



STATUTORY INSTRUMENTS.

**S.I. No. 380 of 2019**



EUROPEAN UNION (PROSPECTUS) REGULATIONS 2019

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I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017<sup>1</sup>, hereby make the following regulations:

Part 1

PRELIMINARY

*Citation and commencement*

1. (1) These Regulations may be cited as the European Union (Prospectus) Regulations 2019.

(2) These Regulations shall come into operation on 21 July 2019.

*Interpretation*

2. (1) In these Regulations—

“Act of 1942” means the Central Bank Act 1942 (No. 22 of 1942);

“Act of 2014” means the Companies Act 2014 (No. 38 of 2014);

“Bank” means the Central Bank of Ireland;

“contravention” includes, in relation to any provision, a failure to comply with that provision, and also includes—

- (a) attempting to commit a contravention,
- (b) aiding, abetting, counselling or procuring a person to commit a contravention,
- (c) inducing, or attempting to induce, a person (whether by threats or promises or otherwise) to commit a contravention,
- (d) being (directly or indirectly) knowingly concerned in, or a party to, a contravention, and
- (e) conspiring with others to commit a contravention;

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<sup>1</sup> OJ No. L 168, 30.6.2017, p. 12.

“Court” means the High Court;

“delegated act” means a delegated act, for the time being in force, adopted by the Commission of the European Union in accordance with Article 44 of the Prospectus Regulation;

“enactment” has the same meaning as it has in the Interpretation Act 2005 (No. 23 of 2005);

“EU prospectus law” means—

- (a) the Prospectus Regulation, and
- (b) the delegated acts;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>2</sup>;

“market operator” means one or more persons who manage or operate the business of a regulated market (or who do both those things), and may be the regulated market itself;

“Minister” means the Minister for Finance;

“prescribed contravention” means a contravention of—

- (a) a provision referred to in Article 38(1) of the Prospectus Regulation, or
- (b) Regulation 30;

“Prospectus Regulation” means Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017<sup>1</sup>;

“regulated financial service provider” has the same meaning as it has in the Act of 1942;

“relevant person” means an issuer, offeror or person seeking admission to trading, as the case may be.

(2) A word or expression which is used in these Regulations and is also used in the Prospectus Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Prospectus Regulation.

#### *Exemption from obligation to publish prospectus*

3. (1) Without prejudice to Articles 1(4) and 4 of the Prospectus Regulation, the obligation to publish a prospectus under Article 3 of the Prospectus Regulation shall not apply to an offer of securities to the public in the State where—

- (a) the offer is not subject to notification in accordance with Article 25 of the Prospectus Regulation, and
- (b) the total consideration for the offer does not exceed €5,000,000.

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<sup>2</sup> OJ No. L 119, 4.5.2016, p. 1.

(2) For the purposes of paragraph (1)(b), the total consideration for an offer is the aggregate of the total consideration for that offer and the total consideration for all previous offers of securities of the same type in the issuer concerned made by the same offeror or issuer within the period of 12 months expiring on the date the offer is made.

## Part 2

### BANK AS COMPETENT AUTHORITY

#### *Designation of Bank as competent authority*

4. The Bank is designated as the competent authority in the State responsible for carrying out the functions of a competent authority referred to in the Prospectus Regulation.

#### *Delegation of functions of Bank*

5. (1) The Bank may delegate, by means of a decision that complies with the requirements specified in paragraph (2), the task of electronic publication of approved prospectuses and related documents to a third party.

- (2) A decision referred to in paragraph (1) shall—
  - (a) specify the tasks to be carried out under the delegation,
  - (b) specify the conditions in accordance with which the tasks are to be carried out,
  - (c) require the third party concerned—
    - (i) to act and be organised in such a manner as to avoid conflicts of interest, and
    - (ii) to ensure that information obtained while carrying out the delegated tasks is not used unfairly or to prevent competition, and
  - (d) specify the arrangements entered into between the Bank and the third party concerned.

(3) Where the Bank delegates a function under paragraph (1), the function so delegated shall, notwithstanding the delegation, continue to be vested in the Bank but shall be so vested concurrently with the third party concerned and so as to be capable of being performed by either the Bank or the third party.

(4) Where the Bank delegates a function under paragraph (1), the Bank shall notify the Minister promptly in writing of the delegation and the conditions in accordance with which the function delegated is to be carried out.

*Liability of Bank and other bodies*

6. Without prejudice to the generality of section 33AJ of the Act of 1942, approval of a prospectus by the Bank shall not be deemed to be or construed as a representation or warranty as to the solvency or credit-worthiness of the issuer of the prospectus or the truth or accuracy of the contents of the prospectus.

*Decisions of Bank*

7. (1) A decision taken by the Bank under the Prospectus Regulation or these Regulations shall be properly reasoned.

(2) A decision taken by the Bank under the Prospectus Regulation or these Regulations is an appealable decision for the purpose of Part VIIA of the Act of 1942.

(3) The reference in paragraph (2) to a decision includes a case in which the circumstances described in the second paragraph of Article 40 of the Prospectus Regulation apply.

## Part 3

## POWERS OF BANK

*Powers of Bank*

8. (1) The Bank shall have the powers specified in points (a) to (n) of Article 32(1) of the Prospectus Regulation.

(2) The Bank shall not exercise the powers referred to in paragraph (1) in a manner or for a purpose inconsistent with the Bank's obligations pursuant to the Prospectus Regulation or these Regulations.

(3) The powers of the Bank referred to in in paragraph (1) are without prejudice to the powers of the Bank under any other provision of these Regulations, the Prospectus Regulation or any other enactment.

*Consultation with market operators*

9. Without prejudice to its powers under Regulations 11 and 19, the Bank may consult with market operators if, in the Bank's opinion, it is necessary to do so for the purposes of exercising its powers under the Prospectus Regulation or these Regulations.

