



IRELAND

FINANCIAL SECTOR ASSESSMENT PROGRAM

TECHNICAL NOTE ON FINANCIAL SAFETY NETS AND CRISIS MANAGEMENT

This paper on Ireland was prepared by a staff team of the International Monetary Fund as background documentation for the periodic consultation with the member country. It is based on the information available at the time it was completed on June 28, 2022.

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June 28, 2022

TECHNICAL NOTE

FINANCIAL SAFETY NET AND CRISIS MANAGEMENT

Prepared By
**Monetary and Capital
Markets Department**

This Technical Note was prepared by IMF staff in the context of the Financial Sector Assessment Program (FSAP) in Ireland. It contains technical analysis and detailed information underpinning the FSAP's findings and recommendations. Further information on the FSAP can be found at

<http://www.imf.org/external/np/fsap/fssa.aspx>

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Glossary

AIB	Allied Irish Banks Group plc
AMV	Asset Management Vehicle
BBI	Barclays Bank Ireland plc
BIFR	Bank and Investment Firm Resolution Fund
BoE	Bank of England
BofAE	Bank of America Europe Designated Activity Company
BOI	Bank of Ireland Group plc
BRRD	European Union Bank Recovery and Resolution Directive
BRR Regulations	Irish Bank Recovery and Resolution Regulations 2015
BSD	Banking Supervision Division
BU	Banking Union
CBLIE	CBL Insurance Europe Designated Activity Company
CCF	Crisis Coordination Framework
CCG	Crisis Coordination Group
CDIC	Canadian Deposit Insurance Corporation
CHIL	Citibank Holdings Ireland Limited
CIO	Capital Instruments Order
CIRF	Credit Institutions Resolution Fund
CMG	Crisis Management Group
CMP	Crisis Management Playbook
CMT	Crisis Management Team
Court	High Court of Ireland
CPG	Crisis Preparedness Group
CPN	Crisis Preparedness Network
CRD IV	European Union Capital Requirements Directive IV
CWG	Communications Working Group
DoF	Department of Finance
DGS	Deposit Guarantee Scheme
DGSD	European Union Deposit Guarantee Schemes Directive
DGS Regulations	Irish Deposit Guarantee Schemes Regulations 2015
EA	Euro-area
EBA	European Banking Authority
EC	European Commission
ECB	European Central Bank
EDIS	European Deposit Insurance Scheme
EEA	European Economic Area
EfBs	Expectations for Banks
EIMs	Early Intervention Measures
ELA	Emergency Liquidity Assistance
ERC	European Resolution College
EU	European Union
FCPM	Financial Crisis Preparedness and Management function
FCR	Financial Crisis Response

FMI	Financial Market Infrastructure
FOLTF	Failing or Likely to Fail
FRWG	Financial Risk Working Group
FSAP	Financial Sector Assessment Program
FSB	Financial Stability Board
FSC	Financial Stability Committee
FSG	Financial Stability Group
FSG CCF	Financial Stability Group – Crisis Coordination Framework
Fund	Deposit Guarantee Contributory Fund
G-SIB	Globally Systemically Important Bank
IBBD	Investment Banking and Broker-Dealer Supervision Division
IBRC	Irish Bank Resolution Corporation
IRRD	European Union Insurance Recovery and Resolution Directive
IRT	Internal Resolution Team
ISIF	Irish Strategic Investment Fund
IS ResCom	Institution Specific Resolution Committee
JST	Joint Supervisory Team
KBCI	KBC Bank Ireland plc
LSI	Less Significant Institution
Minister	Minister for Finance
MOU	Memorandum of Understanding
MREL	Minimum Requirement for Own Funds and Eligible Liabilities
NAMA	National Asset Management Agency
NCA	National Competent (Supervisory) Authority
NCB	National Central Bank
NCWO	No Creditor Worse Off than in Liquidation
NRA	National Resolution Authority
NTMA	National Treasury Management Agency
Oversight Committee	Deposit Guarantee Scheme and Insurance Compensation Fund Oversight Committee
PCIO	Proposed Capital Instruments Order
PIA	Public Interest Assessment
PRO	Proposed Resolution Order
PRS	Preferred Resolution Strategy
PSSD	Payments and Securities Settlements Division
PTAO	Proposed Temporary Administration Order
PTSB	Permanent TSB Group Holding plc
RA	Resolution Authority
ResCom	Resolution Committee
RES	Resolution and Crisis Management Division
RPT	Recovery Planning Team
R&R	Recovery and Resolution
SI	Significant Institution
SRB	Single Resolution Board
SRF	Single Resolution Fund
SRM	Single Resolution Mechanism

SSM	Single Supervisory Mechanism
UBIDAC	Ulster Bank Ireland Designated Activity Company
UK	United Kingdom
US	United States
VRS	Variant Resolution Strategy
2011 Act	Central Bank and Credit Institutions (Resolution) Act 2011

EXECUTIVE SUMMARY

This Note assesses the bank recovery, resolution, and crisis preparedness regime in Ireland. It analyzes laws, policies, procedures, institutional capacity and coordination arrangements for bank failure resolution and for managing financial distress and crises. The assessment is focused on banks under the direct remit of the Central Bank of Ireland and does not evaluate the role played by the European Central Bank and the Single Resolution Board for Ireland's largest banks. The Note also assesses steps toward adopting a recovery and resolution regime for insurers. The Note is guided by international standards, in particular the *Key Attributes of Effective Resolution Regimes for Financial Institutions* promulgated by the Financial Stability Board.

The authorities most relevant to this Note are the Central Bank and the Department of Finance. The Central Bank is both the supervisory and resolution authority and is responsible for the Deposit Guarantee Scheme. The Department of Finance and the Minister have certain responsibilities in dealing with the failure of systemic banks, and along with the National Treasury Management Agency, are owners of equity stakes in three of Ireland's five large retail banks.

Since the prior FSAP in 2016 the authorities have adopted a comprehensive set of new policy, procedure and coordination frameworks for bank resolution and crisis management. While there have been no bank failures since the prior FSAP, new crisis management frameworks at the interagency and Central Bank levels have been invoked several times in the context of Brexit and the COVID-19 pandemic. These invocations led to enhancements to the frameworks. Before and after these invocations, the authorities have utilized simulation exercises to test and enhance different aspects of their bank failure and crisis management frameworks. This program of testing and enhancement is well institutionalized, overseen at the interagency level by the Financial Stability Group chaired by the DoF Secretary General and within the Central Bank by the Financial Stability Committee chaired by the Governor.

The Central Bank's resolution functions are carried out by the Resolution and Crisis Management Division within the Financial Stability Directorate. There is clear institutional and procedural separation from the Central Bank's supervisory functions. Division staffing levels have been increased in response to recent developments, notably those arising from Brexit and the resulting new entry and expansion of activities of regulated firms. The division includes a function tasked with guiding the development and testing of bank failure and crisis preparedness arrangements within the Central Bank and in support of the interagency Financial Stability Group.

Recovery planning by banks and oversight by the Central Bank's supervisory function are well advanced. Having been initiated in 2015 and 2016, recovery plans are now quite mature. The Central Bank defines annual work programs for banks geared to ensuring plans are comprehensive, updated and can be executed. The requirement for recovery planning has recently been extended to insurers. The Central Bank has extensive powers to take actions to ensure that banks rectify identified weaknesses, including requiring them to implement measures specified in their recovery plans.

As in other Member States in the Banking Union, the bank and insurer winding-up and liquidation regime is governed by national insolvency laws. That legal framework in Ireland is sound, with respect to banks but has deficiencies with respect to insurers. The legal framework for bank resolution, other than by liquidation, is the Irish transposition of the European Union's 2014 Bank Recovery and Resolution Directive, as amended. At present, there is no comparable legal framework for insurers.

The Central Bank has statutory obligations to notify the Minister of certain steps taken with respect to failing banks and must obtain the Minister's prior consent to take resolution action in limited circumstances. The Central Bank and the Department of Finance have agreed a framework for promoting effective coordination in the context of bank failures. Government ownership of banks that might be subject to Central Bank resolution action requiring the Minister's prior consent may, however, give rise to the appearance of potential conflict of interest.

Unlike in some other Euro-area states, the High Court plays a decisive role in the resolution of bank failures whether by liquidation or alternative resolution action. The Court must approve all relevant actions proposed to be taken by the Central Bank. The Central Bank has elaborated policies and procedures to ensure its ability to file prompt detailed and comprehensive petitions to the Court and adequate arrangements are in place to mobilize the external experts needed to support the Central Bank in the process of petitioning the Court and implementing the Court's orders.

Resolution planning by the Central Bank and within banks, also initiated in 2015 and 2016, is well advanced. Resolution strategies for all banks, whether by means of liquidation or by using alternative resolution action, have been specified. Substantial progress has been made in ensuring that banks not likely to be liquidated are able to be effectively and efficiently resolved. Since the prior FSAP the Central Bank has developed detailed policy, procedure, and coordination frameworks for executing winding-up and resolution actions.

Substantive efforts have been made to propose a resolution regime for insurers and to identify scope for improving the existing insolvency framework as it applies to insurers. This has involved undertaking a self-assessment in terms of the *Key Attributes* and the issuance of a public consultation paper. Adoption of an insurer resolution regime will depend on progress at the European level where an Insurance Recovery and Resolution Directive recently has been proposed, but remedies to the insolvency framework shortcomings can be implemented independently.

Further progress is currently underway. The Central Bank is developing a structured framework addressing the use of its early intervention powers and its determination as to whether a bank is likely to fail. This framework is due to be tested by means of simulation exercises in 2022. Its emergency liquidity assistance framework has in recent years been undergoing testing and enhancements and this effort will continue. The Department of Finance is in the process of developing an Incident Response Protocol that should complement comparable protocols put in place at the interagency level and in the Central Bank since the prior FSAP.

This Note recommends additional steps. Those deemed most important are:

- The Financial Stability Group's Terms of Reference should be extended to encompass an annual update and discussion of member agencies' contingency plans and testing regimes as they relate to systemic bank failures and financial sector crises;
- Steps to limit the Minister's prior written consent on bank resolution to circumstances that require the use of fiscal resources should be considered.
- The Department of Finance should explore providing statutory protections to persons selected by the Central Bank albeit appointed by the Court for resolution purposes;
- The Central Bank should develop a policy in respect of indemnification of costs incurred by Central Bank staff in defending resolution actions which are in scope of statutory protections;
- The Central Bank and Department of Finance should seek the views of the competition authority on the extent to which resolution regime legislation overrides national competition rules
- The Central Bank should develop policies and procedures for assessing the prospective solvency of a bank entering into or undergoing resolution to determine its eligibility for emergency liquidity assistance; and
- The Department of Finance and the Central Bank should remedy weaknesses in the current insolvency regime as it applies to insurers, including any required legislative amendments.

See Table 1 for a summary of these and other key recommendations made in this Note.

Table 1. Ireland: Summary of Key Recommendations

#	Recommendations	Authority	Time*	Priority**
Institutional Arrangements and Operational Capacities				
1.	Ensure that the RES remains adequately staffed and resourced considering its evolving workload (¶129).	CBI	C	H
2.	Explore providing statutory protections to persons selected by the Central Bank albeit appointed by the Court for resolution purposes (¶130).	DoF, CBI	ST	H
Recovery Planning and Early Intervention				
3.	Finalize the Banking Crisis Management Playbook (¶139).	CBI	I	M
Normal Insolvency and Extraordinary Resolution				
4.	Consider steps to limit the Minister's prior written consent on bank resolution to circumstances that require the use of fiscal resources (¶154).	CBI, DoF	I	H
5.	Merge duplicative policy and procedure framework documents for bank resolution (¶157).	CBI	ST	L
6.	Expand the scope of the R&R Engagement Framework to incorporate all statutory requirements for notifications to the Minister in the context of bank resolution (¶158).	CBI, DoF	ST	M
7.	Adopt arrangements to mitigate the appearance of a conflict of interest between the Minister's ownership of banks and the Minister's potential role in approving resolution action for those banks (¶159).	DoF	I	M
8.	Remedy weaknesses in the insolvency regime for insurers, including any required legislative amendments (¶163).	CBI, DoF	ST	H
Resolution Planning, Strategies, and Impediments				
9.	Seek the views of the competition authority on the extent to which the BRR Regulations override national competition rules (¶172).	CBI, DoF	I	H
10	Pursue planning for potential use of the bridge institution and asset management vehicle tools (¶172).	CBI, DoF	ST	M
Resolution Funding				
11.	Consider how restrictions on use of the SRF may impede resolution action and how to mitigate those impediments (¶177).	CBI	I	L
12.	Develop policies and procedures for assessing the prospective solvency of a bank entering into or undergoing resolution to determine its eligibility for ELA (¶181).	CBI	ST	H
Deposit Protection and Payout				
13.	Agree a written policy addressing potential use of Central Bank funds to supplement the DGS fund and the DoF's contingent liability to repay those funds to the Central Bank (¶191).	CBI, DoF	ST	M
14.	Develop policies and procedures for alternative uses of the DGS fund, including avoiding its use for failure prevention (¶193, 94).	CBI	ST	M

Table 1. Ireland: Summary of Key Recommendations (concluded)

Contingency Planning and Crisis Management				
15.	Extend the FSG's Terms of Reference to encompass an annual update and discussion of member agencies' contingency plans and testing regimes as they relate to systemic bank failures and financial sector crises (¶102).	CBI, DoF, NTMA	I	H
16.	Pursue development of the Incident Response Protocol (¶104).	DoF	ST	H
*C – Continuous; I – Immediate: within 1 year; ST – Short Term: in 1 to 3 years. ** H = High; M = Medium; L = Low.				

