



Number 47 of 2001

ASSET COVERED SECURITIES ACT, 2001

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY MATTERS

Section

1. Short title and commencement.
2. Purposes of Act.
3. Interpretation.
4. Definition of mortgage credit.
5. Definition of public credit.
6. Definition of substitution asset.
7. When designated credit institution becomes insolvent.
8. When designated credit institution becomes potentially insolvent.

PART 2

FUNCTIONS AND POWERS OF AUTHORITY

9. Functions of Authority under this Act.
10. General powers of Authority under this Act.
11. Power of Minister to impose additional functions on Authority.

PART 3

DESIGNATION OF CREDIT INSTITUTIONS

12. Offence to carry on asset covered securities business without designation by Authority.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Section

13. Application for registration as a designated credit institution.
14. Grant and rejection of applications for registration.
15. Effect and term of registration.
16. Authority may vary conditions of registration.
17. Registers of designated credit institutions to be kept.
18. Revocation of registration by Authority on application of credit institution.
19. Revocation of registration by Authority otherwise than on application of credit institution.
20. Authority may direct designated credit institution to suspend its business.
21. Effect of revocation of registration where credit institution is not a company or building society or is a company or building society other than one that is being wound up.
22. Provisions applying to directions given under *sections 20 and 21.*
23. Effect of revocation of registration where credit institution is a company or building society that is being wound up.
24. Authority may substitute other duties for duties of liquidator of credit institution.
25. Provisions of certain other Acts not affected.
26. Right to appeal against certain decisions of the Authority.

PART 4

REGULATION OF DESIGNATED CREDIT INSTITUTIONS

CHAPTER 1

Issue of asset covered securities by designated mortgage credit institutions

27. Interpretation (*Chapter 1*).
28. Designated mortgage credit institution to carry on permitted business activities only.
29. Power of designated mortgage credit institution to issue mortgage covered securities.
30. Designated mortgage credit institution may enter into certain kinds of contracts.
31. Restrictions on business activities of designated mortgage credit institution.
32. Designated mortgage credit institution to establish and maintain cover assets pool.
33. What can be included in a cover assets pool maintained by a designated mortgage credit institution.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

Section

34. What action is to be taken by a designated mortgage credit institution that is in breach of cover assets pool provisions.
35. Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated mortgage credit institution.
36. Use of realised proceeds of cover asset by designated mortgage credit institution.
37. Inclusion of asset in, and removal of asset from, cover assets pool.
38. Designated mortgage credit institution to keep register of mortgage covered securities business.
39. Authority and cover-assets monitor to have access to register of mortgage covered securities business.
40. Financial statements in respect of designated mortgage credit institution.
41. Valuation of assets held by designated mortgage credit institutions.

CHAPTER 2

Issue of asset covered securities by designated public credit institutions

42. Interpretation (*Chapter 2*).
43. Designated public credit institution to carry on permitted business activities only.
44. Power of designated public credit institution to issue public credit covered securities.
45. Designated public credit institution may enter into certain kinds of contracts.
46. Restrictions on business activities of designated public credit institution.
47. Designated public credit institution to establish and maintain cover assets pool.
48. What can be included in a cover assets pool maintained by a designated public credit institution.
49. What action is to be taken by a designated public credit institution that is in breach of cover assets pool provisions.
50. Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated public credit institution.
51. Use of realised proceeds of cover asset by designated public credit institution.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Section

52. Inclusion of asset in, and removal of asset from, cover assets pool.
53. Designated public credit institution to keep register of public credit covered securities business.
54. Authority and cover-assets monitor to have access to register of public credit covered securities business.
55. Financial statements in respect of designated public credit institution.
56. Valuation of assets held by designated public credit institutions.

CHAPTER 3

Provisions applicable to asset covered securities generally

57. Protection of disclosures made to an authorised recipient.
58. Transfer of business or assets from one credit institution to another.

PART 5

COVER-ASSETS MONITORS

59. Cover-assets monitor to be appointed for each designated credit institution.
60. Authority may appoint cover-assets monitor in certain circumstances.
61. Responsibilities of cover-assets monitor appointed in respect of designated mortgage credit institution.
62. Responsibilities of cover-assets monitor appointed in respect of designated public credit institution.
63. Termination of appointment of cover-assets monitor by designated credit institution.
64. Resignation of cover-assets monitor.
65. Cover-assets monitor's powers in relation to designated credit institution.
66. Designated credit institution to provide information and documents required by cover-assets monitor.
67. Duty of cover-assets monitor to report certain matters to Authority.
68. Authority may confer additional responsibilities on cover-assets monitor.
69. Cover-assets monitor to provide reports to Authority on request.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

Section

70. Power of entry, etc., of Authority or authorised person.

PART 6

MANAGEMENT OF BUSINESS ACTIVITIES OF DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTIONS IN CERTAIN CIRCUMSTANCES

71. Interpretation (*Part 6*).
72. Authority may appoint manager in respect of designated credit institution or formerly designated credit institution in certain circumstances.
73. What happens if NTMA's attempts to locate a manager are unsuccessful.
74. What happens if NTMA's attempts to locate a parent entity are unsuccessful.
75. NTMA may be appointed as temporary manager in certain circumstances.
76. Fees payable to NTMA.
77. Application of *Schedule 1* to managers.
78. Effect of appointment of person as manager.
79. Responsibilities of manager.
80. Appointment of new manager to be appointed to fill vacancy.

PART 7

EFFECT OF POTENTIAL INSOLVENCY PROCESS ON DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTION

81. Application and operation of this Part.
82. Existing rights of certain persons not affected by insolvency or potential insolvency of designated credit institution.
83. Rights of preferred creditors in relation to cover assets.
84. Obligations of designated credit institution to continue despite insolvency process.
85. Effect of insolvency process on asset covered securities and cover assets hedge contracts of designated credit institutions.
86. Designated or formerly designated credit institution not to be dissolved unless claims of preferred creditors have been satisfied.
87. This Part not to prevent application of enactment or rule of law relating to fraud, misrepresentation, etc.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Section

88. Designated credit institution not to create security interest in cover assets if claims of preferred creditors would be adversely affected.
89. Certain directions not to apply unless rights of certain persons have been satisfied.
90. Provisions applicable where credit institution is both designated mortgage credit institution and designated public credit institution.

PART 8

REGULATIONS, ORDERS AND REGULATORY NOTICES

91. Authority may make regulations for purposes of Act.
92. Minister to consult Authority before making an order for purposes of this Act.
93. Regulations and orders to be laid before each House of Oireachtas.
94. House of Oireachtas may annul regulation or order.
95. Regulatory notices.

PART 9

ENFORCEMENT

96. Court empowered to make prohibition or compliance orders.
97. Time within which proceedings for an offence may be brought.
98. Offences relating to acts affecting the performance of official functions.
99. Offences by bodies corporate.

PART 10

MISCELLANEOUS

100. Certain persons to be not liable for commission of certain acts and omissions under this Act.
101. Designation of credit institution not to be a warranty of solvency, etc.
102. Reciprocal arrangements with other countries.
103. Giving of notices.
104. Certain documents exempt from stamp duty.
105. Expenses incurred in administering this Act.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

Section

106. Consequential amendments to other Acts.

SCHEDULE 1

PROVISIONS APPLICABLE TO MANAGERS

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

ACTS REFERRED TO

| | |
|---|----------------------|
| ACC Bank Acts, 1978 to 2001 | |
| Bankruptcy Act, 1988 | 1988, No. 27 |
| Bankruptcy Acts, 1988 and 2001 | |
| Bills of Sale (Ireland) Acts, 1879 and 1883 | |
| Building Societies Act, 1989 | 1989, No. 17 |
| Building Societies Acts, 1989 to 1992 | |
| Central Bank Act, 1971 | 1971, No. 24 |
| Central Bank Acts, 1942 to 2001 | |
| Companies Act, 1963 | 1963, No. 33 |
| Companies Act, 1990 | 1990, No. 33 |
| Companies Acts, 1963 to 2001 | |
| Companies (Amendment) Act, 1990 | 1990, No. 27 |
| Consumer Credit Act, 1995 | 1995, No. 24 |
| European Communities Act, 1972 | 1972, No. 27 |
| Investor Compensation Act, 1998 | 1998, No. 37 |
| National Treasury Management Agency Act, 1990 | 1990, No. 18 |
| National Treasury Management Agency Acts, 1990 and 2000 | |
| National Treasury Management Agency (Amendment) Act, 2000 | 2000, No. 39 |
| Petty Sessions (Ireland) Act, 1851 | 12 & 13 Vict., c. 93 |
| Public Offices Fees Act, 1879 | 42 & 43 Vict., c. 58 |
| Registration of Deeds Act, 1707 | 6 Anne, c. 2 |
| Registration of Title Act, 1964 | 1964, No. 16 |
| Taxes Consolidation Act, 1997 | 1997, No. 39 |
| Trustee Savings Banks Act, 1989 | 1989, No. 21 |
| Trustee Savings Banks Acts, 1989 and 2001 | |



Number 47 of 2001

ASSET COVERED SECURITIES ACT, 2001

AN ACT TO FACILITATE THE ESTABLISHMENT AND OPERATION OF A MARKET IN ASSET COVERED SECURITIES, TO PROVIDE FOR THE REGISTRATION OF DESIGNATED CREDIT INSTITUTIONS, TO AMEND THE BUILDING SOCIETIES ACT, 1989, AND CERTAIN OTHER ENACTMENTS, AND TO PROVIDE FOR RELATED MATTERS. [18th December, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY MATTERS

1.—(1) This Act may be cited as the Asset Covered Securities Act, 2001. Short title and commencement.

(2) This Act comes into operation on such day or days as may be fixed by order or orders made by the Minister, either generally or with reference to any particular purpose or provision. Different days may be fixed for different purposes and different provisions.

2.—The purposes of this Act are to facilitate— Purposes of Act.

(a) the establishment and operation in the State of designated credit institutions, and

(b) the establishment and operation of a market in asset covered securities so as to make available further sources of funds to those institutions.

3.—(1) In this Act, unless the context otherwise requires— Interpretation.

“this Act” includes a regulation made under this Act;

“agricultural land” means land that is used, or set aside for use, primarily for the purpose of growing crops or other agricultural products, or for grazing stock or raising domestic animals or birds, and includes all improvements made to the land for that purpose;

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.1 S.3

“asset” includes an interest in an asset;

“asset covered securities”—

(a) in relation to a designated or formerly designated mortgage credit institution, means mortgage covered securities issued by the institution, and

(b) in relation to a designated or formerly designated public credit institution, means public credit covered securities issued by the institution;

“Authority” means the Central Bank;

“building” includes a structure other than a building;

“building society” means a building society incorporated under the Building Societies Act, 1989, or deemed by section 124(2) of that Act to be so incorporated;

“category A country” means a country (other than an EEA country) to which *section 5(1)(a)* relates;

“category B country” means a country to which *section 5(1)(b)* relates;

“Central Bank” means the Central Bank of Ireland;

“Codified Banking Directive” means Directive 2000/12/EC of the European Parliament and of the Council of the European Union of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, and includes that Directive as amended or replaced from time to time;

“commercial property” means land that is used, or is set aside to be used, primarily for the purpose of any industry, trade or other business undertaking, but does not include a mine, quarry, agricultural land or residential property;

“Companies Acts” means the Companies Acts, 1963 to 2001, and every enactment that is to be construed as one with those Acts;

“conditions”, in relation to a designated credit institution, means the conditions specified in or accompanying the institution’s certificate of designation or, if the conditions are varied under *section 16*, those conditions as varied under that section;

“cover assets”—

(a) in relation to a designated or formerly designated mortgage credit institution, means mortgage credit assets, cover assets hedge contracts or substitution assets that are held in a cover assets pool maintained by the institution, and

(b) in relation to a designated or formerly designated public credit institution, means public credit assets, cover assets hedge contracts or substitution assets that are held in a cover assets pool maintained by the institution;

“cover assets hedge contract”—

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

- (a) in relation to a designated or formerly designated mortgage credit institution, means a contract of a kind entered into in accordance with *section 30(3)*, and
- (b) in relation to a designated or formerly designated public credit institution, means a contract of a kind entered into in accordance with *section 45(3)*;

“cover-assets monitor”, in relation to a designated or formerly designated credit institution, means a person appointed in respect of the institution under *Part 5*;

“cover assets pool”—

- (a) in relation to a designated or formerly designated mortgage credit institution, means the mortgage credit assets, cover assets hedge contracts and substitution assets held by the institution that are recorded in the register of mortgage covered securities business kept by the institution, and
- (b) in relation to a designated or formerly designated public credit institution, means the public credit assets, cover assets hedge contracts and substitution assets held by the institution that are recorded in the register of public credit covered securities business kept by the institution;

“credit institution” means any of the following:

- (a) the holder of a licence under section 9 of the Central Bank Act, 1971;
- (b) a building society;
- (c) a trustee savings bank that holds a licence issued under the Trustee Savings Banks Act, 1989;
- (d) ACC Bank plc;
- (e) a credit institution, as defined in the Codified Banking Directive, that is authorised by a competent authority outside the State for the purposes of that Directive;

“dealing”, in relation to an asset, includes originating, acquiring and disposing of the asset;

“designated credit institution” means either a designated mortgage credit institution or a designated public credit institution;

“designated mortgage credit institution” means an institution designated by the Authority in accordance with *Part 3* to carry on the permitted business activities referred to in *section 27(1)*;

“designated public credit institution” means an institution designated by the Authority in accordance with *Part 3* to carry on the permitted business activities referred to in *section 42(1)*;

“EEA country” means a country that is a member of the European Economic Area;

“European Central Bank” has the meaning given by the Statute of the European System of Central Banks and of the European Central Bank;

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

“financial asset” has the meaning given by section 496 of the Taxes Consolidation Act, 1997;

“financial obligation” includes—

- (a) an obligation given as a guarantor or surety,
- (b) an obligation that is indirect, and
- (c) an obligation that is contingent on the happening of some event;

“formerly designated credit institution” means an institution that was formerly registered as either a designated mortgage credit institution or a designated public credit institution;

“functions” includes duties and responsibilities;

“holder”, in relation to an asset covered security, includes any person who has a right to or an interest in the security, whether the right or interest is direct or indirect or is derived through a custodian, intermediary or any system for settling or clearing securities;

“insolvency process” means liquidation, examination, receivership, reorganisation, a moratorium, bankruptcy or any similar process related to the inability of persons to pay their debts, and, in relation to a designated or formerly designated credit institution, includes any process relating to the insolvency or potential insolvency of the institution;

“insolvent”, in relation to a designated or formerly designated credit institution, has the meaning given by *section 7*;

“manager” means a person appointed in respect of a designated or formerly designated credit institution under *Part 6* or *Schedule 1*;

“the Minister” means the Minister for Finance;

“mortgage covered security”, in relation to a designated or formerly designated mortgage credit institution, means a security that is issued by the institution in accordance with this Act and is secured over the cover assets that are included in a cover assets pool maintained by the institution;

“mortgage credit” has the meaning given by *section 4*;

“mortgage credit asset” means property or an asset held by a designated mortgage credit institution that comprises one or more mortgage credits;

“national central bank” has the meaning given by the Statute of the European System of Central Banks and of the European Central Bank;

“non-performing” means—

- (a) in relation to assets or property of any kind—such of the assets or property as are in the course of being foreclosed or otherwise enforced,
- (b) in relation to mortgage credit assets for which the related mortgage credit is of a kind referred to in *section 4(1)*—such of those assets in relation to which one or

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

more payments of principal or interest payable on that credit are in arrears under the terms of the security documents governing that credit, but only if those payments are referable to a period of 3 months or more, or

Pr.1 S.3

- (c) in relation to kinds of assets or property, other than mortgage credit assets referred to in *paragraph (b)*—such of the assets or property in respect of which one or more payments of principal or interest payable on the related credit are in arrears for 10 days or more under the terms of the security documents that govern that credit;

“NTMA” means the National Treasury Management Agency;

“obligation” includes a liability;

“parent entity”, in relation to a designated credit institution, has the same meaning as is given to the expression “parent company” in the European Communities (Credit Institutions: Accounts) Regulations, 1992;

“performing”, in relation to assets or property held by a designated credit institution, means such of the assets or property as are not non-performing assets;

“potentially insolvent”, in relation to a designated or formerly designated credit institution, has the meaning given by *section 8*;

“power” includes a right and an authority;

“preferred creditor”, in relation to a designated or formerly designated credit institution, means all or any of the following persons—

- (a) the holder of an outstanding asset covered security issued by the institution,
- (b) a person (other than the holder) who has rights under or in respect of any such security by virtue of any legal relationship with the holder,
- (c) a person with whom the institution has entered into a cover assets hedge contract, but only if the person is in compliance with the financial obligations imposed under the contract,
- (d) a person who is a super-preferred creditor in relation to the institution;

“property” includes an interest in property;

“property asset”, in relation to a mortgage credit, means a right or interest in the residential or commercial property over which the mortgage credit is secured;

“prudent market value” means—

- (a) in relation to a mortgage credit asset or substitution asset held or proposed to be held by a designated mortgage credit institution—the prudent market value as determined in accordance with *section 41*, and
- (b) in relation to a public credit asset or substitution asset held or proposed to be held by a designated public credit

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.1 S.3

institution—the prudent market value as determined in accordance with *section 56*;

“public credit” has the meaning given by *section 5*;

“public credit covered security”, in relation to a designated or formerly designated public credit institution, means a security issued by the institution in accordance with this Act that is secured over the cover assets that comprise a cover assets pool maintained by the institution;

“public credit asset” means property or an asset held by a designated or formerly designated public credit institution that comprises one or more public credits;

“record” means any record of information, however compiled, recorded or stored, and includes—

(a) any book, register or other document containing information, and

(b) any disc, tape or other article from which information is capable of being produced in any form capable of being reproduced visually or aurally;

“register of designated mortgage credit institutions” means the register established in accordance with *section 17(1)*;

“register of designated public credit institutions” means the register established in accordance with *section 17(2)*;

“register of mortgage covered securities business”, in relation to a designated or formerly designated mortgage credit institution, means the register that the institution is required to keep under *section 38*;

