

TRAINING & DEVELOPMENT PROGRAMME

Legislation of 2022 and Anticipated Developments of 2023: Finance and Financial Services

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Legislation of 2022 and Anticipated Developments of 2023: Finance and Financial Services

1. Anti-Money Laundering

Statutory Instruments:

1.1 European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts) Regulations 2022¹

These Regulations, in effect from 3 February 2022, amend the Central Bank Act 1942 and the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to give further effect to Directive (EU) 2015/849, as amended, (“**MLD4**”). These Regulations transpose Article 32a MLD4 which requires Member States to put in place centralised automated mechanisms which allow the identification of any natural or legal persons holding or controlling payment accounts and bank accounts and safe-deposit boxes held by a credit institution within their territory.

These Regulations require the Central Bank of Ireland (“**CBI**”) to establish and maintain a central database which will contain information on accounts or safe deposit boxes held by credit institutions. The CBI will also be required to establish and maintain an information system (to be known as the “Central Mechanism of Ownership of Bank and Payment Accounts and Safe-Deposit Boxes”) enabling credit institutions to provide the required information to the CBI.

Credit institutions are, in turn, required under the Regulations to submit the required information to the CBI through the central mechanism. The information can include forename and surname, date of birth, address, IBAN, and lease period, depending on the nature of the account or safe-deposit box.

1.2 European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts) (Amendment) Regulations 2022²

These Regulations give effect to Directive (EU) 2015/849 (MLD4) and amend Regulations 4 and 5 of the European Union (Anti-Money Laundering: Central Mechanism for Information on Safe-Deposit Boxes and Bank and Payment Accounts) Regulations 2022, from 6 September 2022.

Regulation 4 is amended by the insertion of the following new paragraph (4): “*In paragraph (1), a reference to an account or a safe-deposit box is a reference to an account or a safe-deposit box, as the case may be, held by a credit institution on or after 3 February 2022.*”

Regulation 5 is amended by the substitution of the following paragraph for paragraph (b):

“(b) *in respect of the beneficial owner of the customer-account holder—*

- (i) *forename and surname,*
- (ii) *date of birth, and*
- (iii) *address (including Eircode, if known);”.*

1.3 Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (Section 109B) (Certificate of Fitness) Regulations 2022³

These Regulations contain schedules setting out the prescribed forms of the notice of intent and application for a certificate of fitness required under s109B Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. These Regulations concern persons who effectively direct a Private Members’ Club (“**PMC**”) at which gambling activity is carried out or who are beneficial owners of a PMC. These Regulations apply from 1 June 2022.

¹ SI 46 of 2022.

² SI 445 of 2022.

³ SI 272 of 2022.

1.4 **European Union (Criminal Justice (Mutual Assistance) Act 2008 (Amendment) Regulations 2022⁴**

These Regulations give effect to the Trade and Cooperation Agreement made between the EU and the UK on 30 December 2020 with a view to supplementing and facilitating the application of European Mutual Assistance Conventions between the EU and the UK. These Regulations provide the rules applicable to requests for information on bank accounts and safe deposit boxes, requests for information on banking transactions, requests for the monitoring of banking transactions, and bank secrecy, among other matters.

2. **Bank Recovery and Resolution**

EU Developments:

2.1 **Commission Implementing Regulation (EU) 2022/365 of 3 March 2022 amending Implementing Regulation (EU) 2018/1624 laying down implementing technical standards with regard to procedures and standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms pursuant to Directive 2014/59/EU of the European Parliament and of the Council**

This Implementing Regulation sets out implementing technical standards (“ITS”) on procedures, standard forms and templates for reporting of resolution plans pursuant to Article 11(3) of Directive 2014/59/EU (“Bank Recovery and Resolution Directive” or “BRRD”). This Implementing Regulation was published in the Official Journal of the European Union (“OJ”) on 4 March 2022 and entered into force on 25 March 2022.

2.2 **Regulation (EU) 2022/2036 of the European Parliament and of the Council of 19 October 2022 amending Regulation (EU) No 575/2013 and Directive 2014/59/EU as regards the prudential treatment of global systemically important institutions with a multiple-point-of-entry resolution strategy and methods for the indirect subscription of instruments eligible for meeting the minimum requirement for own funds and eligible liabilities**

This Regulation amends the BRRD and makes targeted amendments to provisions in the Capital Requirements Regulation (“CRR”) relating to the minimum requirement for own funds and eligible liabilities (“MREL”) and total loss absorbing capacity (“TLAC”). This Regulation was published in the OJ on 25 October 2022.

This Regulation, sometimes referred to as the “*daisy chain*” proposal, strengthens the prudential regulatory framework for credit institutions, introduces targeted adjustments that improve the resolvability of banks and helps to ensure banks remain resilient and capable of withstanding shocks.

Amendments to the CRR concerning the indirect subscription of internal MREL eligible instruments within resolution groups apply from 1 January 2024. Member States must bring the amendments to Articles 45d(4) and 45h(2) BRRD regarding the indirect subscription of internal MREL eligible instruments within resolution groups into force by 15 November 2023. The remaining aspects of this Regulation apply from 14 November 2022.

3. **Benchmarks**

Statutory Instruments:

3.1 **European Union (Indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds) (Amendment) Regulations 2022⁵**

These Regulations, in operation from 22 January 2022, amend the European Union (Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the

⁴ SI 38 of 2022.

⁵ SI 35 of 2022.

Performance of Investment Funds) Regulations 2017 to give further effect to Regulation (EU) 2016/1011 (“**Benchmark Regulation**”), as amended by Regulation (EU) 2021/168.

These Regulations provide a mechanism by which the CBI, having consulted with the Minister for Finance, may designate a replacement for a benchmark, where the majority of contributors are located within the State, in accordance with Article 23c of the Benchmark Regulation. These Regulations also exclude certain spot foreign exchange benchmarks from the scope of the related 2017 Regulations, in accordance with Article 2(2)(i) of the Benchmark Regulation.

EU Developments:

3.2 Commission Delegated Regulation (EU) 2022/749 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/2417 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

This Delegated Regulation amends the regulatory technical standards (“RTS”) which specify the classes of over-the-counter (“OTC”) derivatives that are subject to the derivatives trading obligation (“DTO”) under Regulation (EU) No 600/2014 (the “**Markets in Financial Instruments Regulation**” or “**MiFIR**”), by deleting Tables 2 and 3 in the Annex to Delegated Regulation (EU) 2017/2417.

MiFIR contains an obligation in Article 28 to conclude transactions in derivatives that are subject to the DTO on a regulated market, a multilateral trading facility, an organised trading facility or an equivalent third country trading venue. The amendments to the RTS reflect the decision by the European Securities and Markets Authority (“ESMA”) that the DTO should no longer apply with regard to interest rate swaps denominated in USD and GBP based on the LIBOR benchmark. This Delegated Regulation was published in the OJ on 17 May 2022 and entered into force on 18 May 2022.

3.3 Commission Delegated Regulation (EU) 2022/750 of 8 February 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2015/2205 as regards the transition to new benchmarks referenced in certain OTC derivative contracts

This Delegated Regulation amends the RTS in respect of the transition to new benchmarks referenced in classes of certain OTC derivative contracts subject to the clearing obligation. This Delegated Regulation modifies Article 3 of Delegated Regulation (EU) 2015/2205 regarding interest rate derivative classes to reflect the transition to new benchmarks.

The amendments to the RTS reflect the cessation of EONIA and LIBOR as benchmarks and the inclusion of classes of OTC interest rate derivatives referencing risk-free rates (€STR, SOFR, SONIA or TONA) that should be subject to the clearing obligation.

3.4 Commission Delegated Regulation (EU) 2022/804 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying rules of procedure for measures applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators

This Delegated Regulation specifies the rules of procedure that ESMA must follow in applying measures in infringement procedures (such as the limitation periods for the imposition, enforcement and collection of fines or periodic penalty payments) on benchmark administrators under its supervision.

3.5 Commission Delegated Regulation (EU) 2022/805 of 16 February 2022 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council by specifying fees applicable to the supervision by the European Securities Markets Authority of certain benchmark administrators

This Delegated Regulation specifies details of fees payable to ESMA by administrators of critical benchmarks and of third country benchmarks in respect of ESMA supervision, such as recognition fees, authorisation fees and annual supervisory fees. Details include the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

4. Capital Requirements

Statutory Instruments:

4.1 **European Communities (Electronic Money) (Amendment) Regulations 2022⁶**

These Regulations amend the European Communities (Electronic Money) Regulations 2011 in respect of provisions relating to calculation of own funds and notifications of acquisitions and disposals of qualifying holdings, from 10 May 2022.

EU Developments:

4.2 **Commission Delegated Regulation (EU) 2022/786 of 10 February 2022 amending Commission Delegated Regulation (EU) 2015/61 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for credit institutions**

This Delegated Regulation amends Delegated Regulation EU 2015/61 (the “**LCR Delegated Regulation**”) with regard to liquidity coverage requirement (“**LCR**”) for credit institutions, to adapt the LCR for the covered bond framework. This Delegated Regulation was published in the OJ on 20 May 2022.

The principal amendment is a new paragraph 2a in Article 7 of the LCR Delegated Regulation which is intended to allow credit institutions to treat liquid assets held as part of the cover pool liquidity buffer as unencumbered up to the amount of net liquidity outflows from the associated covered bond programme. This amendment is intended to address double-counting issues.

There are also further amendments to allow some prudentially sound national models of covered bonds issuance to comply with LCR requirements and to align the LCR Delegated Regulation with Article 129 of the Capital Requirements Regulation (“**CRR**”). This Delegated Regulation applies from 8 July 2022.

4.3 **Commission Delegated Regulation (EU) 2022/192 of 20 October 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) No 1151/2014 as regards the information to be notified when exercising the right of establishment and the freedom to provide services**

This Delegated Regulation amends the RTS in Delegated Regulation (EU) No 1151/2014. The amendments are intended to provide further detail on the information to be notified by credit institutions to a competent authority when exercising the right of establishment and the freedom to provide services. This relates to the passporting notifications under the fourth Capital Requirements Directive (“**CRD IV**”). This Delegated Regulation was published in the OJ on 14 February 2022 and entered into force on 6 March 2022.

4.4 **Commission Implementing Regulation (EU) 2022/193 of 17 November 2021 amending the implementing technical standards laid down in Implementing Regulation (EU) No 926/2014 laying down standard forms, templates and procedures as regards the information to be notified when exercising the right of establishment and the freedom to provide services**

This Implementing Regulation amends ITS set out in Implementing Regulation (EU) 926/2014 in relation to forms, templates and procedures involved in notifications set out in the RTS in Commission Delegated Regulation (EU) 2022/192. The amendments made are intended to improve the quality and consistency of information provided by credit institutions concerning passporting. This Implementing Regulation was published in the OJ on 14 February 2022 and entered into force on 6 March 2022.

4.5 **Commission Delegated Regulation (EU) 2022/439 of 20 October 2021 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the assessment methodology competent authorities are to follow when assessing the**

⁶ SI 232 of 2022.

compliance of credit institutions and investment firms with the requirements to use the Internal Ratings Based Approach

This Delegated Regulation supplements the CRR with RTS to specify the assessment methodology that competent authorities must follow when assessing the compliance of credit institutions and investment firms with the requirements to use the Internal Ratings Based Approach. This Delegated Regulation was published in the OJ on 18 March 2022.

4.6 **Commission Implementing Regulation (EU) 2022/1650 of 24 March 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1646 as regards the main indices and recognised exchanges in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council**

This Implementing Regulation contains ITS detailing the main indices and recognised exchanges for determining when securities can be eligible as collateral under the CRR. This Implementing Regulation was published in the OJ on 27 November 2022 and entered into force on 17 October 2022.

4.7 **Commission Implementing Regulation (EU) 2022/631 of 13 April 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of exposures to interest rate risk on positions not held in the trading book**

This Implementing Regulation amends the ITS laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of exposures to interest rate risk on positions not held in the trading book. The amendments include a new Article 16a and Annexes. This Implementing Regulation was published in the OJ on 19 April 2022.

4.8 **Commission Delegated Regulation (EU) 2022/676 of 3 December 2021 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions in accordance with which consolidation is to be carried out in the cases referred to in Article 18(3) to (6) and Article 18(8) of that Regulation**

This Delegated Regulation supplements the CRR with regard to RTS specifying the conditions in accordance with which consolidation is to be carried out in the cases referred to in Article 18(3) to (6) and Article 18(8) of the CRR. This Delegated Regulation was published in the OJ on 26 April 2022.

4.9 **Commission Delegated Regulation (EU) 2022/954 of 12 May 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 183/2014 as regards the specification of the calculation of specific and general credit risk adjustments (Text with EEA relevance)**

This Delegated Regulation amends the RTS laid down in Delegated Regulation (EU) 183/2014 as regards the specification of the calculation of specific and general credit risk adjustments to determine the own funds requirement for credit risk under the CRR. This Delegated Regulation entered into force on 11 July 2022.

4.10 **Commission Delegated Regulation (EU) 2022/1622 of 17 May 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards on emerging markets and advanced economies**

This Delegated Regulation supplements the CRR with regard to RTS on emerging markets and advanced economies. This Delegated Regulation entered into force on 11 October 2022.

