

# PROTECTING FAMILY HOMES, REFORMING PERSONAL DEBT

**Fianna Fáil Strategy  
on Mortgages and  
Personal Debt**



Recommendations of the Fianna Fáil Working  
Group on Mortgages and Personal Debt

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## Introduction

Tens of thousands of families in Ireland today are facing real difficulty paying their mortgage. The fear of losing their family home is with them every day. The most recent figures available from the Central Bank show that 6.3% of private residential mortgage accounts are currently in arrears for more than 90 days. The figures show that at the end of March 2011 there were 782,429 private residential mortgage accounts held in the Republic of Ireland to a value of almost €116 billion. Of these, 86,271 (or 11%) accounts are either in arrears greater than 90 days or have been restructured and are not in arrears as at the end of March 2011.

### **The message is clear: at least one in ten mortgages in Ireland today is in trouble**

The recent ECB interest rate increase, coupled with expected further increases in the months ahead, will only make matters worse. While a number of policy initiatives undertaken by the previous government have assisted those in difficulty and helped to hold back the level of repossessions, it is clear that a more radical policy is now required to protect the family home while, at the same time, reforming Ireland's outdated Personal Insolvency legislation.

Fianna Fáil believes that keeping people in their family home makes for good social policy, and also makes sound financial sense. The policy initiatives we are unveiling today are radical and put the protection of the family home at the centre of the State's approach to mortgage arrears and personal debt. We are also proposing a comprehensive overhaul of Ireland's Personal Insolvency legislation.

Fianna Fáil also believes that by introducing radical new initiatives in this area, families most at risk will be given the help they need, while the entire economy can benefit from the increased confidence such safeguards will bring.

**12 July 2011**

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## Fianna Fáil Proposals

Fianna Fáil is putting forward a number of legislative and policy proposals to deal with the effects of mortgage debt in Ireland. These bills will deal with protecting the Family Home and regulating Debt Management companies. In addition, Fianna Fáil wants to see the implementation of a radical reform of the Mortgage Interest Supplement Scheme which has been in the course of preparation in the Department of Social Protection since last year and the adoption of the Law Reform Commission's recommendations on Personal Insolvency.

This package of proposals comprises four elements:

1. The Family Home Bill 2011
2. The Regulation of Debt Management Advisors Bill 2011
3. Reform of the Mortgage Interest Supplement Scheme
4. Adoption of Law Reform Commission Proposals

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## 1. The Family Home Bill 2011

The overriding purpose of this Bill is to secure the family home.

The Bill provides that:

1. A Credit Institution cannot start legal proceedings to repossess a person's family home until the institution certifies to the Court in writing that the Code of Conduct on Mortgage Arrears has been complied with.
2. The Credit Institution must provide to the court:
  - a) An independent report from MABS on a person's (in) ability to pay.
  - b) Copies of original mortgage documentation.
3. It also sets out alternatives that the court may direct instead of a repossession order:
  - a) Interest only option for up to 4 years
  - b) Extension of mortgage term by up to 20 years
  - c) One year payment holiday
  - d) An adjustment to the Interest Rate
  - e) A debt for equity option
  - f) The Deferred Interest Scheme
4. If the Court believes, having reviewed the original mortgage application, that the mortgage was granted in an unlawful or reckless or negligent manner taking into account the true financial position of the borrower at the time the mortgage was entered into, the Court may rescind the mortgage agreement.
5. If the court deems it appropriate that an order for repossession should not be granted, it may order that the borrower remain in the family home as a court approved tenant of the lender for a rent and on terms to be fixed by the court.

These options are radical and may be controversial. However, we believe they are needed. Essentially these provisions equip the Courts with a set of tools which can be used to avoid the Family Home being repossessed.

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## 2. Regulation of Debt Management Advisors Bill 2011

This is a new Bill to regulate the provision of Debt Management Advice or Services. It is an area of business that is entirely unregulated and has been a significant cause of concern.

Many distressed borrowers have signed up to the seemingly attractive offerings of some providers in this area. The advisor often instructs the borrower to cease making any further payments directly to the creditors and instead to set up a standing order making a regular payment to the advisor, who in turn, pledges to issue payments to the creditors following a negotiated agreement.

