



Number 36 of 2010

CREDIT INSTITUTIONS (STABILISATION) ACT 2010

REVISED

Updated to 17 November 2022

This Revised Act is an administrative consolidation of the *Credit Institutions (Stabilisation) Act 2010*. 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 *Consumer Rights Act 2022* (37/2022), enacted 7 November 2022, and all statutory instruments up to and including the *General Government Secured Borrowings Order 2022* (S.I. No. 581 of 2022), made 17 November 2022, were considered in the preparation of this Revised Act.

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Number 36 of 2010

CREDIT INSTITUTIONS (STABILISATION) ACT 2010

REVISED

Updated to 17 November 2022

AN ACT TO MAKE PROVISION, IN THE CONTEXT OF THE NATIONAL RECOVERY PLAN 2011 - 2014 AND THE EUROPEAN UNION/INTERNATIONAL MONETARY FUND PROGRAMME OF FINANCIAL SUPPORT FOR IRELAND, IN RELATION TO THE STABILISATION, AND THE PRESERVATION OR RESTORATION OF THE FINANCIAL POSITION OF CERTAIN CREDIT INSTITUTIONS; TO AMEND THE BUILDING SOCIETIES ACT 1989, THE CENTRAL BANK ACT 1971 AND THE CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008 FOR THOSE PURPOSES; TO AMEND THE NATIONAL PENSIONS RESERVE FUND ACT 2000 TO ALLOW THE MINISTER FOR FINANCE TO GIVE CERTAIN DIRECTIONS IN RELATION TO THE NATIONAL PENSIONS RESERVE FUND; TO MAKE CONSEQUENTIAL AMENDMENTS TO THE EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP OF CREDIT INSTITUTIONS) REGULATIONS 2004 (S.I. NO. 198 OF 2004); AND FOR RELATED PURPOSES.

[21st December, 2010]

WHEREAS THERE IS A SERIOUS DISTURBANCE IN THE ECONOMY OF THE STATE;

AND WHEREAS MEASURES ARE NECESSARY TO ADDRESS A UNIQUE AND UNPRECEDENTED ECONOMIC CRISIS WHICH HAS LED TO DIFFICULT ECONOMIC CIRCUMSTANCES AND SEVERE DISRUPTION TO THE ECONOMY;

AND WHEREAS THERE IS A CONTINUING SERIOUS THREAT TO THE STABILITY OF CERTAIN CREDIT INSTITUTIONS IN THE STATE, AND TO THE FINANCIAL SYSTEM GENERALLY;

AND WHEREAS IT IS NECESSARY, IN THE PUBLIC INTEREST, TO MAINTAIN THE STABILITY OF THOSE CREDIT INSTITUTIONS AND THE FINANCIAL SYSTEM IN THE STATE;

AND WHEREAS IT IS NECESSARY, IN THE INTERESTS OF THE COMMON GOOD, TO CONTINUE THE PROCESS OF REORGANISATION, PRESERVATION AND RESTORATION OF THE FINANCIAL POSITION OF ANGLO IRISH BANK CORPORATION LIMITED BEGUN WITH THE ANGLO IRISH BANK CORPORATION ACT 2009;

AND WHEREAS THE FUNCTIONS AND POWERS CONFERRED BY THIS ACT ARE NECESSARY TO SECURE FINANCIAL STABILITY AND TO EFFECT A REORGANISATION OF CERTAIN CREDIT INSTITUTIONS;

AND WHEREAS IT IS NECESSARY TO AMEND THE EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP OF CREDIT INSTITUTIONS) REGULATIONS 2004 (S.I. NO. 198 OF 2004) TO IMPLEMENT DIRECTIVE 2001/24/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 4 APRIL 2001¹ TO PRESERVE OR RESTORE THE FINANCIAL POSITION OF CERTAIN CREDIT INSTITUTIONS;

¹ OJ No. L 125, 5.5.2001, p. 15.

AND WHEREAS THE CONSIDERABLE FINANCIAL SUPPORT PROVIDED BY THE STATE TO CERTAIN CREDIT INSTITUTIONS HAS HELPED THOSE INSTITUTIONS TO MEET THEIR FINANCIAL AND REGULATORY OBLIGATIONS;

AND WHEREAS THE STATE WISHES TO PROVIDE FOR THE PERFORMANCE OF THE FUNCTIONS CONFERRED BY THIS ACT IN ORDER TO ACHIEVE THE FINANCIAL STABILISATION OF THOSE CREDIT INSTITUTIONS AND THEIR RESTRUCTURING (CONSISTENTLY WITH THE STATE AID RULES OF THE EUROPEAN UNION) IN THE CONTEXT OF THE NATIONAL RECOVERY PLAN 2011—2014 AND THE EUROPEAN UNION/INTERNATIONAL MONETARY FUND PROGRAMME OF FINANCIAL SUPPORT FOR IRELAND;

AND WHEREAS THE COMMON GOOD REQUIRES PERMANENT OR TEMPORARY INTERFERENCE WITH THE RIGHTS, INCLUDING PROPERTY RIGHTS, OF PERSONS WHO MAY BE AFFECTED BY THE PERFORMANCE OF THOSE FUNCTIONS;

AND WHEREAS THE URGENT REORGANISATION OF CERTAIN CREDIT INSTITUTIONS IS OF SYSTEMIC IMPORTANCE TO THE STATE;

AND WHEREAS IT IS NECESSARY TO MAINTAIN PUBLIC CONFIDENCE IN, AND ENHANCE, THE PROTECTION OF DEPOSITS IN CREDIT INSTITUTIONS GENERALLY;

AND WHEREAS IT IS DESIRABLE TO PROMOTE AND FACILITATE INVESTMENT BY PERSONS OTHER THAN THE STATE IN CREDIT INSTITUTIONS TO REDUCE THEIR RELIANCE UPON STATE SUPPORT;

AND WHEREAS BECAUSE CERTAIN CREDIT INSTITUTIONS IN THE STATE ARE PARTIES TO CONTRACTS AND OTHER ARRANGEMENTS GOVERNED BY THE LAW OF A STATE OTHER THAN THE STATE;

BE IT THEREFORE ENACTED BY THE OIREACTHAS AS FOLLOWS:

Annotations

Editorial Notes:

- E1** Act designated as relevant applicable enactment for purposes of *European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011* (S.I. No. 48 of 2011) (4.02.2011) by *European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011* (S.I. No. 48 of 2011), reg. 2(4).

PART 1

PRELIMINARY

Short title and
commencement.

1.— (1) This Act may be cited as the Credit Institutions (Stabilisation) Act 2010.

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

(3) An order under *subsection (2)* may, in respect of the amendments of Acts and Regulations set out in *Part 8* and the Schedules, appoint different days for the commencement of amendments of different Acts or Regulations or different provisions of them.

Annotations**Editorial Notes:**

E2 Power pursuant to section exercised (21.12.2010 and 22.12.2010) by *Credit Institutions (Stabilisation) Act 2010 (Commencement) Order 2010* (S.I. No. 623 of 2010).

2. (1) Subject to paragraph (2), the 21st day of December 2010 is appointed as the day on which the Credit Institutions (Stabilisation) Act 2010 comes into operation.

(2) Section 59(2) of the Credit Institutions (Stabilisation) Act 2010 comes into operation on the day following the day provided for by paragraph (1).

Interpretation.

2.— (1) In this Act—

“Act of 2008” means the *Credit Institutions (Financial Support) Act 2008*;

“articles of association” includes—

F1[(a) in the case of a credit institution that is established by charter, its bye-laws, and

(b) in the case of a credit institution that is a building society, its rules;]

“Bank” means the Central Bank of Ireland;

“charge” includes—

(a) a mortgage, judgment mortgage, charge, lien, pledge, hypothecation or other security interest or encumbrance or collateral in or over any property,

(b) an assignment by way of security, and

(c) an undertaking or agreement by any person (including a solicitor) to give or create a security interest in property;

“CIWUD Directive” means Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001¹;

“Court” means the High Court;

“credit institution” means a person authorised in the State to accept deposits or other repayable funds from the public and to grant credit on its own account;

“debt security” includes a note, bill, bond or similar financial instrument;

“direction order” has the meaning given by *section 9*;

“enactment” means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under—

(i) an Act of the Oireachtas, or

(ii) a statute referred to in *paragraph (b)*;

“financial support” has the same meaning as in the Act of 2008;

¹ OJ No. L 125, 5.5.2001, p. 15.

F2["functions" includes powers, duties, rights and entitlements, and references to the performance of a function include reference to—

- (a) in relation to a power, the exercise of the power,
- (b) in relation to a duty, the performance of the duty, and
- (c) in relation to a right or entitlement, the exercise of the right or entitlement;]

"Governor" means the Governor of the Bank;

"holding company" means a holding company (within the meaning of [section 155](#) of the [Companies Act 1963](#)) or a parent undertaking (within the meaning given by the European Communities (Companies: Group Accounts) Regulations 1992 ([S.I. No. 201 of 1992](#)));

"interest", in relation to an asset or liability, means—

- (a) the whole or any part or fraction of the asset or liability,
- (b) any other estate in, right or title to, or interest in the asset or liability (whether legal or beneficial), or
- (c) any interest, other than a legal or beneficial interest, in the asset or liability;

"loan instrument" means a document that creates or acknowledges a debt or liability (other than a deposit account);

"memorandum of association" includes, in the case of a credit institution that is established by charter, its charter;

"Minister" means the Minister for Finance;

"regulated market" has the same meaning as in the European Communities (Markets in Financial Instruments) Regulations 2007 ([S.I. No. 60 of 2007](#));

"Regulations of 2004" means the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 ([S.I. No. 198 of 2004](#));

"relevant institution" means (subject to [section 55](#))—

- (a) a body—
 - (i) that has its registered office in the State,
 - (ii) that is, or was on the date on which this Act came into operation, a bank licensed under [section 9](#) of the [Central Bank Act 1971](#), and
 - (iii) to which financial support F3[, other than a financial incentive under [section 38](#), or under [section 46](#) of the [Central Bank and Credit Institutions \(Resolution\) Act 2011, No. — of 2011](#)], has been given or is to be given by the Minister,
- (b) a body that has its chief office in the State and is, or was on the date on which this Act came into operation, a building society within the meaning of the [Building Societies Act 1989](#),
- (c) F4[...]
- (d) a person or body prescribed under [section 3](#),
- (e) a subsidiary of a person or body referred to in any of *paragraphs (a) to (d)*, and
- (f) a holding company of a person or body referred to in any of *paragraphs (a) to (d)*;

“security” includes—

- (a) a charge,
- (b) a mortgage,
- (c) a guarantee, indemnity or surety,
- (d) a right of set-off,
- (e) a debenture,
- (f) a bill of exchange,
- (g) a promissory note,
- (h) collateral,
- (i) any other means of securing—
 - (i) the payment of a debt, or
 - (ii) the discharge or performance of an obligation or liability,
- and
- (j) any other agreement or arrangement having a similar effect;

“share” includes a share of any type or class including ordinary shares, preference shares, deferred shares, share warrants and stock and in the case of a building society includes investment shares, special investment shares and deferred shares but does not include share accounts;

“special management order” has the meaning given by [section 14](#);

“special manager” means any person appointed as such by the Court or the Minister;

“subordinated creditor” means a creditor of a relevant institution, to any extent that the creditor holds a subordinated liability;

“subordinated liability” means, in respect of a relevant institution, an obligation or a liability in the form of a debt security or loan instrument (or any other document howsoever described or constituted) which is expressed to be, or otherwise ranks, subordinate in right of payment to the claims of depositors and unsubordinated creditors of the relevant institution, whether on a winding up or otherwise, and includes a guarantee;

“subsidiary” means a subsidiary (within the meaning given by [section 155](#) of the [Companies Act 1963](#)) or a subsidiary undertaking (within the meaning given by the European Communities (Companies: Group Accounts) Regulations 1992 ([S.I. No. 201 of 1992](#)));

“subordinated liabilities order” has the meaning given by [section 29](#);

“transfer order” has the meaning given by [section 34](#).

(2) A reference in this Act to an agreement includes—

- (a) any instrument (however described) that creates an obligation, whether made in writing or under seal, and without limiting the generality of the foregoing includes an agreement, an arrangement, an undertaking, a scheme, a licence, a security or an obligation, and
- (b) an oral agreement of any kind referred to in [paragraph \(a\)](#).

(3) In this Act—

(a) a reference to an asset includes an interest in an asset, and

(b) a reference to a liability includes an interest in a liability.

(4) A reference in this Act to disposing of an asset or liability includes selling or otherwise transferring, and creating a security or equitable interest in, the asset or liability. For the purposes of this subsection “transfer” includes—

(a) any form of legal or beneficial transfer, including a vesting by operation of law,

(b) a synthetic transfer,

(c) a risk transfer,

(d) a novation,

(e) an assignment,

(f) an assumption,

(g) sub-participation,

(h) sub-contracting, and

(i) any other form of transfer, acquisition, assumption or vesting recognised by law.

F5[(5) A reference in this Act to the preservation of the financial position of a relevant institution shall be taken to include the need for the relevant institution to comply with such one or more of the following as apply to it:

(a) an order made in relation to it under this Act;

(b) a requirement imposed on it under *section 50*;

(c) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).]

Annotations

Amendments:

- F1** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 1, S.I. No. 548 of 2011.
- F2** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 2, S.I. No. 548 of 2011.
- F3** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 3, S.I. No. 548 of 2011.
- F4** Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 4, S.I. No. 548 of 2011.
- F5** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 5, S.I. No. 548 of 2011.

Editorial Notes:

- E3** The amendment to par. (a)(iii) in the definition of “relevant institution” as per F note above did not include the number allocated to *Central Bank and Credit Institutions (Resolution) Act 2011*. The *Central Bank and Credit Institutions (Resolution) Act 2011* is Act No. 27 of 2011.

Prescribed
institutions.

3.— The Minister may make regulations to prescribe a person (including a body corporate that is incorporated after the coming into operation of this Act) for the purposes of *paragraph (d)* of the definition of “relevant institution” in *section 2 (1)* if—

- (a) in the case of a body, it has its registered office, chief office or principal place of business in the State,
- (b) in the case of an individual, his or her ordinary residence is in the State,
- (c) all or any of a relevant institution’s assets or liabilities are transferred, after the coming into operation of this section, to the person under this Act, the Companies Acts, F6[the Central Bank Act 1971 or the Building Societies Act 1989], and
- (d) the Minister is of the opinion that it is necessary or desirable for the purposes of this Act that the person be so prescribed.

Annotations

Amendments:

- F6** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 6, S.I. No. 548 of 2011.

Purposes of Act.

4.— The purposes of this Act are—

- (a) to address the serious and continuing disruption to the economy and the financial system and the continuing serious threat to the stability of certain credit institutions in the State and the financial system generally,
- (b) to implement the reorganisation of credit institutions in the State to achieve the financial stabilisation of those credit institutions and their restructuring (consistently with the state aid rules of the European Union) in the context of the National Recovery Plan 2011 - 2014 and the European Union/International Monetary Fund Programme of Financial Support for Ireland,
- (c) to continue the process of reorganisation, preservation and restoration of the financial position of Anglo Irish Bank Corporation Limited begun with the *Anglo Irish Bank Corporation Act 2009*,
- (d) to continue the process of preservation and restoration of the financial position of building societies through the issue of special investment shares under *section 18(1A)* of the *Building Societies Act 1989*,
- (e) to protect the interests of depositors in credit institutions,
- (f) to address the compelling need—
 - (i) to facilitate the availability of credit in the economy of the State,
 - (ii) to protect the State’s interest in respect of the guarantees given by the State under the Act of 2008 and to support the steps taken by the Government in that regard,
 - (iii) to protect the interests of taxpayers,
 - (iv) to restore confidence in the banking sector and to underpin Government support measures in relation to that sector, and

(v) to align the activities of the relevant institutions and the duties and responsibilities of their officers and employees with the public interest and the other purposes of this Act,

(g) to F7[**preserve or restore**] the financial position of a relevant institution, and

(h) to empower the Court to impose reorganisation measures through orders made in reliance on the CIWUD Directive.

