



# **Data Protection Notice**

## **For IBRC SL**

**30 November 2018**

## 1. Introduction

- 1.1 Irish Bank Resolution Corporation Limited (in Special Liquidation) (“**IBRC**”, “**us**” or “**we**”) is required to comply with its obligations under the General Data Protection Regulation (2016/679) (“**GDPR**”) and the Data Protection Act 2018 (“**DPA**”).
- 1.2 This Data Protection Notice provides details of the way in which we Process Personal Data in line with our obligations under Data Protection Law. It also serves as a compliance manual to assist IBRC staff in meeting those obligations.
- 1.3 Capitalised terms used in this Data Protection Notice are defined in the Glossary in the Annex.

## 2. Background and Purpose

- 2.1 The purpose of this Data Protection Notice is to explain what Personal Data we Process and how and why we Process it. In addition, this Notice outlines our duties and responsibilities regarding the protection of such Personal Data.
- 2.2 This Notice is not an exhaustive statement of our data protection practices. The manner in which we Process data continues to evolve over time, reflecting the wind-down of IBRC’s operations and the completion of the liquidation. We will update this Notice from time to time to reflect changing practices.

## 3. IBRC as a Data Controller

- 3.1 The Irish Bank Resolution Corporation Act 2013 (“**IBRC Act**”) was enacted as emergency legislation on 7 February 2013. The principal purpose of the IBRC Act is summarised in the recitals to the IBRC Act which state that “*it is necessary, in the public interest, to provide for the orderly winding up of the affairs of IBRC to help to address the continuing serious disturbance in the economy of the State*”. The recitals go on to note that “*the maintenance of the functioning of IBRC is no longer necessary to support the financial stability of the State or the stability of the Irish financial system*”. In order to achieve these purposes the recitals note that “*in the achievement of the winding up of IBRC the common good may require permanent or temporary interference with the rights, including property rights, of persons*”.
- 3.2 Pursuant to Sections 4 and 7 of the IBRC Act and the Irish Bank Resolution Corporation Act, 2013 (Special Liquidation) Order 2013, the Minister for Finance passed a “Special Liquidation Order”, for the purposes of the winding up of IBRC. Pursuant to that Order (SI 36 of 2013), Kieran Wallace and Eamonn Richardson were appointed as Special Liquidators (“**SLs**”). Pursuant to Section 9 of the IBRC Act the Minister for Finance issued the SLs with instructions setting out the details in respect of the manner in which the winding up of IBRC is to proceed. Section 9(3) of the IBRC Act places a legal obligation on the SLs to comply with instructions issued or any direction given under the IBRC Act.
- 3.3 This means that the SLs are under a legal obligation to comply with the Ministerial Directions issued by the Minister for Finance under s.9 of the IBRC Act. In doing so, the SLs are given immunity from suit under s.9(4) in relation to “*any cause of action of any kind in respect of anything done or not done in compliance with instructions issued or any direction given under this Act.*”
- 3.4 In legal terms, Art. 6(1)(e) GDPR provides a legal basis for most of IBRC’s Processing activities. This Article permits Processing that is necessary for the performance of the task which is in the public interest, where such “public interest” is

laid down in EU or Irish law (such as in the IBRC Act). Section 38(1) of the DPA further makes it clear that IBRC can rely on this public interest basis as a lawful basis for Processing Personal Data generally where the Processing is necessary for the performance of a function of a Controller conferred by or under an enactment or by the Constitution, or the administration by or on behalf of a Controller of any non-statutory scheme, programme or funds where the legal basis for such administration is a function of a controller conferred by or under an enactment or by the Constitution.

3.5 Where Processing activities are not supported by a statutory basis, IBRC relies on alternative legal bases permitted by Data Protection Law. For example, Art. 6(1)(c) GDPR permits processing that is necessary for compliance with a legal obligation to which the Controller is subject, Art. 6(1)(d) GDPR permits processing that is necessary in order to protect the vital interests of the data subject or of another person and Art. 6(1)(a) permits Processing where the data subject has given his or her consent.

**4. IBRC and Data Processors**

4.1 IBRC does not normally act as a Data Processor on behalf of third parties. However, IBRC does engage third party Data Processors to act on its behalf.

4.2 Where we enter into agreements with third parties to Processes Personal Data on our behalf we will ensure that the appropriate contractual protections are in place to safeguard such Personal Data. Examples of such third party service providers which we engage include communications providers, providers of document and data storage and retrieval services, payroll service providers and IT support providers.

