The Banking Regulation Review

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Editor
Jan Putnis

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PREFACE

This edition of *The Banking Regulation Review* is emerging during significant turbulence in the banking sector following the failure of two medium-sized US banks and the merger – yet to be completed at the time of writing – between the UBS and Credit Suisse Groups in order to save the latter. Whatever happens next, it is clear that business strategy, prudential regulation and resolution strategies in the banking sector will fall under further scrutiny in all major banking centres as a result of these events. As a result, a sector that hitherto had, on the whole, been doing a reasonable job of recovering from the stresses that the covid-19 pandemic imposed in many countries has, in a matter of weeks, been thrown into a new period of regulatory uncertainty.

Up until these market shocks, banks had been preparing for a range of regulatory changes, many of which have been a very long time coming, including the implementation of Basel III. Other items on the reform agenda included the ongoing focus on environment, social and governance (ESG) considerations, particularly climate-related initiatives; greater focus on consumer outcomes in a number of jurisdictions (including the introduction in 2023 of the UK's 'consumer duty'); the re-examination of some post-financial crisis reforms; still greater focus on the quality of banks' controls over outsourcing and other third-party service arrangements; continued regulatory activism in relation to actual and suspected failings in banks' anti-money laundering systems and controls; further moves to encourage 'open banking'; and the gradual move towards the regulation of activities relating to cryptoassets. The UK government, in particular, has unveiled a complex set of post-Brexit reform proposals which, even though not particularly radical, will set in train real divergence of the UK from the EU in banking regulation. In addition, the prospect of central banks issuing digital currencies in the future is now beginning to get the attention it deserves among banks.

All of these items remain on the agenda, but it is hard to see how there will not now also be renewed focus on the causes of bank distress. Bank resolution authorities will be looking carefully again at their powers to act in a crisis and barriers that may exist to the use of those powers. This is further proof that there is never an ideal moment to publish a book such as this as there always seems to be an important set of legal, regulatory or market developments of uncertain impact just around the corner. Yet that is also what makes banking regulation so interesting.

This edition of *The Banking Regulation Review* covers 31 countries and territories in addition to the usual chapters on international initiatives and the European Union. My thanks go to the authors for continuing to prepare informative chapters while running busy practices advising their clients. They make this book the useful overview and guide to banking regulation around the world that it is.

Thank you also to the partners and staff of Slaughter and May in London and Hong Kong for continuing to support and contribute to this book, and in particular to Nick Bonsall, Vincent Chan, Emily Bradley, Ben Goldstein, Selmin Hakki, David Kasal, Tolek Petch, Jocelyn Poon and David Shone. Thanks also to Chino Asiegbu and Natalie Se for their help.

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Jan Putnis
Slaughter and May
London
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Chapter 14

IRELAND

Liam Flynn, Joanne Costello and Beth Gill[1]

I INTRODUCTION

Ireland has two very distinct banking sectors. The domestic banking sector was extensively restructured following Ireland's EU/International Monetary Fund (IMF) bail-out in 2010 and has a substantial, but reducing, state shareholding. Meanwhile the international banking sector has grown significantly post-Brexit. Dublin is now considered a European banking hub, hosting the EU/European Economic Area (EEA) headquarters of several major international banking groups. Ireland also has a well-developed credit union sector, holding substantial retail deposits and providing some retail banking services, but the regulation of that sector is not covered in this text.

The domestic banking sector comprises the 'pillar banks' – Allied Irish Bank (AIB), Bank of Ireland (BOI) and Permanent TSB (PTSB). Both KBC Bank Ireland (KBC) and Ulster Bank (part of the Natwest Group) are in the process of withdrawing from the Irish domestic market. By April 2023, all Ulster Bank branches in Ireland will permanently close, while KBC will continue the account closure process until August 2023. Irish domestic banking needs are now almost exclusively serviced by the three pillar banks, two of which currently remain controlled by the state. Despite this market concentration, the Retail Banking Report published by the Irish Department of Finance in November 2022 (the Report) declared that there remains sufficient competition in the retail banking sector in the short to medium term. The Report suggests that digital banks will step into the gaps left by Ulster Bank and KBC, with Revolut alone having nearly 2 million customers in Ireland (from a population of only 5 million).

