

TRAINING & DEVELOPMENT PROGRAMME

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

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MCCANN FITZGERALD



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1. Introduction

1.1 Objective and Scope of Presentation

This presentation highlights the significant legislative developments of 2020. 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 FitzGerald¹.

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).

1.3 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.

1.4 Acts, Statutory Instruments and EU Legislative Instruments of 2020

In 2020:

- 32 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 and 2019: 53);

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, Imelda Higgins, Martina Firkbank, Martin O’Neill, Eva Barrett, Sinead Curtin, Megan Guthrie, Sara Mac Namara, Coiré Mc Crystall, Sarah Rogers, and Ailbhe Marsh.

² Interpretation Act 2005, section 16(1).

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

- 755 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 and 2019: 693) (although the 2020 series of SIs is unlikely to be complete for another few weeks);
- 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 and 2019: 55);
- the State became subject to approximately 1,072 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 and 2019: 815); and
- the State became subject to approximately 1,317 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).

These notes have been prepared on the basis of material that is available to us on **25 January 2021**.

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

2. Anti-Money Laundering

Statutory Instruments:

2.1 **Solicitors (Money Laundering and Terrorist Financing Regulations) 2020⁴**

These Regulations replace the Solicitors (Money Laundering and Terrorist Financing) Regulations 2016 (SI 533 of 2016) and have an operative date of 1 November 2020. They impose personal obligations on certain legal professionals, including: to adopt policies and procedures to prevent and detect the commission of money laundering and terrorist financing, keep records evidencing the procedures applied, undertake client due diligence, identify politically exposed persons and report suspicious transactions. The Regulations permit the Law Society to investigate whether there has been compliance with the Regulations.

2.2 **European Union (Modifications of Statutory Instrument No. 110 of 2019) (Registration of Beneficial Ownership of Certain Financial Vehicles) Regulations 2020⁵**

These Regulations modify Part 3 of the European Union (Anti-Money Laundering: Beneficial Ownership of Corporate Entities) Regulations 2019 in respect of ICAVs, credit unions and unit trusts to provide for the establishment and maintenance of a Central Register of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts, including a requirement for an applicable financial vehicle to provide specified information to the Central Register; for the appointment of a Registrar of Beneficial Ownership of Irish Collective Asset-management Vehicles, Credit Unions and Unit Trusts; and that the Central Register will be maintained by the Registrar to whom the beneficial ownership information will be submitted.

EU Instruments:

2.3 **Commission Delegated Regulation (EU) 2020/855 of 7 May 2020 amending Delegated Regulation (EU) 2016/1675 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council, as regards adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point I of the Annex and deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from this table**

This Delegated Regulation amends the list of high-risk third countries with strategic anti-money laundering (AML) and counter-terrorist financing (CTF) deficiencies produced under Article 9(2) of the Fourth Money Laundering Directive. It amends the Annex to Delegated Regulation (EU) 2016/1675 by:

- Removing third countries that no longer present strategic AML and CTF deficiencies. This means deleting Bosnia-Herzegovina, Ethiopia, Guyana, Lao People's Democratic Republic, Sri Lanka and Tunisia from the table in point 1 of the Annex.
- Adding third countries that have been identified as having strategic AML and CTF deficiencies. This means adding the Bahamas, Barbados, Botswana, Cambodia, Ghana, Jamaica, Mauritius, Mongolia, Myanmar/Burma, Nicaragua, Panama and Zimbabwe to the table in point 1 of the Annex.

⁴ SI 377 of 2020.

⁵ SI 233 of 2020.

The new Delegated Regulation came into force on 9 July 2020. However, Article 2 (that is, the Article adding third countries to the list) applies from 1 October 2020.

3. Bank Recovery and Resolution

Statutory Instruments:

3.1 **European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020⁶**

These Regulations transpose Directive 2019/879 amending the Bank Recovery and Resolution Directive (“BRRD”) as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms and Directive 98/26/EC into Irish law.

The main purpose of Directive 2019/879 is to implement the Financial Stability Board’s total loss absorbing capacity (TLAC) standard in the EU. TLAC was also implemented through related amendments to the Capital Requirements Regulation (575/2013) (“CRR”) made by the CRR II Regulation ((EU) 2019/876).

In addition to implementing the TLAC standard, Directive 2019/879:

- amends the requirements on the contractual recognition of bail-in, set out in Article 55 of the BRRD;
- introduces a new moratorium power for resolution authorities; and
- introduces requirements on the contractual recognition of resolution stay powers.

The Regulations came into operation on 28 December 2020.

4. Benchmarks

EU Instruments:

4.1 **Commission Delegated Regulation (EU) 2020/1816 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the explanation in the benchmark statement of how environmental, social and governance factors are reflected in each benchmark provided and published**
Regulation (EU) 2016/1011 requires benchmark administrators to explain in the benchmark statement how environmental, social and governance (“ESG”) factors are reflected in each benchmark or family of benchmarks provided and published. This Delegated Regulation specifies the content of that explanation and lays down a template to be used when providing the explanation.

4.2 **Commission Delegated Regulation (EU) 2020/1817 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as regards the minimum content of the explanation on how environmental, social and governance factors are reflected in the benchmark methodology**
This Delegated Regulation lay down the minimum content of the explanation of how the key elements of the benchmark methodology reflect ESG factors for each benchmark, with the exception of interest rate and foreign exchange benchmarks, as well as the standard format to be used.

4.3 **Commission Delegated Regulation (EU) 2020/1818 of 17 July 2020 supplementing Regulation (EU) 2016/1011 of the European Parliament and of the Council as**

⁶ SI 713 of 2020.

regards minimum standards for EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks

This Delegated Regulation sets out the minimum standards that EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks should meet in order to be labelled as such, and lays down the transparency requirements on the methodology for both benchmarks.

5. Capital Requirements

Statutory Instruments:

5.1 European Union (Capital Requirements) (Amendment) Regulations 2020⁷

These Regulations transpose Directive (EU) 2019/878 amending the Capital Requirements Directive 2013/36/EU (“CRD V Directive”). The relevant amendments relate to issues including:

- a new approval process for financial holding companies and mixed financial holding companies as well as on-going supervision, the introduction of the Basel III leverage ratio and net stable funding ratio requirements;
- a requirement for certain third country groups to establish an intermediate parent undertaking;
- the remuneration requirements in the CRD IV Directive;
- clarifying the application of supervisory requirements and guidance under Pillar 2;
- setting out enhanced prudential rules on money-laundering;
- new requirements relating to interest rate risk in the banking book; and
- revisions to the capital buffers that may be applied.