“register of public credit covered securities business”, in relation to a designated or formerly designated public credit institution, means the register that the institution is required to keep under *section 53*;

“registered”, in relation to a designated credit institution, means registered under *Part 3*;

“regulatory notice” means a regulatory notice published by the Authority under a provision of this Act;

“the regulations” means regulations made by the Authority, and in force under this Act;

“related company”, in relation to a designated or formerly designated credit institution, has the meaning given by *subsection (6)*;

“residential property” means a building or part of a building that is used or is suitable for use as a dwelling, and includes the land on which the building is constructed and premises that are used in conjunction with a dwelling, such as a garden, patio, garage or shed;

“secured”—

(a) in relation to asset covered securities issued by a designated credit institution—means secured as provided by *Part 7* over the relevant cover assets pool maintained by the institution to protect and satisfy the claims and rights of the holders of those securities,

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

- (b) in relation to cover assets hedge contracts entered into by such an institution—means secured as so provided to protect and satisfy the claims and rights of the persons with whom the institution has entered into those contracts, Pr.1 S.3
- (c) in relation to the cover-assets monitor appointed in respect of such an institution under this Act—means secured as so provided to protect and satisfy the claims and rights of the monitor in connection with the monitor’s appointment as such, and
- (d) in relation to a manager appointed in respect of such an institution under this Act—means secured as so provided to protect and satisfy the claims and rights of the manager in connection with the manager’s appointment as such;

“security document” includes any form of visual representation that can be produced electronically or by any other means;

“Statute of the European System of Central Banks and of the European Central Bank” means the statute set out in Protocol (No. 3) (annexed by the Treaty on European Union done at Maastricht on the 7th day of February, 1992) to the Treaty establishing the European Economic Community done at Rome on the 25th day of March, 1957;

“substitution asset” has the meaning given by *section 6*;

“super-preferred creditor”, in relation to a designated or formerly designated credit institution, means a cover-assets monitor or manager appointed in respect of the institution;

“supervisory enactment” means any of the following:

- (a) the Central Bank Acts, 1942 to 2001;
- (b) the Building Societies Acts, 1989 to 1992;
- (c) the Trustee Savings Banks Acts, 1989 and 2001;
- (d) the ACC Bank Acts, 1978 to 2001;
- (e) regulations made under the European Communities Act, 1972, relating to the regulation or supervision of credit institutions;
- (f) supervisory notices issued by the Central Bank giving effect to directives of the European Union relating to the regulation or supervision of credit institutions;
- (g) any statute, regulation or notice amending, replacing or supplementing any of those Acts, regulations and notices;

“tier 1 asset” means any property that is designated by the European Central Bank as a tier 1 asset for the purpose of giving effect to the monetary policy of the European System of Central Banks, but, in relation to a designated public credit institution, does not include property that comprises public credit assets; and

“tier 2 asset” means property that is, with the approval of the European Central Bank, included in a national central bank’s list of eligible tier 2 assets for the purpose of giving effect to the monetary

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.1 S.3

policy of the European System of Central Banks, but does not include—

- (a) in the case of a designated mortgage credit institution—
property that comprises a mortgage credit asset or a substitution asset, or
- (b) in the case of a designated public credit institution—
property that comprises a public credit asset or a substitution asset.

(2) For the purposes of this Act—

- (a) the country in which a mortgage credit asset is located is the country in which the property asset that secures the relevant mortgage credit related to the mortgage credit asset is situated, and
- (b) the country in which a substitution asset (other than a deposit of money) is located is the country where the entity that has the primary financial obligation in respect of the asset is formed or established, or
- (c) the country in which a substitution asset that is a deposit of money is located is the country in which the place of business of the financial institution that is holding the deposit is situated.

(3) In *subsection (2)(b)*, “primary financial obligation” means the financial obligation that enables the asset to qualify as a tier 1 asset.

(4) For the purposes of this Act—

- (a) the country in which a public credit asset is located is the country in which the entity that has the primary financial obligation in respect of the asset is formed or established, and
- (b) the country in which a substitution asset (other than a deposit of money) is located is the country where the entity that has the primary financial obligation in respect of the asset is formed or established, or
- (c) the country in which a substitution asset that is a deposit of money is located is the country in which the place of business of the financial institution that is holding the deposit is situated.

(5) In *subsection (4)*, “primary financial obligation” means the financial obligation that enables the asset to qualify—

- (a) as a public credit asset, or
- (b) in the case of a substitution asset that is a tier 1 asset, as a tier 1 asset.

(6) For the purposes of this Act, a company is related to a credit institution if—

- (a) the institution is its holding company or subsidiary,
- (b) more than half in nominal value of the company’s equity share capital is held by the institution and companies

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

related to it (whether directly or indirectly, but otherwise than in a fiduciary capacity), Pr.1 S.3

- (c) more than half in nominal value of the equity share capital of each of those bodies is held by members of the other (whether directly or indirectly, but otherwise than in a fiduciary capacity),
 - (d) the institution, or a company or companies related to it or to the institution together with a company or companies that are related to it, are entitled to exercise or control the exercise of more than one half of the voting power at any general meeting of the company,
 - (e) the businesses of the institution and the company have been so carried on that the separate business of each of them, or a substantial part of it, is not readily identifiable, or
 - (f) there is another company to which both the institution and the company are related.
- (7) For the purposes of *subsection (6)*—
- (a) “company” includes any body that is liable to be wound up under the Companies Acts, and
 - (b) “holding company”, “subsidiary” and “equity share capital” have the meanings given by section 155 of the Companies Act, 1963.

4.—(1) For the purposes of this Act, mortgage credit is any kind of financial obligation in respect of money borrowed or raised that is secured by a mortgage, charge or other security on residential property or commercial property, but only if the property is located in the State or any other EEA country, a category A country or a category B country. Definition of mortgage credit.

(2) For the purposes of this Act, mortgage credit also includes any kind of credit for the time being designated by order made under *subsection (3)(a)*.

(3) The Minister may, by order notified in *Iris Oifigiúil*—

- (a) designate credit of a specified kind to be mortgage credit for the purposes of this Act, or
- (b) declare a credit of a specified kind to be no longer mortgage credit for those purposes.

(4) The Minister may, in an order made under *subsection (3)(a)*, declare—

- (a) that *section 31(1), 31(2), 32(11) to (13) or 33(2)* does not apply to mortgage credit assets consisting of mortgage credits of the kind specified in the order, or
- (b) that all or any of those provisions apply to those mortgage credit assets only with such modifications as are so specified.

(5) The Minister may specify in an order made under *subsection (3)(a)* requirements as to the total prudent market value of relevant mortgage credit assets that can be included in a cover assets pool,

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.1 S.4

expressed as a percentage of the prudent market value of the total mortgage credit assets and substitution assets that are included in the pool. For the purposes of this subsection, mortgage credit assets are relevant mortgage credit assets if they are comprised of mortgage credits of a kind specified in the order.

Definition of public credit.

5.—(1) For the purposes of this Act, public credit is any kind of financial obligation in respect of money borrowed or raised, where the person who has the obligation is—

- (a) the State or any other EEA country, Canada, Japan, the Swiss Confederation, the United States of America, or a country specified in an order made under *subsection (4)*,
- (b) a country, other than a country to which *paragraph (a)* relates, that is a full member of the Organisation for Economic Co-operation and Development, but only if it has not rescheduled its external debt during the immediately preceding 5 years,
- (c) any governmental or public entity established in a country to which *paragraph (a)* or *(b)* relates that has, under the law of the country or a region of that country, power to impose taxes (including levies or rates),
- (d) subject to *subsection (3)*, any other governmental or public entity established in a country to which *paragraph (a)* or *(b)* relates whose financial obligations have a risk weighting of 20 per cent or less for the purposes of the Codified Banking Directive,
- (e) the European Communities (or any of them) or the European Investment Bank, or
- (f) any other entity established in a country to which *paragraph (a)* or *(b)* relates that is prescribed by the regulations for the purposes of this section.

(2) For the purposes of *subsection (1)*, a financial obligation includes a financial obligation that is in the form of a security that represents other public credit that is securitised as well as one that does not.

(3) The reference in *subsection (1)(d)* to a governmental or public entity does not include a credit institution or other financial institution whose financial obligations have the risk weighting referred to in that paragraph only because of its status as such an institution.

(4) The Minister may, by order notified in *Iris Oifigiúil*, specify for the purposes of *paragraph (a)* of *subsection (1)* a country other than one specified in that paragraph.

(5) For the purposes of this Act, public credit also includes any kind of credit for the time being designated by order made under *subsection (6)(a)*.

(6) The Minister may, by order notified in *Iris Oifigiúil*—

- (a) designate credit of a specified kind to be public credit for the purposes of this Act, or

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(b) declare credit of a specified kind to be no longer public credit for those purposes. Pr.1 S.5

(7) The Minister may, in an order made under *subsection (6)(a)*, declare—

(a) that *section 46(1)* or *48(2)* does not apply to public credit assets consisting of public credits of the kind specified in the order, or

(b) that either or both of those provisions apply to those public credit assets only with such modifications as are so specified.

(8) The Minister may specify in an order made under *subsection (6)(a)* requirements as to the total prudent market value of relevant public credit assets that can be included in a cover assets pool, expressed as a percentage of the prudent market value of the total public credit assets and substitution assets that are included in the pool. For the purposes of this subsection, public credit assets are relevant public credit assets if they are comprised of public credits of a kind specified in the order.

6.—(1) The following assets are substitution assets for the purposes of this Act— Definition of substitution asset.

(a) deposits with an eligible financial institution;

(b) tier 1 assets;

(c) any specified kind of property that is for the time being designated by order made under *subsection (3)(a)* to be a substitution asset.

(2) The regulations must provide for a financial institution or class of financial institutions to be designated as an eligible financial institution for the purposes of *subsection (1)*.

(3) The Minister may, by order notified in *Iris Oifigiúil*—

(a) designate a specified kind of property to be a substitution asset for the purposes of this Act, or

(b) declare a specified kind of property to be no longer a substitution asset for those purposes.

7.—A designated credit institution becomes insolvent for the purposes of this Act in any of the following circumstances: When designated credit institution becomes insolvent.

(a) if the appointment of an examiner in respect of the institution under the Companies (Amendment) Act, 1990, is not terminated or stayed within 30 days after the date of the appointment;

(b) if the appointment of a liquidator in respect of the institution is not terminated or stayed within 30 days after the date of the appointment;

(c) if the appointment of a receiver over any part of the property or undertaking of the institution is not terminated or stayed within 30 days after the date of the appointment;

(d) if the institution is a company and the company is deemed to be unable to pay its debts as provided by—

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pr.1 S.7

- (i) section 2(3)(a) or (b) of the Companies (Amendment) Act, 1990, or
- (ii) section 214(b) or (c) of the Companies Act, 1963;
- (e) if the institution is a building society and the High Court makes an order under section 109 of the Building Societies Act, 1989, directing the society to be wound up on the ground that it is unable to pay its debts;
- (f) if the institution is the holder of a licence issued under section 9 of the Central Bank Act, 1971, and—
 - (i) the institution is deemed to be unable to meet its obligations under section 28(1) of that Act, or
 - (ii) the institution is deemed to have committed an act of bankruptcy or to be unable to pay its debts under section 29(4) of that Act;
- (g) if the institution has, in relation to an asset covered security that it has issued, failed to pay an amount payable in respect of the security within 30 days after the amount fell due (unless the failure is attributable to administrative difficulties arising from circumstances that are outside the control of the institution).

When designated credit institution becomes potentially insolvent.

8.—A designated credit institution becomes potentially insolvent for the purposes of this Act in any of the following circumstances:

- (a) if a petition for the appointment of an examiner is presented in relation to the institution under the Companies (Amendment) Act, 1990;
- (b) if a petition is presented, or an effective resolution is passed, for the appointment of a liquidator in relation to the institution;
- (c) if a receiver over any assets of the institution is appointed;
- (d) if the institution has, in relation to an asset covered security that it has issued, failed to pay an amount payable in respect of the security within 10 days after the amount fell due (unless the failure is attributable to administrative difficulties arising from circumstances that are outside the control of the institution).

PART 2

FUNCTIONS AND POWERS OF AUTHORITY

Functions of Authority under this Act.

9.—(1) The functions of the Authority are as follows—

- (a) to designate credit institutions for the purposes of this Act,
- (b) to administer the system of supervision and regulation of designated credit institutions in accordance with this Act in order to promote the maintenance of the proper and orderly regulation and supervision of those institutions, and
- (c) to perform such other functions as are prescribed by or under this Act.

(2) The Authority is required to perform its functions so as to fulfil the purposes of this Act.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(3) The Authority has, in relation to designated credit institutions and other persons to whom this Act relates, the functions imposed and the powers conferred on the Central Bank by or under the supervisory enactments in relation to credit institutions within the scope of those Acts, except as required or provided by this Act and subject to such modifications to those functions and powers as are necessary in order to adapt those functions and powers for the purposes of this Act. Pr.2 S.9

10.—(1) The Authority has power to do all things necessary or expedient to be done for or in connection with, or incidental to, the performance of its functions. General powers of Authority under this Act.

(2) A power conferred by *subsection (1)* is not to be taken to be limited merely by implication from another provision, whether of this or any other Act, that confers a power on the Authority.

11.—(1) The Minister may, by order notified in *Iris Oifigiúil*, impose on the Authority functions additional to those specified in *section 9*. Power of Minister to impose additional functions on Authority.

(2) In making an order under this section, the Minister is required to have regard to the purposes of this Act and, in particular, *section 9*.

PART 3

DESIGNATION OF CREDIT INSTITUTIONS

12.—(1) A person shall not— Offence to carry on asset covered securities business without designation by Authority.

- (a) purport to issue mortgage covered securities in accordance with this Act,
- (b) represent or advertise that the person is a designated mortgage credit institution, or is authorised by this Act to carry on a business involving the issue of mortgage covered securities, or
- (c) claim to have the benefits conferred on designated mortgage credit institutions by or under this Act,

unless the person is registered as a designated mortgage credit institution in accordance with this Part.

(2) A person shall not—

- (a) purport to issue public credit covered securities in accordance with this Act,
- (b) represent or advertise that the person is a designated public credit institution, or is authorised by this Act to carry on a business involving the issue of public credit covered securities, or
- (c) claim to have the benefits conferred on designated public credit institutions by or under this Act,

unless the person is registered as a designated public credit institution in accordance with this Part.

(3) A person who contravenes *subsection (1)* or *(2)* commits an offence and is liable—

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.3 S.12

(a) on conviction on indictment, to a fine not exceeding €250,000 (£196,891), or

(b) on summary conviction, to a fine not exceeding €1,900 (£1,496.37).

Application for registration as a designated credit institution.

13.—(1) An eligible person may apply to the Authority to be registered as a designated mortgage credit institution or as a designated public credit institution.

(2) A person is an eligible person for the purposes of this section only if it is a credit institution incorporated or formed in the State that holds an authorisation issued by the Central Bank authorising it to carry on business as a credit institution.

(3) An application must—

(a) be in a form approved by the Authority, and

(b) contain such information, and be accompanied by such documents, as may be requested by the Authority.

(4) The Authority may, by written notice given to an applicant, require the applicant to provide such additional information and documents as is reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a period specified in the notice, not exceeding 60 days, the Authority may reject the application.

(5) Nothing in this section prevents the same person from making an application for registration as a designated mortgage credit institution and an application for registration as a designated public credit institution.

Grant and rejection of applications for registration.

14.—(1) The Authority may register an applicant as a designated mortgage credit institution only if it is satisfied that the applicant—

(a) is or will be able to carry out, in a proper manner, the responsibilities that a designated mortgage credit institution is required by this Act to carry out, and

(b) complies with, or will be able to comply with, such requirements (if any) relating to designated mortgage credit institutions as are prescribed by the regulations and by regulatory notices.

(2) The Authority may register an applicant as a designated public credit institution only if it is satisfied that the applicant—

(a) is or will be able to carry out, in a proper manner, the responsibilities that a designated public credit institution is required by this Act to carry out, and

(b) complies with, or will be able to comply with, such requirements (if any) relating to designated public credit institutions as are prescribed by the regulations and by regulatory notices.

(3) In granting an application, the Authority may impose such conditions (other than conditions prescribed by the regulations or by a regulatory notice) on the applicant with respect to the orderly and

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

proper regulation of the applicant's business as it considers appropriate. Pr.3 S.14

(4) On granting an application for registration as a designated mortgage credit institution, the Authority shall—

- (a) record the appropriate particulars of the applicant in the register of designated mortgage credit institutions, and
- (b) issue the applicant with a certificate of registration as a designated mortgage credit institution,

and, if the Authority has imposed conditions on the applicant under subsection (3), shall specify those conditions in the certificate or in one or more documents that accompany the certificate.

(5) On granting an application for registration as a designated public credit institution, the Authority shall—

- (a) record the appropriate particulars of the applicant in the register of designated public credit institutions, and
- (b) issue the applicant with a certificate of registration as a designated public credit institution,

and, if the Authority has imposed conditions on the applicant under subsection (3), shall specify those conditions in the certificate or in one or more documents that accompany the certificate.

(6) On granting an application for registration as a designated mortgage credit institution or designated public credit institution, the Authority is also required to give to the Revenue Commissioners written notice of—

- (a) the name of the institution concerned, and
- (b) the address of the principal place of business of that institution and, if the address of its registered office is different from that address, the address of that office.

(7) The Authority may not reject an application without giving the applicant an opportunity to make representations in writing as to why the application should not be rejected.

(8) If the Authority rejects an application, it shall immediately give to the applicant written notice of the rejection, which must include a statement setting out the reasons for the rejection.

15.—(1) Registration as a designated mortgage credit institution authorises the institution named in the certificate of registration to carry on the business of a designated mortgage credit institution in accordance with this Act. Effect and term of registration.

(2) Registration as a designated public credit institution authorises the institution named in the certificate of registration to carry on the business of a designated public credit institution in accordance with this Act.

