Insurance Quarterly Legal and Regulatory Update

Period covered
1 January 2015 – 31 March 2015

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Table of Contents

INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) ECON Letter to European Commission on Solvency II Regulation and Response

On 9 January 2015, the European Parliament published a letter (dated 19 December 2014) from the Chair of its Committee on Economic and Monetary Affairs ("**ECON**") to the European Commissioner for Financial Stability, Financial Services and Capital Markets Union, on the proposed Delegated Regulation supplementing the Solvency II Directive (2009/138/EC) (the "**Solvency II Delegated Regulation**").

The letter states that following an analysis by the European Parliament's Solvency II negotiating team, the European Parliament has drawn up a list of issues relating to the European Commission's proposals. These issues which are set out in the Annex to the letter relate to:

- Corrections to the text of the proposal;
- The empowerments given to the Commission under Solvency II;
- Future work relating to Solvency II to be conducted by the Commission and the European Insurance and Occupational Pensions Authority ("**EIOPA**").

The European Parliament requested the Commission to take immediate action to ensure that EIOPA has the necessary resources to fulfil the powers and duties stemming from the Solvency II Delegated Regulation. Following this, on 30 January 2015, the European Commission published a letter from the European Commissioner for Financial Stability, Financial Services and Capital Markets Union responding to the ECON letter on the Solvency II Delegated Regulation. In the letter, it states that:

- The fact the European Parliament and the Council of the EU accepted the Solvency II Delegated Regulation as adopted by the European Commission, without requesting an extension of the scrutiny period, provides legal certainty on the new prudential regime for insurers.
- The European Commission has started to work on a review of the calibration of capital requirements on infrastructure investments in the broader context of the capital markets union.
- A report will be adopted on the issue of the resources of EIOPA. This report will be an important tool in relation to helping the budgeting authority determines EIOPA's future resources.

- The European Commission is still waiting for input from EIOPA to complete its assessment of third country regimes. The equivalence decisions will be put forward as soon as possible, with major jurisdictions being prioritised. On 11 March 2015, EIOPA published final reports (all dated 30 January 2015) on third country equivalence for Bermuda, Switzerland and Japan. Further detail is set out in section (xii) of this Solvency II section.

(ii) Time Period for European Parliament to object to Delegated Regulations on Solvency II, LCR and leverage ratio expires

A press release was published on 12 January 2015 by the European Commission announcing that the Solvency II Delegated Regulation and the Delegated Regulation supplementing the Capital Requirements Regulation (Regulation 575/2013) ("**CRR**") concerning the liquidity coverage ratio ("**LCR**") and the leverage ratio will become law.

Under Article 301a of the Solvency II Directive and Article 462 of the CRR, these Delegated Regulations will enter into force if no objection has been expressed by the European Parliament or the Council of the EU within a period of three months of the notification of the Regulations by the Commission to the European Parliament and Council or if, before the expiry of the three months, the European Parliament and the European Commission have informed the Commission that they will not object.

The European Commission announced its decision not to object to the Solvency II Delegated Regulation in November 2014 and similarly decided not to object to the Delegated Regulation on the LCR and the leverage ratio in December 2014.

The Solvency II Delegated Regulation (Regulation 2015/35), which supplements the Solvency II Directive (2009/138/EC) was published in the Official Journal on 17 January 2015 and came into force the day after publication (18 January 2015).Separately, the Delegated Regulation which supplements the CRR concerning the LCR has also come into force on 18 January 2015.

(iii) Solvency II Overview – Frequently Asked Questions ("FAQ")

On 12 January 2015, the European Commission published a fact sheet of FAQ's in order to provide an overview of Solvency II and the Delegated Act. The Regulation supplements the Solvency II Directive setting out the detailed requirements for individual undertakings as well as for groups and will make up the core of the single prudential rulebook for insurance and reinsurance undertakings in the European Union. The FAQ's outline:

- What Solvency II is and why it is necessary;
- What the Delegated Act adds to the directive;
- When the new rules become applicable;
- Whether there are transitional provisions; and
- The costs for implementing Solvency II etc.

On 1 April 2015, a number of early approval processes will start, such as the approval process for insurers' internal models to calculate their Solvency Capital Requirement ("**SCR**") before the full applicable date on 1 January 2016.

For the questions and answers in full, the fact sheet is accessible via the following link:

http://europa.eu/rapid/press-release_MEMO-15-3120_en.htm

(iv) EIOPA 2015 Budget Cuts will impact Solvency II

On 2 February 2015, EIOPA published a press release explaining the implication of the 2015 budget cuts.

In the press release, it states that EIOPA's budget for 2015 will be reduced by 7.6% (around €1.7 m) compared to 2014 and currently equals €19.9m. EIOPA has undertaken a reprioritisation exercise in order to respond to these cuts and ensure delivery of high quality work, including extensive reallocation of human resources and rationalisation of funds as well as postponement and cancellation on on-going projects.

It also states that through 2015, Solvency II implementation remains EIOPA's highest priority and that a number of work streams in the areas of Financial Stability and Consumer Protection have been deprioritized as a result for example, the Solvency II training programme for supervisors will be reduced by 20% and production of the IT supervisory toolkit related to XBRL reporting has been cancelled. Investments into EIOPA's operating software, infrastructure and efficiency of business processes will also be very limited.

(v) First Set of EIOPA Solvency II guidelines issued in official EU languages

EIOPA published a press release on 2 February 2015 announcing that it has issued its first set of guidelines under the Solvency II Directive (2009/138/EC) in the official languages of the EU. The guidelines are addressed to National Competent Authorities ("**NCAs**") and financial institutions.

The aim of the guidelines is to ensure the common, uniform and consistent application of EU law, as well as to establish consistent, efficient and effective supervisory practices. EIOPA states that the guidelines are "in line" with Solvency II and the European Commission Delegated Regulation on Solvency II (Regulation 2015/35) which the guidelines aim to clarify.

The NCAs are required to confirm whether they comply or intend to comply with the guidelines within two months of the "issuance date" (2 February 2015), therefore the NCAs need to confirm this no later than 2 April 2015.

(vi) European Commission call for advice from EIOPA relating to possible amendment of Solvency II Delegated Regulation

On 4 February 2015, the European Commission asked EIOPA for technical advice on whether and how it would be appropriate to amend its Delegated Regulation (Regulation 2015/35) supplementing the Solvency II Directive (2009/138/EC) regarding insurers investment in infrastructure projects. The European Commission explained that the Solvency II standard formula sets out calibrations for risk charges on equity and debt instruments. The calibrations do not account for the specific nature of infrastructure investment. The European Commission is adamant that the Delegated Regulation does not present unjustified obstacles to institutional investors like insurers, as infrastructure investment creates long-term value.

As a result, EIOPA has been asked to explore the extent to which it can advise on refinements of the Delegated Regulation that serve this goal as well as being asked to develop concrete proposals for the definition and calibration of infrastructure risk categories. The European Commission has stated that amendments could refine the standard formula with a view to ensuring a more risk-sensitive treatment of insurers' investments in infrastructure.

Technical advice is due to be provided from EIOPA by 30 June 2015. The advice will inform a possible review of the Delegated Regulation.

EIOPA has also launched a new webpage relating to its work in this area. The webpage includes a preliminary timeline for EIOPA's infrastructure investment work. The timeline states that:

- On 27 February 2015, EIOPA held a round table discussion
- In April 2015, a public consultation is planned to launch
- In summer 2015, it intends to submit its technical advice to the Commission.

Click on the link below to visit the webpage:

https://eiopa.europa.eu/regulation-supervision/insurance/investment-in-infrastructure-projects

(vii) The Insurance Directorate publishes the February Edition of Solvency II Matters and two Solvency II Information Notes

The February edition of the Solvency II newsletter was published on 27 February 2015. The newsletter states that 2015 will be a challenging year for the insurance industry ahead of full implementation of Solvency II on 1 January 2016. The Central Bank will host an industry communication event on 20 April 2015 with the Chairman of EIOPA.

In regards to the Solvency II Directive, its states that from 1 April 2015 Member States shall ensure that supervisory authorities have the power to decide on a number of "early approvals" under Solvency II. These include, but are not limited to, ancillary own funds, undertaking parameters, matching adjustment and volatility adjustment. In this regard, the Central Bank has issued two information notes on seeking approval of certain items specified in Article 308(a) of the Solvency II Directive (see next section for more detail).

