



# Public & Regulatory Law Update

## July 2010

### Central Bank Reform Act 2010

The Central Bank Reform Act 2010 (the Act) was signed into law on 17 July 2010 and is expected to come into force shortly. It provides for a single fully-integrated Central Bank, replacing the two-pillar structure of the existing Central Bank and Irish Financial Services Regulatory Authority (IFSRA) with a unitary Board called the Central Bank Commission (the Commission) to be chaired by the Governor of the Central Bank. The Commission will be responsible for the stability of the financial system overall; for prudential regulation of financial institutions; and the protection of consumer interests. The Act also enhances accountability and oversight mechanisms of the governance of the Central Bank and its regulatory performance.

The Government has indicated that the Act is the first of a three-stage legislative process to create a new integrated structure for financial regulation. A second Bill, to be brought before the Dáil in the autumn will enhance the powers and functions of the restructured Central Bank. A third Bill will then consolidate the existing statutory arrangements for the Central Bank and financial regulation in the State.

### Eligible Liabilities Guarantee Scheme

On 28 June 2010 the extension of the Government Eligible Liabilities Guarantee Scheme made under the Credit Institutions (Financial Support) Act 2008 was approved by the European Commission. The scheme came into effect on 9 December 2009 and provides for an unconditional and irrevocable State guarantee for certain eligible liabilities (including deposits) of up to five years in maturity incurred by participating institutions.

The Commission approved the continuation of the scheme to 29 September 2010 as is presently provided in national law and the modification and prolongation of the guarantee to provide for an extension from the end of September 2010 to 31 December 2010 of the issuance window for eligible liabilities of between three months and five years duration (except interbank deposits). In addition, the issuance window for retail deposits regardless of maturity (up to a fixed term of five years) will continue to 31 December 2010.

### Commission of Investigation into banking sector

Following on from the publication of the two preliminary reports in June 2010 the Government has set up a Commission of Investigation into the banking sector (*for more background see the Public and Regulatory Law Update, June 2010*). Mr Peter Nyberg, former Director General for Financial Services at the Finnish Ministry of Finance will lead the Commission. The investigation will cover the period from 1 January 2003 to 15 January 2009 (the date of the Government's decision to nationalise Anglo Irish Bank) and will examine matters relating to corporate governance and risk management in each of the banks covered by the Government's guarantee.



## New strategic approach to banking supervision

On 21 June 2010 the Central Bank published a new strategy on banking supervision in Ireland: “Banking supervision: our new approach”. The paper outlines the new approach to regulation for retail, wholesale and international banks in Ireland. It sets out four major reviews that the Central Bank will undertake in 2010 to understand the progress banks have made in reforming themselves in the aftermath of the financial crisis, which will provide an insight into the nature and pace of change in banking practices in the market.

The paper largely focuses on addressing issues in the recently published banking report on “The Irish Banking Crisis Regulatory and Financial Stability Policy 2003-2008” (*for more detail see the Public and Regulatory Law Update, June 2010*). All banks “can expect a more intrusive and challenging approach to banking supervision” and the new regulatory regime will be one of “attentive, assertive supervision”. The four in-depth reviews will examine:

- Governance and risk management;
- Lending standards;
- Individual bank strategies; and
- Remuneration practices within the banks.

The paper also identifies possible future areas of work and consultations and welcomes views on these issues.

## Mortgage arrears and personal debt

The Expert Group on Mortgage Arrears and Personal Debt on 6 July 2010 published its interim recommendations. The Group was established in February 2010 to make recommendations to the Minister for Finance on options for improving the current situation for families with mortgage arrears on their principal private residence and with personal debt. The interim measures include the following:

1. Lenders ceasing to charge penalty interest or arrears charges to borrowers who are taking part in the arrears resolution process.
2. The Code of Conduct on Mortgage Arrears (the Code) should be amended as suggested in the report, extended to credit unions and be admissible in legal proceedings.
3. All lenders must develop a mortgage arrears resolution process and framework.
4. The Department of Social Protection should make amendments to their existing Mortgage Interest Supplement Scheme.

The Group are reviewing further initiatives/potential longer term solutions reflecting submissions made to the Group and a review of practices in other jurisdictions. The Group, in the next phase of its work, will also consider broader structural changes such as loan modification and options for borrowers with unsustainable mortgages.

The Financial Regulator has committed to act swiftly to consult on amendments to the Code and take other actions to implement the recommendations of the Group where it is in a position to do so.



## Risk equalisation consultation paper

On 27 May 2010 the Government announced its strategy for a stable community rated health insurance market (*for more detail see the Public and Regulatory Law Update, June 2010*). As part of this strategy, a decision was made to implement a new, robust risk equalisation scheme to take effect in 2013 to support the core policy of community rating in the private health insurance market. The principle behind community rating is that everyone pays the same premium for health insurance regardless of age, gender or health profile.

The Health Insurance Authority (the statutory regulator for the Irish private health insurance market) was asked to carry out a consultation process regarding a new risk equalisation scheme and on 18 June 2010 it issued its consultation paper.

The paper:

- Describes the market for private health insurance in Ireland.
- Sets out why a robust risk equalisation system is required.
- Summarises the risk factors used in other countries with risk equalisation systems.
- Considers what risk factors might be used in Ireland.
- Discusses the level of insurance benefits that should be included in any system.
- Consults in relation to the transitional system.

Submissions on the paper must be made by 30 July 2010.

## Review group on State assets

On 22 July 2010 the Minister for Finance announced the establishment of special group to examine State assets and liabilities and to advise him on how the assets can be better used or disposed of to support economic growth and national investment priorities. The Group, which is chaired by Colm McCarthy, will focus at the outset on assets and liabilities in the commercial state sector, examining the potential of this important part of the economy to stimulate job creation and support broader economic recovery. The Group has been asked to provide an interim report before the end of 2010.

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