(3) A designated credit institution shall comply with the conditions contained in its certificate of registration or in any document that was issued with the certificate.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.3 S.15

(4) The fact that the Authority has registered a person as a designated credit institution does not of itself make the Authority liable for any financial loss incurred by a person—

(a) because the institution, any of its officers, employees or agents, or any cover-assets monitor or manager appointed in respect of the institution has contravened or failed to comply with a provision of this Act or any relevant regulatory notice issued under this Act, or any condition of the institution's registration, or

(b) because the institution has become subject to an insolvency process.

(5) The registration of a designated mortgage credit institution or a designated public credit institution remains in force until the registration is revoked under this Part.

Authority may vary conditions of registration.

16.—(1) The Authority may from time to time vary a condition of a designated credit institution's registration or impose on the institution a new condition, but only after giving to the credit institution concerned notice in writing of its intention to do so and after giving the institution an opportunity to make written representations to the Authority in relation to the proposed variation or proposed new condition.

(2) This section does not empower the Authority to vary a condition that is imposed on a designated mortgage credit institution or a designated public credit institution by the regulations or by a regulatory notice.

Registers of designated credit institutions to be kept.

17.—(1) The Authority is required to establish and keep a register of designated mortgage credit institutions.

(2) The Authority is also required to establish and keep a register of designated public credit institutions.

(3) The register of designated mortgage credit institutions must contain the name and the address of the principal place of business of each designated mortgage credit institution and such other information as the Authority determines.

(4) The register of designated public credit institutions must contain the name and the address of the principal place of business of each designated public credit institution and such other information as the Authority determines.

(5) A register may be in book form, electronic form or such other form as the Authority determines from time to time. If a register is kept in an electronic form that is not visually readable, the register must be capable of being reproduced in a visually readable form.

(6) The registers are to be kept at the head office of the Authority.

(7) Members of the public are entitled, without charge, to inspect either of the registers during the ordinary business hours of the Authority. However, the Authority may impose a reasonable charge for providing a copy of a register or of an entry in a register.

(8) The Authority shall, not less frequently than once during every period of 12 months after the commencement of this section, publish

in a publication decided by the Authority a list of designated mortgage credit institutions and designated public credit institutions. If the regulations so require, the list must contain such other particulars as are prescribed by the regulations.

Pr.3 S.17

18.—The Authority may revoke the registration of a designated mortgage credit institution, or a designated public credit institution, on the application of the institution, but only if it is of the opinion that the institution has fully satisfied all claims and liabilities that are secured in respect of the institution as provided by *Part 7*.

Revocation of registration by Authority on application of credit institution.

19.—(1) The Authority may revoke the registration of a designated credit institution on being satisfied on reasonable grounds that—

Revocation of registration by Authority otherwise than on application of credit institution.

- (a) the institution has not begun to carry on any business of a designated credit institution within 12 months after the date on which the registration was notified to the institution,
- (b) the institution has not carried on any such business within the immediately preceding 6 months,
- (c) the registration was obtained by means of a false or misleading representation,
- (d) the institution has contravened or is contravening, or has failed or is failing to comply with a provision of this Act or a regulatory notice,
- (e) the institution has become subject to an insolvency process,
- (f) the institution no longer has sufficient “own funds” (as referred to in the Codified Banking Directive),
- (g) the cover assets comprised in a cover assets pool maintained by the institution do not comply with any provision of *Part 4*,
- (h) the business of, or the corporate structure of, the institution has been so organised to such an extent that the institution can no longer be supervised to the satisfaction of the Authority,
- (i) the institution has come under the control of any other entity that is not supervised by the Authority to such an extent that the institution can no longer be supervised to the satisfaction of the Authority,
- (j) since the institution was registered as a designated credit institution, the circumstances under which the registration was given have changed to the extent that an application for registration would be refused had it been made in the changed circumstances, or
- (k) the institution, or any of its officers, is convicted on indictment of—
 - (i) an offence under this Act or under any other enactment prescribed by the regulations for the purpose of this section, or

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.3 S.19

(ii) an offence involving fraud, dishonesty or breach of trust.

(2) The Authority may revoke the registration of a designated credit institution under this section only with the consent of the Minister.

(3) Before seeking the consent of the Minister to the revocation of the registration of a designated credit institution, the Authority shall, by notice in writing given to the institution, inform the institution of its intention to seek that consent. The notice must specify—

(a) the grounds on which it is proposed to seek the Minister's consent, and

(b) that the institution may, within 21 days after the giving of the notice, make written representations to the Minister showing why the registration should not be revoked.

(4) Not later than 21 days after being given a notice under *subsection (3)*, the institution concerned may make written representations to the Minister showing why the registration should not be revoked.

(5) The Authority may seek the Minister's consent to the revocation of the registration of the institution, and the Minister may give that consent only after having considered any representations made by the institution in accordance with *subsection (4)*.

(6) If the Authority revokes the registration of a designated credit institution under this section, it shall give written notice of the revocation to the institution. The notice must include a statement of the reasons for revoking the registration.

(7) Unless the High Court otherwise orders, revocation of the registration of a designated credit institution under this section takes effect on and from the date of the notice or, if a later date is specified in the notice, on and from that date, irrespective of whether or not the institution appeals against the revocation under *section 26*.

Authority may direct designated credit institution to suspend its business.

20.—(1) If the Authority reasonably believes that there may be grounds for revoking the registration of a designated credit institution under *section 19*, it may, subject to *Part 7*, give to the institution a direction in writing prohibiting it from engaging in any specified activity referred to in *section 21(5)* except with the permission of the Authority.

(2) If a direction given under this section is still in effect—

(a) winding up or bankruptcy proceedings may be initiated in respect of the institution concerned,

(b) a receiver over the assets of that institution may be appointed, and

(c) the assets of that institution may be attached, sequestered or otherwise distrained,

only if the prior approval of the High Court has been obtained.

(3) The High Court may order that all or any part of proceedings before it under this section may be held in closed court if the Court is satisfied that it would, because of the nature or circumstances of

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

the case or because it would be in the interests of justice, be desirable to make such an order. Pr.3 S.20

(4) The High Court may make a further order revoking or amending an order made under *subsection (3)*.

21.—(1) This section applies to a credit institution if the registration of the institution is revoked under *section 19* and the institution—

Effect of revocation of registration where credit institution is not a company or building society or is a company or building society other than one that is being wound up.

(a) is not a company or building society, or

(b) is a company or building society but is not being wound up.

(2) A credit institution to which this section applies is required to continue to carry out the financial obligations of the institution that are secured under *Part 7* until all of those obligations have been fully discharged to the satisfaction of the Authority.

(3) Within such period as the Authority specifies (not exceeding 30 days) after the institution has been notified that its registration has been revoked, or within such extended period as the Authority may allow, the institution shall give to—

(a) the Authority, and

(b) as far as reasonably practicable, every creditor of the institution,

a notice specifying the measures that it is taking or proposes to take to discharge in full its financial obligations. Those measures must include such measures as are designed to ensure that those obligations in respect of asset covered securities and cover assets hedge contracts will be fully discharged in accordance with the terms of the security documents governing those securities and contracts.

(4) If—

(a) the institution fails to give to the Authority a notice in accordance with *subsection (3)* within the required period,

(b) the Authority believes that the institution has failed to take reasonable steps to give the notice to all of its creditors, or

(c) the Authority does not believe that the measures specified in a notice given to it under that subsection are satisfactory,

the Authority may, subject to *Part 7*, give the institution a direction in writing prohibiting the institution from engaging in a specified activity without having first obtained the Authority's permission.

(5) The following activities are specified for the purposes of this section and *section 20*—

(a) dealing with the institution's assets generally or dealing with any specified class of assets or any specified asset,

(b) engaging in transactions generally or engaging in any specified class of transactions or any specified transaction,

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.3 S.21

- (c) making payments generally or making any specified class of payments or any specified payment.

(6) Subject to *Part 7*, the Authority may, either in a direction given under *subsection (4)* or in a later direction, require the institution concerned to prepare and submit to it for its approval within 2 months after the direction, a scheme for the orderly discharge of the institution's obligations to its creditors.

Provisions applying to directions given under *sections 20* and *21*.

22.—(1) A direction given under *section 20* or *21*—

- (a) must include a statement of the Authority's reasons for giving the direction, and
- (b) remains in force for such period (not exceeding 6 months) as is specified in the direction.

(2) Unless the High Court otherwise orders, a direction given under *section 20* or *21* takes effect from the date of the direction or, if a later date is specified in the direction, from that date, irrespective of whether or not the institution appeals against the direction under *section 26*.

(3) The Authority may, by notice in writing given to the institution concerned, amend or revoke a direction given under this section.

(4) Without limiting *subsection (3)*, the Authority may from time to time, by notice in writing given to the institution concerned, extend the period during which a direction remains in force by one further period not exceeding 6 months.

(5) A direction given under *section 20* ceases to have effect—

- (a) at the end of the period specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period,
- (b) on the making of a winding up order in respect of the institution,
- (c) on the revocation of the registration of the institution under this Part, or
- (d) on being revoked by an order of the High Court,

whichever first occurs.

(6) A direction given under *section 21* ceases to have effect—

- (a) at the end of the period specified in the direction, or if the period is extended under *subsection (4)*, at the end of the extended period, or
- (b) on being revoked by an order of the High Court,

whichever first occurs.

(7) A credit institution that fails within the permitted period to comply with a direction given under *section 20* or *21* commits an offence and is liable on summary conviction to a fine not exceeding €1,900 (£1,496.37).

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

23.—(1) This section applies to a credit institution whose registration is revoked under *section 19* and the institution is a company or building society that is being wound up.

Pr.3
Effect of revocation of registration where credit institution is a company or building society that is being wound up.

(2) Except as otherwise provided by this Act, the liquidator of a credit institution to which this section applies has a duty to ensure that the institution performs the obligations imposed on the institution by or under this Act.

(3) The duty imposed by *subsection (2)* is in addition to the liquidator's duties in respect of the winding up of the institution.

24.—If a liquidator is appointed in respect of a credit institution whose registration is revoked under this Part, the Authority may, by notice in writing given to the liquidator, substitute for the obligation imposed on the liquidator to comply with *section 23* such other obligations of a similar nature as the Authority specifies in the notice.

Authority may substitute other duties for duties of liquidator of credit institution.

25.—If the registration of an institution is revoked under this Part and the institution is—

Provisions of certain other Acts not affected.

(a) the holder of a licence issued under the Central Bank Act, 1971,

(b) a trustee savings bank,

(c) a building society, or

(d) ACC Bank plc,

the power of the Authority to exercise in relation to the institution any power conferred on it by the supervisory enactments is affected only in so far as the exercise of that power would be inconsistent with this Act.

26.—(1) If the Authority—

(a) rejects an application made under *section 13*, or

(b) grants the application but imposes conditions (not being conditions prescribed by the regulations) with which the applicant is dissatisfied,

Right to appeal against certain decisions of the Authority.

the applicant may appeal to the High Court against the decision of the Authority rejecting the application or imposing the conditions.

(2) If a designated credit institution is dissatisfied with a decision of the Authority varying the conditions of registration under *section 16*, the institution may appeal to the High Court against the decision.

(3) If the Authority revokes the registration of a designated credit institution under *section 19*, the institution may appeal to the High Court against the decision of the Authority revoking the registration.

(4) If the Authority gives a direction under *section 20* or *21* in respect of a designated credit institution, the institution may appeal to the High Court against the direction.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.3 S.26

(5) An appeal under this section can be made only within 42 days after the decision of the Authority has been notified to the applicant or credit institution concerned.

(6) The High Court may hear an appeal made under this section only if it is satisfied that a copy of the notice of appeal has been served on the Authority.

(7) The Authority is entitled to appear as respondent at the hearing of an appeal made under this section.

(8) An appeal made under this section is to be dealt with by way of rehearing.

(9) On the hearing of an appeal, the High Court may make one of the following orders—

- (a) an order confirming the decision appealed against,
- (b) an order quashing that decision, or
- (c) an order substituting for that decision any decision that the Authority could have made in respect of the appellant.

(10) The High Court may also make such ancillary orders as it thinks appropriate.

PART 4

REGULATION OF DESIGNATED CREDIT INSTITUTIONS

CHAPTER 1

Issue of asset covered securities by designated mortgage credit institutions

Interpretation
(Chapter 1).

27.—(1) For the purposes of this Chapter, the following activities are permitted business activities but only if carried out in accordance with this Act—

- (a) providing mortgage credit and dealing in and holding mortgage credit assets,
- (b) dealing in and holding substitution assets,
- (c) dealing in and holding assets of a kind that, in accordance with a requirement of the Authority made under the supervisory enactments, designated mortgage credit institutions are required to hold for regulatory purposes,
- (d) dealing in and holding credit transaction assets,
- (e) dealing in and holding tier 2 assets,
- (f) engaging in activities connected with financing or refinancing assets of a kind mentioned in *paragraphs (a) to (e)*,
- (g) entering into contracts in accordance with *section 30* for the purpose of hedging risks associated with any other activity of a kind mentioned in *paragraphs (a) to (f)*, and
- (h) engaging in activities that are incidental or ancillary to carrying on any other activity mentioned in *paragraphs (a) to (g)*.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(2) The activities referred to in *subsection (1)(f)* include (but are not limited to)—

- (a) taking deposits or other repayable funds from the public, and
- (b) issuing asset covered securities.

(3) For the purposes of this Chapter—

“credit transaction”, in relation to a designated mortgage credit institution, means—

- (a) placing a deposit with an eligible financial institution designated or of a class designated under *subsection (4)*, or
- (b) dealing with or holding a financial asset, or
- (c) any other kind of transaction designated by an order made under *subsection (5)(a)*;

“credit transaction asset” means an asset derived from having engaged in a credit transaction (not being a hedge contract entered into in accordance with *section 30*), but does not include a mortgage credit asset, substitution asset or tier 2 asset.

(4) The regulations must provide for one or more financial institutions, or financial institutions of one or more specified classes, to be designated as eligible financial institutions for the purposes of *paragraph (a)* of the definition of “credit transaction” in *subsection (3)*.

(5) The Minister may, by order notified in *Iris Oifigiúil*—

- (a) designate a transaction of a specified kind to be a credit transaction for the purposes of the definition of “credit transaction” in *subsection (3)*, or
- (b) declare a transaction of a specified kind to be no longer a credit transaction for those purposes.

28.—A designated mortgage credit institution may not carry on a business activity other than a permitted business activity. However, this section does not prevent such an institution that is also a designated public credit institution from carrying on business activities that can be lawfully carried on by a designated public credit institution.

Designated mortgage credit institution to carry on permitted business activities only.

29.—(1) A designated mortgage credit institution may issue mortgage covered securities, but only in accordance with this Act.

Power of designated mortgage credit institution to issue mortgage covered securities.

(2) A designated mortgage credit institution that issues a mortgage covered security shall ensure that the relevant security document states—

- (a) that the security is a mortgage covered security, and
- (b) that the financial obligations of the institution under the security are secured on the cover assets that comprise a cover assets pool maintained by the institution in accordance with this Act.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

PT.4

Designated mortgage credit institution may enter into certain kinds of contracts.

30.—(1) A designated mortgage credit institution may enter into one or more contracts the purpose or effect of which is to reduce or minimise the risk of financial loss or exposure liable to arise from—

- (a) fluctuations in interest rates or currency exchange rates,
- (b) credit risks, or
- (c) other risk factors that may adversely affect its permitted business activities.

(2) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify for the purpose of this section requirements as to—

- (a) the kind of contracts that a designated mortgage credit institution may enter into under *subsection (1)*, and
- (b) the terms and conditions under which those contracts, or any class of those contracts, may be entered into.

(3) If a contract of a kind referred to in *subsection (1)* relates to asset covered securities issued by, and mortgage credit assets or substitution assets that are included in a cover assets pool maintained by, a designated mortgage credit institution, the institution shall ensure that the contract complies with the requirements of *subsections (4)* and *(5)*.

(4) A contract of the kind referred to in *subsection (3)* may relate only to—

- (a) mortgage covered securities issued by the institution, and
- (b) mortgage credit assets or substitution assets that are included in a cover assets pool maintained by it.

(5) A contract of the kind referred to in *subsection (3)* must—

- (a) state that the contract is a cover assets hedge contract entered into in accordance with this Act and that the financial obligations of the institution under the contract are secured on the cover assets comprised in a cover assets pool maintained by the institution in accordance with this Act, and
- (b) comply with the requirements (if any) specified in any relevant regulatory notice published under *subsection (2)*.

(6) As soon as practicable after entering into a contract of a kind referred to in *subsection (3)*, a designated mortgage credit institution shall ensure that particulars of the contract are entered into its register of mortgage covered securities business.

(7) A designated mortgage credit institution must comply with any requirements imposed under *subsection (2)*.

(8) A designated mortgage credit institution shall remove from its register of mortgage covered securities business the entry relating to a contract of the kind referred to in *subsection (3)*, but only if—

- (a) the contract has been discharged, or
- (b) the person with whom the contract was entered into has agreed.

(9) *Subsection (5)* ceases to apply to a contract of the kind referred to in *subsection (3)* when the entry relating to the contract is removed from a register of mortgage covered securities business in accordance with *subsection (8)*. Pr.4 S.30

31.—(1) A designated mortgage credit institution shall ensure that the ratio of the total principal amounts of all mortgage credit assets that it holds to the total prudent market value of the related property assets does not exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 80 per cent or, if the regulations prescribe some other percentage, that other percentage. Restrictions on business activities of designated mortgage credit institution.

(2) If a designated mortgage credit institution holds mortgage credit assets or substitution assets that are located in one or more category B countries, the institution shall ensure that the total prudent market value of those assets, expressed as a percentage of the total prudent market value of all of the mortgage credit assets and substitution assets held by the institution at the relevant time, does not at any time exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if an order under *subsection (4)* specifies some other percentage, that other percentage.

(3) A designated mortgage credit institution shall ensure that the total value of the credit transaction assets and tier 2 assets that it holds, expressed as a percentage of the total value of all of the institution's assets, does not at any time exceed the prescribed percentage. For the purposes of this subsection—

- (a) “value” means the value determined in accordance with *section 41(5)*, and
- (b) the prescribed percentage is 10 per cent or, if an order under *subsection (4)* specifies some other percentage, that other percentage.

(4) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (2)* or *(3)*.