*Advertising*

10. (1) The Bank may, for the purpose of exercising control over the compliance of advertising activity, relating to an offer of securities to the public or an admission to trading on a regulated market, with paragraphs 2 to 4 of Article 22 of the Prospectus Regulation, give a direction to a relevant person to do or not to do such things as are necessary to ensure compliance with those paragraphs.

(2) Without prejudice to the generality of paragraph (1), a direction under that paragraph may do all or any of the following:

- (a) prohibit the issue of a specified advertisement;
- (b) require the relevant person to modify a specified advertisement or an advertisement of a specified description in a specified manner;
- (c) prohibit the issue by the person of any advertisements which are substantial repetitions of a specified advertisement;
- (d) require the relevant person to withdraw any specified advertisement or any advertisement of a specified description;
- (e) require the relevant person to include specified information in any advertisement to be published by, or on behalf of, the person;
- (f) require the relevant person to arrange the publication of a correction of an advertisement which contravenes paragraph 2, 3 or 4 of Article 22 of the Prospectus Regulation.

(3) A person may apply to the Court for, and the Court may, if it considers it appropriate to do so, grant, an order setting aside or varying a direction under paragraph (1).

(4) The Bank may, as respects a direction under paragraph (1) which, in its opinion has not been complied with or is unlikely to be complied with, apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

(5) An application for an order under paragraph (4) shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

(6) An application under paragraph (3) may not be made if the direction concerned has been the subject of an order granted under paragraph (4) (but without prejudice to the right of a person, the subject of an order granted under paragraph (4), to apply subsequently to the Court to have the order varied or discharged).

(7) The Court may direct the hearing together of applications made under paragraphs (3) and (4) that relate to the same direction.

(8) The Court may, if it thinks fit, vary or discharge an order made under paragraph (4).

(9) If the Court is satisfied that it is desirable that the whole or part of the proceedings relating to an application under paragraph (3) or (4) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice, then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(10) The Bank may give a direction amending or revoking a direction given by it under paragraph (1), but this power may not be exercised—

- (a) if an order under paragraph (4) is for the time being in force in relation to the direction, or
- (b) to extend the period specified in the direction for which it is to have effect.

(11) The powers of the Bank under this Regulation are in addition to those conferred on it by this or any other enactment to give directions or impose conditions or requirements.

(12) In this Regulation, “specified” means specified in a direction under this Regulation.

#### *Directions by Bank*

11. (1) The Bank may give one or more of the directions specified in paragraph (2) if the Bank considers it necessary to do so in order to—

- (a) perform its functions under these Regulations or the Prospectus Regulation,
- (b) prevent any person from contravening or continuing to contravene a provision of these Regulations or any provision of EU prospectus law, or
- (c) protect otherwise the interests of investors.

(2) Each of the following is a direction referred to in paragraph (1), namely a direction to a person—

- (a) to do or not to do anything that the Bank may require to be done or not to be done in exercise of the powers of the Bank referred to in Regulation 8(1),
- (b) not to dispose of or otherwise dissipate any assets or specified assets of the person or not to do any of those things save where specified conditions are complied with,
- (c) not to dispose of or otherwise dissipate any assets or specified assets the beneficial interest in which is vested in another person or persons or not to do any of those things save where specified conditions are complied with,
- (d) being a credit institution, not to make any payments from an account held with the institution by a specified person or persons save with the prior consent of the Bank,
- (e) not to accept, process or execute any subscription or order on behalf of a specified person,
- (f) not to carry on a business (whether on the person’s behalf or another’s behalf) in a specified manner or otherwise than in a specified manner,
- (g) not to engage in any practice that contravenes a provision of these Regulations or any provision of EU prospectus law,

- (h) not to enter into transactions of a specified kind or not to enter into such transactions save to a specified extent or save where specified conditions are complied with,
- (i) not to publish specified information, or
- (j) to publish or disseminate in a specified manner specified information in relation to a public offer, an admission to trading, a relevant person, securities or an advertisement to which Article 22 of the Prospectus Regulation applies.

(3) A direction under this Regulation shall—

- (a) be in writing, and
- (b) specify the date from which it shall have effect and the period for which it shall have effect (which shall not exceed 12 months).

(4) A person may apply to the Court for, and the Court may, if it considers it appropriate to do so, grant, an order setting aside or varying a direction under this Regulation.

(5) The Bank may, as respects a direction under this Regulation which, in its opinion has not been complied with or is unlikely to be complied with (or, in the case of a direction referred to in paragraph (2)(b) or (c), irrespective of whether it is of that opinion), apply to the Court in a summary manner for such order as may be appropriate by way of enforcement of the direction and the Court may, as it thinks fit, on the hearing of the application, make or refuse to make an order providing for such relief.

(6) An application for an order under paragraph (5) shall be by motion, and the Court when considering the motion may make such interim or interlocutory order as it considers appropriate.

(7) An application under paragraph (4) may not be made if the direction concerned has been the subject of an order granted under paragraph (5) (but without prejudice to the right of a person, the subject of an order granted under paragraph (5), to apply subsequently to the Court to have the order varied or discharged).

(8) The Court may direct the hearing together of applications made under paragraphs (4) and (5) that relate to the same direction.

(9) The Court may, if it thinks fit, vary or discharge an order made under paragraph (5).

(10) If the Court is satisfied that it is desirable that the whole or part of the proceedings relating to an application under paragraph (4) or (5) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice, then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(11) Without prejudice to the powers of the Court to enforce an order made under paragraph (5), a person who fails to comply with such an order shall be guilty of an offence.

(12) The Bank may give a direction amending or revoking a direction given by it under this Regulation but this power may not be exercised—

- (a) if an order under paragraph (5) is for the time being in force in relation to the direction, or
- (b) to extend the period specified in the direction for which it is to have effect.

