



Public & Regulatory Law Update

July 2009

Major reform of financial services regulation

On 18 June 2009 the Government announced its agreement to the establishment of a single fully integrated regulatory institution, the Central Bank of Ireland Commission. This follows on from the Minister for Finance's announcement in the April 2009 supplementary budget that the role of the Central Bank of Ireland would be reformed. This new structure will replace the current board structure of the Central Bank of Ireland and the Financial Services Regulatory Authority and will be responsible for both the supervision of individual firms and the stability of the financial system generally.

Two top-level posts will be established within the Central Bank as ex-officio members of the Commission. A Head of Financial Supervision will report to the Commission on the regulatory and supervisory functions and objectives of the new structure. A Head of Central Banking will report on the performance of central banking functions (other than those that relate to the independent role of the Governor under the EC Treaty, Eurosystem and the European Central Bank structure). The reforms will be supported by a significant expansion of regulatory capacity including staff within the new structure.

The consumer information and education role carried out within the Consumer Directorate in the Financial Regulator will be re-assigned to the National Consumer Agency (NCA). The NCA is being amalgamated with the Competition Authority.

No change is proposed to the current role of the Registrar of Credit Unions and the proposed reforms will not impact on the role of the Financial Services Ombudsman who adjudicates on individual customer complaints concerning financial institutions.

Bank guarantee scheme extension

The Credit Institutions (Financial Support) Act 2008 (2008 Act) sets out the framework within which the Minister for Finance may provide financial support (including guarantees) in respect of deposits in and borrowings by any credit institution that the Minister designates under the Act. The Credit Institutions (Financial Support) Scheme set up under the Act provides State guarantees for all deposits and certain liabilities of seven specified guaranteed banks to the extent that these are not covered by existing deposit protection schemes in the State or any other jurisdiction.

The Financial Measures (Miscellaneous Provisions) Act 2009 which facilitates the extension of the bank guarantee scheme beyond its initial two-year period was signed by the President on 1 July 2009 but not all its provisions are in force. It allows for an unlimited extension of the period of financial support beyond 29 September 2010 as set out in the 2008 Act by Ministerial Order. The Minister may also specify by order the period within which institutions may incur liabilities and so on in respect of which financial support may be provided.



New Code of Practice for the Governance of State Bodies

On 15 June 2009, the Department of Finance published an updated Code of Practice for the Governance of State Bodies (the Code). The Code, which was last revised in 2001, sets out the governance framework for the internal management, and the internal and external reporting relationships, of commercial and non-commercial State bodies. It reflects changes in legislation and administrative guidelines that have implications for the governance framework of State bodies and the fact that corporate governance best practice in the Irish public and private sectors and internationally has also moved on since 2001.

State bodies and their subsidiaries are required to confirm to the relevant Minister that they comply with the up-to-date requirements of the Code. The Code also allows certain requirements to be applied proportionately to smaller bodies. In addition, the Code also recognises that not every public body is constituted in the same manner and accordingly some public bodies will not have a board. In such cases, the relevant body should reach agreement with their parent Department on the extent to which the requirement might be adapted for them.

Some of the main changes introduced are as follows:

1. There is a new obligation for a board of the public body (the Board) to consider succession planning for the chief executive and commercial State body Boards must report to the Minister that the business is a going concern with supporting assumptions, as necessary.
2. The Board must also establish procedures for employees to raise concerns about financial reporting irregularities or other matters.
3. The Board is also required to keep the performance of individual directors under review.
4. The Code elaborates on the obligations of Board members and other designated persons in relation to their ethics legislation obligations.
5. There are new obligations on board members concerning risk management and each State body must develop a risk management policy.
6. There are significant new responsibilities as regards relations with the Oireachtas and the relevant Minister. 'Performance Frameworks' must be developed between the State body and the Department which will define both parties' expectations, clarify the State body's role and resources and income parameters.
7. A new travel policy is included to ensure that State agencies obtain better value for money and find alternatives to travelling where possible.
8. The threshold for activating the disposal of assets procedures is increased from €70,000 to €150,000.
9. There are new responsibilities in relation to legal disputes involving other State bodies and where there are such disputes, every effort is to be made to resolve them before incurring legal costs.
10. In terms of procurement, there is considerable detail given on procedures to be followed.

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