

# Financial Regulatory Brief

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FINANCIAL REGULATORY GROUP BRIEFING

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This briefing covers two recent regulatory developments in Ireland:

- The nationalisation of the third largest bank in Ireland, Anglo Irish Bank Corporation plc ("**Anglo Irish Bank**"), on 21 January 2009; and
- The Financial Regulator's confirmation on 20 January 2009 that the prohibition on the short-selling of Irish financial institution stock introduced in September 2008 remains in effect.

## ■ Nationalisation of Anglo Irish Bank

### Background

On 15 January 2008, the Irish Government decided, having consulted with the Board of Anglo Irish Bank, the Central Bank and the Financial Regulator, to take steps to enable Anglo Irish Bank to be taken into public ownership.

Anglo Irish Bank's shares were suspended from listing on the Irish Stock Exchange and the London Stock Exchange on 16 January 2008 and have now been de-listed completely. Its debt securities remain listed.

In announcing the nationalisation plans, the Minister for Finance of Ireland explained that the funding position of the bank had weakened and that unacceptable practices that took place within it (a reference to recent revelations involving concealed loans to the former Chairman of the bank) had caused serious reputational damage to the bank at a time when overall market sentiment towards it was negative. The Government has therefore abandoned plans announced on 21 December 2008 to recapitalise Anglo Irish Bank and instead opted for its nationalisation. The Government has announced that it still intends to recapitalise both AIB and Bank of Ireland as per its announcement of 21 December.

Legislation to put the nationalisation of Anglo Irish Bank into effect was presented to the Houses of the Oireachtas (the Irish Parliament) on 20 January 2009, and was passed on the same day. The legislation was signed into law by President Mary McAleese on 21 January 2009, with the nationalisation being effective from that date.

Anglo Irish Bank is still a “covered institution” under the Credit Institutions (Financial Support) Scheme 2008, so its “covered liabilities” remain guaranteed by the Minister of Finance until 29 September 2010 inclusive.

On 27 January 2009, the Department of Finance published a set of FAQs on the nationalisation of Anglo Irish Bank, which are available at the following link: <http://www.finance.gov.ie/documents/publications/other/2009/AngloFAQ.pdf>

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## The Anglo Irish Bank Corporation Act 2009 (the “Act”)

### Transfer of Control of Anglo Irish Bank

The Act operates to transfer control of Anglo Irish Bank to the Minister for Finance. Section 5 of the Act transfers all shares in Anglo Irish Bank to the Minister, free from any encumbrances and without the need for any transfer formalities. Section 6 confirms that Anglo Irish Bank is transformed from a public limited company to a single member private limited company - the Minister will be the sole member, although he has power to transfer some or all shares to a nominee. The bank will be known as “Anglo Irish Bank Corporation Limited”.

Section 3 allows the Minister to specify a “relationship framework” in writing to govern the relationship between the Minister and Anglo Irish Bank. The relationship framework will recognise the separation of the bank from the Minister and limit intervention by the Minister in the conduct of the bank’s business to that necessary to protect the public interest.

Section 9 of the Act specifies that the change of control of Anglo Irish Bank will not trigger any change of control on analogous clauses in any “relevant instruments”. Relevant investments are investments which Anglo Irish Bank, any of its subsidiaries, subsidiary undertakings or related corporate bodies are

a party to, and which create or terminate any rights, obligations, interests, events of default or give rise to any proceedings. The Minister will have a power to waive this provision where it causes a party undue hardship.

Sections 19 and 20 of the Act give the Minister wide powers to remove or appoint certain persons, including directors and other officers.

### Effects on Shares and Related Rights

Section 10 of the Act operates to extinguish any subscription rights, share options or related rights held by any employee or other person in Anglo Irish Bank.

Section 12 of the Act de-lists all shares of Anglo Irish Bank and grants the Minister power to make regulations discontinuing the admission to trading or trading of any securities that have been issued by Anglo Irish Bank.

### Amendments to Existing Law

Sections 13 to 16 of the Act operate to disapply the effect of certain provisions of the Central Bank Acts, Companies Acts, the Competition Act 2002 and the Credit Institutions (Financial Support) Act 2008 for the purposes of giving effect to the Act.

Section 14(7) of the Act provides that that a petition may not be brought for the winding up of the bank under Part VI of the Companies Act 1963 without the leave of the Minister.

### Appointment of Assessor and Shareholder Compensation

The Minister will appoint an assessor (the “Assessor”) to determine the “fair and reasonable aggregate value of the transferred shares and the extinguished rights and the consequent amount of compensation, if any, payable”. Section 22 deals with the appointment of the Assessor.

A limited class of people will be able to make submissions to the Assessor in respect of the

value of transferred shares and extinguished rights. Submissions may be made by the Central Bank, the Governor, the Minister, and any other person the Assessor invites. In addition, the Assessor will appoint representatives for classes of persons whose shares have been transferred/rights extinguished. These representatives will also be entitled to make submissions, as will any person whose shares have been transferred/rights extinguished and who has not been appointed a representative. Before making a final report to the Minister, the Assessor will circulate a draft report to all persons who have made submissions, allowing written comments within a reasonable time frame specified by the Assessor.

Section 25 sets out the criteria the Assessor will use to determine the compensation payable. This will be done by having reference to all available relevant criteria, including information not publicly known, relating to Anglo Irish Bank on 15 January 2009. The Assessor has an express power in Section 25(6) to make a determination that the compensation payable is nil.

Once the Assessor reports to the Minister on the levels of compensation payable, the Minister shall, within 3 months of the report, enact a compensation scheme providing procedures to calculate the amount of compensation payable to each person concerned and the payment of that compensation.

Section 31 allows for an appeal to the Irish Financial Services Appeals Tribunal (the “**Tribunal**”) on the grounds of: (i) the Assessors’ determination under Section 25; (ii) the Assessors’ rejection of a person’s claim for compensation; or (iii) the Assessors’ determination of the sum that a person is entitled to as compensation. The Tribunal’s decision on an appeal will be final. Section 32 allows for limited judicial review of the Assessor’s determination to the High Court.

## ■ Financial Regulator’s confirmation of prohibition on short selling of Irish financial stocks

On 18 September 2008, the Financial Regulator introduced provisions to prohibit the short selling of stock in four Irish banks, namely: Bank of Ireland, AIB, Anglo Irish Bank and Irish Life and Permanent. New disclosure requirements in relation to short positions in the relevant stock were introduced at the same time. The Financial Regulator did not specify how long the prohibition would last for, save to say that it would be under continuous review.

The FSA’s analogous short-selling ban was lifted on 16 January 2009, which appears to have led to some confusion as to whether short-selling of stock in Irish financial institutions could then occur in the UK.

On 20 January 2009, the Financial Regulator issued a press release cautioning market participants not to rely on incorrect information on Bloomberg screens regarding short selling of stock in Irish financial institutions. The Financial Regulator confirmed that its short selling prohibition remains in place, whether through shares or ADRs, in relation to Bank of Ireland, AIB and Irish Life and Permanent. The prohibition applies to trading done in London, e.g. on the LSE, and other international trading venues, as well as in Dublin. The prohibition is no longer of relevance to Anglo Irish Bank given its nationalisation.

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