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*Number 6 of 2001*

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**TRUSTEE SAVINGS BANKS (AMENDMENT) ACT, 2001**

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ARRANGEMENT OF SECTIONS

Section

1. Authorisation by Minister for Finance of reorganisation of trustee savings banks into companies.
  2. Exemption from stamp duty.
  3. Amendment of Schedule 12 to the Taxes Consolidation Act, 1997.
  4. Short title and collective citation.
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[No. 6.]

*Trustee Savings Banks  
(Amendment) Act, 2001.*

[2001.]

ACTS REFERRED TO

Bankers' Books Evidence Acts, 1879 to 1989	
Bills of Sale (Ireland) Acts, 1879 and 1883	
Central Bank Acts, 1942 to 1998	
Central Bank Act, 1971	1971, No. 24
Companies Acts, 1963 to 1999	
Registration of Deeds Act, 1707	1707, c.10
Registration of Title Act, 1964	1964, No. 16
Stamp Duties Consolidation Act, 1999	1999, No. 31
Taxes Consolidation Act, 1997	1997, No. 39
Trustee Savings Banks Act, 1989	1989, No. 21



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*Number 6 of 2001*

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**TRUSTEE SAVINGS BANKS (AMENDMENT) ACT, 2001**

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AN ACT TO AMEND AND EXTEND SECTIONS 57 AND 64 OF THE TRUSTEE SAVINGS BANKS ACT, 1989, AND SCHEDULE 12 TO THE TAXES CONSOLIDATION ACT, 1997. [28th March, 2001]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—The Trustee Savings Banks Act, 1989, is amended by the substitution for section 57 of the following section:

Authorisation by Minister for Finance of reorganisation of trustee savings banks into companies.

“57.—(1) In this section, unless the context otherwise requires—

‘books’ includes ledgers, day books, cash books, account books and other books and records (including electronic records) used in the ordinary business of a bank before the transfer date;

‘bank’ means a trustee savings bank;

‘banking company’ means an authorised credit institution (within the meaning of the European Communities (Licensing and Supervision of Credit Institutions) Regulations, 1992 (S.I. No. 395 of 1992)) which is a holding company of the relevant company;

‘Central Bank Acts’ means Central Bank Acts, 1942 to 1998;

‘company’, ‘reorganisation’ and ‘reorganised’ shall be construed in accordance with subsection (3);

‘order’ means an order under subsection (2);

‘relevant company’ means the company into which a bank has been reorganised and, for the purposes of subsections (12), (13) and (14) only, includes the banking company into which the said company has been reorganised;

‘relevant owner’ means, in relation to a bank, that bank and any other bank or former bank to which, by any amalgamation or succession of amalgamations, that bank has succeeded and shall include each and every one of the trustees at any time and for the time being of that bank or any such other bank or former bank;

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‘shares’ means shares in the relevant company;

‘transfer date’ means the date on which a reorganisation is carried into effect in accordance with its terms;

‘trust’ means an employee share ownership trust to which section 519 of the Taxes Consolidation Act, 1997, applies.

(2) The Minister may make an order for the purposes of this section and may make an order amending or revoking any order made under this section.

(3) (a) An order may authorise the reorganisation of—

(i) one or more banks into a company referred to in subparagraph (i) or (ii) of paragraph (c) and an order so doing may provide for the transfer or other disposal to the company of all or part of the undertaking, property and rights of the bank or banks concerned and of all or part of the liabilities or obligations thereof, including deposits in the bank or banks and the liabilities referable thereto, to the company; and

(ii) a relevant company into a banking company, provided that the Minister has consulted with the Central Bank in advance of the making of an order, and an order so doing may provide for the transfer or other disposal to the banking company of all or part of the undertaking, property and rights of the relevant company and of all or part of the liabilities or obligations thereof, including deposits formerly in the bank or banks to which the relevant company succeeded and the liabilities referable thereto, to the banking company.

(b) An order may authorise the reorganisation of a company referred to in subparagraph (i) of paragraph (c) into a company referred to in subparagraph (ii) of paragraph (c).

