



STATUTORY INSTRUMENTS.

S.I. No. 48 of 2011



EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP
OF CREDIT INSTITUTIONS) REGULATIONS 2011

(Prn. A11/0225)

EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP
OF CREDIT INSTITUTIONS) REGULATIONS 2011

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EUROPEAN COMMUNITIES (REORGANISATION AND WINDING-UP
OF CREDIT INSTITUTIONS) REGULATIONS 2011

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972, and for the purpose of giving effect to Directive 2001/24/EC¹ of the European Parliament and of the Council, hereby make the following regulations:

Part 1

PRELIMINARY

Citation and commencement

1.— These Regulations may be cited as the European Communities (Reorganisation and Winding-up of Credit Institutions) Regulations 2011.

Interpretation

2.— (1) In these Regulations, except where the context otherwise requires—

“Act of 2010” means the Credit Institutions (Stabilisation) Act of 2010 (No. 36 of 2010);

“administrative authority” means—

(a) in relation to the State—

(i) the Bank,

(ii) the Minister for Finance, in relation to—

(I) the exercise of the powers and functions of that Minister under the Act of 2010, or

(II) the making of an order under section 33(1) of the Central Bank Act 1971 (No. 24 of 1971) that is expressed as set out in section 33(4) of that Act,

(iii) an administrator, or

(iv) a liquidator,

and

¹O.J. L 125, 5.5.2001, p. 15.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th February, 2011.

- (b) in relation to another Member State, any administrative authority that has, under the law of that State, responsibility for supervising or regulating reorganisation measures or winding-up proceedings;

“administrator”—

- (a) in relation to an authorised credit institution, means an examiner appointed in respect of the institution under section 2 of the Companies (Amendment) Act 1990 (No. 27 of 1990), or
- (b) in relation to a credit institution established in another Member State, means any person or body appointed by an administrative or judicial authority of that other Member State for the purpose of administering reorganisation measures;

“another Member State” means a Member State, other than the State;

“authorised credit institution” means—

- (a) the holder of a licence under section 9 of the Central Bank Act 1971,
- (b) a building society incorporated or deemed to be incorporated under the Building Societies Act 1989 (No. 17 of 1989), or
- (c) a trustee savings bank within the meaning of the Trustee Savings Banks Act 1989 (No. 21 of 1989);

“Bank” means the Central Bank of Ireland;

“branch” means a place of business that forms a legally dependent part of a credit institution and carries out directly all or some of the transactions inherent in the business of credit institutions;

“Capital Requirements Directive” means Directive 2006/48/EC² of the European Parliament and of the Council of 14 June 2006;

“Central Bank Acts” means the Central Bank Act 1942 (No. 22 of 1942) and every enactment that is to be construed as one with that Act;

“competent authority” means—

- (a) in relation to the State, the Bank, and
- (b) in relation to another Member State, the competent authority (within the meaning of Article 4(4) of the Capital Requirements Directive) for that other State;

“the Court” means the High Court;

“credit institution” (when not qualified by “authorised”) means—

²O J No. L177, 30.6.2006, p. 1.

- (a) an authorised credit institution, or
- (b) a credit institution, as defined in the Capital Requirements Directive, that is authorised by a competent authority of another State for the purposes of that Directive;

“creditor” includes a contingent creditor and a prospective creditor;

“the Directive” means Directive 2001/24/EC³ of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding-up of credit institutions;

“judicial authority” means—

- (a) in relation to the State, the Court, and
- (b) in relation to another Member State, any court or other judicial authority that has jurisdiction to deal with reorganisation measures or winding-up proceedings in that other State;

“laws” includes enactments, regulations, orders, guidelines and codes of practice;

“liquidator” means—

- (a) in relation to an authorised credit institution, a liquidator or provisional liquidator appointed under the relevant applicable enactment in respect of an authorised credit institution, or
- (b) in relation to a credit institution authorised in another Member State, any person or body appointed by an administrative or judicial authority of the other Member State, or by the governing body of a credit institution authorised in that other State, for the purpose of winding up the institution;

“listed branch”, in relation to a credit institution, means a branch of the institution that is included in the list referred to in Article 14 of the Capital Requirements Directive and published each year in the Official Journal of the European Union;

“Member State” means a Member State of the European Union;

“Official Assignee” has the meaning given by section 3 of the Bankruptcy Act 1988 (No. 27 of 1988);

“regulated market” has the same meaning as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007);

“relevant applicable enactment” has the meaning given by paragraph (4);

“reorganisation measure” shall be construed in accordance with paragraph (2);

³O J L 125, 5/5/2001, p. 15.

