

### 3.1 CHAPTER I : Introductory Provisions

**Heads 1 to 6** are the usual citation, commencement, regulations, penalties and repeal clauses found in most legislation. Whereas these usually do not call for any special comment, particular mention is warranted for **Heads 4 and 6**.

Banking Business is defined essentially as the taking of deposits. There is, however, no Irish legal definition of what constitutes a deposit. As the savings market becomes more competitive, the distinction between deposits and other forms of investment is becoming more blurred and the lack of a legal definition of a deposit is causing concern. This anomaly caused particular concern during a recent successful prosecution of a finance company by the Central Bank. **Head 4** provides for such a definition to be incorporated into Irish law by means of an amendment to Section 27 of the 1971 Act. **Head 6** provides for the repeal of sections 12, 13, and 14 of the Central Bank Act, 1942. These sections deal with "associated Banks" and as this term no longer applies these sections are not required.

### 3.2 CHAPTER II : Payment Systems

The powers of the Central Bank to oversee the collection of cheques and other payable orders by licensed banks are contained in section 26 of the Central Bank Act, 1971. While these powers have been of service, they are limited in scope to licensed banks and to the terms and conditions and rates of charges applied to the collection of such cheques and instruments. The Central Bank has no role in the approval of payment systems nor a direct right of supervision and intervention. The Bank is particularly concerned to ensure that payment systems in the State are effective, efficient and open and that the systems themselves do not add to, or cause, instability in the operation of financial markets.

The growth of international trade, the size of daily settlements, the increased use of electronic payments and

the volatility of trade flows have caused individual central banks to take steps to address the various risks arising in their own domestic payment systems, in particular the risk of default, breakdown and liquidity shortage which would have grave implications for the security and stability of the banking system.

Similar steps are now required in Ireland, particularly for large-value transactions. The current payments system, which has served well to date, is not properly equipped to respond adequately to the increasing pace of change in money transmission services. Discussions on the restructuring of the current system have been ongoing for some time and are at an advanced stage.

**Heads 7 to 25** provide for the supervision of the establishment and operation of payment systems in the State. Briefly, these provisions will require all payment systems (including RTGS - see paragraph 3 above) to be approved of, and have their rules vetted by, the Central Bank. The Bank may impose conditions on approval, revoke approval and issue directions to the system or its members. Specifically, in approving rules, the Bank must have regard to the equity and openness of the system. In circumstances where the Bank proposes to refuse or revoke approval, an appeal may be made to the Minister. This will complement the capacity of the Competition Authority and the European Commission to examine the competitiveness of any proposed arrangements (the Authority and the Commission have already cleared, the current system from a competitiveness point-of-view).

The Heads are modelled on existing provisions in the Central Bank Act, 1989, dealing with the supervision by the Bank of financial futures and options exchanges.

**Head 25** replaces Section 7 of the Central Bank Act, 1942, which lists specific powers of the Bank. It is necessary to provide the Bank with specific powers relating to its increased involvement with payment systems. The opportunity is also taken to express other specific

powers of the Bank in a clearer fashion to better reflect modern practice and conditions.

- 3.3 **Head 26** is a technical provision to allow the Minister transpose into Irish law an EU Directive on Cross Border Payments. The Minister has stated that he intends to implement the Directive in Ireland as soon as possible after its agreement.
- 3.4 CHAPTER III : Power to form or acquire a subsidiary body  
**Head 27** proposes to give authority for the formation or acquisition of subsidiary bodies by the Bank. A number of other central banks enjoy such a facility. The provision is an enabling one only, and the exercise of this power by the Bank will require the prior permission of the Minister for Finance, whose approval will be necessary for the terms of the Memorandum and Articles of Association of any such company. The functions of any subsidiary company established or acquired under the terms of this Head will be restricted to those of the Bank, and any guidelines or obligations applicable to the Bank will also apply to such companies.
- 3.5 CHAPTER IV : Functions & Duties of the Governor.  
The Draft legislation addresses the question of accountability of the Bank to the Oireachtas. At present, the Bank's annual financial accounts are audited by the Comptroller and Auditor General and, together with his report thereon, must be laid before each House of the Oireachtas (Central Bank Act, 1989). The Bank is also required to prepare an annual report of its proceedings in each year and to send it to the Minister for presentation to both Houses of the Oireachtas (Central Bank Act, 1989). A Deputy can table a motion for a debate on the Report.

The view was expressed in the Dáil that the Central Bank should be directly accountable to an Oireachtas Committee. The Minister fully supported this view. This issue raised two concerns, namely, the need to safeguard the independence of the Bank and to maintain its legal obligations on non-disclosure of information. It was

decided that the Governor should be obliged to appear before the Finance & General Affairs Committee of the Dáil once a year. This Committee was chosen as it is not subject to restrictions in relation to matters of policy as is the Public Accounts Committee (PAC).

To facilitate this decision, the Minister made an Order in 1994 which excluded the Bank from examination by the PAC. This Order amended the terms of reference of the Finance & General Affairs Committee to allow it invite the Governor to appear before it once a year. The Governor agreed at the time that he would accede to any such invitation on a voluntary basis. This informal procedure was to remain in place until such time as the Minister can legislate for a more formal one, as he now proposes to do.

**Head 28** provides therefore that, with due regard to the independence of the Central Bank, the Governor shall, if so requested, attend before the Finance & General Affairs Committee and furnish that Committee with any information requested. This statutory obligation on the Governor will replace the informal arrangement described above and the terms of reference of the Committee will have to be amended accordingly.

This provision is complementary to the Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities) Bill, 1995 as, under that Bill, the Finance and General Affairs Committee will not be empowered to compel attendance.

- 3.6 Sections 19 and 20 of the Central Bank Act 1942 prohibit the Governor of the Central Bank from being a director of or holding shares in a licensed bank. **Head 29** proposes to extend this prohibition to all commercial credit institutions and financial institutions, in view of the Bank's new role in supervising a wide range of other financial institutions under recent legislation e.g. the Building Societies, TSB, ACC, and ICC Acts, as well as the Stock Exchange and Investment Intermediaries Acts.

The Head makes it clear that the prohibition does not apply to the Governor being a member of the European Monetary Institute. Furthermore, the prohibition does not apply to shares held by the Governor in any commercial credit or financial institution by means of an insurance policy, ordinary savings account with a building society, or units in other collective investment schemes purchased by him.

### 3.7 CHAPTER V : Miscellaneous Provisions

This Chapter proposes amendments to a number of provisions of the Central Bank Acts, 1942 to 1989, the Cheques Act, 1959, the Building Societies Act, 1989 and the Bills of Exchange Act, 1882. The amendments are being proposed for a variety of reasons which are explained below.

3.8 **Head 30** proposes to extend the existing powers, as set out in section 8 of the 1942 Act, to empower the Bank to assist the Central Statistics Office in the collection, compilation, analysis or interpretation of balance of payments, national accounts or any other financial statistics, and including, where appropriate, the actual collection of data for this purpose. The provisions of the 1989 Act in regard to confidentiality are extended in Head 38 to allow the Bank to provide information required by the Central Statistics Office in this regard.

3.9 **Head 31** proposes to amend section 28(2) of the Central Bank Act, 1942 transferring responsibility for notifying the Minister of vacancies on the Board from the Board to the Secretary of the Bank.

3.10 **Head 32** proposes to allow banks from States outside the EU to establish representative offices in the State. Such offices may not accept deposits in the State or provide banking services and may only provide advice and information on the services which are provided from outside the State by the banks in question. There is no need to cater for the establishment of representative offices by EU banks as such banks already may do so as a result of the implementation of the relevant banking

directives. The existing law is unclear about the status of non-EU representative offices. Such offices are common in other member States and are a feature of all the main international financial centres. Apart from helping to fulfil our GATT obligations, the Head will open up the facility of a representative office to major US, Japanese and other non-EU banks wishing to establish a presence in the IFSC but who may not wish to seek a banking licence in the State.

- 3.11 **Head 33** proposes an amendment to section 11 of the Central Bank Act, 1971, to allow the Central Bank to revoke a banker's licence if the bank organises its business or corporate structure in such a way as to avoid or escape effective supervision by the Bank. This amendment caters for the lacuna in prudential supervision shown up by the BCCI affair in the UK.

BCCI organised its operations so as to divide them among a number of States and thus avoid and confound effective financial supervision by any one particular State. The report by Lord Bingham on the BCCI collapse has recommended a change in the UK along the lines provided for in this Head and the European Commission has signalled its intention to amend the existing banking directives to the same effect.

- 3.12 **Head 34** provides for the extension of the facility to issue bonds to all credit institutions as opposed to "a holder of a licence" provided for in Section 48(3) of the Central Bank Act 1971. It is desirable to extend this definition in the interests of consistency with the wider supervisory role of the Bank.

- 3.13 **Head 35** proposes a technical and clarifying amendment to Section 51 of the act of 1971 which provided relief to the Bank of Ireland from certain restrictions imposed by its Charter and by legislation. This amendment, requested by the Bank of Ireland, proposes to eliminate confusion as to the Bank of Ireland's ability to change its objects and powers.

3.14 Sections 23(5) and 25(d) of the 1942 Act require that the directors of the Central Bank must on appointment be, and remain, "ordinarily resident in the State". While the Attorney General's Office has advised that it might be possible to put up reasonable arguments of public policy to defend the retention of this requirement, the Minister feels that, in present day circumstances, the retention of such an outright embargo is no longer appropriate.

Accordingly, **Head 36** provides for the deletion of the residence qualification. No residence qualification applies in the case of the Governor. Even if the prohibition is removed, there is nothing in practice to preclude the Government from deciding as a matter of policy that only persons resident here should be considered for appointment.

3.15 **Head 37** relates to the tenure of office of the directors of the Bank. At present, section 24 of the Central Bank Act, 1942, prescribes a term of office of 5 years from the expiry of the term of office of the previous incumbent. Where a new director is appointed during the term of office of his predecessor, the term lasts only until the term of office of his predecessor would have expired. These provisions are unnecessarily cumbersome and have led to difficulties and uncertainty in practice if there has been a delay in filling a vacancy.

