TRAINING & DEVELOPMENT PROGRAMME

Legislation of 2021 and Anticipated Developments of 2022

Finance and Financial Services

McCann FitzGerald LLP Knowledge Team

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McCann FitzGerald

CONTENTS

PART I

1. Objective and Scope of Presentation

This presentation highlights the significant legislative developments of 2021. The assessment of "significance" is ours, based on experience of the clients of McCann FitzGerald. Therefore, extensive though this booklet of notes is, the materials that we address in this presentation are merely a considered selection of the thousands of Irish and EU enactments last year.

Our objective in this lecture is to provide to clients of McCann FitzGerald an overview of general developments to assist current awareness and to help us all to maintain the general legal knowledge and background information that lawyers who have developed a specialist practice must possess nonetheless.

However, although each is an important aspect of our practice, this presentation does not address tax or pensions legislation.

These notes are a collaborative effort of the Knowledge Team in McCann FitzGerald[1].

2. An Annual Technical Preliminary

We reiterate the oft-repeated and important cautionary note regarding commencement and remind you that – especially with primary legislation – it does not follow from the fact that a measure is "enacted" that it is "in force", and that an increasing number of statutory instruments are providing for delayed commencement of some or all of their provisions.

As regards commencement dates, recall the default position regarding both an act and an SI: if no provision is made for delayed commencement, then:

- in the case of an act, every provision of the statute comes into operation on the date of its passing;[2] and
- in the case of a statutory instrument, every provision of an SI comes into operation "at the end of the day before the day on which the statutory instrument is made" (*ie* the midnight preceding the moment of signature).

3. An Additional Technical Preliminary: Statutory Instruments

Recall that not every statutory instrument must be assigned a statutory instrument number and that some that are relevant to our practice may be certified by the Attorney General as not requiring to be published[3]. We have encountered this in particular in the area of pensions.

4. Key Acts, Statutory Instruments and EU Legislative Instruments of 2021

In 2021:

- 50 acts (excluding bills to amend the Constitution) were enacted (2007: 42; 2008: 25; 2009: 46; 2010: 40; 2011: 42; 2012: 54; 2013: 51; 2014: 44; 2015: 66; 2016: 22, 2017: 41, 2018: 42, 2019: 53 and 2020: 32);
- 782 SIs (2007: 873; 2008: 609; 2009: 594; 2010: 689; 2011: 741; 2012: 592; 2013: 584; 2014: 621; 2015: 642; 2016: 685, 2017: 646, 2018: 665, 2019: 693 and 2020: 760);
- the State became obliged to transpose a further (approximately) 30 EU directives (2007: 116; 2008: 76; 2009: 69; 2010: 110; 2011: 132; 2012: 52; 2013: 73; 2014: 66; 2015: 59; 2016: 73, 2017: 32, 2018: 60, 2019: 55 and 2020: 30);

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1 The Knowledge Team is a substantial resource for the firm and for McCann FitzGerald clients. Headed by Peter Osborne, the Knowledge Team is comprised of Heather Mahon, Frances Bleahene, Paul Heffernan, Martina Firbank, Martin O'Neill, Eva Barrett, Joanne O'Rourke, Megan Guthrie, Susan Brodigan, Áine Conlon, Maryrose Counihan, Sarah Kennedy, Brían Donnelly and Sarah Rogers.

2 Interpretation Act 2005, section 16(1).

3 Statutory Instruments Act 1947, section 2(3), (4) and (5).

- the State became subject to approximately 1, 040 directly-applicable EU Regulations (2007: 1,733; 2008: 1,403; 2009: 1,390; 2010: 1,357; 2011: 1,458; 2012: 1,393; 2013: 1,500; 2014: 1,551; 2015: 1,412; 2016: 1,298, 2017: 1,246, 2018: 1032, 2019: 815 and 2020: 1,072); and

- the State became subject to approximately 1,382 formal Decisions of the Commission, Parliament, Council and other EU institutions (2007: 1,313; 2008: 1,253; 2009: 1,144; 2010: 1,151; 2011: 1,332; 2012: 1,232; 2013: 1,199; 2014: 1,314; 2015: 1,250; 2016: 1,191, 2017: 1,221, 2018: 1091, 2019: 1,141 and 2020: 1,313).

These notes have been prepared on the basis of material that is available to us on **14 February 2022**.

PART II

1. Anti-Money Laundering

Acts of the Oireachtas:

1.1 **Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021**
This Act makes some significant amendments to the existing primary Irish anti-money-laundering ("**AML**") legislation (namely the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010) in order to largely transpose the EU's Fifth Money Laundering Directive.[4] The two principal amendments effected by the 2021 Act were the introduction of new categories of "designated persons" and the extension of existing customer due diligence obligations.

The new categories of "designated person" introduced by the 2021 Act include: (i) virtual asset service providers (which must register with the Central Bank of Ireland (the "**Central Bank**")); (ii) letting agents (in respect of transactions for which the monthly rent is at least €10,000); (iii) high-value art dealers and intermediaries (in respect of transactions of at least €10,000 in value). It also extends the definition of a "tax advisor" to include "any other person whose principal business or professional activity is to provide, directly or by means of other persons to which that other person is related, material aid, assistance or advice on tax matters.".

The expanded customer due diligence ("**CDD**") measures include measures relating to:

(a) *Timing of CDD*: the designated person must carry out customer identification and verification any time it is obliged to contact a customer for the purposes of reviewing any relevant information relating to the customer's beneficial owner by virtue of any enactment of law;

(b) *Verification of SMOs*: where a customer's beneficial owners is recorded as the "senior managing officials", the designated person must take measures to verify each SMO's identity and keep records of those measures;

(c) *Business relationships*: when dealing with customers whose beneficial ownership information is required to be recorded,[5] the designated person must ascertain that the relevant information is recorded in the applicable Central Register (or, in the case of a trust, in the trust's internal register as the case may be). Generally the checks must be carried out prior to the establishment of a business relationship. There is a limited exception for the opening of an account with a credit or financial institution (but no business may be transacted on that account);

(d) *Examination of background and purpose of certain transactions*: the burden on designated entities to carry out this examination is reduced as the 2021 Act amends the existing obligation so that it only applies "in so far as possible". However, each of the following transaction types must now be examined: (i) complex, (ii) unusually large, (iii) unusual pattern, or (iv) no apparent or lawful purpose;

(e) *PEPs*: where a person is a politically exposed person (*eg* a politician), the designated entity must continue to treat him as such for as long as is reasonably required taking into account the continuing risk posed by that person;

(f) *Enhanced CDD – high risk third countries*: additional obligations are imposed on designated persons when dealing with customers established or residing in a high-risk third country;

(g) *Risk factor Schedules*: some minor amendments are made to schedules 3 and 4 of the 2010 Act, which list non-exhaustive factors suggesting risk level; and

(h) *Other amendments*: the 2021 Act makes a number of other amendments relating to: (i) e-money monetary limit exemptions; (ii) suspicious transaction reports feedback; (iii) a new defence in

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4 Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU.

5 This requirement arises from the following SIs (applicable depending on the customer-type): (i) SI 194 of 2021 European Union (Anti- Money Laundering: Beneficial Ownership of Trusts) Regulations 2021; and (ii) SI 110 of 2019 European Union (Anti- Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 (as amended).

relation to tipping off; (iv) the extension of the prohibition on anonymous accounts to include anonymous safe deposit boxes; (v) whistleblowing mechanisms; and (vi) the introduction of new definitions and concepts that can be applied in relation to beneficial ownership of trust reporting obligations.

Statutory Instruments:

1.2 **European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2021**[6]

The 2021 Regulations revoke and replace the European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019 (the "**2019 Regulations**"). In addition to introducing a new reporting requirement to a central register, the 2021 Regulations substantially update existing obligations and change what constitutes an in-scope trust arrangement. For in-scope trusts (known as "relevant trusts") a trustee has a relatively extensive set of obligations, including: (i) maintaining an internal register of "beneficial owners"; (ii) reporting beneficial ownership information to the central register maintained by Revenue; (iii) notifying any "designated person" (*eg* a bank) that it acts as a trustee; (iv) in certain circumstances, providing the designated person with information on the beneficial owners and keeping the designated person updated on changes to that information; (v) serving a statutory notice on a person suspected of being a beneficial owner (where not already on the register) or having information required to ensure the accuracy of the beneficial ownership information held; and (vi) ensuring beneficial ownership information on the internal and central registers remains up-to-date.

The definition of "beneficial owner" captures a broader range of persons than the ordinary meaning of the word would imply. The definition extends to: (i) any individual entitled to a vested interest in the capital of the relevant trust property; (ii) the class of individuals in whose interest the trust is set up or operates (save where the trust is entirely for the benefit of the individuals mentioned in the preceding bullet point); (iii) any individual who has control (as defined) over the relevant trust; (iv) the settlor; (v) the trustee; and (vi) the protector (if there is one).

While the 2021 Regulations are primarily aimed at trustees, they also create obligations for "designated entities" (*eg* banks); beneficial owners; "presenters" acting on behalf of a trustee; officers/employees of the relevant trust and certain public authorities.

The extent of in-scope "relevant trusts" is broad. A "relevant trust" is:

(a) an express trust established by deed or other declaration in writing but not including an "excluded arrangement". The currently prescribed list of excluded arrangements includes, amongst others: (i) certain occupational pension schemes, (ii) certain approved retirement funds, (iii) certain profit sharing schemes or employee share ownership trusts, and (iv) unit trusts whose beneficial ownership information is already required to be registered pursuant to separate regulations;

(b) where:

(i) the trustees of the relevant trust are resident in the State or the relevant trust is otherwise administered in the State; or

(ii) if no trustee of the relevant trust is resident, and the trust is not otherwise administered, in the European Union, a trustee (acting as trustee) enters into a business relationship in the State or acquires land or other real property in the State in the name of the trust.

It is a criminal offence to fail to comply with the obligations set out above, with the level of penalty dependant on the obligation breached.

1.3 **European Union (Modifications of Statutory Instrument No 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) (Amendment) Regulations 2021**[7]

The primary effect of the 2021 Regulations is to extend the reporting obligation imposed on applicable financial vehicles (*eg* ICAVs, unit trusts and credit unions) to include PPS numbers (alongside any other information required by the Registrar) in the beneficial ownership information being reported to the central Beneficial Ownership Register maintained by the Central Bank of Ireland. The 2021 Regulations

6 SI 194 of 2021.

7 SI 321 of 2021.

do so by amending the preceding 2020 Regulations[8], which in turn amended the original 2019 Regulations.[9]

1.4 **European Union (Access to Anti-Money Laundering Information by Tax Authorities) Regulations 2021[10]**
These Regulations provide authorised officers within the Revenue Commissioners with access to the mechanisms, procedures, documents and information referred to in the Anti-Money Laundering Directive (Directive (EU) 2015/849), from 21 July 2021.

EU Instruments:

1.5 **Commission Implementing Regulation (EU) 2021/369 of 1 March 2021 establishing the technical specifications and procedures required for the system of interconnection of central registers referred to in Directive (EU) 2015/849 of the European Parliament and of the Council (Text with EEA relevance)**
The Fifth Money Laundering Directive ((EU) 2015/849) contemplates the establishment of beneficial ownership registers in each Member State and that those registers would be interconnected. This Regulation prescribes the technical specifications and procedures for the system of interconnection of registers referred to in Article 30 and 31 of the Fifth Money Laundering Directive.

2. Bank Recovery and Resolution

EU Instruments:

2.1 **Commission Delegated Regulation (EU) 2021/1340 of 22 April 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards determining the content of the contractual terms on recognition of resolution stay powers**
This Delegated Regulation lays down the mandatory content for the contractual terms institutions and entities are required to include in financial contracts governed by third-country law to ensure the effectiveness of resolution and promote consistency in the approaches adopted by Member States.

2.2 **Commission Delegated Regulation (EU) 2021/517 of 11 February 2021 amending Delegated Regulation (EU) 2017/2361 as regards the arrangements for the payment of contributions to the administrative expenditures of the Single Resolution Board**
This Delegated Regulation amends arrangements for the payment of contributions, including deadlines for the transmission of data for the purpose of determining supervisory fees and for the issuance of the contribution notices relating to individual annual contributions.

2.3 **Commission Delegated Regulation (EU) 2021/1118 of 26 March 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the methodology to be used by resolution authorities to estimate the requirement referred to in Article 104a of Directive 2013/36/EU of the European Parliament and of the Council and the combined buffer requirement for resolution entities at the resolution group consolidated level where the resolution group is not subject to those requirements under that Directive**
This Delegated Regulation specifies the methodology for estimating additional own funds requirement and the combined buffer requirements where those requirements might not apply to the resolution entity at the resolution group consolidated level.

2.4 **Commission Delegated Regulation (EU) 2021/1527 of 31 May 2021 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to regulatory technical standards for the contractual recognition of write down and conversion powers**
This Delegated Regulation sets out the conditions under which it would be impracticable to include the contractual recognition of write-down and conversion powers in certain categories of liabilities**.**

2.5 **Commission Implementing Regulation (EU) 2021/1751 of 1 October 2021 laying down implementing technical standards for the application of Directive 2014/59/EU of the European Parliament and of the Council with regard to uniform formats and templates for**

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8 SI 233 of 2020.

9 SI 110 of 2019.

10 SI 387 of 2021.

notifications of determination of the impracticability of including contractual recognition of write down and conversion powers
This Implementing Regulation lays down implementing technical standards for the application of the Directive 2014/59/EU (the "**BRRD**") with regard to uniform formats and templates for notifications of determination of the impracticability of including contractual recognition of write down and conversion powers.

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 2021**[11]
These Regulations, in operation from 4 August 2021, amend the European Union (Indices Used as Benchmarks in Financial Instruments and Financial Contracts or to Measure the Performance of Investment Funds) Regulations 2017 to give further effect to Regulation (EU) 2016/1011, as amended by Regulation (EU) 2021/168 by: updating the definition of "Benchmarks Regulation", inserting a definition of "relevant authority" and designating the Central Bank of Ireland as the relevant authority responsible for carrying out the functions referred to in Article 23b '*Replacement of a benchmark by Union law*' of the Regulation (EU) 2016/1011. Article 23b relates to the exercise of "tough legacy" powers by the European Commission where applicable criteria are met to merit the designation of a statutory replacement for a benchmark that is no longer appropriate or available to reference.

EU Instruments:

EU Instruments:

3.2 **Regulation (EU) 2021/168 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) 2016/1011 as regards the exemption of certain third-country spot foreign exchange benchmarks and the designation of replacements for certain benchmarks in cessation, and amending Regulation (EU) No 648/2012**
The EU Benchmark Regulation[12] (the "**BMR**") was amended by Regulation 2021/168 (the "**Regulation**"), which entered into force on 13 February 2021. The amendments:

- provide for a statutory replacement rate mechanism for important benchmarks in certain "tough legacy" arrangements;
- extend the then current transitional period for third country benchmarks;
- exempt certain third country spot foreign exchange ("FX") benchmarks from the scope of the BMR; and
- amend EMIR to clarify the interaction between it and the BMR in certain respects.

The Statutory Replacement Rate Mechanism

Major benchmarks (including at the time of the Regulation LIBOR) are widely used as reference rates in a large variety of contracts and financial instruments. While the cessation of such a benchmark could give rise to legal uncertainty and financial stability risks, the BMR did not provide for a harmonised framework for dealing with the cessation or wind-down of such a benchmark.

The Regulation amended the BMR to include a new Chapter 4a, which provides for a statutory replacement mechanism for a benchmark used in:

- any contract, or any "financial instrument" as defined in the MiFID Directive 2014/65/EU ("**Financial Instrument**"), that references a benchmark and is subject to the law of one of the Member States; and/or

11 SI 415 of 2021.

12 Regulation (EU) 2016/1011.

- any contract, the parties to which are all established in the EU, that references a benchmark and that is subject to the law of a third country and where that law does not provide for the orderly wind-down of a benchmark.

That mechanism empowers the European Commission after:

- the occurrence of a prescribed trigger event;
- conducting a public consultation;
- taking into account official recommendations made by relevant central banks, certain authoritative alternative reference rate working groups, the competent authority of the administrator of any benchmark to be replaced, and ESMA,

to designate a replacement rate (the "**Replacement Benchmark**") to replace a:

- benchmark designated as critical under the BMR;
- third country benchmark the cessation or wind-down of which would significantly disrupt the functioning of EU financial markets or pose a systemic risk to the EU's financial system,

(the "**Replaced Benchmark**") in any in-scope contract or Financial Instrument that contains either:

- no contractual replacement for the Replaced Benchmark, *ie* no contractual "fall-back provision"; or
- a contractual fall-back provision which is deemed "unsuitable", within the meaning of BMR as amended by the Regulation, for instance, because it could have an adverse impact on financial stability or because it requires a third party consent that is not forthcoming,

which are known as "tough legacy" arrangements.

