



Number 27 of 2011

**CENTRAL BANK AND CREDIT INSTITUTIONS
(RESOLUTION) ACT 2011**

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY

Section

1. Short title, collective citation and commencement.
2. Interpretation.
3. References to certain credit institutions.
4. Purposes of Act.

PART 2

GENERAL MATTERS IN RELATION TO RESOLUTION POWERS

5. Responsibility for exercise of functions of Bank under this Act.
6. Independence of Bank and Governor not affected.
7. Minister and Bank to have regard to European Union law.
8. Bank to cooperate with relevant authorities outside State.
9. Intervention conditions.

PART 3

CREDIT INSTITUTIONS RESOLUTION FUND

10. Credit Institutions Resolution Fund.
11. Management and administration of Fund.
12. Minister may contribute to Fund.
13. Authorised credit institutions to contribute to Fund.
14. Offence in relation to Fund.
15. Regulations in relation to Fund.

16. Minister to consult Bank in certain circumstances.

PART 4

BRIDGE-BANKS

17. Bank's power to establish bridge-banks.
18. Bridge-bank may carry on banking business.
19. Regulations in relation to bridge-banks.

PART 5

TRANSFER OF ASSETS AND LIABILITIES

20. Interpretation (*Part 5*).
21. Preconditions for making a proposed transfer order.
22. Bank's power to impose requirements.
23. Bank may disclose information to potential transferee.
24. Directors' duties where Bank imposes requirements on authorised credit institutions.
25. Bank not to be director, etc.
26. Proposed transfer order — written notice.
27. Transferor not to dispose of assets, liabilities.
28. Transfers to be at market value.
29. Proposed transfer order — contents.
30. Hearing of application for transfer orders — procedure.
31. Publication of transfer orders.
32. Application to vary transfer order.
33. Application to vary transfer order where transferee is bridge-bank.
34. Application to set aside transfer order.
35. Application by creditor for permission to apply for compensation.
36. Appointment of Assessor.
37. Expenses, etc., of Assessor and engagement of staff.
38. Applications to Assessor.
39. Submissions to Assessor.
40. Determination of fair and reasonable compensation.
41. Circulation of draft report for comment.

42. Report by Assessor.
43. Review of determination of compensation, etc.
44. Limitation of judicial review of the Assessor's determination.
45. Content of transfer order.
46. Provision of financial incentive to transferee.
47. Repayment of financial incentive.
48. Procedure if transferor disputes consideration for assets and liabilities.
49. Effect of transfer order — general.
50. Effect of transfer order in relation to securities.
51. Transfer of foreign assets and liabilities.
52. Application of Bankers' Books Evidence Acts 1879 to 1989.
53. Stamp duty.

PART 6

SPECIAL MANAGEMENT

54. Interpretation (*Part 6*).
55. Preconditions for making a proposed special management order.
56. Proposed special management order — written notice.
57. Proposed special management order — contents.
58. Hearing of application for special management orders — procedure.
59. Publication of special management orders.
60. Application to vary special management order.
61. Application to set aside special management order.
62. Content of special management order.
63. Terms of appointment.
64. Remuneration, etc., of special managers.
65. Resignation and vacancy in office, etc.
66. Effect of special management order — general.
67. Functions of special managers.
68. Performance of functions of special managers.
69. Effect of appointment of special manager.

[No. 27.] *Central Bank and Credit Institutions (Resolution) Act 2011.* [2011.]

70. Powers of special manager to remove officers, employees and others.
71. Relationship between special manager and directors.
72. Special manager not to be director, etc.
73. Extension of special management.
74. Termination of special management.

PART 7

BANK'S POWERS IN LIQUIDATION OF AUTHORISED CREDIT INSTITUTIONS

75. Interpretation (*Part 7*).
76. Application of Companies Acts to winding-up of authorised credit institutions.
77. Bank may petition to have authorised credit institution wound up, etc.
78. Bank's role in winding-up authorised credit institutions.
79. Liquidators of authorised credit institutions.
80. Objectives of liquidator of authorised credit institution.
81. Bank may make money available.
82. Payments from deposit protection account to be debts due to Bank.
83. Liquidation committee — establishment.
84. Liquidation committee — functions.
85. Liquidation committee — procedure.
86. Functions of Bank after liquidation committee ceases to exist.
87. Achievement of Objective 1.
88. Transfer of accounts.
89. Modifications to Companies Acts in winding-up of authorised credit institutions.
90. Application of this Part to bodies incorporated outside State.

PART 8

RECOVERY PLANS AND RESOLUTION PLANS

91. Recovery plans.
92. Implementation of recovery plans.
93. Resolution plans.

94. Offences.

PART 9

MISCELLANEOUS

95. Effect of CIWUD Directive.
96. Application of certain laws in relation to transfers, etc., of credit institutions.
97. Proposed orders, etc., to be kept in confidence.
98. Costs incurred in relation to making orders, etc.
99. Confidentiality of proceedings.
100. Effect of orders on certain other obligations.
101. Limitation of operation of *section 100*.
102. Limitation of judicial review.
103. Limitation of certain rights of appeal to Supreme Court.
104. Application of laws in relation to netting agreements, etc.
105. Saving of legal proceedings, etc.
106. Codes of practice.
107. Guidelines on Bank's exercise of functions under this Act, etc.
108. Relationship framework between Minister and Bank.
109. Regulations.

PART 10

AMENDMENT OF OTHER ENACTMENTS AND STATUTORY INSTRUMENTS

110. Amendments of Acts.
111. Amendments of statutory instruments.

SCHEDULE 1

POWERS TO REQUIRE PERSONS TO GIVE EVIDENCE OR PRODUCE DOCUMENTS

SCHEDULE 2

AMENDMENTS OF ACTS

PART 1

AMENDMENTS OF ACT OF 1942

[2011.] *Central Bank and Credit Institutions
(Resolution) Act 2011.* [No. 27.]

ACTS REFERRED TO

Agricultural Co-operative Societies (Debentures) Act 1934	1934, No. 39
Agricultural Credit Act 1978	1978, No. 2
Asset Covered Securities Act 2001	2001, No. 47
Bankers' Books Evidence Acts 1879 to 1989	
Bills of Sale (Ireland) Acts 1879 and 1883	
Building Societies Act 1989	1989, No. 17
Central Bank Act 1942	1942, No. 22
Central Bank Act 1971	1971, No. 24
Central Bank Act 1989	1989, No. 16
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Central Bank and Financial Services Authority of Ireland Act 2004	2004, No. 21
Central Bank Acts 1942 to 2010	
Central Bank Reform Act 2010	2010, No. 23
Companies (Amendment) Act 1990	1990, No. 27
Companies Act 1963	1963, No. 33
Companies Act 1990	1990, No. 33
Companies Acts	
Competition Act 2002	2002, No. 14
Credit Institutions (Financial Support) Act 2008	2008, No. 18
Credit Institutions (Stabilisation) Act 2010	2010, No. 36
Credit Union Act 1997	1997, No. 15
Financial Services (Deposit Guarantee Scheme) Act 2009	2009, No. 13
European Communities Act 1972	1972, No. 27
Land and Conveyancing Law Reform Act 2009	2009, No. 27
Local Government Act 2001	2001, No. 37
Netting of Financial Contracts Act 1995	1995, No. 25
Patents Act 1992	1992, No. 1
Registration of Deeds and Title Acts 1964 and 2006	
Registration of Title Act 1964	1964, No. 16
Statutory Instruments Act 1947	1947, No. 44
Taxes Consolidation Act 1997	1997, No. 39
Trade Marks Act 1996	1996, No. 6
Unfair Dismissals Acts 1977 to 2007	



Number 27 of 2011

**CENTRAL BANK AND CREDIT INSTITUTIONS
(RESOLUTION) ACT 2011**

AN ACT TO MAKE PROVISION FOR AN EFFECTIVE AND EXPEDITIOUS RESOLUTION REGIME FOR CERTAIN CREDIT INSTITUTIONS AT THE LEAST COST TO THE STATE; TO AMEND CERTAIN ENACTMENTS; AND FOR RELATED MATTERS.

[20th October, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY

1.—(1) This Act may be cited as the Central Bank and Credit Institutions (Resolution) Act 2011.

Short title,
collective citation
and
commencement.

(2) This Act and the Central Bank Acts 1942 to 2010 may be cited together as the Central Bank Acts 1942 to 2011.

(3) 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.

2.—(1) In this Act—

Interpretation.

“Act of 1942” means the Central Bank Act 1942;

“Act of 1963” means the Companies Act 1963;

“Act of 1971” means the Central Bank Act 1971;

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

“Act of 2010” means the Credit Institutions (Stabilisation) Act 2010;

“articles of association” includes—

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

[No. 27.] *Central Bank and Credit Institutions (Resolution) Act 2011.* [2011.]

(b) in the case of a credit institution that is a credit union, its rules, and

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

“Assessor” has the meaning given by *section 36*;

“authorised credit institution” means (subject to *section 3*)—

(a) a bank licensed under section 9 of the Act of 1971,

(b) a building society, or

(c) a credit union;

“Bank” means the Central Bank of Ireland;

“bridge-bank” has the meaning given by *section 17*;

“building society” means a building society incorporated under the Building Societies Act 1989, or deemed pursuant to section 124(2) of that Act to be so incorporated;

“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;

“credit union” means a society registered as such under the Credit Union Act 1997, including a society deemed to be so registered by virtue of section 5(3) of that Act;

“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

¹OJ No. L 125 5.5.2001, p.15.

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

“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;

“Fund” has the meaning given by *section 10*;

“Governor” means the Governor of the Bank;

“holding company” means a holding company (within the meaning of section 155 of the Act of 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;

“intervention conditions” shall be construed in accordance with *section 9*;

“memorandum of association” includes the charter of a credit institution that is established by 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 2011” means the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011);

“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;

“special management order” has the meaning given by *section 58*;

“special manager” means a person appointed as such by a special management order;

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

“transfer order” has the meaning given by *section 30*.

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

- (a) an instrument (however described) that creates or purports to create an obligation, whether made in writing or under seal, including but not limited to an instrument described as an arrangement, undertaking, scheme, licence, security or obligation, or
- (b) an oral agreement that creates or purports to create an obligation, including but not limited to an obligation 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.

(5) For the purposes of *subsection (4)* “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.

(6) A reference in this Act to the preservation of the financial position of an authorised credit institution shall be taken to include the need for that credit 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 22*,
- (c) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).

3.—(1) In this section “relevant institution” has the same meaning as in the Act of 2010.

References to certain credit institutions.

(2) Subject to *subsection (3)*, while the Act of 2010 is in operation, an authorised credit institution that is a relevant institution within the meaning of that Act shall be taken not to be an authorised credit institution.

(3) If an order under *section 55* of the Act of 2010 is in operation the effect of which is that the relevant institution is taken not to be a relevant institution for the purposes of every provision of that Act, that relevant institution shall, for the purposes of *subsection (2)*, be taken not to be a relevant institution.

4.—The purposes of this Act are—

Purposes of Act.

- (a) to provide an effective and efficient resolution regime for authorised credit institutions that are failing or are likely to fail,
- (b) to provide for a resolution regime for such credit institutions that is effective in protecting the Exchequer, the stability of the financial system and the economy,
- (c) to provide for the taking of measures to maintain public confidence in the financial system in the State, including to protect the interests of depositors in such authorised credit institutions, and depositors generally,
- (d) to secure, to the extent possible in the circumstances, the continuity of banking services generally and in particular in relation to authorised credit institutions that are failing or are likely to fail,
- (e) to facilitate the orderly winding-up of an authorised credit institution that is insolvent,
- (f) to provide a mechanism to prevent the financial instability, or threat to the financial stability, of an authorised credit institution contributing to financial instability of any other authorised credit institution, the financial system or

the economy, and to avoid creating a risk of such financial instability,

- (g) to facilitate the re-organisation of, or the preservation or restoration of the financial position of, an authorised credit institution that is failing or is likely to fail, and
- (h) to provide the Bank with the necessary powers for the purposes set out in *paragraphs (a) to (g)* and to provide a framework within which the Bank can exercise those powers consistently with its legal obligations, including the legal obligations arising pursuant to the Treaty on European Union and the Treaty on the Functioning of the European Union.

PART 2

GENERAL MATTERS IN RELATION TO RESOLUTION POWERS

Responsibility for exercise of functions of Bank under this Act.

5.—(1) The Governor is responsible for the exercise of the functions of the Bank under this Act.

(2) The Governor may delegate any of the functions referred to in *subsection (1)* to a Head of Function (within the meaning given by section 2 of the Act of 1942) or an officer or employee of the Bank.

(3) The Governor, in delegating any function referred to in *subsection (1)*, shall endeavour to ensure that the performance of that function is operationally separate from the regulatory and supervisory responsibilities of the Bank.

Independence of Bank and Governor not affected.

6.—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 Act of 1942).

Minister and Bank to have regard to European Union law.

7.—In performing a function or exercising a power 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.

Bank to cooperate with relevant authorities outside State.

8.—Before performing a function in relation to an authorised credit institution that carries on business in a jurisdiction other than that of the State, whether it carries on that business itself or through one or more subsidiaries, the Bank shall, to the extent that it can do so, having regard to the purposes of this Act, inform the authority duly authorised to perform functions similar to any one or more of the statutory functions of the Bank of its intention to exercise the power.

Intervention conditions.

9.—(1) The intervention conditions are fulfilled in relation to an authorised credit institution if—

- (a) either condition A or condition B is fulfilled,

- (b) conditions C and D are both fulfilled, and
- (c) the Bank has consulted the Minister.

(2) Condition A is that the Bank has serious concerns relating to the financial stability of the authorised credit institution concerned and—

- (a) directs that credit institution to take particular action to address the Bank's concerns, and the Bank is satisfied that—
 - (i) the credit institution has failed to comply fully with the direction under this paragraph, or
 - (ii) the credit institution is incapable of taking the necessary action to so comply within the period specified by the Bank in that direction,

or

- (b) is satisfied that, having regard to the urgency of the situation or for any other reason, its serious concerns cannot be adequately addressed by such a direction.

(3) Condition B is that the Bank is satisfied that there is a present or imminent serious threat to the financial stability of the authorised credit institution concerned or the financial system in the State.

(4) Condition C is that the Bank is satisfied that the authorised credit institution concerned has failed or is likely to fail to meet a regulatory requirement imposed by law or a requirement or condition of its licence or authorisation.

(5) Condition D is that having regard to the purposes of this Act, any guidelines issued by the Bank under *section 107* and such of the matters set out in *subsection (6)* as appear to the Bank to be relevant in the circumstances, the immediate winding-up of the authorised credit institution concerned is not in the public interest.

