Insurance Quarterly Legal and Regulatory Update

Period covered
1 October 2014 to 31 December 2014

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) Solvency II Delegated Regulation

On 10 October 2014, the European Commission published the final version of the text of a Delegated Regulation (the **"Delegated Regulation"**) it adopted supplementing Directive 2009/138/EC of the European Parliament and of the Council of 25th November 2009 (the **"Solvency II Directive"**) as amended by Directive 2014/51/EU (the **"Omnibus II Directive"**), (hereinafter **"Solvency II"**). The Delegated Regulation can only enter into force after it is published in the Official Journal of the European Union (the **"Official Journal"),** which will only occur after the European Parliament and the Council of the European Union have approved the Delegated Regulation. The European Parliament and the Council of the European Union have six months to approve the Delegated Regulation.

In this regard on 28 November 2014, the Council of the European Union issued a press release confirming (amongst other things) that it will not object to the Delegated Regulation. However, on 10 December 2014, the European Parliament published a motion for a resolution to object to the Delegated Regulation. This motion was tabled by Sven Giegold on behalf of the Greens/European Free Alliance political group pursuant to Rule 105(4) of the Parliament's Rules of Procedure. The motion provides that the group objects to the Delegated Regulation because the Delegated Regulation deviates from technical advice submitted to the European Commission by the European Insurance and Occupational Pensions Committee (**"EIOPA"**).

However, on 18 December 2014, the European Parliament published a provisional edition of the minutes from its plenary session held on 17 December 2014, which among other things, considered and voted on the motion for a resolution to object to the European Commission's Delegated Regulation supplementing the Solvency II Directive. The Parliament rejected the motion. Ms Catherine Stihler, Parliament rapporteur for the Solvency II Delegated Regulation, said that the majority of political groups agreed that any issues were not sufficiently important to policyholder security to warrant reopening the Delegated Regulation at this late stage. Ms Stihler went on to say that reopening the Solvency II "package" at this stage would put implementation back by years, and commented on the fact that there will be a review before the end of 2018. Ms Stihler advised that the review would provide an opportunity to deal with any issues that arise. She also said that the Parliament's negotiating team have written to the European Commission with some requests for changes during the review, and have asked the European Commission to carry out the review as soon as possible.

(ii) Department of Finance publishes consultation on Solvency II

The Department of Finance (the **"Department"**) published a Consultation Paper (the **"Consultation"**) in respect of Solvency II. The purpose of the Consultation was to obtain submissions on the transposition of Solvency II. Solvency II is required to be transposed by Member States by 31 March 2015.

The Consultation provided an overview of Solvency II. In addition, six consultation questions were set out in the Consultation, which reflected discretionary aspects of Solvency II whereby Member States are allowed to decide to exercise or not exercise certain elements of Solvency II as they see fit.

Responses received will be taken into consideration when the Department is finalising its policy choices for each of the options specified in the Consultation. The Consultation closed on 21 December 2014.

It should be noted that responses to the Consultation are subject to the provisions of the Freedom of Information Acts. Stakeholders should also note that responses to the Consultation may be published on the website of the Department.

(iii) Consultation on national specific templates for insurers and reinsurers under Solvency II

On 19 December 2014, the Central Bank re-issued its consultation paper on national specific templates for insurers and reinsurers under Solvency II (**"CP 89"**). CP 89 sets out the Central Bank's proposals in relation to reporting templates (**"National Specific Templates"**) which the Central Bank deems necessary to address requirements specific to the local market and/or the nature of insurance undertakings supervised in Ireland and which are not catered for in the set of Solvency II harmonised reporting templates being developed by EIOPA. The content of the proposed National Specific Templates reflects the Central Bank's view that certain information beyond that specified in the harmonised reporting templates is necessary given (a) the specific nature of certain insurance undertakings supervised in Ireland and (b) particular products in which Central Bank-supervised undertakings dominate (e.g. variable annuity business).

The proposals contained in CP89 are subject to changes in the draft harmonised templates which are due to be submitted by EIOPA to the European Commission for endorsement on 30 June 2015.

CP 89 will remain open until Friday 23 January 2015 and submissions will be accepted until that date. The Central Bank intends to make all submissions available on its web-site.

The Central Bank intends to issue final requirements on National Specific Templates during Q1 2015.

(iv) Solvency II Phasing-In Approvals Survey

The Central Bank issued a Solvency II Phasing-In Approvals Survey (the **"Survey"**) on 10 November 2014 to compliance officers of all (re)insurance undertakings. The Survey aims to assist the Central Bank on its resource planning and process design. Under Solvency II, the Central Bank will have the power to consider applications submitted by (re) insurance undertakings for approvals or permission regarding phasing-in approvals from 1 April 2015. The Survey closed on 12 December 2014.

EIOPA Update

(i) EIOPA publishes final report and guidelines on use of the LEI

On 20 October 2014, the European Insurance and Occupational Pensions Authority (**"EIOPA"**) published its final report and guidelines (dated 11 September 2014) following its June 2014 consultation paper on the use of the legal entity identifier (**"LEI"**).

EIOPA is issuing guidelines to national competent authorities (**"NCAs"**) to recommend the use of the LEI as a unique identification code for the supervision of the insurance and occupational retirement provision sectors. The guidelines are intended to establish consistent, efficient and effective supervisory practices by harmonising the identification of legal entities in order to ensure high-quality, reliable and comparable data.

The application of the LEI code relates to all information collected by EIOPA, including reporting and registers covered by Solvency II.

Entities within the scope of Solvency II must have requested the LEI code by 30 June 2015, and all other entities including IORPs by 30 June 2016 at the latest.

The Guidelines further recommend that entities reporting Solvency II information are required to obtain a LEI code for all entities, regulated and non-regulated, that are part of the group on which information is required under their reporting obligations.

EIOPA also supports the adoption of the LEI system proposed by the Financial Stability Board ("**FSB**") and endorsed by the G20

The final report includes a summary of the main comments arising from the consultation and the actions taken (or not taken) together with the underlying rationale. Annexes II and III include the impact assessment and the detailed comments to the consultation paper.

An accompanying press release states that NCAs must confirm to EIOPA, within two months, about their compliance or intention to comply with the guidelines that became applicable on 31 December 2014. To assist NCAs, EIOPA has published a template.

The final report and guidelines are available via the following link – https://eiopa.europa.eu/Publications/Guidelines/19.1._EIOPA-OS-14-026_Guidelines_LEI_final_report_clean_PUBLISHEDWEBSITE.pdf#search=final%20report%20and%20guidelines%20on%20the%20use%20of%20the%20LEI

(ii) EIOPA consults on product oversight and governance arrangements by insurers

On 29 October 2014, EIOPA published a consultation paper (dated 27 October 2014) on a proposal for guidelines on product oversight and governance arrangements by insurance undertakings.

The proposed guidelines are intended to better protect consumers during the early stages of product development by preventing the mis-selling of insurance products because of poor product design. They are addressed to National Competent Authorities (**"NCAs"**) and make clear that full responsibility for compliance sits with insurers, even for products designed by third parties. EIOPA proposes 12 guidelines, addressing the following areas:

- Establishment of product governance and oversight arrangements;
- Role of the manufacturer's administrative, management or supervisory body;
- Review of product governance and oversight arrangements;
- Management of conflicts of interest in product design;
- Target market;
- Knowledge and ability of staff involved in the design of products;
- Product testing;
- Product monitoring;

- Remedial action;
- Distribution channels;
- Outsourcing of the product design; and
- Documentation of product governance and oversight arrangements.

EIOPA requests comments on the proposals by 23 January 2015. EIOPA will then consider the feedback received and expects to publish a final report on the consultation and to submit the Guidelines for adoption by the Board of Supervisors in Quarter 2, 2015.

The consultation paper can be viewed via the attached link – https://eiopa.europa.eu/Publications/Consultations/2014-10-27_EIOPA-BoS-14-150_POG_guidelines_rev.pdf

(iii) EIOPA 2015/2016 action plan for colleges of supervisors

On 30 October 2014, EIOPA published its 2015/16 action plan for the colleges of supervisors (dated 22 October 2014).

The plan sets out the actions that colleges should implement, together with deadlines by which time EIOPA expects the actions to be implemented. The focus of the two-year action plan is the implementation of the Solvency II Directive in 2016 and the major changes for supervision under the new regulation.

Five different Solvency II related themes have been defined as priorities for colleges' work in 2016. These are –

- Consideration of the appropriate quality and adequate set of data and information for the college to form a shared view on the risks of the group and its major solo entities;
- Improvements to the transparency of the college work;
- Consideration of whether there are there any plans for sub-group supervision;
- Consideration of whether the own risk and solvency assessment (ORSA) and group solvency calculations are appropriate and consistent across the group; and
- The need to agree on a procedure for reviewing whether the full or partial internal model is still appropriate for group and solo solvency calculation purposes in the light of developments within group entities or the external environment.

The report also sets out how the existing plan for 2015 has been updated to reflect recent developments and findings.

The 2015/2016 action plan can be viewed via the attached link –

https://eiopa.europa.eu/Publications/Administrative/EIOPA-AP_2015_2016_for_colleges_of_supervisors_for_publication.pdf#search=EIOPA%20action%20plan%20for%20colleges%20of%20supervisors

(iv) EIOPA final report on Guidelines on Operational Functioning of Colleges of Supervisors

On 31 October 2014, EIOPA published its final report on Guidelines on the Operational Functioning of Colleges of Supervisors (**"Guidelines"**).

Article 248(6) of Solvency II requires EIOPA to develop guidelines for the operational functioning of colleges of supervisors to assess the level of convergence between them.

In April 2014, EIOPA published a consultation paper (EIOPA-CP-14/010) containing a draft version of the guidelines. The final report contains a feedback statement to the April 2014 consultation, providing a summary of the responses received and EIOPA's response to them, including where amendments have been made to the draft guidelines. Annex II to the report contains a full list of the comments received on the consultation and EIOPA's responses to them. Annex III contains a revised version of the draft Guidelines.

These draft Guidelines –

- Specify responsibilities of college members and participants;
- Clarify and enhance the cooperation between national supervisory authorities for cross-border groups;
- Enhance information-sharing among national supervisory authorities and communication to the group; and
- Enhance the single market level playing field by ensuring a consistent approach among colleges.

EIOPA intends to issue the Guidelines in all the official EU languages in the first quarter of 2015. They will become applicable on 1 January 2016.

Within 2 months of the issuance of these Guidelines, each NCA shall confirm if it complies or intends to comply with these Guidelines. In the event that a NCA does not comply or does not intend to comply, it shall inform EIOPA, stating the reasons for non-compliance.

EIOPA will publish the fact that a NCA does not comply or does not intend to comply with these Guidelines. The reasons for non-compliance may also be published by EIOPA. The NCA will receive advanced notice of such publication.

The final report can be viewed via the attached link –

https://eiopa.europa.eu/Publications/Consultations/EIOPA-BoS-14-146_Final-Report-on-CP-14-010-GL_Op_Funct_Coll.pdf#search=EIOPA%20final%20report%20on%20operational%20functioning%20of%20colleges

(v) EIOPA submits the first set of Solvency II implementing technical standards to the European Commission

On 31 October 2014, EIOPA published the first set of draft implementing technical standards (**"ITS"**) required under Solvency II, which it has submitted to the European Commission for endorsement.

The draft ITS relate to:

- The approval for the use of ancillary own funds items;
- The approval of an internal model;
- The application to use the group internal model;
- The approval of the application of a matching adjustment;
- The approval to establish special purpose vehicles; and
- The approval procedure to use undertaking-specific parameters.

The ITS are addressed both to undertakings and national supervisors. Their purpose is to guarantee that (re)insurers present all information that is necessary for supervisors to give a legally certain and prudentially sound approval of key elements of Solvency II.

The European Commission has three months from the submission of the ITS to decide whether or not to endorse them. Following endorsement, the ITS will be translated into all official EU languages and will become legally binding.

On 2 December 2014, EIOPA launched a consultation on the second set of draft ITS and Guidelines for Solvency II ("**Guidelines**"). The draft ITS define forms, templates and procedures for specific areas under Solvency II, whilst the guidelines ensure common, uniform and consistent application of the new regime. The Guidelines aim to ensure common, uniform and consistent application of the new Solvency II regime. The Guidelines reflect EIOPA's prudential choice to address in a harmonised manner fundamental objectives of Solvency II, such as risk-based capital requirements, reporting and disclosure.

In addition to consulting on the draft ITS and Guidelines, EIOPA is also consulting on technical advice to the European Commission. This consultation follows the call for advice from the European Commission in July 2014 to provide technical advice to assist the European Commission on the possible content of the delegated acts on:

- The recovery plan referred to in Article 138 (2) of Solvency II Directive;
- The finance scheme referred to in Article 139 (2) of Solvency II Directive;
- With respect to Article 141 of Solvency II Directive (supervisory powers in deteriorating financial conditions).

The closing date for responses to the majority of the consultation papers is 2 March 2015, however the closing date for the consultation on technical advice for the recovery plan and finance scheme is 18 February 2015.

