

Q&A - IBRC liquidation 6 Feb 2013

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IBRC customers who have queries regarding their deposits can contact the helpdesk at 1800 303632

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1) What is happening?

The Bill passed today provides that joint Special Liquidators will be appointed to IBRC. When this is done the Central Bank will become the economic owner of the Promissory Notes. Apart from the wider economic considerations concerning IBRC, it makes very little sense at this point to retain two State organisations performing broadly similar functions. It is now appropriate that the remaining assets of IBRC which, following an independent valuation exercise and if not bought by third parties, will be sold to NAMA as part of the Special Liquidators' winding up of IBRC.

2) What will the liquidation of IBRC mean?

The liquidation of IBRC will involve winding up the institution and the funding structures put in place for it. Special Liquidators will be appointed to manage the winding-up of IBRC. As a key part of their appointment, the Special Liquidators will oversee a valuation and sales process for the assets of IBRC which may result in NAMA acquiring the bulk of the remaining IBRC assets. This will result in the housing and management of the remaining loans (that are not sold by the Special Liquidators to third parties) in one entity (NAMA) and a more efficient use of taxpayers' money. Furthermore, it will improve the health of the Irish banking sector by putting in place a longer-term solution for a significant part of the structural shortfall of bank financing that has emerged through the banking crisis.

There will be some upfront costs of the liquidation of IBRC. It is expected that claims will be made under the Deposit Guarantee Scheme ('DGS') and the Eligible Liabilities Guarantee ('ELG') scheme. Additionally, there could be costs arising under the Derivatives Guarantee. Claims under the guarantee schemes could cost the State between €0.9bn and €1.1bn based on current best estimates. There may be a further cost if the Minister for Finance is required to make up any potential difference between the consideration to be paid by NAMA for the IBRC debt it acquires from the Central Bank and the amount realised by the Special Liquidators on the sale of IBRC assets available to repay that debt. If, after an independent valuation exercise, the value of the assets sold by the Special Liquidators is not sufficient to compensate NAMA for the amount it paid for the net IBRC debt owed to the Central Bank, the Minister for Finance will be required to reimburse NAMA for the shortfall. If on the other hand, the value of the assets is sufficient to repay that debt in full, the Special Liquidators will retain surplus assets for the benefit of other unsecured creditors, including possibly refunding the State for payments made under guarantees.

3) What is the role of the Special Liquidators?

Like other liquidation processes, the Special Liquidators replace the Board and management in IBRC and will wind up its business and operations in the interests of its creditors. The Special Liquidators will, in general, have the same duties, powers and responsibilities as a normal liquidator except that they are appointed by the Minister for Finance rather than by the courts and they are obliged to comply with the instructions given to him by the Minister and act in the interests of the taxpayer under the provisions of the IBRC Act. As is common in liquidations, all employees of IBRC are made redundant but the Special Liquidators may rehire sufficient employees to assist in the liquidation on such terms and for such duration as he may determine. As a key part of their appointment, the Special Liquidators will oversee a valuation and sales process for the assets of IBRC which may result in NAMA acquiring the bulk of IBRC's assets.

Background

The IBRC debt to the Central Bank which will be purchased by NAMA is secured by a floating charge on the assets of IBRC. This floating charge, together with the benefit of a Ministerial Guarantee, will be transferred to NAMA. The IBRC assets will be valued by an independent professional advisor(s) appointed by the Special Liquidators. Any person that satisfies the criteria for bidders determined by the Special Liquidators may also bid for the assets in a sales process to be conducted by the Special Liquidators. The remaining assets will be transferred to NAMA in repayment of IBRC's debt to NAMA.

4) What will happen to the deposits in IBRC?

Eligible deposits are covered by the joint safeguards of the DGS and/or the ELG scheme. Eligible deposits of up to €100,000 for an individual and €200,000 for individuals with a joint account in IBRC are protected by the DGS. Eligible deposits above this limit are guaranteed under the ELG. Today's decisions will have no impact on the customers of any of the operating banks in the Irish banking system. Furthermore, the vast majority of IBRC's original deposit book moved to AIB and Permanent TSB in the first half of 2011 and these deposits are also unaffected by this announcement.

