



Bille an Bhainc Ceannais (Creat Cuntasachta Aonair), 2022
Central Bank (Individual Accountability Framework) Bill 2022

Mar a tionscnaíodh

As initiated



**BILLE AN BHAINC CEANNAIS (CREAT CUNTASACHTA AONAIR), 2022
CENTRAL BANK (INDIVIDUAL ACCOUNTABILITY FRAMEWORK) BILL 2022**

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ACTS REFERRED TO

Central Bank (Supervision and Enforcement) Act 2013 (No. 26)

Central Bank Act 1942 (No. 22)

Central Bank Reform Act 2010 (No. 23)

Freedom of Information Act 2014 (No. 30)



**BILLE AN BHAINC CEANNAIS (CREAT CUNTASACHTA AONAIR), 2022
CENTRAL BANK (INDIVIDUAL ACCOUNTABILITY FRAMEWORK) BILL 2022**

Bill

entitled

An Act to amend the Central Bank Act 1942 to extend the application of the administrative sanctions procedure to persons performing controlled functions and to certain holding companies, to provide for the appointment of a panel from which appointments may be made for the purposes of certain decisions, to provide for the admissibility of business records at an inquiry, to provide for disclosure agreements, and to provide for an application for confirmation by the High Court of a decision of an inquiry under Part IIIC and a decision of the Irish Financial Services Appeals Tribunal under Part VIIA of that Act; to amend the Central Bank Reform Act 2010 to extend the regulation and supervision of financial service providers and persons performing controlled functions and pre-approval controlled functions through the introduction of business standards, conduct standards and the duty of responsibility, to provide for the independence of persons carrying out an investigation in the performance of their functions, to provide for the independence of persons to whom a function of the Head of Financial Regulation, the Central Bank or the Governor is delegated in the performance of their functions, to provide for a right of appeal to the Irish Financial Services Appeals Tribunal of a decision of the Head of Financial Regulation to confirm a suspension notice, to increase the period for which the High Court may extend the duration of a suspension notice, and to provide for an application for confirmation by the High Court of a decision of the Central Bank or the Governor to issue a prohibition notice; to amend the Central Bank (Supervision and Enforcement) Act 2013 to extend the regulation-making power of the Central Bank to provide for arrangements that financial service providers shall adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation; to amend the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011); and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Central Bank (Individual Accountability Framework) Act 2022. 5
- (2) This Act shall come into operation on such day or days as the Minister for Finance may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Definitions

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2. In this Act—

“Act of 1942” means the Central Bank Act 1942;

“Act of 2010” means the Central Bank Reform Act 2010;

“Act of 2013” means the Central Bank (Supervision and Enforcement) Act 2013.

PART 2

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INDIVIDUAL ACCOUNTABILITY AND STANDARDS

CHAPTER 1

Responsibility of persons performing pre-approval controlled functions

Amendment of section 48 of Act of 2013

3. Section 48 of the Act of 2013 is amended— 20
- (a) in subsection (2), by the insertion of the following paragraphs after paragraph (b):
- “(ba) provision specifying the aspects of a regulated financial service provider’s affairs for which a PCF holder has inherent responsibility for the purposes of section 53B of the Central Bank Reform Act 2010; 25
- (bb) provision specifying the aspects of a regulated financial service provider’s affairs for which responsibility is to be allocated by the regulated financial service provider to a PCF holder for the purposes of section 53B of the Central Bank Reform Act 2010;
- (bc) provision as to the arrangements described in subsection (2A) that a regulated financial service provider is to adopt;” 30
- (b) by the insertion of the following subsection after subsection (2):
- “(2A) The arrangements referred to in subsection (2)(bc) are:

- (a) arrangements for the regulated financial service provider to allocate to PCF holders for the purposes of section 53B of the Central Bank Reform Act 2010 responsibility for aspects of its affairs specified in regulations under subsection (2)(bb);
- (b) arrangements for the regulated financial service provider, so as to ensure the proper conduct of its affairs, to allocate to a PCF holder for the purposes of section 53B of the Central Bank Reform Act 2010 responsibility for aspects of its affairs for which no PCF holder has inherent responsibility under regulations under subsection (2)(ba) or responsibility allocated under arrangements described in paragraph (a);
- (c) arrangements for the regulated financial service provider to monitor the performance of pre-approval controlled functions in relation to it;
- (d) arrangements to make clear the management structure that identifies the lines of authority and accountability, and specifies roles and responsibilities, in relation to the management of PCF holders and of other persons by PCF holders;
- (e) arrangements to make clear the governance structure determining how the regulated financial service provider and PCF holders relate to persons concerned in the ownership or control of the regulated financial service provider or representing its customers or other stakeholders;
- (f) arrangements for documenting arrangements referred to in paragraphs (a) to (e).”;

and

- (c) by the insertion of the following subsection after subsection (3):

“(4) In this section—

‘PCF holder’ means a person performing a pre-approval controlled function in relation to the regulated financial service provider concerned;

‘pre-approval controlled function’ has the meaning given by section 18 of the Central Bank Reform Act 2010.”.

Amendment of section 51 of Act of 2013

- 4. Section 51 of the Act of 2013 is amended, in subsection (1), by the insertion of “pre-approval controlled functions,” after “providers,” in each place where it occurs.

Power of Bank to prescribe business standards

Insertion of Part 2A in Act of 2010

5. The Act of 2010 is amended by the insertion of the following Part after Part 2:

“PART 2A 5

POWERS OF BANK IN RELATION TO FINANCIAL SERVICE PROVIDERS

Business standards

- 17A.** (1) A regulated financial service provider shall comply with any standards prescribed by the Bank under subsection (2) (in this section referred to as the ‘business standards’). 10
- (2) The Bank may make regulations prescribing standards for the purpose of ensuring that in the conduct of its affairs a regulated financial service provider—
- (a) acts in the best interests of customers and of the integrity of the market, 15
 - (b) acts honestly, fairly and professionally, and
 - (c) acts with due skill, care and diligence.
- (3) The business standards shall, in particular, include standards requiring that in the conduct of its affairs the regulated financial service provider— 20
- (a) does not mislead a customer as to the advantages or disadvantages of any financial service,
 - (b) maintains adequate financial resources,
 - (c) controls and manages its affairs and systems (including risk management systems, internal control mechanisms and governance arrangements) sustainably, responsibly, and in a sound and prudent manner, 25
 - (d) prevents, or identifies and appropriately manages, conflicts of interest,
 - (e) arranges adequate protection for assets held by the regulated financial service provider on behalf of a customer, 30
 - (f) engages and cooperates in good faith and without delay with the Bank, and with authorities that perform functions in a jurisdiction other than the State that are comparable to one or more of the functions performed by the Bank under financial services legislation, and 35

- (g) discloses to the Bank promptly, and in a manner appropriate to the circumstances, any matter relating to the regulated financial service provider of which the Bank would reasonably expect notice.
- (4) The Bank may prescribe in regulations under this section the systems and controls, processes, policies and procedures that regulated financial service providers are to adopt for the purpose of ensuring that they comply with the business standards. 5
- (5) Before making regulations under this section, the Bank—
 - (a) shall consult with the Minister, and
 - (b) may consult with such other persons as the Bank considers appropriate in the circumstances. 10
- (6) When making regulations under this section the Bank shall have regard to the need to ensure that the business standards are effective and proportionate having regard to the nature, scale and complexity of the activities of regulated financial service providers or the class or classes of regulated financial service providers to whom the regulations apply. 15
- (7) Regulations made under this section may—
 - (a) apply either generally or to a specified class or classes of regulated financial service providers, customers or financial services, and 20
 - (b) include different provisions in relation to different classes of regulated financial service providers, customers or financial services.
- (8) The Bank shall give to the Minister a copy of any regulations made by it under this section as soon as practicable after the regulations are made. 25
- (9) Sections 61C and 61D of the Act of 1942 apply to regulations made under this section.”.

CHAPTER 3

Duty of responsibility and standards for individuals 30

Insertion of Part 3A in Act of 2010

6. The Act of 2010 is amended by the insertion of the following Part after Part 3:

“PART 3A

DUTY OF RESPONSIBILITY AND CONDUCT STANDARDS

Interpretation (Part 3A) 35

53A. For the purposes of this Part—

‘common conduct standards’ shall be construed in accordance with

section 53C(1);

‘additional conduct standards’ shall be construed in accordance with section 53C(2).

Duty of responsibility

- 53B.** (1) For the purposes of this section— 5
- (a) a person has inherent responsibility for an aspect of the affairs of a regulated financial service provider if—
 - (i) the person performs a pre-approval controlled function in relation to the regulated financial service provider, and
 - (ii) the aspect of its affairs is specified in relation to that function by regulations made under section 48(2)(ba) of the Central Bank (Supervision and Enforcement) Act 2013, 10
- and
- (b) a person has allocated responsibility for an aspect of the affairs of a regulated financial service provider if— 15
 - (i) the person performs a pre-approval controlled function in relation to the regulated financial service provider, and
 - (ii) responsibility for the aspect of its affairs has been allocated to the person performing that function under arrangements adopted by the regulated financial service provider in accordance with regulations made under section 48(2)(bc) of the Central Bank (Supervision and Enforcement) Act 2013. 20
- (2) A person who has inherent or allocated responsibility for an aspect of the affairs of a regulated financial service provider shall take any steps that it is reasonable in the circumstances for the person to take to secure that, while the person has that responsibility, the aspect of the affairs of the regulated financial service provider is conducted so as to avoid contravention by it of its obligations under financial services legislation. 25
- (3) For the purposes of subsection (2), avoiding contravention includes avoiding continuation of a contravention. 30

Duty to take steps to meet conduct standards

- 53C.** (1) A person who performs a controlled function in relation to a regulated financial service provider shall take any steps that it is reasonable in the circumstances for the person to take to ensure that the standards set out in section 53E (referred to in this Part as the ‘common conduct standards’) are met. 35
- (2) A person who performs a pre-approval controlled function in relation to a regulated financial service provider or any other function by which the person may exercise a significant influence on the conduct of the regulated financial service provider’s affairs shall take any steps that it is reasonable in the circumstances for the person to take to 40

ensure that the standards set out in section 53F (referred to in this Part as the ‘additional conduct standards’) are met.

Relevant circumstances for purposes of sections 53B and 53C

- 53D.** In determining the circumstances that are relevant for the purposes of subsection (2) of section 53B and subsections (1) and (2) of section 53C, as they apply in the case of any person performing functions in relation to a regulated financial service provider, matters to be considered include—
- (a) the nature of the business of the regulated financial service provider, including its scale and complexity,
 - (b) the functions of the person in relation to the regulated financial service provider, and the level of knowledge and experience that a person with such functions could reasonably be expected to have,
 - (c) the level of knowledge and experience of the person,
 - (d) the existence and application (or otherwise) of—
 - (i) appropriate and effective systems (including risk management systems, internal control mechanisms and governance arrangements),
 - (ii) effective oversight of any delegation of responsibilities and effective safeguards against any inappropriate delegation, and
 - (iii) appropriate and effective procedures for identifying and remedying problems,
 - (e) the extent to which any matter referred to in paragraph (d) was within the control or influence of the person, and
 - (f) in the case of subsections (1) and (2) of section 53C, any guidelines published by the Bank under section 53G.

Common conduct standards

- 53E.** (1) The standards referred to in section 53C(1), in the case of a person who performs a controlled function in relation to a regulated financial service provider, are—
- (a) that the person acts with honesty and integrity, including—
 - (i) having regard to the legitimate interests of the regulated financial service provider, its staff, customers and other persons with whom it engages,
 - (ii) operating without bias and preventing, or identifying and appropriately managing, conflicts of interest,
 - (iii) not exerting pressure or influence on a customer so as to limit his or her ability to make an informed choice in relation to any financial service,
 - (iv) not misusing or misappropriating any assets or information of the regulated financial service provider or its customers, and

- (v) reporting appropriately, and not impeding others from reporting, to the management of the regulated financial service provider—
 - (I) information relevant to, or giving rise to a suspicion of, the commission of a prescribed contravention or contravention of any other legal obligation or standard imposed on the regulated financial service provider, and 5
 - (II) any matter otherwise adversely affecting the activities or interests of customers, the regulated financial service provider, its related undertakings, or the financial system in the State, 10
- (b) that the person acts with due skill, care and diligence, including—
 - (i) having appropriate knowledge of the business activities of the regulated financial service provider relevant to the controlled function, and the associated risks of those activities,
 - (ii) having appropriate knowledge of the legal and regulatory framework, including any legal obligation or standard imposed on the regulated financial service provider, relevant to the controlled function, 15
 - (iii) operating in compliance with the systems and controls, processes, policies and procedures of the regulated financial service provider and any legal obligation or standard imposed on the regulated financial service provider, 20
 - (iv) acting without detriment to customers, the regulated financial service provider, its related undertakings, or the financial system in the State, 25
 - (v) ensuring that any communication, including any record, provided to a customer or other person is clear, accurate, up to date and not misleading,
 - (vi) acting appropriately in any decision-making, including collective decision-making, ensuring decisions are properly informed and exercising sound judgement, and 30
 - (vii) monitoring the performance of any delegated tasks and ensuring that those tasks are appropriately performed,
- (c) that the person cooperates in good faith and without delay with the Bank, and with authorities that perform functions in a jurisdiction other than the State that are comparable to one or more of the functions performed by the Bank under financial services legislation, including— 35
 - (i) responding to requests and requirements under financial services legislation in an open and timely manner, 40
 - (ii) disclosing information or records when required to do so under financial services legislation,

- (iii) attending meetings and interviews when required to do so under financial services legislation,
 - (iv) not providing false, inaccurate or misleading information, records or explanations,
 - (v) not destroying, hiding or putting beyond reach information or records that it is reasonable for the person to expect to be required to be disclosed under financial services legislation, and 5
 - (vi) not engaging in evasive, misleading or obstructive conduct,
 - (d) that the person acts in the best interests of customers and treats them fairly and professionally, including— 10
 - (i) ensuring that customers are informed in a clear manner of relevant information relating to financial services of which they ought to be aware, and not impeding the provision of relevant information to customers,
 - (ii) communicating with customers in a timely manner having regard to the urgency of any matter and the time required by the customer to consider the relevant information, 15
 - (iii) assessing the needs and circumstances of customers, including their level of knowledge and experience of financial services, their financial circumstances and the range of options available to them, and ensuring that any advice or recommendation provided to customers is appropriate and tailored to their needs and circumstances, 20
 - (iv) ensuring that customers are not misled as to the advantages of any financial service, 25
 - (v) acknowledging and seeking to resolve any complaints received from customers,
 - (vi) resolving errors or mistakes affecting customers, and disclosing errors or mistakes to the customers affected in a timely manner, and 30
 - (vii) not acting in a manner that is unfair to customers,
 - and
 - (e) that the person operates in compliance with standards of market conduct and trading venue rules to which the regulated financial service provider is subject by law and any market codes that apply to the affairs of the regulated financial service provider. 35
- (2) Nothing referred to in a subparagraph of any paragraph of subsection (1) as included in that paragraph limits the scope of that paragraph or any other paragraph of that subsection.

