



STATUTORY INSTRUMENTS.

**S.I. No. 127 of 2019**



EUROPEAN UNION (BANK RECOVERY AND RESOLUTION)  
REGULATIONS 2019

S.I. No. 127 of 2019

European Union (Bank Recovery and Resolution) Regulations 2019

I, PASCHAL DONOHOE, Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup> and of giving further effect to Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, hereby make the following regulations:

**Citation**

1. These Regulations may be cited as the European Union (Bank Recovery and Resolution) Regulations 2019.
2. The European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No. 289 of 2015) and these Regulations may be cited together as the European Union (Bank Recovery and Resolution) Regulations 2015 and 2019 and shall be construed together as one.

**Amendment of European Union (Bank Recovery and Resolution) Regulations 2015**

3. The European Union (Bank Recovery and Resolution) Regulations 2015 are amended-
  - (a) in Regulation 3, by the substitution of the following definition for the definition of “Bank Recovery and Resolution Directive”:  
“ ‘Bank Recovery and Resolution Directive’ means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup> establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>;”,
  - (b) in Regulation 81(4)(f), by the substitution of “section 1428A” for “section 621(2) or (2A)”,
  - (c) in Regulation 87(1)(e), by the substitution of “section 1428A” for “section 621(2) and (2A)”,
  - (d) in Regulation 94(1)(b), by the substitution of “section 1428A” for “section 621(2) or (2A)”,and

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<sup>1</sup> OJ No. L 345, 27.12.2017, p. 96.

<sup>2</sup> OJ No. L 173, 12.06.2014, p. 190.

- (e) in Regulation 174(1), by the insertion of “, or in accordance with section 33AR or 33AV of the Act of 1942,” after “following an inquiry under section 33AO of the Act of 1942”.

#### **Amendment of Companies Act 2014**

4. The Companies Act 2014 (No. 38 of 2014) is amended -
- (a) in section 93, by the deletion of paragraph (5),
- (b) in section 191 -
- (i) in subsection (2)(b), by the substitution of “subsection (3)” for “subsection (3) or (3A)”, and
- (ii) by the deletion of subsection (3A),
- (c) in section 621-
- (i) in subsection (2) -
- (I) by the substitution of “employees.” for “employees,” in paragraph (g), and
- (II) by the deletion of paragraphs (h) and (i),
- (ii) by the deletion of subsections (2A) and (2B), and
- (iii) in subsection (7), by the substitution of “The foregoing” for “Subject to subsection (2A), the foregoing”,
- (d) in section 622(6), by the substitution of “section 621(2)” for “section 621(2) and (2A)”,
- (e) in section 1021, by the insertion of the following subsection after subsection (12):
- “(13) Section 93 and this section shall not have effect in respect of a company to which the resolution tools, powers or mechanisms provided for in Part 4 of the Bank Recovery and Resolution Regulations are applied or exercised.”,
- (f) in Part 16, by the insertion of the following Chapter after Chapter 7:

“Chapter 7A

*Winding Up*

#### **Application of Chapter 7 of Part 11 to DACs**

**998A.** For the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>, the application of certain provisions of Chapter 7 of Part 11 is

modified, in relation to a DAC, as provided for in Chapter 1A of Part 25.”,

- (g) in Part 17, by the insertion of the following Chapter after Chapter 12:

“Chapter 12A

*Winding Up*

**Application of Chapter 7 of Part 11 to PLCs**

**1122A.** For the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>, the application of certain provisions of Chapter 7 of Part 11 is modified, in relation to a PLC, as provided for in Chapter 1A of Part 25.”,

- (h) in Part 19, by the insertion of the following Chapter after Chapter 7:

“Chapter 7A

*Winding Up*

**Application of Chapter 7 of Part 11 to unlimited companies**

**1280A.** For the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>, the application of certain provisions of Chapter 7 of Part 11 is modified, in relation to an unlimited company, as provided for in Chapter 1A of Part 25.”,

- (i) in section 1328(1), by the insertion of “and, for the purposes of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>, Chapter 1A of Part 25” after “in this section”,

and

- (j) in Part 25, by the insertion of the following Chapter after Chapter 1:

## “Chapter 1A

*Provisions concerning bank recovery and resolution***Priority of payments in a winding up**

**1428A.** (1) In a winding up of a company that is an entity referred to in Regulation 2(1)(a) to (i) of the Bank Recovery and Resolution Regulations -

- (a) the following shall be paid in priority to the claims of all unsecured creditors, and shall rank equally amongst themselves and with the debts referred to in section 621(2) -
  - (i) the part of eligible deposits up to the coverage level in Article 6 of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014<sup>3</sup>, and
  - (ii) deposit guarantee schemes that are subrogating to the rights and obligations of the holder or holders of the part of the eligible deposits referred to in subparagraph (i),
- (b) the following shall be paid in priority to the claims of all unsecured creditors, but after those referred to in paragraph (a), and shall rank equally amongst themselves -
  - (i) the part of eligible deposits from natural persons and micro, small and medium-sized enterprises that exceeds the coverage level in Article 6 of Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014<sup>3</sup>, and
  - (ii) deposits that would be eligible deposits from natural persons and micro, small and medium-sized enterprises were they not made through branches located outside the European Union of institutions

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<sup>3</sup> OJ No. L 173, 12.06.2014, p. 149.

established within the European Union,

- (c) subject to subsection (3), the claims of all unsecured creditors, after those referred to in paragraphs (a) and (b), shall be paid in priority to the claims of unsecured creditors resulting from debt instruments where -
  - (i) the original contractual maturity of the debt instrument is not less than one year,
  - (ii) subject to subsection (2), the debt instrument contains no embedded derivatives and is not itself a derivative, and
  - (iii) the relevant contractual documentation and, where applicable, the prospectus related to the issuance of the debt instrument expressly refers to the lower ranking of claims in accordance with this paragraph,and
- (d) the claims of all unsecured creditors resulting from debt instruments that meet the conditions set out in paragraph (c) shall be paid in priority to claims resulting from the items listed in subparagraphs (a) to (d) of Regulation 87(1) of the Bank Recovery and Resolution Regulations.

(2) For the purposes of subparagraph (c)(ii) of subsection (1), debt instruments -

- (a) with variable interest derived from a broadly used reference rate, or
- (b) with the principal, repayment and interest denominated in the same currency that is not the domestic currency of the issuer,

shall not be considered to be debt instruments containing embedded derivatives solely because of those features.

(3) Notwithstanding the amendment of this Act by Regulation 4 of the European Union (Bank Recovery and Resolution) Regulations 2019 (S.I. No.127 of 2019), this Act shall apply in respect of claims resulting from debt instruments

issued before the coming into operation of those Regulations as if it had not been so amended.

(4) In this section -

‘company’, in addition to the meaning assigned to that expression by section 2(1), includes an unregistered company referred to in section 1326;

‘debt instruments’ means bonds and other forms of transferable debt and instruments creating or acknowledging a debt;

‘deposit guarantee scheme’ has the meaning given to it in the Bank Recovery and Resolution Regulations;

‘eligible deposits’ has the meaning given to it in the Bank Recovery and Resolution Regulations and shall include a share account held with a building society or credit union;

‘institution’ has the meaning given to it in the Bank Recovery and Resolution Regulations;

‘micro, small and medium-sized enterprises’ has the meaning given to it in the Bank Recovery and Resolution Regulations.

(5) A word or expression that is used in this section and is also used in Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014<sup>2</sup>, as amended by Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017<sup>1</sup>, shall have, in this section, the same meaning as it has in that Directive.”.



GIVEN under my Official Seal,  
29 March 2019

PASCHAL DONOHOE,  
Minister for Finance.

EXPLANATORY NOTE

*(This note is not part of the Instrument and does not purport to be a legal interpretation.)*

These Regulations transpose into domestic law the provisions of Directive (EU) 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy (the “Bank Creditor Hierarchy Directive”). The Directive seeks to partially harmonise the bank insolvency creditor hierarchy in insolvency law.

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