



Public & Regulatory Law Update

August 2011

Publication of the Central Bank (Supervision and Enforcement) Bill 2011

The Minister for Finance announced the publication of the Central Bank (Supervision and Enforcement) Bill 2011 (the “**Bill**”) on 28 July 2011.

The stated purpose of the Bill is to strengthen the ability of the Central Bank to impose and supervise compliance with regulatory requirements and to undertake timely prudential interventions. The Bill provides the Central Bank with a range of new and revised powers which include the following:

Skilled person reports: This allows the Central Bank to require a financial service provider (or related undertaking) to prepare an independent expert report on a regulatory matter, rather than relying on information submitted by the financial service provider alone.

Whistle-blowing requirements: The Bill provides a mandatory disclosure regime for those performing pre-approval controlled functions (senior or influential positions within financial service providers); failure to disclose could be grounds for an investigation and action under the fitness and probity regime.

Directions: The power to issue regulatory directions has been identified as being a central provision in the Bill. The direction may require the entity to take certain actions or suspend certain activities.

Fines: The Bill increases the maximum penalties under the administrative sanction regime: from €5m to €10m (or 10% of turnover) for firms, and from €0.5m to €1m for natural persons. A person found guilty of an offence may be required by the Court to pay to the Central Bank the costs of the investigation.

Sanctions: The Bill provides that a regulated financial service provider may have its authorisation suspended or revoked as an administrative sanction.

Restitution orders: Where a regulated financial service provider is guilty of an offence or contravention under financial services legislation, and where they have been enriched unjustly in doing so, the Central Bank may apply to the Court for a restitution order. This will require the guilty party to pay a specified sum to the Central Bank for disbursement to those who have been identified by the Court as entitled to restitution.



Direction Order in relation to Irish Life & Permanent Group Holdings plc and Irish Life & Permanent plc (together “ILP”)

Following an application by the Minister for Finance (the “**Minister**”), the High Court made a Direction Order under the Credit Institutions (Stabilisation) Act 2010 to facilitate the necessary recapitalisation of ILP by 31 July 2011 to meet with the Central Bank’s regulatory requirements.

On the granting of the Direction Order, the Minister indicated that the Order was necessary to facilitate the recapitalisation of ILP in the sum of €4 Billion, €2.9 Billion of which was required to be in place by 31 July 2011.

Twenty-Ninth Amendment of the Constitution (Judges’ Remuneration) Bill 2011

The purpose of the Twenty-Ninth Amendment of the Constitution (Judges’ Remuneration) Bill 2011 is to amend section 5 of Article 35 of the Constitution. This section provides that the remuneration of a judge shall not be reduced during the continuance in office of the judge.

The amended section 5 of Article 35 would permit reductions in the remuneration of judges on the same basis as reductions to the salaries of public servants made in the public interest.

A draft implementation bill has also been published which outlines what legislative provisions would be applied if the proposed amendment is approved. Such provisions would apply the provisions applied to the wider public service in the two Financial Emergency Measures in the Public Interest Acts of 2009 to judicial salaries. These Acts introduced firstly a pension levy and then a pay cut to the salaries of public servants.

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