



Number 31 of 2012

MICROENTERPRISE LOAN FUND ACT 2012

REVISED

Updated to 20 July 2020

This Revised Act is an administrative consolidation of the *Microenterprise Loan Fund Act 2012*. 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 the *Credit Guarantee (Amendment) Act 2020* (5/2020), enacted 24 July 2020, and all statutory instruments up to and including the *Microenterprise Loan Fund (Amendment) Act 2020 (Commencement) Order 2020* (S.I. No. 268 of 2020), made 20 July 2020, were considered in the preparation of this Revised Act.

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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 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Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked.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. A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.



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ACTS REFERRED TO

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AN ACT TO FACILITATE THE LENDING OF MONEY TO MICROENTERPRISES; FOR THAT PURPOSE TO MAKE PROVISION FOR A FUND TO BE KNOWN AS THE MICROENTERPRISE LOAN FUND; TO PROVIDE FOR THE FORMATION OF A COMPANY TO MANAGE THAT FUND; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[24th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement.

1.— (1) This Act may be cited as the Microenterprise Loan Fund Act 2012.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Interpretation.

2.— (1) In this Act—

“Act of 1963” means the Companies Act 1963;

“Fund” has the meaning assigned to it by *section 4*;

“material interest” shall be construed in accordance with section 2(3) of the Ethics in Public Office Act 1995;

“microenterprise” shall be construed in accordance with *subsection (2)*;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

F1[‘promotional financial institution’ means—

(a) the Strategic Banking Corporation of Ireland, or

(b) any other national promotional bank or institution, other than the Social Finance Foundation, within the meaning of Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No.

1291/2013 and (EU) No. 1316/2013 - the European Fund for Strategic Investments;¹

“Social Finance Foundation” means the company of that name formed and registered under the Companies Acts on 25 January 2007;

“subsidiary” has the meaning assigned to it by *section 11*.

(2) For the purposes of this Act, a person is a microenterprise if—

(a) the person is established in the State and employs fewer than 10 persons (calculated in accordance with Commission Recommendation (2003/361/EC) of 6 May 2003¹ concerning the definition of micro, small and medium-sized enterprises) whether or not in the State, and

(b) the person’s—

(i) annual turnover does not exceed €2 million (calculated in accordance with the said Commission Recommendation) whether or not earned in, or derived from activities carried on, in the State,

(ii) estimated annual turnover (in circumstances where the person has been carrying on business for less than 12 months) in the year concerned does not exceed €2 million (calculated in accordance with the said Commission Recommendation) whether or not estimated to be earned, or derived from activities carried on, in the State, or

(iii) annual balance sheet total does not exceed €2 million (calculated in accordance with the said Commission Recommendation).

Expenses.

3.— The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 2

MICROENTERPRISE LOAN FUND

Microenterprise Loan Fund.

4.— (1) All grants made to the subsidiary under *section 5* and all gift and other income shall be known collectively as the Microenterprise Loan Fund and in this Act are referred to as the “Fund”.

(2) The subsidiary shall for the purposes of the performance of its functions under this Act, open such accounts as, in accordance with any arrangement under *subsection (4)*, it determines.

(3) All grants made to the subsidiary under *section 5* and all gift and other income shall be paid into accounts of the subsidiary opened under this section.

(4) The Minister may, with the consent of the Minister for Public Expenditure and Reform, make an arrangement with the subsidiary as respects the opening and maintenance of accounts by the subsidiary, and such arrangement may make provision in relation to the payment of moneys into such accounts and the transfer of moneys between such accounts.

(5) In this section “gift and other income” means—

¹ OJ No. L169, 1. 7.2015, p.1 ;

¹ O.J. No. L124 of 20.5.2003, p.36

- (a) all income derived from any investment made by the subsidiary under *section 6*,
- (b) the proceeds of the sale or other disposal of any investments made by the subsidiary under *section 6*,
- (c) gifts of money received by the subsidiary in accordance with *section 9*,
- (d) income derived from any gift accepted by the subsidiary in accordance with *section 9*,
- (e) the proceeds of the sale or other disposal of all gifts of land or other property accepted by the subsidiary in accordance with *section 9*,
- (f) moneys paid to the subsidiary in accordance with *subsection (5) of section 9*, and
- (g) the proceeds of the sale or other disposal of any land or other property paid to the subsidiary in accordance with *subsection (6) of section 9*.