High and medium impact undertakings and groups are required to submit Solvency II reporting data during the Preparatory Phase in 2015. The Central Bank published a separate Solvency II Information Note 2 – Preparatory Report Phase to assist undertakings in this regard. The newsletter states that the reporting format for Quantitative Reporting Templates is in XBRL only and that the first returns are due for the year end 2014. The Central Bank will be open to accepting these returns between mid-May and 3 June 2015.

The newsletter refers to the Central Bank Guidelines on Preparing for Solvency II, whereby most of the guidelines have been applicable since January 2014, however the following have become applicable since 1 January 2015, such as:

- All (re)insurance undertakings are required to have established four key functions – Risk Management, Compliance, Internal Audit and Actuarial Functions by January 2015.
- (Re) insurance Undertakings are due to make a second FLAOR submission during 2015. The additional 2015 FLAOR requirements for High Impact and Medium Impact undertakings and groups are:

  (a) A comparison between the overall solvency needs, the regulatory capital requirements and the own funds should be included in the FLAOR supervisory report;

  (b) An assessment of whether they would comply on a continuous basis with the Solvency II regulatory capital requirements and the requirements on the Solvency II technical provisions; and

(c) An assessment of the significance of the deviation of their risk profile from the assumptions underlying the Solvency II SCR calculated with the standard formula.

A copy of the Solvency II newsletter is available via the following link. The newsletter also includes a Solvency II Checklist for (re) insurance undertakings:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20February%202015.pdf

(viii) Article 308a Information Notices – Applications of Approval of certain items specified in Article 308a of the Solvency II Directive

Article 308a of the Solvency II Directive provides that Member States shall ensure that supervisory authorities have the power to decide on the approval of certain items from 1 April 2015 or 1 July 2015, as applicable. The Central Bank will accept applications for approval of these items from 1 April or 1 July 2015. Formal approval of any items can only be made when the Solvency Directive is transposed into Irish Law.

To assist (re)insurance undertakings, the Central Bank has issued a number of information notices in February and March 2015 respectively setting out the proposed approval process. In order to ensure an efficient application process and to avoid unnecessary delays in the review of those applications where approval is needed in advance of January 2016, it is vital that (re)insurance undertakings submit their applications which include all relevant information necessary for the Central Bank assessment and decision..

All of the following approvals outlined below should be submitted in electronic copy to ones supervisory contact;

1. **Internal Models.** The Central Bank will accept Internal Model applications from 1 April 2015. The Solvency II Directive provides for a six month timeframe for supervisory approval by the Central Bank. With regard to applications for group internal models, where the Central Bank supervises a subsidiary (re)insurance undertaking in a group and is part of the supervisory college, the Central Bank will take receipt of applications forwarded to it by the group supervisor. The Solvency II Directive provides for a six month timeframe to enable the supervisory authorities in the college to reach a joint decision. The time period starts on the day the group submits its application to the group supervisor.

2. **Ancillary Own Funds.** Article 90 of the Solvency II Directive, requires supervisory approval in order for Ancillary Own Funds ("**AOF**") items to be recognised in determining own funds. (Re)insurance undertakings intending to include AOF in the determination of own funds can submit applications for supervisory approval

from 1 April 2015. The Central Bank will consider applications for approval of AOF items in accordance with the requirements of the Solvency II Directive. Applications for approval for the use of AOF should include all items required in the Draft Implementing Technical Standard ("**ITS**") on the Approval for the use of Ancillary Own-Fund Items. A checklist based on the relevant Articles of the Draft ITS for the use of AOF is attached at Appendix 2 of Information Note 1**.** Failure to provide all of the necessary evidence will result in the application being deemed incomplete.

3. **Articles 95 Own Funds Items (including Capital Contributions).** The Solvency II Directive and the Delegated Acts identify the criteria own funds item must possess in order to be classified in one of the three Tiers (Tier 1, Tier 2 and Tier 3). The Delegated Acts provide lists of items that fall into each of the three Tiers. Where an item is not specifically listed, Article 95 of the Solvency II Directive requires that such an own funds item is subject to prior supervisory approval. Such approval will allow the firm to count the own funds item as Tier 1, Tier 2 or Tier 3 as appropriate. The Central Bank can only approve items if the own fund item meets the relevant criteria. When assessing own funds items (re)insurance undertakings should consider all relevant elements of the Solvency II Directive, The Delegated Acts and the EIOPA Guidelines on Ancillary Own Funds, Classification of Own Funds and Approval is required for both existing and proposed own funds items which are not included in 'the lists'. In preparing an Application (re)insurance undertakings should submit a written request, including a cover letter and supporting evidence for each own funds item for which approval is sought. Each request should be approved by the Board of Directors before its submission to the Central Bank. EIOPA Guidelines on Classification of Own Funds have a checklist based on the relevant Articles in the EIOPA Guidelines on the Classification of Own Funds which is attached at Appendix 3 of Investment Note 1. Failure to provide all of the necessary evidence will result in the application being deemed incomplete.

4. **Capital Contributions.** The Central Bank understands that a number of (re) insurance undertakings intend to apply for approval of their capital contributions as Tier 1 own funds. To assist (re)insurance undertakings in ensuring that the capital contribution meets the relevant requirements to be approved as Tier 1, the Central Bank has developed a sample legal agreement that could underlie a capital contribution between a contributor and the recipient (re)insurance undertaking. Two versions of this agreement are attached as Appendices 4 and 5 of Information Note 1 – the first is for new agreements and the second is for retrospective agreements. These sample agreements address the features expected to be included in a legal agreement underlying a capital contribution. Where the text of the agreement is used by the (re)insurance undertaking, the legal opinion sought by the Central Bank can be limited to an opinion regarding the enforceability of the terms in all relevant jurisdictions.

5. **Matching Adjustment.** Article 77b of the Solvency II Directive requires that (re)insurance undertakings obtain supervisory approval in order to apply a matching adjustment. (Re)insurance undertakings who wish to use the matching adjustment can submit application for supervisory approval by 1 April 2015. A checklist based on the relevant Articles of the Draft ITS on the approval of the application is located in Appendix 1 of Information Note 3.

6. **Volatility Adjustment.** Article 77d of the Solvency II Directive provides the discretion for Member States to require supervisory approval for use of the volatility adjustment to the risk-free interest rate term structure. Applications applying for the volatility adjustment are recommended to submit them for supervisory approval by 1 April 2015. The Central Bank has recommended that the Department of Finance exercise this discretion (i.e. supervisory approval for the volatility adjustment). A checklist is provided in Appendix 2 of Information Note 3.

7. **Transitional Measure on the Risk Free Interest Rates.** Article 308c of the Solvency II Directive require (re)insurance undertakings to obtain supervisory approval if they wish to apply the transitional adjustment to the risk free term structure. (Re)insurance undertakings wishing to use the transitional adjustment to the risk free term structure can submit application for supervisory approval by 1 April 2015. A checklist is located in Appendix 3 of Information Note 3.

8. **Transitional Measure on the Technical Provisions.** Article 308d of the Solvency II Directive requires (re)insurance undertakings to obtain supervisory approval if they wish to apply the transitional deduction to technical provisions. (Re)insurance undertakings wishing to use the transitional deduction to technical provisions can submit applications for supervisory approval from 1 April 2015. A checklist is located in Appendix 4 of Appendix Note 3.

9. **Undertaking-Specific Parameters.** Article 104(7) of the Directive requires (re)insurance undertakings to obtain supervisory approval if they wish to apply undertaking-specific parameters within the standard formula. (Re)insurance undertakings wishing to apply undertaking-specific parameters within the standard formula can submit applications for supervisory approval from 1 April 2015. A checklist based on the relevant Articles of Commission Implementing Regulation EU 2015/498 on the use of undertaking-specific parameters within the standard formula is provided in Appendix 1 of this document. Failure to provide all of the necessary evidence will result in the application being deemed incomplete.

10. **Special Purpose Vehicles.** When applying for authorisation to establish, the SPV shall demonstrate that the requirements set out in Articles 318 to 324 and 326 to 327 of Delegated Regulation (EU) 2015/35 are met and that the SPV is capable of

meeting the requirements of Article 325 of Delegated Regulation (EU) 2015/35 by providing documentary evidence of that in its application. Applications for the authorisation of a SPV should include all items required in Commission Implementing Regulation (EU) 2015/462. A checklist based on the relevant Articles on the authorisation of a SPV is provided in Appendix 1 of this document. The documentation shall cover the structure of the SPV, the risk to be assumed and the funding of that SPV. Failure to provide all of the necessary evidence will result in the application being deemed incomplete.