“winding-up proceedings”—

- (a) in relation to an authorised credit institution, means collective proceedings commenced and monitored by or before an administrative or judicial authority of the State for the purposes of realising assets under the supervision of that authority, and includes any such proceedings that are terminated by a composition of creditors or other similar arrangement, and, in particular, includes—
 - (i) a winding-up order made under section 213 of the Companies Act 1963 (No. 33 of 1963),
 - (ii) the appointment of a provisional liquidator under section 226 of that Act,
 - (iii) the appointment of a liquidator under section 225 of that Act,
 - (iv) the passing of a resolution for a voluntary winding-up under section 251 of that Act,
 - (v) the appointment of a liquidator in a creditors’ voluntary winding up under section 267 of that Act, and
 - (vi) an arrangement under the control of the Court that involves the vesting of all or part of the property of the institution in the Official Assignee for realisation and distribution, and
- (b) in relation to a credit institution authorised in another Member State, means collective proceedings commenced and monitored by or before an administrative or judicial authority of the other State for the purposes of realising assets under the supervision of that authority, and includes any such proceedings that are terminated by a composition of creditors or other similar arrangement.

(2) In these Regulations “reorganisation measure”, in relation to a credit institution, means a measure that is intended to preserve or restore the institution’s financial position, but that could affect the rights of third parties existing before the measure is imposed in respect of the institution, and includes any measure that contemplates the possibility of—

- (a) payments being suspended by the institution,
- (b) enforcement measures being suspended in relation to the institution,
or
- (c) claims against the institution being reduced,

and, in particular, includes any of the following:

- (i) a scheme of arrangement under section 201 of the Companies Act 1963;

- (ii) the appointment of an examiner under section 2 of the Companies (Amendment) Act 1990;
- (iii) a court order made under section 3A of the Companies (Amendment) Act 1990 placing the institution under the protection of the court for a period pending the submission of an independent accountant's report;
- (iv) a direction given to the institution under section 21 of the Central Bank Act 1971, section 26 of the Trustee Savings Bank Act 1989 or section 40 of the Building Societies Act 1989 to suspend—
 - (I) carrying on banking business,
 - (II) making payments to which the carrying on of banking business does not relate, or
 - (III) acquiring or disposing of other assets or liabilities, except with the authorisation of the Bank;
- (v) a direction under section 20 or 21 of the Asset Covered Securities Act 2001 (No. 47 of 2001) prohibiting the institution from carrying on a specified activity except with the permission of the Bank;
- (vi) a subordinated liabilities order (within the meaning given by the Act of 2010);
- (vii) a direction order, special management order or transfer order (within the respective meanings given by the Act of 2010) that contains a declaration that it or part of it is made with the intention of preserving or restoring the financial position of a relevant institution (within the meaning given by section 3 of that Act);
- (viii) a requirement imposed by the Minister pursuant to section 50 of the Act of 2010 that is expressed as being made with the intention of preserving or restoring the financial position of a relevant institution (within the meaning given by section 3 of that Act);
- (ix) an order under section 33(1) of the Central Bank Act 1971 that is expressed as set out in section 33(4) of that Act.

(3) Any step or act required in preparation for the making of a reorganisation measure that is a scheme, appointment, order, direction or requirement referred to in any of sub-paragraphs (i) to (ix) of paragraph (2) forms part of that reorganisation measure.

(4) In relation to the reorganisation or winding up of an authorised credit institution, any of the following enactments that is relevant to the institution in the particular context is a relevant applicable enactment for the purposes of these Regulations:

- (a) the Companies Acts;
- (b) the Central Bank Acts;
- (c) the Trustee Savings Banks Act 1989;
- (d) the Building Societies Act 1989;
- (e) the Asset Covered Securities Act 2001;
- (f) the Act of 2010.

(5) If a credit institution that has its head office in a Member State has established a number of places of business in another Member State, those places of business are, for the purposes of these Regulations, to be regarded as a single branch.

(6) A word or expression that is used in these Regulations and also in the Directive has, unless the context otherwise requires or these Regulations otherwise provide, the same meaning in these Regulations as it has in the Directive.

(7) In these Regulations, unless the context otherwise requires—

- (a) a reference to a Regulation is a reference to a Regulation of these Regulations, and
- (b) a reference to a paragraph, subparagraph or clause is a reference to a paragraph, subparagraph or clause of the provision in which the reference occurs, and
- (c) a reference to a specified enactment or regulation is a reference to the enactment or regulation as amended by or under any subsequent enactment or regulation, including a Regulation of these Regulations.

(8) These Regulations have effect despite any other law to the contrary, whether that other law is enacted or made before or after the making of these Regulations.

Purpose of these Regulations

3.— The purpose of these Regulations is to give effect to the Directive.

