Banking Regulation in Ireland: Overview

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This Banking Regulation guide provides a high-level overview of the governance and supervision of banks, including legislation, regulatory bodies, licensing, prudential and resolution requirements and recent trends in the regulation of banks.

Legislation and Regulatory Authorities

Legislation

Regulatory Authorities

Bank Licences

Organisation of Banks

Legal Entities

Governance

Prudential Requirements

Shareholdings/Acquisition of Control

Liquidation and Resolution

Conduct of Business

Contributor Profile

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Legislation and Regulatory Authorities

Legislation

1. What is the legal and regulatory framework for banking regulation?

The primary legislation regulating the banking system in Ireland is the Single Supervisory Mechanism Regulation (SSMR) ((EU) 1024/2013) and the Central Bank Acts 1942-2014 (as amended).

Under the SSMR, the European Central Bank (ECB) is the lead regulator, with delegation to the Central Bank of Ireland (Central Bank) as the competent authority in Ireland. The Central Bank Acts 1942-2014 are supplemented with various codes of conduct and other measures issued by the Central Bank. These impose further requirements on banks, for example in relation to corporate governance and conduct of business matters.

Applicable EU legislation that is not directly effective is mainly transposed into Irish law by secondary legislation, that is, statutory instruments.

Regulatory Authorities

2. What are the regulatory and supervisory authorities for banking regulation in your jurisdiction?

Lead Bank Regulators

The ECB is the competent authority in Ireland for granting banking licences. All applications for authorisation in Ireland are submitted to the Central Bank. The Central Bank is the sole regulatory authority with statutory functions and powers for the authorisation and supervision of banks in Ireland, and also has responsibility for enforcement. The ECB reviews licensing applications to ensure they are in accordance with EU law.

Since the ECB Single Supervisory Mechanism (SSM) was introduced in November 2014, the Central Bank has been the home state regulator for "less significant" institutions operating in Ireland, defined in accordance with the SSMR.

The ECB is the home state regulator for "significant institutions", and works alongside the Central Bank in their supervision.

The SSMR delegates specific tasks to the ECB concerning prudential supervision of credit institutions. It sets out two classes of supervisory activities:

- Core: the responsibility of the ECB, for example, the assessment of qualifying holdings.
- Non-core: the responsibility of the Central Bank, for example consumer protection.

The ECB is responsible for core supervisory responsibilities. Significant institutions are directly supervised by a Joint Supervisory Team (JST) led by the ECB, which consists of both ECB and Central Bank supervisors. The Central Bank remains responsible for the supervision of activities of institutions defined as less significant.

The Central Bank operates a direct prudential supervision approach, as well as a risk- based approach to supervision. In 2011, the Central Bank introduced the Probability Risk and Impact System (PRISM), which is the Central Bank's framework for the supervision of regulated firms, including banks. Some of the key objectives of the PRISM framework are to:

- Operate a supervisory risk assessment framework in line with international best practice.
- Ensure that action is taken to mitigate unacceptable risks in firms.
- Have a tool for the allocation of resources based on the impact of firm culture.
- Ensure a minimum level of supervisory engagement for different classes of firms.
- Have a tool that requires actions to mitigate risks, and track progress against these objectives.

The PRISM model considers the risk and potential impact of a regulated entity on financial stability and the consumer. Information provided by the regulated entity, together with information in relation to the sector in which that regulated entity operates is considered, and an appropriate risk categorisation attributed by the Central Bank.

All banks subject to prudential supervision by the Central Bank are categorised under PRISM. The categorisation of an entity determines the manner in which it will be supervised. The size of the team of supervisors assigned to and the level of interaction and engagement with the ultra-high/high entities is far greater than those entities categorised as medium high and medium low. Those with the ability to have the greatest impact on financial stability and the consumer receive the highest level of supervision and structured engagement plans, leading to early interventions to mitigate potential risks.

The Central Bank's approach to regulation of consumer and prudential issues has become more vigorous since 2008. The Central Bank sets out its future priorities, activities, and desired outcomes, under each of its main areas of responsibility in the Strategic Plan 2019 to 2021.

The main tool of enforcement used by the Central Bank is the power to impose significant monetary penalties on regulated firms and also persons concerned in the management of such firms, through the administrative sanction procedure. Since the commencement of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank's powers and range of sanctions in this regard have been strengthened significantly. The maximum fine for a firm is EUR10 million or 10% of turnover, while the fine for persons concerned in the management of the firm is EUR1 million.

Other Authorities

Irish banks are subject to the oversight of other regulatory authorities, such as the Data Protection Commission, who is responsible for the enforcement of data protection legislation.

