TUARASCÁIL ón gComhchoiste Fiosrúcháin i dtaobh na Géarchéime Baincéireachta

An tAcht um Thithe an Oireachtais
(Fiosrúcháin, Pribhléidí agus Nósanna Imeachta), 2013

REPORT of the Joint Committee of Inquiry into the Banking Crisis

Houses of the Oireachtas
(Inquiries, Privileges and Procedures) Act, 2013

Volume 1: Report
Volume 2: Inquiry Framework
Volume 3: Evidence

Dept. of Finance
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THEME: R1

Effectiveness of the regulatory, supervisory and governmental regime structure

LINE OF INQUIRY: R1a

Appropriateness of the regulatory regime

22. Deputy Martin Ferris asked the **Minister for Finance** if the State has met the targets set out in the Memorandum of Understanding with respect to the Fiscal Advisory Council and the reform of the legal, medical and accounting professions. **[25640/12]**

Minister for Finance (Deputy Michael Noonan): The Memorandum of Understanding (MoU) for our EU/IMF Programme of financial assistance was signed in December 2010, and following each of the subsequent quarterly reviews by the Troika, an update of the MoU is agreed. Each update to the MoU can include the continuation of or revisions to existing commitments along with new commitments.

[531]The EU/IMF Programme commitments in relation to the Irish Fiscal Advisory Council have been met in full to date. The commitment in relation to the Fiscal Advisory Council was initially included in the MoU of December 2010. This provided that the Fiscal Advisory Council would be established by end-June 2011. The Irish Fiscal Advisory Council was established at the end of June 2011 on a non-statutory basis and commenced operations the following month thereby meeting this commitment.

A further requirement was included in the updated Memorandum of Understanding following the third review in July 2011 to provide for the statutory establishment of the Irish Fiscal Advisory Council in the Fiscal Responsibility Bill to be submitted to the Oireachtas by the end of December 2011. In light of the reform of the Stability and Growth Pact implemented by the so called “six pack” of five regulations and one directive and the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (“the Stability Treaty”) it was agreed to revise the deadline for the submission of the Fiscal Responsibility Bill a number of times in subsequent missions.

The most recent update to the MoU (signed in March 2012) includes a commitment, under the heading Structural Fiscal Reform, to be met by end-Q2 2012 which is:

“Fiscal Framework

Government will introduce a Fiscal Responsibility Bill consistent with the economic governance framework at the EU level, including provisions for a medium-term budgetary framework and fiscal rules. The Bill will also put the Fiscal Advisory Council on a statutory footing, formalising the Council’s independence through clear arrangements for adequate funding over time and for Council membership, including consultation with the relevant committee of the Oireachtas for nomination, appointment, extension and termination.”

On 26 April 2012, in the context of ensuring that the public will be fully informed on the implications of the Stability Treaty and have access to all available information to enable them to make an informed decision, I published a General Scheme of a Bill to be called the Fiscal Responsibility Bill. This sets out the draft legislation that the Government will bring before the Houses of the Oireachtas to implement key provisions of the Stability Treaty, if the Irish people decide to ratify the Stability Treaty in the forthcoming referendum. The General Scheme includes provision for the establishment of the Irish Fiscal Advisory Council on a statutory basis as it will be the independent institution at national level with responsibility for monitoring compliance with the rules set out in Article 3 of the Stability Treaty. A copy of the General Scheme was circulated to all Members of the Oireachtas and it is available on the Department of Finance’s website.

While issues relating to the reform of the legal, medical and accounting professions are matters for the Ministers of Justice and Equality, Health, and Jobs, Enterprise and Innovation respectively, I have been informed as follows.

On the issue of reform of the legal profession, the Legal Services Regulation Bill 2011 provides the statutory framework for delivering those structural reforms undertaken in the EU/IMF Memorandum of Understanding on Specific Economic Policy Conditionality aimed at removing restrictions to trade and competition in the legal sector.

The Legal Services Regulation Bill commenced Second Stage in the Dáil on 16th December 2011 which was completed on 23rd February 2012. In closing the Second Stage debate Minister Shatter outlined the approaches being taken to enhancing the Bill in preparation for Committee Stage — the objective is to commence Committee Stage before the summer recess.

[532]On the issue of reform of the medical profession the EU/IMF programme provides for the introduction of legislative changes to remove restrictions to trade and competition in sheltered sectors by the end of the 3rd quarter in 2011, including medical services, eliminating restrictions

on the number of GPs qualifying and removing restrictions on GPs wishing to treat public patients as well as restrictions on advertising.
Targets were met in relation to medical services:
The Health (Provision of General Practitioner Services) Act 2012 came into effect on 12th March 2012; the Bill was published on 30th September 2011. This Act provides for the elimination of restrictions on GPs wishing to obtain contracts to treat public patients under the GMS Scheme by opening up access to all fully qualified and vocationally trained GPs.
Legislation was not required for the other elements:
Restrictions on advertising by GPs had already been eliminated.
A “practice based assessment model” has been developed to evaluate and implement an appropriate fast-track training scheme for doctors who have extensive experience in Irish General Practice, but who lack some component of training making them ineligible for specialist registration.
There is no commitment in any of the Memoranda of Understanding relating to reform of the accountancy profession.

Minister/MAC Meeting, 2 February 2005 - Agenda Item No 2

Draft Framework for developing the Budget Strategy Memo 2006-2008

- The Mission of the Department of Finance is to promote a growing economy which will deliver a high level of sustainable employment, social progress and living standards.

- This involves promoting policies which deliver international competitiveness and internal efficiency.

- A key question is to what extent does the Government need to be involved in the economy to deliver internal competitiveness and internal efficiency.

- We can of course have whatever volume of Government services we wish (subject only to the Government's ability to tax and borrow) but the key question is what level of public services will the customers who buy our goods and services be willing to support.

- As this is a question of international competitiveness, a possible first step in arriving at an answer to that question is to look at the size of Government in our main competitors i.e. the Euro area, the UK and the US. About 2/5ths of our exports go to the Euro area, about 1/5th to the UK and 1/5th to the US[1].

- General Government Expenditure in the euro area in 2003 amounted to 49% of GDP; in the UK it was 43½% and 34½% in the US. In Japan the figure was 39%. In Ireland the corresponding figure by reference to the euro area was about 41½% of GNP[2].

- In both the euro area and Japan General Government spending is well above its long-term average (1970-1990) whereas in the US it is close to its long-term average. In the UK spending is 2 percentage points above its long-term average. The long-term average for Ireland is 5 percentage points over its current level as it includes the period where we had large deficits and debt coupled with massive unemployment and emigration.

- The current levels of expenditure in the Euro area may not be sustainable because of unacceptably high deficits and debt and resistance to higher taxation.

- If we take the long-term average of our trading partners and weight them by reference to trade the figure is 41% or broadly where we are now.

- Another measure is total General Government expenditure per head of population. On this basis using estimates for 2004, Ireland is just below €12,200, the UK is just below €12,500, the Euro area is about €11,900 and the US is €10,900.[3] Exchange rate volatility makes comparisons with the US difficult.

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[1] CSO External Trade Release, 29 March 2004

[2] The figures are taken from EU Commission Economic forecasts published on 18.10.2004. The Irish figure is expressed as a percentage of GNP, the relevant comparator for Ireland. The UK and Irish figures could be adjusted upwards by about 2½% to allow for the volume of private pensions by reference to the euro area.

[3] Source European Commission AMECO database

- General Government expenditure as a percentage of GNP in Ireland was on a downward trend from 1997 to 2000, both years inclusive. The total fall in the period was 5 percentage points. There was a 4 percentage point increase over the two years 2001 and 2002. Since then it has been stable, including the projection for 2005[4].

Are there other considerations to be taken into account?

- Ireland is spending about 4½% of GNP on infrastructure and this is up to 2½% higher than the average for the Euro area. Against that we have a younger population and that should lead to lower Health and Social Welfare costs.

- However, the number of people in Ireland aged 65 and over is set to increase substantially in absolute numbers, from 436,000 in 2002 to a figure of up to 741,000 by 2021[5] or by 70%.

- In the short term there are also risks to sustainability from our exposure to exchange rate movements and the likely reduction in housing output. An estimate of housing demand based on demographic and related factors is contained in the ESRI's Medium-Term review. The underlying annual demand for new dwellings in the period 2001 to 2006 is put at 49,000 and this is projected to fall to 42,000 per annum between 2006 and 2011. The risk arises from the fact that output of new dwellings is now estimated at 80,000 per annum.

- The reasons for the strong pressure on public expenditure are many but the key ones are:

  (1) Rising expectations regarding range and quality of public services;

  (2) Backlog of infrastructural projects due to a combination of low investment in difficult times, increasing population and higher income levels;

  (3) A reluctance to accept that it takes time to complete a major programme of change and that the constraints are not just money but also skills and experience, including management.

- The physical constraints to rapid change were evident in the two years 1999-2000. A rapid increase in capital spending in that period pushed construction cost inflation[6] up by over 22% at a time when the CPI increased by just over 7%. In other words much of the extra spending went on higher prices rather than higher output.

- These constraints apply equally to current spending. For example, in the Health area total current spending increased at an annual average rate of 16.6% in the six years 1997 to 2003. During the same period the numbers employed increased by almost 42%, from 67,900 to 96,300. Despite these

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[4] Calculations based on CSO data provided to the European Commission
[5] 2021 figure from *Population and Labour Force Projections 2006 to 2036*, CSO, December 2004
[6] *Private Non-Residential Construction Tender Price Inflation* from Dept. of the Environment publication *Review of the Construction Industry 2003 and Outlook 2004-2006*, Autumn 2004

increases the people availing of the service do not appear to be satisfied that the service is meeting their needs.

Measures required to balance the supply of and demand for public services

- Maintain a competitive economy as this is essential to providing significant additions to the pool of resources available to fund public spending.
- There is a need to establish a stronger link in the public mind between taxation and spending. This is largely a presentational issue which we are examining with a view to developing specific proposals centering on a unified budget.
- There is a need for a stronger focus on improved public service structures and management to get better value for the money being spent. The new structures being put in place to manage the Health system and more generally the linking of performance to pay are important moves in this regard.
- Continuing to spend about 5% of GNP on infrastructure is already beginning to produce results. Over the next two to three years the stream of projects being finished will begin to have more of a positive impact. If the level of capital spending is maintained over the rest of the decade this positive impact will become more pronounced.
- The projects in the Programme for Government will need to be prioritised and there has to be an acknowledgment that some things will take longer to do than others.
- The financial envelopes provide a vehicle for planning over a five year period and this can be expanded for a longer period where required e.g. Transport.

What does all this mean for spending in 2006 and subsequent years?

- It means that if growth holds close to potential, we can hope to command the current percentage of economic resources for public expenditure. In Central Government or annual budget terms this means just below 37% of GNP. In 2005 terms this amounts to €48,835 million.[7]
- In 2006 we are projecting 37% of GNP to be €52,580 million, an increase of 7.7% or €3,745 million. This of course is growing expenditure in line with the growth in Gross National Product.
- If we target capital spending at 5% of GNP and allow for the projected increase in Central Fund Services (debt interest and the EU Budget) some €11,265 million of the figure is already committed, leaving €41,315 million for voted current spending, an increase of 6.6% on the 2005 provision of €38,766. The corresponding increase in 2005 was 8.9%. The lower increase in current spending is largely due to increasing capital spending from 4½% of GNP in 2005 to 5% in 2006.

[7] The figures for 2005 and 2006 are taken from Budget 2005

Summary

- The key points here about our level of public spending are:
- At 41½% of GNP we spend less than the euro area or the UK but more than the US. However, we have key advantages in terms of age of population and defence spending in particular.
- As a small open economy we need to stay competitive if we are to continue to grow. Our cost structure is critical to our competitiveness; wage costs and the cost of government are particularly important.
- If we keep our level of spending as a percentage of GNP at about the current level we will resolve our infrastructure deficit within a reasonable timeframe and increase current spending in 2006 by 6.6%.

TRANSMISSION RESULT REPORT (27 APR '99 16:03)
DEPT FINANCE

(AUTO)

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
008	MEMORY TX		98174867	02/02	OK

ERRORS

1) HANG UP OR LINE FAIL 2) BUSY 3) NO ANSWER
4) NO FACSIMILE CONNECTION 5) 8 MIN. OVERFLOW

Department of Finance

Department of Finance

Phone:6045509
FAX: 6789936/6767335
email:

Facsimile

To:Mr Michael McDowell SC
Fax:8174867
From: Single Regulatory Authority - Implementation Advisory Group
Date: 27/04/99
Re:
Pages: 2 including this.

SOR 12/33

Tom Considine asked me to send this to you

Jim O'Brien

F7/6/99 part 1

Proposed material from the Department of Finance representative for inclusion in the body of the Group's report

The preferred approach of the Department of Finance representative in relation to the SRA is the model outlined at paragraph XXX. However, in the interest of accommodating the Group, to the maximum extent possible, he would be prepared to accept a three Board model, if the joint Board of the Central Bank had the level of effective control normally associated with the main Board of a Group of Companies.

