



Number 22 of 2014

Strategic Banking Corporation of Ireland Act 2014



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STRATEGIC BANKING CORPORATION OF IRELAND ACT 2014

An Act to provide for the formation of a company to be known as the Strategic Banking Corporation of Ireland to facilitate availing by it of national and international sources of funding for the purposes of making credit available to enterprises and to other persons in the State through the provision of credit to providers of credit to enterprises and other persons; to allow the Minister for Finance to guarantee borrowings of and provide funding to that company, to amend section 54 of the Finance Act 1970, the First Schedule to the National Treasury Management Agency Act 1990, the Taxes Consolidation Act 1997, the Stamp Duties Consolidation Act 1999 and the National Pensions Reserve Fund Act 2000, and to provide for connected matters.

[26th July, 2014]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title and commencement

1. (1) This Act may be cited as the Strategic Banking Corporation of Ireland Act 2014.
- (2) This Act comes into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Purposes of Act

2. The purposes of this Act are—
 - (a) to encourage the giving of credit in a prudent manner to enterprises and other persons in the State, in particular SMEs, and facilitate the availability of credit in the State to benefit the economy and the economic well-being of the State,
 - (b) by forming the private company referred to in *section 5*, to enable, facilitate and encourage new providers of credit within the State to facilitate—

- (i) availing of credit and making credit available through on-lending to enterprises, in particular SMEs, and persons, in the State, and
- (ii) the making available of funding for the provision of credit to enterprises, in particular SMEs, and persons, in the State,
- (c) to avail of sources, both in and outside the State, of funding for the purposes of making credit available to persons, and in particular SMEs, in the State,
- (d) to enable the Minister to guarantee borrowings of and provide funding to the company referred to in *section 5* to facilitate and promote funding for the purposes of making credit available,
- (e) to address the compelling need to facilitate the availability of suitable credit in the economy of the State,
- (f) to protect the interests of taxpayers,
- (g) to contribute to the economic development of the State,
- (h) to enhance the competitiveness of the economy of the State, and
- (i) to provide for related ancillary and consequential matters connected to the above purposes.

Definitions

3. In this Act—

“Act of 2000” means National Pensions Reserve Fund Act 2000;

“Act of 2009” means National Asset Management Agency Act 2009;

“micro, small and medium-sized enterprise” means a micro, small and medium-sized enterprise within the meaning of the Commission Recommendation 2003/361/EC of 6 May 2003¹;

“Minister” means Minister for Finance;

“NTMA” means National Treasury Management Agency;

“SBCI” means Strategic Banking Corporation of Ireland;

“SBCI group entity” means—

- (a) a subsidiary of the SBCI, or
- (b) a company (wherever incorporated) or any other body corporate and any trust, partnership, arrangement for the sharing of profits and losses, joint venture, association, syndicate or other arrangement formed, registered, incorporated or established by the SBCI for the purpose of performing any of its functions under this Act;

“SME” means a micro, small and medium-sized enterprise;

“subsidiary” means a subsidiary (within the meaning given by section 155 of the

¹ OJ No. L124, 20.5.2003, p.36

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

Expenses

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

PART 2

ESTABLISHMENT OF SBCI

Formation of Strategic Banking Corporation of Ireland

5. (1) The Minister shall, as soon as may be after the passing of this Act, cause a private company limited by shares, conforming to the conditions laid down in this Act, to be formed and registered under the Companies Acts.
- (2) The name of the company referred to in *subsection (1)* shall be the Strategic Banking Corporation of Ireland in this Act referred to as the SBCI.
- (3) Except where otherwise provided by this Act, the SBCI is independent in the performance of its functions under this Act.
- (4) The share capital of the SBCI shall be as set out in *Part 3*.
- (5) Paragraph (b) of subsection (1) of section 6 (inserted by section 3 of, and the First Schedule to, the Companies (Amendment) Act 1983) of the Companies Act 1963 does not apply to the SBCI.
- (6) Sections 7(1), 8 and 15 of the Central Bank Act 1971 do not apply to the SBCI or a person who acts on behalf of the SBCI.