Together with Frankfurt and Paris, Ireland was an attractive destination for international banks seeking to re-locate EU/EEA operations from London post-Brexit. Dublin now hosts three pan-European banks (Barclays, Citibank and Bank of America) with activities primarily focused on the wider European market. All three are 'significant institutions' directly supervised by the European Central Bank (ECB) under the European Single Supervisory Mechanism (SSM). In relation to Ireland's domestic economy, these EU/EEA hubs are very large indeed, with Barclays' EU subsidiary having been the largest Irish bank by assets in 2020. Other international banks, such as Wells Fargo and Bank of Montreal, have established smaller EU/EEA HQs in Dublin and the sector has continued to grow since Brexit.

[1] Liam Flynn is a partner, Joanne Costello is an associate and Beth Gill is a trainee at Mason Hayes & Curran LLP.

II THE REGULATORY REGIME APPLICABLE TO BANKS

The Central Bank of Ireland (CBI) is the national monetary authority and national central bank (NCB) member of the Eurosystem. Unlike the UK and some other European nations, Ireland operates a 'single peak' approach to monetary policy and financial supervision, with the CBI also being responsible for prudential regulation and conduct supervision of financial institutions in Ireland. The CBI was initially established under the Central Bank Act 1942, which has since been substantially amended and updated to reflect the CBI's structural evolution.

Prior to Ireland's membership of the Eurosystem, the CBI had full responsibility for authorisation and supervision of the Irish banking sector. That changed in 2014 with the establishment of the SSM, which made the ECB the competent authority for banking supervision in the euro area. Banks designated as 'significant institutions' (SIs) for the purposes of the SSM (the large domestic banks, BOI, AIB and, for the time being Ulster Bank; the EU/EEA hubs of Barclays, Citibank and BAME; and certain other Irish entities forming part of SI groups mainly active outside Ireland – Intesa, Bank of Cyprus and KBC) are supervised by joint supervisory teams (JSTs). The remaining Irish banks are designated as 'less significant institutions' (LSIs) and are supervised directly by the CBI within parameters set by the SSM.

The CBI's stated mission is to ensure there is ongoing oversight of financial service providers and markets, to ensure that the interests of consumers are protected and to ensure the wider economy is protected in the long term. The CBI also has statutory objectives, which include maintaining stability of the financial system; ensuring proper and effective regulation of financial service providers and markets, ensuring customer protection; safeguarding the efficient and effective operation of payment and settlement systems; and monitoring the resolution of financial difficulties in banks and other regulated entities.

Until 2010, promoting development of the financial services industry within Ireland was an explicit part of the CBI's mandate, but following Ireland's EU/IMF bail-out, the mandate was amended to remove promotion as one of the CBI's stated objectives. The CBI has, to date, been keen to maintain its focus on financial stability and robust supervision and to resist suggestions that it should play a part in attracting business to Ireland, publicly stating that this is the responsibility of other state agencies.

The bulk of Irish legislation applicable to the regulation of banks in Ireland can be found in the Central Bank Acts 1942–2018; in statutory instruments made under the Central Bank Acts and made under the European Communities Act 1972; and in binding regulatory codes issued by the CBI.

III PRUDENTIAL REGULATION

i Relationship with the prudential regulator

The CBI has a reputation as a prudent, conservative, robust and intrusive regulator. In its participation in JSTs for SIs and direct supervision of LSIs, it strives to align its supervisory practices and expectations as closely as possible with ECB and European Banking Authority (EBA) guidance. The CBI's supervisory engagement with institutions operates on a risk-based approach, employing a risk rating scale called the Probability Risk and Impact System (PRISM).

