MAYER • BROWN

Summary of Government Interventions in Financial Markets
Ireland

Overview

The Irish economy has been one of the worst-hit Eurozone economies due to the high exposure of the banking sector to the property market and the boom associated with that over recent history. To counter this, the Irish government has put in place a major state guarantee scheme and a recapitalisation package to ensure that the financial system in Ireland continuously meets the financial needs of individuals, business and the overall economy.

State guarantees

On 30 September 2008, the Irish government announced its decision to provide a State guarantee for the deposits, senior debt and dated subordinated debt (lower tier 2) of participating named Irish credit institutions for the period until 29 September 2010 (the "**Scheme**"). The Scheme was formally approved by the Irish Parliament on 17 October 2008 in the Credit Institution (Financial Support) Act 2008 (No. 18/2008) which provides legal basis for the Scheme. The following Statutory Instruments were consequently issued by the Minister for Finance to give effect to the Scheme:

- the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008),
- the Credit Institutions (Financial Support) (Specification of Institutions) Order 2008 (S.I. No. 416 of 2008),
- the Credit Institutions (Financial Support) (Specification of Institutions) (No.2) Order 2008 (S.I. No. 425 of 2008), and
- the Credit Institutions (Financial Support) (Specification of Institutions) (No.3) Order 2008 (S.I. No. 515 of 2008) 2008).

as at 19 March 2009

On 13 October 2008, the scheme was approved by the European Commission as compatible with EC Treaty state aid rules.

Key features of the Scheme:

- the Scheme is limited to named participating institutions and certain named subsidiaries of credit institutions (the "**covered institutions**") and types of liabilities (the "**covered liabilities**");
- the eligible institutions formally join the Scheme by executing a "guarantee acceptance deed" and being included in an order made by the Minister for Finance;
- the covered liabilities include retail and corporate deposits (to the extent not covered by the deposit protection scheme), interbank deposits, senior unsecured debt, covered bonds and, subject to certain restrictions, subordinated debt;
- the covered institutions must pay quarterly charge to the Exchequer for the guarantee in order for the Scheme to be self-financing and to deliver a return to taxpayers;
- the covered institutions have to indemnify the Exchequer for any call under the guarantee and all costs incurred by the State under the Scheme;
- there are broad-ranging oversight and corporate governance provisions in the Scheme, including a right on the part of the Minister for Finance to appoint up to two non-executive directors to the Boards of covered institutions, and to effect changes in management and executive structures;
- strict requirements regulating executive remuneration and the establishment of an independent committee (CIROC) to oversee executive remuneration;
- significant monitoring, reporting, disclosure and compliance requirements, including onerous duties on the Chairman, CEO and auditors of covered institutions;
- provisions designed to prohibit covered institutions from entering into new businesses and M&A activity without the Minister's consent;
- the making of rules regulating the payment of dividends, and the prohibition of dividends until such rules are drawn up;
- a prohibition on share buy-backs without the approval of the Financial Regulator; and
- compliance with Corporate Social Responsibility (CSR) goals and targets to be laid down by the Minister for Finance.

The following covered institutions have signed up to the Scheme:

(a) Allied Irish Bank and its subsidiaries AIB Mortgage Bank, AIB Bank (CI) Limited, AIB Group (UK) plc. and Allied Irish Banks North America Inc. (at an estimated cost of less than EUR 130m a year);

(b) Anglo Irish Bank Corporation plc and its subsidiary Anglo Irish Bank Corporation (International) plc;

(c) The Governor and Company of the Bank of Ireland and its subsidiaries Bank of Ireland Mortgage Bank, ICS Building Society and Bank of Ireland (I.O.M.) Limited (at an estimated cost of around EUR 115m a year);

(d) EBS Building Society (at an estimated cost of around EUR 15m a year);

(e) Irish Life and Permanent plc and its subsidiary Irish Permanent (I.O.M) Limited (at an estimated cost of less than EUR 50m a year); and

(f) Irish Nationwide Building Society and its subsidiary Irish Nationwide (I.O.M.) Limited.

Bank deposit guarantee

On 20 September 2008, the Irish government announced an increase of the statutory cover under the deposit protection scheme for banks and building societies from EUR 20,000 to EUR 100,000 per depositor per institution. The guarantee cover applies to 100 per cent. of each individual's deposit and to credit union savers.

Government loans and capital injections

On 14 December 2008, the Irish government decided to support a recapitalisation programme for credit institutions in Ireland of up to EUR 10bn either through the National Pensions Reserve Fund (from its current resources or future contributions) or otherwise, alongside existing shareholders and private investors. It has been decided that the State investment would be assessed on a case-by-case basis having regard to the systemic importance of the institution and may take a form of preference shares and/or ordinary shares. The State may where appropriate, participate on an underwriting basis. Recapitalised institutions may be required to comply with certain transparency and commercial conduct requirements.