Regrettably, many borrowers subsequently discover that the first few payments to the advisor merely represent the advisor's fees and are not passed on to the creditors at all, resulting in the borrower's situation actually getting worse.

While there is a legitimate role for professional debt advisory services, the area is badly in need of regulation. Borrowers can find themselves in a stressful situation and need protection. The new Bill provides that:

1. A Debt Management Advisor (DMA) would be subject to regulation by the Central Bank and required to have an authorisation.
2. A DMA would be required to set out all fees at the point of engagement.
3. A Debt Management company would inform all potential clients of the services offered by the Money, Advice and Budgeting Service (MABS).
4. Fianna Fáil would prohibit DMA's from handling client monies themselves. We believe that in the absence of any system of bonds or the type of regulation that solicitors' client accounts are subject to, it would be inappropriate for DMA's to hold a client's money. The Money Advice and Budgeting Service would be excluded from this prohibition.
5. The Central Bank shall publish a Code of Practice concerning Debt Management Advice within six months of the legislation coming into force.
6. The legislation sets out the penalties that apply to persons found guilty of an offence.

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### 3. Reform of the Mortgage Interest Supplement Scheme

Fianna Fáil believes that the Mortgage Interest Supplement Scheme has a crucial role to play in preventing unwarranted and unnecessary repossession of family homes.

However, we believe that the scheme needs to be reformed.

The reforms which we are proposing below dovetail with work that has been ongoing in the Department of Social Protection since last year and the recommendations of the Expert Group on Mortgage Arrears and Personal Debt:

- Set up a central Mortgage Interest Supplement processing unit in the Department of Social Protection to ensure uniform and speedy processing of Mortgage Interest Supplement (MIS) claims.
- Ensure that MIS does not cease without the long term housing needs of recipients being met.
- Abolish the rule excluding people from receiving MIS where a property is offered for sale (needs secondary legislation)
- Abolish the '30 hour rule' – this would allow couples/single people who, due to the economic downturn have suffered a significant loss of income and now find themselves in a distressed mortgage, receive Mortgage Interest Supplement and work for over 30 hours per week.
- Ensure while Mortgage Interest Supplement is being paid that lenders cannot demand any capital repayments to ensure that the borrower is not put under further financial strain.
- Where MIS is being paid to a borrower, lenders will not be allowed charge interest over the rate agreed for the loan or the market rate whichever is less.
- All applicants to be afforded a six month period of forbearance with the lender before the State intervenes in providing MIS. No MIS would be payable for the first six months of difficulties.
- All applicants for MIS to be required to consult with MABS and have a statement of affairs prepared by them before an application for MIS can be approved.

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- No legal action should be taken by the lender while MIS is being paid and the borrower is cooperating with the lender.
  - MIS to be paid directly into the mortgage account of the borrower
  - The scheme should remain as, insofar as is possible, a short term income support
  - Where a borrower's situation is or becomes unsustainable, they should be facilitated, if necessary, in applying for social housing appropriate to their needs.

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## 4. Adoption of Law Reform Commission Proposals

It is beyond doubt that Ireland's legislative arrangements for dealing with Personal Debt require a major overhaul.

Fianna Fáil commends the excellent work of the Law Reform Commission in this area and supports the recommendations of its *Report on Personal Debt Management and Debt Enforcement* which was published on 16 December 2010 (see [www.lawreform.ie](http://www.lawreform.ie) for full details).

Fianna Fáil supports the draft *Personal Insolvency Bill* published by the Commission and intends to introduce it to the Oireachtas during Private Members' Time.

The essence of the Bill is to establish a non-judicial debt settlement process – and keeps many of the more straight forward personal debt cases out of the courts. The proposed system also recognises the reality of a person's indebtedness and can, on the basis of full disclosure, order that a debt be redeemed.