Under PRISM, the CBI allocates risk ratings to all firms under its supervision, ranging from Low to Medium-Low, Medium-High, and High. Only the broad criteria of this ratings system are disclosed, such that the CBI has considerable discretion to amend the ratings in its supervisory judgement. The most significant firms – those with the ability to have the greatest impact on financial stability and the consumer – receive a higher level of supervision under structured engagement plans, leading to early interventions to mitigate potential risks. Firms with High PRISM ratings have dedicated supervision teams and frequently have regulatory staff permanently based on-site. Conversely, those firms rated Low or Medium-Low which have the lowest potential adverse impact are supervised reactively or through thematic assessments conducted across the industry sector. The CBI takes targeted action by means of specific on-site inspections followed by risk mitigation programmes against firms across all PRISM categories where poor behaviour comes to its attention.

Where serious failings are identified or where a bank fails to properly address a risk mitigation programme, the CBI has extensive enforcement powers under Ireland's administrative sanctions regime. The legal basis for this regime is the Central Bank (Supervision and Enforcement) Act 2013. The 2013 Act allows the CBI, following investigation and enquiry, to impose a broad range of penalties including monetary fines on regulated entities. The maximum fine for a bank is €10 million or 10 per cent of its turnover, whichever is higher, but in practice most investigations and enquiries are settled by agreement. Details of settlement agreements are published, and the highest penalty levied on an Irish bank to date has been just over €100 million. The CBI can use its supervisory and enforcement powers against Irish banks at the direction of the ECB where failings are identified at SIs, though in such cases the ECB may also have its own jurisdiction to impose direct sanctions.

Extensive regulatory disclosure and reporting obligations are imposed by EU and domestic legislation. Banks are subject to public reporting and disclosure obligations under corporate and prospectus and transparency law, but these obligations are not dealt with in detail here. Regulatory reporting and disclosure obligations fall into two categories: regular and periodic; and exceptional and ad hoc. An example of the former is standard regulatory reporting under the EU Capital Requirements Regulation (CRR), supplemented in Ireland by the European Union (Capital Requirements) Regulations 2014 (as amended) (the 2014 Regulations). The data disclosed to the CBI in these reports relate to the bank's own funds and financial information, including liquidity ratios and funding plans. As an example of exceptional/ad hoc reporting, under the CBI's Corporate Governance Requirements for Credit Institutions (the CGRs), the CBI expects disclosure of any breaches of the CGRs within a specified period of the institution becoming aware of the breach.

ii Management of banks

Directors of Irish banks are subject to typical common law and fiduciary directors' duties and to statutory duties under the Companies Act 2014. The 2014 Act largely, but not entirely, codifies the common law and fiduciary standards. Breaches of duty have the potential to generate personal liability for directors and to lead to proceedings for individuals to be restricted from acting as directors of Irish companies in the future.

Ireland transposed the EU's Capital Requirements Directive (CRD) IV (as amended) in the 2014 Regulations. The governance provisions of Articles 88 to 96 of CRD IV have been faithfully transposed in Regulations 76 to 84 of the 2014 Regulations, and the CBI also expects compliance with the EBA's Guidelines on Internal Governance (as revised). The CBI has supplemented CRD IV and the EBA Guidelines with its own CGRs, which impose additional core governance standards for Irish incorporated credit institutions. The CGRs are binding on all Irish-licensed banks and are treated by the CBI as part of domestic implementation of CRD IV.

The CGRs further regulate matters such as the minimum size and composition of the board of directors of an Irish-licensed bank, the board committee structure, the relationship between key functions (such as risk and compliance), and the reporting obligations imposed on banks in the event of governance breaches. The CBI takes the CGRs very seriously and has conducted themed and on-site inspections to monitor institutions' compliance with them. It has also brought sanctions proceedings against institutions that it considers to have not adhered adequately to the CGRs or adequately remediated identified breaches. The CBI does not permit overseas holding companies to reserve approval rights over key management decisions of Irish regulated banks, though it does expect subsidiaries to operate within group risk and credit policies appropriately adapted for local purposes.