In the case of a benchmark designated as critical under the BMR, the national competent authority of an EU member state in which the majority of the contributors to that benchmark are based also has the power to designate a Replacement Rate in certain prescribed circumstances.

Transitional Period for Third Country Benchmarks

The BMR allowed an EU supervised entity to use a third country benchmark until 31 December 2021. The Regulation extends this transitional period until 31 December 2023 subject to certain conditions. The Commission may further extend this period until 31 December 2025 in a delegated act to be adopted by 15 June 2023, if it provides evidence that this is necessary in a report to be presented by that time.

To avoid regulatory arbitrage, the transitional period is disapplied with respect to administrators that relocate from the EU to a third country during that transitional period.

Third Country Spot FX Benchmarks

In order to enable EU companies to continue their business activities while mitigating FX risk, the BMR allowed EU supervised entities to use certain spot FX benchmarks provided by third country administrators to calculate contractual payouts, until the end of the transitional period for third country benchmarks at 31 December 2021. That transitional period was extended to end 2023 but that left outstanding a concern that many third country spot FX benchmarks could not achieve equivalence, endorsement or recognition under the BMR as they are not subject to regulation under the laws of the relevant third country.

To avoid EU supervised entities becoming unable to use those third country spot FX benchmarks after expiry of the extended third country transitional provisions, the Regulation empowers the Commission to exempt them from the scope of the BMR. Third country spot FX benchmarks are eligible for exemption if they:

- reference a spot exchange rate of a third country currency that is not freely convertible, and

- are to be used on a frequent, systematic and regular basis to hedge against adverse foreign exchange movements.

The Commission must, having undertaken a public consultation to identify the relevant benchmarks by 31 December 2022, adopt a delegated act to create a list of exempted spot FX benchmarks by 15 June 2023, updating that list as appropriate.

EMIR

The Regulation amends EMIR to clarify that derivative transactions that are:

- not currently subject to clearing or margining requirements under EMIR; and

- amended or novated for the sole purpose of replacing a reference benchmark or introducing fallback provisions in relation to a reference benchmark,

will not become subject to new clearing and/or margining obligations as a result of such amendments. This addressed significant industry concerns regarding gaps in the coverage of changes made in this regard with effect from 11 February 2021 by Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties.

3.3 **Commission Implementing Regulation (EU) 2021/1847 of 14 October 2021 on the designation of a statutory replacement for certain settings of CHF LIBOR (Text with EEA relevance)**

Applying the statutory replacement mechanism under the BMR (discussed above), the European Commission designated a statutory replacement rate for CHF LIBOR (Swiss franc). The "tough legacy" statutory replacement rate applies from 1 January 2022 in relation to in-scope contracts and "financial instruments" (as defined) that reference CHF LIBOR. Interestingly, the statutory replacement rate (SARON plus a fixed spread adjustment value) references the preceding one or three month period, rather than the actual period of the loan.

3.4 **Commission Implementing Regulation (EU) 2021/1848 of 21 October 2021 on the designation of a replacement for the benchmark Euro overnight index average (Text with EEA relevance)**

Applying the statutory replacement mechanism under the BMR (discussed above), the European Commission designated a statutory replacement rate for EONIA (euro overnight index average), which was phased out as part of benchmark reform. The designated replacement rate is €STR (euro short-term rate), plus a fixed spread adjustment value intended to make the replacement rate as economically similar as possible to EONIA. References to EONIA are replaced in in-scope contracts and "financial instruments" (as defined) from 3 January 2022.

3.5 **Commission Implementing Regulation (EU) 2021/1122 of 8 July 2021 amending Implementing Regulation (EU) 2016/1368 adding the Norwegian Interbank Offered Rate to and removing the London Interbank Offered Rate from the list of critical benchmarks used in financial markets established pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (Text with EEA relevance)**

The BMR provides for a number of different classifications of benchmarks, including a "critical benchmark" category. The competent authority for administrators of critical benchmarks is either (i) ESMA for administrators of critical benchmarks as referred to in Article 20(1), points (a) and (c), of the BMR (as of 1 January 2022); or (ii) the relevant national competent authority for critical benchmarks referred to in Article 20(1), point (b), of the BMR. To clarify the distinction, this Implementing Regulation replaces the Annex to Implementing Regulation (EU) 2016/1368 (providing a list of critical benchmarks). The Implementing Regulation also (i) designates NIBOR (Norwegian Interbank Offered Rate) as a "critical benchmark" for the purposes of the BMR and (ii) removes LIBOR (London Interbank Offered Rate) from the list of critical benchmarks. LIBOR is removed because, since Brexit, the UK-based benchmark administrator is no longer located in the European Union (that being one of the criteria for a benchmark to be classified as critical).

3.6 **Commission Delegated Regulation (EU) 2021/1349 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for the competent authorities' compliance assessment regarding the mandatory administration of a critical benchmark**

This Delegated Regulation sets criteria for how a critical benchmark is to be transitioned to a new administrator or how that benchmark is to be ceased to be provided. This Delegated Regulation entered into force on 1 January 2022.

3.7 **Commission Delegated Regulation (EU) 2021/1351 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the characteristics of the systems and controls for the identification and reporting of any conduct that may involve manipulation or attempted manipulation of a benchmark**
This Delegated Regulation supplements the BMR to specify the characteristics of the systems and controls of a benchmark administrator to ensure that the detection of benchmark manipulation or attempted manipulation is effective and adequate. This Delegated Regulation entered into force on 1 January 2022.

3.8 **Commission Delegated Regulation (EU) 2021/1352 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the conditions to ensure that the methodology for determining a benchmark complies with the quality requirements**
This Delegated Regulation supplements the BMR to specify the methodology for determining a benchmark to be robust and reliable. This Delegated Regulation entered into force on 1 January 2022.

3.9 **Commission Delegated Regulation (EU) 2021/1350 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the requirements to ensure that an administrator's governance arrangements are sufficiently robust**
This Delegated Regulation supplements the BMR to specify requirements to ensure an administrator's governance arrangements are sufficiently robust. This Delegated Regulation entered into force on 1 January 2022.

3.10 **Commission Delegated Regulation (EU) 2021/1348 of 6 May 2021 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria under which competent authorities may require changes to the compliance statement of non-significant benchmarks**
This Delegated Regulation supplements the BMR to specify the criteria under which competent authorities may require changes to the compliance statement referred to in Article 26(3) of that Regulation. This Delegated Regulation entered into force on 1 January 2022.

3.11 **Commission Implementing Regulation (EU) 2021/622 of 15 April 2021 laying down implementing technical standards for the application of Directive 2014/59/EU of the European Parliament and of the Council with regard to uniform reporting templates, instructions and methodology for reporting on the minimum requirement for own funds and eligible liabilities**
This Implementing Regulation adapts the formats and templates specified for the identification and transmission of information on MREL by resolution authorities to the EBA to reflect the amendments to the BRRD, relating in particular to MREL subordination levels and the MREL applied to entities that are not themselves resolution entities.

Anticipated Developments:

3.12 **Further Tough Legacy Regulations**
While not yet published, the European Commission has indicated its intention to publish further Implementing Regulations to designate statutory replacement rates for:

- GBP LIBOR (for British Pound Sterling – details here)
- JPY LIBOR (for Japanese Yen – details here)

4. Capital Requirements

Statutory Instruments

4.1 **European Union (Capital Requirements) (Amendment) Regulations 2021**[13]
These Regulations, in operation from 9 July 2021, give further effect to Regulation (EU) No 575/2013, as amended, and amend Regulation 5(1) of the European Union (Capital Requirements) (No 2) Regulations

[13] SI 336 of 2021.

2014 to provide that giving false, misleading or inaccurate information in relation to any requirement of, or under, Articles 394, 430, 430a or 430b of Regulation (EU) No 575/2013 (the "**CRR**") will be an offence.

4.2 **European Union (Capital Requirements) (Amendment) (No 2) Regulations 2021**[14]
These Regulations give further effect to Regulation (EU) 2020/873 which introduced certain targeted changes to the CRR and Regulation (EU) 2019/876 to maximise the capacity of credit institutions to lend and to absorb losses related to the COVID-19 pandemic. These Regulations come into effect on 8 July 2022 and provide for consequential amendments to the Asset Covered Securities Act 2001, primarily to replace references to the "*Codified Banking Directive*" with references to the CRR.

4.3 **European Union (Capital Requirements) (Amendment) (No 3) Regulations 2021**[15]
These Regulations give further effect to Regulation (EU) 2020/873 which introduced certain targeted changes to the CRR and Regulation (EU) 2019/876 to maximise the capacity of credit institutions to lend and to absorb losses related to the COVID-19 pandemic. These Regulations come into effect on 8 July 2022 and provide for consequential amendments to the Asset Covered Securities Act 2001, primarily to include a definition of "*Capital Requirements Directive*" and substitute references to the '*Codified Banking Directive*' with references to the Directive (EU) 2013/36/EU ("**CRD**").

EU Instruments:

4.4 **Commission Delegated Regulation (EU) 2021/930 of 1 March 2021 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the nature, severity and duration of an economic downturn referred to in Article 181(1), point (b), and Article 182(1), point (b), of that Regulation**
This Delegated Regulation applies from 1 January 2021 and details specification rules and indicator sets for the purposes of identifying an economic downturn for a given type of exposures.

4.5 **Commission Delegated Regulation (EU) 2021/931 of 1 March 2021 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the method for identifying derivative transactions with one or more than one material risk driver for the purposes of Article 277(5), the formula for calculating the supervisory delta of call and put options mapped to the interest rate risk category and the method for determining whether a transaction is a long or short position in the primary risk driver or in the most material risk driver in the given risk category for the purposes of Article 279a(3)(a) and (b) in the standardised approach for counterparty credit risk**
This Delegated Regulation supplements the CRR by providing for a method for identifying transactions with only one material risk driver, transactions with more than one material risk driver and for identifying the most material of those risk drivers. This Delegated Regulation also sets out formula to be used to calculate the supervisory delta of call and put options mapped to the interest rate risk category and supervisory volatility suitable for that formula and method for determining whether a transaction is a long or short position in the primary risk driver or in the most material risk driver in a given risk category.

4.6 **Commission Delegated Regulation (EU) 2021/923 of 25 March 2021 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards setting out the criteria to define managerial responsibility, control functions, material business units and a significant impact on a material business unit's risk profile, and setting out criteria for identifying staff members or categories of staff whose professional activities have an impact on the institution's risk profile that is comparably as material as that of staff members or categories of staff referred to in Article 92(3) of that Directive**
This Delegated Regulation lays down criteria to identify staff members, other than the staff members referred to in Article 92(3), points (a), (b) and (c), of CRD, the professional activities of which have a material impact on the institution's risk profile.

4.7 **Commission Implementing Regulation (EU) 2021/637 of 15 March 2021 laying down implementing technical standards with regard to public disclosures by institutions of the information referred to in Titles II and III of Part Eight of Regulation (EU) No 575/2013 of the European Parliament and of the Council and repealing Commission Implementing Regulation (EU) No 1423/2013, Commission Delegated Regulation (EU) 2015/1555,**

[14] SI 485 of 2021.

[15] SI 486 of 2021.

Commission Implementing Regulation (EU) 2016/200 and Commission Delegated Regulation (EU) 2017/2295
This Implementing Regulation introduces a comprehensive integrated set of uniform disclosure formats, templates and tables.

4.8 **Commission Implementing Regulation (EU) 2021/1018 of 22 June 2021 amending the implementing technical standards laid down in Implementing Regulation (EU) 2021/637 as regards the disclosure of indicators of global systemic importance, and repealing Implementing Regulation (EU) No 1030/2014**
This Implementing Regulation amends implementing technical standards relating to disclosure of indicators of global systemic importance.

4.9 **Commission Delegated Regulation (EU) 2021/539 of 11 February 2021 amending Delegated Regulation (EU) No 1222/2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards for the specification of the methodology for the identification of global systemically important institutions and for the definition of subcategories of global systemically important institutions**
This Delegated Regulation amends regulatory technical standards relating to the reallocation of global systemic institutions between subcategories by supervisory authorities.

4.10 **Commission Implementing Regulation (EU) 2021/2017 of 13 September 2021 amending 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**
This Implementing Regulation amends regulatory technical standards setting out reporting requirements for institutions to enable competent authorities to monitor the range of risk weighted exposure amounts or own funds requirements for the exposures or transactions in the benchmark portfolio resulting from the internal approaches of those institutions, and to assess those approaches, as required by Article 78(3) of CRD.

4.11 **Commission Implementing Regulation (EU) 2021/1043 of 24 June 2021 on the extension of the transitional provisions related to own funds requirements for exposures to central counterparties set out in Regulation (EU) No 575/2013 of the European Parliament and of the Council**
This Implementing Regulation extends the transitional period during which institutions may treat exposures to third-country central clearing counterparties ("**CCPs**") (which have applied for ESMA recognition) as exposures to qualifying CCPs by 12 months, until 28 June 2022.

4.12 **Commission Delegated Regulation (EU) 2021/424 of 17 December 2019 amending Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the alternative standardised approach for market risk**
This Delegated Regulation implements changes to the alternative standardised approach for market risk. The amendments reflect the revised version of the Basel Committee on Banking Supervision ("**BCBS**") standard on minimum capital requirements for market risk which were published in January 2019. The Delegated Regulation applied from 30 September 2021.

4.13 **Commission Implementing Regulation (EU) 2021/453 of 15 March 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to the specific reporting requirements for market risk**
This Implementing Regulation amends implementing technical standards laying down reporting requirements for market risk. This Implementing Regulation applied from 5 October 2021.

4.14 **Commission Implementing Regulation (EU) 2021/451 of 17 December 2020 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to supervisory reporting of institutions and repealing Implementing Regulation (EU) No 680/2014**
This Implementing Regulation amends implementing technical standards laying the reporting framework and the set of templates for the collection of information for supervisory reporting purposes under the CRR. This Implementing Regulation applied from 28 June 2021.

4.15 **Commission Implementing Regulation (EU) 2021/763 of 23 April 2021 laying down implementing technical standards for the application of Regulation (EU) No 575/2013 of the European Parliament and of the Council and Directive 2014/59/EU of the European**

Parliament and of the Council with regard to the supervisory reporting and public disclosure of the minimum requirement for own funds and eligible liabilities
This Implementing Regulation establishes a set of templates for the reporting and public disclosure of harmonised information on the requirement for own funds and eligible liabilities for global systemically important institutions ("**G-SIIs**") and material subsidiaries of non-EU G-SIIs (Total Loss-Absorbing Capacity ("**TLAC**")) and the institution-specific minimum requirement for own funds and eligible liabilities ("**MREL**") applicable to all institutions. Title I of this Implementing Regulation applied from Title I applied from 28 June 2021 and certain aspects of Title II of this Implementing Regulation applied from 1 June 2021.

4.16 **Regulation (EU) 2021/943 of the European Central Bank of 14 May 2021 amending Regulation (EU) 2015/534 on reporting of supervisory financial information (ECB/2021/24)**
This ECB Regulation updates cross-references in Regulation (EU) 2015/534 of the European Central Bank.

4.17 **Commission Implementing Regulation (EU) 2021/1971 of 13 September 2021 amending Implementing Regulation (EU) 2016/2070 laying down implementing technical standards for templates, definitions and IT-solutions to be used by institutions when reporting to the European Banking Authority and to competent authorities in accordance with Article 78(2) of Directive 2013/36/EU of the European Parliament and of the Council**
This Implementing Regulation revises implementing technical standards for reporting templates, definitions and IT-solutions used for reporting in accordance with Article 78(2) of CRD. The amendments include, decreasing the number of benchmark portfolios to be reported, simplifying the design of the benchmark portfolios and including stable benchmark portfolio definitions.

4.18 **Commission Implementing Regulation (EU) 2021/2005 of 16 November 2021 laying down implementing technical standards amending Implementing Regulation (EU) 2016/1799 as regards the mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions and the credit quality steps set out in Regulation (EU) No 575/2013 of the European Parliament and of the Council**
This Implementing Regulation lays down implementing technical standards as regards mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions and the credit quality steps set out in the CRR.

4.19 **Commission Implementing Regulation (EU) 2021/2006 of 16 November 2021 laying down implementing technical standards amending Implementing Regulation (EU) 2016/1800 as regards the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC of the European Parliament and of the Council**
This Implementing Regulation lays down implementing technical standards as regards mapping tables specifying the correspondence between the credit risk assessments of external credit assessment institutions and the credit quality steps referred to in Article 3 of Commission Delegated Regulation (EU) 2015/35.