BACKGROUND¹

A. Scope of the Note

1. This Technical Note assesses arrangements in Ireland for bank failure resolution and financial crisis management, and describes the authorities plans to enhance these arrangements. The Note summarizes the findings of the FSAP mission undertaken virtually during the period February 23 through March 28, 2022. The Note addresses, among other matters, the supervision of recovery planning by banks, early intervention in banks when problems are identified and action taken when banks are deemed to be failing, resolution planning by banks and the Irish authorities, the bank winding-up and resolution legal regimes, deposit insurance and resolution funding arrangements, the legal regime for insurer failures, and the Irish authorities' preparedness to deal with potential systemic distress and crises. The Note also describes recent instances of credit union failures under the Irish winding-up regime which also applies to banks. The assessment presented in this Note is based mainly on an analysis of relevant legal, policy, procedural and coordination frameworks, and on discussions with and representations made by the authorities. The Note does not evaluate the role played by the European Central Bank (ECB) and the Single Resolution Board (SRB) in Ireland's largest banks, nor does it represent an assessment of adherence to relevant international standards, specifically the Key Attributes of Effective Resolution Regimes for Financial Institutions promulgated by the Financial Stability Board (FSB) and the Core Principles for Effective Deposit Insurance Systems adopted by the International Association of Deposit Insurers.

2. As throughout the Banking Union (BU),² the ECB and SRB, in close collaboration with the Irish authorities, play significant well-defined roles in bank supervision and resolution in Ireland under the Single Supervision Mechanism (SSM) and Single Resolution Mechanism (SRM). The ECB exercises direct supervision of the banks and banking groups it has designated as Significant Institutions (SIs), of which there are six in Ireland, and oversees and supports the work of the National Competent (Supervisory) Authorities (NCAs).³ The SRB exercises resolution planning and resolution decision-making powers over SIs and certain other institutions,⁴ and oversees and supports the work of the National Resolution Authorities (NRAs).⁵

3. The domestic authorities relevant to this Note are the Central Bank, the Department of Finance (DoF), and the National Treasury Management Agency (NTMA). The Central Bank is both Ireland's NCA and NRA. As NCA it carries out supervisory responsibilities for the Less

¹ This note was prepared by David H. Scott, External Expert for the Monetary and Capital Markets Department.

² Comprising the 19 Member States in the European Union (EU) that use the euro as their currency and thus form the euro-area (EA).

³ In addition, the ECB may elect to exercise direct supervision over other institutions otherwise under the purview of the NCAs. It has not done so in Ireland.

⁴ These include banks for which the ECB has decided to exercise direct supervision, and other (than SI) cross-border groups where both the parent and at least one subsidiary bank are established in two different participating Member States of the BU. There are no such banks in Ireland.

⁵ As with the ECB, the SRB can directly exercise its powers over institutions otherwise under the purview of the NRAs. It has not done so in Ireland.

Significant Institutions (LSIs, banks not designated as SIs), credit unions, insurers, investment firms and investment funds, among other types of firms. It participates significantly in ECB Joint Supervisory Teams (JSTs) in the supervision of Irish SIs and participates in ECB governance. As NRA, the Central Bank is directly responsible for resolution related activities for LSIs and participates in SRB Internal Resolution Teams (IRTs) for the Irish SIs. The Central Bank as NRA also is responsible for executing all resolution decisions taken with respect to SIs and LSIs, whether initiated by the SRB or the Central Bank,⁶ and participates in SRB governance. The Minister of Finance (Minister) has certain statutory roles and responsibilities with respect to failing banks and systemic crises and is supported by staff within the DoF for those purposes. The NTMA is a state body that provides asset and liability management services to the Government. It has evolved from a single function agency issuing and managing the national debt, to a manager of a portfolio of public assets and liabilities, among other functions. The NTMA reports to the Minister and provides staff on secondment to the Shareholding and Financial Advisory Division in the DoF, which among other functions, represents the Minister's interest in the State ownership in three Irish commercial banks (remnants of the 2008/9 financial crisis), and the Minister's interest in relation to the liquidation of the Irish Bank Resolution Corporation (IBRC), which is comprised of the estates of two large, failed deposit-taking institutions, also dating from the 2008/9 financial crisis. The NTMA also has oversight of the Minister's shareholding in the National Asset Management Agency (NAMA).⁷ The NTMA assign staff and support services to NAMA. Additional detail on the roles of the Central Bank, the DoF and the NTMA, and related recommendations, are set out in the following sections of this Note.

B. Financial Sector Landscape

4. The Irish financial system is large and complex, encompassing a few institutions servicing the domestic economy and a far larger number of firms operating internationally.

Banks are the institutions of most relevance for this Note, along with, to a lesser extent, credit unions and insurers. All Irish banks are subsidiaries of either a domestic or foreign holding company or another foreign financial services firm, and references to banks in this Note are intended to also refer to the group of which the bank is a part. The other principal sectors are investment firms and investment funds.

5. The banking sector is comprised of four main segments. The first is the five banks that largely service the domestic market: Bank of Ireland Group plc (BOI), Allied Irish Bank Group plc (AIB), Permanent TSB Group Holdings plc (PTSB), Ulster Bank Ireland Designated Activity Company (UBIDAC) and KBC Bank Ireland plc (KBCI).⁸ BOI, AIB and PTSB are subsidiaries of domestic holding companies. UBIDAC is a subsidiary of NatWest Group based in the UK and KBCI is subsidiary of a KBC Group NV based in Belgium. Together the five banks held roughly €316 billion in total assets on

⁶ Resolution actions with respect to SIs are decided by the SRB. The Central Bank must consult the SRB on resolution actions proposed to be taken with respect to LSIs.

⁷ NAMA was established by statute in late 2009 as a separate statutory body under the aegis of the NTMA to acquire, manage and resell problematic real estate related assets of banks as part of the government's response to the financial crisis. It is owned the Irish Exchequer under the direction of the Minister. The Minister has stated publicly the intention to wind up NAMA by 2025.

⁸ UBIDAC and KBCI are in the process of exiting the domestic market.

June 30, 2021, comprising roughly 40 percent of banking system assets. All except PTSB are designated as SIs or are a subsidiary of an SI. The second segment is comprised of three internationally oriented investment banks: Citibank Holdings Ireland Limited (CHIL), Barclays Bank Ireland Plc (BBI), and Bank of America Europe DAC (BofAE). They held roughly €276 billion in total assets on June 30, 2021, comprising roughly 35 percent of banking system assets. All three operate mainly in wholesale markets outside of Ireland, have only minimal engagement with Irish clients, are designated as SIs, and are members of groups designated as G-SIBs⁹ by the FSB. The third segment is comprised of 10 other internationally oriented banks, holding some €63 billion in assets on June 30, 2021, most of which are subsidiaries of international banks.¹⁰ Two of the international banks are subsidiaries of SIs while eight are deemed LSIs.¹¹ In addition to the 18 licensed banks, there are 29 bank branches which, at June 30, 2021, held total assets of roughly €125bn.¹² One branch, that of Danske Bank in Denmark, is of particular significance in that it has a contract with the government to provide banking services, including making social protection, wages and pensions payments, along with providing transactional services with respect to tax collection.

6. In summary then, at year end 2021, of the six SIs, three SI subsidiaries, nine LSIs¹³ and 29 branches operating in Ireland, only four SIs, one LSI and one branch were deemed to provide critical functions or be significant to the Irish market. Thus, nearly all of the banks servicing the Irish market are supervised directly by the ECB and are under the remit of the SRB for resolution purposes, the work of both of which fall outside the scope for this Note.¹⁴ The exceptions are PTSB and the Danske Bank branch, both of which are subject to supervision by the Central Bank.¹⁵ The Central Bank also directly supervises the credit union sector. At year end 2021 there were 212 credit unions that held roughly €20 billion in total assets. Of these, 66 credit unions have assets greater than €100m and collectively account for roughly 50 percent of total credit union assets.

7. The Irish government owns common equity stakes in the domestic holding companies of three of the large retail banks. At year end 2021 the government held a roughly 6 percent common equity interest in BOI Group, a 70 percent interest in AIB Group, and a 75 percent interest

⁹ Global Systemically Important Banks.

¹⁰ The 10 banks fall into two broad categories: i) international banks, which are typically subsidiaries of global banks that have established in Ireland to service clients of the wider group requiring European banking services; and ii) captive banks that serve as the financing arm of non-bank parents. In early 2022 one international bank relinquished its license and converted to a branch of a German SI.

¹¹ Of the eight LSIs, two are members of groups designated as G-SIBs by the FSB (JP Morgan Bank (Ireland) plc and Wells Fargo International BV). JP Morgan has recently converted its legal form into that of a branch and is no longer deemed an LSI in Ireland.

¹² Of these, 15 are branches of SIs headquartered in other EEA countries.

¹³ The number has been reduced to eight with the conversion of the one bank to become a branch.

¹⁴ The IMF assessed the work of the ECB and the SRB in a *Technical Note on Euro Area Policies (Bank Resolution and Crisis Management)* published in July 2018.

¹⁵ Danske Bank is authorized in another Member State of the European Economic Area (EEA) and operates in Ireland on a branch basis. It is regulated by the Central Bank for conduct of business rules.

in PTSB Group.¹⁶ The government's shareholdings date from the resolution of the 2008/09 financial crisis. The government is selling its shares in both BOI and AIB into the market on a near daily basis and is thereby reducing its ownership interest. Separately, since 2020 the Minister also owns 100 percent of the NAMA.

8. The insurance and reinsurance sectors in Ireland are mainly internationally focused.

The majority of insurers and reinsurers are subsidiaries of international groups. In October 2021, the insurance sector was comprised of 38 life insurers, 98 non-life insurers (e.g., property, liability, motor) and 60 reinsurance firms. These insurers are supervised by the Central Bank which also is responsible for managing the failure of any of these firms. Only a small subset of these are considered systemically important to the domestic economy based on their market share and potential difficulty in substitution by policyholders. Only one insurer is owned by an Irish bank, which is an SI.

9. The investment firm sector is also significant but also mainly internationally focused.

Investment firms provide services to investors in the securities and other financial markets, including brokerage, investment advice, discretionary portfolio management and trading on their own account. At year end 2021 there were 101 investment firms operating in Ireland. None are deemed by the Central Bank to be significant to the Irish or European economy. Only one investment firm is affiliated to an Irish bank, which is an SI. The larger investment firms fall under the bank resolution regime,¹⁷ but its application to investment firms is not within the scope of this Note.

10. The investment funds industry in Ireland is one of the largest in the world.

Irish investment (mutual) funds mainly comprise Undertakings for Collective Investment in Transferable Securities and Alternative Investment Funds. As at 30 June 2021, total net assets of Irish domiciled funds was €3.7 trillion. Considering in addition non-Irish investment funds serviced in Ireland, net assets under administration were €5.3 trillion and under custody were €3.7 trillion.

C. Legal Framework

11. The legal framework for dealing with failing banks in Ireland was amended and significantly enhanced by the transposition of the EU recovery and resolution framework into Irish Law. Prior to this, the Irish legal regime for bank failures was limited principally to winding-up and liquidation. During the 2008/9 financial crisis, this proved inadequate in the context of banks whose failure would have caused widespread systemic disruption to the Irish financial system and economy. Consequently, substantial taxpayer funds were brought to bear to prevent the failure of certain banks and to reestablish their viability, including via recapitalization by the state and the purchase of non-performing loans by the NAMA, and to pay certain liabilities of banks that did fail. These weaknesses in the legal framework have been remedied. Principal among the relevant developments to Irish law have been the transposition of the 2014 EU Bank Recovery and Resolution

¹⁶ The shares of the BOI Group and the AIB Group are held by the Ireland Strategic Investment Fund (ISIF), the sovereign development fund managed and controlled by the NTMA, in a separate portfolio subject to the direction of the Minister. The shares of PTSB Group are owned by the Irish Exchequer under the direction of the Minister.

¹⁷ Sixteen investment firms fall within the scope of the bank resolution regime.

Directive (BRRD) by means of the Irish Bank Recovery and Resolution Regulations (BRR Regulations) in 2015, the transposition of the 2019 amendments to the BRRD by means of the Irish BRR Amendment Regulations in 2019, and transposition of the EU 2015 Deposit Guarantee Scheme Directive (DGSD) by means of the 2015 Deposit Guarantee Scheme Regulations (DGS Regulations).¹⁸ The government's commendably prompt transposition of the relevant EU legislation has meant that the authorities have gained considerable experience with the legislation and have in place an extensive and mature policy and procedure frameworks to support implementation. Additional detail on the legal, policy and procedure framework, and related recommendations, are set out in the following sections of this Note.

D. Recent Failure Experience

12. Since the prior FSAP no banks have failed or otherwise required resolution action, but three credit unions and one non-life insurer have been wound-up. The legal, policy and procedure regimes under which these failures were managed by the Central Bank are described in the later sections of this Note.

13. The failures of the three small credit unions, each with assets of less than €50 million, occurred in 2016, 2017 and 2020. In each case, the Central Bank petitioned the High Court (Court) for winding-up orders and the appointment of liquidators, first on a provisional basis and then officially (permanently). The appointment of a provisional liquidator triggered the repayment by the Deposit Guarantee Scheme (DGS) of all covered deposits. The Court oversees all liquidation cases until the winding-up is completed. One liquidation is completed while two are ongoing. The completed liquidation returned 96 percent of the DGS payout. One ongoing liquidation has already reimbursed the DGS for its entire payout and the same is anticipated for the second ongoing liquidation.