- (3) In subsection (1), ‘related undertaking’ has the meaning given by section 3(1) of the Central Bank (Supervision and Enforcement) Act 2013.

Additional conduct standards

- 53F.** The standards referred to in section 53C(2), in the case of a person who performs a pre-approval controlled function in relation to a regulated financial service provider or any other function by which the person may exercise a significant influence on the conduct of a regulated financial service provider’s affairs, are— 5
- (a) that the business of the regulated financial service provider is controlled effectively, 10
 - (b) that the business of the regulated financial service provider is conducted in accordance with its obligations under financial services legislation,
 - (c) that any delegated tasks are assigned to an appropriate person with effective oversight, and 15
 - (d) that any information of which the Bank would reasonably expect notice in respect of the business of the regulated financial service provider is disclosed promptly and appropriately to the Bank, including information relevant to, or giving rise to a suspicion or expectation of, any of the following: 20
 - (i) commission of an offence by the regulated financial service provider or a person performing a controlled function in relation to it;
 - (ii) commission of a prescribed contravention or any other breach of obligations under financial services legislation by the regulated financial service provider or a person performing a controlled function in relation to it; 25
 - (iii) concealment or deliberate destruction of evidence relating to a matter referred to in subparagraph (i) or (ii); 30
 - (iv) provision of false or misleading information to the Bank relating to a matter referred to in subparagraph (i) or (ii);
 - (v) obstruction or impeding of an investigation relating to a matter referred to in subparagraph (i) or (ii);
 - (vi) commencement of legal proceedings by or against the regulated financial service provider arising from its obligations under financial services legislation; 35
 - (vii) commencement of legal proceedings against the regulated financial service provider which may impact on its ability to continue to trade; 40
 - (viii) anything that may otherwise interfere significantly with the operation of the regulated financial service provider or its

compliance with its obligations under financial services legislation;

- (ix) a decision by the regulated financial service provider to cease to provide financial services of a particular description.

Guidelines on conduct standards 5

53G. (1) The Bank shall prepare, in such form and manner as it considers appropriate, guidelines for the purpose of providing practical guidance for persons to whom subsection (1) or (2) of section 53C applies relating to the application and operation of this Part.

- (2) The guidelines may include different provisions in respect of different classes of persons to whom subsection (1) or (2) of section 53C applies. 10

- (3) The Bank shall publish guidelines prepared under subsection (1)—

- (a) by notice in *Iris Oifigiúil*, and

- (b) on a website maintained by or on behalf of the Bank. 15

- (4) A person to whom subsection (1) or (2) of section 53C applies shall have regard to any guidelines published by the Bank under this section.

Notification and training for persons subject to conduct standards

53H. (1) A regulated financial service provider shall for the purpose of ensuring compliance with the common conduct standards and additional conduct standards— 20

- (a) notify persons performing a controlled function in relation to the regulated financial service provider of the common conduct standards and how they apply to a person performing that function, 25

- (b) provide training to persons performing a controlled function in relation to the regulated financial service provider to ensure that such persons have appropriate knowledge of the common conduct standards and how they apply to a person performing that function,

- (c) notify persons performing a pre-approval controlled function in relation to the regulated financial service provider or any other function by which the person may exercise a significant influence on the conduct of the regulated financial service provider's affairs of the additional conduct standards and how they apply to a person performing that function, 30 35

- (d) provide training to persons performing a pre-approval controlled function in relation to the regulated financial service provider or any other function by which the person may exercise a significant influence on the conduct of the regulated financial service provider's affairs to ensure that such persons have appropriate knowledge of the additional conduct standards and how they apply to a person performing that function, and 40

- (e) establish, maintain and give effect to policies on how the common conduct standards are integrated into the conduct of the affairs of the regulated financial service provider.
- (2) The Bank shall prepare, in such form and manner as it considers appropriate, guidelines for the purpose of providing practical guidance for regulated financial service providers relating to each of the matters referred to in subsection (1). 5
- (3) The Bank shall publish guidelines prepared under subsection (2)—
 - (a) by notice in *Iris Oifigiúil*, and
 - (b) on a website maintained by or on behalf of the Bank. 10

Limitation of requirements to produce documents, give information or answer questions

- 53I.** Nothing in this Part requires a person—
- (a) to produce a document that the person could not have been compelled to produce to a court, 15
 - (b) to give information that the person could not have been compelled to give to a court,
 - (c) to answer a question that the person could not have been compelled to answer in a court, or
 - (d) to do anything that might tend to incriminate the person.”. 20

PART 3

AMENDMENT OF PART 3 OF ACT OF 2010

Amendment of section 18 of Act of 2010

- 7.** Section 18 of the Act of 2010 is amended—
- (a) in subsection (1)— 25
 - (i) by the substitution of the following definition for the definition of “controlled function”:
 - “ ‘controlled function’—
 - (a) in relation to a regulated financial service provider, means a function prescribed in regulations made under section 20 as a controlled function in relation to a regulated financial service provider, and 30
 - (b) in relation to a holding company, means a function prescribed in regulations made under section 20 as a controlled function in relation to a holding company;”, 35
 - (ii) by the substitution of the following definition for the definition of “pre-approval controlled function”:

“ ‘pre-approval controlled function’—

- (a) in relation to a regulated financial service provider, shall be construed in accordance with section 22(1), and
- (b) in relation to a holding company, shall be construed in accordance with section 22(1A);”

5

and

(iii) by the insertion of the following definitions:

“ ‘holding company’ means any of the following established in the State:

- (a) a financial holding company, within the meaning given by point (20) of Article 4(1) of the Capital Requirements Regulation; 10
- (b) a mixed financial holding company, within the meaning given by point (21) of Article 4(1) of the Capital Requirements Regulation;
- (c) an insurance holding company, within the meaning given by Regulation 215(1) of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015); 15
- (d) an investment holding company, within the meaning of the European Union (Investment Firms) Regulations 2021 (S.I. No. 355 of 2021);

‘prohibition notice’ means a notice under section 43;”

20

and

(b) by the deletion of subsections (2) and (3).

Definition (Chapter 2)

8. The Act of 2010 is amended by the substitution of the following section for section 19:

“19. In this Chapter, ‘relevant obligations’, in relation to a regulated financial service provider or holding company, means the obligations of the regulated financial service provider or holding company under— 25

- (a) all designated enactments and all designated statutory instruments that apply to it,
- (b) all codes, guidelines and notices issued by the Bank that apply to it, 30
and
- (c) all other enactments and statutory instruments with which it must comply.”

Amendment of section 20 of Act of 2010

9. Section 20 of the Act of 2010 is amended— 35

- (a) in subsection (1), by the insertion of “in relation to regulated financial service providers or in relation to holding companies” after “controlled functions”,

- (b) in subsection (2), by the insertion of “to be a controlled function in relation to a regulated financial service provider” after “subsection (1)”,
- (c) by the insertion of the following subsection after subsection (2):
 - “(2A) The Bank may prescribe a function under subsection (1) to be a controlled function in relation to a holding company if and only if the function—
 - (a) is likely to enable the person responsible for its performance to exercise a significant influence on the conduct of the affairs of the holding company, or
 - (b) is related to ensuring, controlling or monitoring compliance by the holding company with its relevant obligations.”,
- (d) in subsection (3), by the substitution of “A function that is prescribed under subsection (1) as a controlled function in relation to a regulated financial service provider and” for “A controlled function that”,
- (e) in subsection (4)—
 - (i) by the substitution of “A function that is prescribed under subsection (1) as a controlled function in relation to a regulated financial service provider or in relation to a holding company” for “A controlled function”,
 - (ii) in paragraph (b), by the insertion of “or holding company” after “provider”, and
 - (iii) by the substitution of the following paragraph for paragraph (c):
 - “(c) it relates to affairs of a regulated financial service provider or holding company established in the State conducted by the regulated financial service provider or holding company outside the State.”,
- and
- (f) in subsection (5), by the insertion of “or holding companies” after “providers” in both places where it occurs.

Application of standards of fitness and probity

- 10.** The Act of 2010 is amended by the substitution of the following section for section 21:
 - “**21.** (1) A regulated financial service provider shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the regulated financial service provider in accordance with this section, is in force in relation to the person.
 - (2) A holding company shall not permit a person to perform a controlled function in relation to it unless a certificate of compliance with standards of fitness and probity, given by the holding company in accordance with this section, is in force in relation to the person.

- (3) A certificate may be given for the purposes of subsection (1) or (2) only if—
- (a) the regulated financial service provider or holding company giving the certificate is satisfied on reasonable grounds that the person concerned complies with any standard of fitness and probity in a code issued under section 50, and 5
 - (b) the person has agreed in writing to comply with any such standard.
- (4) A regulated financial service provider or holding company that has given a certificate for the purposes of subsection (1) or (2) shall revoke the certificate if it ceases to be satisfied on reasonable grounds that the person concerned complies with any standard of fitness and probity referred to in subsection (3). 10
- (5) The Bank may take into account standards of fitness and probity referred to in subsection (3) when performing its functions and exercising its powers. 15
- (6) The Bank may make regulations—
- (a) as to the giving of certificates for the purposes of subsections (1) and (2), and
 - (b) as to the making of reports to the Bank by regulated financial service providers or holding companies in connection with their obligations under this section (including, in particular, reports on disciplinary action relevant to compliance with standards of fitness and probity). 20
- (7) Without prejudice to the generality of subsection (6)(a), regulations under subsection (6) may make provision as to— 25
- (a) the form and content of a certificate,
 - (b) the period of validity of a certificate,
 - (c) procedures, systems and checks to be adopted by regulated financial service providers or holding companies for the purposes of subsections (3)(a) and (4) or otherwise in connection with the giving or revoking of a certificate, and 30
 - (d) the form and content of the agreement required by subsection (3)(b).
- (8) The Bank shall give to the Minister a copy of any regulations made by it under subsection (6) as soon as practicable after the regulations are made.”. 35

Amendment of section 22 of Act of 2010

11. Section 22 of the Act of 2010 is amended—

- (a) in subsection (1), by the insertion of “in relation to a regulated financial service provider” after “is a pre-approval controlled function”, 40

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

“(1A) A function is a pre-approval controlled function in relation to a holding company if it is prescribed as such in regulations made pursuant to subsection (2A).”,

(c) by the substitution of the following subsections for subsection (2): 5

“(2) The Bank may by regulations prescribe a function that is a controlled function in relation to a regulated financial service provider as a pre-approval controlled function in relation to a regulated financial service provider, if the function is one by which a person may exercise a significant influence on the conduct of a regulated financial service provider’s affairs. 10

(2A) The Bank may by regulations prescribe a function that is a controlled function in relation to a holding company as a pre-approval controlled function in relation to a holding company, if the function is one by which a person may exercise a significant influence on the conduct of a holding company’s affairs. 15

(2B) In prescribing a function as a pre-approval controlled function pursuant to subsection (2) or (2A), the Bank may describe or identify the function by reference to a title commonly used for a person who performs the function.”, 20

and

(d) by the substitution of the following subsections for subsections (3) and (4):

“(3) Without prejudice to the generality of subsections (2) and (2A), the Bank may prescribe a controlled function as a pre-approval controlled function in relation to a regulated financial service provider, pursuant to subsection (2), or in relation to a holding company, pursuant to subsection (2A), if— 25

(a) the person who performs the function reports directly to—

(i) a person who holds an office or position mentioned in a subparagraph of subsection (4)(a) in the regulated financial service provider or holding company, or 30

(ii) in the case of a regulated financial service provider, a person referred to in paragraph (b) or (c) of subsection (4),

and

(b) the Bank is satisfied that the prescription of the function as a pre-approval controlled function— 35

(i) is warranted on the grounds of the size or complexity of the regulated financial service provider or holding company or its business, and

- (ii) is necessary or prudent in order to verify the compliance by the regulated financial service provider or holding company with its relevant obligations.
- (4) For the purposes of subsections (2) and (2A) each of the following shall be taken to exercise a significant influence on the conduct of the affairs of the regulated financial service provider or holding company concerned (in this subsection referred to as ‘the entity’):
 - (a) where the entity is a body corporate of a prescribed class, a person who holds, or performs the duties of, any of the following offices or positions in the entity:
 - (i) the office of director;
 - (ii) the office of chief executive;
 - (iii) the office of secretary;
 - (iv) subject to subsection (3), an office or position the holder of which reports directly to—
 - (I) a person who holds an office referred to in subparagraph (i), (ii) or (iii) in the entity, or
 - (II) where the entity is a regulated financial service provider, a person referred to in paragraph (b) or (c);
 - (b) where the entity is a partnership that is a regulated financial service provider of a prescribed class, each member of the partnership;
 - (c) where the entity is a natural person that is a regulated financial service provider of a prescribed class, that person.”.

Amendment of section 23 of Act of 2010

- 12.** Section 23 of the Act of 2010 is amended—
- (a) in subsection (1)—
 - (i) by the insertion of “or holding company” after “provider”, and
 - (ii) by the insertion of “in relation to it” after “controlled function”,
 - (b) in subsection (2)—
 - (i) by the insertion of “the appointment of” after “approve”,
 - (ii) by the insertion of “or holding company” after “provider”, and
 - (iii) by the insertion of “pre-approval” before “controlled”,
 - (c) in subsection (6)(a), by the insertion of “or holding company” after “provider”, and
 - (d) by the insertion of the following subsection after subsection (7):
 - “(8) Where—

- (a) the Bank is considering under subsection (1) whether to approve an appointment,
 - (b) the appointment will be to perform a pre-approval controlled function in relation to a regulated financial service provider, and
 - (c) the person proposing to make the appointment is not yet a regulated financial service provider, 5
- subsection (2) applies as if references in that subsection to a regulated financial service provider were references to that person.”