In common with most other sophisticated global regulators, the culture and conduct of board and management ('tone from the top') is central to the CBI's current regulatory approach. A cornerstone of its efforts to improve culture and individual conduct within regulated financial institutions is its fitness and probity (F&P) regime, which was introduced under the Central Bank Reform Act 2010, during the global financial crisis that commenced in 2008.

The F&P regime designates certain functions of banks and the staff working within those functions as controlled functions (CFs), and the top managers of those functions as pre-approval controlled functions (PCFs). CFs are subject to prescribed conduct standards, a requirement for individual due diligence by the institution prior to appointment and a process of annual re-certification. PCFs are a subset of CFs which by the nature of the role require the CBI's pre-approval prior to appointment. The process requires the candidate to complete an extensive individual questionnaire (IQ) and may involve (and generally for very senior positions in regulated banks, does involve) the CBI interviewing the applicant to assess his or her suitability for the role.

For significant institutions directly regulated by the ECB under the SSM, F&P assessments for members of the management body and of the board of directors are undertaken by the ECB, with the CBI acting as the 'portal' to the SSM for this purpose. The ECB has published its own guidance on F&P processes which must be referred to in such cases, while the CBI has published F&P guidance and FAQs that are invaluable when advising banks on the appropriateness of proposing candidates for specific roles.

Despite these extensive interventions in bank governance, culture and conduct of senior individuals, the CBI remains unhappy with the extent of its powers to address individual misconduct. In response to the CBI's call for an extension of its powers to permit it to impose penalties directly on senior managers, the government introduced the Central Bank (Individual Accountability Framework) Bill in July 2022 (the IAF Bill). The IAF Bill is in the final stages of the legislative process at the time of writing and it is expected that it will come into force by the fourth quarter of 2023, with Central Bank rulemaking to follow thereafter. Its aim is to enhance individual accountability in the financial services industry. It grants regulation-making powers to the CBI to implement a detailed individual accountability framework, broadly similar in intent to the UK's Senior Managers and Certification Regime (SMCR) in respect of senior executives in regulated Irish banks.

Remuneration

The 2014 Regulations faithfully transposed the CRD IV remuneration rules into Irish law in Regulations 80 to 83. Additionally, all banks that benefited from state bailouts during the global financial crisis were completely prohibited until 2022 from offering total benefit packages of over €500,000 and from paying any form of variable remuneration or fringe benefit. Any bonuses that might be paid by such institutions would be subject to a 'super-tax' of almost 90 per cent. These restrictions were eased for BOI in 2022 following the Retail Banking Report, since it has repaid all state support granted, but remain broadly in place for others.

Where variable remuneration is permitted, the CBI expects strict adherence to the EBA's Guidelines on Sound Remuneration Policies. Because the CRD-IV remuneration rules and the EBA's Guidelines are standard throughout the EU, we do not deal with them in detail here. Ireland has adopted the discretion under CRD IV to permit institutions to increase the maximum limit on variable pay to 200 per cent of fixed pay by following a process of shareholder approvals and engagement with the CBI.

iii Regulatory capital and liquidity

The 2014 Regulations transposed the CRD IV capital regime into Irish law and the EU CRR is directly applicable. The CBI has adopted certain of the national discretions that are provided for under CRD IV/CRR and has published implementation notices in this regard. Capital standards of Irish banks are generally strong, with BOI's fully loaded CET1 ratio, by way of example, being 15.5 per cent at mid-year 2022. The most common form of capital held by Irish banks is ordinary share capital and retained earnings, with the ratio between BOI's tier 1 and tier 2 capital at mid-year 2022 being approximately 8:1. Risk-weighted assets are calculated based on CRR rules with significant deference being paid by the CBI to EBA Q&As. There is an expectation that the portfolio acquisitions currently underway as a result of the market exits of Ulster Bank and KBC will lead to lower system-wide capital ratios, but we can expect the CBI to maintain a strong focus on overall capital health.