14. Since the prior FSAP one Irish insurer has failed. The insurer was part of an international group based in New Zealand. The Central Bank and New Zealand authorities had collaborated previously in supervising and imposing intervention measures on the group entities. In early 2018 the Central Bank directed the Irish insurer, CBL Insurance Europe DAC (CBLIE), to cease writing new business. Shortly thereafter the court in New Zealand placed an affiliated group firm into liquidation. The Central Bank then petitioned the Irish Court to appoint a provisional administrator and subsequently an official administrator for CBLIE in early 2018. Based on information from the official administrator, the Central Bank determined that the criteria to petition the Court for a winding-up order had been met. In 2020, the Central Bank petitioned the Court for a winding-up order and the appointment of joint liquidators. The liquidation remains in progress with the Court expected to rule soon on the application of relevant law to the relative priority of certain specific claims on the liquidation estate.

¹⁸ In addition, the Central Bank introduced a domestic recovery plan framework for insurers in 2021.

STRENGTHENING THE FRAMEWORK

A. Institutional Framework, Operational Capabilities, and Legal Protections

Institutional Framework

15. The Institutional framework of most relevance to this Note are the organization and policy and procedural arrangements for Central Bank's NRA, emergency liquidity assistance (ELA) and DGS functions, the DoF's decision-making and supporting roles in winding-up and resolution action, and the internal Central Bank, DoF and interagency arrangements for crisis preparedness and management. Significant enhancements to the institutional framework have been implemented since the prior FSAP.

16. The Central Bank's NRA functions are undertaken by the Resolution and Crisis Management Division (RES) which in addition coordinates the Central Bank's internal and interagency crisis preparedness and management activities. The RES is housed within the Central Banking pillar of the Central Bank and reports to the Director of Financial Stability, who reports to the Deputy Governor Central Banking, who in turn reports to the Governor. There is appropriate institutional separation as between Central Bank's supervisory and resolution functions. Bank supervisory functions are undertaken by the Banking Supervision Division (BSD) and the Investment Banking and Broker-Dealer Supervision Division (IBBD), both housed within the Central Bank's Prudential Regulation pillar which reports ultimately to the Deputy Governor Prudential Regulation. The RES's responsibilities for coordinating crisis preparedness activities is undertaken by its Financial Crisis Preparedness and Management (FCPM) function.

17. The Central Bank is responsible for the DGS. The Payments and Securities Settlements Division (PSSD) is responsible for the day-to-day DGS operations. Like the RES, the PSSD is situated within the Central Bank's Central Banking pillar. Its responsibilities include assessing banks and credit unions risk-based premiums and managing the Deposit Guarantee Contributory Fund (Fund). The Deposit Guarantee Scheme and Insurance Compensation Fund Oversight Committee (Oversight Committee) is chaired by the Director of Financial Operations to whom the PSSD reports. It is comprised of representatives from relevant divisions, including the RES, and meets as required to provide governance and management oversight of the DGS and to ensure appropriate policies and procedures are in place.¹⁹

18. The Central Bank Financial Stability Committee (FSC) serves to advise the Governor on matters relevant to financial stability in Ireland and the euro area.²⁰ The FSC is chaired by the Governor and comprised of the Central Bank senior management including the Director of Financial Stability and the Head of the RES.²¹ The FSC monitors and assesses developments that may give rise to financial stability risks and identifies potential mitigating actions. The FSC is also responsible for

¹⁹ The Oversight Committee is guided by a formal Terms of Reference last updated in 2018.

²⁰ The FSC is guided by a formal Terms of Reference last updated in 2021.

²¹ The Macro-financial Division serves as the secretariat.

oversight of the Central Bank's crisis preparedness and management arrangements. It oversees the testing of the framework by means of simulation exercises. The FCPM in the RES reports semi-annually to the FSC on the Central Bank's crisis preparedness and testing work program in years when the crisis management arrangements are not invoked. The FSC also advises the Governor with respect to potential ELA, for which the Governor is the ultimate decision-maker.

19. The Central Bank Resolution Committee (ResCom) serves to advise the Governor on matters relevant to the resolution regime.²² Housed within the Central Banking pillar, the ResCom is chaired by the Deputy Governor Central Banking and is comprised of the Director of Financial Stability, the Director of Financial Operations, and the Head of the RES.²³ It advises the Governor on matters central to the fulfilment of the Central Bank's role in the resolution of institutions, including potential or actual resolution cases, on the Central Bank's interactions with the SRB and with the DoF, on the status of resolution planning, and on further development of the resolution policy and procedure framework. The ResCom meets at least quarterly. Minutes of ResCom meetings are provided to the Governor.

20. The Minister and the DoF play multiple roles. As noted, the Minister has a range of statutory responsibilities and powers with respect to failing banks and systemic crises. With respect to failing banks, the Minister must be informed and consulted in certain circumstances, and the Minister's prior approval may be required for the Central Bank to take certain actions.²⁴ The DoF's Banking Division supports the Minister in these roles and serves as the principal liaison with the Central Bank's resolution function.²⁵ The DoF's Shareholding and Financial Advisory Division performs ownership functions with respect to the three large domestic retail banks and the NAMA and IBRC.

21. The NTMA is an independent statutory agency functioning as an agent of the Minister. It provides asset and liability management services to the government and operates according to commercial principles. Among its principal tasks are to borrow on behalf of the government and to manage the national debt. A number of NTMA staff are seconded to the DoF's Shareholding and Financial Advisory Division where they contribute to the ownership function cited above, among other duties.

22. Unlike in some other BU member states, the judiciary plays key roles in the resolution of bank failures in Ireland.²⁶ The Court must approve the winding-up or resolution by other means of any failing bank, as well as other related interventions. To obtain the relevant Court approvals, the

²² ResCom is guided by a formal Terms of Reference last updated in 2021.

²³ Staff of the RES serve as the secretariat.

²⁴ These are described in the Bank Winding-up and Resolution section of this Note.

²⁵ Within the Banking Division, the Banking and Payments unit serves as the main day-to-day contact with the Central Bank's RES.

²⁶ As well as in the failure of credit unions and other financial institutions.

Central Bank must file petitions with the Court. The requirement to obtain a Court order is applicable to both SIs and LSIs.²⁷

23. The Financial Stability Group (FSG) comprised of the DoF, the Central Bank, and the NTMA is the most senior interagency forum for crisis preparedness and management.²⁸ The FSG is chaired by the DoF Secretary General and is comprised of the Assistant Secretary for the Banking Division at the DoF, the Central Bank Governor and the Deputy Governors from the Central Banking and Prudential Regulation pillars, and the Chief Executive and the Director Funding and Debt Management from NTMA.²⁹ The FSG's principal objectives are to share assessments of risks to the financial system and economy, to discuss economic or financial policies that may have repercussions for financial stability, to oversee interagency contingency planning and testing, and to coordinate the management of a systemic crisis. The FSG typically meets on a bi-monthly basis but may meet more frequently if required. The minutes of FSG meetings are published three months in arrears on the DoF website. The FSG also publishes an Annual Review.

24. The FSG is supported by a Crisis Preparedness Group (CPG) and a Communications Working Group (CWG). The CPG is comprised of a manager and a staff member from the DoF Banking Division, the Head and a staff member of the FCPM, and a manager from the NTMA. The chair and secretariat functions rotate among the three member authorities. The CPG is the main out-of-crisis forum for coordination and communication between the agencies for crisis preparedness activities, including running crisis simulation exercises to test the interagency framework. It would also support interagency coordination in response to a crisis.³⁰ The CPG coordinates the CWG, a subgroup on communications that includes CPG members and communications specialists from the three agencies. The CWG helps to improve interagency coordination on public communications in out-of-crisis situations and would support the FSG agencies with public communications during a crisis.

25. Cooperation with the SRB is well established. A cooperation framework³¹ has been entered into by the SRB and the Central Bank (along with all other NRAs in the SRM), setting out practical arrangements for cooperation and information sharing.³² The framework addresses both SIs and LSIs and defines rules on the staffing, functioning and coordination of IRTs and procedures

²⁷ The role of the Court is more fully described in the Bank Winding-up and Resolution section of this Note.

²⁸ The FSG is guided by a Terms of Reference last updated in 2020. It was formed in 2017 as the successor to the Principals' Group, though with a greater emphasis on forward-looking assessments of financial stability, consistent with a recommendation of the 2016 FSAP. The Principals' Group succeed an earlier interagency body, the Domestic Standing Group.

²⁹ The DoF's Banking Division serves as the secretariat.

³⁰ See the Crisis Management, Contingency Planning and Testing section of this Note.

³¹ Framework for Cooperation between the SRB and the NRAs (SRB/PS/2018/15)

³² *Decision of the Single Resolution Board of 17 December 2018 establishing the framework for the practical arrangements for the cooperation within the Single Resolution Mechanism between the Single Resolution Board and National Resolution Authorities.*

for the SRB and NRAs regarding their respective resolution responsibilities.³³ Internally the Central Bank's NRA Handbook elaborates granular procedures for coordination with the SRB, including its responsibility for executing any resolution actions decided by the SRB.³⁴

26. The Central Bank participates in various international forums for coordinating cross-border, multi-jurisdictional bank resolution preparedness. For banks designated as G-SIBs, the Central Bank participates in four FSB-mandated Crisis Management Groups (CMGs).³⁵ For banks headquartered in third (non-EU) countries that have entities established in two or more EU Member States, so-called European Resolution Colleges have been established covering the EU operations and the Central Bank participates in three of these.³⁶ For banks headquartered in the EU with operations in two or more Member States, Resolution Colleges have been established and the Central Bank, as NRA, is a participant of two of these led by the SRB for SIs.³⁷ The Central Bank also engages with the Canadian Deposit Insurance Corporation (CDIC) on matters not addressed by the SRB's engagement with the CDIC, and for that purpose has entered into a Memorandum of Understanding for information sharing with the CDIC.

27. The engagement with the Bank of England (BoE) in its role as the UK resolution authority has evolved in the context of Brexit. A number of firms shifted their operations from the UK to Ireland,³⁸ largely within the investment firm sector,³⁹ but also within the banking sector, in particular the three internationally oriented investment banks all of which are under the remit of the SRB. Within the banking sector, the Central Bank had participated in Resolution Colleges for the two Irish domestic SIs that had subsidiaries in the UK, but with Brexit there is no longer a requirement for those Resolution Colleges and they have been replaced by Stakeholder Forums.⁴⁰ The Central Bank also participates (under the lead of the SRB) in two BoE CMGs.⁴¹ No Irish LSIs with a resolution strategy other than a liquidation have operations in the UK.

Operational Capabilities

28. The RES is organized in four sections. The Resolution Planning section is responsible for resolution planning and for assessing and removing and mitigating impediments to resolvability. It

³³ The Central Bank is a member of SRB IRTs for the six SIs headquartered in Ireland: BOI, AIB, UBIDAC, CHIL, BBI, and BofAE.

³⁴ The NRA Handbook is described in more detail in the Bank Winding-up and Resolution section of this Note.

³⁵ CHIL, BofAE and BBI, all of which are designated as SIs within the EU, and for Wells Fargo Bank International Unlimited Company (WFBI), deemed an LSI within the EU.

³⁶ CHIL, BofAE and WFBI.

³⁷ KBCI and Intesa Sanpaolo Bank.

³⁸ This involved both new entry in Ireland and expansion of operations for existing entities.

³⁹ As noted, the investment firm sector is outside the scope of this Note.

⁴⁰ For BOI and AIB, both under the remit of the SRB. Stakeholder Forums are bodies for information sharing and dialogue but have no decision-making responsibility or authority. The Central Bank also established a Stakeholder Forum for PTSB in which the DoF participates.

⁴¹ BBI and NatWest Group.

is organized in four units dealing with resolution planning in, respectively, the LSIs, the UK SIs, the US SIs, and the domestic SIs. The Resolution Policy section ensures that the resolution policy framework is implemented, provides inputs to policy development at the domestic and EU level, and manages the overall engagements with the European Banking Authority (EBA) and the SRB. The Resolution Execution and Funds section is organized in two units responsible, respectively, for managing actual failure cases⁴² and maintaining resolution preparedness,⁴³ and for ensuring the Central Bank fulfils its statutory obligations with regard to resolution funds.⁴⁴ As noted, the FCPM section is responsible for coordinating the Central Bank's financial crisis preparedness and management work both internally and via engagement with the interagency FSG.⁴⁵

29. The RES is adequately staffed and resourced. It has a current approved staff complement of 33. The adequacy of its staffing is evaluated as part of the Central Bank's annual work planning process. In 2018 an increase in the staff complement from 19 to 29 was approved, driven largely by the implications of the then pending Brexit. The addition of the FCPM function in 2018 accounts for the increase to the current complement of 33 staff. In light of its evolving workload,⁴⁶ the Central Bank should continue to ensure that the RES remains adequately staffed and resourced.

Legal Protections

30. The Central Bank and its staff have legal protections in the performance of their duties. Under the Central Bank Act, 1942, persons to whom the legal protection applies are not liable for damages for anything done or omitted in the performance of their functions, unless it is proved that the act or omission was in bad faith. Those afforded this protection include the Central Bank itself and its employees. Under the BRR Regulations, the senior management of a Bridge Institution or an Asset Management Vehicle (AMV) shall not owe any legal duty or responsibility to shareholders or creditors of the institution under resolution and shall have no liability to such shareholders or creditors for acts or omissions in the discharge of their legal duties. There is however no explicit legal protection for liquidators or special managers (in banks undergoing resolution), who, while selected by the Central Bank, are legally appointed by the Court. Liquidators in any company, including a bank, bear personal responsibility for their actions. The DoF should explore the possibility to provide statutory protections, subject to relevant limitations, to persons selected by the Central Bank albeit appointed by the Court for resolution purposes.⁴⁷ There is also no explicit Central Bank policy providing for indemnification of the costs incurred by Central Bank

⁴² For example, the three credit union failures since the prior FSAP.

