



STATUTORY INSTRUMENTS

S.I. No. 206 of 2009

EUROPEAN COMMUNITIES (ASSESSMENT OF ACQUISITIONS IN
THE FINANCIAL SECTOR) REGULATIONS 2009

(Prn. A9/0758)

EUROPEAN COMMUNITIES (ASSESSMENT OF ACQUISITIONS IN THE FINANCIAL SECTOR) REGULATIONS 2009

I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), as amended by the European Communities (Amendment) Act 1993 (No. 25 of 1993), and for the purpose of giving effect to Directive 2007/44/EC¹ of the European Parliament and of the Council amending Council Directive 92/49/EEC² and Directives 2002/83/EC³, 2004/39/EC⁴, 2005/68/EC⁵ and 2006/48/EC⁶ of the European Parliament and of the Council as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009.

Commencement.

2. These Regulations come into operation on the day after the day on which notice of their making is published in *Iris Oifigiúil*.

Amendment of the European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992.

3. The European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992) are amended as follows:

(a) in Regulation 2(1)—

(i) by inserting before the definition of “authorisation” the following:

“ ‘assessment period’, in relation to a proposed acquisition, means the period during which, under Regulation 14B, the Bank is required to complete the assessment of the acquisition, and includes any extension of that period under paragraph (7) or (9) of that Regulation;”

(ii) by substituting for the definition of “qualifying holding” the following:

¹OJ L 247, 21.9.2007, p. 1–16.

²OJ L 228, 11.8.1992, p. 1–23.

³OJ L 345, 19.12.2002, p. 1–51.

⁴OJ L 145, 30.4.2004, p. 1–44.

⁵OJ L 323, 9.12.2005, p. 1–50.

⁶OJ L 177, 30.6.2006, p. 1–200.

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 9th June, 2009.

“ ‘prescribed percentage’ means 20%, 33% or 50%;

‘proposed acquirer’ has the meaning given by paragraph (2);

‘proposed acquisition’ has the meaning given by paragraph (3);

‘qualifying holding’ in a credit institution means, subject to Regulation 2A, a direct or indirect holding—

(a) that represents 10% or more of the capital of, or the voting rights in, the credit institution, or

(b) that makes it possible to exercise a significant influence over the management of the credit institution;”,

and

(iii) by substituting for the definition of “undertaking” the following:

“ ‘undertaking’ has the same meaning as it has in Regulation 3 of the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

‘working day’ means a day that is not a Saturday nor a Sunday nor a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).”;

(b) in Regulation 2 by inserting after paragraph (1A) the following:

“(1B) A reference in these Regulations to a ‘proposed acquirer’ is a reference to a person who proposes to acquire or increase a qualifying holding in a credit institution, and includes a group of persons acting in concert to acquire or increase such a holding.

(1C) A reference in these Regulations to a ‘proposed acquisition’ is a reference to—

(a) the proposed acquisition of a qualifying holding in a credit institution, or

(b) a proposed increase in a qualifying holding in such an institution that results in the size of the holding reaching or exceeding a prescribed percentage.”;

(c) by inserting after regulation 2 the following:

“Determination of voting rights for certain purposes.

2A. (1) For the purpose of determining whether a holding in a credit institution—

(a) is a qualifying holding, or

- (b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the credit institution,

the rules regarding the calculation of voting rights in Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations shall be taken into account.

(2) For those purposes, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account if those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”;

- (d) by substituting for Regulation 14 the following:

“Restrictions on acquiring and disposing of qualifying holdings in credit institutions.

14. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in a credit institution without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in a credit institution shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the credit institution that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the credit institution would become the proposed acquirer’s subsidiary.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraphs (1) and (2) of Regulation 14C, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments) and the structure of the resulting group.

(4) The information to be provided in a notification under paragraph (1) or (2) is that required by the form of notification published

by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

(5) A person shall not, directly or indirectly, dispose of a qualifying holding in a credit institution without having previously notified the Bank in writing of the intended size of the holding.

(6) A person shall not, directly or indirectly, dispose of part of a qualifying holding in a credit institution without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the credit institution that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the credit institution would cease to be the person’s subsidiary.

Credit institutions to provide information on certain acquisitions and disposals.

14A. (1) If a credit institution becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the credit institution shall inform the Bank in writing of the acquisition or increase without delay.

(2) If a credit institution becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the credit institution shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition.

14B. (1) Within two working days after receiving a completed notification under paragraph (1) or (2) of Regulation 14 from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Regulation 14 to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Regulation 14C.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

- (a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and
- (b) 20 working days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by written notice to the proposed acquirer concerned, extend the interruption referred to in paragraph (7) in relation to a proposed acquisition to 30 working days if the proposed acquirer—

- (a) is situated or regulated outside the Community; or
- (b) is not subject to supervision under a law of a Member State that gives effect to Directive 85/611/EEC⁷, 92/49/EEC⁸, 2002/83/EC⁹, 2004/39/EC¹⁰, 2005/68/EC¹¹ or 2006/48/EC¹².

Assessment of proposed acquisitions.

14C. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the credit institution concerned.

(2) In assessing a proposed acquisition, the Bank—

⁷OJ L 375, 31.12.1985, p.3.

⁸OJ L 228, 11.8.1992, p. 1.

⁹OJ L 345, 19.12.2002, p. 1.

¹⁰OJ L 145, 30.4.2004, p. 1.

¹¹OJ L 323, 9.12.2005, p. 1.

¹²OJ L 177, 30.6.2006, p. 1.

- (a) shall have regard to the likely influence of the proposed acquirer concerned on the credit institution concerned, and
- (b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
 - (i) the reputation of the proposed acquirer;
 - (ii) the reputation and experience of the individuals who will direct the business of the credit institution as a result of the proposed acquisition;
 - (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the credit institution;
 - (iv) whether the credit institution will be able to comply and continue to comply with the prudential requirements of existing legislation;
 - (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
 - (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC¹³) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same credit institution have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to cooperate with competent authorities of other Member States in certain cases.