(13) On the expiry of the period specified in a direction for which it is to have effect, the Bank may give another direction under this Regulation (if it considers it necessary to do so on the grounds specified in paragraph (1)), in like or different terms, to the person concerned.

(14) The powers of the Bank under this Regulation are in addition to those conferred on it by this or any other enactment to give directions or impose conditions or requirements.

#### Part 4

### AUTHORISED OFFICERS AND RELATED MATTERS

#### *Definitions – Part 4*

12. In this Part—

“authorised officer” means an authorised officer appointed under Regulation 13;

“person to whom these Regulations or the Prospectus Regulation apply” means a relevant person or a market operator;

“records” means any book, document or any other written or printed material in any form including any information (including phone and data traffic records) stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form;

“relevant records” means records relating to the activities of persons to whom these Regulations or the Prospectus Regulation apply.

#### *Power to appoint authorised officers*

13. (1) The Bank may, in writing—

- (a) authorise such and so many persons as the authority considers necessary to be authorised officers for the purpose of monitoring compliance with the Prospectus Regulation and these Regulations, and
- (b) at any time, revoke any such authorisation.

(2) Subject to paragraph (1)(b), an appointment under paragraph (1)(a) may be for a specified or unspecified period.

(3) Every authorised officer shall—

- (a) be furnished by the Bank with a certificate of his or her appointment as an authorised officer, and
- (b) when exercising a power under these Regulations of an authorised officer, produce the certificate, together with some form of personal identification, if requested to do so by a person affected by the exercise of that power.

(4) An appointment under paragraph (1) of a person as an authorised officer ceases on the occurrence of the earliest to occur of the following:

- (a) where the Bank revokes the appointment, the time of revocation;
- (b) where the person dies, the time of death;
- (c) where the person resigns from the appointment, the time of resignation;
- (d) where the appointment is for a specified period, the end of that period;
- (e) where the person appointed is, when appointed, an officer of the Bank, when the person ceases to be such an officer;
- (f) where the person appointed is, when appointed, a person employed by a third party to which the Bank has delegated a function under Regulation 5(1), when the person ceases to be so employed.

#### *Powers of authorised officers*

14. (1) An authorised officer may, for the purpose of carrying out an investigation for the purpose of monitoring compliance with the Prospectus Regulation and these Regulations, do all or any of the following:

- (a) subject to paragraph (2), at all reasonable times enter any place at which there are reasonable grounds to believe that there are any relevant records;
- (b) search and inspect the place referred to in subparagraph (a) and any relevant records at that place;
- (c) secure for later inspection any place, or any part of any place at which relevant records are kept or at which the officer has reasonable grounds for believing relevant records are kept;
- (d) require any person to whom these Regulations or the Prospectus Regulation apply to produce to the officer relevant records, and if the relevant records are in a non-legible form to reproduce them in a legible form or to give to the officer such information as the officer reasonably requires in relation to entries in the relevant records;
- (e) inspect and take copies of relevant records inspected or produced under this Regulation (including, in the case of

relevant records in a non-legible form, a copy of all or part of the relevant records in a permanent legible form);

- (f) remove and retain any of the relevant records inspected or produced under this Regulation for such period as may be reasonable to facilitate further examination;
- (g) require a person to give to the officer information (including give information by way of a written report) that the officer reasonably requires in relation to activities covered by the Prospectus Regulation or these Regulations and to produce to the officer any relevant records that the person has or has access to;
- (h) require a person by whom, or on whose behalf, data equipment is or has been used, or any person who has charge of, or is otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to give the officer all reasonable assistance in relation thereto;
- (i) require a person to explain entries in any relevant records;
- (j) summon, at any reasonable time, a person to give to the authorised officer such information as the authorised officer may reasonably require and to require the person to answer questions and to make a declaration as to the truth of the answers to those questions.

(2) An authorised officer shall not, except with the consent of the occupier, enter a private dwelling (other than a part of the dwelling used as a place of work) unless the officer has obtained a warrant from a judge of the District Court.

(3) Where any person from whom production of a relevant record is required claims a lien thereon, the production of it shall be without prejudice to the lien.

(4) A person making information available to the Bank in accordance with this Regulation shall not, in so doing, be considered to be infringing any restriction on disclosure of information imposed by contract or law and, accordingly, shall not be liable for making the information so available.

(5) The requirement to produce any relevant record or report or to provide information or assistance under this Regulation extends to—

- (a) an examiner, liquidator or receiver of, or any person who is or has been an officer or employee or agent of, a person to whom the Prospectus Regulation or these Regulations apply, or
- (b) any other person who appears to the Bank or the authorised officer concerned to have the relevant record or report in his or her possession or under his or her control or the ability to provide information or assistance, as the case may be.

(6) When exercising a power under this Part, an authorised officer may, where the officer considers it necessary, be accompanied by one or more members of the Garda Síochána or one or more authorised officers.

(7) A person who obstructs or impedes an authorised officer in the exercise of his or her powers under this Regulation shall be guilty of an offence.

(8) In this Regulation and Regulation 15, “place” means a place entered by an authorised officer pursuant to paragraph (1)(a) and includes the following:

- (a) a dwelling or a part thereof;
- (b) a building or a part thereof;
- (c) a vehicle, whether mechanically propelled or not;
- (d) a vessel, whether sea-going or not.

### *Warrants*

15. (1) When an authorised officer in the exercise of the authorised officer’s powers under Regulation 14—

- (a) is prevented from entering any place, that is not a private dwelling, or
  - (b) believes that there are relevant records in a private dwelling,
- the authorised officer or the Bank may apply to a judge of the District Court for a warrant under this Regulation authorising the entry by the authorised officer into the place or the private dwelling, as the case may be.

