Banking Regulation

Jurisdictional comparisons

Second edition 2014

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Foreword

René Bösch Homburger

The first edition of this book was published in the aftermath of the banking crisis, not least in recognition of the increased focus of local regulators and legislators – as well as international industry bodies – on tighter regulation of banks worldwide. Sound and coherent regulation of banks and other financial intermediaries became of utmost importance in the efforts to restore and maintain public confidence in the national and international financial markets. I was very proud that leading practitioners from 23 jurisdictions joined me in 2012 in putting together a book that provided for the first time a comprehensive point of reference for clients and banking experts, legal professionals, compliance officers, industry experts and financial services consultants on the regulation of banks worldwide.

We all have been very pleased that the first edition of this book became such a success. It has proven that this book filled a gap and provided a very useful research reference source and tool to many clients and advisers in the banking regulation field. Many have confirmed to us that this book indeed provides comprehensive insight into the bank regulatory framework in such jurisdictions, serves as a starting point for understanding licensing and approval procedures and requirements, and presents an invaluable guide on actual regulatory challenges, in particular in relation to remuneration of employees, consolidated supervision, regulation of SIFIs, etc.

We therefore decided to publish a second edition two years after its first publication to update the coverage on banking regulatory trends and allow readers to receive a reference tool that fully reflects all regulatory developments since 2012. Our goal was to keep the conceptual approach of the book and to maintain the structure of the contributions, but to ask all authors to reflect all changes in legislation, regulation and practice since the first edition. Readers will see that the most recent works of the Financial Stability Board (FSB), the Basel Committee on Banking Regulation, the European Union, national legislators and regulators as well as general banking practice are fully reflected in this new edition.

I am very honoured that almost all of the contributors to the first edition again accepted my invitation to contribute and update a chapter on the laws of their respective countries, and I am proudly welcoming the new contributors to this book, now covering 24 jurisdictions. I am again deeply indebted to all authors for sharing their knowledge and experience with us, above all the readers of this book. And I repeat my expression of deep gratitude that all contributors have again taken the time to contribute to this book at times which still may be among of the busiest for bank regulatory lawyers.

Many thanks go also to the staff of The European Lawyer Reference Series

(Thomson Reuters), in particular to Katie Burrington, Emily Kyriacou, Dawn McGovern, Nicola Pender and Lisa Naylor who have been enthusiastic to publish a second edition of this book and were again extremely supportive.

René Bösch, Homburger
Zurich
July 2014

Ireland

Matheson Joe Beashel

1. REGULATORY FRAMEWORK – OVERVIEW

The primary legislation regulating the Irish banking system is the Central Bank Acts 1942 to 2011. The Central Bank of Ireland (the Central Bank) is the competent authority for the purposes of this legislation. The Central Bank has supplemented legislation with a number of codes of conduct and other measures, which impose further requirements on banks, for example, in relation to corporate governance and conduct of business matters. Under primary and secondary legislation, the Central Bank is given wide powers to authorise, impose requirements on, supervise and sanction banks operating in Ireland.

Applicable European legislation is mainly transposed into Irish law by way of secondary legislation called statutory instruments.

2. AUTHORITIES, REGULATORS

2.1 Supervisory architecture - nature, characteristics

The Central Bank Reform Act 2010 (as amended) created a single body – the Central Bank – to take charge of both central banking and financial regulation in Ireland. This structure replaced the dual structures of the Central Bank and the Financial Services Authority of Ireland and the Financial Regulator.

During 2012, the Central Bank introduced the Probability Risk and Impact System (PRISM). Some of the key objectives of this 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 impact of firm failure;
- ensure a minimum level of supervisory engagement for different classes of firms; and
- have a tool that requires actions to mitigate risks and tracks 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.

How a regulated entity is categorised will determine 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 ultra-high/high entities will be far greater than those who are categorised as medium high and medium low.

With regard to both consumer and prudential issues, the Central Bank's approach to regulation has become more vigorous over the last few years. Its strategy in relation to enforcement is set out in a Strategic Plan where it states that its approach is based on a model of assertive risk-based supervision underpinned by a credible threat of enforcement.

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.

