IRISH GOVERNMENT SUPPORT FOR BANKS IN IRELAND

Last week the Minister for Finance, announced the decision of the Irish Government immediately to stand behind all deposits and loans made by Irish banks and building societies as a measure to instil confidence in Irish banks and building societies and prevent a run that could likely have led to destabilising the Irish banking system. This support was implemented through the Credit Institutions (Financial Support) Act 2008, the **Support Act**. Today, the Minister confirmed the extension of the Support Act to funding subsidiaries of European owned banks and building societies with a significant and broad based footprint in the Irish economy.

Characteristically, the terms of the Support Act introduced by the Minister to implement the proposed financial support have been set out in the broadest terms in favour of the Irish Government. This kind of approach is typical of the general approach to drafting of financial legislation as well as a feature of good crisis management.

The priority objective is to safeguard the banking system in Ireland and in so doing confers the widest powers on the Irish Government in its dealings with supported institutions. The powers conferred on the Minister for Finance by the Support Act are additional and are not intended to displace the powers and functions of either the Irish Central Bank or the Irish Financial Regulator.

The period of financial support to be given by the Irish Government is two years from 29 September 2008 until 29 September 2010 and is available only to credit institutions incorporated and having their head office in Ireland.

Financial support is initiated on application by an eligible institution and may take any form and manner determined by the Minister for Finance on such commercial terms as the Minister thinks fit. The ability of the Minister to decide the terms on which it will provide support to each supported credit institution allows the Irish Government to counter arguments against **moral hazard** in the banking system by imposing higher charges on a risk adjusted basis.

In practical terms, an **acquiring investor** (i.e. who acquires 10% or more in the equity capital of an Irish Credit Institution) must now obtain approval from the Minister for Finance, as well as approval from the Irish Central Bank and the Irish Financial Regulator.

In effect, the Support Act now confers a commercial veto over acquiring transactions in Irish banks and building societies in favour of the Minister for Finance. In our view, the Minister is most likely to have regard in exercising this power in a manner that he/she considers conducive to safeguarding the integrity of the Irish banking system as a priority objective; nonetheless the Support Act confers considerable influence on the Minister for Finance in respect of acquiring transactions.

The Support Act also significantly alters the merger control regime for supported institutions. The key feature of the new regime is that the Minister for Finance can approve a transaction involving a supported institution even if the Minister is of the opinion that it results in a substantial lessening of competition; if the Minister considers the transaction necessary to maintain financial stability of either the relevant institution or the financial system generally or a serious disturbance in the Irish economy.

Marco Hickey

T: +353 1 6371522
E: mhickey@lkshields.ie

" Very strong competition lawyer" Legal 500, 2008

" Very forensic and quietly persuasive" Legal 500, 2008

"Knows what he is doing" Chambers Global 2008

"Pragmatic and has a good eye for detail" Chambers Global 2008