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Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009

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Number 7 of 2009

INVESTMENT OF THE NATIONAL PENSIONS RESERVE FUND AND MISCELLANEOUS PROVISIONS ACT 2009

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Acts Referred to

<u>Central Bank Act 1942</u>	1942, No. 22
<u>Central Bank Act 1997</u>	1997, No. 8
<u>Companies Act 1963</u>	1963, No. 33
<u>Companies Act 1990</u>	1990, No. 33
<u>Competition Act 2002</u>	2002, No. 14
<u>Credit Institutions (Financial Support) Act 2008</u>	2008, No. 18
<u>Finance Act 1970</u>	1970, No. 14
<u>Irish Takeover Panel Act 1997</u>	1997, No. 5
<u>Markets in Financial Instruments and Miscellaneous Provisions Act 2007</u>	2007, No. 37
<u>National Pensions Reserve Fund Act 2000</u>	2000, No. 33
<u>Securitisation (Proceeds of Certain Mortgages) Act 1995</u>	1995, No. 30
<u>Taxes Consolidation Act 1997</u>	1997, No. 39



Number 7 of 2009

INVESTMENT OF THE NATIONAL PENSIONS RESERVE FUND AND MISCELLANEOUS PROVISIONS ACT 2009

AN ACT TO AMEND THE NATIONAL PENSIONS RESERVE FUND ACT 2000 IN RELATION TO CERTAIN INVESTMENTS IN THE PUBLIC INTEREST; TO AMEND THE TAXES CONSOLIDATION ACT 1997 IN RELATION TO THE TAXATION OF SUCH INVESTMENTS; TO AMEND THE SECURITISATION (PROCEEDS OF CERTAIN MORTGAGES) ACT 1995 TO FACILITATE THE WINDING-UP OF A BODY ESTABLISHED UNDER THAT ACT; TO AMEND THE MARKETS IN FINANCIAL INSTRUMENTS AND MISCELLANEOUS PROVISIONS ACT 2007 TO PROVIDE FOR GREATER TRANSPARENCY IN RELATION TO CERTAIN KINDS OF TRADING IN FINANCIAL INSTRUMENTS; AND TO PROVIDE FOR CONNECTED MATTERS.

[5th March, 2009]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Definition.

1.— In this Act “Principal Act” means the National Pensions Reserve Fund Act 2000 .

Amendment of
section 2
(interpretation)
of Principal Act.

2.— Section 2(1) of the Principal Act is amended—

(a) by inserting after the definition of “Commission”—

“ ‘Commission investment vehicle’ means a company or other body corporate that the Commission forms, causes to be formed or controls for the purpose of holding, facilitating or managing investments;”,

(b) by inserting after the definition of “custodian”—

“ ‘directed investment’ means—

(a) an investment made by the Commission pursuant to a direction under section 19A,

(b) a shareholding or other interest that the Commission holds as a result of underwriting an issue of securities pursuant to such a direction, or

(c) a shareholding or other interest in a listed credit institution transferred into the Fund under section 18(5A);”,

and

(c) by inserting after the definition of “investment manager”—

“ ‘ listed credit institution ’ means a credit institution (within the meaning given by the Central Bank Act 1997) whose shares are admitted to trading on a regulated market (within the meaning given by the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007));”.

Amendment of
section 6
(functions of
Commission) of
Principal Act.

