

GENERAL SCHEME
OF
LAND DEVELOPMENT AGENCY BILL 2019

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PART 1

PRELIMINARY AND GENERAL

This Part contains provisions normally included in legislation in relation to short title, collective citation, construction, interpretation, the making of regulations, repeals and the construction of enactments.

Head 1 Short title, collective citation and commencement

Provides that:

- (1) This Bill may be cited as the Land Development Agency Bill 2019.
- (2) This Bill shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (3) Other collective citations as appropriate shall be included.

Notes:

This head contains the standard provisions about short title and collective citation for a listing of acts included or previously included in the collective citation.

Head 2 Interpretation

Provides that:

In this Bill-

“2018 Regulations” means Land Development Agency (Establishment) Order 2018, S.I. No 352 of 2018, as amended by Land Development Agency (Amendment) Order 2018, S.I. No 603 of 2018;

“commercial basis” means an activity that endeavours to obtain a financial return for the State

“Companies Act” means the Companies Act 2014;

“dissolution day” means the day appointed by order under head [13] to be the dissolution day;

“dissolved body” has the meaning set out at subhead [13(2)];

“Minister” means Minister for Housing, Planning and Local Government;

“Land Development Agency” or the “LDA” means the company formed and registered by the Minister under head [5];

“LDA group entity” means-

- (a) A subsidiary of the LDA, or
- (b) Any other body corporate and any trust, partnership, arrangement for the sharing of profits and losses, joint venture, association, syndicate or other arrangement,

formed, registered, incorporated or established by the LDA for the purposes of performing any of its functions under this Bill;

“relevant public body” means each of the following:

- (a) a Minister of the Government;
- (b) a local authority for the purposes of the Local Government Act 2001;
- (c) the Permanent Defence Force;
- (d) the Health Service Executive;
- (e) a vocational education committee established under section 7 of the Vocational Education Act 1930;
- (f) any other body established

(i) by or under enactment, or

(ii) under the Companies Act in pursuance of powers conferred by or under enactment, and financed wholly or partly by means of monies provided, or loans made or guaranteed, by a Minister of the Government or the issue of shares held or by on behalf of a Minister of the Government;

(g) any other body that is wholly or partly funded directly or indirectly out of monies provided by the Oireachtas or from the Central Fund or the growing produce of that Fund; or

(h) any subsidiary, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which paragraph (c),(e) or (g) relates.

“relevant public lands” means all lands, within or contiguous to the built up area of any census town with a population of 10,000 people or more in the last census in the ownership or control of a relevant public body

"subsidiary" means a subsidiary undertaking, within the meaning of section 275 of the Companies Act.

Notes:

This is a standard provision to set out interpretations for the terms used in this Bill.

Further interpretations may be included during the drafting process.

Head 3 Regulations

Provides that:

- (1) The Minister may make regulations prescribing any matter or thing which is referred to in this Bill as prescribed or to be prescribed or to be the subject of regulations or for the purpose of enabling any provisions to have full effect.
- (2) Every regulation under this Bill shall be laid before each House of the Oireachtas as soon as may be after it has been made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Notes:

This head enables the Minister to make regulations as provided in the Bill.

Head 4 Expenses of the Minister

Provides that:

- (1) The expenses incurred by the Minister in the administration of this Bill shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Notes:

This is a standard provision enabling expenses of the Minister in the administration of the Bill to be paid out of moneys provided by the Oireachtas subject to the sanction of the Minister for Public Expenditure and Reform.

PART 2

The Land Development Agency

This Part provides for the formation of the Land Development Agency, as a designated activity company under the Companies Act 2014, and sets out provisions in relation to its formation, constitution, certain provisions relating to LDA group entities, the objects and functions of the LDA, its board and any services, systems and staff that may be provided to it.

Head 5 **Formation of the LDA**

Provides that:

- (1) The Minister shall, as soon as practicable after the commencement of this head, cause a DAC limited by shares, conforming to the conditions laid down in this Bill, to be formed and registered under Part 16 of the Companies Act.
- (2) The name of the company referred to in subhead (1) shall be the Land Development Agency.
- (3) Subsections (1) to (3) of section 969 of the Companies Act shall not apply to the LDA.
- (4) Subject to this Bill, the LDA shall be independent in the performance of its functions.
- (5) In this head, “DAC limited by shares” has the same meaning as it has in Part 16 of the Companies Act.