The Head provides that a uniform term of office of 5 years from date of appointment will apply to all directors including the current directors. In the case of a service director on the Board, that director will have no set period of office but will hold office at the pleasure of the Minister and may be removed at any time. The only current service director is the Secretary of the Department of Finance.

3.16 **Head 38** proposes a number of amendments to section 16 of the Central Bank Act, 1989, (which relates to non-disclosure of information by the Bank). Various amendments facilitate the disclosure of information in relation to circumstances of the conveyance of

statistical information to the Central Statistics Office, the disclosure by the Bank of information received from another regulatory authority where that authority has given permission, the ability of the Bank to request information from entities it supervises in response to requests for such information from regulatory authorities outside the State, the Bank's obligations under the money laundering provisions of the Criminal Justice Act, 1994, and the conveyance of information to the European Monetary Institute in accordance with the Maastricht Treaty.

3.17 **Head 39** seeks to apply the duties of auditors as set out in section 47 of the 1989 Act to all entities, financial institutions, exchanges and moneybroking businesses supervised by the Bank.

3.18 **Heads 40 and 41** propose amendments to sections 75 and 76 of the 1989 Act. These sections require that any person proposing to acquire 10% or more of the shares of an Irish bank must obtain the prior approval of the Central Bank. If no such approval is sought or obtained, any acquisition is null and void and title to the shares involved does not pass to the new holder. Head 40 provides that in all cases a person can apply to the High Court to seek relief from the null and void provision where the failure to get the Bank's prior approval for an acquisition arose from inadvertence or oversight and where the circumstances are such that, had the Bank been notified in time, it would have given its approval.

3.19 **Head 42** proposes to amend section 90 of the 1989 Act which relates to the supervision by the Central Bank of firms established in the International Financial Services Centre (IFSC). Under the existing legislation, Central Bank supervision commences when the tax certificate is issued by the Minister. However, several firms operate in the Centre in advance of receiving the certificate and the Bank has asked that the 1989 Act be amended, as provided for in this Head, to allow the Bank to enforce its supervision from an earlier date specified by the Bank e.g. the date on which a firm's application to set



up in the Centre is accepted. The Minister believes that this is a sensible proposal. The practice whereby firms are approved in principle and start operations prior to certification has become well established and the supervisory law must recognise that fact.

- 3.20 **Heads 43, 44 and 45** also deal with supervision in the IFSC. Head 43 provides that the Minister may, by Order, exempt certain firms or services in the Centre from supervision by the Bank (e.g. accountants, lawyers etc). Head 44 proposes to allow the Bank itself to exempt certain firms or services from the application of supervisory requirements in part or in full where the application of such requirements is not practicable or necessary to safeguard the public or the reputation of the Centre. Head 45 provides that, where a firm in the IFSC has had its certificate withdrawn, it will, nonetheless, remain subject to supervision and direction by the Central Bank until it has discharged its liabilities in whole or in part to the satisfaction of the Bank.
- 3.21 **Head 46** proposes to amend section 104 of the Central Bank Act, 1989, which relates to the publication of prospectuses by the promoters of any new financial futures or options exchange in the State. The Head will empower the Bank to require any such promoter to put a "health warning" on the prospectus to the effect that, if such be the case, the exchange has not yet been approved by the Bank and that such approval should not be taken for granted.
- 3.22 **Head 47** provides for an amendment to section 139 of the Central Bank Act, 1989, to enable the Central Bank to engage in the provision of settlement facilities for the buying and selling of securities and other instruments by financial institutions and to act as a depository or custodian of such securities and instruments.
- 3.23 **Head 48** proposes to amend section 38(3) of the Building Societies Act, 1989 to extend the requirement to supply the Minister for the Environment with information and

returns for the purposes of his functions in relation to the national housing programme to all credit institutions and mortgage lenders.

3.24 **Head 49** proposes an amendment to the Bills of Exchange Act, 1882, and the Cheques Act, 1959, to confer legal status on cheques marked "account payee only". Such cheques may only be paid into the account of the payee and not otherwise cashed or transferred. The Head provides an indemnity to banks arising from any refusal to cash the cheque or to transfer the cheque to another in pursuance of an endorsement on the cheque to that effect.

The provisions in Head 49 have been requested by the Insurance Industry Federation (IIF) on foot of a similar change in the law in the UK. The IIF wishes to ensure that cheques made out to policyholders and transmitted via insurance brokers etc. must be handed on to the client and cannot be converted in any way to the use of the intermediary. The Federation believes that this is a basic safeguard for the ordinary investor and will reduce considerably the fraudulent conversion of clients' money. The Minister supports this as a laudable objective.

3.25 In a number of countries there exists a provision in law called the 'zero-hour rule' whereby a liquidator of a defaulting bank can ask the courts to set aside all financial transactions and payments made by the bank between the time the liquidator was appointed and the previous midnight (zero hour). Among EU authorities there is a general concern to involve the central bank at an early stage so as to limit the potential damage to payment systems of any such rulings. There is no precedent for such a ruling in Ireland but it is not precluded. **Head 50** proposes to facilitate the protection of the payments system in the event of a liquidation by requiring that the Bank be notified of any petition for winding up before the petition is presented.

3.26 **Head 51** provides for the re-enactment of section 66 of the Currency Act, 1927, which allows the Central Bank to

collect interest at 1½% from former banks of issue on a certain proportion of old pre-1927 bank notes still outstanding. The banks in question are the four former "associated" banks. The amount of interest is small, approximately £10,000 p.a., but, as section 66 of the 1927 Act was inadvertently repealed, the Bank wishes to restore the position to what it was prior to 1989.

- 3.27 Article 104 of the Treaty on European Union prohibits monetary financing of the public sector by central banks. The Article has direct effect in Ireland since 1 January 1994. Heads 52 to 57 are required to delete provisions in Irish law which conflict with that prohibition as they appear to permit lending by the Central Bank of Ireland to the Minister for Finance.
- 3.28 Head 58 provides that no employee or member of the Board of the Bank will be liable for damages for anything done or omitted in the discharge of duty unless it is shown that the omission or act was in bad faith. This provision is similar to ones incorporated in the recent Stock Exchange and Investment Intermediaries Acts and is designed to bring the Central Bank Acts into line with those enactments.
- 3.29 Head 59 is consequential to Head 4 and also provides for an adjustment of the definition of 'Banking Business' to Section 29 of the 1989 Act.
- 3.30 A recent prosecution by the Bank against a finance company, although successful, highlighted a weakness in the Bank's powers. The offence related to the advertising for deposits by a company which had no authorization to do so. A substantial delay occurred between the date on which the advertisement was first noted by the Bank and the final hearing of the prosecution, during which time the Bank had no power to prohibit the company from accepting deposits. Head 60 seeks to overcome this delay by providing for the conferring on the Bank of a statutory power to apply to the civil Courts for an injunction in respect of the taking of, or advertising for, deposits by a person not

licensed or authorised to do so under the Central Bank, Building Societies, TSB, ACC or ICC Acts.

- 3.31 **Head 61** provides for the last stage of the implementation of the European Communities (Deposit Guarantee Schemes) Regulations, 1995. Optional exclusions, contained in Annex 1 to the Deposit Guarantees Directive, require primary legislation and thus could not be implemented by the Regulations in July 1995.
- 3.32 The Investment Intermediaries Act, 1995, conferred on the Bank and the Department of Enterprise & Employment strong powers of inspection of investment business firms. This measure was designed as a reaction to the growing number of firms engaging in non-legitimate investment business. The banking sector does not have comparable regulation of potentially illegal deposit takers and there is a genuine concern that some firms, particularly those which heretofore operated investment business, may turn their attention to the banking area where they may perceive a legislative weakness. **Head 62** proposes to confer on the Bank, the same powers of inspection as provided for in the Investment Intermediaries Act, 1995.
- 3.33 In order to facilitate separate arrangements to make the Bank accountable to the Committee on Finance & General Affairs (see paragraph 11 above) the Minister made an Order under Section 21 of the Comptroller and Auditor General (Amendment) Act, 1993, which had the effect of excluding the Bank from examination by the Public Accounts Committee. This Order, in turn, had the unintended effect of removing the Bank from the list of bodies subject to the value-for-money audit under the Act. **Head 63** provides for the Bank to be subject to such audits.

**The purpose of the appended amendments is to:**

- (a) amend the Building Societies Act, 1989, to provide for the more equitable treatment of certain joint account holders in regard to the issue of free shares and the distribution of funds on any future conversion of a building society into a company;
- (b) amend the Central Bank Act, 1989, to allow the Central Bank to disclose information in respect of banks, as well as of building societies as at present, to the Minister for the Environment in relation to the national housing programme.

**Background**

- (a) The need to amend the Building Societies Act in relation to the treatment of joint account holders arises from experience with the conversion of the Irish Permanent. There was controversy regarding a number of joint account holders who did not qualify for free shares because of the order of the names on an account or shareholding following death or marriage of a joint account holder, even though the joint account would have otherwise met the relevant qualifying criteria, in particular being a shareholder for two years. The Ombudsman for the Credit Institutions in his Report for 1995 has called for amendment of the 1989 Act to take care of such cases in the context of future conversions of building societies. The Council for the Status of Women (now the National Womens' Council) were also critical of the treatment of these joint account holders in the context of the Irish Permanent conversion.

The Department of the Environment in consultation with the Central Bank and the building societies has examined the relevant provisions of the Act. The amendments now proposed would permit second named joint shareholders, if they were otherwise eligible, to qualify for free shares and distributions in future conversions in the following circumstances:

- (a) following the death of the first-named holder;
- (b) on the creation of a joint account (for example, on marriage);
- (c) on the division of a joint account (for example, on divorce or separation); or
- (d) where there was a change in the order of names within an account.

These changes mirror similar amendments which were made to UK building society legislation in 1995.