The Regulations came into operation on 29 December 2020. Regulation 18 and paragraphs (b), (c) and (d) of Regulation 26 come into operation on 28 June 2021. Regulations 53 (in so far as it relates to the insertion of Regulations 129B and 129C into the European Union (Capital Requirements) Regulations 2014) and 54 come into operation on 1 January 2022.

CRD V forms part of the EU’s “Banking Package” together with Regulation 2019/876, which amends the Capital Requirements Regulation 575/2013, Directive (EU) 2019/879 which amends the Bank Recovery and Resolution Directive 2014/59 and Regulation (EU) 2019/877 which amends the Single Resolution Mechanism Regulation 806/2014.

5.2 European Union (Capital Requirements) (No. 2) (Amendment) Regulations 2020⁸

These Regulations give further effect to Regulation (EU) 2019/876 amending the Capital Requirements Regulation (EU) 575/2013 and Regulation (EU) 2020/873 of 24 June 2020 as regards certain adjustments in response to the COVID-19 pandemic.

Regulation (EU) 2019/876 contains measures relating to the following issues:

- Leverage and the leverage ratio buffer;
- The net stable funding ratio;
- Total loss absorbing capacity;

⁷ SI 710 of 2020.

⁸ SI 711 of 2020.

- Market risk ;
- Counterparty credit risk ;
- Equity investments in funds; and
- Large exposures.

Regulation (EU) 2019/876 also introduces two new categories of credit institution: “large institutions” and “small and non-complex institutions”. It will also introduce a new Article 501a of the Capital Requirements Regulation granting a preferential treatment to specialised lending exposures aimed at funding safe and sound infrastructure projects.

The Regulations came into operation on 28 December 2020.

EU Instruments:

- 5.3 **Regulation (EU) 2020/873 amending Regulation (EU) No 575/2013 (CRR) and Regulation (EU) 2019/876 (CRR II) in response to the COVID-19 pandemic**
This Regulation implements certain targeted changes to the CRR and CRR II to maximise the capacity of credit institutions to lend and to absorb losses related to the COVID-19 pandemic.
- 5.4 **Commission Delegated Regulation (EU) 2020/866 of 28 May 2020 amending Delegated Regulation (EU) 2016/101 supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for prudent valuation under Article 105(14) of Regulation (EU) No 575/2013**
This Delegated Regulation was made in response to the COVID-19 pandemic and entered into force on 26 June 2020.
- 5.5 **Commission Delegated Regulation (EU) 2020/2176 of 12 November 2020 amending Delegated Regulation (EU) No 241/2014 as regards the deduction of software assets from Common Equity Tier 1 items**
This Delegated Regulation sets out regulatory technical standards specifying the application of the deductions of software assets that are classified as intangible assets for accounting purposes under Article 36(1)(b) of the Capital Requirements Regulation.
- 5.6 **Commission Implementing Regulation (EU) 2020/125 of 29 January 2020 amending Implementing Regulation (EU) No 945/2014 laying down implementing technical standards with regard to relevant appropriately diversified indices in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council**
This Implementing Regulation sets out implementing technical standards with regard to relevant appropriately diversified indices in accordance with the Capital Requirements Regulation.
- 5.7 **Commission Implementing Regulation (EU) 2020/429 of 14 February 2020 amending Implementing Regulation (EU) No 680/2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013**
This Implementing Regulation amends the supervisory reporting requirements relating to: common reporting (COREP) to reflect the new securitisation framework and changes relating to the reporting of the liquidity coverage requirement (LCR) in response to Delegated Regulation (EU) 2018/1620, which amends Delegated Regulation (EU) 2015/61 and financial information reporting (FINREP) on non-performing exposures (NPE) and forbearance to allow the monitoring of reporting institutions' NPE strategies, the reporting requirements on profit and loss items and the implementation of the new International Financial Reporting Standard on leases (IFRS 16).

6. Central Securities Depositories Regulation

EU Instruments:

6.1 **Commission Delegated Regulation (EU) 2020/1212 of 8 May 2020 amending Delegated Regulation (EU) 2018/1229 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline**

This Delegated Regulation postpones the entry into force of Delegated Regulation (EU) 2018/1229 until 1 February 2021.

7. Civil Law

Acts of the Oireachtas:

7.1 **Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020**

This significant Act provides for a large number of important reforms to the court system (*eg* providing a basis for remote hearings), and is more fully discussed in the notes for the first lecture in this series. Specifically of note in a Finance context (*eg* for non-bank lenders/servicers) are sections 12-19, which deal with the admissibility of business records in civil proceedings.

Section 13 sets out a presumption of an exemption to the hearsay rule in civil proceedings for business records. “Business” includes private business, charities and the work of public bodies both within and outside the State. The new rules also apply to the records of a business that has ceased to exist. Admissibility is subject to certain criteria set out in section 14(1). In addition to being compiled in the ordinary course of business, the information must be supplied by a person (whether or not he or she compiled it and is identifiable) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with, and in the case of information in non-legible form that has been reproduced in permanent legible form, was reproduced in the course of the normal operation of the reproduction system concerned.

In addition section 14(2) states that the information may have been supplied directly or indirectly but in the latter case only if each person (whether or not he or she is identifiable) through whom it was supplied received it in the ordinary course of a business. The new admissibility rules will not apply in certain circumstances *eg* to privileged material. Certain procedures must be followed by a party who wants to rely on these sections. For example, a party must give notice in advance of their intention to rely on this type of evidence or it will not be admissible under the new provisions.

Under section 16, the court can refuse to admit information or any part of information where it is of the opinion that it is in the interests of justice to do so. In deciding whether to refuse to admit evidence, the court will have regard to factors such as the reliability of the information, the authenticity of the document in which it is contained and any unfairness to any party if it is admitted or excluded. In particular, it will consider whether it is likely to be possible to controvert the information where the person who supplied it does not attend to give oral evidence.

Even if information is admissible, then the court has to consider the weight that should be given to it. Section 16 deals with this as well, stating that the court will have regard to all the circumstances from which any inference can reasonably be drawn as to its accuracy or otherwise. There is another safeguard in section 17. Under that section, the court may hear evidence as to the credibility of the supplier of the information admitted under the new rules. So, for example, the court can hear evidence on credibility that could have been put to the witness had they given evidence in court.