Notes:

This Head provides for the incorporation of the LDA as a private company limited by shares, in the form of a designated activity company, under the Companies Act 2014, which will be independent in the performance of its functions.

Head 6 Constitution of the LDA

Provides that:

- (1) The constitution of the LDA shall be in such form, consistent with this Bill, as may be determined by the Minister with the approval of the Minister for Expenditure and Reform.
- (2) Notwithstanding anything contained in the Companies Act, an alteration of the constitution of the LDA shall not be valid or effectual unless made with the prior approval of the Minister.

Notes:

This head provides that in line with similar commercial state companies established in this form, the constitution will be in a form as determined by the Minister and the Minister for Public Expenditure and Reform.

Head 7 Group entities of the LDA

Provides that:

- (1) The LDA may, with the consent of the Minister, either by itself or with other persons, promote, take part in the formation of, or acquire a shareholding in, an LDA group entity for the purposes of performing the functions assigned to the LDA by this Bill.
- (2) An LDA group entity constitutional document shall be in such form, consistent with this Act, as may be approved of by the LDA.
- (3) An LDA group entity shall make such reports to the LDA as the LDA may require.
- (4) Neither the LDA nor any LDA group entity shall guarantee the borrowings or liabilities of any of their subsidiaries without the prior consent of the Minister for Public Expenditure and Reform and the Minister for Finance.
- (5) The LDA may, with the prior consent of the Minister, and subject to any conditions as the Minister may determine, wind up any LDA group entity.
- (6) In this section, “LDA group entity constitutional document” means the constitution, memorandum of association, articles of association, trust deed, partnership agreement or other document providing for the establishment and governance of a LDA group entity.

Notes:

This Head provides for the establishment of subsidiary entities to provide adequate oversight.

Head 8 **Objects of the LDA**

Provides that:

- (1) The principal objects of the LDA, which are to be included in its memorandum of association are:
 - (a) to perform the functions assigned to the LDA by this Bill;
 - (b) to develop land for housing or other related development purposes on relevant public lands and other lands in support of the implementation of the National Planning Framework on a commercial basis;
 - (c) to establish mechanisms and collaborative structures between public and private entities to develop relevant public lands and other lands; and
 - (d) to establish structures to facilitate delivery of housing on relevant public lands and other lands.
- (2) In the pursuit of the principal objects of the LDA under subhead (1), the LDA shall have regard to the policy of the Government on proper planning and sustainable development, and shall, where appropriate, endeavour to:
 - (a) contribute to the economic and social development of the State;
 - (b) enhance the competitiveness of the economy of the State; and
 - (c) obtain a positive financial return for the State.
- (3) In support of the implementation of the National Planning Framework and the management of relevant public lands:
 - (a) to advise the Government, and the Minister as appropriate, on matters relating to the management and use of relevant public lands; and
 - (b) establish and maintain a register of relevant public lands in order to implement the National Planning Framework
- (4) This head does not prevent or restrict the inclusion in the memorandum of association of all objects and powers, consistent with this Bill, that are reasonable, necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the LDA.

Notes:

This head sets out what are to be the main objects of the LDA.

Head 9 Functions of the LDA

Provides that:

- (1) The LDA shall do all things necessary and reasonable to further its objects.
- (2) Without limiting its responsibilities under *subhead (1)*, the LDA shall undertake the following functions on a commercial basis:
 - (a) to identify relevant public lands and appraise their potential for development;
 - (b) to acquire lands in public and private ownership;
 - (c) to dispose of lands where they are no longer required to enable the LDA to undertake its functions;
 - (d) to develop, or facilitate the development of, relevant public lands and other lands;
 - (e) to obtain development consents, permissions and other approvals for land and related development projects;
 - (f) to draw up, and to assist relevant public bodies and owners of other lands to draw up, master plans for development on relevant public lands and other lands ;
 - (g) to raise capital through equity investment and borrowings;
 - (h) to provide assistance to other relevant public bodies, including local authorities, to provide housing and related developments;
 - (i) to provide, and to facilitate the provision of, professional services and funding on a commercial basis to other relevant public bodies, including local authorities, for land development;
 - (j) to pursue joint ventures and profit sharing agreements with third parties on a commercial basis; and
 - (k) to create investment vehicles to facilitate the development of land.
- (3) In support of the implementation of the National Planning Framework and the management of publicly owned lands, the LDA will undertake additional functions:
 - (a) to establish and maintain a register of relevant public lands;
 - (b) to advise the Government, and the Minister as appropriate, on the management and use of relevant public lands; and

- (c) the provision of publicly owned infrastructure for the development of relevant public lands.
- (4) The LDA shall also perform any other duties or discharge any other responsibilities imposed on it by this Bill or the Companies Act 2014.
- (5) The LDA shall discharge the functions conferred on the dissolved body by the 2018 Regulations.

