



FINANCIAL SERVICES

Acquisitions in Financial Services: Irish Regulatory Requirements

by **Marco Hickey**

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As it becomes harder for investors to achieve investment growth in the markets, more private equity firms are seeking returns through investment in companies in the Financial Services Sector.

Acquiring a business in the Financial Services Sector

Sellers and purchasers of businesses in the Financial Services Sector should know that the Central Bank of Ireland has to be consulted where there is a transaction involving the change of ownership of shares or voting rights of a regulated firm.

Failure to obtain the approval of the Central Bank will, depending on the type of regulated firm, result in the transaction being void. Furthermore, the provision of false or misleading information to the Central Bank is a criminal offence.

The main piece of legislation related to acquiring a business in the Financial Services Sector is the European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009 (Regulations). Not all businesses in the Financial Services Sector are caught by those Regulations, but the Central Bank has evolved its practice so that any entity proposing to acquire a regulated firm must, using a detailed form, known as the Acquiring Transaction Notification Form (ATNF), provide the Central Bank with prior notification of a proposed acquisition or disposal. The Central Bank uses the information provided in the ATNF to examine whether there are prudential grounds upon which it should object to the transaction and if it ought to impose any conditions on an approval of the acquisition.

What kind of regulated business are subject to the Regulations?

- credit institutions
- insurance or assurance undertakings
- reinsurance undertakings
- investment firms or a market operators of regulated markets (MiFID firms)
- UCITS management companies

Other regulated firms such as AIFMs do not come within the remit of the Regulations, but the Central Bank has imposed similar requirements through (in the case of AIFMs) its AIF Rulebook.

When do these Regulations apply?

The Regulations apply on:

- The acquisition, directly or indirectly, of a “qualifying holding” in a regulated firm.
- 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 regulated firm, or a regulated firm 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 regulated

firm or a holding that makes it possible to exercise a “significant influence” over the management of a regulated firm.

The Regulations also apply on the disposal of a qualifying holding or a holding which results in the disposer's interest in the regulated firm falling below the thresholds above or results in the regulated firm ceasing to be a subsidiary of the disposer.

Who must file an ATNF with the Central Bank?

The proposed acquirer and disposer must file an ATNF with the Central Bank. In addition, the regulated firm itself must also file an ANTF with the Central Bank if, and/or when, it becomes aware of a proposed acquisition or disposal.

Careful management and cooperation between the parties to the transaction is crucial for the completion of the ATNF: it is likely that there will be three parties to the ATNF and that the information provided will be sensitive. The information might include specifics on the acquirer and how it is funding the transaction, as well as how the internal management of the target entity will be affected.

What other information must be provided to the Central Bank?

The information to be provided with ATNF must include the following:

- Organisation charts that illustrate the current ownership and also the proposed changes to the ownership of the target entity (entities), detailing in percentage terms the capital and voting rights, and identifying where significant influence exists.
- A completed Individual Questionnaire (IQ) together with a signed, up-to-date CV for each proposed acquirer (natural person) and each new appointee to the Board of the target entity or holding company of a target entity. Where it is proposed to appoint new persons to pre-approval control functions (PCF) (such as board members) those candidates must also be approved by the Central Bank, so Individual Questionnaires for any PCF roles should be submitted through the Central Bank's online reporting system.
- A Business Plan for the target entity, detailing the proposed acquirer's expected financial projections over the forthcoming three years, should also be submitted with the notification.
- Details on the acquirer's source of funding for the transaction.

How long with the process take?

The Central Bank has sixty days to assess an ATNF. The clock starts ticking when the Central Bank informs the applicant that it has received a complete ATNF and all of the ancillary documentation it requires. At any time before the fiftieth day the Central Bank can request further information, which has the effect of stopping the clock until the Central Bank acknowledges receipt of the additional information.

What is the result of the process?

The Central Bank can:

1. Approve the transaction with conditions.
2. Approve the transaction without imposing conditions.
3. Reject the transaction.

If the transaction is approved then the transaction can complete within the timeframe stipulated by the Central Bank. If the transaction is rejected then the only recourse is to the Irish Financial Services Appeals Tribunal.

Some Practical Scenarios

Internal group restructuring

Groups reorganise for a variety of reasons (strategic, managerial, fiscal, etc.). Changes in a holding

company structure may result in changes to the direct or indirect shareholders of a regulated firm without there being any change to the ultimate owners of the regulated firm. Proposed reorganisations should be checked before they happen to ensure that no thresholds are crossed and that an ATNF is filed, if necessary.

Groups with regulated firms in more than one EU Member State

Frequently, an Irish regulated firm is the wholly owned subsidiary of a regulated firm in another EU Member State. Where this happens the parent company of the Irish firm will be going through its own acquiring transaction process with its home regulator, while at the same time the Irish regulated firm is submitting its ATNF for assessment by the Central Bank. This duplication in the review process is unavoidable, but the Central Bank does take into account the fact that the transaction is being reviewed by another EU regulator.

Groups with shares listed on stock exchanges

Many Irish regulated firms are owned by entities whose shares are listed on a stock exchange. It is possible to trade these entities almost instantaneously. Anyone holding shares or thinking about buying a large holding in equity in the Financial Services Sector should do some due diligence before clicking on 'buy'.

What happens if I don't file an ATNF or engage with the Central Bank?

The purported acquisition is of no effect to pass title to any share or any other interest and any exercise of powers based on the acquisition of the holding concerned is void. In other words, this approval process cannot be avoided or side-stepped.

Other Approvals

It should be noted that it may be necessary to obtain other regulatory approvals in the context of an acquisition in the Financial Services Sector. Parts 3 and 3A of the Competition Act 2002 (as amended) require that mergers and acquisitions are notified to the Competition and Consumer Protection Commission (CCPC). The requisite approval needs to be obtained before the completion of the proposed transaction.

Conclusion

- Check if Central Bank approval of the transaction is required. The Central Bank maintains registers of regulated firms, and if necessary, the professional advisers can contact the Central Bank for clarification of its requirements.
- The Central Bank will expect prompt responses to its queries and that such responses would be full and complete. The Central Bank treats submissions as confidential so refusing to provide information on the grounds of commercial sensitivity will not be accepted by the Central Bank.
- Build enough time into the schedule for completion of the deal to obtain Central Bank approval for the transaction.
- Make sure that documents are drafted so that voting rights or ownership does not pass until after the Central Bank approval is issued.
- Make an allowance for obtaining Central Bank approval in the deal budget.
- Remember that other approvals may be required.

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