

## Ireland

### SCREENING OF THIRD COUNTRY TRANSACTIONS ACT 2023 (2024)

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# **SCREENING OF THIRD COUNTRY TRANSACTIONS ACT 2023**

An Act to provide for a process to allow for certain transactions that may present risks to the security or public order of the State to be reviewed by the Minister for Enterprise, Trade and Employment; to empower the Minister to require the provision of information from certain persons for reviewing, and to make decisions and take certain actions in relation to, transactions that present risks to the security or public order of the State; to provide for a process for appealing certain decisions of the Minister with due regard to the potentially sensitive nature of the subject matter of the appeal, and for those

purposes to establish a panel of persons to deal with appeals against certain decisions of the Minister under this Act; to establish a panel of persons to advise the Minister in relation to certain transactions; to give further effect to Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019<sup>1</sup> establishing a framework for the screening of foreign direct investments into the Union; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

# PART 1

## PRELIMINARY AND GENERAL

### 1. Short title and commencement

(1) This Act may be cited as the Screening of Third Country Transactions Act 2023.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

### 2. Interpretation

(1) In this Act—

“acquire”, in relation to control of an asset or of an undertaking, shall be construed in accordance with subsection (3);

“adjudicator” has the meaning given to it by section 22;

“advisory panel” has the meaning given to it by section 39;

“connected”, in relation to a person, shall be construed in accordance with section 3;

“control”, in relation to an asset or an undertaking, shall be construed in accordance with subsection (2);

“Minister” means the Minister for Enterprise, Trade and Employment;

“non-notified transaction” means a notifiable transaction of which the Minister is not notified in accordance with section 10;

“notice of information” has the meaning given to it by section 19;

“notifiable”, in relation to a transaction, shall be construed in accordance with section 9;

“notified transaction” means a transaction of which the Minister is notified in accordance with section 10;

“prescribed” means prescribed by regulations made by the Minister under this Act;

“Regulation” means Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019<sup>2</sup> establishing a framework for the screening of foreign direct investments into the Union;

“relevant material” means any decision, evidence, document, material or any other matter that—

(a) is relevant to an appeal under section 27 or 34, any further appeal following such an appeal, an application under section 35 relating to such an appeal, or judicial review proceedings relating to a screening decision or the decision of an adjudicator,

(b) is not publicly available, and

(c) relates to the security or public order of the State;

“screening decision” has the meaning given to it by section 16;

“screening notice” has the meaning given to it by section 14;

“third country” means a state or territory other than—

(a) the State,

(b) a Member State,

(c) a state or territory, not being a Member State, that is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993, and

(d) Switzerland;

“third country national” means—

(a) a natural person who is ordinarily resident in a third country, or

(b) an unincorporated group or partnership of natural persons at least one of whom is ordinarily resident in a third country;

“third country undertaking” means an undertaking that is—

(a) constituted or otherwise governed by the laws of a third country,

(b) controlled by at least one director, partner, member or other person, that—(i) is a person referred to in paragraph (a), or (ii) is a third country national,

or

(c) a third country national;

“transaction” means any acquisition, agreement or other economic activity resulting in—

(a) a change in control of an asset in the State, or

(b) the acquisition of all or part of, or of any interest in, an undertaking in the State; “undertaking” includes any person (including an individual, a body corporate, a partnership or any other unincorporated body of persons) engaged for gain in the production, supply or distribution of goods, the provision of services, the making or holding of investments or the carrying out of any other economic activity, but does not include a natural person whose role in such activities is limited to working under a contract of employment or a contract for services for an undertaking.

(2) In this Act, a person shall be regarded as exercising control of—

(a) an asset, where that person has ownership of, or the right to use, all or part of the asset, and

(b) an undertaking, where that person can exercise decisive influence over the activities of the undertaking by any means, including as a consequence of— (i) the existence of rights or contracts conferring decisive influence on the composition, voting or other commercial decisions of the undertaking, or (ii) ownership of, or the right to use, all or part of the assets of the undertaking.

(3) In this Act, control of an asset or of an undertaking shall be regarded as being acquired by a person who gains an ability to exercise control of the asset or of the undertaking for the first time or to a greater extent.

(4) In this Act, the circumstances in which an asset shall be regarded as being in the State include—

(a) where it is physically located within the territory of the State, and

(b) in the case of an intangible asset, where it is owned, controlled or otherwise in the possession of an undertaking in the State.

(5) In this Act, an undertaking shall be regarded as being in the State where it—

(a) is constituted or otherwise governed by the laws of the State, or

(b) has its principal place of business in the State.

### **3. Connected persons**

(1) For the purposes of this Act (and without prejudice to subsection (2)), a person is connected with a third country undertaking if the person is—

(a) a spouse, civil partner, parent, sibling or child of a relevant person,

(b) acting in the capacity as the trustee of any trust, the principal beneficiaries of which are—(i) a relevant person, (ii) a person referred to in paragraph (a), or (iii) an undertaking controlled by a relevant person, or

(c) in partnership with a relevant person.

(2) Without prejudice to the application of section 18(c) of the Interpretation Act 2005 to 15 subsection (1)(b), a body corporate shall also be, for the purposes of this Act, connected with a third country undertaking if it is controlled by the third country undertaking or by another undertaking that is controlled by that third country undertaking.

(3) In this section—

“child”, in relation to a relevant person, shall be deemed to include a person who—

(a) is a child of the relevant person’s civil partner, and

(b) ordinarily resides with the relevant person;

“civil partner” has the meaning given to it by the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“relevant person”, in relation to a third country undertaking, means—

(a) where the third country undertaking is an individual, that individual, or

(b) where the third country undertaking is not an individual, a third country national who exercises control over the undertaking.

### **4. Reporting on operation of Act**

(1) The Minister shall—

(a) cause a report to be prepared on the operation of this Act not more than 15 months after this section comes into operation, and not less than once every 12 months thereafter, and

(b) cause a copy of such report to be laid before each House of the Oireachtas as soon as practicable after it has been prepared.

(2) A report prepared under this section shall, subject to subsection (3), include—

(a) aggregated details on the number of transactions notified to the Minister under this Act,

(b) aggregated details on the number of non-notified transactions reviewed by the Minister under this Act,

(c) aggregated details on the actions taken by the Minister in respect of transactions in relation to which a screening decision has been made,

(d) information on sectoral trends of, and third countries involved in, transactions reviewed by the Minister under this Act, and

(e) all other matters relating to the operation of the Act that the Minister considers to be relevant.

(3) A report prepared under this section shall not include—

(a) commercially sensitive information,

(b) personal data (within the meaning of Regulation (EU) 2016/679 of the European Parliament and of

the Council of 27 April 2016<sup>3</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)), or

(c) information the disclosure of which could create a risk to the security or public order of the State.

## **5. Regulations**

(1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.