Notes:

This head sets out what are to be the main functions of the LDA.

In line with the objects of the LDA, its functions comprise both economic activities and non-economic public functions.

Head 10 Board of the LDA

Provides that:

- (1) The Board of the LDA shall consist of at least five and not more than ten directors (including its chairperson), each of whom shall be appointed by the Minister.
- (2) The Minister shall appoint one of the directors of the LDA to be its chairperson.
- (3) The appointment of the directors and of a company secretary of LDA shall each be subject to such terms and conditions as are set out in the constitution of the LDA.

Notes:

This Head provides for the composition of the Board for reasons of transparency.

Head 11 Staff of the LDA

Provides that:

- (1) The LDA may appoint such and so many persons to be members of its staff as it may from time to time determine.
- (2) The terms and conditions of the staff of the LDA appointed under this section shall be such as may be determined from time to time by the LDA.
- (3) There shall be paid by the LDA to the members of its staff appointed under this section such remuneration and allowances as from time to time the LDA determines.
- (4) The LDA shall, in determining the remuneration or allowances for expenses to be paid to members of its staff appointed under this section or the other terms or conditions subject to which such members hold or are to hold their employment, have regard to Government or nationally agreed guidelines that are for the time being extant and to Government policy concerning remuneration and conditions of employment which is so extant and, in addition to the foregoing, the LDA shall comply with any directives with regard to such remuneration, allowances, terms or conditions which the Minister may give to the LDA with the consent of the Minister for Public Expenditure and Reform.
- (5) The LDA may prepare and submit to the Minister a scheme or schemes or may make such other arrangements with the approval of the Minister given with the consent of the Minister for Public Expenditure and Reform for the granting of superannuation benefits to staff of the LDA.

Notes:

This Head provides that the LDA may appoint staff with such terms and conditions as the Agency may determine. It also provides that the LDA will provide a superannuation scheme for its employees.

Head 12 - Chief Executive of the LDA

Provides that:

- 1) There shall be a chief executive of the LDA (who shall be known as and is referred to in this Act as “the Chief Executive”).
- 2) The first Chief Executive shall be the existing CEO of the dissolved body and shall be appointed by the Minister for a period not exceeding 7 years and may be removed from office by the Minister during that period.
- 3) The first Chief Executive may be removed from office, by the directors of the LDA, after consultation with the Minister.
- 4) Each subsequent Chief Executive shall be appointed and may be removed from office by the directors of the LDA after consultation with the Minister.
- 5) The functions of the Chief Executive shall be to:
 - (a) carry on, manage and control generally the administration of the LDA;
and
 - (b) advise the directors of the LDA in relation to the performance of the LDA.
- 6) The Chief Executive shall hold office upon and subject to such terms and conditions (including terms and conditions relating to remuneration and allowances) as may be determined by the Minister and with the consent of the Minister for Public Expenditure and Reform.

Notes:

This Head provides for the appointment of a chief executive of the LDA. This is a standard provision relating to Ministerial consent to the terms and conditions of the chief executive.

PART 3

Dissolution of the statutory body established by the 2018 Regulations

Head 13 Dissolution of the statutory body established by the 2018 Regulations

Provides that:

- (1) The Minister shall by order appoint a day to be the dissolution day for the purposes of this Part.
- (2) On the dissolution day the statutory body established by the 2018 Regulations (the “dissolved body”) is dissolved.

Head 14 Transfer of functions to the LDA

Provides that:

- (1) The administration and business in connection with the performance of any of the functions transferred by subhead (2) are transferred, on the dissolution day, to the LDA.
- (2) The functions vested in the dissolved body under the 2018 Regulations shall, on the dissolution day, stand transferred to the LDA.

