



## New Rules for Acquiring Transactions in the Financial Sector

In line with EU-mandated requirements, Ireland has introduced new rules governing acquisitions, in whole or in part, of certain regulated financial institutions.

### Notification Requirements

The European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009 (the “Regulations”), which came into effect on 10 June 2009, implement Directive 2007/44/EC into Irish law and amend various statutory provisions in respect of requirements for notification and prudential assessment of acquisitions in the financial sector.

The new rules apply to:

- the acquisition, directly or indirectly, of a “qualifying holding” in a target entity; and
- the direct or indirect increase in a “qualifying holding” whereby the resulting holding would reach or exceed 20%, 33% or 50% of the capital of, or voting rights in, a target entity or a target entity would become the proposed acquirer’s subsidiary.

For these purposes, “qualifying holding” means 10% or more of the capital of, or voting rights in, a target entity or a holding that makes it possible to exercise a significant influence over the management of a target entity.

The new rules apply where the target entity is a credit institution, an insurance (life or non-life) undertaking, a reinsurance undertaking, an investment firm, a market operator of a regulated market or a UCITS management company.

The proposed acquirer must, using a detailed form, provide to the Financial Regulator prior notification of a proposed acquisition.

Disposal of a qualifying holding or a holding which dilutes the remaining interest to or below 20%, 33% or 50% or results in the entity ceasing to be a subsidiary of the disposer is also required to be notified in advance to the Financial Regulator.

In addition, the target entity itself, where it becomes aware of such an acquisition or disposal, must notify the Financial Regulator.

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### Assessment Period

There is a strict timeframe for the assessment of a proposed transaction:

- a complete notification must be acknowledged in writing by the Financial Regulator within two working days;
- the Financial Regulator is required to carry out the assessment of a proposed acquisition within 60 working days of the date of the written acknowledgement of the complete notification; and
- the Financial Regulator may request additional information in respect of a proposed acquisition no later than the 50th working day. If such a request is made, the assessment is taken to be interrupted by a maximum of 20 working days.

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### Assessment Criteria

The objective of the assessment of a proposed acquisition is to ensure the sound and prudent management of a target entity. In assessing a proposed acquisition, the Financial Regulator must have regard to the likely influence of the proposed acquirer on the target entity and must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against certain specified criteria, including:

- the reputation and financial soundness of the proposed acquirer; and
- the reputation and experience of the individuals who will direct the business as a result of the proposed acquisition.

## New Rules for Acquiring Transactions in the Financial Sector

### Financial Regulator's Decision

The Financial Regulator may decide to oppose or not to oppose a proposed acquisition.

If the Financial Regulator does not oppose a proposed acquisition it may set a maximum period within which the acquisition is to be completed. The Financial Regulator may also impose conditions or requirements on a proposed acquisition.

Where the Financial Regulator decides to oppose a proposed acquisition, it must, within two working days of the decision being made and before the end of the assessment period, inform the proposed acquirer in writing and give reasons for its decision. The Financial Regulator may only oppose a proposed acquisition if there are reasonable grounds for doing so on the basis of the assessment criteria. A decision to oppose a proposed acquisition may be appealed to the Irish Financial Services Appeals Tribunal.

A proposed acquirer may only complete a proposed acquisition if (i) the Financial Regulator notifies its non-opposition or (ii) the period of assessment lapses without the Financial Regulator opposing the proposed acquisition. If a proposed acquirer otherwise purports to complete a purported acquisition then title to any shares or interest does not pass and any exercise of powers based on the purported acquisition is void. There is no mechanism available whereby such a purported acquisition can be retrospectively approved or "whitewashed" by the Financial Regulator, the courts or otherwise.

### Acquiring Transaction Notification Form

The Financial Regulator has published its Acquiring Transaction Notification Form which must be used when providing the required notification to it. The form is lengthy and requires details of:

- the proposed transaction;
- the proposed acquirer;
- the rationale for the proposed acquisition;
- impact of the acquisition on the target entity; and
- how the proposed acquisition will be financed.

It is important that the form is completed and submitted to the Financial Regulator in a timely manner allowing it sufficient time for a proper assessment of the proposed acquisition.

### Financial Measures (Miscellaneous Provisions) Bill 2009

The Financial Measures (Miscellaneous Provisions) Bill 2009, which was published on 12 June 2009, will amend the Central Bank Act 1989 so that it will no longer be necessary to notify the Financial Regulator of a proposed acquisition pursuant to that Act where notification is made pursuant to the Regulations that are discussed in this briefing.

### Further information is available from:

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or from your usual contact in McCann FitzGerald.

These notes contain general information on the topics covered. Specific legal advice should always be sought on the application of the law in any particular situation.

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