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Banking regulation in Ireland: overview

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LEGISLATION AND REGULATORY AUTHORITIES

Legislation

1. What is the legal framework for banking regulation?

The primary legislation regulating the banking system in Ireland is the Single Supervisory Mechanism Regulation (SSMR) (Regulation (EU) No. 1024/2013) and the Central Bank Acts 1942-2014 (as amended).

Under the SSMR, the European Central Bank (ECB) is the lead regulator, with delegation to the Central Bank of Ireland (Central Bank) as the competent authority in Ireland. The Central Bank Acts 1942-2014 are supplemented with a number of codes of conduct and other measures issued by the Central Bank. These impose further requirements on banks, for example in relation to corporate governance and conduct of business matters.

Applicable European legislation that is not directly effective is mainly transposed into Irish law by secondary legislation, that is, statutory instruments.

Regulatory authorities

2. What are the regulatory authorities for banking regulation in your jurisdiction? What is the role of the central bank in banking regulation?

Lead bank regulators

The European Central Bank (ECB) is the competent authority in Ireland for granting banking licences. All applications for authorisation in Ireland are submitted to the Central Bank. The Central Bank is the sole regulatory authority with statutory functions and powers for the authorisation and supervision of banks in Ireland, and also has responsibility for enforcement. The ECB reviews applications to ensure they are in accordance with EU law.

Since the ECB Single Supervisory Mechanism (SSM) was introduced in November 2014, the Central Bank has been the home state regulator for "less significant" institutions operating in Ireland, defined in accordance with the SSMR.

The ECB is the home state regulator for "significant institutions", and works alongside the Central Bank in their supervision.

The SSMR delegates specific tasks to the ECB concerning prudential supervision of credit institutions. It sets out two classes of supervisory activities:

- Core: the responsibility of the ECB, for example, the assessment of qualifying holdings.
- Non-core: the responsibility of the Central Bank, for example consumer protection.

The ECB is responsible for core supervisory responsibilities. Significant institutions are directly supervised by a Joint Supervisory Team (JST) led by the ECB, which consists of both ECB and Central Bank supervisors. The Central Bank remains responsible for the supervision of activities of these institutions defined as less significant.

The Central Bank operates a direct prudential supervision approach, as well as a risk- based approach to supervision. In 2011, the Central Bank introduced the Probability Risk and Impact SysteM (PRISM), which is the Central Bank's framework for the supervision of regulated firms, including banks. Some of the key objectives of the PRISM framework are to:

- Operate a supervisory risk assessment framework in line with international best practice.
- Ensure that action is taken to mitigate unacceptable risks in firms.
- Have a tool for the allocation of resources based on the impact of firm culture.
- Ensure a minimum level of supervisory engagement for different classes of firms.
- Have a tool that requires actions to mitigate risks, and tracks progress against these objectives.

The PRISM model considers the risk and potential impact of a regulated entity on financial stability and the consumer. Information provided by the regulated entity, together with information in relation to the sector in which that regulated entity operates is considered, and an appropriate risk categorisation attributed by the Central Bank.

All banks subject to prudential supervision by the Central Bank are categorised under PRISM. The categorisation of an entity determines the manner in which it will be supervised. The size of the team of supervisors assigned to and the level of interaction and engagement with the ultra-high/high entities is far greater than those entities categorised as medium high and medium low. Those with the ability to have the greatest impact on financial stability and the consumer receive the highest level of supervision and structured engagement plans, leading to early interventions to mitigate potential risks.

With regard to both consumer and prudential issues, the Central Bank's approach to regulation has become more vigorous since 2008. The Central Bank sets out its future priorities, activities, and desired outcomes, under each of its main areas of responsibility in the Strategic Plan 2016 to 2018.

The main tool of enforcement used by the Central Bank is the power to impose significant monetary penalties on regulated firms and also persons concerned in the management of such firms, through the administrative sanction procedure. Since the commencement of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank's powers and range of sanctions in this regard have been strengthened significantly. The quantum of financial penalties that can be imposed has been increased. The maximum fine for a firm has increased from EUR5 to EUR10 million or 10% of turnover, while the fine for persons concerned in the management of the firm has increased from EUR500,000 to EUR1 million.

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Other authorities

Irish banks are subject to the oversight of other regulatory authorities, such as the Data Protection Commissioner, who is responsible for the enforcement of data protection legislation.

The Financial Services and Pensions Ombudsman (FSPO) is a statutory officer, who deals independently with consumers about their individual dealings with financial services providers. The FSPO is the arbiter of unresolved disputes and is impartial.