4.20 **Commission Delegated Regulation (EU) 2021/598 of 14 December 2020 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for assigning risk weights to specialised lending exposures**
This Delegated Regulation supplements the CRR with regard to regulatory technical standards for assigning risk weights to specialised lending exposures. This Delegated Regulation will apply from 14 April 2022.

4.21 **Commission Implementing Regulation (EU) 2021/249 of 17 February 2021 amending Implementing Regulation (EU) 2015/2197 with regard to closely correlated currencies in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council**
This Implementing Regulation replaces the text of the Annex to Implementing Regulation (EU) 2015/2197 to update the list of closely correlated currencies.

Anticipated Developments:

4.22 **Commission Banking Package 2021**
On 27 October 2021, the European Commission adopted its review of EU banking rules (the "**Banking Package**"). The proposals set out in the Banking Package are intended to finalise implementation of the

Basel III Framework, assist the financing of the European economy in the context of the post-COVID-19 crisis recovery and contribute to a "green transition".

The Banking Package consists of:

- a legislative proposal to amend the CRD;
- a legislative proposal to amend the CRR; and
- a separate legislative proposal to amend the CRR in the area of resolution.

The Banking Package focuses on three key areas: Basel III reforms, enhanced supervision and sustainability.

The next step is for the European Parliament and the Member States in the Council to discuss the final legislative texts on the basis of the Banking Package. The Commission has stated it proposes to give banks and supervisors time to properly implement reforms in their processes, systems and practices and to start applying the new rules from 1 January 2025 (subject to specific transitional arrangements in respect of Basel III reforms).

5. Central Securities Depositories Regulation

Statutory Instruments:

5.1 **European Union (Central Securities Depositories) (CSD Nominee) Regulations 2021**[16]
These Regulations specified that for the purposes of Chapter 7A of Part 17 of the Companies Act 2014, "*relevant securities*" shall include securities registered in the name of a CSD nominee, from 12 March 2021. These Regulations have since been revoked by the Regulations at 13.2 below.

5.2 **European Union (Central Securities Depositories) (CSD Nominee) (Amendment) Regulations 2021**[17]
These Regulations, in operation from 12 March 2021, revoke the European Union (Central Securities Depositories) (CSD Nominee) Regulations 2021 and give further effect to EU Regulation 909/2014 on improving securities settlement in the EU and on central securities depositories. These Regulations specify that for the purposes of Chapter 7A of Part 17 of the Companies Act 2014, "*relevant securities*" shall include securities registered in the name of a CSD nominee, from 12 March 2021.

EU Instruments:

5.3 **Commission Delegated Regulation (EU) 2021/70 of 23 October 2020 amending Delegated Regulation (EU) 2018/1229 concerning the regulatory technical standards on settlement discipline, as regards its entry into force**
This Delegated Regulation delays the entry into force of Delegated Regulation (EU) 2018/1229 concerning the regulatory technical standards on settlement discipline until 1 February 2022.

6. Credit Servicing / Retail Credit

EU Instruments:

6.1 **Directive (EU) 2021/2167 of the European Parliament and of the Council of 24 November 2021 on credit servicers and credit purchasers and amending Directives 2008/48/EC and 2014/17/EU (Text with EEA relevance)**
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.

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16 SI 110 of 2021.

17 SI 119 of 2021.

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.

A further important difference between the Directive and the current Irish credit servicing regime is that the Directive applies to all relevant non-performing loans originated by an EU credit institution (whether or not the borrower is an SME or a natural person), whereas the current Irish regime applies to a transfer of in-scope performing and non-performing loans originated by any regulated lender (*eg* including retail credit firms, not just bank lenders), but only where that loan is advanced to an SME or a natural person.

The Directive applies to "credit servicers" and "credit purchasers" in relation to:

- non-performing credit agreements in relation to credit "...in the form of a deferred payment, a loan or other similar financial accommodation";
- issued by a "credit institution" (within the meaning of the Capital Requirements Regulation) established in the European Union.

The Directive expressly excludes servicing carried out by:

- a credit institution established in the Union;
- a duly authorised AIFM, UCITS management company or investment company (provided the investment company has not appointed a management company);
- a non-credit institution subject to supervision by a competent authority (in Ireland this could include a variety of entities such as retail credit firms, credit unions and moneylenders); and
- servicing carried on by a natural person (in practice, likely rare).

While the Directive lays down a common European framework and requirements in relation to the above, it also specifically provides that it does not affect any restrictions in a Member State's laws in relation to a non-performing credit agreement that "...is not past due, is less than 90 days past due or is not terminated in accordance with national civil law...", nor does it affect the "...transfer of such a non-performing credit agreement.".

The Directive was published in the Official Journal of the European Union on 8 December 2021 (and entered into force 20 days later). The Directive is required to be transposed and in force in Ireland by 30 December 2023.

Anticipated Developments:

6.2 **Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021**

The current draft of the Consumer Protection (Regulation of Retail Credit and Credit Servicing Firms) Bill 2021 proposes one of the most significant expansions to financial services authorisation requirements in recent years. Authorisation from the Central Bank of Ireland will be required in relation to a broader scope of "credit" (no longer only "cash loans") whether provided directly or indirectly, as well as to hire-purchase and consumer-hire business, in each case involving natural persons.

A new cap of 23% APR is also to be imposed on consumer credit agreements and consumer hire-purchase agreements.

According to its explanatory memorandum, the Bill has the following principal objectives:

- "to provide for the extension of authorisation requirements to persons carrying on hire-purchase or consumer-hire business or providing credit indirectly and persons carrying on business relating to hire-purchase or consumer-hire agreements or the indirect provision of credit...

- to provide for a limit on the interest rate that consumers may be charged under credit agreements and hire purchase agreements; to provide for a requirement to include the annual percentage rate in a hire-purchase agreement...".

These objectives are to be achieved through a series of amendments to existing legislation, especially the Central Bank Act 1997 ("**CBA 1997**") and the Consumer Credit Act 1995 ("**CCA 1995**"). The amendments are quite technical in nature and, based on the current drafting, the Bill may have implications beyond those outlined above. The following provides a high level summary of the key issues.

What are the new Authorisation Requirements?

The first important point to note is that the expanded authorisation requirements generally only apply to transactions involving natural persons (though note this is not limited to "consumers"). The authorisation requirements apply in relation to a "regulated business", which includes "...the business of a retail credit firm...or the business of a credit servicing firm".

Retail Credit Firm

The business of a retail credit firm has been expanded (beyond the provision of cash loans) to include the following "Relevant Activities":

- directly or indirectly providing "credit" to; or

- entering into consumer-hire or hire-purchase agreements with,

a "relevant person" (being a natural person, subject to some limited exceptions).

While the precise meaning of "indirectly" providing credit is not set out in the Bill, the accompanying press release clarifies that this is intended to capture circumstances where the "...lender provides credit to the borrower by paying a retailer for the purchase of a good".

The concept of "credit" has been expanded so that instead of applying only to "cash loans" it now includes:

- a deferred payment;

- cash loans; and

- other similar financial accommodation. (The term "financial accommodation" is defined by reference to the CCA 1995 *ie* the term "includes credit and the letting of goods").

The definitions of the newly in-scope consumer-hire agreements and hire-purchase agreements are similar to those used in the CCA 1995, with the important distinction that they apply to a broader range of natural persons and are not limited to "consumers".

Importantly, existing exclusions to both the definitions of "retail credit firm" (*eg* a person already authorised to carry on a relevant activity; a person acquiring credit originated by another person) and "credit" (*eg* credit originated and held by credit unions; certain credit provided without interest or charge) are retained with some drafting amendments. Some new exclusions to these definitions are also added: *eg* "credit" does not include the "bailment of goods to a hirer under an agreement of less than 3 months' duration under which the property in the goods remains with the owner" and "retail credit firm" does not include "a person whose business consists partly of a relevant activity, but only by virtue of the person providing credit in the form of trade credit".

Consequently any entity, whether currently authorised or not, which may be involved in Relevant Activities will need to carefully consider whether it (i) must apply to the Central Bank of Ireland ("**CBI**") for an authorisation; or (ii) could instead re-structure its activities so that a duly authorised entity (such as a credit servicing firm) carries on the Relevant Activities on its behalf.

Credit Servicing Firms

The second significant change to authorisation requirements is the expansion of the scope of the business of "credit servicing". Broadly summarised, the business of "credit servicing" involves any of the following in relation to an in-scope agreement:

- holding the legal title to the agreement;
- managing or administering the agreement (*eg* collecting payments, handling complaints);
- determining the overall strategy for the management and administration of a portfolio of agreements;
- maintaining control over key decisions relating to such portfolio; or
- communicating with the customer in relation to the above (other than holding legal title).

The range of in-scope agreements is to be expanded by:

- capturing a broader range of credit agreements, due to the broader definition of "credit" (discussed above); and
- the extension of credit servicing to hire-purchase agreements and consumer-hire agreements with natural persons.

Transitional Authorisation

Broadly summarised, the Bill contemplates a number of different ways in which an entity engaged in Relevant Activities prior to enactment of the Bill's provisions will be deemed to be authorised (or excluded from the need for further authorisation) in relation to the expanded scope of "regulated business". These include some specific provisions, which allow an entity to apply for a transitional authorisation in relation to a Relevant Activity.

The transitional authorisation provisions require the entity to apply to the CBI no later than 3 months after the coming into operation of the relevant provisions of the Bill. The question of whether such an application is needed or possible will depend on a number of factors, including the existing authorisations held by that entity (if any), the nature of Relevant Activities already being carried on, and those that are intended to be carried on in the future.

23% APR Limit and New Documentary Requirements for Consumers

The CCA 1995 is also being amended in relation to credit agreements and hire-purchase agreements with consumers (*ie* natural persons acting outside the course of their business).

The key changes are:

- Maximum APR: a new cap of 23% "APR" is imposed on credit agreements (other than moneylending agreements) and hire-purchase agreements with consumers. If this cap is breached, the creditor/owner is not entitled to enforce the agreement or any guarantee or security (though the court retains an equitable discretion to allow enforcement in certain circumstances).
- Hire-Purchase Information Statement: the existing prescribed information statement requirements for hire-purchase agreements are updated to require inclusion of the applicable APR. (This requirement already existed for credit agreements).

A number of other technical changes are being made to the CCA 1995, some of which may have consequences that are not immediately apparent at first glance. For example, the definition of "credit institution" in the CCA 1995 is being amended so that it includes a "retail credit firm" within the updated meaning of the CBA 1997. This may have the effect of bringing a retail credit firm within the scope of section 149 of the CCA 1995, which requires the notification of certain charges to the CBI.

Oversight

In addition to the above, some consequential amendments are to be made 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 CBA 1997, are brought within the scope of this legislation, including its disputes/complaints resolution mechanisms and oversight/enforcement mechanisms.

7. Credit Unions

Statutory Instruments:

7.1 **Credit Union Act 1997 (Section 3A) Order 2021**[18]
This Order extends the interim period (which, having regard to the risk to human life and public health posed by the spread of the disease known as Covid-19, made exceptional provision in relation to the operation of certain provisions of the Credit Union Act 1997) for the period beginning on 1 May 2021 and ending on 30 June 2021.

8. Crowdfunding

Statutory Instruments:

8.1 **European Union (Crowdfunding) Regulations 2021**[19]
These Regulations designate the Central Bank of Ireland (the CBI) as the competent authority in the State responsible for carrying out the functions of a competent authority referred to in the EU Crowdfunding Regulation (Regulation (EU) 2020/1503) and include provisions:

- detailing responsibility in respect of the key investment information sheet (at content and platform level);
- outlining civil liability for the key investment information sheet (at content and platform level);
- confirming the CBI may apply administrative penalties for breaches of the Regulations/the Crowdfunding Regulation;
- outlining rights of appeal; and
- amending other areas of financial services legislation (primarily relating to the definition of "*prospectus regulation*" to include reference to the EU Crowdfunding Regulation).

These Regulations took effect on 13 December 2021.

9. Digital Finance

Anticipated Developments:

9.1 **European Digital Finance Package**
The European Digital Finance Package includes a Regulation on Digital Operational Resilience ("**DORA**") which is intended to ensure all firms can withstand all types of ICT-related disruptions and threats and a Regulation on Markets in Crypto-Assets ("**MiCA**") which sets out a framework on crypto-assets to allow for innovation in a way that preserves financial stability and protects investors. These Regulations are expected to be finalised during 2022.

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18 SI 197 of 2021.

19 SI 702 of 2021.

10. EMIR

EU Instruments:

10.1 **Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132**

This Regulation lays down rules and procedures relating to the recovery and resolution of CCPs authorised in accordance with Regulation (EU) No 648/2012 ("**EMIR**") and rules relating to arrangements with third countries in the field of recovery and resolution of CCPs.

This Regulation includes provisions that:

- each Member State shall designate one or more resolution authorities that are empowered to apply the resolution tools and exercise the resolution powers as set out in the Regulation;
- CCPs shall draw up and maintain a recovery plan providing for measures to be taken in the case of both default and non-default events and combinations of both and submit such plan to the relevant competent authority;
- a competent authority where a CCP infringes, or is likely to infringe in the near future, the capital and prudential requirements of EMIR, or poses a risk to financial stability in the Union or in certain other scenarios, the competent authority may take early intervention measures;
- set out conditions for competent authorities to take resolution action and general principles regarding resolution; and
- set out general resolution tools which a competent authority may apply, including the position and loss allocation tools, the write-down and conversion tool, the sale of business tool and the bridge CCP tool.

This Regulation shall apply from 12 August 2022, with the exception of Article 95 which shall apply from 4 July 2020, Article 87(2) which shall apply from 11 February 2021, Articles 9(1), 9(2), 9(3), 9(4), 9(6), 9(7), 9(9), 9(10), 9(12), 9(13), 9(16), 9(17), 9(18), 9(19), 10(1), 10(2), 10(3), 10(8), 10(9), 10(10), 10(11), 10(12) and 11 which shall apply from 12 February 2022 and Articles 9(14) and 20 which shall apply from 12 February 2023.

10.2 **Commission Delegated Regulation (EU) 2021/731 of 26 January 2021 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on third-country central counterparties or related third parties by the European Securities and Markets Authority**

This Delegated Regulation specifies further the rules of procedure regarding fines and periodic penalty payments to be imposed by the European Securities and Markets Authority ("**ESMA**") on third-country CCPs or related third parties to whom those CCPs have outsourced operational functions or activities subject to ESMA's investigation and enforcement proceedings, including rules on the right of defence and limitation periods.

10.3 **Commission Delegated Regulation (EU) 2021/962 of 6 May 2021 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 exemption for certain pension schemes from the EU EMIR clearing obligation until 18 June 2022.

10.4 **Commission Delegated Regulation (EU) 2021/237 of 21 December 2020 amending regulatory technical standards laid down in Delegated Regulations (EU) 2015/2205, (EU) 2016/592 and (EU) 2016/1178 as regards the date at which the clearing obligation takes effect for certain types of contracts**

This Delegated Regulation further defers the date at which the clearing obligation takes effect for OTC derivative contracts concluded between counterparties which are part of the same group and where one counterparty is established in a third country and the other counterparty is established in the Union until 30 June 2022 in case no equivalence decision has been adopted in respect of that third country.

10.5 **Commission Delegated Regulation (EU) 2021/236 of 21 December 2020 amending technical standards laid down in Delegated Regulation (EU) 2016/2251 as regards to the timing of when certain risk management procedures will start to apply for the purpose of the exchange of collateral**
This Delegated Regulation amends technical standards laid down in Delegated Regulation (EU) 2016/2251 as regards to the timing of when certain risk management procedures will start to apply for the purpose of the exchange of collateral, with respect to OTC derivative contracts not cleared by a central counterparty.

10.6 **Commission Delegated Regulation (EU) 2021/732 of 26 January 2021 amending Delegated Regulation (EU) No 667/2014 with regard to the content of the file to be submitted by the investigation officer to the European Securities and Markets Authority, the right to be heard with regard to interim decisions and the lodging of fines and periodic penalty payments**
This Delegated Regulation amends rules of procedure for penalties imposed on trade repositories by the ESMA, including rules on the right of defence.

10.7 **Commission Delegated Regulation (EU) 2021/822 of 24 March 2021 amending Delegated Regulations (EU) No 1003/2013 and (EU) 2019/360 as regards the annual supervisory fees charged by the European Securities and Markets Authority to trade repositories for 2021**
This Delegated Regulation amends regulatory technical standards to allow ESMA to charge fees to trade repositories in 2021 in a proportionate manner while covering all its cost related to their supervision.

10.8 **Commission Delegated Regulation (EU) 2021/1456 of 2 June 2021 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council by specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent**
This Delegated Regulation supplements EMIR by specifying the conditions under which the commercial terms for clearing services for OTC derivatives are to be considered to be fair, reasonable, non-discriminatory and transparent. The Delegated Regulation applies to clearing houses and clients which provide clearing services in the EU. The Annex to the Delegated Regulation sets out the requirements which commercial terms of clearing services must meet to be considered fair, reasonable, non-discriminatory and transparent. The Delegated Regulation will apply from 9 March 2022.