Section 18 provides that copies of business records (even at many removes from the original) are admissible. It does not matter how the copy was produced. However, the court will have to be satisfied as to a copy’s authenticity and reliability.

8. COVID-19

Statutory Instruments:

8.1 **Companies (Miscellaneous Provisions (Covid-19)) Act 2020**

Enacted and commenced on 21 August 2020, this Act introduced measures to provide entities with some flexibility in relation to operational and governance matters during the COVID-19 pandemic. The Act's provisions mostly apply for an initial "interim period" from 21 August to 31 December 2020 (since extended to 9 June 2021). Amongst other matters:

- (a) *Winding-up*: the debt threshold for the commencement of a winding up by the court is extended, for the interim period, from €10,000 for individual debts and €20,000 for aggregate debts, to €50,000 (a single threshold);
- (b) *Examinership*: 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 2014. This amendment means a maximum period of examinership of 150 days in exceptional circumstances (which the Act states includes, but are not limited to, the nature and impact of COVID-19 on the company); and
- (c) *Company seal*: where a company executes a document under seal during the interim period, s43A allows the seal and authorised signatures to appear on "several documents in like form", which will be taken together to constitute one "instrument". While there are quirks in the drafting of s43A that may limit its extent, it does still provide more flexibility than the usual approach of including the seal and authorised signatures on the same page.

8.2 See also the "Real Estate Finance" and "State Finance Schemes" sections below.

9. Credit Unions

Statutory Instruments:

9.1 **Credit Union Act 1997 (Regulatory Requirements) (Amendment) Regulations 2020⁹**

These Regulations amend the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016.

10. Crowdfunding

EU Instruments:

10.1 **Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937**

This Regulation lays down uniform requirements for the provision of crowdfunding services, for the organisation, authorisation and supervision of crowdfunding service providers ("CSPs"), for the operation of crowdfunding platforms as well as for transparency and marketing communications in relation to the provision of crowdfunding services in the EU. The Regulation will apply from 10 November 2021.

10.2 **Directive (EU) 2020/1504 of the European Parliament and of the Council of 7 October 2020 amending Directive 2014/65/EU on markets in financial instruments**

This Directive excludes legal persons authorised as CSPs from the scope of MiFID II.

⁹ SI 675 of 2020.

11. EMIR

EU Instruments:

- 11.1 **Commission Delegated Regulation (EU) 2020/447 of 16 December 2019 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178**
This Delegated Regulation specifies the criteria for establishing the arrangements to adequately mitigate counterparty credit risk associated with covered bonds and securitisations, and amending Delegated Regulations (EU) 2015/2205 and (EU) 2016/1178.
- 11.2 **Commission Delegated Regulation (EU) 2020/448 of 17 December 2019 amending Delegated Regulation (EU) 2016/2251 as regards the specification of the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes**
This Delegated Regulation specifies the treatment of OTC derivatives in connection with certain simple, transparent and standardised securitisations for hedging purposes.
- 11.3 **Commission Delegated Regulation (EU) 2020/1302 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to central counterparties established in third countries**
This Delegated Regulation sets out details of the fees charged by ESMA to third country Central Counterparties (“CCPs”).
- 11.4 **Commission Delegated Regulation (EU) 2020/1303 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the criteria that ESMA should take into account to determine whether a central counterparty established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States**
This Delegated Regulation sets out the criteria that ESMA should take into account to determine whether a CCP established in a third country is systemically important or likely to become systemically important for the financial stability of the Union or of one or more of its Member States.
- 11.5 **Commission Delegated Regulation (EU) 2020/1304 of 14 July 2020 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to the minimum elements to be assessed by ESMA when assessing third country CCPs' requests for comparable compliance and the modalities and conditions of that assessment**
This Delegated Regulation sets out the minimum elements to be assessed by ESMA when assessing third country CCPs requests for comparable compliance and the modalities and conditions of that assessment.
- 11.6 **Commission Delegated Regulation (EU) 2020/2145 of 1 September 2020 amending Delegated Regulation (EU) No 876/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council as regards changes to the composition, functioning and management of colleges for central counterparties**
This Delegated Regulation amends Commission Delegated Regulation (EU) 876/2013 which contains regulatory technical standards (“RTS”) supplementing EMIR on CCP colleges. The revisions to the RTS reflect changes to Article 18(6) of EMIR introduced by EMIR 2.2 (EU) 2019/2099.

12. Fees and Levies

Statutory Instruments:

- 12.1 **Financial Services and Pensions Ombudsman Act 2017 [Financial Services and Pensions Ombudsman Council] Financial Services Industry Levy Regulations 2020**¹⁰
These Regulations provide for each financial service provider to be liable to pay an annual levy in respect of the services provided by the Ombudsman to the financial services industry. These Regulations provide for the collection and recovery of the levy and provide for certain obligations in respect of self-assessment and record keeping by financial services providers. These Regulations also provide for the calculation of the required levy contribution payable by each category of financial services provider for the year ended 31 December 2020, from 27 March 2020.
- 12.2 **European Union (Bank Recovery and Resolution) Resolution Fund Levy Regulations 2020**¹¹
These Regulations prescribe certain matters for the purposes of Regulation 166 of the European Union (Bank Recovery and Resolution) Regulations 2015 with respect to the payment of contributions to the Bank and Investment Firm Resolution Fund, from 20 April 2020.
- 12.3 **Stamp Duty (Designation of Exchanges and Markets) (No1) Regulations 2020**¹²
These Regulations designate Euronext Brussels as a market for the purposes of s75 Stamp Duties Consolidation Act 1999, from 20 March 2020.
- 12.4 **Credit Union Fund (Stabilisation) Levy Regulations 2020**¹³
These Regulations apply to every credit union on 1 January 2021, prescribe the rate of the levy payable as a contribution to the Credit Union Fund in respect of the period from 1 October 2020 to 30 September 2021 and require that the levy be paid to the Minister for Finance by 28 February 2021.
- 12.5 **Credit Institutions Resolution Fund Levy (Amendment) Regulations 2020**¹⁴
These Regulations further amend the Credit Institutions Resolution Fund Levy Regulations 2012 to substitute the definition of “levy period” so that it means the period commencing 1 October 2020 to 30 September 2021 and update additional relevant dates.
- 12.6 **Central Bank Act 1942 (Section 32D) Regulations 2020**¹⁵
These Regulations require all regulated entities to pay a levy contribution, and supplementary levy contributions where applicable, in respect of each authorisation held during a relevant levy period to the Central Bank and set out the method of calculation for the levy and the due date by which the levy must be paid, provide for the issue of a levy notice by the Central Bank in certain circumstances and for the accrual of interest where necessary.