4.11 **Commission Implementing Regulation (EU) 2022/951 of 24 May 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/2070 as regards benchmark portfolios, reporting templates and reporting instructions to be applied in the Union for the reporting referred to in Article 78(2) of Directive 2013/36/EU of the European Parliament and of the Council (Text with EEA relevance)**

This Implementing Regulation (together with Annexes) amends Implementing Regulation (EU) 2016/2070. This Implementing Regulation relates to ITS specifying the benchmarking portfolios and reporting instructions for institutions to be applied in the annual benchmarking exercises.

This Implementing Regulation replaces Annexes I to IX of Implementing Regulation (EU) 2016/2070 to reflect EBA's proposals for the 2022 benchmarking exercise and adds provisions concerning the benchmarking of the loss given default (“LGD”) parameters.

4.12 **Commission Delegated Regulation (EU) 2022/2058 of 28 February 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards on liquidity horizons for the alternative internal model approach, as referred to in Article 325bd(7)**

This Delegated Regulation supplements the CRR and contains RTS that specify liquidity horizons for the alternative internal model approach (“A-IMA”) as referred to in Article 325bd(7) CRR. This Delegated Regulation entered into force on 16 November 2022.

4.13 **Commission Delegated Regulation (EU) 2022/2059 of 14 June 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the technical details of back-testing and profit and loss attribution requirements under Articles 325bf and 325bg of Regulation (EU) No 575/2013**

This Delegated Regulation contains RTS concerning revised market risk requirements under the CRR and specifies the technical details of back-testing and profit and loss attribution requirements under Articles 325bf and 325bg of the CRR. This Delegated Regulation entered into force on 16 November 2022.

4.14 **Commission Delegated Regulation (EU) 2022/2060 of 14 June 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for assessing the modellability of risk factors under the internal model approach (IMA) and specifying the frequency of that assessment under Article 325be(3) of that Regulation**

This Delegated Regulation contains RTS concerning revised market risk requirements under the CRR and specifies the criteria for assessing the modellability of risk factors under the internal model approach and the frequency of that assessment under Article 325be(3) CRR. This Delegated Regulation entered into force on 16 November 2022

4.15 **Commission Delegated Regulation (EU) 2022/2257 of 11 August 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the calculation methods of gross jump-to-default amounts for exposures to debt and equity instruments and for exposures to default risk arising from certain derivative instruments, and specifying the determination of notional amounts of instruments other than the instruments referred to in Article 325w(4) of Regulation (EU) No 575/2013 (Text with EEA relevance)**

This Delegated Regulation supplements the CRR with RTS relating to the alternative standardised approach (“ASA”) for market risk under the CRR. The RTS stipulate how gross jump-to-default amounts should be determined for banks’ exposures in the trading book under the ASA for market risk in scope of the default risk charge for non-securitisations (for exposures to debt and equity instruments and for exposures to default risk arising from certain derivative instruments). This Delegated Regulation entered into force on 8 December 2022.

4.16 **Commission Delegated Regulation (EU) 2022/2328 of 16 August 2022 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying exotic underlyings and the instruments bearing residual risks for the purposes of the calculation of own funds requirements for residual risks (Text with EEA relevance)**

This Delegated Regulation contains RTS, which reflect a mandate in Article 325u(5) CRR, that specify:

- the instruments deemed to be exotic underlyings;
- instruments deemed to be instruments bearing residual risks; and

- risks that do not constitute residual risks.

This Delegated Regulation is directly applicable in Member States and entered into force on 19 December 2022.

4.17 **Commission Implementing Regulation (EU) 2022/2453 of 30 November 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of environmental, social and governance risks (Text with EEA relevance)**

This Implementing Regulation amends the ITS specified in Implementing Regulation (EU) 2021/637 which contain uniform disclosure formats for the disclosure of ESG risks. This Implementing Regulation adds a new Article 18a into Implementing Regulation (EU) 2021/637 setting out uniform formats and associated instructions for the disclosure of information on ESG risks. This Implementing Regulation entered into force on 8 January 2023.

4.18 **Commission Implementing Regulation (EU) 2022/2365 of 2 December 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2016/1801 as regards the mapping tables correspondence of credit assessments of external credit assessment institutions for securitisation in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council (Text with EEA relevance)**

This Implementing Regulation contains amended ITS on the mapping of credit assessments of external credit assessment institutions for securitisation in accordance with the CRR. This Implementing Regulation entered into force on 25 December 2022.

4.19 **Commission Implementing Regulation (EU) 2022/1994 of 21 November 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/451 as regards own funds, asset encumbrance, liquidity and reporting for the purposes of identifying global systemically important institutions (Text with EEA relevance)**

This Implementing Regulation amends ITS as regards own funds, asset encumbrance, liquidity and reporting for the purposes of identifying global systemically important institutions (“G-SII”). This Implementing Regulation entered into force on 11 January 2023 and will apply from 11 July 2023.

4.20 **Commission Delegated Regulation (EU) 2022/2579 of 10 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided by an undertaking in the application for authorisation in accordance with Article 8a of that Directive (Text with EEA relevance)**

This Delegated Regulation lays down RTS in respect of the information to be provided by an undertaking in an application for authorisation under Article 8a of CRD IV.

4.21 **Commission Delegated Regulation (EU) 2022/2580 of 17 June 2022 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the information to be provided in the application for the authorisation as a credit institution, and specifying the obstacles which may prevent the effective exercise of supervisory functions of competent authorities (Text with EEA relevance)**

This Delegated Regulation contains RTS relating to the provision of information in applications for authorisation of a credit institution.

4.22 **Commission Implementing Regulation (EU) 2022/2581 of 20 June 2022 laying down implementing technical standards for the application of Directive 2013/36/EU of the European Parliament and of the Council with regard to provision of information in applications for authorisation of a credit institution**

This Implementing Regulation contains ITS relating to the provision of information in applications for authorisation of a credit institution.

5. Central Securities Depositories Regulation

EU Developments:

5.1 **Commission Delegated Regulation (EU) 2022/1930 of 6 July 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/1229 as regards the date of application of the provisions related to the buy-in regime**

This Delegated Regulation amends the RTS on settlement discipline to defer the application date of the mandatory buy-in regime under the Central Securities Depositories Regulation (the “CSDR”) until 2 November 2025 (three years from its date of entry into force on 2 November 2022). This deferral is intended to provide the European Commission, the European Parliament and the Council of the EU with additional time to determine the best way forward to improve settlement efficiency.

6. Credit Servicing / Retail Credit

Acts of the Oireachtas:

6.1 **Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022**

This Act represents one of the most significant expansions to financial services authorisation requirements in recent years. The Act was commenced on 16 May 2022 via statutory instrument. Authorisation from the CBI is now required in relation to a broader scope of “credit” (no longer only “cash loans”) whether provided directly or indirectly, as well as in relation to hire-purchase and consumer-hire business. A new cap of 23% APR has also been imposed on consumer credit agreements and consumer hire-purchase agreements. Amongst other matters, the Act:

- provides for the extension of authorisation requirements to hire-purchase and consumer-hire business;
- provides for the extension of authorisation requirements to the provision of a broader scope of ‘credit’ (no longer only cash loans);
- makes corresponding changes to authorisation requirements around the credit servicing of hire-purchase, consumer-hire and credit agreements;
- imposes a 23% APR cap on credit agreements (other than moneylending agreements) and hire-purchase agreements with consumers (*ie* natural persons acting outside the course of their business);
- amends the Consumer Credit Act 1995 such that some existing retail credit firms may come within the scope of section 149 of the 1995 Act, requiring the notification of certain charges to the CBI;
- imposes new documentary requirements, especially for hire purchase agreements; and
- makes consequential amendments to the Financial Services and Pensions Ombudsman Act 2017 and the Central Bank (Supervision and Enforcement) Act 2013 so that hire-purchase agreements, consumer-hire agreements and the broader range of “credit” agreements set out in the Central Bank Act 1997, are brought within the scope of this legislation, including its disputes and complaints resolution mechanisms and oversight and enforcement mechanisms.

Statutory Instruments (Commencement Orders):

6.2 Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 (Commencement) Order 2022⁷

This Order appointed 16 May 2022 as the date on which the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Act 2022 came into operation.

Statutory Instruments:

6.3 Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Minimum Competency) (Amendment) Regulations 2022⁸

These Regulations amend the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 (the “**2017 Regulations**”) by the insertion of a new Regulation 16A after Regulation 16. These Regulations relate to the transitional arrangements for newly (transitionally) authorised retail credit firms and credit servicing firms. These Regulations commenced on 16 May 2022.

The new Regulation 16A provides that a regulated firm shall, in respect of a person for whom the regulated firm is responsible under Regulation 3 of the 2017 Regulations and who avails of the transitional arrangements referred to in the Minimum Competency Code:

- inform the person availing of the transitional arrangements, within three weeks of the date of Regulation 16A coming into effect, of the requirement to obtain a relevant recognised qualification by 16 May 2026;
- agree a plan for obtaining a relevant recognised qualification with the person availing of the transitional arrangements;
- monitor compliance with the conditions applicable to those transitional arrangements; and
- where an opportunity to sit an examination is not availed by a person availing of the transitional arrangements, ensure that the reasons are documented in writing.

7. Crowdfunding

Statutory Instruments:

7.1 European Union (Crowdfunding) (Amendment) Regulations 2022⁹

These Regulations amend the European Union (Crowdfunding) Regulations 2021 to replace the concept of “*responsible persons*” with “*project owner*” in Regulation 5 (which sets out responsibility attaching to the key investment information sheet).

These Regulations also amend Regulation 6 (which outlines civil liability for information given in the key investment information sheet) to incorporate the term “*project owner*”, from 22 July 2022.

EU Developments:

7.2 Commission Delegated Regulation (EU) 2022/1988 of 12 July 2022 extending the transitional period for continuing to provide crowdfunding services in accordance

⁷ SI 229 of 2022.

⁸ SI 234 of 2022.

⁹ SI 369 of 2022.

with national law as referred to in Article 48(1) of Regulation (EU) 2020/1503 of the European Parliament and of the Council

This Delegated Regulation extends until 10 November 2023 the transitional period for continuing to provide crowdfunding services in accordance with national law, which is contained in Article 48(1) of Regulation (EU) 2020/1503 (the “**Crowdfunding Regulation**”).

This extends the implementation deadline until 10 November 2023 for platforms that have submitted their authorisation application to their national competent authority before 1 October 2022, thereby permitting them to continue to provide crowdfunding services without authorisation on a transitional basis. Importantly, this transitional period does not apply to crowdfunding service providers (“**CSPs**”) that have not carried on crowdfunding services in Ireland immediately before the commencement of the Crowdfunding Regulation, being 10 November 2021.

This Delegated Regulation arose following a Commission assessment, based on ESMA advice, which concluded that an extension to the transition period was warranted to avoid the risk of disruptions for some large national markets. This Delegated Regulation applies from 11 November 2022.

7.3 **Commission Delegated Regulation (EU) 2022/2111 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying conflicts of interest requirements for crowdfunding service providers**

This Delegated Regulation specifies the conflicts of interest requirements for CSPs.

7.4 **Commission Delegated Regulation (EU) 2022/2112 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying requirements and arrangements for the application for authorisation as a crowdfunding service provider**

This Delegated Regulation contains RTS specifying the requirements and arrangements for the application for authorisation as a CSP.

7.5 **Commission Delegated Regulation (EU) 2022/2113 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities in relation to European crowdfunding service providers for business**

This Delegated Regulation contains RTS covering the exchange of information between competent authorities in relation to investigation, supervision and enforcement activities concerning European CSPs for business.

7.6 **Commission Delegated Regulation (EU) 2022/2114 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects**

This Delegated Regulation contains RTS specifying the entry knowledge test and the simulation of the ability to bear loss for prospective non-sophisticated investors in crowdfunding projects.

7.7 **Commission Delegated Regulation (EU) 2022/2115 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology for calculating default rates of loans offered on a crowdfunding platform**

This Delegated Regulation contains RTS specifying the methodology for calculating default rates of loans offered on a crowdfunding platform.

7.8 **Commission Delegated Regulation (EU) 2022/2116 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with**

regard to regulatory technical standards specifying the measures and procedures for crowdfunding service providers' business continuity plan

This Delegated Regulation contains RTS specifying the measures and procedures for CSPs' business continuity plans.

- 7.9 **Commission Delegated Regulation (EU) 2022/2117 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements, standard formats and procedures for complaint handling**
This Delegated Regulation contains RTS specifying the requirements, standard formats and procedures for complaint handling.
- 7.10 **Commission Delegated Regulation (EU) 2022/2118 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards on individual portfolio management of loans by crowdfunding service providers, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds**
This Delegated Regulation contains RTS on individual portfolio management of loans by CSPs, specifying the elements of the method to assess credit risk, the information on each individual portfolio to be disclosed to investors, and the policies and procedures required in relation to contingency funds.
- 7.11 **Commission Delegated Regulation (EU) 2022/2119 of 13 July 2022 supplementing Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to regulatory technical standards for the key investment information sheet**
This Delegated Regulation contains RTS regarding the key investment information sheet.
- 7.12 **Commission Implementing Regulation (EU) 2022/2120 of 13 July 2022 laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms**
This Implementing Regulation contains ITS with regard to data standards and formats, templates and procedures for reporting information on projects funded through crowdfunding platforms.
- 7.13 **Commission Implementing Regulation (EU) 2022/2121 of 13 July 2022 laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities and ESMA in relation to European crowdfunding service providers for business**
This Implementing Regulation contains ITS with regard to standard forms, templates and procedures for the co-operation and exchange of information between competent authorities and ESMA in relation to CSPs for business.
- 7.14 **Commission Implementing Regulation (EU) 2022/2122 of 13 July 2022 laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to standard forms, templates and procedures for the cooperation and exchange of information between competent authorities concerning European crowdfunding service providers for business**
This Implementing Regulation contains ITS with regard to standard forms, templates and procedures for the co-operation and exchange of information between competent authorities concerning CSPs for business.
- 7.15 **Commission Implementing Regulation (EU) 2022/2123 of 13 July 2022 laying down implementing technical standards for the application of Regulation (EU) 2020/1503 of the European Parliament and of the Council with regard to the standard forms, templates and procedures for the notifications of national**

marketing requirements applicable to crowdfunding service providers by competent authorities to ESMA

This Implementing Regulation contains ITS with regard to the standard forms, templates and procedures for the notifications of national marketing requirements applicable to CSPs by competent authorities to ESMA.