Fianna Fáil wishes to see the recommendations of the report implemented as quickly as possible:

The report's recommendations include:

1. The establishment of a Debt Enforcement Office (DEO) to oversee non-judicial debt settlement arrangements. This new office would provide an efficient and cost effective solution to personal insolvency and takes account of the rights of both creditors and debtors.
2. The DEO would include a small unit, the Debt Settlement Office (DSO), which would license a panel of Personal Insolvency Trustees.
3. A Personal Insolvency Trustee would manage a Debt Settlement Arrangement (legally binding commitment in which a debtor would agree to repay creditors a certain amount over a period of up to 5 years) which would be for debtors who 'can pay' at least some of their debt. At the end of the period, the debt would be deemed to be repaid in full.
4. The Debt Settlement Arrangement process requires a person to act in good faith and make full disclosure of all their assets.

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5. For debtors whose circumstances are so bad that they have virtually no prospect of paying back any debt, the DEO, with the assistance of MABS, could make a Debt Relief Order (DRO).
  6. Under a DRO, the debt is deemed to be discharged.
  7. The Commission also makes recommendations in relation to the reform of the Bankruptcy Act 1988 and the abolition of imprisonment for non-payment of debt.
  8. Automatic discharge from bankruptcy after 3 years subject to certain conditions.

# BILL

*entitled*

**AN ACT TO PROHIBIT THE GRANTING OF A COURT ORDER FOR THE POSSESSION OF A PRIMARY FAMILY HOME EXCEPT IN CIRCUMSTANCES WHERE THE COURT HAS BEEN PRESENTED WITH A VERIFIABLE, DETAILED AND INDEPENDENT ANALYSIS OF THE REPAYMENT CAPACITY OF THE FAMILY HOME OWNER, AND WHERE THE COURT HAS HAD AN OPPORTUNITY TO REVIEW THE ORIGINAL MORTGAGE APPLICATION, AND CONSIDERATION IS GIVEN TO A RANGE OF ALTERNATIVE ACTIONS THAT WILL SEEK TO PROTECT THE HOMEOWNER'S POSSESSION OF THE FAMILY HOME.**

**BE IT ENACTED BY THE OIREACTHAS AS FOLLOWS:**

- 1.- (1) This Act may be cited as The Family Home Bill, 2011.
- (2) This Act shall come into operation on such day or days as may be fixed therefore by Order or Orders of the Minister for Finance.
- 2.- In this Act, unless the context otherwise requires –

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*“Code of Conduct on Mortgage Arrears”* means the Revised Code of Conduct on Mortgage Arrears published by the Central Bank pursuant to section 117 of the Central Bank Act 1989 and which became effective on 1 January 2011;

*“Court”* means The High Court or The Circuit Court;

*“Family Home”* means any real property, building, or any structure, vehicle or vessel (whether mobile or not), or part thereof, ordinarily occupied by a person or persons as a principal private residence, and includes any garden or portion of ground attached to and usually occupied with the property or otherwise required for the amenity or convenience of the property;

*“Money Advice and Budgeting Service”* means MABS National Development Limited that is funded and supported by the Citizens Information Board;

*“Mortgage”* means any charge or lien on any property for securing money or money’s worth;

*“Mortgage Interest Supplement”* means the mortgage interest welfare supplement available as a supplementary welfare allowance under chapter 9 of Part 3 of the Social Welfare (Consolidation) Act, 2005;

*“Mortgagor”* means any person deriving title to the mortgaged property under the original mortgagor or entitled to redeem the mortgage;

*“Mortgagee”* means any person having the benefit of a charge or lien and any person deriving title to the mortgage under the original mortgagee;

*“Report of Expert Group on Mortgage Arrears and Personal Debt”* is the Report published on 16 November 2010 by the expert group that was established by the Government in February 2010 and was tasked with making

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recommendations to the Minister for Finance on options for improving the situation for families with mortgage arrears on their principal private residence and with personal debt;

*“Well Charging Order”* is an Order granted by the Court to a Creditor recognising that its Mortgage is well charged on the property of a mortgagor.

3.- (1) The provisions of this Act shall apply in relation to any proceedings in which a party before the Court claims any of the following reliefs:

(a) An Order for possession of mortgaged property that is a family home pursuant to section 97 (2) of the Land and Conveyancing Law Reform Act, 2009;

(b) An Order authorising exercise of the power of sale of a mortgaged property that is a family home pursuant to section 100 (3) of the Land and Conveyancing Law Reform Act, 2009;

(c) An Order seeking possession of any property that is a family home on foot of a legal mortgage or charge;

(d) An Order declaring the amount due on foot of a mortgage to be well charged on a dwelling that is a family home.