13. Financial Sanctions

EU Instruments:

- 13.1 **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 Central Bank of Ireland maintains a list of European

¹⁰ SI 89 of 2020.

¹¹ SI 135 of 2020.

¹² SI 87 of 2020.

¹³ SI 457 of 2020.

¹⁴ SI 406 of 2020.

¹⁵ SI 345 of 2020.

Union restrictive measures (sanctions) in force, which it updates regularly¹⁶. Various Irish statutory instruments give effect to the European Union restrictive measures contained on this list. See examples below¹⁷

14. Fitness and Probity

Statutory Instruments:

14.1 **Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2020**¹⁸

These Regulations amend the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 to prescribe new pre-approval controlled functions (“PCFs”). The Central Bank has added three new functions to the list of PCFs and has split out PCF-39 Designated Person into six PCF roles aligned to specific managerial functions. The new PCFs comprise PCF-49 Chief Information Officer, which is applicable to all regulated financial service providers except for credit unions, as well as PCF-50 Head of Material Business Line and PCF-51 Head of Market Risk, which apply to banks.

15. Insurance

Statutory Instruments (Commencement Orders):

15.1 **Consumer Insurance Contracts Act 2019 (Commencement) Order 2020**¹⁹

This Order appoints 1 September 2020 as the date on which the Act shall come into operation other than subsection (4) of section 18; sections 8, 9 and 12 and subsections (1) to (5) of section 14 of the Act.

Statutory Instruments:

15.2 **Health Insurance Act 1994 (Section 11E(3)) Regulations 2013 (Amendment) Regulations 2020**²⁰

These Regulations are made by The Health Insurance Authority pursuant to s11E(3) of the Health Insurance Act 1994, as inserted by s15 of the Health Insurance (Amendment) Act 2012 and amend the Schedule to the Health Insurance Act 1994 (s11E(3)) Regulations 2013, from 1 April 2020.

15.3 **European Union (Insurance and Reinsurance) (Amendment) Regulations 2020**²¹

These Regulations give further effect to Directive 2009/138/EC and amend Regulation 3 and 88(8) of the European Union (Insurance and Reinsurance) Regulations 2015, from 30 June 2020.

15.4 **European Union (Insurance Distribution) (Amendment) Regulations 2020**²²

These Regulations amend the European Union (Insurance Distribution) Regulations 2018, by the substitution in Regulation 21(1) of “ for not less than €1,300,380 applying to each claim and in aggregate €1,924,560 per year” for “ for not less than €1,250,000 applying to each claim and in aggregate €1,850,000 per year”, from 12 June 2020.

¹⁶ The list may be accessed [here](#).

¹⁷ Criminal Justice (Terrorist Offences) Act 2005 (Section 42) (Restrictive Measures Concerning Certain Persons and Entities With a View to Combating Terrorism) Regulations 2020 (SI 105 of 2020); • European Union (Restrictive Measures Concerning Iraq) Regulations 2020 (SI 104 of 2020); • European Union (Restrictive Measures Concerning Yemen) Regulations 2020 (SI 167 of 2020).

¹⁸ SI 410 of 2020.

¹⁹ SI 329 of 2020.

²⁰ SI 90 of 2020.

²¹ SI 158 of 2020.

²² SI 215 of 2020.

- 15.5 **Central Bank (National Claims Information Database) Regulations 2020²³**
These Regulations specify additional relevant classes of non-life insurance and the circumstances in which risks falling within the relevant classes of non-life insurance are to be regarded as risks based in the State, for the purpose of the Central Bank (National Claims Information Database) Act 2018 so as to extend the scope of the National Claims Information Database to include employers' liability insurance and public liability insurance and certain non-liability elements of commercial insurance.

EU Instruments:

- 15.6 **Commission Delegated Regulation (EU) 2020/442 of 17 December 2019 correcting 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**
This Delegated Regulation makes corrections relating to the look-through approach and risk weights for flood risk, which are necessary due to previous amendments made by Delegated Regulation (EU) 2019/981.
- 15.7 **Commission Implementing Regulation (EU) 2020/193 of 12 February 2020 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2019 until 30 March 2020 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance**
This Implementing Regulation sets out technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2019 until 30 March 2020.
- 15.8 **Commission Implementing Regulation (EU) 2020/641 of 12 May 2020 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2020 until 29 June 2020 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance**
This Implementing Regulation sets out technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2020 until 29 June 2020.
- 15.9 **Commission Implementing Regulation (EU) 2020/744 of 4 June 2020 on amending Implementing Regulation (EU) 2016/1800 laying down implementing technical standards with regard to 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 updates the mappings of external credit assessment institutions ("ECAIs") to reflect how some ECAIs have extended their credit assessments to new market segments and to reflect modified quantitative and qualitative factors underpinning the credit assessments of some mappings.

16. Investment Firms

EU Instruments:

- 16.1 **Commission Implementing Decision (EU) 2020/2127 of 16 December 2020 amending Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and**

²³ SI 336 of 2020.

recognised market operators in Singapore in accordance with Regulation (EU) No 600/2014 of the European Parliament and of the Council

This Implementing Decision amends Commission Implementing Decision (EU) 2019/541 on the equivalence of the legal and supervisory framework applicable to approved exchanges and recognised market operators in Singapore under the Markets in Financial Instruments Regulation, to include additional approved exchanges and recognised market operators that have been established and authorised in Singapore since the original Implementing Decision was adopted.

17. Investment Management

Acts of the Oireachtas:

17.1 Investment Limited Partnerships (Amendment) Act 2020

This 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 limited partnership agreement (“LPA”) and engage in other related activities without losing their limited liability status. It 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 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 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;
- stipulates that if the LPA provides that where a partner fails to perform any of its obligations under or otherwise breaches the partnership agreement, the sanctions applicable for the failure of performance or breach will not be unenforceable solely because they are penal in nature; and
- allows for the migration of non-Irish LPs to Ireland by way of continuation.

