



Number 22 of 1996

BORROWING POWERS OF CERTAIN BODIES ACT, 1996

AN ACT TO MAKE FURTHER PROVISION IN RELATION TO THE BORROWING AND CAPITAL FINANCING OF CERTAIN BODIES WHOSE POWER TO BORROW MONEY IS SUBJECT TO THE INVOLVEMENT, EITHER DIRECTLY OR INDIRECTLY, OF THE MINISTER FOR FINANCE, TO AMEND SECTION 12 OF THE AGRICULTURAL CREDIT ACT, 1978, AND TO PROVIDE FOR CONNECTED MATTERS. [10th July, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“capital value”, in relation to a transaction, means the total value of the transaction excluding—

- (a) any inherent interest amounts, and
- (b) any amounts which do not constitute a legal liability on the body concerned;

“consent of the Minister” includes—

- (a) approval of the Minister,
- (b) concurrence of the Minister, and
- (c) consent of any other Minister of the Government, given after consultation with the Minister, where such consultation is prescribed by or under statute;

“functions” includes powers and duties;

“the Minister” means the Minister for Finance.

- (2) (a) A reference in this Act to a section is a reference to a section of this Act unless it is indicated that a reference to some other Act is intended.

[No. 22.] *Borrowing Powers of Certain Bodies Act, 1996.* [1996.]

S.1 (b) A reference in this Act to a subsection or to a paragraph is to the subsection or paragraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended.

Application. 2.—Subject to *sections 3(4)(b)* and *8(4)*, this Act applies to any body established by or under statute whose power to borrow money is, in some or all cases, subject to the consent of the Minister.

Power to effect certain transactions on foot of borrowing powers. 3.—(1) A body, whose functions include the power to borrow money subject to the consent of the Minister, shall have and be deemed always to have had, as part of its functions, the power to engage in the following transactions in so far as they relate to borrowing or capital financing, including transactions in a currency other than the currency of the State:

- (a) finance leases;
- (b) issue of notes, bonds, commercial paper or other debt instruments;
- (c) discounting of bills of exchange;
- (d) debtor discounting facilities, invoice discounting facilities or other forms of debt factoring agreement;
- (e) letters of credit, guarantees and other similar instruments;
- (f) securitisation of assets;

and shall also have, as part of its functions, the power to engage in any other financial transaction or class of financial transactions, in so far as it relates to borrowing or capital financing, that the Minister may, after consultation with the Central Bank of Ireland and the Revenue Commissioners, by order prescribe from time to time.

(2) The Minister may, after consultation with the Central Bank of Ireland and the Revenue Commissioners, by order amend or revoke any order under *subsection (1)* and any order under this subsection.

(3) Where the Minister is satisfied that, in accordance with normal accountancy practices, a class of financial transactions is regarded or has ceased to be regarded as a finance lease, then the Minister may by order declare that such class of financial transactions is or ceases to be, as the case may be, a finance lease.

- (4) (a) In this section a reference to a finance lease means a lease which, in accordance with normal accountancy practices—
- (i) in the case of a transaction entered into before the commencement of this provision, was regarded as a finance lease when so entered into,
 - (ii) in the case of a transaction entered into after the commencement of this provision would, subject to *subparagraph (II)*, have been regarded as a finance lease at such commencement,

and, where any order has been made under *subsection (3)* in respect of a class of financial transactions—

[1996.] *Borrowing Powers of Certain Bodies Act, 1996.* [No. 22.]

(I) includes a transaction within such a class of S.3 transactions where, at the time the transaction was entered into, there is an order declaring such class of transactions to be a finance lease, but

(II) excludes a transaction within such a class of transactions where, at the time the transaction was entered into, there is an order declaring such class of transactions to have ceased to be a finance lease.

(b) In this section, a reference to a body includes a reference to a subsidiary company or a holding company of the body and any subsidiary company of such holding company, and “subsidiary company” and “holding company” have the meanings given to them, respectively, by section 155 of the Companies Act, 1963.

4.—The terms under which a body may undertake a transaction to which *section 3* relates may include either or both— Power to issue security.

(a) the issue by such body of indemnities or other similar instruments in respect of all or any of its obligations under the transaction, and

(b) provisions charging all or any part of the transaction and any related financial obligation thereon, upon all the property, of whatsoever kind, being the assets for the time being of such body, or upon any particular property, and provisions establishing the priority of such charges amongst themselves.

5.—(1) Where the power of a body to borrow is subject to the consent of the Minister, then such consent shall also be required, in the like manner and to the like extent, in connection with any transactions authorised under *section 3*. Consent of the Minister.

(2) The power to effect any transactions by virtue of this Act shall be subject to and be in compliance with *subsection (1)* and any requirements specified by the Minister from time to time.

