

NEWS

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CREDIT INSTITUTIONS (STABILISATION) ACT 2010

This Legislation provides for the reorganisation / restructuring of Irish Retail Banking as agreed in the Joint EU IMF Programme for Ireland and confers strong powers on the Minister for Finance to direct the affairs of restructure of certain credit institutions and reorganise their assets and liabilities. A Commencement Order was made to bring the Act in to effect and the Act has a "sunset clause" in that it will cease to have effect on 31st December 2012. The scope of the Act is applicable to relevant institutions, Allied Irish Banks Plc., Bank of Ireland, Anglo Irish Bank, Building Societies – principally Irish Nationwide Building Society and EBS Building Society and Credit Unions. The Act does not affect the operation of the laws relating to netting, settlement, finality or financial collateral arrangements. The main issues which concern foreign depositors or foreign bondholders entitles the Minister to impose a Subordinated Liabilities Order in respect of relevant institutions including modifying rights to interest and the repayment of principal, events of default, timing of obligation including the facilitation of a debt for equity swap and the Subordinate Liabilities Order must be necessary for preserving or resorting the financial position of the relevant institution. The category of persons entitled to apply to Court to have any of the Orders set aside and the time in which such application must be made (5 days) and the basis on which they may do so is severely limited. A Subordinated Creditor may seek to overturn a Subordinated Liabilities Order. No proceedings may be instituted nor petitioned to wind up a Subordinated Creditor based on a failure by the institution to honour the terms of a Subordinated Liability and no Subordinated Creditor may exercise or claim any right of set off in respect of any amount owed to the Subordinated Creditor by a relevant institution i.e. the exclusion of the mutual right of set off. The Act restricts significantly the entitlement of a person both to seek judicial review of a decision under the Act and to appeal any ruling on such judicial review. Any person entitled to apply to have an Order set aside may not seek judicial review of that Order.

O'Gradys
Solicitors
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