(5) For the purpose of ensuring the proper and orderly regulation of designated mortgage credit institutions, the Authority may, by notice in writing given to the institution or institutions concerned, impose on any specified designated mortgage credit institution, or on any class of designated mortgage credit institutions, requirements or restrictions as to the kinds of credit transaction assets or tier 2 assets that the institution or institutions may hold. Any designated mortgage credit institution to which such a notice is given is required to comply with the notice.

32.—(1) A designated mortgage credit institution may issue mortgage covered securities only if it is maintaining a related cover assets pool that complies with this Chapter. Designated mortgage credit institution to establish and maintain cover assets pool.

(2) After a designated mortgage credit institution is registered, the institution may, for the purpose of establishing a cover assets pool and enabling it to make an initial issue of mortgage covered securities, include in its register of mortgage covered securities business mortgage credit assets or substitution assets in accordance with this Chapter.

(3) If a designated mortgage credit institution wishes at any time to issue further mortgage covered securities, it may include in the

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

relevant cover assets pool mortgage credit assets or substitution assets as security for those securities in accordance with this Chapter.

(4) Subject to *subsection (7)*, a mortgage credit asset or a substitution asset referred to in *subsection (2)* or *(3)* forms part of the relevant cover assets pool only if its inclusion has been approved by the relevant cover-assets monitor.

(5) A designated mortgage credit institution may not include a mortgage credit asset or substitution asset in a cover assets pool in the circumstances referred to in *subsection (2)* or *(3)* if—

- (a) the mortgage credit asset or substitution asset is currently included in a different cover assets pool maintained by the institution,
- (b) the mortgage credit asset or substitution asset is non-performing,
- (c) the institution is insolvent,
- (d) the Authority has given the institution a relevant direction, the effect of which is to prohibit the asset from being recorded in the institution’s register of mortgage covered securities business,
- (e) the Authority has given the institution a notice under *section 19(3)* informing the institution that the Authority intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, or
- (f) the Authority has given a direction under *section 20* or *21*, the effect of which is to prohibit the asset from being recorded in the institution’s register of mortgage covered securities business.

(6) For the purposes of *subsection (5)(d)*, “relevant direction” means a direction issued under—

- (a) section 11 or 21 of the Central Bank Act, 1971,
- (b) section 26 of the Trustee Savings Banks Act, 1989, or
- (c) section 40(2) of the Building Societies Act, 1989.

(7) A designated mortgage credit institution may not, without the consent of the Authority, include a mortgage credit asset or substitution asset in a cover assets pool maintained by the institution in the circumstances contemplated by *subsection (2)* or *(3)* if—

- (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution.

(8) A designated mortgage credit institution shall ensure—

- (a) that a cover assets pool maintained by the institution has a duration of not less than that of the mortgage covered securities that relate to the pool,

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

- (b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities,
- (c) that the total amount of interest payable in a given period of 12 months in respect of the pool is during that 12 month period not less than the total amount of interest payable in respect of that period on those securities, and
- (d) that the currency in which each mortgage credit asset and each substitution asset included in the pool is denominated is the same as the currency in which those securities are denominated,

after taking into account, in the case of *paragraphs (b), (c) and (d)*, the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities.

(9) For the purposes of *subsection (8)(a)*, “duration” means, in relation to a cover assets pool or mortgage covered securities—

- (a) if interest payable in respect of a mortgage credit asset or substitution asset included in the pool, or in respect of the securities, is variable, a discounted weighted average term to maturity of the relevant principal amount of the pool or securities, or
- (b) if interest payable in respect of a mortgage credit asset or substitution asset included in the pool, or in respect of the securities, is fixed, a discounted weighted average term to maturity of the relevant principal and interest payable but unpaid in respect of the pool or securities,

determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection, using appropriate zero coupon interest rates and taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool and those securities.

(10) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify a formula or criteria for the purposes of the definition of “duration” in *subsection (9)*.

(11) For the purpose of *subsection (8)(b)*, if the principal amount of a mortgage credit asset included in a cover assets pool represents more than the mortgage loan to value percentage of the prudent market value of the related property assets, the amount by which the principal amount of the asset exceeds the loan to value percentage is to be disregarded.

(12) For the purposes of this section, the prudent market value of a property asset which relates to a mortgage credit asset is required to be calculated only at the time when the related mortgage credit asset is included in the cover assets pool.

(13) For the purposes of *subsection (11)*, the mortgage loan to value ratio is—

- (a) 75 per cent in the case of a mortgage credit asset that comprises residential property, and
- (b) 60 per cent in the case of a mortgage credit asset that comprises commercial property,

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pr.4 S.32

or, if an order made under *subsection (14)* specifies some other percentage, that other percentage.

(14) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentages referred to in *subsection (13)*.

What can be included in a cover assets pool maintained by a designated mortgage credit institution.

33.—(1) Any mortgage credit asset or substitution asset located within an EEA country may be included in a cover assets pool maintained by a designated mortgage credit institution.

(2) A designated mortgage credit institution may not include in a cover assets pool maintained by the institution a mortgage credit asset or substitution asset that is located within one or more category A countries if, after the inclusion of the asset in the pool, the total prudent market value of all mortgage credit assets and substitution assets comprised in the pool located in all such countries would exceed the prescribed percentage of the total prudent market value of all mortgage credit assets and substitution assets that are then included in the pool. For the purposes of this subsection, the prescribed percentage is 15 per cent or, if the regulations prescribe some other percentage, that percentage.

(3) A designated mortgage credit institution may include in a cover assets pool maintained by the institution mortgage credit assets or substitution assets that are located within a category B country only if—

(a) the country is a country designated by an order made under *subsection (4)*, and

(b) the institution complies with any restrictions specified in the order.

(4) The Minister may, by order notified in *Iris Oifigiúil*, specify a category B country for the purposes of *subsection (3)*. The Minister shall include in such an order restrictions as to the prudent market value of the mortgage credit assets and substitution assets referred to in *subsection (3)* that a designated mortgage credit institution can include in the cover assets pool as a percentage of the total prudent market value of mortgage credit assets and substitution assets included in the pool.

(5) A designated mortgage credit institution may not include in a cover assets pool a mortgage credit asset that is secured on commercial property if, after inclusion of the asset in the pool, the total prudent market value of all mortgage credit assets so secured would exceed the prescribed percentage of the total prudent market value of all mortgage credit assets and substitution assets then comprised in the pool. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if the regulations prescribe some other percentage, that other percentage.

(6) A designated mortgage credit institution may not include in a cover assets pool a mortgage credit asset if a building related to that mortgage credit asset is being or is to be constructed until the building is ready for occupation as a commercial or residential property.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

34.—(1) A designated mortgage credit institution shall, as soon as practicable after becoming aware that it has contravened *section 32(1), (4), (5) or (7) or section 33(2), (3), (5) or (6)*, take all possible steps to prevent the contravention from continuing or being repeated. Until those steps have been taken, the institution may not issue any further mortgage covered securities.

Pt.4
What action is to be taken by a designated mortgage credit institution that is in breach of cover assets pool provisions.

(2) A designated mortgage credit institution is required, as soon as practicable after becoming aware that it has failed to comply with *section 32(8)*, to take all possible steps to comply with the subsection. Until those steps have been taken, the institution may not issue any further mortgage covered securities.

(3) Where appropriate, the steps to be taken under this section include acquiring other mortgage credit assets or substitution assets for inclusion in the cover assets pool.

35.—(1) For the purposes of this section, “underlying asset”, in relation to a cover assets pool maintained by a designated mortgage credit institution, means a mortgage credit asset or a substitution asset that is then included in the pool.

Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated mortgage credit institution.

(2) Subject to *subsection (7)*, a mortgage credit asset or a substitution asset that replaces an underlying asset forms part of the relevant cover assets pool only if the replacement has been approved by the relevant cover-assets monitor.

(3) If an underlying asset included in a cover assets pool maintained by a designated mortgage credit institution contravenes or fails to comply with a provision of this Chapter, the regulations or a requirement of the Authority or the relevant cover-assets monitor made under such a provision, the institution shall, in accordance with this section, replace the underlying asset with a mortgage credit asset or substitution asset that the institution has acquired for the purpose or is currently holding.

(4) A designated mortgage credit institution may in any other case replace an underlying asset with a mortgage credit asset or a substitution asset that the institution has acquired for the purpose or is currently holding, but only if the replacement is not prohibited by a provision of this Chapter, the regulations or a requirement of the Authority or of the relevant cover-assets monitor under such a provision.

(5) A designated mortgage credit institution may not replace an underlying asset with a mortgage credit asset or a substitution asset if—

- (a) the mortgage credit asset or substitution asset is currently contained in a different cover assets pool maintained by the institution,
- (b) the mortgage credit asset or substitution asset is non-performing,
- (c) the institution is insolvent,
- (d) the Authority has given to the institution a relevant direction, the effect of which is to prohibit the replacement from being made,

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.4 S.35

(e) a notice has been given by the Authority under *section 19(3)* informing the institution that it intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated mortgage credit institution, or

(f) the Authority has given a direction under *section 20* or *21* that prevents the replacement from being made.

(6) For the purposes of *subsection (5)(d)*, “relevant direction” means a direction issued under—

(a) *section 11* or *21* of the Central Bank Act, 1971,

(b) *section 26* of the Trustee Savings Banks Act, 1989, or

(c) *section 40(2)* of the Building Societies Act, 1989.

(7) A designated mortgage credit institution may not, without the consent of the Authority, replace an underlying asset with a mortgage credit asset or a substitution asset if—

(a) the institution is potentially insolvent, or

(b) there is currently no cover-assets monitor appointed in respect of the institution.

(8) A designated mortgage credit institution may not at any time include a substitution asset in a cover assets pool maintained by the institution if, after including the asset in the pool, the total prudent market value of all substitution assets then included in the pool at the relevant time would exceed the prescribed percentage of the total prudent market value of all cover assets included in the pool. For the purposes of this subsection, the prescribed percentage is 20 per cent or, if an order under *subsection (9)* specifies some other percentage, that other percentage.

(9) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (8)*.

(10) The Authority may, by notice in writing given to a designated mortgage credit institution, suspend the application of *subsection (8)* to the institution for a specified period if it is satisfied that to do so would facilitate the discharge of secured claims against the institution. The notice may specify conditions subject to which the suspension is to have effect.

(11) The Authority may revoke a notice given under *subsection (10)* on the ground that the designated mortgage credit institution concerned has not complied with a condition specified in the notice.

(12) For the purpose of *subsection (10)*, “secured claim” means a claim in respect of which the rights of a preferred creditor (other than a super-preferred creditor) are secured under *Part 7*.

36.—(1) A designated mortgage credit institution may, with the prior consent of the cover-assets monitor concerned, use the proceeds of a cover asset that has been realised—

(a) to create or acquire permitted mortgage credit assets or substitution assets for inclusion in the relevant cover assets pool, or

Use of realised proceeds of cover asset by designated mortgage credit institution.

(b) to discharge secured claims.

(2) *Subsection (1)* applies even if—

(a) the institution is subject to an insolvency process, or

(b) the institution has been given a notice of the kind referred to in *section 35(5)(e)*.

(3) Money received by a designated mortgage credit institution as the proceeds of realising a cover asset forms part of the relevant cover assets pool, and is to be treated as part of the related mortgage credit asset or related substitution asset, until it—

(a) is used in accordance with *subsection (1)*,

(b) is released from that pool as an underlying asset and is replaced with other mortgage credit assets or substitution assets that are included in the cover assets pool in accordance with *section 35* or this section, or

(c) is released from that pool under *subsection (4)*.

(4) A designated mortgage credit institution may, with the prior consent of the cover-assets monitor concerned, release underlying assets (including money received by the institution as the proceeds of a cover asset) from the cover assets pool if the assets are not required by this Chapter to be included in the cover assets pool to secure secured claims.

(5) In this section—

“permitted”, in relation to mortgage credit assets or substitution assets, means mortgage credit assets or substitution assets that are permitted to be included in a cover assets pool in accordance with this Chapter;

“secured claim” means a claim that is secured under *Part 7* in respect of a preferred creditor.

37.—For the purposes of *sections 35* and *36*, an asset is, except as provided by *section 36(3)*, included in, or removed from, a cover assets pool when the appropriate particulars are recorded in the register of mortgage covered securities business.

Inclusion of asset in, and removal of asset from, cover assets pool.

38.—(1) A designated mortgage credit institution shall establish and keep a register in respect of—

Designated mortgage credit institution to keep register of mortgage covered securities business.

(a) the mortgage covered securities that it has issued,

(b) the cover assets hedge contracts that it has entered into, and

(c) the mortgage credit assets and substitution assets that it holds as security for those securities and contracts.

(2) The register is to be called the register of mortgage covered securities business.

(3) The register may be kept in book form, in electronic form or in any other form so long as the register is capable of being reproduced visually.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.4 S.38

(4) The institution shall include in the register the following particulars—

- (a) particulars of the mortgage covered securities that it has issued,
- (b) the cover assets hedge contracts that it has entered into,
- (c) particulars of the mortgage credit assets and substitution assets that it holds as security for those securities and contracts,
- (d) such other particulars as are prescribed by the regulations for the purposes of this section.

(5) Except where the regulations otherwise provide, the institution may make or amend an entry in the register only with the consent of the relevant cover-assets monitor or the Authority.

(6) The institution shall keep the register in such place as may be prescribed by the regulations for the purpose of this subsection.

(7) If a designated mortgage credit institution is also a designated public credit institution, the institution is required to keep its register of mortgage covered securities business separate from its register of public credit covered securities business.

Authority and cover-assets monitor to have access to register of mortgage covered securities business.

39.—(1) The Authority, and each cover-assets monitor appointed in respect of a designated mortgage credit institution, are at all times entitled—

- (a) to have access to the institution's register of mortgage covered securities business, and
- (b) to take copies of the register or any entry in it at the expense of the institution.

(2) If the Authority, or the cover-assets monitor appointed in respect of a designated mortgage credit institution, by notice in writing so requires, the institution shall provide the Authority or monitor with a copy of—

- (a) any specified register kept by the institution in accordance with this Chapter, or
- (b) any specified entry in such a register.

(3) A reference in this section to the Authority includes a reference to any person authorised by the Authority for the purposes of this section.

Financial statements in respect of designated mortgage credit institution.

40.—(1) If a designated mortgage credit institution has a parent entity, the entity shall include the following information in its annual consolidated financial statement or in a document accompanying the statement—

- (a) the name of the institution and any other particulars required by the regulations with respect to the institution,
- (b) the total amounts of principal outstanding in respect of the mortgage covered securities issued by the institution,

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(c) the total amounts of principal outstanding in respect of the cover assets pools that relate to those securities, Pr.4 S.40

(d) any other particulars prescribed by the regulations for the purposes of this subsection.

(2) A designated mortgage credit institution shall include the following information in its annual financial statement, or in a document accompanying the statement, in respect of mortgage credit assets that are recorded in the institution's register of mortgage covered securities business:

(a) the number of mortgage credit assets, as at the date to which the statement is made up, with the amounts of principal outstanding in respect of the related credits being specified in tranches of—

(i) €100,000 (£78,756.40) or less,

(ii) more than €100,000 (£78,756.40) but not more than €200,000 (£157,512.80),

(iii) more than €200,000 (£157,512.80) but not more than €500,000 (£393,782), and

(iv) more than €500,000 (£393,782);

(b) the geographical areas in which the related property assets are located, and the number and percentage of those assets held in each of those areas;

(c) whether or not any persons who owe money under mortgage credit assets have defaulted in making payments in respect of those assets when due and payable, and if they have—

(i) the number of those assets as at that date, and

(ii) the total amount of principal outstanding in respect of those assets at that date;

(d) whether or not any persons who owed money under mortgage credit assets had, during the immediately preceding financial year of the institution (if any), defaulted in making payments in respect of those assets in excess of €1,000 (£787.56) at any time during that year, and if any such persons had defaulted, the number of those assets that were held in the cover assets pool at the date to which the financial statement for that year was made up;

(e) the number of cases in which the institution has replaced mortgage credit assets with other assets because those mortgage credit assets were non-performing;

(f) the total amount of interest in arrears in respect of mortgage credit assets that has not been written off at that date;

(g) the total amount of payments of principal repaid and the total amount of interest paid in respect of mortgage credit assets;

(h) in relation to any related mortgage credits that are secured on commercial property, the number and the total

PT.4 S.40

amounts of principal of those credits that are outstanding at that date; and

- (i) any other information prescribed by the regulations for the purposes of this subsection.

Valuation of assets held by designated mortgage credit institutions.

41.—(1) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of mortgage credit assets or related property assets for the purposes of any provision of this Chapter.

(2) The prudent market value of mortgage credit assets or related property assets is to be determined in accordance with a regulatory notice published in accordance with *subsection (1)*.

(3) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of substitution assets held by a designated mortgage credit institution for the purposes of this Chapter.

(4) The prudent market value of substitution assets that are in the form of securities is to be determined in accordance with a regulatory notice published in accordance with *subsection (3)*.

(5) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the value of tier 2 assets, credit transaction assets or the total assets, held by a designated mortgage credit institution for the purposes of this Act.

(6) The value of assets referred to in *subsection (5)* is to be determined in accordance with a regulatory notice made under that subsection.

CHAPTER 2

Issue of asset covered securities by designated public credit institutions

Interpretation
(Chapter 2).

42.—(1) For the purposes of this Chapter, the following activities are permitted business activities but only if carried out in accordance with this Act:

- (a) providing public credit and dealing in and holding public credit assets;
- (b) dealing in and holding substitution assets;
- (c) dealing in and holding assets of a kind that, in accordance with a requirement of the Authority made under the supervisory enactments, designated public credit institutions are required to hold for regulatory purposes;
- (d) dealing in and holding credit transaction assets;
- (e) dealing in and holding tier 2 assets;
- (f) engaging in activities connected with financing or refinancing assets of a kind mentioned in *paragraphs (a) to (e)*;

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(g) entering into contracts in accordance with *section 45* for the purpose of hedging risks associated with any other activity of a kind mentioned in *paragraphs (a) to (f)*; and

(h) engaging in activities that are incidental or ancillary to carrying on any other activity mentioned in *paragraphs (a) to (g)*.