In addition to amending the ILP Act 1994, the Act also extends anti-money laundering beneficial ownership requirements to both ILPs and common contractual funds as well as making some technical amendments to the ICAV Act 2015 to enhance the efficiency of the structure and align it with the Companies Act 2014, where relevant.

Statutory Instruments:

17.2 European Union (Shareholders’ Rights) Regulations 2020²⁴

These Regulations transpose the revised Shareholders’ Rights Directive into Irish law and have applied since 30 March 2020. The Regulations amend the Companies Act 2014 (the “Act”) and

²⁴ SI 81 of 2020.

in particular, introduce three new chapters into the Act, namely Chapter 8A - Rights of Shareholders; Chapter 8B – Transparency of institutional investors, asset managers and proxy advisors; and Chapter 8C – Remuneration Policy, remuneration report and transparency and approval of related party transactions.

Chapter 8B of the Act imposes additional transparency requirements on certain asset managers and institutional investors, which it refers to as a “relevant asset manager” and a “relevant institutional investor”, respectively. The aim of these new requirements is to promote the development of longer-term investment strategies and commit the asset manager to act in the best medium-to-long-term interest of the institutional investor and its final beneficiaries.

Pursuant to these additional requirements, a relevant asset manager must:

- develop and publicly disclose an engagement policy; and
- make certain disclosures to an institutional investor with which the relevant asset manager has entered into an investment agreement.

18. Market Abuse

EU Instruments:

18.1 **Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse**

This Implementing Regulation sets out implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of the Market Abuse Regulation.

18.2 **Commission Implementing Regulation (EU) 2020/1406 of 2 October 2020 laying down implementing technical standards with regard to procedures and forms for exchange of information and cooperation between competent authorities, ESMA, the Commission and other entities under Articles 24(2) and 25 of Regulation (EU) No 596/2014 of the European Parliament and of the Council on market abuse**

This Implementing Regulation sets out implementing technical standards on forms and procedures for co-operation under Articles 24 and 25 of the Market Abuse Regulation.

19. Moneylending

Statutory Instruments:

19.1 **Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Licensed Moneylenders) Regulations 2020²⁵**

These Regulations set out certain requirements for moneylenders licensed by the Central Bank of Ireland, under the Consumer Credit Act 1995, when engaged in the activity of moneylending, from 29 May 2020.

²⁵ SI 196 of 2020.

20. Miscellaneous

Statutory Instruments:

- 20.1 **Investor Compensation Act 1998 (Prescription of Bodies and Persons) (Amendment) Regulations 2020²⁶**
These Regulations provide for the nomination of a person for appointment as director of the Investor Compensation Company DAC from 1 August 2020.
- 20.2 **African Development (Bank and Fund) (Privileges and Immunities) Order 2019²⁷**
This Order provides that certain privileges and immunities are afforded to (a) the African Development Bank in accordance with the Agreement Establishing the African Development Bank, and (b) the African Development Fund in accordance with the Agreement Establishing the African Development Fund, pursuant to section 42A of the Diplomatic Relations and Immunities Act 1967 (as amended).

EU Instruments:

- 20.3 **Regulation (EU) 2020/2004 of the European Central Bank of 26 November 2020 amending Regulation (EU) No 1333/2014 concerning statistics on the money markets (ECB/2020/58)**
This Regulation amends Regulation (EU) 1333/2014 concerning statistics on the money markets.
- 20.4 **Regulation (EU) 2020/2011 of the European Central Bank of 1 December 2020 amending Regulation (EU) No 1409/2013 on payments statistics**
This Regulation amends Regulation (EU) No 1409/2013 on payments statistics.

21. Online Intermediation

EU Instruments:

- 21.1 **Regulation (EU) 2019/1150 of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services**
These Regulations give further effect to Regulation (EU) 2019/1150 which aims to ensure the fair and transparent treatment of business users by online platforms, giving them more effective options for redress when they face problems, creating a predictable and innovation-friendly regulatory environment for online platforms within the EU.

22. Payments

Statutory Instruments:

- 22.1 **European Union (Interchange Fees for Card-based Payment Transactions) (Amendment) Regulations 2020²⁸**
These Regulations amend the European Union (Interchange Fees for Card-based Payment Transactions) Regulations 2015 by replacing a weighted average approach to capping interchange fees for consumer debit transactions with a per transaction cap approach, from 9 December 2020.

²⁶ SI 255 of 2020.

²⁷ SI 616 of 2019.

²⁸ SI 525 of 2020.

EU Instruments:

- 22.2 **Commission Delegated Regulation (EU) 2020/1423 of 14 March 2019 on supplementing Directive (EU) 2015/2366 of the European Parliament and of the Council with regard to regulatory technical standards on the criteria for appointing central contact points within the field of payment services and on the functions of those central contact points**

This Delegated Regulation supplements the Revised Payment Services Directive and sets out regulatory technical standards on the criteria for appointing central contact points within the field of payment services and on the functions of those central contact points.

23. Prospectus

EU Instruments:

- 23.1 **Commission Delegated Regulation (EU) 2020/1272 of 4 June 2020 amending and correcting Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal**

This Delegated Regulation sets out regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal. Its provisions apply retrospectively with effect from 21 July 2019, apart from the insertion of new Article 22a (relating to summaries of prospectuses approved between 21 July 2019 and 16 September 2020 for non-financial entities issuing equity securities) which applies from 17 September 2020.

- 23.2 **Commission Delegated Regulation (EU) 2020/1273 of 4 June 2020 amending and correcting Delegated Regulation (EU) 2019/980 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market**

This Delegated Regulation amends and corrects Delegated Regulation (EU) 2019/980. Certain provisions of the Delegated Regulation apply retrospectively from 21 July 2019.

24. Real Estate Finance

The following real estate legislation (already discussed in the notes for an earlier lecture in this series) may be of interest in the context of real estate finance.

Acts of the Oireachtas:

- 24.1 **Emergency Measures in the Public Interest (Covid-19) Act 2020**

Emergency measures brought in by this Act in response to COVID-19 included a blanket ban on rent increases and tenancy terminations for all types of residential accommodation arrangements for an initial 3 month period, subsequently extended to 1 August 2020. These initial measures affecting residential tenancies were replaced by further temporary measures under (i) the Residential Tenancies and Valuation Act 2020, which have since been replaced by the Planning and Development, and Residential Tenancies Act 2020 and (ii) the Residential Tenancies Act 2020.