4.- (1) A Mortgagee shall not commence legal proceedings for the possession of a mortgagor’s family home under section 97 (2) of the Land and Conveyancing Law Reform Act, 2009 or otherwise unless the mortgagee certifies in writing to the Court that the provisions of the Code of Conduct on Mortgage Arrears have been complied with by that mortgagee.

(2) A Mortgagee shall not commence legal proceedings for the possession of a mortgagor’s family home under section 97 (2) of the Land and Conveyancing Law

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Reform Act, 2009 or otherwise if the mortgagor is in receipt of a mortgage interest supplement, provided that, whilst in receipt of the mortgage interest supplement, the mortgagor is co-operating and continues to co-operate with the mortgagee.

- 5.- (1) Where Court proceedings have been instituted seeking the possession of any property that is a family home pursuant to section 97 (2) of the Land and Conveyancing Law Reform Act, 2009 or otherwise, or where authorisation for the sale of a family home pursuant to section 100 (3) of the Land and Conveyancing Law Reform Act, 2009 has been sought, or where an Order is sought from the Court declaring the amount due on foot of a mortgage to be well charged on property that is a family home, the Court shall not grant possession or sale of the family home unless:
- (a) The Court has received and reviewed an independent report prepared by the Money Advice and Budgeting Service on the capacity of the mortgagor to repay money due on foot of the mortgage;
  - (b) The Court has received and reviewed copies of the original mortgage application and all supporting documentation accompanying the mortgage application that was available to the mortgagee immediately prior to the execution of the mortgage.
- 6.- (1) In any proceedings before the Court where a party seeks the possession or sale of any property that is a family home on foot of a legal or equitable mortgage or charge, the Court, having taken into account the independent report prepared by the Money Advice and Budgeting Service referred to in Section 5 (a), must consider and, if it deems it appropriate, may make, instead of an Order for possession, any of the following Orders:
- i. An Order that the mortgagor make interest only payments on the mortgage for a period of time that shall not exceed four years;
  - ii. An Order that the mortgage period be extended by a period of time

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that shall not exceed twenty years;

- iii. An Order that the mortgage payments due to be made by the mortgagor be deferred for a period that shall not exceed one year;
- iv. An Order that the terms and conditions of the mortgage be amended so that the interest rate can be changed to a fixed or variable interest rate, as the Court considers appropriate, taking into account prevailing market conditions;
- v. An Order that the principal sum due on the mortgage be reduced in a fair manner provided that the mortgagee be granted a share in the mortgagor's equity in the family home, as the Court considers appropriate;
- vi. An order that the Deferred Interest Scheme recommended in the Report of the Expert Group on Mortgage Arrears and Personal Debt be applied to the mortgage in accordance with paragraph 4.4.2 of that Report, provided that the mortgagor meets the eligibility criteria identified at paragraph 4.4.3 of the Report.

(2) If the Court, having reviewed pursuant to Section 5 (b) the original mortgage application and all supporting documentation accompanying the mortgage application that was available to the mortgagee immediately prior to the execution of the mortgage, determines that the mortgage was granted by the mortgagee in an unlawful or reckless or negligent manner, taking into account the true financial position of the mortgagor at the time the mortgage was entered into, the Court shall be entitled to make an Order that the terms of the mortgage be amended as the Court sees fit.

(3) If the Court determines that possession or sale of a family home on foot of a legal mortgage or charge shall not be granted, the Court shall, if it deems it appropriate, order that the mortgagor shall remain in the family home as a court approved tenant of the mortgagee for a rent and on terms to be fixed by the Court.

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The Mortgagee shall be entitled to bring an application before the Court setting aside this court approved tenancy if the financial circumstances of the mortgagor subsequently alter to an extent that would enable the mortgagor to pay an increased rent or to recommence mortgage payments.

