



Public & Regulatory Law Update

April 2010

Appointment of administrators to Quinn Insurance Limited

Under the Insurance (No 2) Act 1983 an administrator can be appointed to take over the management of the business of an insurer in various circumstances including where the High Court considers that an insurer has failed to make adequate provision for its debts or the business of the insurer is being conducted in a way that jeopardises the rights of policyholders or the insurer is not complying with the insurance regulations in a material respect.

On 30 March 2010 Quinn Insurance Limited (Quinn) was placed into provisional administration by the High Court after the Financial Regulator raised concerns over the finances of the company and that fact that it had "significantly breached" its solvency ratios. On 15 April 2010 the High Court confirmed the appointment of two full time joint administrators. This follows Quinn's decision to finally consent to the appointment made by the High Court. The Financial Regulator considers the appointment of the administrator best serves the proper and orderly regulation of Quinn and the wider insurance market. Only the non-life parts of Quinn, including the motor, home, intermediary and public liability insurance businesses, will be run by the administrators. Quinn's life business is not affected.

Separately, the Financial Regulator is continuing its own investigations into the circumstances surrounding the creation of certain cross guarantees between the various Quinn group companies.

Consultation on corporate governance

A public consultation paper on corporate governance requirements for credit institutions and insurance undertakings was published by the Central Bank and the Financial Regulator on 27 April 2010. Amongst other things it proposes to:

- Impose requirements in terms of the minimum number of directors on the Board;
- Limit the number of directorships which directors may hold so as to ensure they can comply with the expected demands of Board membership of an institution;
- Require that Board membership is reviewed at a minimum every three years;
- Require clear separation of the roles of chairman and CEO and preclude an individual who has been CEO, director or senior manager during the previous five years from becoming chairman of that institution;
- Set out clearly the role of the independent non-executive directors;
- Require the Board to set the risk appetite for the institution and to monitor adherence to this on an ongoing basis;
- Set out the minimum requirements for Board committees; and
- Require annual confirmation of compliance to the Financial Regulator.

The closing date for submissions on the proposals is 30 June 2010.



Ethics in Public Office legislation and NAMA officials

Certain obligations arise for public servants under the Ethics in Public Office Act 1995 and the Standards in Public Office Act 2001 which are known together as the Ethics in Public Office Acts 1995 and 2001 (the Ethics Acts). The Ethics Acts introduced a set of statutory measures which underpin the principle that those who are participating in government and in the public service should not seek to gain personal advantage through their official actions. The Ethics in Public Office (Prescribed Public Bodies, Designated Directorships of Public Bodies and Designated Positions in Public Bodies) (Amendment) (No. 2) Regulations 2010 brings the staff of NAMA and members of committees established by NAMA under the remit of the Ethics Acts. Also, all positions of employment, which carry a salary not less than the maximum salary of a higher executive officer (general service grade, class B PRSI) in the Civil Service, assigned to NAMA under section 42 of the National Asset Management Agency Act 2009 are also now subject to the Ethics Acts.

NAMA: first loan transfers

On 30 March 2010 the National Asset Management Agency (NAMA) announced that it will acquire an initial tranche of over 1,200 individual loans to the ten largest land and development borrowers of Allied Irish Banks Plc (AIB), Anglo Irish Bank, Bank of Ireland, Irish Nationwide Building Society, and EBS Building Society for consideration of €8.5 billion representing an average discount of 47%. It has subsequently completed the transfer of the initial tranche of loans from all of the above institutions except Anglo Irish Bank whose loans are due to transfer in the coming weeks.

The consideration paid by NAMA for the initial tranche of loans consists of 95% government guaranteed securities and 5% NAMA subordinated securities. NAMA has not paid, and does not intend to pay, cash for the loans it acquires. It expects to complete the transfer of the remaining loans from all five institutions by the end of the year and no later than the end of February 2011, the deadline set by the European Commission.

Code of Practice for Corporate Governance Assessment

On 26 March 2010 the National Standards Authority of Ireland and the Institute of Directors in Ireland launched a new voluntary Code of Practice for Corporate Governance Assessment for Irish companies and State bodies. It provides a best practice standard for an independent evaluation of an organisation's compliance with existing corporate governance codes such as the OECD principles, the Combined Code on Corporate Governance and the Code of Practice for the Governance of State Bodies. The Code will be reviewed regularly to reflect changes in regulation, legislation and corporate governance codes.

The Code is the first of its kind in the EU and the first to award certification to companies which meet the required standard. Companies which meet the specifications of the Code will be awarded the SWiFT 3000 certification by independent accredited certification bodies. Assessors cannot have an existing relationship with the organisation they will be evaluating for 24 months on either side of the assessment.



Central Bank and financial regulatory reform

The Central Bank Reform Bill 2010 was published on 30 March 2010 and 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 to be chaired by the Governor of the Central Bank. This 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 Bill also enhances accountability and oversight mechanisms of the governance of the Central Bank and its regulatory performance.

IFSRA will be dissolved and the posts of chief executive of IFSRA and Consumer Director abolished. Two new posts, Head of Financial Regulation and Head of Central Banking will be established. The statutory positions of Registrar of Credit Unions and Financial Services Ombudsman will not change. The Bill transfers responsibility for consumer information and education to the National Consumer Agency.

The Bill also provides for new powers for the Central Bank to ensure the fitness and probity of nominees to key positions within financial service providers and of key office-holders within those providers.

The Bill 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 consolidate the existing statutory arrangements for the Central Bank and financial regulation in the State.

The European Central Bank (ECB) on 7 April 2010 endorsed the general approach in the Bill. Formal opinions are given by the ECB where there are proposed legislative changes to the structures of national central banks within the European System of Central Banks (ESCB) to ensure that the proposals are consistent with the rules governing the ESCB.

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