(6) The matters referred to in *subsection (5)* are the following:

- (a) whether the authorised credit institution concerned is of systemic importance to the economy of the State;
- (b) whether the failure of that credit institution would be likely to contribute to instability of the banking system or serious damage to the financial system in, or the economy of, the State;
- (c) the importance of ensuring that the depositors of that credit institution will continue to have prompt access to their deposits (whether in that credit institution or elsewhere);
- (d) the importance of maintaining public confidence in the financial system in the State;
- (e) the importance of maintaining continuity of banking services to that credit institution's customers;
- (f) the terms of any resolution plan for that credit institution;

- (g) any other matters that the Bank considers relevant, in the particular circumstances, having regard to its duties and obligations.

PART 3

CREDIT INSTITUTIONS RESOLUTION FUND

Credit Institutions
Resolution Fund.

10.—(1) A fund, to be known as the Credit Institutions Resolution Fund and referred to in this Act as “the Fund”, is established.

(2) The purpose of the Fund is to provide a source of funding for the resolution of financial instability in, or an imminent serious threat to the financial stability of, an authorised credit institution, and in particular—

- (a) to reimburse the Minister for any provision of a financial incentive pursuant to *section 46*,
- (b) to provide funds for any payment required pursuant to *section 37(1), 42(5), 48 or 98*,
- (c) with the written consent of the Minister, to provide capital for a bridge-bank, and
- (d) to meet the Bank’s expenses in discharging its functions under this Act.

(3) The Fund shall be constituted by—

- (a) the contributions made by authorised credit institutions pursuant to *section 13*,
- (b) any sums paid into it by the Minister pursuant to *section 12*,
- (c) any assets of a bridge-bank transferred to it pursuant to *section 17(6)*, and
- (d) interest on those sums, contributions and assets.

(4) The Bank shall not provide any funds to the Fund from its own resources.

Management and
administration of
Fund.

11.—(1) The Bank shall manage and administer the Fund.

(2) The Bank shall determine the rate of interest payable from time to time on money standing to the credit of the Fund.

Minister may
contribute to Fund.

12.—(1) The Minister may contribute to the Fund such sums as he or she considers appropriate from the Central Fund or the growing produce of the Central Fund.

(2) The Minister is entitled to be reimbursed from the Fund for all contributions under *subsection (1)* and any financial incentive provided pursuant to *section 46*.

13.—(1) Authorised credit institutions shall contribute to the Fund in accordance with regulations made under *section 15*. Authorised credit institutions to contribute to Fund.

(2) An authorised credit institution shall not carry on the business of a credit institution unless it contributes to the Fund in accordance with *subsection (1)*.

14.—(1) An authorised credit institution that contravenes *section 13(2)* commits an offence and is liable— Offence in relation to Fund.

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €250,000.

(2) If an offence under this section is committed by an authorised credit institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the authorised credit institution or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (3)*.

(3) A person referred to in *subsection (2)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 3 years, or both.

(4) Proceedings for a summary offence under this section may be brought and prosecuted by the Bank.

15.—(1) The Minister shall make regulations prescribing the rate of contribution, or a method of calculating the rate of contribution, to the Fund by an authorised credit institution. Regulations in relation to Fund.

(2) In making regulations under *subsection (1)*, the Minister shall have regard to—

- (a) the need for the Fund to grow, over time, to a size commensurate to the costs that might be incurred in carrying out resolution activities under this Act and any other obligation of the Fund, and
- (b) the need for the rate of contribution by an authorised credit institution or class of such credit institutions to be consistent with maintaining the financial viability and sustaining the commercial position of such credit institutions.

(3) Regulations under *subsection (1)* may prescribe different rates, or different methods of calculating rates, of contribution for different authorised credit institutions or different classes of such credit institutions, according to—

- (a) the nature, scale and complexity of the business of each such credit institution or class, and the level of risk associated with each such credit institution or class,
- (b) the level of capital and liquidity of each such credit institution or class,
- (c) the adequacy of the internal controls of each such credit institution or class, including procedures relating to risk management and mitigation and arrangements for financial stabilisation, and
- (d) the capacity of each such credit institution or class to make the proposed contribution.

(4) The Minister may by regulations make provision for the administration and operation of the Fund.

Minister to consult Bank in certain circumstances.

16.—If the Minister proposes to make regulations under *section 15*, he or she—

- (a) shall consult with the Bank, in particular in relation to the matters set out in *section 15(3)*,
- (b) shall have regard to any advice of the Bank in relation to those matters,
- (c) shall consult with the Credit Union Advisory Committee (within the meaning of *section 180* of the *Credit Union Act 1997*) where the proposed regulations relate to credit unions, and
- (d) may have regard to such other matters as he or she or the Bank considers appropriate.

PART 4

BRIDGE-BANKS

Bank's power to establish bridge-banks.

17.—(1) For the purposes of this Act and in particular for holding assets or liabilities transferred pursuant to a transfer order, the Bank may cause to be formed and registered under the *Companies Acts* a private company limited by shares if, in the opinion of the Bank, having regard to such of the matters set out in *section 9(6)* as appear to the Bank to be relevant in the circumstances, to do so would be in the public interest.

(2) A company formed pursuant to this section is referred to in this Act as a bridge-bank.

(3) A bridge-bank shall be wholly owned by the Bank or a nominee or nominees of the Bank.

(4) The Bank shall not provide capital to a bridge-bank from its own resources, but may use the Fund for the purpose of providing such capital.

(5) A bridge-bank may hold assets and liabilities on a temporary basis, with a view to their transfer to another person as soon as practicable.

(6) Any surplus assets, after all liabilities have been discharged, arising on the winding-up of a bridge-bank shall be transferred to the Fund.

18.—(1) A bridge-bank shall be taken to hold a licence (within the meaning given by section 7(1) of the Act of 1971).

Bridge-bank may carry on banking business.

(2) The Bank may exercise all of its powers under the supervisory enactments (within the meaning given by the Act of 1942) in relation to a bridge-bank.

19.—(1) The Bank, may by regulations make provision in relation to the formation, administration and operation of bridge-banks, including the effective operation of bridge-banks in relation to the exercise of the powers conferred by *Part 5*.

Regulations in relation to bridge-banks.

(2) Before making a regulation under *subsection (1)*, the Bank shall consult the Minister and for that purpose shall provide the Minister with a draft of the proposed regulation.

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

PART 5

TRANSFER OF ASSETS AND LIABILITIES

20.—(1) In this Part—

Interpretation (*Part 5*).

“financial incentive” shall be construed in accordance with *section 46*;

“market value”, in relation to assets and liabilities, shall be construed in accordance with *section 28*.

(2) A reference in this Part to the transferor in relation to a transfer order shall be construed as a reference to the authorised credit institution, or a subsidiary or holding company of the authorised credit institution, the assets or liabilities of which are to be transferred pursuant to the order.

21.—(1) The Bank may make a proposed transfer order in relation to an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, if it decides that—

Preconditions for making a proposed transfer order.

(a) the intervention conditions are fulfilled in relation to that credit institution, and

- (b) 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 authorised credit institution concerned, a transfer order is necessary in all the circumstances to address one or more of the reasons for those intervention conditions being fulfilled.

(2) Nothing in *subsection (1)(b)* requires the Bank 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 authorised credit 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.

Bank's power to impose requirements.

22.—(1) The Bank may, at any time, by written notice impose a requirement on an authorised credit institution, any of its subsidiaries or its holding company, if the Bank is of the opinion that it is necessary or desirable to do so for the effective or efficient making of a proposed transfer order or of a transfer order.

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

- (a) to provide such information concerning the assets and liabilities of the authorised credit institution, or any of its subsidiaries or its holding company, as the Bank requires to permit the effective and efficient making of a proposed transfer order;
- (b) to disclose such information about the assets and liabilities of the authorised credit institution, or any of its subsidiaries or its holding company, as the Bank requires to one or more persons that the Bank identifies as being potential transferees under a transfer order;
- (c) to make a specified application to a specified authority, or give a specified notice to a specified person, on terms that the Bank specifies.

(3) If the Bank imposes a requirement on an authorised credit institution, subsidiary or holding company and the intention of it or part of it is the preservation or restoration of the financial position of a credit institution, the Bank shall declare in the requirement that the requirement or part is made with that intention, in accordance with the CIWUD Directive.

(4) The authorised credit institution, subsidiary or holding company the subject of the requirement under this section shall comply with the requirement in accordance with its terms (including any specification as to the time by which, or period within which, the requirement shall be complied with).

(5) In complying with a requirement under this section, the authorised credit institution, subsidiary or holding company shall disclose in utmost good faith all matters and circumstances in relation to that institution, the authorised credit institution or a subsidiary that might materially affect, or might reasonably be expected to materially

affect, any decision of the Bank in the performance of its functions under this Act.

(6) The Bank may direct an authorised credit institution that any information provided by that institution or its holding company or subsidiary 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 that authorised institution, holding company or subsidiary, as the case may be, or by any 2 officers identified for that purpose by the Bank.

(7) The officers and employees of the authorised credit institution, holding company or subsidiary shall comply with a requirement under this section and shall cause any subsidiary of that authorised institution, holding company or subsidiary 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.

(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 an authorised credit institution, an officer or employee of an authorised credit institution, a subsidiary, holding company, or subsidiary of a holding company, of an authorised credit institution or an officer or employee of such a subsidiary or holding company does not comply with a requirement, the Bank 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 authorised credit institution, holding company or subsidiary to comply with a requirement under this section, make any other order or direction it considers necessary in order to ensure that the authorised credit institution, holding company or subsidiary complies with the requirement.

(11) Nothing in this section authorises the Bank to place an authorised credit institution under special management.

(12) Except with the prior written consent of the Bank, a person shall not publish the fact that the Bank has imposed a requirement pursuant to *subsection (1)* unless required to do so by an enactment.

(13) A person (including an authorised credit institution) who contravenes *subsection (4), (7), or (12)* commits an offence and is liable—

- (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or both.

(14) If an offence under this section is committed by a body corporate, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the body corporate or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the body corporate or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (15)*.

(15) A person referred to in *subsection (14)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or to imprisonment for a term not exceeding 3 years, or both.

(16) It is not a contravention of *subsection (12)* for an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, to disclose a fact referred to in that subsection for the purposes of obtaining professional advice.

Bank may disclose information to potential transferee.

23.—Notwithstanding any provision of any enactment or agreement, or any rule of law, the Bank may disclose to a potential transferee information that it obtains on foot of a requirement or that is otherwise provided to it voluntarily by the transferor.

Directors' duties where Bank imposes requirements on authorised credit institutions.

24.—(1) In the performance of their functions, the directors of an authorised credit institution, holding company or subsidiary on which the Bank has imposed a requirement under *section 22(1)* shall have a duty to comply with the requirement and to cause the authorised credit institution, holding company or subsidiary to comply with the requirement.

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

- (a) is owed by the directors to the Bank, and
- (b) takes priority over any other duty of the directors to the extent of any inconsistency.

(3) The Bank 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.

Bank not to be director, etc.

25.—The Bank shall not, by reason of the imposition of a requirement under *section 22*, 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 the authorised credit institution, subsidiary or holding company on which the requirement was imposed.

26.—(1) Subject to *subsection (4)*, before making a proposed transfer order in relation to an authorised credit institution, subsidiary or holding company, the Bank shall—

Proposed transfer order — written notice.

- (a) deliver a written notice to the transferor and, if the transferor is a subsidiary or holding company of an authorised credit institution, to that credit institution, describing the terms of the proposed transfer order, accompanied by a summary of the reasons why the Bank believes that the intervention conditions are fulfilled,
- (b) afford that transferor, and, if applicable, the authorised credit institution, 48 hours, or a shorter period on which the Bank and that credit institution agree, in which to make written submissions to the Bank, and
- (c) consider any submissions made under *paragraph (b)*.

(2) If the Bank proposes that the transfer order or any term of it have immediate effect, the Bank shall state, in the written notice, that fact and the reasons why the order should have that effect.

(3) If the Bank proposes that assets or liabilities be transferred to a bridge-bank, it shall so state in the written notice.

(4) *Subsections (1) to (3)* do not apply if—

- (a) the Bank has consulted the authorised credit institution concerning the terms of the proposed transfer order and that credit institution has consented to the making of a transfer order in those terms, or
- (b) exceptional circumstances (within the meaning of *subsection (5)*) exist.

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

- (a) there is an imminent threat to the financial stability of the authorised credit institution concerned and the Bank is of the opinion that compliance with *subsection (1)* would result in significant damage to the financial stability of that credit institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Bank is of the opinion that compliance with that subsection would result in significant damage to the stability of that financial system, or
- (c) the Bank has reasonable grounds for believing that—
 - (i) confidentiality in relation to the proposed transfer order, or the possibility of the making of a transfer order, would not be maintained, and
 - (ii) the breach of such confidentiality would have significant adverse consequences.

(6) If the Bank makes a proposed transfer order in relation to an authorised credit institution and the intention of the proposed transfer order or part of it is the preservation or restoration of the financial position of a credit institution, the Bank 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.

Transferor not to dispose of assets, liabilities.

27.—(1) Unless the Bank provides prior written consent, a transferor 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 *section 26(1)* or the date on which the transferor otherwise becomes aware of the proposed transfer order for the purposes of consultation under *section 26(4)*, whichever is the earlier, and ending on the date of effect of the transfer order under *section 49*.

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

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

Transfers to be at market value.

28.—(1) The consideration for the assets and liabilities transferred under a transfer order shall be the aggregate of the market value of all of those assets, less the aggregate of the market value of all of those liabilities, as at the time of the transfer order.

(2) For the purposes of *subsection (1)*, and subject to *subsections (3) and (4)*, the market value of assets and liabilities shall be taken to be—

(a) in the case of assets, the amount that the transferee is willing to pay for those assets, and

(b) in the case of liabilities, the amount that the transferee is willing to accept in return for assuming those liabilities, or the book value of those liabilities, whichever is the lower.

(3) The Bank shall, before making a proposed transfer order and so far as practicable in all the circumstances (including, where relevant, the urgent need to resolve the financial instability of the transferor) carry out a competitive process that allows the determination of market value, unless the proposed transferee is a bridge-bank.

(4) The Bank shall, before applying for a variation of a transfer order under *section 33(1)* and so far as practicable in all the circumstances (including, where relevant, the urgent need to resolve financial instability of the transferor) carry out a competitive process that allows the determination of the market value.

Proposed transfer order — contents.

