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ASSET COVERED SECURITIES (AMENDMENT) ACT 2007

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ACT REFERRED TO

Asset Covered Securities Act 2001

2001, No. 47



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ASSET COVERED SECURITIES (AMENDMENT) ACT 2007

AN ACT TO AMEND THE ASSET COVERED SECURITIES
ACT 2001.

[9th April, 2007]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act, “Principal Act” means the Asset Covered Securities Act 2001. Definition of
“Principal Act”.

2.—Section 3(1) of the Principal Act is amended— Amendment of
section 3 of
Principal Act.

(a) by inserting the following after the definition of “agricultural land”:

“ ‘article 22(4) securities’ mean bonds which come within the terms of the first sub-paragraph of Article 22(4) of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)¹ (as inserted by Council Directive 88/220/EC of 22 March 1988 amending, as regards the investment policies of certain UCITS, Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (UCITS)²);”,

(b) in the definition of “asset covered securities”—

(i) in paragraph (a), by deleting “and”, and

(ii) by inserting the following after paragraph (a):

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

¹ OJ No. L 375, 31.12.1985, p. 03

² OJ No. L 100, 19.04.1988, p. 31

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- (c) by substituting the following for the definition of “category A country”:

“ ‘category A country’ means a country to which section 5(1)(b) or (c) relates;”,

- (d) by substituting the following for the definition of “category B country”:

“ ‘category B country’ means a country (other than an EEA country or a category A country) that—

(a) is a full member of the Organisation for Economic Co-operation and Development, and

(b) has not rescheduled its external debt at any time during the immediately preceding 5 years;”,

- (e) by substituting the following for the definitions of “Codified Banking Directive” and “commercial property”:

“ ‘Codified Banking Directive’ means Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)³ as amended or replaced from time to time by any directive or regulation made by competent organs of the European Union which has been implemented under the laws of the State;

‘commercial mortgage covered security’, in relation to a designated or formerly designated commercial mortgage credit institution, means a security that is—

(a) issued by the institution in accordance with this Act, and

(b) secured over the cover assets that are comprised in a cover assets pool maintained by the institution;

‘commercial mortgage credit’ means mortgage credit which is secured on commercial property;

‘commercial mortgage credit asset’—

(a) subject to paragraph (b), means property or an asset—

(i) held or to be held by a designated or formerly designated commercial mortgage credit institution, and

(ii) which comprises one or more commercial mortgage credits,

(b) does not include property or an asset which comprises all or any part of any pool hedge collateral;

‘commercial property’—

³ OJ L 177, 30.06.2006, p. 1

(a) subject to paragraph (b)—

(i) means a building or part of a building fixed on land that is used, or is set aside to be used, primarily for the purpose of any industry, trade or other business undertaking, and

(ii) includes—

(I) the land on which such building or such part of a building, as the case may be, is located, and

(II) the fixtures that are used in conjunction with such building or such part of a building, as the case may be,

(b) does not include either—

(i) a building or part of a building that is fixed on land that is used, or is set aside to be used, primarily for the purpose of any mine, quarry or agriculture, or

(ii) subject to section 4(6) and (7), a building or part of a building that is residential property;”,

(f) in the definition of “cover assets”—

(i) in paragraph (a), by deleting “and”,

(ii) in paragraph (b), by substituting “institution, and” for “institution;”, and

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

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

(g) in the definition of “cover assets hedge contract”—

(i) in paragraph (a), by deleting “and”,

(ii) in paragraph (b), by substituting “section 45(3), and” for “section 45(3);”, and

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

“(c) in relation to a designated or formerly designated commercial mortgage credit institution, means a contract of a kind entered into in accordance with section 30(3) as applied and modified by section 41B;”,

(h) in the definition of “cover assets pool”—

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- (i) in paragraph (a), by substituting “institution,” for “institution, and”,
- (ii) in paragraph (b) by substituting “institution, and” for “institution;”, and
- (iii) by inserting the following after paragraph (b):
 - “(c) in relation to a designated or formerly designated commercial mortgage credit institution, means the commercial mortgage credit assets, cover assets hedge contracts and substitution assets held by the institution that are recorded in the register of commercial mortgage covered securities business kept by the institution;”,
- (i) in the definition of “credit institution”, by deleting paragraph (d),
- (j) by substituting the following for the definition of “designated credit institution”:
 - “ ‘designated credit institution’ means—
 - (a) a designated mortgage credit institution,
 - (b) a designated commercial mortgage credit institution, or
 - (c) a designated public credit institution;”,
- (k) by inserting the following after the definition of “dealing”:
 - “ ‘designated commercial mortgage credit institution’ means an institution designated by the Authority in accordance with Part 3 to carry on the permitted business activities referred to in section 27(1) as applied and modified by section 41B;”,
- (l) by inserting the following after the definition of “European Central Bank”:
 - “ ‘exposure’ has the meaning given to it by Regulation 20 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006 (S.I. No. 661 of 2006);”,
- (m) by substituting the following for the definition of “formerly designated credit institution”:
 - “ ‘formerly designated credit institution’ means an institution that was formerly registered as—
 - (a) a designated mortgage credit institution,
 - (b) a designated commercial mortgage credit institution, or
 - (c) a designated public credit institution;”,
- (n) by inserting the following after the definition of “holder”:

“ ‘include’, in relation to an asset or property and a cover assets pool, register of mortgage covered securities business, register of commercial mortgage covered securities business or register of public credit covered securities business—

(a) subject to paragraph (b), means—

(i) the insertion of that asset or property, as the case may be, into that pool, or

(ii) the insertion of an entry in that register in respect of that asset or property, as the case may be,

as the case requires,

(b) does not include—

(i) if paragraph (a)(i) is applicable, the continued maintenance of that asset or property, as the case may be, in that pool after it has been inserted therein,

(ii) if paragraph (a)(ii) is applicable, the continued maintenance of that entry in that register after it has been inserted therein,

and ‘included’ and ‘inclusion’ shall be construed accordingly;”

(o) by substituting the following for the definition of “mortgage credit asset”:

“ ‘mortgage credit asset’—

(a) subject to paragraph (b), means—

(i) an asset or property—

(I) held or to be held by a designated or formerly designated mortgage credit institution, and

(II) that comprises one or more mortgage credits, or

(ii) an asset or property—

(I) held or to be held by a designated or formerly designated commercial mortgage credit institution, and

(II) that comprises one or more commercial mortgage credits,

(b) does not include an asset or property which comprises all or any part of any pool hedge collateral;”

(p) by inserting the following after the definition of “national central bank”:

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“ ‘non-commercial administrative bodies’ include commercial undertakings, or undertakings with non-commercial and commercial activities, owned or controlled by central governments or regional governments or local authorities where the debt concerned of the undertaking is used directly or indirectly for the purpose of complying with public service obligations;”,

- (q) in the definition of “non-performing”, in paragraph (b), by inserting “(but disregarding, for the purposes of this paragraph, section 4(4))” after “section 4(1)”,
- (r) by inserting the following after the definition of “performing”:

“ ‘pool hedge collateral’, in relation to a cover assets hedge contract, means any asset or property provided to a designated credit institution by or on behalf of any other contracting party to that contract where the terms of the contract—

- (a) provide for an absolute transfer of the asset or property, as the case may be, to the institution by way of collateral but not by way of security within the meaning of section 58, or

(b) both—

- (i) provide for the transfer of the asset or property, as the case may be, to the institution by way of security within the meaning of section 58, and
- (ii) give the institution the right to deal with the asset or property, as the case may be, under that security as if the institution were the absolute owner of that asset or property, as the case may be;”,

- (s) in the definition of “prudent market value”—

(i) in paragraph (a), by deleting “and”, and

(ii) by inserting the following after paragraph (a):

“(ab) in relation to a commercial mortgage credit asset or substitution asset held or proposed to be held by a designated commercial mortgage credit institution— the prudent market value as determined in accordance with section 41 as applied and modified by section 41B, and”,

- (t) by substituting the following for the definition of “public credit asset”:

“ ‘public credit asset’—

- (a) subject to paragraph (b), means an asset or property held by a designated or formerly designated public credit institution that comprises one or more public credits,

- (b) does not include an asset or property that comprises all or any part of any pool hedge collateral;

‘public sector entities’ mean—

- (a) non-commercial administrative bodies responsible to—
 - (i) central governments, regional governments or local authorities, or
 - (ii) authorities that are regarded by the competent authority (within the meaning of Regulation 2 of the European Communities (Capital Adequacy of Credit Institutions) Regulations 2006), for the purposes of the Codified Banking Directive, as exercising the same responsibilities as regional governments or local authorities,
- (b) non-commercial undertakings owned by central governments that have explicit guarantee arrangements, or
- (c) self-administered bodies governed by law that are under public supervision;”,

(u) by inserting the following after the definition of “record”:

“ ‘register of commercial mortgage covered securities business’, in relation to a designated or formerly designated commercial mortgage credit institution, means the register that the institution is required to keep under section 38 as applied and modified by section 41B;

‘register of designated commercial mortgage credit institutions’ means the register established in accordance with section 17(1A);”,

(v) in the definition of “residential property”, by inserting “, subject to section 4(6) and (7),” after “means”,

(w) by inserting the following after the definition of “secured”:

“ ‘securitised mortgage credit asset’ means an asset which qualifies as a mortgage credit asset by virtue of section 4(4);”,

(x) in the definition of “super-preferred creditor”, by inserting “, subject to section 88(5),” after “means”, and

(y) in the definition of “supervisory enactment”, by deleting paragraph (d).