Grants to subsidiary.

5.— (1) The Minister shall make a grant of €10 million to the subsidiary out of moneys provided by the Oireachtas.

(2) The Minister may, in addition to the grant made in accordance with *subsection (1)*, make such grant or grants to the subsidiary out of moneys provided by the Oireachtas as he or she considers appropriate provided that the aggregate of all grants made to the subsidiary in accordance with this subsection shall not exceed F2[€95 million].

(3) For the avoidance of doubt, the subsidiary shall not be liable to repay to the Minister any moneys paid to it under this section.

Investment of moneys standing to credit of Fund.

6.— (1) Moneys standing to the credit of the Fund that are not, for the time being, required for the purpose of lending money to microenterprises in accordance with *section 7* or the making of payments in accordance with *section 19* may be invested by the subsidiary—

(a) in such securities (other than shares in a company) as it considers appropriate, or

(b) by deposit of the moneys in a credit institution,

in the currency of the State.

(2) The subsidiary may, from time to time and at its discretion, vary or sell any investments made under *subsection (1)*.

(3) Moneys standing to the credit of the Fund shall not be used for any purpose other than the purposes of this Act.

(4) In this section “credit institution” has the same meaning as it has in the Central Bank and Credit Institutions (Resolution) Act 2011.

Lending to microenterprises.

7.— (1) The subsidiary may lend money to microenterprises in accordance with a scheme under *section 10* out of moneys—

(a) for the time being standing to the credit of [the Fund,]

(b) loaned to it by the Social Finance Foundation in accordance with *subsection (4) of [the Fund,]*

F4[(c) loaned to it by a promotional financial institution in accordance with *subsection (1) of section 8A.*]

F5[(2) Where moneys (other than moneys standing to the credit of the Fund) for the time being standing to the credit of accounts held by the subsidiary are, by reason of a default or defaults in the payment of moneys due to the subsidiary pursuant to an agreement or agreements providing for the making of a loan or loans to which *subsection (1)* applies, insufficient to enable the subsidiary to pay (in whole or in part) to—

(a) the Social Finance Foundation, any sum the payment of which falls due in accordance with terms or conditions referred to in *subsection (4) of section 8*, or

(b) a promotional financial institution, any sum the payment of which falls due in accordance with terms or conditions referred to in *subsection (1) of section 8A*,

the subsidiary shall pay the sum due to the Social Finance Foundation or the promotional financial institution concerned, as the case may be, out of moneys for the time being standing to the credit of the Fund.]

Borrowing by
Social Finance
Foundation.

8.— (1) The Social Finance Foundation may, for the purposes of this Act and with the consent of the Minister, the Minister for Finance and the Minister for Public Expenditure and Reform, borrow money (including money in a currency other than the currency of the State) from such persons as it considers appropriate, whether by means of the issue of debentures (or other debt security) or otherwise.

(2) The aggregate at any one time of borrowings by the Social Finance Foundation under this section shall not exceed €25 million.

(3) For the purposes of this section, moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated at the rate of exchange prevailing at the time of the borrowing for that currency and the currency of the State.

(4) (a) The Social Finance Foundation shall, F6[subject to *subsection (2) of section 8A and such terms and conditions*] as the Minister determines, lend to the subsidiary all moneys borrowed by it in accordance with this section.

(b) The Social Finance Foundation shall not lend moneys to the subsidiary other than moneys borrowed by it in accordance with this section.

(c) F7[...]

(5) This section shall not operate to restrict or delimit any power that, apart from this section, the Social Finance Foundation has to borrow money.

F8[Borrowing by
subsidiary from
promotional
financial institution]

8A. (1) The subsidiary may, for the purposes of this Act, with the consent of the Minister, the Minister for Finance and the Minister for Public Expenditure and Reform, and subject to such terms and conditions as may be approved by the Minister, borrow money (including money in a currency other than the currency of the State) from a promotional financial institution whether by means of the issue of debentures (or other debt security) or otherwise.

(2) The aggregate at any one time of borrowings by the subsidiary under this section and *subsection (4) of section 8* shall not exceed €100 million.

