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'The Regulation of Banking in Ireland: Protecting MSMEs'

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Irish Banking Regulation in Context: The Troika Bail Out of 2010

- In November 2010, the Government of Ireland sought relief from 'The Troika' (The IMF, ECB and EU Commission) in the form of a €67.5 billion bailout (The total figure required was €113 billion, the remaining sum of €45.5 billion being borrowed from the National Pension Fund, the UK, Denmark and Sweden). This is equivalent to borrowing the sum of €23,299 on behalf of every person in the state
- Prior to seeking the bailout, the Government of Ireland had unsuccessfully tried to stabilise the banking sector by allocating 32.5% of GDP to it, and by implementing a programme of bank nationalisation.

The Origin of Ireland's Financial Crisis: 'A Plain Vanilla Property Bubble'

- Reigling & Watson (2010) have attributed Ireland's banking collapse to a 'plain vanilla property bubble' compounded by an excessive concentration of lending to the commercial property sector.
- Kelly (2009) has also identified a boom in bank lending as a major contributory factor to Ireland's banking crisis.
- A further contributory factor was the adoption of a neo-liberal, non-interventionist, 'light-touch' approach to banking regulation (Neary, 2008).

NAMA: An Irish Solution to an Irish Problem

- In April 2009, the Government of Ireland established the National Assets Management Agency (NAMA) to remove toxic property assets from the banks' books.
- NAMA CEO Brendan McDonagh acknowledged that the 'vast majority' (over 90%) over NAMA's portfolio of bad banking debts had been acquired by Private Equity Funds, such as US based Blackstone and Cerberus Capital Management (whereas two thirds of NAMA's portfolio was comprised of Irish assets, the majority of the remainder consisted of UK, Northern Ireland based assets).

'Project Eagle': The Sale of NAMA's Northern Ireland Portfolio to Cerberus

- The sale of NAMA's Northern Ireland portfolio has given rise to controversy in both Ireland and the UK, in particular, Northern Ireland (NI). Known as Project Eagle, the sale of the NI portfolio to Cerberus for €1.24 billion in 2014 has been the subject of accusations of fraud and corruption.
- According to the Comptroller & Auditor General, NAMA incurred a net loss of £478 million from NI debtor asset sales in 2014, most of which related to Project Eagle.
- Project Eagle is currently the subject of investigation by the National Crime Agency (UK), the Finance Committee of the NI Assembly (currently suspended), Police Service of NI, the Garda Bureau of Fraud Investigation and the NI Law Society. Individuals associated with Project Eagle have also been the subject of complaints to the Standards in Public Office Commission (Ire) and the Gardai.
- The Public Accounts Committee (Ire) has recently requested an extension of time for the publication of its Report into NAMA's handling of the sale of its NI portfolio.

Irish Banking Regulation Today

- In response to the 2008 financial crisis, the EU Commission announced that it would pursue banking union through the adoption of a Single Supervisory Mechanism (SSM) and a Single Resolution Mechanism (SRM). The SSM primary regulators are the ECB along with the national supervisory authorities of member states (MSs). The SRM provides a centralised system to respond to failing banks within the EU to ensure such failures result in minimum cost to taxpayers and to the real economy.
- Following the adoption of the Single Supervisory Mechanism (SSM) in 2014, the ECB has primary regulatory responsibility for the regulation of Irish banks, working in partnership with the Central Bank of Ireland (CBI) which is Ireland's National Competent Authority for the purposes of banking regulation.

Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015

- 'The 2015 Regs' provide for the regulation of lending by regulated entities to Micro, Small and Medium-Sized Enterprises (MSMEs). They govern the information which must be provided to borrowers and prospective borrowers, seeking to ensure transparency in credit agreements, particularly regarding to the sale of credit, credit applications, securities, arrears, complaints and policies for borrowers in distress.
- The aim of The 2015 Regs was to ensure that MSME borrowers continue to be protected by regulated safeguards due to the fact they borrowed from a regulated lender. All such loans must be serviced, managed and administrated by a regulated credit servicing firm (CSF)
- Regulated entities: These are regulated financial service providers, defined as institutions which provide/offer to provide credit/from which a borrower may seek credit; enter into/offer to enter into a credit facility agreement with a borrower; propose/prepare to enter into a credit agreement with a borrower; provide/offer to provide an alternative credit arrangement to a borrower or engage in credit servicing activities.

