

Appendix

**Central Bank (Supervision and Enforcement) Bill 2011
Report Stage amendment
Third country banks**

Amendment text

The Central Bank Act 1971 is amended by inserting the following new section after section 9:

- "9A. (1) The Bank may authorise a branch of a credit institution located outside the EEA to carry on banking business in the State if:
- (a) The Bank is satisfied that the credit institution is subject, in the country where its head office is located, to authorisation and supervisory rules broadly equivalent to those in the State, and
 - (b) The Bank is satisfied that depositors with the branch will be able to avail of protection broadly equivalent to that provided by the European Communities (Deposit Guarantee Schemes) Regulations 1995, S.I. No. 168 of 1995.
- (2) The Bank shall not issue an authorisation pursuant to *subsection (1)* unless it is satisfied that it is not contrary to the public interest or the interest of good financial regulation to do so. The Bank may revoke any authorisation granted pursuant to *subsection (1)* where it considers that it would be in the interest of good financial regulation to do so.
- (3) The Bank shall ensure that a branch of a credit institution whose head office is located outside the European Economic Area is not treated in any respect more favourably than a branch of a credit institution whose head office is located within the European Economic Area.
- (4) The Bank shall regulate any branch authorised pursuant to this section in respect of conduct of business rules.
- (5) The Bank shall notify the European Commission, the European Banking Authority and the European Banking Committee of all authorisations granted under paragraph (a) of subsection (1).
- (6) Section 7(1) shall not apply to a branch authorised pursuant to this section.
- (7) An authorisation granted pursuant to subsection (1) shall be subject to such conditions, if any, as the Bank may impose and specify at the time of granting an authorisation pursuant to subsection (1).
- (8) The conditions on an authorisation referred to in subsection (7) may be amended, revoked or added to and conditions may be imposed in relation to an authorisation from time to time by the Bank.

(9) Without prejudice to the functions and powers of the Bank under any enactment or law, in particular the power under [Part 8 of the *Central Bank (Supervision and Enforcement) Act 2013*], the Bank may make regulations for the proper and effective regulation of branches authorised pursuant to subsection (1).

(10) Without prejudice to the functions and powers of the Bank under any enactment or law, the Bank may give a direction in writing to branches authorised pursuant to subsection (1) to do or refrain from doing any action or activity referred to in the direction for such period as the Bank may specify.

(11) Notwithstanding any provision of any other enactment or law, an authorisation under this section does not in any way entitle a branch to carry on any form of regulated business in the State relating to the provision of financial services, other than banking business, except in those circumstances in which branches having their head office elsewhere than in a Member State are expressly permitted in an enactment or law to engage in such other business without further authorisation.

Explanatory note

European Law

Article 6 of Directive 2006/48/EC, states that “Member States shall require credit institutions to obtain authorisation before commencing their activities”. Once authorised in one Member State, however, credit institutions are permitted to establish themselves and provide services in other Member States without further authorisation. Article 23 provides that:

“The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 25, 26(1) to (3), 28(1) and (2) and 29 to 37 either by the establishment of a branch or by way of the provision of services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.”

In addition to requirements that all credit institutions have at least two competent directors (Article 11) and separate own funds of €5 million (Article 9), Article 11(2) obliges each Member State to require that:

“(a) any credit institution which is a legal person and which, under its national law, has a registered office, shall have its head office in the same Member State as its registered office; and
(b) any other credit institution shall have its head office in the Member State which granted its authorisation and in which it actually carries on its business”.

This would appear to prevent the establishment of third country bank branches as it requires a credit institution’s head office to be in a Member State. Article 11(2), however, is superseded in that regard by Article 38 which provides as follows:

“1. Member States shall not apply to branches of credit institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community.

2. The competent authorities shall notify the Commission and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office outside the Community.

3. Without prejudice to paragraph 1, the Community may, through agreements concluded with one or more third countries, agree to apply provisions which accord to branches of a credit institution having its head office outside the Community identical treatment throughout the territory of the Community.”

Article 38 would appear to implicitly permit the establishment of third country bank branches within the EU.

Irish law

Section 7(1) of the Central Bank Act 1971 provides that:

“Subject to the provisions of this Act, a person, other than the Bank, shall not, in or outside the State, carry on banking business or hold himself out or represent himself as a banker or as carrying on banking business or on behalf of any other person accept deposits or other repayable funds from the public, unless he is the holder of a licence.”

Section 9 deals with the grant of such licences by providing as follows:

“(1) Subject to the provisions of this section, the Bank may, in its discretion, grant or refuse to grant to any person applying to it for the grant thereof a licence authorising the holder to carry on banking business.

(1A) The Bank shall not grant a licence under this section to an applicant unless the applicant satisfies the Bank that-

- (a) it is a body corporate,
- (b) its registered office and its head office are both located in the State,
- (c) it is a credit institution that is authorised for the purposes of the Recast Credit Institutions Directive,
- (d) its business as a credit institution is directed by at least 2 persons who are of good repute and have sufficient experience to direct that business, and
- (e) those persons’ direction of that business is real and not merely nominal.”

In compliance with the ‘passporting’ obligations imposed by EU law, Article 11(1) of the EC(Licensing and Supervision of Credit Institutions) Regulations 1992, S.I. No. 395 of 1992, states that:

“Any provision of the supervisory enactments or any other enactment which has the effect of requiring a credit institution to seek or to hold an authorisation from the Bank to establish or carry on business in the State shall not apply to a branch of such a credit institution if the credit institution is authorised to so carry out such business in another Member State and the authorisation is in accordance with the Recast Credit Institutions Directive.”

Currently, therefore, while credit institutions established outside the EEA can set up subsidiaries in Ireland (by seeking authorization in accordance with section 9 of the 1971 Act), they cannot establish a branch in Ireland unless they can avail of the 'passporting' provisions of EU legislation through a subsidiary authorized in another Member State. Section 9(1A)(b), which requires both the registered office and the head office of a credit institution to be situated in Ireland before a licence can be granted, is the biggest obstacle preventing third country credit institutions from establishing branches in Ireland.

The intended effect of the proposed amendment to the Central Bank (Supervision and Enforcement) Bill 2011 would be to allow credit institutions from non-EU countries to apply to the Central Bank for authorisation to operate a branch in Ireland. The authorised branch would continue to be the subject of prudential regulation in its home country, with the Central Bank responsible for regulating conduct of business in Ireland. This approach mirrors the passporting arrangements which already apply within the EU, whereby a credit institution authorised by its home country may operate a branch in other Member States subject to conduct of business regulation by the host regulator.

The amendment is to be effected by providing for the insertion of a new section 9A of the Central Bank Act 1971.