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CONTENTS

Preface Peter Ch. Hsu & Daniel Flühmann, *Bär & Karrer Ltd.*

Jurisdiction chapters

Andorra	Miguel Cases Nabau & Laura Nieto Silvente, <i>Cases & Lacambra</i>	1
Brazil	Bruno Balduccini, Veronica Rossi Marins Midega & Amanda Blum Colloca, <i>Pinheiro Neto Advogados</i>	18
Canada	Pat Forgione, Darcy Ammerman & Alex Ricchetti, <i>McMillan LLP</i>	29
Chile	Diego Peralta, Fernando Noriega & Alejandro Toro, <i>Carey</i>	47
Cyprus	Marinella Kilikitas, <i>Kilikitas & Co Law</i>	56
Germany	Jens H. Kunz & Klaudyna Lichnowska, <i>Noerr PartG mbB</i>	70
India	Nihas Basheer, <i>Wadia Ghandy & Co.</i>	85
Ireland	Keith Robinson & Keith Waine, <i>Dillon Eustace LLP</i>	95
Japan	Koji Kanazawa & Katsuya Hongyo, <i>Chuo Sogo Law Office, P.C.</i>	108
Kenya	Esther Njiru-Omulele, Isaiah Mungai Kamau & Maxwell Mafubo Maelo, <i>Asafo & Co.</i>	119
Liechtenstein	Daniel Damjanovic & Sonja Schwaighofer, <i>Marxer & Partner, attorneys-at-law</i>	134
Luxembourg	Andreas Heinzmann & Hawa Mahamoud, <i>GSK Stockmann</i>	144
Netherlands	Lous Vervuurt, <i>BUREN</i>	159
Portugal	Pedro Cardigos, Maria Almeida Fernandes & Carolina Soares de Sousa, <i>CARDIGOS</i>	169
Qatar	Aurore Dib & Rana Moustafa, <i>D&C Legal Services LLC</i>	180
Russia	Vasily Averin, Alexandra Gel & Anton Mogilevskiy, <i>MAST Legal</i>	191
South Africa	Mirellê Vallie, <i>Asafo & Co.</i>	203
Switzerland	Peter Ch. Hsu & Daniel Flühmann, <i>Bär & Karrer Ltd.</i>	215
Turkey	Berk Çektir & Öznur Öngeç, <i>Cektir Law Firm</i>	234
United Kingdom	Alastair Holt & Simon Treacy, <i>Linklaters LLP</i>	241

Ireland

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Introduction

Ireland, similar to the rest of the world, has continued to face the many societal, financial and regulatory changes that have arisen as a result of the COVID-19 pandemic. As well as providing customer-focused supports, the Central Bank of Ireland (the **CBI**) has permitted banks to use capital buffers built up over recent years to support the Irish economy. Since 2011, the Government has enacted a broad range of primary and secondary legislation to address structural issues that arose prior to 2008, to provide more consumer protection and to ensure greater oversight, stability and sustainability of the Irish banking sector. The restructuring of the Irish banking sector since 2011, which included the creation of more robust capital buffers, allows a degree of flexibility to the CBI and the Irish banks in their ability to support Irish banking customers at this time.

The United Kingdom left the European Union's single market and customs union on 31 December 2020. Due to Ireland's close trading relationship with the UK, Brexit will have, relative to many other EU Member States, a material impact on Ireland's economy and UK entities that provide services in Ireland or Irish entities providing services in the UK. While banks have been aware of the potential impacts of Brexit and were instructed by the CBI to develop contingency plans, the practical complications of dealing with the UK, which is now a third country, will create new issues that will need to be considered and addressed.

The Central Bank Reform Act 2010 modified the regulatory framework in Ireland, including the CBI's supervisory culture and approach. The CBI's enforcement powers were further enhanced through the Central Bank (Supervision and Enforcement) Act 2013 (the **2013 Act**). The CBI has broad enforcement powers designed to deter institutions from acting recklessly and to promote behaviours consistent with those expected in the reformed financial system. The 2013 Act introduced an administrative sanctions regime that included increased monetary penalties. The penalties may be imposed on individuals and regulated firms subject to fines of up to €1 million and regulated firms subject to fines of up to the greater of €10 million or 10% of the previous year's turnover.

Following the introduction of the Single Supervisory Mechanism (the **SSM**) on 4 November 2014, the European Central Bank (the **ECB**) became the competent authority for supervising banks operating in Ireland. The CBI operates a risk-based approach to supervision together with direct prudential supervision.