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

- (a) by substituting the following for subsection (4):

Amendment of section 4 of Principal Act.

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“(4) For the purposes of subsection (1), a financial obligation includes a financial obligation that is in the form of security that represents an interest in other mortgage credit that is securitised.”,

- (b) in subsection (5), by substituting “comprised” for “included” in the 2 places where it occurs, and
- (c) by inserting the following after subsection (5):

“(6) Where a mortgage credit asset secured on residential property would, but for the exclusion of residential property from the definition of ‘commercial property’ in section 3(1), also be secured on commercial property, a designated commercial mortgage credit institution may, for the purposes of this Act, treat that asset as if it were secured on commercial property rather than residential property.

(7) Where a mortgage credit asset is secured on a single property asset that would, but for this subsection, constitute commercial property in part and residential property in part, then that mortgage credit asset shall, for the purposes of this Act, be regarded, in relation to that property asset, as secured only on commercial property.

(8) In this section—

‘other security’, in relation to residential or commercial property located outside the State, means a kind of security interest over that property that is recognised as a valid security interest under the *lex situs* of that property;

‘securitised’ shall be construed in accordance with Article 4(36) of the Codified Banking Directive.”.

Amendment of section 5 of Principal Act.

4.—Section 5 of the Principal Act is amended—

- (a) in subsection (1)—
- (i) by substituting “is any one of the following:” for “is—”,
- (ii) by substituting the following for paragraphs (a) to (f):
- “(a) central governments, central banks, public sector entities, regional governments or local authorities in the State or in any other EEA country,
- (b) central governments and central banks in Australia, Canada, Japan, New Zealand, the Swiss Confederation, the United States of America or a country specified in an order made under subsection (3),
- (c) public sector entities, regional governments and local authorities in Australia, Canada, Japan, New Zealand, the Swiss Confederation, the United States of America or a

country specified in an order made under subsection (3),

- (d) (i) multilateral development banks which qualify as such for the purposes of the Codified Banking Directive, or
- (ii) international organisations which qualify as such for the purposes of the Codified Banking Directive,
- (e) central governments, central banks, public sector entities, regional governments or local authorities in a category B country, or
- (f) any other entity established in a country to which paragraph (a), (b) or (e) relates that is prescribed by order of the Minister for the purposes of this section.”

(b) in subsection (2), by inserting “an interest in” after “represents”,

(c) by substituting the following for subsection (3):

“(3) The Minister may, by order notified in *Iris Oifigiúil*, specify, for the purposes of paragraph (b) or (c) of subsection (1), a country other than—

- (a) a country referred to in the paragraph concerned, or
- (b) an EEA country.”

(d) by deleting subsections (4) and (5), and

(e) by substituting the following for subsections (7) and (8):

“(7) Subject to subsection (8), where, but for this subsection, a credit qualifies in part only as a public credit, a designated public credit institution may treat all of that credit as public credit for the purposes of this Act.

(8) For the purposes of—

- (a) section 47(8) and (11),
- (b) any contractual undertaking referred to in section 47(13) of the institution, or
- (c) section 56(1),

a designated public credit institution shall not treat, as public credit pursuant to subsection (7), any part of any credit which would not qualify as public credit but for that subsection.”

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Amendment of
section 6 of
Principal Act.

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

(a) in subsection (1), by inserting “(other than such assets that comprise any pool hedge collateral)” after “following assets”, and

(b) by inserting the following after subsection (3):

“(4) Property referred to in subsection (3)(a) shall be an exposure to an institution within the meaning of Article 4(6) of the Codified Banking Directive.”.

Amendment of
section 11 of
Principal Act.

6.—Section 11(1) of the Principal Act is amended by inserting “after consulting the Authority,” after “may,”.

Amendment of
section 12 of
Principal Act.

7.—Section 12 of the Principal Act is amended—

(a) by inserting the following after subsection (1):

“(1A) A person shall not—

(a) purport to issue commercial mortgage covered securities in accordance with this Act,

(b) represent or advertise that the person is a designated commercial mortgage credit institution, or is authorised by this Act to carry on a business involving the issue of commercial mortgage covered securities, or

(c) claim to have the benefits conferred on designated commercial mortgage credit institutions by or under this Act,

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

and

(b) in subsection (3), by inserting “, (1A)” after “subsection (1)”.

Amendment of
section 13 of
Principal Act.

8.—Section 13 of the Principal Act is amended—

(a) in subsection (1), by inserting “, as a designated commercial mortgage credit institution” after “mortgage credit institution”, and

(b) by substituting the following for subsection (5):

“(5) Nothing in this section prevents the same person from making an application for registration as more than one kind of designated credit institution.”.

Amendment of
section 14 of
Principal Act.

9.—Section 14 of the Principal Act is amended—

(a) by inserting the following after subsection (1):

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

- (a) is or will be able to carry out, in a proper manner, the responsibilities that a designated commercial mortgage credit institution is required by this Act to carry out, and
- (b) complies with, or will be able to comply with, such requirements (if any) relating to designated commercial mortgage credit institutions as are prescribed by the regulations and by the regulatory notices.”,

(b) by inserting the following after subsection (4):

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

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

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

and

(c) in subsection (6), by inserting “, designated commercial mortgage credit institution” after “mortgage credit institution”.

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

Amendment of section 15 of Principal Act.

(a) by inserting the following after subsection (1):

“(1A) Registration as a designated commercial mortgage credit institution authorises the institution named in the certificate of registration to carry on the business of a designated commercial mortgage credit institution in accordance with this Act.”,

(b) in subsection (5), by inserting “, a designated commercial mortgage credit institution” after “mortgage credit institution”, and

(c) by inserting the following after subsection (5):

“(6) Registration under this Act of a person as a particular kind of designated credit institution permitted by this Act does not permit that person to act as another kind of designated credit institution permitted by this Act

unless that person is also registered under this Act as that other kind of designated credit institution.”.

Amendment of
section 16 of
Principal Act.

11.—Section 16 of the Principal Act is amended—

(a) in subsection (2), by inserting “, a designated commercial mortgage credit institution” after “mortgage credit institution”, and

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

“(3) Without limiting subsection (1) or the powers of the Authority under other provisions of this Act, the Authority may vary a condition imposed, or impose a condition, pursuant to subsection (1) which the Authority considers to be necessary, incidental, consequential or supplementary to the implementation of, or compliance with, the Codified Banking Directive or any directive or regulation made by competent organs of the European Union which has been implemented under the laws of the State, and is relevant to article 22(4) securities which qualify as covered bonds for the purposes of the Codified Banking Directive.”.

Amendment of
section 17 of
Principal Act.

12.—Section 17 of the Principal Act is amended—

(a) by inserting the following after subsection (1):

“(1A) The Authority is required to establish and keep a register of designated commercial mortgage credit institutions.”,

and

(b) by inserting the following after subsection (3):

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

Amendment of
section 18 of
Principal Act.

13.—Section 18 of the Principal Act is amended by inserting “a designated commercial mortgage credit institution,” after “mortgage credit institution,”.

Amendment of
section 21 of
Principal Act.

14.—Section 21(2) of the Principal Act is amended by deleting “to the satisfaction of the Authority”.

Amendment of
section 22 of
Principal Act.

15.—Section 22 (3) of the Principal Act is amended by substituting “section 20 or 21” for “this section”.

Amendment of
section 25 of
Principal Act.