14D. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

¹³OJ L 309, 25.11.2005, p. 15.

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, investment firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, investment firm, company or market operator.

(2) In paragraph (1)(a) ‘UCITS management company’ and ‘market operator of a regulated market’ respectively have the same meanings as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in a credit institution authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition, etc.

14E. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose a condition or a requirement or both, being a condition or a requirement that the Bank considers necessary for the proper and orderly regulation and supervision of credit institutions, and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank’s decision.

14F. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any other law that requires the acquisition to be approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions.

14G. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraphs (1) and (2) of Regulation 14C, or
- (b) the information provided by the proposed acquirer concerned in its notification under paragraph (1) or (2) of Regulation 14 is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Regulation 14B.

Decision to oppose proposed acquisition to be appealable.

14H. A decision by the Bank to oppose a proposed acquisition, to impose a condition or requirement on a proposed acquisition, or to vary such a condition or requirement, is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

Circumstances in which proposed acquisition not to be completed.

14I. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with paragraph (1) or (2) of Regulation 14,
- (b) the Bank has acknowledged that notification in accordance with Regulation 14B(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and

- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of section 201 of the Companies Act 1963.

14J. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction under Regulation 14B.

Credit institutions to provide information about shareholdings, etc.

14K. A credit institution shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Offence of providing false or misleading information, etc.

14L. A person who provides the Bank with information in purported compliance with a requirement of or under any of Regulations 14 to 14L, knowing the information to be false or misleading, commits an offence and is liable on summary conviction to a fine not exceeding €1,900.

Powers of court in relation to certain persons with qualifying holdings.

14M. (1) Where the Bank has reason to believe that a person who has a qualifying holding in the shares of, or voting rights attaching to shares in, a credit institution is exercising an influence on the direction of the affairs of the credit institution which is, or is likely to be, detrimental to the prudent and sound management of the credit institution, it shall, subject to paragraph (2), notify the person that it so believes and direct the person in writing to take specified measures to bring that influence to an end within a specified period.

(2) Before issuing a direction to a person under paragraph (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

(4) Where the Bank is of the opinion that a direction under paragraph (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank may, without prejudice to any of its other functions, do any one or more of the following:

- (a) issue a direction to the credit institution concerned under section 21 (as amended by the Central Bank and Financial

Services Authority of Ireland Act 2004 (No.21 of 2004)) of the Central Bank Act 1971 (No.24 of 1971) (and for that purpose the references in that section to ‘holder of a licence’ and ‘holder’ shall be read as a reference to a credit institution and the references to ‘banking business’ and ‘banking’ shall be read as references to the taking of deposits or granting of credit by a credit institution);

- (b) apply to the Court in a summary manner—
 - (i) for an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the credit institution and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the credit institution from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank,
 - (ii) to suspend the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the credit institution concerned,
 - (iii) for an order from the Court requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the credit institution within a period specified by the Court, or
 - (iv) for such other order as the Court considers appropriate.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings before it under this Regulation may be heard otherwise than in public.”.

Amendment of the European Communities (Non-Life Insurance) Framework Regulations 1994.

4. The European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994) are amended as follows:

- (a) in Article 2(1), by inserting after the definition of “participation”:
 - “ ‘qualifying holding’ means, subject to Article 2A, a direct or indirect holding in an insurance undertaking—
 - (a) that represents 10% or more of the capital of, or the voting rights in, the undertaking, or
 - (b) that makes it possible to exercise a significant influence over the management of the undertaking;”;

(b) by inserting after Article 2—

“Determination of voting rights for certain purposes.

2A. (1) For the purpose of determining whether a holding in an insurance undertaking—

(a) is a qualifying holding, or

(b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the undertaking,

the rules regarding the calculation of voting rights in Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations shall be taken into account.

(2) For that purpose, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account if those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”;

(c) in Article 9, by deleting paragraph (4);

(d) by substituting for Articles 20 to 20E the following:

“Interpretation and effect: Part 3.

20. (1) In this Part—

‘assessment period’, in relation to a proposed acquisition, means the period during which, under Article 20C, the Bank is required to complete the assessment of the acquisition, and includes any extension of that period under paragraph (7) or (9) of that Article;

‘credit institution’ has the same meaning as in the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

‘investment firm’ has the same meaning as in the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

‘parent undertaking’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

‘prescribed percentage’ means 20%, 33% or 50%;

‘proposed acquirer’ has the meaning given by paragraph (2);

‘proposed acquisition’ has the meaning given by paragraph (3);

‘subsidiary’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992;

‘working day’ means a day that is not a Saturday nor a Sunday nor a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).

(2) A reference in this Part to a “proposed acquirer” is a reference to a person who proposes to acquire or increase a qualifying holding in an insurance undertaking, and includes a group of persons acting in concert to acquire or increase such a holding.

(3) A reference in this Part to a “proposed acquisition” is a reference to—

- (a) the proposed acquisition of a qualifying holding in an insurance undertaking, or
- (b) a proposed increase in a qualifying holding in such an undertaking that results in the size of the holding reaching or exceeding a prescribed percentage.

Restrictions on acquiring and disposing of qualifying holdings in insurance undertakings.

20A. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an insurance undertaking shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the undertaking would become the proposed acquirer’s subsidiary.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraphs (1) and (2) of Article 20D, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of

any proposed issue of financial instruments) and the structure of the resulting group.

(4) The information to be provided in a notification under paragraph (1) or (2) is that required by the form of notification published by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

(5) A person shall not, directly or indirectly, dispose of a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding.

(6) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the undertaking would cease to be the person’s subsidiary.

Insurance undertakings to provide information on certain acquisitions and disposals.

