

Simmons & Simmons

Irish Funds & Regulatory Quarterly Update

1 July – 30 September 2022



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Spotlight in this edition

Each quarter we will introduce you to a member of our funds and regulatory team who will also outline what is covered for this quarter.



Meet Derek Lawlor

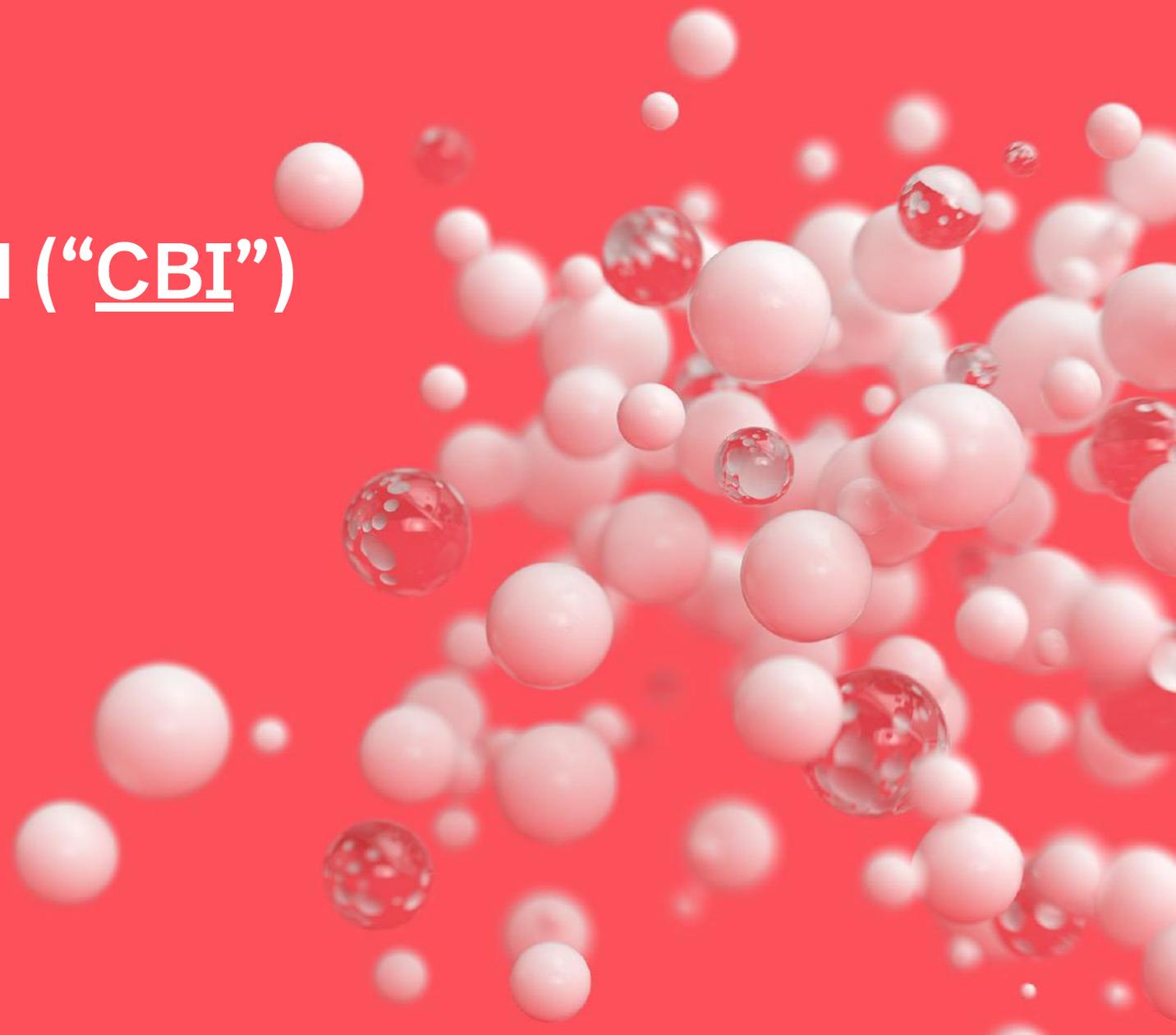
Derek is a partner in our financial regulation practice. Derek specialises in advising both buy-side and sell-side firms on all aspects of the Irish and EU regulatory regimes. Derek advises extensively on MiFID2, EMIR, MAR, and the rules of the Central Bank of Ireland. Derek also advises clients on ESG regulations, outsourcing and operational resilience, the regulation of the FinTech sector and the proposed new Senior Executive Accountability Regime.

