



Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

REVISED

Updated to 7 April 2017

This Revised Act is an administrative consolidation of the *Credit Institutions (Financial Support) Act 2008*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975 (3/1975)* to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Knowledge Development Box (Certification of Inventions) Act 2017 (6/2017)*, enacted 12 April 2017, and all statutory instruments up to and including *European Union Habitats (Blackwater Bank Special Area of Conservation 002953) Regulations 2017 (S.I. No. 149 of 2014)*, made 7 April 2017, were considered in the preparation of this revision.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

REVISED

Updated to 7 April 2017

Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

Related legislation

This Act is not collectively cited with any other Act.

Annotations

This Revised Act is not annotated and only shows textual amendments. An annotated version of this revision is also available which shows textual and non-textual amendments and their sources. It also shows editorial notes including statutory instruments made pursuant to the Act and previous affecting provisions.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1996, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

REVISED

Updated to 7 April 2017

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Functions performed in the public interest.
3. Relevant date.
4. Expenses of Minister.
5. Regulations — general implementation of this Act.
6. Provision of financial support for credit institutions.
7. Modification of application, etc., of certain provisions of Competition Act 2002.
8. Consequential amendments of other Acts.
9. Short title.

ACTS REFERRED TO

Central Bank Act 1942	1942, No. 22
Central Bank Act 1997	1997, No. 8
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Companies Act 1963	1963, No. 33
Companies Acts	
Competition Act 2002	2002, No. 14
Finance Act 1970	1970, No. 14
Finance Act 1993	1993, No. 13
National Development Finance Agency Act 2002	2002, No. 29
National Treasury Management Agency Act 1990	1990, No. 18



Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

REVISED

Updated to 7 April 2017

AN ACT TO PROVIDE, IN THE PUBLIC INTEREST, FOR MAINTAINING THE STABILITY OF THE FINANCIAL SYSTEM IN THE STATE AND FOR THAT PURPOSE TO PROVIDE FOR FINANCIAL SUPPORT BY THE MINISTER FOR FINANCE IN RESPECT OF CERTAIN CREDIT INSTITUTIONS, TO AMEND THE COMPETITION ACT 2002 AND OTHER ENACTMENTS, AND TO PROVIDE FOR CONNECTED MATTERS.

[2nd October, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.— In this Act—

“Central Bank” means the [Central Bank of Ireland];

“credit institution” has the meaning it has in the Central Bank Act 1997;

“financial support” includes a loan, a guarantee, an exchange of assets and any other kind of financial accommodation or support;

“Governor” has the meaning it has in section 2 (inserted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942;

“Minister” means Minister for Finance;

“Regulatory Authority” has the meaning it has in section 2 (inserted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942;

“subsidiary”, in relation to a credit institution, has the meaning it has in section 155 of the Companies Act 1963.

Functions performed in the public interest.

2.— (1) The Minister has, in the public interest, the functions provided for under this Act because, after consulting the Governor and the Regulatory Authority, the Minister is of the opinion that—

(a) there is a serious threat to the stability of credit institutions in the State generally, or would be such a threat if those functions were not performed,

(b) the performance of those functions is necessary, in the public interest, for maintaining the stability of the financial system in the State, and

(c) the performance of those functions is necessary to remedy a serious disturbance in the economy of the State.

(2) The Minister may continue to consult with [the Central Bank and the Governor] in the continuing performance of the Minister’s functions under this Act.

(3) Nothing in this Act prevents the performance by the Central Bank [...] of its functions in relation to any credit institution.

Relevant date. 3.— In this Act “relevant date” means 30 September 2008.

Expenses of Minister. 4.— To the extent that the Minister incurs any expenditure not met in accordance with section 6, the expenditure shall be paid out of the Central Fund or the growing produce thereof.

Regulations — general implementation of this Act. 5.— (1) The Minister may, in respect of any difficulty that arises in the operation of this Act during the period of 2 years beginning on the relevant date, make regulations to do anything that appears necessary or expedient for bringing this Act into operation.

(2) Regulations made under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Where the Minister proposes to make regulations under this section—

(a) he or she shall, before doing so, consult with any other Minister of the Government that the Minister considers appropriate having regard to the functions of that other Minister of the Government in relation to the proposed regulations,

(b) he or she shall cause a draft of the proposed regulations to be laid before each House of the Oireachtas, and

(c) he or she shall not make the regulations unless and until a resolution approving of the draft has been passed by each such House.

