



CLIENT UPDATE

SUMMARY OF THE ANGLO IRISH BANK CORPORATION ACT 2009

(21 January 2009)

Anglo Irish Bank Corporation plc (“**Anglo**”) has been nationalised by the Irish government under the terms of the Anglo Irish Bank Corporation Act 2009 (the “**Act**”) which was passed into law today, 21 January 2009.

The Act states that its provisions are considered necessary in the public interest in order to protect and assist the Irish economy and financial system and to facilitate the continuation of Anglo as a going concern.

The principal areas covered by the Act 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;
- arrangements whereby default clauses in contracts to which Anglo is a party which would otherwise be triggered by the provisions of the Act will be of no effect;
- the removal and appointment of positions in Anglo; and
- the disapplication of various Irish legislative provisions insofar as they apply to Anglo.

The main provisions of the Act can be summarised as follows:

NATIONALISATION OF ANGLO

Section 5 of the Act provides that upon the commencement of the Act, all of the shares in Anglo are transferred to the Minister for Finance (the “**Minister**”) without the need for any instrument of transfer. The shares are transferred to the Minister free from any liability or equitable or beneficial interests (including security interests) and together with any rights attaching to them. Accordingly, following the passing of the Act, the Minister is taken to be registered as the sole shareholder on Anglo’s register of members.

As part of the nationalisation process:

- Anglo has become a private company limited by shares under the name “Anglo Irish Bank Corporation Limited”. Its memorandum and articles of association are taken to have been amended to reflect this new status (Section 6(2)); and
- the Act provides that any listing of shares of Anglo will be discontinued without the need for any further notices or consents (Section 12). 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 shares last traded at €0.217 each, giving Anglo a market capitalisation on that date of €166.91 million.

RELATIONSHIP OF ANGLO WITH THE MINISTER

The Minister may establish a relationship framework to govern the relationship between the Minister and Anglo. Any such framework will recognise the separation of Anglo from the Minister and limit intervention by the Minister in the conduct of Anglo's business to the extent required to protect the public interest (Section 3(1)).

Section 3(3) of the Act empowers the Minister to give a direction to Anglo requiring it to do or refrain from doing something which is, in the opinion of the Minister, necessary in the public interest.

In order to enable the Minister to provide funds for Anglo's continued operation, the Minister may issue securities at interest rates, for consideration and subject to such terms and conditions as he sees fit (Section 34).

EFFECT ON SHAREHOLDERS

The primary concern for former shareholders will be the amount of compensation which they will receive for their Anglo shares. The level of compensation will be determined by an independent assessor. Further details on the assessment process are set out below under the heading "Assessor".

In addition, from the commencement of the Act:

- the share certificates held by former shareholders no longer serve as evidence of ownership of shares in Anglo (other than to establish a right to compensation) (Section 6(3));
- while the Minister holds the Anglo shares, Anglo will not make calls on former shareholders to pay up outstanding amounts due on the Anglo shares which they held, although the liability to pay these amounts remains (Section 6(4)); and
- any rights to subscribe for Anglo shares or options over Anglo shares (whether employee-related or not) cease to exist (Section 10(1)).

Under Section 11, where any Anglo shares were held by a former shareholder subject to an equitable or beneficial interest (including a security interest), any compensation for those shares which is received by the former shareholder will be held on trust for the beneficial owner in proportion to the beneficial owner's entitlement to the shares.

EFFECT ON CREDITORS / CONTRACT COUNTERPARTIES

Where Anglo or any of its subsidiaries has entered into an agreement, licence, security obligation or other instrument (excluding the government guarantee put in place under the Credit Institutions (Financial Support) Scheme, 2008 (the "**Government Guarantee Scheme**")), any termination, default, enforcement or related clauses which may be triggered by the provisions of the Act shall have no effect except to the extent authorised by order of the Minister (Section 9). The extent to which this provision of Irish law can affect agreements which are not governed by Irish law will have to be explored.

The Minister may issue an order of this nature where he considers that the effect of Section 9 is unduly onerous or causes undue unfairness or hardship. Where such an order is published, provision is made for the protection of commercially sensitive information.