Head 15 Transfer of members of staff of the dissolved body

Provides that:

- (1) Each person who, immediately before the dissolution day, was a member of staff of the dissolved body is, on that day, transferred to and becomes a member of staff of the LDA.
- (2) Save in accordance with any enactment or a collective agreement negotiated with any recognised trade union or staff association, a person transferred to the LDA under subhead (1) shall not, on the dissolution day, be subject to less beneficial terms and conditions of service (including those relating to tenure of office) or remuneration than the terms and conditions of service (including those relating to tenure of office) or remuneration to which he or she was subject immediately before the dissolution day.

- (3) In relation to persons transferred to the LDA under subhead (1), previous service with the dissolved body shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2007, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Unfair Dismissals Acts 1977 to 2007.

Head 16 Property and rights and liabilities of the dissolved body

Provides that:

- (1) On the dissolution day, all property that was immediately before that day, the property of the dissolved body is to be transferred to and vested in the LDA without any conveyance or assignment.
- (2) All rights and liabilities of the dissolved body arising by virtue of any contract, agreement or arrangement—
 - (a) entered into by or on behalf of the dissolved body before the dissolution day, and
 - (b) in effect immediately before the dissolution day,are on the dissolution day transferred to the LDA.
- (3) Each right and liability transferred under this head, on or after its transfer to the LDA, may be sued on, recovered or enforced by or against the LDA in the LDA's own name.
- (4) The LDA need not give notice of the transfer to the person whose right or liability is transferred to the LDA

Head 17 Preservation of contracts made by the dissolved body

Provides that:

- (1) Every contract, agreement or arrangement made between the dissolved body or any trustee or agent thereof acting on its behalf, and any other person, which is in force immediately before the dissolution day, shall continue in force and shall be construed and have effect as if the name of the LDA were substituted therein for that of the dissolved body concerned or, as may be appropriate, its trustee or agent, and shall be enforceable by or against the LDA.

Head 18 Records of the dissolved body

Provides that:

- (1) Each record held by the dissolved body immediately before the dissolution day shall, on that day, stand transferred to the LDA and shall, on and after that day, be the property of the LDA and be regarded as being held by the LDA.

Head 19 Liability for loss occurring before dissolution day

Provides that:

- (1) A claim in respect of any loss or injury alleged to have been suffered by any person arising out of the performance before the dissolution day of any of the functions of the dissolved body shall, on and after that day, lie against the LDA and not against the dissolved body.
- (2) Any legal proceedings pending immediately before the dissolution day to which the dissolved body is a party shall be continued with the substitution in the proceedings of the LDA, in so far as they so relate, for the dissolved body.
- (3) Where, before the dissolution day, agreement has been reached between the parties concerned in settlement of a claim to which subhead (1) relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the dissolved body, be enforceable against the LDA and not the dissolved body.
- (4) Any claim made or proper to be made by the dissolved body in respect of any loss or injury arising from the act or default of any person before the dissolution day shall be regarded as having been made by or proper to be made by the LDA and may be pursued and sued for by the LDA as if the loss or injury had been suffered by the LDA.

Head 20 References to the dissolved body in enactments made before dissolution day

Provides that:

- (1) References (however expressed) to the dissolved body in any enactment or instrument under an enactment shall after the dissolution day, unless the context otherwise requires, be construed as references to the LDA.

Head 21 Final accounts of the dissolved body

Provides that:

- (1) As soon as may be, but not more than 3 months after the dissolution day, the LDA shall cause to be prepared final accounts of the dissolved body in respect of the accounting period or part thereof of the dissolved body ending immediately before the dissolution day.
- (2) Accounts prepared pursuant to this head shall be submitted by the LDA to the Comptroller and Auditor General as soon as may be for audit and, immediately after the audit, a copy of the accounts as so audited and a copy of the Comptroller and Auditor General's report thereon shall be presented to the Minister who shall cause copies of those accounts and that report to be laid before each House of the Oireachtas.

Head 22 Final annual report of the dissolved body

Provides that:

- (1) The LDA shall prepare a final annual report for the dissolved body and shall submit that report to the Minister not later than 6 months after the dissolution day.
- (2) The Minister shall, within 21 days of receiving the final annual report of the dissolved body, cause copies of it to be laid before each House of the Oireachtas.
- (3) The LDA shall publish the annual report on the internet, or in such other manner as the Minister may specify, as soon as practicable after copies of the report are laid before the Houses of the Oireachtas.
- (4) The Minister may omit from a copy of the final annual report of the dissolved body laid before the Houses of the Oireachtas any matter that would disclose confidential information provided that where the Minister omits confidential information from a copy, he or she will insert in its place a statement that the matter has been omitted and a general description of the omitted matter.

