



Guidance on financial provision for environmental liabilities

Additional guidance on regulatory requirements for on demand performance bonds.

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ENVIRONMENTAL PROTECTION AGENCY

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INTRODUCTION

This guidance applies to licensees who are considering an On-Demand Performance Bond as a financial provision to meet their environmental liabilities as per the EPA's requirements:

<https://www.epa.ie/enforcement/financialprovisionforenvironmentalliabilities/>

The licensee must ensure that the proposed surety is authorised to provide bond instruments in Ireland. The guidance covers the regulatory requirements for Credit Institutions and Non-Life Insurance companies to provide on-demand performance bonds.

WHAT IS AN ON DEMAND PERFORMANCE BOND?

Perpetual and on-demand performance bonds are suitable financial provision for all liabilities. An on-demand performance bond is a financial instrument issued by a financial institution such as a bank or a specialist provider acceptable to the EPA ("surety"). It is essentially a promise on the part of the surety to immediately pay the EPA the cost of complying with the licensee's obligations if the licensee fails to do so. The bond is issued by the surety and is a direct obligation of the surety in favour of the EPA. The surety's promise to pay the EPA is activated if the licensee fails to meet its obligations. The EPA does not maintain a list of acceptable sureties and the acceptability of a surety will depend on individual circumstances such as the size of the bond and the credit rating of the proposed surety.

REGULATORY REQUIREMENTS

The regulatory requirements for Credit Institutions and Non-Life Insurance companies to provide on-demand performance bonds in Ireland are detailed below.

An entity that wishes to provide performance bonds in Ireland must have one of the following authorisations:

1. A banking licence;
2. Authorisation as a non-life insurance provider to provide suretyship insurance;
3. Authorisation as a third country branch of a non-EEA insurer or banking entity; or
4. Authorisation from a supervisory authority of another EEA member state.

1. Banking Licences

A person is prohibited from carrying out “Banking Business” unless they are granted a banking licence under Section 9 of the [Central Bank Act 1971](#) (as amended). Once granted a banking licence, an entity can engage in a broad range of “Banking Business”.

The definition of “Banking Business” under section 2 of the Central Bank Act 1971 (as substituted by [Schedule 3, Part 4 of the Central Bank and Financial Services Authority of Ireland Act 2004](#)) is very broad and covers:

- (a) receiving money on the person's own account from members of the public either on deposit or as repayable funds (whether or not the issue of securities or any other form of financial obligation is involved), and
- (b) any other business of a kind normally carried on by a bank (which may include the granting of credits on own account), and
- (c) any other business of a kind prescribed under subsection (2) for the purpose of this paragraph

The grant of a banking licence permits a holder to pursue a wide range of activities that would otherwise require individual authorisation. For example, a licence holder can carry out the activities identified in Annex 1 of [Directive 2013/36/EU](#) (Capital Requirements Directive IV) which include the ability to provide guarantees and commitments.

Entities that are granted a banking licence are listed as “Credit Institutions” under the Central Bank’s “Register of Credit Institutions”.

Once it has been granted a banking Licence, the Credit Institution can then engage in all “Banking Business” which includes the provision of on-demand bonds and guarantees.

Licensees can check if a Credit Institution has a banking licence on the Register of Credit Institutions which is maintained by the Central Bank and can be viewed at:

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

2. NON-LIFE INSURANCE PROVIDERS

An insurance undertaking that wishes to carry out guarantee business in Ireland must be authorised to do so under either S.I. No. 359 of 1994 -European Communities (Non-Life Insurance) Framework Regulations, 1994 or S.I. No. 485/2015 - European Union (Insurance and Reinsurance) Regulations 2015. In particular, they must be licensed to provide Class 15 Insurance (non-life insurance). Class 15 Insurance relates to the writing of surety (guarantee business), which covers the issuing of performance bonds. It is one of the classes of Insurance listed in Annex I of S.I. No. 359 of 1994 -European Communities (Non-Life

Insurance) Framework Regulations, 1994 and Part 1 of Schedule 1 of S.I. No. 485/2015 - European Union (Insurance and Reinsurance) Regulations 2015.

Licensees can check if an insurance undertaking has the relevant authorisation by checking the registers of Non-Life Insurance Undertakings maintained by the Central Bank that can be viewed at:

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

When checking the register for a particular non-life insurance entity, certain numbered classes of business for which authorisation has been granted are listed next to each entity. The particular non-life insurance entity offering a performance bond should be registered to carry out Class 15 business as listed beside their entry on the register.

3. THIRD COUNTRY PROVIDERS

A third country bank can open an Irish branch and apply to the Central Bank for a third country branch bank licence under section 9A of the Central Bank Act 1971. In this context, 'third country' refers to entities from a non-EEA member state. Once the relevant authorisation has been granted, a third country bank will be entered on the Register of Credit Institutions maintained by the Central Bank – see 1 above.

Similarly, a third country insurer may establish a branch in Ireland and apply to the Central Bank for authorisation as a third country branch. Where they are authorised, the branch will appear on the Register of Non-Life Insurance Undertakings maintained by the Central Bank – see 2 above.

4. AUTHORISED ENTITIES FROM OTHER EEA MEMBER STATES

A bank authorised by the competent regulator in another EEA member state can passport its services through establishing a branch in Ireland or by providing its services in Ireland on a freedom of services basis. It can do so without the need to obtain any regulatory approval of Irish authorities, although the Central Bank will supervise its conduct of business in Ireland. Where this occurs, the bank will be registered on the Register of Credit Institutions maintained by the Central Bank.

The position is the same in relation to insurers authorised by the competent regulator in another EEA member state. Where such an insurer passports services into Ireland, they will be registered on the Register of Non-Life Insurance Undertakings maintained by the Central Bank – see 2 above.