

THE HIGH COURT

2011 No 239 MCA

**TUESDAY THE 26th DAY OF JULY 2011
BEFORE MR. JUSTICE McGOVERN**

**IN THE MATTER OF IRISH LIFE AND PERMANENT GROUP HOLDINGS PLC
AND
IN THE MATTER OF IRISH LIFE AND PERMANENT PLC
AND
IN THE MATTER OF THE CREDIT INSTITUTIONS (STABILISATION) ACT, 2010
AND
IN THE MATTER OF AN APPLICATION BY THE MINISTER FOR FINANCE FOR A
DIRECTION ORDER IN RELATION TO IRISH LIFE AND PERMANENT GROUP
HOLDINGS PLC AND IRISH LIFE AND PERMANENT PLC
PURSUANT TO SECTION 9 OF THE CREDIT INSTITUTIONS (STABILISATION) ACT
2010 AND ANCILLARY ORDERS**

The ex parte application of the Minister for Finance (the "Applicant" or the "Minister" as appropriate) for a Direction Order pursuant to Section 9 of the Credit Institutions (Stabilisation) Act 2010 (the "Act") along with related reliefs including an application under Section 60 of the Act for restrictions with regard to the disclosure in open Court, publication or reporting of material which is commercially sensitive coming before this Honourable Court this day in the presence of Counsel for the Applicant.

And on the application by Counsel for the Applicant for an Order prohibiting publication of the fact of the within application pending the making of a Direction Order pursuant to Section 9 of the Act

And on hearing said Counsel for the Applicant
The Court doth so Order

Whereas on reading the Affidavit of John Moran sworn the 25th day of July 2011 and the exhibits thereto and on hearing what was offered by Counsel for the Applicant

IT IS ORDERED that the Applicant be granted the following reliefs:

- A. A Direction Order pursuant to Section 9 of the Act in the directions and terms as provided at (B) and (C) hereinafter.
- B. In connection with the investment by the Minister of up to EUR3,800,000,000 in ILPGH, including (i) the subscription of EUR2,300,000,000 for 36,249,014,972 ordinary shares of EUR0.031 each in the capital of ILPGH at a price of EUR0.06345 per share (the "Subscription Shares") and (ii) the subscription of EUR400,000,000 in ILP for 10.00 per cent. Contingent Capital Tier 2 Notes due 2016 (the "Contingent Capital Notes", with the subscription for the Subscription Shares and the subscription for the Contingent Capital Notes hereinafter referred to as the "Principal State Investment") –
- 1.1 subject only to the Minister exercising the powers referred to in paragraph (C) hereinafter for the purposes therein set out, ILPGH shall as soon as possible after the making of the within Direction Order, and by no later than 29 July 2011:
- (a) increase its authorised ordinary share capital by EUR22,400,000,000 by the creation of 70,000,000,000 new ordinary shares of EUR0.32 each, ranking pari passu in all respects with its existing ordinary shares of EUR0.32;
 - (b) alter the issued and authorised but unissued share capital of ILPGH by:
 - (i) the sub-division of each issued and unissued ordinary share of EUR0.32 into 320 ordinary shares of EUR0.001 each (the "Sub-Division");
 - (ii) consolidating and redesignating 289 ordinary shares of EUR0.001 each out of every 320 ordinary shares arising from the Sub-Division into one deferred share of EUR0.289, having the rights and being subject to the restrictions attaching to the deferred shares as are set out in the articles of association to be adopted pursuant to paragraph B.1.1(c) hereinafter; and
 - (iii) consolidating 31 ordinary shares of EUR0.001 each out of every 320 ordinary shares arising from the Sub-Division into one ordinary share of EUR0.031, carrying the same rights and obligations as the ordinary

shares of EUR0.32 each in the capital of ILPGH existing on the date hereof, save as to nominal value;

- (c) adopt the articles of association attached to the Proposed Direction Order at Appendix 1 as the new articles of association of ILPGH in substitution for and to the exclusion of the existing articles of association of ILPGH;
- (d) delete clause 5 of its memorandum of association and replace it with the following new clause 5:

“The share capital of the Company is €22,828,000,000 divided into 70,400,000,000 Ordinary Shares of €0.031 each, 300,000,000 Non-Cumulative Preference Shares of €1 each and 70,400,000,000 Deferred Shares of €0.289 each, STG£100,000,000 divided into 100,000,000 Non-Cumulative Preference Shares of STG£1 each and US\$200,000,000 divided into 200,000,000 Non-Cumulative Preference Shares of US\$1 each.”;

