

JULY 2009

Financial Regulatory Group Briefing New Regulations for Acquisitions in the Financial Sector

Contents

> The purpose of the Acquisitions Directive	01
> The effect and applicability of the Regulations	01
> Acquiring Transaction Notification Form	02
> Role of the Financial Regulator	02
> The Financial Regulator's decision	02
> Further Details	03
> Contacts	03

The European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009 (the “**Regulations**”) came into effect on 10 June 2009. The purpose of the Regulations is to transpose Directive 2007/44/EC (the “**Acquisitions Directive**”) into Irish law.

The purpose of the Acquisitions Directive

The Acquisition Directive's aim is to encourage cross-border mergers and acquisitions in the EU's financial sector. It aims to do this by streamlining the existing criteria and procedures applied by EU supervisory authorities, such as the Financial Regulator, when assessing acquisitions of significant holdings in companies in the banking, insurance and securities sectors.

The effect and applicability of the Regulations

The Regulations modify the existing procedural rules and evaluation criteria for the prudential assessment of acquisitions of, and increases of holdings in, regulated financial institutions in Ireland and amend a range of existing statutory provisions accordingly. In addition, the Financial Measures (Miscellaneous Provisions) Act 2009 amends the Central Bank Act 1989 so acquisitions notifications under that Act will no longer be required where a notification is made under the Regulations.

The Regulations apply to:

- > the direct or indirect acquisition of a “qualifying holding” in a target entity; and
- > the direct or indirect increase in a “qualifying holding” as a result of which the holding would reach or exceed 20%, 33% or 50% of the capital of, or voting rights in, a target entity or a target entity would become the proposed acquirer's subsidiary.

A “qualifying holding” for the purposes of the Regulation means 10% or more of the capital of, or voting rights in, a target entity or a holding that makes it possible to exercise a significant influence over the management of a target entity.

This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

The new rules apply where the target being acquired is:

- › a credit institution;
- › an insurance or assurance undertaking;
- › a reinsurance undertaking;
- › an investment firm or a market operator of a regulated market; or
- › a UCITS management company.

Disposals of qualifying holdings must be notified in a similar manner, i.e. where an existing qualifying holding is diluted below 20%, 33% or 50% of the capital or voting rights or so that the relevant company ceases to be the holder's subsidiary.

In addition, the target entity itself must notify the Financial Regulator where it becomes aware of an acquisition or disposal.

Acquiring Transaction Notification Form

The Financial Regulator has published an "Acquiring Transaction Notification Form" (the "**Notification Form**"). The Notification Form must be completed when providing the Financial Regulator with a notification under the Regulations. The Notification Form requires information on:

- › the proposed transaction;
- › the proposed acquirer(s);
- › the rationale for the proposed acquisition;
- › the impact of the proposed acquisition on the target entity; and
- › how the proposed acquisition will be financed.

The Notification Form is quite detailed and can require the proposed acquirer to produce organisational charts, individual questionnaires for board members and three-year business plans for the target entity.

Role of the Financial Regulator

The Financial Regulator's objective in assessing a proposed acquisition is to ensure the sound and prudent management of a target entity post-acquisition. When assessing a proposed acquisition and in considering the suitability of the proposed acquisition, the Financial Regulator must consider the following set of criteria:

- › the reputation of the acquirer;
- › the financial soundness of the acquirer;
- › the reputation and experience of the management of the target company as a result of the acquisition;
- › the ability of the target company to continue to comply with its prudential requirements; and
- › grounds for suspecting terrorist financing or money laundering in respect of the acquisition or the potential increase in risk of these.

The Financial Regulator's decision

The Financial Regulator may only oppose an acquisition if there are reasonable grounds for doing so on the basis of the five criteria above or if the acquirer provides incomplete information.

Where the acquirer is a regulated financial institution in an EU Member State other than the target's home Member State, the Regulations provide for co-operation between supervisory authorities. However, the final decision on the proposed acquisition will remain with the target company's supervisory authority, i.e., for an Irish target, the Financial Regulator.

The Regulations provide a detailed timetable under which the Financial Regulator must assess proposed acquisitions:

- › the Financial Regulator must acknowledge receipt of a complete Notification Form within two working days;
- › the Financial Regulator must complete its assessment of the proposed acquisition within a maximum period of 60 working days from the date of acknowledgment of a complete Notification Form;
- › during the assessment and no later than the 50th working day, the Financial Regulator may interrupt the process only once for 20 days (or 30 days if acquirer is regulated outside the EU or is unregulated) and then only for the purpose of requesting additional information.
- › if the Financial Regulator opposes the acquisition, it must inform the proposed acquirer within two working days of its decision and provide reasons for its decision in writing. If the acquisition is not opposed within the assessment period, then it will be deemed approved.

If the Financial Regulator does not oppose a proposed acquisition it may set a maximum period within which the acquisition is to be completed. It may also impose further conditions or requirements on a proposed acquisition.

It is important that proposed acquirers are aware of the new requirements and timelines and manage transaction timetables accordingly. This is because a proposed acquirer may only complete a proposed acquisition if the Financial Regulator notifies its non-opposition or if the assessment period lapses without the Financial Regulator opposing the proposed acquisition.

If a proposed acquirer attempts to complete a proposed acquisition in breach of Regulations then title to any shares or interest will not pass and any use of powers based on the invalid acquisition is void. An invalid acquisition cannot be retrospectively approved by the Financial Regulator or the courts.

Further Details

Copies of the Regulations can be found on the website of the Financial Regulator at:

<http://www.financialregulator.ie>.

A copy of the Notification Form is available at:

<http://www.financialregulator.ie/industrysectors/investment-firms/mifidfirms/Documents/Acquisition%20Form%2025%20May%202009.pdf>.

Contacts

If you would like to discuss the legal and strategic implications of the PSD for your institution, please contact:



Carl O'Sullivan Partner
+353 (0)1 618 0525
carl.osullivan@arthurcox.com



Sarah Cunniff Partner
+353 (0)1 618 0508
sarah.cunniff@arthurcox.com



Robert Cain Senior Associate
+353 (0)1 618 1146
robert.cain@arthurcox.com



Orla O'Connor Partner
+353 (0)1 618 0521
orla.oconnor@arthurcox.com



Kevin Murphy Partner
+353 (0)1 618 0515
kevin.murphy@arthurcox.com

or any of your usual Arthur Cox contacts.

Dublin

Earlsfort Centre, Earlsfort Terrace, Dublin 2, Ireland
tel: +353 (0)1 618 0000 | **fax:** +353 (0)1 618 0618
email: dublin@arthurcox.com

London

12 Gough Square, London EC4A 3DW, England
tel: +44 (0)20 7832 0200 | **fax:** +44 (0)20 7832 0201
email: london@arthurcox.com

Belfast

Capital House, 3 Upper Queen Street, Belfast BT1 6PU, Northern Ireland
tel: +44 (0)28 9023 0007 | **fax:** +44 (0)28 9023 3464
email: belfast@arthurcox.com

New York

300 Park Avenue, 17th Floor, New York NY 10022, USA
tel: +1 (1)212 705 4288 | **fax:** +1 (1)212 572 6499
email: newyork@arthurcox.com