- 24.2 **Residential Tenancies and Valuation Act 2020**

The Residential Tenancies and Valuation Act 2020 was passed on 1 August 2020 and commenced in full on the same date. It introduced temporary protections from termination due to non-payment of rent and from rent increases for the period from 2 August 2020 to 10 January 2021 for tenants who self-declared themselves to be at risk of losing their tenancy due to the financial impact of COVID-19. The COVID-related protection measures under this Act

expired on 10 January 2021 and a new temporary protection regime for *at risk* tenants during the pandemic is in effect from 11 January 2021 to 12 April 2021 under Part 3 of the Planning and Development, and Residential Tenancies Act 2020.

In addition to the COVID measures, and so, of on-going general application, this Act changes the general notice requirements for landlords before a residential tenancy can be terminated for non-payment of rent:

- (a) the minimum arrears warning notice, to be served by a landlord before an actual notice of termination for non-payment of rent can be served, is increased from 14 days to 28 days (giving a tenant in arrears of rent at least 56 days to address the arrears before termination can take effect (an arrears warning notice of at least 28 days followed by a further termination notice of, again, at least 28 days); and
- (b) both warning and actual termination notices served on the tenant must also be served on the RTB (receipt of which triggers obligations on the RTB to provide the tenant with certain written information to enable him or her to obtain financial advice and/or dispute the termination, as appropriate).

The Act also includes valuation measures.

24.3 **Residential Tenancies Act 2020**

The Residential Tenancies Act 2020 was enacted on 24 October prompted by the move at that time to introduce “Level 5” Covid restrictions in certain parts of the country. This Act temporarily restricts residential tenancy terminations generally in those areas and during those periods of the pandemic when a 5km restriction applies to people’s movements. It confines itself solely to regulating termination of tenancies by landlords and does not contain any measures to regulate rent increases.

The Act does *not* prohibit tenancy terminations because of behaviour of the tenant or other occupiers or visitors which: (i) is anti-social; would invalidate any insurances in place; or could cause damage to the property.

The protections in this Act run concurrently with the specific protections in place for at risk tenants under Part 3 of the Planning and Development, and Residential Tenancies Act 2020 (the “PDRTA”). Any *at risk* tenant, who qualifies for and claims protection from termination and rent increase under the PDRTA, will be entitled to rely on the more general protection from termination on the terms of this Act, where those apply.

24.4 **Planning and Development, and Residential Tenancies Act 2020 (Part 3)**

The Planning and Development, and Residential Tenancies Act 2020 was enacted on 19 December 2020. Part 3 of the Act replaces the protection regime for *at risk* tenants under the Residential Tenancies and Valuation Act 2020 (the “RTVA”) in a modified way, with effect from 11 January 2021 to 12 April 2021 (the new “emergency period”). Under this Act, for the duration of the new emergency period:

- (a) the protection against termination only applies where the reason for the termination is non-payment of rent; terminations for other reasons may take effect in accordance with the relevant tenancy agreement and the residential tenancies legislation;
- (b) notices for termination may be served but must give at least 90 days’ notice, rather than the usual 28 days, and must not specify a termination date earlier than 13 April 2021; the termination date for any tenant who made a declaration under the RTVA and who continues to enjoy the protection of this Act will move out to 13 April 2021 at the earliest also;
- (c) no rent increase can take effect during the new emergency period and no increase in rent will be payable in respect of any time during that period.

To qualify for the protections:

- (a) a tenant must be in receipt of Covid-related or other financial supports as specified in the Act, but the qualifying date starts to run from 1 August 2020;
- (b) serve a written declaration on the Residential Tenancies Board (“RTB”) (with a true copy to the landlord) that he or she is unable to pay rent due to Covid-19 and is at risk of losing his or her tenancy;
- (c) include with the written declaration served on the RTB, a request for assistance in obtaining advice of the type provided by the Money and Advice and Budgeting Service (“financial advice”); and
- (d) within 5 days of making his or her declaration, serve a notice on his or her landlord seeking a consultation to make rent payment arrangements.

Any tenant who had made a declaration under the RTVA and, so qualified for protection under the RTVA on 10 January 2021, may also qualify for continued protection under this Act on taking the additional equivalent steps to (c) and (d) just above.

Unlike under the RTVA, the protections under this Act will not apply where:

- (a) the tenant declaration of risk is not also accompanied by the request of the RTB for assistance in obtaining financial advice; or
- (b) on 10 January 2021 any rent has been in arrears for 5 months or more (whether or not consecutively); or
- (c) the tenant doesn’t provide sufficient information or documentation reasonably required to facilitate the financial advice envisaged under the Act on time or at all; or
- (d) the tenant doesn’t comply with a rent payment arrangement agreed with the landlord; or
- (e) the landlord serves a written declaration on the RTB (with a true copy on the tenant), stating one of the grounds at (b), (c) or (d) above or that the application of the protections to the tenant would cause undue financial hardship to the landlord.

24.5 **Finance Act 2020 (Real Estate)**

The Finance Act 2020 was signed into law on 19 December 2020. While the Finance Act measures generally are outside the scope of this lecture series, we provide a brief outline of provisions of interest from a real estate perspective.

Stamp Duty

Section 50 amends section 83D of the Stamp Duties Consolidation Act 1999 (introduced in the Finance Act 2017) which provides for a partial refund of stamp duty paid at the commercial rate where land is subsequently developed for residential purposes. It extends the relief for a further year to construction operations commenced before 31 December 2022 and extends the period allowed for the completion of construction from two years to 30 months.

Help to Buy

Section 7 amends section 477C (5A) of the Taxes Consolidation Act 1997 to extend the enhanced Help to Buy (“HTB”) relief. The HTB scheme provides income tax relief to assist first-time buyers with obtaining the deposit required to purchase or build their first home. As part of the Government’s July Stimulus plan, a temporary enhanced HTB relief was introduced to increase the HTB relief to the lesser of (i) €30,000 (up from €20,000) or (ii) 10 per cent (up from 5 per cent) of the purchase price of the new home or of the completion value of the property in the

case of self builds or (iii) the amount of Income Tax and DIRT paid over the four years prior to making the application. The enhanced HTB relief was set to expire on 31 December 2020. This amendment provides for an extension of the enhanced HTB relief by 12 months to 31 December 2021.

Statutory Instruments:

24.6 Registration of Deeds and Title Act 2006 (Fees) Order 2020²⁹

This Order, effective from 1 January 2021 until 31 December 2023, provides that no fee shall be chargeable in respect of an application for the registration of an entry of a charge on the register of the property charged where such application is lodged in an electronic manner approved by, and complies with the requirements of, the Property Registration Authority.