⁴³ For example, by maintaining the NRA Handbook.

⁴⁴ For the banking sector, the Single Resolution Fund (SRF). See the Resolution Funding section of this Note.

⁴⁵ Beyond banks, the focus of this Note, the scope of the RES's mandate extends also to life and non-life insurers, central clearing houses, and certain credit unions and investment firms.

⁴⁶ For example, the possible introduction of a EU-wide resolution regime for insurers and the consequent need to undertake resolution planning and to develop internal playbooks to be able to implement that regime. See the Regime for Insurer Failures section of this Note.

⁴⁷ In doing so, the DoF should explore the threshold standards to hold a liquidator or special manager liable, whether and to what extent any court-based protections are available to them, and whether such persons can benefit from any indemnity under the general corporate or insolvency frameworks.

staff in defending resolution actions which may be in scope of the legal protections, and this should be considered.^{48,49}

31. Summary of Recommendations:

- Ensure the RES remains adequately staffed and resourced in light of its evolving workload;
- Explore providing statutory protections, subject to relevant limitations, to persons selected by the Central Bank albeit appointed by the Court for resolution purposes; and
- Develop an explicit policy providing for the indemnification by the Central Bank of the costs incurred by Central Bank staff in defending resolution actions which may be in scope of the existing legal protections.

B. Recovery Planning and Early Intervention

32. The supervision of Irish banks and early intervention in banks when problems are identified is a joint exercise of the ECB and the Central Bank. The ECB-led JSTs are responsible for supervision of SIs, whereas the Central Bank's BSD and IBBB staff supervise LSIs. The Central Bank participates in eight JSTs. JSTs are led by ECB coordinators with the Central Bank providing a sub-coordinator and additional staff as required. In the assessment of SI recovery plans the JSTs are supported by an ECB horizontal specialized expertise team.

Recovery Planning

33. All Irish banks including their parent holding companies have well developed recovery plans in place. Recovery plans were first required in 2016. Most are updated annually, though the Central Bank permits certain LSIs to use an 18 month rather than annual update and submission cycle.⁵⁰ The Central Bank has direct supervisory responsibility for recovery planning in eight LSIs.⁵¹ The Central Bank's BSD and IBBB are responsible for assessing recovery plans, providing feedback to banks, and following up on banks' implementation of recommended enhancements. For the assessments, the BSD and IBBB closely follow the SSM procedure for reviewing recovery plans. In assessing plans, the BSD and IBBB are supported by subject matter experts in the Recovery Planning Team (RPT) and seek inputs from the RES. Annual feedback letters to the bank's Chief Executive Officer, signed by the head of the bank's supervisory team, highlight any deficiencies in plans and

⁴⁸ Such a policy should be elaborated by an operational framework that provides certainty that all relevant costs will be covered, that the financial support will be provided in a timely manner, and that it will be sufficient to cover the cost of high-quality legal services.

⁴⁹ The authorities did not make use of the national discretion in BRRD Article 3 (12) to limit the liability of the resolution authority and their respective staff in accordance with national law for acts and omissions in the course of discharging their functions because the DoF determined that those legal protections were already in place by virtue of section 33AJ of the Central Bank Act, 1942.

⁵⁰ Under BRR Regulation 10, the Central Bank may apply simplified obligations to banks whose failure is unlikely to have significant negative effects. The Central Bank allows for less frequent recovery plan submissions by certain LSIs, a list that is reviewed annually, without relaxing the plan content requirements for any LSI.

⁵¹ As of the end of January 2022.

make recommendations for enhancing their credibility and feasibility. The recommendations must be addressed in the banks' following years' plan.⁵² In general, the assessment of plans has evolved from a focus on the comprehensiveness and completeness of the plans to now involve in-depth reviews of the feasibility of implementing specific recovery options and the monetary values likely to be realized under different stress scenarios. Another key focus is execution risk, assessing LSI's ability to operationalize the options in a timely manner and ensuring removal of impediments to execution. The Central Bank is also working to ensure that recovery planning is fully integrated into banks' overall risk management frameworks.

34. The Central Bank engages appropriately with home country supervisory authorities in the assessment of recovery plans. Most of the Irish LSIs are part of international banking groups all of which have in place recovery plans at the group level, as is also the case for the branch that provides banking and payments services to the government. The extent of the engagement varies. The Central Bank participates in home country supervisory colleges for the more significant LSIs. In other cases, it maintains a quarterly engagement with the home supervisors on a range of topics that include recovery planning. The Central Bank recently became a full member of the supervisory college for the branch, has provided inputs to the bank's recovery plan assessment, and the plan has been updated to reflect these inputs.

35. The Central Bank periodically undertakes horizontal reviews of recovery plans. The most recent was undertaken in 2019. The review focused on overall usability, governance, indicators, scenarios, and recovery options. These thematic reviews are performed by a team of supervisors of the different banks who jointly assess the plans. The results are shared with relevant senior management in the Central Bank. These reviews help to ensure the consistency of plan assessments and to build staff skills in assessing plans.

36. Insurers are required to prepare recovery plans beginning in 2022. Under new Central Bank regulations,⁵³ nearly all insurers and reinsurers are required to develop, maintain, and update recovery plans. Insurers were to have initial recovery plans in place by March 31, 2022 with High and Medium High impact insurers required to submit those plans to the Central Bank by April 14, 2022. The requirement for insurers to review and update their recovery plans is driven by the Central Bank's rating system, with insurers rated High or Medium-High impact required to update their plans every 12 months, while others must do so every 24 months. Insurers' board of directors must approve the recovery plans and updates to the plans. Like with banks, the Central Bank's supervisors will assess the plans and provide feedback letters, utilizing a procedure adapted from that used for banks. Initial assessments will be undertaken for the plans of all insurers rated High or Medium-High impact and for a significant sample of plans from other insurers. As in the case of banks, the supervisors will be supported by experts in the RPT.

⁵² If deficiencies are deemed material, the Central Bank would require an updated recovery plan to be submitted within two months. No LSI recovery plan submitted in 2020 and 2021 were deemed materially deficient. This is the case with respect to all banks in Ireland.

⁵³ Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Recovery Plan Requirements for Insurers) Regulations 2021.

Early Intervention and Fail or Likely to Fail (FOLTF)

37. The adoption of the BRR Regulations in 2015 further strengthened the early intervention framework in Ireland. The BRR Regulations provide early intervention measures (EIMs) that supplement the supervisory intervention powers in the 2014 Capital Requirements Regulation.⁵⁴ Taken together, these provisions provide a wide range of powers to require banks' managements and boards to rectify identified problems, including breaches of regulatory requirements for liquidity and capital. The BRR Regulations allow the Central Bank to require a bank to implement specific measures set out in its recovery plan, among other provisions. The Central Bank has not had cause to impose EIMs on any LSI since the prior FSAP,⁵⁵ nor has it granted forbearance from liquidity or capital prudential rules to any individual bank.⁵⁶ The Central Bank does not have a documented framework for structured supervisory escalation addressing the use of its various early intervention powers but is in the process of developing one (see below).

38. Should the application of EIMs not prove effective, the Central Bank supervisory function will assess whether the bank is likely not viable and should be deemed FOLTF. The BRR Regulations, which introduced the concept of "failing or likely to fail" (FOLTF), define the criteria for making a FOLTF determination, which is among the conditions that must be met for triggering use of the BRR Regulations resolution powers. These criteria are to some extent dependent on qualitative judgements by the Central Bank regarding the financial condition of the bank, its ability to make payments or otherwise meet the conditions for continuing authorization.

39. The Central Bank is currently enhancing its supervisory escalation approach by developing a formal Banking Crisis Management Playbook (CMP). The Banking CMP will incorporate a formal capital and liquidity trigger framework based on qualitative and quantitative triggers in line with EBA Guidance on early intervention.⁵⁷ A range of proportionate supervisory actions to be considered based on the possible breach of those triggers, including a FOLTF determination, will also be incorporated. The Banking CMP will provide a more structured framework for exercising the Central Bank's intervention powers and its policies and procedures for considering a FOLTF determination, both of which are required. Work on the Banking CMP should be finalized.

40. A FOLTF determination triggers the processes that lead to either winding up or alternative resolution action, as described in the next section of this Note. If a determination is made, the Deputy Governor Prudential Regulation informs the Minister. The FOLTF determination is also the point at which the case is formally transferred from the Central Bank's supervisory function

⁵⁴ The Capital Requirement Regulations are the Irish transposition of the EU's 2013 Capital Requirements Directive (CRD IV).

⁵⁵ This is the case with respect to all banks in Ireland.

⁵⁶ The Central Bank did provide relief measures regarding capital and liquidity requirements system-wide in response to COVID-19.

⁵⁷ *Guidelines on triggers for use of early intervention measures pursuant to Article 27(4) of Directive 2014/59/EU.* EBA/GL/2015/03. 29 July 2015

to its resolution function. The resolution function determines whether winding up, or alternatively resolution action, is appropriate.

41. **Summary of recommendations:**

- Finalize the Banking CMP.

C. **Bank Winding-up and Resolution**

42. The legal frameworks governing the management of failing banks, whether by wind-up and liquidation, or by alternative resolution action, are well-established. Bank winding-up and liquidation is governed by the 2014 Companies Act and the 2011 Act, while alternative resolution action is governed by the BRR Regulations which are the Irish transposition of the EU's harmonized recovery and resolution regime as set out in the BRRD. There is no harmonized EU framework for bank winding-up and liquidation. This section addresses the Irish winding-up and resolution regimes, the role of the Court in both regimes, the priority of claims in liquidation that applies also to the resolution regime, and the decision-making and execution process.

Winding-up and Liquidation

43. When a FOLTF determination has been made, the Central Bank may petition the Court for a winding-up order and the appointment of a liquidator on one or more of the grounds specified in the 2011 Act.⁵⁸ To secure a winding-up order, the Central Bank must submit a Petition and a Verifying Affidavit to the Court. Together these two documents set out the substance of the Central Bank's case for winding-up. The Governor, in his capacity as the Head of the Resolution Authority, will decide whether the Central Bank should take the necessary actions to make an application to the Court. For this purpose, the RES prepares and submits to the Governor a Resolution Report.⁵⁹ The Petition and a Verifying Affidavit are prepared by outside counsel, in close cooperation with the Central Bank.⁶⁰ The three documents contain similar information and preparations for potential Court applications are commenced in tandem, typically well prior to a FOLTF determination, with the RES obtaining required information from the supervisory team. This facilitates readiness in the event that a FOLTF decision is made by the Deputy Governor Prudential Regulation. Also simultaneous with the preparation of the required documents, a liquidator will be identified and have confirmed their ability to serve in that capacity. The liquidator must be specified in the Petition. The process therefore involves procuring the services of both outside legal counsel and a liquidator. The Central Bank maintains panels of qualified firms for both purposes and has in place procedures for selection and contracting. In normal circumstances the contracting for services and the preparation of the required documentation might take several weeks. However, it is possible

⁵⁸ The regime described in this section applies to credit unions as well.

⁵⁹ The Resolution Report provides information on the reasons for the FOLTF determination and the rationale for seeking a Winding-up Order (rather than a Resolution Order), among other information.

⁶⁰ This is a requirement inherent in the Irish judicial system specifying the roles of Solicitors and Barristers in interacting with the Court.

to expedite the process and in practice the Central Bank has produced the required documentation in a matter of a few days.⁶¹

44. The Central Bank routinely seeks the appointment of a provisional liquidator prior to the appointment of an official liquidation. In making a Winding-up Order, the Court may appoint either a provisional liquidator or an official liquidator. There is a constitutional right of access to the Courts and the Rules of Court generally require that a Central Bank winding-up petition be advertised, and served on the company concerned, in advance of the petition hearing.⁶² However, there is also a provision under which the appointment of a provisional liquidator may be sought in an *ex parte* hearing (i.e., without advertisement or notice to any person in advance and without other parties present in the hearing).⁶³ Given the likely disruption that a public notice would entail, in practice this has been the approach taken, most recently in the cases of the three credit union failures. In any case, only a liquidator approved by the Central Bank may be appointed to a bank. While there is no statutory requirement that the Court render its decision within a specific timeframe, to date when it has petitioned the Court *ex parte*, the Central Bank has notified the Court of its intention to file the Petition, presented its case at a hearing, and then obtained a decision from the Court in a single day.⁶⁴

45. After the Court issues a Winding-up Order, a liquidation committee is required to be established. The liquidation committee consists of two representatives from the Central Bank, envisaged to be from the RES and the PSSD (representing the DGS), and one representative from the DoF. The liquidator (provisional or official) has two statutory objectives. Objective 1 is to facilitate the Central Bank in ensuring that DGS-covered depositors are promptly repaid, either directly or by transferring the amount to another bank approved by the Central Bank.⁶⁵ Objective 2 is to wind-up the affairs of the bank so as to achieve the best results for creditors as a whole. The liquidator is to keep the liquidation committee informed of progress towards Objective 1 and is to notify the committee when it has been achieved. Upon such notice, the committee may resolve that Objective 1 has been achieved at which time the liquidation committee ceases to exist. At this point the Central Bank's direct role in the liquidation mostly is completed. Once the liquidation has proceeded sufficiently the Central Bank will make a formal written request to the ECB to withdraw the license of the bank.⁶⁶

46. The priority in which different classes of creditors are entitled to distributions from the liquidation estate, the credit hierarchy, is well defined. The creditor hierarchy in liquidation

⁶¹ This was the case in the Central Bank's petition for winding-up and liquidation of CBLIE.