The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for the enforcement of consumer complaints.

The Central Bank and the Eurosystem

In addition to its role as regulator, the Central Bank is a member of the Eurosystem. As part of this role, the Governor of the Central Bank is a member of the Governing Council of the ECB, which is responsible for setting monetary policy. The Eurosystem monetary policy is then implemented on a decentralised basis by each member state's central bank.

Others

The 2013 Protocol between the Central Bank and the Auditors of Regulated Financial Service Providers (Auditor Protocol) aims to enhance information sharing and facilitate meetings between the Central Bank and auditors of regulated financial service providers, including banks, to improve regulatory and statutory audit processes (*see Question 10*).

BANK LICENCES

3. What licence(s) are required to conduct banking services and what activities do they cover?

Licence and regulated activities

A person is prohibited from doing any of the following, unless that person is a holder of a licence inside or outside Ireland (*section 7(1), Central Bank Act 1971 (as amended)*):

- Carrying on banking business.
- Holding themselves out or representing themselves as a banker or as carrying on banking business.
- Accepting deposits or other repayable funds from the public on behalf of any other person.

Banking business is defined in section 2(1) of the Central Bank Act 1971 (as amended) as any business that consists of or includes:

- Receiving money on the person's own account from members of the public, either on deposit or as repayable funds.
- The granting of credit on own account.

The definition goes on to list a number of activities specifically excluded from the definition of banking business.

The main concept in the definition is deposit-taking, that is, receiving money from members of the public, either on deposit or as repayable funds. Repayable funds are not defined in the Central Bank Act 1971. However, deposit is defined as a sum of money accepted on terms under which it is repayable with or without interest, whether on demand or on notice, or at a fixed or determinable future date (*section 2(2), Central Bank Act 1997*).

A body corporate, an unincorporated body or an individual carrying on business is deemed to hold itself or himself/herself out as a banker, if the name of the body or business includes any of the words "bank", "banker" or "banking", or any analogous words (*Central Bank Act 1971*).

Scope of licence

The grant of a banking licence allows a bank to pursue a wide range of activities which otherwise require individual authorisation. As well as banking business, a licensed bank can carry out, among other things, the activities in Annex 1 of Directive 2013/36/EU on capital requirements (Capital Requirements Directive IV), including:

- Payment services, as set out in Directive 2015/2366/EU.
- Investment services, as contained in Directive 2014/65/EU on markets in financial instruments and the accompanying Regulation MiFIR (collectively MiFID 2).

Banking licence holders must comply with legislation covering conduct of business and prudential matters, as well as codes of practice which cover a varied range of areas and issues.

The Capital Requirements Directive IV and the Capital Requirements Regulation prescribe specific rules and initial/minimum capital requirements when a bank proposes to hold qualifying holdings/assets outside the financial sector.

4. What is the application process for bank licences?

Application

The European Central Bank (ECB) is the competent authority in Ireland for granting banking licences, under section 9 of the Central Bank Act 1971 as amended. Applications are made to the Central Bank. The Central Bank checks that the proposed activity is compatible with Irish requirements before the ECB will grant the licence. The application process for a banking licence is very detailed. It consists of three principal stages: preliminary meeting, submission of the application, and a decision by the ECB on whether to grant the licence:

- A preliminary meeting takes place with the Central Bank to determine the scope of the application. It is recommended to arrange this at the earliest opportunity.
- Applications are initially framed as a proposal. Having reviewed the proposal, the Central Bank provides a preliminary view on whether the application should be submitted.
- The application incorporates the Central Bank's checklist for completing and submitting bank licence application forms (Checklist) and includes a detailed business plan and programme of operations. Applications must contain the completed Checklist and all relevant supporting documentation.
- The application process is iterative, and involves comments from, and responses to, the Central Bank after submission of a draft application.

Requirements

The main areas for the Central Bank's review of an application include the following:

- Overview of the parent/group to which the applicant belongs.
- Consolidated supervision of the parent/group entities.
- Ownership structure.
- Applicant's objectives and proposed operations (with emphasis on the detailed business plan that must be included).
- Legal structure.
- Organisation of the applicant (including corporate governance arrangements, fitness and probity of directors and senior management, and so on).
- Risk oversight (for example, audit, compliance, risk management, treasure, financial control, internal controls and

policies, anti-money laundering procedures, conflicts of interest, liquidity, outsourcing and reporting structures).

- Capital, funding and solvency projections (as required by the Capital Requirements Regulation).
- Business continuity.

When the review of the application has been satisfactorily completed, the ECB will decide whether to grant a banking licence. A banking licence is only granted where the ECB and the Central Bank are satisfied that the applicant complies with the authorisation requirements.