Credit institutions to which these Regulations apply

4.— (1) Except as provided by Regulations 11 and 24, these Regulations apply only to—

- (a) credit institutions whose head offices are located in Member States, and
- (b) the branches of those institutions located in those States, subject to the conditions and exemptions laid down in Article 2 of the Capital Requirements Directive.

(2) Regulation 11 applies to reorganisation measures concerning branches of a credit institution that has a head office outside the European Union, but only if the institution has branches in at least two Member States.

(3) Regulation 24 applies to winding-up proceedings concerning branches of a credit institution that has a head office outside the European Union, but only if the institution has branches in at least two Member States.

Part 2

REORGANISATION MEASURES

What law applies to credit institution in respect of which reorganisation measure is imposed

5.— (1) The relevant applicable enactment applies to and in relation to a reorganisation measure imposed, or to be imposed, in respect of an authorised credit institution (including its branches in other Member States) except as otherwise expressly provided by these Regulations.

(2) The provisions of a relevant applicable enactment forming part of a reorganisation measure or applying, implementing or giving effect to a reorganisation measure apply in relation to the credit institution concerned and shall be fully effective in accordance with that enactment as provided by the Directive.

(3) Provisions of this Regulation applying, implementing or giving effect to a reorganisation measure apply in relation to the credit institution concerned and shall be fully effective in accordance with those provisions as provided by the Directive.

(4) A reorganisation measure imposed by a competent authority of another Member State in respect of a credit institution authorised in that State (including any branch of the institution in the State) is to be recognised in the State as soon as the measure takes effect in that other State. This paragraph applies even if, had the particular matter been dealt with under the relevant applicable enactment, the measure would not be provided for, or would be provided for subject to the fulfilment of specified conditions that would not have been fulfilled in the particular case.

Administrative and judicial authorities of the State to have jurisdiction over reorganisation measures relating to branches of authorised credit institutions

6.— If an administrative or judicial authority of the State makes a decision imposing a reorganisation measure in respect of an authorised credit institution, the authority also has jurisdiction to apply the measure to branches of the institution that are established in other Member States.

Certain decisions of administrative and judicial authorities of other Member States to be recognised in the State

7.— If an administrative or judicial authority of another Member State makes a decision imposing a reorganisation measure in respect of a credit institution established in that other State and the institution has a branch in the State, the decision—

- (a) is to be recognised in the State with respect to the institution and the branch without further formality, and
- (b) takes effect in the State at the same time as it take effect in that other State.

Administrative and judicial authorities and Bank to provide information with respect to reorganisation measures

8.— (1) If an administrative authority of the State (other than the Bank) or the Court makes a decision imposing a reorganisation measure in respect of an authorised credit institution, the authority or the Court shall, without delay, notify the Bank of the decision. The decision must be communicated to the Bank by any available means and, if possible, before it takes effect, but if not, then immediately afterwards.

(2) As soon as practicable after a decision has been notified in accordance with paragraph (1), the Bank shall communicate it by any available means to the competent authority of each of the other Member States in which the credit institution has established a branch. The decision must be accompanied by a statement setting out the practical effects that the decision may have.

(3) If the Bank makes a decision imposing a reorganisation measure in respect of an authorised credit institution, it shall, without delay, communicate the decision by any available means to the competent authority of each of the other Member States in which the credit institution has established a branch. The decision must be accompanied by a statement setting out the practical effects that the decision may have.

(4) If a credit institution authorised in another Member State has a branch in the State and an administrative or judicial authority of the State (other than the Bank) makes a decision imposing a reorganisation measure in respect of the branch, the authority shall, without delay, notify the Bank of the decision. The decision must be communicated to the Bank by any available means and, if possible before it takes effect, but if not, then immediately afterwards.

(5) As soon as practicable after a decision has been notified to the Bank in accordance with paragraph (4), the Bank shall communicate it by any available means to the competent authority of the Member State in which the credit institution is authorised.

(6) If a credit institution authorised in another Member State has a branch in the State and the Bank makes a decision imposing a reorganisation measure in respect of the branch, it shall, without delay, communicate the decision by any available means to the competent authority of the other Member State.

(7) Nothing in this Regulation limits the operation of any other law of the State that requires decisions of administrative or judicial authorities of the State to be communicated to the Bank or to the competent authorities of other Member States.

Extract relating to reorganisation measure to be published in Official Journal and in national newspapers

9.— (1) If—

- (a) a decision to implement a reorganisation measure made by an administrative or judicial authority of the State in relation to an authorised credit institution is likely to affect the rights of third parties in one or more other Member States, and
- (b) a right of appeal lies in the State against the decision,

the authority shall, to facilitate the prompt exercise of the right of appeal, arrange for an extract from the decision to be published in the Official Journal of the European Union and in 2 national newspapers in each of the other Member States concerned.