Amendment of section 23A of Act of 2010

13. Section 23A of the Act of 2010 is amended— 10

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

“(1) A significant supervised entity (within the meaning of the SSM Framework Regulation) which is a regulated financial service provider or holding company shall not—

- (a) appoint a person to its management body (within the meaning of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014)), or 15
- (b) appoint a person to perform in relation to it a pre-approval controlled function prescribed under subsection (1A),

unless the Bank has notified the entity in writing that the ECB has approved the appointment. 20

(1A) The Bank may by regulations prescribe a pre-approval controlled function for the purposes of subsection (1)(b) if it appears to the Bank that the approval of appointments to that function is subject to the exclusive competence of the ECB under Article 4(1)(e) of the SSM Regulation.” 25

and

(b) in subsection (3)—

- (i) by the insertion of “the appointment of” after “approve”, and
- (ii) by the deletion of “to the management body”. 30

Amendment of section 25 of Act of 2010

14. Section 25 of the Act of 2010 is amended—

(a) in subsection (2)—

- (i) in paragraph (a), by the insertion of “or holding company” after “provider”,
 - (ii) by the insertion of the following paragraph after paragraph (a): 35
- “(aa) subject to subsection (2A), if the person has performed a controlled function in relation to a regulated financial service provider or

holding company within the period of 6 years immediately preceding the commencement of the investigation referred to in subsection (1),”,

(iii) in paragraph (b)—

(I) by the insertion of “or holding company” after “provider”, and 5

(II) by the insertion of “in relation to it” after “function”,

and

(iv) in paragraph (c)—

(I) by the insertion of “or holding company” after “provider”, and

(II) by the insertion of “in relation to it,” after “function)”, 10

(b) by the insertion of the following subsection after subsection (2):

“(2A) Where the period from the date of commencement of paragraph (aa) of subsection (2) to the beginning of an investigation under subsection (1) is less than 6 years, that paragraph applies as if the reference to the period of 6 years were a reference to that shorter period.”, 15

and

(c) in subsection (3)—

(i) in paragraph (a), by the deletion of “the part of a controlled function or any controlled function, as the case may be,”,

(ii) by the substitution of the following paragraph for paragraph (c): 20

“(c) the person has committed or participated in serious misconduct in relation to the affairs of a regulated financial service provider or holding company,”,

and

(iii) in paragraph (f), by the insertion of “or holding company” after “provider”. 25

Notice of investigation

15. The Act of 2010 is amended by the insertion of the following section after section 25:

“**25A.**(1) As soon as practicable after a decision is made by the Head of Financial Regulation to conduct an investigation in accordance with this Chapter, the Head of Financial Regulation shall serve on the person to whom the investigation relates notice in writing of the investigation. 30

(2) A notice under subsection (1) shall include—

(a) a statement of the reasons for holding the opinion referred to in section 25(1)(a), 35

(b) a copy of such material on which that opinion is based as the Head of Financial Regulation considers appropriate, and

- (c) a statement that a response to the contents of the notice will be taken into account if made by the person in writing within the period stated in the notice, which shall be—
 - (i) 7 days from the date on which the notice is served, or
 - (ii) such longer period as the Head of Financial Regulation considers necessary to provide an opportunity to respond. 5
- (3) The Head of Financial Regulation shall take such steps as he or she considers reasonable to keep the person to whom an investigation relates informed as to the progress of the investigation.
- (4) If an investigation is discontinued, the Head of Financial Regulation shall, as soon as practicable, serve on the person to whom the investigation relates notice in writing which— 10
 - (a) states that the investigation has been discontinued, and
 - (b) gives one or more of the following reasons for the discontinuance:
 - (i) that the Head of Financial Regulation is no longer of the opinion that there is reason to suspect the person’s fitness and probity to perform the relevant controlled function; 15
 - (ii) that the Head of Financial Regulation is no longer of the opinion that any reason to suspect the person’s fitness and probity to perform the relevant controlled function is sufficient to warrant an investigation; 20
 - (iii) that the investigation has been discontinued for reasons of resources;
 - (iv) that the investigation has been discontinued for policy reasons;
 - (v) that the investigation has been discontinued for reasons of any other description stated in the notice.”. 25

Amendment of section 26 of Act of 2010

16. Section 26 of the Act of 2010 is amended—

- (a) in subsection (1)—
 - (i) by the insertion of “or the Head of Financial Regulation receives a notification under section 43(11A),” after “section 25,” 30
 - (ii) by the substitution of “a regulated financial service provider or holding company” for “a regulated financial service provider concerned”, and
 - (iii) by the insertion of “a part of the relevant controlled function,” after “the relevant controlled function,” 35
- (b) by the insertion of the following subsection after subsection (1):
 - “(1A) In subsection (1), the reference to an investigation under section 25 does not include an investigation in the circumstances referred to in

subsection (2)(aa) of section 25, unless any other paragraph of section 25(2) also applies.”,

(c) in subsection (3)—

(i) by the substitution of “provider or holding company concerned” for “provider concerned”, and 5

(ii) by the insertion of “or holding company” before “confirms”,

(d) in subsection (4)—

(i) in paragraph (b), by the substitution of “section 25(1)(a) or details of a notification received under section 43(11A), as the case may be” for “section 25(1)”, 10

(ii) in paragraph (d), by the substitution of “each regulated financial service provider or holding company on which a copy of the notice is served” for “the regulated financial service provider concerned”, and

(iii) by the substitution of the following paragraph for paragraph (e):

“(e) shall set out, for any regulated financial service provider or holding company on which any terms and conditions are imposed under subsection (8), the terms and conditions imposed.”, 15

(e) in subsection (5)—

(i) in paragraph (b), by the insertion of “or holding company” after “provider”, and 20

(ii) in paragraph (c), by the insertion of “or holding company” after “provider”,

(f) by the deletion of subsection (6),

(g) in subsection (7), by the insertion of “or holding company” after “provider”,

(h) in subsection (8)—

(i) by the substitution of “any regulated financial service provider or holding company on which a copy of the notice is served” for “any regulated financial service provider concerned”, 25

(ii) by the substitution of “including any terms and conditions” for “including any condition”, and

(iii) by the substitution of “its business until it complies with the notice” for “the business of the regulated financial service provider concerned until the regulated financial service provider complies with the notice”, 30

and

(i) in subsection (9), by the insertion of “or holding company” after “provider”.

Amendment of section 27 of Act of 2010

35

17. Section 27 of the Act of 2010 is amended—

- (a) by the insertion of “or holding company” after “provider” in each place where it occurs, and
- (b) in subsection (2), by the substitution of “terms and conditions” for “condition”.

Amendment of section 28 of Act of 2010

- 18.** Section 28 of the Act of 2010 is amended, in paragraph (a), by the insertion of “or holding company” after “provider”. 5

Amendment of section 29 of Act of 2010

- 19.** Section 29 of the Act of 2010 is amended—

- (a) in subsection (1)—
 - (i) by the insertion of “or holding company” after “regulated financial service provider”, 10
 - (ii) by the substitution of “satisfied” for “satisfied that”, and
 - (iii) by the substitution of the following paragraphs for paragraphs (a) to (c):
 - “(a) (except where the suspension notice was issued following receipt of a notification under section 43(11A)) that there is still reason to suspect the person’s fitness and probity to perform the relevant controlled function, and 15
 - (b) that it is necessary in the interests of the proper regulation of the regulated financial service provider or holding company that the person not perform the controlled function, the part of the controlled function, or any controlled function, while the Head of Financial Regulation, the Bank or the Governor is carrying out a function in relation to the person under this Chapter or Chapter 4,” 20
- (b) in subsection (2), by the insertion of “or holding company” after “provider”,
- (c) in subsection (3)(b), by the substitution of “the condition in paragraph (a) of subsection (1), where it applies, or paragraph (b) of that subsection” for “any condition in paragraph (a), (b) or (c) of subsection (1)”, 25
- (d) in subsection (4), by the substitution of “6 months” for “3 months”,
- (e) by the insertion of the following subsection after subsection (5):
 - “(5A) A notice served under subsection (5) shall state that the decision to confirm the suspension notice is an appealable decision for the purposes of Part VIIA of the Act of 1942.”, 30
- (f) by the substitution of the following subsection for subsection (6):
 - “(6) The Head of Financial Regulation may revoke a suspension notice at any time if he or she considers that it is no longer necessary in the interests of the proper regulation of the regulated financial service provider or holding company concerned that the person not perform the relevant controlled function, the relevant part of a controlled 35

function, or any controlled function, while the Head of Financial Regulation, the Bank or the Governor is carrying out a function in relation to the person under this Chapter or Chapter 4.”,

and

(g) by the insertion of the following subsection after subsection (6): 5

“(7) A decision by the Head of Financial Regulation to confirm a suspension notice is an appealable decision for the purposes of Part VIIA of the Act of 1942, and the Appeals Tribunal shall have particular regard to the need for expedition in hearing an appeal against such a decision.”. 10

Amendment of section 30 of Act of 2010

20. Section 30 of the Act of 2010 is amended—

(a) in paragraph (b)—

(i) by the insertion of “or holding company” after “provider”, and

(ii) by the insertion of “in relation to it” after “function” in the second place where it occurs, 15

and

(b) by the substitution of “or the regulated financial service provider or holding company” for “or regulated financial service provider”.

Amendment of section 31 of Act of 2010

20

21. Section 31 of the Act of 2010 is amended—

(a) in subsection (1), by the insertion of “or holding company” after “provider”,

(b) in subsection (2), by the substitution of “6 months” for “3 months”, and

(c) by the insertion of the following subsections after subsection (2):

“(2A) The making of an order under subsection (2) does not prevent the making of a further order. 25

(2B) Subject to subsection (2C), orders under subsection (2) shall not in total extend a suspension notice for more than 24 months from the end of the period of 6 months referred to in section 29(4).

(2C) Where a prohibition is imposed on the suspended person under section 43, or where the suspension notice was issued following the imposition of a prohibition under section 43, subsection (2B) does not apply, but orders under subsection (2) shall not extend the suspension notice beyond the time when an application under section 45 for confirmation of the prohibition notice has been disposed of.”. 30 35

Amendment of section 32 of Act of 2010

22. Section 32 of the Act of 2010 is amended in subsection (2)—

- (a) in paragraph (a), by the insertion of “or holding company” after “provider”,
- (b) in paragraph (b), by the insertion of “or former holding company” after “provider”, and 5
- (c) in paragraph (c)—
 - (i) by the insertion of “or holding company” after “provider” in the first place where it occurs, and
 - (ii) by the insertion of “or former holding company” after “provider” in the second place where it occurs. 10

Amendment of section 39 of Act of 2010

23. Section 39 of the Act of 2010 is amended in subsection (2)(b)—

- (a) by the insertion of “or holding company” after “provider” in the first place where it occurs, and
- (b) by the insertion of “or former holding company” after “provider” in the second place where it occurs. 15

Amendment of section 40 of Act of 2010

24. Section 40 of the Act of 2010 is amended by the insertion of the following subsection after subsection (3):

- “(4) Where the person concerned claims to be entitled to refuse to produce 20 a document, to provide information, or to answer a question, on the grounds of legal professional privilege, the Court may, without prejudice to the generality of subsection (2), give directions as to the appointment of a person with suitable legal qualifications, possessing the level of experience, and the independence from any interest falling 25 to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of—
 - (a) examining the material for which the person claims legal professional privilege, and
 - (b) preparing a report for the Court with a view to assisting or 30 facilitating the Court in deciding what action to take under this section.”.

Head of Financial Regulation to prepare report

25. The Act of 2010 is amended by the substitution of the following section for section 41:

- “41. (1) Where the Head of Financial Regulation has completed an 35 investigation under this Chapter, he or she shall, after considering—
 - (a) the notice under section 25A(1),

- (b) any relevant information or evidence gathered or received by the Head of Financial Regulation in the course of the investigation, and
- (c) any response made by the person to whom the investigation relates in accordance with a statement referred to in section 25A(2)(c), and any other relevant submission or statement made by the person in the course of the investigation, 5
- as soon as practicable prepare a draft report of the investigation.
- (2) The Head of Financial Regulation shall, as soon as practicable after preparing the draft report, serve on the person whose fitness and probity was the subject of the investigation, and any regulated financial service provider or holding company concerned— 10
- (a) a copy of the draft report,
- (b) a copy of this section, and
- (c) a notice in writing stating that the person, and any regulated financial service provider or holding company concerned, may make submissions in writing to the Head of Financial Regulation on the draft report within the period stated in the notice, which shall be— 15
- (i) 7 days from the date on which the notice is served, or
- (ii) such longer period as the Head of Financial Regulation considers necessary to provide an opportunity to respond. 20
- (3) The Head of Financial Regulation shall, as soon as practicable after the end of the period referred to in paragraph (c) of subsection (2), and having considered any submissions made in accordance with that paragraph, make any revisions to the draft report that in the opinion of the Head of Financial Regulation are warranted, and finalise the report. 25
- (4) The Head of Financial Regulation shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a final report under subsection (3), as to whether any prohibition (or, if so, what prohibition) should be imposed under section 43 if the Bank or the Governor forms the opinion referred to in subsection (1) of that section. 30
- (5) The Head of Financial Regulation shall, as soon as practicable after the report has been finalised under subsection (3), provide to the Bank and the Governor, and serve on the person whose fitness and probity was the subject of the investigation, and any regulated financial service provider or holding company concerned a copy of— 35
- (a) the final report, and
- (b) any submissions made in accordance with paragraph (c) of subsection (2).” 40

Amendment of section 42 of Act of 2010

26. Section 42 of the Act of 2010 is amended—

(a) by the substitution of the following definition for the definition of “prohibited person”:

“ ‘prohibited person’ means a person who is the subject of a prohibition imposed under section 43(1).”, 5

and

(b) by the deletion of the definition of “prohibition notice”.