(2) The activities referred to in *subsection (1)(f)* include (but are not limited to)—

(a) taking deposits or other repayable funds from the public, and

(b) issuing asset covered securities.

(3) For the purposes of this Chapter—

“credit transaction”, in relation to a designated public credit institution, means—

(a) placing a deposit with an eligible financial institution designated or of a class designated under *subsection (4)*,

(b) dealing with or holding a financial asset, or

(c) any other kind of transaction designated by an order made under *subsection (5)(a)*;

“credit transaction asset” means an asset derived from having engaged in a credit transaction (not being a hedge contract entered into in accordance with *section 45*), but does not include a public credit asset, mortgage credit asset, substitution asset or tier 2 asset.

(4) The Authority shall, by order notified in *Iris Oifigiúil*, designate one or more financial institutions, or financial institutions of one or more specified classes, to be eligible financial institutions for the purposes of *paragraph (a)* of the definition of “credit transaction” in *subsection (3)*.

(5) The Minister may, by order notified in *Iris Oifigiúil*—

(a) designate a transaction of a specified kind to be a credit transaction for the purposes of the definition of “credit transaction” in *subsection (3)*, or

(b) declare a transaction of a specified kind to be no longer a credit transaction for those purposes.

43.—A designated public credit institution may not carry on a business activity other than a permitted business activity. However, this section does not prevent such an institution that is also a designated mortgage credit institution from carrying on business activities that can be lawfully carried on by a designated mortgage credit institution.

Designated public credit institution to carry on permitted business activities only.

44.—(1) A designated public credit institution may issue public credit covered securities, but only in accordance with this Act.

Power of designated public credit institution to issue public credit covered securities.

(2) A designated public credit institution that issues a public credit covered security shall ensure that the relevant security document states—

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

PT.4 S.44

- (a) that the security is a public credit covered security, and
- (b) that the financial obligations of the institution under the security are secured on the cover assets that comprise a cover assets pool maintained by the institution in accordance with this Act.

Designated public credit institution may enter into certain kinds of contracts.

45.—(1) A designated public credit institution may enter into one or more contracts the purpose or effect of which is to reduce or minimise the risk of financial loss or exposure liable to arise from—

- (a) fluctuations in interest rates or currency exchange rates,
- (b) credit risks, or
- (c) other risk factors that may adversely affect its permitted business activities.

(2) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify for the purpose of this section requirements as to—

- (a) the kind of contracts that a designated public credit institution may enter into under *subsection (1)*, and
- (b) the terms and conditions under which those contracts, or any class of those contracts, may be entered into.

(3) If a contract of a kind referred to in *subsection (1)* relates to asset covered securities issued by, and public credit assets or substitution assets that are included in a cover assets pool maintained by, a designated public credit institution, the institution shall ensure that the contract complies with the requirements of *subsections (4)* and *(5)*.

(4) A contract of the kind referred to in *subsection (3)* may relate only to—

- (a) public credit covered securities issued by the institution, and
- (b) public credit assets or substitution assets that are included in a cover assets pool maintained by it.

(5) A contract of the kind referred to in *subsection (3)* must—

- (a) state that the contract is a cover assets hedge contract entered into in accordance with this Act and that the financial obligations of the institution under the contract are secured on the cover assets comprised in a cover assets pool maintained by the institution in accordance with this Act, and
- (b) comply with the requirements (if any) specified in any relevant regulatory notice published under *subsection (2)*.

(6) As soon as practicable after entering into a contract of a kind referred to in *subsection (3)*, a designated public credit institution shall ensure that particulars of the contract are entered into its register of public credit covered securities business.

(7) A designated public credit institution is required to comply with any requirements imposed under *subsection (2)*.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(8) A designated public credit institution shall remove from its register of public credit covered securities business a contract of the kind referred to in *subsection (3)*, but only if—

- (a) the contract has been discharged, or
- (b) the person with whom the contract was entered into has agreed.

(9) *Subsection (5)* ceases to apply to a contract of the kind referred to in *subsection (3)* when the entry relating to the contract is removed from a register of public credit covered securities business in accordance with *subsection (8)*.

46.—(1) If a designated public credit institution holds public credit assets or substitution assets that are located in one or more category B countries the institution shall ensure that the total prudent market value of those assets, expressed as a percentage of the total prudent market value of all of the public credit assets and substitution assets held by the institution at the relevant time, does not exceed the prescribed percentage. For the purposes of this subsection, the prescribed percentage is 10 per cent or, if an order under *subsection (3)* specifies some other percentage, that other percentage.

Restrictions on business activities of designated public credit institution.

(2) A designated public credit institution shall ensure that the total value of the credit transaction assets and tier 2 assets that it holds, expressed as a percentage of the total value of all of the institution's assets, does not at any time exceed the prescribed percentage. For the purposes of this subsection—

- (a) “value” means the value determined in accordance with *section 56(5)*, and
- (b) the prescribed percentage is 10 per cent or, if an order under *subsection (3)* specifies some other percentage, that other percentage.

(3) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (1)* or *(2)*.

(4) For the purpose of ensuring the proper and orderly regulation of designated public credit institutions, the Authority may, by notice in writing given to the institution or institutions concerned, impose on any specified designated public credit institution or on any class of designated public credit institutions, requirements or restrictions as to the kinds of credit transaction assets or tier 2 assets that the institution or institutions may hold. Any designated public credit institution to which such a notice is given is required to comply with the notice.

(5) A designated public credit institution may not issue further public credit covered securities if the total of the principal amounts of all such securities currently issued by the institution would, after the issue of those further securities, exceed the own funds multiple with respect to the total of its own funds.

(6) For the purposes of *subsection (5)*—

“own funds”, in relation to a designated public credit institution, means the own funds of the institution as determined in accordance with the Codified Banking Directive;

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pr.4 S.46

“own funds multiple” means a multiple of 50 or, if another number is specified in an order made under *subsection (7)*, the other number.

(7) The Minister may, by order notified in *Iris Oifigiúil*, vary the number referred to in the definition of “own funds multiple” in *subsection (6)*.

Designated public credit institution to establish and maintain cover assets pool.

47.—(1) A designated public credit institution may issue public credit covered securities only if it is maintaining a related cover assets pool that complies with this Chapter.

(2) After a designated public credit institution is registered, the institution may, for the purpose of establishing a cover assets pool and enabling it to make an initial issue of public credit covered securities, include in its register of public credit covered securities business public credit assets or substitution assets in accordance with this Chapter.

(3) If a designated public credit institution wishes at any time to issue further public credit covered securities, it may include in the relevant cover assets pool public credit assets or substitution assets as security for those securities in accordance with this Chapter.

(4) Subject to *subsection (7)*, a public credit asset or a substitution asset referred to in *subsection (2)* or *(3)* forms part of the relevant cover assets pool only if its inclusion has been approved by the relevant cover-assets monitor.

(5) A designated public credit institution may not include a public credit asset or substitution asset in a cover assets pool in the circumstances referred to in *subsection (2)* or *(3)* if—

- (a) the public credit asset or substitution asset is currently included in a different cover assets pool maintained by the institution,
- (b) the public credit asset or substitution asset is non-performing,
- (c) the institution is insolvent,
- (d) the Authority has given the institution a relevant direction, the effect of which is to prohibit the asset from being recorded in the institution’s register of public credit covered securities business,
- (e) the Authority has given the institution a notice under *section 19(3)* informing the institution that the Authority intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated credit institution, or
- (f) the Authority has given a direction under *section 20* or *21*, the effect of which is to prohibit the asset from being recorded in the institution’s register of public credit covered securities business.

(6) For the purposes of *subsection (5)(d)*, “relevant direction” means a direction issued under—

- (a) section 11 or 21 of the Central Bank Act, 1971,

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(b) section 26 of the Trustee Savings Banks Act, 1989, or Pr.4 S.47

(c) section 40(2) of the Building Societies Act, 1989.

(7) A designated public credit institution may not, without the consent of the Authority, include a public credit asset or substitution asset in a cover assets pool maintained by the institution in the circumstances contemplated by *subsection (2)* or *(3)* if—

(a) the institution is potentially insolvent, or

(b) there is currently no cover-assets monitor appointed in respect of the institution.

(8) A designated public credit institution shall ensure—

(a) that a cover assets pool maintained by the institution has a duration of not less than that of the public credit covered securities that relate to the pool,

(b) that the prudent market value of the pool is greater than the total of the principal amounts of those securities,

(c) that the total amount of interest payable in a given period of 12 months in respect of the pool is during that 12 month period not less than the total amount of interest payable in respect of that period on those securities, and

(d) that the currency in which each public credit asset and each substitution asset included in the pool is denominated is the same as the currency in which those securities are denominated,

after taking into account, in the case of *paragraphs (b), (c) and (d)*, the effect of any cover assets hedge contract that the institution has entered into in relation to the pool and those securities.

(9) For the purposes of *subsection (8)(a)*, “duration” means, in relation to a cover assets pool or public credit covered securities—

(a) if interest payable in respect of a public credit asset or a substitution asset included in the pool, or in respect of the securities is variable, a discounted weighted average term to maturity of the relevant principal amount of the pool or securities, or

(b) if interest payable in respect of a public credit asset or a substitution asset included in the pool, or in respect of the securities, is fixed, a discounted weighted average term to maturity of the relevant principal and interest payable but unpaid in respect of the pool or securities,

determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection, using appropriate zero coupon interest rates and taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool and those securities.

(10) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify a formula or criteria for the purposes of the definition of “duration” in *subsection (9)*.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.4

What can be included in a cover assets pool maintained by a designated public credit institution.

48.—(1) Any public credit asset or substitution asset located within an EEA country or which is a financial obligation of an entity referred to in *section 5(1)(e)* may be included in a cover assets pool maintained by the designated public credit institution.

(2) A designated public credit institution may not include in a cover assets pool maintained by the institution a public credit asset or a substitution asset that is located within one or more category A countries if, after the inclusion of the asset in the pool, the total prudent market value of all public credit assets and substitution assets comprised in the pool located in all such countries would exceed the prescribed percentage of the total prudent market value of all public credit assets and substitution assets that are then included in the pool. For the purposes of this subsection, the prescribed percentage is 15 per cent or, if the regulations prescribe some other percentage, that percentage.

(3) A designated public credit institution may include in a cover assets pool maintained by the institution public credit assets or substitution assets that are located within a category B country only if—

- (a) the country is a country designated by an order made under *subsection (4)*, and
- (b) the institution complies with any restrictions specified in the order.

(4) The Minister may, by order notified in *Iris Oifigiúil*, specify a category B country for the purposes of *subsection (3)*. The Minister shall include in such an order restrictions as to the prudent market value of the public credit assets or substitution assets referred to in *subsection (3)* that a designated public credit institution can include in the cover assets pool as a percentage of the total prudent market value of public credit assets and substitution assets included in the pool.

What action is to be taken by a designated public credit institution that is in breach of cover assets pool provisions.

49.—(1) A designated public credit institution shall, as soon as practicable after becoming aware that it has contravened *section 47(1), (4), (5) or (7) or section 48(2) or (3)*, take all possible steps to prevent the contravention from continuing or being repeated. Until those steps have been taken, the institution may not issue any further public credit covered securities.

(2) A designated public credit institution shall, as soon as practicable after becoming aware that it has failed to comply with *section 47(8)* take all possible steps to comply with the subsection. Until those steps have been taken, the institution may not issue any further public credit covered securities.

(3) Where appropriate, the steps to be taken under this section include acquiring other public credit assets or substitution assets for inclusion in the cover assets pool.

Substitution of certain cover assets and restrictions on inclusion of substitution assets in cover assets pool of designated public credit institution.

50.—(1) For the purposes of this section, “underlying asset”, in relation to a cover assets pool maintained by a designated public credit institution, means a public credit asset or a substitution asset that is then included in the pool.

(2) Subject to *subsection (7)*, a public credit asset or a substitution asset that replaces an underlying asset forms part of the relevant

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

cover assets pool only if the replacement has been approved by the relevant cover-assets monitor. Pr.4 S.50

(3) If an underlying asset included in a cover assets pool maintained by a designated public credit institution contravenes or fails to comply with a provision of this Chapter, the regulations or a requirement of the Authority or the relevant cover-assets monitor made under such a provision, the institution shall, in accordance with this section, replace the underlying asset with a public credit asset or substitution asset that the institution has acquired for the purpose or is currently holding.

(4) A designated public credit institution may in any other case replace an underlying asset with a public credit asset or a substitution asset that the institution has acquired for the purpose or is currently holding, but only if the replacement is not prohibited by a provision of this Chapter, the regulations or a requirement of the Authority or of the relevant cover-assets monitor under such a provision.

(5) A designated public credit institution may not replace an underlying asset with a public credit asset or a substitution asset if—

- (a) the public credit asset or substitution asset is currently contained in a different cover assets pool maintained by the institution,
- (b) the public credit asset or substitution asset is non-performing,
- (c) the institution is insolvent,
- (d) the Authority has given to the institution a relevant direction, the effect of which is to prohibit the replacement from being made,
- (e) a notice has been given to the institution by the Authority under *section 19(3)* informing the institution that it intends to seek the consent of the Minister to the revocation of the registration of the institution as a designated public credit institution, or
- (f) the Authority has given a direction under *section 20* or *21* that prevents the replacement from being made.

(6) For the purposes of *subsection (5)(d)*, “relevant direction” means a direction issued under—

- (a) section 11 or 21 of the Central Bank Act, 1971,
- (b) section 26 of the Trustee Savings Banks Act, 1989, or
- (c) section 40(2) of the Building Societies Act, 1989.

(7) A designated public credit institution may not, without the consent of the Authority, replace an underlying asset with a public credit asset or a substitution asset if—

- (a) the institution is potentially insolvent, or
- (b) there is currently no cover-assets monitor appointed in respect of the institution.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

PT.4 S.50

(8) A designated public credit institution may not at any time include a substitution asset in a cover assets pool maintained by the institution if, after including the asset in the pool, the total prudent market value of all substitution assets then included in the pool at the relevant time would exceed the prescribed percentage of the total prudent market value of all cover assets included in the pool. For the purposes of this subsection, the prescribed percentage is 20 per cent or, if an order under *subsection (9)* specifies some other percentage, that other percentage.

(9) The Minister may, by order notified in *Iris Oifigiúil*, vary the percentage referred to in *subsection (8)*.

(10) The Authority may, by notice in writing given to a designated public credit institution, suspend the application of *subsection (8)* to the institution for a specified period if it is satisfied that to do so would facilitate the discharge of secured claims against the institution. The notice may specify conditions subject to which the suspension is to have effect.

(11) The Authority may revoke a notice given under *subsection (10)* on the ground that the designated public credit institution concerned has not complied with a condition specified in the notice.

(12) For the purpose of *subsection (10)*, “secured claim” means a claim in respect of which the rights of a preferred creditor (other than a super-preferred creditor) are secured under *Part 7*.

Use of realised proceeds of cover asset by designated public credit institution.

51.—(1) A designated public credit institution may, with the prior consent of the cover-assets monitor concerned, use the proceeds of a cover asset that has been realised—

(a) to create or acquire permitted public credit assets or substitution assets for inclusion in the relevant cover assets pool, or

(b) to discharge secured claims.

(2) *Subsection (1)* applies even if—

(a) the institution is subject to an insolvency process, or

(b) the institution has been given a notice of the kind referred to in *section 50(5)(e)*.

(3) Money received by a designated public credit institution as the proceeds of realising a cover asset forms part of the relevant cover assets pool, and is to be treated as part of the related public credit asset or related substitution asset, until it—

(a) is used in accordance with *subsection (1)*,

(b) is released from that pool as an underlying asset and is replaced by other public credit assets or substitution assets that are included in the cover assets pool in accordance with *section 50* or this section, or

(c) is released from that pool under *subsection (4)*.

(4) A designated public credit institution may, with the prior consent of the cover-assets monitor concerned, release underlying assets (including money received by the institution as the proceeds of a

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

cover asset) from the cover assets pool if the assets are not required by this Chapter to be included in the cover assets pool to secure secured claims. Pr.4 S.51

(5) In this section—

“permitted”, in relation to public credit assets or substitution assets, means public credit assets or substitution assets that are permitted to be included in a cover assets pool in accordance with this Chapter;

“secured claim” means a claim that is secured under *Part 7* in respect of a preferred creditor.

52.—For the purposes of *sections 50* and *51*, an asset is, except as provided by *section 51(3)*, included in, or removed from, a cover assets pool when the appropriate particulars are recorded in the register of public credit covered securities business. Inclusion of asset in, and removal of asset from, cover assets pool.

53.—(1) A designated public credit institution shall establish and keep a register in respect of— Designated public credit institution to keep register of public credit covered securities business.

- (a) the public credit covered securities that it has issued,
- (b) the cover assets hedge contracts that it has entered into, and
- (c) the public credit assets and substitution assets that it holds as security for those securities and contracts.

(2) The register is to be called the register of public credit covered securities business.

(3) The register may be kept in book form, in electronic form or in any other form so long as the register is capable of being reproduced visually.

(4) The institution shall include in the register the following particulars—

- (a) particulars of the public credit covered securities that it has issued;
- (b) the cover assets hedge contracts that it has entered into;
- (c) particulars of the public credit assets and substitution assets that it holds as security for those securities and contracts;
- (d) such other particulars as are prescribed by the regulations for the purposes of this section.

(5) Except where the regulations otherwise provide, the institution may make or amend an entry in the register only with the consent of the relevant cover-assets monitor or the Authority.

(6) The institution shall keep the register in such place as may be prescribed by the regulations for the purpose of this subsection.

(7) If a designated public credit institution is also a designated mortgage credit institution, the institution is required to keep its register of public credit covered securities business separate from its register of mortgage covered securities business.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.4
Authority and
cover-assets
monitor to have
access to register of
public credit
covered securities
business.

54.—(1) The Authority, and each cover-assets monitor appointed in respect of a designated public credit institution, are at all times entitled—

- (a) to have access to the institution's register of public credit covered securities business, and
- (b) to take copies of the register or any entry in it at the expense of the institution.