Anticipated Developments:

10.9 **Commission Implementing Decision (EU) 2022/174 of 8 February 2022 determining, for a limited period of time, that the regulatory framework applicable to central counterparties in the United Kingdom of Great Britain and Northern Ireland is equivalent, in accordance with Regulation (EU) No 648/2012 of the European Parliament and of the Council**
This Implementing Decision extends equivalence for UK CCPs under EMIR until 30 June 2025.

11. EU Restrictive Measures in Force

The EU imposes certain restrictive measures directed against certain persons and entities. These may involve diplomatic measures and specific financial and economic sanctions that target individuals and organisations. The CBI maintains a list of European Union restrictive measures (sanctions) in force, which it updates regularly[20]. Various Irish statutory instruments give effect to the European Union restrictive measures contained on this list. See examples below[21]

12. Fitness and Probity

Anticipated Developments:

12.1 **Central Bank (Individual Accountability Framework) Bill**
To introduce the senior executive accountability regime, conduct standards for individuals and business, enhanced enforcement powers for the CBI and enhancements to the fitness and probity regime.

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[20] The list may be accessed here.

[21] Criminal Justice (Terrorist Offences) Act 2005 (Section 42) (Restrictive Measures concerning Certain Persons and Entities with a view to Combating Terrorism) Regulations 2021 (SI 91 of 2021); • European Union (Restrictive Measures concerning Iraq) Regulations 2021 (SI 47 of 2021); • European Union (Restrictive Measures concerning Belarus) Regulations 2021 (SI 17 of 2021).

12.2 **CBI Regulations amending the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011**
On 22 September 2021, the CBI issued a notice of intention to amend the list of pre-approval controlled functions (the "**PCF List**"). CBI Regulations to implement these amendments are expected in due course.

13. Fees and Levies

Statutory Instruments:

13.1 **Credit Institutions Resolution Fund Levy (Amendment) Regulations 2021**[22]
These Regulations further amend the Credit Institutions Resolution Fund Levy Regulations 2012, from 21 September 2021, by updating:

- the levy period to mean the period from 1 October 2021 to 30 September 2022;
- the reporting date at which the reference to the total assets of a credit union should be construed;
- the date on which a relevant credit institution must be authorised as such and the date by which the levy must be paid; and
- an amendment to the percentage of total assets of a credit union which forms the basis of calculation of the levy.

13.2 **Central Bank Act 1942 (Section 32D) Regulations 2021**[23]
These Regulations require regulated entities to pay the prescribed levy contributions to the CBI, in respect of each authorisation held during the relevant levy period, on or before the due date in a levy notice or, where a notice is not received, by 17 December 2021.

13.3 **Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2021**[24]
These Regulations, in operation from 19 March 2021, require financial service providers to pay an annual levy in respect of the services provided by the Ombudsman to the financial services industry and provide for the collection and recovery of the levy and for certain obligations in respect of self-assessment and record keeping by financial services providers. These Regulations also set out the calculation requirements for the required contribution payable by each category of financial services provider for the year ended 31 December 2021.

13.4 **Central Bank Act 1942 (Section 32D) (Certain Financial Vehicles Dedicated Levy) Regulations 2021**[25]
These Regulations, in operation from 8 July 2021, require the specified regulated entities (including Irish collective asset-management vehicles, unit trusts, investment limited partnerships, credit unions or common contractual funds) to pay the prescribed dedicated levy contributions to the CBI on or before the due date which may be specified by the CBI in a levy notice or by 1 October in a relevant year if no levy notice is received.

13.5 **European Union (Bank Recovery and Resolution) Resolution Fund Levy Regulations 2021**[26]
The CBI in its capacity as designated resolution authority made these Regulations on 19 April 2021 to prescribe certain matters relating to the payment of levies to the CBI for the account of the Bank and Investment Firm Resolution Fund.

13.6 **Credit Union Fund (Stabilisation) Levy Regulations 2021**[27]
These Regulations require every credit union, which is a credit union on 21 January 2022, to pay a levy in respect of the levy period 1 October 2021 to 30 September 2022, to the Minister for Finance for the account

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22 SI 481 of 2021.

23 SI 487 of 2021.

24 SI 117 of 2021.

25 SI 335 of 2021.

26 SI 186 of 2021.

27 SI 480 of 2021.

of the Credit Union Fund at the specified rate per cent of the total assets of the credit union, no later than 28 February 2022.

14. General

Acts of the Oireachtas:

14.1 **Counterfeiting Act 2021**

The purpose of the Counterfeiting Act 2021 is to complete the transposition of Directive 2014/62/EU (on the protection of the euro and other currencies against counterfeiting by criminal law...) and to make provisions for three further EU instruments[28] dealing with the authenticity and fitness checking of euro banknotes and euro coins and measures for the protection of the euro against counterfeiting. While those three EU instruments are binding and directly applicable in Ireland, it was necessary to make provision for associated monitoring, supervision and enforcement powers (along with some related matters). Part 2 of the 2021 Act makes a number of amendments to the Criminal Justice (Theft and Fraud Offences) Act 2001. Part 3 provides for the obligations of "relevant persons" (*eg* a credit institution but also including some unregulated persons) in respect of ensuring the authenticity and fitness of euro banknotes and coins. Part 4 sets out a number of other miscellaneous provisions and amendments.

14.2 **Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021**

The Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 was commenced on 14 April 2021. The Act gives further effect to remaining elements of Directive EU 2017/1371 ("**PIF Directive**"). This Directive aims to fight fraud against the EU's financial interests. It establishes minimum rules on the definition of criminal offences and sanctions in this regard.

The Act creates an offence of "fraud affecting the financial interests of the European Union". It is widely defined and covers a range of activities in and around financial and revenue misconduct involving EU funds or assets with certain areas such as procurement and serious cross-border VAT fraud given express mention.

The Act also creates a new offence of misappropriation. "Misappropriation" means the action of a "public official", who is directly or indirectly entrusted with the management of funds or assets, to commit or disburse funds or appropriate or use assets contrary to the purpose for which they were intended in any way which damages the EU's financial interests. "Public official" is also widely defined.

In addition, where a "relevant offence" is committed for the benefit of a body corporate by a "relevant person" and the commission of that offence is attributable to a failure within the company to exercise the requisite degree of supervision or control over the person concerned, then the body corporate will be guilty of an offence.

A "relevant offence" can be either of the two new offences but also includes a corruption offence that damages, or is likely to damage, the financial interests of the EU, as well as an offence of inciting, aiding and abetting, or attempting any of those offences or laundering their proceeds. A "relevant person" in relation to a body corporate, means a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, or an employee, subsidiary or agent of the body corporate. It will be a defence for a body corporate to prove that it took all reasonable steps and exercised all due diligence to avoid the commission of the offence. If the corporate is convicted of an offence, secondary liability may follow for management in certain circumstances.

The Act has extraterritorial jurisdiction for offences committed abroad by Irish citizens, corporates and residents. This means that relevant misconduct committed abroad may be prosecuted in Ireland. This will extend to inciting, aiding and abetting, or attempting the commission of the offence abroad.

Finally, the Criminal Justice Act 1994 has been amended to add the offences of fraud affecting the financial interests of the European Union and misappropriation to the list of offences considered as extended confiscation offences, for the purposes of seeking a confiscation of the proceeds of crime under section 8F of that Act. The Criminal Justice Act 2011 has also been updated to take account of the new offences and apply mandatory reporting obligations to them.

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[28] Council Regulation 1338/2001 (Euro Counterfeiting Regulation), Council Regulation 1210/2010 (Euro Coin Regulation) and the Decision of the European Central Bank (ECB/2010/14) (Euro Banknote Decision).

14.3 **Counterfeiting Act 2021 (Commencement) Order 2021**[29]
This Order appoints 3 August 2021 as the date on which Parts 1 and 2 and ss30, 32 and 33 Counterfeiting Act 2021 come**s** into operation.

14.4 **Counterfeiting Act 2021 (Part 3 and Sections 28 and 31) (Commencement) Order 2021**[30]
This Order appoints 3 August 2021 as the date on which Part 3 and s28 and s31 Counterfeiting Act 2021 come**s** into operation.

14.5 **Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 (Commencement) Order 2021**[31]
This Order appoints 14 April 2021 as the date on which the Criminal Justice (Theft and Fraud Offences) (Amendment) Act 2021 comes into operation.

14.6 **Loan Guarantee Schemes Agreements (Strategic Banking Corporation of Ireland) Act 2021 (Commencement) Order 2021**[32]
This Order appoints 4 June 2021 as the date on which the Loan Guarantee Schemes Agreements (Strategic Banking Corporation of Ireland) Act 2021 comes into operation.

Statutory Instruments:

14.7 **National Treasury Management Agency (Amendment) Act 2014 (Designated Bodies) Order 2021**[33]
This Order specifies Córas Iompair Éireann, Iarnród Éireann – Irish Rail, Bus Éireann – Irish Bus, Bus Átha Cliath – Dublin Bus, Dublin Port Company, Port of Cork Company, Port of Waterford Company, Shannon Foynes Port Company, daa public limited company, The Irish Aviation Authority and Shannon Group public limited company as **"**designated bodies**"** for the purposes of Part 3 (State Assets and Investment) of the National Treasury Management Agency (Amendment) Act 2014, from 18 February 2021.

14.8 **European Union (Controls of Cash Entering or Leaving the Union) Regulations 2021**[34]
These Regulations amend s42 Customs Act 2015 to give effect to Regulation (EU) 2018/1672 on controls on cash entering or leaving the EU to require declarations to be made to Revenue in certain circumstances and give customs officers powers to carry out controls in relation to accompanied and unaccompanied cash, from 3 June 2021.

14.9 **European Union (Counterfeiting of Euro) Regulations 2021**[35]
These Regulations make some technical amendments to the Central Bank Act 1942, from 3 August 2021, regarding measures to counteract the counterfeiting of euro.

14.10 **Companies Act 2014 (Section 12A(1)) (Covid-19) Order 2021**[36][37]
14.11 **Companies Act 2014 (Section 12A(1)) (Covid-19) (No 2) Order 2021**
Together, these Orders extend – to 30 April 2022 – the "interim period" as defined in section 2[38] of the Companies Act 2014 in respect of the amendments effected by the following sections of the Companies (Miscellaneous Provisions) (Covid-19) Act 2020:

- 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);

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29 SI 404 of 2021.

30 SI 407 of 2021.

31 SI 167 of 2021.

32 SI 269 of 2021.

33 SI 88 of 2021.

34 SI 281 of 2021.

35 SI 408 of 2021.

36 SI 254 of 2021.

37 SI 725 of 2021.

38 As inserted by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020.

- sections 13 to 16 (• raising the debt-threshold for the commencement of a winding up by the court (from €10,000 for individual debts and €20,000 for aggregate debts) to €50,000 (a single threshold), and • making similar provision in respect of creditors' meetings as are, for the interim period, made for general meetings); and

- sections 18 to 25 (permitting an examiner of a company that goes into examinership during the interim period to seek an extended period of 50 days in which to make a report to the court under the Companies Act, entailing a possible maximum period of examinership of 150 days in exceptional circumstances (which include, but are not limited to, the nature and impact of COVID-19 on the company)).

Note that these concessions no longer permit a company to postpone the holding of its AGM (a once-off statutory concession was available in 2020 for this purpose).

EU Instruments:

14.12 **Regulation (EU) 2021/840 of the European Parliament and of the Council of 20 May 2021 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting for the period 2021-2027 (the 'Pericles IV' programme), and repealing Regulation (EU) No 331/2014**
This Regulation is aimed at establishing an exchange, assistance and training programme ("Pericles IV") to protect the euro against counterfeiting. The programme is to run for the duration of the 2021–2027 multiannual financial framework of the European Union (EU). It sets out:

14.13 **Council Regulation (EU) 2021/1696 of 21 September 2021 extending to the non-participating Member States the application of Regulation (EU) 2021/840 of the European Parliament and of the Council establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting for the period 2021-2027 (the 'Pericles IV programme')**
This Regulation extends the Pericles IV anti-counterfeiting programme to Member States that do not have the euro as their official currency.

Anticipated Developments:

14.14 **Investment Screening Bill**
Further to Regulation (EU) 2019/452, this Bill is intended to develop an investment screening mechanism that will empower the Minister to respond to threats to Ireland's security and public order posed by particular types of foreign investment, and to prevent or mitigate such threats.

14.15 **Limited Partnership Bill**
This Bill is intended to modernise the Limited Partnership Act 1907 which is concerned with the registration of Limited Partnerships.

14.16 **Co-Operative Societies Bill**
This Bill is intended to consolidate and modernise the existing Industrial and Provident Societies legislation and to ensure that an effective legislative framework suitable for the diverse range of organisations using the co-operative model in Ireland is in place.

14.17 **Microfinance Ireland Bill**
This Bill, which is included in the Spring 2022 Government Legislation Programme, proposes to provide for ownership of Microfinance Ireland (MFI) to pass from its current parentage (the Social Finance Foundation) to the Minister for Enterprise, Trade and Employment, and to put in place the consequent governance structures.

15. Insolvency

Acts of the Oireachtas:

15.1 **Personal Insolvency (Amendment) Act 2021**
The Act, which has been commenced in part, makes a number of amendments to the Personal Insolvency Act 2012. It increases the value of assets which a person may have, while still being eligible to avail of a Debt Relief Notice, from €400 to €1,500. The Debt Relief Notice procedure is aimed at people who are insolvent, with debts of up to €35,000, but with very limited assets or disposable income with which they could repay those debts. The reason for this amendment stems largely from an issue which has arisen

whereby a person receives a lump sum of certain State social protection allowances and they are tipped over the permitted limit as a result, leaving them unable to avail of a Debt Relief Notice.

The Act makes three amendments to section 115A of the 2012 Act. Currently, under that section, a Personal Insolvency Practitioner can apply to court where a debtor's creditors do not approve their proposal for a Personal Insolvency Arrangement, and that proposal includes a debt secured by the debtor's family home *ie* a home mortgage. That mortgage must have already been in arrears on 1 January 2015 in order to qualify. The court will review the proposal and can impose it on creditors.

- The Act extends the period of time within which an application can be made to court from 14 days to 28 days after the creditors' meeting.

- It clarifies that whether the application is made before or after the protective certificate expires, the protective certificate will continue in force until there is a final decision.

- The Act removes the requirement that the mortgage have been in arrears on 1 January 2015. In effect this means that home mortgage arrears that accrued after that date will also be eligible.

It introduces a new ground for the extension of a protective certificate in a Debt Settlement Arrangement or Personal Insolvency Arrangement. Under this new ground, a court can extend the protective certificate for up to 40 days where there are exceptional circumstances beyond the control of the debtor or Personal Insolvency Practitioner which mean it would be fair to do so.

The Act also makes provision for Personal Insolvency Practitioners to delegate to employees or other Personal Insolvency Practitioners working within the same firm. The Personal Insolvency Practitioner who delegates work remains responsible for the performance of the person acting on their behalf.

Finally the Act also makes a number of amendments to the Act as a response to public health restrictions. These include:

- Allowing the obligatory meeting between debtors and Personal Insolvency Practitioners/Approved Intermediaries in the early stages of the personal insolvency process to take place remotely.

- Allowing a 'confirmation of truth' to be submitted in place of a statutory declaration under certain provisions where it is required. While a statutory declaration must be signed in the presence of a person authorised by law (*eg* a solicitor, a commissioner for oaths *etc*), a confirmation of truth can be signed and transmitted electronically. It will be an offence to make a confirmation of truth without an honest belief as to its truth.

15.2 **Companies (Rescue Process for Small and Micro Companies) Act 2021**

This Act establishes (from 7 December 2021) a new administrative rescue process ("**SCARP**") that is available exclusively to small companies and micro-companies (measured by metrics that are set out below). This was at the 2020 suggestion of the Company Law Review Group which had reported to the Minister that one of the principal barriers to examinership for small companies was the cost involved in the court-led process. In that context, this Act adopts and deploys the key principles of examinership in order to create a new process that is available to small companies and micro-companies to enable them to restructure their debts within 70 days. However, there are important differences between the SCARP process and examinership.

A company may avail of SCARP if it meets at least two of the following criteria:

- turnover does not exceed €700,000 (a micro-company) or €12m (a small company);
- balance sheet total does not exceed €350,000 (a micro-company) or €6m (a small company);
- average number of employees does not exceed 10 (a micro-company) or 50 (a small company).