16.—Section 25 of the Principal Act is amended by substituting the following for paragraphs (b), (c) and (d):

“(b) a trustee savings bank, or

(c) a building society,”.

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

Amendment of
section 27 of
Principal Act.

(a) in subsection (1)—

(i) by substituting the following for paragraph (a):

“(a) providing mortgage credit, dealing in and holding mortgage credit assets and providing group mortgage trust services,”,

(ii) in paragraph (f), by substituting “assets or activities permitted by this subsection” for “assets of a kind mentioned in paragraphs (a) to (e)”, and

(iii) in paragraph (g), by inserting “and dealing in and holding pool hedge collateral” after “to (f)”,

(b) in subsection (2)(b), by substituting “mortgage” for “asset”,

(c) in subsection (3), in the definition of “credit transaction asset”, by substituting “any asset arising from the activities referred to in section 27(1)(c) or (f), mortgage” for “a mortgage”, and

(d) by inserting the following after subsection (5):

“(6) Where a designated mortgage credit institution holds mortgage security and, if applicable, collateral security subject to a trust as a consequence of the institution providing group mortgage trust services to one or more group entities—

(a) the mortgage credit assets held by the institution shall not include any group entity assets,

(b) for the purposes of section 81(4), only mortgage security and, if applicable, collateral security to the extent such security secures mortgage credit assets held by the institution shall be comprised in its cover assets pool and constitute cover assets, and

(c) as regards recourse by the institution or such group entities to such security to satisfy its or their, as the case may be, respective claims under any mortgage credit assets held by the institution or any group entity assets held by one or more such group entities—

(i) such claims held by the institution for its own benefit shall at all times until they are discharged in full rank in priority in all respects to such claims held by such group entities with respect to such recourse, and

(ii) any terms of the trust or any agreement between the institution and one or more such group entities purporting to provide

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for a different priority as between such claims held by the institution and such claims held by such group entities shall be void.

(7) In this section—

‘collateral security’ means any security, guarantee, indemnity or insurance which secures, in addition to mortgage security, assets that comprise one or more mortgage credits;

‘group entity’, in relation to a designated mortgage credit institution, means—

- (a) a parent entity of the institution,
- (b) a subsidiary of the institution, or
- (c) a subsidiary, other than the institution, of a parent entity of the institution;

‘group entity assets’ means any assets that comprise of one or more mortgage credits held by one or more group entities where—

- (a) those assets are secured by mortgage security and, if applicable, collateral security, and
- (b) that security is comprised in a trust constituted for the purposes of group mortgage trust services;

‘group mortgage trust services’ mean services provided by a designated mortgage credit institution to one or more group entities—

- (a) which involve the institution holding mortgage security and, if applicable, collateral security on trust for one or more such group entities, and
- (b) where, under that trust, the institution holds an interest in that security for one or more such group entities (whether as trustee or agent) and for its own behalf;

‘mortgage security’ means a mortgage, charge or other security referred to in section 4(1) which secures assets that comprise one or more mortgage credits;

‘subsidiary’ has the same meaning as is given by section 3(7).”.

Amendment of section 28 of Principal Act.

18.—Section 28 of the Principal Act is amended by substituting the following for the second sentence:

“However, this section does not prevent such an institution that is also registered as a different kind of designated credit institution permitted by this Act from carrying on business activities

that can be lawfully carried on by such a designated credit institution.”.

19.—Section 30 of the Principal Act is amended—

Amendment of section 30 of Principal Act.

(a) in subsection (2)(b), by inserting “(including those relating to pool hedge collateral)” after “into”,

(b) by substituting the following for subsections (3) and (4):

“(3) If a contract of a kind referred to in subsection (1) relates only to—

- (a) mortgage covered securities issued by a designated mortgage credit institution,
- (b) mortgage credit assets or substitution assets, or both, that are comprised in the cover assets pool maintained by a designated mortgage credit institution, or
- (c) mortgage covered securities issued by a designated mortgage credit institution and mortgage credit assets or substitution assets, or both, that are comprised in the cover assets pool maintained by a designated mortgage credit institution,

and the institution and each other party to the contract have agreed that the contract is to be included in the cover assets pool as a cover asset, the institution shall ensure that the contract complies with the requirements of subsections (4) and (5).

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

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

and may consist of one or more contracts or transactions which when taken together directly or indirectly so relate.”.

and

(c) by the insertion of the following after subsection (9):

“(10) A designated mortgage credit institution shall establish and keep a register in respect of any pool hedge collateral that it holds from time to time.

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(11) The register referred to in subsection (10) shall be called the register of pool hedge collateral and shall be kept separate from the register of mortgage covered securities business.

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

(13) The institution shall include in the register of pool hedge collateral the following particulars:

- (a) particulars of the pool hedge collateral it holds from each counterparty to a cover assets hedge contract;
- (b) particulars of the cover assets hedge contracts that relate to the pool hedge collateral;
- (c) where the institution is registered as more than one kind of designated credit institution, particulars of the relevant cover assets pool to which the pool hedge collateral relates; and
- (d) such other particulars as are prescribed by a regulatory notice made in accordance with subsection (15).

(14) Unless—

- (a) the Authority otherwise requires, by a direction in writing, whether to an individual designated mortgage credit institution or to designated mortgage credit institutions generally, or pursuant to a regulatory notice made in accordance with subsection (15), or
- (b) a designated mortgage credit institution is potentially insolvent or insolvent,

the consent of the cover-assets monitor shall not be required for an institution to make, amend or delete an entry in its register of pool hedge collateral.

(15) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to—

- (a) the type of assets or property that qualify as pool hedge collateral,
- (b) the maintenance and operation of the register of pool hedge collateral,
- (c) particulars that an institution shall include in the register of pool hedge collateral for the purposes of paragraph (d) of subsection (13),
- (d) the circumstances in which, pursuant to subsection (14), the consent of the cover-assets monitor is required for a designated mortgage credit institution to make, amend or delete an entry in its register of pool hedge collateral.

(16) The Authority or any person authorised by the Authority may inspect and take copies of the register of pool hedge collateral.

(17) The Authority may, by notice in writing, require a designated mortgage credit institution to provide to the Authority or the cover-assets monitor, or both of them, such information in relation to pool hedge collateral held by that institution and at such intervals as may be specified to the institution by the Authority.”.

20.—Section 32 of the Principal Act is amended—

Amendment of section 32 of Principal Act.

(a) in subsection (5)(a), by substituting “comprised” for “included”,

(b) in subsection (8)—

(i) in paragraph (d), by substituting “comprised” for “included”, and

(ii) by inserting “(but, for the purposes of this subsection, disregarding the effect of any pool hedge collateral)” after “and those securities”,

(c) by substituting the following for subsection (9):

“(9) For the purposes of subsection (8)(a), ‘duration’, in relation to the cover assets pool or mortgage covered securities secured on the pool, means a weighted average term to maturity of the relevant principal amount of the mortgage credit assets and substitution assets comprised in the pool or those securities, as the case may be, determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection and taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool or those securities, or both, as the case may be.”,

(d) in subsection (11)—

(i) by substituting “comprised” for “included”, and

(ii) by substituting “property asset” for “property assets”,

(e) by substituting the following for subsection (12):

“(12) For the purposes of this section, the prudent market value of a property asset which relates to a mortgage credit asset is required to be calculated at such times as the Authority specifies, after having regard to the valuation requirements applicable to covered bonds under the Codified Banking Directive, in accordance with or under a regulatory notice made in accordance with section 41(1).”,

(f) by inserting the following after subsection (14):

“(15) For the purposes of subsection (8)(b) but subject to subsection (16), a designated mortgage credit institution is required to maintain a minimum level of regulatory

overcollateralisation of its cover assets pool with respect to the mortgage covered securities in issue which are secured on the pool.

(16) Subsection (15) shall not affect any contractual undertaking made by the institution in respect of the prudent market value of the cover assets pool being greater than the total of the principal amounts of the mortgage covered securities in issue and secured on that pool and which is the subject of a cover-assets monitor's functions under the Asset Covered Securities Act 2001 (Sections 61(1), 61(2) and 61(3)) (Overcollateralisation) Regulations 2004 (S.I. No. 419 of 2004), where that undertaking requires a higher level of cover assets to be maintained in the pool than subsection (15).

(17) For the purposes of subsection (15), 'regulatory overcollateralisation' means that the prudent market value of the mortgage credit assets and substitution assets comprised in the cover assets pool, expressed as a percentage of the total of the nominal or principal amounts of the mortgage covered securities in issue which are secured on that pool, is a minimum of 103 per cent after taking into account the effect of any cover assets hedge contract comprised in the cover assets pool."