(2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

(3) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

## **6. Offences and penalties**

(1) A person guilty of an offence under this Act, other than under section 28(5), shall be liable—

(a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months, or to both, or

(b) on conviction on indictment, to a fine not exceeding €4,000,000 or to imprisonment for a term not exceeding 5 years, or to both.

(2) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within two years from the date on which the offence was alleged to have been committed.

(3) Where an offence under this Act is committed by a body corporate or other undertaking and is proved to have been so committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate or undertaking, or a person who was purporting to act in any such capacity, that person, as well as the body corporate or undertaking, commits an offence and shall be liable to be proceeded against and punished as if the person were guilty of the first-mentioned offence.

## **7. Expenses**

The expenses incurred in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, National Development Plan Delivery and Reform, be paid out of monies provided by the Oireachtas.

## **8. Service of documents**

(1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:

(a) by delivering it to the person;

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;

(d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.

(2) For the purpose of this section, a company formed and registered under the Companies Act 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

# **PART 2**

## **NOTIFICATION AND REVIEW OF TRANSACTIONS**

### **9. Notifiable transactions**

(1) A transaction is notifiable where it satisfies each of the following criteria:

(a) a third country undertaking, or a person connected with such an undertaking, as a result of the transaction—(i) acquires control of an asset or undertaking in the State, or (ii) changes the percentage of shares or voting rights it holds in an undertaking in the State— (I) from 25 per cent or less to more than 25 per cent, or (II) from 50 per cent or less to more than 50 per cent;

(b) the cumulative value of the transaction and each transaction between the parties to the transaction, or persons connected with third country undertakings that are parties to the transaction, in the period of

12 months before the date of the transaction is equal to or greater than—(i) where no amount stands prescribed under subsection (2), €2,000,000, or (ii) the amount that stands prescribed under subsection (2);

(c) the same undertaking does not, directly or indirectly, control all the parties to the transaction;

(d) the transaction relates to, or impacts upon, one or more of the matters referred to in points (a) to (e) of Article 4(1) of the Regulation.

(2) The Minister may, where it is necessary to do so in order to—

(a) provide for the more effective review of transactions under this Act,

(b) respond to variations in economic, political or social conditions affecting transactions that, but for subsection (1)(b), would be notifiable, or

(c) improve the security or public order of the State, prescribe an amount for the purposes of subsection (1)(b).

#### **10. Requirement to notify Minister of transaction**

(1) Subject to subsection (2) and section 11, the parties to a notifiable transaction shall, not less than 10 days before the date on which the transaction is completed—

(a) notify the Minister of the transaction, and

(b) when notifying the Minister under paragraph (a), provide the Minister with the following information in relation to the transaction:

(i) the identities of the parties (including, where applicable, name, trading name, registered address, domicile, NACE classification code, registered office and registration number);

(ii) the ownership structure of the parties to the transaction, including information on persons participating in the capital of the undertaking;

(iii) the approximate value of the transaction;

(iv) information on the products, services and business operations of the parties to the transaction;

(v) the nature of the economic activities carried out in the State by the parties to the transaction;

(vi) the funding of the transaction and its source;

(vii) the date on which the transaction is proposed to be completed;

(viii) the state or territory under whose laws the parties are constituted, registered, or otherwise organised;

(ix) the Member States in which the parties carry out economic activities;

(x) the annual turnover and total number of employees of each party;

(xi) details of any sanctions and restrictive financial measures imposed on the parties, and on persons connected with a third country undertaking that is a party, by the European Union or by the United Nations;

(xii) details of any convictions of a party, and of persons connected with a third country undertaking that is a party, by the International Criminal Court;

(xiii) details of any convictions of a party, and of persons connected with a third country undertaking that is a party—(I) on indictment (other than a spent conviction within the meaning of section 5 of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016) by a court in the State, and (II) in a state or territory other than the State, in respect of which a sentence of at least 12 months' imprisonment was imposed and that is not a spent conviction (within the meaning of section 5 of the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016, save that references in that section to a "court" shall be construed as references to the court or body that convicted the party or connected person in the state or territory concerned);

(xiv) any other information that is necessary for the Minister to review the transaction under this Act.

(2) A party to a transaction shall not be required to comply with subsection (1) where it is not aware of the transaction.

(3) Subject to subsection (2) and section 11, where a party to a notifiable transaction fails to comply with subsection (1)(a) before the transaction is completed—

(a) the transaction shall be deemed to be subject to a screening decision that the transaction affects, or would be likely to affect, the security or public order of the State, and

(b) such screening decision shall be deemed to have been made on the day before the date on which the transaction is completed.

(4) A person who—

(a) fails to comply with subsection (1), or (b) in purported compliance with subsection (1), provides the Minister with information that the person knows to be false in a material particular, or is reckless as to whether or not it is false in a material particular, shall be guilty of an offence.

#### **11. Deemed compliance with requirement to notify Minister of transaction**

(1) A party to a transaction (in this section referred to as the "first party") may, before complying with section 10(1), provide one or more other parties to the transaction (each of which is, in this section, referred to as a "second party") with a notification in writing—

(a) informing the second party that it intends to so comply.

(b) specifying the date on which it intends to so comply, and

(c) setting out all the information that it intends to provide to the Minister in accordance with section 10(1).

(2) Where the second party agrees, by written notice to the first party and before the date specified in subsection (1)(b), that it is satisfied with the information provided under subsection (1), the second party shall be deemed to comply with section 10(1) to the same extent that it is complied with by the first party.

(3) Where the first party—

(a) having been notified of the agreement of the second party under subsection (2), and

(b) in purported compliance with section 10(1), provides the Minister with information that is materially different to the information it provided to the second party under subsection (1)—

(i) the second party shall be deemed to comply with section 10(1), and (ii) the first party shall be deemed not to comply with section 10(1).

(4) Where a notifiable transaction is completed no later than 10 days from the date on which section 10 comes into operation, a party to the transaction shall be deemed to comply with section 10(1) where the party provides the Minister with the information referred to in section 10(1)(b) no later than 30 days from the date on which the transaction is completed.

(5) Where a second party, having received a notification under subsection (1)—

(a) fails to comply with section 10(1), and

(b) does not notify the first party in accordance with subsection (2), section 10(3) shall not apply to the transaction in respect of the second party's failure to so comply.

## **12. Review of transactions with regard to security or public order of State**

(1) The Minister—

(a) shall, as soon as practicable after being notified of a transaction under section 10, review the transaction in accordance with section 13, and

(b) may, subject to subsection (2), review a transaction in accordance with section 13, regardless of whether or not the transaction is notified or notifiable, where—(i) the Minister has reasonable grounds for believing that the transaction affects, or would be likely to affect, the security or public order of the State, and (ii) the transaction has resulted in, or would if completed result in, a third country undertaking, or a person connected with such an undertaking, acquiring, or changing the extent to which it has—

(I) control of an asset in the State,

(II) control of or an interest in an undertaking in the State,

(III) legal rights in relation to a person, asset or undertaking in the State,

(IV) the ability to exercise effective participation in the management or control of an undertaking in the State, or

(V) the ability to exercise control over an undertaking in the State through a change in ownership or legal structure of that undertaking.