The Central Bank Information Note 1, Note 3, Note 4 and Note 5 on Article 308a Approvals are available via the following links:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%201%20-%20Article%20308a.pdf

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%203%20-%201%20April%20Approvals%20-%20Part%20Two.pdf

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%204%20-%20USP.pdf

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Information%20Note%205%20-%20SPV.pdf

(ix) EIOPA technical documentation and information on Solvency II relevant risk-free interest rate term structures

On 28 February 2015, EIOPA published the Solvency II relevant risk-free interest rate term structures. The publication comprises technical information (dated December 2014) referred to in Article 77(e) of the Solvency II Directive (2009/183/EC) and technical documentation (EIOPA-BoS-15/035). EIOPA has also published a set of Q&As relating to the publication.

Insurance and reinsurance undertakings are required to establish technical provisions for their insurance and reinsurance obligations. Under the Solvency II framework, those technical provisions will be discounted with risk-free interest rates. The Solvency II Directive requires EIOPA to publish risk-free interest rate term structures for that purpose. These structures will change over time depending on market parameters (in particular, the level of market interest rates). The purpose is to enable undertakings and supervisors to better assess the risks posed by changes in market interest rates.

There will be risk-free interest rates term structures for 53 countries with two sets of term structure for each country in relation to the interest rates with and without volatility adjustment. The technical documentation explains the inputs, assumptions and methodology used by EIOPA to calculate the technical information, as envisaged in Recital 23 of the Commission Delegated Regulation supplementing the Solvency II Directive (Regulation 2015/35)

From January 2016, insurance and reinsurance undertakings will have to use the updated term structures for the calculations of the technical provisions under Solvency II. EIOPA has decided to publish the technical information and documentation in advance of their implementation date for the Solvency II regime to assist insurance and reinsurance undertakings with their preparations. In addition, some approval procedures will commence in April 2015 (including the use of internal models to calculate capital requirements).

The corresponding technical information as at 31 January 2015 and 28 February 2015 was added on Friday 6 March 2015, and from now on the data will be published on a monthly basis.

(x) EIOPA publishes symmetric adjustment of Solvency II equity capital charge

On 4 February 2015, EIOPA published technical information on the symmetric adjustment of the equity capital charge for Solvency II in order to assist insurers in calculating their Solvency II positions as at 31 December 2014 and 31 January 2015. This information will be updated on a monthly basis from March 2015 onwards. A certain amount of regulatory capital is required to be held by (re)insurance undertakings using the standard formula in order to compensate for losses in the value of equities in adverse scenarios. The calculation of the symmetric adjustment of the capital charge is based on the behaviour of an equity index built by EIOPA exclusively for that purpose.

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

On 6 March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) has updated its Solvency II Directive (2009/138/EC) reporting format webpage with revised information on the data point model ("**DPM**") and XBRL taxonomy design that would have been developed in accordance with its guidelines on the submission of information to National Competent Authorities ("**NCAs**").

The updated webpage contains links to a zip package containing the updated XBRL taxonomy (version 1.5.2.c). The webpage explains that this version includes corrective changes in the DPM and the taxonomy that are not impacting the instance compatibility with version 1.5.2.b. It also includes a zip package containing a DPM dictionary and annotated templates, a zip package containing sample XBRL instance documents and a timeline for the taxonomy project.

In addition to the above EIOPA has published a paper on the DPM and XBRL taxonomy framework architecture (dated 28 February 2015). The paper presents the data modelling approach and XBRL taxonomy design employed to capture the information required by Solvency II.

Future development will be focused on the full version of the taxonomy (the target taxonomy), as a result, the principles, rules and design approaches described continue to be subject to review, and should not be treated as the final decisions for the target full Solvency II taxonomy. Following this, EIOPA issued a press release on 13 March 2015 that it has published its new version of its Solvency II DPM and XBRL taxonomy and that it plans to release the first full public working draft of the taxonomy at the beginning of April.

(xii) EIOPA final reports on Solvency II equivalence assessments of Bermuda, Japan and Switzerland

On 11 March 2015, EIOPA published final reports (all dated 30 January 2015) on third country equivalence assessments for Bermuda, Switzerland and Japan.

EIOPA consulted on these reports in December 2014 where the Swiss final report remained unchanged, the Japanese final report had a limited number of changes made to it with some changes being made to the Bermuda final report relating to factual accuracy. The reports have been adopted by the Board of Supervisors of EIOPA and submitted to the European Commission.

The reports will allow the European Commission to take fully-informed decisions in 2015 in relation to these third countries' regimes. In the press release published with the reports, EIOPA stated that the Solvency II equivalence criteria is 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 following is a link that will allow you to view all three reports:

https://eiopa.europa.eu/Pages/News/EIOPA-publishes-the-Final-Reports-on-full-equivalence-assessments-of-Bermuda-Japan-and-Switzerland.aspx

(xiii) EIOPA final reports on Guidelines on a system of governance and own risk and solvency assessment (the "Guidelines")

On 3 February 2015, EIOPA published two final reports relating to the Guidelines required under the Solvency II Directive (2009/138/EC). The final reports were both dated 28 January 2015. The first report is based on Guidelines on a system of governance (EIOPA-BoS-14/253). The Guidelines are addressed to NCAs to:

- Set out the requirements for the sound and prudent management of undertakings, without unduly restricting them in choosing how to organise themselves; and

- Provide guidance on the regular review of the system of governance and the proper documentation.

The second final report is based on Guidelines on own risk and solvency assessment ("**ORSA**") (EIOPA-BoS-14/259). The Guidelines which are addressed to NCAs to:

- Provide for a sound and prudent management of undertakings through a better understanding of the undertaking's overall solvency needs and capital allocation, as well as the interrelation between risk and capital management in a forward looking perspective; and
- Provide an additional perspective of solvency assessment by assessing the undertakings risk profile against the assumptions underlying the calculations of its regulatory capital requirements with a view to checking whether the risk profile is adequately covered by the Solvency Capital Requirement.

The Guidelines also contain EIOPA's feedback statements to the consultation paper published in June 2014. Within two months of the Guidelines being issued, each NCA must confirm whether it complies, or intends to comply, with the guidelines. In the case where a NCA does not comply or does not intend to comply, it must inform EIOPA stating the reasons for non-compliance.

(xiv) Responses to EIOPA consultation on second set of Solvency II implementing technical standards and guidelines

On 19 March 2015, EIOPA updated its webpage to include the responses received to its consultations on the second set of draft implementing technical standards ("**ITS**") and guidelines required under the Solvency II Directive (2009/138/EC). Respondents to the consultations include Insurance Europe and Insurance and Reinsurance Stakeholder Group ("**IRSG**").

(xv) Solvency II Implementing Regulation on ITS own internal model, group internal model and special purpose vehicles published in OJ

On 20 March 2015, the following three Commission Implementing Regulations laying down implementing technical standards ("**ITS**") required under the Solvency II Directive (2009/138/EC) were published in the Official Journal of the EU ("**OJ**"):

- **Commission Implementing Regulation (EU) 2015/460** laying down ITS with regard to the procedure concerning the approval of an internal model;
- **Commission Implementing Regulation (EU) 2015/461** laying down ITS with regard to the process to reach a joint decision on the application to use a group internal model; and

- **Commission Implementing Regulation (EU) 2015/462** laying down ITS with regard to the procedures for supervisory approval to establish special purpose vehicles ("**SPVs**") as well as set out formats and templates for information to be reported by SPVs.

The Implementing Regulations, which relate to Article 114(2), 231(4) and 211(2) of the Solvency II Directive respectively, are based on the draft ITS that EIOPA issued to the European Commission. EIOPA published its final draft IT'S in October 2014. The European Commission adopted the Implementing Regulation on 24 March 2015. On 19 March 2015, it adopted the Implementing Regulations based on the first three draft sets of ITS submitted by EIOPA in October 2014. The regulations all entered into force on 21 March 2015, the date after their publication in the OJ.

(xvi) EIOPA reports on progress in the pre-application process for internal models under Solvency II

EIOPA published a Progress Report (dated 17 December 2015) on 20 March 2015 on the Follow-up to the Peer Reviews on Pre-application for Internal Models under the Solvency II framework.

The report aims to analyse enhancement of supervisory practices related to the assessment of internal models during the pre-application process under the Solvency II framework. Two peer reviews on pre-application of internal models were completed in mid-2013, and EIOPA concluded the follow-up between Quarter 1 and Quarter 3 of 2014.