Amendment of section 33 of Principal Act.

21.—Section 33 of the Principal Act is amended—

- (a) by substituting the following for subsections (2), (3) and (4):

“(2) A designated mortgage credit institution—

- (a) may include in the cover assets pool maintained by the institution a mortgage credit asset or substitution asset that is located within one or more category A countries, and
- (b) shall not include in the cover assets pool maintained by the institution a mortgage credit asset or substitution asset that is located in one or more category B countries.”,

and

- (b) by substituting the following for subsection (6):

“(6) Subject to subsection (7), a designated mortgage credit institution may not include in a cover assets pool a mortgage credit asset if a building related to that mortgage credit asset is being or is to be constructed unless the institution attributes to such mortgage credit asset—

- (a) a prudent market value of nil for the purposes of section 32(8) and (15), and
- (b) any contractual undertaking referred to in section 32(16) made by the institution.

(7) Subsection (6) shall cease to apply in the case of a building referred to in that subsection immediately upon

the building being ready for occupation as a commercial or residential property.”.

22.—Section 34 of the Principal Act is amended—

Amendment of section 34 of Principal Act.

- (a) in subsection (1), by substituting “section 32(1), (4), (5), (7) or (15), a contractual undertaking referred to in section 32(16) or section 33(5) or (6)” for “section 32(1), (4), (5) or (7) or section 33(2), (3), (5) or (6)”, and
- (b) by inserting the following after subsection (2):

“(2A) A designated mortgage credit institution shall, as soon as practicable after becoming aware that a cover asset comprised in its cover assets pool would, if the institution were to include that asset at that time in its pool, contravene section 35(8)(a) or 41A(1)(c)(iii), remove that cover asset from its cover assets pool and, where required by this Act, replace it in accordance with section 35. Until these steps have been taken, the institution may not issue any further mortgage covered securities.”.

23.—Section 35 of the Principal Act is amended—

Amendment of section 35 of Principal Act.

- (a) in subsection (1), by substituting “comprised” for “included”,
- (b) in subsection (3), by inserting “when” after “an underlying asset”,
- (c) by substituting the following for subsection (8):

“(8) A designated mortgage credit institution may not at any time include a substitution asset in the cover assets pool maintained by the institution—

- (a) unless the substitution asset concerned meets the creditworthiness standards or criteria applicable to it which may be specified by the Authority in a regulatory notice made for the purposes of this subsection, or
- (b) if, after including the substitution asset concerned in the pool, the total prudent market value of all substitution assets then comprised in the pool at the relevant time would exceed the prescribed percentage of the aggregate nominal or principal amount of outstanding mortgage covered securities secured on the pool. For the purposes of this subsection, the prescribed percentage is 15 per cent or, if an order under subsection (9) specifies some other percentage, that other percentage.”,

- (d) by inserting the following after subsection (9):

“(9A) For the purposes of subsection (8), when determining the total prudent market value of all substitution assets comprised in a cover assets pool at any time

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there shall be disregarded any substitution assets represented by exposures caused by the transmission and management of payments of the obligors under, or liquidation proceeds in respect of, mortgage credit assets comprised in the pool.

(9B) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify creditworthiness standards or criteria for the purposes of subsection (8) and such standards or criteria—

- (a) shall have regard to creditworthiness standards or criteria applicable to substitution assets as eligible collateral for covered bonds under the Codified Banking Directive, and
- (b) may differentiate between substitution assets which have a maximum maturity of 100 days and those which have a longer maturity.”.

Amendment of section 36 of Principal Act.

24.—Section 36(4) of the Principal Act is amended by substituting “comprised” for “included”.

Amendment of section 38 of Principal Act.

25.—Section 38 of the Principal Act is amended—

- (a) in subsection (5), by inserting “, delete” after “make”, and
- (b) by substituting the following for subsection (7):

“(7) If a designated mortgage credit institution is also a designated commercial mortgage credit institution or a designated public credit institution, the institution is required to keep its register of mortgage covered securities business separate from, as applicable—

- (a) its register of commercial mortgage covered securities business,
- (b) its register of public credit covered securities business.”.

Lifting of certain restrictions on cover assets pool of a designated mortgage credit institution.

26.—The Principal Act is amended by inserting the following after section 39:

“Lifting of certain restrictions on cover assets pool of a designated mortgage credit institution.

39A.—For so long as—

- (a) a cover assets pool maintained by a designated mortgage credit institution is comprised in part of cover assets which meet the requirements of section 32(8) and (15) and of any contractual undertaking made by the institution referred to in section 32(16), and
- (b) those cover assets meet the other requirements of this Part,

then any provision of this Part which restricts the proportion or percentage of the cover assets pool which may be comprised of certain cover assets or

criteria or standards applicable to cover assets shall not apply to any further such cover assets comprised or to be comprised from time to time in that cover assets pool, and the provisions of this Part shall be construed accordingly.”.

27.—Section 40 of the Principal Act is amended—

Amendment of section 40 of Principal Act.

- (a) in subsection (1)(c), by substituting “mortgage credit assets and substitution assets comprised in the cover assets pool that relates” for “cover assets pools that relate”, and
- (b) in subsection (2)—
 - (i) in paragraph (c), by substituting “mortgage credit assets are non-performing as at that date, and if they are” for “any persons who owe money under mortgage credit assets have defaulted in making payments in respect of those assets when due and payable, and if they have”,
 - (ii) in paragraph (d), by inserting “so as to render them non-performing for the purposes of this Act” after “(£787.56)”, and
 - (iii) in paragraph (h), by inserting “and not on residential property” after “property”.

28.—Section 41 of the Principal Act is amended by inserting the following after subsection (6):

Amendment of section 41 of Principal Act.

“(7) A regulatory notice made under this section may, and shall be deemed always to have been capable of, specifying requirements in relation to particular assets or properties or different kinds of assets or properties (including kinds with respect to where assets or properties are located or where the assets or properties are secured on commercial or residential properties).”.

29.—The Principal Act is amended by inserting the following after section 41 but in Chapter 1 of Part 4:

Modifications to Chapter 1 of Part 4 of Principal Act in its application to securitised mortgage credit assets.

“Modifications to this Chapter in its application to securitised mortgage credit assets.

41A.—(1) This Chapter shall be modified as follows in relation to securitised mortgage credit assets:

- (a) securitised mortgage credit assets shall be disregarded for the purposes of sections 31(1), 32(11), (12) and (13) and 40(2);
- (b) the location of securitised mortgage credit assets for the purposes of section 33(1) and (2) shall be determined by reference to the location of the property assets related to the mortgage credit assets which are securitised;

- (c) securitised mortgage credit assets may only be included by a designated mortgage credit institution in the cover assets pool if those assets satisfy the following requirements:
- (i) the securitisation entity which is the issuer of the securitised mortgage credit assets is established under and subject to the laws of an EEA country;
 - (ii) at least 90 per cent of the assets held, directly or indirectly, by the securitisation entity are assets that comprise one or more mortgage credits, but disregarding, for the purposes of this subsection—
 - (I) assets that comprise one or more mortgage credits which if they were held by a designated mortgage credit institution would only qualify as mortgage credit assets under section 4(4), and
 - (II) such assets representing exposures caused by transmission and management of payments of the obligors under, or liquidation proceeds in respect of, assets that comprise one or more mortgage credits;
 - (iii) the securitised mortgage credit assets constitute senior claims of the securitisation entity in that they meet any creditworthiness standards or criteria which may be specified by the Authority in a regulatory notice made for the purposes of this paragraph;
 - (iv) the nominal or principal amount outstanding of the securitised mortgage credit assets comprised in the cover assets pool at any time do not exceed any applicable percentage, which may be specified by the Authority by regulatory notice, of the nominal or principal amount of the outstanding mortgage covered securities issued by the institution; and
 - (v) the securitised mortgage assets have a prudent market value not greater than the amount determined under subsection (2) in respect of those assets.

(2) For the purposes of—

- (a) section 32(8) and (15),
- (b) any contractual undertaking made by the institution referred to in section 32(16), and
- (c) section 41(1) and (2),

securitised mortgage credit assets shall have a prudent market value no greater than an amount equal to the lesser of the following:

- (i) the principal or nominal amount outstanding of the securitised mortgage credit assets concerned;
- (ii) subject to subsection (3), the principal or nominal amount of assets that comprise one or more mortgage credits held by the securitisation entity less any credits having security over the property assets, the subject also of those mortgage credit assets, which rank ahead of the security over those mortgage credit assets held by the securitisation entity; and
- (iii) subject to subsection (3), an amount equal to the applicable percentage of the value of the property assets which are the subject of the mortgage credit assets held by the securitisation entity.

