



Public & Regulatory Law Update

March 2010

EU approval for NAMA

On 26 February 2010 the European Commission approved the establishment of the National Asset Management Agency (NAMA) under EU state aid rules. Despite the fact that it concluded that the establishment of NAMA constitutes state aid, the Commission decided that the scheme complies with its guidelines on impaired asset relief for banks that allow state aid to remedy a serious disturbance in an EU member state's economy.

The approval only concerns the NAMA scheme and the Commission will assess the compatibility and the actual transfer price of the transferred assets when they are separately notified to it by the Irish authorities. As a result the process of transferring the eligible loans from the ownership of the designated credit institutions to NAMA has just commenced.

Arising from the EU consultation, the valuation methodology set out in the National Asset Management Agency (Determination of Long-Term Economic Value of Property and Bank Assets) Regulations 2009 has been amended to take account of the Commission's decision. Within the valuation methodology a higher remuneration risk margin and higher enforcement costs will be applied. There will however be a reduction in the interest rates used for loan discounting purposes. NAMA will also report to the Commission annually on the use of certain powers in the NAMA legislation.

Bank of Ireland: issuance of ordinary shares

Under the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Act 2009 the Government provided €3.5 billion in core tier 1 capital to both Allied Irish Bank and Bank of Ireland. The Government through the National Pensions Reserve Fund (NPRF) is entitled to receive annual "coupon" payments on its preference shares from each bank or failing that it is entitled to the issuance of ordinary shares in the capital of the banks.

On 22 February 2010 Bank of Ireland issued to the NPRF €250 million worth of ordinary shares in lieu of a cash payment of this year's coupon due on the preference shares which it received under the recapitalisation agreement. The NPRF therefore now holds 15.7% of the ordinary issued share capital of Bank of Ireland. According to the Department of Finance press release, the reason for this issue of shares in lieu of the payment of cash is that the European Commission requested that discretionary coupon payments on tier 1 and upper tier 2 capital instruments in Bank of Ireland, which includes the Government preference shares, not be paid while they consider Bank of Ireland's restructuring plan.



Preliminary investigation: banking crisis

On 19 January 2010 the Government approved a framework for a banking inquiry and for its subsequent consideration by the Dáil. The inquiry will have two stages:

- The Government has commissioned two separate reports – one from the Governor of the Central Bank on the performance of the functions of the Central Bank and the Financial Regulator and the second from two independent experts Klaus Regling and Max Watson who have been recently appointed to conduct a preliminary investigation into the recent banking crisis and report by May 2010. These reports will also consider the international, social and macro-economic policy environment which provided the context for the recent crisis.
- The Government will then establish a Statutory Commission of Investigation. The terms of reference for this Commission will be informed by the conclusions of the two preliminary reports.

In another development the European Commission is establishing a Group of Experts in Banking Issues to facilitate direct communication among the banking industry, consumers and the Commission. The Group will give advice and opinions on the Commission's policies and banking legislative measures and provide information and analysis on their possible impact on various stakeholders.

Code of Conduct on Mortgage Arrears amended

The Statutory Code of Conduct on Mortgage Arrears came into effect on 27 February 2009. It covers the mortgage lending activities of all regulated entities operating in the State but applies only to mortgage lending activities to consumers in respect of their principal private residence in the State.

On 5 February 2010 the Financial Regulator wrote to all mortgage lenders informing them that with effect from 17 February 2010, the Code has been amended to require that a regulated firm must wait at least 12 months from the time arrears first arise before applying to the courts to commence enforcement of any legal action on repossession of a borrower's primary residence. Previously the moratorium was six months. The extension of the moratorium to 12 months is consistent with the arrangements under the recapitalisation agreement for Bank of Ireland and Allied Irish Bank. This extended moratorium will apply only where the borrower engages with the lender in dealing with arrears and will commence from the date the borrower first goes into arrears. The 12 month requirement therefore does not apply where the borrower is deliberately not engaging with the lender. The Financial Regulator believes that lenders should only seek repossession in less than 12 months in very exceptional circumstances and when all reasonable attempts to encourage engagement by the borrower have failed.

Second report on internal control and governance in FÁS

On 28 January 2010 the second report of the Comptroller and Auditor General on Internal Control and Governance in FÁS the State's Employment and Training Agency was published. This report deals with internal control and governance in FÁS and focuses on the processing of transactions at FÁS Head Office and governance arrangements for the organisation up until 2008. The report identifies serious procedural deficiencies in financial controls and governance, but also concludes that transactions processed were in the vast majority of cases for the benefit of the agency and that transactions comprised in its annual accounts were properly chargeable for the objectives of FÁS.

On 21 January 2010 the Labour Services (Amendment) Act 2009 which appoints a new board to FÁS came into force and it provides for a significantly stronger governance and accountability structure (*for more detail see the Public and Regulatory Law ezines, January 2010, October and December 2009*).



Delegation of banking functions to the NTMA

On 2 February 2010 the Minister for Finance, Brian Lenihan announced his intention to delegate additional functions in the banking area to the National Treasury Management Agency (NTMA). The main functions which the Minister intends to delegate are as follows:

1. Discussions with the covered institutions on their capital needs will be led by the NTMA.
2. Discussions with financial institutions on realignment or restructuring within the banking sector will be led by the NTMA.
3. The management of the Minister's shareholding in the credit institutions.
4. Some remaining functions under the guarantee schemes.
5. Advice on banking matters generally including issues relating to crisis prevention, management and resolution.

Health insurance levy changes

On 19 November 2008 the Minister for Health and Children, Mary Harney announced measures to support the cost of health insurance for older people (*for more detail see "Risk equalisation: government proposals" Public and Regulatory Law ezine, December 2008*). One of the steps which the Government took to stabilise the health insurance market was additional tax relief for health insurance for people aged 50 and over and increasing for higher age group. The Finance Bill 2010 increases the amount of age-related tax credit in the case of insured persons aged 60 years and over for relevant contracts renewed or entered into on or after 1 January 2010:

- For those aged between 60 and 69 the credit is increased from €500 to €525.
- For those aged between 70 and 79 it is increased from €950 to €975.
- For those aged 80 and over it is increased from €1,175 to €1,250.

Niall O'Brien

Head of Public and Regulatory Unit

Beauchamps Solicitors Riverside Two, Sir John Rogerson's Quay, Dublin 2

t: +353 (0)1 4180600

f: +353 (0)1 4180699

e: n.o'brien@beauchamps.ie

w: www.beauchamps.ie

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