29.—(1) A proposed transfer order shall set out—

(a) the consideration for the proposed transfer, and any other terms and conditions of the proposed transfer, including any specification of a date by which or a period within which the transferor is required to comply with any such term or condition, and, where the transfer order or any term of it is to have immediate effect, the reasons why it should have that effect,

- (b) any incidental, consequential and supplemental provisions for implementing the transfer and securing that it is 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
- (c) any provision for transitional matters, including the sharing of assets and other contracts.

(2) A proposed transfer order may propose that the transferee be a bridge-bank if the Bank is of the opinion that—

- (a) the circumstances of the authorised credit institution concerned require the immediate transfer of assets or liabilities out of that credit institution, and
- (b) no suitable transferee can be found willing to take such a transfer on terms and conditions (including consideration) that the Bank considers appropriate.

(3) A proposed transfer order shall not propose that a person (other than a bridge-bank) be the transferee unless that person has agreed to accept the transfer on the terms set out in the order.

(4) Notwithstanding any provision of any enactment, agreement or rule of law, the Bank may, for the purposes of obtaining the agreement of a person under *subsection (3)*, disclose to the person concerned any information in its possession in relation to the transferor or a proposed transfer order.

30.—(1) As soon as may be after completion, in relation to a proposed transfer order, of the procedures required by *section 26*, the Bank shall apply *ex parte* to the Court for an order (referred to in this Act as a “transfer order”) in the terms of the proposed transfer order.

Hearing of application for transfer orders — procedure.

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

(3) The Court, when hearing an application under *subsection (1)*, shall, if satisfied that the requirements of *section 26* have been complied with and that the decision of the Bank 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 by the Bank after consideration of any submission made under *section 26(1)(b)*).

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

(5) The Court shall order that a transfer order or a term of a transfer order has effect immediately if the Court is satisfied that it is necessary, in all the circumstances, for the order or term to have that effect.

(6) Subject to *subsection (5)*, the Court may make a transfer order on terms other than those of the proposed transfer order (or those terms as varied by the Bank after consideration of any submission made under *section 26(1)(b)*) only if the Court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 26* or that the decision of the Bank 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 (2)*, and
- (c) the intervention conditions have been fulfilled in relation to the authorised credit institution concerned.

Publication of transfer orders.

31.—(1) The Bank shall, as soon as practicable after a transfer order is made—

- (a) serve a copy of the transfer order on the authorised credit institution concerned, and
- (b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Bank may, if the Bank 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 authorised credit 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 authorised credit 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 credit 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)*.

Application to vary transfer order.

32.—The Bank may apply—

- (a) on notice, or
- (b) in urgent circumstances, *ex parte*,

to the Court to vary a transfer order.

Application to vary transfer order where transferee is bridge-bank.

33.—(1) If assets or liabilities have been transferred to a bridge-bank by a transfer order, and the Bank finds a suitable transferee for some or all of those assets and liabilities on terms and conditions that the Bank considers appropriate, the Bank may apply to the Court to vary the transfer order to provide that that transferee's name be substituted as transferee of those assets and liabilities, and

to provide for the variation of other terms and conditions (including conditions relating to consideration) of the transfer order.

(2) The Court may not make an order substituting a transferee under *subsection (1)* without the consent of the person whose name is to be substituted as transferee.

(3) If the Court orders that the consideration is varied—

(a) the transferee shall repay, to the bridge-bank (or the person who paid that consideration on behalf of the bridge-bank), the consideration under the transfer order before its variation, and

(b) the transferee shall pay, as the Court may direct, any excess over the amount repaid under *paragraph (a)*—

(i) to the transferor,

(ii) to the bridge-bank, or

(iii) to the transferor and the bridge-bank.

(4) If assets or liabilities have been transferred to a bridge-bank pursuant to a transfer order, and the Bank, after such period as the Bank considers reasonable, forms the opinion that a suitable transferee cannot be found for particular assets and liabilities on terms and conditions that the Bank considers appropriate, the Bank may apply to the Court to vary the transfer order to provide that those assets or liabilities be returned to the transferor.

34.—(1) The transferor in relation to which a transfer order is made or a member of that transferor may apply to the Court by motion on notice grounded upon affidavit, not later than 14 days after the publication, in accordance with *subsection (1)(b)* of *section 31*, of the transfer order, for the setting aside of the transfer order.

Application to set aside transfer order.

(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 26* or that the decision of the Bank was unreasonable or vitiated by an error of law.

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

(5) The setting aside of a transfer order does not affect the rights of a transferee (other than a bridge-bank) or the transferee's title to any asset or liability so transferred before such setting-aside of the transfer order.

(6) If a transfer order is set aside and assets or liabilities have been transferred pursuant to it (other than to a bridge-bank), the transferor is not entitled to any payment other than the consideration paid pursuant to the transfer order or determined to be payable in accordance with *section 48*.

(7) If the Court sets aside a transfer order transferring assets or liabilities to a bridge-bank—

- (a) if a re-transfer of the assets or liabilities, or any of them, is possible, they shall be transferred back to the transferor and any consideration paid to the transferor shall be repaid to the bridge-bank,
- (b) if a re-transfer of the assets or liabilities, or any of them, is not possible, the transfer is not rendered invalid, and
- (c) subject to *paragraphs (a) and (b)*, the Court may—
 - (i) order that the transferor and the bridge-bank be restored as nearly as possible to their respective positions before the order was made, and
 - (ii) by order resolve, or provide for the resolution of, any dispute.

(8) 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 26* or that the decision of the Bank was unreasonable or vitiated by an error of law,
- (b) it would be appropriate to vary or amend the order, having regard to any report referred to in *section 30(2)* before the Court, and
- (c) the intervention conditions have been fulfilled in relation to the authorised credit institution concerned.

(9) If a variation or amendment of a transfer order, whether made under this section or on application by the Bank under *section 33*, would, but for this subsection, have the effect of setting aside a disposition of an asset or liability, *subsections (4) to (7)* apply with any necessary modifications.

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

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

35.—(1) Subject to *subsection (2)*, a creditor of a transferor in relation to a transfer order may apply to the Court, by motion on notice grounded upon affidavit, for an order permitting the creditor to apply for compensation under this Act.

Application by creditor for permission to apply for compensation.

(2) An application under *subsection (1)* may be made only on a date that is—

- (a) after the date on which the affairs of the transferor have been wound up, and
- (b) before the date that is 6 months after the date referred to in *paragraph (a)*.

(3) On an application under *subsection (1)*, the Court shall order that the creditor be permitted to apply for compensation, if the Court is satisfied that—

- (a) a resolution for the winding-up of the transferor was passed, or an order for its winding-up was made, within 12 months after the making of the transfer order,
- (b) the affairs of the transferor have been wound up,
- (c) any financial obligation of the transferor to the creditor in respect of which the creditor seeks to apply for compensation was undertaken before the making of the transfer order,
- (d) financial support (within the meaning of the Act of 2008) was not provided to the transferor by the State, in the 4 years immediately before the date on which the resolution referred to in *paragraph (a)* was passed, or the order referred to in that paragraph was made, whichever is the earlier, and
- (e) the dividend that the creditor received on the winding-up of the transferor was less than the dividend that it is likely that the creditor would have received had the transfer order not been made when it was made, and the creditor's burden in receiving that lesser dividend was, relative to the benefit to the financial stability of the transferor, or the stability of the financial system or the economy, disproportionate having regard to the circumstances of the creditor.

36.—(1) Where the Court makes one or more orders under *section 35* in relation to a creditor or creditors of a transferor, the Bank shall, not later than 6 months after the date of the last order in relation to the creditors of that transferor, appoint a person (referred to in this Act as the “Assessor”) to determine, in accordance with this Act, the fair and reasonable amount, if any, payable to each creditor concerned.

Appointment of Assessor.

(2) The Bank may appoint the same person to be the Assessor in relation to more than one transferor.

(3) In appointing a person as the Assessor, the Bank shall ensure that the person has, in the Bank's opinion, significant knowledge or experience of the financial services sector.

(4) The Bank shall not appoint a person as the Assessor unless the Bank is satisfied that the person would, if appointed, have no conflict of a material nature between any personal or business interests and the performance of the Assessor's functions.

(5) A person is not eligible to be appointed as the Assessor if the person—

- (a) is a member of either House of the Oireachtas or is, with the person's consent, nominated as a candidate for election as such a member,
- (b) is a member of the European Parliament or is, with the person's consent, nominated as a candidate for election as such a member or to fill a vacancy in the membership of that Parliament, or
- (c) is a member of a local authority (within the meaning of the Local Government Act 2001) or is, with the person's consent, nominated as a candidate for election as such a member.

(6) For the purpose of facilitating the performance of his or her functions under this Act, the Assessor has the powers set out in *Schedule 1* and may exercise, for any particular purpose, such of those powers as he or she, in his or her sole discretion, determines are appropriate for that purpose.

(7) A person who commits an offence under *Schedule 1* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or both.

(8) If an offence under this section is committed by an authorised credit institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the authorised credit institution or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (9)*.

(9) A person referred to in *subsection (8)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or

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

(10) In the performance of his or her functions under this Act, the Assessor—

(a) is independent,

(b) shall act as an expert only, and

(c) shall act as expeditiously as possible consistent with fairness.

(11) The Assessor shall complete the performance of his or her functions within such period as the Bank specifies from time to time.

37.—(1) The Bank shall, from the Fund, pay or reimburse such expenses of a person appointed as Assessor (including remuneration) as the Bank determines. Expenses, etc., of Assessor and engagement of staff.

(2) The Assessor may, with the consent of the Bank, engage such staff or other persons as the Assessor considers necessary to assist him or her in the performance of his or her functions, and shall take reasonable measures to satisfy himself or herself that no person so engaged is affected by a material conflict of interest.

38.—(1) A person shall not apply to the Assessor for compensation unless the Court has ordered under *section 35* that the person is permitted to do so. Applications to Assessor.

(2) An application to the Assessor shall be made in accordance with procedures determined by the Assessor under *section 39(3)*.

39.—(1) The following persons and no others may make submissions to the Assessor in respect of compensation in relation to a transferor: Submissions to Assessor.

(a) the Bank;

(b) the creditor concerned;

(c) the liquidator of the transferor;

(d) the Minister;

(e) the National Treasury Management Agency.

(2) A submission to the Assessor under *subsection (1)* shall be made in accordance with procedures determined by the Assessor under *subsection (3)*.

(3) Subject to any regulations made by the Minister under *section 109*, the Assessor shall determine, in his or her sole discretion, procedures for—

(a) the form and type of applications for compensation under *section 38*,

- (b) the form and type of submissions to be made to the Assessor,
- (c) the means by which confidential information should be protected from public disclosure, and
- (d) the performance of any of the Assessor's functions.

Determination of fair and reasonable compensation.

40.—(1) The Assessor shall determine the fair and reasonable amount of compensation, if any, payable to each creditor who applies for compensation.

(2) The Assessor shall, in determining the amount of compensation referred to in *subsection (1)*, have regard to—

- (a) the financial obligation of the transferor to the creditor,
- (b) the dividend that the creditor received on the winding-up of the transferor,
- (c) the dividend that it is likely that the creditor would have received had a winding-up order been made instead of the transfer order,
- (d) whether a financial incentive was provided under *section 46*,
- (e) whether financial support (within the meaning of the Act of 2008) or any other financial assistance, investment or guarantee was provided to the transferor by the State at any time,
- (f) whether it was reasonable in all the circumstances for the creditor to have undertaken the financial obligation with the transferor, having regard to the financial position of the transferor at that time,
- (g) whether the financial obligation of the creditor was undertaken before or after the passing of this Act,
- (h) whether the creditor took steps to secure the satisfaction of the financial obligation before the transfer order was made,
- (i) any relevant evidence that the Assessor obtains in the performance of his or her functions,
- (j) any submissions made to the Assessor, and
- (k) any other relevant matter.

(3) The Assessor shall make the determination required by *subsection (1)* on the basis of the information and evidence available to him or her at the time he or she makes it.

(4) A conclusion drawn or finding made by the Assessor in making the determination required by *subsection (1)* does not amount to a finding of fact for any purpose other than the purposes of this Act.

(5) The fair and reasonable amount of compensation, if any, payable to a creditor—

- (a) shall not exceed the actual loss incurred by the creditor that has been proved, to the satisfaction of the Assessor, to have arisen directly from the making of the transfer order, and
- (b) may be determined to be—
 - (i) less than the actual loss so incurred, or
 - (ii) nil.

(6) Whenever the Bank so requests, the Assessor shall report to the Bank as to his or her progress in making the determination required by this section.

(7) The liquidator of a transferor shall cooperate with the Assessor and shall deliver to the Assessor the books and records of the transferor and of the liquidator which, notwithstanding section 305(1) of the Companies Act 1963, shall not be disposed of.

41.—(1) Before making a report to the Bank under *section 42*, the Assessor shall, subject to *subsection (2)*, send a draft of the report to—

Circulation of draft report for comment.

- (a) each person who made a submission to the Assessor, and
- (b) any other person, or each person in any class of persons, that the Bank specifies in writing,

inviting the person to make written submissions concerning the draft report and specifying a reasonable period in which to do so.

(2) The Assessor may, instead of sending the entire draft of the report—

- (a) in respect of each person mentioned in *paragraph (a)* or *(b)* of *subsection (1)*, send to the person the part of the draft report that is relevant to that person, or
- (b) omit from the draft report any evidence or material if including that evidence or material would, in the Assessor's opinion, disclose commercially sensitive information or would otherwise be contrary to the public interest.

(3) Before making the report to the Bank under *section 42*, the Assessor shall consider any submissions made in accordance with the Assessor's invitation under *subsection (1)* and shall revise the report as appropriate.

(4) A person to whom the Assessor sends a copy of a draft report, or of a part of a draft report, under *subsection (1)* commits an offence if he or she discloses the report or its contents or any part of the report or its contents to any person other than for the purpose of obtaining professional advice.

(5) A person to whom a draft report of the Assessor or a part of it is disclosed (whether under *subsection (4)* for the purposes of obtaining professional advice or otherwise) commits an offence if he or she discloses the report or its contents, or any part of the report

or its contents, to any other person other than for the purpose of obtaining professional advice.

(6) A person who contravenes *subsection (4) or (5)* commits an offence and is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years, or both.

(7) If an offence under this section is committed by a body corporate and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the body corporate or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the body corporate or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (8)*.

(8) A person referred to in *subsection (7)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years, or both.

Report by Assessor. **42.**—(1) When the Assessor has determined, in accordance with *section 40*, the fair and reasonable amount of compensation, if any, payable to each creditor who has applied for it, the Assessor shall report to the Bank—

- (a) the name of each such creditor,
- (b) whether compensation is payable to each such creditor, and
- (c) the amount of compensation, if any, payable to each such creditor.

