



AN BILLE FÁ CHORPARÁID NA HÉIREANNACH UM RÉITEACH BAINC, 2013
IRISH BANK RESOLUTION CORPORATION BILL 2013

Mar a tionscnaíodh
As initiated

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AN BILLE FÁ CHORPARÁID NA HÉIREANNACH UM RÉITEACH BAINC, 2013
IRISH BANK RESOLUTION CORPORATION BILL 2013

B I L L

entitled

AN ACT TO PROVIDE FOR THE WINDING UP OF IBRC AND TO PROVIDE FOR
CONNECTED MATTERS.

WHEREAS IT IS NECESSARY, IN THE PUBLIC INTEREST, TO PROVIDE FOR THE
ORDERLY WINDING UP OF THE AFFAIRS OF IBRC TO HELP TO ADDRESS
THE CONTINUING SERIOUS DISTURBANCE IN THE ECONOMY OF THE
STATE;

AND WHEREAS VITAL ASSISTANCE HAS BEEN PROVIDED BY THE STATE TO
MAINTAIN THE FUNCTIONING OF IBRC TO SUPPORT THE FINANCIAL
STABILITY OF THE STATE;

AND WHEREAS VITAL ASSISTANCE HAS BEEN PROVIDED BY THE CENTRAL
BANK OF IRELAND TO MAINTAIN THE FUNCTIONING OF IBRC TO
SUPPORT THE STABILITY OF THE IRISH FINANCIAL SYSTEM;

AND WHEREAS THE MAINTENANCE OF THE FUNCTIONING OF IBRC IS NO LONGER NECESSARY TO SUPPORT THE FINANCIAL STABILITY OF THE STATE OR THE STABILITY OF THE IRISH FINANCIAL SYSTEM;

AND WHEREAS IT IS NECESSARY TO END THE EXPOSURE OF THE STATE AND THE CENTRAL BANK OF IRELAND TO IBRC;

AND WHEREAS THE WINDING UP OF IBRC IS NOW NECESSARY TO HELP TO RESTORE THE FINANCIAL POSITION OF THE STATE AND TO HELP TO ENABLE THE STATE TO RE-ESTABLISH NORMALISED ACCESS TO THE INTERNATIONAL DEBT MARKETS;

AND WHEREAS IT IS NECESSARY IN THE PUBLIC INTEREST TO ENSURE THAT THE FINANCIAL SUPPORT PROVIDED BY THE STATE TO IBRC IS, TO THE EXTENT ACHIEVABLE, RECOVERED AS FULLY AND EFFICIENTLY AS POSSIBLE;

AND WHEREAS THE WINDING UP OF IBRC IS NECESSARY TO RESOLVE THE DEBT OF IBRC TO THE CENTRAL BANK OF IRELAND;

AND WHEREAS IN THE ACHIEVEMENT OF THE WINDING UP OF IBRC THE COMMON GOOD MAY REQUIRE PERMANENT OR TEMPORARY INTERFERENCE WITH THE RIGHTS, INCLUDING PROPERTY RIGHTS, OF PERSONS;

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1. ___ In this Act -

“Act of 1963” means the Companies Act 1963;

“Act of 1990” means the Companies Act 1990;

“Act of 2009” means the National Asset Management Agency Act 2009;

“Bank” means the Central Bank of Ireland;

“Court” means the High Court;

“credit facility” includes every kind of financial accommodation (including a loan facility, a line of credit, a hedging facility, a derivative facility, a bond, a letter of credit, a guarantee facility, an invoice discounting facility, a debt factoring facility, a deferred payment arrangement, a leasing facility, a guarantee, an indemnity and any other financial accommodation giving rise to a payment or repayment obligation) provided to a person, whether alone or together with another person or persons and whether as part of a syndicate or otherwise;

“IBRC” means Irish Bank Resolution Corporation Limited;

“Minister” means the Minister for Finance;

“NAMA” means the National Asset Management Agency;

“NAMA group entity” means -

- (a) a subsidiary of NAMA (within the meaning given by section 155 of the Act of 1963), or
- (b) any other body corporate and any trust, partnership, arrangement for the sharing of profits and losses, joint venture, association, syndicate or other arrangement formed, registered, incorporated or established by NAMA for the purpose of performing any of its functions under this Act or the Act of 2009;

“proceedings” includes arbitration and any other form of binding dispute resolution;

“security” includes -

- (a) a charge,
- (b) a guarantee, indemnity or surety,
- (c) a right of set-off,
- (d) a debenture,
- (e) a bill of exchange,
- (f) a promissory note,
- (g) collateral,
- (h) any other means of securing -
 - (i) the payment of a debt, or

(ii) the discharge or performance of an obligation or liability,

and

(i) any other agreement or arrangement having a similar effect;

“Special Liquidation Order” means an order, or any order amending that order, under *section 4* and references to “Order” shall be construed accordingly;

“special liquidator” has the meaning given in *section 7*;

“subsidiary”, in relation to IBRC, has the same meaning as in section 155 of the Act of 1963;

“subsidiary undertaking”, in relation to IBRC, has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992).

Expenses of Minister.

2.__(1) The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

(2) The expenses incurred by the Minister under this Act shall be paid out of the Central Fund or the growing produce thereof.