(3) A requirement specified under *subsection (2)* shall only be made by the Minister after consultation with any other Minister of the Government, who, having regard to the functions of the other Minister, the Minister considers ought to be consulted.

6.—Where the Minister, or any other Minister of the Government, is empowered by statute to guarantee either or both the due repayment of the principal of, and any interest on, any money raised or borrowed by a body, then— Guarantees.

(a) such power to guarantee shall be deemed to extend, and to have always extended, to the power to guarantee the due repayment of all moneys becoming due by such body under, or in connection with, any of the transactions provided for in *section 3* and the due performance and discharge by such body of all its obligations under any such transaction, and

[No. 22.] *Borrowing Powers of Certain Bodies Act, 1996.* [1996.]

S.6

(b) the obligations, entitlements and rights of the Minister, any other Minister of the Government or any body provided for by statute in respect of such a guarantee shall also apply in respect of any guarantees given by virtue of *paragraph (a)* and all references in any such statute to the amount of moneys guaranteed, payable or repayable, shall, in respect of any transactions undertaken by virtue of *section 3*, be construed in accordance with the provisions of this Act.

Calculation of borrowing limits and guarantees.

7.—(1) In calculating either or both the borrowings and guarantees of any body which are subject to a limit imposed by or under statute, the capital value of any transaction to which *section 3* relates, including the capital value of any such transaction or any part of any such transaction in a currency other than the currency of the State, shall be counted as part of either or both the borrowings and guarantees of that body, as the case may be.

(2) For the purposes of any calculation to which *subsection (1)* relates, the equivalent in the currency of the State of the amount of any borrowings in a currency other than the currency of the State shall be calculated at the appropriate rate of exchange prevailing—

(a) in the case of any such borrowings, at the time of the borrowing, and

(b) in the case of any guarantee, at the time of the giving of that guarantee.

Certain leases.

8.—(1) Subject to *subsection (2)*, a body, whose functions include the power to borrow money subject to the consent of the Minister, shall have and be deemed always to have had, as part of its functions, the power to enter into leases, other than a lease to which *section 3* relates.

(2) The provisions of *sections 4, 5, 6 and 7* shall not apply to leases or a class thereof, in respect of which a body is deemed under *subsection (1)* to have power to enter into, unless there was, at the time the contract relating to the lease concerned was entered into, a subsisting order under *section 3* relating to such leases or a class thereof.

(3) The Minister may, after consultation with any other Minister of the Government who, having regard to the functions of the other Minister, the Minister considers ought to be consulted, specify the terms and conditions under which a body may engage in such leases or any class thereof.

(4) In this section, a reference to a body includes a reference to a subsidiary company or a holding company of the body and any subsidiary company of such holding company, and “subsidiary company” and “holding company” have the meanings given to them, respectively, by section 155 of the Companies Act, 1963.

Borrowing limit of ACC Bank plc.

9.—The Agricultural Credit Act, 1978, is hereby amended in section 12 (which relates to the borrowing powers of ACC Bank plc) by the substitution for subsection (1) (inserted by section 1 of the ACC Bank Act, 1994) of the following subsection:

“(1) The Corporation may (subject to such conditions and limitations on amounts as the Minister, after consultation with

[1996.] *Borrowing Powers of Certain Bodies Act, 1996.* [No. 22.]

the Central Bank, may determine) raise or borrow money S.9 (including money in a currency other than the currency of the State) in any manner it thinks fit:

Provided that the amount of money raised or borrowed and outstanding at any one time shall not exceed £2,400,000,000.’.

10.—Where a body to which this Act applies was incorporated under the Companies Acts, 1963 to 1990, or under any previous Act relating to the incorporation of companies, it shall take such steps as may be necessary under the Companies Acts, 1963 to 1990, to alter its memorandum and articles of association to make them consistent with this Act. Alteration of memorandum and articles of association of certain bodies.

11.—The expenses incurred by any Minister of the Government in the administration of this Act shall be paid out of moneys provided by the Oireachtas. Expenses.

12.—(1) This Act may be cited as the Borrowing Powers of Certain Bodies Act, 1996. Short title, construction, collective citation and commencement.

(2) The ACC Bank Acts, 1978 to 1994, and *section 9* of this Act shall be construed together as one Act and may be cited together as the ACC Bank Acts, 1978 to 1996.

(3) This Act shall come into operation on such day or days as may be fixed therefor by order or orders of the Minister, either generally or with reference to some particular purpose or provision, and different days may be so fixed for different purposes and different provisions of this Act.

ACTS REFERRED TO

ACC Bank Act, 1994	1994, No. 26
Agricultural Credit Act, 1978	1978, No. 2
Companies Act, 1963	1963, No. 33
Companies Acts, 1963 to 1990	

