Banking Regulation

2018

Fifth Edition

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Ireland

Josh Hogan, Roy Parker & Imelda Higgins
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Introduction

Ireland is home to over half of the world's top 50 banks, evidencing its attractiveness as a banking location. This attractiveness is partially attributable to Ireland's EU membership and partially to its sophisticated financial services ecosystem. A bank authorised under Irish law (Irish bank) can passport its services throughout the European Economic Area (EEA), either on a branch or on a cross-border services basis. Moreover, an Irish bank has access to a deep pool of staff, managers, professional advisers, regulators and service providers including not only native English speakers but a sizeable international population. It is also able to recruit staff freely throughout the EEA.

Banking regulation in Ireland is very similar to that applicable in other EEA Member States. While the past few years have seen substantial developments in banking regulation in Ireland, the majority of these changes are attributable to requirements introduced by EU (and international) law. Generally, Ireland implements EU financial services law without "gold-plating". In addition, the Central Bank of Ireland (CBI), which is the domestic regulator responsible for regulating Irish banks, as well as other regulated financial services providers (RFSPs), is part of the EU's Single Supervisory Mechanism (SSM).

While the reputation of Ireland's domestic retail and commercial banks was badly affected by the banking crisis, the past 10 years have seen considerable efforts on the part of Irish banks, the CBI and the Irish government to restore that reputation. While these efforts have met with a considerable degree of success, Ireland's domestic banks still have considerable work to do, in particular around the issue of non-performing loans.

We expect the UK's impending departure from the EU to lead to more banks establishing themselves in Ireland or expanding their existing operations in Ireland, so as to be able to avail of passporting rights elsewhere in the EEA. A number of banks have already indicated that they intend to establish a subsidiary in Ireland, or expand their existing operations here.

Regulatory architecture: Overview of banking regulators and key regulations

The CBI is responsible for both prudential regulation and the conduct of business of RFSPs in Ireland. It has no specific responsibility for promoting competition across financial services markets. The Competition and Consumer Protection Commission has a role in ensuring consumer protection in the area of financial services.

The key legislation governing banks in Ireland is the EU's Capital Requirements Regulation 575/2013 (CRR) and the European Union (Capital Requirements) Regulations 2014 (Irish Capital Requirements Regulations), which transpose the EU's Capital Requirements

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Directive 2013/36 (CRD IV) into Irish law. Banks are also subject to a variety of other legislation and regulatory measures, a number of which are outlined below.

Insofar as the prudential regulation of Irish banks is concerned, the CBI carries out its role within the framework of the EU's SSM. Under the SSM, the European Central Bank (ECB) is responsible for the prudential regulation of Ireland's 'significant' banks in close cooperation with the CBI: significant banks are supervised by a Joint Supervisory Team consisting of both ECB and CBI supervisors. The CBI has primary responsibility for supervising the activities of institutions classified as 'less significant'. Supervision is conducted in accordance with EU law and in line with the harmonised standards and processes developed in the SSM.

At EU level there are a number of on-going developments which will impact on the regulatory architecture in Ireland, in particular the proposed amendments to CRD IV and the CRR.

Recent regulatory themes and key regulatory developments in Ireland

In so far as banks are concerned, the CBI's current regulatory focus is on the tracker mortgage examination, the issue of non-performing loans (NPLs) and Brexit.

The tracker mortgage examination concerns contractual and regulatory compliance issues relating to residential tracker mortgage borrowers by each of the main Irish banks operating in the domestic mortgage market. Since 2010 the CBI has been identifying and pursuing some lenders in relation to tracker-related issues. In January 2018, the CBI announced that it is running four enforcement investigations arising out of the tracker mortgage examination. The CBI has also stated that it expects the examination to cost the banks around €1 billion, including compensation and redress, as well as costs, fines and regulatory bills.

NPLs are one of the central challenges facing the European banking sector. Irish banks operating in the domestic loan market continue to have elevated levels of NPLs and their sustainable resolution remains a key supervisory priority.