Formation of group entities

6. (1) The SBCI may, with the consent of the Minister, and subject to any conditions of either of them, either by itself or with other persons, promote, take part in the formation of, or acquire a shareholding in, an SBCI group entity.
- (2) The memorandum and articles of association of an SBCI group entity shall be in such form as is in conformity with this Act and as may be approved of by the SBCI.
- (3) An SBCI group entity shall make such reports to the SBCI as the SBCI may require.
- (4) An SBCI group entity may enter into joint ventures with other persons.
- (5) An SBCI group entity shall not guarantee the borrowings or liabilities of any of its subsidiaries without the approval of the Minister.

- (6) An SBCI group entity may, with the consent of the Minister, and subject to any conditions as the SBCI or the Minister may determine, wind up any of its subsidiaries.

Memorandum and articles of association of SBCI

7. (1) The memorandum and articles of association of the SBCI shall be in such form consistent with this Act as may be approved by the Minister.
- (2) Notwithstanding anything contained in the Companies Acts, no alteration of the memorandum of association or the articles of association of the SBCI shall be valid or effectual unless made with the prior approval of the Minister.

Functions of SBCI

8. (1) The functions of the SBCI shall be—
- (a) to provide, and promote the provision of, additional credit in a prudent manner to enterprises or other persons in the State, in particular SMEs,
 - (b) to design or cause to be designed credit facilities which consistently address the financial needs of borrowers, in particular SMEs, be they related to growth, investment or operational needs,
 - (c) to promote competition in markets for the provision of credit to borrowers, in particular SMEs,
 - (d) to encourage an increase in the number of providers of finance to borrowers in the State,
 - (e) to encourage the entry to the market of new providers of credit,
 - (f) to contribute to the diversity of the types of finance available in the State,
 - (g) to source international funding to facilitate lending,
 - (h) to provide finance to projects which promote the economic development of the State,
 - (i) to facilitate the operation of diverse credit markets, and
 - (j) to carry out any functions that are ancillary, consequential or supplemental to the matters mentioned in *paragraphs (a) to (i)*.
- (2) So far as possible, the SBCI shall, consistent with the achievement of its functions under *subsection (1)*, seek to obtain a positive financial return for the State.

Board of SBCI

9. (1) The board of the SBCI shall consist of not more than 9 directors (including its chairperson).
- (2) Subject to *subsection (3)*, the directors (other than the chairperson) shall be appointed by the SBCI.

- (3) The first directors shall be appointed by the Minister on the formation and registration of the SBCI.
- (4) The terms and conditions of appointment to the board and appointment of a company secretary of the SBCI shall be as set out in the memorandum and articles of association of the SBCI.
- (5) The Minister shall appoint one of the directors of the board to be its chairperson.

SBCI's relationship with NTMA

10. (1) The NTMA shall provide the SBCI and any SBCI group entity with such business and support services and systems as the SBCI determines, after consultation with the Chief Executive of the NTMA, from time to time, to be necessary or expedient for the SBCI to perform its functions.
- (2) Where the NTMA is unable for any reason to provide business and support services or systems referred to in *subsection (1)*, the NTMA, as agent of the SBCI or of the SBCI group entity, may procure such services or systems as are necessary.
- (3) The NTMA shall assign so many of its staff to the SBCI as the SBCI determines, after consultation with the Chief Executive of the NTMA, from time to time, to be necessary for the performance by the SBCI of its functions under this Act.
- (4) The NTMA—
 - (a) shall provide the SBCI and any SBCI group entity with treasury services and advice in connection with debt securities and borrowings of the SBCI or the SBCI group entity and the performance of any of the SBCI's functions under this Act, and
 - (b) may, for any purpose related to the provision of such treasury services and advice, enter into transactions of a normal banking nature, in accordance with *section 13(4)*, with any person as agent of the SBCI or of the SBCI group entity.
- (5) The SBCI or the SBCI group entity, as the case may be, shall reimburse the NTMA for the costs incurred by the NTMA in consequence of services provided to the SBCI, or the SBCI group entity, by the NTMA, including, but not limited to, its providing the SBCI with services, systems and advice and its assigning staff to the SBCI under this section.

PART 3

FUNDING OF SBCI

Share capital of SBCI

11. (1) The authorised share capital of the SBCI shall be €250,000,000 or such other amount, up to a maximum of €1,000,000,000, as may be determined by the Minister by order from time to time.