(2) In the report under *subsection (1)* the Assessor shall set out—

- (a) a summary of the evidence on which the Assessor relied in making his or her determination, and
- (b) the Assessor's reasons for making the determination.

(3) The Bank shall make such arrangements as are necessary for sufficient funds to be made available out of the Fund to enable payments of compensation to be made in accordance with the Assessor's report under *subsection (1)*.

(4) The Bank shall cause the Assessor's report under *subsection (1)* to be published as soon as is practicable.

(5) As soon as practicable after the publication of the Assessor's report, the Bank shall—

(a) notify each creditor whether or not compensation has been determined to be payable to him or her, and

(b) pay compensation in accordance with the report to each creditor to whom compensation has been so determined to be payable.

43.—(1) An appeal lies to the Irish Financial Services Appeals Tribunal (in this section called “the Tribunal”) against the determination of the Assessor under *section 40*.

Review of determination of compensation, etc.

(2) This section applies to the Bank in the same manner as it applies to a creditor who has or claims a right to compensation.

(3) The Assessor is to be the respondent to an appeal under *subsection (1)*.

(4) On hearing an appeal under *subsection (1)*, the Tribunal may substitute its own determination or confirm, annul or vary the determination appealed from and may make any other consequential order.

(5) The Tribunal shall determine an appeal under *subsection (1)* as expeditiously as possible consistent with fairness and on the basis of the material that was before the Assessor unless the Tribunal is of the opinion that a further submission or submissions should be sought.

(6) In deciding, for the purposes of an appeal under *subsection (1)*, whether the Assessor's determination should be confirmed, annulled or varied, the test to be applied by the Tribunal is whether the appellant has established, as a matter of probability, taking into account the degree of expertise and specialist knowledge possessed by the Assessor and taking the process as a whole, that the determination was vitiated by a serious and significant error or a series of such errors.

(7) *Section 40* applies to the Tribunal in making its decision in an appeal under *subsection (1)* to the same extent as it did to the Assessor in making his or her determination under that section.

(8) The provisions (except subsections (1) and (4) of section 57L and the definition of “appealable decision” in section 57A) of Chapter 3 of Part VIIA (inserted by section 28 of the Central Bank and Financial Services Authority of Ireland Act 2003 and amended by section 13 of the Central Bank and Financial Services Authority of Ireland Act 2004) of the Central Bank Act 1942 apply to an appeal under this section, except that—

- (a) references in that Chapter to the Bank are to be read as references to the Assessor, and
- (b) references in that Chapter to a decision or an appealable decision of the Bank are to be read as references to a determination of the Assessor.

(9) For the purposes of determining an appeal under this section, the Tribunal may refer a question of law to the Court in accordance with section 57AJ (inserted by the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942.

(10) If the Tribunal is satisfied, on examining the documents in relation to an appeal under *subsection (1)*, that the appeal raises no issue that the Tribunal has not already determined in connection with another such appeal, it may—

- (a) strike out the first-mentioned appeal, or
- (b) determine it without a hearing.

(11) In addition, if the Tribunal is satisfied that a number of appeals before it raise substantially the same issues—

- (a) it may select one of those appeals as representative of all, and
- (b) it may treat its decision on that appeal as determining those issues, or some of them, in each of the other appeals.

(12) The Tribunal may dismiss an appeal at any stage if the Tribunal is of the opinion that it has been made in bad faith or is frivolous, vexatious or misconceived or relates to a trivial matter.

(13) The decision of the Tribunal on an appeal under this section (including a decision made under *subsection (10)* without a hearing, and a decision that a decision on a particular appeal is to be taken, under *subsection (11)*, to determine an issue or issues in a number of appeals) is final.

Limitation of
judicial review of
the Assessor's
determination.

44.—(1) Leave shall not be granted for judicial review of the Assessor's determination under *section 40* or any other decision in relation to compensation unless—

- (a) either—
 - (i) the application for leave to seek judicial review is made to the Court within 14 days after the Assessor's report to the Bank, or, in the case of an application brought by an applicant other than the Bank, 14 days after the publication of that report under *section 42(4)*, 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 the 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 Assessor with such directions as the Court thinks appropriate or necessary.

(3) This section applies to the Bank in the same manner as it applies to a creditor who has or claims a right to compensation.

45.—(1) The Court may, in accordance with this Part, make a transfer order transferring— Content of transfer order.

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

(i) an authorised credit institution, or

(ii) a subsidiary or holding company of that credit institution,

or

(b) any combination of some or all of such assets and liabilities,

to a named person.

(2) If the transferor and the transferee are both credit unions, or are both building societies, the transfer order—

(a) may provide for the transfer of some or all of the engagements of the transferor to the transferee, and

(b) may make such provision for the amendment of the rules of the transferee as the Court considers necessary to give effect to a transfer of the rights of the members of the transferor to the transferee.

(3) A transfer order shall specify the following:

(a) the names of the transferor and the transferee;

(b) the assets and liabilities or the classes or kinds of assets and liabilities to be transferred;

(c) any consideration to be paid by the transferee, or a means of determining that consideration, including that a named person or a person in a class of persons is to determine the consideration payable under it.

(4) For the purposes of *subsection (3)(b)*, a class or kind may be specified by means of any common characteristic of the class or kind.

(5) Where a transfer order transfers a netting agreement (within the meaning of the Netting of Financial Contracts Act 1995) or a financial collateral arrangement (within the meaning of Directive 2002/47/EC² of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements, as amended by Directive 2009/44/EC³ of the European Parliament and of the Council of 6 May 2009, 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.

(6) A transfer order may transfer a cause of action (notwithstanding any rule of law to the contrary).

(7) 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.

Provision of financial incentive to transferee.

46.—(1) The Minister may, at the request of the Bank, directly or indirectly provide a financial incentive, on terms and conditions that the Minister considers appropriate, to a person to become a transferee under—

(a) a transfer order, or

(b) where a transfer order has been varied under *section 33*, the transfer order as so varied.

(2) For the purposes of *subsection (1)(a)*, the person to which the financial incentive is given may be a bridge-bank.

(3) A financial incentive may take the form of a payment, a loan, a guarantee, an exchange of assets or any other kind of financial accommodation or assistance, and may be or may include financial support within the meaning of the Act of 2008.

(4) Where the Minister provides a financial incentive under this Act, a term of the provision of the financial incentive may be in respect of the repayment in case of setting-aside of the transfer order, whether or not there is re-transfer of any assets or liabilities to the transferor.

(5) The Minister may recover from the Fund the amount of any financial incentive that the Minister has provided.

(6) The amount of any financial incentive provided is a debt due and owing to the Fund by the transferor and may be recovered as a simple contract debt in any court of competent jurisdiction.

Repayment of financial incentive.

47.—If a liability to repay the Fund or the Minister arises under *section 46(4)* in relation to a transfer order that transfers assets or liabilities of a subsidiary or holding company of an authorised credit

²OJ No. L 168 27.6.2002, p.43

³OJ No. L 146 10.6.2009, p.37

institution, that credit institution and the subsidiary or holding company are jointly and severally liable to make the repayment.

48.—(1) A transferor in relation to a transfer order (other than a transfer order where the transferee is a bridge-bank), or, where the transferor is a subsidiary or a holding company of an authorised credit institution, that credit institution, may dispute the amount of the consideration specified in the transfer order for the assets and liabilities the subject of that order, if the transferor or credit institution, as the case may be, believes that—

Procedure if transferor disputes consideration for assets and liabilities.

- (a) the consideration was not determined following a competitive process,
- (b) it would have been practicable in all the circumstances for a competitive process to have been carried out, and
- (c) the market value would have been materially greater than the consideration specified in the transfer order had a competitive process been carried out.

(2) In order to dispute the amount of consideration, the authorised credit institution shall serve a written notice to that effect on the Bank, not later than 14 days after the transfer order takes effect.

(3) As soon as practicable after receiving a notice under *subsection (2)*, the Bank shall appoint an independent valuer to determine, in accordance with this section—

- (a) whether a competitive process was carried out, and
- (b) if a competitive process was not carried out, whether it would have been practicable in all the circumstances for the Bank to have carried out a competitive process to determine the market value of the assets and liabilities to be specified in the proposed transfer order concerned, and if so, what the likely market value would have been if the competitive process had been carried out.

(4) In determining whether, for the purposes of *subsection (3)(b)*, it would have been practicable in all the circumstances for the Bank to have carried out a competitive process, the independent valuer shall consult with the Bank as to the reason why the Bank considered that it would not have been practicable to have carried out a competitive process.

(5) If the independent valuer determines that a competitive process was not carried out and that it would have been practicable in all the circumstances for the Bank to have carried out such a process, he or she shall determine what the market value would have been had the competitive process been carried out—

- (a) on the basis that the intervention conditions were fulfilled in relation to the authorised credit institution concerned,
- (b) on the basis of an urgent transfer in a distressed sale,
- (c) on the basis that the transferor is being wound up,
- (d) on the basis that the winding-up will be on the basis of an asset break-up, and

(e) on the basis of any other matter that the Minister prescribes by regulations.

(6) If the independent valuer determines, under *subsection (5)*, that the market value of the assets and liabilities the subject of the transfer order would have been materially different had the competitive process been carried out, he or she shall certify that fact to the Bank, the market value determined by the independent valuer shall be taken to be the consideration specified in the transfer order, and—

(a) if that market value would have been materially less than that consideration, the transferor shall, subject to *subsection (7)*, pay the difference to the transferee, or

(b) if that market value would have been materially greater than that consideration, the Bank shall draw on the Fund to pay the difference to the transferor and the transferee shall have no further liability in respect of those assets and liabilities.

(7) If a liability to pay the transferee arises under *subsection (6)(a)* in relation to a transfer order that transfers assets or liabilities of a subsidiary or holding company of an authorised credit institution, that credit institution and the subsidiary or holding company are jointly and severally liable to make the payment.

(8) The independent valuer shall—

(a) where he or she determines that a competitive process was carried out, certify to the Bank that it was carried out,

(b) where he or she determines that a competitive process was not carried out but that it would not have been practicable in all the circumstances to have carried it out, certify those determinations to the Bank, and

(c) where he or she determines that a competitive process was not carried out but that the market value of the assets and liabilities concerned would not have been materially different from the consideration for those assets specified in the transfer order, certify those determinations to the Bank.

(9) Where the independent valuer certifies to the Bank any of the matters referred to in *subsection (8)*, the market value shall remain the market value and the transferor shall have no further recourse in respect of the consideration.

(10) The transferor shall be liable to reimburse the Bank the costs of the independent valuer if the independent valuer determines that it was manifestly unreasonable for the transferor concerned to have disputed the amount of the consideration on the basis that—

(a) a competitive process was not carried out,

(b) a competitive process was not carried out and it would have been practicable in all the circumstances for the Bank to have carried out such a process, or

(c) a competitive process was not carried out and the market value of the assets and liabilities concerned would have

been materially greater than the consideration for those assets specified in the transfer order.

(11) As soon as may be after the independent valuer certifies to the Bank a matter under this section, the Bank shall send a written notice to the transferor of the determination of the independent valuer.

(12) Leave shall not be granted for judicial review of a determination of the independent valuer unless—

(a) either—

(i) the application for leave to seek judicial review is made to the Court within 14 days after the Bank sends the written notice under *subsection (11)*, 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 the Court's determination.

(13) 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 independent valuer with such directions as the Court thinks appropriate or necessary.

(14) Only a person to whom *subsection (1)* applies may dispute the valuation placed on the assets and liabilities transferred under a transfer order.

49.—(1) A transfer order has effect—

Effect of transfer order — general.

(a) if there is an application made under *section 32, 33 or 34*—

(i) if the Court makes an order under *section 32, 33 or 34* and makes an order as to the date of effect, at that date,

(ii) if the Court makes an order under *section 32, 33 or 34* and does not make an order as to the date of effect, the date of the order made under *section 32, 33 or 34*, as the case may be,

(iii) if the Court does not make an order under *section 32, 33 or 34*, 14 days after the publication of the order under *section 31*,

or

(b) if there is no application made under *section 32, 33 or 34*—

- (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 31*.
- (2) At the time of the transfer, 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 that asset or liability 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 prejudice to the generality of *subsection (3)*—
- (a) any account included in the transfer is transferred to the transferee at the time of the transfer and becomes, at and after that time, 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 at that time has effect after the transfer of the account,
 - (c) any amount owing on such an account by the account holder to the transferor at that time 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 at that time 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 is transferred 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 time of the 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 entitled and subject if the security had continued to be held by the transferor,
 - (i) except to any extent that the 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 time of the transfer, 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) If the transferor is an authorised credit institution that is either a credit union or a building society and a share account is included in the transfer of assets and liabilities—
- (a) where the transferee is a credit institution that is either a credit union or 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.

(6) If—

(a) a transferor is a credit union or 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)(b)*,

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.

(7) *Subsection (6)* has effect notwithstanding anything in—

(a) the Building Societies Act 1989 or the Credit Union Act 1997, or

(b) the memorandum of association or rules of the transferor.

(8) 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 to which the transferor is a party, is bound by, or has an interest in,

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

50.—(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 *subsection (4)* of *section 49* or a security referred to in *paragraph (f)* of that subsection, transferred by the order—

Effect of transfer order in relation to securities.

- (a) notwithstanding any provision of an Act referred to 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 the transferee 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) if 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 referred to 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 time of the 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 Act of 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.

51.—(1) In this section—

Transfer of foreign assets and liabilities.

“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 that relates 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.

(8) In the case of a transfer order that transfers a foreign asset or foreign liability of a subsidiary or holding company of an authorised credit institution, that credit institution shall ensure that the subsidiary or holding company complies with the obligation of the transferor under *subsection (7)*.

52.—(1) The Bankers' Books Evidence Acts 1879 to 1989 apply 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 time of the transfer.

Application of Bankers' Books Evidence Acts 1879 to 1989.

(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 time at which the transfer has effect.

53.—(1) Stamp duty is not chargeable on a transfer order, an order varying or amending a transfer order, an order setting aside a transfer order or an ancillary agreement entered into between a transferor and a transferee.

Stamp duty.

(2) Stamp duty is not chargeable on any instrument executed in order to give legal effect to a transfer effected or taken to be effected by a transfer order.

PART 6

SPECIAL MANAGEMENT

54.—For the purposes of this Part, an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, is under special management if the Court has made a special management order appointing a special manager to it, and the special management has not terminated under *section 74*.

Interpretation (*Part 6*).

55.—The Bank may make a proposed special management order in relation to an authorised credit institution, or a subsidiary or holding company of the authorised credit institution if it decides that—

Preconditions for making a proposed special management order.