(2) The administrative or judicial authority concerned shall, without delay, forward the extract by the most appropriate means to the Office for Official Publications of the European Union and to the 2 national newspapers in each of the other Member States concerned.

(3) The extract must specify, in the official language or languages of each of the other Member States concerned—

- (a) the purpose and legal basis of the decision taken,
- (b) the deadline for lodging an appeal in respect of the decision, and
- (c) the full address of the judicial authority that has jurisdiction to hear such an appeal.

(4) A reorganisation measure made in respect of a credit institution—

- (a) applies irrespective of whether paragraphs (1) to (3) are complied with, and
- (b) is fully effective as against creditors,

unless a decision of an administrative or judicial authority of the State, or some other law of the State, governing the measure otherwise provides.

Duty to notify known creditors and right to lodge claims

10.— (1) If a reorganisation measure is imposed in respect of an authorised credit institution, the administrator appointed in respect of the institution shall ensure that creditors of the institution of whom the administrator is aware and who are domiciled or normally reside, or have their head offices, in another Member State are, in accordance with the procedures laid down in the Directive, informed of their rights (if any) to lodge claims arising as a result of the imposition of the measure.

(2) If a law of the State provides for the rights of creditors who are domiciled or normally reside, or whose head offices are located, in the State to lodge claims, creditors who are domiciled or reside, or whose head offices are located, in other Member States also have that right in accordance with the provisions of Regulations 21 and 22(2).

Obligations in respect of credit institution having their head offices outside European Union

11.— (1) If—

- (a) a credit institution having its head office outside the European Union has a branch in the State,
- (b) an administrative or judicial authority of the State has imposed reorganisation measures in respect of the branch, and
- (c) the institution has established listed branches in one or more other Member States,

the authority shall, without delay, notify the decision to the Bank. The decision must be communicated by any available means and, if possible before it takes effect, but if not, then immediately afterwards. The decision must be accompanied by a statement setting out the practical effects that the decision may have.

(2) As soon as practicable after receiving the notification, the Bank shall communicate it by any available means to the competent authority of each of the other Member States in which the credit institution has established a branch.

(3) An administrative or judicial authority referred to in paragraph (1) shall make every effort to co-ordinate its actions with the competent authority, and the administrative or judicial authority, of each of the other Member States in which a branch of the credit institution is located.

Part 3

WINDING-UP PROCEEDINGS

What law applies to winding up of credit institution

12.— (1) The relevant applicable enactment applies to proceedings to wind up an authorised credit institution, except in so far as these Regulations otherwise provide.

(2) The laws and administrative provisions applicable in another Member State apply to proceedings to wind up a credit institution authorised in that other State.

Administrative and judicial authorities of the State to have jurisdiction over winding-up proceedings relating to branches of authorised credit institutions

13.— If winding-up proceedings in the State are commenced in respect of an authorised credit institution, the administrative or judicial authority responsible

for conducting those proceedings also has jurisdiction for the conduct of winding-up proceedings concerning the branches of the institution that are located in other Member States.

Certain decisions of administrative and judicial authorities of other Member States to be recognised in the State

14.— If an administrative or judicial authority of another Member State makes a decision in connection with winding-up proceedings relating to a credit institution established in that other State and the institution has a branch in the State, the decision—

- (a) is to be recognised in the State with respect to the institution and the branch without further formality, and
- (b) takes effect in the State at the same time as it take effect in that other Member State.

Administrative and judicial authorities and Bank to provide information with respect to winding-up proceedings

15.— (1) If an administrative or judicial authority of the State makes a decision with respect to the winding up of an authorised credit institution, the authority shall, without delay, notify the Bank of the decision. The decision is to be communicated by any available means and, if possible before it takes effect, but if not, then immediately afterwards.

(2) As soon as practicable after being notified of such a decision, the Bank shall communicate the decision by any available means to the competent authority of each of the other Member States in which the credit institution has established a branch. The decision must be accompanied by a statement setting out the practical effects that the decision may have.

(3) Nothing in this Regulation limits the operation of any other law of the State that requires decisions of administrative or judicial authorities of the State to be communicated to the Bank or to the competent authorities of other Members States.

Consultation of competent authorities before voluntary winding up

16.— (1) The governing body of an authorised credit institution may make a decision for the voluntary winding up of the institution only after having consulted the Bank.

(2) The voluntary winding-up of a credit institution does not prevent a reorganisation measure from being imposed, or winding-up from being commenced, in respect of the institution.

(3) Nothing in this Regulation limits the operation of any other law of the State that requires the Bank to be consulted in relation to a voluntary winding up.