In that context, he considers that the proposed role of the joint Board as regards the SRA, while apparently providing for a unified approach to regulation and consumer issues, has a disabling drawback in that the structure proposed does not provide for the unity of the Central Bank in operational terms. His main concern is that because of the structure of the three Board model, the joint Board will be perceived as being nominally responsible for the SRA, whereas de facto it would have no role of substance in relation to the operation of the SRA.

The principles of sound corporate governance and accountability would require that in any three Board structure two of the Boards, should derive their mandates from, and be accountable to, the joint Board. This is not what is proposed by the majority of the Group in the case of the Boards of the SRA or of the Monetary Authority. To resolve this problem, it would be essential that the Joint Board, in addition to the roles proposed for it, should be responsible for determining high-level policy in relation to regulation, for the approval and monitoring of the budget for the overall Central Bank entity and for approving its consolidated annual accounts and report. The SRA would as a consequence report to the joint Board in respect of the execution of that policy.

IBOA THE FINANCE UNION

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U 22
2 PAGES

04/0322/MF
Mr. Kevin Cardiff
19/5/04

/mw

19 May 2004

Mr. Charlie McCreevy, TD,
Minister for Finance,
Department of Finance,
Kildare Street,
Dublin 2.

Re: AIB Overcharging Practices in Foreign Exchange

Dear Mr. McCreevy,

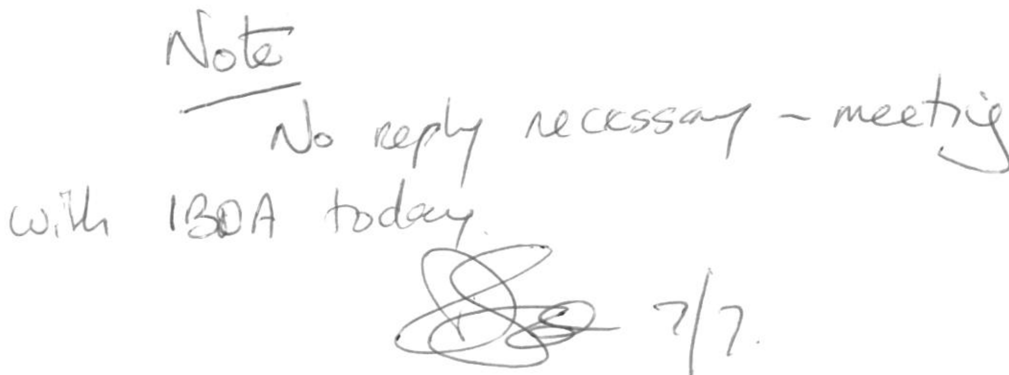
IBOA welcomes the Government's decision to amend the Central Bank and Financial Services Authority of Ireland Bill, giving increased powers to IFSRA, but would emphasise that any substantial fines or penalties must be targeted at the corporate institution guilty of overcharging and not junior staff carrying out their duties as directed by senior management.

In light of the scandal over the overcharging of AIB customers and the Government's decision to introduce new legislation and penalties for financial institutions who overcharge customers, IBOA seeks an urgent meeting with your office to discuss this issue.

It is imperative that confidence in our banking system is restored as soon as possible.

Yours sincerely,

Larry Broderick,
General Secretary.



11/03

IBOA SEEK URGENT MEETING WITH MINISTER MCCREEVY OVER AIB OVERCHARGING SCANDAL

WEDNESDAY 19TH MAY 2004

The General Secretary of IBOA – The Finance Union, Mr Larry Broderick, today sought an urgent meeting with the Minister for Finance, Mr McCreevy, in light of the scandal over the overcharging of AIB customers and the Government's decision to introduce new legislation and penalties for financial institutions who overcharge customers.

Mr Broderick said, "IBOA members are seriously concerned about the latest scandal to hit Irish Banking and we have been inundated with calls from worried staff and customers. IBOA's Executive Committee met to discuss this issue and expressed alarm and disquiet over recent revelations. It is imperative that confidence in our banking system is restored as soon as possible and this can only be achieved by a quick, open and totally transparent investigation into what has occurred and why."

Mr Broderick added, "IBOA welcomes the Government's decision to amend the Central Bank and Financial Services Authority of Ireland Bill, giving increased powers to IFSRA, but would emphasise that any substantial fines or penalties must be targeted at the corporate institution guilty of overcharging and not junior staff carrying out their duties as directed by senior management. It is important to remember that those who profited from overcharging customers are not the ordinary staff working in the Bank and under no circumstances should they be the people scapegoated from this process."

Mr Broderick concluded, "IBOA looks forward to the work of both the IFSRA and Mr McDonald investigations and believe it is important in order to reassure reassure staff and customers that both reports are published in full. Similarly, IBOA believes the deliberations of the Oireachtas Committee on Finance and Public Service will have an important role in getting to the root cause of this latest scandal to engulf Irish Banking and for our part we look forward to cooperating with these bodies in their work."

Ends.

Further information contact IBOA Communications Manager, Marty Whelan 01 4755908, 086 2447623, marty.whelan@iboa.ie

BD14
1-11

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Mr Charley McCreevy, T.D.
Minister for Finance,
Department of Finance.
Upper Merrion Street,
Dublin 2.

Note
Summary position left on Brian Brady's voice mail. 17/2.

16-2-2004.

Dear Minister,

Central Bank and Financial Services Authority of Ireland Bill, 2003.

The Irish Bankers' Federation welcomes the publication of the Bill and the opportunity to comment on it. We were initially advised that the Bill would not reach Committee Stage until the middle of March and have been working to that timeline. We were advised on Wednesday 4th February that the Bill will commence Committee Stage on February 18th. We note that certain amendments were flagged at Second Stage and in particular that it was recognised that concerns exist in relation to the Sanctions Panel. We have arrived at the same conclusion in relation to the Panel and also have major reservations in relation to other aspects of the Bill.

Notified @ publication!

We have two major concerns. Firstly, we have obtained independent legal advice that the provisions surrounding the Enforcement and Regulatory Authority Sanctions Panel are open to serious challenge under the Irish Constitution and the European Convention on Human Rights, which is now part of Irish law.

Sanctions Panel etc. @ AG

Secondly, the powers of the Financial Services Ombudsman are far in excess of the powers of the State Ombudsman or the Pensions Ombudsman. As such they appear to contravene the principle of consistency set out in the White Paper " Regulating Better" (page 34) launched by the Taoiseach on 20 January, 2004.

We believe that the nature of the difficulties already highlighted and those to which we now draw attention are such that better solutions could be found if more time were available for discussion and we ask that consideration be given to reverting to the previously flagged timetable.

This submission contains suggestions as to how the Bill might be improved and because of time constraints deals only with major issues of principle. We have already flagged a number of factual errors to your officials and will, of course, advise of any further errors that come to light.

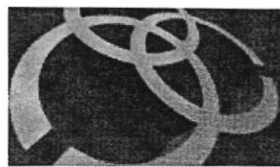
GOK1115

The submission incorporates the views and recommendations of the Board of the Credit Institutions Ombudsman of Ireland Ltd on Part VIIB and the IBF supports these views and recommendations.

In view of the urgency of the situation, we are available at short notice to meet with you and your officials to discuss and elaborate on the submission.

Yours sincerely,

Pat Farrell
Director General.



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IBF Submission on Central Bank & Financial Services Authority of Ireland Bill 2003

Enforcement and Regulatory Authority Sanctions Panel. ✓ @ AGs | Report Stage

We welcome the setting up of the Regulatory Authority Sanctions Panel and the Irish Financial Services Appeals Tribunal (set up under the Central Bank and Financial Services Authority Act 2003) as an alternative to Court Proceedings.

There are major flaws in relation to the Panel and its procedures which compromise its integrity.

1) All decisions of the Panel must be confirmed by the authority so it is inappropriate that members of the Authority may also sit on the Panel.
2) Furthermore, people who are involved in the investigation process may be members of the Panel albeit not in respect of cases they have investigated. The perception of the impartiality and independence of the Panel would be better served if investigation staff did not sit on the panel.
3) The Panel is not bound by the rules of evidence and matters which would be inadmissible in a Court could be taken into account by the Panel. The informality of the procedures (especially the failure to be bound by rules of evidence) and the severity of the penalties envisaged by the Bill as being applicable by the Panel, are inconsistent with Articles 34 and 37 of the Constitution.
4) The standard of proof required is not defined (balance of probabilities or beyond reasonable doubt).
5) The method of decision of the Panel, whether by unanimity or majority, is not defined. This is particularly relevant where independent experts sit on the Panel.
6) The necessary expertise to guarantee fair procedures and natural justice will not necessarily be available to the Panel under the present arrangements.
7) IFSRA, in effect, acts as investigator, prosecutor, judge and jury in its own case because the Panel is a Committee of IFSRA. The multi-faceted participation of IFSRA is in breach of natural justice, that requires justice not only to be done but to be seen to be done and that no person should be a judge in his own cause.
8) The Panel has the right to disqualify individuals, effectively depriving them of their livelihood. The processes around such disqualifications, see previous point, are not as robust as those in relation to other professions such as Doctors, Lawyers, Teachers etc.
9) The legislation as drafted allows the Board to find against "a person concerned in the conduct of the financial services provider" without qualification. The Board should not be able to deliver an adverse finding on a person unless the

person has been notified of the proceedings and has the opportunity to defend him or her self.

10) The prescribed penalties are draconian. For example, by way of contrast, the maximum penalties for breaches of the IAASA legislation is €150,000 and/or three months imprisonment. This is contrary to the principles outlined in the recently published White Paper - "Regulating Better".
11) The purpose of the double jeopardy provision (Section 33BC) is to provide that "a financial services provider or a director/manager who is penalised under this Part may not be prosecuted through the Courts and vice-versa". Both subsections (3) and (4) envisage the Panel being able to impose non-monetary sanctions even where the provider or person has already been prosecuted and sentenced by the Courts. It is possible to envisage a situation where an individual has been tried and found not guilty by the courts and being disqualified by the Panel on the same set of facts.

In order to address these issues and retain the concept of the Sanctions Panel we recommend the following. In arriving at these recommendations we have looked at other statutory bodies including the Irish Takeover Panel.

1) The composition of the Panel be such that both the Convenor and Deputy Convenor be sitting judges or barristers or solicitors eligible for appointment to judicial office. The remainder of the Panel to comprise Bank employees whose normal duties do not include investigations, and independent experts as defined in Section 33AO(3)(c).
2) Each Board to be chaired by either the Convenor or Deputy Convenor and comprise one Bank employee and one independent expert.
3) The Board to conduct its proceedings as outlined in Section 33AT save that (1)(a) and (1)(b) be deleted.
4) The standard of proof to be commensurate with the gravity of the allegation.
5) Decisions of the Board to be unanimous.
6) Subsections (3) and (4) of Section 33BC be deleted.
7) Section 33AW(4) be amended by the insertion of **"upon whom a notice has previously been served under Section 33AR(3)"** after **"financial services provider"** in line 46.
8) Burden of proof to be with IFSRA.

Financial Services Ombudsman.

In general, we welcome the absorption of the existing Credit Institutions Ombudsman Scheme into the new statutory body. We believe that the voluntary scheme has worked well for over 10 years in the absence of the powers now proposed and we believe that some of the proposed provisions are excessive.

In examining the proposals and powers granted to the Ombudsman we have looked at the powers of the State Ombudsman granted under the Ombudsman Act 1980 and the powers of the Pensions Ombudsman as granted by PART XI of the Pensions (Amendment) Act 2002. In the light of that examination we would make the following comments.

Power of entry

1) Section 57CF provides the Financial Services Ombudsman with powers of entry and powers to inspect premises (for what possible reason is unclear) and to inspect any document on the premises (whether relevant to the matter at hand or not). The State Ombudsman does not have this power in relation to Government Departments. The Pensions Ombudsman does not have this power in relation to complaints. Under Section 57CG the Ombudsman has power to apply to the Circuit Court for a compliance order against the provider and it appears to us that this power, which the Pensions Ombudsman also has, is sufficient to enable any necessary documents to be provided. In any event, in the absence of co-operation by the provider with regard to the production of specified documents, the Ombudsman will presumable find in favour of the complainant. Furthermore IFSRA get a copy of each complaint and also get a copy of the Ombudsman's findings so it will be in a position to take any necessary action against an uncooperative provider.
Accordingly, IBF recommends that Section 57CF be deleted.

FSO Court injunctions

2) Section 57CP provides the Ombudsman the right to seek injunctive powers in respect of "conduct being engaged in **or appears likely to engage in**, where the conduct is being investigated **or is proposed to be investigated.**" The High Court may grant the injunction if it is of the opinion that the conduct is **"likely to prejudice or negate the effect or implementation of a decision the Financial Services Ombudsman might make"** if **"the complaint is wholly or partly substantiated."** It appears that the Court is precluded from requiring the Ombudsman to give any undertakings in respect of damages in the event that the complaint is not substantiated and the provider suffers damages as a result of the injunction. Neither the State Ombudsman nor the Pensions Ombudsman has these powers. If a situation arises which is serious enough to require referral to the High Court it should be a matter for the Regulator who should decide what action should be taken.
Accordingly, IBF recommends that Section 57CP be deleted.