(2) The Minister shall not commence a review of a transaction under subsection (1)(b)—

(a) in the case of a non-notified transaction, subject to paragraph (c), after the later of—(i) 5 years from the date on which the transaction is completed, or (ii) 6 months from the date on which the Minister first becomes aware of the transaction,

(b) in the case of a transaction that is not notifiable, subject to paragraph (c), more than 15 months after the transaction is completed, or

(c) where the transaction, regardless of whether or not the transaction is notified or notifiable, is completed more than 15 months before this section comes into operation.

## **13. Considerations when reviewing transactions**

(1) The Minister shall, when reviewing a transaction under this Act, consider whether or not the transaction affects, or would be likely to affect, the security or public order of the State.

(2) In considering whether or not a transaction affects, or would be likely to affect, the security or public order of the State, the Minister shall have regard to the following:

(a) whether or not a party to the transaction is controlled (whether through ownership structures or by other funding) by a government (which reference to government shall include, for the purposes of this paragraph, the state bodies or armed forces of the third country concerned) of a third country and, where relevant, the extent to which such control is inconsistent with the policies and objectives of the State;

(b) the extent to which a party to the transaction is, at the time the transaction is being reviewed, already involved in activities relevant to the security or public order of the State;

(c) whether or not a party to the transaction has previously taken actions affecting the security or public order of the State;

(d) whether or not there is a serious risk of a party to the transaction engaging in illegal or criminal activities.

activities,

(e) whether or not the transaction presents, or is likely to present, a person with an opportunity to—

(i) undertake actions that are disruptive or destructive to persons in the State, or to enhance the impact of any such action,

(ii) improve the person's access to sensitive undertakings, assets, people or data in the State, or

(iii) undertake espionage affecting or relevant to the interests of the State;

(f) whether or not the transaction is likely to have a negative impact in the State on the stability, reliability, continuity or safety of one or more of the matters referred to in points (a) to (e) of Article 4(1) of the Regulation;

(g) whether or not the transaction would result in persons acquiring access to information, data, systems, technologies or assets that are of general importance to the security or public order of the State;

(h) where applicable, comments of Member States and the opinion of the European Commission referred to in Article 6(9) of the Regulation;

(i) the extent to which the transaction affects, or would be likely to affect, the security or public order of a Member State other than the State or of the European Union;

(j) the extent to which the transaction affects, or would be likely to affect, projects or programmes of Union interest within the meaning of Article 8 of the Regulation. 5

(3) In considering whether or not a transaction affects, or would be likely to affect, the security or public order of the State under this section, the Minister—

(a) shall consult the advisory panel, or such members of the advisory panel as the Minister considers appropriate, in relation to the transaction,

(b) shall consider the information, if any, provided under section 10(1) in relation to the transaction,

(c) shall consider the written submissions, if any, made by the parties to the transaction under section 21,

(d) shall consult such other Minister of the Government, if any, as the Minister considers appropriate having regard to the functions of that Minister, 15

(e) may consult any other person the Minister considers appropriate, and

(f) may enter into discussions with the parties to the transaction, or with any other person, with a view to identifying measures that would ameliorate any effects of the transaction on the security or public order of the State.

#### **14. Issuing of screening notice to parties to transaction being reviewed by Minister**

(1) Subject to section 15, the Minister shall, as soon as practicable after commencing a review of a transaction under this Act, provide all parties to the transaction, and any other person the Minister considers appropriate, with a notice (in this Act referred to as a "screening notice") in accordance with this section.

(2) A screening notice shall be in writing and shall, subject to section 15, contain—

(a) a statement summarising the reasons for which the transaction is being reviewed,

(b) a statement that the person to whom it is addressed may make written submissions to the Minister regarding the transaction in accordance with section 21, and

(c) a statement regarding any other matter that the Minister considers to be appropriate in the circumstances.

#### **15. Qualification of obligation to issue screening notice in exceptional circumstances**

(1) Where the Minister is satisfied, in relation to a non-notified transaction, that there are reasonable grounds for believing that it would be manifestly contrary to the security or public order of the State to—

(a) issue a screening notice to a party to a transaction, or

(b) include in the screening notice one or more of the statements referred to in section 14(2), the Minister may elect not to do so.

(2) Where the Minister elects not to issue a screening notice in relation to a transaction in accordance with this section, a period that is stated in this Act to be reckoned from the date on which a screening notice is issued shall, in relation to the transaction, be reckoned from the date on which the Minister commences a review of the transaction under this Act.

#### **16. Screening decision**

(1) The Minister shall, having reviewed a transaction under this Act, make a decision (in this Act referred to as a "screening decision") as to whether or not the transaction affects, or would be likely to affect, the security or public order of the State.

(2) The Minister shall inform the parties to a transaction, by notice in writing, of the screening decision as soon as practicable after it is made and shall, subject to subsection (5), provide reasons for the decision.

(3) Subject to section 20, the Minister shall make a screening decision on or before the later of—

(a) 90 days from the date on which the screening notice in relation to the transaction is issued, or

(b) such date, not being more than 135 days from the date on which the screening notice in relation to

the transaction is issued, as the Minister may specify in a notice in writing to the parties to the transaction within the period referred to in paragraph (a).

(4) Subject to section 20, where the Minister does not make a screening decision within the period applicable to the transaction under subsection (3), the transaction shall be deemed, on and from the last day of that period, to be subject to a screening decision to the effect that it has not affected, or would not be likely to affect, the security or public order of the State.

(5) Where the Minister believes that providing reasons for a screening decision would create a risk to the security or public order of the State, the Minister—

(a) may decide not to provide the parties with such reasons, to the extent necessary in order to avoid or minimise such risk, and

(b) shall include in the notice referred to in subsection (2) a statement that the Minister is declining, under this subsection, to give reasons for the decision.

(6) The Minister shall not delegate the functions under subsection (1) or (5) to any other person other than where the Minister is unable to carry out such functions through illness or absence.

#### **17. Limitation on transaction under review**

(1) Where a screening notice is issued in relation to a transaction, the transaction shall not be completed, and the parties to the transaction shall not take any action for the purpose of completing or furthering the transaction, from the date on which the screening notice is issued until—

(a) in the case of a transaction in respect of which a screening decision is made to the effect that the transaction has not affected, or would not be likely to affect, the security or public order of the State, the date of that decision, or

(b) in the case of a transaction in respect of which a screening decision is made to the effect that the transaction affects, or would be likely to affect, the security or public order of the State, the date (if any) directed by the Minister for those purposes under section 18.

(2) A person who fails to comply with subsection (1) shall be guilty of an offence.