(a) the intervention conditions are fulfilled in relation to that credit institution, and

(b) a special management order is necessary in all the circumstances.

56.—(1) Subject to *subsection (3)*, before making a proposed special management order in relation to an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, the Bank shall—

Proposed special management order — written notice.

- (a) deliver a written notice to the authorised credit institution, subsidiary or holding company and, if the notice is delivered to a subsidiary or holding company, to the authorised credit institution concerned, describing the terms of the proposed special management order, accompanied by a summary of the reasons why the Bank believes that the intervention conditions are fulfilled,
- (b) afford that credit institution and, if applicable, the authorised credit institution, 48 hours, or a shorter period on which the Bank and that credit institution agree, in which to make written submissions to the Bank, and
- (c) consider any submissions made under *paragraph (b)*.

(2) If the Bank proposes that any power of the special manager should be exercisable immediately, the Bank shall state, in the written notice, that fact and the reasons why the order should have that effect.

(3) *Subsections (1) and (2)* do not apply if—

- (a) the Bank has consulted the authorised credit institution concerning the terms of the proposed special management order and that credit institution has consented to the making of a special management order in those terms, or
- (b) exceptional circumstances (within the meaning of *subsection (4)*) exist.

(4) Exceptional circumstances for the purposes of *subsection (3)* exist if—

- (a) there is an imminent threat to the financial stability of that credit institution and the Bank is of the opinion that compliance with *subsection (1)* would result in significant damage to the financial stability of that credit institution,
- (b) there is an imminent threat to the stability of the financial system in the State and the Bank is of the opinion that compliance with that subsection would result in significant damage to the stability of that financial system, or
- (c) the Bank has reasonable grounds for believing that—
 - (i) confidentiality in relation to the proposed special management order, or the possibility of the making of a special management order, would not be maintained, and
 - (ii) the breach of such confidentiality would have significant adverse consequences.

(5) If the Bank makes a proposed special management order in relation to an authorised credit institution and the intention of the proposed special management order or part of it is the preservation or restoration of the financial position of a credit institution, the Bank 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.

57.—A proposed special management order—

Proposed special management order — contents.

- (a) shall set out the right of the authorised credit institution concerned to make submissions in relation to the proposed application,
- (b) shall specify the period in which the authorised credit institution may make such submissions,
- (c) if it is proposed that any power of the special manager is to be exercisable immediately, shall specify the reasons why the special management order should have that effect,
- (d) if the special management order is to be sought to appoint a special manager to a subsidiary or holding company of that credit institution, shall set out the name of the subsidiary or holding company, and
- (e) shall set out such other provisions as the Bank may consider appropriate.

58.—(1) As soon as may be after completion in relation to a proposed special management order, of the procedures required by *section 56*, the Bank shall apply *ex parte* to the Court for an order (referred to in this Act as a “special management order”) in the terms of the proposed special management order.

Hearing of application for special management orders — procedure.

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

(3) The Court, when hearing an application under *subsection (1)*, shall, if satisfied that the requirements of *section 56* have been complied with, and that the decision of the Bank 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 by the Bank after consideration of any submission made under *section 56(1)(b)*).

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

(5) The Court shall order that a power of a special manager is to be exercisable immediately if the Court is satisfied that it is necessary, in all the circumstances, for the order to have that effect.

(6) The Court may make a special management order on terms other than those in the proposed special management order (or those terms as varied by the Bank after consideration of any submission made under *section 56(1)(b)*) only if the court is satisfied that—

- (a) there has been non-compliance with any of the requirements of *section 56* or that the decision of the Bank 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 (2)*, and
- (c) the intervention conditions have been fulfilled in relation to the authorised credit institution concerned.

Publication of special management orders.

59.—(1) The Bank shall, as soon as practicable after a special management order is made—

- (a) serve a copy of the special management order on the authorised credit institution, and, if the subject of the special management order is a subsidiary, or holding company of the authorised credit institution, on the subsidiary or holding company, and
- (b) publish the order in 2 newspapers circulating generally in the State.

(2) In a particular case, the Bank may, if the Bank 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 authorised credit institution shall take all reasonable measures to ensure that its members, and, if the subject of the special management order is a subsidiary or holding company of the authorised credit institution, the members of the subsidiary or holding company, are made aware of the order, including, without limiting the generality of the foregoing—

- (a) where the shares of the authorised credit 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 credit 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)*.

Application to vary special management order.

60.—The Bank may apply—

- (a) on notice, or
- (b) in urgent circumstances, *ex parte*,

to the Court to vary a special management order.

Application to set aside special management order.

61.—(1) The authorised credit institution, subsidiary or holding company in relation to which a special management order is made, or a member of that credit institution, subsidiary or holding company, may apply to the Court by motion on notice grounded upon affidavit, not later than 14 days after the publication, in accordance with *subsection (1)(b)* of *section 59*, of the special management order, for the setting aside of the special management order.

(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 special management 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 special management order only if the Court is satisfied that there has been non-compliance with any of the requirements of *section 56* or that the decision of the Bank 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 56* or that the decision of the Bank 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 58(2)*, and
- (c) the intervention conditions have been fulfilled in relation to the authorised credit institution concerned.

(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, but—

- (a) he or she remains entitled to be paid, out of the assets of that credit 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.

(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 the credit institution, subsidiary or holding company the subject of the special management order, have regard to—

- (a) the date on which the applicant became a member of that credit institution, subsidiary or holding company, or increased or decreased the number of shares that the

applicant held in that credit institution, subsidiary or holding company, 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.

Content of special management order.

62.—(1) The Court may, in accordance with this Part, make an order in relation to an authorised credit institution appointing a special manager to—

- (a) the authorised credit institution, or
- (b) a subsidiary or holding company of that credit institution.

(2) The person named in a special management order as the special manager of an authorised credit institution or a subsidiary or holding company of such a credit institution, shall be a person who has, in the Bank's opinion, the requisite knowledge, expertise and experience of the financial services sector to be the special manager of that credit institution, subsidiary or holding company.

(3) A special management order shall specify the following:

- (a) the name of the special manager,
- (b) the name of the authorised credit institution concerned, or, if the special management order appoints a special manager to a subsidiary or holding company of that credit institution, the name of the subsidiary or holding company,
- (c) the period not exceeding 6 months during which the authorised credit institution, subsidiary or holding company concerned is to be under special management, and
- (d) if the special manager is to take over only part of the business of that credit institution, subsidiary or holding company, a description of that part.

(4) 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.

(5) A special management order shall include the terms of appointment of the special manager, and may—

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

63.—The special manager shall be appointed for the period of the special management set out in the relevant special management order.

Terms of appointment.

64.—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 authorised credit institution, subsidiary or holding company concerned or the proceeds of the realisation of the assets (including investments) or other funds available to that credit institution, subsidiary or holding company.

Remuneration, etc., of special managers.

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

Resignation and vacancy in office, etc.

(2) The Bank may remove a special manager at any time for any reason.

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

(4) The resignation or removal of a special manager does not of itself terminate the special management of the authorised credit institution, subsidiary or holding company concerned.

66.—(1) A special management order has effect—

Effect of special management order — general.

(a) immediately, to the extent that the Court so orders,

(b) if an application is made under *section 60* or *61*, at the time ordered by the Court on hearing that application, or

(c) if no such application is made—

(i) at the time ordered by the Court, or

(ii) if the Court makes no order as to the time of effect, 5 working days after the publication of the order under *section 59*.

(2) If the Court orders that a special management order is to have effect immediately, the Court may order that, for a period ordered by the Court—

(a) a function of the special manager does not apply to the special manager or applies only to the extent ordered by the Court,

(b) a power of the special manager is not to be exercisable, or is to be exercisable only to the extent ordered by the Court, or

(c) a particular power of the special manager shall not be exercised without the leave of the Court.

67.—(1) The special manager of an authorised credit institution, subsidiary or holding company shall take over the management of

Functions of special managers.

the business, or the relevant part of the business, of that credit institution, subsidiary or holding company, and—

- (a) shall manage that business or part with a view to preserving or restoring the financial position of that credit institution, subsidiary or holding company,
- (b) shall wind down that business or part with a view to liquidating its assets and paying off its liabilities and shrinking its business to facilitate its possible liquidation or acquisition, or
- (c) having regard to any recovery plan of, and any resolution plan for, that credit institution, shall otherwise manage that business or part,

in accordance with the relevant special management order.

(2) Without prejudice to the generality of *subsection (1)*, the special manager of an authorised credit institution, subsidiary or holding company has the power to acquire and dispose of any asset or all the assets, and any liability or all the liabilities, of that credit institution, subsidiary or holding company.

(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 an authorised credit institution, subsidiary or holding company has, in relation to that credit institution, subsidiary or holding company, 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 that credit institution, subsidiary or holding company.

(5) The special manager of an authorised credit institution, subsidiary or holding company shall take such steps as he or she considers appropriate to remedy the matters that led to the making of the special management order, and for that purpose may, unless the special management order provides otherwise, appoint advisors to that credit institution, subsidiary or holding company.

(6) A special manager may, with the consent of the Bank, substitute his or her own decision for any decision that would otherwise be made by the members of the authorised credit institution, subsidiary or holding company concerned, and if he or she does so, the decision shall be taken to be the decision of the members.

(7) The appointment of a special manager of an authorised credit institution, subsidiary or holding company does not relieve that credit institution, subsidiary or holding company of any obligation to comply with—

- (a) any applicable laws and regulatory requirements, or
- (b) any direction given by the Bank to that credit institution, subsidiary or holding company under an enactment.

(8) The special manager of an authorised credit institution, subsidiary or holding company shall provide such reports and other information to the Bank as the Bank requests. The obligation under this subsection is in addition to any other obligation of that credit

institution, subsidiary or holding company to provide information and make returns to the Bank.

(9) If a special management order authorises a special manager to take over only a part of the business of an authorised credit institution, subsidiary or holding company, a reference in this section to the business of an authorised credit institution, subsidiary or holding company shall be construed as a reference to that part of that business.

68.—(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. Performance of functions of special managers.

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

69.—(1) While an authorised credit institution, subsidiary or holding company is under special management— Effect of appointment of special manager.

- (a) all functions which, but for this paragraph, would be vested in the directors of that credit institution, subsidiary or holding company (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 Bank,
- (c) a resolution for its winding-up is of no effect without the prior consent in writing of the Bank,
- (d) no petition may be presented for the appointment of an examiner to that credit institution, subsidiary or holding company 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 Bank,
- (e) no inspector may be appointed or an inquiry commenced under the Companies Act 1990 without the prior consent in writing of the Bank,
- (f) subject to *subsection (2)*, no receiver over any part of the property of that credit institution, subsidiary or holding company may be appointed without the prior consent in writing of the Bank,
- (g) subject to *subsection (2)*, no enforcement (whether by attachment, sequestration, distress or execution) of any judgment or order may be put into force against any part of the property of that credit institution, subsidiary or holding company without the prior consent in writing of the Bank, unless the party seeking to do so is the Bank,
- (h) subject to *subsection (2)*, if any claim against an authorised credit institution, subsidiary or holding company is secured by security affecting the whole or any part of the assets of that credit institution, subsidiary or holding company, any person other than the Bank who wishes to

realise the whole or any part of that security shall give written notice to the Bank 90 days (or a shorter period to which the Bank agrees) before such realisation, and

- (i) if the special manager so elects, the powers of that credit institution, subsidiary or holding company exercisable by a general meeting of that credit institution, subsidiary or holding company are exercisable only by the special manager and subject to the prior consent in writing of the Bank.

(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) The powers of a special manager shall not be exercised in a way that conflicts with the law of the European Union.

(4) Except as provided otherwise by this Act, the business of an authorised credit institution, subsidiary or holding company 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 that credit 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.

(5) While an authorised credit institution, subsidiary or holding company is under special management—

- (a) that credit institution, subsidiary or holding company 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 contract stand suspended and are not exercisable,
- (c) section 205 of the Act of 1963 does not apply, and
- (d) no derivative action may be brought in respect of that credit institution.

(6) A special management order has effect notwithstanding anything in—

- (a) the Companies Acts, the Building Societies Act 1989, the Credit Union Act 1997 or the *Central Bank Acts 1942 to 2011*,
- (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 an authorised credit institution may be traded from time to time,
- (e) the memorandum of association and articles of association of that credit institution, subsidiary or holding company, or

- (f) any agreement to which that authorised credit institution, subsidiary or holding company, and any other holding company or subsidiary of that credit institution, subsidiary or holding company is a party, is bound by, or has an interest in,

except to any extent to which the special management order expressly provides otherwise.

70.—(1) The special manager of an authorised credit institution, or a subsidiary or holding company of an authorised credit institution, may, with the consent of the Bank, and shall, if so directed by the Bank, remove any person from—

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

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

(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 that credit 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 manager and directors.

71.—(1) The special manager appointed to an authorised credit institution shall—

- (a) determine the role (if any) of the directors and officers of that credit institution, subsidiary or holding company and any subsidiary of that credit institution, subsidiary or holding company during the special management, and
- (b) determine the remuneration (if any) to be paid to the directors and officers of that credit institution, subsidiary or holding company and any subsidiary of that credit institution, subsidiary or holding company during the special management.

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

(3) A director or other officer of an authorised credit institution, subsidiary or holding company or a subsidiary of such a credit institution, subsidiary or holding company 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)*.

Special manager not to be director, etc.

72.—A special manager of an authorised credit institution, subsidiary or holding company 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 that credit institution, subsidiary or holding company or any subsidiary of that holding company.

Extension of special management.

73.—The Court may, on application by the Bank under *section 60*, extend the special management of an authorised credit institution, subsidiary or holding company.

74.—The special management of an authorised credit institution, subsidiary or holding company terminates—

Termination of special management.

- (a) at the end of the period referred to in *section 63* or *73*, as the case may be,
- (b) on the setting aside of the relevant special management order,
- (c) on the making of an order for the winding-up of that credit institution, subsidiary or holding company,
- (d) on the making of an order under the Companies (Amendment) Act 1990 appointing an examiner to that credit institution, subsidiary or holding company, or
- (e) if the Bank so orders.

PART 7

BANK'S POWERS IN LIQUIDATION OF AUTHORISED CREDIT INSTITUTIONS

75.—(1) In this Part—

Interpretation (*Part 7*).

“deposit protection account” has the same meaning as in the Regulations of 1995;

“eligible depositor” means a person with an eligible deposit (within the meaning given by the Regulations of 1995);

“full payment resolution” has the meaning given by *section 84(3)(a)*;

“liquidator” means a liquidator appointed to an authorised credit institution;

“Regulations of 1995” means the European Communities (Deposit Guarantee Schemes) Regulations 1995 (S.I. No. 168 of 1995).

