



STATUTORY INSTRUMENTS.

S.I. No. 490 of 2009



CREDIT INSTITUTIONS (ELIGIBLE LIABILITIES GUARANTEE)
SCHEME 2009

(Prn. A9/1779)

CREDIT INSTITUTIONS (ELIGIBLE LIABILITIES GUARANTEE)
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I, BRIAN LENIHAN, Minister for Finance, in exercise of the powers conferred on me by section 6(4) of the Credit Institutions (Financial Support) Act 2008 (No.18 of 2008), hereby make the following scheme with respect to which, pursuant to section 6(5) of that Act, a draft has been laid before each House of the Oireachtas and a resolution approving of the draft has been passed by each such House:

Citation

1. This Scheme may be cited as the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009.

Scheme

2. This Scheme constitutes a scheme for the purposes of section 6(4) of the Credit Institutions (Financial Support) Act 2008 (No. 18 of 2008). The terms of this Scheme are as set out in articles 3 and 4 and the Schedule.

Definitions

3. In this Scheme,

3.1 “Act” means the Credit Institutions (Financial Support) Act 2008 (No. 18 of 2008) (as amended);

3.2 “CIFS Scheme” means the Credit Institutions (Financial Support) Scheme 2008 (S.I. No. 411 of 2008);

3.3 “commencement date” means the date specified by the Minister as being the commencement date of the issuance period;

3.4 “covered institution” has the meaning set out in the CIFS Scheme;

3.5 “covered liabilities” has the meaning set out in the CIFS Scheme;

3.6 “eligibility criteria” means the criteria set out in paragraph 12 of the Schedule;

3.7 “eligible liability” shall be construed in accordance with paragraph 11 of the Schedule;

3.8 “eligible liability guarantee” means the guarantee by the Minister in respect of guaranteed liabilities as provided for under paragraph 8 of the Schedule;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 11th December, 2009.*

- 3.9 “eligible liability guarantee certificate” means a certificate issued to a participating institution pursuant to the rules confirming that an eligible liability (other than a deposit) is a guaranteed liability or that all eligible liabilities issued pursuant to a guaranteed programme are guaranteed liabilities;
- 3.10 “eligible liabilities guarantee scheme agreement” means an agreement entered into by a participating institution with the Minister, pursuant to which, inter alia, the participating institution agrees to be bound by the terms and conditions of this Scheme, including the rules;
- 3.11 “guaranteed liability” means:
- (a) an eligible liability in the form of a deposit (to the extent not covered by deposit protection schemes in the State (other than the CIFS Scheme) or any other jurisdiction and subject as provided for in paragraph 13 of the Schedule); and
 - (b) any other eligible liability in respect of which the scheme operator has issued an eligible liability guarantee certificate or which is issued under a guaranteed programme.
- 3.12 “guaranteed programme” means a programme for the issuance of eligible liabilities in respect of which the scheme operator has issued an eligible liability guarantee certificate;
- 3.13 “issuance period” means the period described in paragraph 12.1(b) of the Schedule;
- 3.14 “participating institution” means a credit institution or a subsidiary of a credit institution which has satisfied the criteria provided for in paragraph 3 of the Schedule;
- 3.15 “participating institution certificate” means a certificate issued to an institution pursuant to the rules confirming that it is a participating institution;
- 3.16 “programme” means any arrangement under which a participating institution issues or is capable of issuing more than one instrument (whether in physical, book entry, dematerialised or other form);
- 3.17 “rules” means the Rules of the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (as amended from time to time);
- 3.18 “Scheme” means this Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009; and
- 3.19 “scheme operator” means the National Treasury Management Agency.

CIFS Scheme

4. The CIFS Scheme shall be updated and amended pursuant to paragraphs 30, 31, 32 and 33 of the Schedule. Save as a result of those paragraphs, the scope, duration and terms of the CIFS Scheme shall be unchanged by this Scheme. All covered liabilities guaranteed under the CIFS Scheme as at the commencement date of this Scheme (and in respect of a participating institution, from the time when such participating institution becomes a participating institution under this Scheme) shall remain unconditionally and irrevocably guaranteed under and in accordance with the terms of the CIFS Scheme until 29 September 2010 or until their maturity date, whichever date is sooner.