On 21 December 2008, the Minister for Finance (the "**Minister**") announced the initial decision in relation to recapitalisation of Bank of Ireland ("**BOI**") and Allied Irish Bank ("**AIB**"). The decision was followed by an announcement made on 11 February 2009 detailing the terms of the recapitalisation offered to those two banks.

The main features of the government's investment in AIB and BOI are as follows:

- the government will provide a total of EUR 7bn (EUR 3.5bn for each of the banks) in core tier 1 capital (of which EUR 4bn is to be funded from the National Pensions Reserve Fund's current resources while EUR 3bn is to be provided by means of a front-loading of the Ministry of Finance's contributions to the Fund for 2009 and 2010);
- in return for the overall investment the Minister will get preference shares with a fixed dividend of 8 per cent payable in cash or ordinary shares in lieu. These preference shares can be repurchased at par up to the fifth anniversary of the issue and at 125 per cent. of face value thereafter;

- the Minister can appoint, in total, 25 per cent. of the directors of each of the banks and has 25 per cent. of total ordinary voting rights in respect of change of control and board appointments; and
- there are warrants attached to the preference shares giving an option to purchase in five years time at a predetermined strike price up to 25 per cent. of the ordinary share capital of each bank existing on the date of issue of the new preference shares; the warrants will be reduced if any of the banks redeems up to EUR 1.5bn of the State investment in the preference shares from privately sourced core tier 1 capital prior to 31 December 2009.

Both recapitalised banks agreed in December 2008 and confirmed on 11 February 2009 their commitment to the following credit package for small and medium sized enterprises:

- additional 10 per cent. capacity for lending to small and medium enterprises in 2009;
- an additional 30 per cent. capacity for lending to first time property buyers in 2009 and assistance to households who are in mortgage arrears;
- business lending by the recapitalised banks to be monitored by the Financial Regulator and supported by a new code of practice developed by the Financial Regulator; and
- EUR 100m environmental and clean energy innovation fund to support and develop financial education for consumers and potential consumers to be established by each bank.

The agreed recapitalisation package is subject to regulatory approval, the approval of the ordinary shareholders at general meetings of the banks and approval of the European Commission under the State aid rules.

On 27 February 2009, the Irish government published the Investment of the National Pensions Reserve Fund and Miscellaneous Provisions Bill 2009. The bill amends the existing National Pensions Reserve Fund Act 2000 to allow the National Pensions Reserve Commission to make investments in listed credit institutions in the public interest and to underwrite or otherwise support the issue of securities by such credit institutions. The full text of the bill is available at:

http://www.oireachtas.ie/documents/bills28/bills/2009/0809/b0809d.pdf

Notable developments with commercial banks

Anglo Irish Bank Corporation plc

On 21 January 2009 the Anglo Irish Bank Corporation Act 2009 was passed into law, under which Anglo Irish Bank Corporation plc ("Anglo") was nationalised by the Irish government. As part of the nationalisation process:

- Anglo has become a private company limited by shares under the name "Anglo Irish Bank Corporation Limited"; and
- the law provides that any listing of shares of Anglo are discontinued without the need for any further notices or consents. Both the Irish Stock Exchange and the UK Listing Authority moved to suspend trading in Anglo shares in Dublin and London on Friday, 16 January 2009.

The principal areas covered by the Anglo Irish Bank Corporation Act 2009 are:

- the transfer to the Minister for Finance of all of the shares in Anglo;
- the appointment of an assessor to determine the level of compensation, if any, to be paid to the former shareholders of Anglo upon the transfer of their shares to the Minister of Finance. (the assessor is to determine the value of Anglo shares as at 15 January 2009 taking into account a number of considerations, including the market value of Anglo's assets and liabilities);
- arrangements whereby default clauses in contracts to which Anglo or any of its subsidiaries is a party which would otherwise be triggered by the provisions of the Act have no effect except to the extent authorised by the Minister of Finance (the extent to which this provision can affect agreements which are not governed by Irish law is to be explored);
- the right of the Minister of Finance to remove and appoint directors, secretaries and employees of Anglo and its subsidiaries; and
- the disapplication in relation to Anglo of certain provisions of Irish law, in particular provisions of the Companies Act, 2002.

On 14 January 2009, the European Commission has approved the EUR 1.5bn emergency recapitalisation of Anglo by the Irish authorities. On 17 February 2009, the European Commission confirmed it had no objection to the Irish government nationalising Anglo as no state aid was linked to the move.

