

## Section 33AK of the Central Bank Act 1942

33AK.

(1) This subsection applies to the following persons:

- (a) the Governor and every former Governor;
- (b) every former Director of the Central Bank and Financial Services Authority of Ireland;
- (c) every former member of the Irish Financial Services Regulatory Authority;
- (d) every member and every former member of the Commission;
- (e) every Head of Function and every former Head of Function;
- (f) the Registrar of Credit Unions and every former Registrar of Credit Unions;
- (g) every other officer or employee and every other former officer or employee of the Bank;
- (h) every person who is or was formerly employed as a consultant, auditor or in any other capacity by the Bank or is or was an agent engaged by the Bank;
- (i) every person to whom this subsection (as in force immediately before the amendment of this section by the Central Bank Reform Act 2010) applied immediately before that coming into operation.

(1A) A person to whom subsection (1) applies shall not disclose confidential information concerning-

- (a) the business of any person or body whether corporate or incorporate that has come to the person's knowledge through the person's office or employment with the Bank, or
- (b) any matter arising in connection with the performance of the functions of the Bank or the exercise of its powers,

if such disclosure is prohibited by the Rome Treaty, the ESCB Statute or the supervisory EU legal acts.

(2)

- (a) If requested by the Bank, the directors or those charged with the direction of a supervised entity shall, in accordance with paragraph (b), inform the Bank on the extent of any disclosure duly made by or on behalf of them or the entity to any authority, whether within the State or otherwise.

- (b) Where a request is made under paragraph (a), the directors or those charged with the direction of a supervised entity shall give to the Bank all the information so requested that is in their possession or under their control, within-
  - (i) 30 days of receipt of the request, or
  - (ii) such longer period as the Bank may allow when making the request or subsequently.
- (c) In responding to a request for information under this subsection, the directors or those charged with the direction of the supervised entity concerned shall exercise due diligence and shall not, by any act or omission, give or cause to be given to the Bank false or misleading information.

(3)

- (a) Subject to subsection (1A) and paragraph (b), the Bank shall report, as appropriate, to-
  - (i) the Garda Síochána, or
  - (ii) the Revenue Commissioners, or
  - (iii) the Director of Corporate Enforcement, or
  - (iv) the Competition Authority, or
  - (iva) . . .
  - (v) any other body, whether within the State or otherwise, charged with the detection or investigation of a criminal offence, or
  - (vi) any other body charged with the detection or investigation of a contravention of-
    - (I) the Companies Acts 1963 to 2001, or
    - (II) the Competition Act 2002, or in so far as any commencement order under that Act does not relate to the repeal of provisions of the Competition Acts 1991 and 1996, which would otherwise be subsisting those Acts,or
    - (III) the Irish Collective Asset-management Vehicles Act 2015,

any information relevant to that body that leads the Bank to suspect that-

- (A) a criminal offence may have been committed by a supervised entity, or
  - (B) a supervised entity may have contravened a provision of an Act to which subparagraph (vi) relates.
- (b) Paragraph (a) does not apply-
- (i) where the Bank is satisfied that the supervised entity has already reported the information concerned to the relevant body, or
  - (ii) where the information concerned has come into the possession of, or to the knowledge of the Bank, from an authority, in a jurisdiction other than that of the State, duly authorised to exercise functions similar to any one or more of the statutory functions of the Bank.
- (c) Information contained in a report under paragraph (a) may only be used by the body to which it is addressed for the purposes of-
- (i) the detection or investigation of a contravention of a provision of an Act to which paragraph (a)(vi) relates, or
  - (ii) any investigation which may lead to a prosecution for a criminal offence and any prosecution for the alleged offence.

(3A) Where a provision of any of the supervisory EU legal acts, or of any of the following Regulations of the European Parliament and of the Council, requires or permits the Bank to report information to a supervisory body established by that Regulation, the Bank may do so:

- (a) Regulation (EU) No. 1092/2010 of 24 November 2010 [Note: O J No. 331, 15.12.2010, p. 1.];
- (b) Regulation (EU) No. 1093/2010 of 24 November 2010 [Note: O J No. 331, 15.12.2010, p. 12.];
- (c) Regulation (EU) No. 1094/2010 of 24 November 2010 [Note: O J No. 331, 15.12.2010, p. 48.];
- (d) Regulation (EU) No. 1095/2010 of 24 November 2010 [Note: O J No. 331, 15.12.2010, p. 120.].