Since the commencement of the Central Bank (Supervision and Enforcement) Act 2013, the Central Bank's powers and range of sanctions have been strengthened significantly. The quantum of the financial penalties which may be imposed on both individuals and firms has increased; the former increasing to EUR 1 million and with regard to the latter, the penalty is now up to EUR 10 million or 10 per cent of the previous year's turnover.

2.2 Lead bank regulators

The Central Bank has maintained sole responsibility for the regulation and supervision of banks operating in Ireland and continues to do so at the time of writing. However, from 4 November 2014, the European Central Bank (ECB) will assume its role as direct supervising body of significant institutions across the Eurozone through the implementation of the Single Supervisory Mechanism (SSM) as a step towards banking union in Europe. In Ireland, it is expected that the ECB will directly supervise the following banks:

- Allied Irish Bank plc (AIB);
- The Governor and Company of the Bank of Ireland (Bank of Ireland);
- Merrill Lynch International Bank Limited (Merrill Lynch);
- Permanent tsb plc (PTSB); and
- Ulster Bank plc.

The foregoing banks are currently being subjected to a comprehensive assessment by the ECB which comprises:

- a supervisory risk assessment to review, quantitatively and qualitatively, key risks, including liquidity, leverage and funding;
- an asset quality review to enhance the transparency of bank exposures by reviewing the quality of the banks' assets, including the adequacy of asset and collateral valuation and related provisions; and
- a stress test to examine the resilience of banks' balance sheets to stress scenarios.

This process is expected to be completed in October 2014, prior to the commencement of the SSM.

The Central Bank will continue to be responsible for some banks operating in Ireland after the SSM comes into effect. The ECB will have exclusive competence from 4 November 2014 to authorise or revoke the authorisations of banks seeking to establish in a Eurozone country.

2.3 Other authorities

Banks in Ireland will continue to be subject to the oversight of such other authorities as the Data Protection Commissioner and may be liable to the jurisdiction of the Financial Services Ombudsman in respect of consumer complaints.

2.4 Role of the Central Bank

In addition to being the primary financial services regulator in Ireland, the Central Bank is also a member of the Eurosystem. As part of this role within the Eurosystem, the Governor of the Central Bank is a member of the ECB Governing Council, being the body which has responsibility for the setting of monetary policy which is then implemented on a decentralised basis by each member state's central bank.

3. BANKING LICENCE

3.1 Characteristics, nature

There is a prohibition on a person, unless they are a holder of a licence inside or outside Ireland:

- carrying on banking business; or
- holding themselves out or representing themselves as a banker or as carrying on banking business; or
- accepting deposits or other repayable funds from the public on behalf of any other person;

under section 7(1) of the Central Bank Act 1971 (as amended) (1971 Act).

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

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

The definition then goes on to list a number of activities which are specifically excluded from the definition of banking business.

The main point within the definition of banking business is the notion of deposit-taking, ie, receiving money from members of the public either on deposit or as repayable funds. No definition is given for 'repayable funds' in the 1971 Act. The definition of 'deposit' for these purposes is however given in section 2(2) of the Central Bank Act 1997 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.

Under the 1971 Act, a body corporate, an unincorporated body or an individual carrying on any business is deemed to hold itself/himself out as a banker if the name of the body or business includes any of the words 'bank', 'banker' or 'banking' or analogous words.

The Central Bank may, under section 9 of the 1971 Act, in its discretion, grant or refuse to grant to any person applying to it for the grant of a bank licence authorising the holder to carry on banking business. Section 3.3 below deals in more detail with the requirements to be met in order to become a licensed bank.

3.2 Regulated activities, scope of licence

The grant of a bank licence in Ireland provides the bank with an ability to pursue a wide range of activities which otherwise would require individual authorisation from the Central Bank. As well as 'banking business', the activities which can be carried out by a bank which has been licenced include the activities set out in Annex I of Directive 2013/36/EU (CRD IV), including payment services as set out in Directive 2007/64/EC and investment services as contained in Directive 2004/39/EC.

A holder of a licence must comply with legislation covering business conduct and prudential matters as well as with codes of practice covering a varied range of areas and issues.