In general, domestic Irish banks are conservative users of credit risk mitigation for CRR purposes, with the internationally active banks being somewhat more creative in this area. As in the rest of the Eurosystem, total required capital is composed of the required minimum, the required buffers, and any individual Pillar 2 add-ons. Prior to the covid-19 pandemic, in its role as macroprudential authority, the CBI set the counter-cyclical buffer (CCyB) at 1 per cent but reduced this to zero with the onset of the pandemic in 2020. In November 2022, the CBI restored the CCyB at 1 per cent, which acknowledged the shift in the external risk environment and the strong economic growth in the Irish market, and it aims to raise this to 1.5 per cent by mid-2023. The CBI has also set other systemically important institution buffers (O-SII buffers) for the six significant Irish banks. These buffers range from 0.5 to 1.5 per cent, remain in place, and are kept under yearly review.

The CBI takes any breaches of capital rules very seriously and pays particular attention to failures in institutions' related systems and controls. In 2019, one bank was fined €5.88 million in respect of five breaches under various regulations, two of which related to breaches of CRR requirements. The relevant breaches included a failure to maintain robust governance arrangements in relation to regulatory reporting, including failure to accurately report the bank's capital position and issues surrounding calculation of own funds.

The liquidity coverage ratio (LCR) and the net stable funding ratio (NSFR) apply in Ireland in line with CRR requirements. Where the CBI has adopted any related national discretions, it has published implementation notices in this regard. The liquidity position of Irish credit institutions is strong, with BOI's mid-year 2022 LCR, for example, standing at 218 per cent.

In line with the rest of the EU, Ireland implemented the CRD V/CRR II amendments in December 2020. The EU adopted legislative proposals for CRD VI and CRR III in January 2023, meaning that, in common with the rest of the EU, finalisation of Basel III rules will slip beyond 1 January 2023 in Ireland.

iv Recovery and resolution

As the Irish banking sector collapsed in 2010–2011, the state moved swiftly to introduce resolution powers ahead of the adoption of EU rules. At first, Ireland implemented a temporary bank stabilisation regime under the Credit Institutions Stabilisation Act 2010. Irish law was then further amended to give the CBI extensive intervention and resolution powers under the Central Bank and Credit Institutions (Resolution) Act 2011 (the 2011 Act). The 2011 Act now applies principally to credit unions and has been largely superseded in relation to banks experiencing financial difficulties by the European Union (Bank Recovery and Resolution) Regulations 2015 (as amended) (the BRRD Regulations), which transpose the EU Bank Recovery and Resolution Directive in Ireland.

The BRRD Regulations provide an updated framework for resolving failing banks and large investment firms and enable authorities to intervene early to prevent the failure of an institution. The CBI is the national resolution authority in Ireland, save where the credit institution is a significant institution for SSM purposes where the ECB will have the prescribed powers under EU law. In common with Ireland's usual approach to the transposition of EU financial services law, the Irish BRRD Regulations do not diverge in significant respects from the EU directive and there is no national 'gold-plating'. Therefore, bail-in powers exist consistently with the EU directive, the CBI has the standard resolution powers provided for under EU law and banks are required to prepare recovery and resolution plans accordingly.

Significant institutions are required to submit their resolution plans directly to the EU Single Resolution Board (SRB) and to comply with SRB guidance. While advising that institutions pay close attention to SRB guidance, for less significant institutions the CBI has also published its own 'Approach to Resolution for Banks and Investment Firms', which outlines its resolution mandates, powers and intended approaches under the BRRD Regulations. It has also published a domestic implementation notice regarding minimum requirement for own funds and eligible liabilities (MREL).

IV CONDUCT OF BUSINESS

As would be expected, only licensed banks can carry on banking business in Ireland or hold themselves out as or represent themselves to be banks. Similarly, only licensed banks can solicit deposits in the state, and the use of the term 'bank' in an unlicensed entity's name can lead to a presumption that these restrictions are being breached.