According to the Progress Report, the majority of ESMA's recommendations have already been followed-up whilst those remaining are planned to be implemented by mid-2015 at the latest. EIOPA notes that the implementation of actions taken by NCAs could be assessed by a further follow-up. As for actions that certain NCAs have committed to take in 2014-15, the respective NCAs (as well as EIOPA) are expected to inform the EIOPA Review Panel about the action taken by mid-2015. EIOPA's Centre of Expertise has also taken actions on all the recommendations address to it.

A copy of the Progress Report is available via the following link:

https://eiopa.europa.eu/Publications/Reports/Progress%20Report%20on%20the%20Follow-up%20to%20the%20Peer%20Reviews%20IntMod.pdf

(xvii) EIOPA announces Solvency II co-ordination arrangements signed

On 27 March 2015, EIOPA published a press release announcing that co-ordination arrangements have been signed for colleges of supervisors of insurance groups with internal models. The press release states that these arrangements are important for the successful introduction of the Solvency II Directive (2009/138/EC) as they lay down the basis for the future co-operation within colleges, including their decision making processes.

A copy of the press release is available via the following link:

https://eiopa.europa.eu/Pages/News/Coordination-Arrangements-signed-for-Colleges-of-supervisors-of-insurance-groups-with-internal-models-important-step.aspx

(xviii) EIOPA consults on Solvency II ITS on information exchange between supervisors

On 27 March 2015, EIOPA published a consultation paper on the proposal for implementing technical standards ("**ITS**") on the procedures and templates for submission of information to the group supervisor as well as the exchange of information between supervisory authorities.

The consultation paper contains draft ITS which aim to facilitate the information exchange between supervisors. The procedures and templates are designed in order to ensure that supervisors in their daily business can take into account the nature, scale and complexity of a group, the availability and type of information, as well as the most recent and relevant data.

The procedures and templates are for use by supervisory authorities in the college of supervisors who decide, as part of a co-ordination arrangement, on the information needed for its activities, under Article 357 of Commission Delegated Regulation, which supplements the Solvency II Directive. The consultation closes on 22 May 2015 and any comments must be sent to EIOPA.

In a press release issued by EIOPA, it states that they will send the ITS to the European Commission by 30 June 2015 for final endorsement.

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

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-002_ITS_Info_exchange.pdf

(xix) Solvency II Newsletter

The Central Bank published its March edition of the Solvency II newsletter on 31 March 2015. It states that from 1 April 2015, the Central Bank will accept formal Internal Model applications as well as applications relating to the approval processes outlined in the recently published Information Notes which are published on the Central Bank website. It has stated that the Central Bank will publish a Consultation Paper in early April on the Role of the Actuary.

In response to the feedback received from the consultation paper on National Specific Templates ("**NST's**"), the Central Bank has decided that high impact undertakings and variable annuity undertakings will provide NST's. Reinsurance undertakings and Medium High undertakings will not be required to provide NST's, however this may be subject to future change. A detailed feedback statement from the recent Consultation on National Specific Templates will be published on 23 April 2015.

The newsletter states that the European Central Bank ("**ECB**") and EIOPA are working closely in order to align the new ECB statistical reporting requirements with the Solvency II reporting requirements. In order to minimise the reporting burden on the insurance industry, the ECB Regulation (ECB/2014/50) allows National Central Banks to derive the necessary statistical information, where possible, from data reported for supervisory purposes under the EU's Solvency II framework. The Central Bank has chosen to take advantage of this and derive the ECB add-on templates in order to avoid introducing any new reporting frameworks.

The Central Bank has issued a recommendation to undertakings who are applying to use an internal model in order to calculate their Solvency Capital Requirements, stating that they must submit, at a minimum, documentary evidence that the internal model fulfils the requirements set out in Article 101 and 120 to 125 of Directive 2009/138/EC (the requirements of a partial internal model are set out in Article 113 of Directive 2009/138/EC).

The newsletter can be accessed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20-%20March%202015.pdf

EIOPA Update

(i) EIOPA compliance tables relating to guidelines on use of the LEI

EIOPA has updated its webpage on its guidelines on the use of the legal entity identifier ("**LEI**") to include links to its compliance reports submitted to it by National Competence Authorities ("**NCAs**"). According to EIOPA, NCAs should ensure that all institutions under their supervisory remit obtain a LEI code. The use of LEI will apply to all information collected by EIOPA including Solvency II reporting and registers. The reports confirm the NCAs' compliance or intention to comply with the LEI guidelines which became applicable on 31 December 2014.

The compliance tables and LEI guidelines can be viewed through the following link;

https://eiopa.europa.eu/Pages/Guidelines/Guidelines-on-the-use-of-the-Legal-Entity-Identifier.aspx

(ii) Report on Investment options for occupational DC scheme members

On 28 January 2015, EIOPA published a Report on Investment options in the interest of occupational DC scheme members (the "**Report**"). The Report outlines the choices available to members of occupational DC pension schemes in the European context regarding investment in their retirement plans. The Report highlights the main issues that national supervisors strive to address in order to ensure the making of effective investment decisions. Effective investment decisions are decisions made in the interest of members, working towards ensuring a sustainable level of pension income.

The analysis of the information provided by Member States has shed light on the following issues in occupational DC pension schemes, which EIOPA will consider moving forward and may also require further attention from policy makers;

- Better mechanisms and methods of improving suitability of investment options compared to target members' risk and return characteristics;
- Methods of supporting third parties (e.g. employers) who make or frame investment decisions on behalf of members , where relevant;
- Improved mechanisms for providing standardised and comparable information to help members making better investment decisions, in case they have to make such decisions.

The Report is available via the following link:

https://eiopa.europa.eu/Publications/Reports/2015-01-29_Final_report_on_investment_options.pdf

(iii) Year – end Report on Functioning of Colleges and Accomplishments of Action Plan

On 20 February 2015, EIOPA published its year-end report on the functioning of colleges of supervisors and accomplishments of its 2014 action plan for colleges.

The report concludes that:

- In most countries supervisory colleges have developed in line with targets regarding information exchange, risk assessment, development of emergency plans and coordination arrangements;
- The implementation of the Solvency II preparatory guidelines will require significant further attention both from NCAs and insurance groups;

- Ambitious group supervision and colleges require proof resourcing. EIOPA will focus its support on colleges to ensure that consistency of supervisory practices within Solvency II; and
- A review of the 2014 action plan shows that, although a lot of progress has been made, a minority of the 92 colleges are on track on all tasks.

EIOPA plans on working closely, in both an informal and a formal way, with group supervisors and NCAS to improve the status and quality of the college' work. EIOPA's 2015/2016 action plan was launched in October 2014. To view the year-end report, click on the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-15-207_End-year_report_on_Functioning_of_Colleges_and_Accomplishments_of_Action_Plan_2014_published.pdf

(iv) Harmonisation of Recovery and Resolution Plans

On 6 February 2015, EIOPA wrote to the European Commissioner regarding its views on the need for further harmonisation of recovery and resolution laws.

In the letter, EIOPA states that there are substantial differences across countries in terms of the extent to which recovery and resolution powers are available to NCAs and whether such powers can be used in a preventive way or only in resolution. EIOPA state that when looking across jurisdictions, there is no common EU Framework available to all NCAs, which means any national solutions will more than likely lead to inconsistencies which will increase difficulty of coordinated actions in crisis situations in the future.

EIOPA is also concerned that the likelihood of the risk of a sharp reversal in asset prices, along with the prospect of a prolonged period of very low interest rates will pose severe challenges to the insurance sector as it was concluded in the recent EIOPA stress test. This in turn could impact individual undertakings as well as certain business models in life insurance in general. In order to have practical tools available to handle the possibility of the "double hit" scenario emerging, the development of recovery plans is extremely relevant regardless of whether undertakings are systemically important or not.

Lastly, EIOPA mentions the role of the Insurance Guarantee Schemes in the broader context of recovery and resolution policy and the inconsistent treatment of policy holders across Member States. It states that not all Member States dispose of guarantee funds and the existing schemes do not provide the same scope or coverage. The lack of harmonisation in this area poses problems, from a policy holder protection perspective, in the case of winding-up of an insurance undertaking.

On 27 March 2015, EIOPA published its final report (EIOPA-BoS-15/052) (the "**Report**") setting out its technical advice to the European Commission on its recovery plan, finance scheme and supervisory powers in deteriorating financial conditions under the Solvency II Directive (2009/138/EC).