Annotations

Amendments:

F7 Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 7, S.I. No. 548 of 2011.

Independence of Bank and Governor not affected.

5.— (1) Nothing in this Act prevents the performance by the Governor or the Bank of their functions in relation to any credit institution authorised or regulated in the State, or affects any obligation arising under the treaties governing the European Union or the European Communities (within the meaning given by **section 1** of the **European Communities Act 1972**) or the ESCB Statute (within the meaning given by **section 2** of the **Central Bank Act 1942**).

(2) The Minister may continue to consult with the Governor in the continuing performance of the Minister's functions and powers under this Act.

F8[Minister and Bank to have regard to European Union law.

5A.— In performing a function under this Act, the Minister and the Bank shall have regard to the laws of the European Union (including those governing state aid) and any relevant guidance issued by the Commission of the European Union.]

Annotations

Amendments:

F8 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 8, S.I. No. 548 of 2011.

Relationship framework.

6.— The Minister may from time to time specify a relationship framework in writing to govern the relationship between the Minister and the Governor in relation to the exercise of the Minister's powers under this Act.

PART 2

DIRECTION ORDERS

Proposed direction orders.

7.— (1) Subject to *subsections* (2) and (4), the Minister may make a proposed direction order proposing that a relevant institution be directed to take (within a specified period) or refrain from taking (during a specified period) F9[**any action, or any series of actions that are together designed to achieve a specified objective,**] including, in particular, and without limiting the generality of the foregoing, any one or more of the following:

(a) notwithstanding any statutory or contractual pre-emption rights, the listing rules of a regulated market or the rules of any other market on which the

shares of the relevant institution may be traded from time to time, issuing shares to the Minister or to another person nominated by the Minister on terms and conditions that the Minister specifies in the proposed direction order at a consideration that the Minister sets;

- (b) applying for the de-listing of the relevant institution's shares, or the suspension of their listing, on a regulated market, or to change the listing of the relevant institution's shares from a regulated market to another multi-lateral trading facility;
- (c) increasing the authorised share capital (including by the creation of new classes of shares) of the relevant institution to permit it to issue shares to the Minister or to any other person nominated by the Minister;
- (d) making a specified alteration to the relevant institution's memorandum of association and articles of association (including, without prejudice to the generality of the foregoing, the alteration of the rights of shareholders or any class of shareholders);
- (e) disposing, on specified terms and conditions, of a specified asset or liability or a specified part of the relevant institution's undertaking.

(2) The Minister may make a proposed direction order only if the Minister, having consulted with the Governor, is of the opinion that making a direction order in the terms of the proposed direction order is necessary to secure the achievement of a purpose of this Act specified in the proposed direction order.

(3) If the Minister makes a proposed direction order in relation to a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the proposed direction order that the proposed direction order or part is made with that intention, in accordance with the CIWUD Directive.

(4) Unless the relevant institution concerned consents to the making of a direction order in the terms of the proposed direction order, or exceptional circumstances (within the meaning of *subsection (5)*) exist, the Minister shall also, before making a proposed direction order—

- (a) deliver a written notice to the relevant institution setting out the terms of the proposed direction order, accompanied by a summary of the reasons why the Minister is of the opinion that a direction order in the terms of the proposed direction order is necessary,
- (b) afford the relevant institution 48 hours, or a shorter period on which the Minister and the relevant institution agree, in which to make written submissions to the Minister, and
- (c) consider any submissions made under *paragraph (b)*.

(5) Exceptional circumstances for the purposes of *subsection (4)* exist where—

- (a) there is an imminent threat to the financial stability of the relevant institution concerned and the Minister is of the opinion that compliance with that subsection would result in significant damage to the financial stability of that relevant institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Minister is of the opinion that compliance with that subsection would result in significant damage to the stability of that financial system, or
- (c) the Minister has reasonable grounds for believing that confidentiality with regard to the proposed direction order, or the possibility of the making of a

direction order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

Annotations

Amendments:

- F9** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 9, S.I. No. 548 of 2011.

Relevant institution may act in accordance with proposed direction order.

8.— Where a relevant institution consents to the making of a direction order in the terms of a proposed direction order, it may act in accordance with the terms of the proposed order before the Court makes any direction order.

Direction orders.

9.— (1) As soon as may be after completion in relation to a proposed direction order of the procedures required by *section 7*, the Minister shall apply *ex parte* to the Court for an order (in this Act called a “direction order”) in the terms of the relevant proposed direction order.

(2) The Court, when hearing an *ex parte* application under *subsection (1)*, shall, if satisfied that the requirements of *section 7* have been complied with and that the opinion of the Minister under that section was reasonable and was not vitiated by any error of law, make a direction order in the terms of the proposed direction order (or those terms as varied after consideration of any submission referred to in *section 7(4)(c)*).

(3) If in a proposed direction order the Minister has declared the intention of preserving or restoring the financial position of a credit institution, and the Court is satisfied that the Minister made the proposed direction order or part of it with that intention, the Court shall declare in the relevant direction order that the direction order or the relevant part of it is a reorganisation measure for the purposes of the CIWUD Directive.

(4) A report prepared by the Bank (whether or not prepared specifically for the purpose of the application) in relation to matters within the Governor’s or the Bank’s responsibilities, including the financial position of the relevant institution, is admissible in evidence at the hearing of the application.

(5) The Court may make a direction order in terms varied or amended from those in the proposed direction order only if the Court is satisfied that—

(a) there has been non-compliance with any of the requirements of *section 7* or that the opinion of the Minister under *section 7(2)* was unreasonable or vitiated by an error of law,

(b) it would be appropriate to do so, having regard to any report referred to in *subsection (4)*, and

(c) to do so is necessary for the purpose specified in the proposed direction order or any other purpose of this Act.

(6) F10[...]

F11[(7) A direction order has effect—

(a) if there is an application made under *section 11*—

- (i) if the Court makes an order under *section 11* and makes an order as to the date of effect, at that date,
 - (ii) if the Court makes an order under *section 11* and does not make an order as to the date of effect, the date of that order made under *section 11*, or
 - (iii) if the Court does not make an order under *section 11*, 14 days after the publication of the order under *section 9A(1)(b)*,
- or
- (b) if there is no application made under *section 11*—
 - (i) immediately, to the extent that the Court so orders, or
 - (ii) if the Court does not make an order as to the date of effect, 14 days after the publication of the order under *section 9A(1)(b)*.]
- (8) The Court shall order that a direction order or a term of a direction order has effect immediately where the Court is satisfied that the purpose of the order or term is—
- (a) to ensure the immediate and effective issuance of additional share capital in the relevant institution concerned by issuing shares to the Minister or his or her nominee—
 - (i) to prevent or remedy an imminent breach of the regulatory capital requirements applicable to the relevant institution, or
 - (ii) to enable the relevant institution immediately to meet regulatory capital targets set by the Bank,
 - (b) to address an imminent threat to the financial stability of the relevant institution concerned, or
 - (c) to address an imminent threat to the stability of the financial system in the State.
- (9) The Court may order in a direction order that action taken by a relevant institution in accordance with *section 8* shall be taken to have been taken in compliance with the direction order.

Annotations**Amendments:**

- F10** Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 10, S.I. No. 548 of 2011.
- F11** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 11, S.I. No. 548 of 2011.

F12[Publication
of direction
orders.

- 9A.—** (1) The Minister shall, as soon as practicable after a direction order is made—
- (a) serve a copy of the direction order on the relevant institution concerned, and
 - (b) publish the order in 2 newspapers circulating generally in the State.
- (2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a direction order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the direction order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the direction order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the direction order to the regulatory news service referred to in *paragraph (a)*.]

Annotations

Amendments:

F12 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 12, S.I. No. 548 of 2011.

Application to vary direction order.

10.— The Minister may apply—

(a) on notice, or

(b) in urgent circumstances, *ex parte*,

to the Court to vary a direction order if the Minister is of the opinion that the variation is necessary to secure the achievement of a purpose of this Act.

Application to set aside direction order.

11.— (1) The relevant institution in relation to which a direction order is made or a member of that institution may apply to the Court by motion on notice grounded on affidavit, F13[not later than 14 days after the publication, in accordance with *subsection (1)(b) of section 9A*, of a direction order,] for the setting aside of the direction order.

F14[(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

(a) with regard to the hearing of the application, or

(b) with regard to a matter that arises during the period beginning with the direction order and ending with the order of the Court under this section.]

(3) On an application under *subsection (1)*, the Court shall set aside the direction order only if it is of the opinion that there has been non-compliance with any of the requirements of *section 7* or that the opinion of the Minister under *section 7 (2)* was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the direction order, make an order varying or amending that order in the manner it considers appropriate if the Court is satisfied that—

(a) there has been non-compliance with any of the requirements of *section 7* or that the opinion of the Minister under *section 7 (2)* was unreasonable or vitiated by an error of law,

(b) it would be appropriate to do so, having regard to any report referred to in *section 9 (4)*, and

(c) to do so is necessary to secure the achievement of the purpose specified in the direction order or any other purpose of this Act.

F15[(5) On an application under *subsection (1)*—

(a) if an order is made setting aside the direction order, the order under this section is effective from the date of its making without prejudice to the validity of anything previously done or taken to have been done under the direction order, or

(b) if an order is made refusing to set aside the direction order and the Court does not make an order under *subsection (4)*, the order under this section has the effect that the direction order shall be taken to have been effective as if that application had not been made.]

(6) An order under *subsection (4)* has effect, from the date of its making, to vary or amend the direction order without prejudice to the validity of anything previously done or taken to have been done under the direction order.

F16[(7) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of a relevant institution, have regard to—

(a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and

(b) the value of the shares acquired by or disposed of by the member—

(i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and

(ii) as at the date on which the direction order concerned was made.]

Annotations

Amendments:

- F13** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 13, S.I. No. 548 of 2011.
- F14** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 14, S.I. No. 548 of 2011.
- F15** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 15, S.I. No. 548 of 2011.
- F16** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 16, S.I. No. 548 of 2011.

PART 3

SPECIAL MANAGEMENT

Interpretation
(Part 3).

12.— For the purposes of this Part, a relevant institution is under special management if the Court has made a special management order in relation to it, and the special management has not terminated under *section 27*.

Proposed special
management
orders.

13.— (1) Subject to *subsections (2), (3) and (5)*, the Minister may make a proposed special management order under this section where the Minister decides that a person who has, in the Minister's opinion, the requisite knowledge, expertise and experience of the financial services sector to be the special manager of a relevant institution should be appointed as the special manager of that relevant institution.

(2) The Minister may make a proposed special management order only if the Minister, having consulted with the Governor, is of the opinion that making a special management order in the terms of the proposed special management order is necessary to secure the achievement of a purpose of this Act specified in the F17[proposed special management order].

(3) If the Minister makes a proposed special management order in relation to a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the proposed special management order that the proposed special management order or part is made with that intention, in accordance with the CIWUD Directive.

(4) Unless the relevant institution concerned consents to the making of a special management order in the terms of the proposed special management order, or exceptional circumstances (within the meaning of *subsection (5)*) exist, the Minister shall also, before making a special management order—

- (a) deliver a written notice to the relevant institution setting out the terms of the proposed special management order, accompanied by a summary of the reasons why the Minister is of the opinion that a special management order in the terms of the proposed special management order is necessary,
- (b) afford the relevant institution 48 hours, or a shorter period on which the Minister and the relevant institution agree, in which to make written submissions to the Minister, and
- (c) consider any submissions made under *paragraph (b)*.

(5) Exceptional circumstances for the purposes of *subsection (4)* exist where—

- (a) there is an imminent threat to the financial stability of the relevant institution concerned and the Minister is of the opinion that compliance with that subsection would result in significant damage to the financial stability of that relevant institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Minister is of the opinion that compliance with *subsection (4)* would result in significant damage to the stability of that financial system, or
- (c) the Minister has reasonable grounds for believing that confidentiality with regard to the proposed special management order, or the possibility of the making of a special management order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

(6) The proposed special management order shall—

- (a) name the person to be appointed as the special manager, or
- (b) name a firm all of whose members shall be taken to be appointed as special managers.

(7) The proposed special management order shall include the proposed terms of appointment of the special manager, and may—

- (a) specify particular matters that are to be reserved for decision or approval by the Minister, or
- (b) direct the special manager (subject to regulatory requirements) to take particular action or refrain from taking particular action.

Annotations**Amendments:**

- F17** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 17, S.I. No. 548 of 2011.

Special
management
orders.

14.— (1) As soon as may be after completion in relation to a proposed special management order of the procedures required by *section 13*, the Minister shall apply *ex parte* to the Court for an order (in this Act called a “special management order”) in the terms of the proposed special management order.

(2) The Court, when hearing an *ex parte* application under *subsection (1)*, shall, if satisfied that the requirements of *section 13* have been complied with, and that the opinion of the Minister under that section was reasonable and was not vitiated by any error of law, make a special management order in the terms of the proposed special management order (or those terms as varied after consideration of any submission referred to in *section 13(4)(c)*).

(3) A report prepared by the Bank (whether or not prepared specifically for the purpose of the application) in relation to matters within the Governor or the Bank’s responsibilities, including the financial position of the relevant institution, is admissible in evidence at the hearing of the application.

(4) If in a proposed special management order the Minister has declared the intention of preserving or restoring the financial position of a credit institution, and the Court is satisfied that the Minister made the proposed special management order or part of it with that intention, the Court shall declare in the relevant special management order that the special management order or the relevant part of it is a reorganisation measure for the purposes of the CIWUD Directive.

(5) The Court may make a special management order on terms varied or amended from those in the proposed special management order only if it is of the opinion that—

- (a) there has been non-compliance with any of the requirements of *section 13* or that the opinion of the Minister under *section 13(2)* was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to do so, having regard to any report referred to in *subsection (3)*, and
- (c) to do so is necessary to secure the achievement of the purpose specified in the proposed special management order or any other purpose of this Act.

(6) F18[...]

(7) A special management order is effective immediately on its making, subject to the right of application under *section 16*.

Annotations**Amendments:**

- F18** Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 18, S.I. No. 548 of 2011.

F19[Publication
of special
management
orders.

14A.— (1) The Minister shall, as soon as practicable after a special management order is made—

(a) serve a copy of the special management order on the relevant institution concerned, and

(b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a special management order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the special management order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the special management order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the special management order to the regulatory news service referred to in *paragraph (a)*.]

Annotations

Amendments:

F19 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 19, S.I. No. 548 of 2011.

Application to vary special management order.

15.— The Minister may apply—

(a) on notice, or

(b) in urgent circumstances, *ex parte*,

to the Court to vary a special management order if the Minister is of the opinion that the variation is necessary to secure the achievement of a purpose of this Act.

Application to set aside special management order.

16.— (1) The relevant institution in relation to which a special management order is made or a member of that institution may apply to the Court by motion on notice grounded on affidavit, F20[not later than 14 days after the publication, in accordance with *subsection (1)(b) of section 14A*, of the making of a special management order,] for the setting aside of the special management order.

F21[(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

(a) with regard to the hearing of the application, or

(b) with regard to a matter that arises during the period beginning with the making of the special management order and ending with the making of the order of the Court under this section.]

(3) On an application under *subsection (1)*, the Court shall set aside the special management order only if the Court is satisfied that there has been non-compliance with any of the requirements of *section 13* or that the opinion of the Minister under *section 13* (2) was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the special management order, make an order varying or amending that order in the manner it considers appropriate if the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 13* or that the opinion of the Minister under *section 13* (2) was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to do so, having regard to any report referred to in *subsection 14* (3), and
- (c) to do so is necessary to secure the achievement of the purpose specified in the special management order or any other purpose of this Act.

(5) An order under *subsection (4)* is, from the date of making it, effective to vary or amend the special management order without prejudice to the validity of anything previously done under the special management order.

(6) If the Court sets aside a special management order, the appointment of the special manager shall be taken to have been terminated. However—

- (a) he or she remains entitled to be paid, out of the assets of the relevant institution, his or her costs, expenses and remuneration, and
- (b) the termination does not render invalid anything done by the special manager under the special management order.