25. Securitisation

EU Instruments:

25.1 Commission Delegated Regulation (EU) 2020/1224 of 16 October 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE

This Delegated Regulation sets out regulatory technical standards specifying the information and the details of a securitisation to be made available by the originator, sponsor and SSPE.

25.2 Commission Delegated Regulation (EU) 2020/1226 of 12 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council and laying down regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements

This Delegated Regulation sets out regulatory technical standards specifying the information to be provided in accordance with the STS notification requirements.

25.3 Commission Delegated Regulation (EU) 2020/1229 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency

This Delegated Regulation sets out regulatory technical standards on securitisation repository operational standards for data collection, aggregation, comparison, access and verification of completeness and consistency.

25.4 Commission Delegated Regulation (EU) 2020/1230 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository

This Delegated Regulation sets out regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository.

25.5 Commission Implementing Regulation (EU) 2020/1225 of 29 October 2019 laying down implementing technical standards with regard to the format and

²⁹ SI 544 of 2020.

standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE

This Implementing Regulation sets out implementing technical standards regarding the format and standardised templates for making available the information and details of a securitisation by the originator, sponsor and SSPE.

25.6 Commission Implementing Regulation (EU) 2020/1227 of 12 November 2019 laying down implementing technical standards with regard to templates for the provision of information in accordance with the STS notification requirements

This Implementing Regulation sets out implementing technical standards regarding templates for the provision of information in accordance with the STS notification requirements.

26. Securities Markets

Statutory Instruments (Commencement Orders):

26.1 Migration of Participating Securities Act 2019 (Commencement) Order 2020³⁰

This Order appoints 29 January 2020 as the date on which the Migration of Participating Securities Act 2019 shall come into operation.

Statutory Instruments:

26.2 Migration of Participating Securities Act 2019 (Prescribed Form) (Section 10) Regulations 2020³¹

These Regulations set out the prescribed form for consent to migration of securities by participating issuers for the purposes of s10(1) Migration of Participating Securities Act 2019, from 29 January 2020.

EU Instruments:

26.3 Commission Delegated Regulation (EU) 2020/1989 of 6 November 2020 amending Delegated Regulation (EU) 2019/815 as regards the 2020 update of the taxonomy laid down in the regulatory technical standards for the single electronic reporting format

This Regulation is a technical update to Delegated Regulation (EU) 2019/815 to reflect updates in the IFRS taxonomy.

27. State Finance Schemes

Acts of the Oireachtas:

27.1 Microenterprise Loan Fund (Amendment) Act 2020

This Act amends the Microenterprise Loan Fund Act 2012 to increase the maximum amount of moneys that the Minister for Business, Enterprise and Innovation may grant under that Act to Microfinance Ireland; to extend the borrowing powers of Microfinance Ireland under that Act and, for that purpose, to increase the maximum aggregate amount of borrowings under that Act by Microfinance Ireland; to amend the European Investment Fund Agreement Act 2018 to increase the maximum aggregate liability in respect of contributions committed by the Minister for Business, Enterprise and Innovation and the Minister for Agriculture, Food and the Marine under all agreements entered into under that Act for the time being in force; and to provide for related matters.

27.2 Credit Guarantee (Amendment) Act 2020

This Act amends the Credit Guarantee Acts 2012 to 2016 by adding a new “COVID-19 credit guarantee scheme” (the “COVID-19 scheme”) to the existing SME credit guarantee schemes.

³⁰ SI 26 of 2020.

³¹ SI 27 of 2020.

The COVID-19 scheme will operate independently of those other schemes and is more ambitious in its scale and scope (eg it is not only restricted to SMEs).

Statutory Instruments (Commencement Orders):

- 27.3 **Microenterprise Loan Fund (Amendment) Act 2020 (Commencement) Order 2020³²**
This Order appoints 20 July 2020 as the date on which the Microenterprise Loan Fund (Amendment) Act 2020 comes into operation.
- 27.4 **Credit Guarantee (Amendment) Act 2020 (Commencement) Order 2020³³**
This Order appoints 11 August 2020 as the date on which the Credit Guarantee (Amendment) Act 2020 comes into operation.

Statutory Instruments:

- 27.5 **Harbours Act 1996 (Section 23) (Dublin Port Company) Order 2020³⁴**
This Order provides that for the purposes of section 23 of the Harbours Act 1996, the aggregate at any one time of the borrowings by Dublin Port Company shall not exceed 60 per cent of the value of so much of the company's assets as are treated as fixed assets for the purposes of its accounts.
- 27.6 **Microenterprise Loan Fund Scheme (Amendment) Regulations 2020³⁵**
These Regulations amend the Microenterprise Loan Fund Scheme 2015 by substituting Regulation 5.1.2, regarding the purpose of a loan and Regulation 5.1.3 regarding permissible loan values, from 13 March 2020.
- 27.7 **COVID-19 Credit Guarantee Scheme 2020³⁶**
This statutory instrument provides for the establishment of the COVID-19 Credit Guarantee Scheme. It provides an overview of the Scheme which includes: (i) the powers of the minister to grant a guarantee subject to the conditions specified in s4 and s4A of the Credit Guarantee Act 2012 (as amended) (ii) the facility and guarantee term applicable under the scheme; (iii) the nominal values of financial products that are allowable under the Scheme; (iv) the nature of finance agreements that are considered as Eligible Credit under the Scheme; (v) the requirement to charge a premium as part of a credit agreement under the Scheme to a beneficiary availing of the Scheme; and (vi) the application of a pricing discount, which participating finance providers are required to include on credit agreements under the Scheme, in order to pass on the financial benefit of the State guarantee. Also described is the process of approval of finance providers to this Scheme.
- 27.8 **Credit Guarantee (Amendment) Act 2020 (Extension of Guarantee Date) Order 2020³⁷**
This Order provides 30 June 2021 is the appointed day for the purpose of s4A(1)(a)(ii) Credit Guarantee Act 2012. Section 4A concerns the power of the Minister to give guarantees in accordance with a COVID-19 credit guarantee scheme.

³² SI 268 of 2020.

³³ SI 303 of 2020.

³⁴ SI 41 of 2020.

³⁵ SI 78 of 2020.

³⁶ SI 325 of 2020.

³⁷ SI 633 of 2020.