EIOPA was required to develop draft Regulatory Technical Standards ("**RTS**") to specify the recovery plan and the finance scheme under Article 301b of Solvency II. In July 2014, the European Commission had requested EIOPA to provide technical advice on the recovery plan, the finance scheme and the Article 141 supervisory powers. As a result, EIOPA consulted on the draft RTS in December 2014 and results as published in the Report are as follows:

- The technical advice requested is set out in Annex 1 of the Report. In it, EIOPA identifies the recovery plans and finance schemes to be provided by insurers in case of non-compliance with solvency capital requirement ("**SCR**") and minimum capital requirement ("**MCR**") under Solvency II. It also identifies a list of supervisory measures that can be taken by supervisors in the case of deteriorating financial conditions of companies.

- Annex II of the Report provides a summary of the comments received on the consultation and the main conclusions EIOPA has drawn in result of the feedback. They include comments on the submission of estimates of the SCR and MCR whenever either the SCR or the MCR are not complied with, the use of reporting templates, sustainable recovery, prospective eligible own funds and group issues.

EIOPA issued a press release with the Report which states that they believe the provisions in the advice will allow for a quick and precise supervisory response to be applied when interested policy holders are at a risk due to the delicate financial situation in the insurance company.

A copy of the Report is available via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-052_Final-Report_Advice_Recovery_for_Publication_27032015.pdf

(v) EIOPA published report on costs and charges of Institutions for Occupational Retirement Provisions

On 7 February 2015, EIOPA published a report on Costs and Charges of Institutions for Occupational Retirement Provisions ("**IORPs**").

Costs and charges are a key issue when considering the value for money or affordability that IORPs deliver, since these may have an important, and potentially detrimental, impact on the accrued benefits or calculated contributions. EIOPA undertook a fact-finding mapping exercise to gather information on existing practices and approaches in Member States in respect of costs and charges faced by members and beneficiaries of IORPs, as well as what costs are present in Member States.

EIOPA considers it to be beneficial for all parties that bear charges and costs in IORPs if all costs and charges within the value chain are disclosed in a transparent and comprehensive manner to the parties bearing them. When this is the case, those parties are able to assess whether the costs and charges they are paying represent good value for money, and exert market pressure on costs where necessary. In addition, EIOPA state that NCAs should have effective means to assess costs charges to be able to judge how these affect value for money or the affordability of the pension schemes provided.

The full report is available via the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-14-266-Final_report_on_costs_and_charges_of_IORPs.pdf

(vi) Infrastructure investments by insurers

On 4 February 2015, EIOPA announced that it is commencing a new work stream on infrastructure investments by insurers. This was announced following EIOPA's previous work on the regulatory treatment of long term investments and, in particular, the advice on high quality securitisations, EIOPA is now concentrating its analysis on a more granular treatment of infrastructure investments. In particular, EIOPA intends to:

- Develop a definition of infrastructure developments;
- Evaluate potential criteria for a new class of long-term high quality infrastructure assets; and
- Examine the risk profile and prudential treatment of infrastructure investments within the Solvency II regime.

EIOPA plans to actively engage with stakeholders in order to the produce the best possible outcomes on this challenging task. It is organising a Roundtable event with prominent and high level representatives from public authorities, insurance industry, infrastructure industry, asset management and academia with the objective to exchange views.

According to EIOPA's website, it believes that the knowledge and experience of stakeholders will provide valuable input in order to achieve a sound a prudent treatment of insurer's investment in infrastructure projects. Following this, on 27 March 2015, EIOPA published a discussion paper on infrastructure investments by insurers (EIOPA-CP-15/003) which reflects the above views. The consultation period will end on 26 April 2015.

A copy of the discussion paper is available via the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-003_Discussion_paper_on_Infrastructure_Investments_for_public.pdf

(vii) Conflicts of interest in insurance-based investment product sales

EIOPA published its final report and its technical advice to the European Commission, regarding conflicts of interests in sales of insurance-based investment pods on 4 February 2015.

The report summarises the feedback received on EIOPA's 2014 consultation and its key conclusions based on these. The report includes key recommendations and technical advice requiring clear disclosure of inducements, ensuring that such inducements do not affect the insurance intermediaries and insurers' duty to act in the best interests of consumers and for insurers/intermediaries to put in place an effective written conflicts of interest policy.

Click on the following link in order to view the final report and technical advice:

https://eiopa.europa.eu/Pages/News/EIOPA-provides-advice-to-the-European-Commission-on-conflicts-of-interest.aspx

(viii) EIOPA updates risk dashboard – March 2015

On 20 March 2015, EIOPA published an updated version of the risk dashboard (EIOPA-FS-15/209), which takes the form of a presentation.

In the March 2015 risk dashboard, EIOPA states that the risk environment facing the insurance sector remains very challenging. Among other things, based on indicators for Quarter 4 of 2014, the dashboard lists the following points of interest:

- Probability challenges remain, especially for life insurance companies. EIOPA draws attention to issues faced by insurers that have sold products with guaranteed returns;
- Although Solvency I figures are robust, 14% of the core stress participants in the 2014 EIOPA stress test would have a Solvency Capital Requirement ("**SCR**") ratio below 100% if calculated on a Solvency II bases;
- The score assigned to interlink ages and imbalances is the only score that has deteriorated since the December 2014 risk dashboard; and

- In 2014, insured losses were at their lowest levels since 2009.

The March 2015 Risk Dashboard is available via the following link:

https://eiopa.europa.eu/Publications/Standards/EIOPA-FS-15-209-PUBLIC_20032015.pdf

Insurance Mediation

(i) Insurance distribution in the single market- meeting consumers' needs in the internet age

On 30 January 2015, the Commissioner responsible for Financial Stability, Financial Services and Capital Markets Union delivered a speech to the mid-term meeting of BIPAR (the European Federation of Insurance Intermediaries).

The Commissioner outlined that the revised Insurance Mediation Directive (also known as IMD2) has moved and progressed considerably in recent months and that he is also confident that the trilogue negotiations between the Parliament, Council and the Commission can be finalised under the Latvian Presidency during the first half of 2015.

The Commissioner pointed that "there are many differences between insurance distribution systems in the EU Member States and therefore a balanced and flexible approach is required to take into account those different traditions and practices". One of the main provisions of the new Directive will be that it will create a level playing field so that whatever kind of insurance is being sold and how it is being sold, the same rules will apply. This will allow for transparency as well as helping to build trust that the products that are being recommended are not just those that give the adviser the highest commission.

In order to read the speech in full, click on the following link:

http://europa.eu/rapid/press-release_SPEECH-15-3981_en.htm

Packaged Retail Investment Products (PRIIP KID Regulation)

(i) Insurance Europe publishes its final response to the ESAs

On 17 February 2015, Insurance Europe published its final response to the Joint Committee of the European Supervisory Authorities (the "**ESA's**") November 2014 discussion paper on key information documents ("**KIDs"**) for packaged retail and insurance-based investment products ("**PRIIPs"**).

Insurance Europe has stated that it believes that it is important to apply a clear and comparable cost indicator and clearly distinguish between costs and premiums, and to avoid confusing duplication of pre-contractual information.

Insurance Europe's response to the ESA's discussion paper can be accessed via the following link:

http://www.insuranceeurope.eu/uploads/Modules/Publications/response-to-esas-on-kid-for-priips.pdf

European Market Infrastructure Regulation ("EMIR")

(i) Update on implementation schedule for margin requirements for non-centrally cleared derivatives

The Basel Committee on Banking Supervision ("**BCBS**") and the International Organization of Securities Commissions ("**IOSCO**") released revisions to the framework for margin requirements for non-centrally cleared derivatives on 18 March 2015. The revised framework is available on the websites of the Bank for International Settlements and IOSCO.

Recognising the complexity of implementing the framework, the BCBS and IOSCO have agreed to (i) delay the implementation of requirements to exchange both initial margin and variation margin by nine months; and (ii) adopt a phase-in arrangement for the requirement to exchange variation margin.

Relative to the 2013 framework, the revisions delay the beginning of the phase-in period for collecting and posting initial margin on non-centrally cleared trades from 1 December 2015 to 1 September 2016. The full phase-in schedule has been adjusted to reflect this nine-month delay. The revisions also institute a six-month phase-in of the requirement to exchange variation margin, beginning 1 September 2016.

The BCBS and IOSCO will also liaise with industry as market participants continue their work to develop initial margin models that will be required to comply with the margin requirements. This engagement will help ensure that emerging quantitative initial margin models are consistent with the framework but will not provide an explicit review or approval of any initial margin model.