As mentioned above, Brexit is likely to have a substantial impact on the Irish banking sector. A number of firms with a UK presence have already indicated that they intend to set up new banking operations in Ireland, or expand their existing operations. Brexit is also likely to have significant implications for some Irish banks with a presence in the UK. According to the CBI, a Brexit-related slowdown in the UK economy could negatively affect Irish retail banks' profitability in the long term, given their significant exposures in the UK market.

The regulatory regime for Irish banks has changed considerably since the start of the financial crisis in 2008. These changes have their origins both in EU and in domestic law.

International/EU-related developments

The EU's response to the financial crisis has led to a deluge of new financial measures, including a new regulatory framework for credit institutions, a new recovery and resolution framework, a new supervisory framework, a new regulatory framework for investment firms, as well as new legislation on mortgage credit. As mentioned, by and large, Ireland transposes EU measures into national law without any significant gold-plating. The examples below highlight some of the more significant EU-related developments, without, however, attempting to be exhaustive.

(a) *Capital requirements*

The EU adopted the CRR and CRD IV in 2013, which spell out, respectively, prudential requirements for credit institutions and certain investment firms and rules

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on their governance and supervision. The Irish Capital Requirements Regulations transpose CRD IV into Irish law. The European Union (Capital Requirements) (No. 2) Regulations 2014, give effect to a number of technical requirements so that the CRR can operate effectively in Irish law.

In November 2016, the European Commission published a proposal for a Directive amending CRD IV as regards, among other things, remuneration. The proposed amendment would permit certain smaller institutions to disapply specified remuneration requirements. On 31 January 2017, the CBI issued a policy statement indicating that it will be guided by the proposed amendment when assessing compliance with the EBA's Guidelines on sound remuneration policies.

(b) *Bank recovery and resolution*

The Bank Recovery and Resolution Directive 2014/59 establishes a common EU framework for the recovery and resolution of credit institutions and investment firms. It gives resolution authorities extensive powers to manage failing institutions, including powers to write down debts owed to creditors, convert debt to equity or impose temporary stays on termination rights. It was implemented into Irish law by the European Union (Bank Recovery and Resolution) Regulations 2015. Directive 2017/2399, amending the Bank Recovery and Resolution Directive as regards the ranking of unsecured debt instruments in insolvency hierarchy, must be transposed into national law by the end of 2018.

(c) *Derivatives*

Regulation 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) requires derivatives markets participants to:

- clear certain over-the-counter (OTC) derivatives through a central counterparty;
- put in place certain risk-management procedures for uncleared OTC derivatives transactions; and
- report derivatives to a trade repository.

The European Union (European Markets Infrastructure) Regulations 2014 give further effect to EMIR in Irish law.

(d) *EU Banking Union*

The EU Banking Union is an EU-level banking supervision and resolution system which operates on the basis of EU-wide rules. Its aim is to ensure that the banking sector in the euro area and the wider EU is safe and reliable and that non-viable banks are resolved without recourse to taxpayers' money and with minimal impact on the real economy. The EU Banking Union is currently based on two pillars, the SSM and the single resolution mechanism (SRM). As set out above, Ireland is a member of the EU's Banking Union.

The SSM operates as a system of common banking supervision throughout the Banking Union involving both the ECB and national supervisors. Council Regulation 1024/2013 confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions while Regulation 468/014 of the ECB establishes the framework for cooperation within the SSM between the ECB and national competent authorities and with national designated authorities. These regulations were given further effect in Ireland through the European Union (Single Supervisory Mechanism) Regulations 2014.

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The SRM seeks to ensure an orderly resolution of failing banks with minimal costs to taxpayers and to the real economy. It comprises an EU-level resolution authority, the Single Resolution Board (SRB) and a single resolution fund (SRF), financed by the banking sector. The SRM was established by Regulation 806/2014, which was given further effect in Irish law by the European Union (Single Resolution Mechanism) Regulations 2014.

(e) *Markets in financial instruments*

The revised Markets in Financial Instruments Directive 2014/65 (MiFID) and the Markets in Financial Instruments Regulation 600/2014 regulates certain investment services and activities with the aim of promoting financial markets that are fair, transparent and integrated. MiFID was transposed into Irish law by the European Union (Markets in Financial Instruments) Regulations 2017.