All relevant documentation can be viewed at the following link –

https://eiopa.europa.eu/Pages/Consultations/Public-consultation-on-the-Set-2-of-the-Solvency-II-Implementing-Technical-Standards-(ITS)-and-Guidelines.aspx

On 19 December 2014, EIOPA published a note (EIOPA-14-685) (dated 19 December 2014) to help firms navigate through the reporting and disclosure requirements under Solvency II.

EIOPA explains that the note accompanies its consultation on the draft ITS and Guidelines, which were published on 2 December 2014. The note is designed to provide relevant background information to the consultation, although it is not itself subject to consultation.

(vi) Consultation Paper by EIOPA on process of calculation for Solvency II risk free interest rate term structure

On 2 November 2014. EIOPA published a consultation paper (the **"Paper"**) on a technical document relating to the risk-free interest rate term structure under Solvency II. On 11 November 2014, EIOPA updated its consultations webpage in connection with the Paper because of a number of errors in the original Paper. In addition, EIOPA published an updated version of the Paper.

The Paper is a technical document detailing the proposed methodology, assumptions and identification of the data that EIOPA will use to enable calculation of the relevant risk free interest rate under Solvency II. The relevant risk free interest rate term structures are used for the calculation of the technical provisions.

The closing date for comments on the Paper was 21 November 2014.

(vii) EIOPA's Strategic Priorities

On 19 November 2014, EIOPA published a speech given by its Chairman, Mr. Gabriel Bernardino, at the 4th EIOPA Annual conference on EIOPA's strategic priorities.

In his speech, Mr Bernardino explained that EIOPA will be focused, among other things, on ensuring consistency in implementation of Solvency II, building up an EU supervisory culture, and building better risk-based regulation and supervision of conduct of business.

Points of interest include the following:

- The development of a single rule book of harmonised regulation is a huge step forward for the single market. However, good regulation is just a first step. The real challenge will be to ensure that Solvency II is implemented consistently throughout the EU. EIOPA will put a strong emphasis on promoting supervisory convergence by contributing to upgrading the quality and consistency of national supervision, and strengthening the oversight of cross-border groups. EIOPA will use all of its tools deliver on this objective.
- To deliver on its objectives, EIOPA needs to strengthen its operational independence and, in particular, find a stable solution for its financing. The budget cut and freezing of staff numbers, as proposed by the European Commission for 2015, would severely undermine its capacity to continue to deliver on the objectives set out in the EIOPA Regulation (Regulation 1094/2010) and the tasks it has been given by the EU legislators.
- There are a number of refinements that will contribute to ensuring more efficient supervision and a stronger EU supervisory culture. These include giving EIOPA a centralised oversight role in the on-going monitoring of internal models, enhancing EIOPA's capacity to provide independent and challenging feedback on supervisory practices to national supervisors, and giving EIOPA a co-ordinating role relating to the single supervisory mechanism on insurance matters to ensure a more consistent approach to the supervision of financial conglomerates.

- Three areas that are critical to the success of EIOPA's consumer protection agenda are the key information documents (**"KIDs"**) for packaged retail and insurance-based investment products (**"PRIIPs"**), the product oversight and governance arrangements, and the development of key risk indicators for conduct of business. The Regulation on KID for PRIIPs and the proposed Directive amending the Insurance Mediation Directive (2002/92/EC)(known as **"IMD2"**) are essential tools in ensuring customers receive information that they understand on product conditions, costs and risks, and that they are treated fairly. To guarantee that requirements are met, the serious approach to the supervision of conduct of business needs to be coupled with adequate enforcement. This can only work if national supervisors have the powers, tools and resources to effectively supervise firms' conduct of business. EIOPA needs to see progress in this area.

The full speech is available at the following link –

https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/2014-11-19_EIOPA_Annual_Conference.pdf

(viii) EIOPA report on the results of the 2014 insurance stress test

On 30 November 2014, EIOPA published a report (dated 28 November 2014) setting out the results of its EU-wide insurance stress test.

The aim of the exercise was to test the overall resilience of the insurance sector and identify its major vulnerabilities. Insurers estimated a baseline scenario using the future regime under Solvency II, without internal models. In addition, they tested a number of severe macro-economic and insurance-specific shocks, including a prolonged period of low yields and a sudden reverse in interest rates.

The stress test involved the participation of 167 undertakings in a Core Stress Test Module which looked at group results and the participation of 225 undertakings in a Low Yield Module which focused on individual results and low interest rates.

Participation in the stress test was sufficiently representative to enable EIOPA to draw inferences of a systemic nature. The key results indicated that, generally, the sector is sufficiently capitalised in Solvency II terms, however EIOPA highlighted a number of particular vulnerabilities facing the insurance sector including mass lapse, longevity and natural catastrophe.

Some key points include –

- 14% of insurers (representing 3% of total assets) have a Solvency Capital Requirement ("SCR") ratio below 100%;
- In a prolonged low yield scenario, 24% of insurers would not meet their SCR, while some insurers could face problems in fulfilling their promises to policyholders in 8 to 11 years' time;
- The sector is more vulnerable to a "double hit" stress scenario that combines decreases in asset values with a lower risk free rate;
- As a follow up to the stress test, EIOPA has issued a set of recommendations to NCAs to address the identified vulnerabilities in a co-ordinated way throughout the EU. In the context of Solvency II preparation, NCAs are recommended to engage in a rigorous assessment of the preparedness of insurers, in particular regarding the situations where capital increases or balance sheet management action will be needed. NCAs are also asked to submit to EIOPA, by 30 September 2015, a report on the number, size and market significance of the insurers that are not expected to meet the Minimum Capital Requirement ("**MCR**") or the SCR from 1 January 2016 without use of Articles 131 or 308(b)(14) of Solvency II. EIOPA also intends to engage with NCAs bilaterally, in particular those with the greatest identified vulnerabilities. This could extend to EIOPA issuing specific recommendations addressed to the NCA concerned.

The full report is available at the following link –

https://eiopa.europa.eu/Publications/Surveys/Stress%20Test%20Report%202014.pdf

(ix) EIOPA opinion on sound principles for crisis prevention, management and resolution of preparedness for NCAs

On 1 December 2014, EIOPA published an opinion (dated 24 November 2014) on sound principles for crisis prevention, management and resolution preparedness of NCAs relating to the insurance sector.

The opinion has been issued as a follow-up to a survey that EIOPA carried out in 2013 to obtain a better understanding of the current approaches and practices across the EU.

The outcome of this exercise was presented in the report titled "Crisis Prevention, Management and Resolution Preparedness of National Supervisory Authorities - Survey Results", which was published by EIOPA. The report showed the average situation in the EU, without assessing whether the average was satisfactory or not. Following on from this exercise, the opinion now sets out 14 "sound principles" that NCAs are expected to take into account.

The principles are related to specific powers, tools and institutional features aimed at enhancing crisis prevention, management and resolution preparedness of NCAs. The overarching goal is to contribute to maintenance of EU financial system stability, as well as the protection of policyholders.

The opinion emphasises a range of issues including:

- The organisational set up and the emergency plans for crisis management;
- The development of recovery and resolution plans (RRPs);
- The need to design early warning systems and to define triggers for intervention;
- Having adequate resolution powers and communication strategies in place; and
- The need to co-operate and share information with other relevant authorities.

EIOPA advises that it intends to engage in a follow-up exercise with members in time to explore what actions have been taken in the light of the opinion.

The opinion can be viewed at the following link –

https://eiopa.europa.eu/Publications/Opinions/EIOPA_Opinion_on_Sound_Principles_Crisis_Prevention_Management_and_Reso.pdf#search=opinion%20on%20sound%20principles%20for%20crisis%20prevention%2C%20management%20and%20resolution%20of%20preparedness%20of%20NCAs

(x) EIOPA finalises first set of guidelines for Solvency II

On 3 December 2014, EIOPA published a press release announcing the publication of 18 final reports containing the final version of the majority of the first set of guidelines required under Solvency II.

EIOPA consulted on these guidelines in June 2014 and in this respect the reports cover most areas which the consultation focused on, including own funds and technical provisions, group solvency, internal models, supervisory review process and equivalence.

Following the publication of the final reports the guidelines will now be translated in all European languages. EIOPA expects that the comply-or-explain procedure relating to these guidelines will run from February 2015 to March 2015.

The final reports which were published on 2 December 2014 are available via the following link –

https://eiopa.europa.eu/publications#k=#s=46

(xi) EIOPA Consumer Trends Report – December 2014

On 3 December 2014, EIOPA published its third consumer trends report (dated 2 December 2014). The report provides an overview of trends in Member States that may have led, or may in future lead, to consumer detriment in the insurance and pensions markets. The purpose of the report is to help EIOPA in identifying, prioritising and developing future targeted policy measures.

The main trends highlighted in the report include:

- Misleading advertising and sales literature, and incomplete or difficult to understand information on costs and charges.
- Increased cross-selling (that is, tying and bundling) and sale of add-ons linked to a large number of financial products, such as protection linked to loans, debit and credit cards, where competition for the add-on product may not be effective or the add-on product is of poor added value (or both). These issues have also been reported in connection with non-financial products, such as electronic devices (for example, protection for loss, damage or theft).
- Poor claims-handling or claims management, particularly in the area of motor insurance.
- Conflicts of interests, where life insurers select underlying funds based on the highest commissions received from fund managers.
- Insurers' sales incentive schemes leading to mis-selling, due to insufficient steps being taken to safeguard the fair treatment of customers, reflecting failures in the proper identification and management of conflicts of interests.
- Mis-selling of unit-linked life insurance.
- In relation to payment protection insurance (PPI), unfair practices and contractual clauses restricting the cover provided, or making PPI products inadequate to the needs of consumers.
- Some life insurers are developing business models to reduce the pressure of high guarantees given in the past. Policyholders are being encouraged to switch from life insurance products with guarantees to products with lower or no guarantees, including solely market-based products, such as unit-linked products where the customer bears all the investment risks.

- Supervisory action has been targeted in areas such as beneficiary protection arrangements and comparison websites.

A copy of the trends report is available via the following link –

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-207-Third_Consumer_Trends_Report.pdf#search=trends%20report

(xii) EIOPA publishes a common application package for internal models under Solvency II

On 4 December 2014, EIOPA published a common application package for internal models under Solvency II. The package consists of an

- Excel Template; and
- Explanatory Note (with instructions on how to complete the Excel Template).

The common application package is designed to promote consistent supervisory practices for the application of processes related to internal models. The common application package follows up on EIOPA Opinion on the Use of a Common Application Package for Internal Models issued in March 2014 which proposed that national supervisors should recommend undertakings to use the common application package to organise the documentation needed to demonstrate compliance with the requirements relevant to the use of internal models.

Gabriel Bernardino, Chairman of EIOPA, said: "We developed the Common Application Package for Internal Models in order to foster consistent supervisory practices and ensure the level playing field in the internal market for the ultimate benefit of the EU undertakings and consumers".

(xiii) EIOPA publishes its Financial Stability Report for the Second Half of 2014

EIOPA has updated its report on financial stability in relation to the insurance, reinsurance and occupational pension fund sectors in the EU/EEA. The current report, which was published on the 15 December 2014 covers developments in financial markets, the macroeconomic environment, and the insurance, reinsurance and occupational pension fund sectors as of 11 November for market data and 30 October 2014 for the other sectors unless otherwise indicated.

Although some positive developments in equity markets and further improvements in sovereign spreads can be seen, overall downside risks have increased. This is driven by a contradictory market view given remaining macroeconomic imbalances indicating some asset price misalignments caused by excessive liquidity supported by accommodative monetary policies. A potential risk premia reassessment would have a substantial impact on insurance and occupational pension sectors via decreasing asset values. For insurers, this impact would be more visible, accurately captured and better supervised under the Solvency II regulatory framework. Looking ahead, the key risks and vulnerabilities for the insurance companies and occupational pension funds continue to be seen: the weak macroeconomic environment, a continuation of the low yield environment and credit risk.

Low economic growth has already led to relatively low growth or no growth at all in life business in the past. Still, the sector is well positioned to source growth from the needs for retirement, savings and health solutions. This shows in the current overall positive premium growth for life insurance companies but also stabilised non-life insurance premiums. The overall profitability of insurance companies is still relatively robust but results remain pressurised. Solvency I levels both for life and for non-life insurers dropped slightly but insurers are still capitalised to a sufficient level.

The global reinsurance sector continued its robust growth in Q2 2014. Loss activity remained benign in the first half of 2014. The sector continued to post strong underwriting results and capital returns continue to be excellent. The dynamic of the issuance of catastrophe bonds continues its robust growth, albeit the absolute volumes remain low.

However, for the European occupational pension fund sector, the current low yield environment is putting significant pressure on returns. The average return on assets in 2013 was lower in comparison to 2012. On the other hand reported cover ratios slightly increased in 2013.