Withdrawal of a credit institution's authorisation

17.— (1) The appointment of a liquidator in respect of an authorised credit institution has the effect of revoking the institution's authorisation.

(2) Whenever the authorisation of a credit institution is revoked by the operation of paragraph (1), the Bank shall notify the revocation to the competent authority of each Member State in which the institution has a branch.

(3) Revocation of the authorisation of a credit institution by the operation of paragraph (1) does not prevent the Bank from exercising any power that it has under a relevant applicable enactment to impose duties on the institution after the revocation of the authorisation and to take such measures as are necessary to ensure that any such duties are performed.

(4) Revocation of the authorisation of a credit institution by the operation of paragraph (1) does not prevent the liquidator from carrying on such of the institution's activities as are necessary or appropriate for winding up the institution. However, any such activities may be carried on only with the consent, and under the supervision, of the Bank.

Liquidator to arrange for publication of decision to wind up authorised credit institution

18.— (1) If a liquidator has been appointed in respect of an authorised credit institution, the liquidator shall announce the decision to wind up the institution by arranging for an extract from the relevant winding-up order to be published—

(a) in the Official Journal of the European Union, and

(b) in at least 2 national newspapers in each of the Member States in which a branch of the institution is located.

(2) The publication must be in the English language and in the official language of each Member State in which a branch of the credit institution is located.

(3) The obligation imposed by this Regulation is in addition to any other obligation imposed by a law of the State to publish a winding-up decision.

Liquidator to provide information to certain known creditors of authorised credit institution

19.— (1) After being appointed in respect of an authorised credit institution, a liquidator shall, without delay, give written notice of the decision to wind up the institution to each creditor of the institution whom the liquidator knows to be domiciled or to normally reside, or to have its head office, in another Member State.

(2) Such a notice must be in the English language and must include the following information:

(a) the periods within which creditors in the proceedings must take steps to realise their claims;

- (b) the consequences of not taking a particular step within the period prescribed;
- (c) the name and address of the liquidator for the purpose of lodgement of claims;
- (d) other information of particular relevance to creditors.

(3) Such a notice must also indicate whether it is necessary for creditors to lodge claims if their claims are preferential or are secured in rem.

(4) The obligation imposed by this Regulation is in addition to any other obligation imposed by any other law of the State to give notice of a decision to wind up an authorised credit institution.

Honouring of certain obligations by credit institutions that are neither natural persons or corporations

20.—(1) This Regulation applies to a credit institution in respect of which winding-up proceedings have been commenced in another Member State but only if the institution is not a natural person or a corporation.

(2) When an obligation has been honoured for the benefit of a credit institution to which this Regulation applies, but the obligation should have been honoured for the benefit of the liquidator in those proceedings, the obligation is taken to have been discharged so long as the person honouring it was unaware that the proceedings had commenced.

(3) If such an obligation is honoured before the publication provided for in Regulation 18, the person honouring the obligation is presumed, in the absence of proof to the contrary, to have been unaware of the commencement of the winding-up proceedings.

(4) If such an obligation is honoured after the publication provided for in Regulation 18, the person honouring the obligation is presumed, in the absence of proof to the contrary, to have been aware of the commencement of the winding-up proceedings.

Who has the right to lodge a claim in respect of authorised credit institution

21.— (1) A creditor of an authorised credit institution that is the subject of winding-up proceedings has the right to lodge a claim to the liquidator of the institution irrespective of where the creditor is domiciled or normally resides or, if the creditor is a body corporate or unincorporate, irrespective of where the creditor's head office is located.

(2) The claim of—

- (a) a creditor who is domiciled or normally resides, or
- (b) a creditor (including a public authority) whose head office is located,

in another Member State is to be treated in the same way and accorded the same ranking as the claim of an equivalent nature lodged by a creditor who is domiciled or normally resides, or a creditor (including a public authority) whose head office is located, in the State.

(3) In making a claim to the liquidator of an authorised credit institution, a creditor shall provide the liquidator with copies of relevant supporting documents (if any), and shall specify—

- (a) the nature of the claim,
- (b) the date on which it arose,
- (c) the amount of the claim, and
- (d) whether he or she alleges preference, security in rem, or reservation of title in respect of the claim and the assets that are covered by his or her security.

Formal requirements for certain notices, etc

22.— (1) The forms used for the purposes of the notices referred to in Regulations 18 and 19 must bear the following heading in all the official languages of the European Union:

“Invitation to lodge a claim. Time limits to be observed.”.

(2) A creditor whose place of domicile or normal place of residence, or whose head office, is in another Member State may lodge a claim in an official language of that other State, but if the creditor does so the claim must bear the heading “Lodgement of Claim” in the English language. However, the liquidator may require the creditor to provide a translation of the claim in the English language.