Purposes of Act.

3. ___ The purposes of this Act are as follows:

- (a) to help to address the continuing serious disturbance in the economy of the State;
- (b) to provide for the winding up of IBRC in an orderly and efficient manner in the public interest;
- (c) to end the exposure of the State and the Bank to IBRC;
- (d) to help to restore the financial position of the State;
- (e) to help to enable the State to re-establish normalised access to the international debt markets;
- (f) to assist, to the extent achievable, in recovering the financial assistance provided by the State to IBRC as fully and efficiently as possible;
- (g) to resolve the debt of IBRC to the Bank;
- (h) to protect the interests of taxpayers;
- (i) to restore confidence in the banking sector by furthering the reorganisation of the Irish banking system in the public interest;
- (j) to underpin Government support measures in relation to the banking sector.

Special Liquidation Order.

4.__(1) The Minister shall, as soon as is reasonably practicable after the passing of this Act, make an order, in this Act referred to as the “Special Liquidation Order”, in respect of IBRC for the purposes of the winding up of IBRC.

(2) The winding up of IBRC shall be deemed to have commenced at the time the Special Liquidation Order is made.

(3) After the making of the Special Liquidation Order, no person may bring a petition to wind up a subsidiary, or subsidiary undertaking, of IBRC, or a petition to have an examiner appointed to such a subsidiary or subsidiary undertaking, and the directors of such subsidiaries or subsidiary undertakings may not place such subsidiaries or subsidiary undertakings into a creditors’ voluntary winding up without the consent of a special liquidator, which consent may be given on such terms and conditions as the special liquidator thinks fit.

(4) The Minister may by order amend the Special Liquidation Order.

Publication of Special Liquidation Order.

5.__(1) The Minister shall, as soon as practicable after the Special Liquidation Order is made -

- (a) serve a copy of the Order on IBRC,
- (b) send a copy of the Order to the registrar of companies, and
- (c) publish notice of the making of the Order in *Iris Oifigiúil* and in 2 newspapers circulating generally in the State.

(2) The registrar of companies shall enter notice of receipt of the copy of the Order under *subsection (1)(b)* in the register of companies maintained for the purposes of the Companies Acts.

(3) The Minister may, if he or she thinks it necessary to do so, publish the Special Liquidation Order by any additional means or in any additional place.

(4) IBRC shall take all reasonable measures to ensure that its creditors are made aware of the making of the Special Liquidation Order without delay after its making, including, without limiting the generality of the foregoing -

- (a) making an announcement, that relates to the existence of the Special Liquidation Order, to a regulatory news service generally used by relevant institutions in the State for the purposes of announcements to regulated markets, and

(b) providing a copy of the Special Liquidation Order to the regulatory news service referred to in *paragraph (a)*.

(5) In this section “regulated market” has the same meaning as it has in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

Effect of Special Liquidation Order.

6.__(1) In this section “proceedings”, subject to *subsection (4)*, includes counterclaims or cross-claims against IBRC, in legal actions brought by IBRC, other than those counterclaims or cross-claims which, if successful, would give rise to a right of set-off.

(2) Subject to *subsection (6)*, with effect from the making of the Special Liquidation Order -

- (a) there shall be an immediate stay on all proceedings against IBRC,
- (b) no further actions or proceedings can be issued against IBRC without the consent of the Court,
- (c) no actions or proceedings for the winding up of IBRC, or for the appointment of an examiner (whether interim or otherwise) or a liquidator (whether provisional or otherwise) to IBRC can be taken, issued, continued or commenced,
- (d) the Minister may discharge or remove any liquidator or examiner that had been appointed to IBRC prior to the making of the Special Liquidation Order, and
- (e) the Special Liquidation Order shall constitute effective and proper notice to each employee of IBRC that his or her employment with IBRC is terminated with immediate effect.

(3) *Subsection (2)(e)* shall not prevent the special liquidator from engaging any person, including any person whose employment with IBRC was terminated upon the making of the Special Liquidation Order, on such terms as the special liquidator sees fit where the special liquidator considers such engagement to be necessary or beneficial for the orderly conduct of the winding up of IBRC.

(4) The appointment of a receiver pursuant to a debenture or charge created by IBRC shall not constitute proceedings for the purposes of this section.

(5) The making of the Special Liquidation Order in relation to IBRC shall, for the purposes of any enactment or rule of law or of any contract, deed or other agreement to which IBRC is a party, have the same effect as if the Special Liquidation Order were the making of a winding up order by the Court or the appointment of an official liquidator.

(6) (a) The Special Liquidation Order, and any other thing done under the Special Liquidation Order or pursuant to instructions issued or any directions given to a special liquidator pursuant to this Act -

(i) does not affect any proceedings taken, investigation undertaken, or disciplinary or enforcement action undertaken by the Bank, the Director of Public Prosecutions, An Garda Síochána, the Director of Corporate Enforcement or any regulatory authority, in respect of any matter in existence at the time the Special Liquidation Order was made or other thing was done, and

- (ii) does not preclude the taking of any proceedings, or the undertaking of any investigation, or disciplinary or enforcement action, by the Bank, the Director of Public Prosecutions, An Garda Síochána, the Director of Corporate Enforcement or any regulatory authority, in respect of any contravention of an enactment or any misconduct which may have been committed before the Special Liquidation Order was made or the other thing was done.