(c) In this subsection ‘company’ means—

(i) a company the composition of the board of directors of which is controlled by the Minister or as respects which more than half in nominal value of its equity share capital and more than half in nominal value of its shares carrying voting rights are held by the Minister, or

(ii) a company the composition of the board of directors of which is controlled by a person or persons other than the Minister and as respects which more than half in nominal value of its equity share capital or more than half in nominal value of shares carrying voting rights are held by a person or persons other than the Minister,

and for the purposes of subparagraph (i), the composition of the board of directors of a company shall be deemed to be controlled by a person or persons

including the Minister in a case where, if the person S.1  
or persons were a company, the composition of that  
board would be deemed, by virtue of section 155 (2)  
of the Act of 1963, to be controlled by the latter  
company.

(4) For the purposes of effecting a reorganisation—

(a) the trustees of the bank concerned shall have, and shall be deemed to have had at all relevant times, the power to enter into, and, subject to an order, carry into effect, a contract providing, *inter alia*, for the reorganisation of the bank into a company and the transfer or other disposal by the trustees of the bank to the company of all or part of the undertaking, property and rights of the bank and of all or part of the liabilities or obligations thereof, including deposits in the bank and the liabilities referable thereto, to such company;

(b) the trustees of the bank concerned shall have, and shall be deemed to have had at all relevant times, the power, for the purposes of a trust established by the relevant company and in such manner and upon and subject to such terms and conditions as they may determine, and subject to being so authorised by an order, to sell or otherwise transfer (or direct the sale or transfer) to the trustees of such trust any consideration in the form of shares receivable by the trustees of the bank pursuant to any such reorganisation or contract referred to in paragraph (a);

(c) the Minister, for the purposes of a trust established by the relevant company, may, in an order—

(i) direct a company referred to subsection (3)(c)(i) to issue shares to the trustees of such trust,

(ii) provide, in respect of a company referred to in subsection (3)(c)(i), for the transfer to the trustees of such trust of shares held by the Minister or any director of the company,

(iii) authorise the trustees of the bank concerned, in respect of a company referred to in subsection (3)(c)(ii), to sell or otherwise transfer (or direct the sale or transfer) to the trustees of such trust any consideration in the form of shares receivable by the trustees of the bank pursuant to any such reorganisation or contract referred to in paragraph (a);

and

(d) the trustees of the bank concerned in exercising the powers conferred on them, and in complying with the obligations imposed on them by this section shall, for the purposes of section 22, be deemed to do so in the course of carrying out their duties as such trustees.

(5) An order authorising the reorganisation of a bank into a company referred to in subsection (3)(c)(i) may make provision for such matters as the Minister considers necessary or expedient for the purposes of the reorganisation and, in particular but

S.1 without prejudice to the generality of the foregoing, shall provide—

- (a) that the memorandum and articles of association of the company shall be in such form consistent with any orders for the time being in force as shall be approved of by the Minister and the Central Bank,
- (b) that notwithstanding anything contained in the Companies Acts no alteration in the memorandum of association or articles of association of the company shall be valid or effectual unless made with the previous approval of the Minister and the Central Bank,
- (c) for the allotment and issue to and the holding by the Minister of shares in the company and for the holding in trust for the Minister of any shares in the company held by a person other than the Minister,
- (d) for authorising the Minister to take up by subscription from time to time shares in the company,
- (e) for the exercise by the Minister, in respect of shares in the company held by him, of all or any of the rights and powers from time to time exercisable by the holder of such shares including, where such rights and powers are exercisable by attorney, the exercise by the Minister, if he so thinks proper, of such rights and powers by his attorney,
- (f) for authorising the Minister to appoint persons to be directors of the company and to determine the remuneration of such directors and the other terms and conditions of their tenure of office as such directors,
- (g) for the prohibition of the transfer or alienation by the Minister of shares in the company held by him otherwise than for the purposes set out in subsection (4)(c)(ii) or of providing a person appointed or intended to be appointed to be a director of the company with the necessary qualification and the prohibition, in any event, of the transfer for the purpose aforesaid of any number of shares in the company that would reduce the numbers of shares in the company held by him to less than 51 per cent of the shares of the company,
- (h) for authorising the Minister to require a director of the company to transfer to a specified person, for the purpose mentioned in paragraph (g), a share or shares in the company held by the director, and
- (i) for the charging on the Central Fund or the growing produce thereof of any money payable by the Minister for the allotment and issue of shares in the company to him and to persons who hold them in trust for him.