The SCARP process is based on a "process adviser" to whom the relevant company provides a sworn statement of affairs. If satisfied that the company has a reasonable prospect of survival, the process adviser prepares a report for the company similar to the independent expert's report in an examinership, *ie* addressing the conditions and funding required in order to allow the company to continue trading as a going concern. Within seven days of receipt of the process adviser's report, the directors passes a resolution to appoint the process adviser and the process adviser then must, within two working days, notify the company's creditors of that appointment and request submissions in respect of claims. Should

a creditor fail to respond to the request for information, the process adviser will establish the value of the relevant creditor's claim based on the information available.

The process adviser then must, within 49 days:

- prepare a rescue plan for the company, which is likely to involve a write-down of debt. Although a rescue plan may write down secured debt, as with examinership it must not (a) write down debt below the value of the creditor's security, or (b) impact on the liability of third-party guarantors; and
- hold meetings of the member(s) and creditors of the company to approve the Rescue Plan.

If the rescue plan is passed by 60% of creditors in number of at least one impaired class of creditors, representing a majority in value of the claims in that class, it becomes binding on all creditors within 21 days of a notice being filed with the relevant court (assuming no objection has been filed). A creditor may file an objection with the relevant court (on a number of prescribed grounds) within 21 days of the notice being filed with the court.

Significantly:

- the Revenue Commissioners (and some other State creditors) may effectively 'opt out' of the SCARP process and enforce their debts in full;
- there is no automatic moratorium on enforcement within SCARP (as there is in examinership) and a company has to apply to court for protection from an enforcing creditor;
- the SCARP process cannot be initiated by a creditor; and
- the SCARP process is not currently recognised under the Recast Insolvency Regulation (Regulation (EU) 2015/848).

Statutory Instruments (Commencement Orders):

15.3 **Personal Insolvency (Amendment) Act 2021 (Commencement) Order 2021**[39]
This Order appoints 25 June 2021 as the date on which s1, s2, s3, s5, s6, s7, s10, s13, s14, s17 and s18 Personal Insolvency (Amendment) Act 2021 come**s** into operation.

15.4 **Companies (Rescue Process for Small and Micro Companies) Act 2021 (Commencement) Order 2021** [40]
This Order appoints 7 December 2021 as the date on which the Companies (Rescue Process for Small and Micro Companies) Act 2021 (Commencement) Order 2021 shall come into operation.

Statutory Instruments:

15.5 **Companies Act 2014 (Prescribed Form and Notice) Regulations 2021**[41]
These Regulations prescribe the form to be used for the purposes of the indicated provisions of the Companies Act 2014 (as amended by the Companies (Rescue Process for Small and Micro Companies) Act 2021):

- delivering a *Statement of Affairs of a Company* (section 558B(4)(b));
- delivering the following notices: • SCARP1: *Notice of Appointment of Process Adviser* (section 558J(2)(a)), • *Public Notice of the Appointment of a Process Adviser* (section 558J(3)), • *Notice of Appointment as Process Adviser* (section 558K(2)(a)), • *Notice of Meeting of Creditors* (section 558U(2)), • *Notice of Approval of Rescue Plan* (section 558Z(2)) and • *Notice of Objection to Rescue Plan* (section 558ZC(2); and
- serving an *Instrument of Proxy* or an *Instrument of Special Proxy* (section 558W(3)).

15.6 **Companies Act 2014 (Section 897) Order 2021**[42]
This Order provides that the sole means to deliver the SCARP-related and certain other insolvency-related documents for the purposes of the Companies Act 2014 (as listed in this Order) to the Registrar of Companies is by electronic means.

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39 SI 305 of 2021.

40 SI 673 of 2021.

41 SI 675 of 2021.

42 SI 676 of 2021.

EU Instruments:

15.7 **Regulation (EU) 2021/2260 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) 2015/848 on insolvency proceedings to replace its Annexes A and B**
Annexes A and B to Regulation (EU) 2015/848 list, respectively, the national insolvency proceedings and national insolvency practitioners, as notified by Member States, to which that Regulation applies. The annexes are being updated to take account of changes notified by various Member States. Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

Anticipated Developments:

15.8 **Courts and Civil Law (Miscellaneous Provisions) Bill**
This will enact provisions relating to courts administration and other civil law reform measures (including Immigration and Asylum, Citizenship, Civil Legal Aid, Legal Services Regulation, Succession, Bankruptcy, Licensing and Land and Conveyancing). Of particular interest in a finance context will be the measures relating to (i) the Bankruptcy Act 1988 (amendments dealing with the making of a statement of affairs, distribution of estate and income payment agreements including by way of addressing a number of issues that had been identified by the Official Assignee in Bankruptcy); and (ii) the Personal Insolvency Act 2012 (amendments dealing with a range of matters including the debt relief notice process, duration of personal insolvency, personal insolvency practitioners, the variation of a personal insolvency agreement and rectifying some errors and oversights that have emerged under the 2012 Act).

15.9 **Personal Insolvency (Amendment) (No 2) Bill**
This will update aspects of personal insolvency legislation, following statutory review of the Personal Insolvency Acts.

16. Insurance and Reinsurance

Statutory Instruments:

16.1 **Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021**[43]
These Regulations made by the CBI set out certain requirements in respect of recovery plans for insurers authorised by the CBI and to whom these Regulations apply, from 19 April 2021.

The Regulations require (re)insurers to:

- prepare a pre-emptive recovery plan that addresses specified areas;
- review and, if necessary, update the recovery plan at least every 12 months for High and Medium-High impact firms and at least every 24 months for Medium-Low and Low impact firms or after any change to the legal or organisational structure of the (re)insurer, its business or its financial position, where such a change could have a material effect on, or necessitate a change to, the recovery plan; and
- provide a copy of the recovery plan to the CBI on request.

The deadline for preparation of a recovery plan under the regulations is 31 March 2022 (or within 12 months of authorisation where the (re)insurer is newly authorised on or after the date on which the Regulations come into operation).

16.2 **European Union (Insurance and Reinsurance) (Amendment) Regulations 2021**[44]
These Regulations give further effect to the amendments made to Directive 2009/138/EC (the "**Solvency II Directive**") by Directive (EU) 2019/2177 which gave EIOPA a greater role to contribute to supervisory convergence in the areas of internal model application, through provisions on co-operation and information exchange. These Regulations amend the European Union (Insurance and Reinsurance) Regulations 2015 to include provisions such as enabling the CBI to request that EIOPA set up a collaboration platform to strengthen the exchange of information between supervisory authorities, requiring the CBI to inform EIOPA of any applications to use or change an internal model and may request

[43] SI 184 of 2021.

[44] SI 240 of 2021.

assistance from EIOPA in respect of same and CBI notification requirements to EIOPA are effective from 30 June 2021.

16.3 **Non-Life Insurance (Provision of Information) (Amendment) Regulations 2021**[45]
These Regulations made by the CBI amend the Non-Life Insurance (Provision of Information) Regulations 2007 to delete references to an insurer's obligation, in respect of a private motor insurance policy to be renewed, to include certain specified information on the same page as a renewal premium. These Regulations take effect from 1 September 2021.

EU Instruments:

16.4 **Commission Delegated Regulation (EU) 2021/1256 of 21 April 2021 amending Delegated Regulation (EU) 2015/35 as regards the integration of sustainability risks in the governance of insurance and reinsurance undertakings**
This Delegated Regulation requires the integration of sustainability risks in the governance of insurance and reinsurance undertakings.

This Delegated Regulation includes provisions requiring that the remuneration policies of (re)insurance undertakings should contain information on how those policies take into account the integration of sustainability risks in the risk management system.

In addition, this Delegated Regulation notes that the prudent person principle laid down in Article 132 of the Solvency II Directive requires that (re)insurance undertakings only invest in assets the risks of which they can identify, measure, monitor, manage, control and report properly. In order to ensure that climate and environmental risks are effectively managed by (re)insurance undertakings, this Delegated Regulation requires implementation of the prudent person principle to take into account sustainability risks and (re)insurance undertakings to reflect in their investment process the sustainability preferences of their customers as taken into account in the product approval process.

This Delegated Regulation states that supervisory authorities and (re)reinsurance undertakings should be given sufficient time to adapt to these new requirements and, as such, it will apply from 2 August 2022.

16.5 **Commission Delegated Regulation (EU) 2021/1257 of 21 April 2021 amending Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359 as regards the integration of sustainability factors, risks and preferences into the product oversight and governance requirements for insurance undertakings and insurance distributors and into the rules on conduct of business and investment advice for insurance-based investment products**
This Delegated Regulation clarifies that sustainability factors and sustainability-related objectives should be considered within the product oversight and governance requirements set out in Commission Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359.

Insurance undertakings and insurance intermediaries manufacturing insurance products should consider sustainability factors in the product approval process of each insurance product and in the other product governance and oversight arrangements for each insurance product that is intended to be distributed to customers seeking insurance products with a sustainability-related profile.

This Delegated Regulation includes provisions:

- clarifying that a general statement that an insurance product has a sustainability-related profile is not sufficient - it should be specified by the insurance undertaking or insurance intermediary manufacturing the insurance product to which group of customers with specific sustainability-related objectives the insurance product is supposed to be distributed;

- providing that insurance intermediaries and insurance undertakings distributing insurance-based investment products should, when identifying the types of conflicts of interest the existence of which may damage the interests of a customer or potential customer, include those types of conflicts of interest that stem from the integration of a customer's sustainability preferences;

- clarifying that the inclusion of sustainability factors in the advisory process must not lead to mis-selling practices or to the misrepresentation of insurance-based investment products as fulfilling sustainability preferences where they do not; and

[45] SI 436 of 2021.

- to prevent mis-selling and greenwashing, requiring that insurance intermediaries and insurance undertakings distributing insurance-based investment products should not recommend insurance-based investment products as meeting individual sustainability preferences where those products do not meet those preferences.

This Delegated Regulation notes that competent authorities, insurance intermediaries and insurance undertakings should be given sufficient time to adapt to the new requirements, which should apply from 2 August 2022.

16.6 **Commission Implementing Regulation (EU) 2021/178 of 8 February 2021 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2020 until 30 March 2021 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 on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments for reference dates from 31 December 2020 until 30 March 2021 to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings for the purposes of the Solvency II Directive.

16.7 **Commission Implementing Regulation (EU) 2021/744 of 6 May 2021 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2021 until 29 June 2021 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 on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments for reference dates from 31 March 2021 until 29 June 2021 to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings for the purposes of the Solvency II Directive.

16.8 **Commission Implementing Regulation (EU) 2021/1354 of 6 August 2021 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2021 until 29 September 2021 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 on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments for reference dates from 30 June 2021 until 29 September 2021 to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings for the purposes of the Solvency II Directive.

16.9 **Commission Implementing Regulation (EU) 2021/1964 of 11 November 2021 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2021 until 30 December 2021 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 on relevant risk-free interest rate term structures, fundamental spreads for the calculation of the matching adjustment and volatility adjustments for reference dates from 30 September 2021 until 30 December 2021 to ensure uniform conditions for the calculation of technical provisions and basic own funds by insurance and reinsurance undertakings for the purposes of the Solvency II Directive.

16.10 **Commission Delegated Regulation (EU) 2021/526 of 23 October 2020 correcting the Czech language version of Delegated Regulation (EU) 2015/35 supplementing 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 (Solvency II)**
This Delegated Regulation corrects the Czech language version of Delegated Regulation (EU) 2015/35.

Anticipated Developments:

16.11 **Insurance (Miscellaneous Provisions) Bill**
To address a number of insurance-related issues, including '*price walking*' and collection of data in respect of state supports deducting from final settlement of insurance claims.

16.12 **Commission Review of Solvency II**
The European Commission's review of Solvency II adopted on 22 September 2021 includes a legislative proposal to amend the Solvency II Directive and a legislative proposal for a new insurance recovery and resolution directive.

Key proposals include:

- changes to the long-term guarantee measures to improve risk sensitivity and better mitigate undue volatility;
- introducing greater proportionality by allowing more small (re)insurers to be exempted from the Solvency II Regime and by creating a more suitable framework for (re)insurers identified as having a low risk profile;
- refining rules on transparency to better adapt disclosures required from (re)insurers to the information needed by recipients;
- improving the quality of supervision in relation to ongoing compliance with prudential rules, cross-border (re)insurance business and (re)insurance groups;
- introducing new requirements on long-term climate change scenario analysis; and
- a new insurance recovery and resolution framework which includes provision for the designation of a national resolution authority empowered to apply resolution tools and exercise resolution powers in each Member State.

The next step is for the European Parliament and the Member States in the Council to negotiate the final legislative texts on the basis of the Review.

17. Investment Firms

Statutory Instruments:

17.1 **European Union (Investment Firms) Regulations 2021**[46]
See further detail at 17.2.

17.2 **European Union (Investment Firms) (No 2) Regulations 2021**[47]**.**
The European Union (Investment Firms) Regulations 2021 give partial effect to Directive (EU) 2019/2034 (the "**Investment Firms Directive**") and the European Union (Investment Firms) (No 2) Regulations 2021 give full effect to Regulation (EU) 2019/2033 (the "**Investment Firms Regulation**").

The Investment Firm Directive and the Investment Firm Regulation put in place a new prudential framework for Investment Firms authorised under Directive 2014/65/EU, the Markets in Financial Instruments Directive ("**MiFID II**"). The specific rules that will apply to a particular investment firm will depend on a firm's classification under this new prudential framework.

The Department of Finance notes that while the European Union (Investment Firms) Regulations 2021 transpose the vast majority of the Investment Firms Directive into Irish law, Article 62(6) of the Investment Firms Directive (which requires Member States to impose an obligation on certain large systemic investment firms (Class 1 Firms) to re-authorise as credit institutions) remains to be transposed.

This new framework, for most existing investment firms, replaces the existing prudential requirements, currently set out in the CRD and the CRR. Under the new prudential framework:

- Certain systemically important firms will be reclassified as credit institutions and will be subject to prudential requirements set out in the CRR and the CRD (as noted above this aspect of the framework has yet to be transposed in its entirety). These firms will not be subject to the new prudential

46 SI 355 of 2021.

47 SI 356 of 2021.

framework that will apply to other investment firms under the Investment Firms Regulation and Investment Firms Directive;

- All other investment firms will be subject to a new prudential framework, replacing the requirements set out in the CRR and the CRD IV Directive. Small and non-interconnected investment firms will be subject to limited prudential requirements;

- '*K-factors*' will be used in the classification of investment firms and in the new capital requirements methodology for investment firms. These are quantitative indicators intended to represent the risks that an investment firm can pose to customers, to market access or liquidity, and to the firm itself; and

- Investment firms will also be subject to revised remuneration and governance standards, as set out in the Investment Firms Directive.

These Regulations also makes consequential amendments to the disclosure requirements of certain firms, ensures that breaches of the Regulations falls within the remit of the CBI's administrative sanctions procedure, and updates references and definitions in key Irish financial services legislation.

These Regulations came into effect on 21 September 2021.

17.3 **European Union (Markets in Financial Instruments) (Amendment) Regulations 2021**[48]
These Regulations give effect to Directive (EU) 2020/1504, which provides that MiFID II does not apply to crowdfunding service providers as defined in Regulation 2020/1503, from 10 November 2021.

17.4 **European Union (Markets in Financial Instruments) (Amendment) (No 2) Regulations 2021**[49]
These Regulations amend the European Union (Markets in Financial Instruments) Regulations 2017 (the "**MiFID Regulations**") to give further effect to MiFID II, as amended by Directive (EU) 2019/2177, and will come into operation on 1 January 2022.

Directive (EU) 2019/2177 amends MiFID II to reflect the fact that authorisation and supervision of data reporting service providers has been transferred from the national competent authorities to ESMA. These Regulations transpose these amendments in the MiFID Regulations, primarily by revoking operational requirements of data reporting service providers.

EU instruments:

17.5 **Directive (EU) 2021/338 of the European Parliament and of the Council of 16 February 2021 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis**
This Directive (the "**MiFID 'Quick-Fix' Directive**") introduces targeted amendments to MiFID II to support the recovery from the severe economic shock caused by the COVID-19 pandemic as part of the *'Capital Markets Recovery Package*'.

The targeted amendments contained in the MiFID 'Quick-Fix' Directive include:

- reducing client information requirements (including providing for electronic communication as the default method of communication and certain exemptions from the requirement to provide *ex ante* cost and charges disclosures with respect to agreements to buy or sell financial instruments concluded by means of distance communication);

- temporary suspension of best execution reporting (the temporary suspension of best-execution reports until 28 February 2023 (specifically RTS27) and including a requirement that the European Commission comprehensively review the adequacy of best execution reporting requirements and submit a report to the European Parliament and the Council by 28 February 2022);

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48 SI 203 of 2021.

49 SI 258 of 2021.

- 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.

This Directive was due to be transposed in the State by 28 November 2021 and was transposed by the European Union (Markets in Financial instruments) (Amendment) Regulations 2022[50]. These Regulations come into operation on 28 February 2022[51].