The European Union (Capital Requirements Regulations) 2014 (Capital Requirements Regulations) prescribe specific rules and capital requirements when a bank proposes to hold qualifying holdings/assets outside the financial sector.

3.3 Licensing procedure (parties involved, nature and form of application, duration, cost, licensing decision)

The Central Bank has sole authority to grant banking licences pursuant to the 1971 Act. The application process itself is detailed and very precise in nature. A preliminary meeting with the Central Bank is first required and it is necessary to arrange this at the earliest opportunity as the process can take some time.

The application, which is initially framed as a 'proposal', incorporates The Central Bank's checklist for completing and submitting Bank Licence Applications (Checklist). Any application must contain the completed Checklist together with all relevant supporting documentation.

The main areas looked to by the Central Bank when considering an application include:

- overview of the parent/group to which the applicant belongs;
- consolidated supervision of parent/group entities;
- ownership structure;
- applicant's objectives and proposed operations (including a detailed business plan);
- legal structure;
- organisation of the applicant (including corporate governance arrangements, fitness and probity of key personnel, etc);
- risk oversight (eg audit, compliance, risk management, treasure, financial control, internal controls/policies, anti-money laundering procedures, conflicts of interest, liquidity, outsourcing and reporting structures);
- capital, funding and solvency projections; and
- business continuity.

The legislation governing the grant of a licence by the Central Bank (found in section 9 of the 1971 Act) has been substantially amended with the commencement of the Capital Requirements Regulations; notable conditions to be satisfied before a licence will be granted include the following:

- the application must be accompanied by a programme of operations setting out the types of business envisaged and the structural organisation of the application;

- the applicant must have an initial capital of at least EUR 5,000,000; or if the Central Bank wishes to grant a licence to an applicant that does not meet this requirement, the applicant must have an initial capital of at least EUR 1,000,000 and the Central Bank must notify the European Commission and European Banking Authority (EBA) of its reasons for exercising the option;
- the Central Bank must be satisfied that the applicant is a body corporate, has its registered office and head office located in Ireland, that at least two persons effectively direct the business and that the management body meets the governance requirements laid down in Regulation 79 of the Capital Requirements Regulations; and
- in the case of an applicant which is a subsidiary of a bank authorised in another member state or controlled by the same person controlling a bank in another state, the Central Bank shall consult with the competent authority of that member state before granting a banking licence to the applicant.

It is also now provided for in legislation that the Central Bank will take a decision to grant or refuse a licence within 12 months of receipt of the application. When considering the overall approval process for the grant of a licence, it should be borne in mind that this process is expected to change with the introduction of the SSM.

4. FORMS OF BANKS

4.1 State-owned banks

The financial crisis in Ireland led to a major shift in the ownership of Irish banks. Irish retail banks in the past, before the financial crisis, were entirely commercially owned. Shares in these banks were traded on the Irish Stock Exchange and typically held by a mix of institutional investors (including funds and pension funds) and a large number of personal shareholders. The banking system was radically restructured in the aftermath of the economic crisis. Please see section 9 for a discussion on state intervention in the Irish banking system.

4.2 Universal banks, commercial banks and retail banks

There is no distinction in Irish law for the authorisation or regulatory regimes for universal banks, commercial banks or retail banks.

4.3 Investment banks

N/A

4.4 Private banks

N/A

4.5 Other banks

A number of other banks operate wholesale operations or operations designed to meet the needs of non-Irish customers. These include a range of subsidiaries and branches of leading European and American based parents.

4.6 Regulation of Systemically Important Financial Institutions (SIFIs)

As discussed at 2.1 and 2.2, the implementation of PRISM, the SSM and such European legislation as the Regulation 2013/575/EU (CRR) and CRD IV have seen the issue of 'significant' banks and the regulation of such banks being addressed.

Previously, there had been no special rules applicable to 'significant' banks, however in light of the implementation of PRISM and with the commencement of the Capital Requirements Regulations and the anticipated introduction of SSM in November 2014, 'significant' banks are subject to stricter requirements. The revised 2013 Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013 (CG Code 2013) issued by the Central Bank confirms that 'significant' banks will be subject to the stricter governance requirements laid down in the CRR in place of the requirements for high impact designated institutions.