- (b) In this subsection “regulatory authority” includes –
 - (i) the Irish Stock Exchange,
 - (ii) the Irish Auditing and Accounting Supervisory Authority,
 - (iii) a prescribed accountancy body (within the meaning of Part 2 of the Companies (Auditing and Accounting) Act 2003), and
 - (iv) any other authority which regulates, or which may investigate or prosecute, any person under or by virtue of any enactment, rule of law or contract.

Special liquidator.

7.____(1) In the Special Liquidation Order, the Minister shall appoint one or more than one person for the purpose of the winding up of IBRC (in this Act referred to as a “special liquidator”).

(2) In deciding to appoint a person as a special liquidator, the Minister shall satisfy himself or herself that each person to be appointed has the appropriate level of skill, knowledge and qualifications required to perform the functions of a special liquidator pursuant to this Act.

(3) The Minister shall only appoint a person as a special liquidator if that person -

(a) is an individual, and

(b) is not precluded from acting as a liquidator of a company under section 300A(1) of the Act of 1963.

(4) The terms and conditions of appointment of a special liquidator shall be as fixed by the Minister.

(5) The Minister may at any time remove a special liquidator for any reason and appoint another person as a special liquidator.

(6) A special liquidator may also be appointed as a receiver by the Bank and in that event the special liquidator shall not be precluded by his or her appointment or obligations as a receiver from fulfilling his or her functions under this Act or complying with instructions issued or any direction given to him or her by the Minister pursuant to this Act.

(7) The appointment of a special liquidator shall be taken to have satisfied any statutory or other requirement to obtain the prior approval of the Bank for the acquisition of custody or control of any asset of IBRC acquired by the special liquidator pursuant to that appointment.

(8) Where the Minister appoints more than one special liquidator, the Minister shall provide in the Special Liquidation Order whether any act by this Act or the Companies Acts, as they apply to IBRC, required or authorised to be done by the special liquidator is to be done by all or any one or more of the persons appointed.

Limitation of power to grant injunctive relief.

8.__(1) Where injunctive relief is sought on an interim or interlocutory basis in proceedings -

- (a) to compel a special liquidator to take or refrain from taking any action,
or
- (b) to compel any other person to take or refrain from taking any action
where the relief if granted would adversely affect a special liquidator
in the discharge of his or her functions,

the Court shall have regard, in determining whether to grant such relief, to the public interest.

(2) In considering the public interest, the Court shall have regard to the purposes of this Act.

(3) Unless the Court is satisfied that not granting injunctive relief would give rise to an injustice, the Court shall not grant such relief where a remedy in damages would be available to the person who seeks that relief.

(4) For the purposes of *subsection (3)*, the possibility that the action in respect of which injunctive relief is sought would or might result in a person being declared bankrupt or ordered to be wound up or otherwise adversely affected is not, of itself, sufficient to establish that not granting such relief would give rise to an injustice.

(5) In this section references to a special liquidator shall include references to a special liquidator when acting as a receiver, where he or she is appointed as a receiver by the Bank.

Instructions and directions.

9.__(1) The Minister shall, as soon as practicable following the appointment of a special liquidator, issue the special liquidator with instructions setting out the details in respect of the manner in which the winding up of IBRC is to proceed.

(2) If the Minister is of the opinion that it is necessary for the achievement of any of the purposes of this Act to do so, he or she may give a direction to a special liquidator to take or to refrain from taking any action in connection with the winding up of IBRC.

(3) A special liquidator shall comply with instructions issued or any direction given under this Act.

(4) No cause of action of any kind shall lie against a special liquidator in respect of anything done or not done in compliance with instructions issued or any direction given under this Act.

(5) The Minister may revoke or amend instructions issued under this Act, including instructions issued under this subsection.

Application of Companies Acts to IBRC.

10.___ (1) Subject to *subsections (2) and (3) and Part 1 of the Schedule*, Part VI of the Act of 1963 applies to IBRC together with any necessary additional modifications.

(2) The following provisions of the Act of 1963 do not apply to IBRC:

- (a) sections 205A and 206(1);
- (b) sections 212 to 217;
- (c) sections 220 to 223;
- (d) sections 225 to 228;
- (e) subsections (3) and (4) of section 231;
- (f) sections 232 to 234;
- (g) sections 239, 244 and 246;
- (h) sections 251 to 279;
- (i) subsections (3) and (4) of section 280;
- (j) sections 282 to 282D;
- (k) sections 301A, 306, 308, 309, 311, 311A, 312 and 313A.

(3) The provisions of Part VI of the Act of 1963 that apply to IBRC shall, in their application, be construed -

- (a) as if any reference in those provisions to a company being wound up by the Court, however expressed, were a reference to IBRC being wound up by reason of the making of the Special Liquidation Order,
- (b) as if any other reference in those provisions to winding up by the Court, however expressed, were a reference to the winding up of IBRC by reason of the making of the Special Liquidation Order,
- (c) as if any reference in those provisions to a winding up order, however expressed, were a reference to the Special Liquidation Order,
- (d) as if any reference in those provisions to a liquidator, however expressed, were a reference to a special liquidator, and
- (e) as if those provisions had been modified in the manner set out in *Part 1* of the *Schedule*.