Liquidator to keep creditors informed about the progress of winding up

23.— (1) The liquidator of an authorised credit institution that is being wound up shall keep creditors of the institution regularly informed, in an appropriate manner, about the winding-up and its progress.

(2) The obligation imposed by this Regulation to keep creditors regularly informed is satisfied if the liquidator has complied with any order of the Court with respect to providing reports to creditors and is in addition to the requirement imposed by section 306 of the Companies Act 1963 (No. 33 of 1963).

Obligations in respect of credit institution whose head office is located outside the Member States

24.— (1) This Regulation applies to an institution that has its head office outside the European Union and would be a credit institution within the meaning of Regulation 2 if it were authorised in a Member State.

(2) If—

- (a) an institution to which this Regulation applies has a branch in the State and has a listed branch in one or more other Member States, and
- (b) an administrative or judicial authority of the State has made a decision with respect to the winding up of the branch,

the administrative or judicial authority shall, without delay, notify the decision to the Bank. The decision is to be communicated by any available means and, if possible before it takes effect, but if not, then immediately afterwards.

(3) As soon as practicable after being notified of the decision, the Bank shall communicate it by any available means to the competent authority of each of the other Member States in which the credit institution has established a branch. The decision must be accompanied by a statement setting out the practical effects that the decision may have.

(4) An administrative or judicial authority referred to in paragraph (1) shall make every effort to co-ordinate its actions with the competent authority, and the relevant administrative or judicial authority, of each of the other Member States (if any) in which a branch of the institution is located.

(5) The liquidator of an authorised credit institution shall also make every effort to co-ordinate its actions with the liquidators appointed in respect of branches of the institution that are located in other Member States.

Part 4

PROVISIONS COMMON TO REORGANISATION MEASURES AND WINDING-UP PROCEEDINGS

Effect of reorganisation measure or winding-up proceedings on certain contracts and rights

25.—(1) This Regulation—

- (a) governs the effect of reorganisation measures and the commencement of winding-up proceedings on contracts and the rights mentioned in this Regulation, and
- (b) has effect subject to Regulations 5 and 12.

(2) The effect of a reorganisation measure, or the commencement of winding-up proceedings, on an employment contract or an employment relationship, is governed solely by the law of the Member State applicable to the contract or relationship.

(3) The effect of a reorganisation measure, or the commencement of winding-up proceedings, on a contract conferring the right to make use of, or acquire, immovable property is governed solely by the law of the Member State in which

the property is located. Any question as to whether the property is immovable or not is to be determined in accordance with that law.

(4) If a reorganisation measure is made, or winding-up proceedings are commenced, in respect of a credit institution, the effect of the measure or the proceedings on the rights of a person with respect to immovable property, or a ship or an aircraft, that is subject to registration in a public register is governed solely by the law of the Member State under whose authority the register is kept.

Reorganisation measure or winding-up proceedings not to affect third parties' rights in rem

26.— (1) The imposition of a reorganisation measure, or the commencement of winding-up proceedings, in respect of a credit institution does not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (whether they are specific assets or collections of indefinite assets as a whole which change from time to time) belonging to the institution if the assets are located in another Member State when the measure is imposed or the proceedings are commenced.

(2) The rights in rem referred to in paragraph (1) are as follows:

- (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
- (c) the right to demand the assets from, or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;
- (d) a right in rem to the beneficial use of assets.

(3) If—

- (a) a right is recorded in a public register and enforceable against a third party, and
- (b) the right can give rise to a right in rem,

the right is to be regarded as a right in rem for the purpose of this Regulation.

(4) This Regulation does not affect the right to bring proceedings for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the State.

Reorganisation measure or winding-up proceedings not to affect right to reservation of title to asset

27.— (1) The imposition of a reorganisation measure, or the commencement of winding-up proceedings, in respect of a credit institution that has bought an asset does not affect the seller's rights based on reservation of title if, at the time of the imposition of the measure or the commencement of the proceedings, the asset is located within a State other than the one in which the measure was imposed or the proceedings were commenced.

(2) The imposition of a reorganisation measure, or the commencement of winding-up proceedings, in respect of a credit institution after delivering an asset that it has sold does not constitute grounds for rescinding or terminating the sale and does not prevent the buyer from acquiring title if, at the time of the imposition of the measure or the commencement of the proceedings, the asset sold is located within a State other than the one in which the measure was imposed or the proceedings were commenced.

(3) This Regulation does not affect the right to bring proceedings for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the State.

Reorganisation measure or winding-up proceedings not to affect right to set-off

28.— (1) The imposition of a reorganisation measure, or the commencement of winding-up proceedings, in respect of a credit institution do not affect the rights of creditors of the institution to demand that the claims be set-off of against those of the institution so long as such a set-off is permitted by the law that applies to the institution's claim.