The proposed head relates to future conversions. This is the approach recommended by the Central Bank and the Ombudsman for the Credit Institutions. It is also the position adopted in the UK. However, there is likely to be some pressure for retrospection. Any constitutional obstacles that may arise and the possibilities open to making the proposed amendment retrospective, and so applicable to the Irish Permanent conversion, can, if

necessary, be examined in consultation with the Attorney Generals Office in the course of the drafting of the Bill.

The Department of the Environment is not aware of any impending conversion of a building society. However, it would not be prudent to await an indication of such conversion as emergency legislation could lead to speculative investment in the society.

- (b) The proposed amendment in relation to disclosure of information by the Bank to the Minister for the Environment arises as a consequence of the fact that banks now account for a significant share of the mortgage market. This amendment would allow the Bank to disclose information to the Minister for the Environment in respect of banks where it concerns his functions in relation to the national housing programme. The Bank is already permitted to disclose such information to the Minister for the Environment in respect of building societies, under building societies legislation.

**Draft Heads of**  
**Central Bank Bill 1995**  
**Chapter I - Introductory Provisions**

1. Short Title
2. Construction
3. Commencement
4. Interpretation - generally
5. Laying of Orders
6. Repeals

**Chapter II - Payment Systems**

7. Definitions
8. Bank may join payment systems
9. Approval of Bank for payment systems
10. Submission of Rules to Bank
11. Approval of Rules by Bank
12. Refusal of Approval of Rules by Bank
13. Application of section 17 of the Central Bank Act, 1971
14. Failure to comply with condition of approval
15. Revocation of Approval by Bank

16. Penalties
17. Criteria for Approval of Rules
18. Amendment of section 26 of Central Bank Act, 1971
19. Powers of exemption
20. Power to charge for overseeing the System.
21. Finality of Payment in Settlement Rules
22. Security of Advances by Bank
23. Legality of Netting
24. Validity of Electronic Payments
25. Amendment of section 7 of the 1942 Act
26. Cross-border Credit Transfers

### **Chapter III - Power to form or acquire a Company**

27. Power of the Bank to form or acquire a company.

### **Chapter IV - Functions and Duties of the Governor**

28. Accountability
29. Prohibition on Governor being a director of or holding shares in commercial banks etc

### **Chapter V - Miscellaneous**

30. Amendment of section 8 of Central Bank Act, 1942
31. Amendment of section 28(2) of the Central Bank Act, 1942
32. Establishment of representative offices of credit institutions
33. Amendment of section 11 of Central Bank Act, 1971



34. Amendment of section 48(3) of the Central Bank Act, 1971
35. Amendment of section 51 of the Central Bank Act, 1971
36. Deletion of local residency requirement for Directors of Bank
37. Amendment of section 24 of Central Bank Act, 1942
38. Amendment of section 16 of Central Bank Act, 1989
39. Duties of Auditors
40. Amendment of section 75 of Central Bank Act, 1989
41. Amendment of section 76 of Central Bank Act, 1989
42. Amendment of section 90 of Central Bank Act, 1989
43. Amendment of section 91 of Central Bank Act, 1989
44. Amendment of section 92 of Central Bank Act, 1989
45. Application of provisions of Chapter VII of the Central Bank Act, 1989
46. Amendment of section 104 of Central Bank Act, 1989
47. Amendment of section 139 of Central Bank Act, 1989
48. Amendment of section 38 of the Building Societies Act, 1989
49. Amendment of Bills of Exchange Acts, 1882 to 1989 and the Cheques Act, 1959
50. Amendment of section 49 of the Central Bank Act, 1989
51. Re-enactment of section 66 of Currency Act, 1927
52. Amendment of the Bretton Woods Agreements Act, 1957
53. Amendment of the International Finance Corporation Act, 1958
54. Amendment of the International Development Association Act, 1960
55. Amendment of the European Bank for Reconstruction and Development Act, 1991
56. Amendment of the Multilateral Investment Guarantee Agency Act, 1988

57. Repeal of Regulation (5) of the European Communities (State Financial Transactions) Regulations 1972.
58. Immunity in respect of statutory functions
59. Amendment of section 29 of the Central Bank Act, 1989
60. Power of Court to prohibit contraventions of the Central Bank Act, 1971
61. Deposit Protection
62. Authorised Officers
63. Examination by Comptroller and Auditor General of economy and efficiency in use of resources and of effectiveness of certain management systems

## Central Bank Bill 1995

### Chapter I Introductory Provisions

1. This Act may be cited as the Central Bank Act, 1995.
2. This Act and the Central Bank Acts, 1942 to 1989 shall be construed together as one Act and may be cited together as the Central Bank Acts, 1942 to 1995.
3. This Act shall come into operation as and from the passing of this Act.
4. (1) In this Act -
  - "the Act of 1942" means the Central Bank Act, 1942;
  - "the Act of 1971" means the Central Bank Act, 1971;
  - "the Act of 1989" means the Central Bank Act, 1989;
  - "the Bank" means the Central Bank of Ireland;
  - "the Minister" means the Minister for Finance.
- (2) In this Act, a reference to a Part or Chapter, section or Schedule is to a Part or Chapter or section or Schedule to this Act, unless it is indicated that a reference to some other enactment is intended.
- (3) In this Act, a reference to a subsection or paragraph is to the subsection or paragraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.
- (4) In this Act, a reference to "the Treaty" means the Treaty on European Union and includes the Protocols of the ESCB and the EMI.
- (5) "Credit Institution" has the meaning assigned to it by the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992.
- (6) In this Act, "Financial Institution" means an undertaking other than a credit institution providing any one or more of the financial services set out in the Schedule to the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No 395 of 1992) and an undertaking engaged in life or non-life insurance or any insurance activity related thereto.
- (7) In the Central Bank Acts, 1942 to 1989, "deposit" means a sum of money received on terms under which it will be repaid with or without interest whether on demand or at a fixed or determinable future date.

5. Every regulation and order made under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

6. The Acts specified in the Schedule are hereby repealed to the extent specified in the third column of that Schedule.

**Chapter II**  
**Supervision of Payment Systems**

7. In this Chapter-

"Payment system" means a system established in the State, or proposed to be established in the State, by any person in which credit institutions or financial institutions participate and which provides for the processing, handling, clearance and/or settlement of any securities or any means of payment, or the payment of any moneys by that means of payment, by or as between the members of the system or third parties, whether or not the processing, handling, clearance, settlement and or payment takes place in part or in whole inside or outside the State;

"rules" in relation to a payment system or a proposed system means the rules governing or proposed to govern the membership and operation of the system.

8. The Bank may become a member of, or be a party to the establishment or operation of, a payment system.

9. After the passing of this Act, no payment system shall be established unless the persons who propose to establish the system (in this Chapter referred to as "a proposed system") have submitted the rules for such a proposed system to the Bank for approval and the Bank has approved those rules.

10.(1) Within 3 months of the passing of this Act every payment system which was established before such passing (in this Chapter referred to as "an existing system") shall -

- (a) submit its rules to the Bank for approval, or
- (b) disestablish itself.

(2) Pending a decision by the Bank to approve or not to approve of the rules of an existing system submitted to it under subsection (1)(a), the Bank may -

- (a) impose on the system such conditions or requirements as it considers appropriate to impose, or
- (b) issue a direction under section 14 as if the existing system were a system whose rules had been approved by the Bank.

11. (1)(a) Where the Bank approves the rules of an existing system or for a proposed system, it may -

- (i) make its approval subject to conditions or requirements, and
- (ii) at any time after approval, impose conditions or requirements on the system or amend or revoke any condition or requirement to which this subsection relates, whether or not previously amended by virtue of this subparagraph.

(b) Every condition or requirement imposed to which this subsection relates and every amendment thereto or revocation thereof shall be as the Bank sees fit to impose, amend or revoke in the interest of the prudent regulation of the system concerned, with due regard to the stability, efficiency, openness, competition and equity of the system; and every such condition or requirement may be imposed on either or both -

(i) that payment system, and

(ii) the members of that payment system (either collectively or individually).

(c) For the avoidance of doubt, the functions of the bank as exercised under this Section shall be without prejudice to the statutory functions of the Competition Authority and the Minister for Enterprise & Employment in relation to competition.

(d) In respect of any condition or requirement to which paragraph (a) (ii) relates, a condition or requirement shall not be imposed, amended or revoked until -

(i) the Bank has notified the system concerned of its intention to so impose, amend or revoke, and

(ii) the Bank has heard any representations made by that system or any member thereof within such time limit as the Bank may specify when notifying the system.

(2) The approval by the Bank of the rules of, or for, a payment system shall not constitute a warranty as to the solvency of the system or of any member of the system and the Bank shall not be liable in respect of any losses incurred through the insolvency or default of the system or any of its members.

(3) An application for approval of the rules of an existing payment system or for a proposed system shall be in such form and contain such particulars as the Bank may from time to time determine.

12. Whenever the Bank proposes to refuse to approve the rules of an existing system or for a proposed system -

(a) it shall notify the system or (in the case of a proposed system) the promoter of the system in writing that it intends to seek the consent of the Minister to the proposed refusal and of its reasons for the refusal and that the system or the promoter may, within the period of 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed refusal, and

(b) the system or the promoter may make such representations in writing to the Minister within the time aforesaid, and

(c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed refusal.

13. Without prejudice to the provisions of section 11, the provisions of section 17 (which relate to books and records of holders of licences) of the Act of 1971 (as amended by the Central Bank Act, 1989) shall apply as if every system to which this Chapter applies and every member of that system were the holder of a licence for the purpose of the Central Bank Act, 1942 to 1989.

14. (1) Where the Bank is satisfied that a system or any member thereof has failed or is failing to comply with a condition or requirement under Section 10(2) (a) or 11, the Bank may give a direction to -

- (a) the system to cease such activities as the Bank may specify, and
- (b) any or all of the members of the system to suspend operating as a member of the system,

for a specified period or until further notice by the Bank.

(2) (a) The system or member or members thereof to whom the direction was given under subsection (1) may apply in a summary manner to the Court for, and the Court may grant, an order setting aside the direction.

(b) The Bank may apply in a summary manner to the Court to have a direction by it under this section confirmed by the Court.