(3) Moneys borrowed under this section shall be used by the subsidiary—

(a) to lend moneys to microenterprises under *section 7*, or

(b) to repay (in whole or in part) any loan made to the subsidiary by the Social Finance Foundation in accordance with *subsection (4) of section 8*.

(4) For the purposes of this section, moneys borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys borrowed, such equivalent being calculated at the rate of exchange prevailing at the time of the borrowing for that currency and the currency of the State.]

Gifts.

9.— (1) The Minister or the subsidiary may, with the consent of the Minister for Public Expenditure and Reform, accept a gift of moneys (the purpose of the making of which is to benefit the Fund) upon such trusts or conditions (if any) as may be specified by the donor.

(2) The Minister or the subsidiary may, with the consent of the Minister for Public Expenditure and Reform, accept a gift of land or other property (the purpose of the making of which is to enable the realisation of its value for the benefit of the Fund) upon such trusts or conditions (if any) as may be specified by the donor.

(3) The Minister or the subsidiary shall not accept a gift of moneys, land or other property if the trusts or conditions attached to it would be inconsistent with the functions of the Minister, the Minister for Finance, the Minister for Public Expenditure and Reform, the Social Finance Foundation or the subsidiary under this Act.

(4) (a) The Minister shall, in such manner as, with the consent of the Minister for Public Expenditure and Reform, he or she determines, sell or otherwise dispose of any land or other property, a gift of which has been accepted by him or her under this section.

(b) The subsidiary shall, in such manner as, with the consent of the Minister for Public Expenditure and Reform, it determines, sell or otherwise dispose of any land or other property, a gift of which has been accepted by it under this section.

(5) The Minister shall, as soon as may be after accepting a gift of moneys in accordance with this section, pay those moneys to the subsidiary.

(6) The Minister shall, as soon as may be after the sale or other disposal of any land or other property accepted by him or her as a gift in accordance with this section, pay to the subsidiary the proceeds of such sale or disposal.

(7) Nothing in this section shall operate to restrict or delimit any power that, apart from this section, the Minister has to accept a gift of moneys, land or other property.

Microenterprise
Loan Fund
scheme.

10.— (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform and after consultation with the Social Finance Foundation, make a scheme or schemes for the purposes of this Act.

(2) Without prejudice to the generality of *subsection (1)*, a scheme under this section may make provision in relation to all or any of the following matters—

(a) the class or classes of microenterprise to which the scheme shall apply,

(b) the purposes for which moneys loaned by the subsidiary to microenterprises may be applied,

(c) the maximum amount or amounts that the subsidiary may lend to a microenterprise under this Act,

(d) the terms of agreements for the lending of moneys to microenterprises including the variation of such terms,

- (e) the preparation and maintenance by microenterprises of records, books of account and such other documentation as may be specified in the scheme,
- (f) the giving of documents, information and reports by the subsidiary to the Minister,
- (g) the policies and practices of the subsidiary as respects—
 - (i) the lending of moneys to microenterprises,
 - (ii) the recovery of moneys loaned in accordance with this Act, and
 - (iii) the provision by microenterprises of security for moneys borrowed under this Act.

(3) Every scheme under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House sits after the scheme is laid before it, the scheme shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

PART 3

MANAGEMENT OF MICROENTERPRISE LOAN FUND

Formation of company.

11.— The Social Finance Foundation shall, after consultation with the Minister, the Minister for Finance and the Minister for Public Expenditure and Reform, cause a private company limited by shares (in this Act referred to as the “subsidiary”) conforming to the conditions laid down in this Act to be formed and registered under the Companies Acts.

Name and share capital of subsidiary.

- 12.**— (1) The name of the subsidiary shall be Microfinance Ireland.
- (2) Paragraph (b) of subsection (1) of section 6 (inserted by section 3 of, and the First Schedule to, the Companies (Amendment) Act 1983) of the Act of 1963 shall not apply to the subsidiary.
- (3) The authorised share capital of the subsidiary shall be €1 comprising one share of €1 and that share shall be issued by the subsidiary to the Social Finance Foundation.
- (4) The Social Finance Foundation shall not, without the consent of the Minister, alienate the share issued to it under *subsection (3)*.

