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Banking & Finance 2021

Ireland: Trends & Developments

Elizabeth Bradley and Mark Murran
Maples Group

Trends and Developments

Contributed by:
Elizabeth Bradley and Mark Murran
Maples Group** **see p.7

Banking and Finance in Ireland Over the Last 12 Months

As 2020 drew to a close, lenders, borrowers and other finance professionals had well and truly adjusted to the "new normal" and remote working lockdown restrictions had very little noticeable impact (in certain sectors, at least) on deal size or volume, which continued at pre-pandemic rates into Q1 and Q2 2021.

Now, as vaccination rates across the world continue to rise and as lockdown restrictions are lifted, it will be interesting to see if there will be a return to "business as usual" or whether the COVID-19 pandemic has changed the market irreversibly.

COVID-19

Impact on the economy

There were 169 corporate insolvencies in first half of 2021, a decrease of 38% on the same period last year so, on the face of it, a more positive outlook for the year ahead. These figures likely do not tell the whole picture, with rating agencies forecasting an increase in non-performing loans for the rest of 2021 and the true scale of the impact of COVID-19 on the economy only to be revealed as the government phases out their pandemic-related supports over Q4.

Certain sectors of the economy were more insulated from the COVID-19 pandemic than others and during 2021, there have been many new financings provided by the Irish pillar banks, international funders and alternative lenders in, amongst others, the real estate investment sector as well as in the development finance space and, in particular this year, the leveraged acquisition market. The latter has experienced high volumes of activity since the beginning of 2021, as a result of, amongst other reasons, pent-up investor appetite to invest capital and take advantage of new opportunities arising as a result of the COVID-19 pandemic.

Against this backdrop, the government published its Economic Recovery Plan (ERP) on 1 June 2021 wherein it outlined its plans to achieve rapid job creation and economic growth after the pandemic. In addition to the existing pandemic supports set out below, the ERP set out a range of new supports for the next stage of recovery, including a small company administrative rescue process (SCARP) discussed in detail below.

Existing COVID-19 pandemic supports

The largest state-backed loan guarantee scheme in the history of the Irish state, the Strategic Banking Corporation of Ireland's COVID-19 Credit Guarantee Scheme (the "Guarantee Scheme"), which offers an 80% guarantee to facilitate up to EUR2 billion in lending to participating small and medium sized enterprises is scheduled to end on 31 December 2021 having already been extended from its original end date of 31 December 2020. As at the time of writing some 6,200 loans representing 20% of the EUR2 billion fund, have been granted and drawn down to date.

The figures reveal that, of the loans drawn under the Guarantee Scheme to date:

- 19% were to the wholesale and retail sector;
- 14% were to the food services and accommodation sector;
- 14% were to the construction sector;

- 12% were to the agriculture, forestry and fisheries sector; and
- the balance were to, among others, the manufacturing, administrative services and transport and storage sectors.

Though the Guarantee Scheme offers much needed support for those businesses, global ratings agency Fitch Ratings has sounded a more cautious note saying uptake has been "extremely low" and was "unlikely to increase significantly".

Despite the low figures, Minister for Finance Paschal Donohue commented that the low uptake in the Guarantee Scheme is in fact a sign of the success of the government's other pandemic supports. He also said that the low demand for debt is a consistent feature of the Irish SME (small and medium enterprises) environment and that he expected an increase in application to the Guarantee Scheme once restrictions are lifted.

The SBCI's COVID-19 Working Capital Scheme, which provided loans from EUR25,000 to EUR1.5 million, closed to new applications with effect from July 2021. This scheme was one of the first supports to be introduced in March 2020 as an immediate response to the impact of COVID-19 on SMEs in Ireland and was phased out in light of SMEs' preference for the Guarantee Scheme.

Continuation of pandemic support

However not all pandemic supports are ceasing, with no strict end date to Microfinance Ireland's (MFI) COVID-19 Business Loan, which provides loans from EUR5,000 to EUR25,000 to micro enterprises. MFI was the first support to market in March 2020 with a EUR20 million COVID-19 loan fund of initially offering loans of up to EUR50,000. This initial loan fund was fully utilised by midsummer but following the receipt of additional EUR15 million in funding, a new fund was launched with a reduced loan limit of EUR25,000 in late August 2020. Over EUR21.8 million in loans have been approved since its introduction to 848 businesses representing four times its normal annual lending rate.

The Irish Strategic Investment Fund's (ISIF) EUR2 billion Pandemic Stabilisation and Recovery Fund continues to make capital available to medium and large enterprises on commercial terms. In contrast to the other supports mentioned above, in 2020 the ISIF made a small number of overall loans, just twenty in total, but accounting for over EUR400 million of lending to Irish enterprises in a wide range of sectors. There is a further EUR600 million of potential lending in the pipeline for 2021 across approximately six transactions concentrated in the aviation and tourism/hospitality sectors.

