Central Bank of Ireland

Contributory Negligence

CORMAC BUTLER

Contributory Negligence KBC Bank v BCM Hanby Wallace

Extract from Paragraph 104

The appellant is entitled to argue for the obligation of the bank, in accordance with the **European Communities (Licensing and Supervision of Credit Institutions) Regulations 1992 (S.I. No. 395 of 1992)** (as amended), to manage its businesses "in accordance with sound administrative and accounting principles and [to] put in place and maintain internal control and reporting arrangements and procedures to ensure that the business is so managed."

Role of Central Bank of Ireland (as regulator)

VIA FACSIMILE

Sir David Tweedie
Chairman
International Accounting Standards Board
1st Floor
30 Cannon Street
London EC4M 6XH

23 August 2001

Dear Sir David,

The Basel Committee on Banking Supervision appreciates the opportunity to comment on the proposed IAS 39 Implementation Guidance (Batch VI). You will find our comments in the enclosed note. The Basel Committee's Task Force on Accounting Issues, chaired by Dr Arnold Schilder, Executive Director of De Nederlandsche Bank, has prepared the note.

Dr Schilder has drawn my attention to the topic of accounting for impairment of financial assets (question 112-3), an area of obvious importance to the Basel Committee. Specifically, as discussed more fully in the note, the suggested approach may cause a delay in loss recognition, resulting in an overstatement of assets and a reduction in the relevance of the accounting measure; as well as being contrary to a measurement methodology already accepted in major countries.

Concealed Accounting

The suggested answer is not consistent with the standard

The suggested answer lacks consistency with the standard itself, especially after the changes made in October 2000 to IAS 39.112. As a starting point, it may be useful to repeat the measurement principle as outlined in IAS 39.109:

"An enterprise should assess at each balance sheet date whether there is any objective evidence that a financial asset or group of assets may be impaired. If any such evidence exists, the enterprise should estimate the recoverable amount of that asset or group of assets…"

Further, IAS 39.112, as revised, now states (the changes made October 2000 are marked below):

> "Impairment and uncollectability are ~~may be~~ measured and recognised individually for financial assets that are individually significant. Impairment and uncollectability may be measured and recognised on a portfolio basis for a group of similar financial assets that are not individually identified as impaired."

Flawed Accounting

Ireland central bank governor Patrick Honohan attacks 'unsatisfactory' accounting rules for banks

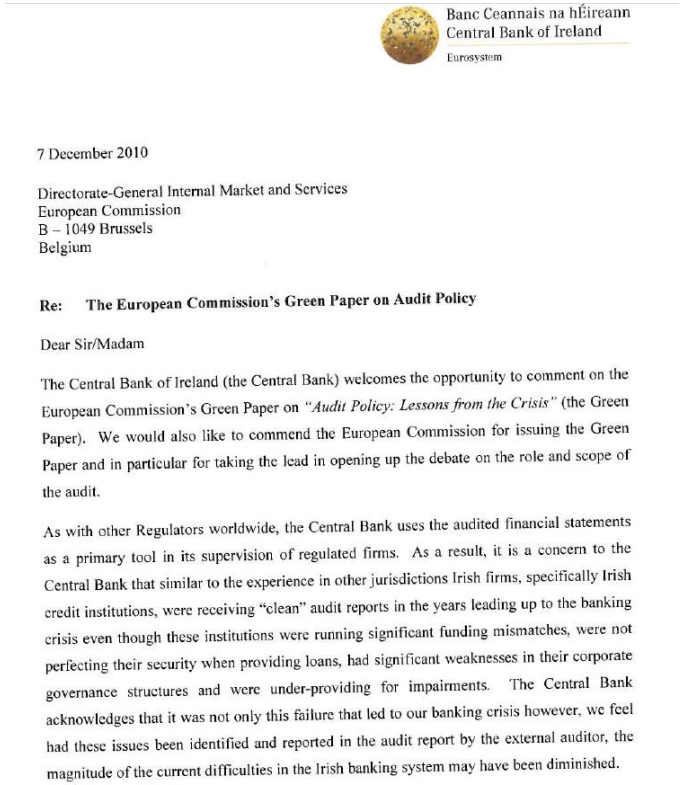
The Governor of the central bank of Ireland has described the accounting rules for British and Irish banks as "unsatisfactory" in a speech that will be used to back the argument for some of the standards to be scrapped.

By Louise Armitstead
25 November 2010 • 8:16pm

“Registration of a charge as a burden on registered land is not evidence of its ownership, it is evidence only that the charge is an encumbrance on the estate of the registered owner.”

- RETIRED DEPUTY REGISTRAR, JOHN DEENEY

Central Bank of Ireland misled



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

7 December 2010

Directorate-General Internal Market and Services
European Commission
B – 1049 Brussels
Belgium

Re: The European Commission's Green Paper on Audit Policy

Dear Sir/Madam

The Central Bank of Ireland (the Central Bank) welcomes the opportunity to comment on the European Commission's Green Paper on *"Audit Policy: Lessons from the Crisis"* (the Green Paper). We would also like to commend the European Commission for issuing the Green Paper and in particular for taking the lead in opening up the debate on the role and scope of the audit.

As with other Regulators worldwide, the Central Bank uses the audited financial statements as a primary tool in its supervision of regulated firms. As a result, it is a concern to the Central Bank that similar to the experience in other jurisdictions Irish firms, specifically Irish credit institutions, were receiving "clean" audit reports in the years leading up to the banking crisis even though these institutions were running significant funding mismatches, were not perfecting their security when providing loans, had significant weaknesses in their corporate governance structures and were under-providing for impairments. The Central Bank acknowledges that it was not only this failure that led to our banking crisis however, we feel had these issues been identified and reported in the audit report by the external auditor, the magnitude of the current difficulties in the Irish banking system may have been diminished.