⁶² Thereby providing affected parties notice and the opportunity to appear at the Court hearing for the winding-up order.

⁶³ The court may appoint a liquidator provisionally at any time after the presentation of a winding-up petition and before the first appointment of an official liquidator. There are no statutory conditions that need be met by the Central Bank to request the appointment of a provisional liquidator.

⁶⁴ This was the case for the three credit union failures and one insurer failure since the prior FSAP.

⁶⁵ However, as will be noted in the Deposit Guarantee Scheme section of this Note, at present there are no operational procedures in place for transferring covered deposits to another bank.

⁶⁶ In the BU only the ECB can withdraw a bank license.

also must be respected in the resolution regime described below. In the creditor hierarchy, covered deposits rank equally with unpaid taxes and employees' wages, which have priority to eligible deposits from natural persons and micro, small and medium size entities that exceed the amount of their covered deposits, which have priority to other unsecured creditors including holders of other uncovered deposits and senior bondholders.⁶⁷

Bank Resolution Regime

47. For a bank deemed systemic in failure, the Central Bank has available the resolution tools and underlying powers set out in the international standard and the BRRD. These are: (i) the "bail-in" tool (the power to write-down⁶⁸ and/or convert into equity eligible liabilities to absorb losses and recapitalize a bank in resolution⁶⁹); (ii) the "sale of business" tool (the power to transfer assets and liabilities from a bank in resolution without shareholder or creditor consent to third parties⁷⁰); (iii) the "bridge institution" tool (based on the power to establish an institution temporarily owned by a state entity⁷¹ to acquire assets and liabilities⁷² from a bank in resolution in order to ensure the continuity of critical functions until a buyer can be found); and (iv) the "asset separation" tool (the power to transfer assets that were not transferred when using the sale of business tool or not retained when undertaking a whole bank bail-in transaction, again without shareholder or creditor consent, to an AMV established by a state entity for the purpose of managing and maximizing the value of the assets). As with winding-up and liquidation, in order to use any of these powers the Central Bank must obtain the approval of the Court (see below).

48. Other key powers in the international standard and the BRRD are in place as well. These include the power: (i) to write-down or write-off a bank's equity, and to write-down or write-off, or convert into equity, its additional Tier 1 and Tier 2 capital instruments;⁷³ (ii) to issue temporary stays on payments and delivery obligations; and (iii) to prevent counterparties from terminating contracts. Prior to exercising the power to write down and convert capital instruments, the Central Bank should obtain a professional third-party valuation to determine the extent of losses on assets to ensure they are fully absorbed by existing capital instruments. In case this is not expedient, the Central Bank can perform its own provisional valuation subject to adjustment⁷⁴ based on an *ex post* third-party definitive valuation. The power to issue temporary stays on payments and delivery obligations and the power to prevent counterparties from terminating contracts can be exercised

⁶⁷ To support use of resolution tools, the creditor hierarchy was modified in 2019 to create a new creditor class subordinate to unsecured creditors. See the Resolution Planning, Strategies, and Impediments section of this Note.

⁶⁸ Including to zero value (i.e., write-off).

⁶⁹ And potentially to help capitalize a bridge institution.

⁷⁰ Or to a bridge institution.

⁷¹ Or, potentially, bailed-in creditors.

⁷² Or, alternatively, an equity position.

⁷³ This power can be used either to ensure the viability of a bank, or prior to or simultaneous with taking other resolution action. The Central Bank must exercise this power as a prerequisite for utilizing extraordinary public support to fund resolution action.

⁷⁴ In terms of the financial consequences for shareholders and holders of other capital instruments.

prior to taking resolution action or to facilitate implementation of resolution actions, but not both. Temporary stays and the prevention of contract terminations have a maximum duration of, in effect, what may be in practice 48 hours. As with the resolution tools, the use of each of these powers generally requires the approval of the Court.⁷⁵

49. A condition for use of the resolution powers of the BRR Regulations is that it be in the public interest to do so. Resolution action is considered to be in the public interest where it is necessary for the achievement of, and is proportionate to, one or more of the statutory resolution objectives,⁷⁶ and winding up the institution would not meet those resolution objectives to the same extent. The Central Bank's approach is aligned with SRB guidance and involves making an initial public interest assessment (PIA) under an idiosyncratic scenario as part of resolution planning and updating and possibly revising the PIA following a FOLTF determination. The Central Bank has adopted procedures for undertaking the PIA including the factors that should be considered in assessing each of the resolution objectives. Consistent with recent SRB guidance,⁷⁷ in 2022 the Central Bank will begin considering system-wide scenarios in addition to idiosyncratic events in resolution planning PIAs.

50. The Court authorization required to use resolution powers cited above is provided by means of a Resolution Order. The Central Bank can make an *ex parte* application to the Court for a Resolution Order by means of a proposed resolution order (PRO). The basic documentation required to be submitted to the Court, and procedures to be followed, are similar to those required to obtain a Winding-up Order, as is the documentation and process for obtaining the Governor's authorization to petition the Court.⁷⁸ Temporarily staying payments and delivery obligations of a bank in resolution or preventing counterparties from terminating contracts with the bank also must be provided for as part of a Resolution Order.⁷⁹

51. A Capital Instruments Order (CIO) is required to write down and convert capital instruments. To obtain a CIO, the Central Bank, upon determining that without the execution of the order the bank (or group) would no longer be viable,⁸⁰ must adopt a proposed capital instruments order (PCIO). Except in certain exceptional circumstances or with consent, the entity (or entities) affected by the PCIO must be notified and given 48 hours, or an agreed shorter period, to make written submissions which must be considered by the Central Bank prior making the proposed

⁷⁵ The exception is where the Central Bank issues a temporary stay on payments and delivery obligations or prevents counterparties from terminating contracts in advance of taking resolution action.

⁷⁶ The resolution objectives are those stipulated in the EU's BRRD, specifically: to ensure the continuity of critical functions; to avoid a significant adverse effect on the financial system; to protect public funds; to protect depositors covered by the DGS; and to protect client funds and client assets.

⁷⁷ *Addendum to the Public Interest Assessment: SRB Approach*. May 2021.

⁷⁸ The Central Bank has engaged with the SRB on the need to have external legal counsel involved in developing any SRB-led resolution scheme.

⁷⁹ As noted, temporarily staying payments and delivery obligations in advance of resolution action does not require a Court order.

⁸⁰ The determination can be made with respect to the bank, a subsidiary and/or its parent.

order.⁸¹ Legal amendments to eliminate the notification requirement should be considered. In order to obtain a CIO, the Central Bank applies *ex parte* to the Court, and the Court is obliged to make the CIO if it finds the proposed order was reasonable and not vitiated by any error of law, and the order has immediate effect. Affected parties can appeal to have the order set aside, but the Court may only do so if it finds the determination was unreasonable and vitiated by an error of law or if there was non-compliance with the relevant notice requirement.

52. There are many similarities in the procedures to obtain a Resolution Order as against a Capital Instruments Order, but there are certain differences. In seeking a Resolution Order, there is no requirement to provide prior notice to affected parties. In addition, in certain circumstances the prior approval of the Minister is required (see below).⁸² Like with a CIO, the Court is obliged to make the Resolution Order if it finds the proposed order is reasonable and not vitiated by any error of law, and the order has immediate effect. For both the CIO and Resolution Order, the Central Bank may also apply to the Court to make changes or vary the order, where it is deemed necessary to do so.⁸³ Legal amendments to specify a short timeframe (e.g., 24 hours) for Court decision-making pertaining to resolution powers should be considered.

53. The Court also must authorize use of the temporary administrator and special manager provisions of the BRR Regulations, where the Central Bank have determined such an appointment is required. To appoint a temporary administrator to assume management responsibilities or assist management, for example as a precursor to potential winding-up or resolution action, the Central Bank must make a proposed temporary administration order (PTAO). The required contents of the PTAO include the grounds for proposing temporary administration, and the role, powers and functions of the proposed temporary administrator. Prior to making a PTAO the Central Bank must ordinarily give the affected institution written notice and 48 hours to make written submissions.⁸⁴ Legal amendments to eliminate the notification requirement should be considered. The Central Bank applies *ex parte* to the Court which is obliged to make the Temporary Administration Order if it finds the proposed order was reasonable and not vitiated by any error of law. The order has immediate effect. The appointment of a special manager must be included as part of a PRO, which must specify the person(s) who will function in that capacity, the basis of their

⁸¹ Exceptional circumstances exist where: i) there is an imminent threat to the entity's financial position and the Central Bank determines that adhering to the notice period would result in significant damage to its financial position; or ii) the Central Bank has reasonable grounds to believe that confidentiality with regard to the proposed order, or the possibility of the making of the order, would not be maintained and that the breach of such confidentiality would have significant adverse consequences.

⁸² To make a PRO, the conditions of resolution must be met. These are: i) the bank is deemed to be FOLTF; ii) it is determined that there are no reasonable prospects that sufficient and timely private sector measures will be taken, and iii) use of the resolution powers is deemed to be in the public interest.

⁸³ The Central Bank may apply to the Court to vary a Resolution Order or CIO with notice to the institutions concerned or on an *ex parte* basis in urgent circumstances.

⁸⁴ The notice period can be waived if the institution so agrees, or if the Central Bank has reasonable grounds to believe that confidentiality in relation to the PTAO would not be maintained, and the breach of such confidentiality would have significant adverse consequences.

remuneration, and their functions, including limits on their actions, and indicating which acts of the special manager are subject to the Central Bank's prior written consent.

54. The Minister's approval is required to take resolution action in certain circumstances.

The Central Bank is obliged to notify the DoF of certain decisions taken in the run up to possible resolution action. Additionally, the Minister's prior written consent must be obtained before the Central Bank can make a PRO where the proposed resolution action is likely to have systemic implications creating a serious risk to the stability of the financial system or the economy of the State.⁸⁵ There is no written policy agreed by the Central Bank and the DoF on how to interpret this statutory language. Steps to limit the Minister's prior written consent on bank resolution to circumstances that require the use of fiscal resources should be considered.

55. There are only limited grounds for setting aside the Court's Resolution Order. The bank under resolution, a shareholder of the bank, or a holder of a capital instrument or liability affected by the Resolution Order, may apply to the Court not later than 48 hours after the publication of the order for the setting aside of the order. The Court shall act as expeditiously as possible and may set aside, vary, or amend the order only where it is satisfied that the decision of the Central Bank was unreasonable or vitiated by an error of law.

56. The legal safeguards for shareholders and creditors set out in the international standard are in place. Among these safeguards, shareholders and creditors are protected from incurring losses in the context of the use of resolution powers greater than they would have incurred under normal insolvency proceedings (the so-called "no-creditor-worse-off," or NCWO, principle). If left financially worse off, based on a professional third-party valuation, they are entitled to compensation from the SRF.⁸⁶

Resolution Decision-Making and Execution

57. Policies and procedures for decision-making and execution are elaborated and documented in the Central Bank NRA Handbook and in the Step Plans for the Resolution of a Failing Credit Institution.⁸⁷ The Handbook addresses both winding-up and resolution action, the roles of the Central Bank and the DoF, and the authorities and roles of the SRB in the case of SIs. The Steps Plans address resolution action in both LSIs and SIs as well as the role of the Court in both cases. Summarizing the Central Bank's decision-making with respect to LSIs, when a FOLTF determination is made by the Deputy Governor, Prudential Regulation, the case is formally transferred to the RES. The Director of Financial Stability forms an institution-specific Resolution Committee (IS ResCom) and the RES forms a Crisis Management Team (CMT). The IS ResCom is

⁸⁵ Or where the resolution action will have a direct fiscal impact.

⁸⁶ The SRF is discussed in the Resolution Funding section of the Note.

⁸⁷ The 142-page NRA Handbook was developed under the instruction of the SRB and in consultation with the Central Bank's Standing Resolution Committee. The Handbook was first developed in 2017 and was updated most recently in February 2022. The 55-page Playbook and Step Plans was adopted in May 2020.

chaired by the Director of Financial Stability and serves in an advisory capacity to the CMT.⁸⁸ The CMT will work in specialized workstreams to address: i) the PIA; ii) valuation;⁸⁹ iii) resolution scheme development; and iv) communications strategy. If deemed to be in the public interest, a resolution scheme is proposed.⁹⁰ If deemed not in the public interest, the CMT will determine whether the grounds to petition the Court for the winding-up are satisfied. In either case, the RES prepares a report with its findings and recommendations which is reviewed by the IS ResCom, approved by the Director of Financial Stability and the Deputy Governor, Central Banking, and submitted to the Governor, who as noted, is the ultimate decision-maker. Once decided, the Head of RES takes the lead in petitioning the Court to obtain either a Winding-up Order or a Resolution Order. The Handbook and Step Plans documents overlap in a number of respects. The Central Bank should consider merging them into a single policies and procedures guide for dealing with bank failures.

58. The Central Bank and DoF recently agreed a Recovery and Resolution (R&R) Engagement Framework to promote coordination in the context of an individual bank failure.

The R&R Engagement Framework was agreed in early 2022 by the Central Bank and the DoF. It documents cooperation arrangements, addressing expectations for engagement through the full range of relevant stages, including steady state (which included engagement on recovery planning), financial deterioration, supervisory directions and early intervention measures, emergency liquidity assistance, a breach of prudential liquidity or capital requirements, FOLTF, preferred resolution strategy determination, resolution decision-making and resolution execution.⁹¹ The R&R Engagement Framework does not address all potential points of engagement between the Central Bank and the DoF, such as the potential step in resolution of the provision of ELA by the Central Bank and all statutory requirements for notifications by the Central Bank to the Minister in the context of bank resolution. The R&R Engagement Framework will be reviewed annually, and these matters should be incorporated.