8. EMIR

EU Developments:

- 8.1 **Commission Implementing Decision (EU) 2022/551 of 4 April 2022 amending Implementing Decision (EU) 2021/85 on the equivalence to the requirements of Regulation (EU) No 648/2012 of the European Parliament and of the Council of the regulatory framework of the United States of America for central counterparties that are authorised and supervised by the U.S. Securities and Exchange Commission (Text with EEA relevance)**

This Implementing Decision (EU) 2022/551 amends Implementing Decision (EU) 2021/85 on the equivalence to the requirements of EMIR with regard to mortgage-backed securities issued or guaranteed by the government-sponsored agencies Federal National Mortgage Association (“**Fannie Mae**”), the Federal Home Loan Mortgage Corporation (“**Freddie Mac**”) or the Government National Mortgage Association (“**Ginnie Mae**”) that are traded on To-Be-Announced basis (“**TBAs**”).

- 8.2 **Commission Implementing Decision (EU) 2022/552 of 4 April 2022 determining that national securities exchanges of the United States of America that are registered with the Securities and Exchange Commission comply with legally binding requirements which are equivalent to the requirements laid down in Title III of Directive 2014/65/EU and are subject to effective supervision and enforcement (Text with EEA relevance)**

This Implementing Decision relates to the determination that national securities exchanges of the United States of America which are registered with the SEC comply with legally binding requirements that are equivalent to the requirements laid down in Title III of Directive 2014/65/EU (the “**MiFID II Directive**”) and are subject to effective supervision and enforcement.

- 8.3 **Commission Delegated Regulation (EU) 2022/1671 of 9 June 2022 extending the transitional period referred to in Article 89(1), first subparagraph, of Regulation (EU) No 648/2012 of the European Parliament and of the Council**

This Delegated Regulation extends the temporary clearing exemption for pension scheme arrangements (“**PSAs**”) until 18 June 2023. PSAs have been relying on time-limited exemptions from the EMIR clearing obligation since it was first introduced. The previous exemption, extended in 2021 for the first of two possible one-year extensions, expired on 18 June 2022. On 25 January 2022, ESMA recommended to the Commission a final extension of that exemption, with the clearing obligation applying to PSAs in full from 19 June 2023.

- 8.4 **Commission Delegated Regulation (EU) 2022/1855 of 10 June 2022 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and the type of reports to be used**

This Delegated Regulation supplements EMIR and contains RTS specifying the minimum details of the data to be reported to trade repositories (“**TR**”) and the type of reports to be used.

- 8.5 **Commission Delegated Regulation (EU) 2022/1856 of 10 June 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 151/2013**

by further specifying the procedure for accessing details of derivatives as well as the technical and operational arrangements for their access

This Delegated Regulation amends the RTS laid down in Delegated Regulation (EU) 151/2013 by further specifying the procedure for accessing details of derivatives and the technical and operational arrangements for their access.

- 8.6 **Commission Delegated Regulation (EU) 2022/1857 of 10 June 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 150/2013 as regards the details of the applications for registration as a trade repository and for applications for extension of registration as a trade repository**
This Delegated Regulation amends the RTS laid down in Delegated Regulation (EU) No 150/2013 as regards the details of the applications for registration as a TR and for applications for extension of registration as a TR.
- 8.7 **Commission Delegated Regulation (EU) 2022/1858 of 10 June 2022 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported**
This Delegated Regulation contains RTS that specify the procedures for the reconciliation of data between TRs and the procedures to be applied by the TR to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported.
- 8.8 **Commission Implementing Regulation (EU) 2022/1859 of 10 June 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) No 1248/2012 as regards the format for applications for registration as trade repositories and for applications for extension of registration as trade repositories**
This Implementing Regulation amends the ITS laid down in Implementing Regulation (EU) 1248/2012 as regards the format for applications for registration as TRs and for applications for extension of registration as TRs.
- 8.9 **Commission Implementing Regulation (EU) 2022/1860 of 10 June 2022 laying down implementing technical standards for the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the standards, formats, frequency and methods and arrangements for reporting**
This Implementing Regulation lays down ITS for the application of EMIR with regard to the standards, formats, frequency, and methods and arrangements for reporting.
- 8.10 **Corrigendum to Commission Implementing Regulation (EU) 2022/1860 of 10 June 2022 laying down implementing technical standards for the application of Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the standards, formats, frequency and methods and arrangements for reporting**
This corrigendum makes a minor amendment to Commission Implementing Regulation (EU) 2022/1860 in Article 4(1) on page 71, replacing the text “in accordance with paragraphs 2 to 14” with “in accordance with paragraphs 2 to 13”.
- 8.11 **Commission Delegated Regulation (EU) 2022/2310 of 18 October 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 149/2013 as regards the value of the clearing threshold for positions held in OTC commodity derivative contracts and other OTC derivative contracts**
This Delegated Regulation increases from €3 billion to €4 billion the clearing threshold for commodity derivatives laid down in Delegated Regulation (EU) 149/2013. This Delegated Regulation applied from 29 November 2022.
- 8.12 **Commission Delegated Regulation (EU) 2022/2311 of 21 October 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) No 153/2013 as regards temporary emergency measures on collateral requirements**

This Delegated Regulation, which was published in the OJ on 28 November 2022 and entered into force on 29 November 2022, amends the RTS laid down in Delegated Regulation (EU) 153/2013 relating to temporary emergency measures on collateral requirements under EMIR. This Delegated Regulation temporarily expands the pool of eligible collateral that CCPs can accept to include uncollateralised bank guarantees for non-financial counterparties acting as clearing members and public guarantees for all types of counterparties, for a period of 12 months after its entry into force (therefore, until 29 November 2023).

9. Fees and Levies

Statutory Instruments:

9.1 **Central Bank Act 1942 (Section 32E) Prospectus and Related Documents Fee Regulations 2022**¹⁰

These Regulations revoke and replace the Central Bank Act 1942 (Section 32E) Prospectus and Related Documents Approval Fee Regulations 2015. These Regulations set out the obligation on applicants for prospectus approval to pay a fee in advance of receipt of that approval. They also set out the obligation to pay a fee in respect of certain documents that are filed with the CBI. The relevant fees are detailed in the Annex to these Regulations.

9.2 **Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2022**¹¹

These Regulations provide for each financial service provider to pay an annual levy in respect of the services provided by the Financial Services and Pensions Ombudsman (“FSPO”) to the financial services industry. The Schedule to the Regulations sets out further detail of the levy to be paid by each category of financial service provider.

9.3 **European Union (Bank Recovery and Resolution) Resolution Fund Levy Regulations 2022**¹²

These Regulations relate to levies to be paid by in scope institutions to the CBI (in respect of the levy period 2022) for the account of the Bank and Investment Firm Resolution Fund.

9.4 **Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) (Amendment) Regulations 2022**¹³

These Regulations specify levies for Irish Collective Asset Management Vehicles, Unit Trust, Credit Unions, Investment Limited Partnerships and Common Contractual Funds. The levies relate to the CBI’s costs of maintaining the Central Register of Beneficial Ownership of Common Contractual Funds and of Investment Limited Partnerships in Ireland.

9.5 **Central Bank Act 1942 (Section 32D) Regulations 2022**¹⁴

These Regulations prescribe levies for which regulated entities are liable in respect of each authorisation held for the levy period (1 January 2021 to 31 December 2021) or the subsequent levy period (1 January 2022 to 31 December 2022). These Regulations came into operation on 31 August 2022.

9.6 **Credit Union Fund (Stabilisation) Levy Regulations 2022**¹⁵

These Regulations set the credit union stabilisation levy for the 2023 levy period at the rate of 0.001484% of the total assets of the credit union, a reduction from previously. These Regulations apply to every credit union that is a credit union on 1 January 2023. Credit unions must make payment of the levy to the Minister not later than 28 February 2023.

¹⁰ SI 135 of 2022.

¹¹ SI 93 of 2022.

¹² SI 190 of 2022.

¹³ SI 327 of 2022.

¹⁴ SI 426 of 2022.

¹⁵ SI 476 of 2022.

9.7 **Credit Institutions Resolution Fund Levy (Amendment) Regulations 2022¹⁶**

These Regulations set the credit institution resolution levy for 2023 at the rate of 0.024725%, a slight reduction from 0.024914% of assets in 2022.

EU Developments:

9.8 **Decision (EU) 2022/514 of the European Central Bank of 1 March 2022 on the total amount of annual supervisory fees for 2021**

This Decision sets out details of the supervisory fees to be paid by significantly supervised entities and groups and less significant supervised entities and groups for the period ending 2021.

10. **EU Restrictive Measures in Force**

The EU imposes certain restrictive measures directed against certain persons and entities. In 2022, the key restrictive measures imposed targeted Russia in respect of the invasion of Ukraine. The restrictive measures involved amendments to existing Council Regulation (EU) 833/2014 and Council Regulation (EU) 269/2014 which added a significant number of persons and entities to the sanctions list, and adopted sectoral measures with the aim of significantly weakening Russia's economic base.

The CBI maintains a list of European Union restrictive measures (sanctions) in force, which it updates regularly¹⁷. Various Irish statutory instruments give effect to the European Union restrictive measures contained on this list. See examples below¹⁸.

11. **Fintech / Crypto**

European Developments

11.1 **Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU**

This Regulation introduces a pilot regime for market infrastructures based on distributed ledger technology (“DLT”) and is known as the “**DLT Pilot Regime Regulation**”. This Regulation allows for certain DLT market infrastructures to be temporarily exempted from specific requirements of EU financial services legislation that could otherwise prevent operators from developing solutions for the trading and settlement of transactions in cryptoassets. This will allow for the testing of DLT market infrastructures.

This Regulation establishes a framework for trading and settling transactions in tokenised securities that qualify as financial instruments within the meaning of the MiFID II Directive. It provides a safe “*sandbox*” environment to facilitate companies in testing solutions using DLT and learn how existing rules apply to DLT financial instruments in practice. The framework includes safeguards, such as limits on the types of financial instruments that can be traded within the regime (meaning the regime is focused mainly on shares and debt securities but unit funds are also included).

This Regulation was published in the OJ on 2 June 2022 and entered into force on 22 June 2022. This Regulation will apply from 23 March 2023, except for Articles 8(5), 9(5), 10(6) and 17 which apply from 22 June 2022 and Article 16 which applies from 4 July 2021.

¹⁶ SI 477 of 2022.

¹⁷ The list may be accessed [here](#).

¹⁸ Criminal Justice (Terrorist Offences) Act 2005 (Section 42) (Restrictive Measures concerning Certain Persons and Entities Associated with the ISIL (Da'esh) and Al-Qaida Organisations) (No.6) Regulations 2022 (SI 275 of 2022); Criminal Justice (Terrorist Offences) Act 2005 (Section 42) (Restrictive Measures Concerning Certain Persons and Entities With a View to Combating Terrorism) (No.2) Regulations 2022 (SI 372 of 2022); European Union (Restrictive Measures Concerning the Democratic Republic of the Congo) (No. 4) Regulations 2022 (SI 700 of 2022); European Union (Restrictive Measures concerning Ukraine) (No.24) Regulations 2022 (SI 707 of 2022).

12. Fitness and Probity

Statutory Instruments:

12.1 **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2022¹⁹**

These Regulations amend the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011, as amended. Schedule 2 to the 2011 Regulations is amended by the substitution of the Schedule to these Regulations. These Regulations amend the list of pre-approval controlled functions (“PCFs”) as follows:

- by expanding PCF-16 to include branch managers in non-EEA countries;
- by introducing a stand-alone PCF in respect of ‘*Independent non-executive director*’ (PCF-2B) and in respect of ‘*Head of Anti-Money Laundering and Counter Terrorist Financing Compliance*’ (PCF-52); and
- by removing PCF-31 ‘*Head of Investment*’.

13. General

Acts of the Oireachtas:

13.1 **Bretton Woods Agreements (Amendment) Act 2022**

This Act amends the Bretton Woods Agreements Act 1957 and Bretton Woods Agreements (Amendment) Act 1999, and repeals s163 Finance Act 2010. This Act commenced on 15 November 2022. This Act provides for Ireland’s adherence to the International Monetary Fund’s (“IMF”) New Arrangements to Borrow (“NAB”) whereby the CBI undertakes to provide resources, on behalf of the State, to the IMF through credit arrangements. The Act provides for guarantees by the Minister for Finance to the CBI on any moneys advanced by it arising from a call by the IMF under the NAB Decision. The Act amends the Bretton Woods Agreements Act 1957 to provide for the payment of grant contributions by the Minister for Finance in respect of the Catastrophe Containment and Relief Trust. The Bretton Woods Agreements (Amendment) Act 1999 is also amended to rename the Enhanced Structural Adjustment Facility Trust as the Poverty Reduction and Growth Trust and to increase the aggregate amount of grant contributions that may be paid in relation to this trust.