Provision of financial support for credit institutions. [6.—(1) As and from the relevant date, and in accordance with this section, the Minister may provide financial support directly or indirectly to any current or former credit institution or current or former subsidiary of a credit institution or former credit institution which the Minister may specify by order having regard to—

(a) the matters set out in section 2,

(b) the extent and nature of the obligations (including the degree of control over possible abuse of the financial support) undertaken and which might be undertaken in the future, and

(c) the resources available to him or her for that purpose.

(1A) For the purposes of this section, the provision of indirect financial support includes the provision of financial support to a person (in particular, a company whose objects include the provision of such financial support) in connection with financial support provided or to be provided by that person to—

- (a) a credit institution or former credit institution or current or former subsidiary of a credit institution or former credit institution, or
- (b) credit institutions (including former credit institutions and current or former subsidiaries of credit institutions or former credit institutions) generally.

(1B) The Minister may establish a company incorporated under the Companies Acts whose objects include the provision of financial support or operating as a parent undertaking of one or more credit institutions to whom the Minister has provided financial support.]

(2)[...]

[(3) Financial support provided under this section shall not continue beyond—

- (a) 29 September 2010, or
- (b) a later date specified by the Minister by order.

(3A) The Minister may specify a date under *subsection (3)(b)* if and only if—

- (a) he or she is satisfied, after consulting the Governor and the Regulatory Authority, that the circumstances set out in section 2 exist and are likely to continue to exist until the date to be specified, and
- (b) he or she is satisfied that it is necessary in the public interest that assistance continue to be provided under this section until that date.

(3B) [...]

(4) Financial support may be provided under this section in a form and manner determined by the Minister and on such commercial or other terms and conditions as the Minister thinks fit. Such provision of financial support may be effected by individual agreement, a scheme made by the Minister or otherwise. Without prejudice to the Minister's discretion as to such conditions, all financial support provided shall so far as possible ultimately be recouped from the credit institution or subsidiary to which the support was provided.

[(4A) Where financial support is to be provided pursuant to a scheme under subsection (4), the Minister may, at the Minister's discretion, specify by order a period or periods during which credit institutions may incur borrowings, liabilities and obligations in respect of which financial support may be provided.]

(5) Where the Minister proposes to make a scheme under *subsection (4)*—

- (a) he or she shall cause a draft of the proposed scheme to be laid before each House of the Oireachtas, and
- (b) he or she shall not make the scheme unless and until a resolution approving of the draft has been passed by each such House.

(6) Without prejudice to *subsection (4)*, the conditions under which the Minister provides financial support under this section may include conditions regulating the commercial conduct of the credit institution or subsidiary to which the support is provided, and in particular may include conditions to regulate the competitive behaviour of that credit institution or subsidiary.

(7) The Minister may, as a condition of providing financial support to a credit institution or subsidiary under this section, require the credit institution or subsidiary to fulfil the requirements for the time being imposed by the Central Bank or equivalent authority (including those in relation to the conduct of its business and its competitive behaviour) and to continue to do so.

(8) A condition referred to in this section—

(a) may, where financial support is provided to a credit institution under this section, regulate the commercial conduct of a subsidiary (whether or not financial support is being provided to the subsidiary), and

(b) may, where financial support is provided under this section to a subsidiary of a credit institution, regulate the commercial conduct of the credit institution or another subsidiary (whether or not financial support is being provided to the credit institution).

(9) The Minister may subscribe for, take an allotment of or purchase shares and any other securities in a credit institution or subsidiary to which financial support is provided under this section on such terms as the Minister sees fit.

(10) The Minister may withdraw or revoke financial support provided to a credit institution or a subsidiary under this section in accordance with the terms or conditions of the financial support as the Minister thinks fit.

(11) For the purposes of this section, the Minister may, whenever and so often as he or she thinks fit, create and issue securities—

(a) bearing interest at such rate as he or she thinks fit, or no interest,

(b) for such cash or non-cash deferred consideration as he or she thinks fit, and

(c) subject to such terms and conditions as to repayment, repurchase, cancellation and redemption or any other matter as he or she thinks fit.