There are also additional rules in the CRR for banks that are designated as 'significant' for the purposes of that legislation. A bank may be designated as 'significant' having regard to its size, internal organisation and the nature, scope and complexity of its activities. A number of CRD IV requirements are limited in scope to 'significant firms'. These include requirements regarding:

- the requirement to establish an independent risk committee;
- the requirement to establish an independent nominations committee;
- the requirement to separate the CEO and chairperson role and limitations on the number of directorships an individual may hold;
- the requirement to establish an independent remuneration committee;
- the capital conservation buffer and the counter-cyclical capital buffer;
- the scope of liquidity reporting on an individual basis;
- the scope of liquidity reporting on a consolidated basis; and
- remuneration disclosure.

5. ORGANISATION OF BANKS

5.1 Corporate bodies – corporate governance

The requirement that every bank authorised by the Central Bank must have in place sound, effective and comprehensive strategies and processes to assess and maintain the amounts, types and distribution of internal capital which is considered adequate to cover the institution in relation to risk to which they could be exposed is now governed by Chapter 2 of the CRR. The Regulations further stipulate that institutions shall have robust governance arrangements in place which includes:

- a clear organisational structure with well-defined, transparent and consistent lines of responsibility;
- effective processes to identify, manage, monitor and report the risks they are, or might be, exposed to;
- adequate internal control mechanisms, including but not limited to (i) sound administration and accounting procedures; and (ii) remuneration policies and practices that are consistent with and promote sound and effective risk management.

These governance arrangements as outlined above, must be comprehensive and proportionate to the nature, scale and complexity of the risks inherent in the institution's activities and business model.

The Central Bank issued the original Corporate Governance Code for Credit Institutions and Insurance Undertakings (CG Code) in 2010.

Any institutions subject to the CG Code must disclose this in their annual report and must submit an annual compliance statement to the Central Bank. Compliance with the CG Code is mandatory and there is no scope for departures from the Code.

Boards of institutions must have a minimum of seven directors in major institutions and a minimum of five in all other institutions under the CG Code. A revised CG Code 2013 has been issued by the Central Bank and will come into force from 1 January 2015. There are a number of changes in the revised CG Code 2013, including the introduction of new requirements to appoint a Chief Risk Officer (CRO), changes to the rules on directorships and board meetings and the removal of references to 'major institutions.'

5.2 Organisation (requirements, corporate documents, audit function etc)

The majority of banks in Ireland are established as limited liability companies. The bank's memorandum and articles of association will set out the legal framework under which the bank operates. The memorandum governs the bank's relationship with others and sets out the objects and powers of the bank. The articles govern the internal regulation of the bank.

If the bank has a legal structure other than a limited company, the rationale for adopting such a structure must be detailed to the Central Bank as part of the application for authorisation process. The 'heart and mind' of the bank must be present in Ireland, (ie, the day-to-day operations of the bank must be conducted in the country).

5.3 Auditors and other experts

The Companies Act 1990, in an attempt to ensure independence, lays down restrictions on who can be appointed, which in effect means that a company must appoint an external auditor.

Specific obligations are imposed on auditors of regulated entities, including banks. There is an obligation on auditors under the Central Bank Act 1989 (as amended) to notify the Central Bank of any matters going to the financial soundness of the bank being audited. The auditor must also report any deficiencies in the financial reporting and accounting systems and controls within the firm.

Where the Central Bank considers it necessary, owing to the nature, scale and complexity of the activities of a bank, it may, by notice in writing to the auditor, require the auditor to conduct an examination for the purpose of providing a statement to the Central Bank as to the extent to which the bank has complied with obligations imposed under financial services legislation. The Central Bank may require an auditor to provide it with a copy of any record or information provided or obtained by the auditor in connection with an audit of the bank's accounts that is in possession of the auditor.

Failure by an auditor to comply with statutory obligations is an offence.