Head 23 **Transitional provisions consequent upon transfer of functions of the dissolved body**

Provides that:

- (1) Anything commenced by or under the authority of the dissolved body and not completed before the dissolution day may be carried on or completed on or after the dissolution day by the LDA.

Notes:

This Part provides that the LDA established by regulation will be dissolved. The business carried out by the LDA to the dissolution day will transition to the new designated activity company following its incorporation on a dissolution day to be appointed by order.

The provisions are standard in such instances.

PART 4

Funding of the LDA

Head 24 **Share capital of the LDA**

Provides that:

- (1) The Minister and the Minister for Public Expenditure and Reform shall subscribe to the constitution of the LDA.
- (2) The LDA shall on incorporation allot and issue shares to the Minister.
- (3) The LDA shall on incorporation allot and issue shares to the Minister for Public Expenditure and Reform.
- (4) The allotment and issue of shares by the LDA shall be subject to the prior consent of the Minister and the Minister for Public Expenditure and Reform.
- (5) The LDA may in accordance with the Companies Act, subject to the prior consent of the Minister for Public Expenditure and Reform, redeem all or any of the shares in the LDA on such terms and conditions as appear to the board of the LDA to be appropriate.

Notes:

This head provides that the Minister and the Minister for Public Expenditure and Reform will subscribe to the constitution of the LDA on incorporation.

Head 25 Acquisition and alienation of shares

Provides that:

- (1) The Minister and the Minister for Public Expenditure and Reform may hold, for so long as he or she thinks fit, any shares in the LDA issued to him or her.
- (2) The Minister for Public Expenditure and Reform may subscribe for such further shares in cash or in specie as may be appropriate from time to time.
- (3) Subject to subhead (4) the Minister and the Minister for Public Expenditure and Reform may, at such time or times as appear to him or her appropriate, sell, transfer, exchange, surrender or dispose of all or any of the shares in the LDA on such terms and conditions as appear to the Minister for Public Expenditure and Reform to be appropriate.
- (4) The Minister and the Minister for Public Expenditure and Reform may only sell, transfer, exchange or dispose of his or her shares in the LDA under subhead (3) to or with, as the case may be—
 - (a) the Minister, or
 - (b) a body under the aegis of (i) the Minister or (ii) the Minister for Public Expenditure and Reform.
- (5) Any funds received in respect of—
 - (a) the sale, transfer, exchange, surrender or disposal of any share under subhead (2), or
 - (b) the redemption of any share under subhead (4),shall be paid into, or disposed of for the benefit of, the Exchequer.
- (6) Subject to this head, the Minister and the Minister for Public Expenditure and Reform may, in respect of the shares in the LDA for the time being held by him or her, exercise all or any of the rights and powers from time to time exercisable by the holder of such shares.

Notes:

This head provides that the Minister and the Minister for Public Expenditure and Reform may subscribe for and hold further shares.

This head provides that the Minister and the Minister for Public Expenditure and Reform can dispose of shares in the LDA as the Minister for Public Expenditure and Reform sees fit.

Head 26 Payment of dividends

Provides that:

- (1) The LDA may pay such dividends in accordance with the Companies Act as may be decided by the board of the LDA following consultation with the Minister for Public Expenditure and Reform.
- (2) All amounts representing dividends or other moneys received by the Minister in respect of shares held by him or her in the share capital of the LDA shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Public Expenditure and Reform sees fit.

Notes:

This Head allows for the payment of dividends to the Exchequer.

Head 27 Borrowing by the LDA

Provides that:

- (1) For the purpose of borrowing, the LDA and any LDA group entity may create and issue bonds, debentures and other securities, bearing such rate of interest and subject to such conditions as to repayment, redemption or otherwise as the LDA and any LDA group entity, as the case may be, thinks fit.
- (2) The LDA and any LDA group entities shall exercise the powers conferred by this head so that the total aggregate amount of principal which the LDA and any LDA group entities may at any particular time be liable to repay on foot of any liability or liabilities incurred as a result of the exercise of a power under this head shall not exceed [€ ●].
- (3) For the purposes of subhead (4), where the European Central Bank has published—
 - (a) a Euro Foreign Exchange Reference Rate, or
 - (b) a rate expressed by the European Central Bank to replace that rate,which is applicable to the currency concerned and the time the calculation concerned is made, that rate shall be taken to be the rate of exchange prevailing at that time for that currency.
- (4) For the purpose of calculating the total amount of principal referred to in subhead (3), no account shall be taken of money loaned to the LDA or an LDA group entity in accordance with a direction of the Minister for Finance under section 42B (inserted by Head 27) of the National Treasury Management Agency (Amendment) Act 2014.