Background:

A significant majority of the remaining deposits in IBRC are held by depositors who have connected loans with IBRC. The status of these deposits will be considered by the Special Liquidators in terms of the contractual arrangements applying to them. To the extent that they are legally entitled to do so and having regard to the arrangement in place between IBRC and customers on their date of appointment, the Special Liquidators will set-off all existing deposits held as security for related lending against amounts due to the bank.

If a deposit is not eligible under either the DGS or ELG scheme the depositor will be treated in the same way as other unsecured creditors.

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5) What is the claims procedure for deposits?

Deposit Guarantee Scheme ('DGS')

There is no need to make a claim for compensation under the DGS. The Special Liquidators will provide details of eligible depositors and account balances to the Central Bank. Payments will be made by cheque within 20 working days of the appointment of the Special Liquidators and will be sent to depositors at the address held by IBRC.

In a limited number of circumstances, additional information may be required to confirm eligibility. In this instance, a formal claim is required. Depositors will be contacted but may also download relevant forms from the Central Bank website www.centralbank.ie

The Central Bank will keep customers of IBRC informed by providing regular updates on its website.

Eligible Liabilities Guarantee ('ELG') scheme

To the degree that customers are fully covered by the DGS no action is required as the Central Bank will be sending out cheques for amounts up to the first €100,000 of eligible deposits. To the extent that a deposit is not covered by the DGS and is covered by the ELG scheme, a claim must be submitted to the NTMA. Claim forms can be found on the NTMA website at www.ntma.ie

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6) How does this affect mortgage account holders / borrowers?

The contractual terms and conditions of customer mortgages and other borrowings will not change as a result of the appointment of the Special Liquidators and all debts owing to IBRC will remain due and enforceable. It is important that, to avoid breaches of their obligations, customers continue to make payments on their loans and otherwise honour the contractual obligations of their borrowings.

Background

All borrowers' loans including personal mortgages will initially be managed by the Special Liquidators. The terms and conditions of mortgage account holders will not change as a result of the liquidation and all debts owing to IBRC will remain due and enforceable. Portfolios of assets including the mortgage book will be identified by the Special Liquidators and these will be independently valued before being sold.

Third parties, including loan counterparties and other financial institutions, will be given the opportunity to bid for specific portfolios as part of an open and transparent sales process. If acceptable bids equal to or in excess of the independent valuation are not obtained, these portfolios will be sold to NAMA at the value determined by the independent valuation exercise until the IBRC debt to NAMA is repaid. This will ensure that the long-term value of the assets is received and a fire sale of assets will not occur. NAMA will not be required to acquire credit facilities advanced to current or former employees of IBRC (or any security or litigation relating to this category of loans). An assessment of this category of loans will be made by the Special Liquidators and a decision made in relation to how best to maximise the value of those loans.

Customers who have queries regarding their borrowings can contact the help desk at 1800 303632

7) What will this mean for employees of IBRC?

Unfortunately today's announcement means that employees of IBRC will be made redundant with immediate effect.

However, the Special Liquidators will be entitled to re-hire employees, on such terms and for such duration as they may determine, for the purposes of the liquidation process. It is expected that the majority of staff will be retained for this purpose. Some staff may be offered positions by NAMA or other purchasers of assets but that will be a matter for the Special Liquidators, NAMA and the other asset purchasers. As is common in liquidations, the Transfer of Undertakings (Protection of Employment) regulations will not apply to the liquidation of IBRC.

Background/redundancy entitlements

Employees will rank as preferential creditors ahead of the floating charge holders and unsecured creditors in respect of certain amounts owing to them on a winding-up, including accrued wages and salaries, holiday pay, sick pay, statutory redundancy, pensions contributions and claims for damages arising from accidents. Listed below are the instances in which the employees rank as preferential creditors.

