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**AN BILLE UM CHOMHAIRLEOIRÍ BAINISTITHE  
FIACHAIS A RIALÁIL, 2011  
REGULATION OF DEBT MANAGEMENT ADVISORS BILL  
2011**

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*Mar a tionscnaíodh  
As initiated*

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**ARRANGEMENT OF SECTIONS**

**PART 1**

**PRELIMINARY AND GENERAL**

**Section**

1. Preliminary and General.
2. Definitions.
3. Regulations.

**PART 2**

**AUTHORISATION**

4. Authorisation.
5. Operation in State.
6. Grant or refusal to grant authorisation.
7. Provision for existing debt management advisors prior to commencement of Act.
8. Revocation of authorisation.

**PART 3**

**REGULATION OF DEBT MANAGEMENT ADVISORS**

9. Regulation and supervision of debt management advisors.
10. Bank may issue directions.
11. Holding of monies.
12. Code of practice.

[No. 53 of 2011]

## PART 4

### OFFENCES

#### 13. Offences and penalties.

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##### ACTS REFERRED TO

Building Societies Act 1989	1989, No. 17
Central Bank Acts 1942 to 2010	
Companies Act 1990	1990, No. 33
Credit Union Act 1997	1997, No. 15



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FIACHAIS A RIALÁIL, 2011  
REGULATION OF DEBT MANAGEMENT ADVISORS BILL  
2011

**BILL**

*entitled*

AN ACT TO MAKE PROVISION IN RELATION TO DEBT  
MANAGEMENT ADVISORS AND FOR THE AUTHORIS-  
ATION 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 OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

**1.**—(1) This Act may be cited as the Debt Management Advisors Act 2011. Preliminary and General.

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

**2.**—In this Act, unless the context otherwise requires— Definitions.

“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 Union 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; 5
- (b) negotiating for financial reward on behalf of any person with a creditor of that person terms for the discharge or alteration of the debt or credit circumstances that person has with a creditor; 10
- (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; 15
- (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, 20
- (f) taking over or administering, for financial reward, the payment of a person’s regular household and other bills 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; 25
  - (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; 30 35 40
  - (iii) advice given in sound or television broadcasts where the principal 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; 45
  - (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, 50

5 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;

10 “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 a debt management advisor and includes a shadow director within the meaning of the Companies Act 1990;

15 “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;

20 “partnership” means the relationship which exists between persons carrying on a business in common providing debt management advice for financial reward;

25 “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 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 Regulations.  
amending definitions contained in this Act.

## PART 2

### AUTHORISATION

35 4.—The Bank shall be the authority in the State for the authorisation of debt management advisors. Authorisation.

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. Operation in State.

45 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. Grant or refusal to grant authorisation.

(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.

(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;
- (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.

5 (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

10 (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.

15 (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.

20 (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.

25 (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.

30 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* 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*, it applies to the Bank under *section 6* for authorisation, and, in that section, references to a proposed debt management advisor shall be construed accordingly.

Provision for existing debt management advisors prior to commencement of Act.

40 (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:

45 (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.

50 (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— 5
  - (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 10
  - (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,
- (d) an authorised debt management advisor or one of its 15 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 author- 20 isation 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 25 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 30 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 35 to provide any proper or reliable debt management advice to consumers.

(2) 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. 40

(3) 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. 45



## PART 3

### REGULATION OF DEBT MANAGEMENT ADVISORS

5 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—

Regulation and supervision of debt management advisors.

(a) the maintenance of the proper and orderly regulation and supervision of debt management advisors, and

(b) the protection of consumers.

10 (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.

15 (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—

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

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

30 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 (3)* 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.

Bank may issue directions.

40 (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 5
- (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.

Holding of monies. **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. 10

Code of practice. **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. 15

(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. 20

(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, 25
- (c) any submissions made by authorised debt management advisors. 30

(4) It shall be an offence for a debt management advisor not to comply with the Code of Practice published by the Bank.

PART 4

OFFENCES

Offences and penalties. **13.**—(1) A person who is guilty of an offence under this Act shall be liable— 35

- (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 40
- (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.

5 (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  
10 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  
15 the Court the offence was committed wilfully.