What's coming up in this edition

In this edition we cover updates from the CBI and the Irish Government. Our highlights are as follows:

- The CBI's update on the issue of VASP registration process which gave further clarity on weaknesses and expectations of such applications.
- The CBI also announced it will once again roll out a fast tracking process with regard to SFDR Level 2 updates.
- The Irish government published an updated version of the Central Bank (Individual Accountability Framework) Bill 2022 (the "Bill"). The Bill, sets out the details of the new Irish individual accountability framework including the SEAR and gives some welcome clarity on the possible final form of the new individual accountability framework. This long awaiting update is discussed in greater detail in this latest edition.

Central Bank of Ireland (“CBI”) - Updates



24-hour approval for Irish direct lending and certain real estate AIFs

On 1 July 2022, the CBI published updated guidance with regard to the authorisation process for certain types of alternative investment funds (AIFs).

By way of background:

- QIAIFs are Irish AIFs aimed at qualifying investors (i.e., professional investors plus high net worth individuals, family offices etc)
- they are approved by the CBI on a fast-track basis, within 24 hours of submission of the authorisation application, with no review of the documentation conducted by the CBI
- instead, the CBI relies on the AIFM and legal advisers to the QIAIF confirming compliance with the relevant rules.

In 2020, the CBI introduced a pre-submission process for certain asset classes, namely

- loan origination funds
- real estate funds and
- funds investing in life settlements.

The CBI has now revised its position so only funds investing in Irish real estate or crypto assets are required to use the pre-submission process.

For further information, please see link to our full Simmons insights article below.

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CBI Markets Update - July 2022

On 4 July 2022, the CBI published [Issue 7 of its regular Markets Update](#), in which it sets out alerts of interest to Irish regulated firms and other market participants.

This issue contains a single item, concerning the [Notice of intention](#) published by the CBI on 4 July 2022. The Notice relates to the application of the [ESMA Guidelines on stress test scenarios under the MMF Regulation](#) (the Guidelines).

The Guidelines

- were published on 4 May 2022 and came into force on 4 July 2022
- are updated at least once a year to take latest market developments into account
- are addressed to NCAs, money market funds (MMFs) and managers of MMFs as defined in the [MMF Regulation](#) and
- establish common reference parameters for stress test scenarios to be included in the stress tests conducted by MMFs or managers of MMFs in accordance with Article 28 of the MMF Regulation.

The CBI notes that it will consult on the incorporation of a provision in the CBI UCITS Regulations and AIF Rulebook in due course. In the meantime, it expects full compliance with the Guidelines from 4 July 2022.

For further information please see link the CBI's markets update provided as well as our full Simmons Insights Article.

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Timing

Full compliance with the Guidelines expected from 4 July 2022.



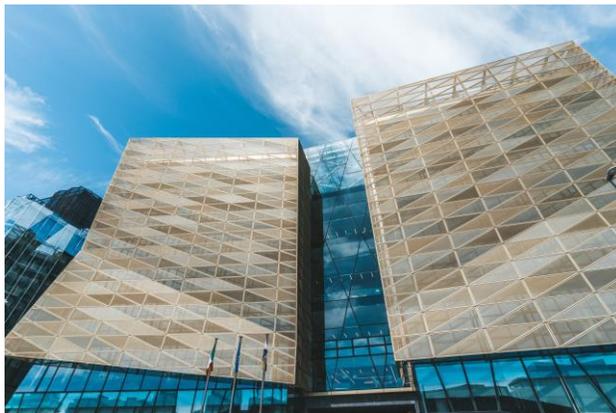
CBI issues update on VASP registration applications

In an effort to assist future applicants, the CBI issues anti-money laundering update focusing on virtual asset service providers.

Earlier this month, the CBI issued an Anti-Money Laundering Bulletin focussing on Virtual Asset Service Providers (VASPs) coming within the CBI's registration and supervisory remit. In an effort to assist future applicants for VASP registration, the CBI outlined a number of recurring weaknesses identified in applications received to date. Such as:

- Incomplete applications;
- Money laundering and terrorist financing risk assessment;
- Policies and procedures;
- Customer due diligence;
- Financial sanctions;
- Outsourcing; and
- Individual questionnaires.

For further information on each of the points raised, please see link to our Simmons Insights Article below.



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CBI publishes final form client asset regulations

The protection of client assets is a key priority of the CBI which can be seen in the upcoming changes to the current regime.

On 23 June 2022, the CBI published the final form *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2022* (the Investment Firm Regulations).

