Finance for your clients: Harmonisation of Capital Markets

Commission(s) in charge of the Session/Workshop:

BANKING, FINANCE AND CAPITAL MARKETS

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National Report of Ireland

Niamh Rodgers
Mason Hayes & Curran
South Bank House
Barrow Street
Dublin 4
Ireland
+353 1 6142445

nrodgers@mhc.ie

Jennifer Maxwell
Blake, Cassels & Graydon LLP
London, England

Xavier Costa Arnau
Roca Junyent
Barcelona, Spain

1. Briefly describe the level of integration of the capital markets at the infra-national, national and supra-national levels.

Ireland is a small, open economy with considerable integration in regional and global capital markets. It is one of the most open economies in the world, and enjoyed remarkable economic success before the crash.

The Irish equity market is small by international standards, with the majority of companies thinly traded and dominated in size by a few organisations. It depends heavily on trading activity in other markets, but not vice versa. Significant return and volatility spill-over effects occur in the direction of, but not from, the Irish market.

Traditional strong interactions between the Irish and UK markets for economic political purposes have been superseded somewhat by new relationships in the EU and the globally dominant US market.

2. Which measures have been adopted (or are foreseen) in your jurisdiction to support access to finance by small and medium sized enterprises ("SMEs")? Measures might include (i) supporting venture capital and equity financing; (ii) lowering information barriers; (iii) enhancing access to public markets; (iv) supporting equity financing; (v) facilitating infrastructure investment; and/or (vi) promoting innovative forms of corporate financing.

2.1 While the feeling in the jurisdiction is that it remains the responsibility of the banking system to provide credit to businesses, the Government Department of Jobs, Enterprise and Innovation (the "**Department**") endeavours to offer some additional targeted supports where there are market failures. This includes action to ensure that a pool of credit is available to fund SMEs in the real economy during the re-structuring and down-sizing programme for the domestic banking sector.

2.2 **Supporting venture capital and equity financing/ Supporting equity financing/ Facilitating innovative forms of corporate financing.**

2.2.1 <u>SME Credit Guarantee Scheme</u>

The Credit Guarantee Scheme ("**CGS**") provides a State guarantee through the Department to accredited lenders of 75 per cent on eligible loans or Performance Bonds to viable Micro, Small and Medium-sized Enterprises ("**SMEs**"). The Guarantee is paid by the State (the "**Guarantor**") to the lender on the unrecovered outstanding principal balance on a Scheme Facility in the event of a Borrower defaulting on the Scheme Facility repayments.

The purpose of the Scheme is to encourage additional lending to SMEs, not to substitute conventional lending. SMEs are thus enabled to develop a positive track record with the Lender with the objective of returning to standard commercial credit facilities in time. It will also place Irish SMEs on a competitive level-footing relative to other trading competitors who are able to avail of a guarantee in their own countries.

2.2.2 Microenterprise Loan Fund

The Fund provides support in the form of loans for up to €25,000, available to start-up, newly established, or growing microenterprises employing less than 10 people, with viable business propositions, that do not meet the conventional risk criteria applied by banks.

2.2.3 Strategic Banking Corporation of Ireland

From February to September 2015, €110 million has been lent to circa 3,200 SMEs by two banks, with broad coverage across various business sectors and regions. The Strategic Banking Corporation of Ireland ("SBCI") has recently announced new on-lending agreements with two non-bank lenders which is a key step in creating greater competition for SME lending in the Irish market, by supporting smaller indigenous players and providing funding for a broader range of products, including Asset Finance, Leasing and Contract Hire.

2.2.4 Ireland Strategic Investment Fund

ISIF is a cornerstone investor in two SMEs making equity and credit available to SMEs and mid-sized corporates in Ireland. Both funds are active in the market place, sourcing deals and have been key drivers in bringing liquidity back into the SME sector. The pipeline for equity investment is good and the SME credit market is becoming increasingly competitive compared to the time of the launch of these funds in 2013, where the domestic banks have become more active in the space especially at the upper end of the SME sector.

2.2.5 Enterprise Ireland Seed & Venture Capital Scheme

To develop the domestic venture capital system, the Government commitment of €175 million under the Seed and Venture Capital Scheme 2013-2018 aims to leverage a further €525 million from the private sector, for investment in high potential start-up and scaling companies.

2.3 Lowering information barriers

2.3.1 Small Business Finance Website

The Small Business Finance website is a joint initiative by the Irish Banking Federation (IBF) and Chambers Ireland. It is an open resource for small businesses of all backgrounds and at various stages of development on business planning and financial management.