5.4 Risk management

The Central Bank requires that banks subject to its regulation ensure that the board of directors and senior management of that institution are structured in a way which allows for the effective management of risk. The significance of ensuring effective risk management is to be seen in CRR, which has imposed various onuses on banks in relation to the way risk is managed. The CG Code 2013 also places greater emphasis on risk management than its predecessor. As noted at 5.1, the CG Code 2013 calls for the formal appointment of a CRO. The requirements to perform this role include having relevant expertise, qualification and/or background otherwise relevant and timely training must be undergone. Under the CG Code 2013 the CRO must challenge decisions that may affect the risk exposure of an institution. The responsibilities of the CRO are also set out in detail in the 2013 Code and include: maintaining and monitoring the effectiveness of the institutions risk management system; ensuring and maintaining that the institution has effective processes in place in order to identify and manage the risks which may threaten the institution; and providing comprehensive and regular information to the board on an institution's risk.

There are specific risks that must be identified, assessed and managed in line with CRD IV requirements including exposures to transferred credit risk, country risk, concentration risk, residual risk and interest rate risk in the banking book.

5.5 Supervision of management

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, 41 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. The individual must complete an online individual questionnaire which is endorsed by the proposing bank and then submitted electronically to the Central Bank.

5.6 Compensation

Banks are required to establish remuneration policies at group, parent company and subsidiary levels, including those established in offshore financial centres. Total remuneration policies, inclusive of 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:

- senior management;
- risk takers;
- staff engaged in control functions; and
- any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers.

The Capital Requirements Regulations set out a number of principles that remuneration policies must comply with, in a manner and to the extent that it is appropriate to the bank's size, internal organisation and the nature, scope and complexity of its activities. There are limits on the remuneration that may be paid to the certain individuals as well as 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 establishes a strengthened remuneration framework to deter excessive risk taking with regard to the requirements for the relationship between the variable component of remuneration and the fixed component. There are disclosure and transparency requirements for individuals who earn more than EUR 1 million per year. From 1 January 2014, the variable component of the total remuneration shall not exceed 100 per cent of the fixed component of the total remuneration of material risk takers. 'Significant' banks must establish a remuneration committee.

5.7 Special rules for SIFIs

Additional obligations are imposed on 'Major Institutions' under the CG Code. The CRD IV requirements stated above at 5.6 apply, including the requirement that significant banks must establish a remuneration committee.

6. LIQUIDITY AND CAPITAL ADEQUACY

6.1 Role of international standards (Basel III)

The regulatory capital and liquidity regime in Ireland is mainly found in international requirements which generally take the form of EU directives and regulations, which are for the most part derived from international standards in the form of the Basel Agreements. CRD IV has had a major impact on the landscape of banking regulation in Ireland. This is true also of liquidity and capital adequacy requirements for banks governed by the Central Bank.

6.2 Liquidity requirements

Pursuant to the CRR, banks are required to hold liquid assets, the sum of values of which will cover the liquidity outflows less the liquidity inflows under stressed conditions over a 30 day period.

The precise details of the Liquidity Coverage Ratio (LCR) are yet to be specified in a delegated act to be issued by the European Commission which shall apply from 1 January 2015.

6.3 Leverage risk

The CRR introduces a leverage ratio. The intention behind the leverage ratio is not to eliminate leverage completely but to discourage its build-up so that firms' assets are more in line with their capital and to act as a safeguard for the existing risk-based capital requirements. The requirements on the leverage ratio apply to all banks on a solo and consolidated basis.

Banks will be required to comply with certain generally applicable principles in disclosing their leverage ratio, including the requirements that disclosure must be public. Such disclosure is required annually.

6.4 Capital adequacy framework

CRD IV prescribes the capital adequacy framework for banks that require banks to keep minimum regulatory capital. A bank is required to maintain at all times the financial resources equal to or greater than a percentage of its risk-weighted assets (RWA).

The capital adequacy rules recognise two layers of capital (ie, Tier 1 and Tier 2 capital) for the purposes of a bank's financial resources. Eligibility criteria apply as to what constitutes such capital. Certain deductions are also required to be made to such capital as set out in the CRR.

Assets and liabilities may therefore be required to be accounted for in regulatory capital terms in the following ways:

- as a component of, or deduction from, capital; or
- as a risk weighted asset in the banking book or in the trading book.

The Capital Requirements Regulation provides for maintenance of a Capital Conservation Buffer of 2.5 per cent comprised of common equity tier 1 (CET 1).