Amendment of section 43 of Act of 2010

27. Section 43 of the Act of 2010 is amended— 10

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

“(1) If the Bank or the Governor has reasonably formed the opinion that a person is not of such fitness and probity as is appropriate to perform a particular controlled function, a specified part of a controlled function, or any controlled function, the Bank or the Governor, as the case may be, may, subject to subsections (3) and (4), impose on the person a prohibition that, as respects the controlled function, the specified part of a controlled function, or any controlled function— 15

(a) forbids the person—

(i) to carry out the function or part at all, or 20

(ii) to carry it out otherwise than in accordance with a specified condition or conditions,

(b) forbids the person—

(i) to carry out the function or part in relation to a specified regulated financial service provider or holding company or specified regulated financial service providers or holding companies, 25

(ii) to carry it out in relation to a specified class or specified classes of regulated financial service providers or holding companies, or 30

(iii) to carry it out in relation to any regulated financial service provider or holding company,

and

(c) is imposed indefinitely or for a specified period.”,

(b) in subsection (2)— 35

(i) by the substitution of the following paragraph for paragraph (c):

- “(c) the person has committed or participated in serious misconduct in relation to the affairs of a regulated financial service provider or holding company,”
- and
- (ii) in paragraph (f), by the insertion of “or holding company” after “provider”, 5
- (c) by the insertion of the following subsection after subsection (2):
- “(2A) Any finding of fact made by the Bank or the Governor for the purpose of forming the opinion referred to in subsection (1) shall be made on the balance of probabilities.”,
- (d) in subsection (3)— 10
- (i) by the substitution of “impose a prohibition on a person under subsection (1)” for “issue a prohibition notice in relation to a person”,
- (ii) in paragraph (a)(i)(I), by the substitution of “Chapter 3” for “this Chapter”,
- (iii) in paragraph (a)(i)(III), by the substitution of “in accordance with paragraph (c) of section 41(2)” for “(within the period specified pursuant to section 41(4)) to the Head of Financial Regulation in relation to any matter in the report”, 15
- (iv) in paragraph (a)(ii), by the substitution of “, and any person to whom subsection (3A) applies,” for “and any regulated financial service provider concerned”, and 20
- (v) by the substitution of the following paragraphs for paragraphs (b) and (c):
- “(b) the person and any person to whom subsection (3A) applies—
- (i) have access to any material taken into account by the Bank or the Governor for the purpose of ensuring that the proposed decision is consistent and proportionate, having regard to other decisions under subsection (1), and 25
- (ii) have been afforded such a hearing in relation to the proposed decision as is necessary to do justice in the circumstances,
- and
- (c) the Bank or the Governor, as the case may be, is satisfied that the imposition of the prohibition is necessary in the circumstances.”, 30
- (e) by the insertion of the following subsection after subsection (3):
- “(3A) In relation to the imposition of a prohibition on any person, this subsection applies—
- (a) where the person is subject to a suspension notice, to any regulated financial service provider or holding company on which the Head of Financial Regulation is required by section 26(5) to serve a copy of the notice, 35

- (b) to any regulated financial service provider or holding company in relation to which, to the knowledge of the Bank or the Governor, as the case may be, the person performs a controlled function to which the prohibition would apply,
 - (c) to any regulated financial service provider or holding company which, to the knowledge of the Bank or the Governor, as the case may be, proposes to appoint the person to perform in relation to it a controlled function to which the prohibition would apply, and
 - (d) to any regulated financial service provider or holding company which the Bank or the Governor, as the case may be, has reason to believe is considering the appointment of the person to perform in relation to it a controlled function to which the prohibition would apply.”,
 - (f) in subsection (4), by the substitution of “impose a prohibition under subsection (1)” for “issue a prohibition notice”,
 - (g) by the insertion of the following subsections after subsection (4):
 - “(4A) A prohibition under subsection (1) shall be imposed by a notice in writing (in this Part referred to as a ‘prohibition notice’).
 - (4B) Where more than one prohibition is imposed under subsection (1) on the same person, they may be imposed by the same prohibition notice.
 - (4C) A prohibition notice—
 - (a) shall be served on the prohibited person, and
 - (b) may be served on a regulated financial service provider or holding company.
 - (4D) Subject to section 46, a prohibition notice does not take effect unless confirmed on an application under section 45.”,
 - (h) by the deletion of subsections (5) to (7),
 - (i) by the substitution of the following subsection for subsection (9):
 - “(9) A regulated financial service provider or holding company shall not permit a prohibited person to perform a controlled function in relation to it if doing so would require the person to contravene a prohibition notice served on it.”,
 - (j) by the insertion of the following subsection after subsection (11):
 - “(11A) Where the Bank or the Governor imposes a prohibition in the circumstances referred to in subparagraph (ii) of subsection (3)(a), the Bank or the Governor, as the case may be, shall notify the Head of Financial Regulation.”,
- and
- (k) by the deletion of subsection (12).

Repeal of section 44 of Act of 2010

28. Section 44 of the Act of 2010 is repealed.

Amendment of section 45 of Act of 2010

29. Section 45 of the Act of 2010 is amended—

- (a) by the substitution of the following subsections for subsection (1): 5
 - “(1) As soon as practicable after the service of a prohibition notice on the prohibited person, the Bank or the Governor, as the case may be, shall, subject to section 46, make an application to the Court for confirmation of the notice.
 - (1A) An application under subsection (1) may be made on an *ex parte* basis provided that the prohibited person informs the Bank or the Governor, as the case may be, in writing that he or she agrees to the application being made *ex parte*.” 10
- (b) in subsection (3), by the substitution of “this section” for “subsection (1)”,
- (c) in subsection (4), by the substitution of “this section” for “subsection (1)”, 15
- (d) in subparagraph (ii) of subsection (5)(a), by the substitution of “regulated financial service provider or holding company” for “regulated financial institution”,
- (e) in subsection (6)—
 - (i) by the substitution of the following paragraph for paragraph (a): 20
 - “(a) a serious and significant error, or a series of errors which, taken together, are serious and significant,”
 - and
 - (ii) in paragraph (c), by the substitution of “opinion” for “finding”,
 - and 25
- (f) in subsection (10), by the insertion of “or the Governor” after “the Bank”.

Application to vary or revoke prohibition notice

30. The Act of 2010 is amended by the insertion of the following section after section 45:

- “45A.(1) An application for an order varying or setting aside a prohibition notice confirmed under section 45 may be made to the Court— 30
 - (a) by the Bank or the Governor, as the case may be, or
 - (b) by the prohibited person.
- (2) An application made by the Bank or the Governor under subsection (1) may be made on an *ex parte* basis provided that the prohibited person informs the Bank or the Governor, as the case may be, in writing that he or she agrees to the application being made *ex parte*. 35

- (3) If on an application under this section the Court is satisfied that—
 - (a) since the confirmation of the prohibition notice under section 45, there has been a change in circumstances, and
 - (b) the change is such that, if an application for confirmation were made at the time of the application under subsection (1), a different decision would be taken in relation to the application for confirmation,
 - the Court may make an order setting aside or, subject to subsection (4), varying the prohibition notice as it thinks fit.
- (4) An order under this section may not vary a prohibition notice in a way that, in the opinion of the Court, would make it more onerous to the prohibited person.
- (5) Subsections (2), (3), (7) and (11) of section 45 shall apply for the purposes of an application or the making of an order under this section subject to any necessary modifications.”.

Agreement for prohibition notice to have effect without confirmation

31. The Act of 2010 is amended by the substitution of the following section for section 46:

- “46. (1) Where the Bank or the Governor has issued a prohibition notice, the prohibited person and any person to whom subsection (2) applies may agree in writing with the Bank or the Governor, as the case may be, to comply with the prohibition notice for such period as is agreed.
- (2) Where the prohibited person is performing a controlled function at the time of issue of the prohibition notice, this subsection applies to the regulated financial service provider or holding company in relation to which that person is at that time performing the controlled function.
- (3) Where a prohibition notice is the subject of an agreement under this section—
- (a) the prohibition notice has effect for the period agreed in the agreement,
 - (b) sections 43(4D) and 45 do not apply (and section 43(8) and (9) apply accordingly), and
 - (c) if the prohibited person performs a controlled function in contravention of the prohibition notice, or if a person to whom subsection (2) applies who is a party to the agreement permits the prohibited person to perform a controlled function in contravention of the prohibition notice, the Head of Financial Regulation may apply *ex parte* to the Court for an order directing the person concerned to comply with the notice.
- (4) If the Bank or the Governor, as the case may be, considers that there is no further need to continue a prohibition notice that is the subject of an agreement under this section, the Bank or the Governor, as the case

may be, may terminate the agreement by written notice to the other parties.

- (5) On termination of an agreement under subsection (4) the prohibition notice ceases to have effect.”.

Amendment of section 48 of Act of 2010

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32. Section 48 of the Act of 2010 is amended, in subsection (2), by the insertion of “or a holding company” after “provider”.

Service of notices and other documents

33. The Act of 2010 is amended by the insertion of the following section after section 49:

“49A. For the purposes of the giving or service of notices or other documents under this Part, section 61G of the Act of 1942 applies as if references in that section to the Bank included references to the Governor and the Head of Financial Regulation.”.

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Amendment of section 51 of Act of 2010

34. Section 51 of the Act of 2010 is amended, in subsection (1), by the insertion of “or holding companies” after “providers”.

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Amendment of section 52 of Act of 2010

35. Section 52 of the Act of 2010 is amended—

(a) in subsection (1), by the insertion of “, subject to subsection (4),” after “discretion”,

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(b) in subsection (2), by the insertion of “, subject to subsection (4),” after “discretion”,

(c) in subsection (2A), by the insertion of “, subject to subsection (4),” after “discretion”, and

(d) by the insertion of the following subsections after subsection (3):

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“(4) The powers conferred by subsections (1), (2) and (2A) shall be exercised so as to secure the following:

(a) that the function of conducting an investigation in accordance with Chapter 3 where a person has formed the opinion referred to in section 25(1), and any function exercisable under that Chapter for or in connection with the conducting of such an investigation, is not performed by the person who forms that opinion;

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(b) that any function under section 29(1) to (3) in relation to a suspension notice is not performed by a person who performed a function under section 26 in relation to the notice;

35

(c) that any function under section 43 in connection with the imposition of a prohibition in circumstances to which subparagraph

(i) of subsection (3)(a) of that section applies is not performed by a person involved in the investigation referred to in that subparagraph.

- (5) Paragraph (a) of subsection (4) does not prevent the person who forms the opinion referred to in that paragraph from exercising functions, of management, advice or otherwise, that do not affect the independence of the investigation.”. 5

Independence of decision-makers

36. The Act of 2010 is amended by the insertion of the following section after section 52:

- “52A. (1) This section applies to the following functions: 10
- (a) deciding whether to issue a suspension notice;
 - (b) deciding whether to confirm a suspension notice;
 - (c) deciding whether to impose a prohibition under section 43.
- (2) The Bank shall not rely on any contract of service or contract for services with a person exercising a function to which this section applies in any way that may affect the person’s independence in the exercise of that function.”. 15

PART 4

AMENDMENT OF ACT OF 1942

CHAPTER 1 20

Amendment of Part IIIC of Act of 1942

Amendment of section 33AN of Act of 1942

37. Section 33AN of the Act of 1942 is amended—

- (a) in subsection (1)—
- (i) by the insertion of the following definitions: 25
 - “ ‘authorised officer’ means a person appointed under section 24 of the Central Bank (Supervision and Enforcement) Act 2013;
 - ‘controlled function’ has the meaning given by section 18(1) of the Central Bank Reform Act 2010;
 - ‘relevant controlled function’ in relation to participation in the commission by a regulated financial service provider of a prescribed contravention, means a controlled function in relation to the regulated financial service provider;”, 30
 - (ii) by the deletion of the definition of “decision of the Bank”, and
 - (iii) by the deletion of the definition of “disqualification direction”, 35

and

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

“(1A) For the purposes of this Part, a person is concerned in the management of a body corporate or other entity if the person is in any way involved in directing, managing or administering the affairs of the body or other entity.”. 5

Amendment of section 33ANC of Act of 1942

38. Section 33ANC of the Act of 1942 is amended—

(a) in subsection (1)(b), by the substitution of “participation by a person, while concerned” for “participation, by a person concerned”, 10

(b) in subsection (2), by the substitution of the following paragraph for paragraph (c):

“(c) a reference in this Part to performing a controlled function in relation to a regulated financial service provider includes a reference to being concerned in the management of a financial holding company, mixed-financial holding company or mixed-activity holding company.”. 15

(c) by the insertion of the following subsection after subsection (2):

“(2A) References in subsections (1) and (2) to a financial holding company, mixed financial holding company or mixed-activity holding company do not include references to a regulated financial service provider which is such a company.”. 20

(d) by the deletion of subsection (3), and

(e) in subsection (4), by the deletion of paragraph (b).

Amendment of section 33ANE of Act of 1942 25

39. Section 33ANE of the Act of 1942 is amended—

(a) in subsection (1), by the insertion of “shall not include any regulated financial service provider but, subject to that,” after “ ‘designated entity’ ”,

(b) in subsection (2), by the substitution of the following paragraph for paragraph (b): 30

“(b) participation by a person, while concerned in the management of a designated entity, in the commission by the designated entity of such a contravention.”,

(c) in subsection (3), by the substitution of the following paragraph for paragraph (c): 35

“(c) a reference in this Part to performing a controlled function in relation to a regulated financial service provider includes a

reference to being concerned in the management of a designated entity.”,

and

(d) by the deletion of subsection (4).

Amendment of section 33ANF of Act of 1942 5

40. Section 33ANF of the Act of 1942 is amended—

(a) in subsection (1)(b), by the substitution of “participation by a person, while concerned” for “participation, by a person concerned”,

(b) in subsection (2), by the substitution of the following paragraph for paragraph (c): 10

“(c) a reference in this Part to performing a controlled function in relation to a regulated financial service provider includes a reference to being concerned in the management of an insurance holding company or mixed financial holding company.”,

(c) by the insertion of the following subsection after subsection (2): 15

“(2A) References in subsections (1) and (2) to an insurance holding company or mixed financial holding company do not include references to a regulated financial service provider which is such a company.”,

and 20

(d) by the deletion of subsection (3).

Amendment of section 33ANG of Act of 1942

41. Section 33ANG of the Act of 1942 is amended—

(a) in subsection (1)(b), by the substitution of “participation by a person, while concerned” for “participation, by a person concerned”, 25

(b) in subsection (2), by the substitution of the following paragraph for paragraph (c):

“(c) a reference in this Part to performing a controlled function in relation to a regulated financial service provider includes a reference to being concerned in the management of an investment holding company, a mixed-financial holding company or a mixed-activity holding company.”, 30

(c) by the insertion of the following subsection after subsection (2):

“(2A) References in subsections (1) and (2) to an investment holding company, a mixed financial holding company or a mixed activity holding company do not include references to a regulated financial service provider which is such a company.”, 35

and

(d) by the deletion of subsection (3).

Application of Part to holding companies under Part 3 of Central Bank Reform Act 2010

42. Chapter 1 of Part IIIC of the Act of 1942 is amended by the insertion of the following section after section 33ANG:

- “33ANH.(1) This Part applies in relation to— 5
- (a) the commission or suspected commission by a financial holding company, mixed financial holding company, insurance holding company or investment holding company of a contravention of—
 - (i) a provision of Part 3 of the Central Bank Reform Act 2010,
 - (ii) a direction given to the company concerned under Part 3 of the Central Bank Reform Act 2010, 10
 - (iii) any requirement imposed on the company concerned under a provision of Part 3 of the Central Bank Reform Act 2010, or
 - (iv) any obligation imposed on the company concerned by this Part or imposed by the Bank pursuant to a power exercised under this Part, 15
- and
- (b) participation by a person, while concerned in the management of a financial holding company, mixed financial holding company, insurance holding company or investment holding company, in the commission by the company concerned of such a contravention. 20
- (2) For the purposes of subsection (1)—
- (a) a reference in this Part to a regulated financial service provider or a financial service provider includes a reference to a financial holding company, mixed financial holding company, insurance holding company or investment holding company, 25
 - (b) a reference in this Part to a prescribed contravention includes a reference to a contravention, by a financial holding company, mixed financial holding company, insurance holding company or investment holding company, of a provision, direction, requirement or obligation referred to in subsection (1), and 30
 - (c) a reference in this Part to performing a controlled function in relation to a regulated financial service provider includes a reference to being concerned in the management of a financial holding company, mixed financial holding company, insurance holding company or investment holding company. 35
- (3) References in subsections (1) and (2) to a financial holding company, mixed financial holding company, insurance holding company or investment holding company do not include references to a regulated financial service provider which is such a company. 40

- (4) In this section—
- ‘financial holding company’ and ‘mixed financial holding company’ have the same meaning as in section 33ANC;
 - ‘insurance holding company’ has the same meaning as in section 33ANF; 5
 - ‘investment holding company’ has the same meaning as in section 33ANG.”.

