



Public & Regulatory Law Update

December 2009

Complaints to Ombudsman increase

Complaints to the Financial Services Ombudsman (Ombudsman) about banks, insurance companies and other financial institutions have increased by 34%. 7,150 complaints were made in the year to November compared to 5,350 in 2008. The Ombudsman adjudicates complaints regarding the conduct of regulated financial services providers. If a complaint is upheld, the Ombudsman may direct the financial services provider to review, rectify and mitigate the conduct complained of and to change the practice relating to that conduct. He can also make compensation awards up to €250,000 and his findings are binding on both parties subject only to appeal to the High Court.

On 1 December 2009 the Ombudsman published summaries of a number of findings he has made since July 2009. Some of the cases which were upheld were as follows:

1. €250,000 was awarded to a retired farming couple who invested €2 million in bank bonds which they had been told were guaranteed. This was untrue and the bank reluctantly admitted it. The couple lost €540,000. The Ombudsman awarded them the maximum compensation he can award and directed the bank to make a formal written apology for their cavalier approach and belittling remarks.
2. €125,000 was awarded in two cases where a stock broking firm inappropriately invested clients' money in very high risk investments where their particular risk classification was low to medium.
3. A building society was ordered to ensure that a mortgage rate remained at an original tracker rate, at the end of a two year fixed rate period agreed with the mortgagors, during the life of a 30 year tracker mortgage.
4. €7,000 was awarded to a complainant with a fixed rate mortgage for mortgage breakage fee conditions not being clearly stated by a mortgage lender.
5. In separate complaints about mortgage rates against a bank, three complainants stated that at the time their mortgages on investment properties were agreed and drawn-down the investment mortgage rate was wrong. The bank in question was ordered to back-date the favourable rate change to early 2009.

Amending legislation governing FÁS

Following the June 2009 Comptroller and Auditor General's report into advertising and promotion in FÁS (the National Training and Employment Authority), which showed serious deficiencies in financial controls, the Labour Services (Amendment) Act 2009 was signed into law by the President on 9 December 2009. The main purpose of the Act is to improve the effectiveness and governance of the board of FÁS and strengthen the accountability of the Director General of FÁS to the Oireachtas (*for more detail see the Public and Regulatory Law ezine, October 2009*).



New reporting requirements for Public Limited Companies (PLCs)

Directive 2006/46/EC updates certain aspects of company law, enhances corporate governance and promotes confidence in financial statements and annual reports published by EU companies, while also limiting disclosure obligations on small and medium sized businesses. It requires public companies, whose shares are admitted to trading on a regulated market in the EU (in Ireland, the Main Market of the Irish Stock Exchange), to produce a corporate governance statement. Although most of this information required is already produced by PLCs, the requirement to put it in one statement in the annual directors' report is new. The European Communities (Directive 2006/46/EC) Regulations implement this Directive in Ireland and apply since 18 November 2009.

In addition, collective responsibility on the part of directors for ensuring that the company accounts and so on have been prepared in line with the Directive is placed on a statutory footing. The Directive also includes various changes to reporting requirements and the thresholds for small and medium-sized companies, which are subject to less onerous obligations, are increased.

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