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**An Bille um Maoiniú Teaghais-Tógála Éireann, 2018**  
**Home Building Finance Ireland Bill 2018**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**HOME BUILDING FINANCE IRELAND BILL 2018**

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**EXPLANATORY MEMORANDUM**

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**Purpose of the Bill**

The purpose of the Home Building Finance Ireland Bill is to provide for the establishment of a company called Home Building Finance Ireland (HBFI) to increase the availability of debt funding for residential development in the State. HBFI will provide financing to developers seeking to build viable residential development projects in Ireland on commercial, market equivalent terms and conditions.

The Bill facilitates funding of HBFI from resources currently held by the Irish Strategic Investment Fund (ISIF), the granting of the necessary power to the National Treasury Management Agency (NTMA) to provide staff and services to HBFI on a cost recoverable basis, the granting of specific powers to HBFI to enable it to carry on the business of residential development finance, and ensures appropriate accountability for HBFI.

**Detailed provisions of the Bill**

The Bill has six parts.

**Part 1 – Preliminary and general** sets out preliminary and general provisions.

**Section 1 – Short title and commencement** is a standard provision setting out the short title of the legislation (the Home Building Finance Ireland Act 2018) and that it will come into operation by order of the Minister.

**Section 2 – Definitions** is a standard provision providing definitions for certain words and terms used in the Bill. “Minister” means the Minister of Finance and “HBFI” means Home Building Finance Ireland.

**Section 3 – Expenses** provides for expenses incurred by the Minister in administration of this legislation to be sanctioned by the Minister for Public Expenditure and Reform and be paid out of moneys provided by the Oireachtas. Expenses incurred by the NTMA in the performance of its functions under the Act are to be paid out of the Central Fund.

**Part 2 – HBFI** provides for the establishment of HBFI as a company and other related matters.

**Section 4 – Formation of Home Building Finance Ireland** provides for the formation of a private company limited by shares under the Companies Acts, to name it “Home Building Finance Ireland” and for the company to be independent in carrying out its functions.

**Section 5 – Constitution of HBFI** provides that the constitution of the company when formed will be consistent with the provisions of the

legislation. It also provides that no alterations to those documents will be valid without the prior approval of the Minister.

*Section 6 – **Group entities of HBFI*** provides for HBFI to be able to promote, form or acquire a shareholding in various types of subsidiaries such as companies or joint ventures, etc. It also provides the terms on which this can be done. Group entities are defined in *section 2* of the Bill.

*Section 7 – **Functions of HBFI*** sets out the functions of HBFI. The main function of HBFI is to lend money on commercial terms for the purpose of funding residential development in the State. In carrying out its functions HBFI shall take into account all of the risk factors relevant to such lending, aim to contribute to the economic and social development of the State and aim to enhance to competitiveness of the economy of the State.

HBFI shall have ancillary powers necessary for the performance of its functions.

*Section 8 – **Board of HBFI*** provides for HBFI to have a board of between three and seven directors including a chairperson. This section sets out that the chairperson and directors will be appointed by the Minister and that the terms and conditions of appointment will be set out in the constitution of HBFI.

*Section 9 – **Services, systems and staff of HBFI*** provides for HBFI's relationship with the NTMA and NAMA. It sets out that the NTMA will provide HBFI with the services, systems and staff it requires, after consultation with the Chief Executive of the NTMA.

This section also provides that where staff and services have already been provided by the NTMA to NAMA that meet HBFI's requirements, the NTMA shall, subject to the approval of the Chief Executive and board of NAMA, reassign such staff and services from NAMA to HBFI where appropriate.

Furthermore, in circumstances where the NTMA is not in a position to provide services to HBFI, then HBFI shall be able to procure such services itself, or the NTMA shall procure such on behalf of HBFI.

This section also provides that the NTMA will be reimbursed by HBFI for costs incurred under this section.

***Part 3 – Funding of HBFI*** sets out the funding arrangements of HBFI.

*Section 10 – **Share capital of HBFI*** provides for shares of HBFI with a total nominal value of €20,000,000 to be allotted and issued to the Minister upon incorporation. Provision is also included for HBFI to allot and issue more shares to the Minister from time to time. The division of shares into different classes by HBFI is subject to the consent of the Minister.

*Section 11 – **Alienation of shares by Minister*** provides that the Minister may sell, transfer, exchange, redeem or dispose of shares in HBFI on such terms and conditions as he deems appropriate. The sale, transfer, exchange or disposal of shares is specifically limited to the NTMA, the Minister for Housing, Planning and Local Government or a body under the aegis of the Minister for Housing, Planning and Local Government.

This section also provides that any funds received from the sale, transfer, exchange, surrender, redemption or disposal of any share will go to the exchequer and that the Minister has the power to exercise all rights and powers associated with the shares.