Say v funding

3) The Bill makes provision for the operations of the Ombudsman and the Council to be transparent and accountable. There is provision for the production of budgets, Annual Reports, financial reports audited by the Comptroller and Auditor General and accountability to the Minister and an Oireachtas Committee. It is worth noting that neither the State Ombudsman nor the Pensions Ombudsman is accountable to an Oireachtas Committee even though they are fully funded by the Exchequer. In the case of the Financial Services Ombudsman it is proposed that all costs be borne by the industry yet it has no say in relation to the overall budget or how it is spent. There is no accountability to the funders of the scheme and they have no say other that a minority representation on the Council. In the interest of equity, transparency and accountability we believe consultation mechanisms should be put in place to address the above concerns. A possible solution would be for the IFSRA Industry Panel to be consulted by the Council in relation to Terms of Reference, budgets and funding model.

4) We have always maintained that the names and financial affairs of individual complainants should not be revealed and that details of particular cases are best illustrated by way of anonymous case studies. A consumer should not have to surrender his privacy in order to have his unresolved complaint independently adjudicated on. This confidentiality is recognised in Section 57CC which provides for investigations to be held in private. It is reinforced by the provision in 57BD(2) which states that the Council has no role in relation to individual complaints Accordingly there is no rationale for providing copies of the Ombudsman's findings to the Council as proposed in Section 57CI(7)(c) and **this provision should be deleted.**

5) In Section 57BF (1)(b) the Council is granted powers to make regulations that are "necessary or convenient" to enable the Ombudsman to perform his duties. The comparable provision in the Pensions Ombudsman legislation provides for powers that are "necessary and incidental" and **we recommend that this wording be used in 57BF(1)(b).**

6) In Section 57BG the Chairman is precluded from making reports or comments on complaints that **"is being or has been investigated"** by the Ombudsman. However, the wording in Sections 57BH (2), 57 BV(1) and 57BW(2) open the possibility of details in individual cases which have been dealt with being brought into the public domain. (Only cases currently under consideration are granted protection). **We recommend that the relevant wording used in Section 57 BG by also used in Sections 57BH(2), 57BV1 and 57BW(2) and the existing relevant wording in these sections be deleted.**

7) Currently, Financial Services Providers, have legal obligations, through their contractual relationships with their customers. By allowing consumers to whom no legal obligations exist and with whom there are no contractual relationships to make complaints to the Ombudsman puts providers at risk to these parties. In the absence of a contractual relationship between the parties there is no legal basis for the intervention of the Ombudsman. **Accordingly, subsections (b) and (c) of the definition of "eligible consumer" in Section 57BA should be deleted.**

8) Section 57CD provides for a progress report to be made to the complainant only. This discriminates against the financial services provider and **we recommend that the words "and product provider" be inserted after "complainant" on line 7, page 42.**

9) Under Section 57CE(4)(b) the Ombudsman may examine staff of the service provider under oath. It would appear sensible to provide that the complainant may also be examined under oath at the discretion of the Ombudsman. Accordingly we recommend that the subsection (4) be amended by adding

"(c) summon and examine under oath the complainant in relation to any matter that appears to the Ombudsman to be relevant to the investigation or adjudication."

10) Section57CI(2)(g) suggests that a complaint can be substantiated on the grounds that the "...conduct complained of was otherwise improper". This particular ground should be dismissed on the grounds that it is insufficiently clear and categorical. On the contrary, it is vague and insubstantial and given the penalties capable of being imposed, is unjust to a financial service provider. As "improper" is without legal definition and only capable of subjective interpretation, **we recommend that (g) should be deleted.**

11) Under Section 57CI(4)(c) the Ombudsman may direct a Financial Services Provider to "change a practice relating to that conduct". It appears to us that in exercising this power that Ombudsman would be, on the basis of the facts of a particular case, amending practice within the industry. If the facts of the case are such that the Ombudsman believes the practice to be wrong for whatever reason he should state his case to IFSRA which is in a better position to decide, on the basis of general principles, whether or not the practice needs changing. **Accordingly, we recommend that Section 57CI(4)(c) be amended to read "to recommend to IFSRA that a particular practice relating to that conduct be examined to ascertain if change is needed".**

No

Consultative Panels.

IBF welcomes the provisions for the introduction of Consumer and Industry Panels and, in particular welcomes the provisions for the setting up of advisory groups and together with our colleagues in FIBI and IMC, look forward to engaging constructively in the Industry Panel and, where relevant, in the advisory groups.

We note the different functions of the Consumer Panel and the Industry Panel as set out in Sections 57CY and 57DB. The provisions in subsections (a), (b) and (c) of 57CY provide a measure of accountability and transparency to the Consumer Panel over the operations of IFSRA. These functions are not provided to the Industry which provide the majority of IFSRA's funding and this is inequitable in our view. Nobody is better placed to comment on the efficient and competent discharge of the functions of IFSRA, or on the delivery of value for money by IFSRA, than the financial services sector. Failure to take account of the views of the industry would also be contrary to the undertakings given by IFSRA in its recently published Strategic Plan.

Accordingly, we recommend that Section 57DB be amended by adding the functions specified at 57CY (a), (b) and (c). We have no objection to the functions at 57DB(b) and (c) being provided to the Consumer Panel.

No

The Part provides for both Panels to be invited to comment on all proposed policy or regulatory documents ahead of publication and for their views to be taken into consideration before finalising the documents (except in the circumstances outlined in Section 57DF(1)). There is also provision for existing regulatory and policy documents to be commented on but only at the request of the Authority. In our view both panels should be free to raise issues in relation to existing policy and regulatory documents and **accordingly recommend that the words "when the Regulatory Authority so requests," be deleted in Section 57CY(d) and Section 57DB(a).**

No.

Functions of Bank with respect to Regulated Financial Services Providers.

In considering proposed legislation in this area, it is important generally to recognise the extensive - and expanding – range of legislative or other measures that Irish financial services companies are currently required to observe in respect of corporate governance and reporting/disclosure. Specifically, the "compliance landscape" in which providers of financial services operate is shaped by elements such as :

A) The broad spectrum of existing Company Law provisions, which are complemented by various regulatory/supervisory regimes;
B) The additional measures provided for in the Companies (Audit and Accountancy) (Amendment) Act 2003 which will add further to the compliance burden facing financial institutions, insofar as reporting on their corporate governance practices and disclosures is concerned;
C) The extensive corporate governance compliance requirements currently imposed on institutions that are listed on the Stock Exchanges in Dublin and London, arising from the comprehensive provisions of the "Combined Code on Corporate Governance"; and
D) The further corporate governance obligations now faced by such companies with a listing on the New York Stock Exchange, arising from the recently-enacted Sarbanes-Oxley Act.

For example, Directors' compliance statements, are also required under the Combined Code on Corporate Governance, and the Companies (Audit and Accountancy)(Amendment) Act. **In the interest of harmonising what may very well be replicating/overlapping governance requirements, arising from such a diverse range of prescriptive instruments, the Bill under comment should therefore provide for appropriate exclusions from its scope, where its requirements are already satisfied under other compliance codes or legislative requirements.**

Section 21 introduces an obligation for regulated service providers to provide a compliance statement when required to do so by the Bank. In light of the enactment of the Companies (Auditing & Accounting) Bill in 2003, this section puts a much higher standard of compliance on the financial services industry than any other industry at this time. The obligations set out in this section are open-ended and disproportionate to the measures necessary to ensure a sound market place. The Federation is concerned that such an open-ended requirement is impractical, will act as a disincentive to possible new entrants to the Irish market, and fortify the increasing concerns of the current participants. It is important to recognise that such incalculable obligations have a negative effect on the attractiveness of Ireland as a financial services centre. Under section 21, inserting 24(1), item (c) of the definition of "relevant obligations" is extraordinarily wide and is incapable of reasonable interpretation. **For this reason, we recommend that item (c) be deleted.**

No

While the principle based approach to this section is a positive step, we would welcome confirmation that the information requested by IFSRA would be incremental to the Directors' compliance statement as set out in the Companies Act. Any overlapping would result in an unnecessary increased workload for the regulator and increased costs for the institution. Therefore, as the relevant obligations for the purposes of the Directors' compliance statement means the company's obligations under the Companies Acts, tax law, and any other enactments that provide a legal framework within which the company operates and that may materially affect the company's financial statements, these requirements should not be covered again by the IFSRA compliance statement. We believe that the Minister has indicated such an approach and **we seek confirmation that our understanding is correct**.

Section 21 inserting 24(3) provides that a director of a regulated financial service provider that is a body corporate is taken to be concerned in the management of the financial service provider even though the director is not involved in the day-to-day management. We believe that this provision is aimed at non-executive directors, which is confusing as non-executive directors already have the same legal obligations as an ordinary director and therefore **provision 24(3) should be deleted**.

Section 21 inserting 27(3) provides that if the provider commits an offence, each person who at the time when the offence is found to have been committed, was concerned in the management of the body commits a separate offence, unless the person establishes that - (a) the body committed the offence without the person's knowledge, or (b) although the person did have that knowledge, the person took all reasonable steps to prevent the commission of the offence. This reverses the burden of proof and effectively introduces the concept of "guilty until proven innocent". Such a development alongside the abandonment of rules of evidence by the sanctions panel is a worrisome trend for the industry. Accordingly, we recommend that **section 27(3) be amended so as to place the burden of proof back on IFSRA.**

Section 27(4). Where a body corporate has been found to commit an offence subsection (3) provides that a person concerned in the management of the company is also deemed to have committed an offence unless he establishes certain facts. This has the effect of shifting the burden of proof onto the individual and as such is unacceptable. Subsection (4) purports to allow an individual to be charged for that offence when the company has not been charged. However subsection (3) only has effect when the offence by the Corporate body **"is found to have been committed".** The only party that can make that finding is the Court so unless the charge against the company has been proved no action can be taken against the individual. **Accordingly, Subsection (4) should be deleted.**

The same problem arises in Section 36K and should be similarly dealt with.

Furthermore, section 19(3) inserting (2A) provides that a person is concerned in the management of a body corporate, if the person is in any way involved in directing, managing or administering the affairs of the body or firm. While this definition is only introduced for the purposes of the Central Bank Act 1997, concern has been expressed that such a broad definition would catch a wide spectrum of personnel not originally envisaged. For example, it would catch ordinary employees who put effect to decisions by managers. We recommend that **"administering" should be deleted from section 19(3).**

We would also welcome greater comfort regarding the delivery and publication of any statement. Where a compliance statement has been provided, this information should be kept confidential and not published in any form by IFSRA. Where such a statement has been prepared at the behest of another public authority, the duty should rest with IFSRA and not the service provider, to provide a copy of the statement to the petitioner. Furthermore, the Public Authority's entitlement to request a compliance statement should be restricted to matters within its statutory responsibility.

Section 27A – (1) allows the Bank to issue guidelines. Where it has been decided that such guidelines are necessary, IFSRA should be obliged to consult with all stakeholders. It should be ensured that the guidelines are consistent with the requirements of the Companies Act 2003 and the guidelines for completing the Directors' Compliance Statement.

Finally, we have a number of concerns regarding Chapter 3 and the imposition of obligations on the auditors of financial service providers. The main responsibility for an auditor is to provide a service for the shareholder, not to act as an appendage of the regulator. The obligations laid out affect the duty of confidentiality between an auditor and his/her client and compromises the ability of the auditor to carry out his/her primary task.

For instance, under 27C(1), the auditor must provide the Bank with a copy of a report on a matter that has come to the auditor's notice while carrying out work for the service provide. We believe the drafter has underestimated the sheer amount of paper such a requirement entails. "*While carrying out work*" is extremely broad and should be limited to the information, the regulator actually wishes to receive.

Under 27E(3), the auditor is to carry out specified work at the behest of the regulator unbeknown to the institution and presumably the institution will be liable for the fees. This is unprecedented and reflects the over-regulation of the Irish financial services industry. It is also difficult to envisage how the auditor will perform such a duty without leading the service provider to suspect that something is afoot.

Consequential and Other Amendments.

Amendment of Insurance Act 1936

Schedule 3, Part 1, item 1 distinguishes a financial contract from an insurance contract and is a welcome step. It is further addressed in Part 13, item 1. We believe a small drafting change is necessary. **The words "*under the contract*" at the end of the section should be placed after "*required*"**.

Amendment of Companies Act 1963

Section 99 of the Companies Act 1963 requires registration of certain types of charges created by companies. Generally, a negative pledge is a contractual undertaking not to create any further charges over the assets of a company. It is not itself a charge. We are at a loss to understand why this amendment is being made, particularly since this entire area is presently being reviewed under the current work programme of the Company Law Review Group.

Amendment of Investment Intermediaries Act 1995.