The Financial Services and Pensions Ombudsman (FSPO) is a statutory officer, who deals independently with consumers about their individual dealings with financial services providers. The FSPO is the arbiter of unresolved disputes and is impartial.

The Competition and Consumer Protection Commission (CCPC) is the statutory body responsible for the enforcement of consumer complaints.

The Corporate Enforcement Authority (CEA) was established in July 2022 and has statutory powers of investigation and enforcement powers in civil and criminal cases. The CEA's statutory functions include promoting compliance with company law, assessing the behaviour and conduct of directors of insolvent companies and investigating instances of suspected breaches of company law.

Central Bank

In addition to its role as regulator, the Central Bank is a member of the Eurosystem. As part of this role, the Governor of the Central Bank is a member of the Governing Council of the ECB, which is responsible for setting monetary policy. The Eurosystem monetary policy is then implemented on a decentralised basis by each member state's central bank.

It also acts as the resolution authority (*see Question 15*).

Others

The 2020 Protocol between the Central Bank and the Auditors of Regulated Financial Service Providers (Auditor Protocol) aims to enhance information sharing and facilitate meetings between the Central Bank and auditors of regulated financial service providers, including banks, to improve regulatory and statutory audit processes (see *Question 10*).

Bank Licences

3. What licence(s) are required to conduct banking services and what activities do they cover?

A person is prohibited from doing any of the following, unless that person is a holder of a licence inside or outside Ireland:

- Carrying on banking business.
- Holding themselves out or representing themselves as a banker or as carrying on banking business.
- Accepting deposits or other repayable funds from the public on behalf of any other person.

(Section 7(1), Central Bank Act 1971 (as amended).)

Banking business is defined in section 2(1) of the Central Bank Act 1971 as any business that consists of or includes both:

- Receiving money on the person's own account from members of the public, either on deposit or as repayable funds.
- The granting of credit on own account.

The definition lists a number of activities specifically excluded from the definition of banking business.

The main concept in the definition is deposit-taking, that is, receiving money from members of the public, either on deposit or as repayable funds. Repayable funds are not defined in the Central Bank Act 1971. However, a deposit is defined as a sum of money accepted on terms under which it is repayable with or without interest, whether on demand or on notice, or at a fixed or determinable future date (section 2(2), Central Bank Act 1997).

A body corporate, an unincorporated body or an individual carrying on business is deemed to hold itself or themselves out as a banker, if the name of the body or business includes any of the words "bank", "banker" or "banking", or any analogous words (Central Bank Act 1971).

The grant of a banking licence allows a bank to pursue a wide range of activities which otherwise require individual authorisation.

As well as banking business, a licensed bank can carry out, among other things, the activities listed in Annex 1 of the *CRD IV Directive* (2013/36/EU), including:

- Payment services, as set out in the revised Payment Services Directive ((EU) 2015/2366) (PSD2).
- Investment services, as contained in *MiFID 2* ((2014/65/EU)).

Banking licence holders must comply with legislation covering conduct of business and prudential matters, as well as codes of practice which cover a varied range of areas and issues.

CRD IV, as amended by CRD V and the *Capital Requirements Regulation* (CRR) (as amended by the *CRR II Regulation* ((EU) 2019/876)) prescribe specific rules and initial/minimum capital requirements when a bank proposes to hold qualifying holdings/ assets outside the financial sector.

4. What is the application process for bank licences?

Application

The ECB is now the competent authority in Ireland for granting banking licences, under section 9 of the Central Bank Act 1971. However, applications are made to the Central Bank. The Central Bank checks that the proposed activity is compatible with Irish requirements before the ECB will grant the licence.

The application process for a banking licence is very detailed. It consists of three principal stages:

- **Preliminary meeting**. A preliminary meeting takes place with the Central Bank to determine the scope of the application. It is recommended to arrange this at the earliest opportunity.
- **Submission of the application**. Applications are initially framed as a proposal. Having reviewed the proposal, the Central Bank provides a preliminary view on whether the application should be submitted.

  The application incorporates the Central Bank's checklist for completing and submitting bank licence application forms (Checklist) and includes a detailed business plan and programme of operations. Applications must contain the completed Checklist and all relevant supporting documentation.
- **Decision.** A decision is made by the ECB on whether to grant the licence.

The application process is iterative, and involves comments from, and responses to, the Central Bank after submission of a draft application.

Requirements

The main areas for the Central Bank's review of an application include the following:

- Overview of the parent/group to which the applicant belongs.
- Consolidated supervision of the parent/group entities.
- Ownership structure.
- Applicant's objectives and proposed operations (with emphasis on the detailed business plan that must be included).
- Legal structure.
- Organisation of the applicant (including corporate governance arrangements, fitness and probity of directors and senior management, and so on).
- Risk oversight (for example, audit, compliance, risk management, treasure, financial control, internal controls and policies, anti-money laundering procedures, conflicts of interest, liquidity, outsourcing and reporting structures).
- Capital, funding and solvency projections (as required by the CRR)).
- Business continuity.

