



# Public & Regulatory Law Update

October 2009

## Consumer Protection Code breaches

The Consumer Protection Code ("Code") is a set of principles and rules that financial services firms must follow when they provide financial products and services; the Financial Regulator ("Regulator") has the power to administer sanctions for a contravention of the Code under part IIIC of the Central Bank Act 1942. In addition, the legislation permits the Regulator, following an inquiry, to enter into binding settlement agreements with regulated financial service providers to resolve a matter which has arisen.

At the end of September 2009 the Regulator entered into a settlement agreement in accordance with which an insurance company had to make a payment to it of €20,000 for breaching the Code by overcharging on brokers' fees and failing to refund other amounts to clients. The breaches related in particular to the sale of general insurance products to customers, including the sale of motor insurance and household insurance. The Regulator said the breaches highlighted a failure on the part of the firm to have adequate systems and controls in place.

In October 2009 an investment life and pension benefits firm entered into a settlement agreement with the Regulator in accordance with which it had to pay the Regulator €12,000 for, amongst other things, breaches of the Code. These related in particular to the manner in which the firm had documented certain clients' purchase of bonds. The Regulator found that the firm had not made full disclosure to certain customers of relevant material information in relation to the risks associated with products sold and/or the adequacy or existence of guarantees on the principal sums invested; had failed to provide certain customers with a copy of the firm's terms of business prior to providing services; and also failed to issue statements of suitability to certain customers prior to providing services.

## Amending legislation governing FÁS

Following on from the June 2009 Comptroller and Auditor General's report into advertising and promotion in FÁS which showed serious deficiencies in financial controls, the Labour Services (Amendment) Bill 2009 was published on 6 October 2009 and amends the legislation governing FÁS by providing for a stronger governance and accountability structure. In particular, it:

- reduces the size of the Board of FÁS from 17 to 11;
- introduces a rolling system of appointments to the Board of FÁS;
- removes the automatic right to nominate individuals for appointment to the Board from bodies not directly accountable to the taxpayer;
- makes the Director General of FÁS accountable to the Oireachtas;
- requires the disclosure of conflicts of interests by directors and staff of FÁS;
- bans directors and staff of FÁS from any involvement on matters where they have a conflict; and
- provides protection for 'whistleblowers' (members of staff who report serious wrongdoing in the organisation.)



## NAMA update

On 14 October 2009 a draft NAMA business plan was published by the Department of Finance which provides more detail on how the agency will work. The plan addresses the following main areas:

- Purpose and objectives;
- Key parameters of the NAMA portfolio;
- Preparatory work carried out to date;
- Work programme to be undertaken until June 2010;
- Operating/governance structure;
- Asset valuation and transfer process;
- Credit management and servicing arrangements;
- Key risks facing NAMA such as a prolonged property market depression.

Under its projections and assumptions, the Department believes it will make a profit of €5.48 billion after ten years. The National Asset Management Agency Bill 2009 (the Bill) to establish the National Asset Management Agency (NAMA) is currently progressing through the Dail (*for more background on its provisions see the Public and Regulatory Law ezine, September 2009*).

Some of the main amendments introduced at Committee Stage in the Dail are as follows:

- An amendment to provide that the maximum amount to be paid to a participating institution in subordinated bonds is 5% of the aggregate amount due to that institution.
- A new provision which will require borrowers to co-operate and act in good faith with participating institutions during the preparation for transfer of loans.
- The issuance of securities in respect of acquisition by NAMA of bank assets is limited to a value of €54 billion. This can be subsequently amended by a Dail resolution.
- NAMA is to be required to produce a code of practice setting out how it will engage with non-participating institutions. This will be subject to Ministerial approval.
- The provision dealing with the valuation panel will be amended so that the Minister for Finance can only refer a valuation assessment back to the valuation panel where he considers the valuation is too high.

In addition the Government has also indicated that, amongst other things, the following measures will be addressed at Report Stage:

- A proposal on the taxation of windfall gains on re-zoned land, and
- A provision in relation to a future levy in the event that NAMA makes a loss.

The Government has also indicated that it intends to amend the Building Societies Act 1989 to provide that if the Minister wished to provide capital to a building society, the building society could issue a special share to the Minister for Finance in return for the investment. The Minister, where he holds such a share, will also be given certain powers in relation to the appointment of directors, blocking or approving resolutions and so on. The issue of any special share would have to be approved by a society's members.

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