



STATUTORY INSTRUMENTS.

S.I. No. 447 of 2023

CENTRAL BANK ACT 1971 (APPROVAL OF SCHEME OF TRANSFER
BETWEEN KBC BANK IRELAND PUBLIC LIMITED COMPANY AND
KBC BANK N.V.) ORDER 2023

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BETWEEN KBC BANK IRELAND PUBLIC LIMITED COMPANY AND
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WHEREAS:

KBC Bank Ireland Public Limited Company (in this Preamble referred to as the transferor) is a public limited company incorporated in the State on 14 February 1973 with registered number 40537 and having its registered office at Sandwith Street, Dublin 2, D02 X489, Ireland, carrying on banking business in the State from its registered office at Sandwith Street, Dublin 2, D02 X489, Ireland and being the holder of a licence in relation thereto granted to it by the Central Bank of Ireland under section 9 of the Central Bank Act 1971 (No. 24 of 1971); and

KBC Bank N.V. (in this Preamble referred to as the transferee) is a limited liability company incorporated under the law of Belgium and is the transferor's Holding Company, carrying on banking business in the State through a branch registered with the Companies Registration Office under Part 21 of the Companies Act 2014 (No. 38 of 2014) with registered number 904213 and having a registered office at Sandwith Street, Dublin 2, D02 X489, Ireland and being the holder of the licence in relation thereto deemed granted to it by the European Central Bank, under the law of Belgium, and operating in the State on the basis of a branch passport pursuant to Title V of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹ on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

AND WHEREAS on 25 May 2023 the transferor and the transferee submitted to the Minister for Finance for the Minister's approval a scheme made by the transferor and the transferee on 25 May 2023 to transfer certain business to which the licence of the transferor relates and other related assets, rights, undertakings, liabilities and obligations of the transferor.

NOW I, MICHAEL MCGRATH, Minister for Finance, after consultation with the Central Bank of Ireland and, in respect of Articles 4 to 11, at the request of the transferor and the transferee, in exercise of the powers conferred on me by section 33 of the Central Bank Act 1971 (No. 24 of 1971) hereby order as follows:

¹ OJ No. L 176, 27.06.2013, p. 338

1. This Order may be cited as the Central Bank Act 1971 (Approval of Scheme of Transfer between KBC Bank Ireland Public Limited Company and KBC Bank N.V.) Order 2023.

2. (1) In this Order –

“Agreement” means the transfer agreement dated 25 May 2023 made between the Parties for the transfer of the Transferring Assets and the Transferring Liabilities from the transferor to the transferee;

“Business” means the business, undertakings, assets, rights, liabilities and obligations of the transferor in the State to which the Licence relates;

“Central Bank” means the Central Bank of Ireland;

“Completion” means completion of the sale of the Transferring Assets and the Transferring Liabilities pursuant to the Agreement, the Scheme and this Order;

“Excluded Assets” means the assets set out in Part 1 of Schedule 1 to the Agreement;

“Excluded Liabilities” means the liabilities set out in Part 2 of Schedule 1 to the Agreement;

“Governmental Authority” means any Irish or foreign national or supranational, federal, state, local or other governmental or regulatory authority, agency, commission, department, board, body, bureau, arbitrator, arbitration panel, or other authority in any jurisdiction, including tribunals, courts and other judicial and arbitral bodies, or any competition, antitrust, foreign investment review or supervisory body, central bank or other governmental, trade or regulatory agency or body, securities exchange, stock exchange or any self-regulatory body or authority, including any instrumentality or entity designed to act for or on behalf of the foregoing, in each case, in any jurisdiction (provided it has jurisdiction over the applicable person or its activities or property);

“Holding Company” means, in relation to a company or body corporate, any other company or body corporate in respect of which it is a Subsidiary;

“Licence” means the licence granted to the transferor under section 9 of the Central Bank Act 1971 (No. 24 of 1971);

“Parties” means the transferor and the transferee (each a “Party”);

“Scheme” means the scheme dated 25 May 2023 relating to the transfer of the part of the Business comprising the Transferring Assets and the Transferring Liabilities submitted to the Minister for Finance by the transferor and the transferee for the Minister’s approval pursuant to section 33 of the Central Bank Act 1971 and (insofar as it relates to the Scheme) the Agreement;