When the review of the application has been satisfactorily completed, the ECB will decide whether to grant a banking licence. A banking licence is only granted where the ECB and the Central Bank are satisfied that the applicant complies with the authorisation requirements.

There is no legislation setting a numerical limit on the number of bank licences that can be granted in Ireland.

Foreign Applicants

There are no specific requirements for foreign (non-EEA) applicants. Foreign applicants must either:

- Incorporate a company in Ireland which will then seek authorisation under section 9 of the Central Bank Act 1971.
- Establish an Irish branch which can then seek a third country branch bank licence under section 9A of the Central Bank Act 1971.

Timing and Basis of Decision

It takes several months for an application to be considered complete by the Central Bank. This will depend on the complexity and quality of the application. A decision must be taken within 12 months of submission of the complete application. There are no additional rules for foreign applicants.

Cost and Duration

While no fee is payable to apply for a licence, annual levies are payable by banks after authorisation.

The Central Bank Reform Act 2010 gave the Central Bank power (with the approval of the Minister for Finance) to make regulations prescribing an annual Industry Funding Levy (Levy) to be paid by regulated financial service providers to the Central Bank.

The Minister for Finance published the Credit Institutions Resolution Fund (Amendment) Levy Regulations, 2020 (2020 Regulations) on 6 October 2020. The 2020 regulations:

- Provide for contributions by authorised credit institutions to the Credit Institutions Resolution Fund under section 15 of the Central Bank and Credit Institutions (Resolution) Act, 2011.
- Apply to every authorised credit institution, including includes banks, building societies and credit unions licensed in Ireland (except institutions covered by the Credit Institutions (Stabilisation) Act, 2010 (2010 Act)).

In January 2021, the Central Bank notified each credit institution of the amount of the levy payable to the Credit Institution Resolution Fund based on returns previously submitted to the Central Bank. Credit institutions within scope of the 2020 Regulations were required to make such payments not later than 28 February 2021.

The Credit Institutions Resolution Fund (Amendment) Levy Regulations 2023 (2023 Regulations) which update the Credit Institution Resolution Fund Levy Regulations 2012 (2012 Regulations) were introduced in September 2023.

The 2012 Regulations, as amended, required every authorised credit institution (except institutions covered by the 2010 Act) to pay a levy in respect of the levy period to the Central Bank for the Resolution Fund by 29 February 2024.

After this date, interest will be charged on any outstanding levy at a rate of 8% per annum.

Banking licences are granted for an indefinite term and last until they are withdrawn.

5. Can banks headquartered in other jurisdictions operate in your jurisdiction on the basis of their home state banking licence?

A bank authorised in another EEA member state (the home state) can passport its services through establishing a branch in Ireland or by providing its services in Ireland (the host state) on a freedom of services basis without having to obtain any Irish regulatory authorisations.

The home state regulator retains responsibility for the prudential supervision of the bank. The home state regulator determines the capitalisation requirements for the bank's total business, which includes the branch, and supervises its solvency on an ongoing basis. The Central Bank supervises the passported entity's conduct of business in Ireland.

In contrast, a non-EEA bank seeking to operate in Ireland must first establish an Irish branch which must then apply to the Central Bank to obtain a third country branch bank licence under section 9A of the Central Bank Act 1971.

Organisation of Banks

Legal Entities

6. What legal entities can operate as banks?

Section 18(2) of the Companies Act 2014 prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. When the Companies Act 2014 came into force, existing credit institutions were required to re-register with the Companies Registration Office (CRO) as a designated activity company (DAC), unless they were public limited companies (PLCs).

A new bank is structured as a DAC from the beginning of the application process. Most banks are therefore DACs, unless they are PLCs.

Before 2008, Irish retail banks were entirely commercially owned. Shares in such banks were publicly traded on the Irish Stock Exchange, and were typically held by a mix of institutional investors (including investment funds and pension funds) and a large number of retail investors.

The Irish banking system was radically restructured following the 2008 financial crisis. The Irish Government became a substantial shareholder in the largest two retail banks, AIB and Bank of Ireland, but it has moved towards reducing its ownership as the Irish economy has recovered in recent times.

7. What requirements apply to the structure of banking groups?

Article 21b of the CRD V introduced a requirement for certain third-country groups to have an intermediary parent undertaking (IPU) in the EU. This applies to firms belonging to the same third-country group, with two or more subsidiaries in the EU and where the total value of the assets of that group exceeds EUR40bn. Those firms had to establish an IPU by 30 December 2023.