Notes

This Head provides that the LDA may borrow money in any currency through any type of debt it sees as appropriate. It limits the aggregate amount of borrowings which the LDA and any LDA group entities can have outstanding at any particular time.

**Head 28 Amendment of National Treasury Management Agency (Amendment) Act
2014**

Provides that:

(1) The National Treasury Management Agency (Amendment) Act, 2014 is amended

(a) by inserting after section 42A the following —

“42B Funding of the Land Development Agency.

(1) Notwithstanding any other provision of this Bill, the Minister may direct the Agency to—

(a) provide funding to the LDA or any LDA group entity on terms or conditions specified in the direction,

(b) exercise, on the terms and conditions specified in the direction, any rights attaching to such funding arrangement,

(c) terminate or dispose of, on the terms and conditions specified in the direction, the funding arrangement, and/or

(d) pay money to the LDA out of the assets of the Fund for the purposes of discharging the liability of the Minister in respect of the shares allotted and issued to the Minister under section [●] of the Land Development Agency Act 2019.

(2) The total amount - (a) provided under subsection (1)(a), and (b) paid under subsection (1)(d), shall not at any time exceed €1,250,000,000.

(3) In this section "funding" includes any loan, investment, contribution or exchange of assets, subscription for securities, debt securities, issued share capital and callable share capital.

(4) For the purpose of calculating the amount referred to in subsection (2), the equivalent in the currency of the State of amounts loaned or paid in a currency other than the currency of the State shall be calculated at the rate of exchange prevailing at the time the calculation is made.

(5) For the purposes of subsection (3), where the European Central Bank has published—

(a) a Euro Foreign Exchange Reference Rate, or

(b) a rate expressed by the European Central Bank to replace that rate,

which is applicable to the currency concerned and the time the calculation concerned is made, that rate shall be taken to be the rate of exchange prevailing at that time for that currency.

(6) Interest on any borrowings, liabilities and obligations of the LDA or any LDA group entity shall not be taken into account in calculating the value of the amount referred to in subsection (2).

(7) The Agency shall comply with a direction given under subsection (1).

(8) In this section 'LDA' and 'LDA group entity' have the same meanings as they have in the Land Development Agency Act 2018."

and

(b) Section 37 of the National Treasury Management Agency (Amendment) Act 2014 is amended, in the definition of "directed investment" by substituting for paragraph (a) the following:

"(a) an investment made by the Agency pursuant to a direction under section 42, 42A, 42B or 47(4)(b) or the proceeds held by the Agency pursuant to a direction under section 47(4)(c);".

Notes:

This head amends the National Treasury Management Agency (Amendment) Act 2014 to provide that the Minister for Finance may direct the NTMA to provide funding to the LDA, if required.

PART 5

Financial Statements and Public Accountability

Head 29 Financial Statements of the LDA and LDA group entities

Provides that:

- (1) In this head, a reference to an LDA group entity is a reference to an LDA group entity which is—
 - (a) a company formed and registered under the Companies Act, or
 - (b) an existing company within the meaning of that Act.
- (2) Part 6 of the Companies Act shall in its application to the LDA and any LDA group entity be subject to the modifications specified in subheads (3) to (8).
- (3) The LDA and any LDA group entity shall, not later than 2 months after the end of the financial year to which they relate, submit the statutory financial statements, prepared in accordance with Part 6 of the Companies Act, to the Comptroller and Auditor General for audit.
- (4) The Comptroller and Auditor General shall—
 - (a) audit, and
 - (b) prepare a report in the form set out in section 336 of the Companies Act on, the statutory financial statements submitted to him or her under subhead (3).
- (5) The LDA shall, as soon as practicable after receipt of the report of the Comptroller and Auditor General prepared under subhead (4), present to the Minister a copy of—
 - (a) the statutory financial statements submitted to the Comptroller and Auditor General under subhead (3), and
 - (b) the report prepared under subhead (4).
- (6) The Minister shall cause a copy of the statutory financial statements and report presented to him or her under subhead (5) to be laid before each House of the Oireachtas as soon as practicable following their presentation.
- (7) In relation to the LDA and any LDA group entity—
 - (a) a reference to “statutory auditor” in the Companies Act shall include a reference to the Comptroller and Auditor General, and