(2) If on an application under paragraph (1) a judge of the District Court is satisfied, on the information of the applicant, that the authorised officer concerned—

- (a) has been prevented from entering any place, that is not a private dwelling, or
  - (b) has reasonable grounds for believing that there are relevant records in a private dwelling,
- then the judge may issue a warrant under the judge’s hand authorising the authorised officer accompanied, if the judge considers it appropriate to so provide, by such number of members of the Garda Síochána as may be specified in the warrant, at any time within 4 weeks from the date of issue of the warrant, to enter, if need be by force, the place or private dwelling, as the case may be, and exercise any of the powers referred to in Regulation 14.

Part 5  
ENFORCEMENT

Chapter 1  
*Definitions*

*Definitions – Part 5*

16. In this Part—

“adverse assessment” means an assessment in which the assessor has decided that the assessee is committing or has committed a prescribed contravention;

“assessee” means the person subject to an assessment;

“assessment” means an assessment referred to in Regulation 17;

“assessor” means an assessor appointed under Regulation 17;

“qualifying holding” means—

(a) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents 10 per cent or more of the capital or the voting rights, or

(b) a direct or indirect holding of shares or other interest in a regulated financial service provider which represents less than 10 per cent of the capital or voting rights, but which, in the opinion of the Bank, makes it possible to control or exercise a significant influence over the management of the regulated financial service provider;

“sanction” means any sanction referred to in any of paragraphs (a) to (f) of Regulation 24(3);

“specified sanctions”, in relation to an adverse assessment, means the sanction or sanctions referred to in Regulation 17(9)(c) which may be imposed on the assessee.

Chapter 2  
*Assessment*

*Appointment of assessor*

17. (1) Where the Bank has reason to suspect that a prescribed contravention is being committed or has been committed, the Bank may appoint an assessor (or, if the Bank thinks fit to do so, more than one assessor) to conduct an assessment as to—

(a) whether or not the assessee is committing or has committed the contravention, and

- (b) if the assessor finds that the assessee is committing or has committed the contravention, the sanction or sanctions, if any, which the assessor considers is or are appropriate to be imposed on the assessee in respect of the contravention.

(2) The Bank may appoint an assessor who is not an officer, employee or official of the Bank and any such assessor so appointed is an agent of the Bank for the purpose of performing the functions of an assessor under this Part.

(3) The Bank shall provide the assessor with such administrative services (including technical and legal advice) as the Bank considers necessary to enable the assessor to perform the assessor's functions.

(4) The assessor shall, as soon as is practicable after the assessor's appointment as an assessor, give notice of the appointment to the assessee.

(5) The notice under paragraph (4) given to the assessee by the assessor shall contain—

- (a) a statement that the assessor is appointed by the Bank under this Regulation,
- (b) a statement in summary form of the grounds for conducting the assessment,
- (c) a statement that, within a reasonable time specified by the assessor in the notice, the assessee may—
  - (i) make submissions in writing to the assessor, and
  - (ii) request the assessor to permit the assessee to make oral submissions about the matters to which the notice relates, and
- (d) a statement that the assessor shall conduct the assessment even if no submissions referred to in subparagraph (c) are made.

(6) The assessee may, within the time specified in the notice given under paragraph (4)—

- (a) make submissions in writing to the assessor, and
- (b) request the assessor to permit the assessee to make oral submissions about the matters to which the notice relates.

(7) The assessor shall—

- (a) consider any submissions referred to in paragraph (6)(a) made by the assessee, and
- (b) conduct such investigations relating to the assessment as the assessor considers appropriate before issuing the assessment.

(8) The assessor shall issue the assessment to the Bank when the assessment is made.

(9) Where the assessor decides that a prescribed contravention is being committed or has been committed, the assessor shall ensure that the assessment includes—

- (a) a statement of the grounds upon which the assessor made the assessment that the assessee is committing or has committed the contravention,
- (b) a statement in summary form of the evidence upon which the assessment is based, and
- (c) a statement of the sanction or sanctions, if any, which the assessor considers is or are appropriate to be imposed on the assessee in respect of the contravention.

(10) The appointment of an assessor may be for a specified or unspecified period.

(11) Subject to Regulations 22(2) and 23, the assessment shall constitute the decision of the Bank, and references in this Part to an adverse assessment shall be construed accordingly.

#### *Revocation of appointment of assessor*

18. (1) Where the Bank is satisfied that the assessor has contravened paragraph (2) or is incapacitated, the Bank may revoke the appointment of the assessor at any time.

(2) The assessor (including a person proposed to be appointed as an assessor) shall—

- (a) disclose to the Bank any material interest that the assessor may have in any matter that may arise during the assessment,
- (b) disclose to the Bank any actual or potential conflict of interest that the assessor may have in conducting the assessment,
- (c) not use any inside information obtained during an assessment for any purpose other than the performance of the assessor's functions under this Part,
- (d) not engage in misconduct during the assessment,
- (e) perform the assessor's functions in accordance with this Part, and
- (f) issue an assessment that is not contrary to law.

(3) In this Regulation, "inside information" has the same meaning as it has in Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April 2014<sup>3</sup>.

#### *Power to require witnesses to appear and give evidence*

19. (1) The assessor may, by notice given in or outside the State to a person, require the person to—

- (a) appear before the assessor to give evidence (including evidence on oath),

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<sup>3</sup> OJ No. L173, 12.6.2014, p. 1.

- (b) produce documents specified in the notice that are in the person's custody or control, or
- (c) for the purposes of subparagraph (a) or (b), attend before the assessor from day to day, unless excused from attendance or released from further attendance by the assessor.

(2) The assessor may administer oaths for the purposes of the evidence referred to in paragraph (1)(a).

(3) A witness at a hearing before the assessor has the same liabilities, privileges and immunities as a witness before the Court.