(ii) Pension funds to benefit from a further two year exemption from central clearing requirements

The European Commission published a report on 3 February 2015 that recommends granting pension funds a two-year exemption from central clearing requirements for their over-the-counter ("**OTC**") derivative transactions. The report, which is based on an extensive study requested by the European Commission, concludes that central counterparties ("**CCPs**") need this time to find solutions for pension funds. At the same time, the report encourages CCPs to continue working on finding technical solutions in this important matter. Ultimately, the objective is that pension scheme arrangements ("**PSAs**") should use central clearing for their derivatives transactions, as is the case for other financial institutions.

Under current arrangements, PSAs – which encompass all categories of pension funds – would have to source cash for central clearing. Given that PSAs hold neither significant amounts of cash nor highly liquid assets, imposing such a requirement on them would require very far-reaching and costly changes to their business model which could ultimately affect pensioners' income. Current EU law provides for a temporary exemption from the clearing obligation until August 2015.

A press release issued by the European Commission is available at:

http://europa.eu/rapid/press-release_IP-15-3643_en.htm

(iii) ESMA publishes opinion on Draft Regulatory Technical Standards ("RTS") on the clearing obligation on interest rate swaps

As previously reported in our last update, ESMA submitted final draft regulatory technical standards ("**IRS RTS**") for the central clearing of Interest Rate Swaps ("**IRS**") for approval to the European Commission on 1 October 2014. 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.

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, (the "**Commission Modified RTS**"). In the letter the European Commission outlined certain changes which it considers were necessary to the IRS RTS which included postponing the start 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.

On 30 January 2015, ESMA published an opinion (the "**Opinion**") on the IRS RTS in response to the European Commission's letter of 18 December 2014. ESMA supports the European Commission's intention to postpone the start date of the frontloading obligation, as this should give counterparties sufficient time to determine whether contracts are subject to frontloading. However, ESMA believes that the European Commission's proposals relating to third country intra-group reporting are not appropriate from a legal perspective. The Opinion contains a second version of ESMA's draft RTS on the clearing obligation (the "**ESMA Modified RTS**"). On 9 March 2015, ESMA published a revised opinion on its Modified RTS however, the revised opinion does not change the ESMA Modified RTS.

The European Commission may now proceed to adopt the ESMA Modified RTS with the amendments it considers relevant (which may involve, as regards one or more of the issues identified above, reinstating the approach taken in the Commission Modified RTS) or reject it. Any adoption by the European Commission of the RTS must simultaneously be notified by it to the European Parliament and the Council, who then have a three-month period in which to object to the RTS, extendible by a further three months (which periods are reduced to one month, where the adopted RTS is the same as the ESMA Modified RTS). In the absence of such an objection, the RTS adopted by the European Commission will be published in the EU's Official Journal and will enter into force on the date set out in the RTS (currently 20 days following such publication). However, if either the European Parliament or the Council objects, the RTS will not enter into force, thereby further delaying the start of mandatory clearing within the EEA. As there is no legislatively prescribed timeline for dealing with such an eventuality, the potential extent of any such delay is unclear. In light of these delays the earliest that the clearing obligation could come into effect for IRS is the end of 2015.

(iv) ESMA issues feedback statement on the central clearing of non-deliverable forwards

ESMA published a feedback statement on its consultation on the clearing obligation for non-deliverable forwards ("**NDF**") which it had to conduct under EMIR by 4 February 2015.

EMIR requires ESMA to draft technical standards regarding the clearing obligation of different derivative classes. This feedback statement summarises the responses received to the consultation.

Based on the feedback received, ESMA is not proposing a clearing obligation on the NDF classes at this stage. ESMA believes that more time is needed to appropriately address the main concerns raised during the consultation.

This decision is without prejudice to the possibility for ESMA to propose a clearing obligation on the NDF classes (by the submission of a final report to the European Commission including a draft RTS) at a later point in time in order to take into account further market developments.

(v) ESMA reviews CCP colleges under EMIR

On 8 January 2015, ESMA published a peer review report on its participation on the supervisory colleges established under EMIR to authorise and supervise EU-based CCPs.

The report is focused on the supervisory activities of competent authorities relating to the authorisation of CCPs under EMIR and is based on ESMA's experience in the initial phase of the college process, that is their establishment, their review of CPP authorisation applications, their review of the competent authorities' risk assessments, and their adoption of the joint opinions on CCPs' authorisations. ESMA is a member of every college to ensure the consistent and correct application of EMIR.

(vi) List of CCPs authorised under EMIR

On 22 January 2015, ESMA added Athens Exchange Clearing House to its list of authorised CCPs under EMIR. The updated list of CCPs can be found at this link;

http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf

(vii) ISDA proposes recovery and continuity framework for central counterparties

On 26 January 2015, the International Swaps and Derivatives Association ("**ISDA**") published a position paper setting out a proposed recovery and continuity framework for CCPs. Owing to their systematic importance, CCPs are required to develop recovery plans to enable them to recover from a threat to their viability and financial strength and ensure that they can maintain the continuity of critical services without requiring the use of resolution powers by authorities or resorting to public money.

The proposed framework comprises the following elements:

- Recovery measures;
- Transparency and timing;
- Appropriateness of utilising recovery measures beyond pre-funded resources;
- Segregated clearing services;
- Failure to re-establish a matched book;
- Compensation for loss allocation; and
- Condition for entry into resolution.

ISDA considers that the recovery of a CCP is preferable to its closure and believes that the proposed framework is comprehensive and will be effective.

(viii) Global Legal Entity Identity Foundation launches website

On 26 January 2015, the Global Legal Entity Identity Foundation ("**GLEIF**") published a press release announcing the launch of its website. The GLEIF was established by the Financial Stability Board ("**FSB**") and is overseen by the Regulatory Oversight Committee of the Global Legal Entity Identifier System ("**LEI ROC**").

During 2015, the website will enable market participants to access the authoritative database of all LEIs issued globally and associated reference data.

(ix) Implementation monitoring of the PFMI: Level 2 assessments for central counterparties and trade repositories in the European Union, Japan and the United States

The Committee on Payments and Market Infrastructures ("**CPMI**") and the IOSCO published three reports on selected jurisdictions' progress towards the implementation of the *Principles for Financial Market Infrastructures* ("**PFMI**") on 26 February 2015.

The reports focus on the implementation of the Principles (as contained in the PFMI) for CCPs and TRs in the European Union, Japan and the United States. The three Level 2 assessment reports are based on peer reviews of whether, and to what degree, the content of the jurisdiction's legal and regulatory or oversight framework is complete and consistent with the PFMI. CPMI and IOSCO consider the implementation monitoring exercise to be very important, not least given the increasingly significant role played by CCPs and TRs in the OTC derivatives market arising from the regulatory reforms agreed by the G20.

In each case, the assessment reflects the status of the jurisdiction's legal, regulatory and oversight frameworks as at 18 April 2014.

Overall, the reports demonstrate that the three jurisdictions have made good progress in implementing the Principles in their legal and regulatory or oversight frameworks. This is especially evident for CCPs, where the jurisdictions have generally developed frameworks that completely and consistently implement either all, or the majority, of the Principles applicable to systemically important CCPs. Jurisdictions' progress towards completely and consistently implementing the Principles for TRs has been more varied. Where appropriate, the reports highlight gaps and make recommendations for addressing them.

(x) Questions and Answers on the implementation of EMIR

ESMA published the 12th update to its Q&A for EMIR on 31 March 2015.

The revised Q&A includes further guidance on the authorisation of CCP services, the clearing obligation and the RTS on direct, substantial and foreseeable effect of contracts within the Union.

The updated Q&A can be found at this link:

http://www.esma.europa.eu/system/files/2015_655_qa_xii_on_emir_implementation_october_2014.pdf

International Association of Insurance Supervisors ("IAIS")

(i) Newsletter- January 2015- AIAS MMoU adds two signatories

In January 2015, the International Association of Insurance Supervisors ("**IAIS**") published a newsletter announcing that Michigan is the seventh U.S. state to be added as a signatory to the IAIS MMoU.

The newsletter states that previous MMoU signatories include, among others, Australia, Austria, Bermuda, Canada, Chile, California (USA), Connecticut (USA), Chinese Taipei, France, Germany, Hong Kong, Japan, the Netherlands, Qatar, Singapore, Switzerland, the United Kingdom and Virginia (USA).A complete list of signatories can be found on the IAIS website (www.iaisweb.org).