Failure to meet the relevant buffers in full will trigger capital conservation measures (restrictions on distributions on common equity and AT1 securities, bonuses and discretionary pension benefits) and the obligation to submit a capital conservation plan within five days.

The buffer capital requirements are to be phased in from 1 January 2016 to 1 January 2019.

6.5 Special requirements for SIFIs

Pursuant to CRD IV, SIFIs are subject to the rules relating to Global Systemically Important Institutions (G-SIIs) and other systemically important institutions (O-SIIs). It is for the Central Bank pursuant to Regulation 121 of the Capital Requirements Regulations to identify, on a consolidated basis, G-SIIs. In order to be a G-SII, the institution must be an EU parent institution, an EU parent financial holding company, an EU parent mixed financial holding company, a bank or an investment firm.

In assessing systemic importance of an O-SII, the Central Bank must consider, at least, the institution's size, its importance for the economy of the European Union or of Ireland, the significance of its cross-border activities, and the interconnectedness of the institution or its group with the financial system. Where a group is subject to an G-SII Buffer and a separate O-SII Buffer, the higher of the two will apply.

Each member state may introduce a Systemic Risk Buffer of CET1 for the financial sector or one or more subsets of a sector of the financial services industry. Ireland has chosen not to implement this buffer but may recognise such buffers set by other member states

7. CONSOLIDATED SUPERVISION

7.1 Role of consolidated supervision

The Central Bank is responsible for consolidated supervision where it has authorised an institution which is either a parent institution in the state or an EU parent institution. It is also, subject to exception, responsible for an authorised institution whose parent is a financial holding company in a member state, whose parent is a mixed-financial holding company in a member state, whose parent is an EU parent financial holding company or whose parent is an EU parent mixed-financial holding company.

7.2 Requirements

The Capital Requirements Regulations now governs the area of consolidated supervision. The Central Bank will exercise general supervision over transactions between the bank and the mixed-holding company and its subsidiaries in certain circumstances.

Each bank supervised by the Central Bank must have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures to identify, monitor, measure and control transactions with their parent mixed-activity holding company and its subsidiaries as appropriate. Banks must also report to the Central Bank on significant transactions.

The Central Bank is responsible for supervision on a consolidated basis in a number of circumstances as set out in the Capital Requirements Regulations. For example, the Central Bank will act as consolidated supervisor where it has authorised a bank which is a parent bank in Ireland or an EU parent bank. The Central Bank is also responsible for supervision on a consolidated basis when it has authorised a bank and the parent of the bank is one of the following:

- a parent financial holding company in a member state;
- a parent mixed-financial holding company in a member state;
- an EU parent financial holding company; or
- an EU mixed-financial holding company in a member state.

7.3 International coordination and cooperation among regulators

Where the Central Bank it responsible for supervision on a consolidated basis, it will make all efforts to reach a joint decision with the competent authority of other member states responsible for the supervision of subsidiaries of an EU parent bank. In situations where the Central Bank is responsible for exercising supervision on a consolidated basis, it may refer to the EBA situations where a competent authority in another member state has not cooperated with the Central Bank to the extent required for the Central Bank to carry out its supervisory tasks or situations where there is disagreement in relation to joint decisions that are required to be made by the Central Bank and a competent authority in another member state.

Where the Central Bank is responsible for the supervision of a bank with significant branches in other member states, the Central Bank will establish and chair a college of supervisors to facilitate cooperation with the competent authorities of those other member states and the establishment and functioning of the college will be based on written arrangements determined, after consultation with those competent authorities, by the Central Bank. The Central Bank will develop a framework as between itself, the EBA and other competent authorities to govern matters such as the exchange of information, agreeing on voluntary entrustment of tasks and delegation of responsibilities, the determination of supervisory examination programmes and to ensure consistent application of the CRD IV requirements. The Central Bank will determine which competent authorities participate in a meeting or in an activity of the college.