Statutory instruments

13.2 **Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2022²⁰**

This Order extended – to 31 December 2022 – the “interim period” as defined in section 2 of the Companies Act 2014 in respect of the amendments effected by the specified provisions of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, including: sections 3 to 9 (including execution of instruments in counterparts, separately, under section 43A of the Companies Act, and the giving of notice, and the calculation of quorums, for general meetings and the holding of general meetings online); section 11 (voting on polls at general meetings, including online); section 13 to 16 (including extending the maximum period of examinership of a company to 150 days and increasing the individual and aggregate debt thresholds for companies to €50,000); and section 18 to 25 (the holding of creditors’ meetings online).

13.3 **Companies Act 2014 (Section 12A(1)) (Covid-19) (No 2) Order 2022²¹**

This Order extends – to 31 December 2023 – the “interim period” as defined in section 2 of the Companies Act 2014 in respect of certain of the amendments effected by the specified provisions of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020, including: sections 3, 4 and 6 to 9 (including the giving of notice, and the calculation of quorums, for general meetings and the

¹⁹ SI 169 of 2022.

²⁰ SI 220 of 2022.

²¹ SI 648 of 2022.

holding of general meetings online); section 11 (voting on polls at general meetings, including online); sections 14 to 16 (including increasing the individual and aggregate debt thresholds for companies to €50,000); and sections 18 to 25 (the holding of creditors' meetings online).

The provisions in respect of the execution of instruments in counterparts, separately, under section 43A of the Companies Act, and the extension of the maximum period of examinership of a company elapsed on 31 December 2022.

13.4 **Central Bank Act 1971 (Approval of Scheme of Transfer between KBC Bank Ireland Public Limited Company and The Governor and Company of the Bank of Ireland) Order 2022²²**

This Order approves the transfer of certain business between KBC Bank Ireland plc and The Governor and Company of the Bank of Ireland in accordance with a scheme submitted to the Minister of Finance, from 1 December 2022.

13.5 **Central Bank Act 1971 (Approval of Scheme of Transfer between KBC Bank Ireland Public Limited Company and The Governor and Company of the Bank of Ireland) (Residual Balance Assets and Residual Balance Liabilities) Order 2022²³**

This Order relates to the transfer of certain business between KBC Bank Ireland Public Limited Company and The Governor and Company of the Bank of Ireland.

Statutory instruments (commencement orders)

13.6 **Bretton Woods Agreements (Amendment) Act 2022 (Commencement) Order 2022²⁴**

This Order appoints 15 November 2022 as the date on which Bretton Woods Agreements (Amendment) Act 2022 shall come into operation.

EU Developments:

13.7 **Commission Implementing Regulation (EU) 2022/2454 of 14 December 2022 laying down implementing technical standards for the application of Directive 2002/87/EC of the European Parliament and of the Council with regard to supervisory reporting of risk concentrations and intra-group transactions**

This Implementing Regulation sets out ITS to harmonise the supervisory reporting of risk concentrations and intra-group transactions in accordance with Articles 7 and 8 of Directive 2002/87/EC (the “**Financial Conglomerates Directive**” or “**FICOD**”). This Implementing Regulation entered into force on 8 January 2023 and will apply from 31 December 2023.

13.8 **Commission Delegated Regulation (EU) 2022/2553 of 21 September 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2019/815 as regards the 2022 update of the taxonomy for the single electronic reporting format**

This Delegated Regulation amends the RTS set out in Delegated Regulation (EU) 2019/815 as regards the 2022 update of the taxonomy for the single electronic reporting format.

²² SI 620 of 2022.

²³ SI 621 of 2022.

²⁴ SI 567 of 2022.

14. Insolvency

Statutory Instruments:

14.1 **Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022²⁵**

These Regulations amend the application form set out in the Schedule to the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013 by substituting “€1,500” for “€400”, from 14 January 2022.

14.2 **Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2022 and Companies Act 2014 (Section 12A(1)) (Covid-19) (No 2) Order 2022**

See paragraphs 13.2 and 13.3 above regarding the extension / expiry of the “interim period” under CA 2014.

14.3 **Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2022²⁶**

These Regulations prescribe the form to be used when making an application to the Insolvency Service of Ireland for a protective certificate in respect of a proposal for a Personal Insolvency Arrangement. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Protective Certificate Personal Insolvency Arrangement Application Form) Regulations 2013, from 29 April 2022.

14.4 **Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2022²⁷**

These Regulations prescribe the form to be used when making an application to the Insolvency Service of Ireland for a protective certificate in respect of a proposed Debt Settlement Arrangement. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Protective Certificate Debt Settlement Arrangement Application Form) Regulations 2013, from 29 April 2022.

14.5 **Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2022²⁸**

These Regulations prescribe the form to be used when making an application to the Insolvency Service of Ireland for a Debt Relief Notice. These Regulations also revoke the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) Regulations 2013 and the Personal Insolvency Act 2012 (Prescribed Debt Relief Notice Application Form) (Amendment) Regulations 2022, from 29 April 2022.

14.6 **Personal Insolvency Act 2012 (Prescribed Financial Statement) (Amendment) Regulations 2022²⁹**

These Regulations amend the Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014 by substituting the form set out in Schedule 1 to these Regulations for the form set out in Schedule 1 to the Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014 and by substituting the form set out in Schedule 2 to these Regulations for the form set out in Schedule 2 to the Personal Insolvency Act 2012 (Prescribed Financial Statement) Regulations 2014, from 10 May 2022.

14.7 **European Union (Preventive Restructuring) Regulations 2022³⁰**

These Regulations amend the Companies Act 2014 (“CA 2014”) to transpose the “phase one” requirements of Directive (EU) 2019/1023 not already provided for in Irish law, from 27 July 2022. The second phase contemplated by the Directive will entail a broader re-evaluation of

²⁵ SI 18 of 2022.

²⁶ SI 213 of 2022.

²⁷ SI 214 of 2022.

²⁸ SI 215 of 2022.

²⁹ SI 228 of 2022.

³⁰ SI 380 of 2022.

Member States' restructuring statutes by reference to optional provisions in the Directive (which include further protections of employees and measures facilitating new financing).

Transposition of the Directive required significant changes to insolvency restructuring regimes in many Member States but in Ireland it was possible to accommodate the Directive's requirements within the existing framework of CA 2014 and, in particular, Ireland's examinership regime. For in-scope companies, a number of notable amendments have been made by these Regulations. For example, the insertion of a new s224A into CA 2014 which codifies the directors' duty to have regard to certain matters, such as the interests of creditors, where the company is, or is likely to be, unable to pay its debts. There are also important new provisions regarding early warning mechanisms, qualifications of examiners, notifications to creditors, carve-outs for employee claims, changes to approval thresholds for examiner's schemes, and certain restrictions on the exercise of contractual rights by creditors where this could impact on a successful restructuring of the relevant company.

15. Insurance and Reinsurance

Acts of the Oireachtas:

15.1 **Insurance (Miscellaneous Provisions) Act 2022**

This Act amends the Central Bank (National Claims Information Database) Act 2018 to enable the collection by the CBI of details of the costs borne and provisions made associated with dealing with relevant claims, including details of deductions, in respect of payments out of public moneys, made by insurance undertakings from the amounts paid in satisfaction of relevant claims.

Furthermore, this Act provides for the preparation of an insurance measures report by the CBI, within 6 months of the first anniversary of the commencement of section 6 of this Act. The report will cover the oversight of pricing practices of insurance undertakings relating to relevant insurance contracts (contracts entered into by consumers in respect of home or motor insurance), the measures the CBI has implemented regarding price-walking, the measures the CBI has implemented regarding the practice whereby non-life insurance contracts are automatically renewed at the end of their term, and the conclusions of the CBI as to whether measures or further measures should be implemented in respect of all or any of these practices.

Additionally, this Act amends the Consumer Insurance Contracts Act 2019. The amendments introduce mutual duties of disclosure in relation to information supporting or prejudicing the validity of insurance claims, notwithstanding rules of litigation privilege and rules of privilege regarding reports prepared by lawyers and communications between lawyers and another person. The amendments provide for the disclosure by insurance undertakings of information in relation to deductions from amounts paid in satisfaction of claims. Further, this Act amends the law in relation to exclusions from contracts of insurance, under which two or more consumers are co-insureds, for loss or damage to property caused by a criminal or intentional act or omission of a co-insured, such that exclusions shall apply only to the claim of a consumer:

- whose act or omission caused the loss or damage;
- who abetted or colluded in the act or omission; or
- who consented to the act or omission and knew or ought to have known that the act or omission would cause the loss or damage.

Lastly, this Act amends the European Union (Insurance and Reinsurance) Regulations 2015, as regards undertakings authorised in the United Kingdom or Gibraltar which are carrying on reinsurance business or subject to winding-up proceedings or reorganisation measures.

Statutory Instruments (Commencement Orders):

- 15.2 **Insurance (Miscellaneous Provisions) Act 2022 (Commencement) Order 2022**³¹
This Order appoints 8 July 2022 as the date on which the Insurance (Miscellaneous Provisions) Act 2022 (other than Section 7 and Section 8) shall come into operation. This Order also appoints 1 October 2022 as the date on which Section 7 and Section 8 (insofar as it relates to the insertion of section 16A into the Consumer Insurance Contracts Act 2019) Insurance (Miscellaneous Provisions) Act 2022 shall come into operation. Finally, this Order appoints 1 January 2023 as the date on which the Insurance (Miscellaneous Provisions) Act 2022, insofar as it is not already in operation, shall come into operation.

Statutory Instruments:

- 15.3 **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Requirements) Regulations 2022**³²

These Regulations set out certain requirements in respect of certain insurance policies and are in force since 1 July 2022. These Regulations apply to insurance undertakings and insurance intermediaries operating in the State in respect of non-life insurance policies, introducing new rules relating to:

- *price walking ban*: as of 1 July 2022, when a person renews their home or motor insurance for the second time or more (subsequent renewal), the insurer can no longer charge more than someone who is renewing for the first time, and has a similar risk profile and cost of service;
- *review of pricing policies and processes*: providers of motor and home insurance are required to review their pricing policies and processes annually; and
- *automatic renewal process*: if a person's home or motor insurance policy renews automatically, additional information will be provided that will be consistent across insurance providers.

- 15.4 **European Union (Insurance and Reinsurance) (Amendment) Regulations 2022**³³
These Regulations give further effect to Directive 2009/138/EC ("**Solvency II**") and amend Regulations 3, 4 and 140 of the European Union (Insurance and Reinsurance) Regulations 2015, from 19 October 2022, as follows:

- Regulation 3 is amended by substituting a new definition of "*large risks*".
- Regulation 4 is amended by the substitution of a paragraph which sets out the conditions, all of which must be met, for the Regulations not to apply to an undertaking (other than an undertaking carrying on reinsurance only).
- Regulation 140 is amended by the substitution of a new paragraph setting the monetary value of absolute floors for the Minimum Capital Requirement in the case of non-life insurance undertakings, life insurance undertakings, and reinsurance undertakings.

EU Developments:

- 15.5 **Commission Implementing Regulation (EU) 2022/186 of 10 February 2022 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2021 until 30 March 2022 in accordance with Directive 2009/138/EC of the European Parliament**

³¹ SI 346 of 2022.

³² SI 126 of 2022.

³³ SI 509 of 2022.

and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance

This Implementing Regulation applies to reporting, with reference dates from 31 December 2021 until 30 March 2022, of technical information on relevant risk-free interest rate term structures, fundamental spreads for calculation of the matching adjustment and volatility adjustments. This Implementing Regulation was published in the OJ on 11 February 2022 and applies from 31 December 2021.

15.6 **Commission Implementing Regulation (EU) 2022/732 of 12 May 2022 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2022 until 29 June 2022 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance**

This Implementing Regulation lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2022 until 29 June 2022 in accordance with the Solvency II Directive.

15.7 **Commission Implementing Regulation (EU) 2022/1384 of 8 August 2022 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2022 until 29 September 2022 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance**

This Implementing Regulation outlines technical information for insurers and reinsurers for use when calculating technical provisions and basic own funds for reporting under the Solvency II Directive, between the period 30 June 2022 to 29 September 2022. This Implementing Regulation entered into force on 10 August 2022, and applies from 30 June 2022.

15.8 **Commission Implementing Regulation (EU) 2022/2282 of 21 November 2022 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2022 until 30 December 2022 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance**

This Implementing Regulation sets out the technical information for calculating technical provisions and basic own funds for reporting under the Solvency II Directive. This Implementing Regulation lays down the technical information for insurers and reinsurers to use when calculating the technical provisions and own funds for reporting from 30 September 2022 until 30 December 2022. This Implementing Regulation entered into force on 23 November 2022 and applies from 30 September 2022.

16. Investment Firms

Statutory Instruments:

16.1 **European Union (Markets in Financial Instruments) (Amendment) Regulations 2022³⁴**

These Regulations transpose Directive (EU) 2021/338 (the “MiFID ‘Quick-Fix’ Directive”) into Irish law. The MiFID ‘Quick-Fix’ Directive, as transposed in the Regulations, contains targeted measures to support economic recovery from COVID-19 including:

- reducing client information requirements (including providing for electronic communication as the default method of communication);
- temporary suspension of best execution reporting (specifically Delegated Regulation (EU) 2017/575 (RTS27)) until 28 February 2023;

³⁴ SI 6 of 2022.