Amendment of Chapter 2 of Part IIIC of Act of 1942

43. Chapter 2 of Part IIIC of the Act of 1942 is amended by the insertion of the following sections before section 33AO: 10

“Interpretation (Chapter 2)

33ANI. In this Chapter—

- ‘investigation’ means an investigation referred to in section 33ANJ(1);
- ‘responsible authorised officer’ means the authorised officer responsible for an investigation. 15

Investigation of suspected prescribed contravention

33ANJ. (1) As soon as practicable after a decision is made by the Bank to investigate—

- (a) whether a person is committing or has committed one or more prescribed contraventions, or 20
 - (b) whether a person is participating or has participated, while performing a relevant controlled function, in the commission by a regulated financial service provider of one or more prescribed contraventions,
- the responsible authorised officer shall give the person notice in writing of the investigation. 25
- (2) The responsible authorised officer shall give the person to whom an investigation relates an amended notice in writing of the investigation as soon as practicable after any of the following events:
 - (a) there is a change in the investigation of the commission of or participation in a prescribed contravention such that a statement included under subsection (3)(a) is no longer accurate; 30
 - (b) the investigation is extended to include investigation of the commission of or participation in another prescribed contravention;
 - (c) investigation of the commission of or participation in a prescribed contravention is discontinued, while continuing in relation to another prescribed contravention. 35
 - (3) A notice under subsection (1) or (2) shall include—

- (a) a statement identifying each prescribed contravention, and the conduct of the person concerned, to which the investigation for the time being relates,
 - (b) a copy of such material relating to the matters referred to in paragraph (a) as the responsible authorised officer considers appropriate, and 5
 - (c) a statement that a response to the contents of the notice will be taken into account if made by the person in writing within the period stated in the notice or such longer period as the responsible authorised officer may allow. 10
- (4) The responsible authorised officer shall take such steps as he or she considers reasonable to keep the person to whom an investigation relates informed as to the progress of the investigation.
- (5) If an investigation is discontinued in respect of all prescribed contraventions, the responsible authorised officer shall as soon as practicable give the person to whom the investigation relates notice in writing which— 15
- (a) states that the investigation has been discontinued, and
 - (b) gives one or more of the following reasons for the discontinuance:
 - (i) that the Bank no longer has reasonable grounds to suspect the person's commission of or participation in a prescribed contravention, so far as included in the investigation immediately before the discontinuance; 20
 - (ii) that the matters included in the investigation immediately before the discontinuance have been resolved; 25
 - (iii) that the investigation has been discontinued for reasons of resources;
 - (iv) that the investigation has been discontinued for policy reasons;
 - (v) that the investigation has been discontinued for reasons of any other description stated in the notice. 30
- (6) If investigation of the commission of or participation in a prescribed contravention is discontinued while continuing in relation to another prescribed contravention, the responsible authorised officer and the Bank are not required to give a reason for the discontinuance.

Investigation report 35

33ANK.(1) When an investigation is completed, the responsible authorised officer shall, after considering—

- (a) the notice given under section 33ANJ(1) and any notice given under section 33ANJ(2),
- (b) anything relevant obtained in the exercise of powers conferred by Chapter 3 of Part 3 of the Central Bank (Supervision and 40

Enforcement) Act 2013 and any other relevant information or evidence gathered or received by the authorised officer in the course of the investigation, and

- (c) any response made by the person to whom the investigation relates in accordance with a statement referred to in paragraph (c) of section 33ANJ(3), and any other relevant submission or statement made by the person in the course of the investigation, 5
as soon as practicable prepare a draft report of the investigation.
- (2) The responsible authorised officer shall, as soon as practicable after preparing the draft report, give the person to whom the investigation relates— 10
- (a) a copy of the draft report,
- (b) a copy of this section, and
- (c) a notice in writing stating that the person may make submissions in writing to the responsible authorised officer on the draft report within the period stated in the notice, which shall be— 15
- (i) 7 days from the date on which the notice is served, or
- (ii) such longer period as the authorised officer considers necessary to give the person an opportunity to respond.
- (3) The responsible authorised officer shall, as soon as practicable after the end of the period referred to in subsection (2)(c), and having considered any submissions made in accordance with that paragraph, make any revisions to the draft report that in the opinion of the authorised officer are warranted, and finalise the report. 20
- (4) The responsible authorised officer shall not make any recommendation, or express any opinion, in a draft report under subsection (1) or in a final report under subsection (3), as to— 25
- (a) whether any sanction (or, if so, what sanction) should be imposed under section 33AQ(3) if the Bank makes a finding that the person is committing or has committed a prescribed contravention, or 30
- (b) whether any sanction (or, if so, what sanction) should be imposed under section 33AQ(5) if the Bank makes a finding that the person is participating or has participated, while performing a relevant controlled function, in the commission of a prescribed contravention. 35
- (5) The responsible authorised officer shall, as soon as practicable after the report has been finalised under subsection (3), provide to the Bank and to the person to whom the investigation relates—
- (a) a copy of the final report, and
- (b) a copy of any submissions made in accordance with subsection (2) (c). 40

- (6) A draft report and final report under this section shall include any material that in the opinion of the responsible authorised officer is relevant to the consideration of the report by the Bank under section 33AO(1) or (2) or 33AR(2) or (4).
- (7) A person who receives a copy of a final report or any submissions under subsection (5) shall not, without the prior authorisation of the Bank, disclose the existence of or the content of the report or the submissions to any person other than for the purpose of obtaining legal advice. 5
- (8) A person who without reasonable excuse contravenes subsection (7) commits an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.” 10

Bank may hold inquiry into suspected commission of or participation in prescribed contravention

- 44. The Act of 1942 is amended by the substitution of the following section for section 33AO: 15

“33AO.(1) Whenever the Bank, after considering the final report of an investigation, and any submissions, provided to it under section 33ANK(5), suspects on reasonable grounds that the person to whom the investigation related is committing or has committed a prescribed contravention, it may hold an inquiry to determine whether or not the person is committing or has committed the contravention. 20

(2) Whenever the Bank, after considering the final report of an investigation, and any submissions, provided to it under section 33ANK(5), suspects on reasonable grounds that the person to whom the investigation related is participating or has participated, while performing a relevant controlled function, in the commission by a regulated financial service provider of a prescribed contravention, it may hold an inquiry to determine whether or not the person is participating or has participated in the contravention while performing a relevant controlled function. 25 30

(3) Without prejudice to the exercise of the Bank’s powers under subsection (2), an inquiry referred to in that subsection may form part of an inquiry held under this section in relation to the suspected commission of a prescribed contravention by the person or by the regulated financial service provider.”. 35

Notice of inquiry, submissions, attendance and adjournment

- 45. The Act of 1942 is amended by the substitution of the following section for section 33AP:

“33AP.(1) Before holding an inquiry under section 33AO, the Bank shall give notice in writing of the proposed inquiry to the person concerned. 40

(2) The notice must—

- (a) specify the grounds on which the Bank’s suspicions are based,
 - (b) specify a date, time and place at which the Bank will hold the inquiry, and
 - (c) either invite the person concerned to attend the inquiry or invite the person concerned to make written submissions about the matter to which the inquiry relates. 5
- (3) A person concerned, whether or not invited to attend the inquiry, may, before the date of the inquiry, lodge with the Bank any written submissions that the person wishes the Bank to take into account when considering the matter to which the inquiry relates. 10
- (4) The Bank may adjourn an inquiry from time to time and from place to place, but if it does so it shall ensure that the person concerned is notified of the date, time and place at which the inquiry is to be resumed.
- (5) The Bank may proceed with an inquiry in the absence of the person concerned so long as that person has been given an opportunity to attend the inquiry or to lodge any written submissions in accordance with subsection (3).” 15

Amendment of section 33AQ of Act of 1942

46. Section 33AQ of the Act of 1942 is amended— 20

(a) by the substitution of the following subsections for subsections (1) and (2):

“(1) At the conclusion of an inquiry held under section 33AO to determine whether or not a person is committing or has committed a prescribed contravention, the Bank shall make a finding as to whether, on the balance of probabilities, the person is committing or has committed the contravention. 25

(2) At the conclusion of an inquiry held under section 33AO to determine whether or not a person is participating or has participated, while performing a relevant controlled function, in the commission by a regulated financial service provider of a prescribed contravention, the Bank shall make a finding as to whether, on the balance of probabilities, the person is so participating, or has so participated, in the commission by the regulated financial service provider of the contravention. 30

(2A) For the purposes of making a finding under subsection (1) or (2) the Bank shall have regard to all relevant matters, including— 35

(a) the final report, and any submissions, provided under section 33ANK(5), and

(b) any evidence adduced or submissions made during the inquiry.”,

(b) in subsection (3)— 40

(i) in the words before paragraph (a)—

- (I) by the substitution of “person” for “regulated financial service provider”, and
- (II) by the substitution of “the person” for “the financial service provider”,
- (ii) in paragraph (b), by the insertion of “in the case of a regulated financial service provider,” before “a direction”, 5
- (iii) in paragraphs (ca), (cb), (cc) and (cd), by the insertion of “regulated” before “financial” in each place where it occurs,
- (iv) by the substitution of the following paragraphs for paragraph (d):
 - “(d) in the case of a natural person, a direction disqualifying the person, for such period as the Bank considers appropriate, from performing, in relation to all regulated financial service providers or in relation to such regulated financial service provider or providers as may be specified in the direction— 10
 - (i) any controlled function,
 - (ii) a particular controlled function, or 15
 - (iii) a specified part of a controlled function or functions;
 - (da) in the case of a natural person, a direction imposing such conditions as the Bank considers appropriate on the performance by the person, in relation to all regulated financial service providers or in relation to such regulated financial service provider or providers as may be specified in the direction, of— 20
 - (i) any controlled function,
 - (ii) such controlled function or functions as may be specified in the direction, or
 - (iii) such part or parts of a controlled function or functions as may be specified in the direction;” 25
- and
- (v) in paragraph (e), by the substitution of “person” for “financial service provider” in each place where it occurs,
- (c) in paragraphs (a) and (b) of subsection (4), by the substitution of “in the case of” for “if the financial service provider is” in each place where it occurs, 30
- (d) in subsection (5)—
 - (i) in the words before paragraph (a)—
 - (I) by the deletion of “concerned in the management of a regulated financial service provider”, and 35
 - (II) by the substitution of “by a regulated financial service provider” for “by the financial service provider”,
- and

- (ii) by the substitution of the following paragraphs for paragraph (c):
 - “(c) a direction disqualifying the person, for such period as the Bank considers appropriate, from performing, in relation to all regulated financial service providers or in relation to such regulated financial service provider or providers as may be specified in the direction— 5
 - (i) any controlled function,
 - (ii) such controlled function or functions as may be specified in the direction, or
 - (iii) such part or parts of a controlled function or functions as may be specified in the direction; 10
 - (ca) a direction imposing such conditions as the Bank considers appropriate on the performance by the person, in relation to all regulated financial service providers or in relation to such regulated financial service provider or providers as may be specified in the direction, of— 15
 - (i) any controlled function,
 - (ii) such controlled function or functions as may be specified in the direction, or
 - (iii) such part or parts of a controlled function or functions as may be specified in the direction;” 20
 - (e) in subsection (7)—
 - (i) by the substitution of “held under section 33AO to determine whether or not a person is committing or has committed a prescribed contravention,” for “relating to the conduct of a regulated financial service provider,” and
 - (ii) by the substitution of “the person” for “the financial service provider” in each place where it occurs, 25
 - (f) in subsection (8)—
 - (i) in the words before paragraph (a), by the substitution of “held under section 33AO to determine whether or not a person is participating or has participated, while performing a relevant controlled function, in the commission by a regulated financial service provider of a prescribed contravention,” for “relating to the conduct of a person concerned in the management of a regulated financial service provider,” 30
 - (ii) in paragraph (a), by the insertion of “, while performing a relevant controlled function,” after “participated”, and 35
 - (iii) in paragraph (c), by the insertion of “while performing a relevant controlled function” after “contravention”,
- and
- (g) by the insertion of the following subsection after subsection (8):

“(8A) A notification under subsection (7) or (8) must also state that the person may, under Part VIIA, appeal against the finding, and any decision to impose a sanction, in accordance with section 33AW.”.

Alternative procedure when commission of or participation in prescribed contravention is acknowledged 5

47. The Act of 1942 is amended by the substitution of the following section for section 33AR:

“33AR.(1) Subsection (2) applies if—

(a) the Bank—

(i) after considering the final report of an investigation, and any submissions, provided to it under section 33ANK(5), or 10

(ii) where there are undisputed facts that in the reasonable opinion of the Bank render an investigation unnecessary,

suspects on reasonable grounds that a person is committing or has committed a prescribed contravention, and 15

(b) the person acknowledges the commission of the contravention.

(2) Where this subsection applies, the Bank may—

(a) with the person’s consent, dispense with an inquiry and impose on the person any sanction that it is empowered to impose under section 33AQ(3), or 20

(b) hold an inquiry to determine what (if any) such sanction should be imposed on the person.

(3) Subsection (4) applies if—

(a) the Bank—

(i) after considering the final report of an investigation, and any submissions provided to it under section 33ANK(5), or 25

(ii) where there are undisputed facts that in the reasonable opinion of the Bank render an investigation unnecessary,

suspects on reasonable grounds that a person is participating or has participated, while performing a relevant controlled function, in the commission of a prescribed contravention, and 30

(b) the person acknowledges participation in the contravention.

(4) Where this subsection applies, the Bank may—

(a) with the person’s consent, dispense with an inquiry and impose on that person any sanction that it is empowered to impose under section 33AQ(5), or 35

(b) hold an inquiry to determine what (if any) such sanction should be imposed on the person.