(3) For the purpose of determining the principal or nominal amount of credits (including mortgage credit assets) for the purposes of subsection (2)(ii) or the value of property assets for the purposes of subsection (2)(iii), an aggregate basis shall be used having regard to—

- (a) the proportion which the nominal or principal amount of the securitised mortgage credit assets concerned bear as against the total of the nominal or principal amount of securitised assets that comprise one or more mortgage credits issued by the securitisation entity and which are secured on the same assets as the securitised mortgage credit assets concerned, and
- (b) the ranking in terms of seniority of the securitised mortgage credit assets concerned as against all securitised assets that comprise one or more mortgage credits issued by the relevant securitisation entity and which are secured on the same assets as the securitised mortgage credit assets concerned.

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(4) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify creditworthiness standards or criteria for securitised mortgage credit assets for the purposes of subsection (1)(c)(iii).

(5) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify—

- (a) a percentage for the purposes of subsection (1)(c)(iv), and
- (b) any circumstances related to creditworthiness of the securitised mortgage credit assets concerned to which such percentage applies.

(6) The applicable percentage for the purposes of subsection (2)(iii) shall be—

- (a) where the property assets which are related to the securitised mortgage credit assets comprise residential property only, 80 per cent,
- (b) in any other case, 60 per cent.

(7) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements or criteria with respect to—

- (a) the creditworthiness of securitised mortgage credit assets which may be acquired and held by a designated mortgage credit institution outside its cover assets pool, or
- (b) any matter referred to in this section.

(8) The Authority shall, when making any regulatory notice for the purposes of this section, have regard to any applicable standards or criteria relevant to article 22(4) securities which qualify as covered bonds under the Codified Banking Directive.

(9) A designated mortgage credit institution shall include the following information in respect of securitised mortgage credit assets comprised in its cover assets pool in its annual financial statement or in a document accompanying the statement:

- (a) the name of the securitisation entities which are the issuers of those assets and the principal or nominal amount and class or title of those assets, as at the date to which the statement is made up; and
- (b) any information prescribed by the regulations for the purposes of this subsection.

(10) In subsection (3), ‘securitised’ shall be construed in accordance with Article 4(36) of the Codified Banking Directive.”.

30.—Part 4 of the Principal Act is amended by inserting the following after Chapter 1:

Chapter 1A— issue of asset covered securities by designated commercial mortgage credit institutions.

“CHAPTER 1A

Issue of asset covered securities by designated commercial mortgage credit institutions

Modifications to Chapter 1 and sections 4(2) to (5), 58, 61, 71 and 91 to enable them to apply to designated commercial mortgage credit institutions.

41B.—(1) The provisions of Chapter 1 and of sections 4(2) to (5), 58, 61, 71 and 91 shall apply to designated commercial mortgage credit institutions with the following modifications:

- (a) references therein to ‘asset covered securities’ or ‘mortgage covered securities’ shall mean commercial mortgage covered securities;
- (b) references therein to ‘designated mortgage credit institutions’ or, except in sections 28 and 38(7), to ‘designated credit institutions’ shall mean designated commercial mortgage credit institutions;
- (c) references therein to ‘mortgage credit assets’ shall mean commercial mortgage credit assets;
- (d) references therein to ‘property assets’ shall mean commercial property;
- (e) except in section 38(7), references therein to a ‘register of mortgage covered securities business’ shall mean the register of commercial mortgage covered securities business;
- (f) except in sections 32(13)(a) and 41A(6)(a), references therein to ‘residential property’ shall mean commercial property;
- (g) references therein to ‘securitised mortgage credit assets’ shall mean securitised mortgage credit assets the related property assets of which comprise commercial property;
- (h) sections 32(13)(a), 33(5) and 40(2) shall not apply to designated commercial mortgage credit institutions;
- (i) where orders, regulations, regulatory notices or other notices may be made or given under section 4(3), 27(4) or (5), 30(2) or (15), 31(1), (4) or (5),

32(10) or (14), 35(9) or (9B), 38(4), (5) or (6), 39(2), 41(1), (3) or (5), 41A, 61(1), (2) or (3) or 91(2), (2A) or (3) in relation to designated mortgage credit institutions—

- (i) separate orders, regulations, regulatory notices or other notices, as the case may be, may be made in relation to designated commercial mortgage credit institutions, and
- (ii) orders, regulations, regulatory notices or other notices, as the case may be, may be made in relation to both designated commercial mortgage credit institutions and designated mortgage credit institutions;
- (j) where orders, regulations, regulatory notices or other notices, have been made under any provision of Chapter 1 or of section 4, 61 or 91 prior to the commencement of this Chapter, such orders, regulations, regulatory notices or other notices, as the case may be, shall not apply to designated commercial mortgage credit institutions;
- (k) where orders, regulations, regulatory notices or other notices are made under any provision of Chapter 1 or of section 4, 61 or 91 after the commencement of this Chapter, those orders, regulations, regulatory notices or other notices, as the case may be, shall not apply in relation to designated commercial mortgage credit institutions unless those orders, regulations, regulatory notices or other notices, as the case may be, expressly so provide;
- (l) in section 32(17), the reference to 103 per cent shall be amended to 110 per cent;
- (m) in sections 33(6)(b), 34(1), 39A(a) and 41A(2)(b) any reference to section 32(16) shall be amended to subsection (4) of this section; and
- (n) in sections 61 and 91 references to provisions of Chapter 1 shall be as such provisions are amended by this section.

(2) If a designated commercial mortgage credit institution is also a designated mortgage credit institution or a designated public credit institution, the institution is required to keep its register of commercial mortgage covered securities business separate from, as applicable—

- (a) its register of mortgage covered securities business,
- (b) its register of public credit covered securities business.

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

- (a) the number of commercial mortgage credit assets, as at the date to which the statement is made up, with the amounts of principal outstanding in respect of the related credits being specified in tranches of—
 - (i) €2,500,000 or less,
 - (ii) more than €2,500,000 but not more than €5,000,000,
 - (iii) more than €5,000,000 but not more than €25,000,000,
 - (iv) more than €25,000,000 but not more than €50,000,000, and
 - (v) more than €50,000,000;
- (b) the geographical areas in which the related property assets are located and the number and percentage of those assets held in each of those areas;
- (c) whether or not any such commercial mortgage credit assets are non-performing as at that date, and if they are—
 - (i) the number of those assets as at that date, and
 - (ii) the total amount of principal outstanding in respect of those assets at that date;
- (d) whether or not any persons who owed money under commercial mortgage credit assets had, during the immediately preceding financial year of the institution (if any), defaulted in making payments in respect of those assets in excess of €25,000 so as to render them non-performing for the purposes of this Act at any time during that year, and if any such persons had defaulted, the number of those assets

that were held in the cover assets pool at the date to which the financial statement for that year was made up;

- (e) the number of cases in which the institution has replaced commercial mortgage credit assets with other assets because those commercial mortgage credit assets were non-performing;
- (f) the total amount of interest in arrears in respect of such commercial mortgage credit assets that has not been written off at that date;
- (g) the total amount of payments of principal repaid and the total amount of interest paid in respect of such commercial mortgage credit assets; and
- (h) any other information prescribed by the regulations for the purposes of this subsection.

(4) Section 32(15) as applied to designated commercial mortgage credit institutions and modified by subsection (1)(l) shall not preclude a designated commercial mortgage credit institution from giving a contractual undertaking in respect of the prudent market value of the cover assets pool being greater than the total of the nominal or principal amounts of the commercial mortgage covered securities which are in issue and secured on that pool where such undertaking requires a higher level of cover assets to be maintained in the pool than section 32(15) as so applied, or affect such an undertaking.”.

Amendment of section 42 of Principal Act.

31.—Section 42 of the Principal Act is amended—

- (a) in subsection (1)—
 - (i) in paragraph (f), by inserting “and other activities permitted by this subsection” after “(e)”, and
 - (ii) in paragraph (g), by inserting “and dealing in and holding pool hedge collateral” after “(f)”,
- (b) in subsection (2)(b), by substituting “public credit” for “asset”, and
- (c) in subsection (3), in the definition of “credit transaction asset”, by substituting “any asset arising from the activities referred to in subsection (1)(c) or (f), public” for “a public”.