17.6 **Commission Delegated Regulation (EU) 2021/2153 of 6 August 2021 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the criteria for subjecting certain investment firms to the requirements of Regulation (EU) No 575/2013**
This Delegated Regulation specifies the criteria for subjecting certain investment firms to the requirements of the CRR.

Article 1 of this Delegated Regulation sets out thresholds in relation to activities of an investment firm which shall be considered to be carried out on such a scale that the failure or distress of the investment firm could lead to systemic risk where the investment firm for the purposes of the Investment Firms Directive. Article 2 of this Delegated Regulation clarifies that investment firms that are clearing members and that offer clearing services to other financial sector entities, which are not clearing members themselves, shall be considered for the purposes of Article 5(1)(b) of Investment Firms Directive.

17.7 **Commission Delegated Regulation (EU) 2021/2154 of 13 August 2021 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages**
This Delegated Regulation specifies appropriate criteria to identify categories of staff whose professional activities have a material impact on the risk profile of an investment firm or of the assets that it manages.

The criteria contained in this Delegated Regulation take into account the authority and responsibilities of staff members, the investment firm's risk profile or that of the assets it manages and performance indicators, the investment firm's internal organisation, and the nature, scope and complexity of the firm concerned. This Delegated Regulation states that these criteria should enable investment firms to set proper incentives in their remuneration policies to ensure that the staff members concerned act prudently when performing their tasks. This Delegated Regulation acknowledges that those criteria should reflect the level of risk of different activities within the investment firm. Qualitative criteria are set out in Article 3 of this Delegated Regulation (for example, where a staff member is a member of the management body) and quantitative criteria are set out in Article 4 (for example, where a staff member has been awarded a total remuneration which is equal to or greater than EUR 500 000 in or for the preceding financial year).

17.8 **Commission Delegated Regulation (EU) 2021/2155 of 13 August 2021 supplementing Directive (EU) 2019/2034 of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration**
This Delegated Regulation specifies the classes of instruments that adequately reflect the credit quality of the investment firm as a going concern and possible alternative arrangements that are appropriate to be used for the purposes of variable remuneration.

17.9 **Commission Delegated Regulation (EU) 2021/1253 of 21 April 2021 amending Delegated Regulation (EU) 2017/565 as regards the integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms**
This Delegated Regulation amends Delegated Regulation (EU) 2017/565 (the "**MiFID Org Regulation**") to require integration of sustainability factors, risks and preferences into certain organisational requirements and operating conditions for investment firms.

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50 SI 6 of 2022.

51 Note this paper covers the legislation of 2021, however these 2022 Regulations have been included for completeness.

Provisions include requirements for investment firms:

- to take into account sustainability risks when complying with organisational requirements;
- to take account of sustainability risks when establishing, implementing and maintaining adequate risk management policies and procedures;
- to demonstrate that they have in place adequate policies and procedures to ensure that they understand the nature features, including costs and risks of investment services and financial instruments selected for their clients, including any sustainability factors, and that they assess whether equivalent investment services or financial instruments can meet their client's profile; and
- not to recommend financial instruments or decide to trade such instruments as meeting a client's or potential client's sustainability preferences when those financial instruments do not do meet those preferences.

This Delegated Regulation applies from 2 August 2022.

17.10 **Commission Delegated Directive (EU) 2021/1269 of 21 April 2021 amending Delegated Directive (EU) 2017/593 as regards the integration of sustainability factors into the product governance obligations**

This Delegated Directive amends Delegated Directive (EU) 2017/593 regarding the integration of sustainability factors into MIFID II product governance obligations.

The objective of the Delegated Directive is to ensure investment firms manufacturing and distributing financial instruments consider sustainability factors in the product approval process of each financial instrument and in the other product governance and oversight arrangements for each financial instrument that is intended to be distributed to clients seeking financial instruments with a sustainability-related profile.

Provisions include requirements that Member States require investment firms:

- to take account of sustainability related objectives when identifying the potential target market for each financial instrument and specifying the type(s) of client with whose needs, characteristics and objectives the financial instrument is compatible;
- to take account of a financial instrument's sustainability factors, where relevant, when determining whether a financial instrument meets the identified needs, characteristics and objectives of the target market are consistent with the target market;
- to present the sustainability factors of the financial instrument in a transparent manner and provide distributers with the relevant information to duly consider any sustainability related objectives of the client or potential client; and
- to have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives, including any sustainability related objectives, of an identified target market.

Member States are required to adopt and publish by 21 August 2022 transposing measures to comply with this Delegated Directive. They shall forthwith communicate to the Commission the text of those provisions. They shall apply those provisions from 22 November 2022.

17.11 **Commission Delegated Regulation (EU) 2021/1833 of 14 July 2021 supplementing Directive 2014/65/EU of the European Parliament and of the Council by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business at group level**

This Delegated Regulation supplements MiFID II by specifying the criteria for establishing when an activity is to be considered to be ancillary to the main business when considered on a group basis (and therefore benefits from an exemption pursuant to Article 2 of MiFID II). The Delegated Regulation includes three ancillary activity tests - the '*De-Minimis Threshold Test*', the '*Trading Test*' and the '*Capital Employed Test*'.

17.12 **Commission Delegated Regulation (EU) 2021/1254 of 21 April 2021 correcting Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive**
The Delegated Regulation corrects cross-reference errors.

17.13 **Commission Delegated Regulation (EU) 2021/527 of 15 December 2020 amending Commission Delegated Regulation (EU) 2017/565 as regards the thresholds for weekly position reporting**
This Delegated Regulation amends Delegated Regulation 2017/656 as regards the thresholds for weekly position reporting. This Delegated Regulation entered into force on 29 March 2021.

17.14 **Commission Delegated Regulation (EU) 2021/529 of 18 December 2020 establishing regulatory technical standards amending Delegated Regulation (EU) 2017/583 as regards adjustment of liquidity thresholds and trade percentiles used to determine the size specific to the instrument applicable to certain non-equity instruments**
This Delegated Regulation amends Delegated Regulation (EU) 2017/583 which sets out the transparency requirements applicable to bonds, structured finance products, emission allowances and derivatives. An annual phase-in of application of certain transparency thresholds over the course of four years applies since 2019. This phase-in period is intended to allow for the gradual broadening of the application of transparency obligations. This Delegated Regulation provides for amendments to Delegated Regulation (EU) 2017/583 to reflect ESMA's assessment that it is appropriate to now move to stage S2 of this phase-in period in respect of bonds, but not in respect of other classes of financial instruments.

17.15 **Commission Implementing Regulation (EU) 2021/2284 of 10 December 2021 laying down implementing technical standards for the application of Regulation (EU) 2019/2033 of the European Parliament and of the Council with regard to supervisory reporting and disclosures of investment firms**
This Implementing Regulation lays down implementing technical standards which include templates and tables for the purposes of investment firm compliance with reporting requirements and disclosures required pursuant to the Investment Firms Regulation.

18. Investment Management

Statutory Instruments (commencement orders):

18.1 **Investment Limited Partnerships (Amendment) Act 2020 (Commencement) Order 2021**[52]
This commencement order appointed 1 February 2021 as the day on which the Investment Limited Partnerships (Amendment) Act 2020 (other than sections 27, 28(b), 29, 38, 39, 61 and 63) came into operation.

The Investment Limited Partnerships (Amendment) Act 2020 (the "**Act**") updates the legal framework applicable to regulated limited partnerships set out in the Investment Limited Partnership ("**ILP**") Act 1994, in order to reflect changes in the global private funds market, both in terms of the modernisation of the Irish ILP structure and in terms of applicable EU legislation.

The Act introduces a number of '*safe harbours*' for limited partnerships ("**LPs**"), thereby allowing them to participate in advisory committees, vote on changes to the LPA and engage in other related activities without losing their limited liability status. The Act also:

- 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 which now forms the primary basis for regulating the responsibilities and conduct of AIFMs, depositaries and other key service providers to an ILP;
- facilitates amendments to the limited partnership agreement ("**LPA**") by allowing alterations to be made; a) in writing via the agreement of a simple majority of partners, provided the existing partnership agreement allows for changes via majority, and/or b) if the depositary certifies that the

[52] SI 19 of 2021.

proposed amendments do not prejudice the interests of LPs and certain other requirements are fulfilled;

- creates a statutory transfer of assets and liabilities on the admission or replacement of a general partner ("**GP**"), so that all rights or property of the ILP vest in the incoming partner or existing GPs; and

- 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.

Statutory Instruments:

18.2 **European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2021**[53]
See further detail at 18.3.

18.3 **European Union (Alternative Investment Fund Managers) (Amendment) Regulations 2021**[54]
Both sets of Regulations transpose Directive (EU) 2019/1160 (the "**Cross-Border Distribution Directive**") into Irish law. Both sets of Regulations come into operation on 6 August 2021.

The European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2021 amend the European Communities (Undertakings for Collective Investment in Transferrable Securities) Regulations 2011 and the European Union (Alternative Investment Fund Managers) (Amendment) Regulations amend the European Union (Alternative Investment Fund Managers) Regulations 2013.

The Cross-Border Distribution Directive, together with Regulation (EU) 2019/1156, introduces a new regime for the cross-border distribution of collective investment undertakings.

The principle changes introduced by the new framework, as transposed in these Regulations, are intended to:

- make it easier for EU AIF managers ("AIFMs") to test the appetite of potential professional investors in new markets (so-called '*pre-marketing*');

- clarify customer service obligations for asset managers in their host Member State;

- align procedures and conditions for managers of collective investment funds to exit national markets when they decide to terminate the offering or placement of their funds (so-called '*de-notification procedure*'); and

- introduce increased transparency and create a single online access point for information on national rules related to marketing requirements and applicable fees.

EU Instruments:

18.4 **Commission Delegated Directive (EU) 2021/1270 of 21 April 2021 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for Undertakings for Collective Investment in Transferable Securities (UCITS)**
This Delegated Directive amends Commission Directive 2010/43/EU (the "**UCITS Org Directive**") as regards the sustainability risks and sustainability factors to be taken into account for UCITS.

This Delegated Directive includes provisions which will require Member States to ensure that:

- investment companies integrate sustainability risks in the management of UCITS;

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53 SI 413 of 2021.

54 SI 414 of 2021.

- management companies retain the necessary resources and expertise for the effective integration of sustainability risks;
- management companies identify conflicts of interest which may arise as a result of the integration of sustainability risks in processes, systems and internal controls; and
- risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to sustainability risks.

Member States are required to transpose this Delegated Directive by 31 July 2022 and apply those transposing measures from 1 August 2022.

18.5 **Commission Delegated Regulation (EU) 2021/1255 of 21 April 2021 amending Delegated Regulation (EU) No 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by Alternative Investment Fund Managers (Text with EEA relevance)**
This Delegated Regulation amends Commission Delegated Regulation (EU) 231/2013 as regards the sustainability risks and sustainability factors to be taken into account by Alternative Investment Fund Managers ("**AIFMs**").

This Delegated Regulation includes provisions which require AIFMs:

- take account of sustainability risks when carrying out due diligence in the selection and ongoing monitoring of investments;
- retain the necessary resources and expertise for the effective integration of sustainability risks;
- put in place risk management policies which include procedures which enable AIFMs to assess an alternative investment fund ("**AIF**")'s exposure to sustainability risk; and
- ensure senior management integrate sustainability risks within their responsibilities (for example, within the oversight of approval of investment strategies and the implementation of investment policies).

This Delegated Regulation shall apply from 1 August 2022.

18.6 **Commission Delegated Regulation (EU) 2021/1383 of 15 June 2021 amending Delegated Regulation (EU) 2018/990 with regard to requirements for assets received by money market funds as part of reverse repurchase agreements**
This Delegated Regulation updates Delegated Regulation (EU) 2018/990 to include legislative cross-references relating to third country equivalence decisions in respect of entities which benefit from an exemption from certain supplementary qualitative and quantitative requirements. This Delegated Regulation entered into force on 21 September 2021.

18.7 **Commission Implementing Regulation (EU) 2021/955 of 27 May 2021 laying down implementing technical standards for the application of Regulation (EU) 2019/1156 of the European Parliament and of the Council with regard to the forms, templates, procedures and technical arrangements for the publications and notifications of marketing rules, fees and charges, and specifying the information to be communicated for the creation and maintenance of the central database on cross-border marketing of AIFs and UCITS, as well as the forms, templates and procedures for the communication of such information**
This Implementing Regulation lays down implementing technical standards which set out forms, templates, procedures and technical arrangements relating to the cross-border distribution framework for collective investment funds outlined in further detail at paragraph 0 above.

Anticipated Developments:

18.8 **Commission CMU package**
On 25 November 2021, the European Commission announced its adoption of a package of four legislative proposals to further capital markets union.

The package includes:

- a proposal for a European Single Access Point ("**ESAP**") which will offer a single access point for public financial and sustainability-related information about EU companies and EU investment products;
- a review of the European Long-Term Investment Funds ("**ELTIFs**") Regulation to increase the attractiveness of ELTIFs for investors and their role as a complementary source of financing for EU companies;
- a review of the Alternative Investment Fund Managers Directive ("**AIFMD**")). The Commission states the proposals are intended to harmonise the rules related to funds that give loans to companies and clarify rules on delegation; and
- and a review of the MiFIR/MiFID II to introduce a single European consolidated tape.

The next stage is for the proposals to be discussed by the Council and the European Parliament.

19. Market Abuse

19.1 **Commission Delegated Regulation (EU) 2021/1783 of 2 July 2021 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards containing a template document for cooperation arrangements with third countries.**
This Delegated Regulation sets out a template document to be used by competent authorities of Member States for the purposes of entering into cooperation arrangements with supervisory authorities in third countries for the purposes of exchanging information and enforcing obligations under Regulation (EU) No 596/2014 (the "**Market Abuse Regulation**")

20. Miscellaneous

Statutory Instruments:

20.1 **Savings Certificates (Issue 23) Rules 2021**[55]
These NTMA Regulations relate to Saving Certificate Rules and apply from 24 January 2021.

20.2 **Post Office Savings Bank (Interest on Deposits) Regulations 2021**[56]
These Regulations prescribe a new rate of interest for deposits in the Post Office Savings Bank, from 24 January 2021.

20.3 **Stamp Duty (Designation of Exchanges and Markets) (No 1) Regulations 2021**[57]
These Regulations designate Sigma X Europe MTF as a market for the purposes of s75 Stamp Duties Consolidation Act 1999, from 19 February 2021.

EU Instruments:

20.4 **Commission Implementing Regulation (EU) 2021/897 of 4 March 2021 laying down implementing technical standards for the application of Regulation (EU) 2019/1238 of the European Parliament and of the Council with regard to the format of supervisory reporting to the competent authorities and the cooperation and exchange of information between competent authorities and with the European Insurance and Occupational Pensions Authority**
This Implementing Regulation lays down implementing technical standards for the exchange of information between competent authorities and EIOPA.

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55 SI 13 of 2021.

56 SI 14 of 2021.

57 SI 72 of 2021.

20.5 **Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2))**
This Regulation recasts ECB Regulation (EU) No 1071/2013 on the balance sheet items of credit institutions and of the monetary financial institutions sector in light of recent amendments.

20.6 **Regulation (EU) 2021/378 of the European Central Bank of 22 January 2021 on the application of minimum reserve requirements (recast) (ECB/2021/1)**
This Regulation recasts ECB Regulation (EC) No 1745/2003 on the application of minimum reserve requirements in light of recent amendments.

20.7 **Regulation (EU) 2021/1814 of the European Central Bank of 7 October 2021 amending Regulation (EC) No 2157/1999 on the powers of the European Central Bank to impose sanctions (ECB/2021/46)**
This Regulation and related Decision (ECB/2021/45) outline the methods to be applied by the ECB to calculate sanctions in cases of non-compliance with minimum reserve requirements.

21. Payments

Statutory Instruments

21.1 **European Communities (Cross Border Payments) (Amendment) Regulations 2021**[58]
These Regulations amend Regulation 2(1) of the European Communities (Cross Border Payments) Regulations 2010 to give effect to Regulation (EU) No 2021/1230 by updating the definition of "*EC Cross Border Payments Regulation*", from 24 August 2021.

21.2 **European Union (Payment Services) (Amendment) Regulations 2021**[59]
These Regulations amend Regulation 86(6)(b) of the European Union (Payment Services) Regulations 2018 to give further effect to Directive (EU) No 2015/2366 and Regulation (EU) No 2021/1230 by updating a legislative reference to refer to Regulation (EU) 2021/1230, from 24 August 2021.