2.3.2 Advisory Group on Small Businesses

The Department provides the secretariat to the Advisory Group on Small Business. The broad terms of reference for the Advisory Group for Small Business are to facilitate structured and regular dialogue between the Minister for Small Business and representatives of the small business sector on issues of concern to that sector on how to promote the economic development and job potential of the sector having regard to the current restraints imposed on the national finances and to recommend action points and follow up. Membership of the Small Business Advisory Group includes entrepreneurs, nominees from the main small business representative bodies and officials from the Department, as well as from the state enterprise support agencies.

2.4 **Facilitating Infrastructure Investment**

2.4.1 Capital Investment Plan

The Government's Capital Investment Plan 2016 – 2021 is worth €27 billion and aims to provide for major infrastructure projects including the areas of transport, enterprise, education and broadband.

3. Has your jurisdiction adopted (or are there any trends indicating that may do so in the future) any measures to remove barriers to cross-border investment? Measures could include (i) improving market infrastructure; (ii) fostering convergence of insolvency proceedings; (iii) removing cross-border tax barriers; (iv) strengthening supervisory convergence.

3.1 Insolvency Proceedings

With effect from 9 July 2014, Regulation (EU) No.663/2014 (pdf) updated the Annexes to the Regulation on Insolvency Proceedings (EC) No 1346/2000 (pdf), which aims to simplify formalities governing the reciprocal recognition and enforcement of judgments in cross-border insolvency matters.

The Irish Personal Insolvency Act introduced three new debt resolution mechanisms to help mortgage-holders and other people with unsustainable debt to reach agreements with their creditors. The mechanisms introduced were the Debt Relief Notice (DRN), Debt Settlement Arrangement (DSA) and Personal Insolvency Arrangement (PSA). The updated Insolvency Regulation designates the DRN, DSA and PSA as insolvency proceedings which can benefit from cross-border recognition. This means that a debtor availing of a DRN, DSA or PIA will gain the same protection against creditors in most other EU countries that they receive in Ireland, subject to and in accordance with the Insolvency Regulation.

3.2 Tax Barriers

Ireland has a low tax, pro-business environment:

- Companies based here pay one of the lowest corporate tax rates in Europe at 12.5%;
- Companies receive a 25% tax credit for investing in research and development;
- Ireland ranks sixth in World Bank and PwC's ease of paying taxes report;

- To facilitate international business, Ireland has signed comprehensive double-taxation agreements with over 60 countries;
- Special Assignment Relief Programme (SARP) is tax relief aimed at people who come to work in Ireland having spent five years outside the country.

Ireland's special regime for securitisation vehicles has contributed to Ireland being a centre for asset back securities activities. Where securitisation entities meet a number of criteria, they are subject to tax at 25% and their taxable profits are computed in accordance with the tax rules which apply for a trading company. Consequently, they are entitled to a tax deduction for all "trade" type expenses which normally results in tax neutrality at entity level. If it were not for this regime, expenses such as interest paid would not normally be tax deductible as such companies are not generally considered as carrying on a trade. The securitisation regime also allows for the tax deductibility of profit participating interest subject to certain rules.

4. Have specific measures been adopted (or are foreseen) to increase choice and competition in cross-border retail financial services and/or insurance?

<u>Retail</u>

Nothing so far has been actioned in relation to the Commission's Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses.

<u>Insurance</u>

Nothing so far has been actioned in relation to the Commission's Green Paper on retail financial services: better products, more choice, and greater opportunities for consumers and businesses.

The European Communities (Insurance Mediation) Regulations 2005 gives effect to the Insurance Mediation Directive which sets out the principle of a single registration for insurance brokers/ intermediaries which provide that a firm may provide services for which it is registered in Ireland, throughout the EC, either through the establishment of a branch office or the free provision of services on a cross border basis (without establishing a permanent presence).

5. Capital markets harmonisation aims to facilitate companies' access to finance, particularly for SMEs by promoting more diversified funding channels that are complementary to bank financing. Is non-bank financing significant in your country? Please consider the role of private equity, venture capital, alternative finance, loan-originating funds, etc.

Irish SMEs are among the most reliant in Europe on bank funding. However, as detailed above at question 2, SMEs have the opportunity to access finance from a wide variety of sources. SME Credit and Lending Division of the Department of Finance promote and evaluate options to diversify funding for SMEs away from banks. This is especially relevant given that many banks are deleveraging and that SMEs rely on the banking sector heavily for financing needs.

The number of enquiries made for non-bank finance has decreased slightly compared to March 2015 and September 2014 with 10% of SMEs having sought non-bank finance in the period April-September 2015. The demand for non-bank finance continues to be significantly lower than demand for bank finance (30% in the period April – September 2015).

Growth/expansion purposes and working capital requirements are key drivers of applications for non-bank finance. 51% of the applications for non-bank finance in the period April-September 2015 were for growth purposes, i.e. new business ventures/expansions/purchase of assets/equipment.

