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Credit Institutions (Financial Support) Act 2008

Government of Ireland

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Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

ARRANGEMENT OF SECTIONS

Section

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[No. 18.] *Credit Institutions (Financial Support) [2008.]
Act 2008.*

ACTS REFERRED TO

Central Bank Act 1942	1942, No. 22
Central Bank Act 1997	1997, No. 8
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Companies Act 1963	1963, No. 33
Companies Acts	
Competition Act 2002	2002, No. 14
Finance Act 1970	1970, No. 14
Finance Act 1993	1993, No. 13
National Development Finance Agency Act 2002	2002, No. 29
National Treasury Management Agency Act 1990	1990, No. 18



Number 18 of 2008

CREDIT INSTITUTIONS (FINANCIAL SUPPORT) ACT 2008

AN ACT TO PROVIDE, IN THE PUBLIC INTEREST, FOR MAINTAINING THE STABILITY OF THE FINANCIAL SYSTEM IN THE STATE AND FOR THAT PURPOSE TO PROVIDE FOR FINANCIAL SUPPORT BY THE MINISTER FOR FINANCE IN RESPECT OF CERTAIN CREDIT INSTITUTIONS, TO AMEND THE COMPETITION ACT 2002 AND OTHER ENACTMENTS, AND TO PROVIDE FOR CONNECTED MATTERS.

[2nd October, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Interpretation.

“Central Bank” means the Central Bank and Financial Services Authority of Ireland;

“credit institution” has the meaning it has in the Central Bank Act 1997;

“financial support” includes a loan, a guarantee, an exchange of assets and any other kind of financial accommodation or support;

“Governor” has the meaning it has in section 2 (inserted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942;

“Minister” means Minister for Finance;

“Regulatory Authority” has the meaning it has in section 2 (inserted by section 3 of the Central Bank and Financial Services Authority of Ireland Act 2003) of the Central Bank Act 1942;

“subsidiary”, in relation to a credit institution, has the meaning it has in section 155 of the Companies Act 1963.

2.—(1) The Minister has, in the public interest, the functions provided for under this Act because, after consulting the Governor and the Regulatory Authority, the Minister is of the opinion that—

Functions performed in the public interest.

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- (a) there is a serious threat to the stability of credit institutions in the State generally, or would be such a threat if those functions were not performed,
- (b) the performance of those functions is necessary, in the public interest, for maintaining the stability of the financial system in the State, and
- (c) the performance of those functions is necessary to remedy a serious disturbance in the economy of the State.

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

(3) Nothing in this Act prevents the performance by the Central Bank or the Regulatory Authority of its functions in relation to any credit institution.

Relevant date.

3.—In this Act “relevant date” means 30 September 2008.

Expenses of Minister.

4.—To the extent that the Minister incurs any expenditure not met in accordance with *section 6*, the expenditure shall be paid out of the Central Fund or the growing produce thereof.

Regulations — general implementation of this Act.

5.—(1) The Minister may, in respect of any difficulty that arises in the operation of this Act during the period of 2 years beginning on the relevant date, make regulations to do anything that appears necessary or expedient for bringing this Act into operation.

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

(3) Where the Minister proposes to make regulations under this section—

- (a) he or she shall, before doing so, consult with any other Minister of the Government that the Minister considers appropriate having regard to the functions of that other Minister of the Government in relation to the proposed regulations,
- (b) he or she shall cause a draft of the proposed regulations to be laid before each House of the Oireachtas, and
- (c) he or she shall not make the regulations unless and until a resolution approving of the draft has been passed by each such House.

Provision of financial support for credit institutions.

6.—(1) As and from the relevant date, the Minister may provide financial support in respect of the borrowings, liabilities and obligations of any credit institution or subsidiary which the Minister may specify by order having regard to the matters set out in *section 2*, the extent and nature of the obligations (including the degree of control over possible abuse of the financial support) undertaken and which

might be undertaken in the future and the resources available to him or her in that behalf.

