

Authorised Bonding Businesses

1. Banks:

Banks that are authorised to do banking business in Ireland are listed on the Financial Regulator's database (see web address below) under the banner "*Register of Credit Institutions*". When a contracting authority is offered a Bond from a Bank it should check the Financial Regulator's database to confirm that it is licensed to do guarantee business in Ireland. It is important to ensure that apart from other normal banking business the Bank is also authorised to do guarantee business in this jurisdiction. Should there be any doubt about a particular Bank it is recommended that the matter should be discussed with the Financial Regulator's office. The Financial Regulator's database is located at: <http://registers.centralbank.ie/DownloadsPage.aspx>

2. Surety Businesses/ Insurance Undertakings (i.e. Non-Life Surety Undertakings):

Insurance Undertakings authorised to do guarantee business in Ireland must be licensed to provide Class 15* Insurance (i.e. non-life insurance). Class 15 Insurance relates to the writing of guarantee business, or more generally referred to as the issuing of Bonds.

***Note:** Class 15 is one of the classes of Insurance listed in Annex I of SI No 359 of 1994 - European Communities (Non-Life Insurance) Framework Regulations, 1994.

A registered list of Insurance Undertakings are listed on the Financial Regulator's database (see web address below) under the banner "*Register of Life and Non Life Insurance Undertakings*". When a contracting authority is offered a Bond from an Insurance Undertaking it should check the Financial Regulator's database to confirm that it is licensed to do guarantee business in Ireland. It is important to ensure that apart from other normal insurance business the Insurance Undertaking is also authorised to do guarantee business in this jurisdiction. The contracting authority prior to contract signing should also seek evidentiary confirmation that the Surety Business/Insurance Undertaking has issued Class 15 insurance in the quantum required within the preceding twelve months and that said insurance remains in place. Should there be any doubt about a particular Insurance Undertaking it is recommended that the matter should be discussed with the Financial Regulator's office. The Financial Regulator's database is located at:

<http://registers.centralbank.ie/DownloadsPage.aspx>

3. Passporting:

If a Credit Institution (i.e. a Bank or an Insurance Undertaking) is not registered as an authorised body in the Financial Regulator's database to write guarantee business in this jurisdiction but is authorised in its home member state to write such business the Institution can provide these services in this jurisdiction if operating under a passporting arrangement into Ireland. It is important to note that this passport arrangement only applies to authorised Credit Institutions

within the European Economic Area (EEA). As a general rule if a Credit Institution is not registered in a member state of the EU it cannot write guarantee business in Ireland, that is unless there is a treaty between the EU and a third country and the business in that country has opened an office in a member state and it is authorised to write guarantee business.

Therefore the Credit Institution must hold an authorisation from a competent financial regulatory authority in a member state of the EEA and have notified the Irish Financial Regulator of its intention to passport into Ireland on either a freedom of services or freedom of establishment basis under the European Communities (Non-Life Insurance) Framework Regulations 1994 (SI No. 359 of 1994). For more details on passporting please see:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/non-life-insurance-companies/Pages/passporting.aspx>

4. Legislative References:

Section 9 of Central Bank Act, 1971:

<http://www.irishstatutebook.ie/1971/en/act/pub/0024/sec0009.html>

Article 6 of Directive 73/239/EEC [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973L0239:EN:HTML)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973L0239:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31973L0239:EN:HTML) as amended by

Articles 4 and 28 of Directive 92/49/EEC [http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0049:EN:HTML)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0049:EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0049:EN:HTML)

Article 4 of SI 115/1976

<http://www.irishstatutebook.ie/1976/en/si/0115.html> as amended by SI No. 142/1991

<http://www.irishstatutebook.ie/1991/en/si/0142.html>

Section 1 and 2 of Insurance (Amendment) Act 1978.

<http://www.irishstatutebook.ie/1978/en/act/pub/0030/print.html>

5. Service Providers on Financial Regulator's Registers not Authorised by the Central Bank:

Certain types of financial service providers, while required to appear on the registers produced by the Central Bank of Ireland, may not be required to be authorised and/ or regulated by the Central Bank of Ireland. For example in the Register of Investment Product Intermediaries (Section 31 Register), solicitors or certified firms are not authorised or regulated by the Central Bank of Ireland, but are allowed under the relevant legislation to provide investment business services. Solicitors are regulated by the Law Society of Ireland and certified firms are regulated by their Approved Professional Body. In addition, in the Insurance Mediation Register, Tied Insurance Intermediaries, while registered as insurance intermediaries, act under the full responsibility of an authorised Insurance Undertaking.

6. Check Bank or Surety Undertaking (Non-Life Insurance):

If a Contracting Authority is in any way concerned about a Bond that has been issued by a Bank or Surety Undertaking it should contact the Bank or Surety

Undertaking directly to clarify and resolve the issue. The Bank or Surety Undertaking concerned will be the party that has signed and sealed the Bond document (e.g. Model Form of Performance Bond MF1.6). It may, or may not, be the company that has provided the *letter of confirmation* at Annex I to Appendix 2 of the Instructions to Tenderers that the Contractor must provide with his tender.

7. Agent

Paragraph 14 of Model Form of Performance Bond (MF1.6) allows for a Surety Company not registered in Ireland to name an Irish Agent whereby legal proceedings can be served if the situation arises. The provision in paragraph 14 does not require the Agent be liable if the Principal defaults in its obligations. The Agent in this case is effectively only a postbox.