#### **18. Powers of Minister in relation to transactions**

(1) Where the Minister—

(a) makes a screening decision that a transaction affects, or would be likely to affect, the security or public order of the State, and

(b) does not make a direction under subsection (3) in relation to the transaction, the parties shall not complete the transaction, or take any action for the purpose of completing or furthering the transaction.

(2) Where the Minister—

(a) makes a screening decision that a transaction affects, or would be likely to affect, the security or public order of the State, and

(b) makes a direction under subsection (3) in relation to the transaction, the parties shall not complete the transaction, or take any action for the purpose of completing or furthering the transaction, other than in accordance with the direction.

(3) The Minister may, having made a screening decision that a transaction affects, or would be likely to affect, the security or public order of the State—

(a) where the transaction has not been completed, direct the parties to the transaction not to complete the transaction, or take any action for the purpose of completing or furthering the transaction, other than subject to such conditions as the Minister may specify for the purpose of protecting the security or public order of the State, or

(b) where the transaction has been completed, direct the parties to the transaction to take such actions as the Minister may specify for the purpose of protecting the security or public order of the State.

(4) Without prejudice to the generality of subsection (3), the conditions or actions that the Minister may specify under that subsection include requiring parties to the transaction, whether jointly or separately, to do or not to do, as the case may be, one or more of the following:

(a) not to complete the transaction, or such parts of the transaction as the Minister may specify;

(b) not to complete the transaction, or such parts of the transaction as the Minister may specify, before or after such date or dates as the Minister may specify;

(c) to sell or divest itself of any matter, including business, assets (tangible or intangible), shares, real property or intellectual property;

(d) to modify or constrain its conduct or practice in specified ways;

(e) to cease a specified conduct or practice;

(f) to prevent the flow of competitively sensitive information between undertakings or within divisions, units, departments or other organisational units within an undertaking;

(g) to report to the Minister, on such terms as the Minister may specify, on the parties' compliance with conditions imposed under this section;

(h) to pay to the Minister, or such other person as the Minister may specify, such amounts as the Minister may specify in order to meet the reasonable costs associated with monitoring compliance with conditions imposed by the Minister under this section.

(5) A person who fails to comply with subsection (1) or (2) shall be guilty of an offence.

#### **19. Notice of information**

(1) Where the Minister is of the opinion that further information is required in order to review a transaction under this Act, the Minister may, at any time after commencing a review of the transaction, issue a notice in writing (in this Act referred to as a “notice of information”) to a party to the transaction in accordance with this section.

(2) A notice of information shall specify—

(a) the information, or class of information, that the Minister requires from the party to which it is issued, and

(b) a period within which the party on which it is served shall comply with it, which period shall—(i) be not less than 30 days, and (ii) be reasonable having regard to the nature of the requirement, the context in which the information is requested and the circumstances of the person of whom the request is made.

(3) An undertaking to which a notice of information is issued shall provide the information, or class of information, required in the notice to the Minister within the period specified under subsection (2)(b).

(4) Where the party providing information under subsection (3) is an undertaking, an officer (where the undertaking is a body corporate), partner (where the undertaking is a partnership) or any individual in control (in the case of any other form of undertaking) of the undertaking shall certify in writing to the Minister that, to the best of that person’s knowledge and belief, the undertaking has complied with a notice of information under this section.

(5) Subject to subsection (6), the following shall be guilty of an offence:

(a) an undertaking that fails to comply with subsection (3);

(b) a person who, in purported compliance with this section, provides the Minister with information that the person knows to be false in a material particular, or is reckless as to whether or not it is false in a material particular.

(6) A person shall not be required under this section to provide to the Minister—(a) an admission that the person committed an offence, or (b) information that is legally privileged.

(7) Information provided in response to a notice of information shall be in such form as the Minister may specify.

#### **20. Calculation of period within which Minister shall make screening decision**

(1) Notwithstanding section 16, where the Minister issues a notice of information under section 19 before the expiry of the period applicable to the transaction under section 16(3), that period shall stand suspended on and from the date on which the notice of information is issued and shall resume on the date on which the party to whom the notice of information was issued complies with section 19(3).

(2) The Minister shall, within 10 days from the date on which information is provided under section 19(3), provide a written notification to the person providing the information and, where relevant, the person providing a certification under section 19(4) relating to that information, stating whether or not the Minister is satisfied that the notice of information has been complied with.

(3) For the purposes of subsection (1), section 19(3) shall be deemed not to be complied with until the earlier of—

(a) the date on which the Minister notifies, in writing, the person providing the information under section 19(3) that the Minister is satisfied that the notice of information has been complied with, or

(b) subject to subsection (4), 10 days from the date on which the Minister was provided with the information under section 19(3).

(4) Where it is confirmed, under subsection (2), that the Minister is not satisfied that a notice of information to which the certification relates has been complied with—

(a) section 19(3) shall be deemed not to be complied with for the purposes of subsection (1), and (b) the Minister may, in writing, request additional information relating to the notice of information from the person to whom it was issued.

(5) Where, having received additional information requested under subsection (4), the Minister considers that the notice of information to which the request relates has been complied with—

(a) the Minister shall notify the person or undertaking of that fact in writing, and

(b) section 19(3) shall be deemed to be complied with on and from the date of the notification under paragraph (a).

#### **21. Written submissions**

(1) A party to a transaction in relation to which a screening notice has been issued may make written submissions to the Minister regarding the transaction.

(2) A written submission to the Minister shall not be made under this section after the later of—

(a) such date as the Minister may specify in the screening notice relating to that transaction, or

(b) such further period as the Minister may specify by notice in writing issued to the party before the date specified in the screening notice.

# PART 3

## APPEALS

### CHAPTER 1

#### Adjudicators

##### 22. Appointment of adjudicators

(1) The Minister—

(a) may, in accordance with this section, appoint such and so many persons (in this Act referred to as “adjudicators”) to carry out the functions assigned to them by this Act, and

(b) shall form a panel of persons who have been appointed as adjudicators.

(2) The Minister shall not appoint a person to be an adjudicator unless—

(a) the person is a practicing solicitor or barrister or a former judge of the Circuit Court, High Court, Court of Appeal or Supreme Court,

(b) the Minister is satisfied that the person has the requisite knowledge or experience of matters relevant to the functions of an adjudicator, and

(c) the Minister is satisfied that it is appropriate for the person, having regard to the security or public order of the State, to carry out the functions of an adjudicator, including by reference to such clearance, verification or background checks as may be prescribed.

(3) A person—

(a) to whom one or more of paragraphs (d) to (m) of subsection (8) applies, or

(b) who is a member of the advisory panel, shall not be appointed as an adjudicator.

(4) The Minister, in so far as practicable and having regard to the knowledge or experience referred to in subsection (2)(b), shall ensure an appropriate gender balance when appointing persons to the panel of adjudicators.

(5) Subject to this Act, an adjudicator’s functions under this Act shall be performed independently.