The proposed amendment to Section 28 requires a product producer to monitor the activities of appointed investment product intermediaries so as to ensure they comply with the provisions of the Act (subsection (4)) and to provide evidence in writing (subsection (5)) that it has complied with this requirement. Furthermore, under subsection (7) the product producer may not deal with an investment product intermediary unless it is satisfied that the intermediary is in compliance with the relevant legislation. These requirements are impossible to implement in practice. There are no procedures that can be put in place that could enable one legal entity to be satisfied to the best of its knowledge and belief that another entity is complying with all its legal obligations. In any event all of these intermediaries are authorised by IFSRA and subject to its supervision. The primary responsibility for compliance lies with the individual firms and the primary responsibility for ensuring compliance rests with IFSRA. **Accordingly, this section should be redrafted to reflect where the actual responsibilities lie and to take account of the points made above.**

Amendment of Consumer Credit Act 1995

It is proposed to give the Minister power to amend, by order, the definition of a consumer in Section 2 for the purposes of the Act. In this regard it should be noted that the primary purpose of the Consumer Credit Act was to implement into Irish Law the terms of the Consumer Credit Directive. Currently there is a draft Consumer Credit Directive, revising the terms of the original Directive, nearing completion of the adoption process. On adoption of that Directive it will be necessary to amend the Consumer Credit Act to bring our legislation in line with the new Directive. In these circumstances it is premature to amend the definition of consumer as this is one of the key terms of the existing and new directive. **Accordingly we recommend that this amendment be deleted.**

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98/1280/MF

Our Ref: 981668/TAN

1 **July 1998**

Mr. Charlie McCreevy
Minister for Finance
Government Buildings
Dublin 2

Dear Charlie,

Thank you for your letter of 10 June 1998 in response to my letter of 13 May 1998.

I take it from your letter and from earlier comments made by you that you are in favour of a single regulator but that you question whether it is necessary to establish a new body to undertake this function.

As we seem to be agreed that a single financial regulator is appropriate but that there are differences as to the precise remit and structure of the regulator, I would like to propose that a working group be established to look into this question. I would suggest that the group be chaired by an independent third party (someone like Prof Dermot McAleese would be appropriate) and would involve participation by your Department, my Department and the Central Bank, with the possible participation or input by other parties such as the Registrar of Friendly Societies and the Director of Consumer Affairs. The issues that would fall to be examined by the group would be-

1. the role of the single regulator (e.g., prudential supervision, conduct of business, the maintenance of orderly markets, the protection of clients)
2. the activities to be covered by the single regulator (e.g., activities currently supervised by the Bank plus other regulated activities such as insurance companies, credit unions, pension industry, mortgage intermediaries, credit intermediaries, friendly societies)
3. whether the role of the single regulator should be undertaken by the Central Bank, a subsidiary of the Bank or by a new body incorporating the existing supervisory functions of the Central Bank.

I do not believe that it is necessary to await the passage of current legislation allocating regulatory responsibility for insurance intermediaries to the Central Bank to undertake some of the preparatory work on the establishment of a single regulator.

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I note that you have commented on some of the issues arising in your letter. I believe that it would be most appropriate for the working group to tease out these issues. However, I would like to make a few brief comments.

I do not see the insurance companies as being the sole remaining area which could fall to regulation by the single regulator (some further areas to be considered are listed under point 2 above).

I do not accept that the single regulator could not have consumer protection functions as well as a prudential supervision responsibility. The main objectives and activities of the UK Securities and Investments Board (SIB) are stated to be —

- to protect investors - especially private investors - for example, from firms conducting investment business fraudulently, from financially unsound investment firms and from unsuitable investment advice;
- to promote clean and orderly investment markets - that is, markets which are free from abuse; and
- to guard against the failure of investment firms and to mitigate the effects of any such failure.

The Financial Services Authority (FSA), which will replace the SIB and all of the other UK regulatory bodies, has indicated that its regulatory approach will come under three main headings-

- to protect consumers of financial services;
- to promote clean and orderly markets; and
- to maintain confidence in the financial system.

In protecting consumers of financial services, the FSA states that it will:-

- set, promote, monitor and enforce high standards of integrity, financial soundness, fair dealing and competence for those it regulates, in order to protect and secure fair treatment for investors, depositors and policyholders;
- aim to ensure that consumers receive clear and adequate information about services, products and risks;
- acknowledge consumers' responsibility for their own decisions, while aiming to ensure that they are not exposed to risks that they should not reasonably be expected to assume.

I would suggest that the existing regulatory responsibility of the Central Bank goes well beyond prudential supervision (i.e., relating to the solvency of the undertaking being regulated) and has important elements of consumer protection. This is most clearly the case in regard to the responsibilities of the Bank for intermediary regulation under the Investment Intermediaries Act, 1995 (IIA).

Section 20 of the IIA provides that the supervisory authority shall administer the system of regulation and supervision of investment business firms in accordance with the provisions of this Act in order to promote—

(a) the maintenance of the proper and orderly regulation and supervision of investment business firms or of financial markets, or both, and

(b) the protection of investors.

This is further developed by the various detailed provisions in the Act in relation to disclosure obligations, advertising rules, the issuing of receipts, probity and competence of employed persons, codes of conduct, etc., - all of which relate essentially to consumer protection.

The type of regulation that will be required will obviously vary in relation to activities of the different bodies being regulated, e.g., the focus of regulation in relation to insurance companies primarily relates to the solvency of the company and its ability to meet on an ongoing basis claims arising whereas the advisory and intermediation role of intermediaries suggests that the focus of regulation must of, necessity, be broader in scope.

Without wishing to pre-empt the conclusions that the working group might come to under points 1 and 2 of its mandate above, I believe, in principle, that it would be desirable to establish a new body which would have a clear mandate and ethos reflecting a more pro-active approach to regulation.

The remit of the above working group would, of course, go well beyond that of the existing group looking at legal and consumer issues in banking. If you agree broadly with the above, we could submit a joint Aide-Memoire to Government.

Yours sincerely

Mary Harney, T.D.
Tánaiste and Minister for Enterprise, Trade and Employment

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F9/08/99 part 2

February, 1999

Mr Bertie Ahern TD
Taoiseach
Government Buildings
Dublin 2

Dear Taoiseach

I have been reflecting on the Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority (SRA) for the Financial Services Sector.

In my opinion, we can support the general thrust of the Report and the bulk of its recommendations. However, the issue concerning the establishment of an SRA within, or outside the ambit of, the Central Bank is something that requires further consideration. While accepting that the 'greenfield' option recommended in the Report has certain merits, I have to say that I am not convinced that these outweigh the considerable risks associated with it. I am very conscious that the Central Bank is a critical part of the financial architecture of Ireland and I am concerned that the benefits of its high reputation, both domestically and internationally, as regulator might be lost in a green field operation. Transferring such a key function to an untested institution could call into question, especially in an increasingly competitive world, the attraction of Ireland as a location for financial services providers. Furthermore, the role of the Central Bank as 'lender of last resort' cannot be forgotten. I don't think we should be prepared to take the risks associated with the greenfield option.

The views of the Board of the Central Bank itself are important: they feel that the main risks associated with a 'greenfield' operation include loss of regulatory expertise;

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difficulty in establishing an international reputation because a new authority would lack a proven record; industrial relations problems; loss of synergies between the Central Bank's regulatory and non-regulatory functions; high start-up and ongoing costs.

I have considered the various models for an SRA referred to in the Report. Weighing up the pros and cons of each, I have reached the opinion that the suggestion advanced in page 42 of the Report by the representative of your Department represents the most constructive way forward. Accordingly, I have had the attached draft of a proposed joint Memorandum to Government prepared. The key point in this is that the Report of the Implementation Advisory Group Report would be generally accepted with the important exception that an SRA would be established as a distinct pillar of a reconstituted Central Bank. While the main Board would have responsibility for approving high-level policy for the SRA and for normal corporate governance, the SRA would have a separate Board with a CEO appointed by that Board. Moreover, legislation would provide that the SRA will have full accountability to the Minister for Finance and the Oireachtas as well as operational autonomy.

It is my intention that the Memorandum should be submitted to Government for consideration at next Tuesday's meeting. Accordingly, I would be obliged for your views on it as a matter of urgency.

I have today issued a similar letter to the Tanaiste.

Yours sincerely,

Charlie McCreevy TD
Minister for Finance

Meeting
6 April 2001

Present: Minister, SG, Noel O'Gorman, David Doyle, Martin Moloney
Governor, Roy Donovan, Friedrich Danz, David Beggs

The Governor thanked the Minister for meeting them, and stated that the Central Bank Board welcomed the fact that a decision had been taken on the structure of financial regulation going forward. He indicated that the Board would wish to examine the draft legislation in due course to see if there was a danger of the structure proving overly-cumbersome.

The Minister stated that he was eager to proceed with all speed to develop the legislation but would welcome the input of the Board and all concerned parties. He was eager that all sides should be fully informed as the project developed.

The SG reported that a delegation from the Department had met the ECB for initial informal briefing on the proposals and the impression of that delegation was that the ECB were in many respects positively disposed to the approach outlined to them. There would, however, be a formal consultation process at a later stage. He also stated that representatives of the Central Bank and the Department of Enterprise, Trade & Employment were working on a Working Group with the Department of Finance. It would, he suggested, be appropriate for the Board of the Central Bank to decide what level of reporting from that Working Group to the Board they wished to see.

David Doyle reported that legal advisers have now been appointed and would be introduced to the Working Group members at its next meeting. He confirmed that the Working Group is being kept advised and is making its input at each stage of the process.

The Governor stated that, in due course, when appointed, the IFSRA Board and the CEO will also need to be brought fully into a consultative process with other parties, including with the Central Bank Board, and this was generally agreed.

The SG set out the breakdown of functions between the CBIFSA/IFSRA and IMA. David Beggs said that there remained a questionmark in their minds as to whether any power at CBIFSA board level to issue broad policy guidelines would be sufficiently extensive to deal with the issues which might arise. In response to a query, it was confirmed that the Governor would have the casting vote on the CBIFSA board.

The Governor went on to raise the issue of licensing powers. He said that the Board would wish the overall board of the CBIFSA to have a role in relation to licensing decisions. Mr. Danz enquired what the position would be where the granting of a license would have significance for overall financial stability.

David Doyle stated that the power to issue licences would lie with the IFSRA. Financial Stability would be the responsibility of the main board and where a financial stability issue was raised by a licence application that responsibility would be relevant to the final decision on whether or not to issue a licence. He pointed out that the IFSRA board would be of a high calibre and 6 of its members would also sit on the main board.

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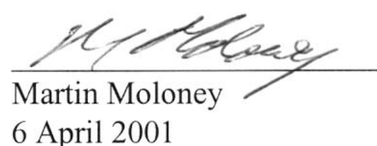
Noel O'Gorman suggested that many such concerns as to how particular cases would be handled would be clarified as the draft legislation emerged.

The Minister stated that his Department would do all in its power, in line with the Government decision, to examine and respond to any concerns raised as the legislation emerged.

The Governor thanked the Minister for meeting them. He stated that this meeting had already addressed some to the questions the Board had. He looked forward to continued cooperation as the project developed.



Martin Moloney
6 April 2001

IFSRA WG Doc: 21

Bullet Points for Secretary General's for Meeting with Governor on 9 July, 1998

1. The concept of establishing a single regulatory authority for all financial services in Ireland would seem to have universal acceptance. Both the Minister and the Tanaiste are agreeable. The Oireachtas report goes further.

2. In general, there appears to be a political if not a public perception that change in the way Ireland regulates its financial services is necessary and that one element of this process of change is a requirement to divest the Central Bank of its regulatory duties and transfer them to another agency.

3. The concept of change for the sake of change with no recognition of its necessity, its merits or otherwise, or without any clear indication of its consequences is not good policy particularly in dealing with an issue which affects the stability of financial markets. The only way to deal with this tendency is through objective and even-handed analysis of the issues. Unfortunately, the Bank and the Department despite their competence are seen as "vested interests", especially in relation to preserving the status quo - and our views may not get a fair hearing in all quarters.

4. The Tanaiste has proposed that an independent working group be established (Prof Dermot McAleese has been suggested as a possible chairman) with the remit of deciding the role of the authority, the types of financial services to be covered by it and its organisational structure (including the location of the functions)

5. Prima facie, it would be counter productive to do anything other than agree to the establishment of such a working group. The exact terms of reference of the group, its composition and the origins of its secretarial backup are matters that will need to be worked out in detail.

6. In general, this Department would be anxious to preserve its lead role in relation to policy underpinning the regulation of financial markets. It is proposed therefore, that we should initiate the process of preparing a submission to Government on the subject. We would, of course consult with the Department of Enterprise Trade & Employment and the Central Bank The Minister is being asked, before we revert to the Tanaiste, to request her agreement to a copy of her letter of 1 July, in which she set out her proposal, being forwarded to the Governor as a matter of courtesy

7. The Tanaiste has proposed that the Central Bank would be represented on the group and it would be correct that the Bank should participate actively and openly in it. The last thing that the Bank should do now is to 'man the barricades' and assume a defensive position as to do so would lend credence to the impression abroad that the Bank is either unable or unwilling to accept constructive criticism and adopt a proactive role towards financial services regulation

8. The Bank should look upon its participation in a working group as an <u>opportunity</u> to put its case for a coherent and structured move towards a single regulatory framework. An important dimension would be to contribute to understanding of ;

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X Chaired by an independent third party.

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(A) The only effective way to deal with this tendency is through objective and ~~[illegible]~~ even-handed analysis of the issues. ~~[illegible]~~

~~[illegible]~~ Unfortunately, the Bank & the Dept are ~~seen as~~ despite their (competence), seen as "vested interest", especially in relation to preserving the status quo — and our views may not get a fair hearing in all quarters.

- tensions between the macro and micro aspects of consumer protection (and how they might be resolved)

- the interface between the exercise of the supervisory function and the Bank's role in certain circumstances where public intervention in banking (in the public interest) might be called for.