The CBI, in its financial stability review issued in June 2021, identified current primary sources of risk to Irish financial stability, including: (1) risks related to structural changes to international taxation and trade policy; (2) the structural impact of COVID-19 on the retail and office commercial property markets in Ireland; (3) the financial stability implications of bank withdrawals from the Irish market; and (4) the impact of climate change.

Two foreign-owned retail banks (Ulster Bank and KBC) are withdrawing from the Irish market. This is reflective of a trend of consolidation in the Irish market since the financial crisis. The CBI notes that this trend of consolidation will result in an increased systemic importance of the remaining institutions, which increases the risk to the Irish State in times of distress despite the mitigants implemented since the financial crisis and the increased presence of non-bank lenders in the Irish market.

Regulatory architecture: Overview of banking regulators and key regulations

Regulators and key regulations

The regulatory authority responsible for the authorisation and supervision of banks in Ireland is the ECB. Under the SSM, banks designated as '*significant*' are supervised by a team led by the ECB, comprising members from the ECB and the CBI. There are currently six Irish banks designated as significant. Banks designated as '*less significant*' are directly supervised by the CBI in the first instance, but the ECB has the power to issue guidelines or instructions to the CBI and to take over direct supervision of any less-significant bank if necessary.

In 2011, the CBI introduced the Probability Risk and Impact System (**PRISM**), which acts as the CBI's framework for the supervision of regulated firms, including banks. The PRISM system is designed to determine the risk and potential impact of banks on financial stability and consumers in a consistent systemic risk-based manner. Under the framework of PRISM, banks are categorised as '*high impact*', '*medium-high impact*', '*medium-low impact*' or '*low impact*'. The category a bank falls into will determine the number of supervisors allocated to that bank and the level of supervisory scrutiny to which it will be subject.

Authorisation applications

Applications for authorisation of banks in Ireland are submitted to the CBI. If the CBI considers that the conditions for authorisation are met, then it will submit the application to the ECB with a recommendation that it is approved. The final authority to grant or refuse the application rests with the ECB. The authorisation of branches of banks from outside the EU is dealt with by the CBI pursuant to domestic legislation. Banks from Member States of the EU are permitted to operate in Ireland, with or without establishing a branch in Ireland, pursuant to the EU's '*passport*' procedure, which requires a notification to the relevant bank's home state regulator and compliance with certain Irish conduct-of-business rules.

Irish law does not distinguish between retail and wholesale/investment banking. Irish law does not therefore provide for the ring-fencing of retail-banking activities. However, banks are not permitted to engage in any lines of business that have not been approved by the CBI/ECB during the authorisation process. If a bank wishes to engage in an activity that did not form part of its application for authorisation, the bank is required to submit an application to the CBI to extend its authorisation.

Primary legislation

The primary pieces of legislation applicable to banks in Ireland are the Central Bank Acts 1942–2018 (the **Central Bank Acts**), the European Union (Capital Requirements) Regulations 2014, the European Union (Capital Requirements) (No. 2) Regulations 2014 (the **2014 Capital Regulations**), EU Directive 2013/36 (**CRD IV**) as amended by Directive (EU) 2019/878 and as last amended by Directive (EU) 2021/338 (**CRD V**) and EU Regulation 575/2013 as amended by Regulation 2019/876 and Regulation (EU) 2020/873 (the **CRR**). Banks are also required to comply with various pieces of secondary

legislation and codes issued under the Central Bank Acts, including the CBI's Corporate Governance Code for Credit Institutions 2015 (the **Corporate Governance Code**) and the 2012 Consumer Protection Code (the **CPC**). The regulations implementing CRD V and the CRR in Ireland are the European Union (Capital Requirements) (Amendment) Regulations 2020, the European Union (Capital Requirements) (Amendment) (No. 2) Regulations 2020, the European Union (Capital Requirements) (Amendment) (No. 2) Regulations 2021, and the European Union (Capital Requirements) (Amendment) (No. 3) Regulations 2021, respectively (collectively with the 2014 Capital Regulations, the **Irish Capital Regulations**).

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) represents the primary legislation governing anti-money laundering in Ireland and implements the EU Money Laundering Directives. The CBI is the competent authority for monitoring compliance with this legislation by banks and other financial services providers.