(4)

- (a) In relation to a supervised entity, where the Bank identifies information-

- (i) which it believes is or is likely to be material to an authority concerned with the enforcement of any law, and
- (ii) which it believes it is unable, due to the provisions of subsection (1A), to disclose to that authority, and
- (iii) in respect of which it is not satisfied that the information has been disclosed to that authority by the directors, or those charged with the direction, of the supervised entity,

then, the Bank shall issue to the directors or others duly charged with the direction of the supervised entity a document, to be known as a Disclosure Issue Notice, and the notice shall-

- (I) specify the name of the authority concerned, and
- (II) identify the information that the Bank has identified as causing it to issue the Disclosure Issue Notice.

- (b) The Bank shall advise the authority concerned when a Disclosure Issue Notice is issued.
- (c) Where a Disclosure Issue Notice is issued in respect of a company to which section 158 of the Companies Act 1963 applies (which relates to the directors' report), the directors' report shall comply with subsection (6B) of that section.

(5) Subject to subsection (1A), the Bank may disclose confidential information-

- (a) required for the purposes of criminal proceedings, or
- (b) with the consent of the person to whom the information relates and, if the information was obtained from another person, that other person, or
- (c) where the Bank is or was the agent of a person – made to the person as the person's agent, or
- (d) to an authority in a jurisdiction other than that of the State duly authorized to exercise functions similar to any one or more of the statutory functions of the Bank and which has obligations in respect of nondisclosure of information similar to the obligations imposed on the Bank under this section, or
- (e) to any institution of the European Community because of the State's membership of the Community, or to the European Central Bank for the purpose of complying with the Rome Treaty or the ESCB Statute, or

- (f) to an approved stock exchange, within the meaning of the Stock Exchange Act 1995-
  - (i) in respect of member firms of the exchange for the purpose of monitoring compliance by member firms with stock exchange rules or with conditions or requirements imposed by the Bank, or with both, or
  - (ii) where the Bank considers it necessary to do so, either for the proper and orderly regulation of stock exchanges and their member firms or for the protection of investors, or for both, or
- (g) to a financial futures and options exchange, within the meaning of section 97 of the Central Bank Act 1989, whose rules have been approved by the Bank under Chapter VIII of the Central Bank Act 1989-
  - (i) for the purpose of monitoring compliance by the members of that exchange with those rules or with conditions or requirements imposed by the Bank, or with both, or
  - (ii) where the Bank considers it necessary to do so for the proper and orderly regulation of futures and options exchanges and their members, or
- (h) to-
  - (i) an inspector appointed under the Companies Acts 1963 to 2001, or section 57 of the Stock Exchange Act 1995, or
  - (ii) a Committee appointed under section 65 of the Stock Exchange Act 1995, or
- (i) to a body that is a competent authority for the purpose of Council Directive 93/22/EEC of 10 May 1993 or Council Directive 93/6/EEC of 15 March 1993, or
- (j) to an approved professional body-
  - (i) for the purpose of monitoring compliance by investment business firms with rules or with conditions or requirements imposed by the Bank, or
  - (ii) where the Bank considers it necessary to do so for the proper and orderly regulation of investment business firms, or
- (k) to-
  - (i) a Committee appointed under section 74 of the Investment Intermediaries Act 1995, or

- (ii) a person nominated or approved of by a supervisory authority in accordance with section 51(2) of that Act, or
- (iii) an inspector appointed by the Court under Part VIII of that Act, or
- (l) to a product producer in respect of investment business services or investment advice provided by a restricted activity investment product intermediary who holds an appointment in writing from the producer under section 27 of the Investment Intermediaries Act 1995, or
- (m) to an officer of statistics (as defined by section 20 of the Statistics Act 1993) in connection with the collection, compilation, analysis or interpretation of data relating to balance of payments, national accounts or any other financial statistics prepared for those purposes, or
- (n) . . .
- (o) to the Comptroller and Auditor General that is required for the performance of that officer's functions or to a person employed in the Office of the Comptroller and Auditor General, or
- (p) to an auditor to whom subsections (3) and (4) of section 32I apply, or
- (q) to the Minister for the Environment and Local Government in connection with that Minister's functions under the national housing programme with respect to a mortgage lender, or
- (r) to the Investor Compensation Company Limited, or to a subsidiary of that company established by the Bank in order to provide administrative services to that company, or
- (s) for the purposes of the hearing of an appeal by the Appeals Tribunal, or
- (t) for the purpose of complying with a requirement imposed under section 33AM or by or under any other law, or
- (u) where the Bank is in receipt of information from an authority in a jurisdiction other than the State duly authorised to exercise functions similar to one or more of the statutory functions of the Bank, made with the permission of that authority, or
- (v) to a liquidator, examiner, receiver or any other person or body involved in the liquidation or bankruptcy of a supervised entity in relation to that entity, in accordance with the supervisory EU legal acts, where applicable, or