- 7.- (1) Where a mortgagor is in mortgage arrears, the Court may order possession of the family home without invoking the provisions of sections 3 - 6 if:
- (a) the mortgagor refuses to cooperate with the mortgagee;
  - (b) the mortgagor has perpetrated a fraud on the mortgagee without the knowledge of the mortgagee;
  - (c) the mortgagor has fundamentally breached the terms and conditions of the mortgage agreement other than in respect of the existence of arrears, and
  - (d) arrangements can readily be made to provide reasonable long term alternative living accommodation to the mortgagor whether by way of a local authority tenancy, the mortgagor's own resources or the proceeds of the mortgagor's equity in the family home.

# BILL

*entitled*

**AN ACT TO MAKE PROVISION IN RELATION TO DEBT  
MANAGEMENT ADVISORS AND FOR THE AUTHORISATION AND  
SUPERVISION OF DEBT MANAGEMENT ADVISORS BY THE  
CENTRAL BANK OF IRELAND AND THE MINISTER FOR FINANCE  
AND TO PROVIDE FOR RELATED MATTERS**

**BE IT ENACTED BY THE OIREACTHAS AS FOLLOWS:**

## **Part 1**

### **Preliminary and General**

- 1.- (1) This Act may be cited as the Debt Management Advisors Act, 2011.
- (2) This Act shall come into operation on such day or days as may be appointed by Order or Orders made by the Minister, either generally or with reference to any

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particular purpose or provision, and different days may be so appointed for different purposes and different provisions of this Act.

2.- (1) In this Act, unless the context otherwise requires -

“*The Bank*” means the Central Bank of Ireland;

“*Credit Institution*” means—

- (a) a recognised bank within the meaning of the Central Bank Acts, 1942 to 2010,
- (b) a Trustee Savings Bank,
- (c) the Post Office Savings Bank,
- (d) a building society within the meaning of the Building Societies Act 1989, or
- (e) a Credit Union registered under the Credit Unions Act, 1997.

“*Creditor*” means a party to whom money is owed;

“*The Court*” means The High Court;

“*Debt Management Advice*” means any of the following –

- (a) giving or offering or agreeing to give, for financial reward, to any person advice on that person’s individual credit or debt circumstances with a credit institution;
- (b) negotiating for financial reward on behalf of any person with a creditor

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of that person terms for the discharge or alteration of the debt or credit circumstances that person has with a creditor;

- (c) acting, for financial reward, as an intermediary between a person and one or more creditors of that person for the purpose of obtaining from the creditor, or creditors, concessions for that person;
- (d) taking over, for financial reward, a person's debts to a creditor and/or obligations to discharge that person's debts to a creditor;
- (e) offering or undertaking, for financial reward, to act for a person in arrangements or negotiations with a creditor or creditors of that person,

but does not include any of the following:

- (i) advice given in a newspaper, journal, magazine or other publication, including electronic publications, where the principal purpose of the publication taken as a whole is not to lead persons to seek advice from any particular Debt Management Advisor;
- (ii) advice given in a lecture, seminar or similar event or series of such events, where the principal purpose of the event or events taken as a whole is not to lead persons to follow the advice of any particular Debt Management Advisor or to deal with any particular Debt Management Advisor, and where persons engaged in the organisation or presentation of such events will earn no remuneration, commission, fee or other reward as a result of any particular decision by a person attending such an event and arising out of such attendance in relation to debt management advice or in relation to the choice of a Debt Management Advisor;
- (iii) advice given in sound or television broadcasts where the principal

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purpose of such broadcasts taken as a whole is not to lead persons to accept advice from any particular Debt Management Advisor or to deal with any particular Debt Management Advisor;

- (iv) advice given by persons in the course of the carrying on of any profession or business not otherwise constituting the business of a Debt Management Advisor, where the giving of such advice is a necessary part of other advice or services given in the course of carrying on that professional business, and where the giving of debt management advice is not remunerated or rewarded separately from such other advice or services;

*“Debt Management Advisor”* means any person or company or partnership providing debt management advice for financial reward but does not include the Money Advice and Budgeting Service;

*“Director”* means any person occupying the position of director by whatever name called and any person who effectively directs or has a material influence over the business of an Debt Management Advisor and includes a shadow director within the meaning of the Companies Act, 1990;