(2) If the Authority, or the cover-assets monitor appointed in respect of a designated public credit institution, by notice in writing so requires, the institution shall provide the Authority or monitor with a copy of—

- (a) any specified register kept by the institution in accordance with this Chapter, or
- (b) any specified entry in such a register.

(3) A reference in this section to the Authority includes a reference to any person authorised by the Authority for the purposes of this section.

Financial statements
in respect of
designated public
credit institution.

55.—A designated public credit institution shall include the following information in its annual financial statement or in a document accompanying the statement:

- (a) the names of the countries in which the public credit assets included in the cover assets pool maintained by the institution are located, and the number and percentage of those assets located in each of those countries, as at the date to which the statement is made up;
- (b) such other information as may be prescribed by the regulations for the purposes of this subsection.

Valuation of assets
held by designated
public credit
institutions.

56.—(1) The prudent market value of a public credit asset included in a cover assets pool maintained by a designated public credit institution for the purposes of this Chapter is to be an amount denominated in the currency in which the related public credit is denominated, equal to 100 per cent of the principal or nominal amount of that public credit that is outstanding on the date that the asset is included in the pool or, if some other percentage is prescribed by the regulations, equal to that other percentage of that principal or nominal amount.

(2) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify further requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of public credit assets for the purposes of this Chapter.

(3) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the prudent market value of substitution assets held by a designated public credit institution for the purposes of this Chapter.

(4) The prudent market value of substitution assets that are in the form of securities is to be determined in accordance with a regulatory notice published in accordance with *subsection (3)*.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(5) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to the valuation basis and methodology, time of valuation and any other matter that it considers relevant for determining the value of tier 2 assets, credit transaction assets or the total assets held by a designated public credit institution for the purposes of this Act. Pt.4 S.56

(6) The value of assets referred to in *subsection (5)* is to be determined in accordance with a regulatory notice published in accordance with that subsection.

CHAPTER 3

Provisions applicable to asset covered securities generally

57.—(1) A person who discloses to an authorised recipient information relating to the business of a designated credit institution is not liable in tort, or for breach of contract, to the institution or any other person in respect of the disclosure if the information was provided in good faith to enable the recipient to perform functions imposed on the recipient by or under this Act. Protection of disclosures made to an authorised recipient.

(2) The following persons are authorised recipients for the purpose of *subsection (1)*:

- (a) the Authority and its members,
- (b) any delegate of the Authority and, if the delegate is a body corporate, any member of the delegate,
- (c) the NTMA,
- (d) any cover-assets monitor appointed in respect of the relevant designated credit institution under *Part 5*,
- (e) any manager appointed in respect of that institution under *Part 6*,
- (f) the officers, employees and agents of, and any persons authorised by, a person referred to in *paragraphs (a) to (e)*.

58.—(1) A designated credit institution may transfer to another credit institution (including one that is not a designated credit institution) the whole or part of its business, or all of its assets or such of those assets as it specifies, but only with the approval of the relevant person and in accordance with this section. Transfer of business or assets from one credit institution to another.

(2) A credit institution that is not a designated credit institution may transfer to a designated credit institution the whole or any specified part of its business, or all of its assets or such of those assets as it specifies, but only with the approval of the relevant person and in accordance with this section.

(3) If the Minister's approval is required for a transfer under this section, the Minister is required to consult the Authority before approving the transfer.

(4) The transferor credit institution and transferee credit institution are required to jointly submit to the relevant person for approval a scheme for the proposed transfer of the business or assets concerned. The scheme must contain such details as that person may

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

require with respect to that business or those assets and must specify the date or dates on which the transfer is to take place or how that date or those dates are to be ascertained.

(5) As a prerequisite to giving approval under this section, the relevant person may impose on the parties to the proposed transfer such conditions relating to the scheme as that person thinks necessary for the purpose of—

- (a) safeguarding the interests of the parties to the transfer and of persons who have financial obligations in respect of the business or assets concerned,
- (b) ensuring an orderly transfer of that business or those assets, and
- (c) providing for publication of the proposed transfer.

(6) On being satisfied that a scheme submitted under *subsection (4)* will achieve the purpose referred to in *subsection (5)* and that the conditions (if any) imposed by that person in respect of the scheme have been or will be complied with, the relevant person—

- (a) shall, by order, approve a transfer of the business or assets concerned, and
- (b) shall publish a notice giving particulars of the transfer in one or more daily newspapers circulating in the State.

(7) The relevant person may, by further order, vary an approval under *subsection (6)*. If such an approval is varied, the relevant person shall publish a notice giving particulars of the variation in one or more daily newspapers circulating in the State.

(8) A transfer of a business or assets under this section takes effect—

- (a) subject to any conditions imposed on the approval of the transfer, and
- (b) on the date or dates specified in the scheme.

(9) On the transfer of a business or assets under this section—

- (a) the transferee credit institution has the same rights (including priorities) and obligations in respect of that business or those assets as the transferor credit institution had immediately before the transfer took effect, and
- (b) the transferor ceases to have those rights and obligations.

(10) A transfer of an asset under this section, whether specifically or as part of a transfer of a business, does not need to be registered under the Registration of Deeds Act, 1707, the Bills of Sale (Ireland) Acts, 1879 and 1883, the Companies Act, 1963, the Registration of Title Act, 1964, and any other Act that provides for the registration of assets or details of them. For the purposes of any of those Acts that would apply to it but for this subsection, such a transfer has effect as a deed registered on the date on which it took effect.

(11) If legal proceedings are pending immediately before the time when a transfer under this section takes effect, those proceedings are to continue. At that time, the transferee credit institution—

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(a) replaces the transferor credit institution as a party to the proceedings, and Pr.4 S.58

(b) assumes the same rights and obligations in relation to those proceedings as the transferor credit institution had immediately before that time.

(12) For the purposes of this section, a transferor credit institution is associated with the transferee credit institution if—

(a) either of the institutions is the beneficial owner of not less than 90 per cent of the issued share capital of the other institution (whether directly or indirectly through any other person or persons), or

(b) a body corporate (other than the transferor or transferee credit institution) is the beneficial owner of not less than 90 per cent of the issued share capital of each of the institutions (whether directly or indirectly through any other person or persons).

(13) In this section—

“assets” means mortgage credit assets, public credit assets or substitution assets, or any securities, contracts of guarantee or indemnity or contracts of insurance relating to any such assets or any other assets connected with all or any part of a business of a credit institution;

“relevant person” means, if the relevant credit institutions are not associated, the Minister or, if the relevant credit institutions are associated, the Authority;

“security” includes mortgage, assignment, charge, lien, pledge and encumbrance.

PART 5

COVER-ASSETS MONITORS

59.—(1) Every designated credit institution is required to appoint a qualified person to be a cover-assets monitor in respect of the institution.

Cover-assets monitor to be appointed for each designated credit institution.

(2) A designated credit institution that is both a designated mortgage credit institution and a designated public credit institution may appoint a separate cover-assets monitor in respect of each cover assets pool maintained by it or may appoint a single cover-assets monitor in respect of both of the pools so maintained.

(3) An appointment under this section does not take effect until the Authority has approved it in writing.

(4) If the Authority refuses to approve such an appointment, the designated credit institution concerned shall, within such period as may be specified by the Authority (being not less than 7 days), appoint another qualified person to be a cover-assets monitor in respect of that institution.

(5) A designated credit institution that has appointed a cover-assets monitor under this section is responsible for paying any remuneration or other money payable to the monitor in connection with the performance of the monitor’s responsibilities in respect of the institution, including any additional responsibilities conferred on the monitor under *section 68*.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pr.5 S.59

(6) The Authority may, by regulatory notice notified in *Iris Oifigiúil*, specify—

- (a) the qualifications required in order for a person to be appointed as a cover-assets monitor, and
- (b) the application procedure for appointment as such a monitor.

Authority may appoint cover-assets monitor in certain circumstances.

60.—(1) If at any time a designated credit institution has no cover-assets monitor appointed in respect of a cover assets pool and the Authority reasonably believes that the institution is unlikely to appoint such a monitor, the Authority may appoint a suitably qualified person to be a cover-assets monitor in respect of the institution. The appointment may be on such terms and subject to such conditions as the Authority thinks fit.

(2) If the Authority has appointed a cover-assets monitor in accordance with this section, the designated credit institution concerned is responsible for paying any remuneration or other money payable to the monitor in connection with the performance of the monitor's responsibilities in respect of the institution, including any additional responsibilities conferred on the monitor under *section 68*.

Responsibilities of cover-assets monitor appointed in respect of designated mortgage credit institution.

61.—(1) The cover-assets monitor appointed in respect of a designated mortgage credit institution is responsible for monitoring the institution's compliance with *sections 32(8), 33 (subsection (6) excepted), 35(2) and (8), 36(1) and (4) and 38(4) and (5)* and such other matters (if any) relating to the business of such an institution as may be prescribed by the regulations for the purposes of this subsection.

(2) Before a designated mortgage credit institution issues mortgage covered securities, or enters into a cover assets hedge contract, the relevant cover-assets monitor shall take reasonable steps to verify—

- (a) that the institution will be in compliance with *section 32(8)*, and will not be in contravention of *section 33 (subsection (6) excepted) and section 35(8)*, as a result of the institution having issued those securities or entered into such a contract,
- (b) that the institution will comply with the requirements of *sections 38(4) and (5)* with respect to keeping its register of mortgage covered securities business, or
- (c) such other matters (if any) relating to the business of designated mortgage credit institutions as may be prescribed by the regulations for the purposes of this subsection.

(3) The cover-assets monitor is also responsible for performing such other responsibilities (if any) as are prescribed by the regulations.

(4) The appointment of a person as a cover-assets monitor in respect of a designated mortgage credit institution does not absolve the institution from its duty to comply with this Act.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

62.—(1) The cover-assets monitor appointed in respect of a designated public credit institution is responsible for monitoring the institution's compliance with *sections 47(8), 50(2) and (8), 51(1) and (4) and 53(4) and (5)* and such other matters (if any) relating to the business of such an institution as may be prescribed by the regulations for the purposes of this subsection.

Pr.5
Responsibilities of cover-assets monitor appointed in respect of designated public credit institution.

(2) Before a designated public credit institution issues public credit covered securities, or enters into a cover assets hedge contract, the relevant cover-assets monitor shall take reasonable steps to verify—

- (a) that the institution will be in compliance with *section 47(8)*, and will not be in contravention of *section 48* or *50(8)* as a result of the institution having issued those securities or entered into such a contract,
- (b) that the institution will comply with requirements of *sections 53(4) and (5)* with respect to keeping its register of public credit covered securities business, and
- (c) such other matters (if any) relating to the business of designated public credit institutions as may be prescribed by the regulations for the purposes of this subsection.

(3) The cover-assets monitor is also responsible for performing such other responsibilities (if any) as are prescribed by the regulations.

(4) The appointment of a person as a cover-assets monitor in respect of a designated public credit institution does not absolve the institution from its obligation to comply with this Act.

63.—(1) A designated credit institution may terminate the appointment of its cover-assets monitor only with the written consent of the Authority.

Termination of appointment of cover-assets monitor by designated credit institution.

(2) The Authority may, by notice in writing given to the institution and cover-assets monitor concerned, direct a designated credit institution to terminate the appointment of the cover-assets monitor appointed in respect of the institution and to appoint another qualified person in place of that monitor. The notice must specify the reasons for giving the direction. Subject to *subsection (4)*, the institution is required to comply with such a direction.

(3) If the Authority issues a notice under *subsection (2)*, the designated credit institution or cover-assets monitor concerned may, within 7 days of receiving the notice, appeal to the High Court against the giving of the direction.

(4) On the hearing of an appeal under *subsection (3)*, the High Court may—

- (a) make an order confirming the decision of the Authority, or
- (b) make an order quashing the direction of the Authority or, if the direction has been implemented, order that the cover-assets monitor concerned be reinstated on the same terms and conditions as those applicable immediately before the implementation of the direction.

The High Court may make such ancillary orders as it thinks appropriate.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.5
Resignation of
cover-assets
monitor.

64.—(1) A cover-assets monitor may resign by notice in writing given to the Authority.

(2) The cover-assets monitor is required to include in the notice a statement of the reasons for the resignation.

(3) A notice of resignation of a cover-assets monitor takes effect at the end of 30 days, or of such longer period as is specified in the notice, after it is given to the Authority or, if the Authority agrees to the resignation taking effect at the end of a shorter period, at the end of that shorter period.

Cover-assets
monitor's powers in
relation to
designated credit
institution.

65.—(1) The cover-assets monitor appointed in respect of a designated credit institution may, at any reasonable time during ordinary business hours, enter any place at which the institution carries on its business for the purpose of carrying out the monitor's responsibilities in relation to the institution.

(2) The cover-assets monitor is required to give the institution reasonable notice of intention to enter a place at which the institution carries on its business.

(3) A cover-assets monitor who enters a place under this section may do any of the following—

- (a) inspect the place and examine any record found on the place that the monitor reasonably believes to be relevant to the performance of the monitor's responsibilities in respect of the institution,
- (b) require the institution or any person who is apparently a person concerned in the management of the institution to answer any relevant questions or provide the monitor with such assistance and facilities as is or are reasonably necessary to enable the monitor to exercise or perform the monitor's responsibilities,
- (c) require any person in the place to produce for inspection records in so far as they relate to the responsibilities of the monitor,
- (d) make copies of all or any part of those records.

Designated credit
institution to
provide information
and documents
required by cover-
assets monitor.

66.—(1) The cover-assets monitor appointed in respect of a designated credit institution may, by notice in writing given to the institution, require it to give to the monitor, within such period as may be specified in the notice, any specified information or record that relates to the responsibilities of the monitor in respect of the institution, but only if the information or record is in the possession, or under the control, of the institution.

(2) A designated credit institution is required to keep the cover-assets monitor informed of—

- (a) such particulars of payments received by the institution in respect of cover assets included in the relevant cover assets pool, and at such times or intervals, as the monitor requires,
- (b) any failure of any person who has a financial obligation in respect of those assets to perform the obligation within the prescribed period after it was due to be performed, and

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(c) any proceedings brought in relation to those assets against any such person by or on behalf of the institution. Pr.5 S.66

(3) For the purposes of *subsection (2)(b)*, “prescribed period” means—

(a) in the case of a mortgage credit asset of a kind referred to in *section 4(1)*—60 days,

(b) in the case of any other kind of mortgage credit asset, or of a public credit asset or substitution asset—10 days, or

(c) if in any of those cases some other period is specified by a regulatory notice made under *subsection (4)*—that other period.

(4) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify a period for the purpose of *subsection (3)*.

(5) A designated credit institution that, without reasonable excuse—

(a) fails to comply with a notice in writing referred to in *subsection (1)*, or

(b) fails to comply with *subsection (2)*,

commits an offence and is liable on summary conviction to a fine not exceeding €1,000 (£787.56).

67.—(1) As soon as practicable after the cover-assets monitor appointed in respect of a designated credit institution has become aware, or has formed a reasonable suspicion, that the institution has contravened or failed to comply with a provision of this Act that relates to the responsibilities of the monitor, the monitor is required to provide the Authority with a written report of the matter. Duty of cover-assets monitor to report certain matters to Authority.

(2) The cover-assets monitor appointed in respect of a designated credit institution is also required to provide the Authority with such reports, and provide such information, as the Authority notifies to the monitor in writing from time to time with respect to—

(a) whether or not the institution is, in the opinion of the monitor, complying with the provisions of this Act that relate to the responsibilities of the monitor, and

(b) if in the monitor’s opinion the institution is not fully complying with any of those provisions, the extent of the non-compliance.

The reports and information are to be given to the Authority at such times or at such intervals as the Authority notifies in writing to the monitor.

68.—(1) This section applies to the following credit institutions— Authority may confer additional responsibilities on cover-assets monitor.

(a) a designated credit institution that has become subject to an insolvency process;

(b) a formerly designated credit institution;

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.5 S.68

(c) a designated credit institution in respect of which a direction under *section 20* is in force;

(d) a designated credit institution in respect of which a manager has been appointed under *Part 6* or *Schedule 1*.

(2) The Authority may, by notice in writing given to the cover-assets monitor appointed in respect of a credit institution to which this section applies, confer on that monitor such additional responsibilities as it considers appropriate for the effective management of the affairs of the institution.

(3) If a liquidator, examiner, receiver or manager is appointed in respect of a credit institution to which this section applies, the cover-assets monitor appointed in respect of the institution may enter into arrangements with respect to the management of the institution on such matters as may be specified in the notice referred to in *subsection (2)*. Those arrangements—

(a) must include arrangements relating to the payment of the remuneration of, and the costs incurred by, the monitor, and

(b) are to be subject to such conditions (if any) as are specified in that notice or as the Authority may subsequently notify to the monitor in writing.

Cover-assets monitor to provide reports to Authority on request.

69.—If the Authority so directs by notice in writing, the cover-assets monitor appointed in respect of a designated credit institution shall—

(a) prepare for the Authority, or any other person specified by the Authority, such reports, and

(b) provide the Authority or any such person, with such information,

at such times or intervals, in relation to the exercise or performance of the monitor’s responsibilities under this Act and the performance by the institution of its obligations under this Act in so far as the monitor is responsible for monitoring the carrying out of those obligations, as the Authority specifies in the direction.

Power of entry, etc., of Authority or authorised person.

70.—The Authority, or any other person that it has authorised for the purposes of this section, may, at any reasonable time—

(a) enter any premises at which the cover-assets monitor appointed in respect of a designated credit institution carries on its business, and

(b) inspect and take copies of any records kept by the monitor in connection with the monitor’s responsibilities under this Act.

PART 6

MANAGEMENT OF BUSINESS ACTIVITIES OF DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTIONS IN CERTAIN CIRCUMSTANCES

Interpretation (*Part 6*).

71.—For the purposes of this Part, “asset covered securities business activities”, in relation to a designated or formerly designated credit institution, means the following activities—

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

- (a) issuing asset covered securities and otherwise financing or refinancing the activities referred to in *paragraphs (b) to (d)*, Pr.6 S.71
- (b) entering into cover assets hedge contracts,
- (c) dealing with mortgage credit assets, public credit assets, or appropriate substitution assets,
- (d) holding cover assets and maintaining the related cover assets pool,
- (e) the keeping of a register of mortgage covered securities business or public credit covered securities business,
- (f) administering and servicing those activities.