- (2) Shares in the share capital of the SBCI shall not be issued without the consent of the Minister.
- (3) The SBCI may, with the consent of the Minister, divide shares into different classes and attach to those classes any rights, privileges or conditions.
- (4) The Minister shall subscribe for, and the SBCI shall issue to the Minister, shares to the value of €10,000,000.
- (5) Subject to *section 12*, the Minister shall be the sole shareholder.
- (6) If the SBCI determines that in order to meet its financial obligations as they fall due, further equity is required—
 - (a) the SBCI shall, as soon as possible—
 - (i) inform the Minister of its determination, and
 - (ii) issue further shares, which shall not exceed the value of the authorised share capital under *subsection (1)* at that time less the value of shares issued and standing at that time,
 and
 - (b) the Minister shall without delay subscribe for those shares issued under this subsection.
- (7) Shares issued under *subsection (6)* may be paid for—
 - (a) in so far as is possible through conversion of any outstanding loans to the SBCI from the National Pensions Reserve Fund Commission,
 - (b) out of the Central Fund or the growing produce thereof, or
 - (c) by means of both.
- (8) The Minister shall allow the SBCI to issue shares to him or her in accordance with this section.
- (9) The Minister may subscribe for further shares in the SBCI.
- (10) Notwithstanding any other enactment, where the Minister has given a direction under section 20B(1) (inserted by *section 15*) of the Act of 2000 for the purpose of funding the subscription of shares by the Minister in the SBCI or where credit provided to, or an investment made by, the National Pensions Reserve Fund Commission under that section is subsequently converted into shares in the SBCI in accordance with the terms of any such credit provided or investment made, such shares shall be transferred to and registered in the name of the Minister and, when so registered, shall no longer form part of the National Pensions Reserve Fund or of any other fund to which assets of the National Pensions Reserve Fund are transferred.
- (11) An order under this section shall be laid before each House of the Oireachtas.

Alienation of shares by Minister

- 12.** (1) The Minister may hold for so long as he or she thinks fit any shares in the SBCI subscribed for, taken up or acquired by the Minister.
- (2) The Minister may, at such time or times as appear to him or her appropriate, sell, transfer, exchange, surrender, redeem or dispose of all or any of the shares in the SBCI on such terms and conditions as appear to the Minister to be appropriate.
- (3) Any funds received in respect of the sale, transfer, disposal, surrender, exchange or redemption of any share to which *subsection (2)* refers shall be paid into or disposed of for the benefit of the Exchequer.
- (4) The Minister may not dispose of any shares in the SBCI without the general principles of the disposal being laid before each House of the Oireachtas.

Borrowings by SBCI

- 13.** (1) Subject to *subsection (3)*, the SBCI and any SBCI group entity may from time to time borrow money in any currency.
- (2) For the purpose of borrowing, the SBCI and any SBCI group entity may create and issue bonds, debentures and other securities, bearing such rate of interest and subject to such conditions as to repayment, redemption or otherwise as the SBCI or the SBCI group entity thinks fit.
- (3) The SBCI and the SBCI group entities shall exercise the powers conferred by this section so that the amount of principal which the SBCI and the SBCI group entities may at any particular time be liable to repay on foot of any liability or liabilities incurred under this section does not exceed €4,000,000,000.
- (4) The SBCI and any SBCI group entity may engage in transactions (including transactions in a currency other than the currency of the State) of a normal banking nature with the Minister or any other person for the purpose of performing any of its functions.
- (5) For the purpose of calculating the amount of borrowings under this section by reference to the limit on principal in *subsection (3)*, the equivalent in the currency of the State of borrowings in a foreign currency shall be calculated at Euro Reference Rates published by the European Central Bank prevailing at the time the calculation is made.

Amendment of section 54 of Finance Act 1970 and First Schedule to National Treasury Management Agency Act 1990

- 14.** (1) The Finance Act 1970 is amended in section 54 after subsection (7F) (inserted by section 17 of the Irish Bank Resolution Corporation Act 2013) by inserting the following:
- “(7G) (a) The Minister for Finance—
- (i) may engage in such transactions of a normal banking nature with the Strategic Banking Corporation of Ireland and any other

persons in connection with any of the functions of the Strategic Banking Corporation of Ireland under this Act as the Minister considers appropriate, and

(ii) may, for the purpose of the transactions referred to in paragraph (a), issue such funds from the Exchequer, as he or she considers appropriate.