- (w) to the auditor of a supervised entity in relation to that entity, in accordance with the supervisory EU legal acts, where applicable, or
- (x) to any body established under law for the purposes of overseeing auditors, in accordance with the terms of the supervisory EU legal acts, where applicable, or
- (y) to the Director of Corporate Enforcement for the purpose of any investigation under Part II (as amended) of the Companies Act 1990, or to an officer of the Director for the purposes of the Director's functions and in accordance with the terms of the supervisory EU legal acts, where applicable, or
- (z) to-
  - (i) the Minister, in accordance with the provisions of the supervisory EU legal acts in relation to the Minister's responsibility for policy on the supervision of supervised entities,
  - (ii) authorities in other Member States with responsibilities corresponding to that of the Minister referred to in subparagraph (i), or
  - (iii) where the Bank is the chair of a college of supervisors established under Regulation 11A of the European Communities (Credit Institutions) (Consolidated Supervision) Regulations 2009 (S.I. No. 475 of 2009), to the Committee of European Banking Supervisors,
- (za) to an inspector appointed by the Minister and acting on the Minister's behalf, or
- (aa) in accordance with Article 25(7) of Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field, to a body which has the function of providing clearing or settlement services for one of the State's markets where necessary for the performance of its functions, or
- (ab) in accordance with the terms of Council Directive 92/49/EEC of 18 June 1992 in respect of insurance undertakings, to bodies which administer compulsory winding up proceedings or guarantee funds, where necessary for the performance of their functions, or
- (ac) in accordance with the terms of Council Directive 92/96/EEC of 10 November 1992 in respect of assurance undertakings, to bodies which administer compulsory winding up proceedings or guarantee funds, where necessary for the performance of their functions, or

- (ad) to the Pensions Board that is required for the performance of its functions, or
- (ae) in summary or collective form, such that individual persons or bodies cannot be identified, in legal proceedings where a supervised entity has been declared bankrupt or is being compulsorily wound up, but only if the information disclosed does not concern the business of any person or body which, to the knowledge of the Bank, may be, or has been involved in attempts to rescue that supervised entity at any stage, or
- (af) if the Bank is satisfied that the disclosure is necessary to protect consumers of relevant financial services or to safeguard the interests of the Bank, or
- (ag) if the disclosure arises in relation to-
  - (i) the operations of the Bank in any financial market, or
  - (ii) the issue by the Bank or the European Central Bank of legal tender, or
  - (iii) the pursuit by the Bank of the objectives set out in section 6A of the Central Bank Act 1942, or
- (ah) to a Tribunal of Inquiry established under the Tribunals of Inquiry (Evidence) Acts 1921 to 2002, or
- (aha) to any Commission of Investigation established under the Commissions of Investigation Act 2004, or
- (ahb) to a Joint Committee of the Houses of the Oireachtas that is conducting an inquiry, being an inquiry-
  - (i) that is a Part 2 inquiry (within the meaning of the Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013), and
  - (ii) in respect of which a terms of reference resolution under section 13 of that Act was passed by Dáil Éireann and Seanad Éireann on the 25th day and 26th day, respectively, of November, 2014,provided the disclosure to that Committee occurs after the making of the rules and standing orders referred to in subsection (6A),
- (ai) to the Revenue Commissioners in relation to their functions in a manner such that no supervised entity can be identified, or
- (aj) to the Registrar of Friendly Societies that is required for the performance of the Registrar's functions, or



- (aja) to the Credit Union Restructuring Board that is required for the performance of that Board's functions,
- (ak) to the Financial Services Ombudsman that is required for the performance of that Ombudsman's functions, or
- (al) to the Competition and Consumer Protection Commission, if the confidential information is required for the performance of the Commission's functions, or
- (am) to a deposit guarantee scheme established in accordance with Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 [Note: O.J. No. L135, 31.5.1994, p.5.], or
- (an) to a body or authority that is a competent authority for the purposes of a Regulation of the European Union or European Communities, or a law of the State implementing such a Regulation, that imposes restrictive measures within the framework of the EU Common Foreign and Security Policy, or
- (ao) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Credit Institutions (Stabilisation) Act 2010, or
- (ap) for any purpose connected with the functions of the Bank, the Minister, the Governor or the Head of Financial Regulation or a special manager under the Central Bank and Credit Institutions (Resolution) Act 2011, or
- (aq) to authorities or bodies charged with responsibility for maintaining the stability of the financial system in Member States through the use of macroprudential rules, or
- (ar) to reorganisation bodies or authorities aiming at protecting the stability of the financial system, or
- (as) for the purposes of contractual or institutional protection schemes as referred to in Article 113(7) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 [Note: OJ No. L 176, 27.06.2013, p. 1], or
- (at) for any purpose connected with the functions of the Bank under Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 [Note: OJ No. L 201, 27.07.2012, p. 1], or
- (au) to the Information Commissioner that is required for the performance of that Commissioner's functions under the Freedom of Information Act 2014, or