(4) Where a person (in this paragraph referred to as "person concerned")—

- (a) fails to comply with a notice under paragraph (1),
- (b) threatens or insults the assessor or any witness or person required to attend before the assessor,
- (c) interrupts the proceedings of, or does not behave in an appropriate manner before, the assessor,
- (d) obstructs or attempts to obstruct the assessor,
- (e) discloses, or authorises the disclosure of, evidence given before the assessor or any of the contents of a document produced to the assessor that the assessor has instructed not to be published, or
- (f) does anything else that, if the assessor were a court of law having power to commit for contempt, would be contempt for that court,

then—

- (i) the assessor may apply to the Court for an order requiring the person concerned to—
  - (I) comply with the notice under paragraph (1), or
  - (II) discontinue or not repeat the behaviour falling within any of the provisions of subparagraphs (b) to (f), or behaviour of any similar kind,

and

- (ii) the Court, if satisfied that there is no reasonable excuse for the failure to comply with the notice under paragraph (1) or for the behaviour concerned, as the case may be, may grant the order and such other orders as it considers appropriate to ensure that the person concerned cooperates with the assessor.

*Referral to Court on question of law*

20. (1) The Bank or the assessor may (including at the request of the assessee) refer a question of law arising in the assessment to the Court for determination by the Court.

(2) Where a question of law is referred under paragraph (1)—

- (a) the assessor shall send to the Court all documents before the assessor that are relevant to the matter in question, and
- (b) at the end of the proceedings in the Court in relation to the reference, the Court shall cause the documents to be returned to the assessor.

*Issue of assessments*

21. (1) Where the assessment of the assessor is that the assessee is committing or has committed a prescribed contravention, the Bank shall—

- (a) issue the assessee with a copy of the adverse assessment (or, as the Bank thinks fit, so much of the adverse assessment as constitutes the statements referred to in Regulation 17(9)), and
- (b) advise the assessee that—
  - (i) the assessee may appeal against the adverse assessment to the Court under Regulation 23, and
  - (ii) the Bank may apply to the Court under Regulation 27 for an order confirming the adverse assessment (including the specified sanctions).

(2) Where the assessment of the assessor is that the assessee is neither committing nor has committed a prescribed contravention, the Bank shall issue the assessee with a statement to that effect.

*Power to correct assessments*

22. (1) Where the assessor or the Bank is satisfied that there is an obvious error in the text of an assessment, the assessor or the Bank, as the case may be, may alter the text of the assessment to remove the error.

(2) Where the text of an assessment is altered under paragraph (1), the text as so altered shall be taken to be the decision of the Bank under Regulation 17(11).

(3) In paragraph (1), “obvious error”, in relation to the text of an assessment, includes—

- (a) a clerical or typographical error,
- (b) an error arising from an accidental slip or omission, or
- (c) a defect of form.

*Right of appeal against adverse assessment (including specified sanctions)*

23. (1) The assessee may appeal against an adverse assessment (including the specified sanctions) to the Court not later than 28 days after the Bank has complied with Regulation 21(1) in relation to the assessee or within such further period as the Court allows.

(2) If the Court is satisfied that it is desirable that the whole or part of the proceedings relating to an appeal under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice, then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(3) The Court may, pending the hearing and determination of an appeal under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.

- (4) The Court shall determine an appeal under paragraph (1) by making—
- (a) subject to paragraph (6), an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or
  - (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

(5) The determination of the Court on the hearing of an appeal under paragraph (1) shall be final, except that a party to the appeal may apply to the Court of Appeal to review the determination on a question of law.

(6) No variation of an adverse assessment under paragraph (4)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 24(3).

### Chapter 3

#### *Sanctions*

*Sanctions that may be imposed*

24. (1) Where—
- (a) an assessor has been appointed under Regulation 17, and
  - (b) an adverse assessment has been made by the assessor (being an adverse assessment that contains a statement of the kind referred to in Regulation 17(9)(c)),
- the Bank may impose on the assessee one or more of the sanctions referred to in paragraph (3) in respect of a prescribed contravention.

(2) The Bank shall take all measures necessary to ensure that a sanction imposed under paragraph (1) is implemented.

- (3) The sanctions mentioned in paragraph (1) are the following:

- (a) the publication of a statement which indicates the person responsible for the contravention and the nature of the contravention concerned, in accordance with Article 42 of the Prospectus Regulation;
- (b) an order requiring the person responsible for the contravention to cease, and desist from, the conduct concerned;
- (c) a direction disqualifying the assessee from being concerned in the management of, or having a qualifying holding in, any regulated financial service provider for such time as is specified in the order;
- (d) a direction to pay to the Bank a monetary penalty not exceeding twice the amount of the profits gained or losses avoided as a result of the contravention where that amount can be determined;
- (e) in the case of a natural person, a direction to pay to the Bank a monetary penalty not exceeding €5,000,000;
- (f) in the case of a legal person, a direction to pay to the Bank a monetary penalty not exceeding €20,000,000 or not exceeding 3 per cent of the total annual turnover of the legal person according to the last available financial accounts approved by the management body and paragraph (4) supplements this subparagraph.

(4) Where the legal person referred to in paragraph (3)(f) is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013<sup>4</sup>, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant law of the European Union in the area of accounting and according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking.

#### *Determination of appropriate sanction*

25. The assessor, when determining the appropriate sanction or sanctions for the purposes of the statement referred to in Regulation 17(9)(c), shall take into account all relevant circumstances including, where appropriate—

- (a) the gravity and duration of the prescribed contravention,
- (b) the degree of responsibility of the assessee for the prescribed contravention,
- (c) the financial strength of the assessee, as indicated, for example, by total turnover, where the assessee is a body corporate or unincorporated body, or by annual income, where the assessee is a natural person,

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<sup>4</sup> OJ No. L182, 29.6.2013, p. 19.