(b) The expenses and other costs incurred by the Minister for Finance in connection with or arising out of the transactions referred to in this subsection shall be charged on the Central Fund or the growing produce thereof.”.

(2) The First Schedule to the National Treasury Management Agency Act 1990 is amended by inserting after paragraph (gg) (inserted by section 17 of the Irish Bank Resolution Corporation Act 2013) the following:

“(gh) section 54(7G) of the Finance Act 1970.”.

Directions by Minister to National Pensions Reserve Fund Commission

15. (1) The Act of 2000 is amended—

(a) by inserting after section 20A (inserted by section 76(g) of the Act of 2010) the following:

“**20B.** (1) Notwithstanding any provision of this Act, the Minister may give directions in writing to the Commission to—

(a) provide credit to, or make an investment in, the Strategic Banking Corporation of Ireland on terms or conditions specified in the direction,

(b) exercise, on the terms and conditions specified in the direction, any rights attaching to such credit arrangement or investment,

(c) terminate or dispose of, on the terms and conditions specified in the direction, the credit arrangement or investment, or

(d) provide funding to the Strategic Banking Corporation of Ireland for the purposes of funding the subscription of shares by the Minister in accordance with *section 11(4) of the Strategic Banking Corporation of Ireland Act 2014.*

(2) The Commission shall comply with a direction given under subsection (1).”.

and

(b) in section 2, in the definition of “directed investment” by substituting for paragraph (a) (as amended by section 76(a) of the Act of 2010) the following:

“(a) an investment made by the Commission pursuant to a direction under section 19A, 19AA or 20B.”.

- (2) In this section “Act of 2010” means Credit Institutions (Stabilisation) Act 2010.

Maximum amount of State funding to SBCI

- 16.** (1) The total aggregate amount of funding provided by the Minister to the SBCI and any SBCI group entity shall not at any particular time exceed €5,000,000,000.
- (2) Any funding payable by the Minister under this Part may be paid out of the Central Fund or the growing produce thereof.
- (3) For the purposes of *subsection (1)* the equivalent in the currency of the State of funding in a foreign currency shall be calculated at Euro Reference Rates published by the European Central Bank prevailing at the time the calculation is made.
- (4) Interest on any borrowings, liabilities and obligations of the SBCI or any SBCI group entity shall not be taken into account in calculating the total aggregate amount of funding referred to in *subsection (1)*.
- (5) In this section “funding” includes any loan, investment, exchange of assets, subscription for securities, debt securities, issued share capital and callable share capital.

Payment of dividends

- 17.** (1) The SBCI may pay such dividends to the Minister as may be decided by its Board.
- (2) All amounts representing dividends or other moneys received by the Minister in respect of shares held by him or her in the share capital of the SBCI shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister may direct.

PART 4

MINISTERIAL GUARANTEES

Minister may issue guarantees

- 18.** (1) The Minister may guarantee the repayment by the SBCI of the principal of any sum borrowed by the SBCI or the payment of interest on that sum or the repayment of both principal and interest.
- (2) The aggregate of the principal of all guarantees outstanding exclusive of accrued interest, shall not exceed €4,000,000,000.
- (3) Details of any guarantee under this section shall be laid before each House of the Oireachtas as soon as may be after it is given.
- (4) All moneys from time to time required by the Minister to meet sums which may become payable by him or her under this section shall be advanced out of the Central Fund or the growing produce thereof.

PART 5

PROCEDURES FOR ENSURING PUBLIC ACCOUNTABILITY

Audit of accounts by Comptroller and Auditor General

19. (1) The SBCI shall submit its consolidated accounts to the Comptroller and Auditor General for audit within 2 months after the end of the financial year to which they relate, and the Comptroller and Auditor General shall—
- (a) if he or she is satisfied that the accounts represent a true and fair view of the state of the affairs of the SBCI, so certify, or
 - (b) otherwise qualify the accounts.
- (2) The SBCI shall present a copy of the consolidated accounts of the SBCI as audited to the Minister as soon as may be and the Minister shall cause a copy of the audited accounts to be laid before each House of the Oireachtas.