The report consists of two parts – the standard part and the thematic article section.
The standard part is structured as follows: the first chapter discusses the key risks identified for insurance and occupational pension sectors. The second, third and fourth chapter elaborates on these risks covering all sectors (insurance, reinsurance and pension). The fifth chapter provides the final qualitative and quantitative assessment of the risks identified and monitored in previous chapters. This assessment is done in terms of the scope as well as the probability of their materialization using econometric techniques and questionnaires.

The second part with one thematic article elaborates on one specific topic in more detail and underpins the analysis and discussions provided in the standard part. The article focuses on financial institution interconnectedness which is considered as a key component to systemic risk supervision.

A full copy of the report is available via the following link –

https://eiopa.europa.eu/Publications/Reports/EIOPA-FS-14-105%20Financial%20Stability%20Report-%20Autumn%202014.pdf

(xiv) EIOPA updates risk dashboard

On 18 December 2014, EIOPA published an updated version of its risk dashboard, which takes the form of a presentation, together with a background note (dated 4 December 2014).

Based on data submitted by 32 large insurance companies, the December 2014 risk dashboard demonstrates that the risk environment facing the insurance sector remains challenging. Among other things, based on indicators for the third quarter of 2014, the dashboard lists the following points of interest:

- Market risks remain unchanged since the last review.
- The overall outlook for macroeconomic risks seems to be worsening.
- Profitability challenges remain, due to low investment yields.
- Solvency I figures are robust and overall the insurance sector is sufficiently capitalised in Solvency II terms. EIOPA notes that its December 2014 stress test found that 14% of companies would have a solvency capital requirement (SCR) ratio below 100% if calculated on a Solvency II basis (see Legal update, EIOPA report on results of 2014 insurance stress test).
- Liquidity and funding risks unchanged, but lapse rates are increasing in some markets.
- The previous version of the dashboard was published in September 2014 (see Legal update, EIOPA updates risk dashboard: September 2014).

A copy of the risk dashboard and the background note are available below –

https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-14-108%20Eiopa%20Risk%20Dashboard%20-%2020141219.pdf
https://eiopa.europa.eu/Publications/Standards/EIOPA%20Risk%20Dashboard%20December%202014%20-%20Background%20Note.pdf

(xv) EIOPA consults on draft reports on Solvency II equivalence assessments for Bermuda, Japan and Switzerland

In February 2014, the European Commission requested that EIOPA update the equivalence assessments for Switzerland, Bermuda and Japan, which it provided in October 2011.

On 19 December 2014, EIOPA published, for consultation purposes, three draft reports on third country equivalence assessments for Switzerland (EIOPA-CP-14/041) and Bermuda (EIOPA-CP-14/042) (under Articles 172, 227 and 260 of the Solvency II Directive (2009/138/EC)) and Japan (EIOPA-CP-14/043) (under Article 172 of the Solvency II Directive), together with related templates for responses.

EIOPA's assessments are expected to allow informed decisions to be taken in 2015 on whether solvency and prudential regimes in Bermuda, Japan and Switzerland are equivalent to the Solvency II framework.

The Solvency II equivalence criteria are based on the overarching principles of Solvency II and include requirements relating to the system of governance, professional secrecy and the exchange of information, effective risk management, solvency, and powers and responsibilities of supervisory authorities.

The deadline for responses is 23 January 2015. EIOPA will consider the feedback received and publish final reports on the consultations. The assessments will subsequently be submitted for adoption by the Board of Supervisors of EIOPA before being sent to the European Commission.

(xvi) EIOPA update on Solvency II data point model and XBRL taxonomy design

On 22 December 2014, EIOPA updated its Solvency II reporting format webpage with revised information on the data point model (**"DPM"**) and XBRL taxonomy design that have been developed in accordance with EIOPA's guidelines on submission of information to NCAs.

The updated webpage contains a link to a zip package containing the updated XBRL taxonomy (version 1.5.2.b). The webpage explains that this version includes the following corrections in the DPM and the taxonomy:

- Corrections to issues that do not allow for successful submission of an instance.

- Introduction of row/column codes in the annotated templates and the taxonomy to identify the position of cells.
- De-activation of validation formulas that require further improvement.

The updates are implemented in the DPM and the XBRL taxonomy files. The list of changes that EIOPA has made is based on technical feedback from its stakeholders, which is included in "versioning worksheets" of the DPM dictionary and the annotated templates.

EIOPA has stated that in the first quarter of 2015 it intends to publish the release schedule for the XBRL taxonomy and the filing rules. The latter will be applicable both for the preparatory and full phases of Solvency II implementation.

The webpage also states that publication of an additional release (V1.5.2.c) by February 2015 is under consideration.

(xvii) EIOPA consults on draft ITS on equity index for symmetric adjustment of equity charge under Solvency II

On 22 December 2014, EIOPA published a consultation paper (dated 27 November 2014) on draft implementing technical standards (**"ITS"**) on the equity index for the symmetric adjustment of the equity capital charge produced under Article 109a(2)(b) of the Solvency II Directive (2009/138/EC).

Article 106 of Solvency II provides that the equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices. The symmetric adjustment shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time, which shall be the same for all firms.

EIOPA explains in the impact assessment set out in Annex I to the consultation paper that the draft ITS defines an equity index for the symmetric adjustment referred to in Article 106 (also referred to as the equity dampener adjustment).

For the purpose of calculating the equity dampener adjustment, EIOPA selected in 2012 a single equity index that was not freely publicly available and was proprietary to a certain financial institution. An informal pre-consultation was carried out. The main concern identified was that a single EU equity index does not appear to be, in all cases, appropriate to represent the average equity holding of EU insurers and reinsurers. Stakeholders proposed the use of one index per currency, but recognised the increased volatility of this alternative approach. The European Commission legal services indicated that referencing a single and non-public proprietary index would not be admissible. EIOPA's proposed approach set out in the draft ITS takes account of the European Commission's comment.

EIOPA is responsible for calculating the equity index, as well as the symmetric adjustment, and for publishing the results at least quarterly according to Article 109a(3) of Solvency II. It notes that more frequent publication may be desirable to help firms. As a result, the calculation of the index should be practicable for EIOPA in terms of efficiency, cost and timely publication. In addition, the calculation of the equity index should be simple and firms should be able to carry out at least short-term projections of its value. To allow this, the equity index has to be defined in an unambiguous and comprehensive manner, and the values necessary to replicate the calculation of the equity index should ideally be publicly available for firms free of any cost.

Comments can be made on the draft until 2 March 2015. EIOPA will consider feedback received and expects to publish a final report on the consultation for adoption by its Board of Supervisors.

A copy of the consultation paper is available via the following link –

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-14-058_ITS_Equity_dampener.pdf

Insurance Mediation

(i) Council of EU Compromise Proposal on IMD2 dated 28 October

On 29 October 2014, the Presidency of the Council of the EU published a sixth compromise proposal dated 28 October 2014 (14791/14) relating to the European Commission's proposed Directive amending IMD2.

The cover note for the compromise proposal refers to the proposed Directive as a Directive on insurance distribution. The cover note states that changes and deletions to the text of the fifth Presidency compromise (dated 15 October 2014) have been marked up.

The sixth compromise proposal can be viewed via the following link:

http://data.consilium.europa.eu/doc/document/ST-14791-2014-INIT/en/pdf

(ii) Council of EU Note on Proposed General Approach on IMD2

A note (14969/14), dated 3 November 2014, from the Presidency of the Council to its Permanent Representatives Committee ("**COREPER**") concerning the preparation of its general approach on the proposed Directive amending the Insurance Mediation Directive (*2002/92/EC*) ("**IMD2**") (known as IMD2) has been published by the Council of the EU.

Points addressed in the note include the following;

- Following deliberations in its working party on financial services on 21 October 2014, the Presidency has amended its latest compromise text with the intention of reaching agreement on a general approach;

- The compromise solutions on the important issues deliberated during the working party meetings are favoured by the member states. However, certain issues are still problematic, specifically those relating to conditions under which insurance distributors can accept fees or commissions from a third party when distributing insurance-based investment products. The approach taken by the Presidency in Article 24 of the current compromise allows intermediaries to accept such fees and commissions on condition that they do not have a detrimental impact on the quality of the services to the customer, while keeping complete alignment with the Markets in Financial Instruments Directive (*2004/39/EC*) (MiFID) on transparency of costs.

The Presidency has recommended that COREPER:

- Agrees on the general approach as set out in document 14791/14. This is the compromise text that was published on 29 October 2014;

- Invites the Presidency to pursue negotiations with the European Parliament on the basis of the general approach with a view to reaching an agreement at first reading.

Packaged Retail Investment Products

(i) Council of EU adopts PRIIPS KID Regulation

On 9 December 2014, the Regulation on Key Information Documents for Packaged Retail and Insurance-based investment products ("**PRIIPs KID Regulation**") was published in the

Official Journal of the EU. The PRIIPs KID Regulation entered into force 20 days after its publication in the Official Journal of the EU (the "**OJ**"); i.e. on 29 December 2014. Member States have two years to apply it after the entry into force and accordingly Member States must apply the PRIIPS KID Regulation by 31 December 2016.

On 13 December 2014, a corrigendum to the text of the PRIIPs KID Regulation was published in the OJ.

(ii) Joint Committee of the European Supervisory Authorities publishes Discussion Paper on Key Information Documents for PRIIPs

On 17 November 2014, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published a discussion paper on the PRIIPS KID Regulation (the "**Discussion Paper**").

The three ESAs, EIOPA, ESMA and the EBA, are required by the PRIIPs KID Regulation to prepare draft regulatory technical standards in certain areas. The Discussion Paper is the primary stage in the provision of the regulatory technical standards, and outlines the ESA's primary considerations.

Rules regarding the contents and presentation of the KID, including calculation methodologies and presentation templates necessary for a summary risk indicator, performance scenarios and cost disclosures will be set out in the regulatory technical standards. Measures in respect of the revision, review and republication of the KID, and on the timing of the KID's delivery to the retail investor will also be outlined.

The Key Information Document or KID will need to be in place for the following types of product:

- UCITS investment funds;
- Non-UCITS investment funds;
- Packaged insurance products including unit-linked and with-profits where there is a surrender or maturity value exposed to market fluctuations; and
- Structured investment products.

The various parts of the KID that need to be covered in the regulatory technical standards are alluded to in the Discussion Paper. Particular sections which are focused on are discussed in chapters 3 and 4 of the Discussion Paper and are entitled "*What are the risks and what could I get in return*" and "*What are the costs?*". This is due to the fact that the

ESAs have identified these sections as causing certain difficulties. Each of the other sections of the KID are discussed in chapter 5 of the Discussion Paper.

The ESAs plan to use replies to the Discussion Paper to prepare draft regulatory technical standards. They will consult on the draft regulatory technical standards in autumn 2015, however, prior to this the European Commission will organise a consumer testing exercise to help the ESAs to develop the draft regulatory technical standards. The ESAs also aim to publish a more technical discussion paper in spring 2015.

It should be noted that the deadline for responses to the Discussion Paper is 17 February 2015.

It is anticipated that the ESAs will submit the regulatory technical standards to the European Commission at the start of 2016 and firms will begin to use the new KIDs at the end of 2016.

The Discussion Paper can be viewed via the following link:

https://www.eba.europa.eu/documents/10180/899036/JC+DP+2014+02+-+PRIIPS+Discussion+Paper.pdf

(iii) Joint Committee of the European Supervisory Authorities ("ESAs") launches Call for Expressions of Interest to Join New Expert Group Supporting Work on KID for PRIIPS

On 18 November 2014, the Joint Committee of the ESAs published a call for expressions of interest to support the work it is carrying out on the PRIIPs KID Regulation.

It is intended that a new consultative expert group (the "**CEG**") will be formed to advise and provide technical input to the joint committee's sub-group on KIDs for PRIIPs (PRIIPs sub-group), which is itself a sub-group of the joint committee's sub-committee on consumer protection and financial innovation ("**JC CPFI**"). The purpose of the call for expressions of interest is to identify members of the CEG. The CEG is anticipated to consist of 18 members, which will include representatives of market participants, independent academic and consumer behaviour experts and retail investors. The CEG's mandate will be for a period of one year.

As some of the tasks to be carried out in preparing draft regulatory technical standards under the PRIIPs Regulation are quite technical in nature, the PRIIPs sub-group believes that additional specialised expert input would be suitable, outlining the contents and format of the KID for different investment products. It is considered that this is particularly significant in relation to disclosures of risks and rewards and product costs.

The closing date for applications was 15 December 2014. The final selection of CEG members will be made in consultation with the executive directors of the ESAs.

The call for expressions of interest can be viewed via the following link:

http://www.eba.europa.eu/documents/10180/15736/Call+for+interest+Expert+Group+PRIIPs.pdf

(iv) EIOPA Publishes Consultation Paper on Product Intervention Powers under the PRIIPs KID Regulation

EIOPA has published a Consultation paper on powers for banning insurance-based investment products under the PRIPS KID Regulation (the "**Consultation Paper**").