72.—(1) The Authority may request the NTMA to attempt to locate persons who are suitably qualified for appointment to manage asset covered securities business activities, or specified asset covered securities business activities, of a designated credit institution or a formerly designated credit institution in any of the following circumstances:

Authority may appoint manager in respect of designated credit institution or formerly designated credit institution in certain circumstances.

- (a) if the institution has become insolvent or potentially insolvent;
- (b) if as a result of becoming aware of information provided to the Authority, it is of the opinion that a manager should be appointed in respect of the institution in order to safeguard the interests of—
 - (i) holders of asset covered securities issued by the institution, or
 - (ii) persons who have rights under cover assets hedge contracts entered into by the institution, or
 - (iii) other creditors of the institution;
- (c) if the registration of the institution as a designated credit institution is revoked under *section 19* or the institution is subject to a direction given under *section 20* or *21*.

(2) If the NTMA is successful in locating one or more suitably qualified persons for appointment to manage specified asset covered securities business activities of the credit institution, it shall give to the Authority the names and qualifications of, and other relevant particulars relating to, the person or persons concerned.

(3) If the NTMA has given to the Authority the name of only one person under *subsection (2)* and the Authority is satisfied that the person is suitably qualified to manage asset covered securities business activities of the credit institution concerned, the Authority shall appoint that person as manager of the asset covered securities business activities of that institution, or of such of those activities as are specified in the notice.

(4) If the NTMA has given to the Authority the names of 2 or more persons under *subsection (2)* and is satisfied that those persons, or any of those persons, are suitably qualified to manage asset

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.6 S.72

covered securities business activities of the credit institution concerned, the Authority shall appoint the person who appears to the Authority to be the most suitably qualified of those persons.

(5) On appointing a manager in respect of a designated or formerly designated credit institution, the Authority shall publish in at least one daily newspaper circulating in the State a notice giving particulars of the appointment. Failure to comply with this subsection does not affect the validity of such an appointment.

What happens if NTMA's attempts to locate a manager are unsuccessful.

73.—If the NTMA's attempt under *section 72* is unsuccessful, or the Authority is not satisfied that any of the persons whose names were given to the Authority under that section is suitable for appointment as manager, the NTMA shall attempt to find an appropriate body corporate to become the parent entity of the designated or formerly designated credit institution concerned in place of the existing parent entity (if any) of that institution.

What happens if NTMA's attempts to locate a parent entity are unsuccessful.

74.—If the NTMA's attempts under *sections 72* and *73* are unsuccessful, the Authority shall, by notice published in *Iris Oifigiúil*, appoint the NTMA as a manager to manage the asset covered securities business activities of the designated or formerly designated credit institution concerned, or such of those activities as are specified in the notice.

NTMA may be appointed as temporary manager in certain circumstances.

75.—When *section 72 (1)* or *73* applies, the Authority may, by notice published in *Iris Oifigiúil*, appoint the NTMA as a temporary manager of the asset covered securities business of a designated or formerly designated credit institution, or of such of these activities as are specified in the notice, until either—

- (a) a manager is appointed in respect of the institution, or
- (b) an appropriate body corporate becomes the parent entity of the institution.

Fees payable to NTMA.

76.—(1) Each designated credit institution is required to pay to the NTMA with respect to the functions imposed on the NTMA by this Part such annual commitment fee as is, and at such times or within such periods as are, determined by the NTMA. The amount of the fee is subject to the approval of the Authority.

(2) A commitment fee is payable under *subsection (1)* irrespective of whether the NTMA has performed, or the Authority has requested the NTMA to perform, any of the functions imposed on the NTMA by this Part.

(3) If a designated credit institution fails to pay a commitment fee on time, the NTMA may, by proceedings brought in a court of competent jurisdiction, recover the fee from the institution as a debt.

- (4) The NTMA shall use—
 - (a) any money that it receives under *subsection (1)* or recovers under *subsection (3)*, and
 - (b) any money that it receives as a result of having been appointed as a manager under this Act,

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

for the purposes of enabling it to perform its functions under this Part. If any of the money so received is not required for those purposes, the NTMA is required to use the surplus towards meeting the expenses incurred in performing its functions under the National Treasury Management Agency Acts, 1990 and 2000. Failing that, the NTMA is required to pay the surplus money into the Exchequer.

Pr.6 S.76

(5) The Public Offices Fees Act, 1879, does not apply to fees payable to the NTMA under this section or *Schedule 1*.

77.—*Schedule 1* has effect with respect to a manager appointed in respect of a designated or formerly designated credit institution.

Application of *Schedule 1* to managers.

78.—On the appointment of a manager in respect of a designated or formerly designated credit institution, the manager becomes responsible—

Effect of appointment of person as manager.

- (a) for managing the asset covered securities business of the institution, or such of those activities as are specified in the manager's notice of appointment, and
- (b) for performing the functions and obligations, and exercising the powers, of the institution in so far as they relate to those activities.

79.—A manager appointed in respect of a designated or formerly designated credit institution—

Responsibilities of manager.

- (a) shall, as soon as practicable after being appointed, assume control of all assets of the institution that relate to the institution's asset covered securities business activities, or such of those assets as relate to the asset covered securities business activities specified in the manager's notice of appointment, and
- (b) shall, subject to and in accordance with any direction given by the Authority, carry on the institution's asset covered securities business activities, or such part of that business as relates to the asset covered securities business activities specified in the manager's notice of appointment, in such manner as appears to the manager to be in the commercial interest of the holders of asset covered securities issued by the institution and of persons with whom the institution has entered into cover assets hedge contracts.

80.—If the appointment of a person as manager ceases before the management is completed or terminated, the Authority shall, in accordance with *section 72*, request the NTMA to locate suitably qualified persons to replace the person.

Appointment of new manager to be appointed to fill vacancy.

PART 7

EFFECT OF POTENTIAL INSOLVENCY PROCESS ON DESIGNATED OR FORMERLY DESIGNATED CREDIT INSTITUTION

81.—(1) Except as provided by *section 87*, the following enactments do not affect the application and operation of this Part in respect of designated and formerly designated credit institutions:

Application and operation of this Part.

[No. 47.] *Asset Covered Securities Act*, 2001. [2001.]

Pt.7 S.81

- (a) the Companies Acts;
- (b) the Bankruptcy Acts, 1988 and 2001;
- (c) the Taxes Acts;
- (d) the supervisory enactments;
- (e) any other enactment or any rule of law relating to an insolvency process.

(2) For the purposes of *subsection (1)*, “Taxes Acts” has the same meaning as is given to the expression “the Acts” in section 811(1)(a) of the Taxes Consolidation Act, 1997.

(3) This Part does not apply to a cover assets hedge contract that has been removed from the relevant register of mortgage covered securities business, or register of public credit covered securities business, in accordance with this Act.

Existing rights of certain persons not affected by insolvency or potential insolvency of designated credit institution.

82.—The fact that a designated or formerly designated credit institution, or its parent entity or any company related to the institution, has become insolvent or potentially insolvent does not affect—

- (a) the claims and rights of holders of asset covered securities issued by the institution,
- (b) the claims and rights of persons referred to in *paragraph (b)* of the definition of “preferred creditor” in *section 3*,
- (c) the claims and rights that the other contracting party has under any cover assets hedge contract entered into by the institution,
- (d) the appointment of a cover-assets monitor in respect of the institution under *Part 5* and the claims and rights of the monitor in so far as those claims or rights relate to the appointment or arise under this Act,
- (e) the appointment of a manager in respect of the institution under *Part 6* and the claims and rights of the manager in so far as those claims or rights relate to the appointment or arise under this Act, or
- (f) the functions of the NTMA under *Part 6* and the claims and rights of the NTMA in so far as those claims and rights relate to those functions.

Rights of preferred creditors in relation to cover assets.

83.—(1) If a designated credit institution, or its parent entity or any company related to the institution, becomes subject to an insolvency process, preferred creditors are, for the purpose of satisfying their claims and rights under this Part, entitled to have recourse to the cover assets that are included in the relevant cover assets pool ahead of members of, and contributories to, the institution and all other creditors of the institution, parent entity or company. This section applies irrespective of whether the claims of creditors other than preferred creditors are preferred under any other enactment or any rule of law and whether those claims are secured or unsecured.

(2) Subject to *subsection (3)*, the claims of preferred creditors of a designated or formerly designated credit institution rank equally

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

among themselves but if those claims cannot be fully satisfied they are to abate in proportion to the amounts of those claims. Pr.7 S.83

(3) The claims of super-preferred creditors rank ahead of those of any other preferred creditors and equally among themselves, but if the first-mentioned claims cannot be fully satisfied, they are to abate in proportion to the amounts of those claims.

(4) Subject to *section 87, subsections (2) and (3)* have effect irrespective of—

- (a) when the security, contract or appointment giving rise to a claim was issued or made, and
- (b) when a claim of a preferred creditor arose,

and irrespective of the terms of that security, contract or appointment.

(5) If the claims of all preferred creditors are not fully satisfied from the proceeds realised from the disposal of cover assets that are included in the relevant cover assets pool of a designated or formerly designated credit institution, those creditors are, with respect to the unsatisfied parts of their claims, to be regarded as unsecured creditors whose claims, subject to *subsection (3)*, rank equally among themselves in any insolvency process relating to the institution.

84.—(1) The obligations of a designated or formerly designated credit institution—

Obligations of designated credit institution to continue despite insolvency process.

- (a) arising under or in respect of an asset covered security issued by the institution,
- (b) arising under or in respect of any cover assets hedge contract entered into by the institution,
- (c) towards the cover-assets monitor appointed in respect of the institution,
- (d) towards any manager appointed to manage affairs of the institution, or
- (e) towards the NTMA under *Part 6*,

continue to have effect in relation to the institution, and be enforceable, despite the institution, or its parent entity or a company related to the institution, becoming subject to an insolvency process.

(2) If a designated or formerly designated credit institution, or where the institution has a parent entity or a company is related to the institution, the parent entity or related company, becomes subject to an insolvency process, the obligation of the institution to appoint and maintain a cover-assets monitor, and the powers of the Authority and the NTMA arising under this Act with respect to the appointment of a manager, continue to have effect until—

- (a) the claims of all preferred creditors have been fully satisfied, and
- (b) the functions of each cover-assets monitor and manager appointed in respect of the institution have been fully discharged.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.7

Effect of insolvency process on asset covered securities and cover assets hedge contracts of designated credit institutions.

85.—(1) If a designated or formerly designated credit institution, or where the institution has a parent entity or a company is related to the institution, the parent entity or related company, becomes subject to an insolvency process—

- (a) all asset covered securities issued by the institution remain outstanding, subject to the terms and conditions specified in the security documents under which those securities are created,
- (b) every cover assets hedge contract relating to those securities continues to have effect, subject to the terms and conditions of the contract,
- (c) each cover-assets monitor or manager appointed by or in respect of the institution continues to hold office as such in accordance with the terms and conditions applicable to the appointment, and
- (d) the institution's obligations under those securities, or any such contract or appointment, continue to be enforceable.

(2) Cover assets that are included in a cover assets pool do not form part of the assets of a designated or formerly designated credit institution or, where the institution has a parent entity or a company is related to the institution, of the parent entity or related company, for the purposes of any insolvency process until the claims secured by this Part have been fully satisfied.

(3) Cover assets that are included in a cover assets pool are not liable to attachment, sequestration or other form of seizure, or to set-off by any persons, that would, but for this subsection, be permitted by law so long as claims secured under this Part remain unsatisfied.

Designated or formerly designated credit institution not to be dissolved unless claims of preferred creditors have been satisfied.

86.—A designated or formerly designated credit institution may not be dissolved under an insolvency process unless the claims and rights of all preferred creditors have been fully satisfied. However, the High Court may make an order dissolving the institution if it is satisfied that the institution has no assets capable of meeting the claims and rights of those creditors.

This Part not to prevent application of enactment or rule of law relating to fraud, misrepresentation, etc.

87.—(1) Nothing in this Part affects the application to—

- (a) an asset covered security issued by a designated or formerly designated credit institution,
- (b) a cover assets hedge contract entered into by such an institution, or
- (c) a contract relating to the appointment of a cover-assets monitor in respect of the institution,

of any enactment or rule of law that would (with respect to circumstances existing at the time when the security was issued or the contract was entered into) render the security or contract void or unenforceable on the ground of fraud or misrepresentation or because of the operation of an enactment specified in *subsection (2)*.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(2) The following enactments are specified for the purpose of *subsection (1)*: Pr.7 S.87

- (a) section 57, 58 or 59 of the Bankruptcy Act, 1988;
- (b) section 286 of the Companies Act, 1963;
- (c) section 139 of the Companies Act, 1990.

88.—(1) If asset covered securities are outstanding, or a cover assets hedge contract is in existence, in relation to a designated credit institution, the institution shall not create a security interest in respect of any cover assets that are included in a cover assets pool if the interest would, but for this Part, adversely affect the priority conferred by this Part of preferred creditors in respect of those assets. If the institution creates any such security interest, the interest is void and any money secured by it is repayable immediately.

Designated credit institution not to create security interest in cover assets if claims of preferred creditors would be adversely affected.

(2) *Subsection (1)* does not prevent a designated credit institution from creating a security interest in respect of cover assets included in a cover assets pool maintained by the institution if—

- (a) the relevant assets are located outside the State, or are financial obligations of an entity referred to in *section 5(1)(e)*, and
- (b) the person who, directly or indirectly, has the benefit of the interest is the same person as the person who is entitled to security over those assets in accordance with the order of priority prescribed by this Part.

(3) If a cover asset included in a cover assets pool maintained by a designated credit institution is subject to a security interest and the creation of the interest would contravene *subsection (1)*, the institution shall, in accordance with *section 35* or *50* (as appropriate), replace the asset with one or more assets that are not subject to such a security interest.

(4) In this section—

“security interest” includes mortgage, charge, pledge, lien and encumbrance.

89.—(1) This section applies to the following directions:

- (a) a direction given under *section 20* or *21*,
- (b) a direction given by the Central Bank under section 11 or 21 of the Central Bank Act, 1971, section 26 of the Trustee Savings Banks Act, 1989, section 27(3) of the Investor Compensation Act, 1998, or section 40(2) of the Building Societies Act, 1989.

Certain directions not to apply unless rights of certain persons have been satisfied.

(2) Unless the Authority has given a notice to the institution under *subsection (3)*, a direction to which this section applies does not have effect with respect to a designated or formerly designated credit institution, its parent entity or any other company related to the institution as regards—

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.7 S.89

- (a) any cover assets that are included in a cover assets pool maintained by the institution,
- (b) any asset covered securities issued by the institution, or
- (c) any cover assets hedge contracts entered into by the institution,

until the claims and rights of the holders of those securities, the claims and rights of the other parties to those contracts, and the claims and rights of every cover-assets monitor, and any manager, appointed in respect of the institution, arising out of the performance of their functions, have been fully satisfied.

(3) If satisfied on reasonable grounds that a designated or formerly designated credit institution is carrying on its business relating to asset covered securities or a cover assets hedge contract, or the relevant cover assets, so as—

- (a) to adversely affect the security of holders of those securities or the other party to the contract, or
- (b) to jeopardise the making of payments by the institution in respect of those securities in accordance with the terms of the relevant security documents, or the making of payments by the institution under the contract,

the Authority may, by notice in writing given to the institution, declare that a direction to which this section applies has effect in respect of the institution, its parent entity or any other company related to the institution.

Provisions applicable where credit institution is both designated mortgage credit institution and designated public credit institution.

90.—(1) If a credit institution that is or was formerly both a designated mortgage credit institution and a designated public credit institution has—

- (a) issued mortgage covered securities, or
- (b) entered into a cover assets hedge contract relating to mortgage covered securities issued by the institution,

the rights of the holders of those securities, or the other party to the contract, are secured only on the cover assets that comprise the relevant cover assets pool.

(2) If a credit institution that is or was formerly both a designated mortgage credit institution and a designated public credit institution has—

- (a) issued public credit covered securities, or
- (b) entered into a cover assets hedge contract relating to public credit covered securities issued by the institution,

the rights of the holders of those securities, or the other party to the contract, are secured only on the cover assets that comprise the relevant cover assets pool.

PART 8

REGULATIONS, ORDERS AND REGULATORY NOTICES

91.—(1) The Authority may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or expedient to be prescribed, for carrying out or giving effect to this Act.

Authority may
make regulations
for purposes of Act.

(2) Without limiting *subsection (1)*, regulations under that subsection may do any or all of the following—

- (a) prescribe requirements with respect to carrying on asset covered securities business that designated credit institutions must comply with,
- (b) prescribe requirements that a designated mortgage credit institution must comply with in maintaining its cover assets pools,
- (c) prescribe requirements that a designated public credit institution must comply with in maintaining its cover assets pools,
- (d) prescribe kinds of substitution assets that may be included in a cover assets pool,
- (e) prescribe which and in what circumstances mortgage credit assets, or public credit assets, or substitution assets that are included in a cover assets pool are required or permitted to be substituted,
- (f) prescribe requirements that a designated mortgage credit institution is required to comply with in relation to the institution's register of mortgage covered securities business,
- (g) prescribe requirements that a designated public credit institution is required to comply with in relation to the institution's register of public credit covered securities business,
- (h) prescribe requirements with respect to the financial statements that a designated mortgage credit institution or a designated public credit institution or its parent entity must comply with,
- (i) prescribe responsibilities to be carried out by a cover-assets monitor in relation to the designated mortgage credit institution, or designated public credit institution, in respect of which the monitor is appointed,
- (j) provide for the removal and replacement of a cover-assets monitor on specified grounds,
- (k) supplement the provisions of this Act relating to transfers of the whole or a part of an asset covered securities business, or of assets relating to such a business, in accordance with *section 58*,
- (l) supplement the provisions of *section 102* with respect to entering into reciprocal arrangements with qualifying countries.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.8 S.91

(3) A regulation may create an offence for contravening or failing to comply with a provision of the regulation and impose a fine not exceeding €100,000 (£78,756.40) for the offence if tried on indictment or €1,900 (£1,496.37) if dealt with summarily.