Central Bank warning 2010

"As with other Regulators worldwide, the Central Bank uses the audited financial statements as a primary tool in its supervision of regulated firms. As a result, it is a concern to the Central Bank that similar to the experience in other jurisdictions, Irish firms, specifically Irish credit institutions, were receiving "clean" audit reports in the years leading up to the banking crisis. Even though these institutions were running significant funding mismatches, were not perfecting their security when providing loans, had significant weaknesses in their corporate governance structures and were under-providing for impairment."

Financial Times article 2018

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In the summer of 2015, at a session of Ireland's marathon parliamentary inquiry into the causes of that country's banking crisis, a senior auditor at PwC made a startling admission.

John McDonnell had since 2010 led the Big Four firm's team on the audit of Bank of Ireland, the country's biggest financial institution.

He was there to answer questions about the auditor's role in the bank's rescue during the financial crisis. PwC, then as now its auditor, had given the bank's accounts a clean bill of health in the summer of 2008, just months before it turned to the state for a bailout that ultimately ran to almost €5bn.

The politicians wanted to know why Bank of Ireland had not disclosed billions in losses that must have been foreseeable, thus overstating its capital and lulling investors to imperil their cash by putting it into the troubled institution. How, they asked, could these accounts have fulfilled the legal requirement to represent a "true and fair" picture of its financial position?

Mr McDonnell did not deny that losses might not have been included. Instead, he said the level of provisions was in effect dictated by the new international

Company Law

The originating bank can only enforce the recoverable value of the loan, not the amount lent

Banks cannot charge a ‘Cost of Funds’ rate if they are a registered company and have followed ICAEW advice.

If a loan was previously securitised, and the bank follows ICAEW advice, the legal interest may have been lost automatically

Under unfair terms legislation, banks cannot charge a variable rate that is **not** linked to an external verifiable rate

Banks may face damages for forced sale of collateral previously

Banks who forced their customers into GRG or entered into a fixed rate hedging product, are also exposed

Banks cannot sell a distressed loan at a discount without firstly offering the loan to the customer

https://www.frielstafford.ie/vulture-funds-could-this-be-the-beginning-of-the-end-for-them-possible-new-strategy-to-force-the-vulture-funds-to-do-a-deal/

Master of the High Court

Claims to ownership of the charge, when made by credit servicers registered as owners, must/{may} be rejected as a fraud. “Mere entry will not, of course, give validity to an invalid claim.” In reality, their validity is never challenged or adjudicated, largely because the name it bears is that of the original lender even after it had morphed into a credit servicer, without title to the charge, and the change has not been notified to the Register. It is a “conveyancers’ artifice” and involves several prosecutable offences, not to mention, when the case comes to court, clear perjury in the failure to tell not just the truth but the whole truth regarding ownership.

Possible doubts at Supreme Court level

This topic has also struck the Supreme Court as one which demands full debate but, of course, the Court can (perhaps frustratingly) only deal with the issues which arise in those cases which arrive in its list. In a "Determination" declining to entertain an appeal, on other grounds, in Pepper v Jenkins 2020 IESC DET 118, the Supreme Court noted as follows: "The Court does not exclude the possibility that, in a suitable case, **the entitlement of the transferor of the beneficial interest in a security who retains the legal title to seek an order for possession might meet the constitutional threshold but the present application does not raise that issue."**

FT Article 1

PwC

Irish eyes are frowning

Unlike subatomic particles, banks typically cannot exist in two states at once. But that hasn't stopped the finest scientific minds at PwC from trying to prove otherwise. In the long-running saga of compensation for Anglo Irish Bank shareholders, after its emergency nationalisation in 2009, PwC's David Tynan was appointed by the Irish government to assess the claim. And he has concluded that no payments are due because, in the depths of the financial crisis, AIB was "both cash flow and balance sheet insolvent". That's a blow for shareholders. It's even worse for the European and Irish central banks — which lent billions to AIB during the crisis, even though they are not meant to lend to insolvent institutions. So why did they? Accounting expert

FT Article 2

Cormac Butler points City Insider to a 2015 inquiry in which former Irish Central Bank governor John Hurley said AIB could not have been insolvent at the time, because a big accountancy firm had "examined the books of AIB some months later and didn't come to that view". That firm? The mercurial PwC. Butler claims: "PwC knew in 2008 that Anglo Irish Bank was insolvent yet advised the ECB and the government otherwise." PwC Ireland declined to comment. To City Insider, though, it looks black and white. Or, rather, black is white.

Central Bank concealment of losses

CB points city insider to a 2015 inquiry in which former Irish central bank governor John Hurley said AIB could not have been insolvent at the time because a big accountancy firm had examined the books of AIB some months later and didn't come to that view. That firm the mercurial PwC.

Deputy Kieran O’Donnell

And looking back everything that we know now in hindsight, do you still believe that it was solvent on the night of the guarantee?

Mr. John Hurley

On the basis of the information we had, yes, but I can’t say when it became insolvent, and … Pricewaterhouse examined the books of Anglo Irish Bank some months later and didn’t come to that view [that it was insolvent].

Section 15 Subsection 2 Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020

(2) A party to the proceedings on whom a notice has been served pursuant to *subsection (1)* shall not, without the leave of the court, object to the admissibility in evidence of

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Pt.3 S.15 [No. **13.**] *Civil Law and Criminal Law (Miscellaneous Provisions) Act* 2020. [2020.]

the whole or any specified part of the information concerned unless, not later than 7 days before the commencement of the civil trial, a notice objecting to its admissibility is served by or on behalf of that party on each of the other parties to the proceedings.