With the Consultation Paper, EIOPA is preparing its technical advice, as requested by the European Commission, on measures specifying the criteria and factors to be taken into account in determining when there is a significant investor protection concern or a threat to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system of the European Union or to the stability of the financial system within at least one Member State.

NCAs and, in certain circumstances, EIOPA, are required under Articles 16 and 17 of the PRIIPs Regulation, to take a decision to temporarily prohibit or restrict:

- the marketing, distribution or sale of certain insurance-based investment products or insurance-based investment products with certain specified features; or
- a type of financial activity or practice of an insurance or reinsurance undertaking.

Various additional requirements are outlined in the PRIIPs Regulation that need to be fulfilled when NCAs, and, in exceptional cases, EIOPA, take a decision under the PRIIPs Regulation to temporarily prohibit or restrict a product. These include the following:

- The degree of complexity of an insurance-based investment product and the relation to the type of investors to whom it is marketed and sold;
- The degree of innovation of an insurance-based investment product, an activity or a practice;
- The leverage a product or practice provides; and

- In relation to the orderly functioning and integrity of financial markets, the size or the notional value of an insurance-based investment product.

Comments on the Consultation Paper should be sent to EIOPA in the provided Template for Comments, by email to CP-14-064@eiopa.europa.eu. The closing date for responses to the consultation is 27 February 2015.

The Consultation Paper can be viewed via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-14-064_Consultation_Paper_on_Product_intervention_powers.pdf

European Market Infrastructure Regulation ("EMIR")

(i) Central Bank appointed National Competent Authority

On 8 October 2014, the Central Bank was appointed the sole NCA for the purposes of the European Market Infrastructure Regulation ("**EMIR**"), by the Minister for Finance in Statutory Instrument S.I. 443 of 2014 (the "**EMIR Regulation**").

In addition, the EMIR Regulation gives certain powers to the Central Bank such as supervisory and investigatory powers considered by the Minister for Finance as necessary to ensure that the Central Bank can properly fulfill its role as the NCA. The powers which have been given to the Central Bank can be summarised as follows:

- Require a counterparty to a derivative contract to submit an EMIR Regulatory Return ("**ERR**");
- Approve a "third party assessor" whose role will be to objectively assess whether the ERR has been prepared and completed in accordance with the EMIR Regulation;
- Require the taking or refraining from taking by counterparties of certain actions or to prohibit certain actions by counterparties by issuing a direction to a Financial Counterparty (or to a non-financial counterparty ("NFC") in certain circumstances);
- Issue a contravention notice detailing the date by which the contravention may be remedied; and
- Appoint authorised officers with powers of entry, search, inspection and other related powers to monitor compliance with the EMIR Regulation.

Lastly, the EMIR Regulation establishes Ireland's sanctions regime for infringements of obligations imposed by EMIR under the EMIR Regulation.

(ii) Consultation on the Supervision of Non-Financial Counterparties under EMIR

EMIR affects all entities “established” in the European Union that enter into derivatives. Unlike other legislation covering financial services which only applies to regulated entities, EMIR has implications for all EU entities that enter derivatives; i.e. to corporates, SPVs, pension funds, unregulated funds, etc.

Accordingly (by virtue of the Central Bank’s appointment as the sole NCA in the State for EMIR), the Central Bank has been charged with a number of new responsibilities including supervising compliance with EMIR. In particular, the Central Bank has been tasked with supervising NFCs[1] many of which will not be known to the Central Bank as a result of their unregulated status.

In light of the above, on 4 December 2014, the Central Bank published Consultation Paper 90 with proposals in relation to the supervision of NFCs under EMIR (the “**Consultation Paper**”). The Consultation Paper focuses on the supervision of EMIR compliance for NFCs, which present certain new challenges for the Central Bank.

The Consultation Paper will be relevant to any NFC and their service providers.

The Central Bank proposes that all NFCs will be required to submit a new regulatory return; the ERR. An entity may not be required to submit an ERR more than once in a twelve month period.

The EMIR Regulation provides that certain NFCs meeting certain conditions shall be exempt from the requirement to submit a ERR where they satisfy the following conditions:

(a) The counterparty has had less than 100 outstanding OTC derivative contracts at any time during the reporting period to which an ERR relates;

(b) The counterparty has outstanding OTC derivative contracts which cumulatively have a gross notional value of less than €100 million; and

(c) The counterparty has delegated the reporting of the details of their OTC derivative contracts to a third party.

[1] A NFC is defined as any undertaking established in the EU that enters into derivatives and does not fall within the financial counterparty category. In other words, any non-regulated EU entity will be a NFC under EMIR.

The consultation process runs from 4 December until 30 January 2015. In January, the Central Bank will host a roundtable discussion covering matters raised in the Consultation Paper. The Central Bank welcomes comments and views from all interested parties by email to emir@centralbank.ie or in writing to:

Markets Infrastructure Team
Markets Policy Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

The closing date for submissions on the Consultation Paper is 30 January 2015. It is intended that submissions will be published on the Central Bank website www.centralbank.ie.

A copy of the Consultation Paper can be accessed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP90%20Consultation%20on%20the%20Supervision%20of%20Non-Financial%20Counterparties%20%20under%20EMIR/CP90%20Consultation%20on%20the%20Supervision%20of%20Non-Financial%20Counterparties%20under%20EMIR.pdf

(iii) ESMA Updates EMIR implementation Q&As

ESMA issued a revised "Questions and Answers" document on the implementation of EMIR, (the "**Q&A**") on 24 October 2014. The updated Q&A include a table of questions, detailing which questions have been added or updated as of 24 October 2014 and to which provision of EMIR the new questions relate.

The new questions and answers include further guidance on trade reporting to trade repositories including a validation table. The Q&A's were originally published in July 2014 and have been updated on an on-going basis as issues arise since that date.

The latest version of the Q&A can be found here:

http://www.esma.europa.eu/system/files/2014-1300_qa_xi_on_emir_implementation_october_2014.pdf

(iv) Consultation Paper on the Review of the EMIR Reporting Technical Standards is published by ESMA

On 10 November 2014, ESMA published a consultation paper (the "**Consultation**") on revising the implementing technical standards ("**ITS**")[2] and the regulatory technical standards ("**RTS**")[3] which relate to the obligation to report data to Trade Repositories ("**TR"**) under EMIR.

ESMA explains in the Consultation that although the RTS and the ITS provide a description of fields, standards and formats to be used, practical experience has shown that there is still room for interpretation of the various fields of the RTS/ITS. In addition, the practical implementation of EMIR reporting has shown some shortcoming with regards to the current reporting framework and has highlighted particular instances for improvements so that the EMIR reports better fulfill their objectives. The Consultation contains a draft of the Commission Delegated Regulation containing revisions to the RTS at Annex IV, and a draft of the Commission Implementing Regulation containing revisions to the ITS is set out at Annex V, (hereinafter the "**Draft Standards**"). The Draft Standards propose to clarify the interpretation of the data fields needed for the reporting to TR's and the most appropriate way of populating them.

ESMA will consider stakeholder's feedback to the proposed revised standards by 13 February 2015. ESMA will submit its final report (containing proposed final Standards) to the European Commission after that date and the European Commission has three months to decide whether to endorse ESMA's final drafts.

A copy of the Consultation can be found at this link:

http://www.esma.europa.eu/system/files/esma-2014-1352_consultation_paper_on_the_review_of_emir_reporting_standards_under_article_9_0.pdf

(v) Report on the OTC Derivatives Regulators Group to G20 Leaders on Cross-Border Implementation Issues

The OTC Derivatives Regulators Group ("**ODRG**") is made up of authorities with responsibility for OTC derivatives markets regulation in Australia, Brazil, the European

[2] Regulation 1247/2012
[3] Regulation 148/2013

Union, Hong Kong, Japan, Ontario, Quebec, Singapore, Switzerland and the United States. The ODRG was set up to help resolve conflicts, inconsistencies, gaps and duplicative requirements across jurisdictions.

In November 2014, ODRG updated the G20 Leaders on how it has addressed or intends to address identified cross-border issues since the St. Petersburg Summit, as well other continuing areas of focus for the ODRG, including further progress made bilaterally and in other fora, (the "**ODRG Report**"). The ODRG Report consolidates for the G20 Leaders the substance of previous reports made during 2014 to the G20 Finance Ministers and Central Bank Governors.

(vi) European Commission adopts First Equivalence Decision for Third Country Regulatory Regimes

Central counterparties ("**CCP's**") located in jurisdictions outside the European Union may provide clearing services to EU clearing members and trading venues where the jurisdiction where the CCP is located has been recognised in accordance with the conditions set out in Article 25 of EMIR. In this respect an equivalence decision must be taken by the European Commission with regards to the relevant jurisdiction in question.

The European Commission explains that it begins its equivalence assessment if a CCP from a third country seeks recognition from ESMA. Equivalence assessments are undertaken using an outcome based approach. This requires that the relevant rules operating in the third country satisfy the same objectives as in the European Union, i.e. a robust CCP framework promoting financial stability through a reduction in systemic risk. It does not mean that identical rules are required to be in place in the third country. In addition, the assessment is undertaken in cooperation with the regulators in the third country. If a determination of equivalence is made, it will be given effect through a legally binding implementing act in accordance with Article 25(6) of EMIR.

On 30 October 2014, the European Commission adopted its first 'equivalence' decisions for the regulatory regimes of CCPs in Australia, Hong Kong, Japan and Singapore in accordance with the conditions set out in Article 25 of EMIR. CCPs in these third country jurisdictions will now be able to achieve full recognition by the European Union whilst remaining subject solely to the regulation and supervision of their home jurisdiction.

With regards to the equivalence decision by the European Commission, Mr. Michel Barnier the Commissioner for Internal Market and Services stated; *"Globally agreed reforms of derivatives markets – like all financial services reforms – will only work in international markets if regulators and supervisors rely on each other. Today's decisions show that the*

EU is willing to defer to the regulatory frameworks of third countries, if they meet the same objectives as EU rules. We have been working in parallel on assessing twelve additional jurisdictions and finalising those assessments is a top priority. This includes the United States: we are in close and continued dialogue with our colleagues at both the SEC and CFTC as we develop our assessments of their respective regimes and discuss their approaches to deference."

A copy of the European Commission's press release can be found at this link:

http://europa.eu/rapid/press-release_IP-14-1228_en.htm

(vii) Extension of Transitional Period for Capital Requirements for EU banks that have Exposures to CCPs

The European Commission confirmed in a press release dated 11 December 2014 the adoption of an implementing act extending the transitional period for capital requirements for EU banking groups' exposures to CCPs under the CRD IV Regulation ("**CRR**") by six months.

In order for a CCP to be considered a qualifying CCP, it has to be either authorised (for those established in the EU) or recognised (for those established outside the EU) in accordance with the rules laid down in EMIR. Since the process of authorisation and recognition takes time, the CRR provides a transitional period during which higher capital requirements will not be applied, to ensure a level playing field for EU CCPs. This transitional period was set to expire on 15 December 2014.

As the authorisation and recognition processes for existing CCPs serving EU markets will not be fully completed by that date, the European Commission has adopted an implementing act that will now extend the transitional phase to 15 June 2015.

This extension period will smooth implementation for CCPs that are still in the process of reauthorisation under the new rules. The extension is also applicable to third country CCPs seeking recognition in the EU.

For more information, please see link to the press release:

http://ec.europa.eu/finance/bank/docs/regcapital/acts/implementing/141211-press-release_en.pdf.

(viii) EFAMA Response to BCBS-IOSCO Consultation Report on the initial policy proposals on Risk Mitigation Standards for non-centrally cleared OTC Derivatives

As previously reported in our last legislative update, BCSB-IOSCO published on 17 September 2014, a consultation paper on risk mitigation standards for non-centrally cleared OTC derivatives (the "**BCBS-IOSCO Consultation**").

On 17 October 2014, the European Fund and Asset Management Association ("**EFAMA**") published its response to the BCBS-IOSCO Consultation (the "**Response**"). In the Response, EFAMA stated that it supports BCBS-IOSCO's view that any proposed standards should be compatible across jurisdictions to the largest extent possible as this is the best way to ensure cross border certainty and to avoid regulatory arbitrage. EFAMA also stresses that any such standards should be non-binding in nature. In addition, the Response notes that the proposed standards are already implemented in Europe through EMIR. Accordingly, European regulated funds and asset managers have already developed and implemented legal and operational procedures to meet EMIR requirements.

A copy of the Response can be found at this link:

http://www.efama.org/Publications/Public/Derivatives/EFAMA_reply_BCBS-IOSCO_consultation_Risk_Mitigation_Standards_OTC_Derivatives.pdf

(ix) ESMA defines Products, Counterparties and Starting Dates for the clearing of Interest Rate Swaps

On 1 October 2014, ESMA issued final draft regulatory technical standards ("**IRS RTS**") for the central clearing of Interest Rate Swaps ("**IRS**") which it is required to develop under EMIR. The IRS RTS define those types of IRS contracts which will have to be centrally cleared, the types of counterparties covered by the obligation and the dates by which central clearing of IRS will become mandatory for them.