Schedule

TERMS OF THIS SCHEME

Scope

1. The Minister makes this Scheme in the public interest because the Minister is of the opinion that:

- 1.1 there is a serious threat to the stability of credit institutions in the State generally, or there would be such a threat if he or she did not provide the financial support;
- 1.2 the provision of the financial support to a specific institution faced with financial difficulties is necessary, in the public interest, for maintaining the stability of the financial system in the State; and
- 1.3 the provision of the financial support is necessary to remedy a serious disturbance in the economy of the State.

This Scheme may apply to any participating institution where it is necessary to further the financial stability objectives in section 2(1) of the Act and in particular the maintenance of the systemic stability of the banking sector in the State.

2. The Minister makes this Scheme having regard to the following objectives in particular:

- 2.1 maintaining financial stability in the best interests of the public and the economy of the State;
- 2.2 providing participating institutions with access to a stable funding stream and longer term funding from the capital markets to ensure that they can discharge their central role in facilitating economic activity and lending to the real economy in the State;
- 2.3 ensuring compliance with the requirements of EU State aid and competition law; and
- 2.4 minimising the potential cost to the Exchequer and taxpayers.

3. A participating institution shall be a systemically important and solvent credit institution or a subsidiary of such a credit institution (including any Irish subsidiary of a credit institution authorised in another Member State) which the Minister specifies or has already specified by order under section 6(1) of the Act in the exercise of his or her powers under that Act as requiring financial support and fulfilling the objectives of the Act and which:

- 3.1 has applied to join this Scheme:

- (a) within sixty (60) calendar days of the commencement date, if it is a covered institution; or
- (b) at any time prior to or during the issuance period, if it is not a covered institution;

3.2 has executed an eligible liabilities guarantee scheme agreement pursuant to which, inter alia, the participating institution agrees to be bound by the terms and conditions of this Scheme, including the rules; and

3.3 has received a participating institution certificate in accordance with the rules.

4. Each eligible liabilities guarantee scheme agreement shall contain, inter alia, a counter indemnity pursuant to which the participating institution shall agree to reimburse the Minister for any payments made by the Minister under the eligible liability guarantee in respect of the guaranteed liabilities of that particular participating institution. The Minister may also require that a parent undertaking or any other undertaking within the participating institution's group execute such an eligible liabilities guarantee scheme agreement in respect of itself or any other undertaking within that group.

5. The Minister shall review this Scheme and the rules from time to time, at no less frequently than six-month intervals from the commencement date, to ensure that it is achieving the purposes of the Act. In such a review, the Minister shall consider, inter alia, the continued requirement for the provision of financial support under this Scheme with regard to the objectives of this Scheme and section 2(1) of the Act. The results of any such review shall be provided to the European Commission, and approval for the continued provision of financial support under this Scheme shall be sought from the European Commission every six months in accordance with EU State aid requirements. Any such review of this Scheme and the rules, shall be without prejudice to the unconditional and irrevocable nature of the eligible liability guarantee in respect of guaranteed liabilities existing at the time of the review.

Rules and scheme operator

6. The Minister may vary this Scheme and the terms and conditions of this Scheme, including the rules as set out in each eligible liabilities guarantee scheme agreement entered into by the Minister and each participating institution, to ensure they are achieving the purposes of the Act. Any variation of this Scheme and the terms and conditions of this Scheme, including the rules, shall be without prejudice to the unconditional and irrevocable nature of the eligible liability guarantee in respect of guaranteed liabilities existing at that time.

7. The Minister may delegate the operation of this Scheme to the scheme operator who shall then operate this Scheme on behalf of the Minister in accordance with this Scheme and the rules.

Description of guarantee

8. The Minister stands as guarantor of all guaranteed liabilities of a participating institution, subject to the terms and conditions of this Scheme, including the rules and the relevant eligible liabilities guarantee scheme agreement. The eligible liability guarantee given by the Minister under this Scheme shall be unconditional and irrevocable and provide for timely payment.