- (d) the impact of the prescribed contravention on retail investor's interests,
- (e) the importance of—
  - (i) the profits gained or losses avoided by the assessee, or
  - (ii) the losses for third parties derived from the prescribed contravention,
 insofar as they can be determined,
- (f) the level of cooperation of the assessee with the Bank and assessor, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by the assessee,
- (g) previous prescribed contraventions by the assessee, and
- (h) measures taken by the assessee after the prescribed contravention to prevent repetition of the prescribed contravention.

*When specified sanctions take effect*

26. (1) Where—

- (a) no appeal under Regulation 23 against the adverse assessment (including the specified sanctions) is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 23 against the adverse assessment (including the specified sanctions) has been lodged with the Court within the period for lodging the appeal, but is withdrawn or abandoned,

then the specified sanctions imposed pursuant to Regulation 24, as confirmed or varied in the order, if any, obtained under Regulation 27(2)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

(2) Where an appeal under Regulation 23 against the adverse assessment is lodged with the Court within the period for lodging the appeal, then the specified sanctions imposed pursuant to Regulation 24, as confirmed or varied in the order, if any, obtained under Regulation 23(4)(a), shall take effect on the date of that order or such other date as the Court may specify in that order.

*Enforcement of adverse assessment (including specified sanctions)*

27. (1) Where—

- (a) no appeal under Regulation 23 against the adverse assessment is lodged with the Court within the period for lodging the appeal, or
- (b) an appeal under Regulation 23 against the adverse assessment has been lodged with the Court within the period for lodging the appeal but is withdrawn or abandoned,

then the Bank may apply to the Court for an order confirming the adverse assessment (including the specified sanctions).

(2) The Court shall determine an application under paragraph (1) by making—

- (a) an order confirming, varying or setting aside the adverse assessment (including the specified sanctions), whether in whole or in part, or
- (b) an order remitting the case to be decided again by the Bank in accordance with the directions of the Court.

(3) The Court shall not hear an application under paragraph (1) unless—

- (a) the assessee appears at the hearing as respondent to the application, or
- (b) if the assessee does not so appear, the Court is satisfied that a copy of the application has been served on the assessee.

(4) If the Court is satisfied that it is desirable that the whole or part of proceedings relating to an application under paragraph (1) be heard otherwise than in public because of the nature or the circumstances of the case or having regard to the interests of justice, then the Court may make an order that the proceedings shall, in whole or part, be heard otherwise than in public.

(5) The Court may, on an application under paragraph (1), make such interim or interlocutory orders as the Court considers necessary in the circumstances.

(6) The determination of the Court on the hearing of an application under paragraph (1) shall be final, except that the Bank or the respondent, if any, may apply to the Court of Appeal to review the determination on a question of law.

(7) No variation of an adverse assessment under paragraph (2)(a) may provide for the imposition of a sanction on the assessee which is not a sanction referred to in Regulation 24(3).

#### *Publication of decisions*

28. (1) Subject to paragraph (3), immediately after an assessee has been informed, in accordance with Regulation 21(1), of a decision to impose on the assessee specified sanctions pursuant to Regulation 24, the Bank shall publish the decision on its website and the publication shall include—

- (a) information relating to the type and nature of the prescribed contravention, and
- (b) the identity of the assessee.

(2) Where the Bank considers that the disclosure of the identity of an assessee in accordance with paragraph (1)(b), or the personal data of an assessee where it is a natural person, would be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or would jeopardise an ongoing investigation or the stability of the financial markets, it shall either—

- (a) defer publication of the specified sanction or the identity of the assessee until the reasons for that deferral cease to exist,
- (b) publish the decision on an anonymous basis, provided such publication ensures the effective protection of the personal data concerned, or
- (c) not publish the decision where the Bank is of the opinion that publication in accordance with subparagraph (a) or (b) would be insufficient to ensure—
  - (i) that the stability of financial markets is not jeopardised, or
  - (ii) the proportionality of the publication of the decision where the sanctions concerned are deemed to be of a minor nature.

(3) Where the Bank decides to publish a decision on an anonymous basis in accordance with paragraph (2)(b), it may postpone the publication of the relevant data for a reasonable period of time where it is foreseeable that the reasons for anonymous publication will cease to exist during that period.

(4) Where an adverse assessment is—

- (a) appealed by the assessee under Regulation 23(1),
- (b) confirmed, varied or set aside by an order of the Court under Regulation 23(4)(a) or Regulation 27(2)(a),
- (c) subject to an application to the Court of Appeal under Regulation 23(5) or Regulation 27(6),
- (d) subject to an application by the Bank under Regulation 27(1), or
- (e) remitted to be decided by the Bank by an order of the Court under Regulation 23(4)(b) or 27(2)(b),

the Bank shall publish on its website information relating to such order, application or appeal, as the case may be, and any subsequent decision of the Bank relating to the case.

(5) Subject to paragraph (6), the Bank shall ensure that information published under this Regulation shall remain on its website for a period of not less than 5 years after its publication.

(6) Personal data published under this Regulation shall not be retained on the website of the Bank for longer than is permitted under the General Data Protection Regulation.

*Person not liable to be penalised twice for same contravention*

29. (1) Where—

- (a) a sanction referred to in Regulation 24(3)(d), (e) or (f) has taken or is to take effect on an assessee by virtue of an order obtained under Regulation 23(4)(a) or 27(2)(a), and

- (b) the acts that constitute the prescribed contravention to which the sanction relates also constitute an offence under a law of the State,

then the assessee shall not, in respect of those acts, be liable to be prosecuted or punished for that offence under that law.

(2) A sanction referred to in Regulation 24(3)(d), (e) or (f) in respect of a prescribed contravention shall not be imposed on an assessee where—

- (a) the assessee has been found guilty or not guilty of having committed—
  - (i) an offence under a provision of these Regulations, or
  - (ii) an offence referred to in section 1356 of the Companies Act 2014, and
- (b) all or some of the acts constituting that offence also constitute the prescribed contravention.