EU Instruments:

21.3 **Commission Delegated Regulation (EU) 2021/1722 of 18 June 2021 supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards specifying the framework for cooperation and the exchange of information between competent authorities of the home and the host Member States in the context of supervision of payment institutions and electronic money institutions exercising cross-border provision of payment services**
This Delegated Regulation establishes the framework for cooperation and for the exchange of information between the competent authorities of the home Member State and the host Member State in accordance with Directive (EU) 2015/2366 ("**PSD2**"). This Delegated Regulation also establishes the means and details of any periodical reporting required by the competent authorities of the host Member States from payment institutions having agents or branches within their territories. Where the competent authority of the host Member State requires periodical reporting in order to monitor compliance with the provisions of national law, payment institutions shall report to the competent authority of the host Member State in the form laid down in Annex VI of this Delegated Regulation.

21.4 **Regulation (EU) 2021/1230 of the European Parliament and of the Council of 14 July 2021 on cross-border payments in the Union (codification)**
This Regulation codifies Regulation (EC) 924/2009 as it has been substantially amended several times.

21.5 **Regulation (EU) 2021/728 of the European Central Bank of 29 April 2021 amending Regulation (EU) No 795/2014 on oversight requirements for systemically important payment systems (ECB/2021/17)**
This ECB Regulation amends ECB Regulation (EU) No 795/2014 on oversight requirements for systemically important payment systems ("**SIPSs**"). This Regulation's objective is to put in place flexible and forward-looking methodology for the identification of payment systems as SIPSs to reflect fast-moving technological trends. This Regulation also details due process procedures, including a system

58 SI 417 of 2021.

59 SI 418 of 2021.

operator's right of access to files, right to be heard and right to request an internal review of the decision that identifies a payment system as a SIPS.

Anticipated Developments:

21.6 **Commission legislative proposal on instant payments**
The Commission is expected to present a legislative initiative on instant payments during the second half of 2022.

22. PRIIPS

22.1 **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 Delegated Regulation amends 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**"). The Delegated Regulation shall apply from 1 July 2022 (other than Article 1, point 13 which applies from 1 January 2022).

22.2 **Regulation (EU) 2021/2259 of the European Parliament and of the Council of 15 December 2021 amending Regulation (EU) No 1286/2014 as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS**
This Regulation amends Regulation (EU) No 1286/2014 (the "**PRIIPs Regulation**") as regards the extension of the transitional arrangement for management companies, investment companies and persons advising on, or selling, units of undertakings for collective investment in transferable securities (UCITS) and non-UCITS. The Regulation extends the transitional arrangement (which exempts management companies, investment companies and persons advising on, or selling, units of UCITS and non-UCITS from the obligation to draw up a key information document ("**KID**")) from 31 December 2021 until 31 December 2022.

22.3 **Directive (EU) 2021/2261 of the European Parliament and of the Council of 15 December 2021 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS) ()**
This Directive amends Directive 2009/65/EC (the "**UCITS Directive**") as regards the use of a KID by management companies of UCITS. This Directive confirms that a PRIIPS KID will satisfy the key investor information requirement set out in the UCITS Directive, ie, an investment company/management company should not be required to provide both a PRIIPS KID and a UCITS key information document to a retail investor. Member States are required to adopt and publish transposing measures by 30 June 2022, with those measures applying from 1 January 2023.

23. Prospectus

23.1 **Commission Delegated Regulation (EU) 2021/528 of 16 December 2020 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the minimum information content of the document to be published for a prospectus exemption in connection with a takeover by means of an exchange offer, a merger or a division**
This Delegated Regulation supplements Regulation (EU) 2017/1129 (the "**Prospectus Regulation**") as regards the minimum information content of the exemption document to be published in connection with a takeover by means of an exchange offer, a merger or a division. This Delegated Regulation entered into force on 15 April 2021.

24. Real Estate Finance

Acts of the Oireachtas:

24.1 Affordable Housing Act 2021

This Act, enacted on 21 July 2021, sets out the legislative and policy framework for a number of schemes aimed at making housing for purchase and rent more affordable for eligible households. More specifically, it provides for housing authorities[60] to make housing available:

(a) for purchase under:

(i) specifically regulated "affordable dwelling purchase arrangements" and

(ii) a new shared equity scheme; and

(b) for rent on a cost rental basis.

The legal framework for each scheme is set out in the Act, which then provides for regulations to be passed, setting out the more detailed requirements of each.

Part 6 of the Act also amends Part V Planning and Development Act 2000 (as amended), governing the respective rights and obligations of planning authorities and private developers to require private developers to contribute to the fulfilment of development plan obligations to provide social and affordable housing.

Except for (i) Part 5 (Arrangements Between Housing Authority and Land Development Agency in Relation to Eligibility and Priority for Certain Dwellings); (ii) the power of a housing authority to enter into arrangements with the Land Development Agency (s6(2)(c)); and (iii) the obligation of a housing authority to have regard to its "housing services plan" in the context of the statutory function of the housing authority in the provision of dwellings (s6(6) and (7)), the Act has been fully commenced: Part 1 (Preliminary & General) and Part 3 (Cost Rental Dwellings) from 19 August 2021[61]; and the remainder from 3 September 2021[62].

Of particular interest from the perspective of real estate finance are:

- Part 2 (Affordable Dwelling Purchase Arrangements) which contemplates the entry into contractual intercreditor arrangements between the relevant Housing Authority and private mortgage lenders; the registration of the Housing Authority's "affordable dwelling equity" as a burden on the Land Registry Folio; the potential priority of private mortgage lender's charges over the property and ability to sell without first obtaining Housing Authority consent; and the Housing Authority's ability to take possession and effect sale of the property in certain circumstances.

- Part 4 (Provision of Funding to Purchase Equity Share in Dwelling): Part 4 contemplates the Minister for Housing, Local Government and Heritage providing funding to an SPV which can purchase of an equity share in dwellings where this would assist the prospective purchaser. Details of how this system would operate and interact with private mortgage lenders is not set out in Part 4, which simply sets out some general principles and provides that operation of the equity share purchase will be detailed in a scheme between the Minister and the SPV.

24.2 Land Development Agency Act 2021

This Act was enacted on 21 July 2021 and commenced in part on 15 December 2021. The Land Development Agency (the "**LDA**") was established as a statutory body in 2018 to address a lack of supply and other deficiencies in the housing market through targeted use and development of relevant public land for the provision of housing. The purpose of the Act is to re-establish the Land Development Agency as a designated activity company (DAC) under the Companies Act 2014 to succeed the original statutory body established in 2018 and to give it enhanced legislative powers to allow it to fulfil its intended central

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60 A "housing authority" is not specifically defined in the Act, but the Act is to be construed with the Housing Acts 1966 to 2019 and sections 15, 85 and 87 of the Residential Tenancies (Amendment) Act 2015 as the Housing Acts 1966 to 2021 (the "**Housing Acts**") (s1(2) of the Act). Per Local Government Reform Act 2014 (1/2014) (relevant sections of which are read with and construed as part of the Housing Acts), s5(3) and sch2 part 1: "*A reference in the Housing Acts 1966 to 2014 to a housing authority is a reference to a local authority and references to the functional area of a housing authority shall be construed accordingly*."

61 SI424 of 2021.

62 SI450 of 2021.

role under government policy and Housing for All in leading and co-ordinating the development and regeneration of relevant public land for the delivery of housing.

On a day to be appointed under the Act, the original LDA entity will be dissolved and all its functions, assets, rights, liabilities and staff shall be transferred to the newly established DAC, with the Minister for Housing, Local Government and Heritage and Minister for Public Expenditure and Reform as its shareholders.

Sections 12 and 13 of the Act have been commenced with effect from 15 December 2021 allowing for the drawing up of the constitution and establishment of the new DAC (but not yet triggering the dissolution of the current statutory body). Only certain other limited provisions of the Act, allowing the new LDA DAC to take the preliminary steps towards equipping itself to move forward with its mandate, have been commenced otherwise.

As the relevant provisions are commenced the new LDA DAC will:

(a) establish and maintain by a Register of Relevant Public Land to identify public land suitable for housing;

(b) be able to: (i) borrow money; (ii) form DAC subsidiaries; (iii) acquire land by compulsory purchase; (iv) create investment vehicles to facilitate the development of relevant public land and LDA land; and (v) enter into commercial contracts and other commercial arrangements (including joint ventures) with local authorities or other parties in respect of relevant public land and private land;

(c) provide services to local authorities in order to assist them in the performance of their functions relating to development of sites for housing and urban development in population centres over 30,000 and will also be a designated development agency under the Planning and Development Act 2000;

(d) assist in the timely provision of publicly-owned infrastructure to service housing or sites being developed for housing on relevant public land and other land;

(e) have a right of first refusal (at market value) on proposed sales of relevant land by certain public bodies;

(f) ensure that a proportion of dwellings provided on relevant public land is (i) made available for cost rental housing, or (ii) transferred to planning authorities, or (iii) made available for "affordable dwelling purchase arrangements" under Part 2 of the Affordable Housing Act 2021.

In the performance of its functions the LDA DAC will also:

(a) support the implementation of the National Planning Framework and advise the Government on its implementation with regard to relevant public land and the provision of publicly-owned infrastructure;

(b) promote the sustainable development of communities and housing, including climate adaptive, low-carbon and affordable housing, that are well served by schools, infrastructure that promotes and facilitates cycling or walking, public transport and public amenities;

(c) endeavour, having regard to the policy of the Government on proper planning and sustainable development:

  (i) to contribute to the economic and social development of the State, and

  (ii) to enhance the competitiveness of the economy of the State, including by encouraging innovation in housing design and construction methods and preparation of masterplans to ensure the effective use of land and, where appropriate, the application of such innovative methods.

While the role to be played by private finance in relation to the LDA is not immediately clear, the Act does note that one of the LDA's purposes is to "...establish appropriate mechanisms and collaborative structures between public and private bodies to develop relevant public land, land owned by the Agency and land that is privately owned that is identified as suitable for the strategic and timely delivery of

housing...".[63] Consequently, it seems likely that the LDA will seek to enter into public-private joint projects where this would be serve the overarching aim of delivering housing.

24.3 **Residential Tenancies (Amendment) Act 2021**[64]

This Act provides for:

(a) a further cap on annual rent increases in rent pressure zones ("**RPZs**" of 2% per annum so that the maximum allowable annual rent increase in RPZs is now the lower of (a) market rent; (b) increases in inflation as recorded in the HICP; and (iii) 2% per annum;

(b) an unlimited extension of the protection period provided for under Part 4 of the Residential Tenancies Act 2004 (as amended) by the removal of the landlord's statutory right at the end of 6 years to terminate a tenancy protected under Part 4 without reason ; and

(c) a temporary fee waiver for annual registration fees for any 'further Part 4 tenancy' for which initial registration is applied and paid for within 1 month of the commencement of the annual registration requirement for tenancies (provided for in the Residential Tenancies (Amendment) Act 2019 and expected to be commenced early in 2022).

The Act was signed into law on 11 December 2021 and came into operation on the same date except for: (a) s5 and s6, giving effect to the changes to the operation of Part 4, which will apply only to tenancies created on or after 11 June 2022; and (b) s7 providing for the temporary waiver from annual registration fees for any 'further Part 4 tenancy' applied and paid for within 1 month of the commencement of the annual registration requirement for tenancies.

24.4 **Finance (Covid-19 and Miscellaneous Provisions) Act 2021**[65]

Among other measures, sections 13, 14 and 15 of this Act, enacted on 19 July 2021, gives statutory effect (with section 13 of the Act inserting a new section 31E into the Stamp Duties Consolidation Act 1999) to a Financial Resolution passed on 19 May 2021 imposing a 10% rate of stamp duty on the acquisition, on or after 20 May 2021, of certain types of residential units where an aggregate of 10 or more such units is acquired during a 12-month period. The 10% rate applies to own-door residential units such as houses and duplexes, but not apartments, and is intended to dis-incentivise the bulk purchase by investors of residential units of a type usually purchased by families and individuals as owner-occupiers. These sections of the Act were commenced either on enactment or the day after enactment.

24.5 **Finance Act 2021**

Among other tax and finance-related provisions to give effect to Budget 2022 announced on 12 October 2022, this Act, enacted on 21 December 2021, provides (at section 80, by insertion of new Part 22A in the Taxes Consolidation Act 1997 ("**TCA 1997**")) for a new annual "residential zoned land tax" ("**ZLT**") calculated at 3% of the market value of the land to replace the vacant site levy (introduced by the Urban Regeneration and Housing Act 2015 and amended by the Planning and Development (Amendment) Act 2018).

As part of the government's Housing for All strategy unveiled in September 2021, the objective of the new ZLT is to encourage the development of relevant zoned land. Subject to certain express exclusions, the ZLT applies (in accordance with section 653B TCA 1997) to serviced land which is zoned either (i) solely or primarily for residential use; or (ii) for a mixture of uses including residential, and which is not affected in physical condition by considerations which may impact the ability to provide housing on the land.

ZLT will be a self-assessed tax. Owners of land within the scope of ZLT will be obliged to register as owners and pay and file annual returns in a format prescribed by the Revenue Commissioners. Except for the obligations on liable persons to prepare and deliver returns (section 653T TCA 1997), the ZLT provisions of the Act took effect on enactment, but there will be an initial two or three year lead-in time before the ZLT will be chargeable. Sites which meet the relevant criteria in section 653B TCA 1997 on 1 January 2022 will be chargeable for each year from 1 January 2024 onwards. Where a site becomes a relevant site after 1 January 2022, it will be chargeable for each year beginning with the third year following the year it becomes a relevant site. The relevant liability date in each chargeable year will be 1 February and the return date will be 23 May.

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63 Section 2(p).

64 Act 39 of 2021.

65 Act 23 of 2021.

The process for identification of lands subject to the ZLT and for making submissions and appeals and the relevant timelines for all are set out in detail in Chapter 2 of new Part 22A TCA 1997 (sections 653B – 653M). Local authorities must produce initial draft maps identifying the land in their functional areas which will fall within the scope of the tax by 1 November 2022, ultimately culminating in final maps to be published no later than 1 December 2023. Local authorities are then required to produce a revised map annually by 31 January from 2025.

Express exclusions from ZLT are set out at section 653B(c)(i) –(v) TCA 1997 and include:

(a) existing habitable dwellings and their curtilage;

(b) land that is used for certain infrastructure or facilities, *eg* utilities, transport, social or community or recreational purposes;

(c) where a site is designated as a derelict site and liable for the Derelict Sites Levy;

(d) land which is zoned for residential use but is used to provide services consistent with a residential area, *eg* a corner shop.

Other measures affecting real estate in this Act include: (i) clarificatory amendments (at section 58) to the application of the 10% stamp duty to bulk residential purchases under s31E Stamp Duties Consolidation Act 1999 as inserted by the Finance (Covid-19 and Miscellaneous Provisions) Act 2021; (ii) the extension (at section 5) to the end of 2022 of the Help to Buy scheme available to first-time buyers / self-builders (allowing them to claim a tax refund up to a maximum of €30,000 to assist towards the deposit for the property); and (iii) the extension (at section 16) to the end of 2024 of the tax relief for certain pre-letting expenses incurred on vacant residential premises against rental income before first letting after a period of vacancy.

Statutory Instruments:

24.6 **Housing Loans Regulations 2021**[66]
These Regulations make provision for a new Local Authority Home Loan whereby local authorities provide loan finance to eligible first time buyers (within certain income limits) for the purchase or construction of new or existing homes (within certain value limits), from 4 January 2022.

24.7 **Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) (Amendment) Regulations 2021**[67]
This SI amends the existing principal "mortgage measures" regulations *ie* the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Housing Loan Requirements) Regulations 2015[68]. The mortgage measures regime is aimed at strengthening the resilience of both borrowers and the banking sector by preventing over-indebtedness. This is achieved by limiting the size of mortgages that consumers can borrow through the use of loan-to-value (LTV) and loan-to-income (LTI) limits.

Following a 2021 review of the mortgage measures the CBI decided not to make any significant changes in light of an ongoing review of the existing framework (due to conclude in the second half of 2022). Operational changes to the measures were made with the introduction of a "carry-over approach" for allowance lending, and amendments clarifying regulated mortgage lenders' ability to participate in the "First Home" Shared Equity Scheme.

Anticipated Developments:

24.8 **Land Value Sharing and Urban Development Zones Bill**
To amend the Planning and Development Act 2000 to provide for the proposals announced as part of Housing for All for (i) land value sharing (aimed at securing for local authorities a proportion of the increase in land values arising from public decisions and investment related to planning and development on land that is newly zoned for housing, or subject to an Urban Development Zone designation) and (ii) a new "Urban Development Zone" designation for urban areas which have potential for significant

66 SI 701 of 2021.

67 SI 666 of 2021.

68 SI 47 of 2015

development for housing and other purposes. Heads were approved on 14 December 2021 and the General Scheme was published on 22 December 2021. Pre-legislative scrutiny remains to be determined.