9. The eligible liability guarantee shall, subject to paragraph 13 below, apply in respect of deposits (to the extent not covered by deposit protection schemes in the State (other than the CIFS Scheme) or any other jurisdiction) incurred by a participating institution from the time it becomes a participating institution under this Scheme.

10. In respect of eligible liabilities other than deposits, in accordance with the rules, participating institutions may apply to the Minister for such eligible liabilities to be guaranteed by the Minister in accordance with this Scheme. A participating institution shall be permitted to incur eligible liabilities which are not guaranteed liabilities.

11. Eligible liabilities shall be any of the following liabilities:

11.1 deposits (to the extent not covered by deposit protection schemes in the State (other than the CIFS Scheme) or any other jurisdiction);

11.2 senior unsecured certificates of deposit;

11.3 senior unsecured commercial paper;

11.4 other senior unsecured bonds and notes; and

11.5 other forms of senior unsecured debt which may be specified by the Minister, consistent with EU State aid rules and the EU Commission's Banking Communication (2008/C 270/02) and subject to prior consultation with the EU Commission,

which satisfy the eligibility criteria set out in paragraph 12 below.

12. An eligible liability shall meet the following eligibility criteria:

12.1 An eligible liability:

(a) shall not have a maturity in excess of five (5) years; and

(b) must be incurred between the period from the commencement date to and including 29 September 2010, subject to the approval of the EU Commission at six (6) monthly intervals, pursuant to paragraph 5 above. The Minister may amend the issuance period by order under section 6(3B) of the Act and in order to ensure compliance with EU State aid requirements.

12.2 In addition, eligible liabilities other than deposits:

- (a) shall not contain an event of default (howsoever described or constituted) constituted by cross-default or cross-acceleration; and
- (b) shall be single currency denominated in one of euro, sterling or US dollars or any other currency approved by the Minister. An eligible liability issued under a programme may be issued in any currency permitted by the programme documentation.

13. In respect of deposits, the Minister may on notice to the public, in his or her discretion, at the request of a relevant participating institution, limit the application of the eligible liability guarantee given to that participating institution pursuant to paragraph 8 above to certain types or categories of deposits. Any such limitation shall be without prejudice to the unconditional and irrevocable nature of the eligible liability guarantee in respect of guaranteed liabilities in the form of deposits of that participating institution existing at the time such limitation becomes effective.

14. In respect of eligible liabilities other than deposits, the Minister may, in his or her sole discretion, issue one or more eligible liability guarantee certificates in respect of eligible liabilities issued during the issuance period.

15. The decision to issue an eligible liability guarantee certificate shall be at the sole discretion of the Minister. In respect of eligible liabilities other than deposits, an eligible liability guarantee certificate may be applied to stand-alone eligible liabilities or to eligible liabilities issued under programmes. In the case of programmes, participating institutions may apply for the eligible liability guarantee to apply to all eligible liabilities issued under a particular programme. An eligible liability guarantee certificate shall not be required in order for a deposit to be guaranteed under the eligible liability guarantee.

16. The Minister shall monitor the outstanding amount of guaranteed liabilities to ensure that this Scheme meets its objectives and those of the Act.

17. The Minister may, in circumstances where he or she is of the view that the objectives of the Act or this Scheme require it: (a) decide not to issue any further eligible liability guarantee certificates to a particular participating institution in respect of guaranteed liabilities other than deposits; and/or (b) require a participating institution to cease issuing eligible liabilities pursuant to a particular guaranteed programme, in each case for a period of time or for the remainder of this Scheme. Any such decision shall be without prejudice to the unconditional and irrevocable nature of the eligible liability guarantee in respect of guaranteed liabilities of that participating institution existing at the time such decision becomes effective or the eligible liability guarantee in respect of deposits of that participating institution.

18. The eligible liability guarantee shall terminate at midnight on the date falling five (5) years after the end of the issuance period.