F22[(7) Where, instead of making an order under *subsection (3)* setting aside a special management order, or an order under *subsection (4)* varying or amending a special management order, the Court, on application under *subsection (1)* makes an order refusing to set aside a special management order, the special management order shall be taken to have been effective as if the application under this section had not been made.

(8) The Court, in considering the order it wishes to make under this section may where the applicant is a member of a relevant institution, have regard to—

- (a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and
- (b) the value of the shares acquired by or disposed of by the member—
 - (i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and
 - (ii) as at the date on which the special management order concerned was made.]

Annotations

Amendments:

- F20** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 20, S.I. No. 548 of 2011.
- F21** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 21, S.I. No. 548 of 2011.
- F22** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 22, S.I. No. 548 of 2011.

Terms of
appointment.

17.— (1) The period of the special management of a relevant institution is 6 months from the making of the relevant special management order (whether that order is made under *subsection (2) or (5) of section 14*).

(2) The terms and conditions of appointment of a special manager (other than the period of his or her appointment) are as set out in the relevant special management order.

Remuneration,
etc., of special
managers.

18.— (1) A special management order shall fix the basis of the calculation of the costs, expenses and remuneration payable to the special manager, and may do so in respect of work done before the making of the special management order.

(2) A special manager is entitled to be paid his or her costs, expenses and remuneration, and to retain the amount of those costs, expenses and remuneration, out of the revenue of the business of the relevant institution or the proceeds of the realisation of the assets (including investments) or other funds available to the relevant institution.

Resignation and
vacancy in office,
etc.

19.— (1) A special manager may resign by giving 2 months' written notice addressed to the Minister.

(2) The Minister may remove the special manager for any reason.

(3) If a special manager resigns or is removed, the Minister may appoint another special manager by instrument in writing.

(4) The resignation or removal of a special manager does not terminate the special management of the relevant institution concerned.

Functions of
special managers.

20.— (1) The special manager of a relevant institution shall take over the management of the business of the relevant institution and shall carry on that business as a going concern with a view to preserving and restoring the financial position of the relevant institution, or the whole or any part of its business, in a manner consistent with the achievement of the purposes of this Act.

(2) Without limiting the generality of *subsection (1)*, the special manager of a relevant institution has the power to acquire and dispose of any asset or all the assets, and any liability, of that institution.

(3) A reference in *subsection (2)* to disposing of an asset or a liability includes selling or otherwise transferring, and creating a security or equitable interest in, the asset or liability.

(4) The special manager of a relevant institution has, in relation to the relevant institution, all powers necessary for or incidental to the special manager's functions, including the sole authority over and direction of all officers and employees of the relevant institution.

(5) The special manager of a relevant institution shall take such steps as he or she determines to be appropriate to remedy the matters that led to the making of a special management order in relation to the relevant institution, and for that purpose may, unless the special management order provides otherwise, appoint advisors to the relevant institution.

(6) A special manager may, with the consent of the Minister and the Governor, substitute his or her own decision for any decision that would otherwise be made by the shareholders, and if he or she does so, the decision shall be taken to be the decision of the shareholders.

(7) The appointment of a special manager of a relevant institution does not relieve the relevant institution of any obligation to comply with any applicable laws and

regulatory requirements and with any directions given by the Bank or the Minister to the relevant institution under any enactment.

(8) The special manager of a relevant institution shall provide such reports and other information to the Bank and the Minister as the Bank or the Minister requests, notwithstanding any other enactment or any rule of law, code of practice, agreement, duty or obligation to any person. The obligation under this subsection is in addition to the obligations of the relevant institution to provide information and make returns to the Bank or the Minister.

Performance of
functions of
special managers.

21.— (1) A special manager may perform his or her functions with the assistance of persons appointed or employed by him or her for that purpose.

(2) A special manager may, with the consent of the Minister, apply to the Court to determine any question arising in the course of the special management.

Effect of
appointment of
special manager.

22.— (1) While a relevant institution is under special management—

- (a) all functions which, but for this paragraph, would be vested in the directors of the relevant institution (whether by virtue of its memorandum of association or articles of association or otherwise) vest in the special manager,
- (b) no proceedings for its winding up shall be commenced without the prior consent in writing of the Minister,
- (c) a resolution for its winding up is of no effect without the prior consent in writing of the Minister,
- (d) no petition can be presented for the appointment of an examiner to the relevant institution or to a related company (within the meaning of [section 4\(5\) of the Companies \(Amendment\) Act 1990](#)) without the prior consent in writing of the Minister,
- (e) no inspector can be appointed or an inquiry commenced under the [Companies Act 1990](#) without the prior consent in writing of the Minister,
- (f) subject to *subsection (2)*, no receiver over any part of the property of the relevant institution shall be appointed without the prior consent in writing of the Minister,
- (g) subject to *subsection (2)*, no enforcement (whether by attachment, sequestration, distress or execution) of any judgment or order shall be put into force against any part of the property of the relevant institution without the prior consent in writing of the Minister, unless the party seeking to do so is the Minister,
- (h) subject to *subsection (2)*, where any claim against a relevant institution is secured by security affecting the whole or any part of the assets of the relevant institution, any person other than the Minister who wishes to realise the whole or any part of that security shall give written notice to the Minister 90 days (or a shorter period to which the Minister agrees) before such realisation, and
- (i) if the special manager so elects, the powers of the relevant institution exercisable by a general meeting of the relevant institution are exercisable only by the special manager and subject to the prior consent in writing of the Minister.

(2) Paragraphs (f), (g) and (h) of *subsection (1)* do not apply to the Bank, the European Central Bank or any other national central bank within the Eurosystem.

(3) Except as provided by this Act, the business of a relevant institution under special management shall continue without interruption as a going concern, and no agreement (including a contract of employment or service), policy, transaction, bank account or bank mandate, right, title, claim, debt, proceeding or obligation of the relevant institution or right, claim or proceeding against it is avoided, cancelled, stayed or otherwise affected by reason only of the appointment of the special manager.

(4) While a relevant institution is under special management—

- (a) the relevant institution shall not convene or hold any general meeting unless the special manager so directs,
- (b) the rights and powers of shareholders and members under any enactment or relevant agreement stand suspended and are not exercisable,
- (c) [section 205](#) of the [Companies Act 1963](#) does not apply, and
- (d) no derivative action may be brought in respect of the relevant institution.

Powers of special manager to remove officers, employees and others.

23.— (1) The special manager of a relevant institution may, with the consent of the Minister, and shall, if so directed by the Minister, remove any person from—

- (a) a position of director, secretary or other officer of the relevant institution or any of its subsidiaries, or
- (b) any of the following positions:
 - (i) a position of employment with the relevant institution or any of its subsidiaries;
 - (ii) an executive position and any such position held by virtue of being a director or secretary of the relevant institution or any of its subsidiaries;
 - (iii) a consultancy to the relevant institution or any of its subsidiaries.

(2) The removal of a person by virtue of *subsection (1)*—

- (a) has effect without the need for any notice being given, meeting being called, resolution being passed or consent being obtained, and
- (b) may be expressed to take effect immediately and, if so expressed, has that effect.

(3) Nothing in *subsection (1)* or (2) deprives a person of any right to claim compensation or damages from the relevant institution for the loss of his or her office or appointment. However—

- (a) a court, tribunal or rights commissioner may not grant any remedy that would have the effect of preventing or restraining the special manager from exercising the special manager's powers under this section, and
- (b) a court, tribunal or rights commissioner may not make an order under the Unfair Dismissals Acts 1977 to 2007 for the reinstatement or re-engagement of such a person.

Relationship between special managers and directors.

24.— (1) The special manager appointed to a relevant institution shall—

- (a) determine the role (if any) of the directors and officers of the relevant institution and its subsidiaries during the special management, and
- (b) determine the remuneration (if any) to be paid to the directors and officers of the relevant institution and its subsidiaries during the special management.

(2) A determination of a special manager under *paragraph (a) or (b) of subsection (1)* is binding on the relevant institution or its subsidiaries (as the case may be) and the directors of the relevant institution or its subsidiaries.

(3) A director or other officer of a relevant institution or a subsidiary of a relevant institution that is under special management remains bound to discharge his or her duties and obligations under any enactment or rule of law except to any extent that he or she is relieved of that duty or obligation by the special manager or by a provision of this Act.

(4) Nothing in this section or any determination under it has the effect of—

(a) rendering lawful any contravention of any enactment or rule of law that took place before the commencement of a special management or takes place after the end of a special management,

(b) relieving any person from any obligation—

(i) to comply at any time, with any such enactment or rule of law, or

(ii) to fulfil any duty at any time, or

(c) precluding any proceedings brought or to be brought in relation to a contravention, or the breach of an obligation, referred to in *paragraph (a) or (b)*.

(5) Nothing in this section affects the duty of directors under *section 48* or authorises the special manager to do so.

Special manager not to be director, etc.

25.— A special manager of a relevant institution shall not be taken to be a shadow director (within the meaning given by *section 27(1)* of the *Companies Act 1990*) nor what is known as a *de facto* director of the relevant institution or any of its subsidiaries.

Extension of special management.

26.— The special management of a relevant institution may be extended in accordance with the procedure set out in *sections 13* and *14*. *Section 16* applies to any order extending the special management.

Termination of special management.

27.— (1) The special management of a relevant institution terminates—

(a) at the end of the period of 6 months referred to in *section 17(1)*,

(b) on the making of an order for the winding up of the relevant institution,

(c) on the making of an order under the *Companies (Amendment) Act 1990* appointing an examiner to the relevant institution, or

(d) if the Minister so orders.

(2) The Minister shall lay a copy of an order under *subsection (1)(d)* before each House of the Oireachtas.

PART 4

SUBORDINATED LIABILITIES

Proposed subordinated liabilities orders.

28.— (1) Subject to subsections (2) and (5) the Minister may make a proposed subordinated liabilities order in relation to the subordinated liabilities of a relevant

institution to which the Minister has provided or intends to provide financial support under the Act of 2008 only if—

(a) the Minister has consulted with the Governor, and

F23[(b) after so consulting, the Minister is of the opinion that the making of a subordinated liabilities order in the terms of the proposed subordinated liabilities order—

(i) is necessary to secure the achievement of a purpose of this Act specified in the proposed subordinated liabilities order, or

(ii) is necessary for the preservation or restoration of the financial position of the relevant institution,

even though the making of that order would have the consequence of affecting (including reducing) the rights enjoyed by subordinated creditors before the order, but nothing in this subsection shall be taken as requiring the Minister to consider the possible adverse consequences of the order on the interests of a particular creditor or class of creditors of the relevant institution or to consider any submission made by a creditor on behalf of that creditor, a class of creditors or creditors generally.]

F24[(1A) If the Minister makes a proposed subordinated liabilities order in relation to a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the proposed subordinated liabilities order that the proposed subordinated liabilities order or part is made with that intention, in accordance with the CIWUD Directive.]

(2) In considering whether to make a proposed subordinated liabilities order in relation to a relevant institution the Minister shall have regard to such of the following matters as the Minister considers appropriate:

(a) the amount of the indebtedness of that institution to its subordinated creditors relative to its assets;

(b) the extent and nature of financial support provided or to be provided to that institution by the Minister under the Act of 2008 or otherwise;

(c) without prejudice to *paragraph (b)*, the extent to which the State has, in particular, provided financial support by way of equity investment (or equivalent) in that institution;

(d) the quantum of the financial support relative to that institution's balance sheet;

(e) the viability of that institution in the absence of that financial support;

(f) the present and likely future ability of that institution to raise equity capital from market sources;

(g) the likely extent to which the subordinated creditors would be repaid amounts owing to them in a winding up of that institution in the absence of such financial support;

F25[(h) the market value of the subordinated liabilities concerned;

(i) the effectiveness or likely effectiveness of liability management exercises of that institution in respect of its subordinated liabilities;

(j) the extent to which subordinated creditors would, if the subordinated liabilities order were made, be more likely to voluntarily agree to any of the matters referred to in *subsection (4)*.]

(3) A proposed subordinated liabilities order may make provision for—

- (a) any one or more or all of the matters referred to in *subsection (4)*, and
- (b) the granting of a shareholding in the relevant institution to the subordinated creditors affected by the order or any class of them.

(4) The matters referred to in *subsection (3)* are the following:

- (a) the postponement, termination, suspension or other modification of specific rights, liabilities, terms and obligations associated with all or any of such subordinated liabilities including (without limiting the generality of the foregoing) any or all of the following rights, terms and obligations:
 - (i) the payment of interest;
 - (ii) the repayment of principal;
 - (iii) what constitutes an event of default;
 - (iv) collective action provisions;
 - (v) the timing of obligations;
 - (vi) the due date;
 - (vii) the applicable law;
 - (viii) the right to declare, specify or determine an event of default;
 - (ix) any right to enforce payment, whether by winding-up or otherwise;
- (b) requiring the relevant institution to acquire those liabilities for a specified consideration, including a consideration calculated on the assumption that the State—
 - (i) has not provided and will not provide financial support to that institution, and
 - (ii) has not made and will not make any investment in that institution.

(5) Unless the relevant institution concerned consents to the making of a subordinated liabilities order in the terms of the proposed order, or exceptional circumstances (within the meaning of *subsection (6)*) exist, the Minister shall also, before making a proposed subordinated liabilities order—

- (a) deliver a written notice to the relevant institution setting out the terms of the subordinated liabilities order, accompanied by a summary of the reasons why the Minister is of the opinion that such an order is necessary,
- (b) afford the relevant institution 48 hours, or a shorter period on which the Minister and the relevant institution agree, in which to make written submissions to the Minister, and
- (c) consider any submissions made under *paragraph (b)*.

(6) Exceptional circumstances for the purposes of *subsection (5)* exist where—

- (a) there is an imminent threat to the financial stability of the relevant institution concerned and the Minister is of the opinion that compliance with that subsection would result in significant damage to the financial stability of that relevant institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Minister is of the opinion that compliance with *subsection (5)* would result in significant damage to the stability of that financial system, or

- (c) the Minister has reasonable grounds for believing that confidentiality with regard to the subordinated liabilities order, or the possibility of the making of a subordinated liabilities order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

(7) The power to make an order in relation to any of the matters referred to in *subsection (4)* is independent of, and may be exercised independently of, the power to make such an order in relation to any other such matter.

Annotations

Amendments:

- F23** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 23, S.I. No. 548 of 2011.
- F24** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 24, S.I. No. 548 of 2011.
- F25** Substituted and inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 25, S.I. No. 548 of 2011.

Subordinated
liabilities orders.

29.— (1) As soon as may be after completion in relation to a proposed subordinated liabilities order of the procedures required by *section 28*, the Minister shall apply *ex parte* to the Court for an order (in this Act called a “subordinated liabilities order”) in the terms of the proposed subordinated liabilities order.

(2) The Court shall, when hearing an *ex parte* application under *subsection (1)*, if satisfied that the requirements of *section 28* have been complied with and that the opinion of the Minister under *section 28(1)(b)* was reasonable and was not vitiated by any error of law, make a subordinated liabilities order in the terms of the proposed subordinated liabilities order (or those terms as varied after consideration of any submission referred to in *section 28(5)(c)*).

F26[(2A) If in a proposed subordinated liabilities order the Minister has declared the intention of preserving or restoring the financial position of a credit institution, and the Court is satisfied that the Minister made the proposed subordinated liabilities order or part of it with that intention, the Court shall declare in the relevant subordinated liabilities order that the subordinated liabilities order or the relevant part of it is a reorganisation measure for the purposes of the CIWUD Directive.]

(3) A report of the Bank relating to—

- (a) the financial state of the relevant institution concerned at a particular time or times,
- (b) the extent of the State’s support of the relevant institution,
- (c) the amount of recovery that would have been made at a particular time or times by subordinated creditors of the relevant institution without State support,
- (d) the amount of recovery that would have been made at a particular time or times by subordinated creditors of the relevant institution if it had been wound up or had been unable to continue as a going concern,
- (e) any of the matters referred to in *section 28 (2)*,

is admissible in evidence at the hearing of the application, whether or not prepared for the purposes of the application.