The Investment Firm Regulations impose obligations on investment firms which:

- hold client assets; or
- enter into Title Transfer Collateral Arrangements (TTCA) with clients.

In particular, the Investment Firm Regulations contain revised client asset requirements (CAR 2022), which will apply to MiFID investment firms and credit institutions (collectively defined as investment firms), and will come into effect in respect of MiFID investment firms on 1 July 2023 and credit institutions on 1 January 2024. The CBI expects investment firms to begin preparations to ensure compliance with CAR 2022 by these dates. The CBI has also published a draft Guidance Note on the CBI Client Asset Requirements dated June 2022 (the Guidance Note) to assist with this process (available [here](#)).

The current client asset requirements are contained in the equivalent 2017 regulations, which will remain in force until repealed by the Investment Firms Regulations on 1 July 2023. Therefore, firms coming within the scope of the existing regulations must continue to comply with these rules until repealed by the Investment Firm Regulations. CAR 2022 will introduce a number of changes to the client asset requirements regime.

For full details of the changes, please read our Simmons Insights Article which is linked below.

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SFDR – the CBI confirms use of fast track filing

On 1 January 2023, the long awaited Level 2 measures under SFDR come into effect. In response, the CBI has announced it will once again use a fast track filing process. Among other things, these will require affected funds to make amendments to their fund documentation, including their prospectuses.

To help with this process, the CBI has announced that it will use a fast-track process – the deadline for filing will be **1 December 2022**. This will be along the lines of the fast track process which the CBI has used in the past – our summary from that time can be found [here](#).

Among other things, we understand that

- as before, the CBI will conduct a sample review of filings
- an attestation will be needed that the changes relate to SFDR only
- managers will need to submit a covering letter in which they identify and provide a rationale for any changes being made to align with SFDR and recent related EU level clarifications (see below)
- the CBI will allow fund re-classifications under the fast-track process. However, in such cases, the manager must explain the rationale for the change in its covering letter
- for technical reasons, pre-contractual disclosures should be submitted as standalone pdfs, separate from the prospectus

It is likely that further details around the fast track process will be made public in due course – we will, of course, provide updates on these as they occur.

The CBI’s move, which we welcome, comes as regulators and industry gear up for the introduction of SFDR. Since late May, for example, we have seen:

- the European Commission’s [responses to questions from the European Supervisory Authorities](#) (ESAs) on interpretation of aspects of the SFDR and the Taxonomy Regulation
- [ESA clarification](#) of aspects of the SFDR Level 2 measures
- [Publication of the final Level 2 Regulatory Technical Standards](#) under SFDR
- [ESMA’s Supervisory Briefing](#) on implementation of the SFDR

See link to our full Simmons Insights Article in the table to the right. For further information on the EU’s ESG framework generally, please see our online resources [here](#) and [here](#) or speak to your usual Simmons contact.

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Timing

- **1 Dec 2022** – the deadline for fast track filing.
- **1 Jan 2023** - Level 2 measures under SFDR come into effect



Irish Government Updates



Central Bank (Individual Accountability Framework) Bill 2022

The Bill, which sets out the details of the new Irish individual accountability framework including the SEAR, was published on 28 July 2022.

Summary

The updated version of the *Central Bank (Individual Accountability Framework) Bill 2022* (the “Bill”) was published on 28 July 2022, a year and a day after the publication of the general scheme of the Bill (the “General Scheme”), and four years after the publication of the CBI’s report on Behaviour and Culture of the Irish Retail Banks (the “Report”), which first set out the general outline of the proposed new Irish individual accountability framework. While the details of the proposed framework have been refined since the publication of the Report, its four main elements remain the same:

- three sets of clear and enforceable standards:
 - **business standards** which will apply to regulated firms;
 - **common conduct standards**, originally proposed to apply to all staff but now limited to those performing controlled functions; and
 - **additional conduct standards**, which will apply to those performing pre-approval controlled functions and other senior persons;
- a senior executive accountability regime (“SEAR”) which is based on the UK’s SMCR;
- enhancements to the existing fitness and probity regime (the “F&P Regime”); and
- a unified enforcement regime, including the removal of the existing participation link.

For further information our full Simmons Insights article has been linked below.

Take away points

The publication of the Bill gives some welcome clarity on the possible final form of the new individual accountability framework, although much of the detail – particularly in relation to SEAR – will be included in regulations to be made by the CBI. We are closely following the evolution of this new regime, in light of the practical experience of our UK colleagues in implementing the SMCR.

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