(4) Parts VI and VII of the Act of 1990 apply to IBRC subject to the following modifications and any necessary additional modifications:

- (a) sections 141, 144, 145, 148 and 149, as if IBRC were a company being wound up by court and as if any reference in those provisions to a liquidator, however expressed, were a reference to a special liquidator;
- (b) sections 139 and 140, as if those sections had been modified in the manner set out in *Part 2* of the *Schedule*;

(c) sections 150 to 168, as if any reference in those provisions to a liquidator, however expressed, were a reference to a special liquidator.

(5) If the Minister is of the opinion that it is necessary for the achievement of any of the purposes of this Act to do so, he or she may by order provide that, notwithstanding anything in this section, any provision of the Companies Acts specified in this section shall apply to IBRC without modification.

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

Non-application of Part 7 of Central Bank and Credit Institutions (Resolution) Act 2011 to IBRC.

11.___ Part 7 of the Central Bank and Credit Institutions (Resolution) Act 2011 shall not apply to the winding up of IBRC.

Sales, transfers, securities, etc.

12.___ (1) The sale or transfer of any asset or liability by IBRC, acting through a special liquidator, or by a special liquidator where such asset or liability has vested in the special liquidator, to any person or the assumption of any obligation or liability relating to such sale or transfer shall take effect notwithstanding -

(a) any provision of any enactment, rule of law, code of practice, contract, or other agreement -

(i) providing for or requiring -

(I) notice to be given to any person,

(II) the consent, approval or concurrence of any person, or

(III) any other step, consent, notification, authorisation, licence or document to similar effect,

or

(ii) prohibiting that sale or transfer,

or

(b) any other legal or equitable restriction, inability or incapacity relating to the sale or transfer of any asset or liability or the assumption of any obligation or liability relating to such sale or transfer.

(2) On the sale or transfer of any cause of action or proceedings by IBRC, acting through a special liquidator, or by a special liquidator where such cause of action has, or proceedings have, vested in the special liquidator, to any person -

(a) that person assumes all of the rights and obligations in relation to the cause of action or proceedings which IBRC had immediately before that sale or transfer, other than the obligations of IBRC to which *paragraph (b)* relates, and

(b) IBRC retains obligations in relation to the defence of or liability for any counterclaim or cross-claim which, if successful, would not give rise to a right of set-off and, in respect of such defence or liability, IBRC has full rights in relation to, and is solely liable for, any remedy awarded in relation to any counterclaim or cross-claim which, if successful, would not give rise to a right of set-off.

(3) Any obligation incurred, security created, payment made or act performed by IBRC (whether or not acting through a special liquidator) at any time (whether before or after the passing of this Act) in favour of the Bank, whether or not all or any part of the Bank's interest in such obligation, security, payment or act has been transferred to another person, shall be taken to be valid and enforceable in all respects notwithstanding any enactment or rule of law, which validity and enforceability may not be challenged by any person including a special liquidator, and, without prejudice to the foregoing, shall not be invalidated or rendered void or voidable as against the Bank or any other person -

(a) by section 60, 99, 100, 101 or 111 of the Act of 1963,

- (b) by section 29 or 31 of the Act of 1990,
- (c) on the grounds that, in relation to IBRC, it was *ultra vires*,
- (d) by reason that IBRC may not have been able to pay its debts as they fell due at the time the security was given or that the directors of IBRC ceased to have the power to create that security,
- (e) by reason that the grant of the security may not have been duly authorised by IBRC or may not have been for the benefit of IBRC,
- (f) by reason that the consent of a party required for the creation of the security may not have been obtained, or
- (g) by reason that the security was created by IBRC in favour of the Bank prior to the making of the Special Liquidation Order.

(4) Unless the terms of sale specifically provide otherwise, security over property provided to the Bank by IBRC in connection with a loan made or credit facility provided by the Bank to IBRC or any other amount owing by IBRC to the Bank -

- (a) shall be available to, deemed provided to, and may be relied on by, any person who purchases such a loan or credit facility or other amount, or a part thereof, from the Bank (in this subsection referred to as a “purchaser”) to secure the indebtedness of IBRC under that loan or credit facility or other amount, or part thereof, to the purchaser, and

(b) where so purchased, such security, or part thereof, which relates to such purchase, shall be held by the Bank in trust for the benefit of the purchaser concerned as if that purchaser was a secured creditor under the relevant document creating such security.

(5) Notwithstanding any enactment or rule of law, IBRC, acting through a special liquidator, or a special liquidator, where such cause of action has vested in the special liquidator, may sell or transfer, on such terms and conditions and to such person as the special liquidator thinks fit, any cause of action, howsoever arising, which has accrued or will accrue to IBRC.

(6) In this section references to a special liquidator shall include references to a special liquidator when acting as a receiver, where he or she is appointed as a receiver by the Bank.

Minister's power of direction.