4.3 The current IT services team comprises both KPMG staff and third party contractors. Contractors receive security training before commencing with IBRC as part of their onboarding. Staff have access based on the permissions assigned to their role and have access to the data but do not have the authority to further Process the data unless they are specifically authorised to.

**5. Record Keeping**

5.1 As part of our record keeping obligations under Art. 30 GDPR, IBRC retains a record of the Processing activities under its responsibility.

5.2 A summary of the relevant information required to be kept by IBRC under Art 30 GDPR is set out below:

Art. 30 GDPR Requirement	IBRC Record
<ul style="list-style-type: none"> <li>Name and contact details of the controller and the data protection officer.</li> </ul>	<ul style="list-style-type: none"> <li>Data Protection Officer, Irish Bank Resolution Corporation Limited (In Special Liquidation), 5th floor, Latin Hall, Golden Lane, Dublin 8.</li> <li>Tel: +353(0)12441369.</li> <li>Email: dataprotectionofficer@ibrc.ie</li> </ul>
<ul style="list-style-type: none"> <li>The purposes of the Processing.</li> </ul>	<ul style="list-style-type: none"> <li>To fulfil the statutory functions of IBRC and the liquidation obligations of the SLs as described in this Data Protection</li> </ul>

	Notice.
<ul style="list-style-type: none"> <li>Description of the categories of data subjects and of the categories of personal data.</li> </ul>	<ul style="list-style-type: none"> <li>Data subjects include employees, mortgagors, creditors and debtors of IBRC. Categories of personal data include contact data such as addresses, telephone numbers and e-mail addresses as well as personal identifiers such as dates of birth, next of kin, etc.</li> </ul>
<ul style="list-style-type: none"> <li>The categories of recipients to whom the personal data have been or will be disclosed including recipients in third countries or international organisations.</li> </ul>	<ul style="list-style-type: none"> <li>See paragraph 10 below.</li> </ul>
<ul style="list-style-type: none"> <li>Where applicable, transfers of personal data to a third country outside of the EEA.</li> </ul>	<ul style="list-style-type: none"> <li>Not normally applicable but see paragraph 12 below.</li> </ul>
<ul style="list-style-type: none"> <li>Where possible, the envisaged time limits for erasure of the different categories of data.</li> </ul>	<ul style="list-style-type: none"> <li>See paragraph 11 below.</li> </ul>
<ul style="list-style-type: none"> <li>Where possible, a general description of the technical and organisational security measures referred to in Article 32(1).</li> </ul>	<ul style="list-style-type: none"> <li>See paragraph 9 below.</li> </ul>

## 6. Purposes and Lawful Basis for Processing

- 6.1 We Process Personal Data for the purpose(s) of fulfilling our statutory functions and obligations under the IBRC Act.
- 6.2 Given the purposes for which IBRC was established as described in paragraph 3.1 above, the primary lawful bases underpinning the Processing of personal data by IBRC are grounded in Art. 6(1)(e) GDPR which permits processing which is “*necessary for the performance of a task in the public interest or in the exercise of official authority vested in the Controller*” and/or Art. 6(1)(c) which relates to processing that “*is necessary for compliance with a legal obligation to which the Controller is subject*”.
- 6.3 These purposes will continue for the duration of the liquidation. Upon completion of the wind-down of IBRC, a process will be adopted to ensure the secure archival and/or deletion of IBRC records in accordance with the Ministerial directions, court orders or other legal requirements that then apply.

## 7. Special Categories of Personal Data

- 7.1 IBRC Processes Special Categories of Personal Data (“SCD”) in limited circumstances:
- (a) *Personnel*: IBRC Processes SCD in the ordinary course of personnel administration. Section 46 of the DPA provides a general lawful basis for Processing SCD where it is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on

the Controller or the data subject in connection with employment or social welfare law. As required by Data Protection Law, IBRC applies suitable and specific measures in respect of such Processing. Section 52 of the DPA also permit the processing of SCD where it is necessary for the purposes of preventative or occupational medicine or to assess the working capacity of an employee.

- (b) Customer Data: IBRC also Processes SCD (principally data concerning health but it can also extend to other categories) in the discharge of its functions to the extent that this data is held on customer or personnel files. In this regard, IBRC relies on the fact that the Processing of SCD is permitted under several provisions of the GDPR and the DPA, including the following:
  - (i) Article 9(2)(f) GDPR where it is “*necessary for the establishment, exercise or defence of legal claims*” and this ground is amplified in Section 47 of the DPA which permits the Processing of SCD where it is necessary for the purposes of providing or obtaining legal advice or for the purposes of, or in connection with, legal claims, prospective legal claims, legal proceedings or prospective legal proceedings, or is otherwise necessary for the purposes of establishing, exercising or defending legal rights; and
  - (ii) Article 9(1)(g) which permits such Processing for reasons of substantial public interests and this is amplified in Section 49 of the DPA which provides a general lawful basis for processing of SCD where it is necessary and proportionate for the performance of a function conferred by or under an enactment, which includes Processing by IBRC in fulfilment of its obligations under the IBRC Act.