20B. (1) If an insurance undertaking becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the undertaking shall inform the Bank in writing of the acquisition or increase without delay.

(2) If an insurance undertaking becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the undertaking shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition.

20C. (1) Within two working days after receiving a completed notification under paragraph (1) or (2) of Article 20A from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Article 20A to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Article 20D.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

(a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 working days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by written notice to a proposed acquirer, extend the interruption referred to in paragraph (7) in relation to a proposed acquisition to 30 working days if the proposed acquirer—

(a) is situated or regulated outside the Community; or

(b) is not subject to supervision under a law of a Member State that gives effect to Directive 85/611/EEC¹, 92/49/EEC², 2002/83/EC³, 2004/39/EC⁴, 2005/68/EC⁵ or 2006/48/EC⁶.

¹OJ L 375, 31.12.1985, p.3.

²OJ L 228, 11.8.1992, p. 1.

³OJ L 345, 19.12.2002, p. 1.

⁴OJ L 145, 30.4.2004, p. 1.

⁵OJ L 323, 9.12.2005, p. 1.

⁶OJ L 177, 30.6.2006, p. 1.

Assessment of proposed acquisitions.

20D. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the insurance undertaking concerned.

(2) In assessing a proposed acquisition, the Bank—

- (a) shall have regard to the likely influence of the proposed acquirer concerned on the undertaking, and
- (b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
 - (i) the reputation of the proposed acquirer;
 - (ii) the reputation and experience of the individuals who will direct the business of the undertaking as a result of the proposed acquisition;
 - (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the undertaking in which the acquisition is proposed;
 - (iv) whether the undertaking will be able to comply and continue to comply with the prudential requirements of existing legislation;
 - (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
 - (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC⁷) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same insurance undertaking have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

⁷OJ L 309, 25.11.2005, p.15.

Bank to cooperate with competent authorities of other Member States in certain cases.

20E. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, investment firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, investment firm, company or market operator.

(2) In paragraph (1)(a), ‘UCITS management company’ and ‘market operator of a regulated market’ respectively have the same meanings as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in an insurance undertaking authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition, etc.

20F. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose either a condition or a requirement or both, being a condition or requirement that the Bank considers necessary for the proper and orderly regulation and supervision of insurance undertakings, and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank’s decision.

20G. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days,

but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any other law that requires the acquisition to be approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions.

20H. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraphs (1) and (2) of Article 20D, or
- (b) the information provided by the proposed acquirer concerned in its notification under Article 20A is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Article 20C.

Decision to oppose proposed acquisition to be appealable.

20I. A decision by the Bank to oppose a proposed acquisition, or impose a condition or requirement on a proposed acquisition, or to vary such a condition or requirement is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

Circumstances in which proposed acquisition not to be completed.

20J. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Article 20A,
- (b) the Bank has acknowledged that notification in accordance with Article 20C(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of section 201 of the Companies Act 1963.

20K. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Insurance undertakings to provide information about shareholdings, etc.

20L. An insurance undertaking shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Offence of providing false or misleading information, etc.

20M. A person who provides the Bank with information in purported compliance with a requirement of or under this Part, knowing the information to be false or misleading, commits an offence and is liable on summary conviction to a fine not exceeding €1,900.

Power of Court to make certain orders.

20N. (1) If the Bank reasonably believes that the control exercised by a person who has a qualifying holding in an insurance undertaking is inconsistent with the prudent and sound management of the undertaking, it may apply to the Court for an order under paragraph (3).

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application under paragraph (1), the Court may, on being satisfied that the Bank's belief is substantiated, make all or any of the following orders:

- (a) an order directing the respondent to dispose of the holding or a specified part of it;
- (b) an order suspending the exercise of the voting rights attached to the relevant shares;
- (c) an order invalidating votes already exercised by holders of those shares.”.

Amendment of the European Communities (Life Assurance) Framework Regulations 1994.

5. The European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) are amended as follows:

- (a) in Article 2(1), by inserting after the definition of “property linked benefits”—

“ ‘qualifying holding’ in an insurance undertaking means, subject to Article 2A, a direct or indirect holding—

- (a) that represents 10% or more of the capital of, or voting rights in, the undertaking, or
- (b) that makes it possible to exercise a significant influence over the management of the undertaking;”;

- (b) by inserting after Article 2—

“Determination of voting rights for certain purposes.

2A. (1) For the purpose of determining whether a holding in an insurance undertaking—

- (a) is a qualifying holding, or
- (b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the undertaking,

the rules regarding the calculation of voting rights in Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations shall be taken into account.

(2) For that purpose, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account, provided that those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”;

- (c) in Article 9, by deleting paragraph (4);
- (d) by substituting for Part 4 the following:

“PART 4

ACQUISITION AND DISPOSAL OF CERTAIN INTERESTS IN
INSURANCE UNDERTAKINGS*Interpretation and effect: Part 4.*

40. (1) In this Part—

‘assessment period’, in relation to a proposed acquisition, means the period during which, under Article 40C, the Bank is required to complete the assessment of the acquisition, and includes any extension of that period under paragraph (7) or (9) of that Article;

‘credit institution’ has the same meaning as in the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

‘investment firm’ has the same meaning as in the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006);

‘parent undertaking’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

‘prescribed percentage’ means 20%, 33% or 50%;

‘proposed acquirer’ has the meaning given by paragraph (2);

‘proposed acquisition’ has the meaning given by paragraph (3);

‘subsidiary’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992;

‘working day’ means a day that is not a Saturday nor a Sunday nor a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).

(2) A reference in this Part to a ‘proposed acquirer’ is a reference to a person who proposes to acquire or increase a qualifying holding in an insurance undertaking, and includes a group of persons acting in concert to acquire or increase such a holding.

