



Public & Regulatory Law Update

May 2009

Financial Services (Deposit Guarantee Scheme) Bill 2009

The Financial Services (Deposit Guarantee Scheme) Bill 2009 (the Bill) was published in May 2009 and, when enacted in conjunction with amending regulations, will give effect to the Irish deposit guarantee scheme (DGS) announced by the Government on 20 September 2008.

The DGS is operated by the Central Bank and Financial Services Authority of Ireland (CBFSAI). The follow-on amending regulations will also transpose the EU amending deposit guarantee schemes Directive 2009/14/EC into Irish law as the Irish and EU deposit protection proposals are similar.

The Bill and regulations will complement the Credit Institutions (Financial Support) Scheme 2008 (the purpose of which is to maintain in the public interest the stability of the financial system in the State and to provide financial support to the seven specified covered credit institutions.) The Credit Institutions (Financial Support) Scheme provides State guarantees for all deposits and certain liabilities of the guaranteed institutions to the extent that these are not covered by existing deposit protection schemes in the State or any other jurisdiction. The DGS legislation applies to **all** credit institutions authorised in the State. This includes credit unions which did not previously benefit from statutory deposit protection.

The Bill allows the Minister for Finance to make regulations prescribing the amount payable to an eligible depositor of a credit institution which fails and to prescribe by regulation the contribution to be made by credit institutions to the Central Bank to fund the DGS.

The follow-on regulations will:

- increase the statutory limit for the DGS for banks and building societies from €20,000 to €100,000 per eligible depositor per institution from 20 September 2008;
- abolish the co-insurance requirement for the depositor to bear the first 10% of his loss up to the statutory ceiling on cover;
- extend DGS cover to credit union savers; and
- reduce the minimum payout deadline under the DGS for compensation from three months to 20 working days.

It is proposed that the Bill and accompanying regulations will be in place by 30 June 2009.



Financial Services Ombudsman: annual report

The Financial Services Ombudsman (Ombudsman) is a statutory officer who deals independently with complaints from consumers about their individual dealings with all financial service providers that have not been resolved by the providers' internal complaints resolution procedure.

The Ombudsman's annual report which was published on 7 May 2009 shows that complaints increased in 2008: 5,947 complaints were received which represents a significant increase of 36% over 2007. 4,887 complaints were resolved and closed and 62% were resolved to the complainants satisfaction with 38% rejected. In total 17,450 complaints have been received since 1 April 2005 with 87% or 15,100 complaints resolved.

The report says more than €45 million has been refunded to consumers as a result of the Ombudsman's findings since 2005. But the time taken to resolve cases now takes longer, as a result of new procedures for handling complaints. This is as a result of the 2008 High Court decision in *Davy v Financial Service Ombudsman and Enfield Credit Union* where it was held that the Ombudsman failed to follow fair procedures in the way in which he upheld a complaint against Davy's (see *Public and Regulatory Law ezine October 2008 for more details on the case*). This case is under appeal to the Supreme Court but the Ombudsman's office updated its procedures for dealing with complaints in any event (see *Public and Regulatory Law ezine November 2008 for more details on the updated procedures*).

Property Services (Regulation) Bill 2009

On 11 May 2009 the long awaited Property Services (Regulation) Bill 2009 was published. It will repeal the Sale of Land by Auction Act 1867, the Auctioneers and House Agents Act 1947, the Auctioneers and House Agents Act 1967, the Auctioneers and House Agents Act 1973 and the Auctioneers and House Agents Act 1947 (Accountant's Examination and Certificate) Regulations 1968.

The Bill is designed to improve the current system of regulation of auctioneers, letting agents and property management agents and it gives effect to recommendations set out in the Auctioneering/Estate Agency Review Group Report 2005 which was established to examine the licensing and regulatory arrangements applicable to property service providers.

The principal recommendation of the Group was that the existing District Court-based licensing system for auctioneers and house agents should be transferred to a new Authority (the National Property Services Regulatory Authority which is currently operating on a non-statutory basis) and that it should be strengthened and extended to cover property management agents. It also recommended that the Authority should be given comprehensive investigative and enforcement functions and that it should be responsible for establishing and administering a new compensation fund.

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