- 1) All wages and salaries in respect of services rendered to IBRC during the four month period prior to the winding-up – but subject to a maximum claim of EUR3,174.35 per employee;
- 2) All accrued holiday remuneration up to the date of the winding-up;
- 3) All sums due in respect of sick leave up to the date of the winding-up;
- 4) All contributions due from IBRC in respect of any superannuation benefits scheme (including a PRSA), and any contributions deducted from employees, as at the date of the winding-up;
- 5) Statutory redundancy lump sums, less the amount of any rebate due from the Department of Jobs, Enterprise and Innovation;
- 6) Any compensation awarded by the Employee Appeals Tribunal in respect of pay in lieu of notice and in respect of any claim for unfair dismissal; and
- 7) Any compensation due under the Workmen's Compensation Acts in respect of damages and costs in relation to an accident occurring in the course of employment prior to the relevant date (save to the extent insured).

In the normal course, liquidators do not make payments in respect of preferential claims owing to employees until all assets have been realised, which in the case of IBRC is envisaged take approximately six months. In those circumstances, the employees will be able to make a claim in respect of (a) their statutory redundancy entitlements from the Social Insurance Fund and (b) arrears of pay, sick pay, holiday pay or pay in lieu of statutory notice (limited to EUR600 per week up to a maximum of eight weeks) from the Insolvency Payments Scheme. The Minister for Social

Protection will rank as a preferential creditor of IBRC in respect of any payments made to employees of IBRC from the Social Insurance Fund or the Insolvency Payments Scheme.

The Special Liquidators will assist any employee in respect of the processing of claims under the Insolvency Payments Scheme or the Social Insurance Fund. Further information in relation to the Social Insurance Fund and the Insolvency Payments Scheme is available on the Department for Social Protection's website.

8) What happens to unsecured creditors?

The normal Companies Acts' priorities will apply in this liquidation process. The proceeds from the disposal of IBRC's assets will be used to repay creditors in accordance with normal Companies Acts priorities, and consequently preferred creditors will be paid first and then the debt which NAMA will have purchased from the Central Bank will be paid. If there are proceeds available after repayment in full of the NAMA debt, these proceeds will be applied to remaining unsecured creditors. This will include the Minister for Finance to the extent that he has made payments under guarantee schemes.

Background

Amounts owing by IBRC to contractors, trade creditors and other service providers are unsecured debts which will rank for repayment after the IBRC debt bought by NAMA from the Central Bank has been repaid in full. It is unclear whether IBRC will have sufficient assets to repay unsecured creditors in whole or in part. The Special Liquidators will have the power to come to separate arrangements with any creditor that is considered crucial to maintaining value or vital in providing services for the day-to-day operations of IBRC. Where IBRC has issued bonds, guarantees or letters of credit to third parties at the request of customers under ancillary facilities arrangements, amounts owing under those bonds, guarantees or letters of credit may become due and owing to the relevant third parties upon the winding-up order in respect of IBRC. Unless covered by the ELG scheme, bonds, guarantees or letters of credit rank equally with debts to contractors and other service providers as unsecured debt.

9) Court cases

a) Cases taken by IBRC

IBRC's claims against third parties, whether or not the subject of Court proceedings, will be unaffected by the winding up. The Special Liquidators will have the power to continue to manage any IBRC claims that currently exist and will have the ability to assert further claims where they arise. Alternatively, the Special Liquidators could sell IBRC's interest in any such claims to a third party, or to NAMA, in which case the acquirer will be entitled to continue those proceedings.

b) Cases taken against IBRC

The effect of the IBRC Act is to place an immediate stay on all proceedings against IBRC that are before the courts (including counter-claims which do not give rise to a set-off). Claimants who have issued proceedings against IBRC will now have to pursue and prove their debt to the Special Liquidators. Such claimants will rank as unsecured creditors in the liquidation. If a claimant is also a debtor of IBRC, and that debt is sold to NAMA or a third party buyer, such buyer

will acquire the debt subject to that claimant's pre-existing valid and enforceable claims and counterclaims that give rise to an enforceable right of set-off against IBRC.

c) Future cases against IBRC

Any claims that have not been issued against IBRC by the date of the winding-up may only be made with the leave of the Court. As would be the case with any liquidation, claimants who issue proceedings against IBRC in respect of claims that arose prior to the winding-up will be unsecured creditors.