(3) A reference in this Part to a ‘proposed acquisition’ is a reference to—

- (a) the proposed acquisition of a qualifying holding in an insurance undertaking, or
- (b) a proposed increase in a qualifying holding in such an undertaking that results in the size of the holding reaching or exceeding a prescribed percentage.

Restrictions on acquiring and disposing of qualifying holdings in insurance undertakings.

40A. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an insurance undertaking shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the undertaking would become the proposed acquirer's subsidiary.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraphs (1) and (2) of Article 40D, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments) and the structure of the resulting group.

(4) The information to be provided in a notification under paragraph (1) or (2) is that required by the form of notification published by the Bank on 25 May 2009 entitled "Acquiring Transaction Notification Form", and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

(5) A person shall not, directly or indirectly, dispose of a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding.

(6) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an insurance undertaking without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the undertaking that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the undertaking would cease to be the person's subsidiary.

Insurance undertakings to provide information in relation to certain acquisitions and disposals.

40B. (1) If an insurance undertaking becomes aware of the acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the undertaking shall inform the Bank in writing of the acquisition or increase without delay.

(2) If an insurance undertaking becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the undertaking shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition.

40C. (1) Within two working days after receiving a completed notification under paragraph (1) or (2) of Article 40A from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Article 40A to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Article 40D.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may, request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (4) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

- (a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 working days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by written notice to a proposed acquirer, extend the interruption referred to in paragraph (7) in relation to a proposed acquisition to 30 working days if the proposed acquirer concerned—

- (a) is situated or regulated outside the Community; or
- (b) is not subject to supervision under a law of a Member State that transposes Directive 85/611/EEC¹, 92/49/EEC², 2002/83/EC³, 2004/39/EC⁴, 2005/68/EC⁵ or 2006/48/EC⁶.

Assessment of proposed acquisitions.

40D. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the insurance undertaking concerned.

(2) In assessing a proposed acquisition, the Bank—

- (a) shall have regard to the likely influence of the proposed acquirer concerned on the insurance undertaking concerned, and
- (b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
 - (i) the reputation of the proposed acquirer;
 - (ii) the reputation and experience of the individuals who will direct the business of the undertaking as a result of the proposed acquisition;
 - (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the undertaking;
 - (iv) whether the undertaking will be able to comply and continue to comply with the prudential requirements of existing legislation;

¹OJ L 375, 31.12.1985, p.3.

²OJ L 228, 11.8.1992, p. 1.

³OJ L 345, 19.12.2002, p. 1.

⁴OJ L 145, 30.4.2004, p. 1.

⁵OJ L 323, 9.12.2005, p. 1.

⁶OJ L 177, 30.6.2006, p. 1.

- (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
- (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC⁷) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same insurance undertaking have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to cooperate with competent authorities of other Member States in certain cases.

40E. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, investment firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, investment firm, company or market operator.

(2) In paragraph (1)(a) ‘UCITS management company’ and ‘market operator of a regulated market’ respectively have the same meanings as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other

⁷OJ L 309, 25.11.2005, p.15.

competent authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in an insurance undertaking authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition etc.

40F. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose a condition or a requirement or both, being a condition or a requirement that the Bank considers necessary for the proper and orderly regulation and supervision of insurance undertakings, and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank's decision.

40G. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to the proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any other law that requires the acquisition to be approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions.

40H. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraph (1) or (2) of Article 40D, or
- (b) the information provided by the proposed acquirer in its notification under Article 40A is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Article 40C.

Decision to oppose proposed acquisition to be appealable.

40I. A decision by the Bank to oppose a proposed acquisition, to impose a condition or requirement on a proposed acquisition, or to

vary such a condition or requirement is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

Circumstances in which proposed acquisition not to be completed.

40J. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Article 40A,
- (b) the Bank has acknowledged that notification in accordance with Article 40C(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of section 201 of the Companies Act 1963.

40K. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Insurance undertakings to provide information about shareholdings, etc.

40L. An insurance undertaking shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Offence of providing false or misleading information, etc.

40M. A person who provides the Bank with information in purported compliance with a requirement of or under this Part, knowing the information to be false or misleading, commits an offence and is liable on summary conviction to a fine not exceeding €1,900.

Power of Court to make certain orders.

40N. (1) If the Bank reasonably believes that the control exercised by a person who has a qualifying holding in an insurance undertaking is inconsistent with the prudent and sound management of the undertaking, it may apply to the Court for an order under paragraph (3).

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application under paragraph (1), the Court may, on being satisfied that the Bank's belief is substantiated, make all or any of the following orders:

- (a) an order directing the respondent to dispose of the holding or a specified part of it;
- (b) an order suspending the exercise of the voting rights attached to the relevant shares;
- (c) an order invalidating votes already exercised by holders of those shares.”.

Amendment of the European Communities (Reinsurance) Regulations 2006.

6. The European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006) are amended as follows:

- (a) in Regulation 3(1), by substituting for the definition of “qualifying holding”—

“ ‘qualifying holding’ in a reinsurance undertaking or an SPRV means, subject to Regulation 3A, a direct or indirect holding—

- (a) that represents 10% or more of the capital of, or the voting rights in, the undertaking or SPRV, or
- (b) that makes it possible to exercise a significant influence over the management of the undertaking or SPRV;”;

- (b) by inserting after regulation 3—

“Determination of voting rights.

3A. (1) For the purpose of determining whether a holding in a reinsurance undertaking or an SPRV—

- (a) is a qualifying holding, or
- (b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of, or voting rights in, the undertaking or SPRV,

the rules regarding the calculation of voting rights in Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations shall be taken into account.

(2) For that purpose, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account, provided that those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”;

(c) by substituting for Part 8 the following:

“PART 8

ACQUISITION AND DISPOSAL OF CERTAIN INTERESTS IN
AUTHORISED REINSURANCE UNDERTAKINGS AND
SPRVs

Interpretation and effect: Part 8.