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32.—Section 43 of the Principal Act is amended by substituting the following for the second sentence: Amendment of section 43 of Principal Act.

“However, this section does not prevent such an institution that is also a different kind of designated credit institution permitted by this Act from carrying on business activities that can lawfully be carried on by such an institution.”.

33.—Section 45 of the Principal Act is amended— Amendment of section 45 of Principal Act.

(a) in subsection (2)(b), by inserting “(including those relating to pool hedge collateral)” after “into”,

(b) by substituting the following for subsections (3) and (4):

“(3) If—

(a) a contract of a kind referred to in subsection (1) relates only to—

(i) public credit securities issued by a designated public credit institution,

(ii) public credit assets or substitution assets, or both, that are comprised in a cover assets pool maintained by a designated public credit institution, or

(iii) both—

(I) public credit securities issued by a designated public credit institution, and

(II) public credit assets or substitution assets, or both, that are comprised in a cover assets pool maintained by that institution,

and

(b) the institution and each other party to the contract have agreed that the contract is to be comprised in the cover assets pool as a cover asset,

the institution shall ensure that the contract complies with the requirements of subsections (4) and (5).

(4) A contract of the kind referred to in subsection (3)—

(a) may relate only to—

(i) public credit covered securities issued by the institution,

(ii) public credit assets of substitution assets, or both, that are comprised in a cover assets pool maintained by it, or

(iii) both—

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(I) public credit covered securities issued by the institution, and

(II) public credit assets or substitution assets, or both, that are comprised in a cover assets pool maintained by it,

and

(b) may consist of one or more contracts or transactions which when taken together directly or indirectly so relate.”,

and

(c) by inserting the following after subsection (9):

“(10) A designated public credit institution shall establish and keep a register in respect of any pool hedge collateral that it holds from time to time.

(11) The register referred to in subsection (10) shall be called the register of pool hedge collateral and shall be kept separate from the register of public credit covered securities business.

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

(13) The institution shall include in the register of pool hedge collateral the following particulars:

(a) particulars of the pool hedge collateral it holds from each counterparty to a cover assets hedge contract;

(b) particulars of the cover assets hedge contracts that relate to the pool hedge collateral;

(c) where the institution is registered as more than one kind of designated credit institution under this Act, particulars of the relevant cover assets pool to which the pool hedge collateral relates; and

(d) such other particulars as are prescribed by the regulations made by the Authority pursuant to subsection (15).

(14) Unless—

(a) the Authority otherwise requires, by a direction in writing, whether to an individual designated public credit institution or to designated public credit institutions generally, or pursuant to a regulatory notice made in accordance with subsection (15), or

(b) a designated public credit institution is potentially insolvent or insolvent,

the consent of the cover-assets monitor shall not be required for an institution to make, amend or delete an entry in its register of pool hedge collateral.

(15) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify requirements in relation to—

- (a) the type of assets or property that qualify as pool hedge collateral,
- (b) the maintenance and operation of the register of pool hedge collateral,
- (c) particulars that an institution shall include in the register of pool hedge collateral for the purposes of paragraph (d) of subsection (13),
- (d) the circumstances in which, pursuant to subsection (14), the consent of the cover assets monitor is required for a designated public credit institution to make, amend or delete an entry in its register of pool hedge collateral.

(16) The Authority or any person authorised by the Authority may inspect and take copies of the register of pool hedge collateral.

(17) The Authority may, by notice in writing, require a designated public credit institution to provide to the Authority or the cover-assets monitor, or both of them, such information in relation to pool hedge collateral held by that institution and at such intervals as may be specified to the institution by the Authority.”.

34.—Section 46 of the Principal Act is amended by deleting subsections (5), (6) and (7).

Amendment of section 46 of Principal Act.

35.—Section 47 of the Principal Act is amended—

Amendment of section 47 of Principal Act.

- (a) in subsection (5)(a), by substituting “comprised” for “included”,
- (b) in subsection (8)—
 - (i) in paragraph (d), by substituting “comprised” for “included”, and
 - (ii) by inserting “(but, for the purposes of this subsection, disregarding the effect of any pool hedge collateral)” after “and those securities”,
- (c) by substituting the following for subsection (9):

“(9) For the purposes of subsection (8)(a), ‘duration’, in relation to the cover assets pool or public credit covered securities secured on the pool, means, subject to subsection (9A), a weighted average term to maturity of the relevant principal amount of the public credit assets and substitution assets comprised in the pool or those securities,

as the case may be, determined in accordance with a formula or criteria specified in a regulatory notice made for the purposes of this subsection, after taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool or those securities, or both, as the case may be.

(9A) For the purposes of the definition of ‘duration’ in subsection (9), the weighted average term to maturity of the principal or nominal amount of the public credit assets and substitution assets comprised in the cover assets pool must not be more than 3 years greater than the weighted average term to maturity of the public credit covered securities secured on that pool after taking into account the effect of any relevant cover assets hedge contract entered into by the institution in relation to the pool or those securities, or both, as the case may be.”

and

(d) by inserting the following after subsection (10):

“(11) For the purpose of subsection (8)(b), a designated public credit institution is required to maintain a minimum level of regulatory overcollateralisation of its cover assets pool with respect to the public credit covered securities in issue which are secured on the pool.

(12) For the purposes of subsection (11), the Authority may, by regulatory notice notified in *Iris Oifigiúil*—

(a) specify a formula or criteria—

(i) to determine the present value of—

(I) public credit assets and substitution assets comprised in a cover assets pool, and

(II) public credit covered securities in issue which are secured on that pool,

(ii) that may take account of cover assets hedge contracts relating to those assets or securities, or both,

(b) specify the frequency of any determination by the designated public credit institution of those present values.

(13) Subsection (11) shall not affect any contractual overcollateralisation undertaking made by the institution and which is the subject of the cover-assets monitor’s functions under the Asset Covered Securities Act 2001 (Sections 61(1), 61(2), 61(3)) (Overcollateralisation) Regulations 2002 (S.I. No. 635 of 2002), where that contractual overcollateralisation undertaking requires a higher level of cover assets to be maintained in the cover assets pool than subsection (11).

(14) In this section—

‘contractual overcollateralisation undertaking’ means a contractual undertaking by the designated public credit institution that the prudent market value of the cover assets pool is to be maintained by the institution at a specified level greater than the total of the principal amounts of the public credit covered securities in issue which are secured on that pool;

‘regulatory overcollateralisation’ means that the present value of the public credit assets and substitution assets comprised in the cover asset pool, expressed as a percentage of the present value of the public credit covered securities in issue which are secured on that pool, is a minimum of 103 per cent after taking account of the effect of any cover assets hedge contract comprised in the cover assets pool.”.

36.—Section 48 of the Principal Act is repealed and substituted by the following:

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

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

48.—(1) Subject to the other provisions of this Chapter, a designated public credit institution—

- (a) may include any public credit asset or substitution asset located within an EEA country or category A country in the cover assets pool maintained by the institution,
- (b) shall not include a public credit asset or substitution asset located only within a category B country in the cover assets pool maintained by the institution.

(2) A designated public credit institution may not, subject to subsection (3), include in its cover assets pool—

- (a) a section 5(1)(b) asset or a section 5(1)(d) asset unless such asset complies with any creditworthiness standards or criteria which may be specified by the Authority in a regulatory notice made for the purposes of this paragraph,
- (b) a section 5(1)(c) asset unless such asset complies with—
 - (i) risk weighting standards or criteria for capital adequacy purposes which may be specified by the Authority in a regulatory notice made for the purposes of this paragraph, and
 - (ii) creditworthiness standards or criteria which may be specified by the Authority in a regulatory notice made for the purposes of this paragraph.

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Act 2007.

(3) A section 5(1)(b) asset, section 5(1)(c) asset or section 5(1)(d) asset may, notwithstanding subsection (2), be included by a designated public credit institution in its cover assets pool provided that—

(a) any such assets comply with creditworthiness standards or criteria, or risk-weighting standards or criteria, which may be specified by the Authority in a regulatory notice made for the purposes of this paragraph, and

(b) the total aggregate nominal or principal amount of all such assets comprised in the cover assets pool at any time does not exceed 20% of the aggregate nominal or principal amount of outstanding public credit covered securities issued by the institution.