(6) An order authorising the reorganisation of—

- (a) a company referred to in subparagraph (i) of subsection (3)(c) into a company referred to in subparagraph

(ii) of that subsection shall make provision for the disposal by the Minister of the proceeds of any sale, placing or other disposal of shares in the first-mentioned company held by him or of any sale or disposal of assets of that company, S.1

(b) a bank into a company referred to in subsection (3)(c)(ii) may provide for the payment to the Minister of the proceeds or part of the proceeds (less any expenses properly incurred by the trustees of the bank concerned in connection with the reorganisation) including all proceeds and consideration received by the trustees pursuant to any contract referred to in subsection (4)(a) or as a result of the disposal of shares to a trust as referred to in subsection (4)(b) or otherwise arising in relation to the reorganisation and for the payment by the Minister into the Central Fund of any such proceeds paid to him.

(7) An order providing for the transfer of any assets of a bank to a company may provide for the transfer of specified assets of the bank to the Minister.

(8) (a) If and for so long as the relevant company is a company to which subsection (3)(c)(i) applies, this Act shall apply in relation to the relevant company subject to any modifications or adaptations (including the adaptation of references to trustees and rules of trustee savings banks) that the Minister considers necessary or expedient and specifies in an order and any other necessary modifications and adaptations.

(b) If the relevant company is a company to which subsection (3)(c)(ii) applies, this Act (other than this section) shall not apply in relation to the relevant company and, if the relevant company has been reorganised into a banking company, to the banking company concerned and the rights, liabilities and obligations referable to a deposit in the bank (being as respects a deposit, liabilities to return the deposit to the depositor and to pay interest on it (if it was payable) at the rate prevailing immediately before the reorganisation) shall become instead rights, liabilities and obligations incident to the relationship of customer and banker and shall be variable, and, subject to paragraph (c), section 7 of the Central Bank Act, 1971, shall apply in relation to the relevant company, and the banking company concerned, accordingly.

(c) If the relevant company is a company to which subsection (3)(c)(ii) applies, the Minister may, after consultation with the Central Bank, make provision in an order for and in connection with the transition from regulation and supervision of the bank concerned by and under this Act to regulation and supervision of the relevant company by and under the Companies Acts and the Central Bank Acts, including provision that section 7(1) of the Central Bank Act, 1971, shall not apply in relation to the relevant company, on such conditions and for such period as the Minister considers necessary and specifies in an order.

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- (d) As from the transfer date, the trustees of the bank concerned shall cease to act further as trustees in the business of the bank.
  - (e) Notwithstanding paragraph (d), the trustees of the bank concerned shall continue in office in order to discharge the following duties—
    - (i) to comply with their obligations pursuant to the reorganisation, an order and this section, and
    - (ii) to prepare audited accounts for the final financial period of the bank as a trustee savings bank and submit them to the Minister and the Central Bank in accordance with section 35(5),  
  