- reducing product governance requirements (the removal of certain product governance requirements for bonds with no other embedded derivative than a make-whole clause or where the financial instruments are marketed or distributed exclusively to eligible counterparties); and
- changing the scope of position limits.

The measures contained in the Regulations came into operation on 28 February 2022.

16.2 Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) (Amendment) Regulations 2022³⁵

These Regulations amend the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017, from 21 February 2022. These Regulations specify the data items (such as accounts, records, reports, returns and other information) that fund administrators, investment business firms, and MiFID investment firms must submit to the CBI.

16.3 European Union (Investment Firms) (Amendment) Regulations 2022³⁶

These Regulations amend the Central Bank Act 1971 to provide for the prohibition of certain investment services and activities (“*Class 1 business*”) in the State by certain investment firms (“*Class 1 firms*”) operating without the requisite permission (“*Class 1 authorisation*” or banking licence). These Regulations also outline the application process for a Class 1 authorisation and the associated conditions of authorisation and set out the process and grounds for the withdrawal of a Class 1 authorisation, from 27 June 2022.

16.4 European Union (Investment Firms) (No 2) (Amendment) Regulations 2022³⁷

These Regulations, in operation from 27 June 2022, amend the Central Bank Act 1971 to provide for undertakings referred to in point (1)(b) of Article 4(1) of the CRR, which have been authorised under Part 2 European Union (Markets in Financial Instruments) Regulations 2017, to apply for re-authorisation as a credit institution, as required by Directive (EU) 2019/2034, and set out certain requirements for the CBI in relation to such applications. In addition, these Regulations amend the European Union (Investment Firms) Regulations 2021 to update internal referencing.

16.5 European Union (Markets in Financial Instruments) (Amendment) (No 2) Regulations 2022³⁸

These Regulations, in operation from 27 June 2022, amend the European Union (Markets in Financial Instruments) Regulations 2017 to provide that a Class 1 investment firm’s authorisation as an investment firm shall be deemed withdrawn upon it being granted a credit institution authorisation or licence. Additionally, these Regulations amend the Central Bank Act 1971 to require the CBI to establish to its satisfaction that an applicant for a credit institution authorisation, who intends to provide investment services or perform investment activities, will comply with the relevant provisions of the European Union (Markets in Financial Instruments) Regulations 2017.

16.6 European Union (Markets in Financial Instruments) (Amendment) (No 3) Regulations 2022³⁹

These Regulations amend the European Union (Markets in Financial Instruments) Regulations 2017 to provide for the integration of sustainability factors into product governance obligations, as required by Commission Delegated Directive (EU) 2021/1269, amending Commission Delegated Directive (EU) 2017/593. These Regulations came into operation on 22 November 2022.

³⁵ SI 45 of 2022.

³⁶ SI 302 of 2022.

³⁷ SI 303 of 2022.

³⁸ SI 304 of 2022.

³⁹ SI 363 of 2022.

16.7 **European Union (Markets in Financial Instruments) (Amendment) (No 4) Regulations 2022⁴⁰**

These Regulations amend the definition of ‘*financial instrument*’ in the European Union (Markets in Financial Instruments) Regulations 2017 to refer to ‘*any of the instruments specified in Part 3 of Schedule 1 (including where such an instrument is issued by means of distributed ledger technology)*’. This amendment is intended to extend the definition of financial instrument to include those instruments issued by way of DLT (as required by the DLT Pilot Regime Regulation (Regulation (EU) 2022/858)). These Regulations come into operation on 23 March 2023.

EU Developments:

16.8 **Commission Delegated Regulation (EU) 2022/25 of 22 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the methods for measuring the K-factors referred to in Article 15 of that Regulation**

This Delegated Regulation contains RTS regarding prudential requirements for investment firms under Regulation (EU) 2019/2033 (the “**Investment Firms Regulation**” or “**IFR**”). This Delegated Regulation lays down RTS specifying methods for measuring K-factors and entered into force on 31 January 2022.

16.9 **Commission Delegated Regulation (EU) 2022/26 of 24 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying the notion of segregated accounts to ensure client money’s protection in the event of an investment firm’s failure**

This Delegated Regulation contains RTS relating to prudential requirements for investment firms under the IFR. This Delegated Regulation specifies RTS on segregated accounts to protect client money in the event of an investment firm’s failure and entered into force on 31 January 2022.

16.10 **Commission Delegated Regulation (EU) 2022/27 of 27 September 2021 amending Regulation (EU) No 236/2012 of the European Parliament and of the Council as regards the adjustment of the relevant threshold for the notification of significant net short positions in shares**

This Delegated Regulation amends Regulation (EU) 236/2012 (the “**Short Selling Regulation**” or “**SSR**”) as regards the adjustment from 0.2% to 0.1% of the relevant threshold for the notification of significant net short positions in shares under Article 5(2) SSR in light of the COVID-19 pandemic. This Delegated Regulation entered into force on 31 January 2022.

16.11 **Commission Delegated Regulation (EU) 2022/76 of 22 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards specifying adjustments to the K-factor ‘daily trading flow’ (K-DTF) coefficients**

This Delegated Regulation supplements the IFR with regard to RTS specifying adjustments to the K-factor ‘daily trading flow’ (“**K-DTF**”) coefficients.

16.12 **Commission Delegated Regulation (EU) 2022/803 of 16 February 2022 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying rules of procedure for the exercise of the power to impose fines or periodic penalty payments by the European Securities Markets Authority regarding data reporting service providers**

This Delegated Regulation supplements MiFIR by specifying the procedure that the ESMA must follow to impose fines or periodic penalty payments on data reporting service providers under its supervision.

16.13 **Commission Delegated Regulation (EU) 2022/244 of 24 September 2021 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the**

⁴⁰ SI 443 of 2022.

Council with regard to regulatory technical standards specifying the amount of total margin for the calculation of the K-factor ‘clear margin given’ (K-CMG)

This Delegated Regulation sets out RTS specifying the amount of total margin for the calculation of the K-factor ‘clear margin given’ (“K-CMG”) under the IFR. This Delegated Regulation entered into force on 14 March 2022.

16.14 Commission Delegated Regulation (EU) 2022/466 of 17 December 2021 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying criteria for derogation of the principle that approved publication arrangements and approved reporting mechanisms are supervised by the European Securities Markets Authority

This Delegated Regulation specifies criteria for data reporting services providers (“DRSPs”) to qualify as having a limited relevance for the internal market and thus be exempt from the supervision of ESMA in respect of approved publication arrangements (“APAs”) and approved reporting mechanisms (“ARMS”). This Delegated Regulation entered into force on 27 March 2022.

16.15 Commission Delegated Regulation (EU) 2022/629 of 12 January 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/583 as regards adjustment the liquidity thresholds and trade percentile used to determine the size specific to the instrument applicable to certain non-equity instruments

This Delegated Regulation amends RTS contained in Delegated Regulation (EU) 2017/583 on the adjustment of liquidity thresholds and trade percentiles used to determine the size specific to the instrument (“SSTI”) applicable to certain non-equity instruments. Delegated Regulation (EU) 2017/583 introduced an annual phase-in of application of certain transparency thresholds over the course of 4 years, starting from 2019. That phase-in allows gradual broadening of the application of corresponding transparency obligations. This Delegated Regulation provides for a move to stage S3 for bonds for which there is a liquid market and for the SSTI for bonds.

16.16 Commission Delegated Regulation (EU) 2022/930 of 10 March 2022 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council by specifying fees relating to the supervision by the European Securities Markets Authority of data reporting service providers

This Delegated Regulation supplements MiFIR by specifying fees relating to the supervision by ESMA of DRSPs. This Delegated Regulation entered into force and applied from 20 June 2022 (subject to the application of certain transitional provisions).

16.17 Commission Implementing Regulation (EU) 2022/1220 of 14 July 2022 laying down implementing technical standards for the application of Directive 2014/65/EU of the European Parliament and of the Council with regard to the format in which branches of third country firms and competent authorities have to report the information referred to in Article 41(3) and (4) of that Directive

This Implementing Regulation lays down ITS with regard to the format in which branches of third-country firms and competent authorities have to report the information referred to in Article 41(3) and (4) of the MiFID II Directive.

16.18 Commission Delegated Regulation (EU) 2022/1299 of 24 March 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the content of position management controls by trading venues

This Delegated Regulation supplements the MiFID II Directive with regard to RTS specifying the content of position management controls by trading venues. This Delegated Regulation forms part of the post-COVID-19 MiFID II recovery package and aims to harmonise the implementation of the position management controls by trading venues, by specifying the content of position management controls and taking into account the characteristics of the trading venues concerned. This Delegated Regulation entered into force on 15 August 2022.

A Corrigendum to this Delegated Regulation makes minor amendments to Article 2(1) and footnote 4 on page 2.

16.19 **Commission Implementing Regulation (EU) 2022/1300 of 24 March 2022 amending Implementing Regulation (EU) 2017/1093 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators**

This Implementing Regulation relates to commodity derivatives position limits, management controls and reporting under the MiFID II Directive and entered into force on 15 August 2022. This Implementing Regulation amends Annex II to Implementing Regulation (EU) 2017/1093 by replacing Table 2 with a new Table 2 concerning fields to be reported for all positions across all maturities of all contracts for the purposes of Article 2.

16.20 **Commission Delegated Regulation (EU) 2022/1302 of 20 April 2022 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits**

This Delegated Regulation supplements the MiFID II Directive with RTS for the application of position limits to commodity derivatives and procedures for applying for exemption from position limits. This Delegated Regulation repeals and replaces Delegated Regulation (EU) 2017/591 (“**RTS 21**”) and sets out how to calculate the size of the net position of a person, the procedure for the risk-reducing exemption for financial entities that are part of a predominantly commercial group and a procedure for applying the liquidity provision exemption, as well as developing the RTS 21 list of non-financial entities into a positive list of legal or natural persons defined as financial entities.

16.21 **Commission Delegated Regulation (EU) 2022/1159 of 11 March 2022 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards for public disclosure of investment policy by investment firms**

This Delegated Regulation supplements the IFR by outlining RTS on the disclosure of firms' investment policies. The RTS specify uniform disclosure formats and associated instructions for the disclosure of information on investment policy in order to provide transparency to investors and the wider market participants. This Delegated Regulation entered into force on 26 July 2022.

16.22 **Commission Delegated Regulation (EU) 2022/1455 of 11 April 2022 supplementing Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to regulatory technical standards for own funds requirement for investment firms based on fixed overheads**

This Delegated Regulation supplements the IFR by setting out RTS on fixed overheads requirements. The RTS cover the calculation of the fixed overheads requirement, calculation of the fixed overheads requirement for commodity and emission allowance dealers and the notion of material change. This Delegated Regulation entered into force on 25 September 2022.

17. **Investment Management / Funds**

Statutory Instruments:

17.1 **European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2022⁴¹**

These Regulations amend the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (the “**UCITS Regulations**”) to give effect to Directive (EU) 2021/2261. Undertakings for collective investment in transferable securities (“**UCITS**”) also qualify as packaged retail investment and insurance products (“**PRIIPs**”) and from 1 January 2023 UCITS must provide a key information document (“**KID**”) as set out in Regulation (EU) No 1286/2014 (the “**PRIIPs Regulation**”).

These Regulations provide that where:

⁴¹ SI 262 of 2022.

- an investment company, or
- for each of the common contractual funds and unit trusts it manages, a management company,

draws up, provides, revises and translates a document which complies with the requirements applicable to a KID under the PRIIPs Regulation, the CBI will consider that document as satisfying the requirements applicable to key investor information for the purposes of Regulations 98 to 102 and Regulation 118 of the UCITS Regulations. These Regulations come into operation on 1 January 2023.

The UCITS 'key investor information' and the KID required by the PRIIPs Regulation cover essentially the same information requirements. For investors other than retail investors, investment companies and management companies should continue to draw up key investor information in accordance with Directive 2009/65/EC (the "**UCITS Directive**"), unless they decide to draw up a KID as set out in the PRIIPs Regulation. The amendments to the UCITS Directive, as provided for in these Regulations, aim to overcome duplicating requirements to provide both documents for the same financial product.

17.2 **European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No 2) Regulations 2022⁴²**

These Regulations transpose into Irish law the provisions of Commission Delegated Directive (EU) 2021/1270 which requires UCITS management companies to take account of sustainability risks and sustainability factors in their operations. As a result, these Regulations amend the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011. These Regulations came into force on 12 September 2022.

18. **Market Abuse**

EU Developments:

18.1 **Commission Implementing Regulation (EU) 2022/1210 of 13 July 2022 laying down implementing technical standards for the application of Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to the format of insider lists and their updates**

This Implementing Regulation sets out ITS for the application of Articles 18(1) and 18(6) of Regulation (EU) No 596/2014 (the "Market Abuse Regulation" or "**MAR**") in relation to the format of insider lists and their updates. This Implementing Regulation was published in the OJ on 14 July 2022 and entered into force on 3 August 2022.

18.2 **Commission Delegated Regulation (EU) 2022/1959 of 13 July 2022 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market**

This Delegated Regulation contains RTS setting out a contractual template for liquidity contracts for the shares of issuers whose financial instruments are admitted to trading on an SME growth market under the MAR. The RTS set out requirements with which parties to a liquidity contract ought to comply to make sure they are not participating in market manipulation as provided under MAR. This Delegated Regulation was published in the OJ on 18 October 2022 and entered into force on 7 November 2022.

