

Dispute Resolution Department

Does a Foreign Financial Institution need a Banking License from the Central Bank

Does a foreign financial institution need a banking licence from the Central Bank of Ireland

Introduction

The judgment of the President of the High Court in *Danske Bank A/S .v. Declan Crowe and Marian Crowe [2015] IEHC 567* raised the question of whether a non-Irish Bank already licensed in another European member state was entitled to undertake banking business in Ireland without the necessity for a banking licence from the Central Bank of Ireland.

Background

In 2007, the Minister for Finance approved the transfer of the assets and liabilities in National Irish Bank Limited to the Danske Bank A/S pursuant to the *Central Bank Act 1971 (Approval of Scheme of National Irish Bank Limited and Danske Bank A/S) Order 2007*.

Proceedings

The Bank issued proceedings against the defendants claiming a sum in excess of €1.2M.

Defendants' legal argument

During the course of the proceedings, the defendants raised the technical objection that the bank has never held a banking licence in this country, as issued by the Central Bank of Ireland and the bank was therefore barred from maintaining the proceedings against the defendants.

The defendants referred to Irish legislation (section 33 of the *Central Bank Act 1971*) ("the Central Bank Act") which required a bank to hold a banking licence issued by the Central Bank of Ireland when carrying on banking business in this jurisdiction. The defendants argued that as the plaintiff had never held such a licence, they could not maintain their application for judgment.

Plaintiff's response

The plaintiff referred to European legislation (*European Communities (Licensing and Supervision of Credit Institutions) Regulation 1992*) ("European Regulation") and claimed that the European Regulation superseded and expanded the Central Bank Act and permitted any credit institution, already licensed in another European member state to undertake banking business in Ireland without the necessity for a banking licence from the Central Bank of Ireland. As Danske Bank A/S held a banking licence in Denmark they argued that there was no requirement for the bank to obtain a further banking licence in Ireland.

Judgment

The court awarded judgment in favour of the bank and stated that it was satisfied that the European Regulations superseded the Central Bank Act. The court accepted the banks submissions that it was no longer a requirement for each bank that was a party to a scheme of transfer of banking business to hold a licence issued by the Central Bank of Ireland in order to come within the scope of the Central Bank Act.

Conclusion

This is an interesting judgment as the defendants staked their entire defence on what they believed was the plaintiff's failure to hold a banking licence from the Central Bank of Ireland. With the recent

influx of foreign financial institutions, this judgment will offer useful clarity with regard to assets and liabilities once held by domestic institutions but now transferred to foreign financial institutions.

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