Consumer Protection (Regulation of Credit Servicing Firms) Act 2018

- 'The 2018 Act' provides for the registration and regulation of credit service providers, including those who hold legal title to mortgages and SME loans.
- The 2018 Act extends the definition of 'credit servicing' to include the holding of legal title to credit, and the managing and administering of such credit, including by the determination of overall strategy for the management and administration of a portfolio. (NAMA is excluded from the statutory definition of Credit Servicing Firm! - s 1 (a) (ii) (a))
- The 2018 Act defines a 'credit agreement owner' as anyone who holds legal title; determines overall strategy for the management and administration of credit agreements, determines interest rates payable; maintains control over key decisions or takes steps to enable another to service/enforce the agreement. Credit agreement owners are deemed to be engaging in credit servicing (s 1 (b) (2)).
- The 2018 Act provides that the CBI may impose conditions or requirements as appropriate on persons who are authorised to engage in business as a CSF, to ensure they are regulated in an orderly and proper manner. The CBI may direct a person not to carry out such business for a period not exceeding 3 months (s 2 (2)(a), (b)).

UK and Ireland: A Comparison of Banking Regulation

- The unique concentration of banking services amongst a few main providers in Ireland makes comparison with other jurisdictions difficult
- The role of the ECB as primary regulator in Ireland sets it apart from the UK. Essentially, Ireland does not have effective control of its banking regulation
- Ireland's financial crisis of 2008, which culminated in the Troika bailout of 2010 is the background against which its current regulatory framework should be considered

Should the UK replicate the 2015 Regs & the 2018 Act?

- The 2015 Regs: Adoption of the 2015 Regs in the UK may provide additional protection for MSMEs whose loan agreements are assigned to Private Equity funds. However it is difficult to assess how many loans, of what total value, would benefit from such protection in the UK.
- The 2018 Act: Possibly motivated more by political manoeuvring than sound business economics. Of limited value in terms of impact.

How can the Relationship between Business and Banks be Improved?

- Regulation occurs via both formal and informal mechanisms. In order to understand how best to improve the relationship between banks and businesses (or between businesses and Private Equity Funds) in the UK, it is necessary to have a first-rate understanding of how these two groups of *social actors* interact.
- A broad, socio-legal, *anthropological* perspective may be most valuable in seeking to better understand this relationship. Flood's (2013) work on the relationship between bankers and lawyers is of relevance here.

References I

- BBC (2016) 'Nama's investigations and inquiries - how many are there?' Available at: <https://www.bbc.co.uk/news/uk-northern-ireland-37363998> accessed 26 February 2019
- Bob Penn, Bob (2018) 'Banking regulation in the UK: overview' Allen & Overy ([https://uk.practicallaw.thomsonreuters.com/w-008-0211?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-008-0211?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)) Accessed 26 February 2019.
- Beashel, Joe (2018) 'Banking regulation in Ireland: overview' Matheson. ([https://uk.practicallaw.thomsonreuters.com/w-006-9529?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-006-9529?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)) Accessed 26 February 2019
- Collins, Eugene F (2019) Consumer Protection (Regulation of Credit Servicing Firms) Act 2018 ([http://www.efc.ie/images/uploads/Consumer_Protection_\(REGULATION_OF_CREDIT_SERVICING_FIRMS\)_Act_2018.pdf](http://www.efc.ie/images/uploads/Consumer_Protection_(REGULATION_OF_CREDIT_SERVICING_FIRMS)_Act_2018.pdf)) accessed 25 February 2019
- Cox, Angus (2018) 'So, a vulture fund bought your mortgage, what's next?' RTE 7 August 2018 (<https://www.rte.ie/news/your-money/2018/0418/955498-so-a-vulture-fund-bought-your-mortgage-whats-next/>) accessed 25 February 2019
- European Central Bank (2019) 'Banking Supervision: The Single Supervisory Mechanism' <https://www.bankingsupervision.europa.eu/about/thessm/html/index.en.html> accessed 16 February 2019
- European Central Bank (2019) 'Banking Supervision: Banking Union' <https://www.bankingsupervision.europa.eu/about/bankingunion/html/index.en.html> accessed 25 February 2019