Memorandum and articles of association of subsidiary.

- 13.**— (1) The memorandum of association of the subsidiary shall be in such form consistent with this Act as may be approved by the Minister with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform.
- (2) The articles of association of the subsidiary shall be in such form consistent with this Act as may be approved by the Minister with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform.
- (3) Notwithstanding anything contained in the Companies Acts, no alteration of the memorandum of association or articles of association of the subsidiary shall be valid or effectual unless made with the prior approval of the Minister given with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform.

Disqualification
for office of
director of
subsidiary.

14.— (1) A director of the subsidiary shall cease to be qualified and cease to be a director of the subsidiary if he or she—

- (a) is adjudicated bankrupt,
- (b) makes a composition or arrangement with creditors,
- (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
- (d) is convicted of any indictable offence in relation to a company,
- (e) is convicted of an offence involving fraud or dishonesty, whether in connection with a company or not, or
- (f) is the subject of an order under section 160 of the Companies Act 1990.

(2) This section is in addition to, and not in substitution for, any provision of the Companies Acts by virtue of which a person is not qualified for, or shall cease to be, a director of a company.

Membership of
either House of
Oireachtas or
European
Parliament.

15.— (1) Where a director of the subsidiary is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
- (c) regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to that Parliament,

he or she shall thereupon cease to be a director of the subsidiary.

(2) Where a member of the staff of the subsidiary is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
- (c) regarded pursuant to the said Part XIII as having been elected to that Parliament,

he or she shall thereupon cease to be a member of the staff of the subsidiary.

(3) A person who is for the time being entitled under the Standing Orders of either House of the Oireachtas to sit therein or who is a member of the European Parliament shall, while he or she is so entitled or is such a member, be disqualified for being a director of the subsidiary or a member of the staff of the subsidiary.

Disclosure of
interests by
directors of
subsidiary.

16.— (1) Where at a meeting of the directors of the subsidiary any of the following matters arises, namely—

- (a) an arrangement to which the subsidiary is a party or a proposed such arrangement, or
- (b) a contract or other agreement with the subsidiary or a proposed such contract or other agreement,

then, any director of the subsidiary present at the meeting who otherwise than in his or her capacity as such director has a material interest in the matter shall—

- (i) at the meeting disclose the fact of such interest and the nature thereof to the other directors of the subsidiary present,

- (ii) neither influence nor seek to influence a decision to be made in relation to the matter,
- (iii) absent himself or herself from the meeting or that part of the meeting during which the matter is being discussed,
- (iv) take no part in any deliberation relating to the matter, and
- (v) not vote on a decision relating to the matter.

(2) Where a material interest is disclosed pursuant to this section, the disclosure shall be recorded in the minutes of the meeting concerned and, for so long as the matter to which the disclosure relates is being dealt with by the meeting, the director by whom the disclosure is made shall not be counted in the quorum for the meeting.

(3) Where at a meeting of the directors of the subsidiary a question arises as to whether or not a course of conduct, if pursued by a director of the subsidiary, would constitute a failure by him or her to comply with the requirements of *subsection (1)*, the question may, subject to *subsection (4)*, be determined by the chairperson of the meeting, whose decision shall be final, and where such a question is so determined, particulars of the determination shall be recorded in the minutes of the meeting.

(4) Where, at a meeting of the directors of the subsidiary, the chairperson of the meeting is the director in respect of whom a question to which *subsection (3)* applies falls to be determined, then the other directors of the subsidiary attending the meeting shall choose one of their number to be chairperson of the meeting for the purpose of determining the question concerned.

(5) (a) Where the Minister is satisfied that a director of the subsidiary has contravened *subsection (1)*, the Minister may, if he or she thinks fit, direct the Social Finance Foundation to remove that director from office and the Social Finance Foundation shall comply with such direction.

(b) Where a person is removed from office pursuant to a direction under this subsection, he or she shall thenceforth be disqualified for being a director of the subsidiary.

(6) Section 194 (amended by section 2 of the Companies (Amendment) Act 2009) of the Act of 1963 shall not apply to a director of the subsidiary.

Disclosure of interests by members of staff of subsidiary.