40. (1) In this Part—

‘assessment period’, in relation to a proposed acquisition, means the period during which, under Regulation 41, the Bank is required to complete the assessment of the acquisition, and includes any extension of that period under paragraph (7) or (9) of that Regulation;

‘parent undertaking’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992 (S.I. No. 201 of 1992);

‘prescribed percentage’ means 20%, 33% or 50%;

‘proposed acquirer’ has the meaning given by paragraph (2);

‘proposed acquisition’ has the meaning given by paragraph (3);

‘subsidiary’ has the same meaning as in the European Communities (Companies: Group Accounts) Regulations 1992;

‘working day’ means a day that is not a Saturday nor a Sunday nor a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).

(2) A reference in this Part to a ‘proposed acquirer’ is a reference to a person who proposes to acquire or increase a qualifying holding in an authorised reinsurance undertaking or SPRV, and includes a

group of persons acting in concert to acquire or increase such a holding.

(3) A reference in this Part to a ‘proposed acquisition’ is a reference to—

- (a) the proposed acquisition of a qualifying holding in an authorised reinsurance undertaking or SPRV, or
- (b) a proposed increase in a qualifying holding in such an undertaking or SPRV that results in the size of the holding reaching or exceeding a prescribed percentage.

Restrictions on acquiring and disposing of qualifying holdings in authorised reinsurance undertakings and SPRVs.

40A. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an authorised reinsurance undertaking or SPRV without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an authorised reinsurance undertaking or SPRV shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the undertaking or SPRV that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the undertaking or SPRV would become the proposed acquirer’s subsidiary.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraph (1) or (2) of Regulation 41A, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments) and the structure of the resulting group.

(4) The information to be provided in a notification under paragraph (1) or (2) is that required by the form of notification published by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

(5) A person shall not, directly or indirectly, dispose of a qualifying holding in an authorised reinsurance undertaking or SPRV without

having previously notified the Bank in writing of the intended size of the holding.

(6) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an authorised reinsurance undertaking or SPRV without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the undertaking or SPRV that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the undertaking or SPRV would cease to be the person's subsidiary.

Reinsurance undertakings and SPRVs to provide information on certain acquisitions and disposals.

40B. (1) If an authorised reinsurance undertaking or SPRV becomes aware of an acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the undertaking or SPRV shall inform the Bank in writing of the acquisition or increase without delay.

(2) If an authorised reinsurance undertaking or SPRV becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the undertaking or SPRV shall inform the Bank in writing of the disposal or reduction without delay.

Period for assessment of proposed acquisition.

41. (1) Within two working days after receiving a completed notification under paragraph (1) or (2) of Regulation 40A from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Regulation 40A to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Regulation 41A.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

- (a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and
- (b) 20 working days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by written notice to a proposed acquirer, extend the interruption referred to in paragraph (5) in relation to a proposed acquisition to 30 working days if the proposed acquirer concerned—

- (a) is situated or regulated outside the Community; or
- (b) is not subject to supervision under a law of a Member State that gives effect to Directive 85/611/EEC¹, 92/49/EEC², 2002/83/EC³, 2004/39/EC⁴, 2005/68/EC⁵ or 2006/48/EC⁶.

Assessment of proposed acquisitions.

41A. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the authorised reinsurance undertaking or SPRV concerned.

(2) In assessing a proposed acquisition, the Bank—

- (a) shall have regard to the likely influence of the proposed acquirer concerned on the authorised reinsurance undertaking or SPRV concerned, and

¹OJ L 375, 31.12.1985, p.3.

²OJ L 228, 11.8.1992, p. 1.

³OJ L 345, 19.12.2002, p. 1.

⁴OJ L 145, 30.4.2004, p. 1.

⁵OJ L 323, 9.12.2005, p. 1.

⁶OJ L 177, 30.6.2006, p. 1.

- (b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
- (i) the reputation of the proposed acquirer;
 - (ii) the reputation and experience of the individuals who will direct the business of the undertaking or SPRV as a result of the proposed acquisition;
 - (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the undertaking or SPRV in which the acquisition is proposed;
 - (iv) whether the undertaking or SPRV will be able to comply and continue to comply with the prudential requirements of existing legislation;
 - (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
 - (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC⁷) is being or has been committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same authorised reinsurance undertaking or SPRV have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to cooperate with competent authorities of other Member States in certain cases.

42. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

⁷OJ L 309, 25.11.2005, p. 15.

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, investment firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, investment firm, company or market operator.

(2) In paragraph (1)(a) ‘UCITS management company’ and ‘market operator of a regulated market’ respectively have the same meanings as in the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007).

(3) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information which is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(4) A decision by the Bank, in the case of a proposed acquisition in an authorised reinsurance undertaking or SPRV authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition etc.

42A. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose either a condition or a requirement or both, being a condition or requirement that the Bank considers necessary for the proper and orderly regulation and supervision of authorised reinsurance undertakings and SPRVs, and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank’s decision.

43. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any other law that requires the acquisition to have been approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions.

43A. The Bank may oppose a proposed acquisition in an authorised reinsurance undertaking or SPRV only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraph (1) or (2) of Regulation 41A, or
- (b) the information provided by the proposed acquirer concerned in its notification under Regulation 40A is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Regulation 41.

Decision to oppose proposed acquisition to be appealable.

44. A decision by the Bank to oppose a proposed acquisition, to impose a condition or requirement on a proposed acquisition, or to vary such a condition or requirement is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942 (No. 22 of 1942).

Circumstances in which proposed acquisition not to be completed.

44A. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Regulation 40A,
- (b) the Bank has acknowledged that notification in accordance with Regulation 41(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

(2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—

- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and

- (b) any exercise of powers based on the purported acquisition of the holding concerned is void.

Effect of section 201 of the Companies Act 1963.

45. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Authorised reinsurance undertakings and SPRVs to provide information about shareholdings, etc.

45A. An authorised reinsurance undertaking or SPRV shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Power of Court to make certain orders.

45B. (1) If the Bank reasonably believes that the control exercised by a person who has a qualifying holding in an authorised reinsurance undertaking or SPRV is inconsistent with the prudent and sound management of the reinsurance undertaking or SPRV, it may apply to the Court for an order under paragraph (3).

(2) On making an application under paragraph (1), the Bank shall serve a copy of the application on the person to whom the application relates. On being served with the notice, that person becomes the respondent to the application.

(3) On the hearing of an application under paragraph (1), the Court may, on being satisfied that the Bank's belief is substantiated, make all or any of the following orders:

- (a) an order directing the respondent to dispose of the holding or a specified part of it;
- (b) an order suspending the exercise of the voting rights attached to the relevant shares;
- (c) an order invalidating votes already exercised by holders of those shares.”.

Amendment of the European Communities (Markets in Financial Instruments) Regulations 2007.

7. The European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) are amended as follows:

- (a) in Regulation 3(1), by substituting for the definition of “qualifying holding”—

“ ‘qualifying holding’ in an investment firm or the market operator of a regulated market means, subject to Regulation 3A, a direct or indirect holding in the investment firm or market operator—

- (a) that represents 10% or more of the capital of, or the voting rights in, the investment firm or market operator, or
- (b) that makes it possible to exercise a significant influence over the management of the investment firm or market operator;”;

(b) by inserting after regulation 3—

“Determination of voting rights for certain purposes.

3A. (1) For the purpose of determining whether a holding in an investment firm or the market operator of a regulated market—

- (a) is a qualifying holding, or
- (b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the investment firm or market operator,

the rules regarding the calculation of voting rights in Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 (S.I. No. 277 of 2007) and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations shall be taken into account.

(2) For that purpose, voting rights or shares that an investment firm or credit institution holds as a result of providing the underwriting of financial instruments or placing of financial instruments on a firm commitment basis shall not be taken into account, provided that those rights or shares are not exercised or otherwise used to intervene in the management of the issuer and are disposed of within one year of acquisition.”;

(c) by substituting for Part 13 the following:

“PART 13

ACQUISITION AND DISPOSAL OF CERTAIN INTERESTS IN INVESTMENT FIRMS AND MARKET OPERATORS OF REGULATED MARKETS

Interpretation and effect: Part 13.

178. (1) In this Part—

‘assessment period’, in relation to a proposed acquisition, means the period during which, under Regulation 181, the Bank is required to

complete the assessment of the acquisition, and includes any extension of that period under paragraph (7) or (9) of that Regulation;

‘prescribed percentage’ means 20%, 33% or 50%;

‘proposed acquirer’ has the meaning given by paragraph (2);

‘proposed acquisition’ has the meaning given by paragraph (3);

‘working day’ means a day that is not a Saturday nor a Sunday nor a public holiday within the meaning of the Organisation of Working Time Act 1997 (No. 20 of 1997).

(2) A reference in this Part to a ‘proposed acquirer’ is a reference to a person who proposes to acquire or increase a qualifying holding in an investment firm or the market operator of a regulated market, and includes a group of persons acting in concert to acquire or increase such a holding.

(3) A reference in this Part to a ‘proposed acquisition’ is a reference to—

- (a) the proposed acquisition of a qualifying holding in an investment firm or the market operator of a regulated market, or
- (b) a proposed increase in a qualifying holding in an investment firm or the market operator of a regulated market that results in the size of the holding reaching or exceeding a prescribed percentage.

Restrictions on acquiring and disposing of qualifying holdings in investment firms and market operators of regulated markets.

179. (1) A proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in an investment firm or the market operator of a regulated market without having previously notified the Bank in writing of the intended size of the holding.

(2) A proposed acquirer who has a qualifying holding in an investment firm or the market operator of a regulated market shall not, directly or indirectly, increase the size of the holding without having previously notified the Bank in writing of the intended size of the holding if, as a result of the increase—

- (a) the percentage of the capital of, or the voting rights in, the investment firm or market operator that the proposed acquirer holds would reach or exceed a prescribed percentage, or
- (b) in the case of a proposed acquirer that is a company or other body corporate, the investment firm or market operator would become the proposed acquirer’s subsidiary.

(3) A notification under paragraph (1) or (2) shall include sufficient information to enable the Bank to consider the proposed acquisition concerned against the criteria in paragraphs (1) and (2) of Regulation 182, and in particular shall include information on who the proposed acquirers are, the individuals to be responsible for their management, how the proposed acquisition is to be financed (including details of any proposed issue of financial instruments) and the structure of the resulting group.

(4) The information to be provided in a notification under paragraph (1) or (2) is that required by the form of notification published by the Bank on 25 May 2009 entitled “Acquiring Transaction Notification Form”, and includes any document in relation to the proposed acquisition or proposed acquirer concerned required by that form.

(5) A person shall not, directly or indirectly, dispose of a qualifying holding in an investment firm or the market operator of a regulated market without having previously notified the Bank in writing of the intended size of the holding.

(6) A person shall not, directly or indirectly, dispose of part of a qualifying holding in an investment firm or the market operator of a regulated market without having previously notified the Bank in writing of the intended size of the holding if, as a result of the disposal—

- (a) the percentage of the capital of, or the voting rights in, the investment firm or market operator that the person holds would fall to or below a prescribed percentage, or
- (b) in the case of a person that is a company or other body corporate, the investment firm or market operator would cease to be the person’s subsidiary.

Investment firms and market operators of regulated markets to provide information on certain acquisitions and disposals.

180. (1) If an investment firm or the market operator of a regulated market becomes aware of an acquisition of a qualifying holding in it, or an increase in the size of such a holding that results in the holding reaching or exceeding a prescribed percentage, the investment firm or market operator shall inform the Bank of the acquisition without delay.