Recent regulatory themes and key regulatory developments in Ireland

Some of the key regulatory themes and developments in Ireland applicable to banks are set out below.

Sustainable finance

Sustainable finance has risen quickly up the regulatory agenda and the CBI expects banks to play a key role in financing the transition of the economy to a more sustainable form. The CBI works closely with the EBA on its Sustainable Finance Action Plan and, in particular, its work on incorporating environmental, social and governance (**ESG**) risks in the supervisory review and evaluation process, enhancing ESG risk disclosures, and considering whether a dedicated prudential treatment of exposures related to assets or activities associated with environmental and/or social objections is justified.

On 21 April 2021, the European Commission published its proposed changes to the sustainability reporting requirements applicable to credit institutions in the form of a proposed new Corporate Sustainability Reporting Directive (the **CSRD**). The CSRD will amend the existing reporting requirements under the Non-Financial Reporting Directive (the **NFRD**), which are currently applicable to Irish banks. The CSRD seeks to expand the scope of requirements of the NFRD and introduces more detailed reporting requirements, including the requirement for ESG reports to be audited. It also aligns reporting standards with mandatory EU sustainability reporting standards.

On 3 November 2021, the CBI issued a 'Dear CEO' Letter to all regulated financial services providers emphasising the need for boards of regulated firms, including banks, to show clear ownership of ESG risks and to promote cultural awareness of the same within their organisations. The CBI also highlighted the importance of the need for existing risk management frameworks to be enhanced in order to identify climate-related risks.

COVID-19

In the context of the CBI's role to ensure the stability of the financial system and the protection of consumers since the onset of the pandemic and into 2022, it has requested that banks take a consumer-focused approach to act in their customers' best interests. Measures that the Irish banks have adopted include short-term payment breaks, modification of reporting classifications for the Central Credit Register, the use of capital buffers in line with SSM announcements, and restrictions on dividends and share buy-backs. The CBI has written

to the banks to provide guidance on its expectations regarding operational, regulatory and reporting obligations on banks during the course of the pandemic. Notwithstanding the positive macro-economic performance following the reopening of society in Ireland, the ongoing, fluid development of the public health and economic challenges arising in connection with the pandemic will necessitate ongoing oversight by the CBI of the Irish banks into and during 2022. The CBI has also recognised the increased threat posed by financial crime due to the modifications to living and working brought about by COVID-19. The CBI has intensified interactions with institutions to assess new risks arising from financial crime and to plan for how to mitigate these new risks.

Individual accountability

The CBI's increased focus on culture in regulated firms in recent years and its experience with the tracker mortgage investigation has led to it advocating legislative change to assign regulatory responsibility to individuals working in regulated entities. In a report issued in July 2018 entitled 'Behaviour and Culture of the Irish Retail Banks', the CBI recommended reforms to establish a new 'Individual Accountability Framework', modelled upon the Senior Managers and Certification Regime in the UK and similar regimes in Australia and Malaysia. On 27 July 2021, the Central Bank (Individual Accountability Framework) Bill 2021 was published by the Irish Government. Once this Bill is enacted, the CBI intends to undertake a public consultation in respect of the implementation of the four elements of the Individual Accountability Framework, which will consist of the following distinct but complementary elements:

- (i) new conduct standards;
- (ii) a Senior Executive Accountability Regime (**SEAR**);
- (iii) enhancements to the existing Fitness and Probity Regime; and
- (iv) changes to the CBI's enforcement investigations and enquiries processes.

The new conduct standards will set out the behaviour that the CBI expects of regulated firms and the individuals working within them. Three sets of standards are proposed: (i) common standards for all staff in regulated financial services providers; (ii) additional conduct standards for senior management; and (iii) standards for businesses. Common standards required of all staff will include requirements to act with due care and diligence and to act honestly, ethically and with integrity in the best interests of customers. Senior management are expected to take all reasonable steps to ensure that the business is controlled effectively, delegated tasks are overseen effectively, and that relevant information is promptly disclosed to the CBI. The standards for businesses will build upon existing requirements on regulated firms provided for in the CPC.

SEAR will initially apply to banks, insurers and certain investment firms. The proposed senior executive functions within scope are board members, executives reporting directly to the board and heads of critical business areas. Each senior executive function will have prescribed responsibilities inherent to the role. The intention is that all key conduct and prudential risks will be assigned to one or other of the senior executive functions and will therefore be the responsibility of the relevant individual holding the role.