13.____ (1) The Minister may give any of the following directions in writing to NAMA:

- (a) to bid for such bank assets of IBRC and to acquire from IBRC, acting through a special liquidator, such bank assets of IBRC on such terms and conditions (including the consideration), as are specified in the direction;
- (b) to acquire from the Bank, such assets, liabilities or obligations on such terms and conditions (including the consideration), as are specified in the direction;
- (c) to provide such credit facilities to a special liquidator or IBRC on such terms and conditions, as are specified in the direction;
- (d) to take or refrain from taking any action, as specified in the direction, where the Minister is of the opinion that such a direction is necessary for the achievement of any of the purposes of this Act.

(2) NAMA shall comply with a direction given by the Minister under *subsection (1)*.

(3) NAMA may, at its discretion, elect to acquire the bank assets, assets, liabilities or obligations referred to in *subsection (1)* itself or arrange for their acquisition by a NAMA group entity.

(4) The acquisition of any asset, liability or obligation by NAMA or a NAMA group entity from the Bank pursuant to a direction under *subsection (1)(b)* shall be taken to be valid and enforceable in all respects and to take effect notwithstanding -

(a) any provision of any enactment, rule of law, code of practice, contract, or other agreement -

(i) providing for or requiring -

(I) notice to be given to any person,

(II) the consent, approval or concurrence of any person, or

(III) any other step, consent, notification, authorisation, licence or document to similar effect,

or

(ii) prohibiting that acquisition,

or

(b) any other legal or equitable restriction, inability or incapacity relating to the sale or transfer of any asset, liability or obligation.

(5) In this section and *section 14* “bank asset” has the same meaning as in the Act of 2009, save that the reference in paragraph (d) of the definition of “bank asset” in section 4(1) of that Act to a participating institution shall be construed as a reference to IBRC.

Determination of consideration for bank assets to be acquired by NAMA.

- 14.____ (1) The Minister shall issue an instruction to the special liquidator –
- a as to the manner, consistent with the purposes of this Act, in which bank assets which are intended to be bid upon by NAMA in accordance with a direction given under *section 13(1)(a)* are to be valued, and
 - b to appoint a person to carry out an independent valuation of those bank assets.
- (2) The consideration specified by the Minister in a direction given under *section 13(1)(a)* shall be the valuation determined, using standard valuation methodologies, by the person appointed by the special liquidator pursuant to an instruction under *subsection (1)(b)*.
- (3) For the purposes of the valuation referred to in *subsection (2)*, loan assets shall be valued using discounted cash flow analysis, taking into account the timing and reliability of cash flows, together with an appropriate discount factor to determine the value or, where appropriate, in accordance with other standard loan valuation methodologies.

Amendment of Act of 2009.

15.____ The Act of 2009 is amended -

- (a) in section 4, in the definition of “bank asset” –
 - (i) in paragraph (d), by deleting “and” and by inserting the following after paragraph (d):

“(dd) an asset owned by the Central Bank, and”,
 - and
 - (ii) in paragraph (e), by substituting “paragraphs (a) to (dd)” for “paragraphs (a) to (d)”,
- (b) in section 4, by substituting the following for the definition of “officer of NAMA”:

“ ‘officer of NAMA’ means -

 - (a) the Chief Executive Officer of NAMA,
 - (b) any person assigned to NAMA in accordance with section 42, and
 - (c) any person employed by NAMA under *section 16(2) of the Irish Bank Resolution Corporation Act 2013;*”,

and

(c) in section 11, by inserting the following after subsection (1):

“(1A) NAMA has such other functions as are conferred on it
by or under the *Irish Bank Resolution Corporation Act 2013*.”.

IBRC to continue to be a participating institution.

16.____ (1) Until 1 July 2013 or such later date as may be fixed by the Minister by order, the Act of 2009 shall continue to apply to IBRC as if IBRC were a participating institution within the meaning of that Act.

(2) NAMA shall have the power to employ staff in the NAMA group entity which is to acquire assets pursuant to a direction given under *section 13(1)(a)*.

(3) An order made by the Minister under *subsection (1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Powers of Minister to create and issue securities, etc.

17.____ (1) The Minister may, whenever and so often as the Minister thinks fit, create and issue securities -

- (a) bearing interest at such rate as the Minister thinks fit or bearing no interest, and
- (b) subject to such conditions as to repayment, redemption or any other matter as the Minister thinks fit,

where such securities are issued in exchange for or in consideration of the redemption, release or cancellation, or the transfer to the Minister, of any other liability or obligation of the Minister to the Bank.

(2) Any payments required in respect of any securities issued under *subsection (1)* and any expenses incurred in the issue thereof may be charged on the Central Fund or the growing produce thereof.

(3) The Finance Act 1970 is amended in section 54 by inserting the following subsection:

“(7F) The Minister for Finance -

- (a) may engage in such transactions of a normal banking nature with any person as the Minister considers appropriate -

- (i) for the purposes of *subsection (1) of section 17 of the Irish Bank Resolution Corporation Act 2013,*
- (ii) for the purpose of the better management of any indebtedness incurred by the Minister under that subsection, and
- (iii) in furtherance of the achievement of any of the purposes of the *Irish Bank Resolution Corporation Act 2013* or the management of risk, arising from the winding up of IBRC (within the meaning of the *Irish Bank Resolution Corporation Act 2013*), as the Minister considers prudent,

and

- (b) may for the purpose of the transactions referred to in paragraph (a) issue such funds from the Exchequer as he or she considers appropriate.