Accountability to Committee of Public Accounts

20. (1) A senior member of the staff of the SBCI nominated by its chairperson (referred to in this section as the “nominated person”) shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record or account subject to audit by the Comptroller and Auditor General that the SBCI is required by or under an enactment to prepare,
 - (b) the economy and efficiency of the SBCI in its use of the resources made available to it under this Act,
 - (c) the systems, procedures and practices employed by the SBCI for evaluating the effectiveness of its operations, and
 - (d) any matter affecting the SBCI referred to in—
 - (i) any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
 - (ii) any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of *paragraphs (a) to (c)*) that is laid before Dáil Éireann.
- (2) In appearing before a Committee referred to in *subsection (1)*, the nominated person appears as an accountable person and not as an accounting officer.
- (3) The nominated person, in giving evidence under *subsection (1)*, shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.

- (4) Any evidence given under *subsection (1)* shall, subject to preserving confidentiality in relation to such commercially sensitive information as determined by the SBCI, relate to the policies of the SBCI.

PART 6

MISCELLANEOUS

Certain persons not to be shadow directors

- 21.** (1) Unless otherwise appointed as a director, none of the persons mentioned in *subsection (2)* is to 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 as a person discharging managerial responsibilities of the SBCI or any SBCI group entity.
- (2) The persons referred to in *subsection (1)* are—
- (a) the Minister;
 - (b) the NTMA, an employee and a member of the staff of the NTMA;
 - (c) the National Pensions Reserve Fund Commission.

Disapplication of certain sections of Companies Acts

- 22.** The following provisions of the Companies Acts shall be disappplied to the SBCI:
- (a) section 60(1) of the Companies Act 1963 (the prohibition on providing financial assistance in connection with a purchase or subscription for shares in the SBCI);
 - (b) the presumption in section 26(6) of the Companies Act 1990 that a sole member of a single member company is a connected person;
 - (c) Part IV of the Companies Act 1990 (the requirement to disclose interests in shares to the SBCI).

PART 7

TAX EXEMPTIONS

Tax exemptions

- 23.** (1) The Taxes Consolidation Act 1997 is amended:
- (a) in section 172A(1)(a), in subparagraph (i) (inserted by section 9 of the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009 and as amended by section 240 of the Act of 2009) of the definition of “relevant distribution”, by inserting before clause (IV) the following:

“(IIIA) the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,”,

- (b) by inserting after section 230AB (inserted by section 43(1)(b) of the Finance Act 2003) the following:

“**230AC.** Notwithstanding any provision of the Corporation Tax Acts, profits arising to the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary shall be exempt from corporation tax.”,

- (c) in section 246(3), after paragraph (d), by inserting the following:

“(da) interest paid to the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,

(db) interest paid by the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary.”,

- (d) in section 256(1), in paragraph (a) of the definition of “relevant deposit”, by inserting after subparagraph (iiie) (inserted by section 240 of the Act of 2009) the following:

“(iiif) the Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary,”,

and

- (e) in Schedule 15, in Part 1, by inserting after paragraph 43 (inserted by section 240 of the Act of 2009) the following:

“44. The Strategic Banking Corporation of Ireland or a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary.”.

- (2) The Stamp Duties Consolidation Act 1999 is amended by inserting after section 108A (inserted by section 139 of the Finance Act 2003) the following:

“**108AA.** (1) Stamp duty shall not be chargeable under or by reference to any heading in Schedule 1 on an instrument for the sale, transfer, lease or other disposition of any property, asset or documentation to the Strategic Banking Corporation of Ireland or to a subsidiary wholly owned by it or a subsidiary wholly owned by any such subsidiary.

(2) For the purposes of subsection (1), whether a subsidiary is wholly owned shall be construed in accordance with section 9(1)(d) of the Taxes Consolidation Act 1997.”.

- (3) The amendments effected by this section do not apply in circumstances where the Minister does not hold all of the shares in the SBCI.