Each individual holding a senior executive function will be required to have a documented statement of responsibilities clearly setting out their role and areas of responsibility. These statements are intended to provide for a more targeted assessment of the fitness and probity of the relevant individuals by allowing their competence, experience and qualifications to be measured against the responsibilities they have been allocated. They are also designed to make it easier to hold individuals to account by making it more difficult for them to claim that culpability for wrongdoing lies outside their sphere of responsibility.

Firms will be required to produce responsibility maps documenting key management and governance arrangements in a single, comprehensive source. The responsibility maps will be required to include matters reserved to the board, terms of reference for board committees and reporting lines. Where firms are part of a larger group, they will be required to provide details of the interaction of the firm's and the group's governance arrangements. The CBI will also strengthen its existing Fitness and Probity Regime. Most significantly, firms will be required to certify, on an annual basis, that the individuals performing prescribed '*controlled functions*' within the firm are fit and proper to do so. Changes are proposed to the CBI's enforcement process to remove current complexity and fragmentation and to break the '*participation link*'. Currently, the CBI can only pursue an individual concerned in the management of a firm where: (1) a case has first been proven against the firm; and (2) the CBI can prove that the individual participated in a breach by the firm. Breaking this '*participation link*' will make it easier for the CBI to hold individuals to account for their own actions by pursuing them directly. It is also proposed that a breach of the new conduct standards will be a ground for direct enforcement action.

Brexit

Brexit and its consequences will remain a key area of focus for Irish banks and the CBI, with regulatory perimeter issues coming under increased scrutiny, along with outsourcing arrangements, reverse solicitation and chaperoning.

Technological innovation

The CBI has stated its intention to focus on technological innovation, including big data and algorithms, in order to assess the risks posed by the inappropriate use of technology and information asymmetries between firms and customers. The pandemic has increased the pace of this technological development, including developments around digitalisation, cloud technology and blockchain. In the area of payments, there has been an acceleration of digital transformation, with a surge in online transactions and contactless payments. In addition to consumer protection, there is an increased focus on the ability of banks to limit the impacts of technology failures and cyber-attacks.

Mortgage arrears

Mortgage arrears has been and continues to be a priority of the CBI since the financial crisis. The CBI closely monitors compliance with the treatment of mortgage borrowers in arrears and works to encourage banks and other loan owners to put in place long-term sustainable restructuring arrangements. The CBI also subjects all new non-bank mortgage owners to authorisation and supervision.

Anti-money laundering (AML) and countering the financing of terrorism (CFT)

The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010–2021 ensure that Irish AML and CFT is in line with the requirements of the Third EU Anti-Money Laundering Directive (2005/60/EC), the Fourth EU Anti-Money Laundering Directive (2015/849/EU), and the Fifth EU Anti-Money Laundering Directive (2018/843/EU).

As required by Article 30(1) of the Fourth Directive, a central register of beneficial ownership of corporate entities has been established and is maintained by the Companies Registration Office. A separate central register of beneficial ownership of credit unions and certain investment fund vehicles is maintained by the CBI. A central register of beneficial ownership of trusts has also been established under the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021.

The CBI published updated Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the financial sector on 23 June 2021. The Guidelines outline the expectations of the CBI regarding banks' compliance with their AML obligations and include a detailed analysis around risk management, customer due diligence requirements, reporting obligations and integral governance and training. The revised Guidelines account for the Fifth EU Anti-Money Laundering Directive (2018/843/EU) and set out further expectations for banks in respect of customer protection via de-risking, beneficial ownership identification and verification as well as transaction monitoring.

The CBI is actively enforcing AML compliance and has recently fined various regulated entities for breaches of the AML requirements.

IT and cyber

In 2016, the CBI published its 'Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks'. The guidance identifies the risks associated with IT and cybersecurity as key concerns for the CBI given their potential to have serious implications for prudential soundness, consumer protection, financial stability and the reputation of the Irish financial system.

The CBI expects boards and senior management of regulated firms to fully recognise their responsibilities in relation to IT and cybersecurity governance and risk management, and to place these among their top priorities. Robust oversight and engagement on IT matters at board and senior management level is expected. Banks are expected to document a comprehensive IT strategy that addresses cyber risk and is aligned with the overall business strategy. They should also have in place a sufficiently robust IT governance framework that is subject to independent assurance.