10) What will happen to ongoing regulatory investigations?

These investigations are unaffected by the liquidation of IBRC and the IBRC Act specifically provides that the issue of a special liquidation order under the Act does not affect any proceedings, investigations or disciplinary enforcement actions taken by the Director of Public Prosecutions, the Director of Corporate Enforcement etc.

11) What does this mean for IBRC?

The Bill passed today means that IBRC will be liquidated with immediate effect. The Special Liquidators will replace the Board and management of IBRC and will undertake the liquidation. Apart from the wider economic considerations concerning IBRC, it makes very little sense at this point to retain two State organisations, NAMA and IBRC, performing broadly similar functions. It is therefore appropriate that the remaining assets of IBRC (i.e., those which are not bought by third parties (following an independent valuation exercise) or those that are not retained by the Central Bank) are transferred to NAMA as part of the Special Liquidators' winding-up of IBRC.

Once all of the assets of IBRC have been realised and the proceeds have been distributed to the creditors in accordance with the priorities set out in the Companies Acts, the Special Liquidators will wind-down the business of IBRC and in due course IBRC will be dissolved and will cease to exist.

Background

The legislation passed means that Special Liquidators will be appointed to IBRC with immediate effect to take over from the Board and management of IBRC and to wind up its business and operations. After certain assets are retained by the Central Bank (e.g. Promissory Notes and NAMA bonds), the remaining net debt will be purchased by NAMA in a way that ensures that there is no capital loss for the Central Bank. Eligible depositors and bondholders will be repaid under the Deposit Guarantee Scheme and the Eligible Liabilities Guarantee scheme. As is common in liquidations, employees of IBRC will be made redundant with immediate effect but the Special Liquidators may rehire sufficient employees on such terms and for such duration as they may determine to assist in the liquidation. It is expected that the majority of staff shall be retained for this purpose.

The remaining IBRC debt to the Central Bank, after certain assets are retained by the Central Bank, which will be purchased by NAMA is secured by a floating charge on the assets of IBRC and a Ministerial guarantee.

Following a valuation process, the Special Liquidators will sell the assets of IBRC to third parties at or above their valuation and failing that, transfer them to NAMA at the independent valuation in repayment of IBRC's debt to NAMA. The proceeds of the loan sales will be used to repay preferred creditors under the Companies Acts first and following that, the IBRC debt to NAMA. To the extent that there are proceeds available after repayment of the IBRC debt to NAMA, these proceeds will be applied to remaining unsecured creditors. This will include the Minister for Finance to the extent that he has made payments under guarantee schemes. To the extent that there are insufficient assets of IBRC available to repay the debt to NAMA, the Minister will be required to make good this difference.

The remaining subsidiaries will be wound up or sold, whichever the Special Liquidators determine will realise greater value and once all of its obligations are settled, IBRC will cease to exist. Upon the appointment of Special Liquidators for the winding-up of IBRC, the board of directors will no longer have a role.

The directors of IBRC (including any former director of IBRC that ceased to hold that office within the 12-month period prior to the appointment of the Special Liquidators) will continue to owe obligations to IBRC (for example, with respect to the preparation of a statement of assets and liabilities for IBRC).

12) What will this mean for other banks?

It is important to note that this proposal is entirely separate from all other banks including AIB, Bank of Ireland and Permanent TSB and their customers, who are not impacted by these decisions.

13) Why is emergency legislation being used?

For financial stability reasons, it is critical to the orderly winding-up of IBRC that immediate certainty is provided to all stakeholders of IBRC in respect of its future. Financial stability is the reason why the potential for the winding-up of IBRC could not be signalled in advance.

14) Does this mean a debt write off for individuals?

No. All debts to IBRC remain due and payable in accordance with their terms. All loan payments should continue to be made. The Special Liquidators will be in direct contact with IBRC borrowers to notify them of any potential changes to payment details as a result of the liquidation. One of the objectives of the Special Liquidators will be to achieve the best valuation of these assets through the liquidation, which includes continuing to collect on all outstanding debts. They are also charged with achieving the best possible price for all other assets of IBRC as part of the liquidation.