(4) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify creditworthiness standards or criteria or, as applicable, risk-weighting standards or criteria for the purposes of subsections (2) and (3)(a).

(5) The Authority, when making any regulatory notice provided for in subsection (4), shall have regard to any relevant standards or criteria applicable under the Codified Banking Directive which are relevant to article 22(4) securities that qualify as covered bonds for the purposes of that Directive.

(6) In this section—

‘section 5(1)(b) asset’ means an asset or property which qualifies as a public credit asset by virtue of section 5(1)(b);

‘section 5(1)(c) asset’ means an asset or property which qualifies as a public credit asset by virtue of section 5(1)(c);

‘section 5(1)(d) asset’ means an asset or property which qualifies as a public credit asset by virtue of section 5(1)(d).”.

Amendment of
section 49 of
Principal Act.

37.—Section 49 of the Principal Act is amended—

(a) in subsection (1), by substituting “, (7) or (11) or any contractual undertaking referred to in section 32(14)” for “or (7)”,

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

“(2A) A designated public credit institution shall, as soon as practicable after becoming aware that a cover asset comprised in its cover assets pool would, if the institution

were to include that asset at that time in its pool, contravene section 48(2) or 50(8)(a), remove that cover asset from its cover assets pool and, where required by this Act, replace it in accordance with section 50. Until these steps have been taken, the institution may not issue any further public credit covered securities.”.

38.—Section 50 of the Principal Act is amended—

Amendment of section 50 of Principal Act.

- (a) in subsection (1), by substituting “comprised” for “included”,
- (b) in subsection (3), by inserting “when” after “an underlying asset”, and
- (c) by substituting the following for subsections (8) and (9):

“(8) A designated public credit institution may not at any time include a substitution asset in a cover assets pool maintained by the institution—

- (a) unless the substitution asset concerned meets the creditworthiness standards or criteria applicable to it which may be specified by the Authority in a regulatory notice made for the purposes of this subsection, or
- (b) if, after including the substitution asset concerned in the pool, the total prudent market value of all substitution assets then comprised in the pool at the relevant time would exceed the prescribed percentage of the aggregate nominal or principal amount of outstanding public credit covered securities secured on the pool. For the purposes of this subsection, the prescribed percentage is 15 per cent.

(9) The Authority may, by regulatory notice published in *Iris Oifigiúil*, specify creditworthiness standards or criteria for the purposes of subsection (8) and such standards or criteria—

- (a) may have regard to creditworthiness standards or criteria under the Codified Banking Directive relevant to substitution assets and article 22(4) securities which qualify as covered bonds for the purposes of that Directive, and
- (b) may differentiate between substitution assets which have a maximum maturity of 100 days and those which have a longer maturity.”.

39.—Section 51(4) of the Principal Act is amended by substituting “comprised” for “included”.

Amendment of section 51 of Principal Act.

40.—Section 53(5) of the Principal Act is amended by inserting “, delete” after “make”.

Amendment of section 53 of Principal Act.

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Lifting of certain restrictions on cover assets pool of a designated public credit institution.

41.—The Principal Act is amended by inserting the following after section 54:

“Lifting of certain restrictions on cover assets pool of a designated public credit institution.

54A.—For so long as—

(a) a cover assets pool maintained by a designated public credit institution is comprised in part of cover assets which meet the requirements of section 47(8) and (11) and of any contractual over-collateralisation undertaking made by the institution referred to in section 47(13), and

(b) those cover assets meet the other requirements of this Part,

then any provision of this Part which restricts the proportion or percentage of the cover assets pool which may be comprised of certain cover assets or criteria or standards applicable to cover assets shall not apply to any further such cover assets comprised or to be comprised from time to time in that cover assets pool, and the provisions of this Part shall be construed accordingly.”.

Amendment of section 55 of Principal Act.

42.—Section 55 of the Principal Act is amended—

(a) in paragraph (a), by substituting “comprised” for “included”,

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

“(ab) in the case of public credit assets comprised in the cover assets pool which are financial obligations of entities referred to in section 5(1)(d), a reference to those kinds of public credit assets and the number and percentage of those assets which are referable to that category,”,

and

(c) in paragraph (b), by substituting “section” for “subsection”.

Amendment of section 56 of Principal Act.

43.—Section 56(1) of the Principal Act is amended—

(a) by substituting “credit asset comprised” for “credit asset included”, and

(b) by substituting “the date concerned” for “date that the asset is included in the pool”.

Amendment of section 58 of Principal Act.

44.—Section 58 of the Principal Act is amended by inserting the following after subsection (12):

“(12A) A designated credit institution shall be, and shall be deemed always to have been, entitled to transfer its assets or

business by any means permitted by law other than this section.”.

45.—Section 61 of the Principal Act is amended—

Amendment of section 61 of Principal Act.

(a) in subsection (1)—

(i) by substituting “32(8) and (15)” for “32(8)”, and

(ii) by substituting “, 38(4) and (5) and 41A(1)(c)” for “and 38(4) and (5)”,

and

(b) in subsection (2)(b), by substituting “and” for “or”.

46.—Section 62(1) of the Principal Act is amended by substituting “47(8) and (11)” for “47(8)”.

Amendment of section 62 of Principal Act.

47.—Section 66 of the Principal Act is amended—

Amendment of section 66 of Principal Act.

(a) in subsection (2)(a), by substituting “comprised” for “included”, and

(b) in subsection (3)(b), by substituting “, substitution asset or cover assets hedge contract” for “or substitution asset”.

48.—Section 71(c) of the Principal Act is amended by substituting “and” for “, or appropriate”.

Amendment of section 71 of Principal Act.

49.—Section 72 of the Principal Act is amended by inserting the following after subsection (5):

Amendment of section 72 of Principal Act.

“(6) The Authority may, by notice in writing given to a manager appointed in respect of a designated credit institution, confer on that manager such additional responsibilities or powers as it considers appropriate for the effective management of the asset covered securities business activities of the institution.

(7) If a liquidator, examiner or receiver is appointed in respect of a designated credit institution to which a manager has been appointed, the manager may enter into arrangements with respect to the management of the institution, including such matters as may be specified in the notice referred to in subsection (6). Those arrangements—

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

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

(8) Without limiting subsection (6), where a designated credit institution in respect of which a manager has been appointed has property or assets located for the purposes of this Act outside the State and those assets or property are relevant to the

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manager's functions under this Act, the manager may, with the prior consent in writing of the Authority, appoint agents with such powers of the manager and on such terms as the manager considers is required to enable the manager to carry out the manager's functions under this Act and the claims of any such agent shall be deemed to be claims of the manager for the purposes of this Act.”.

Amendment of
section 78 of
Principal Act.

50.—Section 78(a) of the Principal Act is amended by inserting “or in a notice referred to in section 72(6)” after “appointment”.

Amendment of
section 81 of
Principal Act.

51.—Section 81 of the Principal Act is amended by inserting the following after subsection (3):

“(4) Subject to section 27(6), in this Part any reference to ‘cover assets’ or a ‘cover assets pool’ includes—

(a) in the case of mortgage credit assets, public credit assets and substitution assets which constitute cover assets or are comprised in the cover assets pool, any security within the meaning of section 58, guarantee, indemnity and insurance held by the designated credit institution in respect of such assets,

(b) in the case of cover assets hedge contracts, any security within the meaning of section 58, guarantee, indemnity and insurance held by the designated credit institution for, or pool hedge collateral provided to the institution under, such contracts.

(5) Any reference in this Part to a ‘cover assets hedge contract’ includes any rights, obligations and title of the designated credit institution to, in or arising from pool hedge collateral or security within the meaning of section 58 provided to the institution under or for that contract.”.

Amendment of
section 83 of
Principal Act.

52.—Section 83 of the Principal Act is amended—

(a) in subsection (1)—

(i) by inserting “or formerly designated” after “designated”, and

(ii) by substituting “comprised” for “included”,

and

(b) in subsection (5)—

(i) by inserting “or application” after “disposal”, and

(ii) by substituting “comprised” for “included”.

Amendment of
section 85 of
Principal Act.

53.—Section 85(2) and (3) of the Principal Act is amended by substituting “comprised” for “included”.

[2007.] *Asset Covered Securities (Amendment) Act 2007.* [No. 13.]

54.—Section 88 of the Principal Act is amended—

Amendment of
section 88 of
Principal Act.