(3) The Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

(4) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part of proceedings under this section may be heard otherwise than in public.

(5) In this section "the Court" means the High Court.

15. (1) The Bank may -

(a) revoke an approval of the rules of a system if the system to whom it was granted so requests,

(b) ... revoke an approval of the rules of a system if -

(i) the system -

(I) has not commenced to operate within 12 months of the date on which the approval was granted, or

(II) has ceased operating for a period of more than one month,

(ii) being a company, the system is being wound up,

(iii) the system (being an existing system) or the promoter of a

proposed system has obtained the approval of the Bank through false statements or any other irregular means,

- (iv) the system becomes unable to meet its obligations to creditors or suspends payment lawfully due by the system or by any member thereof,
  - (c) revoke the approval if, since the grant of the approval, the circumstances relevant to the grant have changed and are such that, if an application for an approval were made in the changed circumstances, it would be refused.
- (2) Whenever the Bank proposes to revoke an approval (other than in pursuance of a request by the system to whom it was granted to do so) -
- (a) it shall notify the system concerned that it intends to seek the consent of the Minister to the revocation and of the reasons for the revocation and that the system may, within 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed revocation,
  - (b) the system may make such representations in writing to the Minister within the time aforesaid, and
  - (b) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed revocation.
- (3) Where an approval of the rules of a system is revoked and the system is not a company which is being wound up -
- (a) the system and the members thereof shall continue to be subject to the duties and obligations imposed by or under this Chapter or section 18 of the Act of 1971 until all liabilities of the system and its members have been discharged to the satisfaction of the Bank.
  - (b) the system shall, as soon as possible after the approval is revoked, notify the Bank and such other persons (if any) as the Bank indicates are to be notified of the measures being taken or proposed to be taken to discharge in full and without undue delay the liabilities of the system and the members thereof.
  - (c) in the case where -
    - (i) that system has notified the Bank in accordance with paragraph (b) and the Bank is of the opinion that the measures being taken or proposed to be taken for the purposes of that paragraph are not satisfactory, or
    - (ii) that system has not so notified the Bank and the Bank is of the opinion that the system has failed to so notify as soon as possible after the approval is revoked, or
    - (iii) the Bank is of the opinion that system has failed to take all reasonable steps to notify persons which the Bank has



indicated, under paragraph (b), are to be notified;

then the Bank may give a direction in writing to that system or to any of its members thereof for such period, not exceeding 6 months, as may be specified therein, prohibiting the system or the members thereof so directed from -

- (i) dealing with or disposing of any assets or specified assets of the system or of its members in any manner, or
- (ii) engaging in any transaction or class of transaction or specified transaction, or
- (iii) making payments,

without the prior authorisation of the Bank, and the Bank may require that system or any of its members to prepare and submit to it for its approval within two months of the direction, a scheme for the orderly discharge in full of the liabilities concerned.

- (4) (a) Where the approval of the rules of a system is revoked and the system is a company which is being wound up, the liquidator of the company shall, in addition to his duties and obligations in respect of the winding up, be subject to the duties and obligations to which the system would be subject were it a system to which subsection (3) relates and that subsection shall, for the purpose of this subsection, be construed accordingly.
- (b) Notwithstanding paragraph (a), the Bank may, where it revokes an approval and considers it appropriate in the circumstances, remove in writing the duty and obligation imposed on the liquidator concerned to comply with paragraph (b) (as construed by this subsection) of subsection (3) and may impose in writing on that liquidator such further or other duty and obligation which corresponds to that set out in the said paragraph (b).
- (c) Nothing in this subsection shall be construed as affecting any duty or obligation under this Chapter of the members of the system concerned.
- (5) The Bank shall as soon as may be after the revocation of an approval of the rules of a system publish a notice of the revocation in such manner as it thinks fit.

16. (1) Any person who contravenes section 9 or 10 and a system or a member thereof who -

- (a) commits by act or omission a breach of a condition or requirement duly imposed and which relates to the approval given by the Bank to the rules of the system, or
- (b) fails to comply with a direction under section 14 or 15,

shall be guilty of an offence and shall be liable -

- (i) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (ii) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both, and, if the contravention, breach or failure in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention, breach or failure continues after conviction in respect of the original contravention, breach or failure and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

17. In approving the rules of a payment system or in setting terms and conditions for the operation of a system the Bank may, without prejudice to any other requirement it sees fit to impose, impose requirements in relation to the criteria for membership and rules of operation of the system; the code of conduct to be followed by the members of the system; the apportionment of costs as between the members inter se or between the members and the system; and the fees, contributions or any other financial requirement whatsoever imposed or to be imposed on an existing member of the system or an applicant for membership of the system.

18. (1) Section 26 of the Central Bank Act, 1971, is hereby amended by the deletion of subsection (7) (inserted by section 42 of the Central Bank Act, 1989) and the substitution of the following

"(7) The Bank may, where it is of the opinion that the orderly and proper regulation of financial markets so requires,

(a) in the case of either or both subsections (2) and (3) of this section, apply those subsections or restrict their application to any person or class of persons, and

(b) in the case of subsection (6) of this section, amend that subsection by the addition thereto or deletion there from, of any instrument specified in that sub-section.

and, in the case of each subsection, whether or not previously affected by virtue of this subsection".

(2) In section 26 of the Act of 1971, the expression "licence holder" shall include a credit institution within the meaning of Regulation 2 of the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (SI No. 395 of 1992).

19. The Bank may exempt a payment system from the requirements of this chapter on such terms and conditions as the Bank may decide where it is of the opinion that the application of this chapter to that system is not necessary in the interest of the orderly and proper regulation of financial transactions in the State.

20. Provide an enabling section to allow the Bank to charge for the overseeing of payment systems and for providing settlement systems and facilities.
21. Payments by credit institutions across their settlement accounts at the Bank are final and irrevocable between the credit institutions concerned.
22. Collateral or securities held by the Bank against loans to credit institutions are immediately realisable in the event of a default by the borrower for whatever reason.
23. Bilateral or multilateral payment netting, settled across accounts of credit institutions at the Bank, is legally enforceable and shall, even in the event of an insolvency of a participant to the payment netting arrangements, be binding on third parties, provided the payment orders which were included in the payment netting were transmitted to the operator of the payment system or to the other participants in the netting arrangements before the opening of insolvency proceedings.
24. Notwithstanding anything to the contrary contained in any enactment relating to settlement or other accounts held at the Bank, all payment instructions and authorisations to and from the Bank shall be effective, if otherwise in order, if made through a computerised system established by the Bank or in any other electronic form and not otherwise recorded within the Bank (without the need for an instrument in writing).
25. Insert a new Section 7 of the Central Bank Act, 1942 in place of the existing section 7 as follows:
- "7-(1) It shall be lawful for the Bank to do all or any of the following things, that is to say:-
- (a) buy or sell coin or gold or silver bullion, or other precious metal, or any currency or currency units, however described;
  - (b) receive deposits;
  - (c) open accounts in other countries or act as agent, depository, or correspondent of any credit institution carrying on business in or outside the State;
  - (d) acquire, hold, or dispose of shares in any international bank formed wholly or mainly by banks which are the principal currency authority in their respective countries;
  - (e) re-discount any exchequer note or bill, local authority bill, bill of exchange or promissory note on such terms and conditions as the Bank sees fit;
  - (f) make loans or advances to credit institutions on the security of such assets and subject to such terms and conditions as the Bank sees fit;
  - (g) fix and publish from time to time the minimum rate or rates at which the Bank may re-discount any bill or debt instrument or otherwise make funds available to credit institutions;

- (h) buy, hold, or sell securities;
- (i) keep registers of securities generally;
- (j) operate or participate in any depository of securities or other instruments;
- (k) keep the accounts for the clearing and settlement of securities or payment instruments;
- (m) become a member of, or establish or operate, a payment system and any payment system;
- (n) operate or participate in any system that provides a settlement service for transactions in securities or other instruments for its members; or
- (o) enter into agreements with any depositories of securities or other instruments and to carry out any transactions under the terms of such agreements necessary for the settlement of transactions between members of such depositories and members of any depository operated by the Bank."

26. The Minister may make regulations providing for the regulation of cross-border credit transfers and, without prejudice to the generality of the Minister's power to make such regulations, such regulations may provide, in respect of such credit transfers, for:

- (a) transparency;
- (b) periods of time within which establishments may be bound to make the payment;
- (c) an obligation to execute transfers in accordance with instructions in payment orders, including as regards allocation of costs;
- (d) an obligation, in the event of non-execution of transfers, to refund the full amount, interest and charges.

### Chapter III - Power to form or acquire a company

27. Provide that

- (1) In this section "company" means -
  - (a) a company under the control and direction of the Bank, as defined by the term "subsidiary company" within the meaning of the Companies Act 1963, or
  - (b) a body formed or established under the laws of a state other than the State and corresponding to a body referred to in paragraph (a) of this subsection.
- (2) The Bank may promote and take part in the formation or establishment of a company.
- (3) The Bank may acquire hold and dispose of shares or other interests in a company and become a member of a company.
- (4) The Bank may exercise total or partial control of the composition of the Board of directors, or other authority, by whatever name called, that controls or manages, a company.
- (5)
  - (i) The exercise by the Bank of any power conferred by this section shall be subject to the consent of the Minister for Finance given after consultation with any other Minister of the Government who, in the opinion of the Minister for Finance, having regard to the functions of that Minister of the Government, ought to be consulted. The consent of the Minister for Finance shall also be required for the terms of the Memorandum and Articles of Association of any subsidiary formed or acquired under the terms of this Section.
  - (ii) The functions and powers of any subsidiary so formed or acquired shall be limited to those of the Bank, and any guidelines or obligations applicable to the Bank shall likewise apply to any subsidiary.