28. Sustainable Finance

EU Instruments:

28.1 **Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088**

This Regulation (also referred to as the Taxonomy Regulation) establishes the criteria for determining whether an economic activity qualifies as environmentally sustainable for the purposes of establishing the degree to which an investment is environmentally sustainable. It also introduces an EU wide taxonomy of environmentally sustainable activities along with new disclosure requirements.

29. Anticipated Developments

- Criminal Justice (Money Laundering and Terrorist Financing)(Amendment)(Bill)
- Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (applies from 10 March 2021)
- Directive (EU) 2019/2034 of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (to be transposed into domestic law by 26 June 2021)
- Regulation (EU) 2019/2033 of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (applies from 26 June 2021)
- Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (applies from 28 June 2021)
- Directive (EU) 2019/1160 of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU with regard to cross-border distribution of collective investment undertakings (to be transposed into national law by 2 August 2021)
- Consumer Protection (Regulation of Retail Credit Firms) Bill
(To ensure that any person or firm which provides credit, hire purchase, PCPs, consumer hire agreements to relevant persons will be required to be authorised as a ‘retail credit firm’ by the Central Bank unless they are already subject to such Central Bank authorisation. Heads were approved on 22 October 2019 and PLS still is to be determined.)
- Affordable Housing Bill
(To give legislative effect to the Government’s affordable housing policy. Work is underway.)
- Land Development Agency Bill
(To establish the Land Development Agency on a primary legislative footing. Revised Heads approved on 20 October 2020 and PLS has taken place.)
- Co-operative Societies Bill
(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. Heads are in preparation.)

- **Companies (Amendment) Bill**
(To provide for a dedicated rescue process for small companies and to make changes to relevant provisions of company law in respect of the rights of employees, as creditors, concerning the liquidation of a company. Heads are in preparation.)
- **Limited Partnership Bill**
(To modernise the Limited Partnership Act 1907 which is concerned with the registration of Limited Partnerships. Heads are in preparation.)
- **Credit Review Bill**
(To put SI 127 of 2010 (which established the Credit Review Office) on a statutory footing. Work is underway.)
- **Credit Union Interest on Loans Bill**
(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. Heads were approved on 11 June 2019, Committee agreed to waive PLS.)
- **Personal Insolvency (Amendment) (No 2) Bill**
(To update aspects of personal insolvency legislation, following statutory review of Personal Insolvency Acts. Work is underway.)
- **European Stability Mechanism (Amendment) Bill**
(To give effect to the amendments to the ESM Treaty. Heads are in preparation.)

30. Relevant Finance and Financial Services Publications 2020

- 30.1 Investment Management – 2019 Regulatory Round Up (8 January 2020)
- 30.2 Central Bank Relaxes Index Confirmation Rules (10 January 2020)
- 30.3 The A-Z of Regulatory Deadlines for Irish Funds and Fund Service Providers in 2020 (16 January 2020)
- 30.4 New Security Filing for Transferees of Fixed Charges on Book Debts (17 January 2020)
- 30.5 Financial Services Regulatory Update – December 2019 Round Up (20 January 2020)
- 30.6 Pending Reform of Consumer Insurance Contracts (23 January 2020)
- 30.7 Financial Services Regulatory Update – January 2020 Round Up (14 February 2020)
- 30.8 Managing Wholesale Market Conduct Risk (17 February 2020)
- 30.9 Sustainable Finance: New Disclosure Requirements (27 February 2020)
- 30.10 Sustainable Finance: New Benchmarks (27 February 2020)
- 30.11 Sustainable Finance: Taxonomy Regulation – Final Text Agreed (27 February 2020)
- 30.12 Financial Services Regulatory Update – February 2020 Round Up (9 March 2020)
- 30.13 Recent Regulatory Updates for Fund Managers (10 March 2020)
- 30.14 COVID-19: Pandemic Planning for Financial Service Providers (13 March 2020)
- 30.15 COVID-19: Impact on Reporting Securities Financing Transactions (19 March 2020)
- 30.16 COVID-19: Back to 0% for the Counter Cyclical Capital Buffer (CCyB) (19 March 2020)
- 30.17 COVID-19: Financial Services Round-Up for 16-22 March 2020 (23 March 2020)
- 30.18 Revised Shareholders’ Rights Directive Transposed into Irish Law: Update for Asset Managers (27 March 2020)
- 30.19 COVID-19: Financial Services Round-Up for 23-29 March 2020 (31 March 2020)
- 30.20 Asset Managers and Cybersecurity Risk Management Practices – Central Bank Update (3 April 2020)
- 30.21 Financial Services Regulatory Update – March 2020 Round Up (6 April 2020)
- 30.22 COVID-19: Financial Services Round-Up for 30 March-5 April 2020 (7 April 2020)
- 30.23 COVID-19: Central Bank of Ireland Sets Out How Insurers Should Approach Claims (8 April 2020)
- 30.24 EMIR Update – ESMA Consults on Pension Scheme Arrangements (8 April 2020)
- 30.25 ESMA Publishes Final Guidance on Performance Fees (17 April 2020)
- 30.26 COVID-19: Central Bank of Ireland Announces Flexibility Measures for Funds, Fund Service Providers and Investment Firms (20 April 2020)
- 30.27 COVID-19: Financial Services Round-Up for 6-19 April 2020 (21 April 2020)

- 30.28 COVID-19: Financial Services Round-Up for 20-26 April 2020 (28 April 2020)
- 30.29 EMIR Refit – New Reporting Requirements Coming Soon! (5 May 2020)
- 30.30 COVID-19: Financial Services Round-Up for 27 April - 3 May 2020 (6 May 2020)
- 30.31 Financial Services Regulatory Update – April 2020 Round Up (8 May 2020)
- 30.32 COVID-19: Financial Services Round Up for 4-17 May 2020 (19 May 2020)
- 30.33 AML Developments – European Commission Action Plan (22 May 2020)
- 30.34 COVID-19: Financial Services Round-Up for 18-31 May 2020 (5 June 2020)
- 30.35 EMIR Reporting - Check Your Compliance Calendar (12 June 2020)
- 30.36 Financial Services Regulatory Update – May 2020 Round Up (12 June 2020)
- 30.37 COVID-19: Market Abuse – A Reminder of the Risks (15 June 2020)
- 30.38 Supervising Costs in UCITS and AIFs – in for a Penny, in for a Pound! (19 June 2020)
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