(f) *The Mortgage Credit Directive*

The Mortgage Credit Directive 2014/17 (Mortgage Credit Directive or MCD) applies to credit agreements, entered into by consumers, which are secured either by a mortgage or by another comparable security commonly used in an EU Member State on residential immovable property. It also applies to credit agreements which are used to acquire or retain property rights in land or in an existing or projected building. The MCD harmonises the legal framework applicable to the provision of mortgage credit in a number of areas, with the aim of facilitating an internal market with a high level of consumer protection in the area of credit agreements relating to immovable property. The MCD was transposed into Irish law by the European Union (Consumer Mortgage Credit Agreements) Regulations 2016.

Domestic trends

As well as responding to EU developments, there have been a number of legislative and regulatory developments on the domestic front. From a legislative perspective these include the introduction of the Central Credit Register (CCR), the regulation of credit servicing firms and the restructuring of the CBI. For its part, the CBI has used its powers to bring in a number of regulatory initiatives, in the areas of corporate governance, fitness and probity, consumer protection, and supervision and enforcement.

(a) *The Central Credit Register* (CCR)

The Credit Reporting Act 2013 provides for the establishment of a CCR whose purpose is to provide a comprehensive "Single Borrower View" showing a borrower's total exposure. It applies to credit applications/agreements where:

- the applicant or the person for whom credit is provided under the credit agreement is resident in Ireland at the time the application/agreement is made; and/or
- Irish law governs the credit agreement or would govern the credit agreement.

In September 2016, the CBI published regulations governing the operation of the CCR. These regulations set out the legal obligations on lenders to supply information to the Register and to use the Register when considering loan applications. The CRR is being implemented in phases. Phase 1 dealt with the reporting of consumer credit, with initial reports required by 31 December 2017. Phase 2 deals with the reporting of non-consumer credit, with initial reporting required by 30 September 2018.

(b) *Credit servicing firms*

The Consumer Protection (Regulation of Credit Servicing Firms) Act 2015, which

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entered into effect on 8 July 2015, aims to ensure that those who enter into a credit agreement with a regulated entity retain their regulatory protections in the event that the agreement is subsequently sold to an unregulated third party. Generally, it requires entities carrying on the activity of credit servicing to be authorised for that purpose.

The Act defines credit servicing as managing or administering a credit agreement in respect of a cash loan entered into between, on the one hand, a creditor and on the other, a 'relevant borrower', a term which covers both consumers and SMEs that have entered into the credit agreement with a RFSP.

A RFSP that is authorised to lend in Ireland, whether by the CBI or another EEA regulator on a passporting basis, is itself taken to be authorised to carry on the business of a credit servicing firm and does not have to apply for specific authorisation.

(c) *The Central Bank of Ireland* (CBI)

Changes to the CBI's structure and powers were largely prompted by a widespread perception that Ireland's banking crisis was at least partially attributable to the fact that banks were inadequately supervised in the years leading up to that crisis.

Prior to 2010 the supervision of Irish banks, and other financial institutions, was entrusted to the Irish Financial Services Regulatory Authority (Financial Regulator), which was an autonomous part of the Central Bank and Financial Services Authority of Ireland. In 2010, the financial regulator and the Central Bank were fused into a single body, the CBI, under the Central Bank Reform Act 2010 (CBRA 2010). That Act also conferred the CBI with a number of new powers and competencies, including the introduction of a new fitness and probity regime for financial firms and their senior personnel. The CBI's powers were again enhanced by the Central Bank (Supervision and Enforcement) Act 2013, including through the conferral on the CBI of a new power to make regulations for the proper and effective regulation of RFSPs, and significantly enhanced enforcement powers.

(d) *Corporate governance*

The CBI's Corporate Governance Code for Credit Institutions (CGR) was first introduced in 2010 and most recently updated in 2015. The CGR seeks to ensure that credit institutions have in place robust governance arrangements to ensure appropriate oversight of their activities, and augments CRDIV requirements in this regard. It sets out the minimum statutory requirements on how credit institutions should organise the governance of their institutions and includes provisions on the membership of the Board of Directors, the role and responsibilities of the Chairman and other directors and the operation of various committees.