8. SHAREHOLDERS, ACQUISITIONS OF BANKS

8.1 Reporting of significant shareholdings

The only domestic Irish bank to be listed on the main market of the Irish Stock Exchange (as well as the London and New York Stock Exchanges) is Bank of Ireland. AIB is admitted to ESM, a market designed primarily for small to mid-sized companies to which a higher investment risk tends to be attached and is therefore subject to the ESM Rules and not the Listing Rules for officially listed companies. Bank of Ireland is subject to the reporting requirements of the Transparency Directive (2004/109/EC) as implemented in Ireland by the Transparency (Directive 2004/109/EC) Regulations 2007 (Transparency Regulations) and amended by the Transparency (Directive 2004/109/EC) (Amendment) Regulations 2010, the Transparency (Directive 2004/109/EC) (Amendment) Regulations 2012 and the Transparency (Directive 2004/109/EC) (Amendment) (No. 2) Regulations 2012. Bank of Ireland is also subject to the Transparency Rules issued by the Central Bank. The Regulations and Rules (the Transparency Legislation) apply to issuers of securities on regulated markets (as defined under Directive 2004/39/EC).

Under the Transparency Legislation, notification must be given to an issuer where a person's percentage of voting rights in that issuer (whether held as shares or financial instruments) reaches, exceeds or falls below the following thresholds:

- 3 per cent, 4 per cent, 5 per cent, 6 per cent, 7 per cent, 8 per cent, 9 per cent, 10 per cent and each 1 per cent threshold thereafter up to 100 per cent in the case of an Irish issuer; or
- 5 per cent, 10 per cent, 15 per cent, 20 per cent, 25 per cent, 30 per cent, 50 per cent and 75 per cent in the case of a non-Irish issuer.

8.2 Approval requirements

Please refer to section 8.4 below.

8.3 Foreign investments

Irish law makes no distinction between domestic and foreign investment in banks and there is no prohibition on banks being in foreign ownership.

8.4 Acquisition of banks

The regime for the acquisition of Irish banks is governed by the European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009 and the CRR. A Central Bank notification must be made where a direct or indirect holding in a bank will increase or decrease past 10 per cent of the capital or voting rights of the bank. A notification will also be necessary in respect of a direct or indirect holding of the capital or voting rights of less than 10 per cent which allows the proposed acquirer to exercise a 'significant influence' over the management of the bank.

Notifications are also required where a holding increases or decreases past subsequent notifiable thresholds of 20 per cent, 33 per cent or 50 per cent, or in the case of a person that is a company or other body corporate, the bank would become/cease to be the person's subsidiary.

The proposed acquirer may be a person acting on their own behalf or in conjunction with others to acquire or increase a holding. In addition to the proposed acquirer, the bank is itself under an obligation to notify in advance of any proposed acquisition or disposal.

A notification under the 1992 Regulations should be made by way of a prescribed notification form. The notification form is detailed and complex and requires significant information to be provided about the acquirer (plus its controllers) and the acquisition itself.

Central Bank approval must be sought before an acquisition can proceed. Therefore, a proposed acquirer may only complete a proposed 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 the proposed acquisition. The maximum assessment period from the date the Central Bank acknowledges receipt of the form is 92 working days.

Where merger control requirements are applicable, it may be necessary to seek the approval of the Irish Competition Authority.

9. RESOLUTION

9.1 Liquidation – legal framework

The Central Bank may apply to the High Court for an order to liquidate a bank in a number of circumstances. For example, where 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 or where the Central Bank considers that it is in the interest of deposit-holders that it be wound up.

No other person may apply to have a bank wound up without giving the Central Bank notice and receiving the approval of the Central Bank. Only a liquidator approved by the Central Bank may 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 of the bank.

9.2 Resolution regime

It was readily apparent in the aftermath of the financial crisis, that the current Irish legislation in respect of the insolvency and reorganisation of companies did not offer an effective and expeditious mechanism to resolve failing banks. The Credit Institutions (Stabilisation) Act 2010 (Stabilisation Act) sought to address this situation and provides the Minister for Finance of Ireland (Minister) with extensive powers in relation to banks that have received financial support from the state (as well as building societies and credit unions). The Stabilisation Act was a temporary measure and lapsed on 31 December 2012 to be succeeded by a permanent regime (see below).