It seems as though many businesses are wary of taking on further debt in the hope of riding out the storm. But with the horizon for reopening the economy by no means clear, many SME's may be forced to rethink this strategy.

The Companies (Miscellaneous Provisions) (COVID-19) Act 2020 (the "Covid Act")

Like the Guarantee Scheme, the application of the Covid Act was extended from 31 December 2020 to 31 December 2021. The Covid Act amended Irish company law that had created challenges for Irish companies following the onset of the pandemic. The main changes provided was to increase the protection period in an examinership up to 150 days (up from a maximum of 100 days) in exceptional circumstances and to increase the threshold at which a company is deemed unable to pay its debts to EUR50,000 (up from EUR10,000, or EUR20,000 where two or more creditors are acting together).

The examinership process has traditionally experienced very low levels of uptake and only three petitions made in the first half of 2021 (compared to seven on the same period in 2020). There is a considerable amount of work involved prior to any court application and though the increased thresholds are a welcome development one wonders if more could be done to encourage uptake of this proven corporate rescue option. The introduction of the Rescue Act for small and micros companies (SMCs) as discussed below might help to chance the mind set on availing of a corporate rescue plan.

The Companies (Rescue Process for Small and Micro Companies) Act 2021 (the "Rescue Act")

The Rescue Act came into force in July 2021 and provides for a SCARP, which is a dedicated framework for the rescue of SMCs that, with some key distinctions, effectively mirrors the existing examinership process used by the larger Irish corporates from an administrative perspective.

The Rescue Act aims to deal with some of the main hurdles to examinership for smaller companies highlighted by the Company Law Review Group in their 2020 report, the primary barrier being costs. SMCs account for 98% of all enterprises in the state, so the Rescue Act and SCARP are a welcome reform and all the more important in light of the ongoing pandemic.

In practice, SCARP aims to come to a conclusion within 70 days being less than half the time currently available to larger companies under traditional examinership. One hopes that the Rescue Act and SCARP can assist in helping SMCs bounce back as quickly as possible over the coming 12 months as various pandemic related supports are removed but only time will tell.

Fund Financing

Long awaited reforms to the Investment Limited Partnership Act 1994 (the "1994 Act") intended to align the Irish investment limited partnership (ILP) more closely with the well-established limited partnership structures in other international funds domiciles such as the Cayman Islands and Luxembourg came into force.

The Investment Limited Partnership (Amendment) Act, 2020 (the "2020 Act") was signed into law on 23 December 2020 with all of its provisions having commenced by 1 March 2021. The 2020 Act amended the 1994 Act in a number of important ways that are expected to make the ILP a very compelling regulated EU fund vehicle for private equity/ credit, sustainable investments and other closed-ended alternative funds.

The ability to establish ILPs as umbrella funds, with segregated liability between sub-funds and to migrate partnerships into and out of Ireland on a statutory basis together with the clarification of rights and obligations of limited partners are just some of the important reforms which it is hoped will increase the attraction of ILPs in Ireland to international managers and investors.

The numbers of new ILPs is expected to increase during the year and while the implementation of the 2020 Act will not change the financial landscape overnight, it is worth contrasting the introduction of the updated ILP with that of the Irish Collective Asset-management Vehicle (ICAV) in the Irish market in 2015. Though the overall number of ILPs will be less than ICAVs (because of the broader range of product categories and asset classes that an ICAV can accommodate), it is anticipated that ILPs will have a proportionally bigger impact and create much more downstream work for a range of legal and other professionals across the corporate, tax and finance sectors.

This is welcome news to legal practitioners as, though funds finance work in Ireland has remained somewhat insulated from the effects of the COVID-19 pandemic generally, the 2020 Act sets the foundations for continued growth in this space in the future. With Ireland having positioned itself as one of the major players in the creation and management of investment funds worldwide and with the benefit of the 2020 Act, it is likely that ILPs will be increasingly involved in fund financing transactions.

Brexit

Though Brexit may have received less column inches over the past 12 months compared to COVID-19, this does not mean the fallout and its unintended consequences from it have abated.

The UK and EU Trade and Cooperation Agreement which came into force on 1 May 2021 was sparse on details when it came to financial services and had no provisions for passporting or an equivalent framework.

However, both sides agreed the terms of a Memorandum of Understanding (MOU) on 26 March 2021 which are to lay the foundations for continued negotiation and cooperation in financial services between the UK and the EU going forward. The text of the MOU is not available for public scrutiny nor has the MOU been signed by the parties, but it is a welcome step in the right direction signalling a strong intention for collaboration in 2021.

On the ground, there has been an influx of financial services firms to Dublin with Barclays, Bank of America and BNY Mellon having announced investments in Ireland which are connected to Brexit. As many as ten UK and international law firms have followed, opening offices in the Irish capital or stating their intention to do so. This is in clear contrast to the years immediately following the Brexit referendum where the Law Society of Ireland saw a huge increase in the number of Brexit refugee solicitors enrolling but not practicing in Ireland.