Foreign applicants

There are no specific requirements for foreign (non-EEA) applicants. Foreign applicants must incorporate an entity in Ireland or establish a third country branch by seeking approval under section 9A of the Central Bank Act 1971.

Timing and basis of decision

It can take several months for an application to be considered complete by the Central Bank. This will depend on the complexity and quality of the application. A decision must be taken within 12 months of submission of the complete application.

Cost and duration

While no fee is payable to apply for a licence, levies are payable by banks after authorisation. The Central Bank Reform Act 2010 gives the Central Bank power (with the approval of the Minister for Finance) to make regulations prescribing an annual Industry Funding Levy (Levy) to be paid by regulated financial service providers to the Central Bank.

The purpose of the Levy is to fund about 50% of the cost of the annual budget for financial regulation. The remaining 50% is funded by the Central Bank. Any financial service provider who is authorised and regulated by the Central Bank on 31 December of a given year is liable to pay the levy for the following year. For the purposes of calculating its annual levy, a financial services provider is classified as falling in a particular levy category, according to the type of authorisation. At present there are 12 levy categories.

Banking licences are granted for an indefinite duration and last until they are withdrawn.

5. Can banks headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state banking licence?

A bank authorised in another EEA member state (the home state) can passport its services through establishing a branch in Ireland, or by providing its services in Ireland (the host state) on a cross-border basis.

The home state regulator retains responsibility for the prudential supervision of the bank. The home state regulator determines the capitalisation requirements for the bank's total business, which includes the branch, and supervises its solvency on an ongoing basis. The Central Bank will supervise the passported entity's conduct of business in Ireland.

FORMS OF BANKS

6. What forms of bank operate in your jurisdiction, and how are they generally regulated? Does the regulatory regime distinguish between different forms of banks?

State-owned banks

The financial crisis led to a major shift in the ownership of Irish banks. Irish retail banks were entirely commercially owned pre-crisis. Shares in such banks were publicly traded on the Irish Stock Exchange, and were typically held by a mix of institutional investors (including investment funds and pension funds) and a large number of retail investors.

The Irish banking system was radically restructured following the financial crisis. The government became a substantial shareholder in the largest two retail banks, Bank of Ireland and AIB, in relation to which it owned 99.9% until 2017 when it sold over 25% of its shares to investors. Ulster Bank is the next largest, and is a wholly-owned subsidiary of the Royal Bank of Scotland (RBS) group in the UK.

Universal banks, commercial and retail banks

Irish law does not distinguish between universal, commercial or retail banks in terms of authorisation or regulation. Instead, a bank is only permitted to engage in the activities which have been approved by the Central Bank during its authorisation process (*see Question 3*). Subsequent material change to the business lines or model requires pre-approval by the Central Bank. No new licence is needed.

Investment banks

See above, *Universal banks, commercial and retail banks*.

Private banks

See above, *Universal banks, commercial and retail banks*.

Other banks

There are a number of other banks focusing on the corporate or institutional markets, or operations designed to meet the needs of non-Irish consumers. These include subsidiaries and branches of European and US-based parents. Of the world's top 50 banks, more than half have operations in Ireland.

Regulation of systemically important financial institutions (SIFIs)

In light of the implementation of PRISM and the commencement of the Capital Requirements Directive IV, the Capital Requirements Regulation and the Single Supervisory Mechanism (*see Question 2*), "significant" banks are subject to more stringent requirements.

The Corporate Governance Requirements for Credit Institutions 2015 (Corporate Governance Requirements) (see *Question 13*) issued by the Central Bank, confirm that significant banks are subject to the more onerous corporate governance rules (imposed by the Capital Requirements Regulation – *see below*) than those imposed on high impact designated institutions.

The Capital Requirements Regulation provides additional rules for banks that are designated as significant for the purpose of the Capital Requirements Regulation. Banks can be designated as significant with regard to factors such as size, internal organisation and the nature, scope and complexity of their activities.

A number of the requirements of the Capital Requirements Directive IV are limited to significant firms, including:

- Establishing an independent risk committee.
- Establishing an independent nominations committee.

- Separating the chief executive officer (CEO) and chair role, and limitations on the number of directorships an individual can hold.
- Establishing an independent remuneration committee.
- The capital conservation buffer and the counter-cyclical capital buffer.
- The scope of liquidity reporting, on an individual basis and on a consolidated basis.
- Remuneration disclosure.