EFFECT ON DEPOSITORS

A clause in the Anglo Irish Bank Bill, 2009 which placed restrictions on the right of depositors to withdraw funds from Anglo where they had debts to Anglo of €20 million or more has been removed from the Act.

Accordingly, the Act does not have an effect on deposits which are held by Anglo. These deposits continue to be guaranteed by the government under the Government Guarantee Scheme.

EFFECT ON DIRECTORS / STAFF

Section 19 empowers the Minister to remove any director, the secretary, the auditors, any employee or consultant and any pension fund trustee or employee share scheme trustee of Anglo and any of its subsidiaries. Any such removal can take place with immediate effect.

Under Section 20, the Minister may, with the consent of the Central Bank, make appointments for any of these positions (save in the case of employees and consultants).

It is anticipated that Donal O'Connor, who was appointed as chairman of Anglo on 18 December 2008, will continue in this role and that the two non-executive directors appointed under the Government Guarantee Scheme will remain on the board of directors. A number of other directors have resigned to facilitate the appointment of new board members by the Minister.

ASSESSOR

The Minister will appoint an assessor (the “**Assessor**”) to determine the fair and reasonable aggregate value of the transferred shares and extinguished rights relating to the Anglo shares and the amount of compensation payable in respect of these shares and rights.

The Assessor has a wide set of powers (set out in the Schedule to the Act) to take up evidence and documents to assist with his/her task. Various parties are specified who may make submissions to the Assessor. To this end, the Assessor may appoint representatives of persons holding a particular class of shares (Section 24).

The Assessor will determine the value of the Anglo shares as at 15 January 2009, taking into account a number of considerations, including the market value of Anglo's assets and its actual, contingent and prospective liabilities at that date and assuming that no future financial assistance will be provided by the Irish government (save for the Government Guarantee Scheme). The Assessor will also have reference to a number of defined criteria, including movements in the quoted price of Anglo shares for such period as the Assessor considers appropriate, any relevant information about the business of Anglo at 15 January 2009 (whether publicly known or not) and any evidence obtained by the Assessor while undertaking his/her task. A full list of the criteria to be considered by the Assessor is set out in Section 25(3) of the Act.

When the Assessor's determination is complete, he/she will submit a report to the Minister detailing the compensation for the Anglo shares. This report will state whether or not the Assessor considers that interest should be paid on compensated amounts and, if applicable, the rate of interest determined by the Assessor. Section 25(6) provides that nothing prevents the Assessor from concluding that the fair and reasonable compensation payable is nil. Where compensation is payable, the Minister shall, within one month (or, if applicable, within one month of the outcome of any appeal or judicial review), provide for procedures for the payment of amounts due (Section 28). The Minister will make arrangements to ensure that sufficient funds are available out of the Central Fund or the growing produce of this fund for this purpose.

An appeal lies to the Irish Financial Services Appeals Tribunal (Section 31). Provision is also made for the circumstances in which judicial review of the Assessor's determination will be permitted (Section 32).

GENERAL

The Minister may transfer some or all of his shares in Anglo to a nominee to exercise the functions of the Minister under the Act (Section 8).

The Act provides for a number of provisions which disapply certain enactments of Irish law which might otherwise affect the provisions in the Act. Examples include the disapplication for so long as the Minister (or its nominee) is a member of Anglo of provisions in the Companies Acts relating to financial assistance, the transfer of shares and disclosure of interests in shares, together with the disapplication of provisions under the Competition Act, 2002 and of certain notice requirements under a variety of Acts in relation to the acquisition of shares.

CURRENT POSITION

The European Commission confirmed on 16 January 2009 that it will investigate whether the nationalisation of Anglo complies with state aid and competition rules. The commission is reported to be fast-tracking its review of national aid and rescue packages for banks in the current financial crisis.

In a statement issued on 15 January 2009, Anglo confirmed that:

“Anglo Irish Bank will continue to trade normally as a going concern and accordingly customers and providers of funding can be fully assured of the safety of their deposits and investments, which remain State guaranteed. The Board and management are committed to driving the business forward on an independent and commercial basis.”

This briefing provides a broad summary of the matters referred to above. Full details of the Banking and Financial Services Department, together with further updates and articles written by members of the Banking and Financial Services Department can be accessed at www.mop.ie

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