- (5) The imposition of a sanction under subsection (2)(a) or (4)(a) does not take effect unless confirmed by the High Court under section 33AWA.
- (6) The imposition of a sanction under subsection (2)(b) or (4)(b) is subject to section 33AW(4).
- (7) At the conclusion of an inquiry held under subsection (2)(b) or (4)(b) the Bank shall notify the person concerned of its decision, which shall set out the sanctions (if any) imposed under that paragraph. 5
- (8) A notification under subsection (7) must also state that the person may, under Part VIIA, appeal against the finding, and any decision to impose a sanction, in accordance with section 33AW.”. 10

Considerations relevant to imposition of sanctions

48. Part IIIC of the Act of 1942 is amended by the insertion of the following section after section 33AR:

“33ARA.(1)In determining under section 33AQ or 33AR whether to impose a sanction on a natural person, what sanction to impose on a natural person, or the level of any monetary penalty to be imposed on a natural person, the Bank shall have regard, together with any other relevant considerations, to any of the following that appear to it to be relevant: 15

- (a) any consideration affecting the seriousness of the prescribed contravention concerned, including— 20
 - (i) the person’s seniority and level of responsibility, and the nature of any role performed by the person, at the time of the person’s commission of or participation in the prescribed contravention,
 - (ii) the extent to which the person’s conduct in committing or participating in the prescribed contravention departs from any standard to which the person is subject, 25
 - (iii) whether the person’s conduct was intentional, negligent, or dishonest,
 - (iv) whether the person’s conduct involved or facilitated the commission of an offence, and the nature and seriousness of any such offence, 30
 - (v) the duration of the period over which the person committed or participated in the prescribed contravention,
 - (vi) whether the sanction relates to more than one prescribed contravention, or to the repeated commission of or participation in a prescribed contravention, and 35
 - (vii) any benefit gained or loss avoided, by means of the prescribed contravention, by the person or a regulated financial service provider or any other person, 40
- (b) the effect of the prescribed contravention, including—

- (i) whether it has affected or may affect the orderliness of the financial markets, including public confidence in those markets,
- (ii) any loss or detriment it has caused or may cause to a regulated financial service provider, or to customers, consumers, other market users or third parties, and 5
- (iii) whether any loss or detriment has affected or may affect vulnerable persons,
- (c) the conduct of the person during and after the person’s commission of or participation in the prescribed contravention, including—
 - (i) how quickly, effectively and completely the person brought the prescribed contravention to the attention of a regulated financial service provider, the Bank or any other relevant regulatory authority, agency or criminal investigative body, and 10
 - (ii) the degree of cooperation by the person with the Bank or any other relevant regulatory authority, agency or criminal investigative body provided during an investigation of the contravention, 15
- (d) the previous record of the person, including—
 - (i) whether or not the Bank has previously imposed a sanction on the person or the Bank or the Governor has issued a prohibition notice to the person under section 43 of the Central Bank Reform Act 2010, and 20
 - (ii) whether or not the person has previously been convicted of an offence relevant to the performance of a controlled function,
- (e) any consideration relating to pending or possible criminal proceedings, including whether such proceedings may be prejudiced by the imposition of a sanction, and 25
- (f) any matter relevant to the financial position of the person.
- (2) In determining under section 33AQ or 33AR whether to impose a sanction, what sanction to impose, or the level of any monetary penalty, in the case of a contravention of section 53C of the Central Bank Reform Act 2010, the Bank shall have regard to the importance of promoting a culture of compliance with the common conduct standards and additional conduct standards (within the meaning of Part 3A of that Act).” 30 35

Amendment of section 33AS of Act of 1942

49. Section 33AS of the Act of 1942 is amended—

- (a) in subsection (2), by the substitution of “a natural person” for “a person”, and
- (b) by the substitution of the following subsection for subsection (3):

“(3) If conduct engaged in by a person constitutes—

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- (a) two or more prescribed contraventions by that person,
- (b) participation by that person in two or more prescribed contraventions by a regulated financial service provider, or
- (c) one or more prescribed contraventions by that person and participation by that person in one or more prescribed contraventions by a regulated financial service provider, 5

an inquiry may be held under section 33AO or 33AR in relation to one or more of the contraventions, but only one monetary penalty may be imposed on that person under section 33AQ or 33AR in respect of the same conduct.”. 10

Amendment of section 33AT of Act of 1942

50. Section 33AT of the Act of 1942 is amended—

- (a) in subsection (1)—
 - (i) by the insertion of “on a person” after “penalty”, and
 - (ii) by the substitution of “person” for “financial service provider or other person concerned”, 15
- and
- (b) in subsection (2)—
 - (i) in the words before paragraph (a), by the substitution of “person” for “financial service provider, or on a person concerned in the management of the financial service provider”, and 20
 - (ii) in paragraph (a), by the deletion of “financial service provider or other”.

Observance of directions imposing disqualification or conditions

51. The Act of 1942 is amended by the substitution of the following section for section 33AU: 25

“33AU. A regulated financial service provider shall ensure that a person is not permitted to perform a controlled function in relation to the financial service provider in circumstances, or in a manner, that would contravene a direction which is imposed under section 33AQ or 33AR by virtue of subsection (3)(d) or (da) or (5)(c) or (ca) of section 33AQ.”. 30

Amendment of section 33AV of Act of 1942

52. Section 33AV of the Act of 1942 is amended—

- (a) by the substitution of the following subsection for subsection (1):
 - “(1) If the Bank suspects on reasonable grounds that—
 - (a) a person is committing or has committed a prescribed contravention, or 35

(b) a person is participating or has participated, while performing a relevant controlled function, in the commission of a prescribed contravention by a regulated financial service provider,

it may, except where the person acknowledges the commission of or participation in the prescribed contravention, enter into an agreement under this section in writing with the person to resolve the matter.” 5

(b) in subsection (2)—

(i) by the substitution of “the person” for “the financial service provider or person”, and

(ii) by the substitution of “the person” for “that financial service provider or person”, 10

(c) in paragraph (a) of subsection (3), by the deletion of “or 33AR”,

(d) in subsection (3A), by the substitution of “the person” for “the regulated financial service provider or person concerned in the management of the financial service provider”, and 15

(e) in subsection (3B)—

(i) by the substitution of “the person” for “the regulated financial service provider or person”, and

(ii) by the substitution of “the person” for “that regulated financial service provider or person”. 20

Appeal, confirmation and taking effect of decisions under this Part

53. The Act of 1942 is amended by the substitution of the following section for section 33AW:

“33AW.(1) In this section—

(a) an ‘inquiry decision’ means any of the following: 25

(i) a finding made by the Bank under section 33AQ(1) or (2);

(ii) a decision of the Bank imposing a sanction under section 33AQ;

(iii) a decision of the Bank imposing a sanction under section 33AR(2)(b) or (4)(b),

and 30

(b) an ‘appeal decision’ means a decision of the Appeals Tribunal affirming or varying, or made in substitution for, an inquiry decision.

(2) An inquiry decision is an appealable decision for the purposes of Part VIIA. 35

(3) An appeal under Part VIIA against an inquiry decision may be made only on one or more of the following grounds:

- (a) any ground that could, but for section 33BF, be relied on in an application seeking judicial review of the inquiry decision;
 - (b) so far as it is not within paragraph (a), the ground that any sanction imposed is not proportionate.
- (4) An inquiry decision and an appeal decision do not take effect unless confirmed by the High Court on an application under this section. 5
- (5) Where—
- (a) a person who is the subject of an inquiry decision does not, under Part VIIA, appeal against that decision within the period required by that Part, 10
 - (b) an appeal under Part VIIA against an inquiry decision is withdrawn, or
 - (c) the Appeals Tribunal makes an appeal decision,
 - the Bank shall, as soon as practicable, make an application to the High Court for confirmation of the inquiry decision or appeal decision, as the case may be. 15
- (6) On an application under subsection (5), the High Court shall confirm the decision unless it is satisfied, on the basis of the evidence that was before the Bank or the Appeals Tribunal when making the decision—
- (a) that the Bank or the Appeals Tribunal made an error of law which is— 20
 - (i) manifest from the record of the decision, and
 - (ii) fundamental so as to deprive the decision of its basis, or
 - (b) that any sanction imposed is manifestly disproportionate. 25
- (7) Where, on an application under subsection (5), the High Court does not confirm the decision, the Court may—
- (a) substitute for the decision any appropriate decision that the Bank or the Appeals Tribunal, as the case may be, could have lawfully made in relation to the matter, or 30
 - (b) set aside the decision and remit the matter for reconsideration by the Bank or the Appeals Tribunal, as the case may be, together with any recommendation or direction of the Court as to what aspects of the matter should be reconsidered.
- (8) An application under subsection (5) may be made on an *ex parte* basis provided that the person who is the subject of the decision informs the Bank in writing that the person agrees to the application being made *ex parte*. 35

- (9) A decision confirmed by the High Court under this section, and a decision of the High Court made under subsection (7)(a) in substitution for a decision—
 - (a) takes effect on the day on which the Court’s decision is given or such later date as the Court may specify in its decision, and 5
 - (b) has effect as an order of the Court and may be enforced accordingly.”.

Confirmation of sanctions imposed by consent

54. The Act of 1942 is amended by the insertion of the following section after section 33AW:

- “33AWA.(1) Where the Bank by consent imposes a sanction under section 33AR(2) 10
 - (a) or (4)(a), the Bank shall, as soon as practicable, make an application to the High Court for confirmation of the imposition of the sanction.
- (2) On an application under this section the High Court shall confirm the 15
 imposition of the sanction unless it is satisfied that the sanction imposed is manifestly disproportionate.
- (3) Where on an application under this section the High Court does not 20
 confirm the sanction, the Court shall remit the matter for reconsideration by the parties, together with any recommendation of the Court as to what aspects of the matter should be reconsidered.
- (4) An application under subsection (1) may be made on an *ex parte* basis 25
 provided that the person on whom the sanction is imposed informs the Bank in writing that the person agrees to the application being made *ex parte*.”.

Repeal of section 33AX of Act of 1942

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55. Section 33AX of the Act of 1942 is repealed.

Interpretation (Chapter 3)

56. Chapter 3 of Part IIIC of the Act of 1942 is amended by the insertion of the following section before section 33AY:

- “33AXA. In this Chapter— 30
 - ‘inquiry members’ has the meaning given by section 33BE(5);
 - ‘person presiding’ in relation to an inquiry means the inquiry member appointed to chair the inquiry.”.

Amendment of section 33AY of Act of 1942

57. Section 33AY of the Act of 1942 is amended—

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- (a) in subsection (2), by the insertion of “(without prejudice to section 33BAA)” after “but”,

(b) by the insertion of the following subsection after subsection (2):

“(2A) At an inquiry the functions of the Bank include the making of submissions, leading of evidence and examination of witnesses on behalf of the Bank and any other function required for conducting the inquiry.”,

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and

(c) by the substitution of the following subsection for subsection (3):

“(3) Subject to section 33BE, the Bank may be assisted by a legal practitioner for the purpose of performing any of the functions referred to in subsection (2A).”.

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Amendment of section 33AZ of Act of 1942

58. Section 33AZ of the Act of 1942 is amended—

(a) in subsection (2), by the deletion of “financial service provider or other”, and

(b) by the insertion of the following subsection after subsection (3):

“(4) Subject to section 33AZA, the Bank may, where it is satisfied that in doing so a person’s reputation would not be unfairly prejudiced, publish a record of any procedural matter relating to an inquiry or a transcript of all or any part of the proceedings of an inquiry, whether with or without any information which would enable the persons taking part in the proceedings, or any one or more than one of them, to be identified, as it thinks appropriate.”.

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Power to order information about proceedings not to be disclosed

59. The Act of 1942 is amended by the insertion of the following section after section 33AZ:

“**33AZA.**(1) Subject to subsections (2) and (3), where the person presiding at an inquiry is satisfied that there are reasonable grounds for doing so, that person may order that specified information relating to specified proceedings before the inquiry, so far as it is held in public, shall not be disclosed.

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(2) An order under subsection (1) does not prohibit the disclosure of information in such form as to prevent particulars relating to the identity of the following persons from being ascertained from the information:

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(a) a person to whom the inquiry relates;

(b) in the case of an inquiry held under section 33AO(2) or section 33AR(4)(b), the regulated financial service provider concerned;

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(c) a person taking part in the specified proceedings;

(d) any other specified person.

- (3) In subsections (1) and (2), ‘specified’, in relation to an order under subsection (1), means specified in the order.
- (4) Nothing in this section or an order under subsection (1) shall be construed as prohibiting the disclosure of any information pursuant to a court order. 5
- (5) A person who contravenes an order under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.”.

Confidential information not to be disclosed 10

60. The Act of 1942 is amended by the insertion of the following section after section 33AZA (inserted by *section 59*):

- “33AZB.(1) Where confidential information is provided to a person for the purposes of an inquiry, that person shall not, subject to section 33AK, disclose that information unless authorised to do so by the Bank in writing or required to do so by law. 15
- (2) A person who contravenes subsection (1) shall be guilty of an offence and is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months or both.
- (3) Nothing in subsection (1) prevents a person who is the subject of an inquiry, or who is required to attend before an inquiry, from disclosing information to his or her legal representative. 20
- (4) In this section ‘confidential information’ includes information given to a person for the purposes of an inquiry where—
 - (a) the person has been notified by the person presiding at the inquiry that the information is confidential, or 25
 - (b) the information is of a class or description in relation to which the person has been notified by the person presiding at the inquiry that information of that class or description is confidential.”.

Amendment of section 33BA of Act of 1942 30

61. Section 33BA of the Act of 1942 is amended by the insertion of the following subsections after subsection (9):

- “(10) The Bank may apply to the High Court for an order referred to in subsection (11) in respect of any person who, at an inquiry—
 - (a) behaves in a manner referred to in paragraphs (a) to (d) of subsection (9), 35
 - (b) without reasonable excuse, fails to comply or refuses to comply with a requirement or request made by the person presiding at the inquiry,

- (c) threatens or insults any person presiding at the inquiry or any witness or other person summoned or authorised to attend before the inquiry,
 - (d) interrupts the proceedings of the inquiry,
 - (e) discloses, or authorises the disclosure of, evidence given before the inquiry or any of the contents of a document produced at a hearing that the person presiding at an inquiry has ordered not to be published, 5
 - (f) discloses, or authorises the disclosure of, evidence given before the inquiry at a hearing held in private or any of the contents of a document produced at a hearing held in private (except to a member of staff of that inquiry or as permitted by that inquiry), or 10
 - (g) does any other thing that, if the inquiry were a court of law having power to commit for contempt, would be contempt of that court.
- (11) Where the Bank makes an application under subsection (10), the High Court may, if satisfied that there was no reasonable excuse for the act or omission concerned, make an order requiring the person concerned— 15
- (a) to comply with any request or requirement under this Act, and
 - (b) not to repeat the conduct the subject of the application, 20
- and if the person fails to comply with such order, may deal with the matter as if it were a contempt of that Court.”.