Other covered institutions

Report on disclosure of directors' loans in covered institutions

Following the discovery in January 2009 at Anglo of issues relating to the removal from the bank and reduction of directors' loans at year-end to avoid disclosure of the loans in the bank's financial statements, the Financial Regulator has conducted a review of loans to directors and connected parties at six of the covered institutions (excluding Anglo which is subject to a separate on-going investigation). The review primarily focused on the accuracy of disclosure in relation to directors' loans in the financial statements of the six covered institutions and their parent companies. On 3 March 2009, a report on disclosure of directors' loans in covered institutions was published which found that all credit institutions subject to the review provided loans to directors of various types, according to the business of the credit institution; however, no evidence was found in the six covered institutions of the removal or reduction of loans at the year-end to avoid disclosure in the financial statements. Following the review, the Financial Regulator issued new requirements with regard to the disclosure of information regarding directors' loans in the annual accounts of Irish banks and buildings societies and informed relevant credit institutions of the matters raised during the examination and the new disclosure requirements.

The full text of the report is available at:
http://www.financialregulator.ie/press-area/press-releases/Documents/Directors%27%20Loan%20Report.pdf

Summary of proposed/new key legislation/regulation

On 16 October 2008, the Financial Regulator announced that, on a temporary and exceptional basis, it would permit money market funds to derogate from the requirement to carry out a weekly review of discrepancies between the market value and the amortised cost value in respect of certain money market instruments with a residual maturity of three months and under. Accordingly, certain money market instruments may be valued at amortised cost.

Codes of Conduct

On 13 February 2009, the Financial Regulator issued two new codes of conduct which introduce minimum lending standards for Irish regulated entities:

- the Code of Conduct for Mortgage Arrears (the "**Mortgage Code**") which came into effect on 27 February 2009; and
- the Code of Conduct for Business Lending to Small and Medium Enterprises (the "**SME Code**") which came into effect on 13 March 2009.

The Mortgage Code builds on an existing voluntary code of practice issued by the Irish Banking Federation and incorporates a requirement for the lenders to grant at least six months grace period to the mortgagors in arrears before taking legal action.

The SME Code applies to all regulated entities such as banks, building societies and retail credit providers. The Code includes a requirement for banks to offer business customers annual review meetings, to inform customers of the basis of their decisions and to have written procedures for the proper handling of complaints.

Both codes are drafted with the aim to provide a list of high-level principles together with some detailed rules and allowing each regulated entity to individually interpret the codes, implement them and apply their provisions. Both codes emphasise the importance of retaining proper records, implementing documented procedures and appropriate handling of client complaints. They are both issued under Section 117 of the Central Bank Act 1989 which provides for criminal sanctions for a breach and enables the Financial Regulator to impose administrative sanctions regime.

Other developments

Ireland's sovereign debt rating

On 30 January 2009, Moody's lowered the Irish government's AAA debt-rating outlook from 'stable' to 'negative' and warned Ireland was in danger of losing its AAA sovereign debt rating. Ireland has therefore become the first western European country to have its top credit rating given a negative outlook by Moody's.

Earlier in January, Standard & Poor's cut its outlook for Ireland's sovereign debt to negative from its previous stable rating.

Short selling

The Financial Regulator has amended the Market Abuse Rules to introduce provisions to prohibit short selling of stocks on Irish publicly quoted banks which came into force from on 18 September 2008. Under the new regulation, a person, other than a market maker, may not enter into any transaction, transactions or arrangements which have the effect of generating a net economic benefit which would arise from a fall in the price of the shares of either the Governor and Company of the Bank of Ireland, Allied Irish Banks Plc, Irish Life and Permanent Plc or Anglo Irish Bank Corporation Plc.

Further, by 3.30pm on each business day from 23rd September 2008 each person who has on that day an economic interest involving 0.25 per cent. or more of the issued share capital of any of the above financial institutions, shall make disclosure to a Regulatory Information Service setting out the name of the person who has the position, the company in which the position is held and the amount of that position.

These above measures are under continuous review and the Financial Regulator may issue guidelines on application of these rules as required.

Contact us

For further information, please contact

Bruce Bloomingdale

Partner
T: +44 20 3130 3211
E: bbloomingdale@mayerbrown.com

Kevin Hawken

Partner
T: +44 20 3130 3318
E: khawken@mayerbrown.com

Ed Parker

Partner
T: +44 20 3130 3922
E: eparker@mayerbrown.com

Danuta Rychlicka

Associate
T: +44 20 3130 3331
E: drychlicka@mayerbrown.com

mayerbrown.com

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