ORGANISATION OF BANKS

Legal entities

7. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

Section 18(2) of the Companies Act 2014 prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. When the Companies Act 2014 came into force, existing credit institutions were required to re-register with the Companies Registration Office (CRO) as a designated activity company (DAC), unless they were public limited companies (PLCs). A new bank is structured as a DAC from the beginning of the application process. Most banks are therefore DACs, unless they are PLCs.

Corporate governance

8. What are the legislative and non-legislative corporate governance rules for banks?

The Central Bank issued the original Corporate Governance Code for Credit Institutions and Insurance Undertakings (Corporate Governance Code) in 2010. A revised Corporate Governance Code 2013 was issued by the Central Bank, which came into force on 1 January 2015. The revised code has since been split into separate codes for credit institutions and insurance undertakings, and the code that applies to credit institutions is now known as the Corporate Governance Requirements for Credit Institutions.

The Corporate Governance Requirements impose minimum core standards on all credit institutions licensed or authorised by the Central Bank, and additional requirements on credit institutions designated as High Impact by the Central Bank. The revised Corporate Governance Requirements introduced a number of changes, which include:

- A requirement to appoint a chief risk officer (CRO).
- Changes to the rules on directorships and board meetings.
- Removal of references to "major institutions".

All credit institutions subject to the Corporate Governance Requirements for Credit Institutions must disclose this in their annual report and submit an annual compliance statement to the Central Bank.

Compliance with the Corporate Governance Requirements for Credit Institutions is mandatory and there is no scope for departures from it. Boards must have at least five directors, and credit institutions designated as High Impact by the Central Bank must have at least seven.

9. What are the organisational requirements for banks?

The bank's constitutional documents set out the legal framework under which the bank operates. The constitution governs the bank's relationship with others, and sets out the objects and powers of the bank, as well as governing its internal regulation.

10. What are the rules concerning appointment of auditors and other experts?

As banks are Public Interest Entities under the Statutory Audit Directive 2014/56/EU, directors of banks must establish an audit committee to govern financial reporting, operations, risk management and compliance. The audit committee must have at least one independent non-executive director (INED) who has competence in accounting or auditing, to comply with the Companies Act 2014.

In addition, banks must have internal auditors to report to the audit committee. Internal auditors must have a deep understanding of the policies, procedures and processes of the bank, as well as a high level of risk management expertise.

The audit committee should provide a link between the board and the external auditors, so that the external auditor has access to the INED to address concerns with the accounting rules and policies. The role of the external auditor is to support the credibility of the bank's financial statements. External auditors are appointed in accordance with the Companies Act 2014 at the annual general meeting (AGM).

The 2013 Protocol between the Central Bank and the Auditors of Regulated Financial Service Providers (Auditor Protocol) aims to enhance information sharing and facilitate meetings between the Central Bank and auditors of regulated financial service providers, including banks, to improve regulatory and statutory audit processes.

The Auditor Protocol is in addition to the statutory requirements for auditors of firms to report to the Central Bank under Irish legislative requirements set out in the Central Bank Act 1997, Chapter 3.

11. What is the supervisory regime for management of banks?

The Central Bank's Fitness and Probity regime is set out in Part 3 of the Central Bank Reform Act 2010 (as amended) and applies to all individuals performing controlled functions (CFs). There are 11 CF roles prescribed by the legislation. In addition, 46 senior positions are prescribed as "pre-approval controlled functions" (PCFs), including 18 general roles and three banking-specific roles.

The Fitness and Probity Standards set out minimum standards of competence and knowledge/experience (fitness) and good character and financial soundness (probity) that must be met by anyone who performs a CF role:

- A PCF/CF must be competent and capable, honest, ethical and act with integrity and be financially sound.
- A person must have a level of fitness and probity appropriate to the performance of their particular function.
- CFs and PCFs must agree to abide by the minimum standards.

As well as satisfying the fitness and probity requirements, individuals who are to be appointed to a PCF role must first be approved by the Central Bank. The individual must complete an online individual questionnaire, which is endorsed by the proposing bank and then submitted electronically to the Central Bank.

Additional obligations are imposed on High Impact institutions under the Corporate Governance Requirements. The Capital Requirements Directive IV requirements apply, including that significant banks must establish a remuneration committee (*see Questions 6 and 12*).