IT risk management frameworks are expected to be comprehensive, encompassing risk identification, assessment, monitoring, testing, IT change processes, cybersecurity incident response, risk mitigation and recovery strategies. Roles and responsibilities in managing IT risks, including in emergency or crisis decision-making, should be clearly defined, documented and communicated to relevant staff. Banks that are part of a larger multinational group should ensure that group IT strategies and governance arrangements are appropriately tailored from a regulatory and operational perspective for the Irish entity.

Banks are required to notify the CBI upon becoming aware of an IT incident that could have a significant and adverse effect on the bank's ability to provide adequate services to its customers, its reputation or financial condition.

Bank governance and internal controls

Corporate governance requirements

All banks authorised in Ireland are subject to minimum corporate governance standards as set out in the Corporate Governance Code. Additional requirements set out in the Corporate Governance Code apply to banks designated as '*high impact*' by the CBI. All banks are required to submit an annual compliance statement to the CBI specifying whether they have complied with the requirements of the Corporate Governance Code.

Matters dealt with in the Corporate Governance Code include:

- composition of the board, including a requirement for a majority of independent non-executive directors (subject to certain exceptions for banks that are subsidiaries of groups) and a minimum of seven directors for banks designated as high impact;

- a prohibition on a person who has been an executive director or member of the senior management of the bank during the previous five years from becoming Chairman;
- a requirement to appoint a suitably qualified and experienced Chief Risk Officer;
- a requirement to establish audit and risk committees of the board and, in certain cases, remuneration and/or nomination committees;
- a requirement for a formal annual review of board and individual director performance and, in the case of banks designated as high impact, an external evaluation every three years; and
- a requirement for boards of banks designated as high impact to put in place formal skills matrices to ensure an appropriate skills mix on the board.

Banks deemed significant institutions for the purposes of the CRR are required to comply with certain requirements of those regulations relating to limitations on the number of directorships and sub-committees of the board instead of the requirements in the Corporate Governance Code dealing with the same matters.

Banks are also currently required to comply with the EBA's 'Guidelines on Internal Governance under CRD IV' and its 'Guidelines on the Assessment of Suitability of Members of the Management Body and Key Function Holders', each of which came into force on 30 June 2018. In July 2021, the EBA issued its 'Guidelines on Internal Governance under CRD V' as well as updated 'Guidelines on the Assessment of Suitability of Members of the Management Body and Key Function Holders', each of which will come into effect from 31 December 2021, replacing each of the aforementioned guidelines.

Fitness and probity

The CBI has put in place a Fitness and Probity Regime, which applies to individuals performing prescribed roles in regulated firms, including banks. These roles are referred to in the legislation as '*controlled functions*' or '*pre-approval controlled functions*'. The purpose of the regime is to ensure that persons performing these important roles are sufficiently capable and of good character. Banks are therefore required to ensure that those persons:

- are competent and capable;
- act honestly, ethically and with integrity; and
- are financially sound.

Before appointing an individual to a pre-approved controlled function, CBI approval must be obtained, which may involve a face-to-face interview with the CBI. Pre-approval functions in banks include board directors, the CEO, heads of control functions and the heads of finance, retail sales, treasury, asset and liability management, and credit. With effect from October 2021, the Head of Market Risk and the Chief Information Officer were added to the list of pre-approval functions for banks.

On 22 September 2021, the CBI issued a notice of intention to amend the list of pre-approval functions to include branch managers in non-EEA countries, and include standalone pre-approved controlled functions for independent non-executive directors and the head of AML and CFT. The proposed changes have, at the date of writing, not yet been written into law.

The assessment of the fitness and probity of the management board of banks applying for authorisation and of members of the management board and key function holders of banks designated as '*significant institutions*' pursuant to the SSM is the responsibility of the ECB.

Minimum competency

The CBI's Minimum Competency Code 2017 and the 2013 Act (Section 48(1)) Minimum Competency Regulations 2017 set out minimum competency standards applicable to staff

of regulated firms (including banks) who exercise specified functions in relation to specified financial products and services. The aim of the standards is to ensure that consumers obtain a minimum acceptable level of competence from individuals acting on behalf of regulated firms in connection with retail financial products.

Remuneration

Banks in Ireland are required to comply with the remuneration requirements set out in the Irish legislation implementing CRD V, the remuneration disclosure requirements set out in the CRR and the relevant EBA Guidelines. On 2 July 2021, the EBA issued further guidelines on sound remuneration policies, which are to take effect from 31 December 2021.