The newsletter published by the IAIS is available with the following link:

http://newsletter.iaisweb.org/db/6/1179.pdf

Market Abuse

(i) Benchmark Regulation

On 22 January 2015, the Presidency of the Council of the EU published a compromise proposal dated 21 January 2015 in respect of the proposed Regulation on indices used as benchmarks in financial instruments and financial contracts (the "**Benchmark Regulation**") (the "**Compromise Proposal**"). It is outlined in the cover note of the Compromise Proposal that additions to the previous compromise text are set out in bold underlined font and deletions are struck through. It is understood that this refers to the Council's compromise proposal on the Benchmark Regulation dated 8 December 2014.

On 13 February 2015, the Council of the EU published a press release outlining that COREPER has agreed, on the Council's behalf, the Council's negotiating position on the proposed Benchmark Regulation. The Council's General Secretariat had previously recommended on 6 February 2015, in an "I" item note (5921/15) from its General Secretariat to COREPER (Part 2) that COREPER agree on the negotiating mandate for the proposed Regulation, as set out in the Annex. The Council's press release confirms that COREPER has adopted the text in 5921/15 as the Council's negotiating position. The European Commission has approved the Council's action and has published a press release in this regard.

On 31 March 2015, ECON voted on the European Parliament's text for the Benchmark Regulation. ECON have addressed apprehensions regarding access to non-EU benchmarks by supplementing the European Commission's original equivalence framework with alternative options through which non-EU entities can provide their benchmarks in the EU. What constitutes the use of a benchmark for the purposes of the rules was also clarified. ECON has published a press release announcing that it has voted to adopt its draft report on the proposed Benchmark Regulation. This press release outlines that the text will be put to a vote by the European Parliament as a whole in order to consolidate its position prior to trialogue negotiations with the Council of the EU and the European Commission.

The European Parliament has indicated that it will consider the proposed Benchmark Regulation during its plenary session to be held from 7 to 10 September 2015.

On 6 January 2015, the Latvian Presidency of the EU published its work programme for the period 1 January to 30 June 2015. Amongst other initiatives, the Presidency intends to reach agreement with the European Parliament on the proposed Benchmark Regulation.

The Compromise Proposal can be accessed via the following link:

http://data.consilium.europa.eu/doc/document/ST-5453-2015-INIT/en/pdf

The Council's press release can be accessed via the following link:

http://www.consilium.europa.eu/en/press/press-releases/2015/02/150213-benchmarks-for-financial-instruments-council-agrees-stance-tighter-controls/

ECON's press release can be accessed via the following link:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20150330IPR39136/20150330IPR39136_en.pdf

(ii) ESMA technical advice on new market abuse regime under the market abuse regulation

On 3 February 2015, ESMA published a final report outlining its technical advice to the European Commission on potential delegated acts under the Market Abuse Regulation ("**MAR**") (the "**Final Report**").

On 12 June 2014, MAR was published in the Official Journal of the European Union and entered into force on 2 July 2014.

MAR aims to enhance market integrity and investor protection. To this end MAR updates and strengthens the existing framework by extending its scope to new markets and trading strategies and by introducing new requirements.

ESMA received two formal mandates from the European Commission to provide technical advice to assist the European Commission on the possible content of the delegated acts required by some of the provisions in MAR.

ESMA was required to provide technical advice by no later than 8 months after the entry into force of MAR.

The first mandate was published on 21 October 2013 and it covers the following topics:

- The specification of the indicators of market manipulation;
- The establishment of a minimum threshold of carbon dioxide equivalent and a minimum threshold of rated thermal input for the purposes of exemption with respect to the public disclosure of inside information;
- The specification of the competent authority for the notification of delays in the public disclosure of inside information; and
- The specification of the characteristics of a manager's transaction which trigger the notification duty, and specification of the circumstances under which trading during a closed period may be permitted by the issuer.

The second mandate was published on 2 June 2014, and refers only to the specification of procedures to enable reporting of actual or potential infringements of MAR.

The Final Report follows the Consultation Paper ("**CP**") published by ESMA on 15 July 2014, and is divided into five main sections, reflecting the mandates received:

- Specification of the indicators of market manipulation;
- Minimum thresholds for the purpose of the exemption for certain participants in the emission allowance market from the requirement to publicly disclose inside information;
- Determination of the competent authority for notification of delays in public disclosure of inside information;
- Managers' transactions; and
- Reporting of infringements.

The Final Report also contains, for each question originally included in the CP, the summary of the market participants' responses, as well as ESMA's own comments to the responses received.

The delegated acts should be adopted by the European Commission so that they enter into force 24 months after the entry into force of the MAR, taking into account the right of the European Parliament and Council to object to a delegated act within 3 months (which can be extended by a further 3-month period).

The Final Report can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-224.pdf

Prospectus Directive

(i) Response to ESMA's consultation paper on draft regulatory technical standards on prospectus related issues under the Omnibus II directive

The Omnibus II Directive introduced some important changes to the Prospectus Directive with the aim of further harmonisation in relation to prospectuses, their approval and publication, and to dissemination of advertisements.

To achieve those goals, ESMA has been mandated to draft RTS as part of assisting the European Commission with its advice. ESMA must deliver the RTS to the European Commission by 1 July 2015. To this end ESMA published a Consultation Paper on 25 September 2014, in respect of the draft regulatory technical standards on prospectus related issues under the Omnibus II Directive (the "**Consultation Paper**"). The deadline to submit responses to the Consultation Paper has now closed.

On 16 January 2015, the Securities Markets Stakeholder Group (the "**SMSG**") published a response to the Consultation Paper. Although the SMSG outlined in the response to the Consultation Paper that it supports almost all of ESMA's proposals in principle, the SMSG has highlighted those areas where different interpretations could result from the current wording of such proposals, with the aim of helping to achieve better clarity of wording. In some cases, the SMSG proposes smaller modifications and/or alternative wordings with the aim of building a strong and unified market across the EU, with the highest possible level of protection of both issuers and investors.

The response to the Consultation Paper can be accessed via the following link:

http://www.esma.europa.eu/system/files/2015-smsg-003_smsg_advice_prospectus.pdf

(ii) European Commission publishes consultation paper on the review of the prospectus directive

On 18 February 2015, the European Commission published a consultation paper on the review of the Prospectus Directive (the "**Consultation Paper**").

The issues outlined for discussion in the Consultation Paper are as follows:

- *When a prospectus is needed:* the European Commission is seeking respondents' views on a possible recalibration of the obligation for issuers to draw up a prospectus, based on the existing exemption thresholds, as well as the favourable treatment granted to debt issuers using high denominations per unit. Views are also welcome on whether a prospectus should be required for secondary issuances and for the admission of securities to trading on MTFs;
- *What information a prospectus should contain*: the Consultation Paper seeks feedback on ways to expand the existing tools that were intended to introduce some flexibility in the drawing up of a prospectus and enhance their effectiveness to the benefit of issuers. Issues raised include whether the proportionate disclosure regime should be modified or extended, whether there should be a simplified prospectus for SMEs and companies with reduced market capitalisation admitted to trading on an SME growth market and the possible limitations which could be introduced on prospectuses; and
- *How prospectuses are approved*: for example, the Consultation Paper questions whether the scrutiny and approval process should be made more transparent to the public and more flexible for the issuers seeking to react quickly to market windows. The role of national competent authorities in the approval process of prospectuses and the equivalence of third-country prospectus regimes is also considered.

Respondents are invited to reply to the Consultation Paper by 13 May 2015 at the latest.

The Consultation Paper can be accessed via the following link:

http://ec.europa.eu/finance/consultations/2015/prospectus-directive/docs/consultation-document_en.pdf

Pensions Update

(i) Insurance Ireland Welcomes Tánaiste's Announcement on Pensions

On 9 January 2015, Insurance Ireland made an announcement welcoming the Tánaiste's decision that the Government has given the go-ahead for an expert group to begin work on a new Universal Pension Scheme for private-sector workers in Ireland.

Insurance Ireland has stated that they understand from the Tánaiste's decision that the expert group will focus on a plan that will result in automatic enrolment in pension schemes for working people who are not State employed and do not have existing private pension schemes. Insurance Ireland has been keen to input into the policy formation in the area of Universal Pensions and has already been actively promoting this concept.