and the relevant company and the banking company, as appropriate, shall provide the trustees with such access to records as they require for those purposes.
  - (f) A trustee of a bank who becomes an employee or officer of the relevant company or of the banking company shall forthwith become and be disqualified for being a trustee of the bank concerned.
- (9) An order may, for the purposes of a reorganisation, make such (if any) provision as the Minister, after consultation with the Central Bank, considers appropriate for the transfer of staff of the bank concerned from employment with the bank to employment with the relevant company and from employment with the relevant company to employment with a banking company and from employment with a company referred to in subparagraph (i) of subsection (3)(c) to employment with a company referred to in subparagraph (ii) of that paragraph and in relation to the terms and conditions of such employment.
- (10) An order—
- (a) may provide, for the purposes of a reorganisation, for the dissolution and winding up of a bank and may, for the purpose of the winding up, apply to it, with any necessary modifications, the provisions of the Companies Acts;
  - (b) may provide for an interim distribution or interim distributions of a part or parts of the proceeds and consideration referred to in subsection (6)(b) to be made by the trustees of the bank concerned to the Minister and shall provide for the final distribution to the Minister of the balance of such proceeds and consideration;
  - (c) may provide for the preparation by the trustees of the bank concerned, and the submission to the Minister, of audited financial statements for the final financial period of the bank as a trustee savings bank;
  - (d) shall provide for the preparation by the trustees of the bank concerned, and the submission to the Minister, of audited financial statements for the period from the transfer date to the date of final distribution in accordance with subsection (6)(b);



- (e) shall provide that after payment of the balance of the S.1  
said proceeds and consideration to the Minister and  
the submission of audited financial statements as  
provided for in paragraph (d), the bank concerned  
shall be dissolved and the trustees shall vacate office  
upon such date as shall be determined by the Mini-  
ster and the Minister shall, within two months of  
such dissolution and vacating, publish a notification  
in *Iris Oifigiúil* of the date of dissolution;

and section 42 shall not apply to the trustees of the bank concerned or to the bank concerned in relation to any such dissolution.

(11) An order may authorise the relevant company, a banking company and any subsidiary thereof to include within its name, or use in connection with its business, ‘TSB’ or ‘TSB Bank’ on such conditions as may, after consultation with the Central Bank, be specified in the order, and section 14 of this Act and sections 15 and 16 of the Central Bank Act, 1971, shall not apply in relation to the use of ‘TSB’ or ‘TSB Bank’ by the relevant company, the banking company or any such subsidiary if an order grants such authorisation.

(12) An order may include provisions to the effect that—

- (a) a reference (express or implied) to a bank in any instrument made, given, passed or executed before the transfer date shall be read and construed as a reference to the relevant company;
- (b) all contracts, agreements, conveyances, mortgages, deeds, leases, licences, other instruments, undertakings and other notices (whether or not in writing) entered into by, made with, given to or by or addressed to a bank (whether alone or with any other person) before the transfer date and subsisting immediately before the transfer date shall to the extent that they were previously binding on and enforceable by, against or in favour of the bank, be binding on and enforceable by, against or in favour of the relevant company as fully and effectually in every respect as if instead of the bank, the relevant company had been the person by whom they were entered into, with whom they were made or to or by whom they were given or addressed, as the case may be;
- (c) an instruction, order, direction, mandate or authority given to a bank and subsisting immediately before the transfer date shall be deemed to have been given to the relevant company;
- (d) any account between a bank and any person at any office or branch of that bank in the State shall be transferred or deemed to be transferred to the relevant company on the transfer date and become as and from that day an account between the relevant company and that person with the same rights and subject to the same obligations and incidents (including rights of set-off) as would have been applicable thereto if such account between the bank

S.1

and the person had continued and any order, instruction, direction, mandate or authority given, whether before or after that day, by that person in relation to such account or any obligation entered into by the bank in relation to any person and subsisting on that day shall apply and have effect after the transfer of the account to the relevant company, and any moneys owing on such account by that person to the bank on that day shall become due and payable by that person to the relevant company instead of to the bank and any moneys owing on such account by the bank to that person at that date shall become due and payable to that person by the relevant company instead of by the bank;