“Subsidiary” has the meaning given to that term by section 7 of the Companies Act 2014 (No. 38 of 2014);

“Transaction Documents” has the meaning given to that term in the Agreement;

“Transfer Date” means 1 December 2023 or such other date (if any) as may be agreed by the Parties as the effective date of the transfer of the Transferring Assets and the Transferring Liabilities pursuant to the Scheme, the Agreement and this Order, provided always that this shall not be less than two months after the date of this Order;

“transferee” means KBC Bank N.V. operating in the State on the basis of a branch passport pursuant to Title V of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013¹ on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

“transferor” means KBC Bank Ireland Public Limited Company;

“Transferring Assets” has the meaning given to that term in the Agreement;

“Transferring Liabilities” has the meaning given to that term in the Agreement.

(2) Unless the context otherwise requires, any reference in this Order to:

- (a) a “regulation” means -
 - (i) any regulation, rule or equivalent (having the force of law in the State) of any governmental, intra governmental or supranational body, agency, department or other authority or organisation, or
 - (ii) any regulation, rule, code of conduct or equivalent issued by the Central Bank (whether or not having the force of law in the State) to the extent applicable to the transferor;
- (b) a provision of law or regulation is a reference to that provision or regulation as amended, extended or re-enacted prior to the Transfer Date;
- (c) this Order or any other order, scheme, agreement, document or instrument is a reference to this Order or, as the case may be, that order, scheme, agreement, document or instrument as amended, restated, supplemented or novated;
- (d) a “Party”, the “transferor” or the “transferee” shall be construed so as to include its successors, permitted assigns and permitted transferees pursuant to the Agreement and (in the case of the transferor), any person that assumes any of the transferor’s obligations or liabilities under the Transaction Documents pursuant to clause 20.2(c) of the Agreement;
- (e) a “person” includes any individual, group, body corporate, corporation, partnership, limited liability company, joint venture, association, trust, consortium, unincorporated organisation or other entity (whether or not having a separate legal personality) or any Governmental Authority or any department, agency or political subdivision of any Governmental Authority;

- (f) a “company” shall be construed so as to include any company, corporation or body corporate, wherever and however incorporated or established;
- (g) “assets” includes present and future properties, revenues, powers, rights and remedies of every description (including those that are, or that are expressed to be, personal in nature); and
- (h) “liabilities” includes present and future liabilities, costs, expenses, penalties, duties, obligations and claims of every description (including those that are, or that are expressed to be, personal in nature), in each case whether known or unknown, whether suspected or unsuspected, whether direct or indirect, whether accrued or unaccrued, whether actual, prospective, contingent, potential, alleged or other and whether or not attributable to one cause or event and however and whenever arising and in whatever jurisdiction.

(3) This Order shall enure for the benefit of the transferor and the transferee and their respective successors, permitted assigns and permitted transferees.

(4) A reference in this Order to a statute or statutory provision includes any subordinate legislation made under it, including all regulations, bye-laws, orders and codes made thereunder.

(5) The rule known as the *ejusdem generis* rule shall not apply to this Order and accordingly general words introduced by the word “other”, “include”, or “including” or any similar expression shall not be given a restrictive meaning because of the fact that they are preceded by words indicating a particular class of acts, matters or things and shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

3. The Scheme is approved.

4. (1) On and from the Transfer Date, all books and other documents which would, before the Transfer Date, have been evidence in respect of any matter for or against the transferor relating to the Transferring Assets and the Transferring Liabilities shall be admitted in evidence in respect of the same matter for or against the transferee.

(2) On and from the Transfer Date:

- (a) the Bankers’ Books Evidence Acts 1879 to 1989 shall continue to apply with respect to any books of the transferor transferred to the transferee in connection with the Transferring Assets or the Transferring Liabilities and to entries made in those books before the Transfer Date as if such books were the books of the transferee; and
- (b) for the purpose of section 4 of the Bankers’ Books Evidence Act 1879 (42 & 43 Vic., c.11), any book referred to in subparagraph

(a) shall, on being proved to be in the custody of the transferee, be deemed to be one of the ordinary books of the transferee and any entry therein purporting to have been made before the Transfer Date shall be deemed to have been made in the ordinary course of business.