All banks conducting business in Ireland, whether headquartered in the state or not, must comply with the CBI's Consumer Protection Code 2012 (the CPC), when dealing with consumers. For these purposes, 'consumer' includes partnerships and trustees, as well as companies with a turnover of less than €3 million per annum. The CPC includes detailed rules regarding, among other matters, knowing your customer, suitability, sales and promotions, packaged products and complaints handling. The CBI is conducting a review of the CPC at the time of writing, and a new retail conduct framework, in the form of regulations, is expected by the end of 2024. The aim of the review is to modernise the CPC to ensure it is fit for purpose and continues to protect consumers of financial products.

Banks dealing with consumers must also comply with the CBI's Minimum Competency Code 2017 and Minimum Competency Regulations 2013. These set out minimum professional standards and qualifications for staff when dealing with consumers in relation to retail financial products, and with retail clients and elective professional clients in respect of Markets in Financial Instruments Directive (MiFID) investment services and activities.

Banks must comply with the EU's Anti-Money Laundering Directives as transposed in Ireland by the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The CBI supervises compliance by regulated entities with anti-money laundering requirements, while the responsible authorities for suspicious transactions reports are the Financial Intelligence Unit of the Irish Police and the Revenue Commissioners.

Like the rest of the EU, consumer lending in Ireland is primarily governed by the EU Consumer Credit Directive, transposed into Irish law by the European Union (Consumer Credit Agreements) Regulations 2010, and mortgage lending is governed by the EU Mortgage Credit Directive, transposed by the European Union (Mortgage Credit Agreements) Regulations 2016. Great care needs to be taken in this area as domestic Irish legislation relating to consumer and mortgage lending that pre-dates these directives is in effect, together with supplemental CBI guidance and binding codes of conduct (such as the Code of Conduct on Mortgage Arrears). In practice therefore, analysing conduct requirements in this area is extremely complex. One conduct of business rule of which overseas banks transacting business in Ireland are frequently unaware is the mandatory requirement that fees and charges levied on Irish customers must be pre-approved by the CBI (Section 149 of the Consumer Credit Act 1995).

Ireland has a mandatory credit reporting regime with one central credit register that is maintained by the CBI under the Credit Reporting Act 2013. All loans to Irish resident individuals and companies must be reported to the CBI and loan documentation must include prescribed forms of notification to borrowers that their data will be registered.

As is the case in most sophisticated jurisdictions, the sources of potential civil, criminal and regulatory liability for banks are many and various and cannot easily be summarised. Criminal prosecutions are rare, but regulatory enforcement through the administrative sanctions regime is relatively common. An important source of potential civil liability is the broad jurisdiction of the Financial Services and Pensions Ombudsman to award compensation to consumers that bring successful complaints against banks.

As a common law jurisdiction, Ireland recognises the traditional bankers' duty of confidentiality to customers, qualified in practice by extensive statutory obligations to disclose prescribed information to various authorities, such as the Revenue Commissioners. Unlike some continental European jurisdictions, there is no statutory duty of bank confidentiality and no automatic criminal consequences for staff members that disclose customer information without authority.

V FUNDING

Irish domestic banks are today primarily funded by retail and commercial deposits and by ECB funding, while the international sector tends to be funded either by intra-group arrangements or by the wholesale market. Before 2008, as a result of the boom in the Irish property market, over half of Irish bank lending was funded by the issuance of bonds on the wholesale market and through inter-bank lending. The flight of this capital source following the collapse of Lehman Brothers led to the Irish state announcing a sovereign guarantee of the entire banking sector in October 2008. Mounting liabilities under this guarantee in turn led indirectly to the state's EU/IMF bailout. As a result, Irish domestic banks tend to make conservative use of wholesale market funding today and with ECB funding readily available, they have little short-term incentive to change.

VI CONTROL OF BANKS AND TRANSFERS OF BANKING BUSINESS

i Control regime

There are currently no special legal restrictions on the foreign ownership of Irish banks or stakes therein. Competition law applies to regulate mergers and acquisitions considered to be anticompetitive, and legislation is currently being considered to implement the EU Foreign Direct Investment Screening Regulation and to establish an Investments Screening Board for that purpose. Subject to these points, foreign bank investors, whether based in the EU or otherwise, have the same rights and obligations as domestic investors as a matter of Irish law.