*“Money Advice and Budgeting Service”* means MABS National Development Limited that is funded and supported by the Citizens Information Board;

*“The Minister”* means the Minister for Finance;

*“Partnership”* means the relationship which exists between persons carrying on a business in common providing Debt Management Advice for financial reward;

*“Qualifying Shareholding”* means a direct or indirect holding of shares or other interest in a proposed Debt Management Advisor or an authorised Debt Management Advisor which represents 10 per cent, or more of the capital

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or of the voting rights, or any direct or indirect holding of less than 10 per cent, which, in the opinion of the Central Bank, makes it possible to control or exercise a significant influence over the management of the proposed Debt Management Advisor or an authorised Debt Management Advisor in which a holding subsists.

- 3.- The Minister may make regulations for the purposes of amending definitions contained in this Act.

## Part 2

### Authorisation

- 4.- The Bank shall be the authority in the State for the authorisation of Debt Management Advisors.
- 5.- It shall be an offence for a Company registered or operating in the State or any other person or partnership operating in the State to act as a Debt Management Advisor, or to claim or to hold themselves out to be a Debt Management Advisor, in the State or outside the State unless it is acting under and within the terms of an authorisation to do so under Sections 6 or 7 of this Act.
- 6.- (1) Subject to the provisions of this Act, the Bank may grant or refuse to grant to any person or partnership or Company applying to it under this Section an authorisation to operate as a Debt Management Advisor.
- (2) The grant of an authorisation under subsection (1) of this section may be given unconditionally or it may be given subject to such conditions, including conditions limiting the duration of authorisation, or requirements or both as the Bank considers fit.

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(3) Whenever the Bank refuses to grant authorisation to a proposed Debt Management Advisor under this section it shall serve notice on the proposed Debt Management Advisor of its intention to refuse to authorise it and stating the reasons therefore, and the proposed Debt Management Advisor may within 21 days of receipt of such notice appeal to the Court against the decision.

(4) An application for authorisation under subsection (1) of this Section shall be in such form and contain such particulars as the Bank shall specify from time to time and, without prejudice to the generality of the aforesaid, shall include such particulars or information as the Bank may request in relation to:

- (a) the type of business to be carried on or likely to be carried on by the proposed Debt Management Advisor;
- (b) any person or persons having a qualifying shareholding or having control or ownership of the proposed Debt Management Advisor including any natural or legal person whose shareholding or other commercial relationship with the proposed Debt Management Advisor might influence the conduct of the proposed Debt Management Advisor to a material degree; and
- (c) if the proposed Debt Management Advisor is a company, the Memorandum of Association and Articles of Association of the proposed Debt Management Advisor.

(5). A proposed Debt Management Advisor shall not be authorised by the Bank under this section unless -

- (a) if it be a Company, that it be incorporated by Statute or under the Companies Acts, or is incorporated outside the State;

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- (b) if it be an unincorporated body of persons, that they be governed by a Partnership Agreement;
  - (c) if it be a Sole Trader, that he or she satisfies the Bank as to the probity and competence of the Sole Trader;
  - (d) if it be a company or partnership, that it satisfies the Bank as to the probity and competence of each of the Directors and/or Managers and/or Partners of the company or partnership;
  - (e) it satisfies the Bank as to the suitability of each of its qualifying shareholders;
  - (f) it provides to the Bank details of the proposed fees and charges that it will impose for the provision of debt management advice;
  - (g) it provides to the Bank a current Tax Clearance Certificate; and
  - (h) it provides whatever other information that the Bank deems is appropriate for the purpose of assessing the probity and reliability of the Debt Management Advisor.
- (6). A proposed Debt Management Advisor shall be informed whether or not authorisation has been granted -
- (a) within two months of the date of receipt of the application or within two months of the coming into operation of this section, whichever is the later, or

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(b) where additional information in relation to the application has been sought by the Bank, within a period of two months after the receipt by

the Bank of the additional information or the period of six months after the receipt of the application, whichever is the sooner.