12. Do any remuneration policies apply?

Banks must establish remuneration policies at group, parent company and subsidiary levels, including those established in offshore financial centres. Total remuneration policies, including salaries and discretionary pension benefits, must be set out for categories of staff whose professional activities have a material impact on the risk profile of the bank, including:

- Senior management.
- Risk takers.
- Staff engaged in controlled functions.
- Any employee receiving total remuneration that puts them in the same remuneration bracket as senior management and risk takers

The Capital Requirements Regulation sets out a number of principles that remuneration policies must comply with, in a manner and to the extent appropriate to the bank's size, internal organisation and the nature, scope and complexity of its activities, in particular:

- Limits on the remuneration that can be paid to certain individuals.
- A requirement to establish a remuneration policy and framework that is in line with the business strategy, objectives, values and long-term interests of the bank, and incorporates measures to avoid conflicts of interest.

The Capital Requirements Directive IV imposes a strengthened remuneration framework to deter excessive risk taking, relating to the relationship between the variable and fixed components of remuneration:

- There are disclosure and transparency requirements for individuals who earn more than EUR1 million per year.
- The variable component of the total remuneration cannot exceed 100% of the fixed component of the total remuneration of material risk takers.

The European Banking Authority Guidelines on sound remuneration policies under the Capital Requirements Directive IV and disclosures under Article 450 of the Capital Requirements Regulation (EBA Remuneration Guidelines) apply to credit institutions, Capital Requirements Directive IV investment firms and competent authorities from 1 January 2017. They complement the remuneration requirements of the Capital Requirements Directive IV.

The Central Bank issued a Policy Statement in January 2017, on its approach to proportionality relating to the pay-out process for variable remuneration for Irish "less significant" institutions. It states that where firms use the principle of proportionality, the Central Bank's assessment of compliance with the EBA Remuneration Guidelines will be guided by the European Commission's thresholds in Article 94(3) of its proposal for amendments to Capital Requirements Directive IV, published on 23 November 2016.

13. What are the risk management rules for banks?

The Central Bank requires regulated banks to ensure that its board of directors and senior management are structured to allow effective management of risk. The significance of ensuring effective risk management is seen in the Capital Requirements Regulation, which impose various requirements on banks in relation to risk management.

The Corporate Governance Requirements for Credit Institutions also place greater emphasis on risk management than the original Corporate Governance Code of 2010 (*see Question 8*). The Corporate Governance Requirements for Credit Institutions call for the formal appointment of a chief risk officer (CRO). The requirements for this role include having relevant experience, qualifications and/or background, or undergoing relevant and timely training. The CRO must challenge decisions that may affect the risk exposure of an institution. The responsibilities of the CRO are set out in detail in the Corporate Governance Requirements for Credit Institutions, and include:

- Maintaining and monitoring the effectiveness of the institution's risk management system.
- Ensuring and maintaining that the institution has effective processes in place to identify and manage risks that may threaten it.
- Providing comprehensive and regular information to the board on the institution's risk.

There are specific risks that must be identified, assessed and managed in line with Capital Requirements Directive IV requirements, including exposure to transferred credit risk, country risk, concentration risk, residual risk and interest rate risk in the banking book.

LIQUIDITY AND CAPITAL ADEQUACY

Role of international standards

14. What international standards apply? How have they been incorporated into domestic law/regulation?

While standards of international bodies are not normally binding, they are generally accepted as international benchmarks or best practice. In addition to participation in the European Supervisory Authorities (ESAs) on banking, the European Systemic Risk Board and the Single Supervisory Mechanism (SSM), the Central Bank of Ireland's supervisory work is influenced by international developments, including the:

- Basel Committee on Banking Supervision (BCBS).
- Financial Stability Board (FSB).
- Organisation for Economic Cooperation and Development (OECD).

The Central Bank is represented in these cross-sector bodies or tracks their output.

Main liquidity/capital adequacy requirements

15. What liquidity requirements apply?

The Capital Requirements Regulation introduced two quantitative liquidity requirements for banks:

- The Liquidity Coverage Ratio (LCR).
- The Net Stable Funding Ratio (NSFR).

The LCR was introduced by the Basel Committee on Banking Supervision (BCBS) to promote the short-term resilience of the liquidity risk profile of banks, by ensuring that banks maintain an adequate stock of unencumbered high-quality liquid assets that can be easily and immediately converted into cash, to meet liquidity needs for a 30-day liquidity stress scenario. This will improve the sector's ability to absorb shocks and reduce spillover into the real economy.

The NSFR was also introduced by the BCBS in December 2010 and it requires banks to maintain a stable funding profile in relation to

the composition of their assets and off-balance sheet activities. The NSFR will become a minimum standard on 1 January 2018, as a response to the lack of an appropriately stable financing structure before the global financial crisis, which led to bank failures and costly interventions.