Bullet Points for Secretary General's for Meeting with Governor on 9 July, 1998

- The concept of establishing a single regulatory authority for all financial services in Ireland would seem to have universal acceptance. Both the Minister and the Tanaiste are agreeable.

- The Tanaiste has proposed that an independent working group be established (Prof Dermot McAleese has been suggested as a possible chairman) with the remit of deciding the role of the authority, the types of financial services to be covered by it and its organisational structure

- *Prima facie*, it would be counter productive to do anything other than agree to the establishment of such a working group. The exact terms of reference of the group, its composition and the origins of its secretarial backup are matters that will need to be worked out in detail. In general, this Department would be anxious to preserve its lead role in relation to policy underpinning the regulation of financial markets. It is proposed therefore, that we should initiate the process of preparing a submission to Government on the subject. We would, of course consult with the Department of Enterprise Trade & Employment and the Central Bank. The Minister is being asked to request the Tanaiste's agreement that a copy of her letter of 1 July, in which she set out her proposal, be forwarded to the Governor as a matter of courtesy

- The Tanaiste has proposed that the Central Bank would be represented on the group and it would be correct that the Bank should participate actively and openly in it. The last thing that the Bank should do now is to 'man the barricades' and assume a defensive position as to do so would lend credence to the impression abroad that the Bank is either unable or unwilling to accept constructive criticism and adopt a proactive role towards financial services regulation

- In general, there appears to be a political if not a public perception that change in the way Ireland regulates its financial services is necessary and that one element of this process of change is a requirement to divest the Central Bank of its regulatory duties and transfer them to another agency. The concept of change for the sake of change with no recognition of its necessity, its merits or otherwise, or without any clear indication of its consequences is not good policy particularly in dealing with an issue which affects the stability of financial markets.

- The Bank should look upon its participation in a working group as an opportunity to put its case for coherent and structured move towards a single regulatory framework.

Presentation on the Report of the Implementation Group on the Establishment of a Single Regulatory Authority for the Financial Services Sector by Mr T Considine, Assistant Secretary, Department of Finance, to the Joint Committee on Finance and the Public Service on 13 October, 1999

Mr Chairman and Members of the Committee I would like to take this opportunity to outline the approach adopted by the Department of Finance in relation to the work of the Implementation Group on the establishment of a Single Regulatory Authority for the Financial Services Sector.

On 20 October, 1998 the Government agreed in principle to the establishment of a Single Regulatory Authority for the financial services sector at the earliest possible date; and agreed to the immediate establishment of an Implementation Advisory Group to progress the necessary work. The Group was chaired by Mr Michael McDowell, Senior Counsel and now the Attorney General. I was a member of the Group.

The terms of reference of the Group are set out in pages one and two of the Group's report.

The Group held 22 meetings and received submissions from 64 interested parties. The Group met with representatives of the staff currently employed in the area of financial services supervision, a representative of the UK Treasury, a representative of the UK Financial

GOR 12/1

Services Authority and other interested parties. The Group took account of the July 1998 Report of this Committee on the regulation and supervision of financial institutions. The Group also took account of the regulatory arrangements in other countries and the views of the parties who made submissions to it and who came to see it. Account was also taken of the analysis undertaken by the Working Group on Banking and Consumer Issues established by the Minister for Finance in April 1998, the remit of which was overtaken by the establishment of the Implementation Advisory Group.

The Group also noted that the terms of reference of the Moriarty Tribunal includes a remit to make whatever broad recommendations the Tribunal considers necessary or expedient for enhancing the role and performance of the Central Bank as regulator of the banks and of the financial services sector generally. However, as the Tribunal has not reported, the Group was not in a position to take account of any work which the Tribunal may have undertaken in relation to this matter.

In regard to the existing position, the Group noted that Ireland's financial services sector is supervised and regulated under a legal framework that is, primarily, the responsibility of the Departments of Finance and Enterprise, Trade and Employment. The Minister for Environment and Local Government is responsible for legislation in relation to Building Societies. This legal framework is made up of both Acts of the Oireachtas and regulations made under statute on foot of EU legislation.

The Department of Finance is responsible for the development of the legal framework for most of the regulation of the Financial Services Sector carried out by the Central Bank of

Ireland. The Department also represents Ireland in the development of EU legislation in the same area.

Apart from his role in providing the legal framework, the Minister for Finance has no general statutory function in relation to supervision. The legislation provided by the Minister for Finance requires the Central Bank to undertake the actual supervision. The Bank is required to undertake the supervision in accordance with the legal framework provided by the Minister for Finance. The Minister for Finance appoints the members of the Central Bank Board with the exception of the Governor, who is appointed by the President on the advice of the Government.

A key objective of the Department of Finance is to ensure that the Irish financial sector remains competitive and successful. Consistent with this, the Department believes that the sector must be regulated to best international standards, including the regulation of issues of particular concern to the consumer, with the maximum possible transparency.

Allegations which have been made concerning financial institutions have raised questions about the nature and scope of supervision of the financial sector. In particular, they have raised questions relating to the adequacy of the protection of consumers in their dealings with financial institutions and about the adequacy of the accountability obligations of the State regulatory authorities. Consequently, the Department is clear that the Single Regulatory Authority must allow for the maximum degree of co-operation permitted by EU law between those responsible for prudential regulation, consumer protection and law enforcement generally. The Single Regulatory Authority must also be seen to be subject to the maximum possible degree of accountability.

The Group worked well and reached agreement on all but one point, the structure and location of the SRA. The main point of difference is whether the Single Regulatory Authority should be an entirely new, independent organisation - the majority view - or whether this role should be given to a restructured Central Bank, where the Board of the Central Bank retains responsibility for policy on regulation. There was general agreement in the Group on the following points:

- Ireland needs a first class regulatory authority operating to high standards and dedicated to its regulatory role;
- The SRA should be fully accountable in the discharge of its functions in a transparent way to the Minister for Finance, to the Oireachtas and, in part, to a statutory financial services Ombudsman;
- The SRA should have clear statutory responsibility for the implementation of regulation and supervision of financial services coming within its remit;
- The SRA should be responsible for the implementation of both prudential regulation and consumer protection in the provision of financial services, and should provide a *"one stop shop"* both for the regulated bodies and their customers;
- The SRA should be self-financing in the sense that, taking one year with the next, the full costs of the SRA should be defrayed by the entities regulated by it;

- The SRA should be in a position to provide itself with the skilled staff and resources necessary to carry out its functions;

- The Minister for Finance should be the Minister responsible for the SRA.

In an early submission, the Department of Finance informed the Group that it had an open mind on where the SRA should be located and that it would not reach a conclusion on this point before considering all the submissions made to the Group and discussing them with the other members of the Group. The Department went on to inform the Group that it took the view that regulation of the financial sector will contribute to the further development of the sector if it is consistent with the following principles:

(a) It has the structure, skilled staff and resources required to provide the sector with a regulatory system which in all respects equals best international practice;

(b) That there are clear lines of responsibility and accountability;

(c) That there are acceptable and clear avenues for dealing with incidents of wrong doing which come to the attention of SRA; and

(d) That it is consistent with pursuing a policy of maximum possible transparency in the regulatory area.

Having considered the issues in full, the views of all interested parties and after detailed discussion within the Group the Department reached the decision that the best option would be to locate the SRA within a restructured Central Bank. The model proposed by the Department of Finance to achieve this objective is set out at Appendix II of the Group's Report.

This model provides for the establishment of an SRA, with consumer protection functions, within the Central Bank. The model provides for a high level of accountability for regulation to the Minister for Finance and the Oireachtas.

In parallel with the central banking function carried out as part of the ESCB in the euro zone, a separate Division would be established within the Central Bank, headed up by a person with the same rank as the current Director General of the Central Bank. This person would be responsible for the implementation of the functions of the Bank concerning all the prudential and consumer regulation assigned to the SRA and could be known as the Commissioner for Regulation. The functions of the Commissioner would be provided for by statute.

However, a person reporting directly to him or her, to be known as the Director for Consumer Issues, would also have specific statutory responsibility for consumer issues. The Board would retain responsibility for policy in relation to regulation as provided in statute. The Commissioner for Regulation would have autonomy insofar as the operation of the regulatory system would be concerned and would only report directly to the Board in respect of policy aspects of his or her regulatory and consumer affairs functions. The Commissioner would only report to the Governor in respect of organisational (e.g. staffing, finance etc.) issues. There would be free flow of information between the regulatory and consumer divisions.

With regard to accountability, the Commissioner for Regulation would be appointed by the Board of the Bank with the consent of the Minister for Finance for a fixed term which could be renewable. The post would be filled by open competition to be conducted by an independent body on a basis to be agreed by the Minister for Finance and the Minister for Enterprise, Trade and Employment. Both the Governor and the Commissioner for Regulation could each be required to appear before the relevant Joint Committee of the Oireachtas whenever requested and, in any event, at least once a year, to answer questions in relation to regulatory and consumer affairs matters in the context of the Bank's Annual Report and a specific report by the Commissioner.

In addition, under the law at present, the Minister for Finance can oblige the Board of the Bank or the Governor on behalf of the Board to consult with him in regard to the execution and performance by the Bank of any function or duty imposed on it other than those related to monetary policy. This power would continue under this model to apply to regulatory and consumer issues, thus emphasising the accountability to the Minister of these functions.

This model also envisages the establishment of a panel representative of consumer and industry interests which would be chaired by the new Commissioner for Regulation and which would provide a forum for reviewing the performance of the Central Bank in carrying out its financial regulatory duties as well as providing an opportunity for the industry and consumer interests to suggest initiatives which they wish to see pursued. This model also envisages the establishment of a single statutory Ombudsman scheme for financial services, fully independent of the Central Bank. Complaints raised by customers of regulated entities would be referred to the relevant financial institutions in the first instance. In the event that a customer is unhappy with the institution's response he/she would be able to refer the matter

to the Director for Consumer Issues in the Central Bank who, depending on the nature of the complaint, could deal with it himself or refer it to the Ombudsman. In any event, any decisions of the Central Bank in relation to customer complaints, would be appealable to the Ombudsman.

Advantages associated with this model are that:

- it addresses the need for change by providing operational autonomy for the regulatory function, while preserving what is already working well;

- it would extend the statutory remit of the existing regulatory role of the Central Bank to include consumers who are at present provided for separately;

- it provides a high level of accountability;

- the relationship between the monetary authority and the regulator would not be disturbed if the SRA were located within the Central Bank; it is important that co-ordination between the two functions is maximised;

- the track record of the Central Bank in regard to its regulatory functions is extremely good and the confidence of the financial markets, both foreign and domestic, it has earned and retained is high;

- there is very considerable support among the entities currently regulated by the Central Bank for it to become the new regulator; criticism of the Bank in relation

to the exercise of its statutory functions, as prudential regulator, has been non-existent in the context of the submissions received;

- it would provide for continuity of expertise;

- it would help to minimise industrial relations difficulties.

While a new stand-alone organisation could give consumer interests a high priority and identity, there is no reason why the Central Bank, if restructured in the way I have just outlined, could not give the same focus and attention to consumer matters. The primary role assigned to the Bank up to now has been prudential supervision. The model proposed by the Department for regulating consumer issues, combining as it does a statutorily based officer at senior level within the SRA and a role for an independent Ombudsman, would significantly strengthen the position of consumers and would overcome the main shortcoming perceived in regard to the existing regulatory role of the Central Bank.

The Department of Finance also made clear to the Group that it had no objection to a solution which involved the establishment of a three Board structure within the Central Bank. Subject to the provisions of the Maastricht Treaty, the main Board would have responsibility for policy matters, including policy on regulation, and for corporate governance. One of the other two Boards would have autonomy in the day-to-day implementation of regulation, both prudential and consumer. The other Board would have operational responsibility for the non-regulatory business of the Central Bank, consistent with the provisions of the Maastricht Treaty. However, this approach to restructuring the Central Bank was also not acceptable to a majority of the Group.

Report

of the

Implementation Advisory Group

on the establishment of a

Single Regulatory Authority

for the

Financial Services Sector

May, 1999

OPUB

PUB01B01-P

PUB00169-001

Advertisement placed in the main national daily newspapers on the 9 November 1998

SINGLE REGULATORY AUTHORITY - IMPLEMENTATION ADVISORY GROUP

On 20 October, 1998 the Government agreed in principle to the establishment of a single regulatory authority for the financial services sector at the earliest date possible and agreed in the immediate establishment to an Implementation Group to progress the necessary work.

The Implementation Group is to advise the Government on

a) The role and functions of the single financial regulatory authority (e.g. prudential supervision, the maintenance of orderly markets, safeguarding of clients' funds, consumer protection, the development and regulation of conduct of business rules), including consideration of the issues arising from combining the functions of monetary policy and prudential regulation.

b) The range of financial service providers to be overseen by the authority (e.g. banks, building societies, Post Offices Savings Bank, insurance companies and brokers, investment intermediaries (including lawyers and accountants in as much as they handle clients' funds). exchangers, credit unions, friendly societies, finance companies, money lenders etc) also taking account of the development of electronic commerce which may involve new types of service providers.

c) The extent to which, if any, existing regulators (e.g. the Director of Consumer Affairs, Registrar of Friendly Societies, Central Bank and Department of Enterprise, Trade and Employment) would continue to have functions in relation to the regulation of the financial services sector and the extent to which any alteration to the status quo would impinge on the non-regulatory functions of the Central Bank.

d) The organisational structure for the authority including the manner of its public accountability.

e) The funding, resourcing and staffing of the authority (and issues arising in a transition to a new structure, including staffing and industrial relations and the extent to which the authority could be self-financing).

f) The legislative changes necessary for the establishment of the authority.

g) The time schedule (including insofar as necessary a phased implementation) for achieving the objective of a fully operational single financial regulator at the earliest date possible.