The total value of the assets takes into account the group's assets both inside and outside the EU. Assets held in subsidiaries outside of the EU, but part of the EU consolidation would count towards the threshold.

An IPU can take the form of an authorised credit institution, a financial holding company or a mixed financial holding company that has been granted approval under Article 21a of CRD V. The IPU can also take the form of an authorised investment firm, where none of the firms within the third-country group are a credit institution (Article 21b(3), CRD V).

There is an exception which allows for the establishment of two IPU's where either:

- A single IPU would be incompatible with a mandatory requirement for separation of activities imposed by the rules of that third-country group or its supervisory authorities.

- A single IPU would render resolvability less efficient than in the case of two IPU's, according to an assessment carried out by the competent resolution authority of the EU IPU.

Governance

8. What are the governance and organisational requirements for banks?

The Corporate Governance Requirements for Credit Institutions 2015 (Corporate Governance Requirements) impose minimum core standards on all credit institutions licensed or authorised by the Central Bank, and additional requirements on credit institutions designated as "High Impact" under PRISM by the Central Bank.

All credit institutions subject to the Corporate Governance Requirements must disclose this in their annual report and submit an annual compliance statement to the Central Bank.

Compliance with the Corporate Governance Requirements is mandatory and there is no scope for departures from it. Boards must have at least five directors, and credit institutions designated as High Impact by the Central Bank must have at least seven.

Certain aspects of the Corporate Governance Requirements are modified for "significant" credit institutions .

Banking institutions are further required to comply with the EBA's Guidelines on Internal Governance under CRV IV, together with its Guidance on the Assessment of Suitability of Members if the Management Body and Key Function Holders.

9. What is the supervisory regime for key individuals within banks?

The Central Bank's Fitness and Probity regime is set out in Part 3 of the Central Bank Reform Act 2010 (as amended) and applies to all individuals performing controlled functions (CFs). There are 11 CF roles prescribed by the legislation. In addition, 54 senior positions are prescribed as "pre-approval controlled functions" (PCFs).

The Fitness and Probity Standards set out minimum standards of competence and knowledge/experience (fitness) and good character and financial soundness (probity) that must be met by anyone who performs a CF role:

- A PCF/CF must be competent and capable, honest, ethical and act with integrity and be financially sound.
- A person must have a level of fitness and probity appropriate to the performance of their particular function.
- CFs and PCFs must agree to abide by the minimum standards.

As well as satisfying the fitness and probity requirements, individuals who are to be appointed to a PCF role must first be approved by the Central Bank (or in the case of significant institutions, the ECB). The individual must complete an online individual questionnaire, which is endorsed by the proposing bank and then submitted electronically to the Central Bank. Persons performing PCFs are approved by the Central Bank on an institution-specific basis. This means that a previous approval in respect of one firm will not of itself enable a person to perform a PCF for another.

On 9 March 2023, the Central Bank (Individual Accountability Framework) Act 2023 (IAF Act) was signed into law and was partially commenced on 19 April 2023. The IAF Act was published to improve the culture of the financial sector and to restore public trust in the sector. The IAF act includes the following four key components:

- Standards of behaviour for regulated financial services providers and the individuals working within them (Conduct Standards).
- A Senior Executive Accountability Regime (SEAR) which ensures clearer accountability.
- Enhancements to the current Fitness and Probity Regime.
- A unified enforcement process applicable to all contraventions by firms and individuals which fall within the remit of the financial services legislation.

In introducing the IAF, the Irish Government appears to have been influenced by the Senior Manager and Certification Regime (SMCR) put in place in the UK in 2016. There are broad similarities between the two schemes. For example, the Conduct Standards in the IAF are largely identical to the UK's equivalent, the Conduct Rules. The requirements underpinning the SEAR are also representative of the SMCR with the adoption of a new category of senior executive functions and the placing of obligations on firms to allocate senior staff with guidance on prescribed responsibilities and so on.

The introduction of the IAF aims to positively impact the financial services sector in the following ways:

- Financial service providers will be fully accountable to their customers for the services and advice they offer.
- The duties and responsibilities of employees working in the financial services sector will be more transparent, providing employees with greater clarity as to their obligations.
- Senior executives will be accountable to both firms and shareholders for their decisions and actions.
- Risky decision making will be reduced, resulting in increased stability in the financial services market.

10. Do any specific remuneration requirements apply to bank employees?

Banks must establish remuneration policies at group, parent company and subsidiary levels, including those established in offshore financial centres. Total remuneration policies, including salaries and discretionary pension benefits, must be set out for categories of staff whose professional activities have a material impact on the risk profile of the bank, including:

- Material risk-takers, as defined in CRD V that is, any staff that receive:
  - remuneration of EUR 500,000 or more; or
  - remuneration which is higher than the average awarded to senior management.
- Staff engaged in controlled functions.