19. **Operational Resilience**

EU Developments

19.1 **Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and**

⁴² SI 442 of 2022.

amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011

This Regulation (known as the Digital Operational Resilience Act or “DORA”) harmonises and strengthens digital operational resilience requirements for the EU financial services sector, in order to equip entities in the financial system with processes to better prevent and manage cyber-incidents. DORA aims to consolidate and upgrade ICT risk requirements and operational risk requirements that have previously been addressed separately in various EU legal acts.

The focus of DORA is on “*digital operational resilience*” and DORA is intended to address risk deriving from all types of “*ICT Services*”. To that end, the definition of “*ICT services*” is to be understood in a broad manner, encompassing digital and data services provided through ICT systems to one or more internal or external users on an ongoing basis.

DORA will require a wide range of financial entities in the banking, insurance, investment, funds, and markets infrastructure sectors to manage their ICT risks in a robust and effective manner. This includes having strong internal governance and control frameworks, having ICT risk management frameworks, reporting ICT-related incidents to competent authorities, carrying out digital operational resilience testing, and managing ICT third-party risk. DORA entered into force on 16 January 2023 and its provisions will apply from 17 January 2025.

19.2 **Directive (EU) 2022/2556 of the European Parliament and of the Council of 14 December 2022 amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, 2014/65/EU, (EU) 2015/2366 and (EU) 2016/2341 as regards digital operational resilience for the financial sector**

This Directive complements DORA and makes amendments to various EU financial services directives to provide for strengthened digital operational resilience in EU financial institutions. This Directive entered into force on 16 January 2023 and must be transposed by member states by 17 January 2025.

19.3 **Directive (EU) 2022/2557 of the European Parliament and of the Council of 14 December 2022 on the resilience of critical entities and repealing Council Directive 2008/114/EC**

This Directive, known as the “**Critical Infrastructures Directive**” concerns the resilience of critical entities in specified sectors, subsectors and categories of entities in the EU. Banking and financial market infrastructure are categories of entities included in the Annex for which an entity may be considered to be a critical entity. EU member states must adopt and publish the measures necessary to comply with this Directive by 17 October 2024 and those measures shall apply from 18 October 2024.

20. Payments

EU Developments:

20.1 **Commission Delegated Regulation (EU) 2022/2360 of 3 August 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access**

This Delegated Regulation amends the RTS laid down in Delegated Regulation (EU) 2018/389 as regards the 90-day exemption for account access, the strong customer authentication (“SCA”) and the common and secure open standards of communication (“CSC”) under Directive 2015/2366/EU (the “**revised Payment Services Directive**” or “**PSD2**”). This Delegated Regulation entered into force on 25 December 2022 and will apply from 25 July 2023.

The amendments to the RTS:

- introduce a new mandatory exemption from the SCA requirement that will mandate account providers not to apply SCA when customers use an account information service provider to access their payment account information (provided certain conditions are met);

- limit the scope of the voluntary exemption in Article 10 of the RTS to instances where the customer accesses the account information directly; and
- extend the renewal timeline of SCA from every 90 days to every 180 days where the above exemptions apply.

21. PRIIPS

EU Developments:

- 21.1 **Corrigendum to Commission Delegated Regulation (EU) 2021/2268 of 6 September 2021 amending the regulatory technical standards laid down in Commission Delegated Regulation (EU) 2017/653 as regards the underpinning methodology and presentation of performance scenarios, the presentation of costs and the methodology for the calculation of summary cost indicators, the presentation and content of information on past performance and the presentation of costs by packaged retail and insurance-based investment products (PRIIPs) offering a range of options for investment and alignment of the transitional arrangement for PRIIP manufacturers offering units of funds referred to in Article 32 of Regulation (EU) No 1286/2014 of the European Parliament and of the Council as underlying investment options with the prolonged transitional arrangement laid down in that Article**

This Corrigendum, from 13 April 2022, replaces the entirety of the text of Delegated Regulation (EU) 2021/2268, which amends RTS on KIDs for PRIIPs.

- 21.2 **Commission Delegated Regulation (EU) 2022/975 of 17 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2017/653 as regards the extension of the transitional arrangement laid down in Article 14(2) of that Regulation and amending the regulatory technical standards laid down in Delegated Regulation (EU) 2021/2268 as regards the date of application of that Regulation**

This Delegated Regulation postpones the application date of certain PRIIPs-related disclosures rules until 1 January 2023 (instead of 1 July 2022) and extends the derogation arrangement whereby the UCITS Key Investor Information may be used to provide specific information for the purposes of PRIIPs disclosures until 31 December 2022 (instead of 30 June 2022). This Regulation entered into force on 14 July 2022.

22. Real estate finance

Statutory Instruments:

- 22.1 **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Housing Loan Requirements) Regulations 2022⁴³**

These Regulations set the limits for lenders on the proportion of mortgage loans that they may advance in certain categories by reference to: (a) the value of the property on which the mortgage loan is or is to be secured, and (b) the income of the borrower. These Regulations apply from 1 January 2023.

Regulation 5 provides that a housing loan to a first-time borrower for a principal home must not exceed a multiple of 4 times the borrower's income. This means that first-time buyers will be able to borrow up to 4 times their gross income, an increase from the previous loan to income ("LTI") rule of 3.5 times gross income. Second & subsequent buyers will continue to be able to borrow up to 3.5 times their gross income.

Loan-to-value ("LTV") for first-time buyers will remain at 90%. LTV for second & subsequent buyers will increase to 90%. This means that both buyer types will need to have a minimum deposit of 10%. LTV for buy-to-let buyers will remain at 70%.

⁴³ SI 546 of 2022.

Lenders will continue to be able to lend a certain amount above these limits, in line with their own credit policies. These Regulations revoke the previous Regulations on this subject.

(While not finance-specific, readers may also wish to refer to the separate notes for the accompanying lecture on “*Real Estate, Planning and Environment*”. This provides an overview of legislation relevant to those sectors and thus, indirectly, to the financing of those sectors.)

23. Securitisation

EU Developments:

23.1 **Commission Delegated Regulation (EU) 2022/1301 of 31 March 2022 amending the regulatory technical standards laid down in Delegated Regulation (EU) 2020/1226 as regards the information to be provided in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations**

This Delegated Regulation amends the RTS laid down in Delegated Regulation (EU) 2020/1226 setting out the information that securitisation parties are required to provide to ESMA in accordance with the simple, transparent and standardised (“**STS**”) notification requirements for traditional true sale securitisations laid down in the Securitisation Regulation. In particular, the amendments distinguish between those STS criteria for which a simple confirmation is sufficient and those for which a concise explanation or a detailed explanation is necessary.

23.2 **Commission Implementing Regulation (EU) 2022/1929 of 31 March 2022 amending the implementing technical standards laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations**

This Implementing Regulation amends the ITS laid down in Implementing Regulation (EU) 2020/1227 as regards the templates for the provision of information in accordance with the STS notification requirements for on-balance-sheet synthetic securitisations. Annexes I and II of the Implementing Regulation set out the content and format of the notification templates for on-balance-sheet synthetic STS securitisations. This Implementing Regulation entered into force on 2 November 2022.

24. Securities Markets

Statutory Instruments:

24.1 **European Union (Recovery and Resolution of Central Counterparties) Regulations 2022⁴⁴**

These Regulations give effect to Regulation (EU) 2021/23 (the “CCP Recovery and Resolution Regulation” or “**CCPRRR**”) and apply to the recovery and resolution of central counterparties “**CCPs**” within the State. These Regulations designate the CBI as the resolution authority in the State that carries out the functions and duties of a resolution authority under the CCPRRR and also designates the CBI as the competent authority. The Minister for Finance is designated as the competent ministry under the CCPRRR.

These Regulations provide that the CBI has all the powers necessary for the performance of its functions and duties under the CCPRRR and these Regulations. These Regulations also provide for sanctions and contravention, publication of administrative penalties or other administrative measures, the maintenance of the central database by ESMA, and the exercise of powers to impose sanctions. These Regulations also amend the Central Bank Act 1942, the European Communities (Financial Collateral Arrangements) Regulations 2010, and Regulation 2 of the European Union (Bank Recovery and Resolution) Regulations 2015.

The objective of a recovery and resolution framework is to ensure that CCPs set out measures to recover from financial distress, in order to maintain the critical functions of a CCP which is failing or likely to fail while winding up the remaining activities through normal insolvency proceedings.

⁴⁴ SI 547 of 2022.

This aims to preserve financial stability by avoiding a significant adverse effect on the financial system.

25. SME and Consumer

Acts of the Oireachtas:

25.1 **Consumer Rights Act 2022**

The Consumer Rights Act 2022 was commenced (with the exception of section 161) by statutory instrument on 29 November 2022. The Act represents a significant overhaul of the legislation on consumer rights generally but in the context of financial services, the aspects likely to attract the most focus are Part 4 (Service Contracts) and Part 6 (Unfair terms in consumer contracts). Each of Parts 4 and 6 are listed as “designated enactments” in the Central Bank Act 1942 bringing contraventions of those provisions within the scope of the CBI administrative sanctions / enforcement regime. This is in addition to some specific offences prescribed by the Act.

Part 4 (Service contracts) sets out a series of obligations for a “trader” in relation to consumer service contracts (*eg* requirements for the service to be in conformity with the contract) and gives the consumer a series of remedies (largely relating to either price reduction, withholding payment or termination of contract). Part 4 also prohibits clauses that seek to exclude or restrict the trader’s liability in relation to a list of specified provisions of the Act (*eg* supply of service; conformity of service with contract; reasonable price for service), with a breach of that prohibition constituting an offence.

Part 6 (Unfair terms in consumer contracts) replaces the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 and adds a number of new consumer-protective measures. Some of the more noteworthy changes are: (i) a new “black list” of standard contractual terms and conditions that are always unfair; (ii) an expansion to the existing “grey list” of terms which are now presumed to be unfair; and (iii) the codification of some involved CJEU jurisprudence, including in relation to “transparency” requirements for contractual terms.

The Act includes a number of other measures that are generally relevant (e.g. Part 8 amends the Consumer Credit Act 1995 in relation to goods that are the subject of hire-purchase agreements and consumer-hire agreements with consumers). Finance providers that offer products to consumers are likely to need to undertake diligence work on existing and future business lines to ensure compliance with the Act has been built into their documentation and processes.

25.2 **Consumer Credit (Amendment) Act 2022**

This Act amends the law in relation to providers of high cost credit (previously called moneylenders), including in relation to the licensing of such persons, and for that purpose amends the Consumer Credit Act 1995 and makes consequential amendments to other enactments. The Act was signed into law on 29 June 2022 and was commenced in its entirety on 14 November 2022. The focus of this Act is high cost credit loans and the important provisions include:

- **Interest rate cap:** Pursuant to s9 (which inserts s98A Consumer Credit Act 1995), the Minister for Finance is permitted to set the maximum interest rate at which a high cost credit loan can be provided. The maximum rate is prescribed in regulations made by the Minister for Finance (following consultation with the CBI) in accordance with prescribed principles and policies.

While the Minister for Finance is given discretion to specify the interest rate, this discretion is subject to a maximum cap of 1% per week or 48% per year (save in relation to a “running account” where the cap is 2.83% per month). The CBI will prepare a report, within 3 years of commencement of the Act, assessing the impact of the maximum interest rates;

- **Maximum term:** In the case of high cost credit that is provided as a loan (rather than a running account), a maximum term of 52 weeks (*ie* 1 year) applies;

- *Terminology:* Terms such as “moneylender”, “moneylending” and the like are replaced with “high cost credit provider”, “high cost credit” etc.

The Act also provides that high cost credit providers must ensure that agreements contain in a prominent position the words “High cost credit agreement”;

- *Offences:* The scope of potential offences for breach of moneylending legislation is extended to include the new provisions implementing the interest rate cap and maximum term mentioned above;
- *Licensing:* The licensing regime is streamlined so that licences: (i) are granted for five years (rather than one year); and (ii) can be obtained on a national basis (rather than applying in each District Court area in which moneylending is to take place).

The Act also provides broader discretion to the CBI in relation to the granting or renewal of a licence;

- *Repayment book:* High cost credit providers are required to give consumers a choice of having the required repayment book in a paper form or in another durable medium (such as an electronic form). The repayment book will also need to specify the total cost of credit both in euro and as a percentage of the amount borrowed; and
- *Collection:* High cost credit providers are prohibited from charging for collection services.

25.3 **Credit Guarantee (Amendment) Act 2022**

This Act provides for the giving of guarantees by the Minister for Enterprise, Trade and Employment (the “**Minister**”) under the Credit Guarantee Act 2012 (the “**2012 Act**”) in accordance with a credit guarantee scheme made under the 2012 Act by the Minister in response to the economic difficulties resulting from the aggression against Ukraine by Russia. This Act places a monetary limit of €960 million on the potential liability of the Minister in respect of such a credit guarantee scheme. This Act extends the classes of enterprise to which such a credit guarantee scheme may apply, to include small mid-caps and primary producers, by amending the Credit Guarantee Act 2012 and the Credit Guarantee (Amendment) Act 2016.