(e) *Fitness and probity*

In 2011, the CBI introduced a new Fitness and Probity Regime which applies to persons in senior positions, known as Controlled Functions (CFs) and Pre-Approval Controlled Functions (PCFs) within RFSPs.

However, since 4 November 2014, the ECB has had exclusive competence for the fitness and probity assessments of both the management board of significant credit institutions and the management board of all credit institutions applying for authorisation, under the SSM framework. Otherwise, the CBI is responsible for carrying out fitness and probity assessments for less significant credit institutions.

(f) *Consumer protection*

Consumer protection is one of the CBI's key objectives, as reflected in its mission

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statement 'Safeguarding Stability, Protecting Consumers'. This objective is integrated across the CBI's mandate and is reflected across its functions ranging from financial stability, through authorisation, prudential regulation, supervision and inspection, to enforcement and redress.

The CBI seeks to deliver on its consumer protection mission through its '5 Cs Framework'. The five 'Cs' stand for: consumer; confidence; compliance; challenging firms; and culture. This framework puts the **Consumer** at its centre, requiring RFSPs to focus on delivering positive consumer outcomes through a consumer focused **Culture**, which enables consumers to have **Confidence** in their financial decisions and in the firms that they are dealing with. RFSPs must **Challenge** themselves and be challenged by the CBI where their focus is not on those consumer outcomes. Where **Compliance** standards are not met, the CBI will take appropriate regulatory action.

Alongside the existing consumer protection legislation, the CBI has, over the past years, made use of its code-making powers to introduce a number of consumer protection codes. These include, in particular, the Consumer Protection Code (CPC) and the Code of Conduct on Mortgage Arrears (CCMA). The CBI has replaced its Code of Conduct for Business Lending to Small and Medium Enterprises with new regulations (see below). It has also issued Guidelines on Variable Remuneration for Sales Staff (Remuneration Guidelines).

- The Consumer Protection Code: the CPC came into effect on 1 January 2012, replacing an earlier code. It sets out the requirements with which RFSPs must comply when dealing with consumers including the provision of information, knowing the customer and suitability, post-sale information requirements, rebates and claims processing, arrears handling, advertising, errors and complaints resolution and records and compliance. In July 2015, the CBI published an Addendum to the CPC covering credit servicing firms. It published a further addendum in 2016 in connection with the transposition of the Mortgage Credit Directive and increased protections for variable rate mortgage holders. In 2017 it published another addendum related to Ireland's transposition of the MiFID regime.
- The Code of Conduct on Mortgage Arrears: the CCMA came into effect on 1 July 2013, replacing an earlier code. It sets out rules for lenders when dealing with borrowers in arrears or in pre-arrears with their mortgage payments on their primary residences. It defines primary residence to mean "a residential property which is the only residential property in this State owned by the borrower" as well as the more common definition of "the residential property which the borrower occupies as his/her primary residence in this State".

  Under the CCMA, lenders must operate a Mortgage Arrears Resolution Process (MARP) when dealing with arrears and pre-arrears customers. In general, the CCMA requires lenders to wait eight months before taking legal action about mortgages in arrears. However, this requirement does not apply if a borrower is deliberately not co-operating with the lender.
- SME Regulations: the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015 (SME Regulations) apply, since 1 July 2016, to banks and most other RFSPs when providing certain credit products within the State to SMEs operating within the State. The SME Regulations are divided into three parts: Part 1 has preliminary

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and general provisions, Part 2 applies to lending to micro and small enterprises, and Part 3 applies to lending to medium-sized enterprises. The SME Regulations replaced the earlier Code of Conduct for Business Lending to SMEs. Overall, the SME Regulations are considerably more detailed than the Code and strengthen the protection available to SMEs in a number of ways. The SME Regulations have been recently amended in relation to the definition of an 'SME'.