A bank's remuneration policy must promote sound and effective risk management and must not encourage risk-taking that exceeds the bank's level of tolerated risk. The policy must apply to all staff whose professional activities have a material impact on the risk profile of the bank, including senior management, risk-takers, staff engaged in control functions and any employees whose total remuneration takes them into the same pay bracket as senior management and risk-takers. A bank's policy must be gender neutral and ensure that all staff are paid equally for equal work of equal value. The bank's policy must now also be consistent with its ESG objectives.

Staff in control functions are required to be remunerated in accordance with the achievement of objectives linked to their functions that are independent of the performance of the business areas they control. Variable elements of remuneration must be based on assessment of performance over a multi-year period, with payments spread over a period that takes account of the business cycle. The variable component of remuneration for each individual is generally not permitted to exceed 100% of the fixed component and must be subject to clawback arrangements. When granting retention bonuses, a bank must now document the justification for each individual bonus and also define the applicable performance conditions that were considered in advance of the granting of any such bonus.

Outsourcing

Banks in Ireland are required to comply with the EBA's 'Guidelines on Outsourcing Arrangements', which came into effect in September 2019. These Guidelines specify the governance arrangements and risk management measures banks must adopt when outsourcing activities, particularly when outsourcing '*critical or important functions*' (as defined in Section 4 of the Guidelines).

Banks must also have regard to the CBI's 'Outsourcing – Findings and Issues for Discussion' paper of November 2018, which was issued following a survey of 185 regulated firms on their outsourcing arrangements. The paper also addresses some of the key outsourcing risks identified by the CBI and the issues regulated firms must consider in order to mitigate those risks effectively.

In February 2021, the CBI published a consultation paper to be read in conjunction with the Draft Cross-Industry Guidance on Outsourcing. The Cross-Industry Guidance on Outsourcing is intended to complement existing laws, regulations and guidelines on the topic, following on from the 2018 report referred to above. The CBI has placed an enhanced focus on the outsourcing of '*critical or important*' functions.

The consultation paper highlights the primary outsourcing risks faced by regulated firms, including banks. The four key risks highlighted are: (1) data security risks; (2) oversight risks related to the use of sub-/chain outsourcing; (3) challenges in respect of adequate

supervision and oversight in situations where outsourcing is offshore; and (4) increased levels of concentration risk, especially regarding cloud outsourcing. The consultation period closed in July 2021 and the CBI plans to publish finalised Guidelines before 31 December 2021.

When relying on outsourcing service providers of IT services, the outsourcing requirements set out in the CBI's 'Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks' must also be taken into account.

Bank capital requirements

Irish capital requirements

The CRR has direct effect in Ireland. The Irish Capital Regulations transposed CRD IV and V and certain elements of the CRR into Irish law. Under the Irish Capital Regulations, a bank must have initial capital of at least €5 million and must be in a position to meet ongoing capital requirements.

Regulatory capital

The CBI has issued a set of rules and guidance on the application of the CRR, CRD IV and CRD V. The CRD package in Ireland, while currently primarily derived from CRD IV, V and the CRR, is informed by international standards promulgated by the Basel Committee on Banking Supervision. The CBI is cognisant of international developments, including pronouncements and decisions made by the Basel Committee on Banking Supervision, the Financial Stability Board and the OECD when determining its approach to capital adequacy and liquidity requirements. The CBI has also indicated its approach to its application of the revised capital requirements provided in CRD V.

Irish banks are obliged to maintain financial resources equal to or greater than a percentage of their risk-weighted assets (**RWAs**).

The own funds of an institution must at all times be in excess of the initial capital amount (currently €5 million) required at the time of its authorisation. Own funds' requirements need to be determined in line with the credit risk, market risk, operational risk and settlement risk. The Irish banks are subject to the following capital requirements:

- The Pillar 1 requirement: a regulatory minimum amount of capital that the banks must hold. This is a total capital ratio of 8% of the RWAs. A minimum of 4.5% of RWAs must be Common Equity Tier 1 and at least 6% of RWAs should be met with Tier 1 capital. This Pillar 1 requirement applies to all banks uniformly.
- The Pillar 2 requirement: an additional capital requirement that applies on a case-by-case basis, subject to the supervisory review and evaluation process. Any additional capital required, by reference to Pillar 2, is specifically tailored to a bank's individual business model and risk profile. CRD V requires that firms meet their Pillar 2 requirements with at least 75% Tier 1 capital, of which 75% must be Common Equity Tier 1 (reduced to 56.25% due to COVID-19).
- The combined buffer requirement: the CBI also applies the individual buffers provided for in CRD IV, being (1) the capital conservation buffer, which is fixed at 2.5% of a bank's total RWAs, (2) the global/other systemically important institution (**GSII/OSII**) buffer, which is designed to ensure that systemically important financial institutions hold a higher level of capital to protect against the risk they pose to the national financial system. The six banks regulated by the CBI are subject to the OSII buffer

ranging from 0.5% to 1.5%, (3) the countercyclical capital buffer (**CCyB**), which is currently at 0% in Ireland, reduced from 1% in light of the impact of COVID-19; this is unlikely to change during the remainder of 2021, and (4) the systemic risk buffer (the **SRB**), which is designed to mitigate long-term, non-cyclical risk that may have serious adverse consequences for the economy. The SRB has not yet been implemented in Ireland and the CBI has stated that, notwithstanding the provisions of CRD V, it does not intend to phase in such buffer in the remainder of 2021.

- Irish banks are also subject to a 3% leverage ratio, which is to be made up of Tier 1 capital. Articles 124 and 164 of the CRR provide for augmented measures to address real estate exposure. The CBI, under Article 124, applies higher minimum risk rates on lending for the acquisition of commercial property. The CBI also uses this Article to establish a maximum loan-to-value ratio of 75% for lending for owner-occupied residential property.

The types of capital that qualify for capital adequacy purposes are Common Equity Tier 1 comprising ordinary share capital and reserves, additional Tier 1 being perpetual co-ordinated debt instruments that contain certain specified features, including restrictions on redemption and automatic triggers for write-down of the debt or conversion of the debt into equity, and Tier 2 being subordinated debt with an original maturity of at least five years.

The level of non-performing portfolios remains a significant feature of banks' balance sheets, which also necessitates Irish banks holding greater levels of capital than many similar-sized European banks.

On 27 October 2021, the European Commission adopted a review of the CRR and CRD. The intention of the proposed amendments is to assist the region's recovery from COVID-19 and to ensure that banks are more resilient to future economic shocks. These proposals focus on (1) implementing the Basel III agreement, (2) increased sustainability risk management for banks, and (3) providing stronger enforcement tools for supervisors of EU banks. The CBI has yet to issue any guidance on these proposals.

In addition to the requirements of CRD V/the CRR, the Bank Recovery and Resolution Directive (as amended) (the **BRRD**), as implemented in Ireland, also requires banks to meet the minimum requirement for own funds and eligible liabilities (**MREL**) to enable banks to absorb losses and restore their capital position in a resolution scenario. MREL requirements are institution-specific. If a resolution tool under the BRRD is to be implemented (i.e. the bank will not be liquidated), the default MREL requirement is calculated as approximately two times the sum of Pillar 1, Pillar 2 and the combined buffer requirement. This may be adjusted upwards or downwards in accordance with the provisions of the BRRD.

Liquidity

Macro-prudential liquidity instruments are utilised to mitigate systemic liquidity risks. Liquidity ratios contained in the CRR apply to Ireland. The liquidity cover ratio (the **LCR**) requires Irish banks to maintain sufficient unencumbered high-quality assets against net cash outflows over a 30-day period. The purpose of the ratio is to ensure that a bank has sufficient capital to meet any short-term liquidity disruptions that may affect a particular market. High-quality liquid assets (**HQLA**) include only those that can be converted reasonably easily and quickly into cash, such as cash, treasury bonds or corporate debt.

There are three categories of HQLA: Level 1 assets, which are not subject to a discount while calculating the LCR; Level 2A assets, which are subject to a discount of 15%; and Level 2B assets, which are subject to a discount of 50%. No more than 40% of HQLA

can comprise Level 2 assets with Level 2B assets comprising no more than 15% of all total stock of HQLA. While the LCR ensures that institutions can address stress events on a short-term basis, it does not address stable funding on a longer-term basis. The stable funding requirement was introduced as a ratio of an institution's available stable funding to its required stable funding over a one-year period (the **NSFR**). The NSFR obliges banks to hold sufficient stable funding to meet its funding needs over a 12-month period, both in normal and stressed conditions. Basel III requires the NSFR to be no lower than 100% on an ongoing basis.