(6) An adjudicator—

(a) shall be appointed for such period as the Minister may specify,

(b) shall be paid such fees and expenses as the Minister may, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, determine, and

(c) subject to paragraphs (a) and (b), shall be appointed subject to such terms and conditions as the Minister may specify.

(7) An adjudicator may at any time resign as an adjudicator.

(8) The appointment of an adjudicator under this section shall cease upon—

(a) the expiry of a period specified by the Minister under subsection (6)(a),

(b) the revocation by the Government of the appointment under section 23,

(c) the resignation of the adjudicator,

(d) the conviction of the adjudicator on indictment of an offence,

(e) the conviction of the adjudicator of an offence involving fraud or dishonesty,

(f) the making of a declaration against the adjudicator under section 819 of the Companies Act 2014 or the deeming of the adjudicator to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, 30

(g) the adjudicator being subject to, or being deemed to be subject to, a disqualification order within the meaning of Chapter 4 of Part 14 of the Companies Act 2014 whether by virtue of that Chapter or of any other provision of that Act,

(h) the adjudicator being nominated as a member of Seanad Éireann,

(i) the adjudicator being elected as a member of either House of the Oireachtas or to be a member of the European Parliament,

(j) the adjudicator being regarded pursuant to Part XIII of the Second Schedule to the European Parliament Elections Act 1997 as having been elected to be a member of the European Parliament,

(k) the adjudicator being elected or co-opted as a member of a local authority,

(l) the adjudicator’s name being removed, where the adjudicator is a practising barrister, from the roll of practising barristers (which shall be construed in accordance with section 2(1) of the Legal Services Regulation Act 2015), or

(m) the adjudicator’s name being struck off, where the adjudicator is a practising solicitor, the roll of solicitors (which shall be construed in accordance with section 9 of the Solicitor’s Act 1954).

(9) A person who is for the time being—

(a) entitled under the Standing Orders of either House of the Oireachtas to sit therein, or

(b) a member of the European Parliament, shall, while the person is so entitled or is such a member, as the case may be, be disqualified for office as an adjudicator.

(10) (a) Where an adjudicator dies, resigns, ceases to be qualified for office, ceases to hold office or is removed from office, the Minister may appoint, in the same manner as the adjudicator who occasioned

the casual vacancy was appointed, a person to be an adjudicator to fill the casual vacancy so occasioned. (b) A person appointed to be an adjudicator pursuant to paragraph (a) shall hold office for that period of the term of office of the adjudicator who occasioned the casual vacancy concerned that remains unexpired at the date of the appointment and shall be eligible for reappointment as an adjudicator on the expiry of the said period.

(11) The Civil Service Regulation Acts 1956 to 2005 shall not apply to an adjudicator.

### **23. Revocation of appointment as adjudicator**

(1) The Government may revoke the appointment of an adjudicator if the Government is satisfied that one or more of the grounds specified in subsection (2) apply to the adjudicator.

(2) The grounds referred to in subsection (1) are that an adjudicator—

(a) has become incapable through ill-health of performing the functions of an adjudicator,

(b) has engaged in serious misconduct,

(c) has failed without reasonable cause to perform functions under this Act for a continuous period of at least 3 months, or

(d) has contravened to a material extent a provision of the Ethics in Public Office Acts 1995 and 2001 that, by virtue of a regulation under section 3 of the Ethics in Public Office Act 1995, applies to the adjudicator.

(3) Where the Government proposes to revoke the appointment of an adjudicator under subsection (1), they shall give notice in writing to the adjudicator concerned of the proposal.

(4) A notice under subsection (3) shall include a statement—

(a) of the reasons for the proposed revocation of appointment,

(b) that the adjudicator may, within a period of 30 working days from the giving of the notice or such longer period as the Government may, having regard to the requirements of natural justice, specify in the notice, make representations to the Government in such form and manner as may be specified by the Government as to why the appointment of the adjudicator should not be revoked, and

(c) that where no representations are received within the period referred to in paragraph (b) or the period specified in the notice, as the case may be, the Government shall, without further notice to the adjudicator, proceed with the revocation of the appointment of the adjudicator in accordance with this section.

(5) In considering whether to revoke the appointment of an adjudicator under subsection (1), the Government shall take into account—

(a) any representations made by the adjudicator under paragraph (b) of subsection (4) within the period referred to in that paragraph or the period specified in the notice, as the case may be, and

(b) any other matter the Government considers relevant for the purpose of their decision.

(6) Where, having taken into account the matters referred to in subsection (5), the Government decide to revoke the appointment of an adjudicator, they shall give notice in writing to the adjudicator of the decision and the reasons for that decision.

### **24. Liability of adjudicators**

An adjudicator shall not be liable in damages in respect of any act done or omitted to be done by the adjudicator in the performance, or purported performance, of functions under this Act, unless the act or omission concerned was done in bad faith.

### **25. Rules concerning conduct of appeals before adjudicator**

(1) The Minister may prescribe rules in relation to the conduct of appeals falling to be determined by an adjudicator, and all rules so prescribed shall be published on a website maintained by or on behalf of the Minister.

(2) Without prejudice to the generality of subsection (1), rules prescribed under this section may include rules relating to the following:

(a) requirements to give notice of an appeal;

(b) the identities, number of, or conduct of, parties to an appeal;

(c) requirements for notification of an appeal by a party to an adjudicator;

(d) the place at, time at and manner in which adjudicators may sit, including whether and how adjudicators shall sit individually or as a panel;

(e) information or documentation to be supplied to an adjudicator by parties to an appeal, and the manner in which it is to be so supplied;

(f) an adjudicator's power to require submission by a person of information or documentation that is necessary for the determination of an appeal;

(g) dismissal of an appeal which in the opinion of the adjudicator is frivolous or vexatious or without substance or foundation;

(h) advising the appellant of its rights in an appeal, including the right—

(i) to be present at the appeal,

(ii) to present a case in person at an appeal, or

(iii) to present a case through a legal representative at the appellant's own expense;

- (iii) to present a case through a legal representative at the appellant's own expense;
  - (i) procedures applicable to the hearing of an appeal;
  - (j) the calling and examination of witnesses in an appeal;
  - (k) time limits applicable to the conduct of appeals;
  - (l) the manner in which submissions are made to the adjudicator by parties to an appeal or other persons;
  - (m) procedures for the consolidation and hearing of two or more than two appeals together;
  - (n) procedures for delayed or abandoned appeals;
  - (o) procedures for the separation of appeals;
  - (p) the procedures for imposing restrictions in relation to disclosure, publication or reporting, during the hearing of an appeal, of a matter that the adjudicator considers—(i) to relate to the security or public order of the State, or (ii) to be commercially sensitive;
  - (q) recording of, or prohibiting the recording of, proceedings before an adjudicator;
  - (r) without prejudice to section 28(3), requiring certain evidence in proceedings before an adjudicator to be given on oath or affirmation and, for that purpose, providing for an adjudicator to administer an oath or affirmation.
- (3) The Minister shall provide, or arrange for the provision of, such support of an administrative nature as the Minister considers necessary to enable the performance of an adjudicator's functions.