(4) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind, or
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person or body,

or may do any combination of those things.

Minister to consult Authority before making an order for purposes of this Act.

92.—The Minister is required to consult the Authority before making an order for the purposes of this Act.

Regulations and orders to be laid before each House of Oireachtas.

93.—(1) The Minister shall ensure that every regulation made by the Authority, and every order made by the Minister or the Authority under this Act, is laid before each House of the Oireachtas as soon as practicable after it is made.

(2) This section does not apply to an order made under *section 58*.

House of Oireachtas may annul regulation or order.

94.—(1) Either House of the Oireachtas may, by resolution passed within 21 sitting days after the day on which a regulation or order was laid before it in accordance with *section 93*, annul the regulation or order.

(2) The annulment of such a regulation or order takes effect immediately on the passing of the resolution concerned, but does not affect anything that was done under the regulation or order before the passing of that resolution.

Regulatory notices.

95.—(1) A regulatory notice issued by the Authority comes into operation on the date on which it is published in *Iris Oifigiúil* or on such later date as is specified in the notice.

(2) The Authority may from time to time amend or revoke a regulatory notice it has issued under this Act.

(3) For the purpose of *subsection (2)*, “amend” includes add to, substitute and delete.

PART 9

ENFORCEMENT

Court empowered to make prohibition or compliance orders.

96.—(1) The High Court may, on the hearing of an application made under this section, make an order prohibiting a person whom

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

it finds to be contravening or to have repeatedly contravened a provision of this Act or a regulatory notice from continuing or repeating the contravention. Pr.9 S.96

(2) The High Court may, on the hearing of an application made under this section, make an order requiring a person to comply with a provision of this Act or a regulatory notice if it finds that the person has failed or is failing to comply with the provision after being requested by the Authority to so comply.

(3) The Authority or any person or class of person specified in an order made under *subsection (7)*, may make an application for the purpose of *subsection (1)* or *(2)*.

(4) An order under this section may be made subject to such conditions as the High Court considers appropriate.

(5) If the High Court decides to make an order under *subsection (1)* or *(2)*, it may also make an order requiring a person to do a specified act.

(6) The High Court may grant an interim order pending the determination of an application under this section. Such an order may be granted on the basis of rebuttable evidence that the person concerned has contravened or is contravening, or has failed or is failing to comply with, a provision of this Act.

(7) The Minister may, by order notified in *Iris Oifigiúil*, specify a person, or class of persons, for the purpose of *subsection (3)*.

97.—Despite section 10(4) of the Petty Sessions (Ireland) Act, 1851, or any other Act, proceedings for an offence against this Act may be brought at any time within 2 years after the date alleged to be the date on which the offence was committed or, if the offence involved misleading or deceptive conduct, 2 years after the date on which the Authority has become aware of the commission of the offence. Time within which proceedings for an offence may be brought.

98.—(1) A person who—

- (a) prevents an authorised person from performing a function imposed by this Act, or obstructs an authorised person who is performing such a function,
- (b) without reasonable excuse, fails to provide an authorised person with information that is lawfully required by or under this Act, or
- (c) provides an authorised person with information required by or under this Act knowing it to be materially false or misleading,

Offences relating to acts affecting the performance of official functions.

commits an offence and is liable on summary conviction to a fine not exceeding €1,900 (£1,496.37) or to imprisonment for a term not exceeding 6 months, or to both.

(2) In this section, “authorised person” means—

- (a) the Authority, or any person authorised by it to perform the relevant function on its behalf,

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

PT.9 S.98

- (b) any delegate of the Authority or any member or employee of any such delegate, or
- (c) a cover-assets monitor,
- (d) the NTMA, or any person authorised by it to perform the relevant function on its behalf, or
- (e) a manager appointed in respect of a designated credit institution or formerly designated credit institution.

Offences by bodies corporate.

99.—(1) If a body corporate commits an offence against a provision of this Act, each person who was an officer of the body when the offence was committed commits an offence against this section if it is proved that the officer—

- (a) willingly participated in, connived at or consented to the commission of the offence by the body, or
- (b) knowing that the body corporate was committing or about to commit that offence, failed to take all reasonably practicable steps to prevent its commission.

(2) A person who commits an offence against this section is liable on conviction to a fine not exceeding that for which the body corporate is liable for the offence.

(3) A person may be proceeded against for an offence against this section whether or not the body corporate has been proceeded against or been convicted of the offence committed by that body.

(4) In this section, “officer”, in relation to a body corporate, means a director, manager, executive officer, secretary or other person concerned in the management of the body.

PART 10

MISCELLANEOUS

Certain persons to be not liable for commission of certain acts and omissions under this Act.

100.—(1) This section applies to the following persons—

- (a) the Minister and any public officer acting under the direction of the Minister,
- (b) the Authority, members and employees of the Authority, and persons acting under the direction of the Authority,
- (c) the NTMA, the chief executive and employees of the NTMA, and persons acting under the direction of the NTMA,
- (d) a cover-assets monitor appointed in respect of a designated credit institution under *Part 5*, officers and employees of the monitor, and persons acting under the direction of the monitor,
- (e) a manager, other than the NTMA, appointed in respect of a designated or formerly designated credit institution under *Part 6* or *Schedule 1*, officers and employees of the manager, and persons acting under the direction of the manager.

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

(2) A person to whom this section applies is not liable in any civil proceedings for any act done, or omitted to be done, by the person for the purposes of, or in connection with, performing or exercising any function or power imposed or conferred on the Minister, the Authority, the NTMA, a cover-assets monitor or manager by or under this Act if the act was done, or was omitted, in good faith for the purposes of this Act. Pr.10 S.100

101.—The fact that a person is registered under this Act as a designated credit institution, or that a person is in any respect being regulated or monitored under this Act, does not of itself constitute a warranty that the person is solvent or that the person is complying with, or has complied with, this Act, or with obligations imposed on the person by or under this Act. Designation of credit institution not to be a warranty of solvency, etc.

102.—(1) In this section—

“corresponding law”, in relation to a relevant overseas country, means a law in force in that country which corresponds to, or substantially corresponds to, the provisions of this Act;

“relevant overseas country” means—

- (a) an EEA country (other than the State), or
- (b) a category A country, or
- (c) a category B country designated by an order in force under section 33(4) or 48(4).

(2) This section applies when a corresponding law of a relevant overseas country contains provisions that treat—

- (a) designated credit institutions, and
- (b) the holders of asset covered securities issued by those institutions,

no less favourably than their counterparts in that country.

(3) If—

- (a) a credit institution established and authorised in a relevant overseas country has issued securities that, under a corresponding law of that country, are equivalent to or substantially equivalent to asset covered securities issued by a designated credit institution in accordance with this Act,
- (b) those securities are, in accordance with that law, secured over or backed by assets that would be eligible to be cover assets for the purposes of this Act if held by a designated credit institution,
- (c) assets located in the State provide security or backing to satisfy the claims and rights of holders of those securities, and
- (d) that security or backing is equivalent to, or is substantially equivalent to, that to which preferred creditors are entitled under *Part 7*,

Reciprocal arrangements with other countries.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

Pt.10 S.102

the rights and benefits conferred by this Act on preferred creditors referred to in *paragraphs (a) and (b)* of the definition of that expression in *section 3(1)* also extend, subject to *section 87* and with such modifications as are prescribed by the regulations, to holders of equivalent securities issued by relevant financial institutions in that country in so far as those securities relate to assets that are located in the State.

Giving of notices.

103.—(1) If, under this Act, a notice (not being a regulatory notice) is required or permitted to be given to a person, the notice may be given—

- (a) where the person is a natural person, by giving it to the person personally or by sending it by prepaid registered letter addressed to the person at the person’s usual or last known place of residence or business, or
- (b) where the person is a body corporate—
 - (i) by delivering it to a person who is or apparently is concerned in the management of the body, or
 - (ii) by leaving it at the registered office of the body with a person apparently employed at that office, being a person who has or apparently has attained the age of 16 years, or
 - (iii) by sending it by prepaid registered letter addressed to the body at that registered office.

(2) In *subsection (1)(b)*, “registered office” in relation to a body corporate means—

- (a) the office of the body that is the registered office or principal office in accordance with the law under which the body is incorporated,
- (b) if the body is not incorporated in the State, an office registered under a law of the State as a registered office of the body, or
- (c) in the case of a body that has no such registered office or principal office, the principal place of business of the body corporate in the State.

Certain documents exempt from stamp duty.

104.—Stamp duty is not chargeable on—

- (a) the issue of an asset covered security in accordance with this Act,
- (b) a transfer of such a security, or
- (c) a transfer of a business or a part of a business, or an asset, in respect of which the approval of the Minister or the Authority is required under *section 58*.

Expenses incurred in administering this Act.

105.—The expenses incurred by the Minister in administering this Act are, to such extent as the Minister approves, payable out of money provided by the Oireachtas.

Consequential amendments to other Acts.

106.—The Acts specified in *Schedule 2* are amended as indicated in that Schedule.

PROVISIONS APPLICABLE TO MANAGERS

Managers to whom this Schedule applies.

1. This Schedule applies to a manager appointed under *Part 6* or this Schedule.

Acting manager.

2. (1) If, because of illness or absence of a manager who is a natural person, the manager is unable to exercise the functions of his or her office, the Authority may, by notice published in *Iris Oifigiúil*, appoint a person to act in that office during the manager's illness or absence.

(2) The Authority may, at any time, remove from office a person appointed under *subparagraph (1)*.

(3) If a person other than the NTMA is appointed under this paragraph, the person is taken to be a manager appointed under *section 72*.

Vacation of office.

3. (1) The office of manager becomes vacant if the manager (being a natural person)—

- (a) dies,
- (b) resigns the office by a letter addressed to the Authority,
- (c) is removed from office by the Authority under *subparagraph (3)*,
- (d) is adjudicated bankrupt or makes a composition with creditors,
- (e) is disqualified or restricted from being a director of a company,
- (f) is convicted of an offence involving fraud, dishonesty or a breach of trust, or
- (g) is convicted in the State of an indictable offence or is convicted elsewhere than in the State of an offence that, if committed in the State, would be such an offence.

(2) The office of manager becomes vacant if the manager (being a body corporate)—

- (a) becomes insolvent or potentially insolvent,
- (b) resigns the office by a letter addressed to the Authority,
- (c) is removed from office by the Authority under *subparagraph (3)*,
- (d) is convicted of an offence involving fraud, dishonesty or a breach of trust, or
- (e) is convicted in the State of an indictable offence or is convicted elsewhere than in the State of an offence that, if committed in the State, would be such an offence.

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

SCH.1

(3) The Authority may at any time, by notice published in *Iris Oifigiúil*, remove a manager from office for proven misconduct.

Fees and expenses of manager.

4. (1) A designated or formerly designated credit institution in respect of which a manager is appointed is required to pay to the manager—

(a) such remuneration as the Authority determines for performing the manager’s responsibilities in relation to managing asset covered business activities on behalf of the institution, and

(b) such expenses as the manager reasonably incurs in carrying out those activities.

(2) The manager may, by proceedings brought in a court of competent jurisdiction, recover as a debt an amount due and payable under *subparagraph (1)*.

Section 106.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

PART 1

Amendment of Building Societies Act, 1989

| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> |
|-----------------|-------------------------|--|
| 1. | Section 2 | <p>(a) In subsection (1), insert the following definitions after the definition of “associated body”:</p> <p>“ ‘associated designated credit institution’, in relation to a building society, means a designated mortgage credit institution in which a society has invested in accordance with section 28;</p> <p>‘associated home loan’, in relation to an associated designated credit institution, means a housing loan (as defined in section 2 of the Consumer Credit Act, 1995) in respect of which the institution is the creditor or one of the creditors;”;</p> <p>(b) In subsection (1), insert the following definition after the definition of “deposit”:</p> <p>“ ‘designated mortgage credit institution’ has the meaning given in <i>section 3</i> of the <i>Asset Covered Securities Act, 2001</i>;”;</p> <p>(c) In the definition of “housing loan” in subsection (1), insert “, but does not include an associated home loan” after “section 22”.</p> |

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

| | | | |
|-----------------|-------------------------|------------------|-------|
| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> | SCH.2 |
|-----------------|-------------------------|------------------|-------|

| | | |
|----|-----------|--|
| 2. | Section 9 | In subsection (2), substitute “any ancillary or incidental powers that are related to the furtherance” for “any incidental powers that are necessary for the achievement”. |
|----|-----------|--|

| | | |
|----|------------|--|
| 3. | Section 16 | Substitute the following subsections for subsection (2): |
|----|------------|--|

“(2) A society may, if its rules permit, allow a person—

(a) to whom a housing loan or associated home loan is made, or

(b) to whom a loan secured by a mortgage of a freehold or leasehold estate or interest in a house has been made under the repealed enactments,

to be a member even though the person does not hold shares in the society. However, the liability of a person who is allowed to be such a member must not be any greater than would be the case if the rules treated the person as being a holder of shares in the society because of the making of the loan.

(2A) Subsection (2) continues to apply to a person referred to in that subsection even if the society’s rights in respect of the loan are disposed of under section 18(6).”.

| | | |
|----|------------|--|
| 4. | Section 18 | (a) In subsection (1), substitute the following paragraph for paragraph (b): |
|----|------------|--|

“(b) by receiving deposits or issuing securities or any other means (other than the issue of shares of the kind referred to in paragraph (a)).”;

(b) Substitute the following subsection for subsection (3):

“(3) A society shall ensure that its total liabilities under subsection (1)(b) do not exceed such proportion of its total liabilities under subsection (1)(a) as the Central Bank specifies in a notice given to the society. The Central Bank shall issue a notice for the purpose of this subsection whenever the occasion requires.”;

(c) Substitute the following subsections for subsection (5):

“(5) A society may give security for—

(a) any money that it borrows or raises, or

[No. 47.] *Asset Covered Securities Act, 2001.* [2001.]

SCH.2

| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> |
|-----------------|-------------------------|---|
| | | <p>(b) any money borrowed or raised by a body corporate or an approved housing body in which it has invested, or that it has supported, in accordance with section 28.</p> <p>(5A) Any such security may include mortgages held by the society and any interest in those mortgages, subject to compliance by the society with—</p> <p>(a) any requirements made under subsection (6A), and</p> <p>(b) the requirement to obtain the approval of the Central Bank, and</p> <p>(c) the terms of those mortgages.</p> <p>(5B) For the purposes of subsections (5) and (5A), ‘security’ means any kind of security recognised by law.”;</p> <p>and</p> <p>(d) Insert the following subsections after subsection (5B):</p> <p>“(6) A society may dispose of a mortgage, or any interest in a mortgage, that it holds as security for a loan or other form of credit, together with any other security that it holds in relation to the mortgage or interest.</p> <p>(6A) The Central Bank may, from time to time, serve on a society a notice specifying requirements that the society must comply with in relation to its exercise of the powers conferred by subsection (5), (5A) or (6).</p> <p>(6B) A society shall comply with requirements specified in a notice given to it in accordance with subsection (6A).”.</p> |
| 5. | Section 28 | In subsection (2)(a), insert “(other than an associated designated credit institution)” after “body corporate”. |
| 6. | Section 71 | <p>Substitute the following subsection for subsection (2):</p> <p>“(2) For the purposes of this section and Part XI, a person is a borrowing member of the society at a particular time—</p> <p>(a) if at that time the person’s indebtedness to the society,</p> |

[2001.] *Asset Covered Securities Act, 2001.* [No. 47.]

| | | | |
|---------------------|-----------------------------|------------------|-------|
| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> | SCH.2 |
|---------------------|-----------------------------|------------------|-------|

or to an associated designated credit institution, is in respect of—

- (i) a loan made under the repealed enactments, secured by a mortgage of a freehold or leasehold estate or interest in a house, or
- (ii) a housing loan or an associated home loan,

and

(b) if in either case the amount of the mortgage debt is not less than £500 or, if the Central Bank, by regulation, prescribes some other amount for the purposes of this subsection, that other amount.”.

PART 2

Amendment of Taxes Consolidation Act, 1997

| | | |
|---------------------|-----------------------------|---|
| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> |
| 1. | Section 198 | Substitute the following subparagraph for subsection (1)(c)(iii): |

“(iii) a person shall not be chargeable to income tax in respect of interest payable by a company if the person is not a resident of the State and is regarded as being a resident of a relevant territory for the purpose of this subsection, and the interest is interest to which section 64(2) applies or interest paid in respect of an asset covered security within the meaning of section 2 of the *Asset Covered Securities Act, 2001.*”.

PART 3

Amendment of Companies Act, 1963

| | | |
|---------------------|-----------------------------|---|
| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> |
| 1. | Section 61 | Insert the following subsection after subsection (3): |

“(4) An offer of asset covered securities is not to be treated as an offer to the public for the purposes of this Act if the offer would, had it been made in the State, be exempted under or excluded from the operation of the European Communities (Transferable Securities and Stock Exchange) Regulations, 1992. In this subsection, ‘asset covered securities’ has the meaning given by section 3 of the *Asset Covered Securities Act, 2001.*”.

PART 4

Amendment of National Treasury Management Agency Act, 1990

| <i>Item No.</i> | <i>Section affected</i> | <i>Amendment</i> |
|-----------------|-------------------------|---|
| 1. | Section 3 | <p>Insert the following subsection after subsection (1):</p> <p>“(1A) The Agency also has such other functions as are conferred on it by or under any other Act.”.</p> |
| 2. | Section 4 | <p>(a) Substitute the following subsection for subsection (1):</p> <p>“(1) The principal functions of the Agency are—</p> <ul style="list-style-type: none">(a) to perform on behalf of the Minister the functions delegated to it under section 5, and(b) to perform the functions delegated to it under Part 2 of the National Treasury Management Agency (Amendment) Act, 2000, and(c) to perform such other functions as are imposed on it by or under any other enactment.”. <p>(b) Substitute the following subsection for subsection (3):</p> <p>“(3) In carrying out the functions referred to in subsection (1)(a) or (b), the Agency is subject to the control and general supervision of the Minister.”.</p> |