## Chapter IV - Function and Duties of the Governor

28. Provide that the Governor of the Central Bank shall, if so requested, attend before a Select Committee of Dail Eireann and which by specific mention in Terms of Reference is assigned the role of examining matters related to the Central Bank and shall furnish that Committee with such information as may be requested, subject to any restrictions in this regard as are placed on him by virtue of the provisions of the Central Bank Acts 1942-89 and this Act.
29. (1) Section 19 of the Central Bank Act 1942 is hereby amended:
- (i) by the deletion in subsections 4(b) and (c) of the words "any bank whatsoever" and the substitution therefore of the words "any credit institution or financial institution";
  - (ii) by the substitution of the following subsection for subsection (5) -  
" (5) In this section and section 20 the expression:-  
  
"Credit Institution" means an undertaking whose business it is to receive deposits or other repayable funds from the public and to grant credit on its own account but does not include the European Monetary Institute.  
  
"Financial Institution" means an undertaking other than a credit institution providing any one or more of the financial services set out in the Schedule to the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No 395 of 1992) and an undertaking engaged in life or non-life insurance or any insurance activity related thereto.
- (2) Section 20 of the Central Bank Act, 1942 shall apply as if the reference to a bank wherever it occurs were a reference to a credit institution or financial institution, provided that nothing in section 20 shall be construed as prohibiting the Governor from effecting any policy of insurance or purchasing the units of, or participating in, any collective investment scheme whose funds are invested in bonds or equities generally including the bonds or shares of a credit institution or financial institution or from having an ordinary savings account with a building or friendly society.

## Chapter V - Miscellaneous

30. To provide that Section 8, of the Central Bank Act, 1942, be amended by the addition of the following after subsection (c):

" (d) provide advice and assistance to the Central Statistics Office in regard to the collection, compilation, analysis or interpretation of balance of payments, national accounts or any other financial statistics relevant for these purposes, including where appropriate to undertake collection of data for this purpose."

31. Section 28(2) of the Central Bank Act, 1942 is hereby amended by the substitution of the words "Secretary of the Bank" for the words "the Board" in line 3.

32. (1) Nothing in section 7 of the Central Bank Act, 1971, shall prohibit the establishment of a representative office in the State of a credit institution that is authorised in any state other than a Member State of the Community subject to such terms and conditions as may be specified by the Bank.

(2) Every such representative office shall comply with each and every term or condition laid down by the Bank under subsection (1).

(3) If the Bank is of the opinion that the terms or conditions are not being complied with, it may direct the credit institution concerned to close its representative office in the State and the institution shall comply with any such direction within such time as may be specified by the Bank.

(4) A representative office referred to in subsection (1) shall transact no business in the State other than the provision of advice and information on the services provided from outside the State by the credit institution concerned.

(5) Notwithstanding anything contained in the Central Bank Acts, 1942 to 1989, a representative office may use in its name or title the words "bank", "banker" or "banking" or any variant or derivative thereof, subject to such terms or conditions which the Bank may specify.

33. Section 11 (as amended by section 34 of the Central Bank Act, 1989) of the Central Bank Act, 1971, is hereby amended by the insertion of the following subparagraph after subparagraph (c) in subsection (1):-

"(d) with the consent of the Minister, revoke the licence if the holder has so organised its business or corporate structure, or come under the control of any other undertaking not supervised by the Bank, such that the holder and, where appropriate, any parent or subsidiary undertaking or fellow subsidiary or associated undertaking, either collectively or individually, is no longer capable of being supervised to the satisfaction of the Bank under the supervisory enactments."

and by the insertion of the following subsection after subsection (5):-

(6) In this section, the expressions "control", "fellow subsidiary", "parent undertaking", "subsidiary undertaking" and "supervisory enactments" have the meaning they have in the European Communities (Licensing and Supervision of Credit Institutions)

Regulations, 1992, and the expression "associated undertaking" has the meaning it has in the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992)."

34. Amend Section 48(3) of the Central Bank Act, 1971 to read:

"The Bank shall only issue bonds to credit institutions".

35. Section 51 of the Central Bank Act, 1971 is hereby amended by the substitution of the following subclause for subclause (i) of paragraph (a) of subsection (1):

"(i) Altering the objects and powers of the Bank of Ireland by abandoning, restricting or amending any existing object or power or by adopting a new object or power, or"

This section shall be deemed to have entered into force on the 1st day of September 1971.

36. (1) Section 23 of the Central Bank Act, 1942, is hereby amended by the deletion of subsection (5) of that Section.

(2) Section 25 of the Central Bank Act, 1942, is hereby amended by the deletion of paragraph (d) of that section.

37. The following section is hereby substituted for section 24 of the Central Bank Act, 1942, as amended by section 14 of the Central Bank Act 1989:

"24.-(1) Every Director (other than a service Director) shall, unless he sooner dies, resigns or becomes disqualified, hold office for a period of five years from his date of appointment.

(2) Every service Director shall hold office at the pleasure of the Minister and may be removed by the Minister at any time.

(3) This section shall apply to every director of the Bank who holds office when this section comes into effect."

38. Section 16 of the Central Bank Act, 1989, as amended by the Stock Exchange Act, 1995 and the Investment Intermediaries Act, 1995, is hereby amended:

(i) by the addition of the following to paragraph (e) of subsection (2) -

"and the Bank may require from a person it supervises any information for the purposes of assisting the authority in the jurisdiction other than the State, but the Bank may only require such information where the information requested is to assist the authority in the jurisdiction other than the State in the carrying out of its regulatory functions,"

(ii) Provide for the addition of the following paragraphs after paragraph (2)(o):-

"(p) made to an officer of statistics, as defined by Section 20 of the Statistics Act, 1993, in connection with the collection, compilation, analysis or interpretation of data relating to balance of payments, national accounts or any other financial statistics for these purposes,



(q) made for the purpose of complying with section 57(2) of the Criminal Justice Act, 1994,

(r) where the Bank is in receipt of information from an authority in a jurisdiction other than that of the State duly authorised to exercise functions similar to one or more of the statutory functions of the Bank and made with the permission of that authority,

(s) made to the Comptroller and Auditor General or an officer of his, that is required for the performance of his functions,

(t) made to the European Monetary Institute where such disclosure is required in accordance with the Treaty."

(iii) Provide for the following after subsection (6):-

" (7) An officer of Statistics who receives information from the Bank under Section 16(2)(p) shall be bound by the provisions of this Section with regard to the disclosure of said information."

39. The provisions of section 47 of the Central Bank Act, 1989 shall apply:

(a) to every financial institution to which Chapter VII of Part II of the Act of 1989 relates,

(b) to every exchange to which Chapter VIII of Part II of the Act of 1989 relates and every member of that exchange,

(c) to every person authorised by the Bank to carry on moneybroking business

as if each such institution, exchange, member or person so authorised were the holder of a licence for the purposes of the Central Bank Acts, 1942 to 1994.

40. (i) Repeal Section 75(1)(b) of the Central Bank Act, 1989.

(ii) Section 75(2) of the Central Bank Act 1989 is hereby amended by the insertion of the following after paragraph (b):-

"(c) the acquiring transaction is being entered into with the prior approval of the Bank in the interests of the orderly and proper regulation of banking or financial markets in the State."

41. Section 76 of the Central Bank Act, 1989, is hereby amended by the insertion of the following subsection in that section:-

"(2) A person may, with the prior approval in writing of the Bank, apply to the Court for an Order, on such conditions as the Court may decide, declaring that, notwithstanding that person's failure to notify the Bank as required by this chapter, the acquiring transaction is, and always had been, a valid transaction and that title to any shares or other interest concerned did pass and that all purported exercise of powers is and always had been valid, and if the Court finds that the failure to notify the Bank of the

proposed acquiring transaction was due to inadvertence on the part of the person or other innocent causes, or if the Court considers that it is otherwise in the interest of justice to do so, it shall grant the Order sought."

42. Section 90 of the Central Bank Act, 1989, is hereby amended by the insertion of the following subsection in that section:-

"(2) The Bank may apply from a date specified in writing by the Bank any or all of the provisions of this Chapter to any person who has applied for a certificate under section 39B (inserted by the Finance Act, 1987) of the Finance Act, 1980, where the Bank is of the opinion that the application of these provisions to that person is necessary in the interests of the orderly and proper regulation of the Area and this Chapter shall have full effect as if that person were a person to whom a certificate had been given by the Minister."

43. Section 91 of the Central Bank Act, 1989, is hereby amended by the insertion of the following after subsection (2):-

"(3) Notwithstanding subsection (1), an order under this section may provide that

(a) the provisions of this Chapter shall not apply to financial institutions of a specified class or financial institutions engaged in a specified class of business, or

(b) the provisions of this Chapter shall apply to every such financial institution referred to in subparagraph (a) to the extent only specified in the Order."

44. Section 92 of the Central Bank Act, 1989, is hereby amended by the insertion of the following subsections:-

"(3) The Bank may decide not to impose prudential, supervisory and reporting requirements and conditions on a financial institution where it considers that the imposition of such requirements and conditions is not necessary in the interests of the reasonable protection of the public, the financial system or a sector thereof, or otherwise in the interests of the orderly and proper regulation of the institution or the Area as an International Financial Services Centre.

(4) Where under subsection (3) of this section no requirements or conditions are imposed by the Bank, sections 95 and 96 of this Act shall not apply to the institution concerned."

45. The Central Bank Act, 1989, is hereby amended by the insertion of the following before section 97:-

"96A The provisions of this chapter shall continue to apply to a financial institution which has had its certificate revoked by the Minister or has surrendered its certificate until such time as the institution has discharged its liabilities in whole or in part to the satisfaction of the Bank."

46. Section 104 of the Central Bank Act, 1989, is hereby amended by the insertion of the following in subsection 2(b) after the word "proposal": -

"provided that every such prospectus or other document shall contain a statement in a prominent position in such form or manner approved by the Bank and containing such particulars for the protection of subscribers relating to the approval or otherwise of the rules of the exchange and its proposed establishment as the Bank may, in writing, direct."