(2) In *subsection (1)* a reference to borrowings, liabilities and obligations includes borrowings, liabilities and obligations to the Central Bank or any person.

(3) Financial support shall not be provided under this section for any period beyond 29 September 2010, and any financial support provided under this section shall not continue beyond that date.

(4) Financial support may be provided under this section in a form and manner determined by the Minister and on such commercial or other terms and conditions as the Minister thinks fit. Such provision of financial support may be effected by individual agreement, a scheme made by the Minister or otherwise. Without prejudice to the Minister's discretion as to such conditions, all financial support provided shall so far as possible ultimately be recouped from the credit institution or subsidiary to which the support was provided.

(5) Where the Minister proposes to make a scheme under *subsection (4)*—

(a) he or she shall cause a draft of the proposed scheme to be laid before each House of the Oireachtas, and

(b) he or she shall not make the scheme unless and until a resolution approving of the draft has been passed by each such House.

(6) Without prejudice to *subsection (4)*, the conditions under which the Minister provides financial support under this section may include conditions regulating the commercial conduct of the credit institution or subsidiary to which the support is provided, and in particular may include conditions to regulate the competitive behaviour of that credit institution or subsidiary.

(7) The Minister may, as a condition of providing financial support to a credit institution or subsidiary under this section, require the credit institution or subsidiary to fulfil the requirements for the time being imposed by the Central Bank or equivalent authority (including those in relation to the conduct of its business and its competitive behaviour) and to continue to do so.

(8) A condition referred to in this section—

(a) may, where financial support is provided to a credit institution under this section, regulate the commercial conduct of a subsidiary (whether or not financial support is being provided to the subsidiary), and

(b) may, where financial support is provided under this section to a subsidiary of a credit institution, regulate the commercial conduct of the credit institution or another subsidiary (whether or not financial support is being provided to the credit institution).

(9) The Minister may subscribe for, take an allotment of or purchase shares and any other securities in a credit institution or subsidiary to which financial support is provided under this section on such terms as the Minister sees fit.

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(10) The Minister may withdraw or revoke financial support provided to a credit institution or a subsidiary under this section in accordance with the terms or conditions of the financial support as the Minister thinks fit.

(11) For the purposes of this section, the Minister may, whenever and so often as he or she thinks fit, create and issue securities—

- (a) bearing interest at such rate as he or she thinks fit, or no interest,
- (b) for such cash or non-cash deferred consideration as he or she thinks fit, and
- (c) subject to such terms and conditions as to repayment, repurchase, cancellation and redemption or any other matter as he or she thinks fit.

(12) All money to be paid out or non-cash assets to be given by the Minister under this section may be paid out of the Central Fund or the growing produce thereof.

(13) Money paid by a credit institution or subsidiary to the Minister, or any non-cash consideration received by the Minister from such credit institution or subsidiary, is to be paid into, or disposed of for the benefit of, the Exchequer in connection with the performance of his or her functions under this section or for any other purpose in such manner as the Minister thinks fit.

(14) Where financial support has been provided under this section to a credit institution or subsidiary, the Minister—

- (a) shall from time to time review the necessity for the financial support, and
- (b) if he or she is satisfied, having regard to the considerations set out in *section 2*, that the financial support is no longer necessary, shall withdraw the financial support.

(15) As soon as practicable after the end of 2009 and each year thereafter, the Minister shall lay a report before each House of the Oireachtas for the purpose of informing the members of each House on the situation with regard to any financial support provided under this section. The report shall give particulars of—

- (a) the aggregate amount of payment and the amount (if any) repaid to the Minister on foot of the payment, and
- (b) the aggregate amount of money that was outstanding at the end of that year on foot of such financial support.

(16) The publication of the reports required by *subsection (15)* shall be taken as satisfying any obligation of the Minister under Regulation 3 of the European Communities (Financial Transparency) Regulations 2004 (S.I. No. 693 of 2004).