(3) In this Article, “books” has the same meaning as “bankers’ books” in the Bankers’ Books Evidence Acts 1879 to 1989.

5. On and from the Transfer Date, the transferee shall be entitled to remuneration and to act as trustee, executor, guardian or in any other fiduciary capacity (as the case may be) at the same scale of fees and upon and subject to the same terms and conditions as were applicable to the transferor immediately before the Transfer Date.

6. On the Transfer Date, subject to the terms and conditions of the Agreement, the Transferring Assets and the Transferring Liabilities shall be transferred and conveyed to and shall be assumed by (and shall be deemed for all purposes to have been transferred or conveyed to, and to have been assumed by) the transferee and shall become, as and from the Transfer Date, assets, property (including choses in action), chattels, rights, contracts, agreements, instruments, arrangements, liabilities or obligations (as the case may be) of the transferee and accordingly where such transfer and conveyance or assumption relates to any interest that another person has in the matters so transferred, conveyed or assumed:

- (a) that other person shall continue to have that interest which shall be exercisable by or against the transferee in replacement of the transferor in the same manner as was exercisable by or against the transferor before Completion including in any proceedings, arbitration, claim, hearing, litigation, suit, administrative or other proceeding (in each case of whatever kind or nature, whether in law, in equity, contractual, regulatory or otherwise); and
- (b) the transferee, together with each and every other such person shall be bound by the terms of, or attaching to, such assets, property, chattels, rights, contracts, agreements, instruments, arrangements, liabilities or obligations in every way as if the transferee were a party to those terms in substitution of the transferor.

7. On and from the Transfer Date, a reference (express or implied) to the transferor in any contract, agreement, deed, document or instrument made, issued or entered into in the course of or incidental to or relating to the Transferring Assets or the Transferring Liabilities before Completion shall be read and construed as a reference to the transferee, provided that this Article shall not apply or have effect in relation to the Transaction Documents.

8. Any instruction, order, direction, mandate or authority given to or binding on the transferor in the course of or incidental to or relating to the Transferring Assets or the Transferring Liabilities and subsisting immediately before Completion shall be deemed on and from Completion to have been given to and binding on the transferee.

9. Any instruction, order, direction, mandate or authority given to any third party in relation to or for the benefit of the transferor in relation to payments to any account comprising part of the Transferring Assets or the Transferring Liabilities and subsisting immediately before Completion shall be deemed on and following Completion to have been given to such third party in relation to or for the benefit of the transferee.

10. Articles 4 to 9 are subject to the following:

- (a) no Excluded Asset or Excluded Liability held or owned by the transferor, or, as applicable, owed or incurred by the transferor to any other person in force or effect on the Transfer Date, shall be so transferred or assumed or deemed to be so transferred or assumed and each such Excluded Asset or Excluded Liability shall remain held or owned or, as applicable, shall remain owing or incurred by the transferor and, where applicable, in full force and effect in accordance with its terms between the transferor and the relevant other person; and
- (b) no provision of this Order shall take effect in relation to any Excluded Asset or Excluded Liability held or owned by the transferor, or, as applicable, owed or incurred by the transferor to any other person in force or effect on the Transfer Date.

11. All parts of the Transferring Assets and the Transferring Liabilities agreed to be transferred and conveyed to or assumed by the transferee pursuant to the Agreement and not otherwise transferred and conveyed to or assumed by the transferee pursuant to the other provisions of this Order or the Central Bank Act 1971 shall be transferred and conveyed to or, as the case may be, shall be assumed by (or shall be deemed to have been transferred and conveyed to or, as the case may be, to have been assumed by) the transferee on the Transfer Date in accordance with the provisions of the Agreement.

GIVEN under my Official Seal,
13 September, 2023.

MICHAEL MCGRATH,
Minister for Finance.

L.S.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
E-mail: publications@opw.ie

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