(7). The Bank may impose conditions or requirements or both on an authorised Debt Management Advisor which is constituted as a partnership or sole trader, in order to achieve an equivalent level of supervision to that pertaining to an authorised Debt Management Advisor which is constituted as a corporate body.

(8). It shall be an offence for a proposed Debt Management Advisor or any other person to apply for authorisation under this section knowingly or recklessly using false or misleading information, or knowingly or recklessly making false or misleading statements, in relation to an application for an authorisation under this section.

(9) On receipt of its authorisation from the Bank, an authorised Debt Management Advisor shall, prior to entering into any agreement to provide Debt Management Advice to a consumer, present to that consumer for whom it is providing Debt Management advice a copy of the authorisation granted by the Bank.

7.- (1) A person who is a Debt Management Advisor on the day immediately prior to the coming into operation of this section and who is not deemed to be authorised under section 6 of this Act may stand authorised, on the coming into operation of this section, as an authorised Debt Management Advisor until the Bank has granted or refused authorisation to it provided that, no later than two months after the coming into operation of this part of this Act, it applies to the Bank under section 6 of this Act for authorisation, and, in that section, references to a proposed Debt Management Advisor shall be construed accordingly.

(2) Pending a decision by the Bank to authorise a Debt Management Advisor to whom subsection (1) of this section refers, or during the two months referred to in subsection (1) of this section, or during both such times, the Bank may do all or any of the following, namely:

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(a) impose such conditions or requirements or both as it thinks fit relating to the proper and orderly regulation and supervision of the Debt Management Advisor or in relation to the protection of consumers,

(b) issue directions under this Act.

(3) A person to whom subsection (1) of this section refers may appeal to the Court against the conditions or requirements imposed under this section. On hearing an application under this subsection of this section, the Court may confirm, vary or rescind any condition or requirement imposed under this section.

8.- (1) The Bank may revoke the authorisation of an authorised Debt Management Advisor where -

(a) a request is made to it to do so by the authorised Debt Management Advisor, or

(b) an authorised Debt Management Advisor -

i. has failed to operate as a Debt Management Advisor within twelve months of the date on which it was authorised under this Act, or

ii. has failed to operate as a Debt Management Advisor for a period of more than six months, or

iii. if it is a Company, is being wound up.

(c) it is expedient to do so in the interests of the proper and orderly regulation and supervision of Debt Management Advisors or in order to protect consumers,

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- (d) an authorised Debt Management Advisor or one of its Directors and/or Partners has been convicted on indictment of any offence under this Act or any offence involving fraud, dishonesty or breach of trust,
  - (e) circumstances have materially changed since the granting of the authorisation such that if an application for authorisation were made at the time when the circumstances had materially changed, a different decision would be taken in relation to the application for authorisation,
  - (f) the authorisation was obtained by knowingly or recklessly making false or misleading statements, or by knowingly or recklessly using false or misleading information;
  - (g) an authorised Debt Management Advisor has systematically failed to comply with the condition or requirement of this Act,
  - (h) an authorised Debt Management Advisor no longer fulfils any or all of the conditions or requirements which were imposed when the authorisation was granted or which were subsequently imposed;
  - (i) an authorised Debt Management Advisor becomes unable or, in the opinion of the Bank, is likely to become unable to provide any proper or reliable debt management advice to consumers.

(4) The Bank shall publish notice of revocation of an authorisation of an authorised Debt Management Advisor in Iris Oifigiúil within fourteen days of such revocation.

(5) Where the Bank revokes an authorisation of an authorised Debt Management Advisor, the Debt Management Advisor may apply to the Court within twenty eight days of such revocation for an Order varying or setting aside the revocation on such terms as the Court thinks fit.

### Regulation and Supervision of Debt Management Advisors

9.- (1) The Bank shall administer the system of regulation and supervision of Debt Management Advisors in accordance with the provisions of this Act in order to promote -

(a) the maintenance of the proper and orderly regulation and supervision of Debt Management Advisors, and

(b) the protection of consumers.

(2) Where the Bank is of the opinion that it is necessary in the interests of assessing the capacity of an authorised or proposed Debt Management Advisor to provide debt management advice, it may commission an independent assessment of the capacity of the proposed Debt Management Advisor or the authorised Debt Management Advisor.