CRD V clarifies that the rules in relation to deferral, retention and payment in instruments apply to all institutions and their identified staff, except:

- Small and non-complex firms whose assets' value is on average equal to or less than EUR5 billion over the four-year period immediately preceding the current financial year.
- Staff members whose annual variable remuneration does not exceed EUR50,000 and does not represent more than one quarter of the staff member's total remuneration

Banks' remuneration policies must comply with various principles, in particular:

- The remuneration policy for all staff should be gender neutral, that is staff, independent of their gender, should be equally remunerated for equal work or work of equal value.
- Limits on the remuneration that can be paid to certain individuals.
- A requirement to establish a remuneration policy and framework that:
  - is in line with the business strategy, objectives, values and long-term interests of the bank; and
  - incorporates measures to avoid conflicts of interest.

CRD IV and CRD V impose a strengthened remuneration framework to deter excessive risk taking, relating to the relationship between the variable and fixed components of remuneration:

- There are disclosure and transparency requirements for individuals who earn more than EUR1 million per year.
- The variable component of the total remuneration cannot exceed 100% (or 200% with shareholder approval) of the fixed component of the total remuneration of material risk-takers.
- On 21 July 2021, the EBA published revised Guidelines on sound remuneration policies (EBA Remuneration Guidelines) to take into account the amendments introduced by the CRD V in relation to institutions' sound remuneration policies and in particular the requirement that those remuneration policies should be gender neutral. The EBA Remuneration Guidelines apply to credit institutions, certain investment firms and competent authorities. They complement the remuneration requirements of CRD IV and CRD V.

Significant credit institutions are also required to have a dedicated remuneration committee at board level.

Prudential Requirements

11. What are the prudential requirements for banks?

The CRR has direct effect in Ireland and was transposed into Irish law by the:

- European Union (Capital Requirements) Regulations 2014.
- European Union (Capital Requirements) (No. 2) Regulations 2014.
- European Union (Capital Requirements) (Amendment) Regulations 2020.

Under this framework, a bank must have initial capital of at least EUR5 million and be in a position to meet ongoing risk-based capital requirements. Banks are further required to maintain financial resources equal to or greater than a percentage of their risk-weighted assets (RWA),

The Central Bank has set additional capital buffers for the six significant Irish banks which were in 2023 AIB Group plc, Bank of Ireland Group plc, Citibank Europe plc, Bank of America Europe DAC, Barclays Bank Ireland plc and Permanent TSB Group Holdings plc. These significant Irish banks are considered other systematically important institutions (O-SIIs').

CRD IV allows the Central Bank to require O-SIIs to maintain a buffer requirement of up to 2% of risk-weighted assets. So far, O-SII buffers ranging from 0.5 to 1.5% are being applied to the six identified O-SIIs but these buffers are kept under yearly review by the Central Bank. These decisions are made in conjunction with the ECB as is required for all significant banks supervised by the SSM.

CRD IV allows the Central Bank to apply a countercyclical capital buffer (CCyB), which aims to promote a sustainable provision of credit to the economy by making the banking system more resilient and less pro-cyclical. The current CCyB rate is 0%, reduced from 1% in 2020 to support credit supply to the Irish economy and subsequently reduce the likelihood that the banking sector will contribute to the economic shock caused by the COVID-19 pandemic.

The CRR introduces two quantitative liquidity requirements for banks:

- Liquidity Coverage Ratio (LCR).
- Net Stable Funding Ratio (NSFR).

The LCR was introduced by the Basel Committee on Banking Supervision (BCBS) to promote the short-term resilience of the liquidity risk profile of banks, by ensuring that banks maintain an adequate stock of unencumbered high-quality liquid assets (HQLA) that can be easily and immediately converted into cash, to meet liquidity needs for a 30-day liquidity stress scenario.

This improves the sector's ability to absorb shocks and reduces spillover into the real economy. HQLA for the purposes of calculating the LCR include only those with a high potential to be converted easily and quickly into cash in times of distress. There are three categories of HQLA:

- Level 1 assets, which are not subject to a discount while calculating the LCR.
- Level 2 assets, which are subject to a discount of 15% while calculating the LCR.
- Level 2B assets, which are subject to a discount of 50%.

No more than 40% of HQLA can comprise Level 2 assets, with Level 2B assets comprising no more than 15% of all total stock of HQLA.

The NSFR (introduced by the BCBS in December 2010) requires banks to maintain a stable funding profile in relation to the composition of their assets and off-balance sheet activities. The NSFR became a minimum standard on 1 January 2018, as a response to the lack of an appropriately stable financing structure before the global financial crisis, which led to bank failures and costly interventions.