16. Is a leverage ratio applicable?

The Capital Requirements Regulation introduced a leverage ratio. The intention is not to eliminate leverage completely but to discourage its build-up, so that a firm's assets are more in line with its capital, and to act as a safeguard for existing risk-based capital requirements.

The leverage ratio requirements apply to all banks on a solo and consolidated basis. Banks must comply with certain generally applicable principles in disclosing their leverage ratio, including that disclosure must be public. Such disclosure is required annually.

17. What is the capital adequacy framework that applies for banks?

The Capital Requirements Directive IV prescribes a capital adequacy framework for banks, which requires banks to keep minimum regulatory capital. A bank must maintain at all times financial resources equal to or greater than a percentage of its risk-weighted assets (RWA). RWA is calculated by adjusting each of the bank's asset classes for risk, which determines the extent to which the bank is exposed to potential losses.

The capital adequacy rules recognise three layers of capital for the purposes of a bank's financial resources. Eligibility criteria apply as to what constitutes such capital. Certain deductions must also be made to such capital, as set out in the Capital Requirements Regulation.

Assets and liabilities can be required to be accounted for in regulatory capital terms, as either:

- A component of, or deduction from, capital.
- A risk-weighted asset in the banking book or the trading book.

The Capital Requirements Regulation provides for maintenance of a capital conservation buffer of 2.5%, comprised of common equity tier 1 (CET 1) in addition to the minimum 4.5% CET1 of RWA which all institutions are required to hold.

Failure to meet the relevant buffers in full will trigger capital conservation measures (restrictions on distributions on common equity and AT1 securities, bonuses and discretionary pension benefits) and the obligation to submit a capital conservation plan within five days. The buffer capital requirements are being phased in from 1 January 2016 to 1 January 2019.

Under the Capital Requirements Directive IV, systemically important financial institutions (SIFIs) are subject to the rules relating to Global Systemically Important Institutions (G-SIIs) and other systemically important institutions (O-SIIs). The Central Bank, under Regulation 121 of the Capital Requirements Regulation, identifies G-SIIs on a consolidated basis. To be a G-SII, the institution must be one of the following:

- An EU parent institution.
- An EU parent financial holding company.
- An EU parent mixed financial holding company.
- A bank or an investment firm.

In assessing the systemic importance of an O-SII, the Central Bank must consider, at least, the institution's:

- Size.
- Importance for the economy of the EU or Ireland.
- Significance in terms of its cross-border activities.
- Interconnectedness of its group with the financial system.

Where a group is subject to a G-SII Buffer and a separate O-SII buffer, the higher of the two will apply.

Each member state can introduce a Systemic Risk buffer of CET 1 for the financial sector, or one or more subsets of a sector of the financial services industry. Ireland has chosen not to implement this buffer, but may recognise such buffers set by other member states.

CONSOLIDATED SUPERVISION

Role and requirements

18. What is the role of consolidated supervision of a bank in your jurisdiction and what are the requirements?

Role

The Central Bank is responsible for consolidated supervision where it has authorised an institution which is a parent institution in Ireland or an EU parent institution (*Capital Requirements Regulation*).

It is also, subject to exception, responsible for an authorised institution whose parent is one of the following:

- A financial holding company in a member state.
- A mixed-financial holding company in a member state.
- An EU parent financial holding company.
- An EU parent mixed-financial holding company.

Requirements

The Capital Requirements Regulation governs consolidated supervision. The Central Bank exercises general supervision over transactions between a bank and a mixed holding company and its subsidiaries in certain circumstances.

Each bank supervised by the Central Bank must have adequate risk management processes and internal control mechanisms. These include sound reporting and accounting procedures to identify, monitor, measure and control transactions with their parent mixed-activity holding company and its subsidiaries as appropriate.

Banks must also report to the Central Bank on significant transactions.

International co-ordination and co-operation

19. To what extent is there co-operation with other jurisdictions?

Where the Central Bank is responsible for consolidated supervision (*see Question 18*), it will make all efforts to reach a joint decision with the competent authority in other member states responsible for supervising subsidiaries of an EU parent bank. In particular, it may refer to the European Banking Authority (EBA) situations where:

- A competent authority in another member state has not co-operated with the Central Bank, to the extent required for the Central Bank to carry out its supervisory tasks.
- There is disagreement in relation to decisions required by the Central Bank and a competent authority in another member state.

If the Central Bank is responsible for supervising a bank with significant branches in other member states, the Central Bank will establish and chair a college of supervisors, to facilitate co-

operation with the competent authorities of the other member states. The functioning of the college is based on written arrangements, determined after consultation with the competent authorities. The Central Bank will develop a framework between itself, the EBA and other competent authorities, to govern matters such as:

- Exchange of information.
- Agreeing entrustment of tasks and delegation of responsibilities.
- Supervisory examination programmes.
- Consistent application of Capital Requirements Directive IV requirements.