Submissions to the Implementation Group are hereby invited from interested individuals and organisations. The closing date for receipt of applications to the address hereunder is Monday 14 December 1998.

The Secretary
Single Regulatory Authority Implementation Advisory Group
C/O Department of Finance
Room 2.16
Government Buildings
Upper Merrion Street
Dublin 2

15/11/03

F009/040/08

Central Bank and Financial Services Authority of Ireland (No. 2) Bill, 2003: Approval for Circulation and Submission to Government on 25 November

Kevin Cardiff
Noel O'Gorman
Secretary-General
Rúnai Aire

Submitted herewith are:

- Draft Memorandum for Government
- Explanatory Memorandum
- Text of Bill

The Minister's approval is requested to:

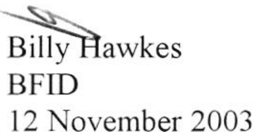
- Circulate the 3 documents to relevant Government Departments as soon as possible
- Submit the documents to the Government Secretariat in time for the Government meeting on 25 November (taking account of any observations from other Departments)

The text is at present being finalised by the Parliamentary Counsel, but no substantive changes remain to be made. A "stamped" copy is expected in the coming days.

The Minister is at ECOFIN that day.

In order to meet the publication deadline of end-November, the Bill would need to be considered by the Government at its meeting on 25 November.

The government departments most directly involved have been kept informed of the progress of the drafting of the Sections of most relevance to them. Nevertheless, the material should be circulated formally to them before end-week, in order to give them a few days for formal consideration. No substantive observations are expected.



Billy Hawkes
BFID
12 November 2003

(S6(a))

An Roinn Airgeadais
Department of Finance

Office of the Minister

December, 1999

Sráid Mhuirfean Uacht,
Baile Átha Cliath 2,
Éire.

Upper Merrion Street,
Dublin 2,
Ireland.

Telephone: (01) 676 7571
Facsimile: (01) 676 1951
GTN: 7109
URL: http://www.irlgov.ie

Mr Bertie Ahern TD
Taoiseach
Government Buildings
Dublin 2

Dear Taoiseach

I have been reflecting on the Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority (SRA) for the Financial Services Sector.

In my opinion, we can support the general thrust of the Report and the bulk of its recommendations. However, the issue concerning the establishment of an SRA within, or outside the ambit of, the Central Bank is something that requires further consideration. While accepting that the 'greenfield' option recommended in the Report has certain merits, I have to say that I am not convinced that these outweigh the considerable risks associated with it. I am very conscious that the Central Bank is a critical part of the financial architecture of Ireland and I am concerned that the benefits of its high reputation, both domestically and internationally, as regulator might be lost in a green field operation. Transferring such a key function to an untested institution could call into question, especially in an increasingly competitive world, the attraction of Ireland as a location for financial services providers. Furthermore, the role of the Central Bank as 'lender of last resort' cannot be forgotten. I don't think we should be prepared to take the risks associated with the greenfield option.

(56(b))

An Roinn Airgeadais
Department of Finance

Office of the Minister

Sráid Mhuirfean Uacht, Baile Átha Cliath 2, Éire.
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GTN: 7109
URL: http://www.irlgov.ie

December, 1999

Ms Mary Harney TD
Tanaiste & Minister for Enterprise
Trade & Employment
Kildare Street
Dublin 2

Dear Mary

I have been reflecting on the Report of the Implementation Advisory Group on the establishment of a Single Regulatory Authority (SRA) for the Financial Services Sector.

In my opinion, we can support the general thrust of the Report and the bulk of its recommendations. However, the issue concerning the establishment of an SRA within, or outside the ambit of, the Central Bank is something that requires further consideration. While accepting that the 'greenfield' option recommended in the Report has certain merits, I have to say that I am not convinced that these outweigh the considerable risks associated with it. I am very conscious that the Central Bank is a critical part of the financial architecture of Ireland and I am concerned that the benefits of its high reputation, both domestically and internationally, as regulator might be lost in a green field operation. Transferring such a key function to an untested institution could call into question, especially in an increasingly competitive world, the attraction of Ireland as a location for financial services providers. Furthermore, the role of the Central Bank as 'lender of last resort' cannot be forgotten. I don't think we should be prepared to take the risks associated with the greenfield option.

The views of the Board of the Central Bank itself are important: they feel that the main risks associated with a 'greenfield' operation include loss of regulatory expertise; difficulty in establishing an international reputation because a new authority would lack a proven record; industrial relations problems; loss of synergies between the Central Bank's regulatory and non-regulatory functions; high start-up and ongoing costs.

I have considered the various models for an SRA referred to in the Report. Weighing up the pros and cons of each, I have reached the opinion that the suggestion advanced in page 42 of the Report by the representative of the Taoiseach's Department represents the most constructive way forward. Accordingly, I have had the attached draft of a proposed joint Memorandum to Government prepared. The key point in this is that the Report of the Implementation Advisory Group Report would be accepted in its entirety with the important exception that an SRA would be established as a distinct pillar of a reconstituted Central Bank. While the main Board would have responsibility for approving high-level policy for the SRA and for normal corporate governance, the SRA would have a separate Board with a CEO appointed by that Board. Moreover, legislation would provide that the SRA will have full accountability to the Minister for Finance and the Oireachtas as well as operational autonomy.

It is my intention that the Memorandum should be submitted to Cabinet at the meeting of Wednesday, 22 December, 1999. Accordingly, I would be obliged for your views on it as a matter of urgency.

I have today issued similar letters to the Taoiseach and the Attorney General.

Yours sincerely,

Charlie McCreevy TD
Minister for Finance

Presentation on the Report of the Implementation Group on the Establishment of a Single Regulatory Authority for the Financial Services Sector by Mr T Considine, Assistant Secretary, Department of Finance, to the Joint Committee on Finance and the Public Service on 13 October, 1999

Mr Chairman and Members of the Committee I would like to take this opportunity to outline the approach adopted by the Department of Finance in relation to the work of the Implementation Group on the establishment of a Single Regulatory Authority for the Financial Services Sector.

On 20 October, 1998 the Government agreed in principle to the establishment of a Single Regulatory Authority for the financial services sector at the earliest possible date; and agreed to the immediate establishment of an Implementation Advisory Group to progress the necessary work. The Group was chaired by Mr Michael McDowell, Senior Counsel and now the Attorney General. I was a member of the Group.

The terms of reference of the Group are set out in pages one and two of the Group's report.

The Group held a total of 22 meetings and received submissions from 64 interested parties. The Group met with representatives of the staff currently employed in the area of financial services supervision. The Group also met with a representative of the UK Treasury and with a representative of the UK Financial Services Authority. The Group took account of the July 1998 Report of this Committee on the regulation and supervision of financial institutions. The Group also took account of the regulatory arrangements in other countries and the views of the parties who made submissions to the Group and who came to see the Group. Account was also taken of the analysis undertaken by the Working Group on Banking and Consumer Issues established by the Minister for Finance in April l998, the remit of which was overtaken by the establishment of the Implementation Advisory Group.

The Group also noted that the terms of reference of the Moriarty Tribunal includes a remit to make whatever broad recommendations the Tribunal considers necessary or expedient for enhancing the role and performance of the Central Bank as regulator of the banks and of the

financial services sector generally. However, as the Tribunal has not reported, the Group was not in a position to take account of any work which the Tribunal may have undertaken in relation to this matter.

In regard to the existing position, the Group noted that Ireland's financial services sector is supervised and regulated under a legal framework that is, primarily, the responsibility of the Departments of Finance and Enterprise, Trade and Employment. The Minister for Environment and Local Government is responsible for legislation in relation to Building Societies. This legal framework is made up of both Acts of the Oireachtas and regulations made under statute on foot of EU legislation.

The Department of Finance is responsible for the development of the legal framework for most of the regulation of the Financial Services Sector carried out by the Central Bank of Ireland. The Department also represents Ireland in the development of EU legislation in the same area.

Apart from his role in providing the legal framework, the Minister for Finance has no general statutory function in relation to supervision. The legislation provided by the Minister for Finance requires the Central Bank to undertake the actual supervision. The Bank is required to undertake the supervision in accordance with the legal framework provided by the Minister for Finance. The Minister for Finance appoints the members of the Central Bank Board with the exception of the Governor, who is appointed by the President on the advice of the Government.

A key objective of the Department of Finance is to ensure that the Irish financial sector remains competitive and successful. Consistent with this, the Department believes that the sector must be regulated to best international standards, including the regulation of issues of particular concern to the consumer, with the maximum possible transparency.

Allegations which have been made concerning financial institutions have raised questions about the nature and scope of supervision of the financial sector. In particular, they have raised questions relating to the adequacy of the protection of consumers in their dealings with financial institutions and about the adequacy of the accountability obligations of the State regulatory authorities. Consequently, the Department is clear that the Single Regulatory

Authority must allow for the maximum degree of co-operation permitted by EU law between those responsible for prudential regulation, consumer protection and law enforcement generally. The Single Regulatory Authority must also be seen to be subject to the maximum possible degree of accountability.

The Group worked well and reached agreement on all but one point, the structure and location of the SRA. The main point of difference is whether the Single Regulatory Authority should be an entirely new, independent organisation - the majority view - or whether this role should be given to a restructured Central Bank, where the Board of the Central Bank retains responsibility for policy on regulation. There was general agreement in the Group on the following points:

- Ireland needs a first class regulatory authority operating to high standards and dedicated to its regulatory role;
- The SRA should be fully accountable in the discharge of its functions in a transparent way to the Minister for Finance, to the Oireachtas and, in part, to a statutory financial services Ombudsman;
- The SRA should have clear statutory responsibility for the implementation of regulation and supervision of financial services coming within its remit;
- The SRA should be responsible for the implementation of both prudential regulation and consumer protection in the provision of financial services, and should provide a *"one stop shop"* both for the regulated bodies and their customers**;**
- The SRA should be self-financing in the sense that, taking one year with the next, the full costs of the SRA should be defrayed by the entities regulated by it;
- The SRA should be in a position to provide itself with the skilled staff and resources necessary to carry out its functions;
- The Minister for Finance should be the Minister responsible for the SRA.

In an early submission, the Department of Finance informed the Group that it had an open mind on where the SRA should be located and that it would not reach a conclusion on this point before considering all the submissions made to the Group and discussing them with the other members of the Group. The Department went on to inform the Group that it took the view that regulation of the financial sector will contribute to the further development of the sector if it is consistent with the following principles:

(a) It has the structure, skilled staff and resources required to provide the sector with a regulatory system which in all respects equals best international practice;

(b) That there are clear lines of responsibility and accountability;

(c) That there are acceptable and clear avenues for dealing with incidents of wrong doing which come to the attention of SRA; and

(d) That it is consistent with pursuing a policy of maximum possible transparency in the regulatory area.

Having considered the issues in full, the views of all interested parties and after detailed discussion within the Group the Department reached the decision that the best option would be to locate the SRA within a restructured Central Bank. The model proposed by the Department of Finance to achieve this objective is set out at Appendix II of the Group's Report.

This model provides for the establishment of an SRA, with consumer protection functions, within the Central Bank. The model provides for a high level of accountability for regulation to the Minister for Finance and the Oireachtas.

In parallel with the central banking function carried out as part of the ESCB in the euro zone, a separate Division would be established, headed up by a person with the same rank as the current Director General of the Central Bank. This person would be responsible for the implementation of the functions of the Bank concerning all the prudential and consumer regulation assigned to the SRA and could be known as the Commissioner for Regulation. The functions of the Commissioner would be provided for by statute.

However, a person reporting directly to him, to be known as the Director for Consumer Issues, would also have specific statutory responsibility for consumer issues. The Board would retain responsibility for policy in relation to regulation as provided in statute. The Commissioner for Regulation would have autonomy insofar as the operation of the regulatory system would be concerned and would only report directly to the Board in respect of policy aspects of his regulatory and consumer affairs functions. The Commissioner would only report to the Governor in respect of organisational (e.g. staffing, finance etc.) issues. There

would be free flow of information between the regulatory and consumer divisions.

With regard to accountability, the Commissioner for Regulation would be appointed by the Board of the Bank with the consent of the Minister for Finance for a fixed term which could be renewable. The post would be filled by open competition to be conducted by an independent body on a basis to be agreed by the Minister for Finance and the Minister for Enterprise, Trade and Employment. Both the Governor and the Commissioner for Regulation could each be required to appear before the relevant Joint Committee of the Oireachtas whenever requested and, in any event, at least once a year, to answer questions in relation to regulatory and consumer affairs matters in the context of the Bank's Annual Report and a specific report by the Commissioner.

In addition, under the law at present, the Minister for Finance can oblige the Board of the Bank or the Governor on behalf of the Board to consult with him in regard to the execution and performance by the Bank of any function or duty imposed on it other than those related to monetary policy. This power would continue under this model to apply to regulatory and consumer issues, thus emphasising the accountability to the Minister of these functions.