*Disqualification: obligation on regulated financial service provider*

30. A regulated financial service provider shall ensure that a person shall not be concerned in the management of, or have a qualifying holding in, the financial service provider while the person is subject to a sanction referred to in Regulation 24(3)(c) that is in force.

## Chapter 4

### *Resolution of Contraventions*

*Power of Bank to resolve suspected contraventions*

31. (1) Where the Bank has reason to suspect that a person (“relevant party”) is committing or has committed a prescribed contravention, it may enter into an agreement in writing with the relevant party to resolve the matter (including at any time before an assessment, if any, has been issued in respect of the relevant party).

(2) An agreement entered into under paragraph (1)—

- (a) is binding on the Bank and the relevant party, and
- (b) may include terms under which the relevant party accepts the imposition of sanctions.

(3) An agreement entered into under paragraph (1) may be enforced by the Bank or the relevant party in a court of competent jurisdiction.

## Chapter 5

*Offences**False etc. information*

32. A person who—

- (a) gives the Bank a notification pursuant to a requirement under the Prospectus Regulation, or
- (b) gives an assessor information pursuant to a requirement under Chapter 2,

that the person—

- (i) knows is false or misleading in a material particular, or
- (ii) does not believe to be true,

shall be guilty of an offence.

*Certain offences and penalties generally*

33. (1) Where a person has been convicted of an offence under these Regulations, the person shall be guilty of a further offence on each day on which the contravention of which the first-mentioned offence consists continues after the person's having been so convicted and in respect of each such further offence shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both.

(2) Where an offence under these Regulations is committed by a body corporate and is proved to have been so committed with the consent or connivance of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in such capacity, that person shall, as well as the body corporate, be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) A person who is guilty of an offence under these Regulations, other than an offence under paragraph (1), shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both.

(4) An issuer or offeror who offers securities to the public in contravention of Article 3(1) of the Prospectus Regulation, where that offer is not exempt, under Article 1(4) of the Prospectus Regulation or Regulation 3(1), from the obligation to publish a prospectus, shall be guilty of an offence.

(5) A person who has securities admitted to trading on a regulated market in contravention of Article 3(3) of the Prospectus Regulation shall be guilty of an offence.

(6) A market operator that admits securities to trading in circumstances where it knows that that admission involves a contravention of Article 3(3) of the Prospectus Regulation shall be guilty of an offence.

(7) A market operator in the State shall be entitled to rely on a copy of a notification of the decision to approve a prospectus under Article 20 of the Prospectus Regulation as evidence of compliance of the prospectus with Article 3(3) of the Prospectus Regulation.

(8) Each of the following is an offence to which section 1356 of the Act of 2014 applies:

- (a) an offence under paragraph (4);
- (b) an offence under paragraph (5);
- (c) an offence under paragraph (1) or (2) that relates to an offence referred to in subparagraph (a) or (b).

## Chapter 6

### *Reporting of Contraventions*

#### *Reporting of contraventions*

34. (1) Regulated financial service providers shall have in place appropriate procedures for their employees to report actual or potential contraventions of the Prospectus Regulation internally through a specific, independent and autonomous channel.

(2) The procedures referred to in paragraph (1) shall include the following:

- (a) appropriate protection for employees of regulated financial service providers who report potential or actual contraventions committed within the institution against retaliation, discrimination or other types of unfair treatment, at a minimum;
- (b) protection of personal data concerning both the person who reports the potential or actual contravention and the natural person who is allegedly responsible for a contravention in accordance with the General Data Protection Regulation;
- (c) protection of the identity of both the person who reports the contravention and the natural person who is allegedly responsible for a contravention, at all stages of the procedures unless such disclosure is required by law in the context of further investigation or subsequent administrative or judicial proceedings.

## Part 6

## MISCELLANEOUS PROVISIONS

*Responsibility attaching to prospectus*

35. (1) The provisions of this Regulation shall govern responsibility in respect of the contents of a prospectus, and any supplement thereto, relating to issuers or securities, as the case may be, in respect of which the State is the Home Member State.

(2) For the purposes of these Regulations and the Prospectus Regulation and subject to paragraph (3), responsibility for the information given in a prospectus, and any supplement thereto, attaches, subject to the provisions of the Schedule, in each of the cases specified in the Schedule to the person specified in the relevant case and references in these Regulations to responsible persons shall be construed accordingly.

(3) The responsible persons shall be clearly identified in a prospectus, and any supplement thereto, by their names and functions or, in the case of legal persons, their names and registered offices.

(4) A prospectus, and any supplement thereto, shall contain declarations by the responsible persons that, to the best of their knowledge—

- (a) the information contained in the prospectus or supplement thereto, as the case may be, is in accordance with the facts, and
- (b) the prospectus or supplement thereto, as the case may be, makes no omission likely to affect its import, save information, if any, omitted in accordance with Article 18 of the Prospectus Regulation.

(5) The declarations referred to in paragraph (4) shall not be required to be signed but shall be deemed to have been made on publication of the prospectus or supplement thereto, as the case may be.

(6) The responsibility for the information given in a registration document or in a universal registration document shall attach to a person responsible for the information given in a prospectus, and any supplement thereto, in accordance with paragraph (2) only where the registration document or the universal registration document, as the case may be, is in use as a constituent part of an approved prospectus.

(7) Where the information required to be included in a report referred to in Part 2 of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) is included in a universal registration document, paragraph (6) shall apply without prejudice to that Part 2.

(8) This Regulation does not prejudice sections 1349 to 1353 of the Act of 2014.

*Use of language*

36. The Bank shall, from time to time, publish in such manner as it deems fit a notice specifying—

- (a) the languages accepted by it, for the time being, for the purposes of Article 27 of the Prospectus Regulation,
- (b) its language requirements for the purposes of—
  - (i) the second subparagraph of Article 27(2), and
  - (ii) the second subparagraph of Article 27(3), of the Prospectus Regulation, and
- (c) any requirements, for the time being, of the Bank as regards the use of languages other than those specified for the purpose of subparagraph (a).