The Central Bank will determine which competent authorities participate in a meeting of the college.

SHAREHOLDINGS/ACQUISITION OF CONTROL

Shareholdings

20. What reporting requirements apply to the acquisition of shareholdings in banks?

'See Question 21.

21. What approval requirements apply to the acquisition of shareholdings and of control of banks?

The requirements in relation to the acquisition and disposal of qualifying holdings in credit institutions are set out in Chapter 2 of Part 3 of the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014).

The 2008 Guidelines for the prudential assessment of acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC apply in Ireland. They are jointly published by the Committee of European Securities Regulators (CESR) (now the European Securities and Markets Authority (ESMA)), the Committee of European Banking Supervisors (CEBS) (now the European Banking Authority (EBA)) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) (now the European Insurance and Occupational Pensions Authority (EIOPA)).

Central Bank approval must be sought before an acquisition can proceed. A proposed acquirer can only complete an acquisition if the Central Bank notifies the proposed acquirer that it has no opposition to the acquisition, or if the assessment period lapses without the Central Bank opposing it. The maximum assessment period from the date the Central Bank acknowledges receipt of the form is 60 working days.

Where merger control requirements apply it may be necessary to seek the approval of the Competition and Consumer Protection Commission. For details of these requirements, see *http://ccpc.ie/enforcement-mergers-mergers/when-notify* .

Foreign investment

22. Are there specific restrictions on foreign shareholdings in banks?

There is no distinction between domestic and foreign investment in banks under Irish law. There is no prohibition on banks being foreign-owned.

RESOLUTION

23. What is the legal framework for liquidation of banks?

Under the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27), the Central Bank can apply to the High Court for an order to liquidate a bank in any of the following circumstances:

- If the Central Bank believes that the liquidation would be in the public interest.
- The bank has failed to comply with a direction of the Central Bank.
- The bank's licence or authorisation has been revoked.
- The Central Bank considers that it is in the interest of deposit holders that it be wound up.

No other person can apply to have a bank wound up without giving the Central Bank notice and receiving approval from the Central Bank. Only a liquidator approved by the Central Bank can wind up a bank. As soon as practicable after the court makes a winding-up order, the Central Bank will appoint a liquidation committee to oversee the winding-up process.

24. What is the resolution regime for banks?

The legislation governing resolution of credit institutions in Ireland is set out in the European Union (Bank Recovery and Resolution) Regulations 2015 (BRRD Regulations) which transposed Directive 2014/59/EU on Bank Recovery and Resolution (BRRD) into Irish law on 9 July 2015, to deal effectively with failing banks and investment firms. The BRRD Regulations provide a framework for resolving failing banks and large investment firms and enables authorities to intervene early to prevent the failure of an institution.

This framework and related legislation enhances both the resilience and the resolvability of EU institutions and in-scope investment firms, which will be better prepared to deal with, and recover from, a crisis situation. Also, in the event that an institution does fail, the impact associated with that failure should be minimised.

Specifically, the framework brings about the following changes:

- Credit institutions and in-scope investment firms are required to prepare recovery plans which identify appropriate options that can be executed in the event of a significant financial deterioration of the institution, thereby reducing the likelihood of failure.
- In addition, the BRRD grants a new set of early intervention powers to supervisors. These powers include the requirement for institutions to execute recovery options, the removal of management and changing the structure of the institution.
- Resolution planning activity is undertaken by the Central Bank, or the European Central Bank's Single Resolution Board (SRB), in advance of failure to unsure this process is managed effectively.
- If required, the Central Bank and the SRB have at their disposal a set of resolution tools that can be used to resolve failing institutions to minimise the impact of failure on the financial system, the real economy, depositors and taxpayers.
- Both a national and a European resolution fund have been established to help finance the cost of resolution in the future.
- Central Bank of Ireland National Resolution Authority Internal Rules

The Central Bank is the national resolution authority for Ireland. In its capacity as resolution authority, the Central Bank is responsible

for the orderly resolution of failing credit institutions, certain investment firms and credit unions.

The Central Bank manages resolution funds and prepares resolution plans for these entities. These plans can then be activated in the event of a failing or likely to fail determination, in accordance with the BRRD.

Both a national and a European resolution fund have been established to help finance the cost of resolution in the future.