59. The Minister’s potential role in authorizing resolution action in the context of the government’s ownership stakes in potential resolution candidates gives rise to the perception of a potential conflict of interest. As noted, the Minister’s prior written consent must be obtained before the Central Bank can petition the Court to issue a Resolution Order in certain circumstances. As the resolution action would most likely result in the write-off of the government ownership interest, the appearance of a conflict of interest exists. At present there are no mitigating arrangements in place and the DoF should seek to put them in place.

⁸⁸ In the event that the Central Bank’s FCR Protocol had been triggered in the run up to the FOLTF determination and a FCR Task Force had established by the supervisors in the Prudential Regulation pillar, the Task Force may be transitioned into the IS ResCom, though now under leadership within the Central Banking pillar.

⁸⁹ In particular, the valuation required to inform decisions on the choice of resolution tools.

⁹⁰ The resolution scheme forms the basis of the PRO that will be submitted to the Court.

⁹¹ In the event of multiple simultaneous failures, the FSG-CCF most likely would be the principal framework used to structure engagement between the Central Bank and DoF though the R&R Engagement Framework procedures will continue to be relevant.

60. Summary of recommendations:

- Consider legal amendments to remove the requirement for advance notification to affected parties of planned use of certain resolution powers (write down and conversion of capital instruments; appointing a temporary administrator or special manager) and to specify a short timeframe (e.g., 24 hours) for court decision-making pertaining to resolution powers.⁹²
- Steps to limit the Minister's prior written consent on bank resolution to circumstances that require the use of fiscal resources should be considered;
- Consider merging the NRA Handbook and the Step Plan documents into a single policies and procedures guide for dealing with bank failures;
- Expand the scope of the R&R Engagement Framework to incorporate the potential step of providing ELA in resolution and the statutory requirements for notifications to the Minister in the context of bank resolution; and
- Adopt arrangements within the DoF to mitigate the appearance of a conflict of interest between the DoF's ownership of banks and the Minister's potential role in approving resolution action affecting those banks.

D. Regime for Insurer Failures

61. In Ireland as in the EU there is no insurer resolution regime as envisioned in the international standard and in Ireland insurer failures come under the corporate insolvency framework. That framework provides three processes for dealing with a distressed insurer. Administration involves the appointment of an administrator to help restore the insurer's financial condition placing it on a sound commercial and financial footing. Examinership is essentially a rescue process that shields an insurer from creditor claims while undergoing restructuring. Liquidation entails the winding-up of a failing insurer.⁹³ As in the banking sector, in all cases the Central Bank must petition the Court to issue an order to execute the chosen action. The independent professionals who are appointed as liquidators, examiners or administrators are subject to the oversight of the Court and not the Central Bank.

62. The Central Bank and DoF are pursuing significant improvements to the current regime. They recently published a joint public consultation paper proposing the development of a National Resolution Framework for (re)insurers and seeking views on potential enhancements to the current insolvency framework.⁹⁴ The comment period has closed, the bulk of the comments were supportive of the initiative, and the authorities will publish a feedback statement including a summary of the comments in due course. In addition, the Central Bank undertook a self-assessment of the current framework in terms of the *Key Attributes* international standard which is applicable

⁹² A recommendation of the 2016 FSAP.

⁹³ Notably, the Central Bank cannot petition the Court for the appointment of a liquidator to a failing reinsurer.

⁹⁴ *Public Consultation on the Development of a National Resolution Framework for (re)Insurers*, September 2021.

also to insurers. The self-assessment used the FSB's assessment methodology, is comprehensive, and identifies in detail the gaps in the existing framework relative to that advocated in the international standard. The self-assessment also proposes an action plan to remedy the current shortcomings in the regime. In September 2021, the European Commission adopted a proposal for an Insurance Recovery and Resolution Directive (IRRD), comparable in many respects to the BRRD. The authorities are engaging in Council Working Party negotiations on this file. The timetable for adoption of the IRRD by the European Parliament might involve 18 months or longer but, in any case, the timing and ultimate scope of the IRRD is uncertain. In any case, the IRRD proposal does not address the harmonization of national insolvency frameworks.

63. National insolvency frameworks will remain the regime applicable to most insurer failures in practice. Very few insurers are likely to be deemed systemically important to the domestic or EU economy and thus candidates for alternative resolution action under the eventual IRRD and its transposition into Irish law. As such, the Central Bank and DoF should seek to remedy weaknesses in the current insolvency regime, including by means of any required legislative amendment.⁹⁵

64. Summary of recommendations:

- Remedy weaknesses in the current insolvency regime, including any required legislative amendment.

E. Resolution Planning, Strategies, and Impediments

65. Resolution planning in Irish banks is well advanced. As noted, SI resolution plans are prepared by SRB IRTs with significant contributions by RES staff, while plans for LSIs are prepared by the RES with oversight by the SRB. Resolution plans for the five domestic banks, four of which are SIs, have been prepared since 2015/2016.⁹⁶ In 2021, work led by the SRB on the SI resolution plans⁹⁷ included the first assessment against the SRB's 2020 *Expectations for Banks* (EfBs) framework,⁹⁸ the

⁹⁵ Key weaknesses are: i) the inability of the Central Bank to petition the Court for the appointment of a liquidator to a reinsurer; ii) the Central Bank's lack of oversight authority regarding the actions of insolvency practitioners (i.e., the administrator, examiner, or liquidator) once they have been formally appointed to the insurer by the Court; and iii) the limited grounds on which the Central Bank can petition the Court for the appointment of a liquidator to certain types of insurers.

⁹⁶ To recall, these are the banks that largely service the domestic market: BOI, AIB, PTSB, UBIDAC and KBCI. BOI, AIB and PTSB are subsidiaries of domestic holding companies. UBIDAC is a subsidiary of UK based group and KBCI is a subsidiary of a Belgium based group. All except PTSB are SIs and under the remit of the SRB. Resolution plans for all of the banks, except KBCI, have been prepared since 2015 with the first resolution plan for KBCI developed in 2016.

⁹⁷ This work is described more fully in the SRB's *Resolution Planning Cycle 2021 Booklet*

⁹⁸ In 2020 the SRB issued a document titled *Expectations for Banks* to support the SRB's and NRAs' assessments of resolvability aimed at ensuring banks' preparedness for potential resolution action. The EfBs sets out the SRB's expectations for banks regarding resolution planning to demonstrate that the banks are resolvable. It addresses seven dimensions in which to assess resolvability: i) governance; ii) loss absorption and recapitalization capacity; iii) liquidity and funding in resolution; iv) operational continuity and access to Financial Market Infrastructure (FMI) services; v) information systems and data requirements; vi) communication; and vii) separability and restructuring.

first assessment under the new operational guidance for liquidity and funding in resolution,⁹⁹ assessment of Management Information Systems (MIS) capabilities for valuation and bail-in, and the introduction of a system wide event in conducting the PIA. Work led by the Central Bank with respect to the LSIs closely tracks that of the SRB. The Central Bank has published an *Approach to Resolution* document, most recently updated in October 2021, that describes how it goes about resolution planning, assessing impediments to resolution, and related matters.

66. The Central Bank has direct responsibility for resolution planning in eight banks.

Among these, the resolution strategy for some is winding-up and liquidation. Where this is not the case, the RES pursues a comprehensive and well-structured engagement to determine appropriate resolution plans and to ensure they can be implemented. A resolution plan involves both a preferred resolution strategy (PRS) and a variant resolution strategy (VRS) and the engagement seeks to ensure that both can be implemented. The engagement involves a series of written communications directed to the group Chief Executive Officer from the Director of Financial Stability. These communications include a confirmation of the core business lines identified by the bank and the critical functions the bank provides to the Irish financial system and economy as identified by the Central Bank, a description of the PRS and VRS, an analysis of the resolvability of the bank and identification of any key remaining impediments to full resolvability,¹⁰⁰ a detailed set of resolvability work priorities structured along the lines of the EfBs, and a specification of all deliverables expected by the Central Bank during the coming year and the deadlines by which they must be submitted. A bank must formulate and submit to the Central Bank an annual resolvability work plan addressing how it will achieve the priorities and fulfill the Central Bank's requirements. A bank is expected to maintain an appropriately skilled and resourced team to oversee and deliver upon this work program and otherwise collaborate with the Central Bank toward the objective of ensuring resolvability.

67. The recent adoption of consideration of system-wide events in making a PIA may indicate a need to reconsider the resolution strategies for some banks. While the consideration of both idiosyncratic and now system-wide events will still result in a single planning PIA, this might result in some banks with a liquidation PRS to be considered resolution candidates and require the initiation of more intensive resolution planning.

68. Regardless of the resolution tools envisioned in the PRS and VRS, an important component of ensuring resolvability is the issuance of a sufficient volume of bail-inable liabilities. For this purpose, in communicating to a bank its decision on the PRS and VRS, the Central Bank provides a binding minimum requirement for own funds and eligible liabilities (MREL) target.¹⁰¹ To promote the practical ability to bail-in liabilities,¹⁰² the Central Bank has required all

⁹⁹ *Liquidity and Funding in Resolution, Operational Guidance for 2021* issued by the SRB.

¹⁰⁰ For this the Central Bank has adopted a comprehensive Resolvability Assessment Framework. The framework is an internal document based on the SRBs' resolvability assessment policies and the EBA's guidance on resolvability.

¹⁰¹ In practice the Central Bank (and the SRB) sets MREL targets for all banks. For banks with a liquidation resolution strategy the MREL target usually is set at the level of their regulatory capital requirement.

¹⁰² Whether prior to resolution action (write down and conversion) or as a component of resolution (i.e., use of the bail-in tool).

banks that might be subject to resolution to form a holding company that would issue MREL eligible liabilities that are fully subordinated to other liabilities.¹⁰³ The Central Bank specifies MREL requirements at both the consolidated group (holding company) level (externally issued MREL and equity) and the bank level (internal MREL allowing losses in the bank to be passed to the holding company at the direction of the Central Bank).^{104,105} Binding targets have been set for all firms and were set on a linear basis with an initial binding requirement for January 1, 2022, and a final requirement to be met by January 1, 2024. All LSIs that have a resolution strategy other than liquidation have met their 2022 MREL targets.¹⁰⁶ To promote the practical ability to execute a bail-in transaction, banks have prepared and are enhancing bail-in playbooks.¹⁰⁷

69. Where the sale of business tool is envisioned as a component of the PRS or VRS the resolution plan must include a detailed plan to ensure the separability of at least the assets and liabilities associated with the bank's critical functions. A bank is required to identify the relevant assets and liabilities which will form the core of the business to be transferred to an acquiring entity, to identify the operational requirements necessary to ensure the business can be efficiently and effectively transferred, and to address how the assets and liabilities not transferred will be wound up in an orderly manner, including consideration of ensuring the liquidity needs in doing so. Where relevant this planning is well advanced in annual resolvability work plans with limited further work required in 2022. To ensure ability to execute a sale of business transaction, banks also have been required to develop transfer playbooks.¹⁰⁸

70. Other key components of resolvability are also addressed in the annual work program. These include ensuring the maintenance of adequate liquidity in resolution, maintaining operational continuity and access to financial market infrastructures during resolution,¹⁰⁹ being able to provide the data necessary to support resolution planning and to enable the implementation of resolution actions if required, including the data needed for required valuations, and ensuring the ability to communicate effectively with stakeholders. Planning along these dimensions is also well advanced

¹⁰³ To promote the practical effectiveness of bail-in, the Central Bank adopted a structural subordination approach, whereby bail-inable debt is issued by the resolution entity (i.e., the parent holding company) which does not itself have any liabilities that cannot be legally or practically bailed-in that rank *pari passu* or junior to its MREL-eligible instruments.

¹⁰⁴ As a complement to its updated *Approach to Resolution* document, the Central Bank published an *Approach to MREL* document in October 2021.

¹⁰⁵ The MREL-eligible instruments issued by the holding company are down-streamed to the bank on a like for like basis. The authorities modified the creditor hierarchy applicable to liquidation to include a new class of senior non-preferred debt that is subordinate to banks' other unsecured claims that could include, for example, senior debt and the uncovered deposits of corporations (which in turn are subordinate to the uncovered deposits of small and medium enterprises and natural persons).

¹⁰⁶ This is also the case for all banks in Ireland that have a resolution strategy other than liquidation.

¹⁰⁷ The bail-in playbook is informed by the SRB's *Operational Guidance on Bail-in Implementation*.

¹⁰⁸ The sale of business playbook is informed by the SRB's *Operational Guidance for Bank on Separability for Transfer Tools* which contemplates use of the sale of business tool, the asset transfer tool, and the bridge institution tool.

¹⁰⁹ Such as payments and security settlement systems.

and specific guidance on next steps and the Central Bank's expectations are documented in annual resolvability work plans.

71. While not directly responsible for resolution planning in bank branches in Ireland, the Central Bank has pursued engagement with home country resolution authorities where appropriate. The Central Bank reports good cooperation with those authorities. This is confirmed by actions taken by the relevant authorities.