3.— Section 6 of the Principal Act is amended—

(a) in subsection (1)(a) by inserting “and sections 19A and 19B” after “Fund investment policy”,

(b) in subsection (1)(c) by substituting “securities issued under section 54 (1) of the Finance Act 1970 ,”, for “Irish government securities”,

(c) by inserting after subsection (1)(c)—

“(ca) to accept funds or assets for the benefit of the Fund from sources other than the Central Fund, if so directed by the Minister,”,

(d) in subsection (1)(k) by substituting “Fund, and” for “Fund.”,

(e) by inserting after subsection (1)(k)—

“(l) to advise the Minister, whenever the Minister so requests, on any matter about which the Minister proposes to give a direction under section 19A or 19B.”,

(f) in subsection (2)(e) by substituting “its functions,” for “its functions.”, and

(g) by inserting after subsection (2)(e)—

“(f) comply with a direction by the Minister under section 19A or 19B,

(g) act as an underwriter, lead manager or arranger, or in any other similar capacity (whether alone or with another person or undertaking on a joint, several or joint and several basis), in relation to the issue of securities of any kind, and

(h) form a Commission investment vehicle or cause a Commission investment vehicle to be formed.”.

Amendment of
section 15
(Commission
shall not control
company) of
Principal Act.

4.— Section 15 of the Principal Act is amended—

(a) in subsection (1) by substituting “Subject to subsections (3) and (4), the Commission” for “The Commission”, and

(b) by inserting after subsection (2)—

“(3) A reference to a company in subsection (1) does not include a Commission investment vehicle.

(4) Subsection (1) does not apply in relation to a holding of shares or the possession of voting or other rights constituting or resulting from a directed investment.”.

Disapplication of
certain
requirements of
competition law,
etc., in certain
circumstances.

5.— The Principal Act is amended by inserting after section 15—

“15A.— (1) Parts 2 and 3 of the Competition Act 2002 do not apply with respect to a relevant acquisition or a relevant transfer.

(2) Section 7 of the Credit Institutions (Financial Support) Act 2008 does not apply with respect to a relevant acquisition or a relevant transfer.

(3) Nothing done by or on behalf of the Minister, the Commission or a Commission investment vehicle for the purposes of a relevant acquisition or a relevant transfer constitutes a re-organisation measure for the purposes of—

(a) the European Communities (Re-organisation and Winding-Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004), or

(b) the European Communities (Reorganisation and Winding-up of Insurance Undertakings) Regulations 2003 (S.I. No. 168 of 2003).

(4) Nothing done by or on behalf of the Minister, the Commission or a Commission investment vehicle for the purposes of a relevant acquisition or a relevant transfer, and no acquisition by the Commission or a Commission investment vehicle of shares or securities in connection with a relevant acquisition or a relevant transfer, constitutes—

(a) an offer, a takeover, the acquisition of control or any other takeover transaction for the purposes of the Irish Takeover Panel Act 1997 or any rules made under section 8 of that Act, or

(b) a takeover bid or bid (in each case within the meaning of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006 (S.I. No. 255 of 2006)).

(5) In this section—

‘relevant acquisition’ means an acquisition by or on behalf of the Minister, the Commission or a Commission investment vehicle of an interest in a listed credit institution (being an acquisition that results or would result from a direction under section 19A) and includes a proposal to make such an acquisition;

‘relevant transfer’ means a transfer into the Fund, pursuant to section 18(5A), of an interest in a listed credit institution, and includes a proposal to make such a transfer.”.

Amendment of
section 18
(establishment
of National
Pensions
Fund) of
the

6.— Section 18 of the Principal Act is amended—

(a) in subsection (2) by deleting “, in equal quarterly instalments,”,

(b) by inserting after subsection (2)—

“(2A) The Minister may pay the sum referred to in subsection (2) in one lump sum or in two or more instalments, as the Minister thinks fit. If that sum is paid in instalments the instalments need not be equal.”,

(c) by inserting after subsection (5)—

“(5A) The Minister may contribute to the Fund by transferring into the Fund a shareholding or other interest held by the Minister or a nominee of the Minister.

(5B) The value of a contribution referred to in subsection (5A), as determined by the Minister on the date of transfer, shall be taken to be in satisfaction or part-satisfaction, as the case may be, of the Minister’s obligation under subsection (2) to make payments into the Fund in the current year.