The CRR introduced a leverage ratio. The leverage ratio is a bank's capital measure divided by its total exposure measure, expressed as a percentage. Before 28 June 2021, the leverage ratio was a reporting requirement, but, following amendments in the CRR II, it became a binding capital requirement. The intention is not to eliminate leverage completely but to discourage its build-up, so that a firm's assets are more in line with its capital, and to act as a safeguard for existing risk-based capital requirements. The leverage ratio requirements apply to all banks on a solo and consolidated basis.

Additionally, the CRR II contains a leverage ratio buffer requirement for globally systemic important banks (G-SIBs). There are currently no banks in Ireland recognised as globally systemic.

Shareholdings/Acquisition of Control

12. What requirements or restrictions apply to the acquisition of shareholdings and of control of banks?

The requirements in relation to the acquisition and disposal of qualifying holdings in credit institutions are set out in Chapter 2 of Part 3 of the European Union (Capital Requirements) Regulations 2014 (SI. 158/2014).

The 2016 Joint Guidelines on the prudential assessment of acquisitions and increases in holdings in the financial sector published by the European Supervisory Authorities have been adopted by the Central Bank. The Joint Guidelines are jointly published by the European Securities and Markets Authority (ESMA), the EBA and the European Insurance and Occupational Pensions Authority (EIOPA).

Central Bank approval must be sought before an acquisition can proceed. A proposed acquirer can only complete an acquisition if the Central Bank notifies the proposed acquirer that it has no opposition to the acquisition, or if the assessment period lapses without the Central Bank opposing it.

The maximum assessment period from the date the Central Bank acknowledges receipt of the form is 60 working days, although this can be extended to 90 working days if the proposed acquirer is from a third country.

Where merger control requirements apply. it may also be necessary to seek the approval of the Competition and Consumer Protection Commission.

13. Are there specific restrictions on foreign shareholdings in banks?

There is no distinction between domestic and foreign investment in banks under Irish law. There is no prohibition on banks being foreign-owned.

Liquidation and Resolution

14.What is the legal framework for the liquidation of banks?

Under Part 7 of the Central Bank and Credit Institutions (Resolution) Act 2011 (No. 27), the Central Bank can apply to the High Court for an order to liquidate a bank in any of the following circumstances:

- If the Central Bank believes that the liquidation would be in the public interest.
- The bank has failed to comply with a direction of the Central Bank.
- The bank's licence or authorisation has been revoked.
- The Central Bank considers that it is in the interest of deposit holders that it be wound up.

No other person can apply to have a bank wound up without giving the Central Bank notice and receiving approval from the Central Bank. Only a liquidator approved by the Central Bank can wind up a bank. As soon as practicable after the court makes a winding-up order, the Central Bank will appoint a liquidation committee to oversee the winding-up process.

15. What is the recovery and resolution regime for banks?

Obligations To Prepare Recovery Plans

The legislation governing resolution of credit institutions in Ireland is set out in the:

- European Union (Bank Recovery and Resolution) Regulations 2015 which transposed the Bank Recovery and Resolution Directive (2014/59/EU) (BRRD) into Irish law on 9 July 2015.
- European Union (Bank Recovery and Resolution) (Amendment) Regulations 2020 which transposed the *BRRD II Directive ((EU) 2019/879)* (together, BRRD Regulations) into Irish law on 22 December 2020 to deal effectively with failing banks and investment firms.

The BRRD Regulations provide a framework for resolving failing banks and large investment firms and enable authorities to intervene early to prevent the failure of an institution.

BRRD II amends BRRD by:

- Granting exemptions in relation to the contractual recognition of bail-in provisions.
- Giving early intervention powers to regulators.
- Introducing a requirement to contractually recognise resolution stay powers.
- Amending the calibration of MREL requirements.

This framework and related legislation enhances both the resilience and the resolvability of EU institutions and in-scope investment firms, which will be better prepared to deal with, and recover from, a crisis situation. Also, in the event that an institution does fail, the impact associated with that failure should be minimised.

Specifically, under the framework:

Credit institutions and in-scope investment firms are required to prepare recovery plans which identify appropriate options that can be executed in the event of a significant financial deterioration of the institution, thereby reducing the likelihood of failure.

- The BRRD grants a new set of early intervention powers to supervisors. These powers include the requirement for institutions to execute recovery options, the removal of management and changing the structure of the institution.
- Resolution planning activity is undertaken by the Central Bank, or the ECB's Single Resolution Board (SRB), in advance of failure to ensure this process is managed effectively.
- If required, the Central Bank and the SRB can use a set of resolution tools to resolve failing institutions to minimise the impact of failure on the financial system, the real economy, depositors and taxpayers.
- Both a national and a European resolution fund have been established to help finance the cost of resolution in the future.