72. The Central Bank has not prioritized preparations to quickly operationalize a Bridge Institution or an AMV. Planning in this regard is limited to some extent by the fact that, although temporary, bridge institutions are credit institutions and are therefore subject to an ECB license decision. Further, the SRB is in the process of developing operational implementation manuals for the use of the bridge institution tool and asset separation tool (applicable to AMVs) and the Central Bank intends to update its internal policies and procedures once this guidance becomes available. The current structure of the domestic retail market with its limited and declining number of domestically oriented banks¹¹⁰ might constrain the ability to execute a sale of business resolution strategy with a private sector acquirer. Moreover, the concentrated nature of the market raises the potential that a private sector transaction would result in further concentration. While the Central Bank is of the view that the BRR Regulations override certain national competition rules, further confirmation of this interpretation should be sought from the competition authority.¹¹¹ In any case, the Central Bank should pursue further contingency planning to be able to quickly establish and operationalize a bridge institution and AMV.¹¹²

73. As noted, the RES has policies and procedures in place to contract for external experts to support resolution action. Panels of firms have been identified for valuers,¹¹³ liquidators and temporary administrators, special managers, and general consultancy services. In addition, the Central Bank's legal department maintains a panel of solicitors and barristers for the provision of external legal services, for example, that required to support filing petitions with the Court. External expert services, including legal services, may be drawn down on short notice in urgent circumstances, if required, by way of direct award or mini competition process, as may be determined in the particular circumstances.

74. Summary of recommendations:

- Seek the views of the competition authority on the extent to which the BRR Regulations override national competition rules;

¹¹⁰ The two foreign owned retail banks have signaled their intention to exit the market.

¹¹¹ The Competition and Consumer Protection Commission.

¹¹² In substance, in the NAMA, Ireland already has an AMV in place, though there is no indication that it will not be wound down as planned in 2025.

¹¹³ As noted, prior to taking a decision to initiate resolution, or to write down and/or convert capital instruments, the Central Bank normally must arrange for a third-party valuation.

- Pursue contingency planning for use of the bridge institution and asset separation tools.

F. Resolution Funding

75. There are two primary sources of finance to support the implementation of resolution actions. Subsequent to the write-down and/or conversion of capital instruments and other liabilities eligible for bail-in, financing may be required for recapitalization of a resolved bank¹¹⁴ and for maintaining adequate liquidity prior to, during, and subsequent to executing resolution measures. The potential sources are the SRF and Central Bank ELA.¹¹⁵ The Irish authorities elected not to transpose the discretionary provisions of the BRRD that would have allowed for direct state support as an additional source of funding in resolution.¹¹⁶

Single Resolution Fund

76. The SRM Regulation established the SRF. The SRF is owned and administered by the SRB. Subject to certain conditions, the SRF may fund loss absorption, recapitalization, liquidity, and other costs and expenses associated with resolution measures.¹¹⁷ Under exceptional circumstances and subject to conditions, the SRF can make contributions to the institution under resolution in lieu of the write-down or conversion of certain liabilities and/or creditors. The SRF also is the source of compensation to shareholders or creditors under any successful NCWO claims. The Central Bank supports the SRB in the administration of the SRF through the invoicing and collection of funds.¹¹⁸ The amount of SRF funding potentially available for resolution measures with respect to Irish banks was roughly €44.7 billion as of June 30, 2021.

77. Conditions on certain uses of the SRF may constrain its effectiveness. A prerequisite for access to the SRF for loss absorption and recapitalization support (but not liquidity support) is that shareholders and creditors have collectively first absorbed losses of at least 8 percent of total

¹¹⁴ In extraordinary circumstances, financing may be required for loss absorption (i.e., to restore capital to zero).

¹¹⁵ In addition, as will be described in the Deposit Guarantee Scheme section of this Note, the DGS Fund may be used to finance resolution actions in certain cases.

¹¹⁶ The government did not transpose Articles 56 – 58 of the BRRD (government financial stabilization tools) that provide for equity support from the state and/or temporary public ownership. The DoF and the Attorney General's Office as a matter of principle take a strict approach and attempt to ensure minimum levels of divergence from the European legislation, and thus to ensure maximum levels of harmonization and reduce the risk of challenges. At the time of transposition, an assessment was made that the additional resolution powers and tools were not provided for in the relevant text (the BRRD). However, the government financial stabilization tool provisions can be brought into force by action of the Minister after certain consultations and do not require primary legislation.

¹¹⁷ This includes the ability to make capital contributions, issue guarantees, make loans and purchase assets.

¹¹⁸ The Central Bank also manages and administers the Bank and Investment Firm Resolution Fund (BIFR) and the Credit Institutions Resolution Fund (CIRF). The former may be used in the resolution of Irish licensed investment firms and third country bank branches that are not within scope of the SRM Regulation, while the latter may be used in the resolution of credit unions. Neither the BIFR nor the CIRF has been used since the prior FSAP.

liabilities and own funds of the bank.¹¹⁹ As noted in the Euro Area FSAP Technical Note,¹²⁰ this may impede the implementation of any resolution tool necessitating the use of SRF, where there are insufficient bail-inable liabilities to meet the 8 percent rule. Depending on the circumstances at the time, this could prove to be a binding constraint in Ireland. In any case, and despite the fact that the SRB precludes consideration of the use of the SRF in resolution plans, the Central Bank should consider how restrictions on the use of the SRF may impede resolution action and how to remedy or mitigate those impediments.

Emergency Liquidity Assistance (ELA)

78. The provision of ELA to Irish banks is at the discretion of the Central Bank. In the BU, ELA may be granted by the national central banks (NCBs), subject to potential objection by the ECB.¹²¹ The ECB and the NCBs, including the Central Bank, have entered into a non-binding Agreement on Emergency Liquidity Assistance.¹²² When granting ELA, the Central Bank bears the risk of any loss. No ELA has been requested by or granted to any Irish bank since the prior FSAP.

79. Written policies and procedures for considering and granting ELA are in place. By policy it is expected that to be eligible for ELA the bank must be systemically important as well as solvent. A request for ELA is to be addressed to the Governor and accompanied by a confirmation of solvency from the bank's Board. Receipt of the request triggers the convening of the FSC, which as noted above is chaired by the Governor, who is the ultimate decision-maker in granting or denying ELA.¹²³ The FSC considers and advises the Governor on the systemic importance of the bank.¹²⁴ In parallel, the Central Bank's Financial Risk Working Group (FRWG) will convene to provide inputs on decisions relating to collateral, haircuts, pricing, and other risk controls. Well-developed policies and procedures are in place with respect to collateral including marketable securities and residential mortgage portfolios, and the Central Bank has practical experience in accepting those asset classes in its normal monetary operations. Policies and procedures are in place to accept additional classes of assets, including commercial loans and mortgages and consumer loan portfolios.

¹¹⁹ A second constraint is that the amount provided by the SRF is limited to five percent of the bank's total liabilities and own funds.

¹²⁰ IMF Country Report No. 18/232. *Euro Area Policies: Technical Note – Bank Resolution and Crisis Management*, July 2018.

¹²¹ The ECB's Governing Council can object to ELA if it finds the ELA interferes with the objectives and tasks of the ESCB. There are established procedures for *ex post* and *ex ante* notification of ELA to the Governing Council by the NCBs. Any ELA outstanding would be reviewed by the Governing Council regularly.

¹²² The Eurosystem Agreement, updated in November 2020, sets out the rules and procedures for notifications by NCBs to the ECB Governing Council, solvency criterion, interest rates, duration, and communications to the public, among other matters.

¹²³ The Governor notifies the DoF of any request for ELA and the decision taken.

¹²⁴ The Macro-financial Division undertakes the analysis of systemic importance and presents its findings to the FSC. The division's assessment considers the specific characteristics of the bank requesting ELA as well as prevailing market conditions, drawing on a range of quantitative and qualitative information.

80. In 2021 the Central Bank undertook comprehensive testing of its ELA arrangements including its governance and decision-making processes and operational procedures.¹²⁵ The testing involved a series of scenario-based workshops and simulated meetings of the FRWG and FSC in the context of an ELA request by a fictitious bank.¹²⁶ The key phases of the exercises were a Prudential Liquidity Assessment Workshop, two tests of ELA governance processes involving a mock meeting of the FRWG and a subsequent mock meeting of the FSC, and a test of ELA operational procedures. The results of the exercise were formally reported to the FSC which has endorsed follow-on work in 2022, including formalizing the solvency assessment framework and preparing Central Bank-wide procedures defining responsibilities for each relevant unit in the event of an ELA request, which in turn will guide development of procedures at the unit level. A simulation exercise is envisioned for 2023 to test the results of this work.

81. The Eurosystem Agreement provides for a prospective assessment of solvency, for example in the case a bank entering into resolution or undergoing resolution action.¹²⁷ The Central Bank at present does not have written policies or procedures to guide a prospective solvency determination. The work planned in 2022 to formalize the solvency assessment is not intended to address prospective solvency. As it is likely that any bank undergoing resolution may well require ELA until the resolution action can be fully implemented and market confidence is restored, the Central Bank should consider incorporating prospective solvency into its solvency assessment work program by developing policies and procedures for assessing the prospective solvency of a bank entering into or undergoing resolution to determine its eligibility for ELA.

82. Given that most Irish banks are subsidiaries or branches of foreign banks, cross-jurisdictional coordination of ELA provision may be required. For non-domestic banks the Central Bank would coordinate any provision of ELA under the lead of the ECB or other central banks. Given the scope of its ELA work program for 2022 and 2023, the Central Bank does not see engagement on this issue with the ECB or other central banks in that timeframe as a priority and this seems appropriate.

83. By policy the Central Bank will only provide ELA in euro. Given the significant deleveraging of the domestic banking system that has occurred over the past decade, the domestic banks' foreign currency funding requirements have reduced significantly, and the Central Bank sees little prospect of the need to provide foreign currency ELA to them. While two domestic banks have significant operations in the UK, they have access to the Bank of England for sterling. The non-domestic banks in Ireland that could conceivably be eligible for ELA are parts of international

¹²⁵ Operational procedures were first adopted in 2011 and subsequently reviewed and enhanced by the FRWG in 2018.

¹²⁶ The FSC portion of the exercise employed and tested a new framework for assessing the systemic importance of the requesting bank. The FRWG exercise employed a new collateral risk control framework involving a wide range of collateral classes.

¹²⁷ Section 4.1(b) of the agreement.

banking groups where primary responsibility for potential ELA would lie with other major central banks.¹²⁸

84. The state guarantee of ELA expired in 2018. The possibility under the legislation to extend the guarantee was not exercised. With the subsequent Central Bank advances in forward-looking liquidity monitoring in banks and its ability to secure any ELA with a wide range of asset classes, the Central Bank and DoF are of the view there is little prospect of the Central Bank requiring a state guarantee to backstop ELA that is less than fully secured. Nonetheless, particularly in the context of potential ELA to a bank in resolution, the Central Bank and DoF should consider additional means to further mitigate the possibility of the Central Bank suffering a loss, including the potential for a DoF backstop of any Central Bank exposure to loss.¹²⁹

85. Summary of recommendations

- Consider how restrictions on use of the SRF may impede resolution action and how to remedy or mitigate those impediments;
- Incorporate the prospective solvency of a bank in resolution into the ELA solvency assessment work program; and
- Consider additional means to further mitigate the possibility of the Central Bank suffering a loss arising from ELA provision, including the potential for a DoF backstop of any Central Bank exposure to loss.

G. Deposit Guarantee Scheme

86. The Deposit Guarantee Scheme Directive (DGSD) created a common EU framework. It introduced harmonized coverage of deposits at €100,000, a requirement to make payouts within seven business days from January 1, 2024, *ex ante* funding through risk-based premiums, and a requirement to reach a target fund balance of at least 0.8 percent of covered deposits by July 3, 2024, among other features.

87. The Irish DGS is governed by the Financial Services (Deposit Guarantee Scheme) Act 2009,¹³⁰ as amended, and the 2015 DGS Regulations which transposed the DGSD. The DGS Regulations established a Contributory Fund maintained, governed, and operated by the Central Bank. The DGS covers resident and non-resident depositors in banks and credit unions licensed in Ireland and their branches in the EU.¹³¹ As noted, the DGS is governed by an Oversight Committee and managed by the PSSD.

¹²⁸ These banks in any case would not meet the systemic importance criteria to qualify for Central Bank ELA.

¹²⁹ A state backstop of a central bank's potential loss in providing ELA is in accordance with IMF policy.

¹³⁰ The 2009 Act provided for a deposit protection account at the Central Bank in which all banks were required to maintain a deposit in an amount determined by the Minister.

¹³¹ It does not cover the deposits of public authorities, pension funds, collective investment schemes, and financial institutions, such as investment banks, insurers, and investment firms.

88. Deposits covered by the DGS are concentrated in five banks. As noted, the domestic market mainly is serviced by only five banks, four of which are SIs. The five hold roughly 84 percent of total covered deposits at June 2021. Three of these banks are domestically owned (all with government shareholdings), while two are subsidiaries of SIs headquartered in other European jurisdictions. In no case is the resolution strategy for these banks winding-up and liquidation, and as such no deposit payout is envisioned (but see below regarding the potential for the DGS to fund resolution action). Nine other banks together hold 3 percent of covered deposits.¹³² Of these, only four have a winding-up resolution strategy, and of these four, each only holds on average over time around €1 million in total covered deposits and is a subsidiary of an international banking group. As such, at present the potential for a covered deposit payout in the banking industry is remote. The 221 credit unions together hold around 13 percent of covered deposits, all of which might be subject to winding-up in failure and a covered deposit payout.¹³³

89. The DGS is financed through *ex-ante* and potential extraordinary contributions from members. Regular annual premiums take the form cash contributions.¹³⁴ The DGS can require members to make extraordinary contributions in an amount of up to 0.5 percent of covered deposits each year (other than in exceptional circumstances which would allow up to 1 percent), in case its resources are insufficient. It has not done so since the prior FSAP.