(4) The Court may make a subordinated liabilities order on terms varied or amended from those in the proposed subordinated liabilities order only if the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 28* or that the opinion of the Minister under *section 28 (1) (b)* was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to do so, having regard to any report referred to in *subsection (3)*, and
- (c) to do so is necessary to secure the achievement of the purpose specified in the proposed subordinated liabilities order.

(5) F27[...]

F28[(6) A subordinated liabilities order is effective from the date on which the requirements of *section 29A(2)(a)* and *(b)* are met.

(7) If one of the consequences of a subordinated liabilities order is that it terminates or reduces the liability of a relevant institution to its subordinated creditors, that termination or reduction shall be taken, for all purposes, as having occurred immediately on the subordinated liabilities order's becoming effective under *subsection (6)*.]

Annotations

Amendments:

- F26** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 26, S.I. No. 548 of 2011.
- F27** Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 27, S.I. No. 548 of 2011.
- F28** Substituted and inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 28, S.I. No. 548 of 2011.

F29[Publication of subordinated liabilities orders.

29A.— (1) The Minister shall, as soon as practicable after a subordinated liabilities order is made—

- (a) serve a copy of the subordinated liabilities order on the relevant institution concerned, and
- (b) publish the order in 2 newspapers circulating generally in the State.

(2) Without delay after the service of the copy of the subordinated liabilities order, the relevant institution concerned shall take all reasonable measures to ensure that the subordinated creditors concerned are made aware of the order, including, without limiting the generality of the foregoing—

- (a) making an announcement that relates to the existence of the subordinated liabilities order and its effect to a regulatory news service generally used by relevant institutions in the State whose securities are traded from time to time on a financial market (whether a regulated market or not), to make announcements to such markets,
- (b) providing a copy of the subordinated liabilities order to the regulatory news service referred to in *paragraph (a)*, and
- (c) providing a copy of the announcement, and of the subordinated liabilities order, to each clearing house through which the subordinated creditors

concerned would, in the ordinary course, acquire or settle subordinated liabilities held by them.]

Annotations

Amendments:

F29 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 29, S.I. No. 548 of 2011.

Application to vary subordinated liabilities order.

30.— The Minister may apply—

(a) on notice, or

(b) in urgent circumstances, *ex parte*,

to the Court to vary a subordinated liabilities order if the Minister is of the opinion that the variation is necessary to secure the achievement of a purpose of this Act.

Application to set aside subordinated liabilities order.

31.— (1) The relevant institution in relation to which a subordinated liabilities order is made or a subordinated creditor of that institution may apply to the Court by motion on notice grounded on affidavit, F30[not later than 14 days after the requirements of *section 29A(2)(a)* and *(b)* have been met, for the setting aside of the subordinated liabilities order or, in the case of a subordinated creditor, of the part or parts of that order that affect the subordinated creditor concerned].

F31[(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

(a) with regard to the hearing of the application, or

(b) with regard to a matter that arises during the period beginning with the subordinated liabilities order and ending with the order of the Court under this section.]

(3) On an application under *subsection (1)*, the Court shall set aside the subordinated liabilities order only if the Court is satisfied that there has been non-compliance with any of the requirements of *section 28* or that the opinion of the Minister under *section 28 (1) (b)* was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the subordinated liabilities order, make an order varying or amending that order in the manner it considers appropriate F32[(including varying the amounts owing to subordinated creditors or one or more classes of subordinated creditors)] if the Court is satisfied that—

(a) there has been non-compliance with any of the requirements of *section 28* or that the opinion of the Minister under *section 28(1)(b)* was unreasonable or vitiated by an error of law,

(b) it would be appropriate to do so, having regard to any report referred to in *section 29(3)*, and

(c) to do so is necessary for the purpose specified in the subordinated liabilities order or any other purpose of this Act.

F33[(5) On application under *subsection (1)*—

(a) if an order is made setting aside the subordinated liabilities order, the effect of the order under this section shall be to set aside the subordinated liabilities order concerned to the extent and on the terms that the Court directs, and

(b) if an order is made refusing to set aside the subordinated liabilities order and the Court does not make an order under subsection (4), then the subordinated liabilities order shall continue to be effective.]

F34[(6) If any order is made under *subsection (4)* to vary or amend a subordinated liabilities order, the subordinated liabilities order as varied or amended shall be taken as being effective as if the terms and conditions as varied were the terms and conditions of the original subordinated liabilities order but otherwise as if the application under this section had not been made.]

F35[(7) The Court, in considering the order it wishes to make under this section may, where the applicant is a subordinated creditor of a relevant institution, have regard to—

(a) the date or dates on which the applicant acquired or disposed of the subordinated liabilities of the relevant institution, and

(b) the market value of those subordinated liabilities—

(i) as at the date or dates referred to in *paragraph (a)*, and

(ii) as at the date on which the subordinated liabilities order concerned was made.

(8) Where an application under *subsection (1)* is made by a subordinated creditor for the setting aside of the part or parts of the subordinated liabilities order that affect him or her, or where the Court makes an order setting aside, or amending or varying, a part or parts only of the subordinated liabilities order, a reference in this section to a subordinated liabilities order shall be read as a reference to that part or those parts only of that subordinated liabilities order.]

Annotations

Amendments:

F30	Substituted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 30, S.I. No. 548 of 2011.
F31	Substituted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 31, S.I. No. 548 of 2011.
F32	Inserted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 32, S.I. No. 548 of 2011.
F33	Substituted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 33, S.I. No. 548 of 2011.
F34	Substituted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 34, S.I. No. 548 of 2011.
F35	Inserted (28.10.2011) by <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> (27/2011), s. 110(5) and sch. 2 part 5 item 35, S.I. No. 548 of 2011.

Certain rights of subordinated creditors not exercisable.

32.— (1) No proceedings may be instituted and no petition to wind up may be brought by a subordinated creditor of a relevant institution in relation to which a subordinated liabilities order has been made in relation to the relevant institution based upon a failure by that institution to honour the terms of a subordinated liability if those terms have been modified by the subordinated liabilities order and that institution is in compliance with the terms as so modified.

(2) No subordinated creditor of a relevant institution in relation to which a subordinated liabilities order has been made may exercise or claim any right of set-off in respect of any amount (being an amount arising under or in connection with

the relevant subordinated liabilities) owed to the subordinated creditor by the relevant institution.

PART 5

TRANSFER OF ASSETS AND LIABILITIES

Proposed transfer orders.

33.— (1) Subject to *subsections (2) and (4)*, the Minister may make a proposed transfer order in relation to the transfer of assets or liabilities of a relevant institution.

F36[(2) The Minister may make a proposed transfer order only if the Minister, having consulted with the Governor, is of the opinion that, having regard to any adverse consequences that may arise as a result of the transfer order, in relation to the interests generally of the creditors of the transferor or, where the transferor is a subsidiary or holding company, in relation to the interests generally of the creditors of the transferor or the relevant institution concerned, making a transfer order in the terms of the proposed transfer order is necessary to secure the achievement of a purpose of this Act specified in the proposed transfer order.

(2A) Nothing in *subsection (2)* requires the Minister to consider the possible adverse consequences of the transfer order concerned on the interests of a particular creditor or class of creditors of the transferor or relevant institution, as the case may be, or to consider any submission made by a creditor on behalf of that creditor, a class of creditors or creditors generally.]

(3) If the Minister makes a proposed transfer order in relation to a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the proposed transfer order that the proposed transfer order or part is made with that intention, in accordance with the CIWUD Directive.

(4) Unless the relevant institution concerned consents to the making of a transfer order in the terms of the proposed transfer order, or exceptional circumstances (within the meaning of *subsection (5)*) exist, the Minister shall also, before making a proposed transfer order—

- (a) deliver a written notice to the relevant institution describing the terms of the proposed transfer order, accompanied by a summary of the reasons why the Minister is of the opinion that such an order is necessary,
- (b) afford the relevant institution 48 hours, or a shorter period on which the Minister and the relevant institution agree, in which to make written submissions to the Minister, and
- (c) consider any submissions made under *paragraph (b)*.

F37[(4A) If the Minister proposes that the transfer order or any term of it have immediate effect, the Minister shall state, in the written notice given under *subsection (4)(a)*, that fact and the reasons why the order or term should have that effect.]

(5) Exceptional circumstances for the purposes of *subsection (4)* exist where—

- (a) there is an imminent threat to the financial stability of the relevant institution concerned and the Minister is of the opinion that compliance with that subsection would result in significant damage to the financial stability of that relevant institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Minister is of the opinion that compliance with that subsection would result in significant damage to the stability of that financial system, or

- (c) the Minister has reasonable grounds for believing that confidentiality with regard to the transfer order, or the possibility of the making of a transfer order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

(6) A proposed transfer order—

- (a) shall contain such terms and conditions as the Minister proposes relating to the proposed transfer, including the specification of a date by which or a period within which the institution is required to comply, and
- (b) may include such incidental, consequential and supplemental provisions as the Minister considers appropriate for implementing the transfer and securing that it be fully and effectively carried out, including provisions for substituting the name of the transferee for that of the transferor or otherwise adapting references to the transferor in any instrument made under an Act, and may provide for such transitional matters, including the sharing of assets and other contracts, as the Minister considers appropriate.

Annotations

Amendments:

- F36** Substituted and inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 37, S.I. No. 548 of 2011.
- F37** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 38, S.I. No. 548 of 2011.

F38 [Relevant institution not to dispose of assets, liabilities.

33A.—(1) Unless the Minister provides prior written consent, a relevant institution shall not dispose of any asset or liability which is to be transferred under a transfer order, except in the ordinary course of its business, during the period beginning with the delivery of the written notice under *subsection (4) of section 33*, or the date on which the relevant institution otherwise becomes aware of the proposed transfer order as part of the process of seeking its consent under that subsection, whichever is the earlier, and ending on the date of effect of the transfer order under *section 34(7)*.

(2) The officers and employees of a relevant institution shall comply with *subsection (1)*.

(3) If the Minister is of the opinion that a relevant institution is in breach of *subsection (1)* or has taken steps that would likely lead to such a breach, the Minister may apply *ex parte* to the Court for an order compelling compliance with that subsection.]

Annotations

Amendments:

- F38** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 36, S.I. No. 548 of 2011.

Transfer orders.

34.— (1) As soon as may be after completion in relation to a proposed transfer order of the procedures required by *section 33*, the Minister shall apply *ex parte* to the Court for an order (in this Act called a “transfer order”) in the terms of the proposed transfer order.

(2) The Court, when hearing an *ex parte* application under *subsection (1)*, shall, if satisfied that the requirements of *section 33* have been complied with and that the

opinion of the Minister under *section 33* (2) was reasonable and was not vitiated by any error of law, make a transfer order in the terms of the proposed transfer order (or those terms as varied after consideration of any submission referred to in *section 33* (4) (c)).

(3) A report prepared by the Bank (whether or not prepared specifically for the purpose of the application) in relation to matters within the Governor or the Bank's responsibilities, including the financial position of the relevant institution, is admissible in evidence at the hearing of the application.

(4) If in a proposed transfer order the Minister has declared the intention of preserving or restoring the financial position of a credit institution, and the Court is satisfied that the Minister made the proposed transfer order or part of it with that intention, the Court shall declare in the relevant transfer order that the transfer order or the relevant part of it is a reorganisation measure for the purposes of the CIWUD Directive.

(5) The Court may make a transfer order on terms varied or amended from those in the proposed transfer order only if the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 33* or that the opinion of the Minister under *section 33* (2) was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to do so, having regard to any report referred to in *subsection (3)*, and
- (c) to do so is necessary for the purpose specified in the proposed transfer order or any other purpose of this Act.

(6) F39[...]

F40[(7) A transfer order has effect—

(a) if there is an application made under *section 36*—

- (i) if the Court makes an order under *section 36* and makes an order as to the date of effect, at that date,
- (ii) if the Court makes an order under *section 36* and does not make an order as to the date of effect, the date of that order made under *section 36*, or
- (iii) if the Court does not make an order under *section 36*, 14 days after the publication of the order under *section 34A(1)(b)*,

or

(b) if there is no application made under *section 36*—

- (i) immediately, to the extent that the Court so orders, or
- (ii) if the Court does not make an order as to the date of effect, 14 days after the publication of the order under *section 34A(1)(b)*.]

Annotations

Amendments:

- F39** Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 39, S.I. No. 548 of 2011.
- F40** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 40, S.I. No. 548 of 2011.

F41[Publication
of transfer
orders.

34A.— (1) The Minister shall, as soon as practicable after a transfer order is made—

(a) serve a copy of the transfer order on the relevant institution concerned, and

(b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Minister may, if he or she thinks it necessary to do so, publish a transfer order by an additional means or in an additional place.

(3) Without delay after the service of the copy of the transfer order, the relevant institution shall take all reasonable measures to ensure that its members are made aware of the order, including, without limiting the generality of the foregoing—

(a) where the shares of the relevant institution are traded from time to time on a financial market (whether a regulated market or not), making an announcement that relates to the existence of the transfer order and its effect, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to such markets, and

(b) providing a copy of the transfer order to the regulatory news service referred to in *paragraph (a)*.]

Annotations

Amendments:

F41 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 41, S.I. No. 548 of 2011.

Application to
vary transfer
order.

35.— The Minister may apply—

(a) on notice, or

(b) in urgent circumstances, *ex parte*,

to the Court to vary a transfer order if the Minister is of the opinion that the variation is necessary to secure the achievement of a purpose of this Act.

Application to set
aside transfer
order.

36.— (1) The relevant institution in relation to which a transfer order is made or a member of that institution may apply to the Court by motion on notice grounded on affidavit, F42[not later than 14 days after the publication, in accordance with *subsection (1)(b) of section 34A*, of a transfer order,] for the setting aside of the transfer order.

F43[(2) The Court shall give such priority to an application under *subsection (1)* as is necessary in the circumstances, and may give such directions as it considers appropriate in the circumstances—

(a) with regard to the hearing of the application, or

(b) with regard to a matter that arises during the period beginning with the transfer order and ending with the order of the Court under this section.]

(3) On an application under *subsection (1)*, the Court shall set aside the transfer order only if the Court is satisfied that there has been non-compliance with any of the requirements of *section 33* or that the opinion of the Minister under *section 33* (2) was unreasonable or vitiated by an error of law.

(4) The Court may, instead of setting aside the transfer order, make an order varying or amending that order in the manner it considers appropriate if the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 33* or that the opinion of the Minister under *section 33* (2) was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to do so, having regard to any report referred to in *section 34* (3), and
- (c) to do so is necessary to secure the achievement of the purpose specified in the transfer order or any other purpose of this Act.

F44[(5) If the Court sets aside a transfer order, no further assets or liabilities shall be transferred as a consequence of the transfer order.

(6) The setting aside of a transfer order does not affect the rights of a transferee or the transferee's title to any asset or liability so transferred before that setting-aside.

(7) If a transfer order is set aside and assets or liabilities have been transferred pursuant to it, the transferor is not entitled to any payment other than the consideration paid pursuant to the transfer order.

(8) If a variation or amendment of a transfer order made under this section would, but for this subsection, have the effect of setting aside a disposition of an asset or liability, *subsections* (5) to (7) apply with any necessary modifications.

(9) The Court, in considering the order it wishes to make under this section, may, where the applicant is a member of a relevant institution, have regard to—

- (a) the date on which the applicant became a member of that institution, or increased or decreased the number of shares that the applicant held in that institution, and
- (b) the value of the shares acquired by or disposed of by the member—
 - (i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and
 - (ii) as at the date on which the transfer order concerned was made.]

Annotations

Amendments:

- F42** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 42, S.I. No. 548 of 2011.
- F43** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 43, S.I. No. 548 of 2011.
- F44** Substituted and inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 44, S.I. No. 548 of 2011.

Content of
transfer order.

37.— (1) A transfer order shall specify the following:

- (a) the name of the transferee;
- (b) any term or condition imposed on the transfer, or to which the transfer is subject;
- (c) the assets and liabilities or the classes or kinds of assets and liabilities to be transferred,

(d) any consideration to be paid by the transferee, or a means of determining that consideration.

(2) For the purposes of *paragraph (1) (c)*, a class or kind may be specified by means of any common characteristic of the class or kind.