(3) Subject to subsection (4) of this Section, the Minister may, after consulting with the Bank, prescribe by regulation the fee to be paid to the Bank by a proposed Debt Management Advisor or by an authorised Debt Management Advisor supervised by it and the Minister may prescribe different fees for different classes of Debt Management Advisors.

(4) Regulations under this Section may provide for such incidental or related matters as are, in the opinion of the Minister, necessary to give effect to such fees and where the Minister proposes to prescribe a fee under subsection (3) of this Section he shall -

(a) publish details of the proposed fee where the fee is in respect of an application for authorisation, and

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- (b) consider any representations made to him within two months after the date of such publication.

10.- (1) Without prejudice to the powers of the Bank to impose conditions or requirements or both under this Act, and, without prejudice to the powers of the Bank under subsections (2) or (4) of this Section, where the Bank considers it necessary to do so in the interests of the proper and orderly regulation and supervision of Debt Management Advisors and for the protection of investors, the Bank may give a direction to any or all authorised Debt Management Advisors or any or all proposed Debt Management Advisors in relation to any matter related to the operation of the provision of Debt Management advice.

(2) Without prejudice to the powers of the Bank under subsection (1) of this section, and without prejudice to the powers of the Bank to impose conditions or requirements or both under this Act, where the Bank is of the opinion that it is necessary to do so in the interests of the proper and orderly regulation and supervision of Debt Management Advisors or for the protection of investors or both, the Bank may give a direction in writing to the Debt Management Advisor concerned to suspend for such period (not exceeding twelve months) the provision of any Debt Management advice.

(3) Without prejudice to the powers of the Bank to impose conditions or requirements or both under subsections (2) and (7) of section 6, an authorised Debt Management Advisor shall, upon engagement by a consumer, and before the provision of any Debt Management advice -

- (a) advise the consumer in writing of the existence, role and function of the Money Advice and Budgeting Service, and
- (b) set out in writing the fees and costs to be charged, in accordance with the Debt Management Advisor's authorisation, for the provision of Debt Management advice;

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- 11.- It shall be an offence for a Debt Management Advisor to receive from or hold on behalf of a consumer to whom it is providing Debt Management advice any monies other than monies paid by the consumer for the provision of Debt Management advice.
- 12.- (1) The Bank shall, after consultation with the Minister, publish a code of practice in relation to Debt Management Advisors and the provision of Debt Management Advice and it shall be a condition of authorisation of all Debt Management Advisors that they shall comply with the terms of the code of practice.
- (2) The Bank shall publish the code of practice concerning the provision of Debt Management advice within six months from the coming into force of this Section.
- (3) In drawing up the code of practice in relation to the provision of Debt Management Advice, the Bank shall have regard to -
- (a) the interest of consumers and the general public,
  - (b) the vulnerable position that Debtors may find themselves in because of the significant decline in property values between 2006 and the date of coming into force of this Act,
  - (c) any submissions made by authorised Debt Management Advisors.
- (4) It shall be an offence for a Debt Management Advisor not to comply with the Code of Practice published by the Bank.

## Offences and Penalties

- 13.- (1) A person who is guilty of an offence under this Act shall be liable -
- (a) on summary conviction to a fine not exceeding €5,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding twelve months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000 or, at the discretion of the Court in the case of an individual, to imprisonment for a term not exceeding five years, or both.
- (2) Summary proceedings in relation to an offence under this Act may be brought and prosecuted by the Director of Public Prosecutions or by the Central Bank,
- (3) Where an offence under this Act is committed by a body corporate or by a partnership or by a sole trader and it is proved of being committed with the consent or connivance of, or to be attributable to, or to have been facilitated by any neglect on the part of any Officer or employee of the Debt Management Advisor or person purporting to act on behalf of the Debt Management Advisor or body corporate or partnership or sole trader, that officer or employee or person shall be guilty of an offence and shall be liable to be proceeded against and punished as if he were guilty of the first mentioned offence, provided, however, that a person shall not be sentenced to imprisonment for such an offence unless in the opinion of the Court the offence was committed wilfully.



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