## CHAPTER 2

### Review of decisions of Minister

#### 26. Jurisdiction to review decisions of Minister

A decision of the Minister under this Act, or a screening decision deemed by this Act to have been made, shall not be questioned, including as to its validity, other than by way of judicial review or appeal under this Chapter, and in such an appeal the appellant may raise any of the grounds of challenge that could be raised by the appellant in judicial review proceedings against the decision.

#### 27. Procedure for appeal of screening decisions

- (1) A party to a transaction in relation to which a screening decision has been made (in this section referred to as an "appellant") may appeal either or both of the following decisions in accordance with this section:
- (a) the screening decision;
  - (b) a decision under section 16(5).
- (2) An appellant shall notify the Minister in writing and in such form as the Minister may specify that the appellant is appealing a decision referred to in subsection (1) no later than 30 days after being notified of the decision.
- (3) The Minister shall, as soon as practicable after receiving a notification under subsection (2)—
- (a) designate an adjudicator or adjudicators from amongst the panel referred to in section 22(1)(b) to hear the appeal, and
  - (b) notify the appellant of the adjudicator or adjudicators so designated.
- (4) An appellant shall—
- (a) submit its appeal to the adjudicator within 14 days of the date on which the notification under subsection (3) is provided,
  - (b) in submitting its appeal, state all of the grounds upon which the appeal is made and provide to the adjudicator all of the documents and evidence upon which the applicant intends to rely to support those grounds, and
  - (c) subject to this Act, and to any rules prescribed under section 25, submit the appeal in such manner or subject to such conditions as the adjudicator may direct.
- (5) The Minister shall—
- (a) be the respondent to an appeal, and
  - (b) subject to section 30, when responding to an appeal, state all of the grounds upon which the appeal is responded to and provide to the adjudicator all of the documents and evidence upon which the Minister intends to rely to support those grounds
- (6) Subject to subsection (7), a party to an appeal shall not be entitled, during the course of an appeal, to make submissions to the adjudicator other than submissions related to the grounds stated, or documents and evidence provided under, subsection (4) or (5), as the case may be.
- (7) The adjudicator may, where it considers it necessary or expedient for the fair and proper determination of an appeal, require or permit a party to an appeal to—
- (a) make submissions to the adjudicator other than submissions related to the grounds stated or documents and evidence provided under subsection (4) or (5), as the case may be, or
  - (b) provide documents or evidence to the adjudicator other than documents or evidence provided under subsection (4) or (5), as the case may be.
- (8) The adjudicator may refuse to consider a submission, document or evidence where the adjudicator

considers that—

- (a) the submission, document or evidence is not relevant to the appeal, or
- (b) it is appropriate to do so in order to avoid undue repetition of submissions. 15

(9) Making an appeal under this section does not suspend or otherwise alter the effect of the screening decision to which the appeal relates pending the decision of the adjudicator.

## **28. Oral hearing**

(1) The adjudicator may determine an appeal without an oral hearing unless, having regard to the particular circumstances of the appeal, the adjudicator considers that it is necessary to conduct an oral hearing in order to properly and fairly determine the appeal.

(2) The adjudicator may, by notice in writing, require a person to—

- (a) attend an oral hearing, at such time and place as is specified in the notice,
- (b) give evidence in respect of any matter in issue in an appeal, and
- (c) produce any relevant documents within the person's possession, control or procurement.

(3) A person required to attend under subsection (2) may be examined and cross-examined at the oral hearing and any testimony so given shall be given on oath or affirmation.

(4) The adjudicator may limit the time within which each party to a particular appeal may make submissions at an oral hearing.

(5) A person who does or fails to do anything that, if the adjudicator were a court having power to commit for contempt of court, would be contempt of such court, is guilty of an offence and shall be liable—

- (a) on summary conviction, to a class C fine or imprisonment for a term not exceeding 6 months or to both, or
- (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 3 years, or to both.

## **29. Decision of adjudicator**

(1) Following consideration of an appeal, the adjudicator shall—

(a) where the adjudicator is satisfied that a serious or significant error was, or a series of errors were, made in making the decision to which the appeal relates, or that the decision was made without complying with this Act or with fair procedures, allow the appeal and remit the matter, for stated reasons, to the Minister to determine the matter—

- (i) with a direction to make such determination taking into account the findings of the adjudicator, and
- (ii) within such period, not being more than 30 days from the date on which the notice under subsection (2) is given, as the adjudicator may direct, or (b) where the adjudicator is not so satisfied, affirm the decision to which the appeal relates.

(2) The adjudicator shall give notice of the decision under this section, as soon as practicable after it is made, to the Minister, the appellant and such other parties as the adjudicator may determine.

(3) The decision of the adjudicator under this section shall be final save that an appeal from that decision may be made in accordance with section 34.

# **CHAPTER 3**

## **Exceptional provisions regarding sensitive material and evidence**

### **30. Treatment of certain material of relevance to security or public order of State in appeal against decision of Minister**

(1) Where the adjudicator is satisfied by information on oath or affirmation of the Minister, or of an officer of the Minister appointed by the Minister to provide such information, that there are reasonable grounds for believing that the disclosure to an appellant of relevant material would create a risk to the security or public order of the State, the adjudicator may—

- (a) where satisfied that the relevant material can be redacted in a way that removes that risk, direct the Minister to provide the relevant material to the appellant subject to such redactions,
- (b) where satisfied that the relevant material or part thereof can be summarised or described in a way that removes that risk, direct the Minister to provide the appellant with such a summary or description, and
- (c) take the relevant material into account in making a decision under section 29, regardless of the extent to which the relevant material is provided to the appellant.

(2) The information on oath or affirmation provided to the adjudicator under subsection (1) shall not, without the express authorisation of the Minister, be disclosed by any person to any person other than a party to the appeal.

(3) When providing information on oath or affirmation under subsection (1), the Minister may request the adjudicator to direct that—

- (a) the information shall not be provided to a party to the appeal, and

(b) a summary of the information, provided to the adjudicator with the request, shall be provided to the party.

(4) The adjudicator shall, if satisfied that the summary of the information provided with the Minister's request under subsection (3) is sufficiently clear and detailed to allow a party to the appeal effectively to challenge the basis on which, or way in which, the relevant material is provided to it, direct that—

(a) the information shall not be provided to a party to the appeal, and

(b) the summary shall be provided to the party.

(5) The Minister shall comply with a direction of the adjudicator under subsection (1) or (4), as the case may be.

(6) A person, other than the Minister or an adjudicator, who contravenes subsection (2) shall be guilty of an offence.