24.9 **Housing and Residential Tenancies Bill**
To strengthen the statutory framework for the enforcement of the overcrowding provisions of the Housing Act 1966 and to amend the Residential Tenancies Act 2004 to further enhance tenancy protections, particularly during receivership and around deposit. Heads are in preparation.

25. Securitisation

Statutory Instruments:

25.1 **European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) (Amendment) Regulations 2021**[69]
These Regulations amend the European Union (General Framework for Securitisation and Specific Framework for Simple, Transparent and Standardised Securitisation) Regulations 2018. The amendments made are intended to give effect to Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 (the "Securitisation Regulation") to help the recovery from the COVID-19 crisis.

The objective of Regulation (EU) 2021/557 is to extend the STS securitisation framework to synthetic securitisation and to remove regulatory obstacles to securitisation of non-performing loans ("NPLs") to further increase lending capacities without lowering the prudential standards for bank lending to help the recovery from the COVID-19 crisis (see further detail on Regulation (EU) 2021/557 at paragraph 25.3 below.

25.2 **European Union (Covered Bonds) Regulations 2021**[70]
These Regulations, which will take effect from 8 July 2022, amend the Asset Covered Securities Act 2001 (the "**ACS Act**") to give effect to Directive (EU) 2019/2162 (the "**Covered Bond Directive**").

The Covered Bond Directive and related Regulation (EU) 2019/2160 implement a new integrated covered bond framework in the EU.

This new framework:

- provides a common definition of covered bonds;
- defines the structural features of covered bonds;
- defines the tasks and responsibilities for the supervision of covered bonds;
- sets out the rules allowing the use of the '*European Covered Bonds*' label; and
- strengthens the conditions for granting preferential prudential treatment to covered bonds under the CRR.

These Regulations transpose the Covered Bond Directive into Irish law and make corresponding amendments to the ACS Act, including:

- designating the CBI as the competent authority for the purposes of public supervision purposes of asset covered securities;
- requiring institutions to apply to the CBI for permission for a covered bond programme;
- introducing requirements in respect of the cover-assets monitor;

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69 SI 561 of 2021.

70 SI 576 of 2021.

- updating provisions in respect of valuation of the cover assets pool and assets which may be included in that pool; and

- introducing additional reporting requirements.

EU Instruments:

25.3 **Regulation (EU) 2021/557 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) 2017/2402 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation to help the recovery from the COVID-19 crisis**
This Regulation amends the Securitisation Regulation to extend the STS securitisation regime to synthetic securitisations and remove the regulatory impediments to allow for the securitisation of NPEs and includes a new Article 45a to integrate sustainability-related transparency requirements into that Regulation. This Regulation entered into force on 9 April 2021.

25.4 **Regulation (EU) 2021/558 of the European Parliament and of the Council of 31 March 2021 amending Regulation (EU) No 575/2013 as regards adjustments to the securitisation framework to support the economic recovery in response to the COVID-19 crisis**
Regulation (EU) 2021/558 introduces consequential targeted amendments to the Capital Requirements Regulation to introduce a specific treatment for NPEs and a specific treatment for risk-sensitive calibration of own funds requirements for STS on-balance sheet securitisations. Regulation (EU) 2021/558 entered into force on 9 April 2021 (other than Article 1(2) and (4) which enters into force on 10 April 2022).

25.5 **Commission Delegated Regulation (EU) 2021/1415 of 5 May 2021 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on the cooperation, exchange of information and notification obligations between competent authorities and ESMA, the EBA and EIOPA**
This Delegated Regulation sets out the minimum information which the competent authorities and the ESAs should exchange, including, where relevant, reports of their supervisory and enforcement activities for the purposes of the Securitisation Regulation.

26. Securities Markets

Statutory Instruments:

26.1 **Migration of Participating Securities Act 2019 (Appointed Date) (Section 10) Order 2021**[71]
This Order appoints 10 March 2021 at 17:00 hours as the date and time before which the statement referred to in s10(1) or s10(3) Migration of Participating Securities Act 2019, as the case may be, must be furnished to the Registrar of Companies or, as appropriate, to the Listing Authority, by a participating issuer that wishes to consent to a migration from CREST to Belgium-based Euroclear Bank on the "*live date*" for the purposes of the Migration of Participating Securities Act 2019.

26.2 **Migration of Participating Securities Act 2019 (Appointment of Live Date) (Section 12(5)) Order 2021**[72]
This Order appoints 15 March 2021 at 00:01 hours as the "live date" for the purposes of s12(5) of the Migration of Participating Securities Act 2019, on which participating securities migrated from CREST to Belgium-based Euroclear Bank.

27. SME and Consumer

Anticipated Developments:

27.1 **Consumer Rights Bill**
While currently only a General Scheme is available, the Bill that follows will be intended to transpose the EU's "Omnibus Directive" (implementing the EU's "New Deal for Consumers") as well as transposing the EU Digital Content Directive (EU 2019/770) and the EU Sale of Goods Directive (EU 2019/771). From a

[71] SI 99 of 2021.

[72] SI 111 of 2021.

finance perspective, the following are likely to be the principal implications for in-scope financial services provided to consumers once the Bill is enacted:

- *Exclusion/Restriction of Liability*: a contract for a supply of services will no longer be permitted to exclude or restrict the service-provider's liability in relation to a list of specified provisions of the Bill;

- *Unfair Terms*: significantly, the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 are being repealed and replaced by the provisions set out in Part 7 of the Bill. While not mandated by the Omnibus Directive itself, the provisions of Part 7 represent significant change from those set out in the 1995 Regulations. Some of the more noteworthy changes are: (i) a new "black list" of standard contractual terms and conditions that are always unfair; (ii) the expansion of the existing "grey list" of potentially unfair contractual terms (which will be presumed to be unfair); (iii) helpfully, the codification of a number of CJEU decisions, including in relation to "transparency" requirements; and (iv) a narrowing of categories of items excluded from assessment for unfairness; and

- *Offences / Fines*: as is typical in such legislation, the Bill will make breaches of a number of its provisions an offence, with the potential for the imposition of fines or imprisonment on conviction. In addition, however, where an offence under specified parts of the Bill (including Part 7 regarding unfair terms) constitutes an intra-union or relevant widespread infringement, then further fines can be imposed of up to 4% of relevant turnover.

27.2 **Consumer Credit (Amendment) Bill**

The Government has approved the drafting of the Consumer Credit (Amendment) Bill 2021, the main purpose of which is to restrict the total cost of credit on moneylending loans. To date, only the General Scheme is available. The Scheme indicates that the intended purpose will be achieved by introducing a cap on the interest rate a moneylender can charge on a loan, allowing for that rate to be adjusted in future by Ministerial Order, and prohibiting moneylenders from charging for home collection services. The Bill also contains a range of measures to modernise and streamline the sector, including:

- allowing repayment books to be maintained online;

- allowing licenses to be issued for periods of five years at a time rather than one;

- removing the requirement for moneylenders to register for a particular District Court area, and register State-wide instead; and

- changing the term "licensed moneylender" to "high cost credit provider".

27.3 **Credit Review Service Bill**

Drafting of this Bill has been approved by the Minister for Finance but it has not yet been published. Based on available information, the proposed legislation will establish the Credit Review Service as a body corporate, putting it on a legislative footing. The "Credit Reviewer" will be the Head of the Service and the Minister for Finance will be given power to extend the scope of the Credit Review Office to include additional regulated financial service providers, State Bodies and State-supported credit schemes. The Credit Reviewer was established in 2010 and its key role is to examine credit decisions for SME or farm borrowers who have had an application for credit of up to €3 million declined or reduced by participating banks.

27.4 **Credit Union Interest on Loans Bill**

Drafting of the Bill has been approved but details are not available yet. It is described in the Government Legislation Programme for Spring 2022 as being intended to "increase the maximum monthly interest rate on credit union loans and to allow for that maximum rate to be adjusted in future by Ministerial Order".

28. State Finance Schemes

28.1 **Credit Guarantee (Amendment) Act 2020 (Extension of Guarantee Date) Order 2021**[73]
This Order appoints 31 December 2021 as the appointed date for the purpose of Section 4A(1)(a)(ii) Credit Guarantee Act 2012. Section 4A Credit Guarantee Act 2012 governs the power of the Minister for Jobs, Enterprise and Innovation to give guarantees in accordance with the Covid-19 credit guarantee scheme.

28.2 **Loan Guarantee Schemes Agreements (Strategic Banking Corporation of Ireland) Act 2021**
The Act enables certain Ministers of the Government to enter into agreements with the Strategic Banking Corporation of Ireland for the purpose of facilitating access to finance by certain "qualifying enterprises" (being SMEs and small mid-cap enterprises established in the State). The maximum aggregate liability that the Ministers can commit to under all agreements for the time being in force is €50 million.

Statutory Instruments (Commencement Orders):

29. Sustainable Finance

Statutory Instruments:

29.1 **European Union (Sustainability-related Disclosures in the Financial Services Sector) Regulations 2021**[74]
These Regulations amend the Central Bank Act 1942 and give effect to Articles 14 and 17 of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the "**SFDR**") and require compliance with the requirements of the SFDR by financial market participants and financial advisers to be monitored by the CBI, with certain exceptions.

EU Instruments:

29.2 **Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation**
This Delegated Regulation supplements Article 8 of the Taxonomy Regulation which requires certain undertakings to disclose how and to what extent their activities are associated with environmentally sustainable economic activities.

This Delegated Regulation provides that from 1 January 2022 until 31 December 2023, financial undertakings shall disclose the information detailed in Article 10 therein, including the proportion in their total assets of exposures to taxonomy non-eligible and taxonomy-eligible economic activities. Credit institutions shall also disclose the proportion of their trading portfolio and on demand inter-bank loans in their total assets. Insurance and reinsurance undertakings shall also disclose the proportion of taxonomy-eligible and taxonomy non-eligible non-life insurance economic activities. Key performance indicators of financial undertakings with accompanying information shall be disclosed from 1 January 2024 and certain other information requirements shall apply from 1 January 2026.

29.3 **Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives**
This Delegated Regulation establishes the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the climate change objectives set out in the Taxonomy Regulation and whether an economic activity causes no significant harm to any of the other environmental objectives contained therein. This Delegated Regulation applied from 1 January 2022.

Anticipated Developments

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73 SI 200 of 2021.

74 SI 146 of 2021.

29.4 **Corporate Sustainability Reporting Directive**
This Directive will amend the existing reporting requirements of the Non-Financial Reporting Directive ("**NFRD**").

This Directive will:

- extend the scope of the NFRD to all large companies and all companies listed on regulated markets (except listed micro-enterprises);
- require the audit (assurance) of reported information;
- introduces more detailed reporting requirements, and a requirement to report according to mandatory EU sustainability reporting standards; and
- require companies to digitally '*tag*' the reported information, so it is machine readable and feeds into the European single access point envisaged in the capital markets union action plan.

This Directive is expected to be adopted in 2022.

29.5 **Commission Delegated Regulation with Sustainable Finance Disclosure Regulation regulatory technical standards**
The Commission has indicated that this Commission Delegated Regulation containing Level 2 SFDR measures is expected during 2022 with an expected application date of 1 January 2023.

29.6 **Commission Delegated Regulation with technical screening criteria for the remaining four environmental objectives (water, circular economy, pollution prevention & control, and biodiversity & ecosystems) under the Taxonomy Regulation**
This Delegated Regulation setting out the technical screening criteria for the four remaining environmental objectives in the Taxonomy Regulation is expected during 2022 with an application date of 1 January 2023.

30. Relevant Banking and Financial Services Publications 2021

(a) The Brexit Deal: Impact on Financial Services (12 January 2021)

(b) Financial Services Regulatory Update – December 2020 Round Up (15 January 2021)

(c) Brexit: Documenting Corporate Financing in the Post-Brexit World (14 January 2021)

(d) ISDA IBOR Fallbacks Tool Goes Live on 25 January 2021 (20 January 2021)

(e) New Sanctions Measures Planned to Strengthen EU's Economic and Financial System (28 January 2021)

(f) IBA Banking Law Committee Survey: COVID-19 Emergency Measures (05 February 2021)

(g) Financial Services Regulatory Update – January 2021 Round Up (09 February 2021)

(h) Full Steam Ahead for the Investment Limited Partnership (10 February 2021)

(i) Embedding Sustainability (11 February 2021)

(j) Auto-Delete and Encrypted Messaging Apps: Next in the Regulatory Spotlight? (12 February 2021)

(k) The Irish Investment Limited Partnership - a modern and flexible option for private fund sponsors (18 February 2021)

(l) Recent Amendments to the EU Benchmark Regulation and EMIR (17 February 2021)

(m) Ireland as a Location for MiFID Investment Firms 2021 (01 March 2021)

(n) Ireland as a Location for Payment Institutions 2021 (03 March 2021)

(o) Sustainable Finance Disclosure Regulation: Draft RTS to Light the Way (04 March 2021)

(p) LIBOR: FCA Announces Future Cessation and Loss of Representativeness (08 March 2021)

(q) Financial Services Regulatory Update – February 2021 Round Up (09 March 2021)

(r) Brexit: An Overview of Legal and Regulatory Implications (09 March 2021

(s) Ireland Must be Ready to Seize the Opportunity Crypto-Assets Offer (24 March 2021)

(t) Crypto-Assets: The Meteoric Rise of 'Non-Fungible Tokens' (06 April 2021)

(u) Financial Services Regulatory Update – March 2021 Round Up (14 April 2021)

(v) Central Bank of Ireland Publishes Guidance on Fund Performance Fees (22 April 2021)

(w) Changes to Anti-Money Laundering Requirements Start to Apply (14 May 2021)

(x) Beneficial Ownership of Trusts: Regulations Updated and Filing in Central Register now Required (14 May 2021)

(y) Financial Services Regulatory Update – April 2021 Round Up (18 May 2021)

(z) Reporting Sustainability (19 May 2021)

(aa) Common Supervisory Action on UCITS Liquidity Risk Management (21 May 2021)

(bb) EU Taxonomy Regulation – Agreed Technical Screening Criteria Published (24 May 2021)

(cc) Court Considers Impact of EURIBOR Reference in Variable Rate Loan Agreement (02 June 2021)

(dd) Cross-Border Distribution of Collective Investment Schemes (03 June 2021)

(ee) Financial Services Regulatory Update – May 2021 Round Up (15 June 2021)

(ff) Sustainable Finance: ICMA Principles Updated (24 June 2021)

(gg) Application of the SFDR Regulatory Technical Standards Postponed to 1 July 2022 (09 July 2021)

(hh) Authorisation Requirements to be Extended to Hire-Purchase and other Types of Credit (20 July 2021)

(ii) EU Proposal: An Overhaul of Anti-Money Laundering and Countering the Financing of Terrorism Rules (06 August 2021)

(jj) Financial Services: Senior Executive Accountability Regime (09 August 2021)

(kk) Consumer Rights Bill and Financial Services – Will you be Ready? (12 August 2021)

(ll) ECB Urges Banks to Take Swifter Action on Climate and Environmental Risks (23 August 2021)

(mm) Central Bank Issues Revised AIFMD Q&A and UCITS Q&A (17 September 2021)

(nn) Fitness and Probity Update - CBI Issues Notice of Intention to Amend the List of Pre-Approval Controlled Functions (24 September 2021)

(oo) European Commission Issues Review of Solvency II Regime (28 September 2021)

(pp) Financial Services Regulatory Update – September 2021 Round Up (12 October 2021)

(qq) EU Credit Servicing Directive: What will it mean for Ireland? (18 October 2021)

(rr) Financial Services Regulatory Update – October 2021 Round Up (11 November 2021)

(ss) Central Bank Issues "Dear CEO" Letter on Supervisory Expectations – Key Points for Asset Managers (09 November 2021)

(tt) European Commission Adopts Review of EU Banking Rules (12 November 2021)

(uu) Central Bank Expected to Confirm "Fast-Track" Filing Process for Sustainability Disclosures (12 November 2021)

(vv) Central Bank Confirms 'Fast-Track' Filing Process for Sustainability Disclosures (17 November 2021)

(ww) General Scheme of Insurance (Miscellaneous Provisions) Bill Published (24 November 2021)

(xx) Application of SFDR Regulatory Technical Standards Delayed until 1 January 2023 (30 November 2021)

(yy) Central Bank Consults on Macroprudential Measures for the Property Fund Sector (02 December 2021)

(zz) EU Taxonomy Regulation - Technical Screening Criteria Published in Official Journal (10 December 2021)

(aaa) Financial Services Regulatory Update – November 2021 Round Up (16 December 2021)

(bbb) Central Bank Issues "Dear CEO" Letter to Payment and E-Money Firms (17 December 2021)

(ccc) Central Bank Issues Updated AIFMD Q&A and UCITS Q&A (22 December 2021)

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