- (b) a reference to “audit of the statutory financial statements” in the Companies Act shall include a reference to the audit of the statutory financial statements by the Comptroller and Auditor General under subhead (4).
- (8) Chapters 18, 20 and 21 of Part 6 of the Companies Act shall not apply to the Comptroller and Auditor General in the performance of his or her functions in relation to the LDA, or any LDA group entity, nor to the audit of the statutory financial statements of the LDA, or any LDA group entity, by him or her.
- (9) In this head, “statutory financial statements” has the same meaning as it has in Part 6 of the Companies Act.
- (10) Where, following prior consultation with the Minister, the board of the LDA considers it appropriate to do so having regard to its functions (including the obligations imposed on the LDA under head 7), the LDA or any LDA group entity may appoint a statutory auditor or statutory audit firm to be a statutory auditor of the LDA or the LDA group entity, as the case may be, for the purposes of, and in accordance with, the Companies Act.
- (11) The appointment of a statutory auditor or statutory audit firm under subhead (1) shall not affect the operation of subheads (3) to (9).
- (12) In this head—
- “statutory auditor” has the same meaning as it has in the Companies Act;
- “statutory audit firm” has the same meaning as it has in the Companies Act.

Notes:

This Head is a standard provision for bodies funded by the Exchequer and requires the LDA to submit its annual accounts to the Comptroller and Auditor General for audit

This Head also clarifies that the Comptroller and Auditor General will be the statutory auditor of the LDA and its group entities for the purposes of the Companies Act. This Head also allows the LDA to retain the ability to appoint a statutory auditor within the meaning of the Companies Act, for example in the event that it is required to do so for regulatory reasons such as the listing of debt.

Head 30 Accountability to Committee of Public Accounts

Provides that:

- (1) The chairperson of the board of the LDA shall nominate a member of that board or a senior officer of the LDA (referred to in this section as the “nominated person”) for the purposes of this section.
- (2) The nominated person shall, whenever required by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—
 - (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record or account subject to audit by the Comptroller and Auditor General that the LDA is required by or under an enactment to prepare,
 - (b) the economy and efficiency of the LDA in its use of the resources made available to it under this Bill,
 - (c) the systems, procedures and practices employed by the LDA for the purposes of evaluating the effectiveness of its operations, and
 - (d) any matter affecting the LDA referred to in—
 - i. any special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or
 - ii. any other report of the Comptroller and Auditor General (in so far as it relates to a matter specified in any of paragraphs (a) to (c)) that is laid before Dáil Éireann.
- (3) In appearing before a Committee referred to in subhead (2), the nominated person appears as a person accountable to the Committee and not as an accounting officer.
- (4) The nominated person, in giving evidence under subhead (2), shall not question or express an opinion on the merits of any policy of the Government or a Minister of the Government or on the merits of the objectives of such a policy.
- (5) Any evidence given under subhead (2) shall, subject to preserving confidentiality in relation to such commercially sensitive information as determined by the LDA, relate to the policies of the LDA.

Notes:

This is a standard provision to provide that a senior officer assigned to the LDA or an LDA Board member shall give evidence on a designated range of issues to the Committee of Public Accounts when required.

Head 31 Reporting Arrangements

Provides that:

- (1) The Land Development Agency shall furnish to the Minister such information regarding the performance or proposals for the performance of its functions as the Minister may from time to time require.
- (2) The Land Development Agency will report to Government on a half-yearly basis.

Notes:

This Head sets out the reporting arrangements for the LDA.

Part 6

The LDA and Land Management

Head 32 **National Public Lands Register**

Provides that:

- (1) The LDA will be empowered to compile and update a national register of relevant public lands.
- (2) The register shall contain all necessary information to enable the LDA to identify all relevant public lands and advise the Government, and the Minister as appropriate, on the management and use of relevant public lands.
- (3) The Property Registration Authority, Ordnance Survey Ireland and the Valuation Office will provide services to the LDA to assist in the compilation of the register.
- (4) The register shall be compiled within a defined period of the establishment of the LDA.
- (5) Relevant public bodies shall provide all necessary information to the LDA within a defined period of it being requested.

