



EUROPEAN CENTRAL BANK

EUROSTIFTEN

BAILING-IN, BAILING-OUT? LEGAL CHALLENGES

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Insights from Research
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OVERVIEW: 3 NATIONAL CASES/ EU



IRELAND

- **STATUTORY BAIL-IN: SUBORDINATED LIABILITIES REGIME**
- **IMPACT OF STATE SUPPORT ON VIABILITY OF BANK**
- **SCOPE FOR JUDICIAL REVIEW**



CARROT-AND-STICK APPROACH

- **VOLUNTARY RESTRUCTURINGS WITH CONSENT OF SUPERMAJORITY OF NOTE HOLDERS**
- **IN SHADOW OF COERCIVE LEGISLATION**
- **EXIT CONSENTS DESTROYING VALUE OF OLD NOTES**



PRISONER'S DILEMMA

ENGLISH HIGH COURT IN *ASSENAGON v ANGLO-IRISH BANK*

- **EXIT CONSENTS PLACED ANGLO NOTE HOLDERS IN PRISONER'S DILEMMA**
- **MAJORITY NOTE HOLDERS MUST EXERCISE POWERS IN INTERESTS OF ALL NOTE HOLDERS**

CONCLUSION:

- **AGGRESSIVE LEGAL STRATEGIES SHOULD BE CAREFULLY CONSIDERED**



SENIOR BONDS OF ANGLO-IRISH BANK & INBS

- **IRISH AUTHORITIES REPAID SENIOR BONDHOLDERS IN ANGLO IRISH & INBS**
- **ECB ADVICE AT TIME OF EXTRAORDINARY STRESS IN FINANCIAL MARKETS**
- **QUESTION OF BURDEN SHARING WITH SENIOR CREDITORS EVOLVING AT EU LEVEL**



SPAIN

- **LIMITED BAIL-IN REGIME FOR SUBORDINATED DEBT & HYBRID CAPITAL INSTRUMENTS**
- **FROB CAN IMPOSE MANDATORY CONVERSIONS & WRITE-DOWNS**
- **NO CREDITOR MAY BEAR LOSSES GREATER THAN IN LIQUIDATION**



RETAIL INVESTOR LITIGATION IN SPAIN

- **CENTRALISATION OF COURT APPEALS AGAINST FROB DECISIONS**
- **MIS-SELLING CLAIMS BY RETAIL INVESTORS**
- **ARBITRATION PROCEDURES**
- **BAIL-IN PROCESS WELL UNDERWAY**



CYPRUS

- **BAIL-IN OF SENIOR CREDITORS & DEPOSITORS NOT COVERED BY DEPOSIT GUARANTEE SCHEME**
- **DEPOSITOR PREFERENCE FOR GUARANTEED DEPOSITORS**
- **3-STEP RESOLUTION OF CYPRUS POPULAR BANK & BANK OF CYPRUS**
- **DIFFERENTIATED TREATMENT OF CERTAIN CREDITORS**



LITIGATION IN CYPRUS

- **WAVE OF LITIGATION**
- **PRIVATE PROPERTY AND EQUALITY RIGHTS UNDER CYPRIOT CONSTITUTION**
- **SUPREME COURT: 'NO CREDITOR WORSE OFF THAN IN INSOLVENCY' PRINCIPLE**



EU RESOLUTION DIRECTIVE

- **BURDEN SHARING WITH CREDITORS**
- **SCOPE OF STATUTORY BAIL-IN REGIME**
- **DEPOSITOR PREFERENCE RULE**
- **COMPENSATION & VALUATION PROCEDURES**





EUROPEAN CENTRAL BANK

EUROSYSTEM

CONCLUSIONS

**AVOID AGGRESSIVE TECHNIQUES
ARBITRATION FOR RETAIL HOLDERS
DEPOSITOR PREFERENCE KEY**

EU RESOLUTION DIRECTIVE

QUESTIONS & ANSWERS