47. (i) The following subsection is hereby substituted for subsection (1) of Section 139 of the Central Bank Act 1989:

"(1) Notwithstanding anything to the contrary contained in any enactment, or in any prospectus or other document, relating to the terms of issue, holding or transfer of any securities or other instruments, the issue or the transfer of such securities or other instruments may be made and shall be effective if instructions for the issue or transfer are communicated by electronic means: any issue or transfer of securities shall be deemed to be effective if recorded in a computerised system established by the Bank or any agent of the Bank, without the need for instructions in writing."

(2) Section 139, sub-section (2) of the Central Bank Act 1989 is hereby deleted.

(3) The following subsection shall be added after subsection (3) of section 139.

"(4) It shall be lawful for the Bank and within its functions and powers to:-

(i) operate or participate in any system that provides a settlement service for transactions in securities or other instruments for its members; or

(ii) to enter into agreements with any depositories of securities or other instruments and to carry out any transactions under the terms of such agreements necessary for the settlement of transactions between members of such depositories and members of any depository operated by the Bank."

48. (1) Section 38(3) of the Building Societies Act, 1989 is hereby amended by the substitution of the words "every credit institution mortgage lender" for the words "every building society".

(2) "Mortgage lender" means a person whose business includes the making of housing loans, where "housing loan" means an agreement for credit on the security of a mortgage of a freehold or leasehold estate or interest in a house where-

(a) the loan is made for the purpose of enabling the borrower to provide or improve the house or to purchase the said estate or interest, or

(b) the house is to be used as the principal residence of the borrower or his dependants.

49. (1) After section 81 of the Bills of Exchange Act 1882 there shall be inserted the following section-

"81A. (1) Where a cheque is crossed and bears across its face the words "account payee" or "a/c payee", either with or without the word "only", the cheque shall not be transferable, but shall only be valid as between the parties thereto.

(2) A banker is not to be treated for the purposes of section 80 above as having been negligent by reason only of his failure to concern himself with any purported endorsement of a cheque which under subsection (1) above or otherwise is not transferable".

- (2) In section 80 of the Bills of Exchange Act, 1882 (protection to banker and drawer where cheque is crossed) after "crossed cheque" there shall be inserted "(including a cheque which under section 81A below or otherwise is not transferable)".
- (3) In section 4(2)(a) of the Cheques Act, 1959 (protection of bankers collecting payment of cheques, etc) there shall be inserted after the word "cheques" the words "(including cheques which under section 81A(1) of the Bills of Exchange Act, 1882 or otherwise are non transferable)".
- (4) This section shall come into force at the end of the period of three months beginning on the day on which this Act is passed.

50. Section 48 of the Central Bank Act, 1989, is hereby amended by the insertion of the following subsection:-

"(4) The Bank shall be notified of any application for a petition for the winding up of the holder of a licence before the petition is presented."

51. Section 66 of the Currency Act, 1927, to the extent that it was repealed by section 4 of the Central Bank Act, 1989, shall be deemed not to have been so repealed by the latter Act and shall be deemed to have been, and to continue, in force notwithstanding section 4 of the Act of 1989.

52. Section 3 of the Bretton Woods Agreements Act, 1957 is hereby amended by the deletion of the following words from subsection (7):

"and the Bank may advance to the Minister for Finance any sum or sums required for payments under this section".

53. Section 3 of the International Finance Corporation Act, 1958 is hereby amended by the deletion of the following words from subsection (6):

"and may advance to the Minister for Finance any sum or sums required for payments under this section".

54. Section 3 of the International Development Association Act, 1960 is hereby amended by the deletion of the following words from subsection (7):

"and may advance to the Minister for Finance any sum or sums required for payments under this section".

55. Section 3 of the European Bank for Reconstruction and Development Act, 1991 is hereby amended by the deletion of the following words from subsection (5) and by the deletion of subsection (6):

"and may advance to the Minister for Finance any sum or sums required for payments under this section, subject to such security, rate of interest and other terms and conditions as are agreed between the Minister and the Central Bank of Ireland".

56. Section 3 (5) of the Multilateral Investment Guarantee Agency Act, 1988 is hereby amended by the deletion of the following words from subsection (5) and by the deletion of subsection (6):

"and may advance to the Minister for Finance any sum or sums required for payments under this section, subject to such security, rate of interest and other terms and conditions as are agreed between the Minister and the Bank".

57. Regulation (5) of the European Communities (State Financial Transactions) Regulations, 1972 (S.I. No. 329 of 1972) is hereby revoked.

58. The following section is inserted in Part II, Chapter II of the Act of 1989 after section 25:

"25A. (1) The Bank or any employee of the Bank or any member of its Board or any authorised person or authorised officer appointed by the Bank for the performance of its statutory functions (as defined in section 3(1) of this Act) shall not be liable for damages for anything done or omitted in the discharge or purported discharge of any of its statutory functions under this Act unless it is shown that the act or omission was in bad faith.

(2) Without prejudice to the generality of subsection (1) of this section, the authorisation or revocation of authorisation or supervision or regulation of any person under any of its statutory functions shall not constitute a warranty as to the solvency or performance of a person and neither the State nor the Bank shall be liable for any losses incurred through the insolvency, default or performance of any person.

(3) Without prejudice to the generality of subsection (1) of this section, the approval or revocation of approval or supervision or regulation of any exchange or the approval, amendment, revocation or imposition of rules or the consent or refusal of consent to amendments of rules under any of its statutory functions shall not constitute a warranty as to the solvency or performance of any exchange or member of any exchange and neither the State nor the Bank shall be liable for any losses incurred through the insolvency, default or performance of any exchange or member of any exchange.

59. Section 29 of the Act of 1989, paragraph (a), is hereby amended by the deletion in the definition of "banking business" of paragraph (b) and the insertion of new paragraph (iv) as follows:

"(iv) Borrowings by one company from another company at a time when one is a subsidiary of the other or both are subsidiaries of another company,".

60. The Bank may apply to the Court to seek a civil injunction to prohibit the continuance by any person of any contravention of section 7 of the Central Bank Act, 1971 (as amended by section 30 of the Central Bank Act, 1989) and section 27 of the Central Bank Act, 1971 (as amended by section 43 of the Central Bank Act, 1989) where such a person is not a credit institution.

61. The European Communities (Deposit Guarantee Schemes) Regulations, 1995 is hereby amended by:-

(a) in Regulation 3(1) by the substitution in the definition of "relevant beneficial owner" of "5 per cent." for "20 per cent.";

(b) in Regulation 16(1) by the insertion of the following after paragraph (1) (i):-

"(j) deposits by financial institutions (as defined in Regulation 2 of the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992);

(k) deposits by an insurer (as defined in section 2 of the Insurance Act, 1989);

(l) deposits by the Government of any State or central administrative authority;

(m) deposits by provincial, regional, local and municipal authorities;

(n) deposits by:

(i) undertakings for collective investments in transferable securities within the meaning of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989,

(ii) a unit trust, or

(iii) other collective investment schemes;

(o) deposits by pension and retirement funds;

(p) debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes;

(q) deposits by companies which are not permitted to draw up abridged balance sheets pursuant to section 10(1) of the Companies (Amendment) Act, 1986, as amended by the European Communities (Accounts) Regulations, 1993.

62. (1) The powers conferred by this section may be exercised in respect of a person whom the Bank has reasonable grounds to believe has conducted or is conducting banking business or an associated undertaking or related undertaking and these persons shall be referred to in this section as "persons to whom this section applies".

(2) An appropriate person may, for the purpose of obtaining any information which the Bank may require to enable it to exercise any of its statutory functions, do any one or more of the following things:

(a) at all reasonable times enter any premises, at which there are reasonable grounds to believe that any banking business or any activity in connection with banking business is, or has been, carried on or that books, records or other documents in relation to such business or activities are kept, and search and inspect the premises and any books, records or other documents on the premises;

(b) secure for later inspection any premises or any part of a premises in which books, records or other documents are kept or there are reasonable grounds for believing that such books, records or other documents are kept;

- (c) inspect and take copies of or extracts from or, subject to a warrant being issued for that purpose by a judge of the District Court, remove for a reasonable period for further examination any books, records or other documents which the appropriate person finds in the course of inspection;
  - (d) require any person who carries on such banking business and any person employed in connection therewith to give to the appropriate person such information as the appropriate person may reasonably require in relation to any entries in such books, records or other documents;
  - (e) require any such person to give to the appropriate person any information which the appropriate person may require in regard to banking business or in regard to the persons carrying on such banking business or employed in connection therewith;
  - (f) require any such person to give to the appropriate person any other information which the appropriate person may reasonably require in regard to such banking business;
  - (g) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the appropriate person reasonable assistance in relation thereto;
  - (h) summon, at any reasonable time, any other person employed in connection with the banking business to give to the appropriate person any information which the appropriate person may reasonably require in regard to such activity and to produce to the appropriate person any books, records or other documents which are in that person's power or control;
  - (i) require any person employed in the premises to prepare a report on specified aspects of the business of the persons to whom this section applies or to explain entries in any documents or other materials furnished.
- (3) A person who has in his power, possession or procurement any books, records or other documents aforesaid shall -
- (a) produce them at the request of an appropriate person and permit him to inspect and take copies of, or extracts from, them,
  - (b) at the request of an appropriate person, give any information which may be reasonable required with regard to them, and
  - (c) give such other assistance and information to an appropriate person as is reasonable in the circumstances.
- (4) Where any person from whom the production of a book, record or other document is required claims a lien thereon the production of it shall be without prejudice to the lien.
- (5) Nothing in this section shall compel the production by a barrister or solicitor of a book, record or other document containing a privileged communication made by him or to him in that capacity or the furnishing of information contained in a privileged communication so made.
- (6) A requirement under this section may be imposed on a person to whom this section applies outside the State.
- (7) The duty to produce or provide any information, document, material or explanation extends to an examiner, liquidator, receiver, official assignee or any person who is or has been an officer

or employee or agent of the persons to whom this section applies, or who appears to the Bank or the appropriate person to have the information, document, material or explanation in his possession or under his control.

(8) An appropriate person appointed under section 17 of the Central Bank Act, 1971 (as amended by section 36 of the Central Bank Act, 1989) where he considers it necessary, may be accompanied by a member of the Garda Síochána when performing any powers conferred on an appropriate person by this Act.

