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Ireland

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Introduction

Since the previous edition of this chapter was published, Ireland, similar to the rest of the world, has been subject to many societal, financial and regulatory changes that have arisen as a result of the COVID-19 pandemic. On 2 December 2020, the European Banking Authority (the **EBA**) announced its decision to reactivate its guidelines on payment moratoria, which will apply to 31 March 2021. This means that Irish borrowers can, subject to the conditions of the guidelines issued by the EBA, avail of payment breaks and not have their loans classified as forborne or defaulted in line with the standard definition of distressed restructuring. Approximately 175,000 Irish loans have had an initial payment break, with approximately 40% going on to take a second payment break. In addition to 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. For example, Irish creditors with direct debits in place for UK customers may need to provide their bank with additional information to avoid payment requests being rejected, and customer deposits that were covered by the Irish deposit guarantee schemes are no longer covered.

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. Relevant individuals are 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 November 2020, identified current primary sources of risk to Irish financial stability, including: (1) a disruption in the global economy recovery from the 2008 financial crisis; (2) the macroeconomic effect of Brexit; (3) a prolonged impact of COVID-19 on the Irish economy, leading to a further deterioration in the domestic macro-financial outlook; (4) the ability of the Irish economy and financial system to absorb shocks; and (5) the ongoing issues relating to the undersupply of housing in Ireland.

Regulatory architecture: Overview of banking

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.

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, such 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 **Irish Capital Regulations**), EU Directive 2013/36 (**CRD IV**) as amended by Directive (EU) 2019/878 (**CRD V**) and EU Regulation 575/2013 as amended by Regulation 2019/876 (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 **Code**) and the 2012 Consumer Protection Code (the **CPC**). Implementing legislation for CRD V has not yet come into force in Ireland.

The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended in 2013 and 2018) is the primary legislation governing anti-money laundering in Ireland and implements the EU Money Laundering Directives. The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020, which has been promulgated to give effect to the Fifth EU Anti-Money Laundering Directive (2018/843/EU), is currently going through the Irish legislative process. 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

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.

COVID-19

In the context of the CBI's role to ensure the stability of the financial system and the protection of consumers during 2020 and into 2021, 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. The ongoing, fluid development of the economic and public health challenges arising in connection with the pandemic will necessitate an active and ongoing management by the CBI of the Irish banks during 2021.

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, the proposed new framework will consist of four 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 process.

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 upon firms 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 also proposed a new framework, including strengthening 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 pursing them directly. It is also proposed that a breach of the new conduct standards will be a ground for direct enforcement action.

The Department of Finance (with input from the CBI) is currently working to progress the proposed legislation. The CBI has stated that there will be a consultation process and extensive engagement with industry before the new SEAR framework is rolled out.

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. The CBI, prior the end of the transition period, instructed banks to have contingency plans to ensure business continuity in light of Brexit-related challenges.

Tracker mortgage examination

The CBI's tracker mortgage examination covered all lenders that offered tracker mortgages to customers, including mortgages used for family homes or investment properties. During the global financial crisis, the ECB dramatically lowered its main borrowing interest rate, which made tracker loans much less profitable for banks when compared with fixed-rate and variable mortgages. Certain tracker customers switched to a fixed-rate mortgage for a period on the understanding they would return to the original tracker rate but were in many instances prevented from doing so by the banks. This practice contributed to additional financial pressures being incurred on borrowers and in some instances led to family homes being repossessed.

In 2015, the CBI carried out an industry-wide review of mortgage products with agreed interest rates tracking the ECB rate ('tracker mortgages'). The review has been the largest and most complex ever undertaken by the CBI. The supervisory phase of the examination concluded in July 2019 at which point over 40,100 customers were identified as affected and over €680 million paid by lenders in redress and compensation. The CBI's enforcement investigations are continuing and further significant fines are anticipated.

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.

Mortgage arrears

Mortgage arrears has 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 and countering the financing of terrorism

Ireland has implemented the Fourth EU Money Laundering Directive (Directive 2015/849/EU). The deadline for implementation of the Fifth EU Money Laundering Directive (Directive 2018/843/EU) was 10 January 2020. The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020, which will implement the Fifth EU Money Laundering Directive, has been passed by the Irish parliament, but is not yet effective. The Sixth EU Money Laundering Directive (Directive (EU) 2018/1973) was required to be implemented in December 2020, but this has not yet occurred. 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 is to be established soon. The CBI has been particularly active in anti-money laundering enforcement and has issued six-figure fines to a number of banks in recent years.

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 Code. Additional requirements set out in the 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 Code.

Matters dealt with in the 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 Code dealing with the same matters.

Banks are also 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.

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.

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 IV, the remuneration disclosure requirements set out in the CRR and the relevant EBA Guidelines.

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.

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.

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.

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 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 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.
- 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%. The OSII buffer in Ireland is subject to a phase-in period to be completed by July 2021, (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 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 2021.

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.

In July 2019, a CCyB of 1% came into effect. The CBI considered the 1% rate to be consistent with its objective of promoting resilience in the banking sector, particularly against potential losses associated with a build-up of cyclical and systemic risk, in light of the strong growth in the domestic economy, coupled with recovery in asset values in commercial and residential real estate. However, during 2020, the CCyB was reduced to 0% and, given the expected macro-financial conditions due to the impact of COVID-19 in Ireland, the CBI does not expect to announce a change to CCyB in 2021. 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.

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 repossessions 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.

Anti-money laundering

The Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 to 2018 (the **AML Acts**) ensure Irish anti-money laundering and terrorist financing legislation is in line with the requirements of the Third EU Anti-Money Laundering Directive (2005/60/EC) and the Fourth EU Anti-Money Laundering Directive (2015/849/EU) (together, the **Third and Fourth AML Directives**). The Third and Fourth AML Directives have been transposed into Irish law by the AML Acts. As stated above, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020, which has been promulgated to give effect to the Fifth EU Anti-Money Laundering Directive (2018/843/EU), is currently going through the Irish legislative process. The CBI published Anti-Money Laundering and Countering the Financing of Terrorism Guidelines for the financial sector on 6 September 2019. 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 CBI is actively enforcing AML compliance and has recently fined various regulated entities for breaches of the AML requirements.

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Keith advises clients on a wide range of regulatory matters, including local authorisation requirements, licensing and regulatory perimeter issues, anti-money laundering, 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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