(17) A reference in section 99(2) of the Companies Act 1963 to a charge shall be taken not to include any charge to secure a liability or obligation arising under this section created by a credit institution or subsidiary in favour of the Minister or any agent of the Minister (including the National Treasury Management Agency) or the Central Bank. Section 99 of that Act shall not apply to any such charge.

(18) Notwithstanding any provision in the memorandum or articles of association of a credit institution or subsidiary that provides for the keeping of a register of charges created by that credit institution or subsidiary, a charge of a kind referred to in *subsection (17)* shall not be entered in that register.

(19) In *subsection (18)* “articles of association” shall, in the case of a body corporate that is not a company within the meaning of the Companies Acts, be taken to include any other instrument constituting or defining its constitution, including bye-laws.

7.—(1) This section applies to a merger or acquisition (within the meaning of section 16 of the Act of 2002) that involves a credit institution or subsidiary where the Minister—

Modification of application, etc., of certain provisions of Competition Act 2002.

- (a) after such consultation with the Central Bank and the Regulatory Authority as the Minister considers necessary, is of the opinion that—
 - (i) the proposed merger or acquisition is necessary to maintain the stability of the financial system in the State, and
 - (ii) there would be a serious threat to the stability of that system if the merger or acquisition did not proceed, and
- (b) certifies in writing to the parties to the merger or acquisition, the Competition Authority and the Governor that he or she is of that opinion.

(2) Notwithstanding anything in the Act of 2002, a notification of a merger or acquisition to which this section applies shall be given to the Minister and not to the Competition Authority.

(3) A determination, that a merger or acquisition to which this section applies may be put into effect, is referred to in this section as an approval.

(4) A merger or acquisition to which this section applies and which has been notified to the Minister shall not be put into effect unless and until the Minister has made a determination in relation to the merger or acquisition under this section.

(5) Where the Minister is of the opinion that in order to consider a merger or acquisition to which this section applies he or she requires further information, he or she may by notice require any one or more of the undertakings concerned to supply, within a specified period, specified information. An undertaking shall comply with such a direction.

(6) On receipt of a notification under *subsection (2)*, the Minister—

- (a) shall consult urgently with the Minister for Enterprise, Trade and Employment, the Governor, the Central Bank and the Competition Authority,
- (b) shall publish the notification in any way the Minister thinks fit, and

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(c) shall invite the making, in accordance with procedures provided for in the regulations, of submissions on the notification.

(7) The Governor and the Competition Authority shall provide any advice, information and assistance that the Minister reasonably requires for the purposes of making a decision on a notification under *subsection (2)*.

(8) The Minister may appoint a suitably qualified person as a competition advisor for the purposes of assisting with the consideration of a notification under *subsection (2)*.

(9) Any person affected by a proposed merger or acquisition to which this section applies may make a submission to the Minister in relation to the proposed merger or acquisition.

(10) The Minister shall make a decision whether to approve a merger or acquisition to which this section applies as soon as reasonably practicable after he or she receives the notification under *subsection (2)* for its approval.

(11) The Minister shall approve a merger or acquisition to which this section applies if, in the Minister's opinion, the result of the merger or acquisition will not be to substantially lessen competition in markets for goods or services in the State and, accordingly, that the merger or acquisition may be put into effect.

(12) The Minister may approve a merger or acquisition to which this section applies even if he or she forms the opinion that the result of the merger or acquisition will be to substantially lessen competition in markets for goods or services in the State but that the merger or acquisition is necessary having regard to any or all of the following:

- (a) maintenance of the stability of the financial system in the State;
- (b) the need to avoid a serious threat to the stability of credit institutions;
- (c) the need to remedy a serious disturbance in the economy of the State.

(13) The Minister, after considering a notification under *subsection (2)*, may—

- (a) approve the merger or acquisition with or without conditions, or
- (b) refuse to approve the merger or acquisition.