Fee

19. A fee shall be payable to the Minister or his nominee by each participating institution in respect of each guaranteed liability, in accordance with Annex 7 of the rules and in accordance with EU State aid rules or such other rules as may be applicable. The basis for the calculation of the fee shall be advised by the Minister to the participating institutions from time to time.

20. Notwithstanding paragraph 19 above, for a three-month period from the commencement date, the fee applicable to any guaranteed liabilities of a participating institution with a maturity of one (1) month or less shall be based on an overall flat fee of 25 basis points per annum.

21. The Minister shall report to the Oireachtas Committee on Finance and the Public Service every six months on the level of fees received from each participating institution and progress in relation to the purposes of the Act and compliance with the terms and conditions of this Scheme.

Commercial conduct

22. The Minister, after consultation with the Governor and the Regulatory Authority, shall issue such direction or directions to the participating institutions which he or she is of the view are necessary to ensure that the objectives of the Act and this Scheme are met. Such directions may include directions to comply with some or all of the provisions on conduct, transparency and reporting requirements applicable to those participating institutions as covered institutions pursuant to paragraphs 24 to 52 of the schedule to the CIFS Scheme. Each participating institution shall comply with any such direction including after the CIFS Scheme has expired or if the participating institution is no longer a covered institution under the CIFS Scheme.

23. The Minister, after consultation with the Governor and the Regulatory Authority, may at any time direct a participating institution to draw up a restructuring plan to ensure compliance with the objectives of this Scheme within such timeframe as the Minister specifies. The Minister shall require a restructuring plan to be produced if a participating institution's solvency ratio falls below the minimum regulatory standards applicable to it on a material basis. A restructuring plan shall also be submitted to the Minister by a participating institution within no later than 6 months of: (a) the Minister notifying the participating institution that he or she has been called upon to make a payment under the eligible liability guarantee with respect to that participating institution; or (b) the commencement of insolvency or similar proceedings or the appointment of an insolvency official in respect of the participating institution. Any restructuring plan drawn up by a participating institution shall be required to comply with EU State aid and competition law and the need for a restructuring plan shall be communicated by the Minister to the EU Commission immediately. The Minister, in consultation with the Governor and the Regulatory Authority, may direct the participating institution to make changes to such restructuring plan and implement the plan (including any changes) within a specified timeframe as determined by him or her. A participating institution shall comply with any such direction.

24. A participating institution shall submit, or assist in the preparation of, such reports or provide such information as requested by the Minister, the scheme operator or the Regulatory Authority, which the Minister, the scheme operator or the Regulatory Authority consider are necessary to monitor compliance with the terms and conditions of this Scheme and the rules and the achievement of the purposes of the Act.

25. If in the opinion of the Minister a participating institution is in material breach of its obligations under this Scheme or the rules, the Minister may by notice in writing:

25.1 increase the fee payable under paragraphs 19 and 20 above by the participating institution; or

25.2 impose additional conditions on the participating institution; or

25.3 take such other action as the Minister deems appropriate in the context of the breach,

provided that any action taken by the Minister pursuant to this paragraph 25 shall be without prejudice to the unconditional and irrevocable nature of an eligible liability guarantee in respect of guaranteed liabilities existing at the time such action is taken.

Claims under the Eligible Liability Guarantee

26. In the event of default of a participating institution in discharging a guaranteed liability when due and payable, a demand for payment in respect of that guaranteed liability under the eligible liability guarantee shall be in writing and made in the form prescribed in the rules or such other form from time to time specified by the Minister and delivered to the addressees therein specified. A demand for payment in respect of a guaranteed liability under the eligible liability guarantee which is not made in the form prescribed in the rules or as otherwise determined by the Minister shall not be a valid claim, shall be returned and no payment shall be made under such demand. The foregoing is without prejudice to the right of any person to re-submit a demand for payment in such circumstances.

27. The Minister shall make timely payment in respect of a valid demand for payment in respect of a guaranteed liability under the eligible liability guarantee to the claimant or to a person or persons duly nominated by such claimant, including a depositor, the principal paying agent, the registrar, the trustee, the relevant instrument holder or such other appropriate person in respect of the relevant guaranteed liability.