There are two resolution funds to which Irish banks are required to contribute:

- Bank and Investment Firm Resolution Fund (BIFR): All banks, third country branches and full scope CRD IV investment firms are liable to contribute to the IFR commencing in the calendar year 2015. The Central Bank calculates the amount of levy payable by an in-scope institution by applying the calculation method outlined in Commission Delegated Regulation (EU) 2015/63.
- Single Resolution Fund (SRF): The SRF was established in 1 January 2016. Institutions that come within the scope of the Single Resolution Mechanism (SRM) regulation are required to make contributions to the SRF rather than to national resolution funds from 1 January 2016.
- The Single Resolution Board in Brussels calculates the contributions for the SRF, based on data submitted by the in-scope institutions. As a rule, larger banks with higher risk profiles will pay a larger contribution.
- Commission Delegated Regulation (EU) 2015/63 contains detailed provisions on how the contributions should be calculated. These rules are complemented by Council Implementing Regulation (EU) 2015/81.
- The Resolution Function within the Central Bank has the responsibility for day-to-day for resolution matters. There is both European and Irish legislation governing these areas.

REGULATORY DEVELOPMENTS AND RECENT TRENDS

25. What are the regulatory developments and recent trends in bank regulation?

Since the UK's vote to leave the EU (Brexit), the Central Bank has stressed that it is ready to manage any resulting applications for authorisation, and that it will be sufficiently resourced to process all such applications in the usual way.

This has been the authors' experience in practice. The Central Bank has a long and extensive record of authorising financial services businesses, particularly if they are part of a large global financial services firm. Substantive operations with "mind and management" in Ireland are required. It will be important to determine the level of substance and combination of personnel in Ireland necessary to ensure that the business is genuinely controlled from Ireland.

A key consideration can be to what extent the authorised business in Ireland can outsource aspects of that business to other jurisdictions. The Central Bank can approve outsourcing, provided it is satisfied that the required levels of oversight and control from Ireland are present.

ONLINE RESOURCES

Europa

W *https://europa.eu/european-union/law.en*

Description. Official source for EU primary and secondary legislation, that is, treaties, regulations, directives and decisions. English versions of all documents are available.

Irish Statute Book

W *www.irishstatutebook.ie*

Description. Official source for Irish legislation, including primary legislation (Acts of the Oireachtas, the Irish parliament) and secondary legislation (statutory instruments).

THE REGULATORY AUTHORITIES

Central Bank of Ireland

T +353 1 224 6000

E enquiries@centralbank.ie

W *www.centralbank.ie*

European Central Bank Banking Supervision

T +49 69 1344 1300

E info@ecb.europa.eu

W *www.bankingsupervision.europa.eu/home/html/index.en.html*

Financial Services and Pensions Ombudsman's Bureau of Ireland

T +353 1 567 7000

E *info@fspo.ie*

W *www.fspo.ie/*

Data Protection Commissioner

T +353 761 104 8000

E *info@dataprotectioncommission.ie*

W *www.dataprotection.ie/docs/Home/4.htm*

Competition and Consumer Protection Commission

T +353 1 402 5500

E *http://ccpc.ie/get-touch*(website enquiry form)

W *www.ccpc.ie*

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Professional qualifications. Solicitor, Law Society of Ireland.

Areas of practice. Financial institutions; head of the regulatory risk management and compliance team.

Recent transactions

- Assisting clients with the authorisation of new entities by the Central Bank of Ireland including banks, MiFID/investment firms, fund services providers, alternative investment fund managers, payment institutions, retail credit firms and others.
- Assisting in expanding the regulatory authorisations of existing entities.
- Advising boards of directors, senior management, in-house counsel and compliance officers, in relation to the impact of new regulation.
- Assisting clients to carry out reviews of their process and procedures, covering issues such as anti-money laundering, MiFID suitability, and client assets requirements.
- Assisting clients to prepare for reviews by the Central Bank, notably PRISM reviews, which are increasingly common.
- Where the Central Bank initiates its administrative sanctions process, working with clients to minimise the impact of any sanction imposed.
- Helping clients dealing with complaints to the Financial Services Ombudsman.

Professional associations/memberships

- Member of the Association of Compliance Officers in Ireland and the Institute of Bankers.
- Co-ordinates drafting of course materials and lectures for the Institute of Bankers of Ireland, as part of its Professional Development (Level 3) qualification.
- Speaking and writing on topics including the new Payment Services Directive, the updated Markets in Financial Instruments Directive, and many others.

Publications. These include the:

- *Fitness and Probity Handbook*, which gathers together all relevant materials regarding the Central Bank's Fitness and Probity regime.
- *MiFID Directory*.