Documentary evidence

62. The Act of 1942 is amended by the insertion of the following section after section 33BA:

- “33BAA.(1) Subject to this section, information contained in a document shall be admissible in an inquiry under this Part, on or after the submission date, as evidence of any fact in the document of which direct oral evidence would be admissible. 25
- (2) Subsection (1) applies only if the information—
- (a) was compiled in the ordinary course of a business, 30
 - (b) was supplied by a person (whether or not the person who compiled it, and whether or not identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with, and
 - (c) in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned. 35

- (3) Information contained in a document is not admissible in evidence by virtue of subsection (1) unless the participant proposing to give it in evidence serves on each of the other participants a notice which—
- (a) states the intention of the participant giving the notice to give the information in evidence by virtue of subsection (1), 5
 - (b) specifies as the submission date a date not less than 21 days after the date on which the notice is served, and
 - (c) is accompanied by a copy of the document.
- (4) If a participant on whom a notice has been served under subsection (3) serves on each of the other participants, not later than 7 days before the submission date, a notice objecting to the admission in evidence of the whole or any specified part of the information concerned, the person presiding at the inquiry shall determine the matter. 10
- (5) In making a determination under subsection (4), the person presiding at the inquiry shall consider whether in the interests of justice all or any part of the information ought not to be admitted in evidence having regard to all the circumstances, including— 15
- (a) whether or not, having regard to the contents and source of the information and the circumstances in which it was compiled, it is a reasonable inference that the information is reliable, 20
 - (b) whether or not, having regard to the nature and source of the document containing the information and to any other circumstances that appear to the person presiding at the inquiry to be relevant, it is a reasonable inference that the document is authentic, and 25
 - (c) any risk that its admission or exclusion will result in unfairness to any participant, having regard in particular to whether it is likely to be possible to controvert the information where the person who supplied it does not attend to give oral evidence in the proceedings.
- (6) In estimating the weight, if any, to be attached to information given in evidence by virtue of this section, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise. 30
- (7) Subsection (1) applies to information compiled in the ordinary course of a business— 35
- (a) notwithstanding that the business may have ceased to exist, and
 - (b) in the case of a business carried on outside the State, notwithstanding that any director, manager or other similar officer who may act on behalf of the business is not compellable to give evidence in a court in the State. 40

- (8) Subsection (1) applies where the document is a copy, if the copy is authenticated in such manner as the person presiding at the inquiry may approve.
- (9) Where information is admissible in evidence by virtue of this section but is expressed in terms that are not intelligible to the average person without explanation, an explanation of the information shall also be admissible in evidence if either—
 - (a) it is given orally by a person who is competent to do so, or
 - (b) it is contained in a document and the document purports to be signed by such a person.
- (10) Nothing in this section prevents information contained in a document from being admitted in evidence with leave of the person presiding at the inquiry.
- (11) In this section—
 - ‘participant’ means the Bank or a person to whom the inquiry relates;
 - ‘submission date’ means the date specified in accordance with subsection (3)(b).”.

Amendment of section 33BB of Act of 1942

63. Section 33BB of the Act of 1942 is amended—

- (a) in subsection (1), by the deletion of “financial service provider or other”, and
- (b) by the substitution of “the High Court” for “the Court” in each place where it occurs.

Amendment of section 33BC of Act of 1942

64. Section 33BC of the Act of 1942 is amended—

- (a) by the substitution of the following subsections for subsections (1) and (2):
 - “(1) If, under section 33AQ(1) or (2), the Bank has found that—
 - (a) a person is committing or has committed a prescribed contravention, or
 - (b) a person is participating or has participated, while performing a relevant controlled function, in the commission of a prescribed contravention by a regulated financial service provider,
 it shall, subject to subsection (4), after complying with section 33AQ(7) or (8), as the case may be, publish in such form and manner as it thinks appropriate the finding and such (if any) of the particulars specified in subsection (3) as it thinks appropriate.
 - (2) If the Bank has imposed a sanction under section 33AQ(3) or (5) or 33AR, it shall, subject to subsection (4), after complying with section 33AQ(7) or (8) or 33AR(7), as the case may be, publish in such form

and manner as it thinks appropriate, such (if any) of the particulars specified in subsection (3) as it thinks appropriate.

(3) The particulars referred to in subsections (1) and (2) are:

- (a) the name of the person to whom the finding relates or on whom the sanction is imposed; 5
- (b) the grounds on which the finding is based;
- (c) details of the prescribed contravention in respect of which the sanction has been imposed;
- (d) details of the sanction imposed.”,

(b) by the insertion of the following subsection after subsection (3): 10

“(3A) If the Bank has entered into an agreement with a person under section 33AV, it may publish, subject to subsection (4), in such form and manner as it thinks appropriate, such (if any) of the following particulars as it thinks appropriate:

- (a) the name of the person; 15
- (b) details of the prescribed contravention which the Bank suspects is being or has been committed or participated in;
- (c) details of any sanction whose imposition is accepted under the agreement.”,

and 20

(c) in subsection (4), by the substitution of the following for paragraph (a) and the words before it:

“(4) Subsections (1), (2) and (3A) do not apply to a finding or particulars—

- (a) if publication of the finding or particulars involves a disclosure of confidential information which the Rome Treaty, the ESCB Statute or any of the supervisory EU legal acts (within the meaning of section 33AK) prohibits or requires to be prohibited, or”.
- 25

Amendment of section 33BD of Act of 1942

65. Section 33BD of the Act of 1942 is amended by the insertion of the following subsection after subsection (1): 30

“(1A) Without prejudice to the generality of subsection (1), the Bank may prescribe guidelines with respect to the determination of appropriate sanctions and the level of any monetary penalty to be imposed under this Part.”.

Amendment of section 33BE of Act of 1942 35

66. Section 33BE of the Act of 1942 is amended by the insertion of the following subsections after subsection (2):

- “(3) In relation to an inquiry that the Bank holds or considers holding, the following functions or powers are restricted for the purposes of subsection (4):
- (a) functions or powers under section 33AO(1) or (2) of deciding whether to hold the inquiry; 5
 - (b) functions or powers of the person presiding at the inquiry;
 - (c) functions or powers under subsection (1), (2), (3) or (5) of section 33AQ;
 - (d) functions or powers under subsection (2)(b) or (4)(b) of section 33AR of determining whether to impose a sanction or what sanction to impose. 10
- (4) Functions or powers which are restricted under subsection (3) in relation to an inquiry that the Bank holds or considers holding shall not be performed or exercised by—
- (a) where subsection (1) or (2) of section 33AQ applies, a person involved in carrying out the investigation referred to in that subsection, 15
 - (b) where subsection (2)(b) or (4)(b) of section 33AR applies, a person involved in carrying out the investigation referred to in that section,
 - (c) a person exercising the Bank’s power to decide to carry out the investigation referred to in paragraph (a) or (b), and 20
 - (d) a person involved in making submissions, leading evidence or examining witnesses on behalf of the Bank at the inquiry.
- (5) Subject to subsection (4), the persons responsible for performing and exercising the functions of the Bank to preside at an inquiry and make findings under subsection (1), (2), (3) or (5) of section 33AQ or determinations under subsection (2)(b) or (4)(b) of section 33AR at the conclusion of the inquiry (referred to in this Chapter as ‘inquiry members’) shall be appointed by the Bank from a panel established by the Minister under section 33BI. 25 30
- (6) A person exercising the Bank’s power to decide to carry out an investigation referred to in section 33ANJ(1) shall not be involved in carrying out the investigation.
- (7) Subsection (6) does not prevent the person referred to in that subsection from exercising functions, of management, advice or otherwise, that do not affect the independence of the investigation.”. 35

Limitation of judicial review

67. The Act of 1942 is amended by the substitution of the following section for section 33BF:

“33BF.(1) Leave shall not be granted for judicial review of any of the following: 40

- (a) a finding made by the Bank under section 33AQ(1) or (2);
 - (b) a decision of the Bank imposing a sanction under section 33AQ;
 - (c) a decision of the Bank imposing a sanction under section 33AR(2) (b) or (4)(b).
- (2) An application for leave to apply for judicial review of any other decision of the Bank under this Part must be made—
- (a) within 2 months after the date on which notice of the decision was first notified to the person concerned, or
 - (b) if the High Court makes an order extending that period, within that extended period.”.

New Chapter 4 inserted into Part IIIC of Act of 1942

68. Part IIIC of the Act of 1942 is amended by the insertion of the following Chapter after section 33BF:

“CHAPTER 4

Supplementary

Documents privileged for purposes of law of defamation

33BG. For the purposes of the law of defamation, the following proceedings, reports and communications shall be absolutely privileged:

- (a) proceedings of an investigation referred to in section 33ANJ(1), or an inquiry under this Part, including any statement or submission made by or on behalf of any person in the proceedings;
- (b) communications of an authorised officer or an inquiry member, within the meaning of Chapter 3, in relation to proceedings referred to in paragraph (a);
- (c) an investigation report, whether in draft or final form, prepared under section 33ANK.

Service of documents

33BH. Section 61G, and any provision of the regulations made in accordance with subsection (3) of that section, apply for the purposes of this Part, unless otherwise provided, as if references to the Bank included references to an authorised officer.”.

CHAPTER 2

Insertion of Part IIID in Act of 1942

Establishment of panel

69. The Act of 1942 is amended by the insertion of the following Part after section 33BH (inserted by *section 68*):

“PART IIID

PANEL FOR PURPOSES OF CERTAIN DECISIONS

Panel for purposes of certain decisions

- 33BI.** (1) The Minister may establish a panel from which appointments may be made by the Bank— 5
- (a) for the purposes of any provision of this Act, or any other enactment, requiring appointments to be made from a panel established under this section, or
 - (b) (in accordance with any agreement between the Minister and the Bank) for any other purpose involving the conduct of an inquiry, or the taking of a decision, on behalf of the Bank. 10
- (2) The members of a panel established under this section shall be appointed by the Minister following a process conducted by the Bank after consulting the Minister.
- (3) The Minister shall not appoint a person to a panel established under this section unless the Minister, after consulting the Bank, is satisfied that the person has the skill, experience and knowledge necessary for the proper, effective and efficient performance of the functions that the person may be appointed by the Bank to perform in accordance with subsection (1). 15 20
- (4) Appointment as a member of a panel established under this section shall be for a period specified by the Minister and on such other terms as the Minister considers appropriate.
- (5) The expiry of a person’s term of appointment as a member of a panel established under this section does not affect the person’s capacity to complete any function that the person has been appointed by the Bank to perform in accordance with subsection (1). 25
- (6) The Bank shall ensure the independence of any member of a panel established under this section in the performance of any function that the person is appointed by the Bank to perform in accordance with subsection (1). 30
- (7) The Bank shall not, in reliance on a contract of service or contract for services with a member of a panel established under this section, act in any way that may affect the person’s independence in the exercise of a function that the person is appointed by the Bank to perform in accordance with subsection (1).” 35

CHAPTER 3

Amendment of Part VIIA of Act of 1942

Amendment of section 57R of Act of 1942

- 70.** Section 57R of the Act of 1942 is amended— 40

- (a) in subsection (1), by the substitution of “The” for “Subject to this section, the”,
and
- (b) by the deletion of subsections (2) to (7).

Repeal of section 57S of Act of 1942

71. Section 57S of the Act of 1942 is repealed. 5

Amendment of section 57Z of Act of 1942

72. Subsection (2A) of section 57Z of the Act of 1942 is amended by the substitution of “a decision which is an appealable decision under section 33AW(2) of this Act or section 29(7) of the Central Bank Reform Act 2010” for “an appealable decision made under Part IIC”. 10

Amendment of section 57AC of Act of 1942

73. Section 57AC of the Act of 1942 is amended by the insertion of the following subsection after subsection (2):

“(3) This section is subject to section 33AW(4) and (9).”.

CHAPTER 4

15

Miscellaneous amendments to Act of 1942

Amendment of section 2 of Act of 1942

74. Section 2 of the Act of 1942 is amended by the deletion of subsection (4).

Amendment of section 33AK of Act of 1942

75. Section 33AK of the Act of 1942 is amended— 20

- (a) in subsection (1A)—

- (i) in paragraph (a), by the substitution of “unincorporate” for “incorporate”,
and

- (ii) by the substitution of “if the Rome Treaty, the ESCB Statute or any of the supervisory EU legal acts prohibits the disclosure or requires it to be prohibited” for “if such disclosure is prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts”, 25

- (b) in subsection (5B), in paragraph (a), by the substitution of “unincorporate” for “incorporate”,

- (c) by the substitution of the following subsection for subsection (6): 30

“(6) Any person or entity to whom confidential information is provided by the Bank under subsection (3)(a) or (5) shall hold and deal with that confidential information in a manner consistent with the provisions on

professional secrecy in the supervisory EU legal acts and in the ESCB Statute.”,

and

- (d) in subsection (6A), by the deletion of “the provisions of professional secrecy referred to in”.

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Amendment of section 34 of Act of 1942

76. Section 34 of the Act of 1942 is amended, in subsection (1), by the substitution of “Schedule 4” for “the Third Schedule”.

Amendment of section 57G of Act of 1942

77. Section 57G of the Act of 1942 is amended by the deletion of subsection (1A).

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Amendment of section 61G of Act of 1942

78. Section 61G of the Act of 1942 is amended, in subparagraph (ii) of subsection (1)(a), by the deletion of “or Regulatory Authority”.

Amendment of Schedule 2 to Act of 1942

79. Part 1 of Schedule 2 to the Act of 1942 is amended—

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- (a) by the substitution of the following for item 3:

“

3	No. 22 of 1942	Central Bank Act 1942	Sections 5C, 33AU, 33AZA and 33AZB
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”,

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and

- (b) by the substitution of the following for item 38:

“

38	No. 23 of 2010	Central Bank Reform Act 2010	Parts 2A, 3, 3A and 4
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”.

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PART 5

PRIVILEGED LEGAL MATERIAL

Repeal of section 33 of Act of 2013

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80. Section 33 of the Act of 2013 is repealed.

Amendment of section 34 of Act of 2013

81. Section 34 of the Act of 2013 is amended by the insertion of “, other than information acquired under a disclosure agreement under section 34A,” after “legislation” in the first place where it occurs.

Insertion of Part 3A in Act of 2013

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82. The Act of 2013 is amended by the insertion of the following Part after section 34:

“PART 3A

VOLUNTARY DISCLOSURE OF PRIVILEGED LEGAL MATERIAL

Voluntary disclosure of privileged legal material

34A. (1) In this section—

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‘disclosed material’ means information produced, or to which access is given, under a disclosure agreement;

‘disclosure agreement’ has the meaning given by subsection (2);

‘privileged legal material’ means information which a person is entitled to refuse to produce on the grounds of legal professional privilege;

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‘specified person’ means a person specified in a disclosure agreement as a person to whom disclosed material is to be produced or to whom access to disclosed material is to be given under the agreement.