(3) For the purposes of *paragraph (1) (d)*, a transfer order may specify that a named person or a person in a class of persons is to determine the consideration.

(4) A transfer order shall not name a person as transferee unless that person has agreed to accept the transfer on the terms set out in the order.

(5) F45[...]

(6) A transfer order may relate to the transfer of—

(a) all or any specified part of the assets of the transferor,

(b) all, or any specified part of the liabilities of the transferor, or

(c) any combination of some or all of the assets and liabilities of the transferor.

(7) Where a transfer order transfers a netting agreement (within the meaning of the [Netting of Financial Contracts Act 1995](#)) or a F46[financial collateral arrangement (within the meaning of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002⁵ on financial collateral arrangements, as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009⁶, and of the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010))], the transfer order shall transfer the whole of that agreement or arrangement.

(8) Notwithstanding any enactment or rule of law, a cause of action capable of being exercised by the transferor may be transferred to the transferee by a transfer order.

(9) A transfer order may include such incidental, consequential and supplemental provisions as the Court considers appropriate for implementing the transfer and securing that it be fully and effectively carried out, including provisions for substituting the name of the transferee for that of the transferor or otherwise adapting references to the transferor in any instrument made under an Act, and may provide for such transitional matters, including the sharing of assets and other contracts, as the Court considers appropriate.

Annotations

Amendments:

F45 Deleted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 45, S.I. No. 548 of 2011.

F46 Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 46, S.I. No. 548 of 2011.

Financial
incentive to
transferee.

38.— (1) The Minister may directly or indirectly provide a financial incentive to any person to become a transferee on such terms and subject to such conditions as the Minister considers necessary or appropriate.

(2) For the purposes of *subsection (1)* “financial incentive” includes a payment, a loan, a guarantee, an exchange of assets and any other kind of financial accommodation or assistance, including financial support.

⁵ OJ No. L168, 27.6.2002, p.43.

⁶ OJ No. L146, 10.6.2009, p.37.

(3) The Minister may enter into transactions of a normal banking nature in connection with or related to the provision of a financial incentive under this section.

F47[(3A) Where the Minister provides a financial incentive under *subsection (1)* which is in the form of a payment or gives rise to a payment, the payment shall be made from the Central Fund or the growing produce thereof.]

(4) Subject to *subsection (5)*, the amount of any financial incentive provided under this section is a debt due and owing to the State by the transferor and may be recovered as a simple contract debt in any court of competent jurisdiction.

(5) Where a transfer order is set aside in whole or in part—

(a) in the case where a part of any financial incentive can be identified as relating to assets or liabilities that are transferred back to the transferor under *section 36 (5) (a) (i)*, an amount equal to that part, and

(b) in any other case, an amount equal to the percentage of the amount of financial incentive equivalent to the percentage of the value of the total assets and liabilities the subject of the transfer order that is represented by the value of the assets, liabilities and interests that are transferred back to the transferor under that section,

becomes immediately repayable to the Minister, is a debt due and owing to the State by the transferee and may be recovered as a simple contract debt in any court of competent jurisdiction.

Annotations

Amendments:

F47 Inserted (1.08.2013) by *Central Bank (Supervision and Enforcement) Act 2013* (26/2013), s. 93, S.I. No. 287 of 2013.

Effect of transfer order — general.

39.— (1) A transfer order has effect subject to any term or condition imposed in the order.

(2) On the date specified in a transfer order, all the assets and liabilities specified in the order (whether located in the State or not) are transferred to the transferee.

(3) On and after the transfer of an asset or liability under a transfer order—

(a) the transferee has the same rights (including priorities) and obligations in respect of those assets and liabilities as the transferor had immediately before the transfer, and

(b) the transferor no longer has those rights and obligations.

(4) In particular, unless the transfer order specifies otherwise, and without limiting the generality of *subsection (3)*—

(a) any account included in the transfer is transferred to the transferee on the date of the transfer and becomes, on and after that date, an account between the transferee and the account holder with the same rights and subject to the same rights and obligations (including rights of set-off) as would have been applicable before the transfer,

(b) any order, instruction, direction, mandate or authority given, whether before or after the transfer, by the account holder in relation to such an account or any obligation entered into by the transferor in relation to any person and subsisting on that date, has effect after the transfer of the account,

- (c) any amount owing on such an account by the account holder to the transferor on that date becomes due and payable by the account holder to the transferee, and any amount owing on such an account by the transferor to the account holder on that date becomes due and payable by the transferee to the account holder,
 - (d) all property (whether real or personal, and including choses in action) specified in the transfer order transfers to the transferee,
 - (e) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, undertakings, notices and other instruments (whether or not in writing) entered into by, made with, given to or by, or addressed to the transferor (whether alone or with another person) relating to property referred to in *paragraph (d)* are, to the extent that they were previously binding on and enforceable by, against or in favour of the transferor, binding on and enforceable by, against, or in favour of the transferee as fully and effectually in every respect as if the transferee had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed (as the case may be),
 - (f) security held by the transferor in connection with the assets and liabilities transferred as security for the payment of the debts or liabilities (whether present or future and whether actual or contingent) of any person are transferred to the transferee as security for the payment of such debts and liabilities to the transferee,
 - (g) where the amount secured by such security includes future advances to, or liabilities of, a person, the security becomes available to the transferee as security for future advances to that person by, and future liabilities of that person to, the transferee to the extent to which future advances by or liabilities to the transferor were secured by it immediately before the date of transfer,
 - (h) the transferee, in relation to any security transferred to it and the amount secured by that security in accordance with the terms of the security, becomes entitled to the same rights and priorities and subject to the same obligations as those to which the transferor would have been F48[entitled and subject if] the security had continued to be held by the transferor,
 - (i) except to any extent that the relevant transfer order provides otherwise—
 - (i) agreements made or other things done by or in relation to the transferor shall be treated, so far as may be necessary for the purposes of, in connection with or in consequence of the transfer, as made or done by or in relation to the transferee (as the case may be), and
 - (ii) references to the transferor, or to any officer or employee of the transferor, in instruments or documents relating to the assets and liabilities transferred have effect as if they were references to the transferee, or to any officer or employee of the transferee (as the case may be),
- and
- (j) where, immediately before the transfer date, any legal proceedings are pending to which the transferor is a party and the proceedings have reference to the assets and liabilities transferred, the proceedings continue, and the name of the transferee is substituted (to any extent necessary) for that of the transferor.
- (5) Where the transferor is F49[a building society] and a share account is included in the transfer of assets and liabilities—
- (a) where the transferee is also F49[a building society]—

- (i) if the transferee has agreed that the account holders of the transferor shall have membership rights in the transferee, on and after that transfer the holder of the transferred share account has such rights in the transferee, and
 - (ii) in any other case, on that transfer the account becomes a deposit account and the account holder has no membership rights in the transferee,
- and
- (b) in any other case, on that transfer the account becomes a deposit account with the transferee.

F50[(5A) If—

- (a) the transferor is a building society,
- (b) a share account is included in the transfer of assets and liabilities, and
- (c) the share account becomes a deposit account in the transferee pursuant to subsection (5),

the holder of that account continues to have the membership rights in the transferor that he or she had before the transfer, including (without limitation) voting rights and rights to participate in any surplus on a winding-up.

(5B) Subsection (5A) has effect notwithstanding anything in—

- (a) the Building Societies Act 1989, or
- (b) the memorandum of association or rules of the transferor.]

F51[(6) The transfer of assets and liabilities under a transfer order takes effect notwithstanding—

- (a) any duty or obligation to any person that would otherwise prevent or restrict the transfer,
- (b) any provision of any enactment, rule of law, code of practice or agreement providing for or requiring—
 - (i) notice to any person,
 - (ii) the consent, approval or concurrence of any person, or
 - (iii) any formality such as registration,
- (c) any other rule of law or equity,
- (d) any code of practice made under an enactment,
- (e) the listing rules of a regulated market or the rules of any other market on which the shares of the transferor are traded,
- (f) the memorandum of association or articles of association of the transferor, or
- (g) any agreement which the transferor is a party to, is bound by, or has an interest in,

except to any extent to which the transfer order expressly provides otherwise.]

Annotations**Amendments:**

- F48** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 47, S.I. No. 548 of 2011.
- F49** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 48, S.I. No. 548 of 2011.
- F50** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 49, S.I. No. 548 of 2011.
- F51** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 50, S.I. No. 548 of 2011.

Effect of transfer order in relation to securities.

40.— (1) On and after the transfer of assets and liabilities under a transfer order, in relation to property referred to in *paragraph (d)* or *(e)* of [section 39\(4\)](#) or a security referred to in *paragraph (f)* of that section, transferred by the order—

- (a) notwithstanding any provision of an Act listed in *subsection (2)* or any other Act that provides for the registration of assets or security, or any details of assets or security, a transferee is not required to become registered as owner of the security,
- (b) notwithstanding [sections 62](#) and [64](#) of the [Registration of Title Act 1964](#), a transferee has, in relation to any charge that is or is part of such a security, the powers of a mortgagee under a mortgage by deed, even though it is not registered as owner of the charge,
- (c) the transferee has the powers and rights conferred on the registered owner of a charge by the [Registration of Title Act 1964](#), and
- (d) where the transfer order effects an extension of or in relation to the security so as to include future advances by or future liabilities to the transferee, the extension need not be registered under any Act listed in *subsection (2)* under which it would otherwise be required to be registered, but operates for the purposes of those Acts as if made by deed duly registered under that Act on the date of transfer.

(2) The Acts referred to in *paragraphs (a)* and *(d)* of *subsection (1)* are the following:

- (a) the Bills of Sale (Ireland) Acts 1879 and 1883;
- (b) the [Agricultural Co-operative Societies \(Debentures\) Act 1934](#);
- (c) the [Companies Act 1963](#);
- (d) the Registration of Deeds and Title Acts 1964 and 2006;
- (e) the [Agricultural Credit Act 1978](#);
- (f) the [Patents Act 1992](#);
- (g) the [Trade Marks Act 1996](#);
- (h) the [Taxes Consolidation Act 1997](#).

Transfer of foreign assets and liabilities.

41.— (1) In this section—

“foreign asset” means an asset in which the transfer or assignment of any right, title or interest to be transferred under a transfer order is governed in whole or in

part by the law of a state (including the law of a territorial unit of a state) other than the State;

“foreign law”, in relation to a foreign asset or a transaction in relation to a foreign asset means the law of a state (including the law of a territorial unit of a state) other than the State;

“foreign liability” means a liability in which the transfer or assignment of any right, title or interest to be transferred under a transfer order is governed in whole or in part by the law of a state (including the law of a territorial unit of a state) other than the State.

(2) This section applies in relation to the transfer of a foreign asset or foreign liability expressed to be transferred by a transfer order, where—

- (a) the transfer order is not recognised under the relevant foreign law, or
- (b) the transfer order is otherwise not fully effective, under the relevant foreign law, to transfer the asset or liability.

(3) To the extent that a liability expressed to be transferred under a transfer order is or includes a foreign liability—

- (a) if the law governing the transfer of the foreign liability permits the transfer or assignment of that liability, the transferor and transferee shall do everything required by that law to give effect to the transfer or assignment, and
- (b) to any extent that that law does not permit the transfer or assignment of the foreign liability, the transferee is responsible for discharging the transferor’s obligations under that liability.

(4) To the extent that an asset expressed to be transferred by a transfer order is or includes a foreign asset—

- (a) if the law governing the transfer or assignment of the foreign asset permits the transfer or assignment of that asset, the transferor shall do everything required by that law to give effect to the transfer, and
- (b) to the extent that that law does not permit the transfer or assignment of the foreign asset, the transferor shall do all that is possible to do under that law to assign to the transferee the greatest possible interest in the foreign asset.

(5) The transferor, to the extent that an asset is one to which *subsection (4) (b)* applies—

- (a) is subject to duties, obligations and liabilities as nearly as possible corresponding to those of a trustee in relation to that asset, and
- (b) shall hold that asset for the benefit and to the direction of the transferee,

in each case so far as possible consistent with the nature of, and the terms and conditions of the transfer of, that asset.

(6) A trust, duty, obligation or liability created or constituted by this section shall not be taken to constitute a security interest.

(7) The transferor shall obtain, make, maintain and comply with any authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration that is necessary in the State and in any other place in connection with ensuring the validity and enforceability of any act, matter or thing referred to in this section.

Application of
Bankers' Books
Evidence Act
1879.

42.— (1) The Bankers' Books Evidence Act 1879 applies with respect to any books of the transferor transferred to the transferee in connection with the assets and liabilities transferred by a transfer order and to entries made in those books before the transfer date.

(2) In *subsection (1)* "books" includes ledgers, day books, cash books, account books and all other books and records used in the ordinary business of the transferor before the date on which the transfer has effect.

Stamp duty.

43.— (1) Stamp duty shall not be chargeable on a transfer order, an order varying or amending a transfer order, an order setting aside a transfer order or any ancillary agreement entered into between the relevant institution and transferee.

(2) Stamp duty shall not be chargeable on any instrument executed in order to give legal effect to the transfers effected or taken to be effected by this Part.

PART 6

GENERAL MATTERS IN RELATION TO COMPANIES, ETC.

Minister's powers
in relation to
removal of
directors, etc.

44.— (1) The Minister may by written notice—

(a) remove a person from a position of director or officer of a relevant institution,
or

(b) terminate the employment by a relevant institution of a person.

(2) The removal of a person or termination of a person's employment by virtue of *subsection (1)*—

(a) has effect without the need for any notice being given, meeting being called, resolution being passed or consent being obtained, and

(b) may be expressed to take effect immediately and, if so expressed, has that effect.

(3) Where a notice under *subsection (1)* is expressed to have immediate effect, no period of notice is necessary to the person concerned.

(4) The removal of a person from a position of director or officer of a relevant institution under this section also terminates any contract of service or contract for services between the person and the relevant institution.

(5) Nothing in this section deprives a person removed or whose employment is terminated of any right to claim compensation or damages from the relevant institution for the loss of his or her office or appointment.

(6) Notwithstanding *subsection (5)*—

(a) a court, tribunal or rights commissioner may not grant any remedy that would have the effect of preventing or restraining the Minister from exercising his or her functions under *subsection (1)*, and

(b) a court, tribunal or rights commissioner may not make any order under the Unfair Dismissals Acts 1977 to 2007 for the reinstatement or re-engagement of such a person.

Minister's powers
in relation to
appointment of
directors, etc.

45.— (1) With the consent of the Governor, the Minister may appoint a person as a director of a relevant institution. Where the relevant institution is a credit institution, **Part 3** of the **Central Bank Reform Act 2010** does not apply in relation to such an appointment.

(2) Subject to *subsection (3)*, the appointment of a person under this section may be expressed to take effect immediately and, if so expressed, has that effect.

(3) A person appointed under this section holds office for the period, and upon the terms and conditions, that the Minister determines.

(4) An appointment under this section is effective—

(a) even if the person appointed does not hold any share qualification required by the memorandum of association or articles of association of the relevant institution concerned,

(b) whether or not he or she satisfies any other requirement for appointment under that memorandum or those articles, and

(c) even if the appointment causes the number of directors of the relevant institution to exceed the number otherwise authorised.

(5) A person appointed under this section is removable from office only by the Minister.

No resolution
required, etc.

46.— (1) No enactment or rule of law, no provision of a relevant institution's memorandum of association or articles of association, no agreement and no rule or other instrument shall be taken to require the members or directors of a relevant institution to approve by resolution (whether an ordinary, special or other resolution) the taking of any action—

(a) by the relevant institution,

(b) by the directors of the relevant institution, or

(c) where the relevant institution is under special management, by the special manager,

which that institution is directed to take by the Minister under this Act or by order of the Court under this Act or which is required to be taken in order to make effective any order made or direction given by the Minister or the Court under this Act.

(2) Any resolution passed by the members of a relevant institution the effect of which would otherwise be to prevent the taking of any action by—

(a) the relevant institution,

(b) the directors of the relevant institution, or

(c) where the relevant institution is under special management, the special manager,

which that institution is required to take by an order under this Act, or which is necessary to make effective any such order, or any requirement of the Minister under this Act, is of no effect.