*Section 12 – **Payment of dividends*** provides that HBFI will pay a dividend of the amount decided by the board of HBFI in consultation

with the Minister. Any dividend received from the shares will go to the exchequer.

*Section 13 – Borrowing by HBFi* provides that HBFi may borrow money in any currency through any type of debt it thinks fit and on such terms as it thinks fit. This section limits the amount that HBFi can be liable to repay at any given time to €750,000,000. HBFi will be responsible for the repayment of its borrowings. The value of borrowings in other currencies will be valued using the European Central Bank's published exchange rates. Money loaned to HBFi under the National Treasury Management Agency (Amendment) Act 2014 will not be taken into account for the purposes of calculating the €750,000,000 borrowing limit.

*Part 4 – Financial statements and public accountability* sets out the procedures relating to HBFi's financial accounts and procedures for ensuring public accountability.

*Chapter 1 – Financial Statements of HBFi and HBFi group entities* sets out the procedures for the recording of HBFi's finances and the auditing of its accounts.

*Section 14 – Interpretation (Chapter 1)* provides for the definition of a HBFi group entity for the purposes of this chapter.

*Section 15 – Preparation and audit of statutory financial statements of HBFi and HBFi group entities* provides that HBFi shall prepare statutory financial statements in accordance with the Companies Act.

HBFi must submit its accounts to the Comptroller and Auditor General for audit within two months after the end of the financial year to which they relate. The audited accounts will be laid before both Houses of the Oireachtas.

This section also provides that an audit of the financial statements by the Comptroller and Auditor General shall constitute a statutory audit for the purposes of the Companies Act 2014.

*Section 16 – Appointment of statutory auditor or firm* provides that where the board of HBFi has determined that the appointment of a statutory auditor is required that the firm appointed must be a recognised statutory auditor under the 2016 Audit Regulations and appointed in addition to the Comptroller and Auditor General.

*Chapter 2 – Public accountability* sets out the procedures for ensuring that HBFi can be held publically accountable.

*Section 17 – Accountability to Committee of Public Accounts* provides that a senior HBFi officer or member of the board nominated by the HBFi chairperson will give evidence to the Committee of Public Accounts on the matters specified in this section whenever required.

*Part 5 – Consequential amendments* sets out the necessary amendments to other acts as a consequence of HBFi's establishment and operation.

*Section 18 – Amendment of section 246 of Taxes Consolidation Act 1997* provides that income and gains arising to HBFi or a wholly owned subsidiary of HBFi will be exempt from interest withholding tax.

*Section 19 – Amendment of National Treasury Management Agency (Amendment) Act 2014* allows the Minister to direct the NTMA (ISIF) to provide funding to HBFi on certain terms. The total value of this funding is not to exceed €750,000,000 at any one time.

*Part 6 – Miscellaneous Provisions* sets out seven miscellaneous provisions.

*Section 20 – Shadow directors* provides that the Minister, the NTMA and its employees or staff, NAMA and its officers, or HBFI and its officers are not to be considered either shadow directors or de facto directors of HBFI.

*Section 21 – Disclosure of confidential information* provides that the unauthorised disclosure of confidential information by a board member or a member of staff of HBFI or a HBFI group entity or an advisor or consultant will be an offence subject to the exemptions specified.

*Section 22 – Power of Minister to give directions* provides that the Minister has the power to issue directions to HBFI where these directions are consistent with the functions of HBFI. Directions given by the Minister must be published in *Iris Oifigiúil* and laid before each House of the Oireachtas.

*Section 23 – Review of achievement of purposes of HBFI* provides that the Minister may at any time require HBFI to report to the Minister regarding the progress and achievement of HBFI's purposes. As soon as possible after 31 December 2020, and subsequently every two years, the Minister will assess the extent to which HBFI has made progress toward achieving its overall objectives, the impact HBFI is having in the residential development funding market, and the amount of funding available in the market. As part of this assessment the Minister shall decide whether HBFI should continue in operation.

*Section 24 – Communications with HBFI* provides that, subject to certain exceptions, a person who communicates with, amongst others, HBFI and a HBFI group entity, with the intention of influencing the making of a decision in relation to the performance of the functions of HBFI or the HBFI group entity, commits an offence. This section also provides for related matters.

*Section 25 – Disapplication of certain provisions of Companies Acts to HBFI* provides that certain provisions of the Companies Act 2014 will not apply to HBFI. These provisions are:

- the presumption that the sole member of a single member company is a person connected with a director of that company as contained in section 220(8) of the 2014 Act;
- the requirements for disclosure of shares and debentures as contained in Chapter 5 of Part 5 of the 2014 Act; and
- The requirement to include “DAC” after the name of a designated activity company, as contained in section 969 of the 2014 Act.

*Department of Finance,  
June, 2018*