The expenses and other costs incurred by the Minister in connection with or arising out of the transactions referred to in this subsection shall be charged on the Central Fund or the growing produce of that Fund.”.

(4) The First Schedule to the National Treasury Management Agency Act 1990 is amended by inserting the following after paragraph (gf):

“(gg) *section 17(1) of the Irish Bank Resolution Corporation Act 2013 and section 54(7F) of the Finance Act 1970,*”.

Netting agreements, etc.

18.___ (1) Subject to *subsection (3)*, nothing in this Act -

- (a) affects the operation of -
 - (i) the Netting of Financial Contracts Act 1995,
 - (ii) the European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010),
 - (iii) the European Communities (Financial Collateral Arrangements) Regulations 2010 (S.I. No. 626 of 2010), or
 - (iv) Regulation 30 of the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011),

in relation to an agreement to which IBRC or any of its subsidiaries or subsidiary undertakings is a party, or

- (b) affects the operation of any provision of the law of a Member State required for the implementation of the provisions of -
 - (i) Directive 98/26/EC¹ of the European Parliament and of the Council of 19 May 1998 (as amended by Directive

¹ OJ No. L 166, 11.9.1998, p.45

2009/44/EC² of the European Parliament and of the Council of 6 May 2009), or

- (ii) Directive 2002/47/EC³ of the European Parliament and of the Council of 6 June 2002 (as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009).

(2) Nothing in this Act affects the operation of the Asset Covered Securities Acts 2001 and 2007.

(3) The European Communities (Settlement Finality) Regulations 2010 (S.I. No. 624 of 2010) are amended -

- (a) in Regulation 2, in subparagraph (a) of the definition of “insolvency proceedings”, by substituting the following for clauses (iii) and (iv):

- “(iii) a voluntary winding up (either creditors’ or members’) of the body,

- (iv) proceedings for the appointment of an administrator in respect of the body, and

- (v) a winding up of the body pursuant to the *Irish Bank Resolution Corporation Act 2013 (No. _ of 2013)*,”

² OJ No. L 146, 10.6.2009, p. 37

³ OJ No. L 168, 27.6.2002, p. 43

(b) in Regulation 3(a), by substituting the following for subparagraphs (i) and (ii):

“(i) the making by the Court of an order for the winding up of the body,

(ii) the passing by the members of the body of a resolution for the voluntary winding up (whether creditors’ or members’) of the body, and

(iv) the making of the Special Liquidation Order by the Minister under the *Irish Bank Resolution Corporation Act 2013*,”

and

(c) in Regulation 9(2), by substituting “a special liquidator appointed under *section 7* of the *Irish Bank Resolution Corporation Act 2013*, a liquidator” for “a liquidator”.

Amendment of certain regulations for the purposes of their application to IBRC.

19.___ (1) The European Communities (Deposit Guarantee Schemes) Regulations 1995 (S.I. No. 168 of 1995) are amended -

(a) in Regulation 3, by inserting the following after paragraph (4):

“(5) In their application to a credit institution in respect of which the Special Liquidation Order has been made under the *Irish Bank Resolution Corporation Act 2013 (No. _ of 2013)*, references in these Regulations to -

(a) a liquidator shall be construed as a reference to a special liquidator appointed under *section 7* of that Act, and

(b) a credit institution being wound up by the Court, howsoever expressed, shall be construed as a reference to the credit institution being wound up by reason of that Special Liquidation Order and references to the Court shall be construed as references to that special liquidator.”,

(b) in Regulation 8A(1), by substituting the following for subparagraphs (b) and (c):

“(b) a court has appointed a liquidator or examiner of the credit institution,

(c) a judicial authority has made, for reasons directly related to the credit institution's financial circumstances, any other ruling that has the effect of suspending depositors' ability to make claims against it, or

(d) the Special Liquidation Order has been made in respect of the credit institution under the *Irish Bank Resolution Corporation Act 2013.*”,

and

(c) in Regulation 17 by inserting the following after paragraph (1):

“(1A) Notwithstanding any legal or contractual restriction, other than section 33AK(1A) of the Central Bank Act 1942 (No. 22 of 1942), the Bank and any entity listed in paragraph (1B) may disclose to each other any information, or any book, record, report, certificate or other document, that either one obtains in connection with a person believed to be a depositor of IBRC, any deposit held by that person with IBRC, any amount owed to IBRC or the person believed to owe that amount.

(1B) The entities referred to in paragraph (1A) are:

(a) the Minister for Finance;

- (b) the National Treasury Management Agency;
- (c) the National Asset Management Agency,
- (d) a special liquidator appointed under *section 7 of the Irish Bank Resolution Corporation Act 2013*;
- (e) an agent or adviser of any of the entities specified in subparagraphs (a) to (d).

(1C) The disclosure of any information, or any book, record, report, certificate or other document under paragraph (1A) does not contravene any duty of confidentiality to which the entity disclosing that information, book, record, report, certificate or other document would otherwise be subject.