Certain provisions
may be included
in orders.

47.— (1) There may be included in an order under this Act a provision that all the powers, or any specified power, exercisable by the members of the relevant institution concerned in a general meeting under, as the case may be, F52[**the Companies Acts or the Building Societies Act 1989**], any other enactment, the relevant institution's memorandum of association or articles of association, any agreement or any rule or

other instrument, shall instead be exercised by the Minister. Such an exercise shall be taken for all purposes to have been that of the members.

(2) Where an order under this Act makes provision in accordance with *subsection (1)*, any provision of the enactments or instruments referred to in that subsection which—

(a) enables or requires any matter to be done or to be decided by a relevant institution in general meeting, or

(b) requires any matter to be decided by a resolution of that institution,

shall be taken to be satisfied by a decision of the Minister notified in writing to that institution.

Annotations

Amendments:

F52 Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 51, S.I. No. 548 of 2011.

Directors' duties. **48.—** (1) In the performance of their functions the directors of a relevant institution shall have a duty to have regard to the matters mentioned in *section 4(f)*.

(2) The duty imposed by *subsection (1)*—

(a) is owed by the directors to the Minister on behalf of the State, and

(b) takes priority over any other duty of the directors to the extent of any inconsistency.

(3) The Minister may make and publish guidelines in relation to the duty imposed by *subsection (1)*. A director may rely on any such guidelines in demonstrating his or her compliance with that duty.

(4) If the Minister is of the opinion that it is no longer necessary for this section to apply in relation to a particular relevant institution, he or she may so order.

(5) The Minister shall lay a copy of an order under *subsection (4)* before each House of the Oireachtas as soon as may be after the order is made.

Minister not to be director, etc. **49.—** The Minister or a nominee of the Minister shall not, by reason of any action taken under this Act, be taken to be a shadow director (within the meaning given by *section 27(1)* of the *Companies Act 1990*) nor what is known as a *de facto* director nor a person discharging managerial responsibilities of a relevant institution, any of its subsidiaries or any holding company.

Minister's powers to impose requirements on relevant institutions. **50.—** (1) The Minister may by notice in writing impose a requirement on a relevant institution if the Minister is of the opinion that it is necessary to do so to secure the achievement of any of the purposes of this Act (including reducing the reliance of that institution or another relevant institution on State financial support or assisting in the recapitalisation of a relevant institution, or providing necessary protection for the State in the context of such a recapitalisation).

(2) The requirements that may be imposed under this section include the following—

(a) to provide such information concerning the rights and liabilities of the relevant institution as the Minister requires to permit the effective and efficient making of a subordinated liabilities order;

- (b) to provide such information concerning its assets and liabilities as the Minister requires to permit the effective and efficient making of a transfer order;
- (c) to make a specified application to a specified authority or person on terms that the Minister specifies;
- (d) to suspend for a specified period (not exceeding 6 months) a specified activity unless otherwise authorised by the Minister;
- (e) to draw up or amend one or more restructuring plans to achieve the objectives of this Act and to make changes to such restructuring plans and implement the plans (including changes) within a specified timeframe;
- (f) to change the management of the relevant institution by taking specified steps to restructure its executive management responsibilities (including by terminating the employment of a specified employee), strengthen its management capacity and improve its corporate governance;
- (g) to comply with some or all of the provisions on conduct, transparency and reporting requirements set out in paragraphs 24 to 52 of the Schedule to the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008) and paragraph 22 of the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 F53[(S.I. No. 490 of 2009);]

F54[(h) to dispose of some of the assets or part of the undertaking of the relevant institution, subject to such terms and conditions as are specified by the Minister, where, in the opinion of the Minister, the disposal is required in order for the relevant institution concerned to achieve—

- (i) a ratio the subject of a requisition under section 23 of the Central Bank Act 1971,
- (ii) a requirement as to the composition of the assets or liabilities of the relevant institution as specified by the Bank under section 23A of that Act.]

F55[(2A) If the Minister imposes a requirement on a relevant institution and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Minister shall declare in the requirement that the requirement or part is made with that intention, in accordance with the CIWUD Directive.]

(3) A relevant institution shall comply with a requirement under this section in accordance with its terms, including any specification as to the time by which, or period within which, the requirement shall be complied with.

(4) In complying with a requirement under this section, a relevant institution shall disclose in utmost good faith all matters and circumstances in relation to that institution or a subsidiary that might materially affect, or might reasonably be expected to materially affect, any decision of the Minister in the performance of his or her functions under this Act.

(5) The Minister may direct a relevant institution that any information provided by that institution or any of its subsidiaries pursuant to a requirement under this section is to be certified as accurate and complete jointly by the chief executive officer and chief financial officer of the institution.

(6) The officers and employees of a relevant institution shall comply with a requirement under this section and shall cause any subsidiary of the relevant institution to comply with the requirement (including any specification as to the time by which, or period within which, the requirement shall be complied with) to the extent that the requirement applies to the subsidiary.

(7) The holding company of a relevant institution and its officers and employees shall comply with a requirement under this section in accordance with its terms including any specification as to the time by which, or period within which, the requirement shall be complied with.

(8) The obligation to comply with a requirement under this section—

(a) does not, notwithstanding any provision of any enactment or agreement or any rule of law, require the consent, approval or concurrence of any other person, and

(b) takes priority over any other duty or obligation to any person.

(9) If a relevant institution, an officer or employee of a relevant institution or a subsidiary or holding company of a relevant institution or an officer or employee of such a subsidiary or holding company does not comply with a requirement, the Minister may apply to the Court by motion on notice on affidavit for an order compelling compliance with that requirement.

(10) The Court may, in addition to the order compelling the relevant institution to comply with a requirement under this section, make any other order or direction it considers necessary in order to ensure that the relevant institution complies with the requirement.

(11) Nothing in this section authorises the Minister to—

(a) make a requirement under this section that would otherwise require the making of a direction order, or

(b) place a relevant institution under special management.

Annotations

Amendments:

F53 Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 52, S.I. No. 548 of 2011.

F54 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 52, S.I. No. 548 of 2011.

F55 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 53, S.I. No. 548 of 2011.

PART 7

MISCELLANEOUS

Minister may impose certain conditions in relation to financial support.

51.— (1) Nothing in this Act or in any other enactment, and no rule of law, prevents the Minister, when providing a financial support facilitated by this Act or pursuant to any other enactment, from imposing any terms and conditions which any other provider of financial support to the relevant institution concerned would be entitled to impose or which the Minister considers desirable to impose in order to protect the public interest.

(2) In considering the terms and conditions to be imposed in respect of any future financial support the Minister may, insofar as those terms and conditions relate to bonus payments payable by the relevant institution concerned to its employees or officers, take into account—

(a) the extent of the financial support already provided to the relevant institution,

- (b) the benefits already received, and to be received, by the relevant institution and its officers and employees and in particular the fact that those officers and employees have received or will receive the benefit of continued employment with the relevant institution by reason of that financial support,
- (c) the fact that such bonuses are unlikely to have been paid if the State had not enabled the relevant institution to meet its financial and regulatory obligations through the provision of financial support, and
- (d) the extent to which the circumstances giving rise to the necessity for financial support could not have been within the reasonable contemplation of the relevant institution and its officers and employees when the arrangements for bonus payments were concluded.

(3) In particular, nothing in this Act or any other enactment prevents the Minister from imposing such terms and conditions with regard to payment or non-payment or manner of payment or suspension or postponement of any performance bonuses payable by a relevant institution, wholly or partly in respect of, or wholly or partly referable to, any period during which the relevant institution benefited from financial support provided by the State.

(4) It shall not be lawful for a relevant institution to make any payment that would amount to a breach of such a term or condition.

(5) The provisions of this section are without prejudice to any defences or justifications for non-payment at law, and without prejudice to all legal entitlements the Minister has with regard to the terms and conditions he or she may impose as a condition of granting financial support.

Effect of CIWUD Directive.

52.— Any order made under this Act F56[or requirement imposed under section 50] that is declared to have been made with the intention of preserving or restoring the financial position of a credit institution is intended to have effect in accordance with the CIWUD Directive and any law giving effect to it.

Annotations

Amendments:

- F56** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 54, S.I. No. 548 of 2011.

F57[Costs incurred in relation to making orders, etc.

52A.—Where the Courts Service, or another body funded, wholly or partly, out of moneys provided by the Oireachtas, or from the Central Fund or the growing produce of the Central Fund, has incurred costs in relation to the translation or publication of an order under this Act (including where the translation or publication is required by the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011)), the costs are a debt due and owing by the credit institution concerned, and may be recovered as a simple contract debt in any court of competent jurisdiction.]

Annotations

Amendments:

- F57** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5, item 55, S.I. No. 548 of 2011.

Act, etc., to override inconsistent provisions.

53.— The provisions of this Act, and any order made under this Act, have effect notwithstanding anything in—

- (a) F58[the Companies Acts or the Building Societies Act 1989] or any other enactment,
- (b) any other rule of law or equity,
- (c) any code of practice made under an enactment,
- (d) the listing rules of any regulated market or the rules of any other market on which the shares of a relevant institution may be traded from time to time,
- (e) the memorandum of association and articles of association of a relevant institution, or
- (f) any agreement to which such an institution or any of its subsidiaries is a party, is bound by, or has an interest in,

except to any extent to which this Act expressly provides otherwise.

Annotations

Amendments:

- F58** Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 56, S.I. No. 548 of 2011.

Application of laws in relation to transfers, etc., of credit institutions.

54.— Parts 2 and 3 of the Competition Act 2002 and section 7 of the Act of 2008 do not apply with respect to—

- (a) the issue of shares in a relevant institution to the Minister or to a nominee of the Minister under a direction order,
- (b) the appointment of a special manager to a relevant institution,
- (c) the acquisition or disposal of an asset, or all of the assets, of a relevant institution or a liability of that institution by a special manager or under a direction order, or
- (d) a transfer under a transfer order.

Orders in relation to particular relevant institutions.

55.— (1) If the Minister, having consulted with the Governor, is of the opinion, in relation to a relevant institution, that the making of an order under this section is necessary to secure the achievement of any of the following purposes:

- (a) to provide the assurance required to promote the financial stability of the relevant institution concerned;
- (b) to remove or reduce the likelihood of a requirement for further State investment in that institution;
- (c) to facilitate the return to normal operations of that institution;
- (d) to facilitate the return to normal operations of the banking sector generally;
- (e) to facilitate the acquisition of an interest in that institution by a person other than the State where the Minister is of the opinion that such an acquisition will contribute to the achievement of any of the purposes referred to in paragraphs (a) to (d),

the Minister may by order declare that the relevant institution shall be taken not to be a relevant institution during a period specified in the order to the extent specified in the order, but—

- (i) only for the purposes of a specified provision or provisions of this Act,
- (ii) only on fulfilment of one or more conditions specified in the order, and
- (iii) only while specified circumstances relevant to that institution prevail.

(2) While an order under this section is in effect in relation to a relevant institution, the relevant institution shall, on fulfilment of the condition specified in the order, be taken not to be a relevant institution, but—

- (a) only for the purposes of the specified provision or provisions of this Act, and
- (b) only while the specified circumstances prevail.

(3) On the revocation of an order under this section, the relevant institution concerned again becomes a relevant institution for all the purposes of this Act.

(4) As soon as practicable after the Minister makes an order under this section, he or she shall lay a copy of the order before each House of the Oireachtas.

Expression of intention in relation to exercise of powers in relation to particular relevant institutions.

56.— (1) Where the Minister, having consulted with the Governor, is of the opinion in relation to a relevant institution that particular circumstances exist, the Minister may express, in writing, an intention in relation to the future exercise, in relation to that relevant institution, of his or her powers under this Act.

(2) The Minister shall express an intention under this section only for one or more of the purposes referred to in *paragraphs (a) to (e) of section 55(1)* and only if he or she is of the opinion that it is more appropriate to do so than to make an order under that section.

(3) A expression of intention by the Minister under this section—

- (a) shall be addressed to such persons as the Minister considers appropriate, having regard to the purpose or purposes for which it is made, and
- (b) shall be to the effect that, if specified circumstances exist, he or she does not intend to exercise the powers or a specified power conferred by this Act in relation to a specified relevant institution.

Minister's and Court's powers under this Act not exclusive of other powers.

57.— (1) The powers of the Court under a provision of this Act are in addition to the powers of the Court under any other provision of this Act and under any other enactment.

(2) The powers of the Minister under a provision of this Act are in addition to the powers of the Minister under any other provision of this Act, any other enactment, the memorandum or articles of association of a relevant institution or any agreement.

(3) The exercise by the Minister of a power under a provision of this Act does not preclude the exercise by the Minister of any other power of the Minister under any other provision of this Act or any other enactment, the memorandum of association or articles of association of a relevant institution or any agreement.

Minister's power to take certain proceedings in other jurisdictions.

58.— The Minister may institute proceedings to enforce an order under this Act in a place outside the State.

Proposed orders
to be kept in
confidence.

59.— (1) A person shall not F59[(other than the Minister)] publish the fact that the Minister proposes to make or has made a proposed direction order, proposed special management order, proposed subordinated liabilities order or proposed transfer order unless required to do so by an enactment.

(2) A person (including a relevant institution) who contravenes *subsection (1)* commits an offence punishable—

(a) on summary conviction by a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment by a fine not exceeding €100,000 or imprisonment for a term not exceeding 3 years or both.

(3) It is not a contravention of *subsection (1)* for a relevant institution to disclose a fact referred to in that subsection for the purposes of obtaining professional advice.

Annotations

Amendments:

F59 Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 57, S.I. No. 548 of 2011.

Editorial Notes:

E4 A fine of €5,000 translates into a class A fine, not greater than €5,000, as provided (4.01.2011) by *Fines Act 2010* (8/2010), ss. 3, 4(3) and table ref. no. 1, S.I. No. 662 of 2010.

Confidentiality of
proceedings.

60.— The Court may order that any application under this Act, or any part of such an application, shall be heard otherwise than in public or may impose restrictions with regard to the disclosure in open court, publication or reporting of any material that might be commercially sensitive.

Effect of orders
on certain other
obligations.

61.— (1) In this section “relevant agreement” means an agreement under which the relevant institution in relation to which an order under this Act is made or any of its subsidiaries, its holding company and any subsidiary of its holding company enjoys any right or interest or is subject to any obligation or liability (regardless of whether such an agreement is governed by the law of the State or another place).

(2) If any consequence specified or referred to in *subsection (4)* in relation to a relevant institution or any of its subsidiaries, its holding company and any subsidiary of its holding company would, but for this subsection, arise under a relevant agreement by virtue of—

(a) the enactment of this Act,

(b) the publication of the Bill for this Act, or

(c) any statement made by the Minister, the Governor or the relevant institution in relation to the Bill for this Act, the contents of that Bill or this Act, or the use or effect of any powers in this Act,

then, notwithstanding anything in the relevant agreement and subject to *section 62*—

(i) no interest or right of any third party arises or becomes exercisable; and

(ii) no liability or obligation arises or is incurred by any third party,

by virtue of that enactment, publication or statement.

(3) Where an order or requirement has been made under this Act in relation to a relevant institution, any of its subsidiaries, its holding company or any subsidiary of its holding company F60[(whether or not the order or requirement is subsequently set aside, or varied or amended in a relevant manner)], and a relevant agreement would (apart from this subsection) cause a consequence specified or referred to in subsection (4) to follow by virtue of—

- (a) the making of the order or requirement or any step taken (including the making of a proposed order) in preparation for the making of the order or requirement,
- (b) an act taken or omitted to be taken by any person in compliance with the order or requirement,
- (c) any consequences of any such act or omission,
- (d) any consequence of the order or requirement, or
- (e) any other thing done or authorised to be done under, or resulting from any provision of this Act,

then, notwithstanding that relevant agreement and subject to *section 62*—

- (i) no interest or right of any third party arises or becomes exercisable, and
- (ii) no liability or obligation arises or is incurred by any third party,

by virtue of any of the matters mentioned in any of *paragraphs (a) to (e)*.