(2) This Regulation does not affect the right to bring proceedings for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the State.

Enforcement of certain property rights

29.— If the existence or transfer of a property or other right in an instrument of a kind referred to in Section B of the Annex to Council Directive 93/22/EEC of 10 May 1993⁴ presupposes that the right is recorded in a register, an account or a centralised deposit system held or located in a Member State, the enforcement of the right is governed by the law of the Member State where the register, account or centralised deposit system in which the right is recorded is held or located.

Netting agreement to be governed by law of contract

30.— A netting agreement is governed solely by the law of the contract that governs the agreement.

Repurchase agreement to be governed by law of contract

31.— (1) Subject to paragraph (2), a repurchase agreement is governed solely by the law of the contract that governs the agreement.

⁴O J L 141, 11.6.1993, p. 27.

(2) Nothing in this Regulation affects the operation of Regulation 29.

Transactions on regulated market to be governed by law of contract

32.— Without prejudice to Regulation 29, transactions carried out in the context of a regulated market shall be governed solely by the law of the contract that governs such transactions.

How appointment of administrators and liquidators is to be proved

33.— (1) The appointment of an administrator or liquidator in respect of an authorised credit institution is to be evidenced—

- (a) by producing a copy of the original decision appointing the administrator or liquidator certified by the administrative or judicial authority of the State that made that decision, or
- (b) by producing any other certificate, issued by that authority, certifying that appointment.

(2) An administrator or liquidator of an authorised credit institution who wishes to act in another Member State shall make available a translation of the copy in one of the official languages of that State if a competent authority of that State requires the administrator or liquidator to do so.

(3) The appointment of an administrator or liquidator in respect of a credit institution authorised in another Member State is to be evidenced in the State—

- (a) by producing a copy of the appointment, certified by the administrative or judicial authority of that other State who made or approved the appointment, or
- (b) by producing a certificate, issued by a competent authority of that other State, certifying the appointment,

accompanied, in the case of a certificate not in the English language, by a certified translation into that language.

(4) If an authorised credit institution is being wound up voluntarily, the Bank may, on the application of the liquidator appointed in respect of the institution, issue to the liquidator a certificate certifying the voluntary winding-up resolution and the appointment of the liquidator and, if the Bank does so, the certified copy is taken to satisfy the requirements of Article 28 of the Directive.

(5) If the Bank gives to an authorised credit institution—

- (a) a direction under section 21 of the Central Bank Act 1971 (No. 24 of 1971), section 26 of the Trustee Savings Bank Act 1989 (No. 21 of 1989) or section 40 of the Building Societies Act 1989 (No. 17 of 1989) to suspend—
 - (i) carrying on banking business,

- (ii) making payments to which the carrying on of banking business does not relate, or
 - (iii) acquiring or disposing of other assets or liabilities except with the Bank's authorisation, or
- (b) a direction under section 20 or 21 of the Asset Covered Securities Act 2001 (No. 47 of 2001) prohibiting the institution from engaging in a specified activity except with the permission of the Bank,

a copy of the direction, purporting to be certified by an officer of the Bank, is taken to satisfy the requirements of Article 28 of the Directive.

Administrator or liquidator of authorised credit institution empowered to exercise powers in other Member States

34.— (1) An administrator or liquidator appointed in respect of an authorised credit institution is entitled to exercise within another Member State the same powers in respect of an institution as the administrator or liquidator is entitled to exercise within the State. In particular, such an administrator or liquidator may appoint one or more persons to do either or both of the following:

- (a) to assist and, if appropriate, to represent the administrator or liquidator in legal proceedings—
 - (i) involving the imposition of a reorganisation measure in respect of the institution, or
 - (ii) for winding up the institution;
- (b) to help in overcoming any difficulties encountered by creditors who are in the other Member State.

(2) In exercising in another Member State a power conferred by or under a law of the State, an administrator or liquidator appointed in respect of an authorised credit institution shall comply with the laws of the other Member State, in particular with respect to—

- (a) procedures for realising the institution's assets, and
- (b) providing its employees with information.

(3) In exercising a power referred to in paragraph (2), an administrator or liquidator may not—

- (a) resort to the use of force, or
- (b) make any ruling or determination on or relating to a legal proceeding or dispute.

Administrator or liquidator appointed in other Member State empowered to exercise certain powers within the State

35.— (1) An administrator or liquidator appointed in respect of a credit institution authorised by a competent authority of another Member State is entitled to exercise within the State the same powers in respect of the institution as the administrator or liquidator is entitled to exercise within the other Member State. Such an administrator or liquidator may, if a law of that other State permits, appoint one or more persons to do either or both of the following:

- (a) to assist or, if appropriate, to represent the administrator or liquidator in the State in legal proceedings—
 - (i) involving the imposition of a reorganisation measure in respect of the institution, or
 - (ii) for winding up the institution;
- (b) to help overcome any difficulties encountered by creditors who are in the State.