Central Bank of Ireland National Resolution Authority Internal Rules. The Central Bank is the national resolution authority for Ireland. In its capacity as resolution authority, the Central Bank is responsible for the orderly resolution of failing credit institutions, certain investment firms and credit unions.

The Central Bank manages resolution funds and prepares resolution plans for these entities. These plans can then be activated in the event of a failing or likely to fail determination, in accordance with the BRRD.

There are two resolution funds to which Irish banks are required to contribute:

- Bank and Investment Firm Resolution Fund (BIFR): All banks, third country branches and full scope CRD IV investment firms have been required to contribute to the IFR since 2015. The Central Bank calculates the amount of levy payable by applying the calculation method outlined in Commission Delegated Regulation (EU) 2015/63.
- Single Resolution Fund (SRF): Institutions that come within the scope of the Single Resolution Mechanism (SRM) regulation have been required to make contributions to the SRF rather than to national resolution funds from 1 January 2016.

  The Single Resolution Board in Brussels calculates the contributions for the SRF, based on data submitted by the in-scope institutions. Larger banks with higher risk profiles will generally pay a larger contribution.

Powers of the Regulator

When applying the resolution tools, resolution authorities should have all the necessary legal powers. To this end, the main resolution powers given to competent authorities under the BRRD are the following::

- **Replacement of management**. Competent authorities have the authority to remove an individual from senior management or an entire management body and can appoint a replacement for either (Article 28, BRRD). This power is available only where there is:
  - a significant deterioration in the financial situation of an institution or serious infringements of law or regulation; and
  - where other early intervention measures under Article 27 are insufficient to reverse that deterioration.

  Competent authorities can also appoint a temporary administrator if it considers replacement of senior management or management body to be an insufficient remedy (Article 29, BRRD). The competent authority must specify the powers of the temporary administrator, as well as its role and functions.
- **Sale of business tool**. This aim of this tool is to enable authorities to effect the sale of all or part of a failing BRRD institution to one or more purchasers without the consent of shareholders. A resolution authority must, among others, make arrangements for the marketing of the firm and its assets, rights and liabilities in a transparent, non-discriminatory, open manner, aimed at maximising the sale price for the shares or other instruments of ownership, assets, rights or liabilities involved (Article 29, BRRD).
- **Bridge institution tool**. The bridge institution tool allows resolution authorities to set up a bridge institution to which all of the performing assets or essential functions of the BRRD institution are transferred, with the aim of being sold to another entity. The remaining firm with the under-performing assets and non-essential functions would then be liquidated within an appropriate time-frame, in accordance with normal insolvency proceedings.
- **Asset separation tool**. This enables resolution authorities to transfer assets, rights or liabilities of a BRRD institution under resolution to a separate asset management vehicle (Article 42, BRRD). The asset separation tool cannot be applied alone and must only be applied with another resolution tool.

  It can also only be applied by authorities in the following circumstances:
  - the liquidation of those assets could have an adverse effect on one or more financial markets;
  - the transfer is necessary to ensure the proper functioning of the institution under resolution or bridge institution; or

    - the transfer is necessary to maximise liquidation proceedings.

    (Article 42(5), BRRD.)

- **Bail-in tool**. The bail-in tool minimises the costs of the resolution of a failing BRRD institution to taxpayers by ensuring that the shareholders and creditors of that institution suffer appropriate losses and bear an appropriate part of the costs arising from the failure of that institution. This tool can be applied to recapitalise or wind down the firm.

Banking groups containing EU credit institutions and certain types of investment firms (those subject to the BRRD) are required to maintain and comply with obligations relating to the minimum requirement for own funds and eligible liabilities (MREL), which are set out primarily in the BRRD. Those obligations reflect the EU's implementation of the Financial Stability Board's (FSB) total loss absorbing capacity (TLAC) standard.

MREL is one of the key tools in resolvability and the purpose of firms maintaining MREL is to ensure that bail-in tool (*see above*) can be effectively applied if these firms enter a resolution. Only certain liabilities can be used by firms to satisfy their MREL obligations and these must satisfy various conditions before it can be used to count towards the MREL.

Articles 93 to 98 of the BRRD contain provisions on how the BRRD interacts with resolution regimes in third countries. The EU Commission can submit proposals to the EU Council on agreements regarding the co-operation between the EU resolution authorities and the relevant third country authorities (Article 93, BRRD). The powers of resolution authorities apply to third countries.

EU resolution authorities have the powers to give effect to transfers of the assets and liabilities of a failed third-country credit institution or investment firm and apply resolution tools to EU branches of third-country firms where separate resolution is necessary.