Notes:

This Head provides that the LDA will compile a National Public Lands Register. Public bodies will be obliged to enable the compilation of the Register by providing information, records and access to relevant public lands to the LDA.

The Head also provides that the Property Registration Authority, Ordnance Survey Ireland and the Valuation Office will provide appropriate services to the LDA.

Head 33 Information, records and access to relevant public lands to be made available to the LDA

Provides that:

- (1) The LDA, in performing its functions set out under subhead 9(3)(a) and Head 32, may request from a relevant public body:
 - (a) access to information, records or documents relating to relevant public lands; and
 - (b) reasonable access to such relevant public lands.
- (2) A relevant public body shall co-operate and comply with any request of the LDA made under subhead (1).
- (3) It is the duty of each of the members, board, or equivalent governing body of a relevant public body, and each member of its staff, to co-operate with the LDA.

Notes:

This Head provides that relevant public bodies must assist the LDA in relation to the compilation of the Register of Public Lands

PART 7

Miscellaneous

Head 34 **Shadow and de facto directors**

Provides that:

- (1) A person specified in subhead (2) shall not be taken to be—
- (a) a shadow director (within the meaning of section 221 of the Companies Act), or
 - (b) a de facto director (within the meaning of section 222 of the Companies Act),
- of the LDA or any LDA group entity.
- (2) The persons referred to in subhead (1) are the following:
- (a) the Minister;
 - (b) an employee or a member of the staff of the Minister; and/or
 - (c) an officer or an employee or member of staff of the LDA.

Notes:

The purpose of this head is to avoid any possibility of the Minister, his staff, the LDA or its staff being regarded as a shadow director or de facto director of the LDA or other LDA group.

Head 35 Disapplication of certain provisions

Provides that:

- (1) Section 220(8) of the Companies Act shall be disapplied in relation to LDA and each LDA group entity.

Notes:

Section 220(8) of the Companies Act provides that there is a presumption that the sole member of a single member company is a person connected with a director of that company.

Head 36 **Review of achievement of the LDA's purposes**

Provides that:

- (1) The Minister may at any time require the LDA to report to him or her regarding progress with regard to the achievement of the LDA's purposes.
- (2) The Minister will assess the extent to which the LDA has made progress towards achieving its overall objectives.

Notes:

This Head provides that the Minister may review the extent to which the LDA has made progress towards achieving its overall objectives.

Head 37 Confidential Information

Provides that:

- (1) A person shall not disclose confidential information obtained by him or her while performing functions as a director or officer, or a member of the staff of, or an adviser or consultant to, the LDA, or a member of the staff of such adviser or consultant unless he or she is duly authorised by the LDA to so do.
- (2) Subhead (1) shall not operate to prohibit the disclosure of confidential information by a person referred to in that subhead to the board of directors of the LDA, where the LDA authorise the disclosure, where the disclosure is made to the Minister by or on behalf of the LDA or in compliance with a requirement of this Bill or where the disclosure is otherwise required by law.
- (3) In this section “confidential information” includes—
 - (a) information that is expressed by the LDA to be confidential either as regards particular information or as regards information of a particular class or description, and
 - (b) proposals of a commercial nature or tenders submitted to the LDA by contractors, consultants or any other person.
- (4) Where a person to whom this section applies fails to comply with a requirement of this section, the LDA shall decide the appropriate action (including removal from office or termination of contract) to be taken.

Notes:

This head provides that confidential information received by a person while performing his/her functions cannot be disclosed unless the person is authorised by the LDA to do so.

Head 38 Offence of Unlawful Interference

Provides that:

- (1) A person shall not attempt, and shall not procure or counsel another to attempt, in either case whether directly or indirectly, to:
 - (a) influence improperly a decision of the LDA concerning the discharge of its objects or functions under this Bill; or
 - (b) otherwise improperly interfere with or compromise a decision of the LDA concerning the discharge of its objects or functions under this Bill.
- (2) A person who contravenes subhead (1) shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 6 months, or both.

Notes:

This Head provides that it will be an offence to unlawfully interfere with the decision making process of the LDA.

Head 39 Amendment to the Freedom of Information Act 2014

Provides that

The Freedom of Information Act 2014 is amended to ensure that records of the LDA, in relation to its activities under Head 9(2), are excluded from the provisions of the Freedom of Information Act 2014.

Notes:

This Head provides that certain functions of the LDA will be excluded from the provisions of the Freedom of Information Act 2014.