(2) In exercising in the State a power conferred by or under a law of another Member State, an administrator or liquidator appointed in respect of a credit institution authorised in the other Member State shall comply with the laws of the State when taking action within the State, in particular with respect to—

- (a) procedures for realising the institution's assets, and
- (b) providing its employees with information.

(3) In exercising a power referred to in paragraph (2), an administrator or liquidator may not—

- (a) resort to the use of force, or
- (b) make any ruling or determination on or relating to a legal proceeding or dispute.

Registration in a public register

36.— (1) The registrar of companies shall, if requested by the administrator or liquidator appointed in respect of a credit institution authorised in another Member State, or by any other authority duly empowered in that other State, register any reorganisation measure, or decision relating to winding-up proceedings, concerning the institution and capable of being registered under the Companies Acts.

(2) An administrator or liquidator appointed in respect of an authorised credit institution shall, if so required by the law of another Member State, take all steps necessary to register in the land register, the trade register and any other public register kept in the other Member State any reorganisation measure, or decision relating to winding-up proceedings, in so far as the measure or decision—

- (a) concerns a branch of the institution that is located in the other Member State, and
- (b) is capable of being recorded in that register.

(3) The costs of the registration referred to in paragraphs (1) and (2) are to be regarded as costs and expenses incurred in the reorganisation or winding-up proceedings.

Certain Regulations not to apply with respect to application of rules relating to the voidness, voidability or unenforceability of certain legal acts

37.— (1) If, in proceedings in which a judicial authority decides to apply a reorganisation measure in respect of a credit institution and, in so doing, provides for rules relating to the voidness, voidability or unenforceability of any legal act performed before the measure is imposed and such an act is detrimental to the creditors of the institution as a whole, Regulation 5 does not apply with respect to the application of those rules to the act, if the person benefiting from the act proves in the proceedings that—

- (a) the act is subject to the law of another Member State, and
- (b) that law does not allow any means of challenging the act.

(2) In legal proceedings for winding up a credit institution, Regulation 12 does not apply with respect to the application of rules relating to the voidness, voidability or unenforceability of a legal act detrimental to the creditors of a credit institution as a whole if the person benefiting from the act proves in the proceedings that—

- (a) the act is subject to the law of another Member State, and
- (b) that law does not allow any means of challenging the act.

Validity of certain acts to be governed by law of Member State in which immovable asset located or relevant register, etc., kept

38.— If, by an act completed after a reorganisation measure is imposed, or winding-up proceedings are commenced, in respect of a credit institution, the institution, for a consideration, disposes of—

- (a) an immovable asset,
- (b) a ship or an aircraft that is registered in a public register, or
- (c) transferable or other securities whose existence or transfer presupposes entry in a register or account prescribed by law or that are placed in a central deposit system governed by the law of a Member State,

the validity of the act is to be governed by the law of the Member State in which the asset is located, or the register, account or system is kept. Any question as

to whether an asset is immovable or not is to be determined in accordance with the law of the Member State in which the asset is located.

Effect of reorganisation measure or winding-up proceedings on pending legal proceedings relating to credit institution

39.— The effect of a reorganisation measure or winding-up proceedings on pending legal proceedings concerning an asset, or a right, of which a credit institution has been divested is to be governed solely by the law of the Member State in which the legal proceedings are pending.

Persons required to receive or divulge information under these Regulations bound by professional secrecy

40.— Every person required to receive or divulge information in connection with the communication procedures prescribed by Regulations 8, 10, 11, 15, 16, 17 and 24 is bound by professional secrecy, in accordance with the rules and conditions set out in Articles 44 to 52 of the Capital Requirements Directive, except when required, by an order of a court of competent jurisdiction, to disclose the information in civil or criminal proceedings.

Revocation

41.— The European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004) are revoked.



GIVEN under my Official Seal,
4 February 2011.

BRIAN LENIHAN,
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

This Statutory Instrument updates and repeals existing regulations transposing Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions. The amendments to the existing regulations provide for:

- (a) the regulations to apply as comprehensively and as clearly as possible to orders and requirements made under the Credit Institutions (Stabilisation) Act 2010; and
- (b) certain consequential amendments so that, inter alia, they more accurately reflect the text of the Directive 2001/24/EC.

Directive 2001/24/EC was originally transposed by the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2004 (S.I. No. 198 of 2004, which have been in operation since 5 May 2004.

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