(12) All money to be paid out or non-cash assets to be given by the Minister under this section may be paid out of the Central Fund or the growing produce thereof.

(13) Money paid by a credit institution or subsidiary to the Minister, or any non-cash consideration received by the Minister from such credit institution or subsidiary, is to be paid into, or disposed of for the benefit of, the Exchequer in connection with the performance of his or her functions under this section or for any other purpose in such manner as the Minister thinks fit.

(14) Where financial support has been provided under this section to a credit institution or subsidiary, the Minister—

(a) shall from time to time review the necessity for the financial support, and

(b) if he or she is satisfied, having regard to the considerations set out in *section 2*, that the financial support is no longer necessary, shall withdraw the financial support.

(15) As soon as practicable after the end of 2009 and each year thereafter, the Minister shall lay a report before each House of the Oireachtas for the purpose of informing the members of each House on the situation with regard to any financial support provided under this section. The report shall give particulars of—

(a) the aggregate amount of payment and the amount (if any) repaid to the Minister on foot of the payment, and

(b) the aggregate amount of money that was outstanding at the end of that year on foot of such financial support.

(16) The publication of the reports required by *subsection (15)* shall be taken as satisfying any obligation of the Minister under Regulation 3 of the European Communities (Financial Transparency) Regulations 2004 (S.I. No. 693 of 2004).

(17) A reference in section 99(2) of the Companies Act 1963 to a charge shall be taken not to include any charge to secure a liability or obligation arising under this section created by a credit institution or subsidiary in favour of the Minister or any

agent of the Minister (including the National Treasury Management Agency) or the Central Bank. Section 99 of that Act shall not apply to any such charge.

(18) Notwithstanding any provision in the memorandum or articles of association of a credit institution or subsidiary that provides for the keeping of a register of charges created by that credit institution or subsidiary, a charge of a kind referred to in *subsection (17)* shall not be entered in that register.

(19) In *subsection (18)* “articles of association” shall, in the case of a body corporate that is not a company within the meaning of the Companies Acts, be taken to include any other instrument constituting or defining its constitution, including bye-laws.

[(20) In the event of there being any doubt or uncertainty over whether financial support provided or proposed to be provided to a current or former credit institution or current or former subsidiary of a credit institution or former credit institution may be provided under this section, the Minister may determine the matter. The Minister’s determination is conclusive.]

Modification of application, etc., of certain provisions of Competition Act 2002.

7.—[...]

Consequential amendments of other Acts.

8.— (1) The First Schedule to the National Treasury Management Agency Act 1990 is amended by—

(a) the deletion of “and” before paragraph (m); and

(b) the addition after paragraph (r) of:

“and

(s) *subsections (1) to (11) of section 6 of the Credit Institutions (Financial Support) Act 2008*”.

(2) Section 54 of the Finance Act 1970 is amended by inserting after subsection (7B) (inserted by the National Development Finance Agency Act 2002):

“(7C) The Minister for Finance may engage in such transactions of a normal banking nature with any person—

(a) in connection with the performance of his or her functions under *section 6 of the Credit Institutions (Financial Support) Act 2008*, and

(b) for the purpose of the better management of any indebtedness incurred by the Minister under that section,

and may for the purpose of those transactions issue such funds from the Exchequer as the Minister for Finance considers appropriate. The expenses and other costs incurred by the Minister for Finance in connection with or arising out of those transactions shall be charged on the Central Fund or the growing produce thereof.”.

(3) The First Schedule to the National Treasury Management Agency Act 1990 is amended by inserting the following after paragraph (gggg) (inserted by the National Development Finance Agency Act 2002):

“(ggggg) *section 54(7C) (inserted by the Credit Institutions (Financial Support) Act 2008)* in so far as that section relates to the engage-

ment in certain transactions of a normal banking nature) of the Finance Act 1970.”.

(4) Section 138 of the Finance Act 1993 is amended by inserting, after subparagraph (iv) of subsection (1)(b):

“(v) any securities or financial instrument determined by the Minister as permissible on such terms and conditions as the Minister may determine.”.

Short title. **9.**— This Act may be cited as the Credit Institutions (Financial Support) Act 2008.