Requirements in relation to the acquisition and disposal of qualifying holdings in credit institutions are set out in the 2014 Regulations and are consistent with those imposed under CRDIV/CRR. The CBI must be notified, and approval must be sought in advance of a proposed acquisition of a direct or indirect holding in a bank (i.e., 10 per cent or more of the voting rights or capital in the bank or a holding that allows that person to exercise a significant influence over the bank's direction or management). Notification and approval are also required in respect of direct or indirect increases (above thresholds of 10, 20, 33 or 50 per cent) in such a qualifying holding. Approval is now granted directly by the ECB under the SSM.

ii Transfers of banking business

Assets and liabilities relating to banking business can be transferred from one Irish licenced bank to another licenced bank under a statutory scheme of transfer mechanism provided for under the Central Bank Act 1971. When a holder of a banking licence wants to transfer, in whole or part, its banking business to another banking licence holder, the parties must submit a scheme for the transfer to the Minister for Finance for his approval. The process requires the Minister to consult with the CBI and requires certain statutory advertisements to be published in daily newspapers and in the Official Gazette. There is no court approval process involved and the procedure is used only where the transferring business includes a deposit book. Transfers of loan portfolios follow different processes.

VII THE YEAR IN REVIEW

The slowing of the global economy in 2022 has posed challenges for the Irish banking sector; however, there has been a trend of continuing and increasing stability following the enormous challenges and radical changes that affected both banking regulation and the banking sector in Ireland in the wake of the financial crisis in 2008. The government has been slowly selling down its holdings in the pillar banks – it no longer has a stake in BOI, while its holding in

AIB has reduced to under 60 per cent and its stake in PTSB has fallen to just over 62 per cent and is intended to fall further once PTSB acquires part of the business of Ulster Bank in exchange for an issue of shares to NatWest Group.

The CBI has continued its vigorous approach to enforcement, including reprimanding and fining BOI €100.5 million for refusing certain customers access to cheaper mortgages that tracked ECB rates. AIB was also fined €96.7 million in 2022 for the same regulatory breaches, all forming part of the 'tracker mortgage scandal'. The CBI's long-running investigations into this affair are now closed, and Irish banks have expressed hopes that this can herald a new era in positive customer relations.

As mentioned above, significant legal changes to reinforce individual accountability of senior managers in regulated firms and to give the CBI power to bring enforcement proceedings directly against them have been included in the IAF Bill, which is expected to come into force in the fourth quarter of 2023. It will create Ireland's first comprehensive senior executive accountability regime (SEAR). SEAR will introduce prescribed responsibilities for senior managers and strengthen firms' obligations to undertake due diligence on staff. It will also impose more onerous conduct standards that can be enforced directly by the CBI against staff through fines and other sanctions.

VIII OUTLOOK AND CONCLUSIONS

The Irish economy expects continued growth in 2023, despite the high level of inflation and slowing global economic activity primarily driven by the energy price impact of Russia's invasion of Ukraine. Irish GDP is forecast to grow by 3.8 per cent in 2023 (though GDP is often considered to be a poor measure of real economic activity because of the outsize impact of international transfers on Irish economic data). Due to the energy inflation shock, profit margins will likely fall for Irish small- and medium-sized enterprises, exposing retail banks to risks from distressed borrowers; however Irish banks' profitability prospects remain relatively strong because of the higher euro-area interest rates.

The CBI's banking policy priorities for 2023 include establishing a macro-prudential framework for non-bank lenders, strengthening the resilience of the financial system to climate change risks, and monitoring the potential decline in asset quality that could result from inflation and broader global slowdowns. Its concerns in these areas are broadly aligned with those of other global regulators. Focusing on more domestic concerns, the CBI also intends to concentrate resources on implementation of the IAF/SEAR regime and on its review of the CPC.

Appendix 1

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