(14) In determining any conditions to be imposed in relation to a merger or acquisition, the Minister shall have regard to the effect of the merger or acquisition in the market for goods or services in the State, the maintenance of the stability of the financial system in the State, the need to avoid any serious stress in the stability of credit institutions and the need to remedy a serious disturbance in the economy of the State. In particular the Minister may impose such conditions as he considers appropriate to facilitate competition in the markets for those goods and services having regard to the aforesaid matters.

(15) Sections 4(8) and 5(3) of the Act of 2002 shall apply to a merger or acquisition to which this section applies and, accordingly, for that purpose references in those provisions to Part 3 of the Act of 2002 shall be read as references to this section.

(16) Part 3 of the Act of 2002 applies in relation to a merger or acquisition to which this section applies with—

- (a) the modifications specified in *subsection (17)*,
- (b) any other necessary modifications, and
- (c) any adaptations of that Part's provisions made by regulations under *section 5*.

(17) The modifications mentioned in *subsection (16)(a)* are—

- (a) references to the Competition Authority in sections 16, 18, 20 and 26 shall be read as references to the Minister;
- (b) sections 17, 19, 21, 22, 23, 24, 25 and 27 shall be disregarded;
- (c) so much of section 20 provision for the matters contained in which are made by this section shall be disregarded;
- (d) the following definition shall be substituted for the definition of “determination” in section 26:

“ ‘determination’ means an approval of the Minister for Finance under *section 7* of the *Credit Institutions (Financial Support) Act 2008*;”.

(18) References in the Act of 2002 to Council Regulation (EEC) No. 4064/89 on the control of concentrations between undertakings should be read as references to Council Regulation (EC) No. 139/2004 on the control of concentrations between undertakings.

(19) The Minister may make regulations to determine the procedures to be followed in making submissions under this section, including, without limit to the generality of the foregoing—

- (a) the form and type of submissions to be made to the Minister,
- (b) the appointment of representatives of persons having substantially the same interests,
- (c) the means by which confidential information is to be protected from public disclosure.

(20) In this section “Act of 2002” means the Competition Act 2002.

8.—(1) The First Schedule to the National Treasury Management Agency Act 1990 is amended by—

Consequential amendments of other Acts.

- (a) the deletion of “and” before paragraph (*m*); and
- (b) the addition after paragraph (*r*) of:

[No. 18.] *Credit Institutions (Financial Support) [2008.] Act 2008.*

“and

(s) *subsections (1) to (11) of section 6 of the Credit Institutions (Financial Support) Act 2008*”.

(2) Section 54 of the Finance Act 1970 is amended by inserting after subsection (7B) (inserted by the National Development Finance Agency Act 2002):

“(7C) The Minister for Finance may engage in such transactions of a normal banking nature with any person—

(a) in connection with the performance of his or her functions under *section 6 of the Credit Institutions (Financial Support) Act 2008*, and

(b) for the purpose of the better management of any indebtedness incurred by the Minister under that section,

and may for the purpose of those transactions issue such funds from the Exchequer as the Minister for Finance considers appropriate. The expenses and other costs incurred by the Minister for Finance in connection with or arising out of those transactions shall be charged on the Central Fund or the growing produce thereof.”.

(3) The First Schedule to the National Treasury Management Agency Act 1990 is amended by inserting the following after paragraph (gggg) (inserted by the National Development Finance Agency Act 2002):

“(ggggg) *section 54(7C) (inserted by the Credit Institutions (Financial Support) Act 2008) in so far as that section relates to the engagement in certain transactions of a normal banking nature) of the Finance Act 1970.*”.

(4) Section 138 of the Finance Act 1993 is amended by inserting, after subparagraph (iv) of subsection (1)(b):

“(v) any securities or financial instrument determined by the Minister as permissible on such terms and conditions as the Minister may determine.”.

Short title.

9.—This Act may be cited as the *Credit Institutions (Financial Support) Act 2008*.