This Act makes certain amendments to the 2012 Act (as amended) to create a specific Ukraine Credit Guarantee Scheme (the “**Scheme**”) in order to ensure access to additional finance in response to the economic difficulties resulting from the war in Ukraine. The Act empowers the Minister to give guarantees in accordance with the Scheme in order to facilitate the provision of financial products to participating enterprises. The Scheme is open for guarantees until 31 December 2024 and these guarantees will not extend beyond 6 years in duration. The maximum amount of credit to be covered by these guarantees will not exceed €1.2 billion, and the Minister’s liability in respect of those guarantees will not exceed €960 million.

Certain aspects of the 2012 Act (as amended) have been disapplied, therefore, the portfolio cap of 13% in the existing scheme is not in place for this Scheme and the overall maximum yearly credit amount is €1.2 billion compared to €150 million in the existing credit guarantee scheme.

This Act also amends section 2(3) Loan Guarantee Schemes Agreements (Strategic Banking Corporation of Ireland) Act 2021 by increasing the maximum aggregate amount of liability in respect of contributions committed under all agreements between the SBCI and relevant Ministers from €50 million to €180 million. On 8 December 2022, this Act was commenced and the Scheme was set up.

Statutory Instruments (Commencement Orders):

- 25.4 **Consumer Rights Act 2022 (Commencement) Order 2022**⁴⁵
This Order appoints 29 November 2022 as the date on which the Consumer Rights Act 2022, other than s161, shall come into operation.
- 25.5 **Consumer Credit (Amendment) Act 2022 (Commencement) Order 2022**⁴⁶
This Order appointed 14 November 2022 as the day on which Consumer Credit (Amendment) Act 2022 came into operation.
- 25.6 **Credit Guarantee (Amendment) Act 2022 (Commencement) Order 2022**⁴⁷
This Order appoints 8 December 2022 as the date on which Credit Guarantee (Amendment) Act 2022 shall come into operation.

Statutory Instruments:

- 25.7 **Consumer Credit Act 1995 (section 98A) (Maximum Interest Rates) Regulations 2022**⁴⁸
These Regulations specify the maximum rate of simple interest chargeable in respect of a loan (other than a running account) under a high cost credit agreement. These Regulations provide that the maximum rate of interest rate chargeable per week is 1% and the maximum rate of interest rate chargeable per year is 48%. In respect of a running account under a high cost credit agreement, the maximum rate of nominal monthly interest chargeable on an outstanding balance is 2.83%, from 14 November 2022.
- 25.8 **Ukraine Credit Guarantee Scheme 2022**⁴⁹
This Scheme facilitates the provision of financial products to participating enterprises in response to the economic difficulties caused by Russian aggression against Ukraine. This Scheme permits the Minister for Enterprise, Trade and Employment to guarantee the obligations of participating enterprises under qualifying finance agreements in favour of the corresponding participating finance providers, from 8 December 2022.

26. Sustainable Finance / ESG

Statutory Instruments:

- 26.1 **European Union (Sustainability-related Disclosures in the Financial Services Sector) (Amendment) Regulations 2022**⁵⁰
These Regulations amend the European Union (Sustainability-related Disclosures in the Financial Services Sector) Regulations 2021 by deleting paragraph (a) in Regulation 3. Regulation 3 provides that the CBI shall monitor compliance with the requirements of Regulation (EU) 2019/2088 (the “**Sustainable Finance Disclosure Regulation**” or “**SFDR**”). Deleting paragraph (a) removes “a pan-European personal pension product (PEPP) provider” from the list of exceptions to this rule.

EU Developments:

- 26.2 **Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of ‘do no significant harm’, specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the**

⁴⁵ SI 596 of 2022.

⁴⁶ SI 575 of 2022.

⁴⁷ SI 642 of 2022.

⁴⁸ SI 576 of 2022.

⁴⁹ SI 641 of 2022.

⁵⁰ SI 653 of 2022.

content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in precontractual documents, on websites and in periodic reports

This Delegated Regulation supplements the SFDR and contains RTS for financial market participants' sustainability disclosures. The RTS include requirements regarding:

- the content and presentation of the information relating to the principle of 'do no significant harm' ("DNSH") and the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports;
- the content, methodologies and presentation of information relating to sustainability indicators and adverse sustainability impacts; and
- the exact content, methodology and presentation of the information to be disclosed to improve its quality and comparability.

This Delegated Regulation entered into force on 14 August 2022 and applies from 1 January 2023.

A corrigendum to this Delegated Regulation published in the OJ on 27 December 2022 replaces the entirety of the text of this Delegated Regulation laying down the RTS under the SFDR.

26.3 Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards economic activities in certain energy sectors and Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities

This Delegated Regulation (the "Taxonomy Complementary Climate Delegated Act") sets out the conditions under which nuclear and natural gas energy activities can be included in the list of economic activities covered by Regulation (EU) 2020/852 (the "Taxonomy Regulation"). The Taxonomy Complementary Climate Delegated Act also amends Delegated Regulation (EU) 2021/2178 to require large listed non-financial and financial companies to disclose the proportion of their activities linked to natural gas and nuclear energy. The Taxonomy Complementary Climate Delegated Act applies from 1 January 2023.

26.4 Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting

This Directive, known as the Corporate Sustainability Reporting Directive ("CSRD"), replaces the current reporting regime under Directive 2014/95/EU (the "Non-Financial Reporting Directive" or "NFRD") to introduce more detailed reporting requirements for sustainability issues such as environmental rights, social rights, human rights and governance factors. The CSRD obliges in-scope companies to disclose information on principal actual or potential adverse impacts connected with their own operations and with their value chain (including products and services, business relationships and their supply chain).

This will expand the NFRD's non-financial reporting requirement to a broader range of companies, including some non-EU companies, and on a wider range of sustainability matters in accordance with mandatory EU sustainability reporting standards. The European Financial Reporting Advisory Group ("EFRAG") is developing EU sustainability reporting standards ("ESRS"), which the European Commission will soon adopt as delegated acts. Member States must transpose the CSRD by 6 July 2024 and it will apply on a phased basis:

- reporting in 2025 on the financial year 2024 for companies already subject to the NFRD;
- reporting in 2026 on the financial year 2025 for companies not currently subject to the NFRD;

- reporting in 2027 on the financial year 2026 for listed SMEs except micro undertakings, small and non-complex credit institutions and captive insurance undertakings. An opt-out will be possible for in scope SMEs for the first two years; and
- reporting in 2029 on the financial year 2028 for in scope third-country undertakings.

27. Anticipated Developments

Acts of the Oireachtas:

27.1 **Central Bank (Individual Accountability Framework) Bill 2022**

This Bill has completed Third State in Dáil Éireann (also known as Committee Stage) and is expected to be enacted in the first quarter of 2023. Once enacted, the Act will strengthen and enhance individual responsibility and accountability by:

- introducing the Senior Executive Accountability Regime (“SEAR”), a framework of individual responsibility, governance and sanctions for senior executives who are managing and operating regulated financial service providers (“RFSPs”);
- setting out codes of conduct for both businesses and individuals, making clear the standards of behaviour that are permitted as well as sanctions that will occur if responsibilities are breached;
- introducing a new “*duty of responsibility*” obliging individual senior executives to take reasonable steps to ensure that the firm does not breach its obligations under financial services legislation;
- revising the CBI processes (including the Fitness and Probity regime and the Administrative Sanctions Procedure) to make them more effective and efficient and to ensure that they conform to standards of fairness in the administration of justice.

27.2 **Credit Union (Amendment) Bill 2022**

This Bill, which was initiated in Seanad Éireann, has completed all stages in the Seanad and is currently at Dáil Second Stage. This Bill amends the Credit Union Act 1997 to:

- provide for the establishment of corporate credit unions as an additional regulated vehicle through which credit unions can collaborate;
- amend the requirements and qualifications for membership of credit unions;
- alter the scope of permitted investments by credit unions (by amending s43 Credit Union Act 1997);
- provide for changes to the governance of credit unions;
- provide for the setting of maximum interest rates on loans by credit unions (by amending s38 Credit Union Act 1997); and
- provide for the provision of services by credit unions to members of other credit unions and for the participation by credit unions in loans to members of other credit unions.

27.3 **Financial Services and Pensions Ombudsman (Amendment) Bill**

The purpose of this Bill is to amend the Financial Services and Pensions Ombudsman Act 2017 to take account of the *Zalewski* ruling and update elements where the FSPO could be viewed as administering justice. This Bill will be one of the Bills prioritised for drafting in 2023, according to the Government Legislation Programme for the Spring Session 2023.

27.4 **Financial Provisions (State Guarantees and International Financial Institution Funds) Bill**

The purpose of this Bill is to enable Ireland to enter into a guarantee agreement in accordance with Decision (EU) 2022/1628, regarding the disbursement of €5 billion in macro-financial assistance (MFA) to Ukraine in 2022 and to enter into a contribution agreement in accordance with the Regulation of the European Parliament and of the Council establishing an Instrument for providing support to Ukraine for 2023. The Government believes that this Bill is necessary in order to participate in certain donor or trust funds established by International Financial Institutions to enable a swift response to crises. This Bill is included in the Government Legislation Programme for the Spring Session 2023 (as a Bill to be prioritised for publication). Heads of Bill are being prepared.

27.5 **Credit Review Service Bill**

This Bill is intended to put SI 127 of 2010, which established the Credit Review Office, on a statutory footing. Heads of Bill were approved on 6 July 2021 and pre-legislative scrutiny is yet to be determined.

27.6 **Retail Banking**

The recommendations made in the report on the Retail Banking Review are now government policy and as such, several legislative changes are expected to reflect this. Such legislative developments may include “access to cash” legislation that will require banks to keep “reasonable access to cash” and to preserve cash access at December 2022 levels, legislation requiring ATM operators and cash-in-transit operators to be authorised and supervised by the CBI, legislation requiring providers of credit to SMEs to be authorised and supervised by the CBI, and amendments to the remuneration restrictions for banks.

EU Developments:

Anti-money laundering:

27.7 **AML and CTF legislative measures**

It is expected that the following European Commission proposals to strengthen and modernise the AML/CTF framework will be adopted and published in the OJ in 2023:

- Proposed Regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism and amending Regulations (EU) No 1093/2010, (EU) 1094/2010, (EU) 1095/2010 (“**AMLA Regulation**”)
- Proposed Regulation on information accompanying transfers of funds and certain cryptoassets (“**recast revised WTR**”)
- Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (“**AML Regulation**”) ([here](#)) (Annexes [here](#)), and
- Directive on the mechanisms to be put in place by the member states for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU) 2015/849 (“**MLD6**”) ([here](#)).

On 7 December 2022, the Council of the EU announced that it has adopted a position on the AML Regulation and MLD6 proposals. The Council made a number of clarifications to the beneficial ownership provisions to make them more transparent, as well as providing that any natural or legal person that can demonstrate a legitimate interest can access certain information from the beneficial ownership registers.

Additionally, the Council has proposed rules requiring cryptoasset service providers (“**CASPs**”) to apply customer due diligence (“**CDD**”) measures when carrying out transactions of €1,000 or more. The Council has also proposed to introduce measures to mitigate risks relating to transactions with self-hosted wallets and introduced specific enhanced due diligence measures for cross-border correspondent relationships for CASPs.

27.8 **Commission Delegated Regulation amending the list of high-risk third countries with strategic AML and CFT deficiencies under Article 9(2) of the MLD4**

On 19 December 2022, the Commission adopted a Delegated Regulation ([here](#)) that amends the list of high-risk third countries with strategic AML and CFT deficiencies under Article 9(2) of the MLD4. The Delegated Regulation adds Gibraltar, the Democratic Republic of the Congo, Mozambique, Tanzania and the United Arab Emirates and removes Nicaragua, Pakistan and Zimbabwe.

Capital requirements / credit institutions:

27.9 **CRR III and CRD VI**

The Council of the EU has agreed its general approach on:

- the proposal for a Regulation amending the CRR as regards requirements for credit risk, credit valuation adjustment (“CVA”) risk, operational risk, market risk and the output floor (“**CRR III Regulation**”) ([here](#)); and
- the proposal for a Directive amending the CRD IV Directive as regards supervisory powers, sanctions, third-country branches and ESG risks (“**CRD VI Directive**”) ([here](#)).

The Council has added technical improvements to the areas of credit risk, market risk and operational risk. The Council has also introduced enhanced proportionality rules for small banks, particularly in relation to disclosure requirements for small and non-complex institutions. In addition, the Council has revised the ‘fit and proper’ framework for assessing the suitability of management bodies and key function holders.

Trilogue negotiations will soon begin between the three EU institutions to agree on final versions of the text of the proposed Regulation and Directive, which could be published in the OJ before the end of 2023.

27.10 **EU Directive on credit servicers and credit purchasers⁵¹**

Ireland is due to transpose this EU Directive before the end of 2023. The Directive forms part of the EU’s efforts to create a robust Banking Union and Capital Markets Union. More specifically, a key objective of the Directive is to promote the development of a secondary market for EU bank originated non-performing loans. It aims to achieve this by proposing a common set of rules that will apply to third party credit servicers operating in the European Union.

Significantly, the Directive contemplates that a credit servicer authorised in one Member State will be permitted to exercise passport rights and provide those services on a cross-border basis into other Member States.

In contrast to the current Irish credit-servicing regime, the Directive does not impose a direct obligation on the part of a purchaser to obtain an authorisation and, instead, mandates that the relevant third party servicer must be authorised.