- Minimum competency: staff of RFSPs must comply with certain minimum professional requirements which are set out in the Minimum Competency Code 2017. The Minimum Competency Regulations 2017 impose obligations on RFSPs which relate to those minimum professional requirements.
- Remuneration: in July 2014, the CBI published Remuneration Guidelines, which require financial institutions including Irish banks to review and restructure their incentive payments for sales staff to ensure that employees, individually and collectively, act in the best interests of their customers and provide products suitable to their needs.

(g) *Supervision and enforcement*

The CBI introduced its Probability Risk and Impact System (PRISM), in 2011. PRISM is both a supervisory tool and a software application. It enables RFSPs to be categorised based on impact, so that supervisors can guard against the potential failure of firms posing higher potential impact risk. Under PRISM, RFSPs are divided into four categories, depending on their ability to impact on financial stability and the consumer, namely high impact, medium impact, medium-low impact and low impact. The most significant RFSPs receive a high level of supervision under structured engagement plans, leading to early interventions to mitigate potential risks. Conversely, those RFSPs which have the lowest potential adverse impact are supervised reactively or through thematic assessments. However, the CBI takes targeted enforcement action against any RFSP whose poor behaviour risks jeopardising the CBI's statutory objectives.

In 2017, the CBI launched a new framework for assessing how Irish banks and other RFSPs deliver fair consumer outcomes. It intends to carry out firm-specific consumer protection risk assessments in order to assess how RFSPs are delivering fair consumer outcomes. The CBI expects each RFSP to implement consumer protection risk management frameworks that are proportionate to the RFSP's nature, scale and complexity and the risk the framework is designed to manage.

Bank governance and internal controls

Both CRD IV and the CBI's CGR lay down requirements for the governance of credit institutions and regarding internal controls.

Governance arrangements

Under the Irish Capital Requirements Regulations, institutions must have in place and maintain robust governance arrangements, including:

- a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- effective processes to identify, manage, monitor and report the risks they are, or might be, exposed to; and
- adequate internal control mechanisms.

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The relevant governance arrangements put in place must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the business model and the relevant institution's activities, and take into account the criteria set out in Regulations 64 to 83 of the Irish Capital Requirements Regulations.

A credit institution's board must be of sufficient size and expertise to oversee its operations adequately. It must have a minimum of five directors, the majority of whom must be independent non-executive directors. A high-impact designated credit institution must have a minimum of seven directors.

All directors must have a knowledge and understanding of the relevant credit institution's business, risks and material activities to enable them to make an effective contribution. The CBI requires all directors (and senior executives) to demonstrate that they are fit and proper persons and that they have appropriate competence and experience in banking and financial services to enable them to perform the roles to which they are assigned. A director must also have sufficient time to carry out his or her role, and a director of a credit institution cannot hold more than five directorships of credit institutions and/or insurance undertakings.

Generally, each credit institution must establish, at a minimum, both an audit committee and a risk committee, which must have at least one shared member. High-impact designated credit institutions are required to establish audit, risk, remuneration and nomination committees. Under the Companies Act 2014, a credit institution must appoint an external auditor. Each credit institution must also appoint a Chief Risk Officer (CRO) with distinct responsibility for the risk management function and for maintaining and monitoring the effectiveness of the credit institution's risk management system.

The Irish Capital Requirements Regulations also imposes extensive remuneration requirements on staff of a credit institution or an investment firm that are capable of having a material impact on the institution's risk profile. This includes limiting a person's variable remuneration to 100% of fixed remuneration, or 200% if shareholders approve. The CRR sets out remuneration-related disclosure requirements.

The CGR sets out general corporate governance requirements for credit institutions; however, Appendix 1 imposes additional obligations on credit institutions designated as high impact under PRISM. Moreover, Appendix 2 of the CGR contains additional corporate governance obligations which apply to credit institutions which are deemed significant for the purposes of the Capital Requirements Directive. Under the CGR, the Board is responsible for ensuring that a credit institution's remuneration practices do not promote excessive risk-taking, and must design and implement a remuneration policy to meet this objective.