(2) A reference in this Part to Objective 1 or Objective 2, or the objectives of a liquidator of an authorised credit institution, shall be construed in accordance with *section 80*.

(3) Notwithstanding *section 3(2)*, a reference in this Part to an authorised credit institution includes a reference to a relevant institution within the meaning of the Act of 2010.

(4) Expressions used in this Part and in the Companies Acts have the same meanings in this Part as in the Companies Acts except to any extent that this Part provides otherwise.

76.—The Companies Acts apply to the winding-up of an authorised credit institution subject to this Part.

Application of Companies Acts to winding-up of authorised credit institutions.

77.—The Bank may present a petition to the Court for the winding-up of an authorised credit institution on any of the following grounds:

Bank may petition to have authorised credit institution wound up, etc.

- (a) that in the opinion of the Bank, the winding-up of that credit institution would be in the public interest;
- (b) that that credit institution is, or in the opinion of the Bank may be, unable to meet its obligations to its creditors;
- (c) that that credit institution has failed to comply with a direction of the Bank—
 - (i) in the case of the holder of a licence under section 9 of the Act of 1971, under section 21 of that Act, or
 - (ii) in the case of a building society, under section 40(2) of the Building Societies Act 1989, or
 - (iii) in the case of a credit union, under section 87 of the Credit Union Act 1997;
- (d) that that credit institution’s licence or authorisation (as applicable) has been revoked and (in the case of the holder of a licence under section 9 of the Act of 1971) that it has ceased to carry on banking business;
- (e) that the Bank considers that it is in the interest of persons having deposits (including deposits on current accounts) with that credit institution that it be wound up.

Bank’s role in winding-up authorised credit institutions.

78.—(1) A person other than the Bank shall not—

- (a) present a petition to the Central Office of the High Court,
- (b) advertise such a petition, or
- (c) take any other step or make any other publication concerning that person’s intention to cause an authorised credit institution to be wound up,

unless—

- (i) the person has given 10 days’ written notice to the Bank of his or her intention to do so, and
- (ii) the Bank has confirmed in writing that it has no objection to the person doing so.

(2) If an authorised credit institution is being wound up voluntarily and the Bank has reason to believe that any of the grounds set out in *section 77* apply, the Bank may apply to the Court to have that credit institution wound up by the Court.

(3) If an authorised credit institution, or a body that was formerly an authorised credit institution, is being wound up and the Bank is not a creditor, any notice or document, by whatever name called, required to be sent to a creditor of that credit institution or body shall also be sent to the Bank.

(4) In the winding-up of an authorised credit institution (if the Bank was not the petitioner)—

- (a) the Bank is entitled to be a notice party in all applications brought in the course of the winding-up, and

(b) the Bank may make representations to the Court.

79.—(1) Only a liquidator approved by the Bank may be appointed to an authorised credit institution.

Liquidators of authorised credit institutions.

(2) A liquidator appointed by the Court to an authorised credit institution shall notify the Bank, immediately after his or her appointment, that a compensation event (within the meaning in Regulation 8A of the Regulations of 1995) has taken place.

80.—(1) The liquidator of an authorised credit institution has 2 objectives, as follows:

Objectives of liquidator of authorised credit institution.

(a) Objective 1—

(i) to facilitate the Bank in ensuring that each eligible depositor receives the prescribed amount payable under Regulation 4 of the Regulations of 1995 from the deposit protection account, or

(ii) to facilitate the Bank in transferring that amount from the deposit protection account to another authorised credit institution or to a credit institution approved by the Bank, to hold that amount on behalf of each such eligible depositor;

(b) Objective 2, to wind up the affairs of the authorised credit institution so as to achieve the best results for that credit institution's creditors as a whole.

(2) In the event of a conflict between Objective 1 and Objective 2, Objective 1 takes precedence.

(3) The liquidator of an authorised credit institution shall begin working towards both objectives immediately upon his or her appointment. The liquidator and the Bank shall cooperate in the pursuit of those objectives.

(4) The duties of a liquidator under this Part are in addition to the other duties of a liquidator.

(5) The liquidator of an authorised credit institution—

(a) shall comply with a request of the Bank for information in relation to the liquidation, and

(b) may provide the Bank with any other information that the liquidator thinks might be useful for the purpose of co-operating in the pursuit of Objective 1.

81.—(1) The Bank may, for the purpose of cooperating in the pursuit of Objective 1, and to facilitate the transfer of accounts of eligible depositors of the authorised credit institution concerned—

Bank may make money available.

(a) make money available from the deposit protection account, or

(b) make payments and charge the payments on the deposit protection account.

(2) Section 8 of the Financial Services (Deposit Guarantee Scheme) Act 2009 shall apply in respect of payments charged on the deposit protection account under *subsection (1)(b)* as if the reference in that section 8 to a payment in accordance with the Regulations of 1995 were a reference to a payment in accordance with this section.

Payments from deposit protection account to be debts due to Bank.

82.—If the Bank has paid or transferred funds from the deposit protection account in accordance with *section 80(1)(a)(ii)* or *81*—

- (a) the Court (or in the case of a voluntary winding-up of the authorised credit institution, the liquidator) shall admit the amount of each such payment or transfer as a proved debt due to the Bank, and
- (b) in relation to each such debt—
 - (i) the Bank shall have the same priority as the person to whom the payment was made, or on whose behalf the transfer was made, would have had if that payment or transfer had not been made, and
 - (ii) the Bank shall rank ahead of the person for the full amount of the debt.

Liquidation committee — establishment.

83.—(1) As soon as practicable after the Court makes a winding-up order pursuant to section 216(1) of the Act of 1963 in relation to an authorised credit institution, the Bank shall nominate 2 individuals, and the Minister shall nominate one individual, who shall comprise a liquidation committee.

(2) The Bank and the Minister may each replace their respective nominees at any time.

(3) The function of a liquidation committee is to ensure that the liquidator properly carries out his or her functions under this Part.

(4) While a liquidation committee exists in relation to an authorised credit institution, section 232 of the Act of 1963 does not apply in relation to that credit institution.

(5) If a liquidation committee ceases to exist by virtue of *section 84(4)*, section 232 of the Act of 1963 again becomes applicable in relation to the authorised credit institution concerned.

Liquidation committee — functions.

84.—(1) The liquidator shall report to the liquidation committee about any matter on request, and may report to that committee about any matter which the liquidator thinks is likely to be of interest to that committee.

(2) The liquidator shall keep the liquidation committee informed of progress towards Objective 1, and shall notify that committee when in the liquidator's opinion Objective 1 has been achieved entirely or so far as is reasonably practicable.

(3) As soon as is reasonably practicable after receiving a notice under *subsection (2)*, the liquidation committee shall either—

(a) resolve that Objective 1 has been achieved entirely or so far as is reasonably practicable (referred to in this Part as a “full payment resolution”), or

(b) apply to the Court under section 280 of the Act of 1963.

(4) If a liquidation committee passes a full payment resolution, the liquidation committee ceases to exist at the end of the meeting at which that resolution was passed.

85.—(1) A meeting of the liquidation committee may be summoned by any of the members or by the liquidator.

Liquidation committee — procedure.

(2) A meeting of the liquidation committee is quorate only if all the members are present.

(3) A person aggrieved by anything done by the liquidation committee before it has passed a full payment resolution may apply to the Court, which may make any order that it considers appropriate in the circumstances (including an order for the repayment of money).

(4) The Court may (whether on an application under *subsection (3)*, on the application of the liquidator or otherwise) make an order that the liquidation committee is to be treated as having passed a full payment resolution.

(5) If a liquidation committee fails to comply with *section 84(3)* the liquidator shall apply to the Court for an order under *subsection (3)* or for directions under section 280 of the Act of 1963.

86.—If a liquidation committee ceases to exist by virtue of *section 84(4)*—

Functions of Bank after liquidation committee ceases to exist.

(a) the Bank shall be a notice party to legal proceedings relating to the winding-up of the authorised credit institution concerned, and

(b) if a committee of inspection is appointed, the Bank—

(i) may attend meetings of the committee of inspection,

(ii) is entitled to receive copies of all documents relating to the business of the committee of inspection, and

(iii) may make representations to the committee of inspection.

87.—(1) As soon as is reasonably practicable after it is established, a liquidation committee shall make recommendations to the liquidator on appropriate ways of achieving Objective 1, and the liquidator shall comply with any such recommendation.

Achievement of Objective 1.

(2) If the liquidation committee is of the opinion that the liquidator is failing to comply with such a recommendation, it shall apply to the Court for directions under section 280 of the Act of 1963.

(3) If the liquidation committee does not make a recommendation under *subsection (1)* within a reasonable time after it is established, the liquidator may apply to the Court under section 280 of the Act of 1963 for directions.

Transfer of accounts.

88.—(1) This section applies where a liquidator arranges, in pursuit of Objective 1, for the transfer of eligible depositors' accounts from the authorised credit institution to another authorised credit institution or a credit institution approved of by the Bank.

(2) The arrangements referred to in *subsection (1)* shall have effect despite any restriction (whether or not under an enactment or a contractual provision).

(3) In making the arrangements mentioned in *subsection (1)* the liquidator shall ensure that eligible depositors will be able to remove money from transferred accounts as soon as is reasonably practicable after transfer.

(4) In *subsection (2)* “restriction” includes any restriction, inability or incapacity affecting what can and cannot be assigned or transferred (whether generally or by a particular person) and a requirement for consent (howsoever described).

Modifications to Companies Acts in winding-up of authorised credit institutions.

89.—(1) A provision of the Act of 1963 mentioned in column 1 of the Table to this subsection applies to the winding-up of an authorised credit institution as if it were modified in the manner set out in column 2 of that Table opposite to the mention of the provision in column 1.

TABLE

<i>Column 1</i>	<i>Column 2</i>
Section 2(1)	After the definition of “Act of 2003”, insert: “ ‘Act of 2011’ means the <i>Central Bank and Credit Institutions (Resolution) Act 2011 (No. — of 2011)</i> ;”.
Section 2(1)	After the definition of “auditor” insert: “ ‘authorised credit institution’ has the same meaning as in the <i>Act of 2011</i> ;”.
Section 2(1)	Before the definition of “book and paper” insert: “ ‘Bank’ means the Central Bank of Ireland;”.
Section 217	Insert “or the Bank” after “any creditor or contributory”.
Section 223	Delete.
Section 234(1)	Substitute “Subject to subsection (2A), the Court” for “the Court”.
Section 234(2)	Substitute “Subject to subsection (2A), the Court” for “the Court”.
Section 234	After subsection (2), insert: “(2A) The Court may not make an order under subsection (1) or (2) before the passage of a full payment resolution (within the meaning given by <i>section 84(3)(a)</i> of the <i>Act of 2011</i>).”.
Section 243(1)	Substitute: “ 243.—(1) The Court may, at any time after making a winding-up order, make such order for inspection of the books and papers of the company, by creditors and contributories or the Bank, as the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories or the Bank accordingly, but not further or otherwise.”.

Column 1	Column 2
Section 243	<p>Before subsection (2), insert:</p> <p>“(1B) In considering an application under subsection (1), the Court shall have regard to the liquidator’s duty to secure the achievement of Objective 1 described in <i>section 80(1)(a)</i> of the <i>Act of 2011</i>.</p> <p>“(1C) In considering an application under this section, the Court shall have regard to the liquidator’s duty to secure the achievement of Objective 1 described in <i>section 80(1)(a)</i> of the <i>Act of 2011</i>.”.</p>
Section 280(1)	Insert “or the Bank” after “any contributory or creditor”.
Section 286	<p>Insert after subsection (3):</p> <p>“(3A) The disposal of property of an authorised credit institution by the Bank pursuant to an order under the <i>Act of 2011</i> does not amount to the giving of a preference for the purposes of this section.”.</p>
Section 302(1)	Substitute “, the registrar of companies, the liquidation committee or the Bank” for “or by the registrar of companies”.
Section 309(1)	<p>Substitute:</p> <p>“309.—(1) The Court may, as to all matters relating to the winding-up of an authorised credit institution, have regard to the wishes of the creditors or contributories (or, at a time before the passing of a full payment resolution (within the meaning given by <i>section 84(3)(a)</i> of the <i>Act of 2011</i>), those of the Bank), as proved to it by any sufficient evidence, and may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories or the Bank to be called, held and conducted in such manner as the court directs, and may appoint a person to act as chairperson of any such meeting and report the result thereof to the Court.”.</p>

(2) When a liquidation committee stands established in relation to an authorised credit institution, a reference in the Act of 1963 to a committee of inspection shall be interpreted as a reference to the liquidation committee.

(3) Section 139 of the Companies Act 1990 applies to the winding-up of an authorised credit institution as if it were modified by the insertion after subsection (2) of the following:

“(2A) Subsection (1) does not apply to a disposal of property of an authorised credit institution (within the meaning given by the *Central Bank and Credit Institutions (Resolution) Act 2011*) pursuant to an order under that Act.”.

90.—(1) In the case of the winding-up of an authorised credit institution, or a body that was formerly an authorised credit institution, that is a company incorporated outside the State, references in the *Central Bank Acts 1942 to 2011* to—

Application of this Part to bodies incorporated outside State.

- (a) the winding-up of an authorised credit institution or a body that was formerly an authorised credit institution, or
- (b) any provision of the Companies Acts which relates to winding-up,

shall be construed as references to the corresponding provisions in the law of the foreign jurisdiction concerned if the context so admits and the circumstances so require.

(2) For the purposes of a winding-up referred to in *subsection (1)*, the Court may order that the *Central Bank Acts 1942 to 2011* apply, if necessary, with such modifications as the Court orders.

PART 8

RECOVERY PLANS AND RESOLUTION PLANS

Recovery plans.

91.—(1) Having regard to the nature of the business of an authorised credit institution, the Bank may direct that credit institution to prepare a recovery plan setting out actions that could be taken to facilitate the continuation, or secure the business or part of the business, of that credit institution in a situation where the institution is experiencing financial instability.

(2) A recovery plan shall not assume that financial support will be available from the State or the Fund.

(3) A recovery plan shall be in accordance with any code of practice issued by the Bank under *section 106*.

(4) An authorised credit institution shall submit its recovery plan to the Bank for assessment. If the Bank so directs, that credit institution shall demonstrate to the Bank that the plan can be implemented.

(5) The Bank may direct an authorised credit institution—

(a) to provide any additional information or analysis necessary to assess that credit institution's recovery plan, and

(b) to make specified changes to the plan that the Bank considers necessary to ensure that the plan can be implemented.

