

TRAINING & DEVELOPMENT PROGRAMME

Knowledge Network

Webinar Series

Financial Services Legislation of 2020 and Anticipated Financial Services Developments of 2021

Thursday, 28 January 2021 | 8.30 am to 9.30 am



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Financial Services Legislation of 2020 and Anticipated Financial Services Developments of 2021

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Overview

- Hearsay Rule / Business Records
- COVID-19 Credit Guarantee Scheme
- Companies Act
- Real Estate Finance
- Anticipated Developments



Hearsay and COVID-19 Credit Guarantee Scheme

- Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020
 - Exception from hearsay rule for “business records”
 - Especially relevant for non-banks
 - Effectively enables summary proceedings
- Credit Guarantee (Amendment) Act 2020
 - €2bn credit guarantee scheme
 - Maintains liquidity for Irish businesses
 - COVID-19 Credit Guarantee Scheme 2020



Companies Act and Real Estate Finance

- Companies (Miscellaneous Provisions (Covid-19)) Act 2020
 - “interim period”
 - *Winding-up*: threshold for commencing winding-up increased to €50,000
 - *Examinership*: examiner can seek additional 50 days
 - *Use of Seal*

- Real Estate Finance
 - Residential Tenancies

27 March to 1 August 2020: Emergency Measures in the Public Interest (Covid-19) Act 2020 (Part 2)

2 August 2020 to 10 January 2021: Residential Tenancies and Valuation Act 2020

11 January to 12 April 2021 (subject to extension): Planning and Development, and Residential Tenancies Act 2020 (Part 3)

24 October 2020 onwards: Residential Tenancies Act 2020

Anticipated Developments

- Consumer Protection (Regulation of Retail Credit Firms) Bill
 - *Hire purchase etc*
- Affordable Housing Bill
- Land Development Agency Bill
- Co-operative Societies Bill
- Companies (Amendment) Bill
 - *Small company rescue process*
- Limited Partnership Bill
- Credit Review Bill
- Credit Union Interest on Loans Bill
- Personal Insolvency (Amendment) (No 2) Bill



Financial Services Regulatory Update: Overview

- **Sectoral**

- Credit Institutions
- Investment Firms
- Asset Managers
- Insurers
- Crowd Funding Service Providers

- **Cross-Sectoral**

- Anti-Money Laundering
- Fitness and Probity
- EMIR
- Sustainable Finance
- Brexit

Credit Institutions - Implementation of the Banking Package

- The Banking or Risk Reduction Measures Package seeks to
 - reduce risks in the banking sector and strengthen the resilience and resolvability of EU banks
 - build on existing banking rules and implement international standards (Basel, TLAC) – major step towards completion of post-crisis regulatory agenda
 - increase the ability of banks to finance the real economy, reduce the administrative burden for smaller, less complex banks and improve governance and supervision
 - take the next step towards the completion of the Banking Union, notably on the common backstop to the Single Resolution Fund (SRF)



Thanks to the introduction of key measures such as the binding leverage ratio for all banks and the introduction of a "total loss-absorbing capacity" for the biggest institutions, **banks will be better capitalised and better equipped to withstand market turbulences**



Credit Institutions – Implementation of the Banking Package

The Banking Package consists of two Directives and two Regulations

- Directive 2019/878, which amends the fourth Capital Requirements Directive 2013/36 (CRDV)
- Directive 2019/879, which amends the Banking Recovery and Resolution Directive 2014/59 (BRRDII)
- Regulation (EU) 2019/876, which amends the Capital Requirements Regulation 575/2013 (CRDII)
- Regulation (EU) 2019/877, which amends the Single Resolution Mechanism Regulation (EU) 806/2014)(SRMII)

Credit Institutions

European Union (Capital Requirements)(Amendment) Regulations 2020

- **Transposes CRDV – (application 29 December 2020/26 June 2021)**
- New specific approval procedure for certain financial holding companies and mixed financial holding companies (Chapter 1A)
- Intermediate EU parent undertakings (Chapter 1B)
 - third-country institutions undertaking significant activities in the EU must have an EU intermediate parent undertaking where total value of EU assets is more than EUR 40 billion
- Remuneration & Governance
 - Gender neutrality principle
 - Clearer and more proportionate rules
 - Rules on supervisory oversight of loans to related parties and the assessment of the suitability of members of the management body

Credit Institutions

European Union (Capital Requirements)(Amendment) Regulations 2020

- Clarifies the application of supervisory requirements and guidance under Pillar 2
 - Institution specific requirement and not for addressing systemic risk
 - Clarifies the conditions for applying Pillar 2 capital add-on requirements as well as the distinction between mandatory Pillar 2 requirements and supervisory expectations to hold additional capital (Pillar 2 guidance)
- New requirements regarding interest rate risk in the banking book
- Revisions to the capital buffers that may be applied
- Enhanced prudential rules on anti-money laundering
 - SREP
 - authorisation procedures
 - checks on members of management body

Credit Institutions

Capital Requirements Regulation (CRR II)