(4) The consequences referred to in *subsections (2) and (3)* are the following:

- (a) the creation of an obligation or liability;
- (b) the suspension or extinction (however described, and whether in whole or in part) of a right or an obligation or the becoming subject to a right or an obligation;
- (c) the termination or extinguishment of the relevant agreement concerned or a right or obligation under it;
- (d) a right becoming exercisable to terminate or modify the relevant agreement or a right or obligation under it;
- (e) an amount becoming due and payable or capable of being declared due and payable or ceasing to be payable;
- (f) any other change in the amount or timing of any payment falling to be made or due to be received by any person;
- (g) a right becoming exercisable to withhold, net or set off any payment under or in connection with the relevant agreement;
- (h) the occurrence of an event giving rise to a default or breach of a right or obligation;
- (i) a right becoming exercisable not to advance any amount;
- (j) an obligation arising to provide or transfer a deposit or collateral;
- (k) a right of transfer or assignment of an asset or liability;
- (l) any right to enforce a guarantee, indemnity or security interest (however described);
- (m) the triggering of any mandatory prepayment event (howsoever described);

- (n) any obligation to return collateral or its equivalent;
- (o) the cancellation of any obligation to advance any amount or to provide credit or a contingent instrument;
- (p) legal proceedings becoming maintainable to enforce the relevant agreement;
- (q) the termination or modification of an obligation to provide a service or product;
- (r) the accrual of any right to give or withhold any consent or approval;
- (s) any event of default or breach of any right arising;
- (t) any right or obligation not arising;
- (u) the imposition of any condition on the relevant agreement;
- (v) the imposition of any condition on any right or obligation under the relevant agreement;
- (w) the creation of any constructive or resulting trust or other equitable interest or equity;
- (x) the accrual of any right to trace any property or to claim an equitable interest in or equity in respect of any property or to claim any breach of trust;
- (y) any other right or remedy (whether or not similar in kind to those referred to in *paragraphs (a) to (x)*) arising or becoming exercisable.

(5) A relevant agreement has a consequence specified in *subsection (4)* if the substantial effect of the agreement is to produce that consequence, regardless of whether or not the agreement describes its consequences in the precise terms used in that subsection.

Annotations

Amendments:

- F60** Inserted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 58, S.I. No. 548 of 2011.

Limitation of
operation of
section 61.

62.— (1) If the Minister is of the opinion that in a particular case or cases the effect of *section 61* is in all the circumstances unduly onerous, or causes unfairness or undue hardship, and that it is appropriate in all the circumstances to do so, he or she may by order provide that, notwithstanding *subsections (2) and (3) of section 61*, a provision in a relevant agreement that provides for a consequence mentioned or referred to in *section 61(4)* has effect to the extent specified in the order.

(2) An order under *subsection (1)*—

(a) may make provision in relation to the effect of a provision in—

- (i) a particular relevant agreement,
- (ii) relevant agreements of a particular kind, or
- (iii) rights held under a relevant agreement, or relevant agreements of a particular kind, by a particular person or a particular class of persons,

(b) in the case of an order that makes provision in relation to relevant agreements of a particular kind, may specify the kind by reference to any common characteristic of the agreements concerned, and

(c) in the case of an order that makes provision in relation to rights held by a particular class of persons, may specify the class by reference to any common characteristic of the persons concerned, and

(d) may be expressed to have retrospective effect to a date falling after 13 December 2010.

(3) As soon as practicable after the Minister makes an order under *subsection (1)*, he or she shall lay a copy of the order before each House of the Oireachtas.

(4) If the Minister considers that an order under *subsection (1)* contains matter that is commercially sensitive, he or she may direct—

(a) that the obligations in relation to the order under *section 3(1)* of the *Statutory Instruments Act 1947* are to be taken to be satisfied by the printing, sending to the institutions mentioned in *section 3(1)(a)* of that Act, publication and sale of a version of the order from which the commercially sensitive matter is omitted, or

(b) if the preparation of such a version would be impracticable, or would result in the version being seriously misleading, that the order is exempt from the operation of *section 3(1)* of that Act.

(5) A version of an order under *subsection (1)* prepared in accordance with a direction given by the Minister under *subsection (4)(a)* shall indicate that matter has been omitted from the version of the order and the general nature of that matter.

(6) A direction given by the Minister under *subsection (4)* shall be published in *Iris Oifigiúil* as soon as practicable.

(7) Evidence of a direction given by the Minister under *subsection (4)* may be given by the production of a copy of *Iris Oifigiúil* purporting to contain the direction.

(8) Nothing in this Act or the *Statutory Instruments Act 1947* affects any obligation that arises under the Regulations of 2004 to publish, or give notice of, an order or direction under this section.

Limitation of
judicial review.

63.— (1) Leave shall not be granted for judicial review of any decision under this Act unless—

(a) either—

(i) the application for leave to seek judicial review is made to the Court within 14 days after the decision is notified to the person concerned, or that person otherwise becomes aware of the decision, or

(ii) the Court is satisfied that—

(I) there are substantial reasons why the application was not made within that period, and

(II) it is just, in all the circumstances, to grant leave, having regard to the interests of other affected persons and the public interest,

and

(b) the Court is satisfied that the application raises a substantial issue for that Court's determination.

(2) The Court may make such order on the hearing of the judicial review as it thinks fit, including an order remitting the matter back to the Minister with such directions as the Court thinks appropriate or necessary.

(3) A person is not entitled to apply for the judicial review of a decision referred to in *subsection (1)* if he or she was entitled to apply to have the relevant order of the Court set aside but did not do so.

(4) A person is not entitled to apply for the judicial review of a decision referred to in *subsection (1)* if he or she applied to have the relevant order of the Court set aside and that application was refused by the Court.

Limitation of certain rights of appeal to the Supreme Court.

64.— (1) The determination of the Court of an application for leave to apply for judicial review, or an application for judicial review, is final and no appeal lies from the decision of the Court to the Supreme Court in either case, except with the leave of the Court.

(2) A direction order, special management order, subordinated liabilities order or transfer order, and an order varying such an order or setting it aside, is final and no appeal lies from the order of the Court to the Supreme Court except with the leave of the Court.

(3) The Court shall grant leave under *subsection (1)* or *(2)* only if the Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Supreme Court.

(4) On an appeal from a determination of the Court in respect of an application referred to in *subsection (1)*, or an appeal from an order referred to in *subsection (2)*, the Supreme Court—

(a) has jurisdiction to determine only the point of law certified by the Court under *subsection (3)*, as the case may be (and to make only such order in the proceedings as follows from that determination), and

(b) shall, in determining the appeal, act as expeditiously as possible consistent with the administration of justice.

(5) This section does not apply to a determination of the Court in so far as it involves a question as to the validity of any law having regard to the provisions of the Constitution.

Application of laws in relation to netting agreements, etc.

F61[65.— (1) Nothing in this Act—

(a) affects the operation of—

(i) the Netting of Financial Contracts Act 1995,

(ii) the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010),

(iii) the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), or

(iv) Regulation 30 of the Regulations of 2011,

in relation to an agreement to which a relevant institution or any of its subsidiaries is a party, or

(b) affects the terms and operation of any collateral arrangements governed by any provision of the law of a Member State required for the implementation of the provisions of—

(i) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009), or

(ii) Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009).]

(2) Nothing in this Act affects the operation of the **Asset Covered Securities Act 2001**.

Annotations

Amendments:

F61 Substituted (28.10.2011) by *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011), s. 110(5) and sch. 2 part 5 item 59, S.I. No. 548 of 2011.

Saving of legal proceedings, etc.

66.— A transfer under a transfer order, and any other thing done under an order or requirement made under this Act (including the dissolution of a relevant institution)—

- (a) does not affect any legal proceedings taken, investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at the time the transfer was made or other thing was done, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action, in respect of any contravention of an enactment or any misconduct which may have been committed before the transfer was made or the other thing was done.

Prohibition of certain secured borrowings.

67.— (1) This section applies to—

- (a) a local authority (within the meaning of the **Local Government Act 2001**), and
- (b) any other person or body prescribed under *subsection (5)*.

(2) A person or body to which this section applies shall not mortgage, pledge or otherwise encumber its own assets or revenues to secure any present or future indebtedness or any guarantee or indemnity given in respect of such indebtedness, without the consent of the Minister.

(3) The Minister shall not consent under *subsection (2)* unless he or she is satisfied that the relevant borrowing would not give rise to a breach of an obligation to the facility lenders.

(4) Where a security is granted in contravention of *subsection (2)* the facility lenders shall be taken to be entitled to share *pari passu* and *pro rata* in that security or encumbrance.

(5) The Minister may prescribe persons or bodies for the purposes of *subsection (1)(b)* by regulation.

(6) In making regulations under *subsection (5)*, the Minister shall have regard to the list of bodies included in General Government maintained by the Central Statistics Office.

(7) In this section “facility lender” means—

- (a) the International Monetary Fund,
- (b) the European Financial Stabilisation Mechanism,
- (c) the European Financial Stability Facility, F62[...]

F63[(ca) the European Union as lender to the State under any loan agreement with the European Union, and]

(d) the lender under any bilateral loan agreement with a Member State.

Annotations

Amendments:

F62 Deleted (16.12.2020) by *Finance (Miscellaneous Provisions) Act 2020* (25/2020), s. 15(a), commenced on enactment.

F63 Inserted (16.12.2020) by *Finance (Miscellaneous Provisions) Act 2020* (25/2020), s. 15(b), commenced on enactment.

Editorial Notes:

E5 Power pursuant to subs. (5) exercised (17.11.2022) by *General Government Secured Borrowings Order 2022* (S.I. No. 581 of 2022).

E6 Previous affecting provision: power pursuant to subs. (5) exercised (21.12.2020) by *General Government Secured Borrowings Order 2020* (S.I. No. 750 of 2020); revoked (17.11.2022) by *General Government Secured Borrowings Order 2022* (S.I. No. 581 of 2022).

E7 Previous affecting provision: power pursuant to subs. (5) exercised (5.12.2018) by *General Government Secured Borrowings (No. 2) Order 2018* (S.I. No. 522 of 2018); revoked (21.12.2020) by *General Government Secured Borrowings Order 2020* (S.I. No. 750 of 2020), art. 2.

E8 Previous affecting provision: power pursuant to subs. (5) exercised (23.04.2018) by *General Government Secured Borrowings Order 2018* (S.I. No. 118 of 2018); revoked (5.12.2018) by *General Government Secured Borrowings (No. 2) Order 2018* (S.I. No. 522 of 2018), in effect as per art. 1(2).

E9 Previous affecting provision: power pursuant to subs. (5) exercised (5.03.2014) by *General Government Secured Borrowings Order 2014* (S.I. No. 120 of 2014); revoked (23.04.2018) by *General Government Secured Borrowings Order 2018* (S.I. No. 118 of 2018), art. 3(b), in effect as per art. 1(2).

E10 Previous affecting provision: power pursuant to subs. (5) exercised (28.11.2011) by *General Government Secured Borrowings Order 2011* (S.I. No. 40 of 2011); revoked (23.04.2018) by *General Government Secured Borrowings Order 2018* (S.I. No. 118 of 2018), art. 3(a), in effect as per art. 1(2).

Regulations.

68.— (1) The Minister may make regulations to do anything that appears necessary or expedient for bringing this Act into operation.

(2) Where a provision of this Act requires or authorises the Minister to make regulations, such regulations—

(a) may make different provision for different circumstances or cases, classes or types, and

(b) may contain such incidental, consequential or transitional provisions as the Minister considers necessary or expedient.

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

Cessation of
effect of Act.

69.— (1) This Act (other than *sections 51* and *67*) ceases to have effect on 31 December 2012 or a later date substituted by resolution of both Houses of the Oireachtas.

(2) Notwithstanding the cessation in effect of this Act, any order or requirement made under it continues to have effect according to its terms.

(3) Notwithstanding the cessation in effect of this Act in accordance with *subsection (1)*, the provisions of this Act shall be taken to continue in effect to any extent necessary—

(a) to enforce any order or requirement continued in effect by *subsection (2)*, and

(b) to vary, terminate or revoke any such order or requirement.

Annotations

Editorial Notes:

E11 Date in subs. (1) changed to 31 December 2014 by resolutions of Dáil Éireann of 14 December 2012 and Seanad Éireann of 18 December 2012.

Disapplication of
section 7 of
Official Languages
Act 2003.

70.— *Section 7* of the *Official Languages Act 2003* does not apply in relation to this Act. The text of this Act shall be made available electronically in each of the official languages as soon as practicable after its enactment.

PART 8

AMENDMENT OF OTHER ENACTMENTS

Amendment of
Building Societies
Act 1989.

71.— The *Building Societies Act 1989* is amended as set out in *Part 1* of *Schedule 1*.

Amendment of
Central Bank Act
1942.

72.— The *Central Bank Act 1942* is amended as set out in *Part 2* of *Schedule 1*.

Amendment of
Central Bank Act
1971.

73.— The *Central Bank Act 1971* is amended as set out in *Part 3* of *Schedule 1*.

Amendment of
Act of 2008.

74.— The Act of 2008 is amended as set out in *Part 4* of *Schedule 1*.

Amendment of
National Asset
Management
Agency Act 2009.

75.— The *National Asset Management Agency Act 2009* is amended as set out in *Part 5* of *Schedule 1*.

Amendment of
National Pensions
Reserve Fund Act
2000.

76.— [...]

Annotations**Amendments:**

F64 Repealed (31.12.2021) by *National Treasury Management Agency (Amendment) Act 2014* (23/2014), s. 5(1) and sch. 1 part 8 item 1, S.I. No. 608 of 2021, art. 2(a)(iii).

Amendment of
Regulations of
2004.

77.— (1) The Regulations of 2004 are amended as set out in *Schedule 2* .

(2) The amendment of the Regulations of 2004 by *subsection (1)* and *Schedule 2* does not prevent their further amendment or revocation by statutory instrument.

Section 71.

SCHEDULE 1

AMENDMENTS OF ACTS

PART 1

AMENDMENTS OF BUILDING SOCIETIES ACT 1989

Item	Provision Amended	Amendment
1	Section 50	Insert after subsection (5): “(5A) No person may be nominated for election as a director of a society that has issued special investment shares without the prior written consent of the holder of those shares.”.
2	Section 100, definition of “company”	Substitute: “ ‘company’ means a company limited by shares (within the meaning of the Companies Acts);”.
3	Section 101(3)(a)	Substitute: “(a) state the name of the proposed company and whether it will be a public limited company limited by shares or a private company limited by shares,”.
4	Section 101(3)(k)	Substitute: “(k) specify the terms of any proposed distribution of the funds of the society in connection with the conversion scheme, (ka) in the case of a building society that has issued special investment shares, be posted on the society’s website if it is proposed that the holder of such shares would pass the conversion resolution by written resolution, and”.
5	Section 101(5)	Substitute: “(5) A conversion scheme under this section shall not be sent to the members of the society (or, where applicable, published on the website of the society) unless the scheme has been approved by the Central Bank as meeting the requirements of or under this Part.”.
6	Section 101(6)	After “by virtue of holding shares”, insert “(other than special investment shares)”.
7	Section 101(8)	After “building society”, insert “that has issued special investment shares, and a building society”.
8	Section 101C(8)(a)	After “by virtue of holding shares”, insert “(other than special investment shares)”.
9	Section 103(1)	Delete “Before”, substitute “Subject to subsection (1A), before”.
10	Section 103	After subsection (1), insert: “(1A) Subsection (1) does not apply to a building society that has issued special investment shares where it is proposed that the holder of those shares would pass the conversion resolution by written resolution.”.
11	Section 105(1)	Delete “A petition”, substitute “Subject to subsection (1A), a petition”.
12	Section 105	After subsection (1), insert:

Item	Provision Amended	Amendment
		“(1A) Subsection (1) does not apply to a building society that has issued special investment shares where it is proposed that the holder of those shares would pass the conversion resolution by written resolution.”.
13	Section 106(1)	After “as soon as may be but”, insert “(except in the case of a building society that has passed the relevant conversion resolution as a written resolution)”.
14	Paragraphs (a) to (c) of section 107(1)	Substitute: “(a) every shareholding (except any holding of special investment shares) in and deposit with the society becomes, on conversion, a deposit of the same amount with the successor company, (b) on the conversion date, the business, property, rights and liabilities of the society vest in the successor company, and (c) except where the consent of the holder of special investment shares has been obtained, or the terms of the special investment shares provide otherwise, the special investment shares or investment shares issued by the society become, on conversion, ordinary shares in the successor company.”.
15	Section 107	After subsection (1), insert: “(1A) Any ordinary shares in the successor company referred to in subsection (1)(c) shall be taken to have been fully paid up.”.