### **31. Appeals to be held otherwise than in public**

(1) Subject to subsection (4), proceedings before an adjudicator shall not be held in public, and the adjudicator shall exclude from the hearing of any proceedings before it all persons except—

(a) a person providing services to the adjudicator, whose presence is necessary for the adjudicator to deal with the proceedings in accordance with this Act,

(b) the parties to the appeal,

(c) the legal representatives of the parties to the appeal, and

(d) a witness whose evidence is relevant to the appeal, for as long as the witness's presence is required for the purpose of providing such evidence.

(2) This subsection shall apply to proceedings before an adjudicator where the Minister—

(a) is satisfied that holding such proceedings, or specified matters forming part of such proceedings, in public would not create a risk to the security or public order of the State, and

(b) notifies the adjudicator in writing of that fact.

(3) The Minister shall not withdraw, or otherwise reverse the effect of, a notification under subsection (2)(b).

(4) Where subsection (2) applies to proceedings, the adjudicator shall—

(a) as soon as practicable after receiving a notification under subsection (2)(b), notify the appellants of that fact in writing, and

(b) hold proceedings relating to the appeal, or to the specified matters forming part of the appeal, as the case may be, to which subsection (2) applies in public unless the adjudicator believes that there are good and sufficient reasons to hold such proceedings other than in public.

(5) Where subsection (2) applies to proceedings before an adjudicator, or to specified 10 matters forming part of such proceedings, it shall continue to apply to—

(a) an appeal under section 34 arising from such proceedings or relating to such matters,

(b) an application under section 35 relating to an appeal, or to the matters, referred to in paragraph (a),

(c) an appeal from the decision of the High Court under section 34(5) arising from the proceedings, or relating to the matters, referred to in paragraph (a), and (d) judicial review proceedings based on the proceedings.

### **32. Confidentiality of proceedings**

(1) A person shall not disclose any information obtained—

(a) by a party to an appeal before an adjudicator to which section 31(2) does not apply, and

(b) as a result of such an appeal, to any person other than—(i) a party to the appeal, (ii) a legal representative of a party to the appeal, (iii) the adjudicator, (iv) a witness whose evidence is relevant to the appeal, to the extent such disclosure is necessary for the witness to give such evidence, or (v) where an appeal is taken under section 34, or judicial review proceedings are taken in relation to a screening decision or a matter before an adjudicator, to— (I) the court, (II) a party to the appeal or proceedings, (III) a legal representative of a party to the appeal or proceedings, or (IV) a witness whose evidence is relevant to the appeal or proceedings, to the extent such disclosure is necessary for the witness to give such evidence.

(2) A person who contravenes subsection (1) shall be guilty of an offence.

### **33. Designation of legal representatives in respect of certain matters**

(1) The Minister may by order designate a person (in this section referred to as an "approved legal representative") for the purposes of this section.

(2) The Minister shall not designate a person under subsection (1) unless the Minister is satisfied that—

(a) the person is qualified to practice as a barrister or solicitor in the State,

(b) the person has the requisite knowledge and experience to act as an approved legal representative, and

(c) it is appropriate for the person, having regard to the security or public order of the State, to act as an approved legal representative, including by reference to such clearance, verification or background checks as may be prescribed.

(5) where—

(a) the Minister is satisfied that an appeal under section 27 or 34, or a specified matter forming part of such appeal, is likely to create a particularly sensitive and serious risk to the security or public order of the State, and

(b) section 31(2) does not apply to the appeal or specified matter forming part of the appeal, as the case may be, the Minister may specify that this section applies to that appeal or to that specified matter.

(4) The Minister shall, as soon as practicable after specifying that this section applies to an appeal, or to a specified matter forming part of an appeal, notify the parties to the appeal of that fact.

(5) No person other than an approved legal representative may represent a party to an appeal—

(a) where this section applies to an appeal generally, before a court or adjudicator in relation to that appeal,

(b) where this section applies to a specified matter forming part of an appeal, before a court or adjudicator, as the case may be, in respect of the matter, or

(c) where this section applies to an appeal generally or to a specified matter forming part of an appeal, before a court in an application under section 35 relating to that appeal.

(6) The Minister shall publish a list of approved legal representatives on a website maintained by or on behalf of the Minister.

(7) A person shall cease to be an approved legal representative on and from the date—(a) the person ceases to be qualified to practice as a barrister or solicitor in the State, or (b) the Minister revokes the order designating the person for the purposes of this section.

(8) In this section, a reference to an appeal under section 34 includes a reference to any judicial review proceedings taken in relation to a screening decision or a matter before an adjudicator.

## **CHAPTER 4**

### **Appeal against decision of adjudicator**

#### **34. Appeal against decision of adjudicator**

(1) A party to a transaction in relation to which a decision under section 29(1) is made may, by leave of the High Court, appeal to that court on a point of law not later than 30 days from the date on which the party was notified of the decision.

(2) The High Court shall, in determining an appeal under this section, act as expeditiously as possible consistent with the administration of justice.

(3) Rules of court may make provision for the expeditious hearing of appeals under this section.

(4) A decision or direction of an adjudicator, including a decision under section 29(1), shall not be questioned, including as to its validity, other than by way of judicial review or appeal under this section, and in such an appeal the appellant may raise any of the grounds of challenge that could be raised by the appellant in judicial review proceedings against the decision.

(5) The decision of the High Court in an appeal taken under this section is final and no appeal lies from the decision to the Court of Appeal except with the leave of the High Court, which shall only be granted if the High Court certifies that its decision involves (a) point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken to the Court of Appeal.

#### **35. Application to suspend effect of screening decision**

Where an appeal under section 34 relates to a screening decision, the making of the appeal does not suspend the effect of the screening decision unless—

(a) the appellant, in addition to making an appeal under section 34, applies to the High Court to have the effect of the screening decision suspended until such time as the appeal is determined, and

(b) the High Court, where it considers it appropriate to do so having regard to all the circumstances of the case, orders that the effect of the screening decision, or such particular effects of the screening decision as the court may order, are suspended until the appeal is determined, or until such other time as the court may order.

#### **36. Treatment of evidence in relation to appeals against decision of adjudicator**

(1) In an appeal under section 34, an application under section 35 or judicial review proceedings relating to a screening decision or a decision of an adjudicator, that relates to or involves relevant material, the High Court may—

(a) where it is satisfied by information on oath or affirmation of the Minister, or of an officer of the Minister appointed by the Minister to provide such information, that there are reasonable grounds for believing that the disclosure to an appellant of relevant material would create a risk to the security or public order of the State—(i) where satisfied that the relevant material can be redacted in a way that removes that risk, direct the Minister to provide the relevant material to the appellant subject to such redactions, or (ii) where satisfied that the relevant material or part thereof can be summarised or described in a way that removes that risk, direct the Minister to provide the appellant with such a summary or description,

(b) where it is not satisfied by the information on oath or affirmation referred to in paragraph (a) that the

disclosure to a party of relevant material would create a risk to the security or public order of the State, direct that the relevant material, or such part of that material as the High Court may direct, be provided to the party, and

(c) take the relevant material into account in making its decision in relation to the appeal or application, as the case may be, regardless of the extent to which, or ways in which, the relevant material is provided to the appellant in accordance with this section.