## 8. Individual Data Subject Rights

8.1 Data Protection Law provides certain rights in favour of data subjects. The rights in question are as follows:

- (a) The right of a data subject to receive detailed information on the processing (by virtue of the transparency obligations on the Controller);
- (b) The right of access to Personal Data;
- (c) The right to rectify or erase Personal Data (right to be forgotten);
- (d) The right to restrict processing;
- (e) The right of data portability;
- (f) The right of objection; and
- (g) The right to object to automated decision making, including profiling;

(“**Data Subject Rights**”).

8.2 Arts 17 and 20 GDPR state that the right to be forgotten and the right of data portability do not apply to processing that is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Controller. Therefore these rights will not normally apply in the case of IBRC.

8.3 Any data subject wishing to exercise their Data Subject Rights should write to the IBRC Data Protection Officer, at the contact details provided for in paragraph 5.2.

## 9. **Data Security**

9.1 For security reasons, IBRC does not publish its data security policy. However, we have technical and organisational measures in place to protect Personal Data from unlawful or unauthorised destruction, loss, change, disclosure, acquisition or access. This includes firewall technology, intrusion prevention and antivirus software as well as data loss prevention systems. In accordance with Arts 24 and 32 GDPR, in adopting these measures, IBRC has taken into account the nature, scope, context and purposes of processing as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons. The measures shall be reviewed and updated where necessary.

## 10. **Disclosing Personal Data**

10.1 From time to time, we may disclose Personal Data to third parties, or allow third parties to access Personal Data which we Process (for example where a law enforcement agency or regulatory authority submits a valid request for access to Personal Data).

10.2 We may also share Personal Data: (a) with another statutory body where there is a lawful basis to do so; (b) with selected third parties including sub-contractors (see paragraph 4); (c) if we are under a legal obligation to disclose Personal Data. This includes exchanging information with other organisations for the purposes of fraud prevention or investigation.

## 11. **Data Retention**

11.1 IBRC retains data in a combination of structured electronic files, unstructured electronic format and in hard copy.

11.2 The SLs are under legal obligations to retain records. In light of these circumstances, it is not currently possible for IBRC to adopt a data deletion policy.

11.3 Upon completion of the wind-down of IBRC, a process will be adopted to ensure the secure archival and/or deletion of IBRC records in accordance with the Ministerial directions, court orders or other legal requirements that then apply. While Art 89 GDPR and Section 42 of the DPA permit the retention of personal data for archiving purposes subject to certain conditions, those conditions do not currently apply to IBRC but this will be kept under review pending the final wind-down of IBRC.

## 12. **Data Transfers outside the EEA**

12.1 IBRC will not normally need to transfer Personal Data outside the EEA. However, if such transfers become necessary they will occur in accordance with applicable Data Protection Law (typically through the use of EU-approved Model Contract Clauses).

## 13. **Further Information/Complaints Procedure**

13.1 Data subjects can ask a question or make a complaint about this Data Protection Notice and/or the Processing of their Personal Data by contacting the IBRC Data Protection Officer at the contact details provided for in paragraph 5.2.

Date: [ ● ]

## ANNEX

### Glossary

In this Data Protection Notice, the terms below have the following meaning:

**“Data Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed.

**“Data Controller”/“Controller”** means the entity which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**“Data Processor” / “Processor”** means the party that Processes Personal Data on behalf of the Data Controller (for example, a payroll service provider).

**“Data Protection Law”** means the General Data Protection Regulation (No 2016/679) (**“GDPR”**) and the Data Protection Act 2018 and any other laws which apply to IBRC in relation to the Processing of Personal Data.

**“European Economic Area”** or **“EEA”** means Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, the UK, Iceland, Liechtenstein, and Norway.

**“Personal Data”** means any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

**“Processing”** means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. **“Process”** and **“Processing”** are interpreted accordingly.

**“Special Categories of Personal Data”** are types of Personal Data that reveal any of the following information relating to an individual: racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership. Special Categories of Personal Data also include the Processing of genetic data, biometric data (for example, fingerprints or facial images), health data, data concerning sex life or sexual orientation and any Personal Data relating to criminal convictions or offences.