This model also envisages the establishment of a panel representative of consumer and industry interests which would be chaired by the new Commissioner for Regulation and which would provide a forum for reviewing the performance of the Central Bank in carrying out its financial regulatory duties as well as providing an opportunity for the industry and consumer interests to suggest initiatives which they wish to see pursued. This model also envisages the establishment of a single statutory Ombudsman scheme for financial services, fully independent of the Central Bank. Complaints raised by customers of regulated entities would be referred to the relevant financial institutions in the first instance. In the event that a customer is unhappy with the institution's response he/she would be able to refer the matter to the Director for Consumer Issues in the Central Bank who, depending on the nature of the complaint, could deal with it himself or refer it to the Ombudsman. In any event, any decisions of the Central Bank in relation to customer complaints, would be appealable to the Ombudsman.

Advantages associated with this model are that:

- it addresses the need for change by providing operational autonomy for the regulatory function, while preserving what is already working well;
- it would extend the statutory remit of the existing regulatory role of the Central Bank to include consumers who are at present provided for separately;
- it provides a high level of accountability;
- the relationship between the monetary authority and the regulator would not be disturbed if the SRA were located within the Central Bank; it is important that co-ordination between the two functions is maximised;
- the track record of the Central Bank in regard to its regulatory functions is extremely good and the confidence of the financial markets, both foreign and domestic, it has earned and retained is high;
- there is very considerable support among the entities currently regulated by the Central Bank for it to become the new regulator; criticism of the Bank in relation to the exercise of its statutory functions, as prudential regulator, has been non-existent in the context of the submissions received;
- it would provide for continuity of expertise;
- it would help to minimise industrial relations difficulties.

While a new stand-alone organisation could give consumer interests a high priority and identity, there is no reason why the Central Bank, if restructured in the way I have just outlined, could not give the same focus and attention to consumer matters. The primary role assigned to the Bank up to now has been on prudential supervision. The model proposed by the Department for regulating consumer issues, combining as it does a statutorily based officer at senior level within the SRA and a role for an independent Ombudsman, would significantly strengthen the position of consumers and would overcome the main shortcoming perceived in regard to the existing regulatory role of the Central Bank.

The Department of Finance also made clear to the Group that it had no objection to a solution which involved the establishment of a three Board structure within the Central Bank. Subject to the provisions of the Maastricht Treaty, the main Board would have responsibility for policy matters, including policy on regulation, and for corporate governance. One of the other two Boards would have autonomy in the day-to-day implementation of regulation, both prudential and consumer. The other Board would have operational responsibility for the non-regulatory business of the Central Bank, consistent with the provisions of the Maastricht Treaty. However, this approach to restructuring the Central Bank was also not acceptable to a

Speaking Points

Point 1 (I accept SRA one-stop-shop concept)
At the outset, I have to say that I fully accept the need for a Single Regulatory Authority that deals with both prudential and consumer issues. I am on the record as having supported the 'one-stop-shop' concept recommended in the Group's report.

Point 2 (Greenfield site option - too many risks)
While acknowledging the benefits of the "Greenfield Site" recommended by the Group, I consider that it carries with it a number of risks**.**

The Central Bank has a high reputation as regulator including in its supervision of IFSC companies. This has been crucial to the development of the IFSC as a major international location for financial service providers. If the Central Bank was to lose this role, it could jeopardise the future development of the IFSC and possibly even undermine the confidence of existing financial services firms in our supervisory regime.

The Central Bank is a critical part of the financial architecture of Ireland and should not be lightly dismantled. The loss of its regulatory and supervisory functions would leave the rump of the Central Bank with little real function other than running the Mint.

The role of the Central Bank as the lender of last resort to the Irish banking system would be complicated.

There could be significant industrial relations difficulties associated with "breaking up" the Central Bank.

There are real risks that the Green field site could turn out to be the wrong choice, and any damage done by this approach would be very difficult to retrieve. **I am not prepared to take these risks.**

Point 3 (The Central Bank will be consumer friendly)

The Central Bank at present, in common with many others, does not have a strict consumer protection brief. This is formally vested here in the Director of Consumer Affairs. The reconstituted Central Bank that I would like to see will commit itself fully to this new role. The Board has affirmed this and I know that it will deliver on it.

Point 4 (I like Dermot McCarthy's 'Twin-pillars' alternative)
I do acknowledge the views of the majority of the Group concerning the need for sufficient accountability and separation of purpose. For that reason, I am prepared to support a model for the SRA along the lines advanced in the Report by the representative of the Taoiseach's Department, Dermot McCarthy. This reservation says:

"Mr Dermot McCarthy considers that a Single Regulatory Authority with the characteristics set down in paragraph 6.3 could be achieved by its establishment as one pillar of a reconstituted Central Bank. The members and Chief Executive could be appointed, as proposed in Chapter 6, and could be made, by statute, accountable to the Minister for Finance and the Oireachtas.

The relationship of the Board of the Authority to the Board of the restructured Central Bank could secure accountability and operational autonomy, and provide a framework linking the regulatory function to the other, cognate responsibilities of the Central Bank, while facilitating a significant degree of continuity with respect to staffing and institutional reputation."

Accordingly, I feel the SRA should be set up as a separate agency or pillar within the overall ambit of the Central Bank - as proposed by Dermot McCarthy in your report.
[Note: Diagram attached showing proposed 'Twin Pillars' structure].

Point 5 (Structure of Twin Pillars)
What I envisage is that:

- the Central Bank will be fundamentally re-organised

- there will be a 'monetary' agency with is own Board

- the other Agency in the reconstituted Central Bank would be the SRA. I would appoint the Board of this. It will have an independent Chair and 'public interest' representation (e.g. consumer, legal & financial). It will appoint a CEO, with my consent. It will deal with prudential and consumer issues. There will be a statutory position of Customer Protection Director. There will be a statutory Financial Services Ombudsman as well as a Financial Services Regulation Tribunal.

- the SRA would be operationally independent

- the overall Board of the reconstituted Central Bank would be chaired by the Governor and would include amongst its members representation from the two agencies, but would include, as a minimum, the Chairman and CEO of the SRA.

- the overall Board would set high-level policy objectives in accordance with statutory requirements. The initiative for any papers relative to the SRA being brought before the main board would be vested in the SRA [this is used in EU fora to good effect with the Commission having sole right to initiate papers]. It will retain responsibility for normal corporate governance such as provision of joint services, approval of annual reports and accounts.

Point 6 (Adequate accountability with 'Twin pillars' option)
There would be adequate accountability with the 'Twin Pillars' option.:

- the SRA would have its own Board appointed by me and CEO appointed with my consent,

- the SRA would be accountable to the Minister for Finance and to the Oireachtas,

- the SRA will produce a separate annual report and be subject to scrutiny by a relevant Committee of the Oireachtas

- there would be provision for the removal of the Board, the CEO and other statutory officers of the SRA for stated reasons,

- the Financial Services Ombudsman and Customer Protection Director would also be accountable persons,

- in summary, the SRA 'Pillar' would have complete accountability

- and the main Board of the Central Bank would also be removable by the Minister for Finance

Point 7 (Non-sackability of Governor)
Given the in-built accountability at many levels of the proposal for the 'twin Pillars' approach, I consider that the narrow issue of the non-sackability of the Governor should not

related pay deduction for public servants. In addition, the postponement of the next rounds of the Social Partnership pay agreement ‘Towards 2016’ secured savings on the pay bill. In 2010 these are estimated to achieve of up to €1 billion in savings.

Measures Delivered in this Supplementary Budget

Section II – Summary of Budget Measures – set out the specific expenditure and taxation measures announced in the Supplementary Budget.

An additional €1.8 billion is being raised over the remainder of 2009, consisting of an additional €1 billion in tax revenue and an additional €799 million from the changes in PRSI and Health Levy arrangements. The additional €1 billion in tax revenue is equivalent to €1.9 billion in a full year. As a result of this, tax revenue in 2009 is now forecast to yield €34.4 billion. By end-March, €8.5 billion had already been collected, representing about 25 per cent of the annual target, which is in line with the average proportion collected in the first quarter of each year over the last decade.

In addition, the changes to PSRI and Health Levy arrangements will yield €1.65 billion in a full year. The impact of this additional income for the State means that Departments will have lower net expenditure on a post-budget basis.

In terms of expenditure, further adjustments of €886 million in gross current expenditure and €576 million in capital have been announced. While capital expenditure has been reduced, it still represents 5 per cent of GNP, which remains high by international standards.

In addition to the above measures, the Government will receive over a two year period the value of the assets of the third level university pension funds and the pension funds of the non-commercial semi-state bodies. The public finances will also benefit from the substantial amounts of funds that are now being paid on a quarterly basis by the six covered financial institutions in respect of the Government Guarantee they have received.

Taking account of the impact of the measures in the Supplementary Budget, a General Government Deficit of -10¾ per cent of GDP is now forecast for 2009. Table 4 below shows the pre and post adjustment Exchequer and General Government Deficits.

Table 4: Budgetary Path 2009

	Pre-Adjustment	**Post-Adjustment**
Exchequer Balance (€m)	- €23 billion	- €20.35 billion
General Government Balance (% of GDP)	-12¾%	-10¾%

Economic impact of the Supplementary Budget Measures in 2009

The Supplementary Budget adjustments of €3.3 billion that are being implemented during the year are equivalent in full year terms to a package of over €5 billion. Quantifying the impact of these measures on economic activity is an inherently uncertain exercise and requires a combination of econometric model simulations and judgement. It is estimated that the level of economic activity will be reduced by about 1 percentage point on foot of the Supplementary Budget.

EXCHEQUER STATEMENT

STATEMENT OF EXCHEQUER SURPLUS / (DEFICIT) in the period ended December 2009

Receipts and Expenditure - Current		**1 January 2008 to 31 December 2008**	**1 January 2009 to 31 December 2009**
		€000	€000
Receipts			
Tax Revenue	Note 1	40,777,196	33,043,173
Non-Tax Revenue	Note 2	846,901	836,149
Total		41,624,097	33,879,322
Expenditure			
Voted (Departmental Expenditure Voted Annually by the Dail)	Note 4	(40,756,518)	(40,255,879)
Non-Voted Non-discretionary Expenditure charged directly on the Capital Fund			
. Sinking Fund *	Note 5	(487,977)	(572,950)
. Other Non-Voted Current Expenditure	Note 5	(3,448,308)	(4,419,281)
Total		(44,692,803)	(45,248,110)
Surplus / (Deficit) on Current Account		**(3,068,707)**	**(11,368,788)**
Receipts and Expenditure - Capital			
Receipts			
Sinking Fund *		487,977	572,950
Other Capital Receipts	Note 3	909,704	891,587
Total		1,397,681	1,464,536
Expenditure			
Voted (Departmental Expenditure Voted Annually by the Dail)	Note 4	(8,556,276)	(6,907,395)
Non-Voted (Expenditure charged under particular legislation)	Note 6	(2,486,519)	(7,829,324)
Total		(11,042,795)	(14,736,719)
Surplus / (Deficit) on Capital Account		**(9,645,114)**	**(13,272,183)**
Exchequer Surplus / (Deficit)		**(12,713,821)**	**(24,640,971)**
Source and Application of Funds			
Total (Borrowing) / Repayment	Note 7	(30,310,525)	(24,474,146)
Total Increase / (Decrease) in Exchequer Deposits and Other Balances	Note 8	17,596,705	(166,825)
Exchequer Surplus / (Deficit)		**(12,713,821)**	**(24,640,971)**

* The Sinking Fund provision is a transfer from the current account to the capital account to reduce national debt

further reduction of nearly €1.5 billion in gross public expenditure and additional revenue of €1.8 billion.

The scope for additional expenditure reductions at this stage of the year is limited. Further immediate reductions in expenditure today would have necessitated additional pay cuts for public servants, reductions in the rates of payments for welfare recipients and the cancellation of all contractually uncommitted investment projects.

The deterioration in tax revenues from €47¼ billion in 2007 to €40¾ billion in 2008 to an envisaged €34½ billion this year is a far greater decline than the decline in the economy. This illustrates that in recent years our tax system became over reliant on fast growing, construction heavy economic activity. As we move to the next stage of our economic development, we must restructure our tax system to suit an export led economy growing at a more sustainable pace.

Multi-Annual Plan

Last January, the Government proposed to the European Commission that we could fulfil our obligations to secure stability and growth over a 5 year period. I am glad to report to this House that following intensive discussions with the European Commission, agreement has been reached with the Commission that 5 years is the appropriate timeframe for addressing our structural problems. I want to express my gratitude to Commissioner Almunia and my colleagues amongst the eurozone Member States who have been supportive of our efforts to stabilise the public finances.

To bring sustainability to the public finances, the Government is today announcing the necessary multi-annual consolidation plan. In 2010 and 2011, the plan envisages greater reductions in expenditure than increases in revenue. I want to stress that the expenditure figures are the minimum that must be achieved and the figures mentioned for tax are the very maximum that can be imposed.