Ireland already has a significant national credit servicing regime in place and, while there is overlap between the Irish regime and the EU-level regime being introduced, their focus is different and the Irish regime is generally broader in its application. Based on information available at the time of writing, it appears likely that the national regime and the EU regime will operate in parallel, with the EU regime applying in priority where both regimes would otherwise apply.

The Department of Finance has published a consultation on the transposition of the EU Directive on Credit Servicers and Credit Purchasers. The consultation period runs from 24 January 2023 to 8 March 2023, with the Directive due to be transposed into Irish law and in effect by 30 December 2023.

⁵¹ Directive (EU) 2021/2167 of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU.

Consumer credit:

27.11 **Proposed Directive on consumer credits to repeal Directive 2008/48/EC**

This proposed Directive, often called the second Consumer Credit Directive (“**CCD II**”), was included in the European Commission’s work programme for 2023. The European Parliament and the Council of the EU reached provisional political agreement on the proposed CCD II on 2 December 2022. The Council states that the proposals are intended to keep up with the trend of digitalization, as the new credit rules will apply to certain loans that are currently excluded from the scope of the existing Consumer Credit Directive. These loans include loans below €200, loans offered through crowd-lending platforms, and buy-now-pay-later (“**BNPL**”) products.

The CCD II is expected to be adopted and published in the OJ in 2023. Once the CCD II proposal is adopted, member states will have 24 months to adopt and publish laws, regulations and administrative provisions necessary to comply with the CCD II. The measures are to be applied six months from the transposition date.

27.12 **Proposal for a Directive concerning financial services contracts concluded at a distance**

On 11 May 2022, the European Commission published a legislative proposal ([here](#)) for a directive concerning financial services contracts concluded at a distance. The proposed directive will repeal the Distance Marketing of Financial Services Directive (Directive 2002/65/EC or “**Distance Marketing Directive**”) and transfer the framework for consumer protections relating to financial services distance contracts to the Consumer Rights Directive.

The objective of the proposal is to make targeted modernising amendments. In particular, amendments will reflect the fact that a number of EU product-specific legislative acts (such as the Consumer Credit Directive or the Mortgage Credit Directive) and EU horizontal legislation (such as the General Data Protection Regulation) have been introduced since the Distance Marketing Directive took effect. The Commission notes, however, that the Distance Marketing Directive provides a safety net feature for consumers for contracts concluded at a distance in respect of financial products that were not as yet subject to any EU legislation (for example, in the absence of EU rules on crypto-assets, the Commission states that the Distance Marketing Directive applies). The Council of the EU and European Parliament are considering the proposal as part of trilogue negotiations.

Crypto-assets/Fintech:

27.13 **Proposed Regulation on Markets in Crypto-Assets (“MiCA”)**

27.14 **Proposed Regulation on information accompanying transfers of funds and certain cryptoassets (“recast revised WTR”)**

The EU institutions reached provisional political agreement on the MiCA proposal on 30 June 2022. The Council of the EU announced in October 2022 that if the European Parliament adopts its position at first reading, the Council will approve the Parliament’s position and adopt the act in wording corresponding to the Parliament’s position. The Parliament is due to consider the proposed MiCA Regulation and the proposed recast revised WTR during its plenary session to be held from 17 to 20 April 2023. It is likely that these proposals will be finalised in 2023.

EMIR

27.15 **EMIR 3**

On 7 December 2022, the European Commission adopted the following legislative proposals intended to reform the EU clearing system (also known as “**EMIR 3**”):

- proposal for a Regulation amending Regulations (EU) No 648/2012, (EU) No 575/2013 and (EU) 2017/1131 as regards measures to mitigate excessive exposures to third-country CCPs and improve the efficiency of Union clearing markets ([here](#)); and
- proposal for a Directive amending Directives 2009/65/EU, 2013/36/EU and (EU) 2019/2034 as regards the treatment of concentration risk towards CCPs and the counterparty risk on centrally cleared derivative transactions ([here](#)).

The targeted amendments contained in EMIR 3 are intended to enhance the attractiveness of EU CCPs, reduce reliance of EU market participants on non-EU CCPs, safeguard EU financial stability and enhance the EU's open strategic autonomy. Amongst the proposals are plans to (i) amend provisions in respect of intragroup transaction exemptions and clearing obligations and to (ii) require financial counterparties and non-financial counterparties that are subject to the clearing obligation to hold active accounts, directly or indirectly, at CCPs established in the EU, to clear at least a certain proportion of the services identified as of substantial systemic importance at EU CCPs and to report on that.

The Commission's proposal will now progress through the European legislative procedure, the next step being negotiations between the European Parliament and the Council of the EU.

ESG/sustainability:

27.16 **Corporate Sustainability Due Diligence Directive**

The European Commission and the Council of the EU have adopted their texts for negotiations on the proposed Corporate Sustainability Due Diligence Directive ("**CSDDD**") (here). The Parliament is expected to adopt its position in the first half of 2023.

The CSDDD will lay down rules on obligations for large companies regarding actual and potential adverse impacts on human rights and the environment, with respect to their own operations, those of their subsidiaries, and those carried out by their business partners in their chain of activities. The CSDDD introduces a mandatory sustainability due diligence duty to identify and seek to prevent, minimise or end specific adverse human rights and environmental impacts. It will also lay down obligations for companies to adopt a plan ensuring their business model and strategy are compatible with the Paris Agreement on climate. Lastly, the CSDDD will also specify penalties and civil liability for violating those obligations.

The CSDDD will apply to (i) EU companies with greater than 500 employees and turnover greater than €150 million and (ii) EU companies with greater than 250 employees and net worldwide turnover greater than €40 million where more than 50% of this turnover was generated in one or more of the specified high impact sectors. The CSDDD will also apply to non-EU businesses with high EU turnover and mid-sized businesses operating in specified "high risk" sectors, as well as having an indirect impact on non-EU actors in the supply chain of an in-scope business.

27.17 **Commission Delegated Regulation containing amendments to the SFDR RTS**

On 31 October 2022, the European Commission adopted a Delegated Regulation ([here](#)) containing amendments to the SFDR RTS to provide for gas and nuclear disclosures. This Delegated Regulation amends and corrects the SFDR RTS laid down in Delegated Regulation (EU) 2022/1288 to ensure investors receive information reflecting provisions set out in Delegated Regulation (EU) 2022/1214 ("**Complementary Climate Delegated Act**").

The Commission states that "*the amendments proposed in this Delegated Regulation are very limited and do not constitute real policy options, as they update the SFDR Regulation in light of the Complementary Delegated Act mainly by including references to natural gas and nuclear energy sectors*". The Council and Parliament are now considering this Delegated Regulation, which will take effect 3 days after being published in the OJ.

27.18 **Proposed Regulation on European green bonds**

Progress was made in 2022 on the proposed European green bond standard ("**EU GBS**") as the proposed Regulation on European green bonds continues to move through the EU ordinary legislative procedure. The EU GBS will introduce a designation for European green bonds but it is unclear whether it will be mandatory or voluntary for EU green bonds to use this label. The EU GBS is aligned with the Taxonomy Regulation. The trilogue negotiations between the EU institutions are expected to take place in 2023.

27.19 **Developments related to the Corporate Sustainability Reporting Directive (“CSRD”)**

To complement the CSRD, the European Financial Reporting Advisory Group (“**EFRAG**”) is developing EU sustainability reporting standards, which the European Commission will soon adopt as delegated acts.

27.20 **Possible Regulation on ESG ratings**

The European Commission is considering a proposal to bring transparency to the EU ESG ratings market and introduce rules on the operations of the ESG ratings agencies. This could be in the form of an EU Regulation or a set of guidelines.

General:

27.21 **Framework on Open Finance**

The European Commission intends to further improve data access in financial services with an initiative for an open finance framework. The Commission is due to release its proposal for an open finance framework in spring 2023.

27.22 **Proposed Regulation amending the Central Securities Depositories Regulation**

On 20 December 2022, the Council of the EU published the text of its agreed general approach on the proposed Regulation ([here](#)) amending the Central Securities Depositories Regulation (the “**CSDR Regulation**”). The proposed amendments are intended to clarify the scope of mandatory buy-in rules and cash penalties set out in Article 7 of the CSDR Regulation. The Council will now engage in negotiations with the other EU institutions in order to agree a final text.

Insurance:

27.23 **Proposed Insurance Recovery and Resolution Directive (“IRRD”)**

This Directive is intended to establish a harmonised recovery and resolution framework for EU insurers, reinsurers and insurance groups that are failing or likely to fail. It will also provide for a slate of resolution tools for competent authorities. On 21 December 2022, the Council of the EU published the text of its agreed general approach on the proposed IRRD ([here](#)). The Council emphasised the need for national authorities to have flexibility to reflect different national insurance markets and that a creditor should not be worse off in resolution compared to insolvency. The final text is expected to be published in early 2023.

27.24 **Proposed Directive amending the Solvency II Directive**

This proposed Directive amending the Solvency II Directive was included in the European Commission’s 2023 Work Programme. The Council of EU has adopted a negotiating position and the European Parliament is currently considering the European Commission’s proposal, with negotiations expected to commence in 2023. This Directive could be published in the OJ in the first half of 2023, with transposition necessary by member states 18 months thereafter.

Investment funds:

27.25 **Proposed Directive amending the Alternative Investment Fund Managers Directive and UCITS Directive (“AIFMD II”)**

The Council of the EU and the European Parliament will soon enter trilogue negotiations on the European Commission’s legislative proposal for a Directive amending the AIFMD and the UCITS Directive. The amendments relate to, among other things, AIFM authorisation, delegation arrangements, liquidity risk management, loan origination by AIFs, depository services, ancillary services, fund marketing, investor transparency and supervisory reporting.

27.26 **Proposed Regulation amending the Regulation on European long-term investment funds (“ELTIFs”)**

On 7 December 2022, the Council of the EU published the text of the political agreement with the European Parliament on the proposed Regulation containing amendments to the European Long-term Investment Funds Regulation (Regulation (EU) 2015/760) (“**ELTIF Regulation**”) ([here](#)).

The amendments aim to overcome several supply-side and demand-side limitations in the existing framework to make ELTIFs more attractive and easier to invest in, including a redesign of the ELTIF framework to permit more finance to be channelled to SMEs and long-term projects to help achieve the digital transition. The Council states that revisions to the framework are intended to clarify the scope of eligible assets and investments, the portfolio composition and diversification requirements, the conditions for borrowing and lending of cash and other fund rules, including sustainability aspects. Additionally, the amendments include rules making it easier for retail investors to invest in ELTIFs while preserving strong investor protection.

The Parliament is scheduled to consider the proposed ELTIF Regulation in its 13 February 2023 plenary session. If the Parliament adopts the text at first reading, the Council has stated that it will adopt the text also.

Markets in Financial Instruments / investment firms:

27.27 **Proposed Regulation amending the Market in Financial Instruments Regulation (“MiFIR”)**

27.28 **Proposed Directive amending the MiFID II Directive**

On 16 December 2022, the Council of the EU agreed its general approach for the proposed Regulation amending MiFIR ([here](#)) and proposed Directive amending MiFID II ([here](#)). The Council states that the priorities for this review of MiFIR and MiFID II are to improve transparency and availability of market data, improve the level-playing field between execution venues and ensure that EU market infrastructures can remain competitive at international level. The next step is for negotiations between the Council and the Parliament to begin with a view to reaching a final agreement on the future legislation.

27.29 **Revision of EU Listing Rules**

On 7 December 2022, the European Commission published a package of proposals to simplify the EU listing rules. The package forms part of the Commission’s commitment in the Capital Markets Union Action plan to simplify listing rules, including proposals for:

- a Regulation to amend the Prospectus Regulation (Regulation (EU) 2017/1129), the Market Abuse Regulation and MiFIR ([here](#));
- a Directive permitting multiple-vote share structures in companies seeking admission of their shares to trading on an SME growth market ([here](#)); and
- a Directive to amend MiFID II and repeal the Listing Directive (Directive 2001/34/EC) ([here](#)).

Payments:

27.30 **Proposed revision of the Payment Services Directive**

The European Commission intends to revise the Payment Services Directive for the purpose of supporting innovation whilst ensuring easier and safer use of online payment services and better protecting users against fraud and abuse, with a legislative proposal expected in Q2 2023.

27.31 **New proposal for Regulation on instant payments**

On 26 October 2022, the European Commission adopted a proposed Regulation amending the Single Euro Payments Area Regulation and the Cross-Border Payments Regulation as regards instant credit transfers in euro ([here](#)). The proposal contains phased implementation deadlines for euro and non-euro member states. The four key requirements of the proposal are:

- Making instant euro payments universally available, obliging EU payment service providers (“PSPs”) to offer instant payments alongside existing non-instant credit transfers;
- Making instant euro payments affordable, such that there is an obligation on PSPs to ensure the price charged for instant payments does not exceed the price charged for non-instant credit transfers;

- Increasing trust in instant payments, by obliging PSPs to verify the IBAN and name of the beneficiary before the payment is made; and
- Removing friction in processing instant payments while also preserving effectiveness of screening for persons subject to EU sanctions.

27.32 **The Digital Euro Project**

The Commission is expected to put forward a legislative proposal for establishing a digital euro in 2023. The Digital Euro would be an electronic equivalent to cash in the form of a central bank digital currency complementing banknotes and coins.

On 6 February 2023, the ECB published answers to market research issued in respect of the technical design of possible digital euro components and services. The ECB has indicated that a decision on whether the Eurosystem will enter into a further realisation phase of a digital euro and its design will be made towards the end of 2023.

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