(9) A person shall not obstruct or interfere with an appropriate person in the exercise of his powers under this Act.

(10) A person shall comply with any request or requirement of an appropriate officer under this Act.

(11) (a) If a judge of the District Court is satisfied on the sworn information of an appropriate person that there are reasonable grounds for suspecting that there are on any premises any books, records or other documents -

(i) of which production has been required under this Act, and

(ii) which have not been produced in compliance with that requirement,

the judge may issue a warrant authorising any member of the Garda Síochána, together with any other persons named in the warrant and any other members of the Garda Síochána, at any time or times within one month from the date of the warrant, on production if so requested of the warrant, to enter the premises specified in the information (using such force as is reasonably necessary for the purpose) and to search the premises or other place specified in the warrant and -

(I) take possession of any books or documents appearing to be such books or documents as aforesaid, or

(II) to take, in relation to any books or documents so appearing, any other steps which may appear necessary for preserving them and preventing interference with them.

(b) Any books or documents of which possession is taken under this subsection may be retained for a period of three months.

(12) A person who -

(a) obstructs or interferes with a member of the Garda Síochána acting under the authority of a warrant issued under this section, or

(b) is found on the premises or at the place specified in the warrant by a member of the Garda Síochána acting as aforesaid and who fails or refuses to give the member his name or address when required to do so or gives a name and address that is false or misleading, or

(c) who obstructs the exercise of an authority conferred by a warrant under this section to take possession of any books or documents,

shall be guilty of an offence and shall be liable—

(i) on summary conviction to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or

(ii) on conviction on indictment to a fine not exceeding £1,000,000 or, at the discretion of the court, to imprisonment for a term not exceeding ten years, or to both.



- (13) In this section "premises" includes any building or other land and includes a vessel, aircraft or motor vehicle.
- (14) In this section "appropriate person" means -
- (a) an officer of the Bank, or
  - (b) in relation to any particular inspection (including a proposed inspection), any other person who in the opinion of the Governor of the Bank possesses appropriate qualifications or experience to carry out the inspection, or any part thereof, to which this section relates.
63. (1) The Comptroller and Auditor General may, in relation to the Bank, carry out such examinations as he considers appropriate for the purpose of ascertaining -
- (a) whether and to what extent the resources of the Bank-
    - (i) have been used, and
    - (ii) if acquired or disposed of by the Bank, have been so acquired or disposed of, economically and efficiently, and
  - (b) whether any such disposal has been effected upon the most favourable terms available.
- (2) Without prejudice to the generality of subsection (1), the systems, procedures and practices employed by the Bank to evaluate the effectiveness of its operations may be examined by the Comptroller and Auditor General.
- (3) The Comptroller and Auditor General may, if he considers it appropriate to do so, prepare a special report in writing in relation to an examination carried out by him under this section or any general matters arising in relation to any such examination and shall submit a copy of the report to the Minister and shall, as soon as may be, submit a copy to the Bank.
- (4) The Minister shall cause a copy of a report submitted under subsection (3) to be laid before Dáil Éireann not later than 3 months after the date of submission to him.
- (5) The Comptroller and Auditor General may, with the consent of the Minister, require the Bank to pay to the Comptroller and Auditor General a fee of an amount calculated on such basis as he may determine after consultation with the Minister in respect of an examination under this section in relation to the Bank carried out by him pursuant to this Act or any other enactment or any provision under any other enactment.
- (6) A fee under this section may be recovered by the Comptroller and Auditor General as a simple contract debt in any court of competent jurisdiction.
- (7) A fee paid under this section shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister.
- (8) The Public Offices Fees Act, 1879, shall not apply in relation to a fee paid under this section.
- (9) The expenses incurred by the Comptroller and Auditor General in the administration of this section shall, to such extent as may be sanctioned by the Minister, be paid out of moneys provided by the Oireachtas.
- (10) The Comptroller and Auditor General or an officer of his or a person referred to in section 16(2) of the Comptroller and Auditor General (Amendment) Act, 1993, for the purpose of obtaining any information that is required for the performance of his functions, on production, in the case of the officer of his authorisation, if so requested -
- (a) shall have access to and may take or, at his request, shall be given such copies of, or

such extracts from, such books, documents and records as he may reasonably require of the Bank;

(b) shall have access to and may take or, at his request, shall be given such copies of, or such extracts from, any data or data material of the Bank as he may reasonably require and may extract information from any such data;

(c) may obtain from any officer, servant or employee of the Bank such information within his knowledge or control as he may reasonably require, including information in relation the contents of any such books, documents or records as aforesaid, or in relation to the data aforesaid or the sources from which they are obtained or the data material aforesaid or any information extracted from such data.

(11) An officer of the Comptroller and Auditor General or person referred to in section 16(2) of the Comptroller and Auditor General (Amendment) Act, 1993 exercising powers conferred on him under this section shall be authorised in writing by the Comptroller and Auditor General to exercise for the powers conferred on him under this section for the purposes of this section.

(12) In this section "data" and "data material" have the meanings assigned to them by the Data Protection Act, 1988.

(13) The provisions of section 16 of the Comptroller and Auditor General (Amendment) Act, 1993 shall apply in respect of the functions of the Comptroller and Auditor General under this section.

**FIRST SCHEDULE**  
**Enactments Repealed**

Number and year	Short Title	Extent of Repeal
No. 3 of 1964	Central Bank Act, 1964	Sections 1 and 3 (i)
No. 22 of 1942	Central Bank Act, 1942	Sections 12, 13 and 14
No. 16 of 1989	Central Bank Act, 1989	Section 75(1)(b)
SI No. 329 of 1972	European Communities (State Financial Transactions) Regulations, 1972	Regulation (5)

## Central Bank Bill

### Inclusion of provisions regarding

#### (a) Supervision of Bureaux de change

#### (b) Trustee authorised investments

1. The Central Bank Bill is being drafted at present and is expected to be published by June. It is proposed to request the Parliamentary Draftsman to include provision in relation to

- (a) Supervision of bureaux de change
- (b) certain amendments of the Trustee (Authorised Investments) Act 1958.

The relevant provisions would be included in the final draft of the Bill which would be submitted to Government for approval to publish.

### Supervision of bureaux de change

2. Apart from those which form part of a bank's operations, bureaux de change have been effectively outside the scope of any official supervision since the abolition of exchange controls some years ago. The need to introduce a supervisory regime at this point arises from our international commitments in the area of money laundering. The Financial Action Task Force of the OECD, the international body set up to combat money laundering, has recommended that those countries which do not currently supervise bureaux de change should do so because of their potential use in the money laundering chain. While we are not bound to follow the views of the FATF in this matter, failure to do so could leave Ireland open to criticism.

3. The Central Bank have agreed to take on the role of supervisor of bureaux de change. It is proposed to include provisions in the Central Bank Bill to give the Bank the appropriate powers. These provisions will be based very closely on existing provisions relating to the supervision of moneybrokers (Chapter IX of the Central Bank Act 1989) and will require bureaux de change to be authorised by the Central Bank with the standard provisions regarding appeal to the Minister for Finance where the Bank proposes either to withhold or revoke an authorisation. The degree of supervision of the operations of bureaux de change would largely be a matter for the discretion of the Central Bank under a general framework to be set out in the Bill.

## Amendment of Trustee (Authorised Investments) Act 1958

4. The Trustee (Authorised Investments) Act 1958 contains a list of investments in which trustees are empowered to invest. It gives the Minister for Finance power to designate other investment or to delete investments. This is done by Ministerial Order but such Orders require a Motion approving them to be passed by both Houses of the Oireachtas. The list of investments which are currently designated is largely confined to fixed-rate securities, bank or building society deposits and a small number of unit trusts whose investments are restricted to Government securities and bank/building society deposits. The only equities on the list are the shares of the two main banks - Bank of Ireland and AIB. Following a request some time ago for the designation of certain other company shares the Department reviewed the existing approach to the designation of trustee investments and concluded that the approach adopted to date was no longer appropriate and that a revised approach should have the following main features:
  - (a) as far as possible designation should be in respect of categories of investments rather than individual investment products so as to avoid the appearance of giving an official endorsement to individual products.
  - (b) the powers of trustees should be widened to include equities whether directly or indirectly through collective investment schemes.
  - (c) the investment powers of trustees should be subject to certain conditions regarding the level of foreign investment and investment in equities.
5. While the Trustee (Authorised Investments) Act 1958 gives the Minister for Finance power to amend the list of investments by Order, it does not give him power to impose conditions on the investment powers of trustees. It is proposed therefore to amend the 1958 Act to give the Minister this power. It is also proposed to remove the requirement in the 1958 Act that each Order made under it must be approved by both Houses of the Oireachtas. Effectively a legislative procedure is required for what is essentially a regulatory matter. Instead of the requirement for the passing of a Motion approving Ministerial Orders made under the 1958 Act we would propose to substitute the normal procedure which is used

for Orders made under the Central Bank Acts i.e. that they are laid before both Houses of the Oireachtas and become effective unless an annulling Resolution is passed within a specified time. [A partial move in this direction was made in the Central Bank Act 1989: Section 138 removed the requirement for a positive Oireachtas Motion approving Orders for the deletion of bank deposits in certain circumstances.] It is not proposed to amend the existing requirement in the 1958 Act that certain persons (the President of the High Court, the Governor of the Central Bank, the President of the Incorporated Law Society, the President of the Stock Exchange, the Chairman of the Irish Banks Standing Committee and the Public Trustee) be consulted before an Order is made amending the list of designated investments.

6. The making of an Order containing a revised list of designated trustee investments together with conditions to apply to the investment powers of trustees is a separate matter and will be submitted for your approval in due course. The matters proposed to be dealt with in the Central Bank Bill are essentially enabling and simplifying provisions, briefly
  - (a) the Minister for Finance will be given the power to impose conditions on the investment powers of trustees, and
  - (b) the requirement for positive Oireachtas approval of Orders made under the Act will be removed in favour of the standard provision that such Orders take effect unless annulled by the Oireachtas.