28. Any payment pursuant to paragraph 27 above shall, notwithstanding any contrary provision in any document under or by reference to which the guaranteed liability is issued, created or constituted, for the purposes of the eligible liability guarantee be deemed to be payment to the ultimate beneficiary of the guaranteed liability, and such payment shall constitute a complete discharge by the Minister in respect of his or her liability under the eligible liability guarantee in respect of the relevant demand.

29. The Minister may, in his or her discretion, waive the requirement for a beneficiary to make a demand as described in paragraph 26 above.

CIFS Scheme

30. Dated subordinated debt (Lower Tier 2) and asset covered securities (including other forms of covered bonds) issued by a covered institution before the commencement date and which are covered liabilities shall continue to be guaranteed under the CIFS Scheme. Dated subordinated debt (Lower Tier 2) or asset covered securities (including other forms of covered bonds) issued by a covered institution on or after the commencement date shall not be guaranteed either under this Scheme or the CIFS Scheme.

31. From the time that it has become a participating institution under this Scheme:

31.1 covered liabilities in the form of senior unsecured debt incurred or contracted for by that participating institution before that time; and

31.2 any other covered liability that was incurred by that participating institution before that time,

shall remain guaranteed under the CIFS Scheme. All such covered liabilities remain fully guaranteed until 29 September 2010 (or until their maturity if earlier) under and in accordance with the terms of the CIFS Scheme.

32. A participating institution shall remain liable to pay fees under the CIFS Scheme in relation only to:

32.1 covered liabilities in the form of senior unsecured debt incurred or contracted for during the relevant period; and

32.2 any other covered liability that was incurred during the relevant period.

For the purposes of this paragraph 32, the “relevant period” for a participating institution is the period beginning at the first moment of 30 September 2008 and ending immediately before the first moment of the day on which it becomes a participating institution under this Scheme. No fee is payable under the CIFS Scheme by a participating institution in relation to any other covered liability from the time that it becomes a participating institution under this Scheme.

33. Any eligible liabilities incurred or contracted by a participating institution after becoming a participating institution under this Scheme, can only be guaranteed under and in accordance with the terms and conditions of this Scheme.

34. Save as a result of paragraphs 30, 31, 32 and 33 above, the scope, duration and terms of the CIFS Scheme shall be unchanged by this Scheme.

Governor and Regulatory Authority

35. Subject to the requirements of the Treaties governing the European Union (within the meaning of the European Union Act 2009 (No. 33 of 2009)) and the Statute of the European System of Central Banks and of the European Central Bank, and in accordance with applicable law, the Minister, the scheme operator, the Governor and the Regulatory Authority may disclose to each other any information which they receive (including information relating to a period before the participating institution availed itself of the eligible liability guarantee under this Scheme) concerning a participating institution or its subsidiaries and may use such information in respect of the performance of this Scheme or in the case of the Central Bank (including the Regulatory Authority), the performance of its statutory functions. All participating institutions shall consent to any disclosure of information and provide such information as the Minister requires to perform his or her functions under the Act and this Scheme. All such information shall be treated as confidential.

36. The Minister shall consult with the Governor and the Regulatory Authority before exercising any of his or her functions under this Scheme which relate to any of the statutory responsibilities of the Governor and the Regulatory Authority. However, decisions or actions taken by the Minister pursuant to or in relation to this Scheme are in his or her absolute discretion provided that nothing in this Scheme shall prejudice the independence of the Governor or the Regulatory Authority.



GIVEN under my Official Seal,
9 December 2009.

BRIAN LENIHAN,
Minister for Finance.

EXPANATORY NOTE

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

This scheme is made pursuant to Section 6(4) of the Credit Institutions (Financial Support) Act 2008 (the Act). This scheme provides for a guarantee for certain eligible liabilities (including deposits) of up to five years in maturity incurred by participating institutions during the period from the commencement date of this scheme to 29 September 2010 (subject to six month review and approval under EU aid rules) on certain terms and conditions.

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