- (e) a security held by a bank as security for a debt or other liability to the bank incurred before the transfer date shall be available to the relevant company as security for the discharge of that debt or liability and where the security extends to future or prospective debts or liabilities, shall be available as security for the discharge of debts or liabilities to the relevant company incurred on or after the transfer date and in relation to a security, the relevant company shall be entitled to all the rights and priorities (howsoever arising) and shall be subject to all liabilities to which the bank would have been entitled or subject to if the bank had not been reorganised into the relevant company, and in relation thereto the following provisions shall have effect—
  - (i) the transfer of any such security effected or deemed to have been effected by an order shall not require registration under or in pursuance of the Registration of Deeds Act, 1707, the Registration of Title Act, 1964, or section 99 of the Act of 1963, but shall operate for the purposes of those Acts as if it were made by deed duly registered on the transfer date under or in pursuance of whichever of those Acts may be applicable thereto,
  - (ii) where an order effects an extension of or in relation to any such security so as to include future advances or future liabilities to the relevant company such extension shall not require registration under or in pursuance of the Registration of Deeds Act, 1707, the Bills of Sale (Ireland) Acts, 1879 and 1883, the Registration of Title Act, 1964, or section 99 of the Act of 1963, but shall operate for the purposes of those Acts as if it were made by deed duly registered on the transfer date under or in pursuance of whichever of those Acts may be applicable thereto;
- (f) all the rights and liabilities of a bank as bailor or bailee of documents or chattels shall be vested in and assumed by the relevant company;
- (g) a negotiable instrument or order for payment of money which before the transfer date is drawn on or given

to or accepted or endorsed by a bank or payable at a place of business of a bank shall, unless the context otherwise requires, have the same effect on and after the transfer date as if it had been drawn on or given to or accepted or endorsed by the relevant company instead of the bank or was payable at the place of business of the relevant company; S.1

(h) nothing effected or authorised by an order—

- (i) shall be regarded as placing a bank or the relevant company or any person in breach of contract or confidence or as otherwise making any of them guilty of a civil wrong,
  - (ii) shall be regarded as giving rise to a right to any person to terminate or cancel any contract or arrangement or to accelerate the performance of any obligation,
  - (iii) shall be regarded as placing a bank or the relevant company or any person in breach of any enactment or rule of law or contractual provision prohibiting, restricting or regulating the assignment or transfer of any property or the disclosure of any information,
  - (iv) shall release any surety wholly or in part from any obligation, or
  - (v) shall invalidate or discharge any contract or security;
- (i) any action, arbitration or proceedings or cause of action which immediately before the transfer date is pending or existing by, against or in favour of a bank or to which a bank is a party may be prosecuted and without amendment of any summons, pleading or other document continued and enforced by, against or in favour of the relevant company;

(j) where—

- (i) the business of a bank, includes the business of acting as trustee, executor or guardian or in any other fiduciary capacity, and
- (ii) a bank was or is appointed to act as a personal representative, trustee or guardian or in any other fiduciary capacity by—

(A) an instrument consisting of—

- (I) an order of a court,
- (II) a trust deed, settlement, covenant or agreement, or
- (III) a will, codicil or other testamentary instrument or a grant of administration,

or

S.1 (B) any other testamentary act other than those aforesaid whether the instrument, grant or act was made, executed or done before or after the transfer date,

the instrument, grant or act shall as from the transfer date be read and construed and have effect as if for any reference therein to the bank, there were substituted a reference to the relevant company; and

(k) the Bankers' Books Evidence Acts, 1879 to 1989, shall continue to apply with respect to any books of a bank transferred to the relevant company in connection with the business of the bank and to entries made in those books before the transfer date;

and, for the avoidance of doubt, an order may include like provisions to those set out in this subsection (12) in connection with the reorganisation of a relevant company into a banking company pursuant to subsection (3)(a)(ii).

(13) (a) Upon the making of an order every interest of the bank concerned in any lands or buildings owned or occupied by that bank and whether held by or for or vested in that bank or any relevant owner shall with effect from the transfer date be transferred to and be absolutely vested in the relevant company without the necessity for any formal deed or other instrument.

(b) An order insofar as it provides for the transfer of any property (whether real or personal) or any agreement or deed made pursuant to an order shall not require registration under or in pursuance of the Registration of Deeds Act, 1707, the Registration of Title Act, 1964, section 99 of the Act of 1963 or any other Act, but shall operate for the purposes of those Acts as if the transfer of any property concerned were made by deed duly registered on the transfer date under or in pursuance of whichever of those Acts may be applicable thereto, and subject, where necessary, to a transfer in the books of any bank, corporation or company, the property so transferred shall become the property of and be absolutely vested in the relevant company for all the estate, term or interest for which the same immediately before such transfer was vested in or belonged to or was held in trust for the relevant owner.