(2) If an investment firm or the market operator of a regulated market becomes aware of a disposal of, or a reduction in the size of, a holding in it that results in the holding ceasing to be a qualifying holding or falling to or below a prescribed percentage, the investment firm or market operator shall inform the Bank of the disposal or reduction without delay.

Period for assessment of proposed acquisition.

181. (1) Within two working days after receiving a completed notification under paragraph (1) or (2) of Regulation 179 from a proposed acquirer, the Bank shall acknowledge receipt of the notification in writing.

(2) For the purposes of paragraph (1), a notification is completed if it gives all the information (whether in the notification itself or as an attachment) required by Regulation 179 to be provided for the assessment of the proposed acquisition concerned.

(3) Within 60 working days after the date of the written acknowledgement referred to in paragraph (1), the Bank shall carry out the assessment of the proposed acquisition concerned in accordance with Regulation 182.

(4) In its acknowledgement of receipt of a notification referred to in paragraph (1), the Bank shall inform the proposed acquirer concerned of the date on which the assessment period will end.

(5) During the assessment period in relation to a proposed acquisition, but no later than the 50th working day of that period, the Bank may request any further information necessary to complete the assessment of the acquisition. If the Bank makes such a request it shall acknowledge the receipt of any information received in response to the request.

(6) A request under paragraph (5) shall be made in writing and shall specify or describe the additional information needed.

(7) Subject to paragraph (9), if the Bank makes a request under paragraph (5) the assessment period is to be taken to be interrupted for the shorter of—

(a) the period between the date of the request and the date of the receipt of a response from the proposed acquirer concerned, and

(b) 20 working days.

(8) The Bank may request still further information for completion or clarification of information already supplied but such a further request does not interrupt the assessment period.

(9) The Bank may, by written notice to a proposed acquirer, extend the interruption referred to in paragraph (7) in relation to a proposed acquisition to 30 working days if the proposed acquirer concerned—

(a) is situated or regulated outside the Community; or

- (b) is not subject to supervision under a law of a Member State that gives effect to Directive 85/611/EEC¹, 92/49/EEC², 2002/83/EC³, 2004/39/EC⁴, 2005/68/EC⁵ or 2006/48/EC⁶.

Assessment of proposed acquisitions.

182. (1) The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of the investment firm or market operator of a regulated market concerned.

- (2) In assessing a proposed acquisition, the Bank—
- (a) shall have regard to the likely influence of the proposed acquirer concerned on the investment firm or market operator concerned, and
 - (b) shall appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition concerned against all of the following criteria:
 - (i) the reputation of the proposed acquirer;
 - (ii) the reputation and experience of the individuals who will direct the business of the investment firm or market operator as a result of the proposed acquisition;
 - (iii) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment firm or market operator;
 - (iv) whether the investment firm or market operator will be able to comply and continue to comply with the prudential requirements of existing legislation;
 - (v) whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
 - (vi) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing (within the meaning of Article 1 of Directive 2005/60/EC⁷) is being or has been

¹OJ L 375, 31.12.1985, p.3.

²OJ L 228, 11.8.1992, p. 1.

³OJ L 345, 19.12.2002, p. 1.

⁴OJ L 145, 30.4.2004, p. 1.

⁵OJ L 323, 9.12.2005, p. 1.

⁶OJ L 177, 30.6.2006, p. 1.

⁷OJ L 309, 25.11.2005, p.15.

committed or attempted, or that the proposed acquisition could increase the risk of money laundering or terrorist financing.

(3) The Bank shall not examine a proposed acquisition in terms of the economic needs of the market.

(4) Where two or more proposals to acquire or increase qualifying holdings in the same investment firm or market operator of a regulated market have been notified to the Bank, the Bank shall treat the proposed acquirers concerned in a non-discriminatory manner.

Bank to cooperate with competent authorities of other Member States in certain cases.

183. (1) In carrying out its assessment of a proposed acquisition, the Bank shall work in full consultation with the relevant competent authorities of other Member States if the proposed acquirer concerned is—

- (a) an insurance undertaking, reinsurance undertaking, credit institution, investment firm or UCITS management company, or the market operator of a regulated market, authorised by a competent authority of another Member State,
- (b) the parent undertaking of such an undertaking, institution, investment firm, company or market operator, or
- (c) a person that controls such an undertaking, institution, investment firm, company or market operator.

(2) In a case to which paragraph (1) applies, the Bank shall, without undue delay, provide any other competent authority concerned with any information that is essential or relevant for the assessment of a proposed acquisition. The Bank shall communicate to each such other competent authority all relevant information upon request and all essential information on its own initiative.

(3) A decision by the Bank, in the case of a proposed acquisition in an investment firm or market operator of a regulated market authorised by the Bank, shall indicate any views or reservations expressed by the competent authority responsible for the proposed acquirer concerned.

Bank may fix period for completion of acquisition etc.

184. (1) The Bank may fix a maximum period within which a proposed acquisition shall be completed, and may extend any period so fixed.

(2) If the Bank has given notice in relation to a proposed acquisition that the Bank does not oppose the acquisition, the Bank may impose either a condition or a requirement or both, being a condition or a

requirement that the Bank considers necessary for the proper and orderly regulation and supervision of investment firms or market operators of regulated markets and may at any time revoke or vary any condition or requirement so imposed.

Notice of Bank's decision.

184A. (1) If on completing the assessment of a proposed acquisition the Bank decides to oppose it, the Bank shall, within two working days, but before the end of the assessment period, so inform the proposed acquirer concerned in writing and give reasons for that decision.

(2) Subject to any other law, the Bank shall publish an appropriate statement of the reasons for the decision if the proposed acquirer concerned so requests. The Bank may in its discretion publish such a statement even without any request by the proposed acquirer.