Loans from family or friends (requested by 3%) remain the most common source of non-bank finance requested. Below is a list of enquiries for non-bank financing, and the percentage of SMEs that have enquired in relation to them:

- Loans from family and friends – 3%
- Business Angel or Investor Finance – 1%
- Government Financial Support – 1%
- Loans from Business Partners – 1%
- Equity from Business Partners – 1%
- Venture Capital Finance – 1%
- Crowdfunding / Peer to Peer lending – 1%
- Enterprise Ireland – 1%
- Non-bank asset finance related facilities – 1%

6. While loans traditionally represent the bulk of the banking assets, most financial entities also invest in capital markets. Do financial institutions in your jurisdiction invest highly in the capital markets? Are bonds and equity investments a significant proportion of the assets of financial institutions in your jurisdiction?

Financial institutions in Ireland tend to invest highly in the capital markets.

The Irish Stock Exchange (ISE) is ranked number 1 for listing bonds and investment funds worldwide. Its equity markets saw four companies raise €980m in international funds through initial public offering (IPO) while the ISEQ rose 30%.

The ISE is the world leader in terms of new bond listings, according to World Federation Exchange's figures, and had 7,219 new debt securities listed during 2015 (compared to 7,013 in 2014). ISE's is the number 1 centre for listing investment funds globally with 7,123 fund and ETF classes now listed on its markets.

7. **Harmonisation requires standardisation, particularly in terms of credit information. Is SME credit information easily available in your jurisdiction? Is your jurisdiction adopting any measures to boost availability and standardisation of SME credit information at the national and supra-national levels?**

Ireland has made steps to achieve improvement in the coverage, quality and comparability of SME credit information through the establishment of a central credit registry owned by the Irish Central Bank. The registry aims to capture a wealth of data in relation to SME credits and provide for more informed decision-making by lenders as well as the potential to develop credit scores in the future.

The government is supportive of efforts to examine whether a framework for developing credit scores or credit ratings in respect of SMEs is viable and believe this would support SME securitisations.

8. **Is there any recent or proposed legislation in your jurisdiction aimed to establish a framework for simple, transparent and standardised securitisation? Examples might include measures (i) to simplify prospectus requirements; (ii) to increase/decrease the information required to be provided to investors before making an investment decision; or (iii) to reduce barriers for smaller firms to access capital markets. If there have been no recent developments, please describe the current situation of securitisation in your jurisdiction.**

No, there is no such legislation in Ireland as of yet.

In Ireland, the legal framework for securities markets regulation is based closely on EU law and a number of EU Directives: the Prospectus Directive, the Market Abuse Directive, the Transparency Directive and the Markets in Financial Instruments Directive, which have been transposed into Irish law. The Short Selling Regulations and Regulation 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (“EMIR”) are also directly applicable in Ireland.

The principal regulator of capital markets in Ireland is the Central Bank of Ireland, which has been appointed competent authority for most securities law.

The Markets Directorate of the Central Bank of Ireland has responsibility for the competent authority securities markets functions arising from these EU Directives. In this capacity, it has issued Prospectus, Market Abuse and Transparency Rules.

Ireland’s only regulated stock exchange is the ISE. The ISE operates 4 markets: the Main Securities Market, the principal market for Irish and overseas companies; the Enterprise Securities Market (ESM), an equity market designed for growth companies; the Global Exchange Market (GEM), a specialist debt market for professional investors and the Atlantic Securities Market (ASM), a market dedicated to companies who wish to dual list in Ireland and the USA.

9. **In your experience as a banking/capital markets lawyer, have you detected in your jurisdiction any unnecessary regulatory burdens, interactions, inconsistencies and/or rules that have unintended consequences which threaten the ability of the companies to finance themselves?**

Irish businesses are still struggling to get finance, but studies have shown that the inability to finance growth has eased with only 44% in 2015 viewing this as a business threat compared to 61% in 2014. Studies also suggest that more SMEs are planning to use alternative sources of finance within their overall capital structure, up from 11% last year to 15% this year. So it seems that burdens have eased off somewhat in terms of access to finance, whether banking or non-banking.

While Ireland is ranked high internationally in terms of ease of doing business, the burden of regulatory compliance is not spread proportionately across companies of different sizes. Compliance costs fall as business size increases, and the disproportionate cost of compliance is the primary issue affecting the smaller businesses, detracting from available finances.

Irish businesses took a major hit during the recession, not only financially, but also confidence wise. More is needed to help change the mind-set of Irish companies so as to encourage them to internationalise their horizons, ambitions and client base. At the moment, Irish home-grown companies are overly dependent on the domestic market, leaving them particularly vulnerable.

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