PART 2

AMENDMENT OF CENTRAL BANK ACT 1942

Section 72.

Item	Provision Amended	Amendment
1	Paragraphs numbered (am) in section 33AK(5)	Substitute: “(am) to a deposit guarantee scheme established in accordance with Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 ² , or (an) to a body or authority that is a competent authority for the purposes of a Regulation of the European Union or European Communities, or a law of the State implementing such a Regulation, that imposes restrictive measures within the framework of the EU Common Foreign and Security Policy, or (ao) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Credit Institutions (Stabilisation) Act 2010.”.

PART 3

AMENDMENTS OF CENTRAL BANK ACT 1971

² O.J. No. L135, 31.5.1994, p.5.

Section 73.

Item	Provision Amended	Amendment
1	Section 33(1)	After “the business to which the licence relates” insert “and all or any of the other assets and liabilities of the transferor”.
2	Section 33(1)(c)	After “order”, insert “(in this section called a “transfer order”)”.
3	Paragraphs (d) and (e) of section 33(1)	<p>Substitute:</p> <p>“(d) if the Minister approves of the scheme—</p> <p>(i) the assets and liabilities of the transferor described in the scheme shall be transferred under the transfer order, and</p> <p>(ii) if the scheme so provides, sections 34 to 39 and 42 have effect in relation to the transfer, but only to the extent that the scheme so provides,</p> <p>(e) the Minister, if the transferor and transferee so request—</p> <p>(i) may include in the transfer order such incidental, consequential and supplemental provisions as he or she thinks appropriate for facilitating and implementing the transfer and securing that it is fully and effectively carried out, including provisions for substituting the name of the transferee for the transferor or otherwise adapting references to the transferor in any instrument, and</p> <p>(ii) may provide in the transfer order for such transitional matters, including the sharing of assets and other contracts, as the Minister considers appropriate,</p> <p>and</p> <p>(f) a transfer order takes effect notwithstanding:</p> <p>(i) any duty or obligation to any person;</p> <p>(ii) any provision of any enactment, rule of law, code of practice or agreement providing or requiring—</p> <p>(I) notice to any person, or</p> <p>(II) the consent, approval or concurrence of any person.”.</p>
4	Section 33	<p>After subsection (3), insert:</p> <p>“(4) Where the Minister approves of a scheme under subsection (1)(c) involving a transfer which, in the Minister’s opinion, is intended to preserve or restore the financial position of the transferor or transferee, but which could affect the rights of third parties existing before the transfer—</p> <p>(a) the relevant order under subsection (1) shall be expressed as having been made with the intention of preserving or restoring the financial position of the transferor or transferee (with the possibility of affecting third parties’ pre-existing rights) and being intended to have effect outside as well as inside the State,</p> <p>(b) sections 33A and 33B have effect in relation to the transfer, and</p> <p>(c) the Minister may dispense with the requirement in subsection (1)(b) to publish prior notice of the transfer, and may substitute for that requirement a requirement to publish a contemporaneous or retrospective notice in such places as the Minister may direct.”.</p>

Item	Provision Amended	Amendment
5		<p>After section 33, insert:</p> <p>“Effect of order under section 33(1) on certain other rights.</p> <p>33A.—(1) This section and section 33B apply only where an order under section 33(1) provides that they shall have effect.</p> <p>(2) In this section ‘relevant agreement’ means an agreement, arrangement, undertaking, scheme, licence, security, obligation or other instrument, or an oral contract, that a transferor or transferee (or any of the transferor or transferee’s subsidiaries, holding companies and any subsidiaries of their holding companies (with the respective meanings given by section 155 of the Companies Act 1963)) is a party to, is bound by or has an interest in (regardless of whether governed by the law of the State or that of any other place).</p> <p>(3) Any provision in a relevant agreement that would (apart from this subsection) cause any of the consequences specified in subsection (4) to follow by virtue of—</p> <ul style="list-style-type: none"> (a) the amendment of this Act by the Credit Institutions (Stabilisation) Act 2010, (b) the publication of the Bill for that Act, (c) the making of an order under section 33(1) or any step taken in preparation for the making of such an order, (d) an act done or omitted to be done in compliance with such an order, (e) any consequences of such an act or omission, (f) any consequence of a transfer expressed as set out in section 33(4), (g) any other thing done or authorised to be done under, under or resulting from any provision of this Act, <p>is of no effect, and—</p> <ul style="list-style-type: none"> (i) no interest or right of any third party arises or becomes exercisable, and (ii) no liability or obligation arises or is incurred by any third party, <p>without the express consent of the Minister, except to any extent to which the Minister provides otherwise by order under section 33B.</p> <p>(4) The consequences referred to in subsection (3) are the following:</p> <ul style="list-style-type: none"> (a) the creation of an obligation or liability; (b) the suspension or extinction (however described, and whether in whole or in part) of a right or an obligation or the becoming subject to a right or an obligation; (c) the termination or extinguishment of the relevant agreement concerned or a right or obligation under it; (d) a right becoming exercisable to terminate or modify the relevant agreement or a right or obligation under it; (e) an amount becoming due and payable or capable of being declared due and payable or ceasing to be payable; (f) any other change in the amount or timing of any payment falling to be made or due to be received by any person;

Item	Provision Amended	Amendment
		<p>(g) a right becoming exercisable to withhold, net or set off any payment under or in connection with the relevant agreement;</p> <p>(h) the occurrence of an event giving rise to a default or breach of a right or obligation;</p> <p>(i) a right becoming exercisable not to advance any amount;</p> <p>(j) an obligation arising to provide or transfer a deposit or collateral;</p> <p>(k) a right of transfer or assignment of an asset or liability;</p> <p>(l) any right to enforce a guarantee, indemnity or security interest (however described);</p> <p>(m) the triggering of any mandatory prepayment event (howsoever described);</p> <p>(n) any obligation to return collateral or its equivalent;</p> <p>(o) the cancellation of any obligation to advance any amount or to provide credit or a contingent instrument;</p> <p>(p) legal proceedings becoming maintainable to enforce the relevant agreement;</p> <p>(q) the termination or modification of an obligation to provide a service or product;</p> <p>(r) the accrual of any right to give or withhold any consent or approval;</p> <p>(s) any event of default or breach of any right arising;</p> <p>(t) any right or obligation not arising;</p> <p>(u) the imposition of any condition on the relevant agreement;</p> <p>(v) the imposition of any condition on any right or obligation under the relevant agreement;</p> <p>(w) the creation of any constructive or resulting trust or other equitable interest or equity;</p> <p>(x) the accrual of any right to trace any property or to claim an equitable interest in or equity in respect of any property or to claim any breach of trust;</p> <p>(y) any other right or remedy (whether or not similar in kind to those referred to in paragraphs (a) to (x)) arising or becoming exercisable.</p> <p>Minister's power to modify application of section 33A.</p> <p>33B.—(1) In this section 'relevant agreement' has the same meaning as in section 33A.</p> <p>(2) If the Minister is of the opinion that in a particular case or cases the effect of section 33A is in all the circumstances unduly onerous, or causes unfairness or undue hardship, and that it is appropriate in all the circumstances to do so, he or she may by order provide that, notwithstanding anything in that section, a provision in a relevant agreement that provides for a consequence mentioned or referred to in section 33A(4) has effect to the extent specified in the order.</p> <p>(3) An order under subsection (2)—</p> <p>(a) may make provision in relation to the effect of a provision in—</p>

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		<p>(i) a particular relevant agreement,</p> <p>(ii) relevant agreements of a particular kind, or</p> <p>(iii) rights held under a relevant agreement, or relevant agreements of a particular kind, by a particular person or a particular class of persons,</p> <p>(b) in the case of an order that makes provision in relation to relevant agreements of a particular kind, may specify the kind by reference to any common characteristic of the instruments concerned,</p> <p>(c) in the case of an order that makes provision in relation to rights held by a particular class of persons, may specify the class by reference to any common characteristic of the persons concerned, and</p> <p>(d) may be expressed to have retrospective effect to a date falling after 13 December 2010.</p> <p>(4) If the Minister considers that an order under subsection (2) contains matter that is commercially sensitive, he or she may direct—</p> <p>(a) that the obligations in relation to the order under section 3(1) of the Statutory Instruments Act 1947 are to be taken to be satisfied by the printing, sending to the institutions mentioned in section 3(1)(a) of that Act, publication and sale of a version of the order from which the commercially sensitive matter is omitted, or</p> <p>(b) if the preparation of such a version would be impracticable, or would result in the version being seriously misleading, that the order is exempt from the operation of section 3(1) of that Act.</p> <p>(5) A version of an order prepared in accordance with a direction given by the Minister under subsection (4)(a) shall indicate that matter has been omitted from the version of the order and the general nature of that matter.</p> <p>(6) A direction given by the Minister under subsection (4) shall be published in <i>Iris Oifigiúil</i> as soon as practicable.</p> <p>(7) Evidence of a direction given by the Minister under subsection (4) may be given by the production of a copy of <i>Iris Oifigiúil</i> purporting to contain the direction.”.</p>
6	Section 34	After “State”, insert “(or, where the relevant transfer order under section 33(1) so provides, inside and outside the State)”.
7		<p>After section 34, insert:</p> <p>“Transfer of property.</p> <p>34A.—All contracts, agreements, conveyances, mortgages, deeds, leases, licences, undertakings, notices and other instruments, (whether or not in writing) entered into by, made with, given to or by, or addressed to the transferor (whether alone or with another person) relating to assets comprising real property or personal property (including choses in action) transferred are, to the extent that they were previously binding on and enforceable by, against or in favour of the transferor, binding on and enforceable by, against, or in favour of the transferee as fully and effectually in every respect as if the transferee had been the person by whom they were entered into, with whom they were made, or to or by whom they were given or addressed (as the case may be).”.</p>
8	Section 35	After “transferor” (second occurring), insert: “(whether inside or outside the State)”.

Item	Provision Amended	Amendment
9	Section 36	After “in relation to” (first occurring), insert “any property transferred in accordance with or by virtue of the provisions of section 34A or”.
10	Section 37	After “State”, insert “(or, where the relevant transfer order under section 33(1) so provides, inside and outside the State)”.
11	Section 38(1)	Delete “Any officer”, substitute “Subject to subsection (5A), any officer”.
12	Section 38(2)	Delete “Every such officer”, substitute “Subject to subsection (5A), every such officer”.
13	Section 38(3)	Delete “Any benefit”, substitute “Subject to subsection (5A), any benefit”.
14	Section 38(4)	Delete “Service or employment”, substitute “Subject to subsection (5A), service or employment”.
15	Section 38(5)	Delete “the order under section 33 of this Act”, substitute “an order under section 33 (other than an order referred to in subsection (4) of that section)”.
16		After section 38(5), insert: “(5A) This section does not apply in relation to a transfer of the undertaking of a bank under an order under section 33(1) that is expressed as set out in section 33(4).”.

PART 4

AMENDMENTS OF ACT OF 2008

Section 74 .

Item	Provision Amended	Amendment
1	Section 6(1)	<p>Substitute:</p> <p>“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—</p> <p>(a) the matters set out in section 2,</p> <p>(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</p> <p>(c) the resources available to him or her for that purpose.</p> <p>(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—</p> <p>(a) a credit institution or former credit institution or current or former subsidiary of a credit institution or former credit institution, or</p> <p>(b) credit institutions (including former credit institutions and current or former subsidiaries of credit institutions or former credit institutions) generally.</p> <p>(1B) The Minister may establish a company incorporated under the Companies Acts whose objects include the provision of financial support</p>

Item	Provision Amended	Amendment
		or operating as a parent undertaking of one or more credit institutions to whom the Minister has provided financial support.”.
2	Section 6(2)	Delete.
3	Section 6(3B)	Delete.
4		After subsection (4), insert: “(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	Section 6(20)	Substitute: “(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.”.

PART 5

AMENDMENT OF NATIONAL ASSET MANAGEMENT AGENCY ACT 2009

Section 75.

Item	Provision Amended	Amendment
1	Section 194	After subsection (2), insert: “(2A) On an appeal from a determination of the Court in respect of an application referred to in <i>subsection (1)</i> , the Supreme Court— (a) has jurisdiction to determine only the point of law certified by the Court under <i>subsection (2)</i> , and to make only such order in the proceedings as follows from that determination, and (b) shall, in determining the appeal, act as expeditiously as possible consistent with the administration of justice.”.

Section 77 .

SCHEDULE 2

AMENDMENTS OF REGULATIONS OF 2004

Item	Provision Amended	Amendment
1	Regulation 2(1), definition of “administrative authority”, subparagraph (a)	Insert after sub-subparagraph (i): “(ia) in relation to the making of an order under section 33(1) of the Central Bank Act 1971 (No. 24 of 1971) that is expressed as set out in section 33(4) of that Act, the Minister for Finance, or”.

Item	Provision Amended	Amendment
2	Regulation 2(1), definition of "reorganisation measure"	<p>Insert after subparagraph (h):</p> <p>"(i) a subordinated liabilities order (within the meaning given by the Credit Institutions (Stabilisation) Act 2010 (No. - of 2010));</p> <p>(j) a direction order, special management order or transfer order (within the respective meanings given by that Act) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of the relevant institution;</p> <p>(k) an order under section 33(1) of the Central Bank Act 1971 (No. 24 of 1971) that is expressed as set out in section 33(4) of that Act."</p>
3	Regulation 2(2)	<p>Substitute:</p> <p>"(2) In relation to the reorganisation or winding up of an authorised credit institution, any of the following enactments that is relevant to the institution in the particular context is a relevant applicable enactment for the purposes of these Regulations:</p> <p>(a) the Companies Acts;</p> <p>(b) the Central Bank Acts;</p> <p>(c) the Trustee Savings Banks Act 1989 (No. 21 of 1989);</p> <p>(d) the Building Societies Act 1989 (No. 17 of 1989);</p> <p>(e) the Asset Covered Securities Act 2001 (No. 47 of 2001);</p> <p>(f) the Credit Institutions (Stabilisation) Act 2010 (No. 36 of 2010)."</p>



Number 36 of 2010

CREDIT INSTITUTIONS (STABILISATION) ACT 2010

REVISED

Updated to 17 November 2022

About this Revised Act

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 annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations

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 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Finance (Miscellaneous Provisions) Act 2020* (25/2020)
- *National Treasury Management Agency (Amendment) Act 2014* (23/2014)
- *Central Bank (Supervision and Enforcement) Act 2013* (26/2013)
- *Central Bank and Credit Institutions (Resolution) Act 2011* (27/2011)

All Acts up to and including *Consumer Rights Act 2022* (37/2022), enacted 7 November 2022, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *General Government Secured Borrowings Order 2022* (S.I. No. 581 of 2022)
- *General Government Secured Borrowings Order 2020* (S.I. No. 750 of 2020)
- *General Government Secured Borrowings (No. 2) Order 2018* (S.I. No. 522 of 2018)
- *General Government Secured Borrowings Order 2018* (S.I. No. 118 of 2018)
- *General Government Secured Borrowings Order 2014* (S.I. No. 120 of 2014)
- *European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011* (S.I. No. 48 of 2011)
- *General Government Secured Borrowings Order 2011* (S.I. No. 40 of 2011)
- *Credit Institutions (Stabilisation) Act 2010 (Commencement) Order 2010* (S.I. No. 623 of 2010)

All statutory instruments up to and including *General Government Secured Borrowings Order 2022* (S.I. No. 581 of 2022), made 17 November 2022, were considered in the preparation of this revision.

Dáil and Seanad Resolutions which affect or previously affected this revision

- Motion of Dáil Éireann of 14 December 2012
- Motion of Seanad Éireann of 18 December 2012