An Irish bank can outsource its activities; however, it must retain its 'heart and mind' in Ireland and cannot use outsourcing to the extent that it becomes a letter box entity. Ultimately, the CBI will need to be satisfied that the Irish bank will be properly run in Ireland and that it will be able to supervise the Irish bank effectively. Among other things, the CBI expects an Irish bank to have in Ireland:

- a senior management team with strength and depth, overseen and directed by a strong board; and
- organisation structure and reporting lines which ensure there is appropriate separation and oversight of all activities.

While there is no requirement for any specific individual to be resident in Ireland, ideally the personnel who fulfil the Irish bank's core functions should operate out of Ireland.

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Bank capital requirements

Capital adequacy rules applicable to Irish banks are primarily contained in the CRR. The EU capital adequacy rules recognise two principal layers of capital – Tier 1 and Tier 2. Tier 1 is further divided into sub-divisions – Common Equity Tier 1 (CET 1) and Additional Tier 1 (AT1). CET 1 is the highest-quality capital (i.e., most effective at absorbing losses) and AT1 and Tier 2 comprise lower-quality capital.

An Irish bank must satisfy the following own-funds requirements on a post-transition, fully loaded basis:

- a total capital ratio of 8%;
- a Tier 1 capital ratio of 6%; and
- a CET 1 capital ratio of 4.5%.

All institutions must meet the full phase-in requirement under CRR of 4.5% CET1 and 6% Tier 1. These are minimum 'pillar 1' capital requirements and the CBI, or ECB where applicable, applies higher capital requirements as a matter of course in terms of 'pillar 2' requirements which are designed to address particular risks and requirements that are not adequately covered by pillar 1, and risks to which the firm may become exposed over a forward-looking planning horizon.

Irish banks must maintain the following capital buffers: the capital conservation buffer; the counter-cyclical capital buffer; the systemic risk buffer; the global systemic institutions buffer; and the other systemic institutions buffer. In addition, a Liquidity Coverage Ratio is currently being phased-in, with the objective of improving short-term resilience of the liquidity risk profile of credit institutions by requiring them to hold a buffer of high-quality liquid assets.

CRD IV also provides for a Net Stable Funding Requirement (NSFR), which aims to ensure that a firm has an acceptable amount of stable funding to support its assets and activities over the long term. It has not yet been introduced. However, in November 2016 the European Commission adopted a legislative proposal which contains measures introducing a binding NSFR that will require credit institutions and systemic investment firms to finance their long-term activities with stable sources of funding.

Rules governing banks' relationships with their customers and other third parties

Extensive rules govern all aspects of Irish banks' relationships with their customers and third parties. In particular, as outlined above, there is an extensive legal and regulatory framework governing lending in Ireland, as well as the provision of investment services. The Financial Services Ombudsman (FSO) can hear complaints from certain customers regarding an RFSP.

<u>Deposit-taking</u>

Deposit-taking is one of the core regulated activities carried on by Irish banks. The CBI's Consumer Protection Code contains a number of requirements applicable to regulated entities, including banks, when providing deposit products to consumers. In addition, the European Union (Payment Accounts) Regulations 2016, which transpose the EU's Payment Accounts Directive 2014/92 into Irish law, impose requirements on payment service providers, including banks, which affect payment accounts. Similarly, the European Union (Payment Services) Regulations 2017, which transpose the EU's revised Payment Services Directive 2015/2366 into Irish law, contain provisions applicable to certain types of payment accounts including, for example, current accounts and flexible savings accounts.

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<u>Lending</u>

As outlined, measures applicable to lending activities include the Credit Reporting Act 2013, the Consumer Protection (Credit Servicing Firms) Act 2015 and the Mortgage Credit Regulations. They also include the CBI's Consumer Protection Code, the Code of Conduct on Mortgage Arrears and the SME Regulations. Other important measures which have not yet been mentioned are the Consumer Credit Act 1995, the European Communities (Consumer Credit Agreements) Regulations 2010, and the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

(a) *Consumer Credit Act 1995* (CCA)

The CCA provides basic protections and rights, particularly in respect of information, for consumers. The CCA has a significant impact on the rights and obligations of the parties where an agreement is for the provision of credit to a consumer. The CCA also regulates certain bank charges and fees in the case of customers generally.

