

RESPONSIBILITY FOR  
INFORMATION WITHIN A  
PROSPECTUS FOR  
DEBT SECURITIES

DILLON  EUSTACE

DUBLIN HONG KONG NEW YORK TOKYO

## RESPONSIBILITY FOR INFORMATION WITHIN A PROSPECTUS FOR DEBT SECURITIES

On 16 September, 2011, the Central Bank published a guidance paper entitled “Responsibility for Information within a Prospectus for Debt Securities”.

The publication indicates that an issue has arisen with regard to the drafting of responsibility statements in debt prospectuses. Recent practice has allowed “split responsibility” statements where it would appear that the issuer disclaims responsibility for certain parts of the prospectus. This practice has its roots in the regime that existed prior to the implementation of Directive 2003/71/EC (the “Prospectus Directive”) in Ireland by the Investment Funds, Companies and Miscellaneous Provisions Act, 2005 (the “2005 Act”) and the Prospectus (Directive 2003/71/EC) Regulations 2005 (the “Irish Regulations”). The Central Bank publication clarifies that this practice is not permitted.

The publication clarifies that whilst Schedule 1, Paragraph 3(2) of the Irish Regulations permits others to assume responsibility for certain sections of the prospectus, this does not substitute for the responsibility under Regulation 31(2) of at least one of the other “persons” mentioned in Schedule 1 of the Regulations, such as the issuer, to assume responsibility for the whole of the prospectus.

Schedule 1, Paragraph 3(2) of the Regulations states: “In a case to which this paragraph applies, *each of the following persons is*, subject to the other provisions of this Schedule, *responsible for the prospectus*:

- (a) the issuer of the securities;
- (b) each person who accepts, and is stated in the prospectus as accepting, responsibility for the prospectus;
- (c) if the case involves an offer of securities to the public, the offeror of the securities, if this is not the issuer;
- (d) if the case involves the admission to trading of securities, the person seeking admission, if this is not the issuer;
- (e) if there is a guarantor for the issue, the guarantor in relation to information in the prospectus that relates to the guarantor and the guarantee; and (f) each person not falling within any of the preceding provisions of this subparagraph who has authorised the contents of the prospectus.”

Regulation 31(2) of the Irish Regulations provides that “For the purposes of these Regulations, responsibility for the information given in a prospectus attaches, subject to the provisions of that Schedule, in each of the cases specified in Schedule 1 to these Regulations to the persons specified in the relevant case, and references in these Regulations to responsible persons shall be construed accordingly.”

As a result under the Irish Regulations, the issuer, offeror and the person seeking admission to trading will be responsible for the whole of the prospectus. Therefore, qualifying language limiting the issuer’s responsibility will no longer be acceptable unless the issuer is wholly excluded from the offer or application for admission to trading.

The publication also clarifies; (a) the requisite wording to be inserted into a prospectus in respect of the declarations by those responsible for the information in the prospectus; and (b) clarifies that the use of certain confirmations in respect of third party-sourced information (to the extent permitted as highlighted therein) does not obviate the responsibility of the issuer with regard to that information in the prospectus.

A copy of the publication can be obtained at: [http://www.centralbank.ie/regulation/securities-markets/prospectus/documents/responsibility for information within a prospectus for debt securities](http://www.centralbank.ie/regulation/securities-markets/prospectus/documents/responsibility%20for%20information%20within%20a%20prospectus%20for%20debt%20securities).

**Date:** September 2011

**Authors:** Karen Jennings

 CONTACT US

Our Offices

**Dublin**

33 Sir John Rogerson's Quay,  
Dublin 2,  
Ireland.  
Tel: +353 1 667 0022  
Fax: +353 1 667 0042

**Hong Kong**

62/F, The Center  
99 Queens Road, Central  
Hong Kong  
Tel: + 852 3965-3126  
Fax: + 852 3965-3222

**New York**

245 Park Avenue  
39<sup>th</sup> Floor  
New York, NY 10167  
United States  
Tel: +1 212 792 4166  
Fax: +1 212 792 4167

**Tokyo**

12th Floor,  
Yurakucho Itocia Building  
2-7-1 Yurakucho, Chiyoda-ku  
Tokyo 100-0006, Japan  
Tel: +813 6860 4885  
Fax: +813 6860 4501

e-mail: [enquiries@dilloneustace.ie](mailto:enquiries@dilloneustace.ie)

website: [www.dilloneustace.ie](http://www.dilloneustace.ie)

## Contact Points

*For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.*

**Andrew Bates**

**e-mail: [andrew.bates@dilloneustace.ie](mailto:andrew.bates@dilloneustace.ie)**  
**Tel : + 353 1 6670022**  
**Fax: + 353 1 6670042**

**Karen Jennings**

**e-mail: [karen.jennings@dilloneustace.ie](mailto:karen.jennings@dilloneustace.ie)**  
**Tel : + 353 1 6670022**  
**Fax: + 353 1 6670042**

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2011 Dillon Eustace. All rights reserved.

DILLON  EUSTACE

DUBLIN HONG KONG NEW YORK TOKYO

33 Sir John Rogerson's Quay, Dublin 2, Ireland.  
[www.dilloneustace.ie](http://www.dilloneustace.ie)

In alliance with Arendt & Medernach