- (e) enter into the placing agreement with the Minister, the National Treasury Management Agency and ILP in the form set out in Appendix 2 of the Proposed Direction Order (the “Placing Agreement”);
- (f) allot and issue the Subscription Shares to the Minister in consideration of the subscription by the Minister of EUR2,300,000,000 for such shares in accordance with the Placing Agreement, enter the Minister in the register of members of ILPGH as a shareholder of ILPGH in respect of the Subscription Shares and issue the Minister with a share certificate for the Subscription Shares;
- (g) discharge its liability to pay on the Closing Date (as defined in the Placing Agreement) commissions, fees and expenses pursuant to clause 4 of the Placing Agreement in connection with the subscription by the Minister for the Subscription Shares and the Contingent Capital Notes (the “Subscription Fees”) to the extent that any such Subscription Fees are not discharged by ILP;
- (h) immediately following completion of the subscription referred to in paragraph B.1.1(f) hereinbefore, pay an amount equal to EUR2,300,000,000 less the Subscription Fees being discharged by ILPGH (such amount being the “Downward Payment Amount”) in such a manner (whether involving a share

subscription or otherwise, subject in each case to the prior written approval of the NTMA) that will ensure that the Core Tier 1 Capital of ILP is increased by the Downward Payment Amount;

- (i) enter into the note purchase agreement between ILPGH, ILP and the Minister relating to the Contingent Capital Notes in the form set out in Appendix 3 of the Proposed Direction Order (the "Note Purchase Agreement");
- (j) enter into the agency deed between ILPGH, ILP and Citibank N.A. relating to the Contingent Capital Notes in the form set out in Appendix 4 of the Proposed Direction Order (the "Agency Deed");
- (k) execute and deliver the deed of covenant relating to the Contingent Capital Notes in the form set out in Appendix 5 of the Proposed Direction Order (the "Deed of Covenant");

1.2 ILP shall as soon as possible after the making of the within Direction Order, and by no later than 29 July 2011:

- (a) enter into the Placing Agreement;
- (b) enter into the Note Purchase Agreement;
- (c) execute and deliver the Agency Deed; and
- (d) issue the Contingent Capital Notes in favour of the Minister in consideration of the subscription by the Minister of EUR400,000,000 for the Contingent Capital Notes in accordance with the Note Purchase Agreement, execute the certificate by which the Contingent Capital Notes will be represented and take all steps necessary to procure the Minister being entered as the holder of EUR400,000,000 in principal amount of Capital Contingency Notes in the register to be maintained in respect of the Capital Contingency Notes pursuant to the terms of the Agency Agreement; and
- (e) discharge its liability to pay on the Closing Date (as defined in the Placing Agreement) the Subscription Fees to the extent that any such Subscription Fees are not discharged by ILPGH;

1.3 subject only to the Minister exercising the powers referred to in paragraph (C) hereinafter for the purposes therein set out, ILPGH shall as soon as possible after the steps set out in paragraph B.1.1 hereinbefore have been completed:

- (a) make an application to the Irish Stock Exchange (the "ISE") and the UK Listing Authority respectively for the cancellation of the admission of ILPGH's ordinary shares to their respective Official Lists and to the ISE and the London Stock Exchange respectively for the cancellation of the admission to trading of ILPGH's ordinary shares from their respective regulated markets for listed securities and, if necessary to achieve any such cancellation, in any such application to request a derogation from the requirement to seek shareholder consent for this cancellation;
- (b) make an application to the ISE for the admission of ILPGH's ordinary shares to the Enterprise Securities Market regulated by the ISE and, if necessary to achieve such admission, in such application to request a derogation from the requirement to seek shareholder consent for this admission;
- (c) prepare and register the following documents and forms with the Registrar of Companies in Dublin (accompanied by a copy of the Act and a document specifically drawing the attention of the Registrar to the provisions of Sections 47 and 53 of the Act) to evidence certain of the matters carried out pursuant to the within Direction Order:
 - (i) a Form G2 notifying any authorisation by the Minister of an increase in authorised share capital of ILPGH, and/or any other matter constituting an ordinary resolution of ILPGH under the Companies Acts;
 - (ii) a Form G1 notifying any adoption of memorandum and articles of association of ILPGH, accompanied by a copy of the new memorandum and articles of association, and/or any other matter constituting a special resolution of ILPGH under the Companies Acts;
 - (iii) a Form B4 notifying any increase in the authorised share capital of ILPGH;
 - (iv) a Form B5 notifying any issue of shares by ILPGH; and