(6) An authorised credit institution shall maintain its recovery plan, and keep it up to date, in accordance with any code of practice issued by the Bank under *section 106*.

Implementation of recovery plans.

92.—The Bank may direct an authorised credit institution to implement its recovery plan, or any part of it, if the Bank is of the opinion that the actions contained in that plan or part are necessary or desirable.

Resolution plans.

93.—(1) If the Bank has directed an authorised credit institution to prepare a recovery plan, the Bank may prepare a resolution plan for that credit institution.

(2) A resolution plan for an authorised credit institution is required to set out the Bank's preparations on a contingency basis for the exercise of the Bank's functions under this Act in relation to that credit institution.

(3) The Bank may direct an authorised credit institution to provide such information and analysis as the Bank requires for the preparation of a resolution plan.

94.—(1) An authorised credit institution that fails to comply with a direction under this Part commits an offence and is liable—

Offences.

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment, to a fine not exceeding €10,000,000.

(2) If an offence under this section is committed by an authorised credit institution, and is proved to have been committed with the consent or connivance, or to be attributable to any wilful neglect, of a person who, when the offence is committed, is—

- (a) a director, manager, secretary or other officer of the authorised credit institution or a person purporting to act in that capacity, or
- (b) a member of the committee of management or other controlling authority of the authorised credit institution or a person purporting to act in that capacity,

that person is taken to have also committed an offence and may be proceeded against and punished in accordance with *subsection (3)*.

(3) A person referred to in *subsection (2)* is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €10,000,000 or to imprisonment for a term not exceeding 5 years, or both.

PART 9

MISCELLANEOUS

95.—An order made under this Act or requirement imposed under *section 22* 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.

Effect of CIWUD Directive.

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

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

- (a) the appointment of a special manager pursuant to *Part 6*,
- (b) the acquisition or disposal of any asset or liability by such a special manager, or
- (c) a transfer under a transfer order pursuant to *Part 5*.

97.—(1) A person other than the Bank shall not publish the fact that the Bank proposes to make or has made a proposed transfer order or proposed special management order, unless required to do so by an enactment, or with the prior written consent of the Bank.

Proposed orders, etc., to be kept in confidence.

(2) A person other than the Bank shall not publish the fact that the person or the Bank proposes—

- (a) to present a petition to wind up an authorised credit institution,
- (b) to advertise such a petition, or
- (c) to take any other step or make any other publication concerning that person's intention to cause an authorised credit institution to be wound up,

unless required to do so by an enactment, except with the prior written consent of the Bank.

(3) A person (including an authorised credit institution) who contravenes *subsection (1) or (2)* commits an offence and is liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) on conviction on indictment to a fine not exceeding €100,000 or to imprisonment for a term not exceeding 3 years or to both.

(4) It is not a contravention of *subsection (1) or (2)* for an authorised credit institution to disclose a fact referred to in either of those subsections for the purposes of obtaining professional advice.

Costs incurred in relation to making orders, etc.

98.—(1) 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 Regulations of 2011), the costs are a debt due and owing by the authorised credit institution concerned, and may be recovered as a simple contract debt in any court of competent jurisdiction.

(2) If the authorised credit institution is unable to pay the costs referred to in *subsection (1)*, they shall be recoverable from the Fund by the body concerned.

Confidentiality of proceedings.

99.—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 in relation to the disclosure in open court, publication or reporting of any material that might be commercially sensitive.

Effect of orders on certain other obligations.

100.—(1) In this section “relevant agreement” means an agreement under which the authorised credit 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 an authorised credit 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 Bank or the authorised credit 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 101*—

- (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 has been made, or requirement imposed, under this Act in relation to an authorised credit institution, any of its subsidiaries, or its holding company, (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 the imposition of the requirement, or any step taken (including the making of a proposed order) in preparation for the making of the order or imposition of the 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 101*—

- (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.

101.—(1) If the Minister is of the opinion that in a particular case or cases the effect of *section 100* 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, after consultation with the Bank, by order provide that, notwithstanding *subsections (2) and (3)* of that section, a provision in a relevant agreement that provides for a consequence mentioned or referred to in *section 100(4)* has effect to the extent specified in the order.

Limitation of operation of *section 100.*

- (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.

(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 2011 to publish, or give notice of, an order or direction under this Act.

Limitation of
judicial review.

102.—(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 Bank 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.

103.—(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.

Limitation of certain rights of appeal to Supreme Court.

(2) A special management 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)*, 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.

104.—(1) Nothing in this Act—

Application of laws in relation to netting agreements, etc.

(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 an authorised credit institution or any of its subsidiaries or its holding company is a party, or

(b) affects the operation of any provision of the law of a Member State required for the implementation of the provisions of—

- (i) Directive 98/26/EC⁴ 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.

Saving of legal proceedings, etc.

105.—A transfer under a transfer order, and any other thing done under an order or requirement made under this Act (including the dissolution of an authorised credit 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.

Codes of practice.

106.—(1) The Bank may, after consultation with the Minister, issue a code of practice relating to the operation of this Act including the exercise of any powers under this Act.

(2) An authorised credit institution shall comply with a code of practice issued under this section.

(3) In the Bank's consultation with the Minister, the Bank shall ensure that the Minister is afforded a minimum consultation period of 2 months.

Guidelines on Bank's exercise of functions under this Act, etc.

107.—The Bank, after consultation with the Minister, may issue guidelines or policy statements in relation to the exercise of the functions conferred upon it by this Act.

Relationship framework between Minister and Bank.

108.—The Minister may from time to time specify a relationship framework in writing to govern the relationship between the Minister and the Bank, and may from time to time amend or revoke any such relationship framework. The relationship framework shall recognise the separation of the Bank and the Minister, and limit the extent of any intervention by the Minister in the performance of the Bank's functions to that necessary to protect the public interest. The relationship framework shall at all times comply with regulatory requirements.

⁴OJ No. L 166 11.6.2002, p.45

109.—(1) The Minister may make regulations to do anything that appears necessary or expedient— Regulations.

(a) for bringing this Act into operation, or

(b) for enabling this Act to have full effect in accordance with its purposes.

(2) Where a provision of this Act requires or authorises the Minister or the Bank 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 Act 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.

PART 10

AMENDMENT OF OTHER ENACTMENTS AND STATUTORY INSTRUMENTS

110.—(1) The Act of 1942 is amended as set out in *Part 1* of *Schedule 2*. Amendments of Acts.

(2) The Central Bank Act 1989 is amended as set out in *Part 2* of *Schedule 2*.

(3) The Credit Union Act 1997 is amended as set out in *Part 3* of *Schedule 2*.

(4) The Land and Conveyancing Law Reform Act 2009 is amended as set out in *Part 4* of *Schedule 2*.

(5) The Act of 2010 is amended as set out in *Part 5* of *Schedule 2*.

111.—(1) The European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010) are amended as set out in *Part 1* of *Schedule 3*. Amendments of statutory instruments.

(2) The Regulations of 2011 are amended as set out in *Part 2* of *Schedule 3*.

(3) The amendment of an instrument by this section does not prevent or restrict the subsequent amendment or revocation of the instrument in the manner provided for in the Act under which the instrument was made.

Section 36(6).

SCHEDULE 1

POWERS TO REQUIRE PERSONS TO GIVE EVIDENCE OR PRODUCE DOCUMENTS

Assessor may require persons to give evidence or produce documents.

1. (1) If the Assessor believes on reasonable grounds that a person may be able to give evidence, or to produce a document, that relates to a matter concerning the performance or fulfillment of any of the Assessor's functions or objectives, he or she may serve on the person a notice requiring the person—

(a) to appear before the Assessor to give evidence about the matter, or

(b) to produce the document for examination.

(2) The notice shall—

(a) specify the matter to which the evidence relates, or specify or describe the document to be produced, as the case requires, and

(b) in the case of a notice to appear before the Assessor to give evidence—

(i) specify the date, time and place at which the person is required to appear before the Assessor, and

(ii) state whether and to what extent the evidence is to be given orally or on affidavit.

(3) The notice may require the person concerned to appear before a specified member of the Assessor's staff and, if it does so, a reference in this Schedule to the Assessor is to be read as including the staff member.

Offence of failing to appear before Assessor.

2. (1) A person commits an offence if, having been required to appear before the Assessor in compliance with a requirement made under *paragraph 1*, the person fails to comply with the requirement, and has not been excused, or released from further attendance, by the Assessor.

(2) *Subparagraph (1)* does not apply if the person has a reasonable excuse.

Offence of failing to produce document.

3. (1) A person commits an offence if, having been required to produce a document to the Assessor in compliance with a requirement under *paragraph 1*, he or she fails to comply with the requirement and has not been excused by the Assessor.

(2) *Subparagraph (1)* does not apply if—

(a) the person does not have the document and cannot by any reasonable effort obtain it, or

- (b) the person could not be compelled to produce it in a court of law.

Conduct of proceedings under this Schedule.

4. (1) The Assessor may require a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* to swear an oath.

(2) The Assessor may administer an oath for the purposes of this paragraph.

(3) The Assessor may permit a person giving oral evidence to be cross-examined by a person nominated by the Assessor under such procedures as the Assessor may determine.

Proceedings normally to be in private.

5. (1) Except as provided by this paragraph, evidence to be given, or a document to be produced, to the Assessor by a person who appears before him or her in compliance with a requirement made under *paragraph 1* is to be given or produced in private.

(2) If a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* requests that the matter be dealt with in public, the Assessor shall comply with the request unless the matter raises issues that in the Assessor's opinion should be dealt with in private.

(3) If the Assessor is satisfied that it is desirable in the public interest that the evidence to be given should be given, or the document to be produced should be produced, in public, the Assessor may direct accordingly.

(4) If the evidence is to be given, or the document is to be produced, in private, the Assessor may do either or both of the following:

- (a) give directions as to the persons (other than the Assessor or the Assessor's staff) who may be present during the proceeding;
- (b) give directions preventing or restricting the publication of the whole or any part of the evidence or of matters contained in the document.

(5) If the evidence is to be given, or the document is to be produced, in private, a person (other than the person required to appear before the Assessor, the Assessor or a member of the Assessor's staff) may be present only if entitled to be present because of a direction given under *subparagraph (4)(a)*.

(6) A person who contravenes a direction of the Assessor under *subparagraph (4)(b)* commits an offence.

Offence of refusing to be sworn or answer question.

6. (1) A person appearing before the Assessor in compliance with a requirement made under *paragraph 1* commits an offence if the person—

[No. 27.] *Central Bank and Credit Institutions* [2011.]
(Resolution) Act 2011.

- (a) refuses or fails to swear an oath on being required to do so by the Assessor, or
- (b) refuses or fails to give evidence in compliance with a requirement made under *paragraph 1*, or
- (c) refuses or fails to answer a question put to the person by the Assessor or in cross-examination with the Assessor's permission.

(2) *Subparagraph (1)* does not apply if the person has a reasonable excuse.

(3) It is a reasonable excuse for the purposes of *subparagraph (2)* for a person to refuse or fail to answer a question that the answer might tend to incriminate the person.

(4) *Subparagraph (3)* does not limit what is a reasonable excuse for the purposes of *subparagraph (2)*.

Protection, etc., of persons appearing before Assessor.

7. Subject to this Schedule, a person who appears before the Assessor in compliance with a requirement made under *paragraph 1* has the same protection and privileges and is, in addition to the offences under this Schedule, subject to the same liabilities as a witness in proceedings in the Court.

Payment of allowances and expenses to persons who appear before Assessor.

8. (1) A person who appears before the Assessor in compliance with a requirement under *paragraph 1* is entitled to be paid such allowances and travelling or other expenses as are payable to or in respect of a witness attending in civil proceedings before the Court.

(2) All allowances and expenses payable under *subparagraph (1)* are payable by the Assessor.

Assessor's certificate to Court of failure to produce document, etc.

9. (1) If a person refuses or fails—

- (a) to produce to the Assessor a document in accordance with a requirement by the Assessor,
- (b) to attend before the Assessor when required so to do, or
- (c) to answer a question put to him or her by the Assessor,

the Assessor may certify the refusal or failure to the Court.

(2) The Court may, after hearing any witnesses who may be produced against or on behalf of the person alleged to have so refused or failed and any statement which may be offered in defence, make any order or give any direction it thinks fit.

(3) Without prejudice to the generality of *subparagraph (2)*, the Court may—

- (a) order the person concerned to attend or re-attend before the Assessor, or to produce a particular document or

answer a particular question put to him or her by the Assessor, or

- (b) order that the person concerned need not produce a particular document, or answer a particular question put to him or her by the Assessor.

[No. 27.] *Central Bank and Credit Institutions (Resolution) Act 2011.* [2011.]

Section 110.

SCHEDULE 2

AMENDMENTS OF ACTS

Section 110(1).

PART 1

AMENDMENTS OF ACT OF 1942

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>								
1	Section 5A(1)	After paragraph (a), insert: “(aa) the functions provided for by the <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> .”								
2	Section 6A(2)	After paragraph (c), insert: “(ca) the resolution of financial difficulties in credit institutions;”.								
3	Section 33K(5)(ao)	Substitute: “(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 <i>Credit Institutions (Stabilisation) Act 2010</i> , or; “(ap) 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 <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> .”.								
4	Item 38 of Part 1 of Schedule 2	Substitute: “ <table border="1" style="display: inline-table; vertical-align: middle;"> <tr> <td>38</td> <td>No. 23 of 2010</td> <td>Central Bank Reform Act 2010</td> <td>Part 3</td> </tr> <tr> <td>39</td> <td>No. – of 2011</td> <td><i>Central Bank and Credit Institutions (Resolution) Act 2011</i></td> <td><i>Part 8 and sections 22 and 106</i></td> </tr> </table> ”.	38	No. 23 of 2010	Central Bank Reform Act 2010	Part 3	39	No. – of 2011	<i>Central Bank and Credit Institutions (Resolution) Act 2011</i>	<i>Part 8 and sections 22 and 106</i>
38	No. 23 of 2010	Central Bank Reform Act 2010	Part 3							
39	No. – of 2011	<i>Central Bank and Credit Institutions (Resolution) Act 2011</i>	<i>Part 8 and sections 22 and 106</i>							

Section 110(2).

PART 2

AMENDMENT OF CENTRAL BANK ACT 1989

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 48	Delete.

PART 3

Section 110(3).