(1D) The production of any book, record, report, certificate or other document under paragraph (1A) that the entity concerned could not have been compelled to produce to any court on the grounds of legal professional privilege does not constitute a waiver of that privilege.”.

(2) The European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) are amended in Regulation 6 -

- (a) in paragraph (2), by inserting the following after subparagraph (e):

“(f) a winding up pursuant to the Special Liquidation Order made by the Minister for Finance under the *Irish Bank Resolution Corporation Act 2013* (No. _ of 2013).”

and

(b) by inserting the following after paragraph (2):

“(2A) Where the Minister for Finance makes the Special Liquidation Order under the *Irish Bank Resolution Corporation Act 2013* that Minister shall be taken to be a competent public authority for the purposes of these Regulations.”

(3) The European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011) are amended in Regulation 2 -

(a) in paragraph (1), in the definition of “administrative authority”, in subparagraph (a)(ii)(II) by substituting “that Act or the making of the Special Liquidation Order, the issuing of instructions or the giving of directions by that Minister to a special liquidator pursuant to the *Irish Bank Resolution Corporation Act 2013* (No. _ of 2013),” for “that Act,”

(b) in paragraph (1), in the definition of “administrative authority”, in subparagraph (a) by substituting the following for clauses (iii) and (iv):

- “(iii) an administrator,
- (iv) a liquidator, or
- (v) a special liquidator appointed under *section 7 of the Irish Bank Resolution Corporation Act 2013*,”

- (c) in paragraph (1), in the definition of “liquidator”, by substituting “a special liquidator appointed under *section 7 of the Irish Bank Resolution Corporation Act 2013*, a liquidator” for “a liquidator”, and
- (d) in paragraph (4), by substituting the following for paragraph (g):

- “(g) the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27 of 2011);

- (h) *the Irish Bank Resolution Corporation Act 2013 (No. of 2013)*.”

Disclosure of information.

20.____ (1) Notwithstanding any legal or contractual restriction, other than section 33AK(1A) of the Central Bank Act 1942, the Bank and any entity listed in *subsection (2)* may disclose to each other any information, or any book, record, report, certificate or other document (including any information, book, record, report, certificate or document relating to a period before IBRC availed itself of the eligible liability guarantee under the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (S.I. No. 490 of 2009)), that either one obtains in connection with IBRC or any subsidiary or subsidiary undertaking of IBRC.

(2) The entities referred to in *subsection (1)* are:

- (a) the Minister;
- (b) the National Treasury Management Agency;
- (c) NAMA;
- (d) a special liquidator;
- (e) an agent or adviser of any of the entities specified in *paragraphs (a) to (d)*.

(3) The disclosure of any information, or any book, record, report, certificate or other document under *subsection (1)* does not contravene any duty of confidentiality to which the entity disclosing that information, book, record, report, certificate or other document would otherwise be subject.

(4) The production of any book, record, report, certificate or other document under *subsection (1)* that the entity concerned could not have been compelled to produce to any court on the grounds of legal professional privilege does not constitute a waiver of that privilege.

Amendment of Land and Conveyancing Law Reform Act 2009.

21.___ The Land and Conveyancing Law Reform Act 2009 is amended in section 74 -

- (a) in subsection (1), by substituting “subject to subsections (2), (5) and (6)” for “subject to subsections (2) and (5)”,
- (b) in subsection (3), by substituting “subject to subsections (4), (5) and (6)” for “subject to subsections (4) and (5)”, and
- (c) by inserting the following subsection:

“(6) The disposal of any property, or interest in property, of IBRC (within the meaning of the *Irish Bank Resolution Corporation Act 2013*), and whether effected before or after the passing of the *Irish Bank Resolution Corporation Act 2013*, does not amount to a voluntary disposition or a conveyance of property.”.

Amendment of Stamp Duties Consolidation Act 1999.

22.____ The Stamp Duties Consolidation Act 1999 is amended in section 108B(3) -

- (a) in paragraph (d), by substituting “Act of 2009,” for “Act of 2009, or”,
- (b) in paragraph (e), by substituting “acquired bank asset,” for acquired bank asset.”, and
- (c) by inserting the following after paragraph (e):
 - “(f) for the sale, transfer, lease or other disposition of any property, asset or documentation to NAMA or a NAMA group entity (within the meaning of the *Irish Bank Resolution Corporation Act 2013*) by -
 - (i) the Central Bank of Ireland,
 - (ii) IBRC (within the meaning of the *Irish Bank Resolution Corporation Act 2013*),
 - (iii) a subsidiary or subsidiary undertaking (both within the meaning of the *Irish Bank Resolution Corporation Act 2013*) of IBRC,

or

- (iv) a special liquidator appointed under *section 7 of the Irish Bank Resolution Corporation Act 2013*, or
- (g) for the transfer to the Central Bank of Ireland of securities issued under section 48 of the Act of 2009 for the purpose specified in subsection (2)(b) of that section .”.

Amendment of Central Bank Act 1942.

23.____ The Central Bank Act 1942 is amended in Part 2 of Schedule 2 by substituting the following for item 36:

“

36	S.I. No. 48 of 2011	European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011 (S.I. No 48 of 2011)	The whole instrument
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Amendment of European Communities (Deposit Guarantee Schemes) Regulations 1995.