(b) *European Communities (Consumer Credit Agreements) Regulations 2010 (Consumer Credit Regulations)*

The Consumer Credit Regulations are relevant, in broad terms, to consumer credit which is non-property-related and which relates to an amount between €200 and €75,000. The Consumer Credit Regulations disapply most of the provisions of the CCA with the result that many of the robust protections for consumers in the CCA do not apply to agreements governed by the Consumer Credit Regulations. In addition to prescribing contractual requirements, the Consumer Credit Regulations also require adherence to certain pre-contractual formalities.

(c) *European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004 (Distance Marketing Regulations)*

The Distance Marketing Regulations regulate the 'distance selling' of financial services, namely services sold by phone, fax, internet and post. They set out what information must be given to a consumer, provide for a 'warming-up' period before a contract can be concluded, provide for a 'cooling-off period' before a contract can be finalised, and prohibit some forms of direct marketing while regulating others.

<u>Investment services</u>

The provision of investment services is regulated by MiFID and the Investment Intermediaries Act 1995 (IIA), which provide for two distinct regulatory regimes. Unlike a MiFID investment firm, investment business firms authorised under the IIA can only provide a limited range of services and cannot passport their services to other EEA jurisdictions.

<u>Financial Services and Pensions Ombudsman (FSPO)</u>

The Financial Services Ombudsman Bureau was established under the Central Bank and Financial Services Authority of Ireland Act 2004 and was merged with the Office of the Pensions Ombudsman to form the FSPO with effect from 1 January 2018. The FSPO is an independent officer whose remit is to investigate, mediate and adjudicate unresolved complaints of customers about financial service providers. Private individuals and limited companies with an annual turnover of €3 million or less can make a complaint against any financial services provider that is registered and authorised by the CBI to operate in Ireland. Where a complaint is made to the FSPO against a bank that has passported into Ireland on a freedom of services basis, the FSPO will refer that complaint to the relevant Ombudsman Scheme in the passporting bank's home country.

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Compensation schemes

In the event that an Irish bank is unable to repay deposits, all eligible deposits held by individuals and companies are protected up to an amount of €100,000, with higher amounts protected in some instances. The deposit protection guarantee and the key features of the scheme are set out in the European Union (Deposit Guarantee Schemes) Regulations 2015 which transpose EU Directive 2014/49 on deposit guarantee schemes into Irish law. Those Regulations also set out the applicable minimum payout periods and depositor information requirements as well as funding arrangements.

Clients of failed banks may also be entitled to compensation under the Investor Compensation Act, which transposes the Investor Compensation Directive 97/9 into Irish law.

Restrictions on inbound cross-border banking activities

EEA authorised banks can passport into Ireland on both a branch and on a services basis subject to compliance with the requirements set down under the Capital Requirements Regulations. Passporting banks must comply with conduct of business requirements that apply under Irish law. Nearly 500 banks operate in Ireland on a passporting basis.

A non-EEA credit institution can obtain authorisation to operate a branch in Ireland under section 9A of the Central Bank Act 1971 for the purpose of carrying on 'banking business', namely any business that consists of or includes:

- receiving money on the person's own account from members of the public either on deposit or as repayable funds; and
- the granting of credits on own account.

Before the CBI grants an authorisation under section 9A, it must be satisfied that the relevant credit institution is subject, in the country of origin, to regulatory or administrative provisions relating to authorisation to carry on banking business, as well as supervisory arrangements corresponding to those applicable in Ireland.

Regulatory framework on anti-money laundering

The regulatory framework on anti-money laundering is set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 and 2013 (CJA). These Acts implement the EU's Third Money Laundering Directive 2005/60 (MLD3) into Irish law. Consistently with MLD3, the CJA requires banks and other designated institutions to put in place policies and procedures to combat money laundering and terrorist financing, including customer due diligence measures, record-keeping measures, reporting procedures and communication and training. Ireland is in the process of transposing the rest of the EU's Fourth Money Laundering Directive 2015/849 into Irish law, having partially transposed that Directive through the European Union (Anti-Money Laundering) Beneficial Ownership of Corporate Entities) Regulations 2016.

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