It is estimated that the total number of job relocations across the financial services sector from the UK since the referendum is almost 7,600, with Dublin being the most popular destination in Europe. No doubt there are more jobs to come and the presence of international banks, assets managers and insurers in Ireland is set to drive competition and propel Ireland to new levels of economic activity.

Environmental, Social and Corporate Governance (ESG)

Reinforced by the impact of the COVID-19 pandemic, 2020 saw the EU continue to push towards a harmonised framework for sustainable finance. The EU Regulation on the Establishment of a Framework to Facilitate Sustainable Investment (which is more commonly referred to as the Taxonomy Regulation), adopted in June 2020, sets out an EU-wide classification system and provides a common method for investors to identify environmentally sustainable economic activities and encourage private investment in those activities.

The Taxonomy Regulation forms part of the EU's Sustainable Finance Action Plan which also includes the Sustainability Disclosures Regulation and the Low Carbon Regulation. These new initiatives will require large listed companies, banks and insurance companies to publish information on how, and to what extent, their activities align with those considered environmentally sustainable in the EU taxonomy. In order for an economic activity to qualify as environmentally sustainable, it has to substantively contribute to at least one of the six environmental objectives set out in the Taxonomy Regulation.

Investors are increasingly looking to align their investment decisions with their personal priorities. Investors are now not only focused on financial returns but also on non-financial outcomes. Asset managers are embracing ESG in order to align stakeholders' interests and avoid short-term investments and results, in favour of long-term incentives aligning investment practices with social responsibilities and principles in order to meet investor demands.

The move towards sustainable finance in Ireland is particularly important in light of Project Ireland 2040 which sets out the government's long-term strategy for developing Ireland's infrastructure over the next 20 years, including an investment package of EUR116 billion in the years to 2027 with climate change objectives, supported by, amongst others the recent Climate Action and Low Carbon Development (Amendment) Act 2021, to fundamentally shape public capital investment choices across a range of sectoral areas. The National Treasury Management Agency has raised in excess EUR5 billion through their Irish Sovereign Green Bonds since their initial issue in October 2018.

Irish pillar banks Allied Irish Banks plc and Bank of Ireland have, in recent times, issued their first "Green Bonds" raising EUR1 billion and EUR750 million respectively. The proceeds of these Green Bonds are to be exclusively applied to the finance or re-finance of new and/or existing projects that will promote progress on environmentally sustainable activities. The ESG landscape in Ireland is starting to change, and for the better.

Conclusion

Though there has been a very strong start to the year and forecast continued growth throughout 2021, the economic impact of the COVID-19 pandemic will not be truly understood until lockdown restrictions have been lifted, not only in Ireland, but globally, and the dust has settled.

However, in the absence of a crystal ball many finance professionals will be satisfied with the status quo and will continue to "make hay" until the forecast says differently.

Maples Group advises global financial, institutional, business and private clients on the laws of the British Virgin Islands, the Cayman Islands, Ireland, Jersey and Luxembourg through its leading international law firm, Maples and Calder. With offices in key jurisdictions around the world, the Maples Group has specific strengths in the areas of finance and banking, corporate commercial, investment funds, litigation and trusts. The banking and finance team in the Maples Group's Dublin office has a diverse practice and comprises three partners and four associates. The team acts as lead counsel, as well as local counsel, for lenders and borrowers on a wide range of domestic and cross-border debt financings, including corporate and leveraged finance, real estate finance and funds finance, and provides commercially focused and solutions-oriented advice to clients. The firm's international perspective, working with both Irish and international financial and institutional clients, ensures best-in-class advice.

AUTHORS

Elizabeth Bradley is a partner in Maples and Calder's banking and finance team in the Maples Group's Dublin office. Elizabeth specialises in banking law, advising clients in structuring, negotiating, implementing and restructuring a range of financing transactions. She acts for leading domestic and global financial institutions, alternative lenders, major corporates, private equity funds and limited partnerships across a wide range of domestic and cross-border finance transactions. These include real estate financing (investment and development), acquisition and leveraged finance, project finance and fund financing, through bilateral and syndicated deals. Elizabeth also advises on loan portfolio sales, acting for purchasers, vendors and servicers.

Mark Murran is an associate in Maples and Calder's banking and finance team in the Maples Group's Dublin office. He works with a broad range of clients, including domestic and international banks, non-bank lenders as well corporate, fund and individual borrowers. He advises on financings, refinancings and restructurings across all sectors, including real estate and development finance, acquisition finance, corporate finance and fund finance.

Maples Group

75 St. Stephen's Green
Dublin
Ireland
D02 PR50

Tel: +353 1 619 2737
Email: elizabeth.bradley@maples.com
Web: www.maples.com