(c) An order or any agreement or deed made pursuant to an order may, at the option of the relevant company be registered pursuant to the provisions of the Registration of Deeds Act, 1707, the Registration of Title Act, 1964, section 99 of the Act of 1963 or any other Act.

(14) Without prejudice to the foregoing, an order may make provision for such other matters including the vesting in the relevant company of all or part of the business, property, rights and liabilities of the bank concerned (including deposits in the bank concerned and the liabilities referable thereto) and adaptation and modification, as respects the relevant company of

statutes and instruments made under statute as the Minister considers necessary or expedient for the purposes of the reorganisation concerned and for enabling any such reorganisation to have full effect. S.1

(15) A draft of any order proposed to be made shall be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

(16) Section 60 of the Act of 1963 shall not apply to the provision, whether directly or indirectly, by a company of money or financial assistance (including a loan or guarantee or the provision of security or otherwise) at any time for the purpose of or in connection with the acquisition (whether by purchase or exchange and whether from or with the trustees of the bank concerned or otherwise) of or subscription for shares in the company or its holding company, being an acquisition of or subscription for such shares for the purposes of a trust established by the relevant company or the transfer to such trust of such shares, irrespective of whether or not all or a portion of such shares are pledged as security or otherwise to the relevant company or any other person.”.

2.—The Trustee Savings Banks Act, 1989, is amended by the substitution for section 64 of the following section: Exemption from stamp duty.

“64.—Stamp duty, other than stamp duty provided for in sections 114 to 122 of the Stamp Duties Consolidation Act, 1999, shall not be chargeable on any transfer, conveyance or other instrument executed for the purposes of providing for or effecting—

- (a) an amalgamation of trustee savings banks under Part VI,
- (b) the reorganisation of a trustee savings bank into a company under section 57, including the transfer or other disposal to that company of all or part of the undertaking, property and rights of the trustee savings bank and of all or part of the liabilities or obligations thereof, including deposits in the said trustee savings bank and the liabilities referable thereto, or
- (c) the reorganisation of a relevant company into a banking company under section 57, including the transfer or other disposal to that banking company of all or part of the undertaking, property and rights of the relevant company and of all or part of the liabilities or obligations thereof, including deposits formerly in a trustee savings bank to which the relevant company succeeded and the liabilities referable thereto.”.

3.—Schedule 12 to the Taxes Consolidation Act, 1997, is amended— Amendment of Schedule 12 to the Taxes Consolidation Act, 1997.

- (a) in paragraph 6 by the insertion after subparagraph (2) of the following subparagraph:

[No. 6.] *Trustee Savings Banks* [2001.]  
(Amendment) Act, 2001.

S.3 “(3) Nothing in subparagraph (2) shall prohibit a company into which a trustee savings bank has been reorganised under section 57 of the Trustee Savings Banks Act, 1989, from establishing the trust at a time when the company is controlled by another company.”,

and

(b) in paragraph 14 by the substitution for subparagraph (5) of the following subparagraph:

“(5) The trust deed shall provide that shares in the founding company may not be acquired by the trustees at a time when that company is controlled by another company, other than where the founding company is a company into which a trustee savings bank has been reorganised under section 57 of the Trustee Savings Banks Act, 1989.”.

Short title and collective citation.

4.—(1) This Act may be cited as the Trustee Savings Banks (Amendment) Act, 2001.

(2) The Trustee Savings Banks Act, 1989 and this Act (other than *section 3*) may be cited together as the Trustee Savings Banks Acts, 1989 and 2001.



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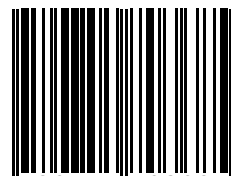
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