AMENDMENTS OF CREDIT UNION ACT 1997

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 87(3)	<p>After paragraph (d), insert:</p> <p>“(e) require the credit union to raise within such period as may be specified and maintain such reserves or other financial resources or to maintain such non-financial resources, as may be specified;</p> <p>(f) require the credit union to take such steps as may be specified to strengthen its systems or controls;</p> <p>(g) require the credit union to apply a specified policy for making provision for such debts or treatment of assets, as may be specified, for the purposes of capital and reserve requirements;</p> <p>(h) require the credit union to restrict or limit its business, operations or activities, as the Bank considers necessary, to reduce risks inherent in its activities, products and systems;</p> <p>(i) require the credit union to provide a statement in writing to the Bank of the steps it will take to comply with any regulatory direction imposed under this section or with any other requirement imposed on a credit union under this Act;</p> <p>(j) impose limitations on the acceptance of members’ savings or the employment of assets;”.</p>
2	Section 97(1)(d)	<p>After “common bond” insert “(including a common bond arising by virtue of the operation of law)”.</p>
3	Section 129	<p>Insert the following subsection:</p> <p>“(7) (a) Where the engagements of a credit union (in this subsection referred to as the ‘transferor credit union’) are transferred to another credit union (in this subsection referred to as the ‘transferee credit union’), the common bond of the transferee credit union is taken to include the common bond of the transferor credit union and the rules of the transferee credit union are amended accordingly, on and from the date on which the transfer takes effect in accordance with this section.</p> <p>(b) Section 14 shall not apply to the amendment of the rules of the transferee credit union effected by paragraph (a).”.</p>

Section 110(4).

PART 4

AMENDMENTS OF LAND AND CONVEYANCING LAW REFORM ACT 2009

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 74(1)	Delete “subject to subsection (2)” and insert “subject to subsections (2) and (5)”.
2	Section 74(3)	Delete “subject to subsection (4)” and insert “subject to subsections (4) and (5)”.
3	Section 74	After subsection (4), insert: “(5) The disposal of any property of an authorised credit institution within the meaning of the <i>Central Bank and Credit Institutions (Resolution) Act 2011</i> pursuant to an order under that Act does not amount to a voluntary disposition or a conveyance of property.”.

Section 110(5).

PART 5

AMENDMENTS OF ACT OF 2010

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Section 2(1), definition of “articles of association”, paragraphs (a) to (c)	Substitute: “(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;”.
2	Section 2(1)	After the definition of “financial support”, insert: “ ‘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;”.
3	Section 2(1), definition of “relevant institution”, paragraph (a)(iii)	After “financial support”, insert: “, other than a financial incentive under section 38, or under section 46 of the <i>Central Bank and Credit Institutions (Resolution) Act 2011, No. — of 2011</i> ,”.
4	Section 2(1), definition of “relevant institution”, paragraph (c)	Delete.

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
5	Section 2	<p>After subsection (4), insert:</p> <p>“(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:</p> <p>(a) an order made in relation to it under this Act;</p> <p>(b) a requirement imposed on it under section 50;</p> <p>(c) the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006).”.</p>
6	Section 3(c)	For “the Central Bank Act 1971, the Building Societies Act 1989 or the Credit Union Act 1997”, substitute “the Central Bank Act 1971 or the Building Societies Act 1989”.
7	Section 4(g)	For “preserve and restore”, substitute “preserve or restore”.
8	New section	<p>After section 5, insert:</p> <p><i>“Minister and Bank to have regard to European Union law.</i></p> <p>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.”.</p>
9	Section 7(1)	For “any action,” substitute “any action, or any series of actions that are together designed to achieve a specified objective,”.
10	Section 9(6)	Delete.
11	Section 9(7)	<p>Substitute:</p> <p>“(7) A direction order has effect—</p> <p>(a) if there is an application made under section 11—</p> <p>(i) if the Court makes an order under section 11 and makes an order as to the date of effect, at that date,</p> <p>(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</p> <p>(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),</p> <p>or</p> <p>(b) if there is no application made under section 11—</p> <p>(i) immediately, to the extent that the Court so orders, or</p> <p>(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).”.</p>

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
12	New section	<p>After section 9, insert:</p> <p><i>“Publication of direction orders.</i></p> <p>9A.—(1) The Minister shall, as soon as practicable after a direction order is made—</p> <p>(a) serve a copy of the direction order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(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.</p> <p>(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—</p> <p>(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</p> <p>(b) providing a copy of the direction order to the regulatory news service referred to in paragraph (a).”.</p>
13	Section 11(1)	Delete “not later than 5 working days after the making of a direction order,” and substitute “not later than 14 days after the publication, in accordance with subsection (1)(b) of section 9A, of a direction order.”.
14	Section 11(2)	<p>Substitute:</p> <p>“(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—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(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.”.</p>
15	Section 11(5)	<p>Substitute:</p> <p>“(5) On an application under subsection (1)—</p> <p>(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</p> <p>(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.”.</p>

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
16	Section 11	<p>After subsection (6), insert:</p> <p>“(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—</p> <p>(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</p> <p>(b) the value of the shares acquired by or disposed of by the member—</p> <p>(i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and</p> <p>(ii) as at the date on which the direction order concerned was made.”.</p>
17	Section 13(2)	For “proposed direction order”, substitute “proposed special management order”.
18	Section 14(6)	Delete.
19	New section	<p>After section 14, insert:</p> <p><i>“Publication of special management orders.</i></p> <p>14A.—(1) The Minister shall, as soon as practicable after a special management order is made—</p> <p>(a) serve a copy of the special management order on the relevant institution concerned, and</p> <p>(b) publish the order in 2 newspapers circulating generally in the State.</p> <p>(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.</p> <p>(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—</p> <p>(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</p> <p>(b) providing a copy of the special management order to the regulatory news service referred to in paragraph (a).”.</p>
20	Section 16(1)	Delete “not later than 5 working days after the making of a special management order,” substitute “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,”.

Item	Provision amended	Amendment
21	Section 16(2)	<p>Substitute:</p> <p>“(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—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(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.”.</p>
22	Section 16	<p>After subsection (6), insert:</p> <p>“(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.</p> <p>(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—</p> <p>(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</p> <p>(b) the value of the shares acquired by or disposed of by the member—</p> <p>(i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and</p> <p>(ii) as at the date on which the special management order concerned was made.”.</p>
23	Section 28(1)(b)	<p>Substitute:</p> <p>“(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—</p> <p>(i) is necessary to secure the achievement of a purpose of this Act specified in the proposed subordinated liabilities order, or</p> <p>(ii) is necessary for the preservation or restoration of the financial position of the relevant institution,</p> <p>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.”.</p>

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
24	Section 28	After subsection (1), insert: “(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.”.
25	Section 28(2)(h)	Substitute: “(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).”.
26	Section 29	After subsection (2), insert: “(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.”.
27	Section 29(5)	Delete.
28	Section 29(6)	Substitute: “(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).”.
29	New section	After section 29, insert: “ <i>Publication of subordinated liabilities orders.</i> 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

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
		<p>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,</p> <p>(b) providing a copy of the subordinated liabilities order to the regulatory news service referred to in paragraph (a), and</p> <p>(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.”.</p>
30	Section 31(1)	Delete “not later than 5 working days after the making of a subordinated liabilities order, for the setting aside of the subordinated liabilities order” and substitute “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.”.
31	Section 31(2)	<p>Substitute:</p> <p>“(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—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(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.”.</p>
32	Section 31(4)	After “considers appropriate”, insert “(including varying the amounts owing to subordinated creditors or one or more classes of subordinated creditors)”.
33	Section 31(5)	<p>Substitute:</p> <p>“(5) On application under subsection (1)—</p> <p>(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</p> <p>(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.”.</p>
34	Section 31(6)	<p>Substitute:</p> <p>“(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.”.</p>

Item	Provision amended	Amendment
35	Section 31	<p>After subsection (6), insert:</p> <p>“(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—</p> <p>(a) the date or dates on which the applicant acquired or disposed of the subordinated liabilities of the relevant institution, and</p> <p>(b) the market value of those subordinated liabilities—</p> <p>(i) as at the date or dates referred to in paragraph (a), and</p> <p>(ii) as at the date on which the subordinated liabilities order concerned was made.</p> <p>(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.”.</p>
36	New section	<p>After section 33, insert:</p> <p><i>“Relevant institution not to dispose of assets, liabilities.</i></p> <p>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).</p> <p>(2) The officers and employees of a relevant institution shall comply with subsection (1).</p> <p>(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 <i>ex parte</i> to the Court for an order compelling compliance with that subsection.”.</p>
37	Section 33(2)	<p>Substitute:</p> <p>“(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.</p> <p>(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</p>

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
		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.”.
38	Section 33	After subsection (4), insert: “(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.”.
39	Section 34(6)	Delete.
40	Section 34(7)	Substitute: “(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).”.
41	New section	After section 34, insert: “ <i>Publication of transfer orders.</i> 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

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
		<p>the State for the purposes of announcements to such markets, and</p> <p>(b) providing a copy of the transfer order to the regulatory news service referred to in paragraph (a).”.</p>
42	Section 36(1)	Delete “not later than 5 working days after the making of a transfer order,” and substitute “not later than 14 days after the publication, in accordance with subsection (1)(b) of section 34A, of a transfer order.”.
43	Section 36(2)	<p>Substitute:</p> <p>“(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—</p> <p>(a) with regard to the hearing of the application, or</p> <p>(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.”.</p>
44	Section 36(5) and (6)	<p>Substitute:</p> <p>“(5) If the Court sets aside a transfer order, no further assets or liabilities shall be transferred as a consequence of the transfer order.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> <p>(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—</p> <p>(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</p> <p>(b) the value of the shares acquired by or disposed of by the member—</p> <p>(i) as at the date or dates on which the shares were acquired or disposed of, as the case may be, and</p> <p>(ii) as at the date on which the transfer order concerned was made.”.</p>
45	Section 37(5)	Delete.

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
46	Section 37(7)	For “financial collateral arrangement (within the meaning of the European Communities (Financial Collateral Arrangements) Regulations 2004 (S.I. No. 1 of 2004))”, substitute “financial collateral arrangement (within the meaning of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 ⁵ on financial collateral arrangements, as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 ⁶ , and of the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010))”.
47	Section 39(4)(h)	Delete “entitled and subject to if” and substitute “entitled and subject if”.
48	Section 39(5)	For “a credit union or a building society”, substitute “a building society” in each place where it occurs.
49	Section 39	After subsection (5), insert: “(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.”.
50	Section 39(6)	Substitute: “(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

⁵OJ No. L168, 27.6.2002, p.43.⁶OJ No. L146, 10.6.2009, p.37.

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
		(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.”.
51	Section 47(1)	For “the Companies Acts, the Building Societies Act 1989 or the Credit Union Act 1997”, substitute “the Companies Acts or the Building Societies Act 1989”.
52	Section 50(2)	In paragraph (g), for “(S.I. No. 490 of 2009).” substitute “(S.I. No. 490 of 2009).” After paragraph (g), insert: “(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.”.
53	Section 50	After subsection (2), insert: “(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.”.
54	Section 52	Insert “or requirement imposed under section 50” after “Act”.
55	New section	After section 52, insert the following: “ <i>Costs incurred in relation to making orders, etc.</i> 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.”.
56	Section 53(a)	For “the Companies Acts, the Building Societies Act 1989 or the Credit Union Act 1997”, substitute “the Companies Acts or the Building Societies Act 1989”.
57	Section 59(1)	Insert “(other than the Minister)” after “person shall not”.
58	Section 61(3)	Insert “(whether or not the order or requirement is subsequently set aside, or varied or amended in a relevant manner)” after “subsidiary of its holding company”.

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
59	Section 65(1)	<p>Substitute:</p> <p>“65.—(1) Nothing in this Act—</p> <p>(a) affects the operation of—</p> <p>(i) the Netting of Financial Contracts Act 1995,</p> <p>(ii) the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010),</p> <p>(iii) the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), or</p> <p>(iv) Regulation 30 of the Regulations of 2011,</p> <p>in relation to an agreement to which a relevant institution or any of its subsidiaries is a party, or</p> <p>(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—</p> <p>(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</p> <p>(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).”</p>

SCHEDULE 3

Section 111.

AMENDMENTS OF STATUTORY INSTRUMENTS

PART 1

Section 111(1).

AMENDMENT OF EUROPEAN COMMUNITIES (FINANCIAL COLLATERAL ARRANGEMENTS) REGULATIONS 2010

Item	Provision amended	Amendment
1	Regulation 18A	<p>Substitute:</p> <p>“Relationship between these Regulations and Credit Institutions (Stabilisation) Act 2010 and <i>Central Bank and Credit Institutions (Resolution) Act 2011.</i></p> <p>18A.—(1) In this Regulation—</p> <p>‘Act of 2010’ means the Credit Institutions (Stabilisation) Act 2010 (No. 36 of 2010);</p> <p>‘Act of 2011’ means the <i>Central Bank and Credit Institutions (Resolution) Act 2011 (No. – of 2011).</i></p> <p>(2) For the avoidance of doubt, nothing in Regulation 6, 7, 10, 11 or 12 shall affect the operation or effect of—</p> <p>(a) section 61 of the Act of 2010, or</p> <p>(b) <i>section 100</i> of the <i>Act of 2011.</i></p> <p>(3) Without prejudice to paragraph (2) and for the avoidance of doubt—</p> <p>(a) no order or requirement made under the Act of 2010, and no act, omission or consequence referred to in section 61(3) of that Act, and</p> <p>(b) no order made under the <i>Act of 2011</i>, and no act, omission or consequence referred to in <i>section 100(3)</i> of that Act,</p> <p>shall constitute an enforcement event for the purposes of these Regulations.</p> <p>(4) Without prejudice to paragraph (2) and for the avoidance of doubt—</p> <p>(a) no order or requirement made under the Act of 2010, and no act, omission or consequence referred to in section 61(3) of that Act, and</p> <p>(b) no order made under the <i>Act of 2011</i>, and no act, omission or consequence referred to in <i>section 100(3)</i> of that Act,</p> <p>shall constitute an enforcement event related to a financial collateral arrangement.”.</p>

PART 2

AMENDMENTS OF REGULATIONS OF 2011

<i>Item</i>	<i>Provision amended</i>	<i>Amendment</i>
1	Regulation 2(2)	In subparagraph (ix), delete “Act.” and substitute “Act;” and after that subparagraph, insert: “(x) a transfer order or special management order (within the respective meanings given by the <i>Central Bank and Credit Institutions (Resolution) Act 2011 (No. – of 2011)</i>) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of an authorised credit institution (within the meaning given by <i>section 2</i> of that Act).”
2	Regulation 2(4)	In subparagraph (f), delete “Act 2001.” and substitute “Act 2001;” and after that subparagraph, insert: “(g) the <i>Central Bank and Credit Institutions (Resolution) Act 2011 (No. – of 2011)</i> .”