References II

- Flood J (2013) What do Lawyers Do? An Ethnography of a Corporate Law Firm. Quid Pro Books, New Orleans.
- Kelly M (2009) The Irish Credit Bubble' UCD Centre for Economic Research Working Paper Series 2009 WP09/32
- Neary P, 'IFSC 2.0 Conference - The Next Phase, UCD, 5th March 2008
- Penn, Bob (2018) 'Banking regulation in the UK: overview' Allen & Overy ([https://uk.practicallaw.thomsonreuters.com/w-008-0211?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-008-0211?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)) Accessed 26 February 2019.
- People Before Profit (2018) 'Vulture Fund Cerberus Behind Collapse Of Social Housing Projects' 20 October 2019 <http://www.pbp.ie/vulture-fund-cerberus-behind-collapse-of-social-housing-projects/> accessed 26 February 2019
- Regling K & Watson M (2010) Preliminary Report on the Sources of Ireland's Banking Crisis (Dublin: Government Publications Office, 2010)
- The Journal (2014) 'Nearly all the assets from Nama's €17.5 billion in fire sales have gone to offshore buyers' [journal.ie](http://www.thejournal.ie/nama-sales-offshore-1740291-Oct2014/) 22nd October 2014 <https://www.thejournal.ie/nama-sales-offshore-1740291-Oct2014/> accessed 26 February 2019

Some Publications ...

- Pyaneandee C (2018) (Hosier M, ed) 'International Disability Law: A Practical Approach to the United Nations Convention on the Rights of Persons with Disabilities' (Routledge 26 June 2018). Details available at: <https://www.routledge.com/International-Disability-Law-A-Practical-Approach-to-the-United-Nations/Pyaneandee/p/book/9781138593473>
- Hosier M (2017) 'Lawyers of the Celtic Phoenix' Chapter, in Boon A (ed) (2017) 'International Perspectives on the Regulation of Lawyers and Legal Services' (Hart, December 2017).
- Hosier M and Hoolash B (2017) 'The Effect of Methodological Variations on University Rankings and Associated Decision-Making Policy' Studies in Higher Education (September 2017).
- Hosier M (2015) 'The Legal Profession in Troikaland: Before and After the Irish Bailout' International Journal of the Legal Profession 22 (2) 193 – 211. Abstract available at: <http://www.tandfonline.com/doi/abs/10.1080/09695958.2015.1047839>
- Hosier M (2015) 'Submission to the Committee for Finance and Personnel of the Northern Ireland Assembly on the Legal Complaints and Regulation Bill 2013'. Available at: <http://www.niassembly.gov.uk/globalassets/documents/finance/legislation/legal-complaints-and-regulation-bill/dr-maeve-hosier>
- Hosier M (2014) 'The Legal Services Regulation Bill 2011: Changes and Challenges for the Legal Profession' Irish Business Law Review 1 (2)
- Hosier M (2014) 'The Regulation of the Legal Profession in Ireland' (Quid Pro Books, 2014) ISBN 978-1-61027-257-5 (pbk), ISBN 978-1-61027-259-9 (ebk). Details available at: <http://quidprolaw.com/?p=5396>

Impactful Research which Meets Your Needs

- In October 2016, my research on the impact of methodological variations on global university rankings was cited at the Committee Stage of the Higher Education and Research Bill ([https://hansard.parliament.uk/commons/2016-10-11/debates/6499f957-9daf-4fbe-b732-3368af565dbc/HigherEducationAnd-ResearchBill\(NinthSitting\)](https://hansard.parliament.uk/commons/2016-10-11/debates/6499f957-9daf-4fbe-b732-3368af565dbc/HigherEducationAnd-ResearchBill(NinthSitting)))
- In September 2015, my submission to the Northern Ireland Assembly on the merits of proposed legislative changes for the handling of legal complaints led to the recent amendment of the Assembly's draft legislation, in accordance with my recommendations.
- In 2014, my doctoral research on the regulation of the legal profession informed the debate in Ireland on the subject, having been cited by the Minister for Justice in the course of a Parliamentary debate on legislative changes in the sector (<http://oireachtasdebates.oireachtas.ie/debates%20authoring/Debates-WebPack.nsf/committeetakes/JUS2014021200007>).