17.— (1) Where a member of the staff of the subsidiary has a material interest, otherwise than in his or her capacity as such a member, in any contract, agreement or arrangement, or proposed contract, agreement or arrangement, to which the subsidiary is a party, that person shall—

- (a) disclose to the subsidiary his or her interest and the nature thereof,
- (b) take no part in the negotiation of the contract, agreement or arrangement or in any deliberation by the subsidiary or members of the staff of the subsidiary in relation thereto, and
- (c) neither influence nor seek to influence a decision to be made in the matter nor make any recommendation in relation to the contract, agreement or arrangement.

(2) *Subsection (1)* shall not apply to contracts or proposed contracts of employment of members of the staff of the subsidiary with the subsidiary.

(3) Where a person contravenes this section the subsidiary may make such alterations to the person's terms and conditions of employment as it considers appropriate or terminate the person's contract of employment.

Disclosure of confidential information.

18.— (1) A person shall not disclose confidential information obtained by him or her while performing functions as a director or a member of the staff of, or an adviser or consultant to, the subsidiary, or a member of the staff of such adviser or consultant unless he or she is duly authorised by the subsidiary to so do.

(2) *Subsection (1)* shall not operate to prohibit the disclosure of confidential information by a person referred to in that subsection to the Social Finance Foundation.

(3) In this section “confidential information” includes—

(a) information that is expressed by the subsidiary to be confidential either as regards particular information or as regards information of a particular class or description, and

(b) proposals of a commercial nature or tenders submitted to the subsidiary by contractors, consultants or any other person.

Funding of subsidiary.

19.— (1) All expenditure incurred by the subsidiary in accordance with an arrangement under this section shall be paid out of moneys standing to the credit of the Fund.

(2) The Minister may, with the consent of the Minister for Public Expenditure and Reform, make an arrangement in writing with the subsidiary in relation to expenditure of moneys (other than moneys loaned by the subsidiary under F9[*section 7, paid*] to the Social Finance Foundation in connection with any loan made to the subsidiary by the Social Finance Foundation in accordance with *subsection (4) of section 8 F10[or paid to a promotional financial institution in connection with any loan made to the subsidiary by that promotional financial institution in accordance with subsection (1) of section 8A]*) by the subsidiary in the performance of its functions under this Act.

(3) If the subsidiary is wound up either voluntarily or by the court, any moneys remaining in the Fund after the payment of all debts of the subsidiary incurred in accordance with an arrangement under this section shall be paid into the Central Fund.

Accounts and audit.

20.— (1) Without prejudice to the requirements of the Companies Acts in relation to balance sheets and accounts, the subsidiary shall keep in such form as may be approved by the Minister, with the consent of the Minister for Public Expenditure and Reform, all proper and usual accounts of all money received or expended by it and, in particular, shall keep in such form as aforesaid all such special accounts as the Minister may, with the consent of the Minister for Public Expenditure and Reform, from time to time direct.

(2) Accounts kept by the subsidiary in pursuance of this section shall be submitted, not later than 1 March in the year immediately following the financial year to which they relate or on such earlier date as the Minister may, from time to time, specify, to the Comptroller and Auditor General for audit and, immediately after the audit, a copy of the accounts, and of such other (if any) accounts as the Minister, after consultation with the Minister for Public Expenditure and Reform, may direct and a copy of the Comptroller and Auditor General’s report on the accounts shall be presented to the Minister who shall, as soon as may be after they are so presented, cause copies thereof to be laid before each House of the Oireachtas.

(3) A relevant enactment shall not, as respects the subsidiary, apply to the Social Finance Foundation.

(4) For the purposes of this section, each of the following is a relevant enactment—

(a) sections 150 and 158 of the Act of 1963,

(b) sections 13 and 16 of, and Part V of the Schedule to, the Companies (Amendment) Act 1986, and

(c) Regulations 17, 18, 19, 20, 21, 22, 25, 26 and 39 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992).

Annual report. **21.**— The subsidiary shall, not later than 30 June in each year, prepare and submit to the Minister a report on its activities in the immediately preceding year, and the Minister shall, as soon as may be after receiving such report, cause copies of the report to be laid before each House of the Oireachtas.

Review of operation of Act. **22.**— The Minister shall commence a review of the operation of this Act not later than 2 years after the date of its passing.