(5C) The Minister may contribute to the Fund by paying into the Fund, from the Central Fund or the growing produce of it, a sum for the purpose of an investment about which the Minister has given, or proposes to give, a direction under section 19A.

(5D) A contribution referred to in subsection (5C) shall be taken to be in satisfaction or part-satisfaction, as the case may be, of the Minister’s obligation under subsection (2) to make payments into the Fund in the current year.

(5E) If the value of a contribution referred to in subsection (5A) (as determined under subsection (5B)), or the amount of a contribution referred to in subsection (5C), added to any contribution made in the same year under subsection (2), is greater than the amount required to be paid into the Fund in the year under subsection (2), the excess amount shall be taken to be in satisfaction or part-satisfaction, as the case requires, of the amount required under subsection (2) to be paid into the Fund in any subsequent year.

(5F) Stamp duty is not chargeable on an instrument giving effect to a transfer referred to in subsection (5A).”,

and

(d) in subsection (7) by inserting “, and of any Commission investment vehicle,” after “Fund”.

Amendment of
section 19 of
Principal Act
(investment
policy for Fund).

7.— Section 19 of the Principal Act is amended—

(a) in subsection (1) by substituting “Other than in the case of a directed investment, moneys” for “Moneys”, and

(b) by inserting after subsection (2)—

“(3) In determining the investment strategy for the Fund under section 6(1)(c), the Commission may have regard to its directed investments.”.

Directions about
investments, etc.

8.— The Principal Act is amended by inserting after section 19—

“Directions to make certain investments, etc.

19A.— (1) The Minister has, in the public interest, the functions provided for under subsection (2) where, after consulting the Governor of the Bank and the Regulatory Authority, the Minister is of the opinion that the performance of those functions is necessary, in the public interest, for either or both of the following purposes—

(a) to remedy a serious disturbance in the economy of the State;

(b) to prevent potential serious damage to the financial system in the State and ensure the continued stability of that system.

(2) For either or both of the purposes mentioned in subsection (1), the Minister may give a direction in writing to the Commission—

(a) to invest, on terms and conditions specified in the direction, in specified securities of a listed credit institution, or

(b) to underwrite or otherwise support, on terms and conditions specified in the direction, the issue of any kind of securities of a listed credit institution.

(3) The terms and conditions that the Minister may specify in a direction under subsection (2) may include terms or conditions requiring the Commission to impose specified terms or conditions in relation to the investment or underwriting or on the credit institution in which the investment is to be made or of which the securities are to be issued.

(4) The Commission shall comply with a direction under subsection (2) and may do so either directly or through a Commission investment vehicle.

(5) In this section ‘Governor’ and ‘Regulatory Authority’ have the same respective meanings as in the Central Bank Act 1942 .

Directions in relation to management of certain investments.

19B.— (1) The Minister may give a direction in writing to the Commission in relation to

—

- (a) the holding and management, on terms and conditions specified in the direction, of a directed investment,
- (b) the exercise, on terms and conditions specified in the direction, of any voting or other rights attaching to such an investment, or
- (c) the disposal, on terms and conditions specified in the direction, of such an investment.

(2) The Commission shall comply with a direction under subsection (1).

Certain persons not to be shadow directors.

19C.— (1) Unless otherwise appointed as a director, none of the persons mentioned in subsection (2) is to be taken to be a shadow director (within the meaning given by [section 27](#) (1) of the [Companies Act 1990](#)) nor what is known as a *de facto* director nor as a person discharging managerial responsibilities of—

- (a) a company in which the Commission or a Commission investment vehicle has a directed investment,
- (b) any subsidiary or subsidiary undertaking of such a company.

(2) The persons are the following:

- (a) the Minister;
- (b) the Commission;
- (c) a Commissioner;
- (d) the Manager and any member of the staff of the Manager.

(3) In this section:

‘subsidiary’, in relation to a company, has the same meaning as in section 155 of the Companies Act 1963;

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

Amendment of
the Taxes
Consolidation
Act 1997.