*Fees*

37. Subject to Article 20(10), Article 22(7), Article 25(5) and the sixth subparagraph of Article 26(2) of the Prospectus Regulation, fees shall be payable pursuant to section 32E of the Act of 1942 in respect of the performance by the Bank of its functions under these Regulations and the Prospectus Regulation.

*Revocations*

38. (1) The Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005) are revoked.

(2) Without prejudice to the generality of section 27 of the Interpretation Act 2005, the revocation effected by paragraph (1)—

- (a) does not affect any direction given by the Bank, or any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and
- (b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything revoked by these Regulations) or any misconduct which may have been committed before the time of the revocation.

*Amendment of Act of 1942*

39. The Act of 1942 is amended—

- (a) in section 2(2A)—
  - (i) in paragraph (aw), by the substitution of “of 27 November 2017;” for “of 27 November 2017.”, and

- (ii) by the insertion of the following paragraphs after paragraph (aw):
- “(ax) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017;<sup>1</sup>
- (ay) Commission Delegated Regulation (EU) 2019/979 of 14 March 2019;<sup>5</sup>
- (az) Commission Delegated Regulation (EU) 2019/980 of 14 March 2019.<sup>6</sup>”
- (b) in section 33AK(10), in the definition of “supervisory EU legal acts”—
- (i) in paragraph (af), by the substitution of “12 December 2017,” for “12 December 2017;”, and
- (ii) by the insertion of the following paragraph after paragraph (af):
- “(ag) Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017;<sup>1</sup>”
- (c) in section 33AN(1)—
- (i) in the definition of “designated enactment”, by the substitution of the following for “Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014”:
- “Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014, Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017”, and
- (ii) in the definition of “designated statutory instrument”, by the substitution of “the European Union (Prospectus) Regulations 2019 (S.I. No. XX of 2019)” for “the Prospectus (Directive 2003/71/EC) Regulations 2005 (S.I. No. 324 of 2005)”, and
- (d) in Part 2 of Schedule 2 by the substitution of the following for item 40

“

40	S.I. No. XX of 2019	European Union (Prospectus) Regulations 2019	The whole instrument
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”

<sup>5</sup> OJ No. L 166, 21.6.2019, p. 1.

<sup>6</sup> OJ No. L 166, 21.6.2019, p. 26.

*Amendment of Act of 2014*

40. Section 1350 of the Act of 2014 is amended—

(a) by the substitution of the following subsection for subsection (1):

“(1) In respect of a person specified in any of paragraphs (i) to (vi) of subsection (1) of section 1349, such a person shall not be liable under that section solely on the basis of a summary of a prospectus or the specific summary of an EU Growth Prospectus (including a translation of either such summary), unless—

(a) it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus, or

(b) it does not provide, when read together with other parts of the prospectus, key information in order to aid investors when determining whether to invest in the securities concerned.”, and

(b) by the insertion of the following subsection after subsection (1):

“(1A) In respect of a person specified in paragraph (vii) or (viii) of subsection (1) of section 1349, such a person shall not be liable under that section solely on the basis of a summary of a prospectus, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with other parts of the prospectus.”.

## SCHEDULE

### Responsible Persons

#### *Regulation 35*

1. Subject to the provisions of this Schedule, responsibility for the information given in a prospectus attaches in the following cases.

#### *Equity securities*

2. (1) This paragraph applies to a case in which the prospectus relates to equity securities (other than securities convertible into shares issued by the issuer of the underlying shares or by an entity belonging to the issuer's group).
- (2) In a case to which this paragraph applies, each of the following persons is, subject to the other provisions of this Schedule, responsible for the prospectus:
  - (a) the issuer of the securities;
  - (b) if the issuer is a body corporate:
    - (i) each person who is a director of that body corporate when the prospectus is published;
    - (ii) each person who has authorised himself or herself to be named and is named, in the prospectus as a director or as having agreed to become a director of that body corporate either immediately or at a future time;

- (c) if the case involves an offer of securities to the public, the offeror of the securities, if this is not the issuer;
- (d) if the case involves the admission to trading of securities, the person seeking admission, if this is not the issuer;
- (e) the guarantor of the issue of securities to which the prospectus relates.

*All other securities*

3. (1) This paragraph applies to a case in which the prospectus relates to securities that are not securities to which paragraph 2 applies.
- (2) In a case to which this paragraph applies, each of the following persons is, subject to the other provisions of this Schedule, responsible for the prospectus:
- (a) if the case involves an offer of securities to the public, the offeror of the securities;
  - (b) if the case involves the admission to trading of securities, the person seeking admission;
  - (c) if there is a guarantor in respect of the issue, the guarantor in respect of statements included in, or information omitted from, the prospectus that relate to the guarantor or the guarantee given by the guarantor.

*Issuer not responsible if it has not authorised offer or admission to trading*

4. An issuer is not responsible for a prospectus under paragraph 2(2)(a) or (b) unless the issuer has made or authorised the offer of securities to the public or the application for admission to trading in relation to which the prospectus was published.

*Publication without director's consent*

5. A person is not responsible for a prospectus under paragraph 2(2)(b)(i) if it is published without his or her knowledge or consent and on becoming aware of its publication he or she, as soon as practicable, gives reasonable public notice that it was published without his or her knowledge or consent.

*Offeror not responsible in certain circumstances*

6. A person is not responsible for a prospectus under paragraph 2(2)(c) if—
  - (a) the issuer is responsible for the prospectus in accordance with this Schedule,
  - (b) the prospectus was drawn up primarily by the issuer, or by one or more persons acting on behalf of the issuer, and
  - (c) the offeror is making the offer in association with the issuer.



GIVEN under my Official Seal  
19 July, 2019.

PASCHAL DONOHOE,  
Minister for Finance.

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