(3) If the Bank does not give notice in writing within the assessment period in relation to a proposed acquisition that it opposes the acquisition, the acquisition is taken, for the purposes of any law that requires the acquisition to be approved by the Bank, to have been so approved.

Bank may oppose certain acquisitions.

185. The Bank may oppose a proposed acquisition only if—

- (a) there are reasonable grounds for doing so on the basis of the criteria in paragraphs (1) and (2) of Regulation 182, or
- (b) the information provided by the proposed acquirer in its notification under Regulation 179 is incomplete, or the proposed acquirer has not provided information in response to a request under paragraph (5) or (8) of Regulation 181.

Circumstances in which proposed acquisition not to be completed.

186. (1) The proposed acquirer in relation to a proposed acquisition may complete the acquisition only if—

- (a) the proposed acquirer has notified the Bank of the acquisition in accordance with Regulation 179,
- (b) the Bank has acknowledged that notification in accordance with Regulation 181(1), and
- (c) either—
 - (i) the assessment period in relation to the acquisition has ended and the Bank has not notified the proposed acquirer that it opposes the acquisition, or
 - (ii) the Bank has notified the proposed acquirer that it does not oppose the acquisition.

- (2) If a proposed acquirer purports to complete a proposed acquisition in contravention of paragraph (1)—
- (a) the purported acquisition is of no effect to pass title to any share or any other interest, and
 - (b) any exercise of powers based on the acquisition of the holding concerned is void.

Effect of section 201 of the Companies Act 1963.

187. If a transaction is both a proposed acquisition and a compromise or arrangement for the purposes of sections 201 and 202 of the Companies Act 1963 (No. 33 of 1963), the court shall not make an order under section 201 of that Act in relation to the transaction until after the end of the assessment period in relation to the transaction.

Investment firms and market operators of regulated markets to provide information about shareholdings, etc.

187A. An investment firm or the market operator of a regulated market shall, at times specified by the Bank and at least once a year, notify the Bank of the names of shareholders or members who have qualifying holdings and the size of each such holding.

Offence of providing false or misleading information, etc.

187B. A person who provides the Bank with information in purported compliance with a requirement of or under this Part, knowing the information to be false or misleading, commits an offence.

Powers of court in relation to certain persons with qualifying holdings.

187C. (1) Where the Bank has reason to believe that a person who has a qualifying holding in the shares of, or voting rights attaching to shares in, an investment firm or the market operator of a regulated market is exercising an influence on the direction of the affairs of the investment firm or market operator which is, or is likely to be, detrimental to the prudent and sound management of the investment firm or market operator, it shall, subject to paragraph (2), notify the person that it so believes and direct the person in writing to take specified measures to bring that influence to an end within a specified period.

(2) Before issuing a direction to a person under paragraph (1), the Bank shall notify the person of its intention to issue the direction and shall give the person an opportunity to make such representations on the matter as he or she may wish to make within a period specified by the Bank in the notification.

(3) A direction issued under paragraph (1) is an appealable decision for the purposes of Part VIIA of the Central Bank Act 1942.

(4) Where the Bank is of the opinion that a direction under paragraph (1) has not been complied with by the person concerned, or has not been complied with within the specified period of time, the Bank

may, without prejudice to any of its other functions, apply to the Court in a summary manner for any one or more of the following:

- (a) an injunction prohibiting the person concerned from issuing directions to directors or to any manager, secretary, officer or staff of, or persons engaged by, the firm or market operator and prohibiting any director, manager, secretary, officer or any other person acting on behalf of the investment firm or market operator from seeking directions from, or consulting, the person concerned, or from acting on such directions without the consent of the Bank;
- (b) an order suspending the exercise by the person concerned of any interest in or voting rights attaching to shares held by that person in the investment firm or market operator;
- (c) an order requiring the person concerned to dispose of some or all of his shareholding, interests or rights in the investment firm or market operator within a period specified by the Court;
- (d) such other order as the Court considers appropriate.

(5) Where the Court is satisfied, because of the nature or the circumstances of the case or otherwise in the interests of justice that it is desirable, the whole or any part of proceedings before it under this Regulation may be heard otherwise than in public.”;

(d) by substituting for Regulation 191(g) the following:

“(g) a decision of the Bank—

- (i) under Regulation 182 to oppose a proposed acquisition (within the meaning given by Regulation 178(2)); or
- (ii) under Regulation 184(2) to impose a condition or requirement on such an acquisition.”.

Consequential amendment of Markets in Financial Instruments and Miscellaneous Provisions Act 2007.

8. The Markets in Financial Instruments and Miscellaneous Provisions Act 2007 (No. 37 of 2007) is amended as follows:

- (a) in subsection 5(1) by substituting “European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007) (as amended by the European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009 (S.I. No. 206 of 2009)) for “European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007)”;
- (b) in paragraph 5(2)(b) by substituting “187B” for “185(2)”.



GIVEN under my Official Seal,
6 June 2009

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 transposes Directive 2007/44/EC of the European Parliament and of the Council amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector.

This Directive establishes a harmonised legal framework setting out the entire procedure to be applied by competent authorities when assessing acquisitions on prudential grounds in the EU/EEA.

The Statutory Instrument amends existing regulations transposing the various sectoral Directives mentioned above and introduces a number of changes to the current acquisition regimes for credit institutions, insurance undertakings, assurance undertakings, reinsurance undertakings, investment firms, market operators of regulated markets and UCITS management companies. The changes include:

- the introduction of a clear and transparent notification and decision-making process for competent authorities and firms;
- the reduction of the period allowed for the Central Bank and Financial Services Authority of Ireland to carry out the assessment and limits on interruptions to the assessment period where more information or clarification is required;
- clarification of the prudential criteria for the supervisory assessment; and
- introduction of a defined set of assessment criteria for the proposed acquirer.

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Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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