(a) in subsection (1)—

(i) by inserting “or formerly designated” after “designated”, and

(ii) by substituting “comprised” for “included”,

(b) in subsection (2)—

(i) by inserting “or formerly designated” after “designated”,

(ii) by substituting “comprised” for “included”, and

(iii) in paragraph (b), by inserting “(but disregarding, for the purposes of this subsection, any claims over those assets arising from mandatory laws in the relevant jurisdictions and any costs associated with administering the security interest and realising assets under the security interest)” after “Part”,

(c) in subsection (3)—

(i) by inserting “or formerly designated” after “designated”, and

(ii) by substituting “comprised” for “included”,

and

(d) by inserting the following after subsection (3):

“(3A) Where a security interest of the kind referred to in subsection (2) is granted in favour of a trustee or other representative for the benefit of the persons referred to in subsection (2)(b) (which may include the claims of that trustee or other representative in its own right), then the claims of that trustee or other representative in its own right agreed by the manager, or where no manager has been appointed to the institution, the cover-assets monitor, shall be deemed to be the claims of super-preferred creditors for the purposes of this Act.

(3B) The cover-assets monitor or any manager may enter into arrangements with any trustee or other representative referred to in subsection (5) in connection with—

(a) their respective functions under this Act and operations relating to cover assets which are also subject to the security arrangements referred to in subsection (2),

(b) their respective functions under this Act and the enforcement or administration of cover assets which are also subject to security arrangements referred to in subsection (2).”.

[No. 13.] *Asset Covered Securities (Amendment)* [2007.]
Act 2007.

Amendment of
section 89 of
Principal Act.

55.—Section 89(2)(a) of the Principal Act is amended by substituting “comprised” for “included”.

Provisions
applicable where a
credit institution is
more than one kind
of designated credit
institution.

56.—Section 90 of the Principal Act is repealed and substituted by the following:

“Provisions
applicable
where a credit
institution is
more than one
kind of
designated
credit
institution.

90.—(1) If a credit institution that is or was formerly both a designated mortgage credit institution and a different kind of designated credit institution permitted under this Act has—

(a) issued mortgage covered securities, or

(b) entered into a cover assets hedge contract comprised in its register of mortgage credit covered securities business,

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

(2) If a credit institution that is or was formerly both a designated public credit institution and a different kind of designated credit institution permitted under this Act has—

(a) issued public credit covered securities,
or

(b) entered into a cover assets hedge contract comprised in its register of public credit covered securities business,

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

(3) If a credit institution that is or was formerly both a designated commercial mortgage credit institution and a different kind of designated credit institution permitted by this Act has—

(a) issued commercial mortgage covered securities, or

(b) entered into a cover assets hedge contract comprised in its register of commercial mortgage credit covered securities business,

the rights of the holders of those securities, or of each other party to the contract, are secured only on the cover assets comprised in the relevant cover assets pool.”.

[2007.] *Asset Covered Securities (Amendment) Act 2007.* [No. 13.]

57.—Section 91 of the Principal Act is amended—

Amendment of section 91 of Principal Act.

(a) in subsection (2)—

- (i) in paragraphs (b) and (c), by substituting “pool” for “pools”,
- (ii) in paragraph (e), by substituting “comprised” for “included”,
- (iii) in paragraph (k), by substituting “prescribe requirements” for “supplement the provisions of this Act”, and
- (iv) by substituting the following for paragraph (l):

“(l) prescribe requirements relating to entering into reciprocal arrangements with qualifying countries in accordance with section 102.”,

and

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

“(2A) The Authority may, by regulatory notice published in *Iris Oifigiúil*, impose requirements consistent with the provisions of this Act so as to ensure that asset covered securities meet criteria which apply in relation to article 22(4) securities which qualify as covered bonds under—

- (a) the Codified Banking Directive, or
- (b) any directive or regulation made by competent organs of the European Union which has been implemented under the laws of the State.”.

58.—The Principal Act is amended by inserting the following after section 95:

Principles and policies applicable to making of orders, etc., under Principal Act.

“Principles and policies applicable to making of orders, etc. under this Act.

95A.—When the Minister or the Authority makes an order, regulation, regulatory notice or other notice under this Act, the Minister or the Authority, as the case may be, shall have regard to the following principles and policies to the extent applicable to the relevant order, regulation, regulatory notice or other notice, as the case may be:

- (a) the purposes of this Act as set out in section 2;
- (b) the need to develop the business of one or more types of designated credit institutions permitted by this Act having regard to domestic or international markets in which the institutions operate or may propose to operate;

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- (c) the need to protect the interests of preferred creditors or other creditors of one or more types of designated credit institutions permitted by this Act;
- (d) the need for the proper and proportionate regulation of one or more types of designated credit institutions permitted by this Act; and
- (e) the Codified Banking Directive and any regulations and directives made by competent organs of the European Union which have been implemented under the laws of the State relevant to article 22(4) securities and asset covered securities.”.

Further amendments to Principal Act.

59.—The Principal Act is amended by inserting the following after section 106:

“Further amendments to this Act.

107.—(1) The Minister may, by order notified in *Iris Oifigiúil*, appoint a date for the purposes of Part 1, 2 or 3 of Schedule 3.

(2) On the date appointed under subsection (1) for a Part of Schedule 3, this Act is amended as specified in that Part.”.

Schedule 3 — further amendments to Principal Act.

60.—The Principal Act is amended by inserting the following after Schedule 2:

Section 107.

“SCHEDULE 3

FURTHER AMENDMENTS TO THIS ACT

PART 1

DELETION OF REFERENCES TO TIER 2 ASSET

Item No.	Section affected	Amendment
1.	Section 3	(a) In subsection (1), in the definition of “tier 1 asset”, substitute “assets.” for “assets; and”. (b) In subsection (1), delete the definition of “tier 2 asset”.
2.	Section 27	(a) In subsection (1), delete paragraph (e). (b) In subsection (3), in the definition of “credit transaction asset”, substitute “or substitution asset” for “, substitution asset or tier 2 asset”.
3.	Section 31	(a) In subsection (3), delete “and tier 2 assets”. (b) In subsection (5), delete “or tier 2 assets”.
4.	Section 41	In subsection (5), delete “tier 2 assets,”.
5.	Section 42	(a) In subsection (1), delete paragraph (e). (b) In subsection (3), in the definition of “credit transaction asset”, substitute “or substitution asset” for “, substitution asset or tier 2 asset”.
6.	Section 46	In subsection (4), delete “or tier 2 assets”.
7.	Section 56	In subsection (5), delete “tier 2 assets”.

PART 2

DELETION OF REFERENCES TO TIER 1 ASSET

Item No.	Section affected	Amendment
1.	Section 3	<p>(a) In subsection (1), in the definition of “supervisory enactment”, substitute “notices.” for “notices;”.</p> <p>(b) In subsection (1), delete the definition of “tier 1 asset”.</p> <p>(c) In subsection (2)—</p> <p style="padding-left: 40px;">(i) delete paragraph (b), and</p> <p style="padding-left: 40px;">(ii) in paragraph (c)—</p> <p style="padding-left: 80px;">(I) substitute “an exposure” for “a deposit of money”, and</p> <p style="padding-left: 80px;">(II) substitute “subject of the exposure” for “holding the deposit”.</p> <p>(d) Delete subsection (3).</p> <p>(e) In subsection (4)—</p> <p style="padding-left: 40px;">(i) delete paragraph (b), and</p> <p style="padding-left: 40px;">(ii) in paragraph (c)—</p> <p style="padding-left: 80px;">(I) substitute “an exposure” for “a deposit of money”, and</p> <p style="padding-left: 80px;">(II) substitute “subject of the exposure” for “hold the deposit”.</p> <p>(f) Substitute the following for subsection (5):</p> <p style="padding-left: 40px;">“(5) In subsection (4), ‘primary financial obligation’ means the financial obligations that enables the asset to qualify as a public credit asset.”.</p>
2.	Section 6	In subsection (1), delete paragraph (b).

PART 3

DELETION OF DEFINITIONS OF “EUROPEAN CENTRAL BANK” AND “NATIONAL CENTRAL BANK”

Item No.	Section affected	Amendment
1.	Section 3	In subsection (1), delete the definitions of “European Central Bank” and “national central bank”.

61.—(1) This Act may be cited as the Asset Covered Securities (Amendment) Act 2007.

Short title, construction, collective citation and commencement.

(2) The Asset Covered Securities Act 2001 and this Act shall be construed together as one Act and may be cited together as the Asset Covered Securities Acts 2001 and 2007.

(3) This Act shall come into operation on such day or days as the Minister for Finance may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes and different provisions.