- Applies from 28 June 2021
- New approach to market risk – implementation of FRTB (Fundamental Review of the Trading Book) as a reporting requirement
- Introduces a 3% leverage ratio as an own funds requirement as well as a G-SII leverage ratio buffer requirement
- Introduces the Net Stable Funding Ratio requirement (NSFR) (Basel standards with adjustments)
- Targeted amendments to the credit risk framework to facilitate the disposal of non-performing loans and to reflect EU specificities
- Enhanced minimum requirement for own funds and eligible liabilities (MREL) subordination rules for G-SIIs and other top-tier banks

Credit Institutions

Capital Requirements Regulation (CRR II)

- Reducing the administrative burden related to reporting and disclosure requirements for small non-complex banks, as well as simplified market risk and liquidity rules for those banks
- Incorporates environmental, social and governance (ESG) aspects into the prudential rules
- Enhances banks' capacity to lend to SMEs through a more generous discount on capital requirements for exposures to SMEs
- Enhances banks' capacity to fund infrastructure (discount on high quality projects)
- A new total loss absorbing capacity (TLAC) requirement for G-SIIs

Credit Institutions

European Union (Bank Recovery and Resolution)(Amendment) Regulations 2020

- Implements BRRDII since 28 December 2020
- Targeted amendments to MREL calibrating it with the TLAC standard
- Tightening the rules on the subordination of MREL instruments with the aim of achieving a credit bail-in tool
- Introducing a moratorium power for regulators in the event of a bank resolution
- Introducing a ‘maximum distributable amount’ for banks that breach their MREL requirements
- Introducing resolution entities and resolution groups
- Requirements on supervisory reporting and public disclosure relating to MREL
- Exemption from contractual recognition of bail-in where legally or otherwise impracticable
- Contractual recognition of resolution stay powers in financial contracts governed by third country law

Credit Institutions

Regulation (EU) 2020/873

- Targeted “Quick-Fix” amendments to CRR and CRR II for COVID-19
- Intended to improve banks' capacity to lend and to absorb losses related to the 2019 novel coronavirus disease (COVID-19) pandemic, while still ensuring their continued resilience
- Extends the transitional arrangements for mitigating the impact of the International Financial Reporting Standard (IFRS) 9 provisions on regulatory capital
- Applies a preferential treatment for publicly guaranteed loans under the prudential backstop for non-performing loans (NPLs) available under the CRR
- Delays until 1 January 2023 the application of the leverage ratio buffer for global systemically important institutions (G-SIIs), which forms part of the final Basel III (or Basel 3.1) standards
- Recalibrates the mechanism for offsetting the impact of excluding certain exposures from the calculation of the leverage ratio
- Brings forward the dates of application of certain reforms introduced by CRRII

Investment Firms

- **Investment Firms Directive 2019/2034** (26 June 2021)
- **Investment Firms Regulation 2019/2033** (26 June 2021)
 - Prudential regime applicable to investment firms will depend on firm's size and complexity
 - Class 1 firms – subject to CRR/CRD IV
 - systemically important firms that are reclassified as credit institutions and investment firms that are not of systemic importance but whose size and activities present some risks to financial stability
 - Class 2 firms – full prudential regime in IFR/IFD
 - Investment firms exceeding the categorisation thresholds for small and non-interconnected investment firms
 - Class 3 firms – various exemptions and modifications under the new regime
 - Small and non-interconnected investment firms

Investment Firms

IFD/IFR

- K-factor requirements – seek to capture
 - Risk to client
 - Risk to market
 - Risk to firm
- Will be used to calculate whether Class 2 or Class 3 firms
- Class 2 firms will use K-factor formulae to calculate capital requirements

New framework sets out requirements relating to

- Own funds composition
- Capital requirements
- The K-factor requirements
- Concentration risk
- Liquidity requirements
- Remuneration requirements
- Disclosure and reporting requirements

Investment Firms

- **IFD/IFR**
 - More stringent provisions regarding equivalence - if service/activities of third country firm could be of **systemic relevance**
 - More detailed assessment of third country supervisory and behavioural requirements
 - Commission may attach operational conditions to equivalence decisions (including reporting requirements)
 - ESMA to monitor developments in third countries for which equivalence decisions in place
 - Third country firms must report to ESMA

Asset Managers

- **Investment Limited Partnership Act 2020**
 - Updates the ILP Act 1994, in order to reflect changes in the global private funds market;
- New framework:
 - Includes safe-harbours for limited partners allowing them participate in certain activities without losing their limited partnership status
 - Allows an ILP to be established as an umbrella fund, with segregated liability between sub-funds
 - Modernises existing legislative references to take account of AIFMD, MiFID II and other EU legislation

