

Ireland Exercises National Discretions under IFD/IFR

The Investment Firms Directive EU/2019/2034¹ ("IFD") and the Investment Firms Regulation EU/2019/2033² ("IFR") (collectively the IFD/IFR regime) introduce a new dedicated prudential framework for investment firms. New classes of firm are being introduced and, as a result, most investment firms will fall outside the scope of the prudential regime that applies to banks (the CRD IV / CRR framework).

The IFD grants a number of national discretions to EU Member States, including certain points relating to the remuneration rules and applicable exemptions.

The Central Bank of Ireland ("Central Bank") stated in January 2021 that it expected all investment firms to have begun considering the impact of the IFD/IFR regime, at that stage, and to have commenced preparations to ensure that they can comply with it from 26 June 2021.

The Irish Department of Finance, as the department responsible for drafting the domestic legislation which will transpose IFD into Irish law, issued a public consultation on the national discretions under IFD in May 2020. It published the outcome of this consultation in a "Feedback Statement"³ on 24 May 2021.

¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L2034>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R2033&qid=1610041074672>

³ <https://assets.gov.ie/135676/61353679-13aa-49cb-a3e3-dfde5af72fa1.pdf>

Remuneration Rules

Article 32 of IFD sets out the requirements for a portion of variable remuneration to be paid out in instruments, with a number of options on how this can be achieved. It also requires a portion of the variable remuneration to be deferred.

There are two exemptions from these requirements. The first exemption (the "Smaller Firm Exemption") applies where the value of the firm's assets falls below a certain threshold over the four year period immediately preceding the given financial year. The second exemption (the "Individual Exemption") applies where the relevant senior manager / risk taker staff member receives variable remuneration of less than €50,000 and the variable remuneration is less than one quarter of the person's total remuneration.

Irish Application of National Discretions

The Smaller Firm Exemption threshold level, is set at a default level in IFD of €100 million. Member States may adjust this default threshold level either upwards (as high as €300 million) or downwards, at their discretion.

The Department of Finance has indicated that it will avail of this discretion and will set the default threshold at €300 million, but with a discretion being granted to the Central Bank (the designated national competent authority ("NCA") for the IFD / IFR regime) to specify a lower threshold in particular circumstances based on (i) the nature and scope of a particular firm's

activities; (ii) the internal organisation of the firm, and, where applicable, (iii) the characteristics of the group to which the firm belongs.

The Department of Finance has also indicated that it will not exercise the national discretion to determine that specific roles will be carved out of the Individual Exemption (based on the nature of the responsibilities and job profile) so as not to be able to avail of the variable remuneration threshold exemption. It will also not exercise a third national discretion relating to remuneration (to place restrictions on the types and designs of instruments that may be used where variable remuneration must be paid in kind or prohibit the use of certain instruments for this purpose).

Central Bank Discretions

IFD and IFR separately provide for a number of discretions to be exercised by NCAs. The Central Bank published its consultation paper, CP135⁴, in January 2021 but has not yet indicated how it will exercise these discretions. It plans to do so by the end of June 2021 in an 'Implementation of NCA Discretions in IFD / IFR Regulatory Notice'.

Timing

The Department of Finance has not indicated when the transposing regulations implementing IFD into Irish law (and reflecting its decisions on the exercise of national discretions) will be published, but Member States are required to transpose the IFD by 26 June 2021.

⁴ <https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp135/cp135-consultation-on-competent-authority-discretions-in-the-ifd-and-ifr.pdf?sfvrsn=4>

Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide, is available on our website⁵ and in our brochure⁶.

If you would like further information, please liaise with your usual Maples Group contact or one of the members of our Irish Financial Services Regulatory Group.

Dublin

Stephen Carty
+353 1 619 2023
stephen.carty@maples.com

Lorna Smith
+353 1 619 2125
lorna.smith@maples.com

Philip Keegan
+353 1 619 2122
philip.keegan@maples.com

Alison Gibney
+353 1 619 2158
alison.gibney@maples.com

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⁵ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

⁶ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>