- (v) any other form or document that the Minister considers appropriate for the purpose of notifying matters carried out pursuant to the within Direction Order;
- 1.4 ILPGH and/or ILP (as applicable) shall discharge its liability to pay any commissions, fees and expenses payable pursuant to clause 4 of the Placing Agreement in addition to the Subscription Fees as and when such amounts (if any) are due to be discharged in accordance with the terms of the Placing Agreement;
- 1.5 on the subscription at any time by the Minister pursuant to clause 3.6 of the Placing Agreement of up to EUR1,100,000,000 (plus any additional amount necessary to enable ILPGH and/or ILP (as applicable) to discharge its liability to pay any commissions, fees and expenses payable pursuant to clause 4 of the Placing Agreement), ILPGH shall issue ordinary shares of EUR0.031 each in the capital of ILPGH to the Minister at a price of EUR0.06345 per ordinary share; and
- 1.6 on the conversion of any Contingent Capital Notes pursuant to the terms and conditions of the Contingent Capital Notes, ILPGH shall issue ordinary shares in the capital of ILPGH to the then holder or holders of the Contingent Capital Notes on the date of such conversion, such number of ordinary shares to be issued to be calculated in accordance with the terms and conditions of the Contingent Capital Notes;
- 1.7 ILPGH shall perform its obligations under the Placing Agreement, the Note Purchase Agreement, the Agency Deed and the Deed of Covenant which are to be entered into by ILPGH pursuant to this Direction Order;
- 1.8 ILP shall perform its obligations under the Placing Agreement, the Note Purchase Agreement and the Agency Deed which are to be entered into by ILP pursuant to this Direction Order; and
- 1.9 ILPGH shall immediately:
 - (a) notwithstanding the ordinary resolution of the shareholders passed at an extraordinary general meeting of ILPGH held on 20 July 2011, a copy of which is set out in Appendix 6 of the Proposed Direction Order (“Resolution 5”), not proceed with (or, to the extent applicable, shall immediately revoke) any appointment of additional financial and legal advisers to ILPGH to review and report on alternative capitalisation options, and to seek investors in accordance with the terms of Resolution 5; and

(b) notwithstanding the ordinary resolution of the shareholders passed at an extraordinary general meeting of ILPGH held on 20 July 2011, a copy of which is set out in Appendix 7 of the Proposed Direction Order (“Resolution 6”), not proceed with (or, to the extent applicable, shall immediately withdraw) any request to the Central Bank of Ireland, the Minister, the European Union authorities, the International Monetary Fund and the European Central Bank to extend the 31 July 2011 capitalisation deadline for ILPGH in accordance with the terms of Resolution 6.

C. An Order pursuant to Section 47 of the Act providing and declaring that all the powers, or any specified power, exercisable by the members of ILPGH or ILP in a general meeting under the Companies Acts, any other enactment, ILPGH’s or ILP’s memorandum of association or articles of association, any agreement or any rule or other instrument, shall instead be exercised by the Minister for the purpose of the directions at paragraph (B) hereinbefore and that such an exercise shall be taken for all purposes to have been that of the members.

D. An Order pursuant to Section 9(8) of the Act providing that the reliefs granted at paragraphs 1.1, 1.2, 1.3(a), 1.3(b) and 1.9 of (B) and at paragraph (C) hereinbefore shall have immediate effect from the making hereof.

E. A Declaration pursuant to Section 9(3) of the Act that the within Direction Order and each and every part of it insofar as it is addressed to and is made in respect of ILP is a reorganisation measure for the purposes of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions (the “CIWUD Directive”), and the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2011 (S.I. No. 48 of 2011) (the “2011 Regulations”) and accordingly, it is intended that the within Direction Order insofar as it is addressed to and is made in respect of ILP should have full effect in all applicable jurisdictions (including, without limitation, the United Kingdom of Great Britain and Northern Ireland) in accordance with the CIWUD Directive, the 2011 Regulations and the Act, including, in particular, but not limited to section 61 of the Act.

F. An Order pursuant to Section 60 of the Act directing that there be no disclosure in open Court, publication or reporting of those parts of paragraphs 6, 27, 28, 30, 31, 32, 38, 67, 72, 77, 79, 87, 94, 103, 118, 120, 122, 123, 125, 129 and 132 of the Affidavit of John Moran sworn on 25th day of July 2011 or that part of clause 2 of Appendix 2 of Exhibit “JM1” to said Affidavit or that part of clause 2 of part (ii) of Exhibit “JM15” to said Affidavit or cer-

tain parts of Exhibit "JM25" to said Affidavit, all of which parts not to be disclosed are highlighted in yellow in said Affidavit and Exhibits thereto.

- G. An Order pursuant to Regulation 9 of the European Communities (Reorganisation and Winding-Up of Credit Institutions) Regulations 2011 directing that the Courts Service arrange for publication forthwith of an extract of this Order.

MARY KELLY
REGISTRAR
26TH JULY 2011

David J. O'Hagan
Chief State Solicitor
Solicitor for the Applicant