9.— The Taxes Consolidation Act 1997 is amended as follows:

(a) in section 172A(1)(a) by substituting for subparagraph (i) of the definition of “relevant distribution”—

“(i) a distribution within the meaning of paragraph 1 of Schedule F in section 20(1), other than such a distribution made to—

(I) a Minister of the Government in his or her capacity as such a Minister,

(II) the National Pensions Reserve Fund Commission, or

(III) a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)),”;

(b) in section 230A by inserting “or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*))” after “National Pensions Reserve Fund Commission”;

(c) in section 256(1), in paragraph (a) of the definition of “relevant deposit”, by substituting for subparagraphs (iii a) and (iii b)—

“(iii a) the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)),

(iii**b**) the State acting through the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)),

(d) in section 739D by substituting for subsection (6)(l)—

“(l) is—

(i) the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)), or

(ii) the State acting through the National Pensions Reserve Fund Commission or a Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)),

and has made a declaration to that effect to the investment undertaking, or”;

(e) in Part 1 of Schedule 15 by inserting after paragraph 34—

“34A. A Commission investment vehicle (within the meaning given by section 2 of the National Pensions Reserve Fund Act 2000 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*)).”.

Amendment of European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) are amended by inserting after Regulation 5(1)(g) (as amended by the European Communities (Markets in Financial Instruments) (Amendment) Regulations 2007 (S.I. No. 663 of 2007))—

Financial Instruments) Regulations 2007.

“(ga) the National Pensions Reserve Fund Commission;

(gb) any Commission investment vehicle (within the meaning given by section 2 (as amended by section 2 of the *Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009*) of the National Pensions Reserve Fund Act 2000);”.

Amendment of the Securitisation (Proceeds of Certain Mortgages) Act 1995.

11.— The Securitisation (Proceeds of Certain Mortgages) Act 1995 is amended by substituting the following for section 10:

“Distributions, etc., by designated body.

10.— (1) A designated body may from time to time make distributions to the Minister or such other person or body as the Minister may direct.

(2) A designated body may from time to time transfer, to the Minister or such other person or body as the Minister may direct, outstanding mortgage loan payments representing the principal and interest amounts of securitised local authority mortgage payments due to the designated body.

(3) Any asset of a designated body remaining on its winding-up shall be transferred to the Minister or such other person or body as the Minister may direct.

(4) For the purposes of subsection (3), ‘asset’ includes money, an interest and a right of action in respect of money and an interest accruing, receivable or vesting subsequent to the winding-up.”.

Amendment of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007.

12.— The Markets in Financial Instruments and Miscellaneous Provisions Act 2007 is amended by inserting after section 6—

“Regulations in relation to transparency in trading in certain financial instruments.

6A.— (1) In this section ‘financial instruments’ has the same meaning as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(2) For the purposes of ensuring that trading in financial instruments in the State is and remains fair, orderly and transparent, or where the Minister considers it necessary or expedient to do so to advance the objectives of a Directive of the European Communities relating to the oversight of financial markets and trading in financial instruments (or of a law of the State giving effect to such a Directive), the Minister may, after consulting the Bank, make regulations requiring persons (or persons of specified classes) who have entered into transactions in specified financial instruments or classes of financial instruments to disclose to the Bank or the public (or both) such information as may be specified in the regulations.

(3) Regulations under subsection (2)—

(a) may provide for the method of disclosure and the form in which the disclosure is to be made, and

(b) may make such incidental, supplementary or consequential provision as the Minister considers necessary or expedient for the purposes of the regulations, including provisions creating offences (but only providing penalties in respect of summary convictions for such offences).

(4) Every regulation made under subsection (2) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done under the regulation.”.

Short title and commencement. **13.**— (1) This Act may be cited as the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009.

(2) This Act (other than *paragraphs (d) and (e) of section 3*) shall come into operation on such day or days as the Minister may, by order or orders, appoint either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.