Spending reductions that the Government has decided on for 2009 to 2011 will have a cumulative full year effect on current spending of €2.7 billion in 2010 and €4.2 billion in 2011. Reductions in capital spending will accumulate to €1.3 billion in 2010 and €2.4 billion in 2011. The policy decisions underlying these reductions are already in train. They entail further reductions in pay costs, programmes and numbers. There is no provision for extra social spending, other than dictated by demography and unemployment. There will be a cap on capital spending and efficiencies will be found throughout the public sector.

Savings on day to day spending will be made through more targeted welfare provision and further reductions in public service costs and numbers and the wider application of charges. Sharper targeting of programme spending and more efficient use of resources across the board will be required. Difficult decisions in all areas of policy are in prospect.

In 2010, we will seek up to an additional €1.75 billion from taxation. In 2011, the target will be to raise up to an additional €1.5 billion. Options to raise this may include the taxation of Child Benefit, the introduction of a Carbon Tax, a form of property tax and significant further base broadening through the elimination of unnecessary reliefs and a review of all areas of tax exempt incomes.

Over the later years of the 5 year plan, further adjustments will be required. The scale and nature of these measures will depend to a great extent on the strength of the economic cycle. If growth is better than forecast, less will need to be done at that stage.

point out that notwithstanding all the increases made today, Ireland will continue to have one of the lowest tax wedges within the OECD. All of these measures will take effect from 1st May 2009.

I indicated previously that I was prepared to review the operation of the public service pension levy to address any issues of fairness. Taking account of the impact of the tax measures which I have now announced, I am proposing a slight recasting of the structure of the levy to reduce somewhat the impact on the lowest paid public servants with a small increase at the higher levels. The net cost of this is €100 million in 2009.

Excise

From midnight tonight, excises on cigarettes will go up by 25 cent per packet of 20 and on auto-diesel by 5 cent per litre. These excise changes are VAT inclusive. There is no scope for increases in excise duties on alcohol or petrol because of the substantial risk of loss of revenue by the purchase of these items in Northern Ireland.

Full details of all of these and other taxation measures are contained in the Summary of Budget measures. The total tax and levies measures will raise €1.8 billion in 2009 and over €3.6 billion in a full year.

The measures I have outlined have necessarily concentrated on income. I am now giving notice that, in 2010 and 2011, I will turn to other areas of taxation to achieve the necessary adjustment in later years.

RESTORING THE CREDIT SYSTEM

The global financial crisis has caused extensive and rapid government interventions across the developed world. Governments have intervened time and again to preserve financial stability and maintain their banking systems. Here in Ireland, through the bank guarantee, bank recapitalisation and the protection of public ownership, we have provided very substantial support to the banking sector.

Our sole objective is to ensure that householders can access credit for homeloans and consumer credit, that small and medium sized business can fund their enterprises, that deposit-holders have confidence that their money is secure and protected, and that international investors are satisfied about the stability of our banking system.

A key pillar in our economic renewal is a well regulated financial system. This is essential for domestic and international confidence and credibility. The actions of those who have tarnished the reputation of Ireland will be dealt with through the appropriate processes.

The role of the Central Bank of Ireland will be reformed to place it at the centre of financial supervision and financial stability oversight, providing for full integration and co-ordination of the prudential supervision and stability of individual financial institutions with that of the financial system as a whole. The Central Bank of Ireland will in the future be headed by a Commission, chaired by the Governor.

These important structural changes will be complemented by significant new resources and additional expert staff, to widen skill sets and enhance market-based knowledge.

I have asked the former Deputy Governor of the Bank of England and former member of the UK Monetary Policy Committee, Sir Andrew Large, to advise on the process to select a new

Head of Financial Regulation within the new institutional structure. This search will be wide ranging and the person chosen will be of the calibre, reputation, experience and expertise to lead the reforms of financial regulation that I have outlined.

The Government also believes that further radical action is necessary to stabilise the banking system and ensure the supply of credit to the real economy. Cleansing and repairing the banks' balance sheets is considered fundamental to achieving a sustained recovery of the banking system.

The Government has decided to bring forward measures to address the issue of asset quality in the banking system. A National Asset Management Agency will be established on a statutory basis, under the aegis of the National Treasury Management Agency. Assets will be transferred from the banks to the new National Asset Management Agency with the purpose of ensuring that banks have a clean bill of health, their balance sheets are strengthened and uncertainty over bad debts is reduced. This will ensure a sustained flow of credit on a commercial basis to individuals, households and businesses in the real economy. The Agency will have a commercial mandate and will have the central objective of maximising over time the income and capital value of the assets entrusted to it.

Because it is clear that the principal uncertainties in relation to asset quality in the Irish banking system lie in the banks' land and development loans and in the largest aggregate associated exposures in the banks, these will be transferred to the Agency. These assets pose the main systemic risk to the banking sector in Ireland and the most significant obstacle to the recovery and restoration of lending by the banking system.

The Agency will purchase the assets through the issue to the banks of Government bonds. This will result in a very significant increase in gross national debt, to be offset of course by the assets taken in. The cost of servicing this debt will be offset, as far as practical, from income accruing from the assets of the new Agency. The debt will be repaid from funds raised through the realisation of those assets over time.

The potential maximum book value of loans that will be transferred to the Agency is estimated to be in the region of €80 to €90 billion, although the amount paid by the Agency will be significantly less than this to reflect the loss in value of the properties. In the longer term, if the Agency were to fall short of recouping all of the costs, the Government intends that a levy should be applied to recoup any shortfall.

All borrowers will be required to meet their full legal obligations for repayment. There will be a hardening of the approach to these borrowers – taxpayer's money is at stake, and the Agency will be expected to protect it in a commercial way and with an independent remit.

It is important to note the State will not assume all of the risk in the acquisition of these assets. The assets will be valued on a basis which is sustainable for the taxpayer. This will entail an assumption of losses by the financial institution whose assets are removed. The State has already capitalised the Bank of Ireland for a 25% stake and is completing a due diligence of the Allied Irish Banks prior to capitalisation for a similar stake. If the crystallisation of losses at any institution requires additional capital the State will insist on participation by way of ordinary shares in the relevant institution.

This initiative will be developed and implemented within the common EU framework detailed in the European Commission Guidance on the Treatment of Impaired Assets, working closely with the European Commission to obtain prior State aid approval. By drawing on the best advice and experience available internationally, we are committed to ensuring that this

Insurance Intermediaries	*Solicitors*
Investment Intermediaries	*Stockbrokers*
Moneybrokers	*Stock Exchange / Futures Exchanges*

The Group's conclusions are summarised in the following sections.

1. Bodies currently regulated by the Central Bank

The Central Bank is currently responsible for the prudential supervision of credit institutions operating in the State, which are defined in accordance with EU Directives as any institution which accepts deposits or other repayable funds from the public and grants credit for its own account (i.e. banks, building societies, etc). In addition, its remit also includes responsibility for a broad range of non-bank firms, exchanges, bureaux de changes, etc. In carrying out its supervisory functions, the Bank has two specific objectives i.e. the protection of the banking and financial system as a whole and the protection of depositors with banks and clients of investment firms. The rationale underlying these objectives is that structures are required to help limit runs on financial institutions where the cost to the general public of institutional failure would exceed any losses borne by the shareholders and creditors of that institution. In addition, there is a need for public intervention to ensure to a reasonable degree, that financial institutions are safe repositories for depositors' and investors' funds.

The Investor Compensation Act, 1998 provides that authorised firms, as defined in that Act (i.e. investment business firms, stockbrokers, credit institutions providing investment services and insurance intermediaries), are required to be members of an investor compensation scheme unless they are specifically exempted from the Act. The Central Bank is the competent authority for compensation under the Act. The Act provides that compensation is payable to eligible investors of an authorised firm in the event of the firm being unable to meet its obligations in relation to money or investment instruments owed to or belonging to a client in connection with the provision of investment business services by the authorised firm.

The Group agreed that the existing regulatory functions carried on by the Bank should, in future, be carried out by the SFR. A summary of the considerations arising in relation to each category of financial service provider considered is set out below:

Banks / Building Societies

The Central Bank is currently the prudential supervisor of all credit institutions authorised in Ireland, including branches based outside Ireland. The Bank also has a role in relation to branches of EU credit institutions which are based in Ireland. The central role of credit institutions in the financial system invariably gives rise to a wide range of regulatory issues in relation to systemic, prudential and consumer protection considerations. Supervision of credit institutions is carried out in accordance with relevant EU Directives. The Group agreed that credit institutions should be subject to regulation by the SFR

Investment Intermediaries

The Investment Intermediaries Act, 1995, covers both investment business firms and Restricted Activity Investment Product Intermediaries (RAIPIs). Under the Act, **investment business firms** are covered by a regulatory framework under which the Bank is the competent authority for supervising these firms. The Bank is also

Bank Act, 1997, relates to the effective implementation of the money laundering provisions of the Criminal Justice Act, 1994. **[Consumer protection aspects with DCA?].** Those financial institutions which provide foreign currency exchange services in the normal course of business and traders who provide exchange services, on an ancillary basis, to their customers in the normal course of business are not regarded as Bureaux de Change. The Group agreed that Bureaux de Change should be subject to regulation by the SFR.

2. *Bodies currently regulated by the Department of Enterprise, Trade and Employment*

[See the Appendix for an alternative text of part of this section which is being proposed by the Department of Enterprise, Trade and Employment for approval by the Group.]

The Department of Enterprise, Trade and Employment currently supervises the insurance industry. In addition to its role in supervising the financial behaviour of the industry from a prudential perspective, the Department also has a general policy role in the promotion of fair trading of insurance products. This latter role involves promoting measures aimed at ensuring that the cost of non-life insurance is kept as low as possible and is available to all, particularly young drivers and disabled drivers. The Department is also involved in pursuing the maximum possible transparency for members of the public in relation to the marketing of insurance products.

The Group concluded that consistent with its criteria, principally that the SFR should be the primary source of regulation of financial service providers, the **financial** aspects of the insurance industry, where the need for prudential supervision arose, should become the responsibility of the SFR. The general policy role currently carried out by the Department of Enterprise, Trade and Employment in relation to non-financial issues was not considered appropriate for the SFR and the Group recommended that this should remain with the Department of Enterprise, Trade and Employment which is the government Department responsible for fair trade and consumer issues generally.

Consistent with this general position, the different segments of the insurance industry to be covered by the SFR are outlined below:

Insurance Undertakings
The Minister for Enterprise, Trade and Employment is responsible for the supervision of insurance undertakings with their Head Offices in Ireland and Irish branches of undertakings with their Head Offices outside of the EU. The Group agreed that the financial aspects of insurance undertakings should be subject to regulation by the SFR.

Insurance Intermediaries
An insurance intermediary is an insurance agent or an insurance broker. Insurance agents are the holders of appointments, in writing, from insurers enabling them to place insurance business with those insurers. Insurance brokers, as defined in the Insurance Act, 1989, means any person, other than an insurance agent, who brings together, with a view to insurance of risks, persons seeking insurance and insurance

Friendly Societies

The term friendly society refers to four categories of bodies registered with the Registrar of Friendly Societies under the Friendly Societies Acts 1896-1977. These categories are:

i. **Friendly societies-** bodies which provide a range of insurance services to their members including life assurance, sickness benefits and death benefits. Some societies also maintain loans funds;
ii. **Benevolent societies** which provide benefits similar to those provided by friendly societies but, in the case of benevolent societies, they may be supplied to non-members;
iii. **Specially Authorised Societies** comprised of Loan Societies, which accept subscriptions or deposits from members and extend loans to members, and other societies which are established for a range of purposes such as the promotion of science, literature or education; and
iv. **Workingmen's clubs**.

At present, the Registrar of Friendly Societies performs a regulatory function in relation to each of these categories of society, although in the case of societies engaging in insurance business above certain thresholds, authorisation to carry out such business under the appropriate insurance regime is required.

[It is necessary to clearly distinguish between those bodies that can and should be covered by the SFR. In this context, it would seem that benevolent societies are more in the nature of charitable organisations and financial regulation is not required. Similarly, workingmen's clubs (of which there was only 1 registered at end-1997) do not give rise to the types of risks appropriate to the SFR. The Group concluded that the other categories involved provide financial services, albeit to a fairly limited extent, and, accordingly, should be regulated by the SFR. This proposal does, however, have significant implications for the Office of the Registrar of Friendly Societies whose functions would be substantially reduced as a result. This is a matter which would need to be addressed by the Registrar and the Department of Enterprise, Trade and Employment.]

5. *Bodies currently regulated by the Pensions Board*

The operations of pensions funds are governed by the Pensions Act, 1990, and Regulations made thereunder. The Pensions Board, which was established by this Act, monitors and supervises the operation of pension funds in respect of the pensions-related aspects of the Act.

Furthermore, in order to secure approval by the Revenue Commissioners, private sector occupational pension schemes must be established as irrevocable trusts and the management of a pension scheme's assets by trustees is therefore subject to general trust law and, in particular, the Trustee (Authorised Investments) Act, 1958. The trustees' powers are set out in the governing trust deed and rules, which will usually outline trustees' powers of investment. General trust law includes, *inter alia*, a requirement on trustees to invest the trust funds on the basis of the 'prudent person' rule.

Under the Pensions Act, 1990 (Section 59), trustees are required to "provide for the proper investment of the resources of the scheme in accordance with the rules of the scheme". The Pensions Act and its Regulations also contain limits on the extent to which self-investment

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