24.___ The European Communities (Deposit Guarantee Schemes) Regulations 1995 (S.I. No. 168 of 1995) are amended in Regulation 18 by substituting “in relation to which a compensation event has occurred” for “which has become insolvent and is being wound up” in each place.

Short title.

25.___ This Act may be cited as the Irish Bank Resolution Corporation Act 2013.

SCHEDULE
MODIFICATIONS TO COMPANIES ACTS

Section 10.

PART 1

SPECIFIC MODIFICATIONS OF CERTAIN PROVISIONS OF PART VI OF THE ACT OF 1963 IN THEIR
APPLICATION UNDER THIS ACT

Item (1)	Provision of Act of 1963 (2)	Modification for purposes of this Act (3)
1	Section 206(2)	As if “by reason of the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “in either of those modes”.
2	Section 224(1)	As if “submitted to the Minister for Finance” were substituted for “filed in the court” and as if all other references to “the court” were references to “the Minister for Finance”.
3	Section 224(2)	As if - <ul style="list-style-type: none"> (a) “the Minister for Finance” were substituted for “the court” in each place, (b) “submitted” were substituted for “filed”, and (c) “submit” were substituted for “file”.
4	Section 224(3)	As if “the Minister for Finance” were substituted for “the court” and as if “submitted” were substituted for “filed”.
5	Section 224(4)	As if “the Minister for Finance” were substituted for “the court”.
6	Section 224(7)	As if the following were substituted for subsection (7):

		“(7) Any person untruthfully so stating himself or herself to be a creditor or contributory shall be guilty of an offence.”.
7	Section 229(2)	As if “or no special liquidator (appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i>)” were inserted after “no liquidator” and as if “the Minister for Finance” were substituted for “the court”.
8	Section 231(1)	As if “, with the sanction of the court or of the committee of inspection” were deleted.
9	Section 235	As if “the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “the court” in each place.
10	Section 236	As if “the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “making a winding up order”.
11	Section 237	As if “the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “making a winding up order”.
12	Section 238	As if - <ul style="list-style-type: none"> (a) “special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i>” were substituted for “court” in each place, (b) “the special liquidator” were substituted for “it”, and (c) “after the Special Liquidation Order is made under the <i>Irish Bank Resolution Corporation Act 2013</i>” were substituted for “after making a winding up order”.

13	Section 240(1)	As if “by the court or the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “by the court”.
14	Section 241	As if “The special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “The court”.
15	Section 242	As if “The special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “The court”.
16	Section 243	As if “the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “making a winding up order”.
17	Section 245(1)	As if “on the application of the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “of its own motion”.
18	Section 245A(1)	As if “on the application of the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “of its own motion”.
19	Section 247	As if “the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “making a winding up order” and as if “on the application of the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “of its own motion”.
20	Section 248	As if “or on the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were inserted after “the court”.

21	Section 280(1)	<p>As if the following were substituted for subsection (1):</p> <p>“(1) The special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> or any creditor may apply to the court to determine any question arising in the winding up of IBRC (within the meaning of the <i>Irish Bank Resolution Corporation Act 2013</i>) and that special liquidator may apply to the court to exercise all or any of the powers which the court might exercise if IBRC were being wound up by the court.”.</p>
22	Section 280(2)	<p>As if "(other than an order annulling the making of the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i>)" were inserted after "such other order".</p>
23	Section 286	<p>As if the following were inserted after subsection (5):</p> <p>“(6) This section shall not apply to any act relating to property by IBRC (within the meaning of the <i>Irish Bank Resolution Corporation Act 2013</i>) in favour of the Central Bank of Ireland.”.</p>
24	Section 288	<p>As if the following were inserted after subsection (4):</p> <p>“(5) This section shall not apply to any floating charge created by IBRC (within the meaning of the <i>Irish Bank Resolution Corporation Act 2013</i>) in favour of the Central Bank of Ireland.”.</p>
25	Section 292	<p>As if “the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i>” were substituted for “a winding up order”.</p>
26	Section 293	<p>As if “or under the Special Liquidation Order</p>

		under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were inserted after “by the court” in each place.
27	Section 295	As if “or under the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were inserted after “by the court”.
28	Section 307	As if “or under the Special Liquidation Order under the <i>Irish Bank Resolution Corporation Act 2013</i> ” were inserted after “voluntarily”.

PART 2

SPECIFIC MODIFICATIONS OF CERTAIN PROVISIONS OF THE ACT OF 1990 IN THEIR APPLICATION UNDER THIS ACT

Item (1)	Provision of Act of 1990 (2)	Modification for purposes of this Act (3)
1	Section 139(1)	As if “the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were substituted for “a liquidator, creditor or contributory of a company which is being wound up”.
2	Section 139	As if the following were inserted after subsection (2): “(2A) Subsection (1) shall not apply to any disposal by IBRC (within the meaning of the <i>Irish Bank Resolution Corporation Act 2013</i>) in favour of the Central Bank of Ireland.”
3	Section 140(1)	As if “the special liquidator appointed under <i>section 7</i> of the <i>Irish Bank Resolution Corporation Act 2013</i> ” were

		substituted for “the liquidator or any creditor or contributory of a company that is being wound up”.
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