90. As of June 30, 2021, the Contributory Fund balance was €564 million. The Irish authorities adopted the DGSD's minimum target Fund balance of 0.8 percent of covered deposits. The current target balance, expected to be achieved by December 2023, based on current covered deposit levels, is projected to be roughly €1 billion at that time. The Fund's assets are invested in short-term Exchequer Notes issued by the NTMA. The Central Bank serves as investment manager. The terms and conditions of the Exchequer Notes purchased provide that at the request of a customer, the NTMA may allow the customer to redeem the Notes prior to maturity, enabling the Fund to liquidate its investments in time of need.

91. The Central Bank and DoF provide a financial backstop that can increase the capacity of the Fund. The Central Bank may provide its own monies to the Fund in the event the Fund and extraordinary contributions from members are insufficient in amount to cover the costs of a particular compensation event. If the Central Bank does so, the amount of its payment shall be reimbursed by the Irish Government to the Central Bank within two weeks. The amount paid by the Irish Government must be repaid from the Fund over a period and at an interest rate determined by the Minister after consultation with the Central Bank. There is no written policy agreed between the

¹³² Four banks hold no covered deposits.

¹³³ There is an alternative resolution regime for credit unions. It provides the option of a directed transfer of assets and liabilities, potentially including all deposits, to another credit union, with financial incentive to the acquirer funded by the CIRF. The credit unions contribute to the CIRF, which has a balance of €56 million and a target balance of €65 million. Use of the CIRF funded directed transfer resolution option must meet certain conditions related to the public interest.

¹³⁴ None of the contributions are in the form of the payment commitments that are provided for under the DGSD and the DGS Regulations.

DoF and Central Bank addressing this contingent liability on the part of the DoF that can be triggered by a decision of the Central Bank, and one should be developed.

92. Covered deposit payouts are triggered when the Court issues a Winding-up Order and appoints a liquidator. As described above, the liquidator's immediate task is to furnish the DGS the information required to make a payout. A DGS payout has been triggered three times since the prior FSAP in the three credit union failures described earlier. At present the DGS is required by statute to make payouts within 10 working days, but in all three cases since the prior FSAP, payouts were made with seven working days, the eventual statutory target. In a payout the DGS subrogates the priority creditor status of covered deposits in liquidation.

93. The DGS may use the Fund for other than a covered deposit payout. The Fund may be used to prevent the failure of a member, and in the context of winding-up proceedings, to finance the transfer of covered deposits, along with assets of the failed member, to another institution. Both powers are subject to a provision that the costs borne by the DGS in doing so do not exceed the anticipated net cost of a payout or the available financial means within the fund. The Central Bank does not have written policies specifically addressing whether and how these powers can be used, in part due to limitations and uncertainties as to the interpretation and application of certain elements of the DGSD and DGS Regulations. The European Commission is currently considering clarifying legislative amendments.¹³⁵ Once these issues are resolved, the Central Bank should develop policies and procedures to guide any use of these powers. While the ability to finance the transfer of covered deposits may prove useful, the ability to use the Fund in an attempt to prevent the failure of an institution should be avoided.

94. The Fund may also be used to finance resolution actions in certain cases. Specifically, in the context of bail-in, the DGS is liable for the amount by which covered deposits would have been written down to absorb losses had covered deposits been included within the scope of a bail-in and been written down to the same extent as creditors in the same level of the creditor hierarchy. In case resolution tools other than bail-in are employed, the DGS is liable for the amount of losses that covered depositors would have suffered in proportion to the losses suffered by creditors in the same level of the creditor hierarchy.¹³⁶ An interpretation allowing the DGS to finance resolution measures up to the amount it otherwise would have paid out to depositors under insolvency, providing that it is reasonably expected to recover those funds to the same degree as in liquidation, would increase resolution funding options.¹³⁷ The interpretation of these provisions is being reviewed at the

¹³⁵ Among the key matters being considered for clarification are the definition of "available financial means" of the Fund in the legal text, potential interactions with the State Aid framework, and the methodology and harmonization for applying the least cost test relative to a payout in the context of using the Fund to prevent the failure of a member or in the context of winding-up proceedings.

¹³⁶ In either case, the amount of DGS funds that may be used to provide funding in resolution is capped at the greater of the amount of losses that the DGS would have had to bear had the institution been wound-up and liquidated or an amount equal to 50 percent of the target level of the DGS.

¹³⁷ See: *Resolution Funding: Who Pays When Financial Institutions Fail?*; Oana Croitoru, Marc Dobler, and Johan Molin at: <https://www.imf.org/en/Publications/TNM/Issues/2018/08/16/Resolution-Funding-Who-Pays-When-Financial-Institutions-Fail-46124>

European level. The Central Bank should develop policies and procedures to guide potential use of these powers.

95. The Central Bank tests members' ability to produce the data required to enable a payout within seven working days. Operational requirements setting out the technical specifications of the single customer view data format were first provided to banks in 2012 and to credit unions in 2015. Each bank's ability to provide the data in the required format is tested annually.¹³⁸ The tests results confirm banks' ability to supply the required data in a timely manner.

96. The Central Bank has completed several simulation exercises to test its ability to manage a payout. These involve carrying out two full end-to-end simulation events per year using full depositor data files from two banks. The simulations test all aspects of operational procedures and identify any issues which would affect efficient pay-out in the event of a real invocation. The results of the simulation exercises are reported to the Oversight Committee.

97. Summary of recommendations

- Agree a written policy between the Central Bank and the DoF addressing potential use of Central Bank funds to supplement the DGS Fund and the DoF's contingent liability to repay those funds to the Central Bank; and
- Adopt policies addressing alternative uses of the DGS Fund, including avoiding its use for failure prevention.

H. Crisis Management, Contingency Planning and Testing

98. The authorities have progressively adopted, tested and enhanced their crisis management arrangements since the prior FSAP. These include interagency and Central Bank internal policies and procedures frameworks that serve as contingency plans for crisis management, along with programs for testing these frameworks, identifying scope for enhancements, and upgrading and expanding upon the frameworks. Enhancements have also been made based on the lessons of actual invocations of the frameworks.

99. At the interagency level, the FSG has adopted and oversees a written Crisis Coordination Framework (CCF) to help coordinate activities among its members in the event of systemic distress or crisis. The CCF, first adopted in 2017, elaborates policies and procedures for mobilizing and coordinating the FSG member agencies in a potential crisis.¹³⁹ The CCF includes procedures for both a Readiness state and an Activation state. In practice it has been invoked three

¹³⁸ A sample of credit unions are tested each year. All credit unions have been tested at least once. As noted, the three credit unions that have been paid out since the prior FSAP were all able to supply the data to enable a payout within seven working days.

¹³⁹ The CCF would be invoked when there is an event that could threaten the viability of an important institution, lead to contagion or undermine the soundness of, or confidence in, the financial system. The member agencies participate in the CCF in line with their statutory objectives and without prejudice to their respective institutional and legal responsibilities and functions.

times since inception, twice to its Readiness state during two periods of heightened potential for Brexit related disruptions, and once to its Activation state in the context of COVID-19. The CCF is updated periodically, most recently in early 2022, based on the learnings from the invocations and on the results of simulation exercises (see below). When invoked to its Activation state, a formal Crisis Coordination Group (CCG) is established to coordinate the agencies' response to the situation and the FSG agrees a formal terms of reference for the CCG.¹⁴⁰

100. Execution of the CCF is supported by the CPG and the CWG. The CPG is responsible for maintaining the FSG CCF document and for supporting interagency coordination in response to systemic distress of crisis, including in the invocation and operation of the CCF. The CPG coordinates the CWG, a subgroup on communications that includes CPG members and communications representatives from the three agencies. The CWG supports the exercise of the communications elements of the CCF when it is invoked.

101. The Central Bank has in place a Financial Crisis Response (FCR) Protocol to guide its crisis responses. The FCR Protocol was adopted in 2017 and served as a model for the CCF. It too is a written coordination framework contemplating both a Readiness and an Activation. The FCR Protocol has been invoked five times since inception, three times in coordination with invocation of the FSG CCF cited above. The protocol is periodically updated, most recently in early 2022, based on actual experience and on the lessons learned in crisis simulation exercises. The protocol elaborates the roles and responsibilities of the various Central Bank units and managers in both of its two states. In its Activate state, the protocol requires formation of a formal FCR Task Force. The protocol provides guidance on the leadership, membership and functioning of a crisis-specific Task Force.¹⁴¹ The protocol also provides guidance on coordinating internal and external communications. While the protocol is crisis agnostic, several scenario-specific playbooks have been prepared to better guide crisis responses.¹⁴² The FCPM in the RES is responsible for maintaining, updating, and supporting implementation of the FCR Protocol.

102. The interagency crisis management, contingency planning and testing regime is overseen by the FSG chaired by the DoF Secretary General. The FSG serves as a forum for the agencies to reach agreement on the risks that require contingency planning, to delegate responsibility for contingency planning to specific organizations, units and officials, to review draft contingency plans, to agree on coordinated crisis simulation exercises and review the results and lessons learned during the exercises, and when necessary to coordinate the implementation of crisis management actions. The FSG's current mandate is limited to overseeing interagency activities, reflecting a respect for the individual responsibilities and authorities of the three member authorities. The FSG's Terms of Reference should be extended to encompass an annual update and

¹⁴⁰ A CCG was established to guide the agencies' response to COVID-19 from March 2020 until July 2021.

¹⁴¹ A COVID-19 Crisis Response Task Force was formed and operated from March 2020 until November 2021.

¹⁴² These playbooks address responding to significant disruptions in the provision of payment services, for escalating supervision due to heightened concerns with respect to an insurer, and for monitoring the funds sector in times of heightened stress in funds and/or markets, in all cases addressing the potential to invoke the Protocol. For bank failures, the NRA Handbook serves as the principal playbook.

discussion of member agencies' contingency plans and testing regimes as they apply to system bank failures and financial sector crises.

103. Within the Central Bank, the crisis management, contingency planning, and testing regime is overseen by the FSC chaired by the Governor. The FSC is supported in this responsibility by the FCPM. To help coordinate its institution-wide work, the FCPM in 2018 established a Crisis Preparedness Network (CPN) which is guided by a Terms of Reference last updated in early 2022. The CPN is a cross-organizational group of division-level experts that support efforts to enhance the Central Bank's crisis preparedness and management capability. It is chaired by the Head of FCPM and consists of Core and Advisory divisions, with the Core division currently consisting of some 20 divisional members who contribute regularly to the FCPM's work and the Advisory members contributing where necessary.¹⁴³

104. Crisis management contingency planning within the DoF and NTMA is integrated into their overall risk management frameworks. The DoF has progressively built up its risk management planning that is documented in its Risk Management Framework and Procedures Manual, most recently updated in February 2021. To build upon this, DoF initiated development of a comprehensive Incident Response Protocol, oriented to responding to distress and crises of any nature. Progress on this initiative was interrupted by resources being taken up by Covid-19. DoF intends to renew its efforts to develop the protocol in 2022. The DoF should ensure adequate resources are devoted to this effort to put in place the protocol as expeditiously as possible. Ideally the protocol will serve as a complement to the Central Bank's FCR Protocol and the FSG CCF. The DoF should put in place of program of periodic testing and updating of the protocol.

105. The authorities make good use of simulation and similar exercises to enhance crisis preparedness. Simulation exercises are undertaken on an interagency and individual agency level. In general, the exercises are used to test and enhance new policy and procedure frameworks. Within the Central Bank, exercises often begin with tests at the divisional level with subsequent exercises at higher levels. The exercises complement the learnings that occur when the authorities' crisis response mechanisms (such as the FSG CCF and the Central Bank FCR Protocol) are actually invoked. These all feedback into enhancements to the frameworks.

106. Since it was established in 2017, the FSG has undertaken four exercises. Two involved testing the FSG's governance, communications and coordination arrangements in the context of a cyber-attack on the Irish financial system and in the context of a potential systemic crisis involving liquidity and operational problems. Another tested the communications elements of the FSG CCF through all stages of a cyber-related crisis. The fourth was used to test additional guidance on FSG CCF invocation and escalation procedures.

107. Within the Central Bank, six exercises have been conducted since 2017. One examined the Central Bank's response to a cyber-attack on the financial system and was a precursor to the FSG

¹⁴³ The FCPM occasionally is also supported by external experts who help prepare and execute crisis simulation exercises (see below). Budgetary arrangements are included as part of the annual planning process for FCPM work, with the cost of any interagency work conducted by the FSG shared equally by the three FSG agencies.

exercise using a similar scenario. Another assessed the Central Bank's response to liquidity and operational problems in an institution with implications for other institutions and the financial system, which also was a precursor to the FSG exercise using a similar scenario. Other exercises have assessed the Central Bank's response to the impact of a hard-Brexit on Irish domiciled investment funds, the failure of an investment firm, and disruptions to payment services. As noted, a recent exercise examined the Central Bank's ELA decision-making and operational procedures.¹⁴⁴

108. The Central Bank and FSG have a number of exercises planned for 2022. A program of planned Central Bank exercises is submitted annually to the FSC for endorsement in years when the crisis management arrangements are not invoked. Similarly, the FSG runs one exercise each year when there are no invocations. The program envisioned by the Central Bank in 2022 will involve a number of crisis simulation exercises and workshops including in relation to bank failure and cyber crisis response. An FSG exercise is also planned.

109. Summary of recommendations:

- The FSG's Terms of Reference should be extended to encompass an annual update and discussion of the member agencies' internal contingency planning and testing regimes as they relate to systemic bank failures and financial sector crises; and
- The DoF should pursue development of its planned Incident Response Protocol, and once in place, initiate a program of periodic testing of the protocol.

¹⁴⁴ In addition, as noted previously, the DGS carries out regular exercises to ensure that it is prepared for a payout in a member institution.