16. Are there any protections available to customers of a bank that has failed?

The Deposit Guarantee Scheme (DGS) protects depositors where a bank, building society or credit union authorised by the Central Bank becomes unable to repay deposits. The DGS is administered by the Central Bank and is funded by the credit institutions covered by the scheme. If the bank goes through resolution, depositors are also protected as the process is designed to safeguard them. Depositors will continue to have access to, and the use of, their money following a resolution.

The legal framework that supports the DSG includes the Deposit Guarantee Schemes Directive (2014/49/EU) (DGSD), the European Union (Deposit Guarantee Schemes) Regulations 2015 (SI 516/2015) and the Financial Services (Deposit Guarantee Scheme) Act 2009. The legal framework sets out provisions such as the DGS eligibility criteria, covered institutions, exclusions form DGS cover and co-operation with EEA member states.

The DGS protects deposits belonging to individuals, companies, partnerships, clubs and associations. It excludes public authorities, insurers, pension funds, collective investment schemes, banks and other certain financial institutions.

Deposits types such as current accounts, saving accounts, demand deposit accounts and shared accounts in a building society or credit union are all examples of protected deposits.

Conduct of Business

17.What conduct of business standards apply to banks' deposit-taking and lending activities?

In addition to primary and secondary legislation, banks in Ireland are subject to a variety of codes issued by the Central Bank to ensure a uniform level of protection for consumers and small to medium sized enterprises.

The main legislation and codes in this regard include;

- **Consumer Protection Code and associated addenda (Consumer Protection Code.**: The Consumer Protection Code is issued by the Central Bank under Section 117 of the Central Bank Act 1989. It provides a set of rules and principles that all regulated financial services firms must follow when providing financial products and services to consumers. The Consumer Protection Code is expected to be revised during 2024 with an updated version to be published in early 2025.
- **Code of Conduct on Mortgage Arrears (CCMA).** The CCMA is issued under Section 117 of the Central Bank Act 1989 and is designed to protect consumers. It sets out how mortgage lenders must treat borrowers in or facing mortgage arrears, having due regard to each case and considering each case on its own merits.
- **Code of Conduct on Switching of Payment Accounts with Payment Service Providers 2016.** This code is issued by the Central Bank under Section 117 of the Central Bank Act 1989 to facilitate consumers who wish to close a payment account in a bank in Ireland and open a payment account with a payment service provider located in another member state.
- **Central Bank (Supervision and Enforcement) Act 2013 (Section 48) Lending to Small and Medium Sized Enterprises Regulations 2015 (SME Regulations).** The SME Regulations set out:
  - conduct of business rules;
  - the nature and content of information to be provided to micro/small enterprises (turnover of less than EUR50 million) and medium enterprises (turnover of less than EUR50 million); and
  - rules for dealing with such entities in financial difficulty.
- **Minimum Competency Code 2017 (MCC) and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Minimum Competency Regulations 2017 (Minimum Competency Regulations).** The minimum competency framework sets out statutory minimum competency requirements applicable to employees of regulated financial service providers who exercise controlled functions in relation to specified financial services and products.

Contributor Profile

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Professional qualifications. Solicitor, Law Society of Ireland.

Areas of practice. Financial institutions; head of the regulatory risk management and compliance team.

Recent transactions.

- Assisting clients with the authorisation of new entities by the Central Bank of Ireland including banks, MiFID/investment firms, fund services providers, alternative investment fund managers, payment institutions, retail credit firms and others.
- Assisting in expanding the regulatory authorisations of existing entities.
- Advising boards of directors, senior management, in-house counsel and compliance officers, in relation to the impact of new regulation.
- Assisting clients to carry out reviews of their process and procedures, covering issues such as anti-money laundering, MiFID suitability, and client assets requirements.
- Assisting clients to prepare for reviews by the Central Bank, notably PRISM reviews, which are increasingly common.
- Where the Central Bank initiates its administrative sanctions process, working with clients to minimise the impact of any sanction imposed.
- **Professional associations/memberships.**
- Co-ordinates drafting of course materials and lectures for the Institute of Bankers of Ireland, as part of its Professional Development (Level 3) qualification.
- Speaking and writing on topics including the Payment Services Directive II, MiFID 2 and many others.

Publications These include the:

- *Fitness and Probity Handbook*, which gathers together all relevant materials regarding the Central Bank's Fitness and Probity regime.

- *MiFID II Directory.*

END OF DOCUMENT

RESOURCE HISTORY

Law stated date updated following periodic maintenance.

This document has been reviewed by the author as part of its periodic maintenance to ensure it reflects the current law and market practice 01 March 2024.

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