A permanent resolution regime for certain failing institutions is now in place with the enactment of the Central Bank and Credit Institutions (Resolution) Act 2011 (Resolution Act), which was signed into law on 20 October 2011 and commenced on 28 October 2011.

The purposes of the Resolution Act include to provide an effective and efficient resolution regime for authorised banks that are failing or are likely to fail and that is effective in protecting the exchequer, the stability of the financial system and the economy.

The Resolution Act applies to 'authorised credit institutions', meaning:

- banks licensed under the 1971 Act;
- building societies incorporated under the Building Societies Act 1989; and
- credit unions registered under the Credit Union Act 1997.

Unlike the Stabilisation Act, the Resolution Act applies to banks irrespective of whether they have received financial support from the state.

Under the Resolution Act, where certain 'intervention conditions' and other conditions are met, the Central Bank has the power to:

- propose an order for the transfer of all or any specified part of the assets or liabilities of an authorised bank; and
- propose an order for the appointment of a special manager to an authorised bank.

9.3 Bail-in/bail-out

The Resolution Act provides a resolution framework for banks which are failing or are likely to fail. The legislation applies to all deposit takers regulated by the Central Bank but does not apply to branches of foreign banks operating in Ireland.

Certain pre-conditions must be met before the Central Bank can intervene under the Resolution Act. Either condition A or B must be met and in all cases both C and D must be met (the Conditions). The Conditions are:

A. The Central Bank must either have serious concerns relating to the financial stability of the bank and directs that bank to take particular action to address its concerns, and the Central Bank is satisfied that the bank has either failed to comply fully with the direction or is incapable of taking the necessary action to comply within the period specified by the Central Bank in the direction, OR, the Central Bank is satisfied that, having regard to the urgency of the situation or for any other reason, its serious concerns cannot be adequately addressed by such a direction.

B. The Central Bank is satisfied that there is a present or imminent serious threat to the financial stability of the bank concerned or the financial system in the state.
C. The Central Bank is satisfied that the bank has failed or is likely to fail to meet a regulatory requirement imposed by law or a requirement or condition of its licence or authorisation.
D. The Central Bank believes that, having regard to the relevant circumstances, the immediate winding up of the bank is not in the public interest.

The Central Bank may direct a bank to prepare and implement a Recovery Plan, which should set out actions that could be taken to facilitate the continuation, or secure part of the business of, the bank when that bank is experiencing financial difficulty. The Central Bank may draft a Resolution Plan for the bank, setting out its proposed actions, on a contingency basis, should the exercise of its functions under the Resolution Act become necessary (eg, issuing a transfer order etc). If the Conditions are met, the Central Bank may appoint a suitably qualified special manager to take over the management of a bank.

The Resolution Act 2011 also established the Credit Institutions Resolution Fund to provide a source of monies for the resolution of a financially unstable bank.

Finally, at European level, a Bank Recovery and Resolution Directive (BRRD) has been agreed. It is envisaged that this will come into force in 2015 and will apply to banks, including branches of 'third country' banks. The BRRD establishes a framework for dealing with banks in the event of a material deterioration in their financial position. The key objectives are to maintain financial stability and confidence in banks, strengthen the internal market for banking services and to avoid contagion. This lays down similar requirements and powers to those in the Resolution Act and establishes a pan-European resolution fund.

10. REGULATORY DEVELOPMENTS AND TOPICAL TRENDS

The financial crisis precipitated significant changes to both the structure of the Irish banking system and to the regulatory environment in Ireland. The Central Bank itself has been restructured and has fundamentally altered its approach to banking supervision. The Central Bank now favours a more interventionist style of supervision and towards a greater degree of consumer protection than might have applied in the past, influenced largely by perceived weaknesses in its previous supervisory approach and by the increasing numbers of bank customers who are in financial distress. On top of that domestically driven agenda sits a wave of international and European regulatory developments, particularly in relation to regulatory capital and liquidity requirements (eg, Basel III and CRD IV).

From 4 November 2014, the SSM will take effect and will form part of the move at a European level towards banking union. The other parts of banking union are a Single Resolution Mechanism (SRM) which will apply to significant banks in the Eurozone (and other participating member states should they opt in to the SSM) and the BRRD.

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