- (av) to the ECB or a national competent authority in accordance with the SSM Regulation or the SSM Framework Regulation, or
  - (aw) for any purpose connected to the functions of the Bank as a competent authority or resolution authority under Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 [Note: OJ No. L 173, 12.06.2014, p. 190], or
  - (ax) to independent actuaries of insurance undertakings and reinsurance undertakings (within the meaning of the European Union (Insurance and Reinsurance) Regulations 2015) carrying out legal supervision of those entities and the bodies responsible for overseeing such actuaries.
  - (ay) in accordance with the SRM Regulation, to -
    - (i) the SRB,
    - (ii) national resolution authorities in other Member States,
    - (iii) the Commission,
    - (iv) the Council,
    - (v) the ECB, or
    - (vi) competent authorities in other Member States.
- (6) Any person or entity to whom confidential information is provided under subsection (3)(a) or (5) shall comply with the provisions on professional secrecy in the supervisory EU legal acts and in the ESCB Statute in holding and dealing with information provided to them by the Bank.
- (6A) Any member of either House of the Oireachtas to whom confidential information is provided under subsection (5) and who fails to comply with the provisions of professional secrecy referred to in subsection (6) in respect of that information may be subject to the sanction of the House of which the person is a member in accordance with rules and standing orders made by that House.
- (7) The Bank may, for the purposes of subsection (5)(d) or otherwise, require from a supervised entity any information for the purposes of the Bank assisting an authority to which that subsection relates, but the Bank may only require such information where the information requested is, in the opinion of the Bank, to assist the authority in the carrying out of its regulatory functions.
- (8) A person who-

- (a) contravenes subsection (1A), or
  - (b) contravenes paragraph (a) or (c) of subsection (2), or
  - (c) fails to comply with section 158(6B) of the Companies Act 1963, for the purpose of a Disclosure Issue Notice issued under subsection (4), commits an offence and is liable-
    - (i) on conviction on indictment to a fine not exceeding €30,000 or to imprisonment for a term not exceeding 5 years, or both, or
    - (ii) on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months, or both.
- (9) Notwithstanding anything to the contrary provided for by or under any enactment, where in the opinion of the Revenue Commissioners, or such officer or officers of the Commissioners as they may from time to time designate for this purpose, there is information which may relate to-
- (a) the commission of an offence, or
  - (b) a failure to comply with an obligation,

under the designated enactments or the designated statutory instruments, then the Commissioners or that officer shall disclose the information to the Bank.

- (10) In this section-

‘approved professional body’ has the meaning given by section 55 of the Investment Intermediaries Act 1995;

‘product producer’ has the meaning given by section 2 of the Investment Intermediaries Act 1995;

‘restricted activity investment product intermediary’ has the meaning assigned to it by section 26 of the Investment Intermediaries Act 1995;

‘supervisory EU legal acts’ means-

- (a) Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000,
- (b) Council Directive 93/22/EEC of 10 May 1993,
- (c) Council Directive 85/611/EEC of 20 December 1985,
- (d) Council Directive 92/49/EEC of 18 June 1992,
- (e) Council Directive 92/96/EEC of 10 November 1992,

- (f) the 2003 Market Abuse Directive (within the meaning of Part 4 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),
- (g) the supplemental Directives (within the meaning of that Part 4),
- (h) the 2003 Prospectus Directive (within the meaning of Part 5 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005),
- (i) Directive 2005/68/EC of 16 November 2005,
- (j) the Transparency (Regulated Markets) Directive (within the meaning of Part 3 of the Investment Funds, Companies and Miscellaneous Provisions Act 2006),
- (k) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions,
- (l) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on 15 the capital adequacy of investment firms and credit institutions,
- (m) Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation,
- (n) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments,
- (o) the Supplemental Directive and the MiFID Regulation as defined in section 3(1) of the Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (No. 37 of 2007),
- (p) Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC [Note: 25OJ No. L 319, 05.12.2007, p. 1],
- (q) Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC [Note: OJ No. L 267, 10.10.2009, p. 7],
- (r) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC [Note: OJ No. L 176, 27.06.2013, p. 338], and

- (s) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 [Note: OJ No. L 201, 27.07.2012, p. 1] on OTC derivatives, central counterparties and trade repositories,
- (t) the SSM Regulation,
- (u) the SSM Framework Regulation,
- (v) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II).
- (w) the SRM Regulation.

‘supervised entity’ means any person or body in relation to which the Bank exercises functions under the designated enactments or the designated statutory instruments.