(2) This section applies if, for the purposes of the performance by the Bank of its functions under financial services legislation, the Bank enters into an agreement (referred to in this section as a ‘disclosure agreement’) with a person entitled to waive legal professional privilege in respect of privileged legal material, under which the person agrees to produce or give access to the material, to the Bank and any specified person, for the purposes specified in the agreement.

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(3) Section 33AK of the Act of 1942 applies to disclosed material in the same manner as it applies to confidential information, and a reference in that section to confidential information shall, where the context admits, be construed as a reference to disclosed material.

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(4) The production of or giving of access to information to the Bank or any specified person under a disclosure agreement, and the report or disclosure of disclosed material to any person under section 33AK(3) (a) or (5) of the Act of 1942—

(a) does not constitute a waiver of legal professional privilege in respect of information other than the disclosed material concerned, and

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(b) does not constitute a waiver of legal professional privilege in respect of disclosed material to any person other than the Bank or a

specified person, or for a purpose other than the purposes specified in the agreement.

- (5) Where the Bank or a specified person proposes to give disclosed material in evidence in proceedings under financial services legislation, the proceedings or any part of the proceedings may be heard otherwise than in public in order to maintain the confidentiality of the disclosed material. 5
- (6) The following do not apply to disclosed material:
- (a) section 47 of the Central Bank Reform Act 2010;
 - (b) the Freedom of Information Act 2014. 10
- (7) Where information is the subject of a disclosure agreement, nothing in the agreement or this section affects any power of the Bank to require a person to produce or give access to the information otherwise than under the agreement.

Determination by court as to whether legal professional privilege applies 15

34B. (1) In this section—

‘Court’ means the High Court;

‘privileged legal material’ means information which, in the opinion of the Court, a person is entitled to refuse to produce on the grounds of legal professional privilege; 20

‘relevant person’ means the Bank or an authorised officer.

- (2) If a person refuses to produce information or give access to it, pursuant to a requirement imposed by a relevant person under financial services legislation, on the grounds that the information contains privileged legal material, the Bank may, at any time within 6 months (or such longer period as the Court may allow) of the date of such refusal, apply to the Court for a determination as to whether the information, or any part of the information, is privileged legal material where— 25
- (a) in relation to the information concerned— 30
- (i) the Bank has reasonable grounds for believing that it is not privileged legal material, or
 - (ii) due to the manner or extent to which such information is presented together with any other information, it is impossible or impractical to extract only such information, 35
- and
- (b) the Bank has reasonable grounds to suspect that the information contains evidence relating to the commission of a prescribed contravention or an offence under financial services legislation.
- (3) A person who refuses to produce information or give access to it, pursuant to a requirement imposed by a relevant person under 40

financial services legislation, on the grounds that the information contains privileged legal material shall preserve the information and keep it in a safe and secure place and manner pending the determination of an application under subsection (2) and shall, if the information is so determined not to be privileged legal material, produce it in accordance with such order as the Court considers appropriate. 5

(4) A person shall be considered to have complied with the requirement under subsection (3) to preserve information, where the person has complied with such requirements as may be imposed by an authorised officer under paragraph (g) or (h) of section 27(1). 10

(5) Where an application is made by the Bank under subsection (2), the Court may give such interim or interlocutory directions as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions as to the appointment of a person with suitable legal qualifications, possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of— 15

(a) examining the information, and 20

(b) preparing a report for the Court with a view to assisting or facilitating the Court in the making by the Court of its determination as to whether the information is privileged legal material.

(6) An application under subsection (2) shall be by motion and may, if the Court so directs, be heard otherwise than in public.”. 25

PART 6

MISCELLANEOUS AMENDMENTS

Amendment of section 3 of Act of 2010

83. Section 3 of the Act of 2010 is amended, in paragraph (c) of the definition of “financial services legislation”, by the substitution of “2013” for “2012”. 30

Amendment of European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

84. The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) are amended, in Regulation 132A(4), by the deletion of “concerned in the management of a regulated financial service provider”. 35

Amendment of section 21 of Act of 2013

85. Section 21 of the Act of 2013 is amended—

(a) in subsection (1)—

(i) in paragraph (l), by the substitution of “company;” for “company.”, and

(ii) by the insertion of the following paragraph after paragraph (l): 5

“(m) subject to subsection (4), a holding company within the meaning of Part 3 of the Central Bank Reform Act 2010.”.

(b) by the insertion of the following subsection after subsection (3):

“(4) In the case of a person referred to in paragraph (m) of subsection (1) (and not in any other paragraph of that subsection), this Part applies 10 only for the purpose of the performance by the Bank of functions under Part 3 of the Central Bank Reform Act 2010.”.

Amendment of section 22 of Act of 2013

86. Section 22 of the Act of 2013 is amended, in subsection (1)(a), by the insertion of “or, subject to section 21(4), any other holding company within the meaning of Part 3 of the 15 Central Bank Reform Act 2010” after “mixed financial holding companies,”.

Amendment of section 24 of Act of 2013

87. Section 24 of the Act of 2013 is amended, in subsection (1), by the insertion of “or, subject to section 21(4), any other holding company within the meaning of Part 3 of the 20 Central Bank Reform Act 2010” after “mixed financial holding companies,”.

PART 7

SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation (Part 7)

88. A word or expression that is used in this Part and is also used in Part IIIC of the Act of 1942 has (unless the context otherwise requires) the same meaning in this Part as in Part 25 IIIC of that Act.

Investigations and suspension notices under Chapter 3 of Part 3 of Act of 2010

89. (1) In relation to an investigation under Chapter 3 of Part 3 of the Act of 2010, notice of which was served on the person to whom the investigation relates before the commencement of *section 15*, that Chapter continues to apply, subject to *subsection 30 (2)*, as if *Part 3* of this Act had not been commenced.

(2) In relation to an investigation referred to in *subsection (1)*, section 41 of the Act of 2010 as substituted by *section 25* applies, on and after the commencement of *section 25*—

(a) with the omission of paragraph (a) of subsection (1) of the said section 41, and 35

(b) with the substitution of the following paragraph for paragraph (c) of the said subsection (1):

“(c) any response or other submission by the person to whom the investigation relates that that person is entitled to make,”.

(3) In relation to a suspension notice issued under section 26 of the Act of 2010 before the commencement of a provision of *sections 16 to 21*, Chapter 3 of Part 3 of that Act continues to apply as if that provision had not been commenced. 5

Prohibition notices under section 43 of Act of 2010

90. (1) A prohibition notice issued under section 43 of the Act of 2010 before the date of commencement of *section 27*, but which has not taken effect before that date, shall be treated on and after that date as if issued under section 43 of that Act as amended by *section 27*. 10

(2) In relation to a prohibition notice issued under section 43 of the Act of 2010 which has taken effect before the commencement of *section 27*, Chapter 4 of Part 3 of that Act continues to apply as if *sections 27 to 29* and *section 31*, had not been commenced. 15

Investigations under Part IIIC of Act of 1942

91. (1) In this section “investigation” means an investigation by the Bank as to—

(a) whether a person is committing or has committed one or more prescribed contraventions, or 20

(b) whether a person is participating or has participated in the commission of one or more prescribed contraventions.

(2) In relation to an investigation where the decision by the Bank to carry out the investigation was made before the date of commencement of *section 43*, Chapter 2 of Part IIIC of the Act of 1942, as amended by that section, has effect on and after that date— 25

(a) with the omission of section 33ANJ, and

(b) in subsection (1) of section 33ANK—

(i) with the omission of paragraph (a), and

(ii) with the substitution of the following paragraph for paragraph (c): 30

“(c) any response or other submission by the person to whom the investigation relates that that person is entitled to make,”.

(3) Section 33AO of the Act of 1942 as substituted by *section 44*, where it applies in relation to an investigation completed before the commencement of *section 43*, has effect as if references to the final report of an investigation provided under section 33ANK(5) of that Act were references to the findings of the investigation, and as if references to any submissions provided with the report were references to any submissions made to the Bank at the conclusion of the investigation. 35

Inquiries under Part IIIC of Act of 1942

92. (1) In this section—

“inquiry” means an inquiry under section 33AO(1) or (2) or 33AR(1)(b) or (2)(b) of the Act of 1942 (or section 33AR(2)(b) or (4)(b) of that Act as amended by this Act);

“inquiry decision” has the same meaning as it has in section 33AW of the Act of 1942 as substituted by *section 53*. 5

(2) In relation to an inquiry, notice of which was given under section 33AP of the Act of 1942 before the commencement of a provision of *Part 4*, the Act of 1942 continues to apply, subject to *subsection (3)*, as if the provision had not been commenced.

(3) On and after the commencement of *section 53*, section 33AW of the Act of 1942, as substituted by *section 53*, applies in relation to any inquiry decision which has been made but has not taken effect before that commencement. 10

(4) In relation to an inquiry decision which has taken effect before the commencement of *section 53*, the Act of 1942 continues to apply as if that section, *section 55* and *Chapter 3* of *Part 4* had not been commenced. 15

Application of Part IIIC of Act of 1942 to participation in pre-commencement contraventions

93. Where an inquiry under section 33AO(2) of the Act of 1942 relates to participation in the commission of a prescribed contravention committed before the commencement of *section 44*, a reference in Part IIIC of that Act to performing a controlled function in relation to a regulated financial service provider is to be read as a reference to being concerned in the management of the regulated financial service provider. 20

Application of section 33BI of Act of 1942 to existing panel

94. (1) A panel established by the Bank before the commencement of *section 69* and which is designated in writing by the Minister under this section shall be treated on and after that commencement, for the purposes of section 33BI of the Act of 1942, as a panel established by the Minister. 25

(2) An appointment made before the commencement of *section 69* to a panel designated under this section shall be treated on and after that commencement, for the purposes of section 33BI of the Act of 1942, as an appointment made by the Minister in accordance with that section, but that does not affect the terms of the appointment. 30

(3) Where a panel is designated under this section, nothing in this section or *section 69* affects the making of appointments from the panel otherwise than for the purposes mentioned in paragraph (a), or in accordance with an agreement mentioned in paragraph (b), of section 33BI(1) of the Act of 1942. 35

Section 33 of Act of 2013

95. The repeal of section 33 of the Act of 2013 does not affect any application made or other thing done under that section before the commencement of *section 80*.

Bille an Bhainc Ceannais (Creat Cuntasachta
Aonair), 2022

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú Acht an Bhainc Ceannais, 1942 chun daoine a chomhlíonann feidhmeanna rialaithe agus cuideachtaí sealbhaíochta áirithe a thabhairt faoi fheidhm an nós imeachta um smachtbhannaí riaracháin, do dhéanamh socrú maidir le painéal a cheapadh óna bhféadfar ceapacháin a dhéanamh chun críoch breitheanna áirithe, do dhéanamh socrú maidir le hinghlachtacht taifead gnó ag fiosrúchán, do dhéanamh socrú maidir le comhaontuithe um nochtadh, agus do dhéanamh socrú maidir le hiarratas go ndaingneoidh an Ard-Chúirt breith ó fiosrúchán faoi Chuid IIIC agus breith ó Bhinse Achomhairc Seirbhíse Airgeadais na hÉireann faoi Chuid VIIA den Acht sin; do leasú an Achta um Athchóiriú an Bhainc Ceannais, 2010 chun rialáil agus maoirsiú soláthraithe seirbhíse airgeadais agus daoine a mbeidh feidhmeanna rialaithe agus feidhmeanna rialaithe réamhcheadaitheacha á gcomhlíonadh acu a leathnú trí chaidheáin ghnó, caighdeáin iompair agus dualgas freagrachta a thabhairt isteach, do dhéanamh socrú maidir le neamhspleáchas daoine a mbeidh imscrúdú á sheoladh acu le linn dóibh a bhfeidhmeanna a chomhlíonadh, do dhéanamh socrú maidir le neamhspleáchas daoine ar chucu a thamligfear feidhm de chuid an Cheannasáí Rialála Airgeadais, an Bhainc Ceannais nó an Ghobhamóra le linn dóibh a bhfeidhmeanna a chomhlíonadh, do dhéanamh socrú maidir le ceart achomhairc chun Binse Achomhairc Seirbhíse Airgeadais na hÉireann i gcoinne breith ón gCeannasáí Rialála Airgeadais chun fógra fionraí a dhaingniú, d'fhadú na tréimhse a fhéadfaidh an Ard-Chúirt a chur le ré fógra fionraí, agus do dhéanamh socrú maidir le hiarratas go ndaingneoidh an Ard-Chúirt breith ón mBanc Ceannais nó ón nGobharnóir chun fógra toirmisce a eisiúint; do leasú Acht an Bhainc Ceannais (Maoirsiú agus Forfheidhmiú), 2013 chun an chumhacht chun rialacháin a dhéanamh atá ag an mBanc Ceannais a leathnú chun foráil a dhéanamh maidir le socrúithe a ghlacfaidh soláthraithe seirbhíse airgeadais i ndáil le leithroinnt freagrachtaí agus comhlíonadh oibleagáidí faoin reachtaíocht a bhaineann le seirbhíse airgeadais; do leasú Rialacháin na gComhphobal Eorpach (Gnóthais le haghaidh Comhinfeistíochta in Urrúis Inaistrithe), 2011 (I.R. Uimh. 352 de 2011); agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An tAire Airgeadais a thíolaic,

28 Iúil, 2022

Central Bank (Individual Accountability
Framework) Bill 2022

BILL

(as initiated)

entitled

An Act to amend the Central Bank Act 1942 to extend the application of the administrative sanctions procedure to persons performing controlled functions and to certain holding companies, to provide for the appointment of a panel from which appointments may be made for the purposes of certain decisions, to provide for the admissibility of business records at an inquiry, to provide for disclosure agreements, and to provide for an application for confirmation by the High Court of a decision of an inquiry under Part IIIC and a decision of the Irish Financial Services Appeals Tribunal under Part VIIA of that Act; to amend the Central Bank Reform Act 2010 to extend the regulation and supervision of financial service providers and persons performing controlled functions and pre-approval controlled functions through the introduction of business standards, conduct standards and the duty of responsibility, to provide for the independence of persons carrying out an investigation in the performance of their functions, to provide for the independence of persons to whom a function of the Head of Financial Regulation, the Central Bank or the Governor is delegated in the performance of their functions, to provide for a right of appeal to the Irish Financial Services Appeals Tribunal of a decision of the Head of Financial Regulation to confirm a suspension notice, to increase the period for which the High Court may extend the duration of a suspension notice, and to provide for an application for confirmation by the High Court of a decision of the Central Bank or the Governor to issue a prohibition notice; to amend the Central Bank (Supervision and Enforcement) Act 2013 to extend the regulation-making power of the Central Bank to provide for arrangements that financial service providers shall adopt in relation to the allocation of responsibilities and compliance with obligations under financial services legislation; to amend the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011); and to provide for related matters.

Presented by the Minister for Finance,

28th July, 2022

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,
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