ESMA's IRS RTS define the following four IRS classes to be subject to central clearing:

- Basis swaps denominated in EUR, GBP, JPY, USD;
- Fixed-to-float swaps denominated in EUR, GBP, JPY, USD;
- Forward rate agreements denominated in EUR, GBP, USD; and
- Overnight index swaps denominated in EUR, GBP, USD.

ESMA defined these IRS classes following an analysis of all IRS classes currently being cleared in the EU by authorised CCPs.

ESMA's IRS RTS define the implementation schedule for the counterparties to whom central clearing of the defined IRS classes will become mandatory. These counterparties will have to start central clearing of IRS after the entry-into-force of ESMA's RTS in accordance with the following phase-in periods:

1. Clearing Members (six months after the IRS RTS entered into force);
2. Financial Counterparties and other alternative investment funds ("**AIFs**") whose aggregate month end average notional amount of non-centrally cleared derivatives for the three months preceding the entry into force of the IRS RTS is above EUR 8 billion (twelve months after the IRS RTS entered into force);
3. Financial Counterparties and other AIFs with a low level of activity in un-cleared derivatives (18 months after the IRS RTS entered into force);
4. Non-Financial Counterparties (three years after the IRS RTS entered into force);

In order to properly capture systemic risk, the counterparties included in the first two categories will also have to frontload those IRS contracts they have concluded between the date of publication of the IRS RTS in the Official Journal and the respective starting date of the clearing obligation.

On 1 October 2014, ESMA submitted the final draft IRS RTS to the European Commission for approval pursuant to Article 5 of EMIR. On 18 December 2014, the European Commission sent a letter to ESMA informing ESMA of its intention to endorse, with amendments, the draft IRS RTS. In its letter the European Commission outlined certain changes which it considers are necessary to the IRS RTS which include postponing the starting date of the frontloading requirement, clarifying the calculation threshold for investment funds and excluding from the scope of the clearing obligation non-EU intragroup transactions. ESMA now has a period of six weeks in which to amend the draft IRS RTS on the basis of the European Commission's amendments and to resubmit the draft IRS RTS in the form of a formal opinion to the European Commission copying the European Parliament and the Council of the European Union. The European Commission may after the expiry of the six week period adopt the revised IRS RTS or reject the revised IRS RTS if it is not happy with the changes made by ESMA.

The IRS RTS will only enter into force after its publication in the Official Journal. This will not occur until it has been approved by the European Commission and following a period of non-objection period by the European Parliament and Council of the European Union.

(x) AIMA outlines concerns about ESMA's approach to frontloading obligation under EMIR

On 3 November 2014, the Alternative Investment Management Association ("**AIMA**") published a letter it sent to the Head of Financial Market Infrastructure, European Commission outlining concerns regarding the approach taken by ESMA with regards to frontloading. In particular AIMA raised concerns about the approach taken by ESMA in its "Final Report : Draft Technical Standards on the Clearing Obligation : Interest Rate OTC Derivatives", (the "**IRS RTS**").

In its letter, AIMA comments on the concept of frontloading and the potential impact same and sets out challenges associated with a retroactive clearing obligation. AIMA concludes by stating that the problems associated with frontloading would be best addressed by reducing significantly the scope of activity to which frontloading may apply.

(xi) ESMA launches Consultation on Draft Standards for the Clearing of Foreign-exchange Non-deliverable Forwards under EMIR

On 1 October 2014, ESMA published, for consultation, draft regulatory technical standards ("**RTS**") it has to develop under the EMIR for the clearing of foreign-exchange non-deliverable forwards.

This paper follows the publication in July 2013 of a discussion paper on the clearing obligation under EMIR, the publication of the first consultation papers on the clearing obligation on interest rate classes and credit classes, and the publication of the final draft regulatory technical standards ("**IRS RTS**") (please see ix above).

The input from stakeholders will help ESMA in finalising the relevant technical standards to be drafted and submitted to the European Commission for endorsement in the form of Commission Regulations, i.e. a legally binding instrument directly applicable in all Member States of the European Union. One essential element in the development of draft technical standards is the analysis of the costs and benefits that those legal provisions will imply.

The consultation period closed on 6 November 2014 and a copy of responses received by ESMA can be viewed at this link:

http://www.esma.europa.eu/consultation/Consultation-clearing-obligation-under-EMIR-no3#responses

(xii) ESMA to delay submitting further RTS on EMIR Clearing Obligation

On 24 November 2014, ESMA published a letter (dated 20 November 2014) from Steven Maijoor, ESMA Chair to Jonathan Faull, European Commission Director General for Internal Market and Services.

The letter refers to recent discussions between ESMA and the European Commission concerning the clearing obligation under EMIR. Mr Maijoor states that as the European Commission is currently assessing certain aspects of the first regulatory technical standards on interest rate derivatives that could affect the content of the RTS for credit derivatives it will delay the publication on the RTS for credit derivatives until this assessment is finalised. Please see link below to the European Commission's letter:

http://www.esma.europa.eu/system/files/2014-esma-1385_-_letter_to_the_commission_on_credit_rts.pdf

International Association of Insurance Supervisors ("IAIS")

(i) IAIS publishes an issues paper on approaches to group corporate governance

The International Association of Insurance Supervisors ("**IAIS**") has published an issues paper on approaches to group corporate governance on 27 October 2014, (the "**Paper**"). The Paper illustrates the different approaches to governance structures of insurance groups, whether more centralized or more decentralized and analyses the various challenges such structures can present as well as possible practices to address these challenges. In addition, the Paper sets out key characteristics of good governance and provides practices to insurers and supervisors which could help to achieve, within different models, the outcomes intended by applicable standards and objectives of good governance.

The IAIS says that the need for this paper arose due to the growing awareness of the variety of approaches to governance adopted within insurance groups, and the different impact and demands those approaches can have on control functions which form a key element of the corporate governance framework of the group.

A copy of the Paper can be found at this link –

http://www.iaisweb.org/Supervisory-Material/Issues-papers-48

(ii) IAIS develops basic capital requirements for global systematically important insurers

On 23 October 2014, the IAIS published a document setting out the basic capital requirements (**"BCR"**) for global systemically important insurers (**"G-SIIs"**), together with a factsheet on the BCR.

The publication of the BCR requirement followed a consultation process were comments were received, considered and included in the BCR development process – this consultation process was described in our last quarterly legislative update. The IAIS also published the feedback it received on the main issues raised during the consultation process on 29 October 2014, (the **"Feedback Document"**). This Feedback Document highlights the major issues raised by respondents to the consultation and provides IAIS' comments in response to these issues.

The BCR Ratio is calculated by dividing total qualifying capital resources by required capita. In principle, total qualifying capital resources are determined on a consolidated group-wide basis for all financial and material non-financial activities and are classified as either core or additional capital. BCR required capital is also calculated on a consolidated group-wide basis for all financial and material non-financial activities.

The development of the BCR is the first step of the IAIS' long-term project to develop risk based group-wide global insurance capital standards. The second step is the development of Higher Loss Absorbency (**"HLA"**) requirements to apply to G-SIIs, due to be completed by the end of 2015.

The HLA will build on the BCR and address additional capital requirements for G-SIIs reflecting their systemic importance in the international financial system. The final step is the development of a risk based group-wide insurance capital standard, due to be completed by the end of 2016 and applied to internationally active insurance groups from 2019.

Beginning in 2015, the BCR will be reported on a confidential basis to group-wide supervisors and be shared with the IAIS for purposes of refining the BCR as necessary. During this reporting period, the IAIS will review the suitability of the BCR factors to ensure that the BCR remains fit for purpose. From 2019, G-SIIs will be required to hold capital no lower than the BCR plus HLA. Many respondents in the Feedback Document raised concerns about the period of confidential reporting for the BCR that will apply from 2015 to

2018 ahead of full implementation of the BCR in 2019. The IAIS therefore also published a memorandum to G-SIIs providing guidance on BCR confidential reporting.

An accompanying press release states that the BCR is the first global insurance standards for G-IISs and it has been endorsed by the Financial Stability Board (**"FSB"**).

A copy of all relevant documentation can be accessed through this link –

http://www.iaisweb.org/Supervisory-Material/Financial-Stability-Macroprudential-Policy-Surveillance-988

(iii) IAIS Guidance on Liquidity Management and planning by G-SIIs

On 4 November 2014, IAIS published a letter (dated 22 October 2014) that it has sent to its members attaching guidance on liquidity management and planning for use by group-wide supervisors of G-SIIs (the **"Letter"**).

This Letter builds on the G-SII Policy Measures, which were published on the IAIS website on 18 July 2013 (http://www.iaisweb.org/G-SIIs-988) and which state that the group-wide supervisor is responsible for evaluating and monitoring liquidity management and planning on a group-wide basis. The purpose of the Letter is to provide further guidance to group-wide supervisors on how they could direct G-SIIs to develop their liquidity management.

The guidance addresses the following issues that are deemed to be core elements of effective liquidity management and planning;

- A statement of policy containing the liquidity risk tolerance of the insurer;
- A description of the corporate governance and management that will establish the risk tolerance, manage the level of liquidity risk given the threshold, and monitor the effectiveness of that management;
- A means of assessing the insurer's liquidity across various suitable time horizons and under current and plausible stress scenarios; and
- Reporting by the G-SIIs on the above activities.

The guidance in the Letter was drafted by the IAIS Financial Stability Committee and approved by the IAIS Executive Committee and is intended for group-wide supervisors of G-SIIs.

(iv) IAIS application paper on approaches to conduct of business supervision

On 27 October 2014, IAIS published an application paper on approaches to conduct of business supervision (the **"Paper"**). The Paper identifies approaches to conduct of business supervision that Members may wish to consider when supervising compliance with the requirements of ICP 19 (Conduct of Business) as well as implementing the related components of ICP 9 (Supervisory Review and Reporting) and incorporating them into broader supervisory frameworks.

The Paper can be found at this link –

http://www.iaisweb.org/Application-papers-763

(v) IAIS application paper on supervisory colleges

On 27 October 2014, the IAIS published a paper providing best practice guidance on the establishment and operation of supervisory colleges (forums for cooperation and communication between supervisors established to facilitate effective supervision of multi-national insurance groups).

The purpose of the paper is to provide best practices and examples throughout all phases of the college process. This includes considerations such as the setup of supervisory colleges, procedures and tools for the operation of supervisory colleges and supervisory college meetings.

The IAIS states that the paper does not set standards, offer binding guidance on standards, or provide interpretations of standards.

A copy of this paper can be found at this link –

http://www.iaisweb.org/Application-papers-763

(vi) IAIS report on findings of self-assessment and peer review of insurance core principles 4, 5, 7 and 8

On 27 October 2014, the IAIS published a report (the **"Report"**) on the findings from a self-assessment and peer review of certain core insurance principles (**"ICPs"**). In particular the Report contains high level findings with regards to ICP 4 (licensing), 5 (suitability of persons), 7 (corporate governance) and 8 (risk management and internal controls). The Report was prepared by IAIS' expert review teams in consultation with the standards observance committee. As a general comment the Report provides observance of the ICPs and standards was high although some notable shortcomings were identified.

In summary, the most commence challenges to observance of the ICPs are –

- Legislative frameworks that do not provide the powers needed to meet the requirements of the Standards;
- Supervisory practices that are reactive and not sufficiently robust; and
- Supervisory concerns that are not resolved in a timely fashion, or to the satisfaction of the supervisor.

It is hoped that the Report can help participating authorities identify steps that can be taken to improve their observance and understanding of the ICPs.

(vii) Draft Procedures on Meeting Participation and the Development of Supervisory and Supporting Material released for consultation

In July 2014, the IAIS released for consultation Draft Procedures for Meeting Participation and Supporting Material to market participants, (the "**Initial Consultation"**). This consultation closed on 2 September 2014 and comments received were published on the IAIS's website following that deadline. The Initial Consultation sets out proposed reforms designed to increase the effectiveness of the IAIS's activities and to ensure adequate coordination of standard setting and implementation.

On 17 November 2014, the IAIS published a revised set of policies and procedures for public comment prior to adoption. This revised set of policies and procedures aims to incorporate certain of the comments that the IAIS received as part of the Initial Consultation. The deadline for any responses to that consultation was 17 December 2014.

It is hoped that the revised policies and procedures will be adopted by IAIS shortly.

A complete list of documentation associated with this development can be found via the link below –

http://www.iaisweb.org/News/Consultations/Revised-Draft-Procedures-on-Meeting-Participation-and-the-Development-of-Supervisory-and-Supporting-Material-and-Draft-Policy-for-Consultation-of-Stakeholders-1208

Joint Committee of European Supervisory Authorities (“ESAs”)

(i) Guidelines for cross-selling practices in the financial sector

On 22 December 2014, the Joint Committee of the European Supervisory Authorities (**“ESAs”**) (that is, the EBA, ESMA and EIOPA), published a joint consultation on draft guidelines for regulating cross-selling practices in the financial sector across the EU.