Asset Managers

- **Investment Limited Partnership Act 2020**
 - Updates the ILP Act 1994, in order to reflect changes in the global private funds market;
- New framework:
 - Creates a statutory transfer of assets and liabilities on the admission or replacement of a GP, so that all rights or property of the ILP vest in the incoming partner or existing GPs;
 - Stipulates that if the LPA provides that where a partner fails to perform any of its obligations under or otherwise breaches the partnership agreement, the sanctions applicable for the failure of performance or breach will not be unenforceable solely because they are penal in nature; and
 - Allows for the migration of non-Irish LPs to Ireland by way of continuation.
- Regulation 2019/1156 on facilitating cross-border distribution of collective investment undertakings (and Directive 2019/1160) – (2 August 2021)

Asset Managers and Insurers

- **European Union (Shareholders' Rights) Regulations 2020**
 - Transpose revised Shareholders' Rights Directive into Irish law
- **“Relevant Asset Manager”** (MiFID Firm, AIFM, UCITS Manager that invests in shares traded on a regulated market) must
 - develop and publicly disclose on its website an engagement policy (comply or explain); and
 - make certain disclosures to an institutional investor with which the relevant asset manager has entered into an investment agreement.
- **“Institutional investor”** (EU life assurance companies and pension funds)
 - Must disclose on its website certain aspects of its arrangements with asset managers

Insurers

- **Consumer Insurance Contracts Act 2019 (Commencement) Order 2020**
- Consumer Insurance Contracts Act 2019 (CICA)
 - Seeks to address the perceived current imbalances in consumer insurance contract law
- Most of CICA commenced on 1 September 2020, with the exception of following:
 - Section 8 (pre-contractual duties of consumer and insurer)
 - Section 9 (proportionate remedies for misrepresentation)
 - Section 12 (renewal of insurance contract)
 - Section 14(1) – (5) (duties of consumer and insurer at renewal)
 - Section 18(4) (proportionate remedies and claims handling)

Crowd Funding

- **Regulation on European Crowdfunding Service Providers for Business**
 - *Seeks to foster the cross border funding of businesses through the establishment of a harmonised legal framework for crowdfunding which will better facilitate cross-border crowdfunding (10 November 2021)*
 - Crowdfunding platforms which comply with the new rules and become “*authorised crowdfunding service providers*” (CSP) may offer their services to potential investors across the EU under the EU passporting regime
 - Applies to both lending based platforms and investment based crowdfunding
 - Applies to the financing of projects up to a value of €5,000,000 per project (calculated over a 12 month period)
 - Includes operational requirements and investor protection requirements
 - Prospectus Regulations will not apply to offers of securities by Project Owners (via a regulated crowdfunding platform) where the value of the securities offered is €5,000,000 or less
 - a CSP will not be required to hold a MiFID authorisation

Anti-Money Laundering / Counter Financing of Terrorism

- **Solicitors (Money Laundering and Terrorist Financing Regulations) 2020**
 - Does not impose new obligations on solicitors with regard to their statutory AML obligations,
 - Does not confer any new powers on the Law Society regarding its statutory role as the competent authority for solicitors
- **European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020**
 - Beneficial ownership register for ICAVs, Unit Trusts and Credit Unions
- **Anticipated Developments**
 - **Criminal Justice (Money Laundering and Terrorist Financing) Bill**
 - EU Commission legislative package expected in Q1
 - New Regulation setting out AML requirements
 - Increased competencies for EBA

Fitness and Probity

- **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2020**
 - All regulated firms except credit unions - Chief Information Officer (CIO) as a new PCF role
 - reflects *“the increasing importance of and reliance on information technology within regulated financial service providers (RFSPs)”*
 - *Credit Institutions*
 - PCF-50 Head of Material Business Line
 - PCF-51 Head of Market Risk
 - reflects *“the changing landscape of the banking sector in Ireland due to Brexit, including the entry/expansion of investment banks/broker-dealer firms with significant capital markets activity”*
 - *Asset Managers*
 - Designated Person PCF-39 role changed to the new PCF-39A to PCF-39F roles based on the management function that the relevant Designated Person is appointed to.

EMIR

- **Three Commission Delegated Regulations relating to EMIR 2.2**
 - First CDR - fees ESMA charges to third country CCPs for recognition and for its supervisory activities on an ongoing basis
 - Second CDR - sets out further details of the criteria that ESMA will take into account when determining whether a third-country CCP is systemically important or likely to become systemically important (i.e. a Tier 2 CCP).
 - Third CDR – sets out the process by which Tier 2 CCPs should submit a request for "comparable compliance" and the elements to be assessed by ESMA when making a comparable compliance determination

Sustainable Finance

- Taxonomy Regulation 2020/852
 - introduces an EU-wide classification system (or taxonomy) of environmentally sustainable activities,
 - lays down disclosure obligations that supplement the SFDR and the Non Financial Reporting Directive (“NFRD”) with regards to activities that contribute to an environmental objective

Brexit

- Withdrawal of the UK from the European Union (Consequential Provisions) Act 2020
- The EU-UK Trade and Cooperation Agreement
 - Joint Declaration on Financial Services Regulatory Cooperation
- Equivalence Decisions
 - Three UK CCPs recognised as equivalent third country CCPs until 30 June 2022
 - UK central securities depositaries until 30 June 2021

Questions?



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