Rules governing banks' relationships with their customers and other third parties

Deposit Guarantee Scheme

The State's Deposit Guarantee Scheme (the **DGS**) is overseen and administered by the CBI. It provides protection for eligible depositors of a bank if that entity is unable to repay their deposits. The protection is limited to €100,000 per person per institution and relates to the balances in various types of accounts comprising current accounts, deposit accounts and share accounts in banks and building societies. The DGS covers deposits in the names of individuals, sole traders, partnerships, clubs, associations, schools, charities, companies, small, self-administered pensions, trust funds and other monies held by professional service providers on behalf of their clients. However, deposits by banks, credit unions, building societies, investment firms, pension schemes, financial institutions and other regulated entities are not covered by the DGS. Securities issued by a bank are also not subject to the DGS.

Credit reporting

The Credit Reporting Act (the **CRA**) was enacted in 2013. Lenders subject to the CRA are obliged to report details of qualifying loans provided by them. The types of agreements captured by the CRA are credit agreements of more than €500 that are (i) entered into with Irish borrowers, and/or (ii) governed by Irish law. Where an application for credit is made in respect of a qualifying loan, such applications will also need to be reported. Included in the credit-reporting regime are consumer loans provided through credit cards, mortgages, personal loans, overdrafts, money lender loans, local authority loans, business loans and hire-purchase personal contract plans and asset finance loans. The types of borrowers that are covered are companies, consumers, individuals, partnerships and sole traders.

Consumer protection

In addition to primary and secondary legislation, the CBI has produced a number of codes governing banks' interactions with their customers.

The CPC is primarily designed to ensure fair treatment of customers. The CPC sets out rules regarding how banks interact with their clients (including vulnerable customers), how information is to be provided (including disclosures to be made on the face of documents regarding certain investment and other products), assessing the suitability of financial products and addressing arrears and arrangements arising out of distressed consumers.

The Code of Conduct on Mortgage Arrears (the **CCMA**) governs how mortgage lenders and entities regulated as credit servicers treat borrowers in or facing mortgage arrears where a mortgage loan is secured by the borrower's primary residence. The CCMA specifies arrangements regarding borrowers that are in arrears, including how they are to be communicated with, the assessment of their financial position, how repossession are to be conducted and information to be provided to borrowers.

The Central Bank (Supervision and Enforcement) Act 2013 (Lending to Small and Medium-sized Enterprises) Regulations 2015 (the **SME Regulations**) apply to credit provided to small and medium-sized enterprises (**SMEs**). The SME Regulations distinguish between micro and small enterprises (turnover of less than €10 million) and medium-sized enterprises (turnover of less than €50 million). The SME Regulations set out conduct-of-business parameters, the nature and content of information to be provided to SMEs and dealing with SMEs in financial difficulty.

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Note

The law is correct as at 15 November 2021.

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Keith Robinson is a partner in Dillon Eustace's Banking and Capital Markets Team. Keith advises many of the firm's lending and credit servicing clients on the Irish regulatory framework applicable to them. Keith acts on a broad range of banking, finance and capital markets-related transactions. He advises lenders and borrowers on national and multi-jurisdictional finance transactions, including fund finance, asset finance, acquisition finance, development finance and real estate finance. His practice covers syndicated, club and bilateral facilities. Keith's structured finance work includes advising on and implementing tax-efficient financing and investment structures. He has regularly advised on transactions involving fund structures including lending for liquidity purposes. Keith has broad experience advising on non-performing loans (NPLs) and bank deleveraging. He has advised numerous sellers, buyers, servicers and financiers on the acquisition, financing and management of NPLs.

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Keith Waine is head of the Financial Regulation practice at Dillon Eustace. His team provides regulatory advice to domestic and international financial services providers, including banks, insurers, investment firms, broker-dealers, asset managers, payments firms and others. He has extensive in-house experience, having previously worked as head of legal and compliance at leading international banks and co-founder of a non-bank lender.

Keith advises clients on a wide range of regulatory matters, including local authorisation requirements, licensing and regulatory perimeter issues, anti-money laundering, payment services, non-bank lending, MiFID and consumer protection. He is an active member of the Association of Compliance Officers in Ireland and a frequent author and speaker on financial regulatory topics. Keith is rated 'highly regarded' by *IFLR1000*.

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