The draft guidelines establish a coherent and effective approach in supervising firms that offer cross-selling options, so as to enhance the protection of EU customers. Generally, cross-selling is the practice whereby firms group, and sell, two or more separately identifiable products or services in a ‘package’.

The draft guidelines aim to indicate to EU competent authorities, through high-level principles and practical examples, ways to ensure that firms can comply with the general conduct of business standards towards customers that are expected of firms in the context of cross-selling practices.

In particular, the guidelines provide an approach for supervising firms valid across the EU and give more scope for EU customers to make better informed purchasing decisions.

The guidelines apply irrespective of the sales channel used. They aim to:

- Improve the content of disclosure on price, costs and other non-price features when different products are cross-sold with one another;
- Require that all relevant information is communicated in a timely and prominent manner;
- Improve customer understanding of whether the purchase of individual products is possible;
- Improve the assessment of the customers' individual demands and needs, or suitability/appropriateness of the cross-sold package;
- Address training and remuneration issues; and
- Clarify the application of any post-sale cancellation rights attached to the purchase of one of the products.

The guidelines apply in relation to cross-selling practices involving selling a package of financial products or services falling with the scope of the directives listed below and are addressed to competent authorities with supervisory oversight of such firms -

- Markets in Financial Instruments Directive and its recast (**"MiFID and MiFID II"**);
- Insurance Mediation Directive (**"IMD"**);
- Directive on credit agreements for consumers relating to residential immovable property (the Mortgage Credit Directive (**"MCD"**), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
- Undertakings for collective investment in transferable securities (**"UCITS Directive"**);
- Capital Requirements Directive (**"CRD"**) and Capital Requirements Regulation (**"CRR"**);
- Payment Accounts Directive (**"PAD"**), if these authorities are competent authorities under point (2) of Article 4 of Regulation (EU) No 1093/2010;
- Solvency II Directive;
- Payment Services Directive (**"PSD"**);
- Electronic Money Directive (**"EMD"**); and
- Alternative Investment Fund Manager Directive (**"AIFMD"**).

The consultation closes on 22 March 2014. The ESAs intend to publish a final report, together with the final guidelines, in the fourth quarter of 2015.

A copy of the consultation on the draft guidelines is available at the link below –

http://www.eba.europa.eu/documents/10180/936747/JC+CP+2014+05+%28Consultation+Paper+on+Cross+Selling%29.pdf

(ii) Guidelines on consistency of supervisory practices for financial conglomerates

On 22 December 2014, the ESAs published its final guidelines on the convergence of supervisory practices relating to the consistency of supervisory co-ordination arrangements for financial conglomerates, which will apply from 23 February 2015.

The guidelines aim to clarify and enhance co-operation between national competent authorities on cross-border groups that have been identified as financial conglomerates.

They focus on how authorities should co-operate to achieve a supplementary level of supervision of financial conglomerates and are intended to serve the purpose of addressing loopholes in present legislation, as prescribed by the Financial Conglomerates Directive (2002/87/EC).

Areas covered by the guidelines include:

- The mapping of the financial conglomerate structure and written agreements.
- The co-ordination of information exchange.
- Supervisory planning and co-ordination of supervisory activities in going concern and emergency situations.
- The supervisory assessment of financial conglomerates.
- Decision-making processes among the competent authorities.

A copy of the final guidelines is available at the following link –

http://www.eba.europa.eu/documents/10180/936042/JC+GL+2014+01+%28Joint+Guidelines+on+coordination+arrangements+for+financi....pdf

Regulation on Statistical Reporting Requirements for Insurance Companies

(i) Regulation on Statistical Reporting Requirements for Insurance Companies

On 28 November 2014, the Governing Council of the European Central Bank adopted Regulation ECB/2014/50 on statistical reporting requirements for insurance corporations (the **"Regulation"**). On the 20 December 2014, the Regulation was published in the Official Journal of the European Union and will enter into force on the 8 January 2015.

The Regulation provides that the purpose of imposing statistical reporting requirements on "insurance corporations" (which term is defined in Article 1) is to provide the European Central Bank with adequate statistics on the financial activities of the insurance corporation subsector in the Member States whose currency is the euro which are viewed as one economic territory. The collection of statistical information on insurance corporations is necessary to satisfy regular and ad hoc analytical needs, to support the European Central Bank in carrying out monetary and financial analysis, and for the European Systems of Central Bank's contribution to the stability of the financial system.

The Regulation provides that by 2020 at the latest the Governing Council of the European Central Bank will assess the merits and costs of increasing the coverage of quarterly reporting of insurance corporations, of the separate reporting of assets and liabilities of branches and of further reducing the time for the transmission of data by reporting agents.

In addition, the European Commission published an opinion (2014/C427/01) (dated 26 November 2014) on the Regulation. In the opinion, the European Commission welcomes the fact that the draft Regulation aligns the thresholds of the quarterly item-by-item reporting requirements with Article 35 of the Solvency II Directive.

However, the European Commission encourages the ECB Governing Council, when reviewing this alignment by 2020 at the latest (as provided for in the draft Regulation), to bear in mind that it is critical for the European Commission that this alignment be maintained, since the administrative costs linked to quarterly item-by-item reporting would be excessively burdensome for SME insurers. Were the alignment not to be maintained, the European Commission would probably have to issue unfavourable opinions on future proposals for statistical reporting requirements by insurance corporations.

The Regulation and the opinion are available at the following links –

https://www.ecb.europa.eu/ecb/legal/pdf/en_reg_2014_50_sign.pdf

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2014.427.01.0001.01.ENG

Market Abuse

(i) Council of EU Presidency Compromise Proposal on the Benchmark Regulation

On 25 November 2014, the presidency of the Council of the EU published a compromise proposal dated 21 November 2014, in respect of the proposed Regulation concerning indices used as benchmarks in financial instruments and financial contracts (the "**Benchmark Regulation**"). The proposal for the Benchmark proposal was first made in June 2013 by the European Commission and sets out that the manipulation of benchmarks should be made a market abuse offence and be met by strict administrative fines by offenders.

The compromise proposal can be viewed via the following link:

http://data.consilium.europa.eu/doc/document/ST-15936-2014-INIT/en/pdf

(ii) ESMA Securities and Markets Stakeholder Group Publishes Response to Consultations Issued by ESMA on Draft Technical Standards and Technical Advice on the Market Abuse Regulation ("MAR")

On 10 October 2014, the Securities and Markets Stakeholder Group (the "**SMSG**") responded to a consultation published by ESMA in July 2014 regarding draft regulatory technical standards and implementing technical standards ("**ITS**") on MAR and draft technical advice on possible delegated acts concerning MAR. SMSG outlined four points as being the main issues;

- Market Soundings – SMSG considers that although their approach appears flexible with regards to procedures and keeping records in relation to MAR, some of these processes are too complex and may lead to discouragement in the market. The MAR recognises that market soundings are vital for the correct functioning of financial markets. Therefore they shouldn't be regarding as market abuse in themselves;
- Insider Lists – ESMA have stressed the importance of insider lists when NCA's are investigating market abuse. SMSG, although they agree with the necessity for them, have raised concerns regarding the vast amount of information insiders are required to provide to ESMA;
- Investment Recommendations – SMSG have supported ESMA with regards to providing stricter rules in this area. i.e. Conflicts of interest and disclosing financial interests;
- Manager Transactions – SMSG has concerns regarding ESMAs proposal of the respective obligations of managers and believe it is not coherent in relation to MAR disclosure regimes.

In addition to the above points SMSG has said that there is some ambiguity with regards to different language versions of the text of MAR. In order to ensure that there are no inaccuracies, SMSG suggests that the European Commission or ESMA should call upon national authorities to proof the texts by analysing them and then provide ESMA with an error list. SMSG has commended ESMA on its flexible approach, given the risks involved in implementing such thorough requirements.

SMSG's response can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-smsg-047.pdf

Transparency Directive

(i) ESMA publishes Consultation Papers on draft Regulatory Technical Standards under the Revised Transparency Directive relating to the Notification of Major Shareholdings

On 29 September 2014, ESMA published its final draft regulatory technical standards under the revised Transparency Directive in respect of the notification of major shareholdings.

The regulatory technical standards support the aims of the revised Transparency Directive by harmonising transparency requirements in respect of the aggregation of holdings of shares and financial instruments, the calculation of notification thresholds and the exemptions from notification requirements.

The regime is intended to improve transparency regarding the ownership structure of an issuer, to improve legal certainty and reduce the administrative burden for cross-border investors. The revised Transparency Directive also deals with the issue of the disclosure regime for new types of financial instruments that expose investors to an economic risk similar to when holding shares.

The issues addressed in the regulatory technical standards on major shareholding notifications include the following:

- Method of calculation of 5% threshold exemption regarding trading books and market makers;
- Calculation method regarding a basket of shares or an index;
- Methods for determining the 'delta' for calculating voting rights; and
- Financial intermediaries' notification regime of financial instruments.

An outline of the responses from the public consultation and the amendments to the regulatory technical standards and the indicative list which ESMA proposes based on this feedback is also provided in the regulatory technical standards.

The regulatory technical standards can be viewed via the following link:

http://www.esma.europa.eu/content/draft-Regulatory-Technical-Standards-major-shareholdings-and-indicative-list-financial-ins-0

On 17 December 2014, the European Commission published a draft delegated regulation relating to certain regulatory technical standards on the notification of major holdings under the amended Transparency Directive. While slight amendments have been made, the draft delegated regulation is largely unchanged from the draft regulatory technical standards published by ESMA in its final report on 29 September 2014

The European Parliament and the Council will now consider the draft and if neither object to the draft, it will be published in the OJ. It is anticipated that the regulation will enter into force on the twentieth day following publication in the OJ and will apply from 26 November 2015.

(ii) ESMA Consultation on European Access Point

On 19 December 2014, ESMA published a consultation paper on draft Regulatory Technical Standards ("**RTS**") on a European Electronic Access Point (the "**Consultation Paper**").

The draft RTS set out ESMA's proposals for technical requirements regarding access to regulated information at Union level and includes the following:

- Central access point for the search for regulated information;
- Communication technologies used by national storage mechanisms;
- Unique identifier for each issuer;
- Common format for the delivery of regulated information; and
- Common classification of regulated information.

The consultation closes on 30 March 2015. ESMA is required to submit the draft RTS to the European Commission for endorsement by 27 November 2015.

This Consultation Paper can be viewed via the following link:

http://www.esma.europa.eu/system/files/2014-1566_consultation_paper_on_the_draft_rts_on_the_eeap.pdf

Directive on Disclosure of Non-Financial and Diversity Information

(i) Directive on disclosure of non-financial and diversity information by large companies and groups addressing environmental, social and governance issues was published in the Official Journal of the EU

The Directive on disclosure of non-financial and diversity information by large companies and groups addressing environmental, social and governance issues was published in the Official Journal of the EU on 15 November 2014, (the "**Directive**"). The Directive entered into force 20 days later; i.e. on 6 December 2014. Member States have to transpose the Directive into national law by 6 December 2016. The provisions of the Directive have to be applied to all undertakings within scope for the financial year starting 1 January 2017.

The Directive will require certain companies to disclose information in their management report on policies, risks and results on matters such as respect for human rights, environmental matters, diversity, social and employee related issues, anticorruption and bribery issues and diversity on boards of directors. The Directive amends Directive2013/34/EU, which addresses the disclosure of non-financial information but which in that respect has proved to be unclear and ineffective and applied in different ways in different Member States.

The objective of the new proposed Directive is to increase companies' transparency on environmental and social matters and therefore, to contribute to long term economic growth and employment. The European Commission believes that transparent companies perform better over time, have lower financing costs, have better employee retention levels and are more successful in the long run.

The Directive will apply to large public-interest entities with more than 500 employees. Public interest entities include listed companies and some unlisted companies, such as banks, insurance companies and other companies that are designated as such by Member States because of their activities, size or number of employees.

Pensions Update

(i) Insurance Ireland launches Report – A universal pension for Ireland – a policy and implementation on international best practice

On 30 September 2014, Insurance Ireland launched a new report called "A universal pension for Ireland – a policy and implementation on international best practice (the **"Report"**), which is a discussion document looking at international best practice in countries where universal pensions have already been introduced.

The Government-commissioned OECD Review of the Irish Pension System recommended the establishment of a universal defined-contribution (DC) pension model that would eventually cover all, or nearly all, Irish workers in both the public and private sectors. In February 2014, the Minister for Social Protection, Joan Burton, indicated that the preferred solution would be auto-enrollment of Irish workers into a supplementary scheme and that a roadmap and timeline for introduction would be developed.

In response to the OECD report Insurance Ireland has:

- Established an academic advisory panel, comprising individuals within the academic and public-policy community who have demonstrated significant knowledge and leadership in pension and social security reform in their home countries;

- Signalled to Government that it will develop proposals to achieve the OECD objective of 90% pension coverage for the working population on an equitable basis;
- Reached out to key stakeholders in Irish society with a view to building a national consensus on what needs to be done so that an efficient, effective, equitable, sustainable and legitimate solution can be offered to all Irish people;
- Engaged Tor Financial, who assisted the OECD in preparing its Review, to assist in outlining the policy options and technical challenges as the basis for a dialogue, initially with other stakeholders and then with Government.