CHAPTER 1<sup>1</sup>  
Supervision of Bureaux de Change

1. \_\_ In this Chapter \_\_

"authorization" means an authorization granted to a person by the Bank under this Chapter to carry on the business of bureaux de change;

"bureau de change business" means any business which consist of the business of arranging all or any of the following, that is to say:

- (a) purchases or sales of foreign exchange,
- (b) other transactions which are similar in effect to that to which *paragraph (a)* relates;

between any two or more persons being a holder of an authorization under this Chapter and any person being a holder of an authorisation under this Chapter who provides a service to the public in accordance with *paragraph (a)* and or *(b)* in a professional or commercial capacity.

2. \_\_ (1) Where both the Minister and the Bank are of the opinion that it is necessary in the context of developments in the financial markets or the orderly and proper regulation of bureaux de change business that certain types of transactions be prescribed for the purpose of the definition of "bureau de change business", then the Minister may, at the request of the Bank, by order so prescribe.

(2) The Minister may, at the request of the Bank, by order revoke an order under *subsection (1)*

3. \_\_ (1) A person shall not carry on a bureau de change business at any time after this section has been in operation for 6 months unless the person has been granted an authorization for the purposes of this section and the authorization has not been revoked.

(2) Subject to the provisions of this section, the Bank may grant or refuse to grant to any person applying to it an authorization to carry on a bureau de change business.

(3) The Bank shall not refuse an authorization without the consent of the Minister and unless it is satisfied that the authorization would not be in the interest of the orderly and proper regulation of bureaux de change or banking, and the Minister shall not grant his consent to the refusal unless he is satisfied that the authorization would not be in the

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<sup>1</sup> Davittm:G:\MD\MONEY\MDO2 Date 4 March 1996

interest of the orderly and proper regulation of bureaux de change or banking.

- (4) Whenever the Bank proposes to refuse an authorization to a person\_\_\_\_
    - (a) it shall notify the person in writing that it intends to seek the consent of the Minister to the refusal and of its reasons for the refusal and that the person may, within 21 days after the date of the giving of the notification, make representation in writing to the Minister in relation to the proposed refusal,
    - (b) the person may make such representations in writing to the Minister within the time aforesaid, and
    - (c) the Minister shall, before deciding to grant or refuse to grant his consent, consider any representations duly made to him under this subsection in relation to the proposed refusal.
  - (5) An application for an authorization shall be in such form and contain such particulars as the Bank may from time to time determine.
  - (6) The authorization of a person under this section shall not constitute a warranty as to the solvency of the person to carry on a bureau de change business and the Bank shall not be liable in respect of any losses incurred through the insolvency or default of the person.
4. \_\_\_ Every person carrying on bureaux de change business shall each comply with such supervisory and reporting requirements or conditions relating to his business which the Bank considers prudent to impose on him from time to time for the purposes and in the interest of the proper and orderly regulation of bureaux de change.
5. \_\_\_ Without prejudice to the provisions of *section 4*, the provisions of *section 17* (which relates to books and records of holders of licences) of the Act of 1971 (as amended ) shall apply as if every person authorised by the Bank to carry on bureaux de change business were the holder of a licence for the purposes of the *Central Bank Acts, 1942 to 1989*.
6. \_\_\_ (1) Where, on an application made in a summary manner by the Bank, the Court is of the opinion that there has occurred or is occurring a failure by a bureau de change to comply with a requirement or condition imposed by virtue of *section 4*, the Court may by order, prohibit the continuance of the failure by the bureau de change concerned.
- (2) The Court when considering the matter may make such



interim or interlocutory order as it considers appropriate.

- (3) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice, that it is desirable, the whole or any part or proceedings under this section may be heard otherwise than in public.
- (4) In this section "the Court" means the High Court.

7.\_\_(1) The Bank may\_\_

- (a) revoke an authorisation if the person to whom it was granted so requests,
- (b) with the consent of the Minister, revoke an authorisation if the person to whom it was granted\_\_

- (i) (I) has not commenced to carry on a bureau de change business within 12 months of the date on which the authorisation was granted, or
- (II) has ceased to carry on a bureau de change business and has not carried it on during a period of more than 6 months immediately following the cesser.
- (ii) is adjudicated bankrupt,
- (iii) being a partnership, the partnership is dissolved by death or bankruptcy of any partner, or otherwise under the law of partnership,
- (iv) being a company, is being wound up,
- (v) has obtained the authorisation through false statements or any other irregular means,
- (vi) becomes unable to meet his obligations to his creditors or suspends payments lawfully due by him or can no longer be relied upon to fulfil his obligations towards his creditors and in particular no longer provides security for the assets entrusted to him,
- (vii) is convicted on indictment of an offence under any provision of the *Central Bank Acts, 1942 to 1989*, or an offence involving fraud, dishonesty or breach of trust,
- (viii) has his head office in another state that is a member of the European Communities and the authority in that state that exercises in that state functions corresponding to those of the Bank under this Chapter has withdrawn authorisation from the institution of which the holder is a branch,

- (c) with the consent of the Minister, revoke the authorisation if, since the grant of the authorisation, the circumstances relevant to the grant have changed and are such that, if an application for an authorisation were made in the changed circumstances, it would be refused.
- (2) Whenever the Bank proposes to revoke an authorisation (other than in circumstances to which *paragraph (a) or (b) (viii) of subsection (1) relate*)\_\_
  - (a) the person to whom it was granted shall be notified in writing that the Bank intends to seek the consent of the Minister to the revocation and of the reasons for the revocation and that the person may, within 21 days after the date of the giving of the notification, make representations in writing to the Minister in relation to the proposed revocation,
  - (b) the said person may make such representations in writing to the Minister within the time aforesaid, and
  - (c) the Minister shall, before deciding to give or withhold his consent, consider any representations duly made to him under this subsection in relation to the proposed revocation.

- 8.\_\_(1) The Bank shall publish from time to time, but not less frequently than once a year, in such manner as it thinks fit the names of persons authorised to carry on a bureau de change business.
- (2) The Bank shall as soon as may be after the revocation of an authorisation publish a notice of the revocation in such manner as it thinks fit.

9.\_\_ A person who contravenes *subsection (1) or (2) of section 3* or a bureau de change who fails by act or omission to comply with a requirement or condition imposed on him under *section 4* shall be guilty of an offence and shall be liable\_\_

- (a) on summary conviction, to a fine not exceeding £1,000 or, at the discretion of the court, to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding £50,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years, or to both,

and, if the contravention or breach in respect of which he was convicted is continued after conviction, he shall be guilty of an offence on every day on which the contravention or breach continues after conviction in respect of the original contravention or breach and for each such offence he shall be liable on summary conviction to a fine not exceeding £100 or on conviction on indictment to a fine not exceeding £5,000.

**Appendix I**

**Additional Draft Heads for the Central Bank Bill**

Central Bank Bill

Additional provisions relating to the conversion of a building society  
to a public limited company

Head 48A-

The Building Societies Act, 1989 is hereby amended by the insertion after section 101 of the following section:

"101A (1) This section shall apply in relation to rights of members of a society converting into a company entitling them to shares in the successor company, to acquire shares in the successor company in priority to other subscribers or to any distribution of the funds of the society where a member -

- (a) has held shares in the society for the specified period;
- (b) has held the shares jointly for the whole or part of such period; and
- (c) by reason solely of the member not being the representative joint holder for the whole of the specified period

did not qualify for such rights.

(2) Where -

- (a) a member held shares in a society for the whole of the specified period;
- (b) shares held by that member were jointly held for the whole or part of the specified period;
- (c) that member is named second in the records of the society for the whole or part of the period the shares are jointly held; and

- (d) no person who has priority, in accordance with subsection (3), over the member referred to in paragraph (a) held shares in the society throughout the specified period;

the shares jointly held shall, notwithstanding any contrary provision of this Act, be regarded as having been held alone by the member referred to in paragraph (a).

- (3) The following persons shall be regarded, for the purposes of subsection (2), as having priority over the member referred to in paragraph (a) of that subsection, namely

- (a) where that member was the representative joint holder of the shares for part of the period the shares were jointly held, any person who was the representative joint holder for a later part of that period,

- (b) where that member was not the representative joint holder of the shares for any part of the period the shares were jointly held -

- (i) any person who was the representative joint holder of the shares for the whole or part of the period; and

- (ii) if, in relation to the shares jointly held, that member is named second in the records of the society for part only of the period the shares are so held, any person who was joint holder of the shares and who was named second in the records of the society for a later part of that period.

- (4) Where a member dies during the specified period at a time when the member's name appears in the records of the society as a joint holder of shares, this section shall have effect in relation to any later time as if the member had never been so named.

- (5) In this section "specified period" means the period of 2 years expiring with the day on which notice is given to members of the conversion resolution.

Amendment of section 16 of the Central Bank Act, 1989

At the end of subhead 38(ii) of the General Scheme of the Central Bank Bill, as approved by Government on 22 January 1996 (Ref. No. S.27317B), to insert the following paragraph:

"(u) made to the Minister for the Environment, for the purposes of his functions under the national housing programme, in respect of credit institution mortgage lenders."

## **Head**

Provide that:

- (1) Each reference to the Company in Section 3(1) of the ICC Bank Act, 1992 shall be construed as including any subsidiary of ICC Bank plc which carries on its business by virtue of an order made under Section 7(4)(b) of the Central Bank Act, 1971.
  
- (2) Any regulations made under section 3(1) of the ICC Bank Act, 1992 shall apply equally to any such subsidiary of the Company.

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## **Explanation:**

The purpose of the above head is to extend the supervisory powers of the Central Bank as they currently apply to ICC Bank plc to ICC Investment Bank who are the deposit taking subsidiary of ICC Bank plc. ICC Investment Bank are exempted by virtue of an order made under Section 7(4)(b) of the Central Bank Act, 1971 from holding a banking licence. This amendment is necessary to provide a statutory basis for the banks current supervisory practice in relation to ICC Investment Bank.