(2) The Minister shall comply with a direction of the High Court under subsection (1).

(3) The information on oath or affirmation provided to the High Court under subsection (1) shall not, without the express authorisation of the Minister, be disclosed by the court, an officer or agent of the court, or any other person, to any person other than a party to an appeal.

(4) When providing information on oath or affirmation under subsection (1), the Minister may apply to the High Court ex parte for an order that—

(a) the information shall not be provided to a party to the appeal, and

(b) a summary of the information, provided to the High Court with the application, shall be provided to the party.

(5) The High Court shall grant the order applied for under subsection (4) if it is satisfied that—

(a) the Minister has grounds for believing that providing the information on oath or affirmation under subsection (1) to a party would create a risk to the security or public order of the State, and

(b) the summary provided with the application for that order is sufficiently clear and detailed to allow the party effectively to challenge the basis on which, or way in which, the information on oath or affirmation is not being provided to it, or provided to it in part, as the case may be, and the Minister shall comply with such an order. 5

(6) A person, other than a judge, who contravenes subsection (3) shall be guilty of an offence.

### **37. Hearing of matters otherwise than in public**

(1) The High Court shall exclude from the hearing of any relevant proceedings before it all persons except—

(a) a judge hearing the matter,

(b) an officer or agent of the court whose presence is necessary for the judge to hear the matter,

(c) the parties to the proceedings,

(d) the legal representatives of the parties to the proceedings, and

(e) a witness whose evidence is relevant to the proceedings, for as long as the witness's presence is required for the purpose of providing such evidence, unless it is satisfied that the interests of justice require any other person not to be so excluded.

(2) In this section, "relevant proceedings" means proceedings before the High Court relating to—

(a) an appeal under section 34, or part of such an appeal, to which section 31(2) does not apply,

(b) an application under section 35 or 36(4) in relation to such an appeal, or

(c) judicial review proceedings relating to a screening decision or the decision of an adjudicator.

### **38. Proceedings before court other than High Court**

Where a court other than the High Court deals with an appeal in relation to which leave is granted under section 34(5), an appeal from any decision of the High Court under sections 35 to 37, or an appeal in judicial review proceedings relating to a screening decision or the decision of an adjudicator, sections 35 to 37 shall apply to the appeal mutatis mutandis as if a reference in those sections to the High Court was a reference to the court before which the appeal is heard.

## **PART 4**

## **THE ADVISORY PANEL**

### **39. Establishment and function of advisory panel**

(1) As soon as may be after the commencement of this section, the Minister shall establish a panel (in this Act referred to as the "advisory panel") to advise the Minister on transactions reviewed under this Act and to perform the functions conferred on it by this Act.

(2) The advisory panel shall consist of a chairperson and no fewer than 7 ordinary members, each of whom shall be appointed by the Minister to be a member of the advisory panel in accordance with section 40.

(3) The function of the advisory panel is to provide the Minister with advice and information in relation to transactions that the Minister reviews under this Act.

(4) The advisory panel may, with the consent of the Minister, request that persons provide it with assistance, including by means of providing expert evidence, in carrying out its functions under this Act.

(5) The Minister may at any time—

(a) remove a member of the advisory panel from the advisory panel for stated reasons, or

(b) dissolve the advisory panel.

### **40. Appointment to advisory panel**

(1) The Minister shall

(1) The Minister shall—

(a) appoint an officer of the Minister not below the rank of principal officer to be the chairperson of the advisory panel, and

(b) appoint the persons nominated under subsection (2) as ordinary members of the advisory panel, unless the Minister believes that there is a good and sufficient reason not to do so.

(2) (a) Each of the following Ministers shall nominate an officer of that Minister not below the rank of principal officer for appointment by the Minister under subsection (1):

(i) the Minister for Defence;

(ii) the Minister for Finance;

(iii) the Minister for Foreign Affairs;

(iv) the Minister for Justice;

(v) the Minister for the Environment, Climate and Communications;

(vi) the Minister for Transport.

(b) The Taoiseach shall nominate an officer of the Taoiseach not below the rank of principal officer for appointment by the Minister under subsection (1).

(3) An appointment to the advisory panel made under this section shall, subject to this section, be subject to such terms and conditions as may be specified by the Minister.

(4) Without prejudice to the generality of subsection (3), a person appointed by the Minister to the advisory panel under this section shall cease to be a member of the advisory panel—

(a) in the case of the chairperson of the advisory panel, at the request of the Minister or if the chairperson ceases to be an officer of the Minister,

(b) in the case of an ordinary member of the advisory panel who was nominated under subsection (2)(a), at the request of the Minister of the Government who nominated the member or if the member ceases to be an officer of the Minister of the Government concerned,

(c) in the case of an ordinary member of the advisory panel who was nominated under subsection (2)(b), at the request of the Taoiseach or if the member ceases to be an officer of the Taoiseach, or

(d) if the person is appointed as an adjudicator.

(5) If a member of the advisory panel dies or otherwise ceases to be a member of the advisory panel—

(a) in the case of the chairperson of the advisory panel, the Minister shall appoint an officer of the Minister not below the rank of principal officer to fill the vacancy so arising,

(b) in the case of an ordinary member of the advisory panel who was nominated under subsection (2)(a), the Minister who nominated the member shall nominate an officer of that Minister not below the rank of principal officer to fill the vacancy so arising, and the Minister for Enterprise, Trade and Employment shall, unless there is a good and sufficient reason not to do so, appoint that person to fill the vacancy, and

(c) in the case of an ordinary member of the advisory panel who was nominated under subsection (2)(b), the Taoiseach shall nominate an officer of the Taoiseach not below the rank of principal officer to fill the vacancy so arising, and the Minister for Enterprise, Trade and Employment shall, unless there is a good and sufficient reason not to do so, appoint that person to fill the vacancy.

#### **41. Meetings of advisory panel**

(1) The advisory panel shall hold such and so many meetings as may be necessary for the performance of its functions and may make such arrangements for the conduct of its meetings and business as it considers appropriate.

(2) The quorum for a meeting of the advisory panel shall be 4.

(3) Subject to subsection (2), the advisory panel may act notwithstanding one or more than one vacancy among its membership.

(4) At a meeting of the advisory panel—

(a) the chairperson of the advisory panel shall, if present, chair the meeting, or

(b) if and so long as the chairperson of the advisory panel is not present, or if that office is vacant, the members of the advisory panel who are present shall choose one of their number to chair the meeting.

#### **42. Consultants and advisers**

Subject to such conditions as may be specified by the Minister for the purposes of this section, the advisory panel may, with the consent of the Minister, engage such 10 consultants or advisers as it considers necessary for the performance of its functions.