The Report summarises the views of various stakeholders. Some observations from the Report are –

- There are indications that the Defined Benefit ("DB") model is broken in both the public and private sector because the cost is prohibitive and the promises being made are unsustainable. DB will continue to decline as trustees are forced to consider: closing DB to new entrants; closing future accrual to existing DB members; scaling back benefits and withdrawing or restructuring to meet liabilities. At the same time voluntary retirement saving is diminishing. The inevitable consequence will be that sustainable and adequate income in retirement cannot be guaranteed.

- A critical element of any solution is going to be personal ownership of pension savings by individuals. This will be necessary to create public confidence. Some of this confidence must be stimulated by system design and supervision and some must be achieved by helping workers to become more self-reliant savers - whilst avoiding the need for them to make complex investment decisions.

- It is inevitable that Defined Contribution ("DC") workplace retirement saving will be the model for the future and this is backed up by its almost universal adoption in other parts of Europe, the United States and Australia. Within that model there are variations of approach which can be debated in order to achieve the best system for Ireland and its own particular economic profile.

- It is for policymakers to decide how DC coverage should be expanded and maintained, but it is noted that the OECD recommended a mandatory DC workplace pension system with employer and employee contributions (in addition to the state pension). Mandation would be a less expensive system for the state to implement but a consensus on the strategy for Ireland must be established.

- From a practical point of view each element of the pension infrastructure should align with common design principles to allow individuals maximum flexibility as they move between employers. There is an opportunity here to remove complexity from the current system and make pensions more accessible and less costly.

The Report can be accessed via the following link –

http://www.insuranceireland.eu/news-and-publications/news-press-release/insurance-ireland-launches-new-report-a-universal-pension-for-ireland-policy-and-implementation-issues-based-on-international-be

(ii) EIOPA's vision on private pensions

On 17 October 2014, Mr. Gabriel Bernardino the Chairman of EIOPA delivered a speech on EIOPA's vision on private pensions – Enhances sustainability, strong governance and full transparency.

In his speech, Mr. Bernardino acknowledged that pension systems are facing tremendous challenges to deliver on promises due to longevity growth, the sluggish economic environment, budget deficits and debt burdens, low interest rates and low employment.

Key points from the speech were as follows –

- Public pay-as-you-go pension schemes are affected by lower contributions due to higher unemployment and apply further pressure on public finances.

- Reforms of public pension systems are introduced as part of current initiatives to restore confidence in government finances.

- Private funded schemes are affected by the volatility of asset values and by reduced returns which lower the funding ratios in defined benefit schemes and diminish the ultimate value of pensions paid by defined contribution schemes. These effects are not always transparent to members and beneficiaries contributing to an environment of lack of confidence

- The priority goal should be to support the further development of private complementary pension savings in the EU, be it 2nd pillar occupational pensions or 3rd pillar personal pensions.

- An important strategy to achieve this goal is to provide a robust and proportionate EU regulatory framework capable of regaining the trust and confidence of EU citizens in private complementary pension savings.

- To achieve this strategy the regulatory framework needs to deliver on three fundamental objectives: enhanced sustainability, strong governance and full transparency.

The full speech is available via the following link –

https://eiopa.europa.eu/Publications/Speeches%20and%20presentations/Speech%20by%20Gabriel%20Bernardino,%20Chairman%20of%20EIOPA,%20at%20the%20NAPF%20Conference%20in%20Liverpool.pdf#search=vision%20on%20private%20pensions

(iii) Pensions Authority advises trustees of their obligations under EMIR when engaging in derivative contracts

The Pensions Authority has advised that trustees of occupational pension schemes and trust retirement annuity contracts should be aware of various obligations which arise for counterparties to derivative contracts, under EMIR.

The obligations include:

- Ensuring that derivative contracts are reported to a trade repository. The reporting obligations apply as from 12 February 2014 and will affect derivative contracts which were entered into since, or were outstanding on, 16 August 2012.
- Risk mitigation requirements for over-the-counter derivatives which are not centrally cleared
- Mandatory clearing of certain over-the-counter derivatives, unless subject to the transitional exemptions in Article 89 of EMIR.

Trustees should familiarise themselves with EMIR and liaise with their investment managers as necessary.

(iv) Pensions Authority publishes synopsis on main points made in submission on its consultation paper on financial management guidelines for defined benefit schemes

On 11 November 2014, the Pensions Authority published a synopsis of the main points made in submissions it received in response to its consultation paper on financial management guidelines for defined benefit schemes, which it had published in July 2014.

The proposed guidelines set out what practices the Pensions Authority expects trustees to follow in order to understand and manage the funding and investment of their defined benefit scheme.

The Authority has received a total of 19 written submissions in response to the consultation, 3 of which have come from individuals and 16 from organisations.

There was broad agreement that the proposed guidelines should help as a practical guide to what trustees should do to understand the financial position of their scheme and to manage their scheme's funding and investment.

The synopsis is available at the following link –

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Synopsis_of_responses_to_the_Pensions_Authority%e2%80%99s_consultation_on_financial_management_guidelines_for_defined_benefit_schemes.pdf

Health

(i) Health Insurance (Amendment) Bill 2014

On 7 November 2014, the Health Insurance (Amendment) Bill 2014 (the **"Bill"**) was published. The main purpose of the Bill is to specify –

- the allowable rate of net premium payable in respect of young adults;
- to provide for the transfer of an insured person from a restricted membership undertaking to another registered undertaking without the application of any additional initial waiting period;
- to specify the amount of risk equalisation credits in respect of age, gender and level of cover that is payable to insurers from the risk equalisation fund from 1 March 2015;
- to specify the amount of the hospital bed utilisation credit applicable from 1 March 2015; and
- to make consequential amendments to the Stamp Duty Consolidation Act 1999 to revise the stamp duty levy required to fund the risk equalisation credits for 2015.

In addition, some technical amendments to the Health Insurance Acts are also included.

The Bill was presented to the Seanad on 15 December 2014 and reviewed at Committee stage on the 17 and 18 December 2014. The Bill was signed by the President of Ireland on 25 December 2014 and has been enacted as the Health Insurance (Amendment) Act 2014 (Act No. 42 of 2014).

Fitness and Probity

(i) Central Bank publishes Fitness and Probity Standards 2014

On 1 October 2010, Part 3 of the Central Bank Reform Act 2010 created for the first time in Irish law a harmonised statutory system for the regulation by the Central Bank of Ireland of persons performing controlled functions ("**CFs**") or pre-approval controlled functions ("**PCFs**") in regulated financial service providers, with the exception of credit unions. This new regime was fully implemented by 1 December 2012. On 3 November 2014, the Fitness and Probity Standards were updated and published to reflect the introduction of the Single Supervisory Mechanism which came into effect on 4 November 2014.

The Central Bank has published updated non-statutory guidance to assist regulated financial service providers in complying with their obligations under Section 21 of the Central Bank Reform Act 2010 in relation to the Fitness and Probity Standards. The guidance outlines the steps which the Central Bank expects regulated financial service providers to take in order to satisfy themselves on reasonable grounds that individuals performing CFs, including PCFs, are in compliance with the Fitness and Probity Standards.

The Central Bank has also published a Frequently Asked Questions document in relation to the operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010.

The updated Fitness and Probity Guidelines, the Guidance and the Frequently Asked Questions can be viewed at the following links respectively:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Fitness%20and%20Probity%20Standards%202014.pdf

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance%20on%20Fitness%20and%20Probity%202014.pdf http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Fitness%20and%20Probity%20-%20FAQs%202014.pdf

Central Bank of Ireland

(i) Central Bank Publish Latest Central Bank Inquiry Guidelines and Administrative Sanctions Outline

Part IIIC of the Central Bank Act 1942, as amended, (the "**Act**") provides the Central Bank with the power to administer sanctions in respect of the commission of prescribed contraventions by regulated financial service providers and the participation in the prescribed contraventions by persons concerned in their management.

Where a concern arises that a prescribed contravention has been or is being committed, the Central Bank may investigate. Following an investigation an Inquiry may be held where there are reasonable grounds to suspect that a prescribed contravention has been or is being committed. The Inquiry shall decide if the prescribed contravention has occurred and determine the appropriate sanctions. The decision of the Inquiry may be appealed to the Irish Financial Services Tribunal.

The Administrative Sanctions Procedure provides that, any time before the conclusion of an Inquiry, the matter may be resolved by entering into a settlement agreement. This is a written agreement which binds the Central Bank and the regulated financial service provider and/or person concerned in its management.

The latest Central Bank Inquiry Guidelines and Administrative Sanctions Outline are applicable as of 4 November 2014, and can be viewed respectively via the following links:

http://www.centralbank.ie/regulation/processes/EnfI/asp/Documents/Inquiry%20Guidelines%202014.pdf

http://www.centralbank.ie/regulation/processes/EnfI/asp/Documents/Outline%20of%20Administrative%20Sanctions%20Procedure%202014.pdf

(ii) Central Bank Publish "Skilled Persons' Reporting – Statement of Proposed Use

On 19 November 2014, the Central Bank published a Skilled Persons' Reporting – Statement of Proposed Use. Part 2 of the Central Bank (Supervision and Enforcement) Act, 2013 provides the Central Bank with the power, for the purposes of the proper and effective regulation of financial service providers, to require a regulated financial services provider or a related undertaking of a regulated financial services provider to produce a report on such matters as the Central Bank may specify.

The Statement applies to all firms regulated by the Central Bank and sets out the Central Bank's policy and expectations when using the Skilled Persons' Reporting Powers as a supervisory tool. The Statement covers:

- Use of the Skilled Persons' Reporting Powers;
- Preparation of the Skilled Persons' Report;
- Expectations in respect of a Skilled Person, and
- Confidentiality.

The Central Bank's Statement can be accessed via the following link:

http://www.centralbank.ie/press-area/press-releases/Documents/Skilled%20Persons%27%20Reporting%20-%20Statement%20of%20proposed%20use.pdf

(iii) Central Bank Updates and Replaces Requirements for Non-Life and Life Reinsurance Undertakings

The Central Bank has published a paper which updates and replaces the previous requirement paper, dated July 2012, to take into account developments since that date such as new requirements and guidelines issued by the Central Bank.

The requirements in the paper apply to reinsurance undertakings established in the State carrying on non-life reinsurance business. Such non-life reinsurance undertakings must ensure that they are familiar and compliant with all of the requirements therein in addition to other applicable requirements, Codes, and Regulations.

The updated requirements can be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/reinsurance-companies/Documents/Requirements%20for%20Non-Life%20Reinsurance%20Undertakings%202014.

Anti-Money laundering/Counter-Terrorist Financing

(i) Financial Action Task Force ("FATF") Guidance on Transparency and Beneficial Ownership

The FATF has published Guidance on Transparency and Beneficial Ownership (the "**Guidance**") that will assist countries to design and implement measures that will deter and prevent the misuse of corporate vehicles, such as companies, trusts and other types of legal persons and arrangements – for money laundering, terrorist financing and other illicit purposes. The latest guidance is an update from the FATF recommendations set out in 2012.

The idea of Beneficial Ownership is welcomed by the ever increasing number of advocacy groups and law enforcement agencies who are pushing for greater transparency in corporate agencies. However, there is a concern that some nations may find it difficult to implement the Guidance.

The FATF have suggested 3 possible strategies to make the gathering of the information of actual or beneficial owners behind legal entities less difficult:

- Require Companies to retain their own information;
- Create a database of company registers; or
- Rely on currently available information

In relation to the three strategies above, it is proposed that the first recommendation of requiring companies to collect their own information is probably the most reliable and strongest option. The reporting systems are also putting pressure on institutions to identify the natural persons behind their legal entity customers. So far 51 jurisdictions have formalised their commitment to share data.

The FATF Guidance can be viewed via the following link:

http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf

(ii) Notification for attention of the Central Bank Regarding Funds or Economic Resources Frozen in Accordance with Requirements of EU Financial Sanctions Regulations

A notification has been released by the Central Bank stating that any entity, person or body which has undertaken freezing measures in accordance with EU Financial Sanctions Regulations is required to report said measures to the Central Bank as soon as possible. Information about who implements the freezing is to be reported, alongside the details of whom or what entity is being frozen must also be reported and why they are being frozen.

The Central Bank's notification can be viewed via the following link:

http://www.centralbank.ie/Pages/SearchResults.aspx?k=frozen

(iii) Political Agreement Reached on MLD4 and Revised Wire Transfer Regulation

On 17 December 2014, the presidency of the Council of the EU announced agreement with the European Parliament on the Forth Money Laundering Directive ("**MLD4**") which will replace the Third Money Laundering Directive (2005/60/EC) ("**MLD3**") and the proposed Regulation to amend and replace Regulation (EC) 1781/2006 regarding information on the payer accompanying transfers of funds. This is known as the revised Wire Transfer Regulation ("**WTR**"). The approved texts, which are not yet available to the public, represent a key achievement in relation to AML, as they implement the FATF recommendations.

In relation to MLD4, EU Member States for the first time will be obliged to maintain registers with information on the beneficial owners of both corporate and legal entities as well as trusts. Competent authorities will have access to these registers without any restrictions. Other notable changes proposed under MLD4 include:

- The extension of the Politically Exposed Person ("**PEP**") regime to cover domestic PEPs and persons entrusted with a prominent function by an international organisation;
- The removal of the automatic entitlement to apply Simplified Customer Due Diligence ("**Simplified CDD**") when dealing with specified customers and product;
- An increased range of sanctions which may be imposed for breaches by Designated Persons of their AML and CTF obligations;
- The introduction of risk assessments at EU and national level. It is proposed that these risk assessments will be shared with Designated Persons to assist them in preparing their own risk assessment of their business and customers.

The agreed texts of MLD4 and WTR will now require endorsement by the Committee of the Permanent Representatives of the Governments of the Member States to the European Union ("**COREPER**") and by the Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs Committees before being put to a vote by the full Parliament in 2015.

Data Protection

(i) Government Announces New Data Protection Plans

The government has announced its intention to implement a "data protection roadmap" in order to tackle data protection issues. In an effort to achieve the goal in making Ireland the "best in class" with regards to data protection plans, three suggestions have been proposed by the government in order to raise the standards of Irish data protection laws;

- Allowing the office of the Data Protection Commission to have it owns vote;
- The formation of an office of the Data Protection Commission in Dublin as well as the office in Portarlington; and
- The establishment of an Interdepartmental Committee on Data and Technology Issues in a bid to encourage a wider scope in the area.

The reason for the update to the data protection plans is due to the need for a wider reform of data protection legislation across the European Union. The evolution of new technologies, in particular the expansion of social networks and the effort made in a bid to protect personal data and how it is sought, processed and kept remains a continuous challenge for the Data Protection Commissioner.

(ii) The European Fund and Asset Management Association ("EFAMA") along with Fund and User groups calls upon the EU Anti-Trust Commission in a bid for a Higher Standard of Data Protection in relation to ISIN users

EFAMA along with leading investment fund and information user associations have requested the EU Antitrust Commission to improve its protection of European International Securities Identification Numbers ("**ISINs**") data users as it considers that Standard and Poors ("**S&P**") have not met their EU obligations in respect of ISINs.

EFAMA maintains that the use of the global securities identifier ISIN should not only be free but also license (contract) free around the world as the applicable ISO 6166 standard does not require ISIN end-user agreements. The S&P model agreements limit ISIN usage considerably by creating unnecessary legal risks and liabilities as well as administrative burden.

It has been requested of S&P to find a resolution due to its failure to meet EU obligations with regards to ISINs and ISIN users. EFAMA has called on S&P, as the US National Numbering Agency ("**US NNA**") for the ISIN, to provide the market with a fair solution that reflects the approach of other National Numbering Agencies worldwide, which would meet the following minimum requirements:

- Acknowledgement that S&P will allow the free usage of all S&P issued US-ISINs in the normal course of business, without any contractual commitment of the end user which is independent of the dissemination channel of the data and without any reference to the US Committee on Uniform Securities Identification Procedures ("**CUSIP**") identification code;
- Assurance that S&P will not pursue end users based on any proclaimed IP, copyrights and data basing rights, in order to establish legal certainty on free ISIN usage in the entire financial market including that S&P will respect their customers rights conferred under local data laws;
- Limitations on the definition of Information Service Providers in order to ensure that financial services firm reporting activities in the normal course of their business are not considered a licensable "ISP" activity;
- The free use of US ISIN needs to be a global solution and must cover at a minimum all European financial services companies activities outside the EEA territory in order to deal with "follow the trade around the clock situations" and in line with the efforts of the Financial Stability Board and the G 20 to overall reduce risk in the global financial market place.

(iii) European Data Protection Supervisor Guidelines on Data Protection in EU Financial Services

Guidelines regarding data protection in EU financial services were published by the European Data Protection Supervisor ("**EDPS**") on 25 November 2014. The guidelines were published in a bid to set out that although financial markets are to be monitored closely, the right to privacy and data protection must be adhered to. The guidelines set out the following main points:

- The right to privacy and protection of personal data under EU rights;
- The steps that are required to assess data protection;
- Setting out the ways in which data protection rules are applied in relation to financial services regulation;

- Sets out how the EDPS intends to work with policy and lawmakers in the financial services regulation area.

(iv) Council releases Latest Draft of New Law

On 19 December 2014, the Council of the European Union published the latest version of the Data Protection Regulation (the "**Data Protection Regulation**").

This latest version shows that both EU institutions and various Member States still have certain concerns in respect of a number of areas of the Data Protection Regulation. By way of example, the UK government has sought to revert to the definition of consent in Article 2(h) of the Data Protection Directive, which would remove the requirement that 'unambiguous' consent is given, thereby watering down the meaning of 'consent' which is currently proposed by the Working Group.

The latest version of the Data Protection Regulation can be viewed via the following link:

http://pdp.ie/docs/regulation-council.pdf

Whistleblowing

(i) The Central Bank publishes Feedback Statement on CP79 regarding Consultation on Handling of Protected Disclosures by the Central Bank

In November 2014, the Central Bank published a Feedback Statement on Consultation Paper 79 – Handling of Protected Disclosures by the Central Bank ("**CP79**"). CP79 outlined the Central Bank's proposed approach to dealing with protected disclosures regarding alleged breaches of financial services legislation and the operation of a Whistleblower Desk within the Central Bank to handle protected disclosures.

The Central Bank (Supervision and Enforcement) Act 2013 (the "**Supervision and Enforcement Act**") has necessitated the Central Bank to put in place new procedures regarding the receipt and handling of certain protected disclosures. CP79 outlined the proposed policy and procedures that the Central Bank intends to put in place in response to the legislation.

Section 2 of the Feedback Statement on CP79 provides an overview of the main submissions received and the Central Bank's responses to same. A number of the submissions requested that the Central Bank provide guidelines on what is a disclosure that will or will not be protected, together with possible examples and guidance to assist whistleblowers in making disclosures. The Central Bank has responded that it has no role in assessing whether or not a disclosure is a protected disclosure as this is a matter of law to be assessed by a Rights Commissioner, the Labour Courts or Courts. The Central Bank also advises that it cannot give any legal guidance on material disclosures but that it will publish a frequently asked questions sheet on its website which will be updated on a regular basis.

The Feedback Statement on CP79 can be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP79%20Handling%20of%20Protected%20Disclosures%20by%20the%20Central%20Bank%20of%20Ireland/Feedback%20Statement%20CP79.pdf

(ii) Central Bank Letter setting out further Information regarding Protected Disclosures

The Central Bank has recently sent a letter to all regulated financial service providers reminding them of their obligations under the Supervision and Enforcement Act. The letter also refers to the Protected Disclosures Act 2014 which came into operation on 15 July 2014 and which provides protections to cover workers in all sectors.

Part 5 of the Supervision and Enforcement Act was enacted on 1 August 2013. This introduced new provisions providing protection for persons who, in good faith, make a disclosure to the Central Bank regarding a possible or actual contravention of financial services legislation. The Supervision and Enforcement Act places a mandatory obligation on those performing PCFs to report a prescribed contravention that may be, or may have been, committed.

Generally, where a person makes a disclosure in good faith to the Central Bank or one of its employees, and the person making the disclosure has reasonable grounds for believing that the disclosure will show that there has been a breach of, or offence under, financial services legislation or the concealment or destruction of evidence relating to such an offence or breach, the disclosure is a protected disclosure provided the person provides their name. Disclosures made anonymously will not qualify as a protected disclosure.

Where a person wishes to disclose to the Central Bank an alleged offence, breach of financial services legislation or concealment or destruction of evidence of such, they may make the disclosure through the following channel:

E-mail: confidential@centralbank.ie
Telephone: 1890 130014

Post: Whistleblowing Desk
Central Bank of Ireland
P.O. Box 559
Dame Street
Dublin 2

Section 38 (2) of the Supervision and Enforcement Act places an obligation on PCF's to report breaches of financial services legislation. A PCF 38(2) disclosure form is available to be downloaded from the Central Bank website. Persons holding PCF roles who need to make a disclosure under the Supervision and Enforcement Act should make the disclosure by completing this form and submitting it either by e-mail or post to the following addresses.

E-mail: Protecteddisclosures@centralbank.ie
Telephone: 1890 130015 (for general queries only)
Post: PCF Disclosure Desk
Central Bank of Ireland
P.O. Box 559
Dame Street
Dublin 2

A copy of this letter can be accessed via the following link:

http://www.centralbank.ie/regulation/processes/protected-disclosures/Documents/Industry%20Letter.pdf

Consumer Protection

(i) Consumer Protection Act 2007 (National Consumer Agency) Levy Regulations 2014

The Consumer Protection Act 2007 (National Consumer Agency) Levy Regulations 2014, which are now in force, amend the Consumer Protection Act 2007 (National Consumer Agency) Levy Regulations 2011 (S.I. No. 560 of 2011) and provide for a levy scheme to fund the provision of information in relation to financial services including information in relation to the costs to consumers, the risks and benefits associated with the provision of those services and promoting the development of financial education and capability in 2014.

The Consumer Protection Act 2007 (National Consumer Agency) Levy Regulations 2014 can be viewed via the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0458.pdf

Companies Bill Update

(i) Enactment of the Companies Bill 2012

The Companies Bill 2012 was signed by the President of Ireland on 23 December 2014 and has been enacted as the Companies Act 2014 (Act No. 38 of 2014)(the "**Companies Act**"). The Companies Act will be commenced by Statutory Instrument and is expected to be effective from 1 June 2015 with a transition period of 18 months for certain elements.

The Companies Act represents a significant reform of Ireland's company law regime by consolidating, reforming and amending existing company law legislation. With about 1,500 sections, it is the largest piece of legislation ever enacted by the Oireachtas.

The Companies Act impacts every Irish company together with all directors and shareholders.

Please see our website (http://www.dilloneustace.ie/) for updates on the key innovations of the Companies Act.

The Companies Registration Office has yet to finalise and introduce over 159 new CRO forms. Also, the Rules Committee of the District and High Court will need to consider the new statutory provisions which will permit new applications in the District and High Court under the new provisions of the Companies Act 2014.

Irish Taxation update

(i) FATCA Update

FATCA is now fully operational with relevant Irish financial institutions being required to have registered with the IRS before 31 December 2014. The first FATCA reports are due to be filed with the Irish Revenue Commissioners by 30 June 2015 and will be in respect of the 2014 reporting year.

(ii) Finance Act 2014

The Standard for Automatic Exchange of Financial Account Information

The Standard for Automatic Exchange of Financial Account Information (**"the Standard"**) was approved on 15 July 2014. The Common Reporting Standard (**"CRS"**) is part of this Standard and is the component that contains the reporting and due diligence standard that underpins the automatic exchange of financial account information.

In summary, from an Irish perspective, the Standard should ensure that Irish financial institutions collect and report certain information in relation to financial accounts maintained by them that are held by persons not resident in Ireland. This information will be reported to the Irish Revenue Commissioners who will then exchange same with the tax authorities of the jurisdiction in which the account holder is resident.

Fundamentally, the information that should be collected and reported is likely to be similar to the information that financial institutions should already be collecting for FATCA purposes. However, as will be appreciated the Standard will have much further reaching significant as it will not just require collection and reporting of information regarding certain US account holders.

Finance Act 2014 (the **"Act"**) has introduced legislation to allow the Irish Revenue Commissioners to make regulations to comply with the Standard and to effectively introduce the Standard into Irish law.

It is currently envisaged that for early adopters (which includes Ireland) that the effective start date of the CRS will be 1 January 2016 (new account opening procedures will be required to be in place by 1 January 2016 with pre-existing accounts being those open on 31 December 2015). The first exchange of information is currently targeted to take place by the end of September 2017.

Life Assurance Policies (Certain Foreign Life Policies)

The Act makes provision to increase the income tax rate applying to disposals of foreign life policies that are categorised as personal portfolio life policies to 80% (from 60%) in cases where the details of the disposal are not correctly included in the taxpayer's income tax return.

Amendments to Irish Residency Rules for Companies

Due to the recent concerns raised in relation to the "Double Irish" structure, the Act has amended the residency rules for companies incorporated on or after 1 January 2015. These new residency rules will ensure that companies incorporated in Ireland and also companies not so incorporated but that are managed and controlled in Ireland, will be tax resident in Ireland except to the extent that the company in question is, by virtue of a double taxation treaty between Ireland and another country, regarded as resident in a territory other than Ireland (and thus not resident in Ireland). For companies incorporated before this date these new rules will not come into effect until 1 January 2021 (except in limited circumstances).

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This Insurance Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 December 2014, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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