Throughout 2014, Insurance Ireland hosted two cross sectoral workshops, both of which were attended by Tánaiste, Joan Burton. As well as this, Insurance Ireland hosted a specifically commissioned report titled “A Universal Pension in Ireland”, which focused on policy and implementation issues based on international best practice. The report reiterated what is already known in the industry, for example, two few people are saving for their retirement and those that have are not doing so at the right level resulting in not enough retirement funds to meet their needs in the future. This was stated against the grim backdrop of Ireland’s public debt of €192 billion, with hidden pension liabilities of €440 billion; being made up of €116 billion in accrued liabilities relating to public sector pensions and potentially €324 billion in shortfalls to the Social Insurance fund.

Kevin Thompson, Chief Executive of Insurance Ireland, stated that “Our sector is keen to see swift action taken by Government to tackle the pension crisis, and we are keen to input our expertise and experience into devising the right Universal Pension Scheme for Ireland that will draw on the best examples from around the world and ensure that all Irish citizens are adequately provided for in their retirement.

(ii) Consumer Paper on a Report on Good Practices on individual transfers of supplementary occupational pension rights

On 29 January 2015, EIOPA published a Consultation Paper on Good Practices on individual transfers of supplementary occupational pension rights.

EIOPA has identified eight main impediments to cross-border transfers of supplementary pension rights, and a number of good practices to overcoming them. Good practices vary from the establishment of voluntary agreements covering as many providers as possible, the layering of information and the use of appropriate tools to provide additional relevant information. It is also stated good practice to facilitate the scheme member’s access to advice.

Transferability may also be improved when schemes communicate directly without involving the scheme members on the practicalities of the transfer execution and maintain reasonable time limits for the execution of transfers.

The Consultation has been published with the view to preparing a formal response from EIOPA to a call for advice from the European Commission. The deadline for providing comments on the paper is 10 April 2015.

To view the Consultation Paper, click on the following link -

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-001_Pensions_Transferability_Final.pdf

(iii) Occupational Pension Schemes (Section 50 and 50B) (Amendment) Regulations, 2015

On 22 January 2015, the Minister for Social Protection, Joan Burton, signed the Occupational Pension Schemes (Section 50 and 50B) (Amendment) Regulations, 2015 (the "**Regulations**").

Article 2(1) of the Occupational Pension Schemes (Section 50 and 50B) Regulation, 2014 is amended by inserting the following after the definition of "direction"; whereby "representative group" means a group which:

- Represents at least 50% of members of a scheme –
  - (i) whose service in relevant employment has ceased, who have not reached normal pensionable age and who have an entitlement to a preserved benefit under the scheme, or
  - (ii) who are receiving benefits under a scheme or who have reached normal pensionable age; and
- Has notified the trustees that they represent those members.

Article 4(1) (b), Article 4 (2) (c), Article 5 and Article 6 are each amended by inserting "or any representative group" after "trade union".

The Regulation is available on the following link;

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0024.pdf

(iv) SI 43/2015- Occupation Pension Schemes (Revaluation) Regulations 2015

On 10 February 2015, the Minister for Social Protection, Joan Burton, in accordance with the powers conferred on her by section 5 and 33 (as amended by section 21 of the Pensions (Amendment) Act, 2002 (No. 18 of 2002)) of the Pensions Act 1990 (No. 25 of 1990), made the following Regulations;

- These Regulations may be cited as the Occupational Pension Schemes (Revaluation) Regulations 2015.
- In accordance with Section 33 of the Pensions Act, there shall be a 0.2% revaluation of preserved pension benefits for 2014.

The Regulations are available via the following link:

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0043.pdf

(v) The Pensions Authority publishes statistics for defined benefit schemes

On 4 March 2015, the Pensions Authority published for the first time a set of statistics for defined benefit ("**DB**") schemes which have been compiled from analysis of Annual Actuarial Data Returns ("**AADRs**").

Since 2012, trustees of DB schemes subject to the funding standard as set out in the Pensions Act have been required to submit an AADR to the Pensions Authority. The AADR includes details of the status of a scheme as to whether it is current, frozen or in wind-up and sets out the assets and liabilities for the scheme. In relation to the assets of a scheme, the actuary must report the breakdown of the assets across equities, bonds, property and cash. The report also classes the liabilities across the membership of the scheme broken down by active, deferred or retired members.

The Pensions Authority is publishing this data to increase the general understanding of the importance of the DB pensions sector and it intends to issue these statistics on an annual basis.

Some of the findings include:

- The total assets and liabilities of the 703 current and frozen schemes are respectively €51bn. and € 51.9 bn.
- The total assets and liabilities of the 50 largest schemes are respectively €34.8 bn. and €36.3 bn. This represents approximately 70% of the total liabilities of all active and frozen DB schemes.
- 41% of current and frozen schemes were reported to be non-compliant with the funding standard (287 of 703)
- Of the 287 non-compliant schemes, the majority have embarked on funding proposals designed to ensure that the scheme complies with the funding standard by an agreed date. The 'real' total deficit, i.e. excluding surpluses, is almost €5 billion, which is about 18% of liabilities of those schemes
- At the end of February 2015, there were 30 schemes where no funding proposal was in place. For each of these schemes, the Authority has begun the process of deciding whether to use its powers under the Pensions Act to direct trustees to reduce benefits or to windup the scheme.

Commenting on the data, the Pensions Regulator, Brendan Kennedy said that "the data published today demonstrates the continuing importance of DB pensions. Although most such schemes are closed to new members, and many are frozen, these schemes nonetheless represent by far the greater part of pension savings, and they will continue to be important for a long time to come".

A copy of the set of statistics is available via the following link:

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Defined_benefit_schemes_-_Review_of_2014_statistics.pdf

Health

(i) SI 612/2014-Health Insurance Act 1994 (Minimum Benefit) (Amendment) Regulations 2014

On 6 January 2015, the Minister for Health, Leo Varadkar, in exercising his powers under section 3 (amended by section 4 of the Health Insurance (Amendment) Act 2012)) and section 10 (amended by section 4 of the Voluntary Health Insurance (Amendment) Act 2008 (No.6 of 2008)) of the Health Insurance Act 1994 (No. 16 of 1994), published:

- The Health Insurance Act 1994 (Minimum Benefit) (Amendment) Regulations 2014, which came into operation on the 1 January 2015.
- In these Regulations, "Principal Regulations" means the Health Insurance Act 1994 (Minimum Benefit) Regulations 1996 (S.I. No 83 of 1996).
- Schedule A to the Principal Regulations is amended, in paragraph 1, by the substitution of an amended sub-paragraph for sub-paragraph (2) and by the substitution of an amended sub-paragraph of sub-paragraph (4).

The Regulation is available via the following link;

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0612.pdf

(ii) SI 613/2014-Voluntary Health Insurance (Amendment) Act 2008 (Appointment of date pursuant to subsection (5) (b) of section 2 of the Voluntary Health Insurance (Amendment Act 1996) Order 2014

On 6 January 2015, the Minister for Health, Leo Varadkar, in exercising his powers under section 2 (as amended by section 6 of the Voluntary Health Insurance (Amendment) Act 2008 (No. 6 of 2008)) of the Voluntary Health Insurance (Amendment) Act 1996 (No. 4 of 1996), published the Voluntary Health Insurance (Amendment) Act 2008 (Appointment of date pursuant to subsection (5) (b) of section 2 of the Voluntary Health Insurance (Amendment) Act 1996) Order 2014.

The 31 March 2015 is appointed pursuant to subsection (5) (b) of section 2 (as amended by section 6 of the Voluntary Health Insurance (Amendment) Act 2008 (No. 6 of 2008)) of the Voluntary Health Insurance (Amendment) ACT 1996 (No. 4 of 1996).

The Order is available via the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0613.pdf

(iii) SI 79/2015 Health Insurance Act 1994 (Open Enrolment) Regulations 2015

On 6 March 2015, the Minister for Health, Leo Varadkar, exercised his powers under section 3 (amended by section 4 of the Health Insurance (Amendment) Act 2012)) and section 8 (amended by section 4 of the Health Insurance (Amendment) Act 2014 (No.42 of 2014)) of the Health Insurance Act 1994 (No. 16 of 1994), published the Health Insurance Act 1994 (Open Enrolment) Regulations 2015, in which an "insured person" and an "undertaking" have both been defined in detail. Part 2 includes details about 'maximum waiting periods' for eligibility for payment under a health insurance contract.

The Regulation is available via the following link:

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0079.pdf

Fitness and Probity

(i) Performance Report on fitness and probity service standards performance

The Central Bank published a report on 'Fitness and Probity Service Standards Performance Report – July 2014' on 30 January 2015 and further amended it on 5 February 2015. The report sets out the Central Bank's performance against Service Standards it has committed to in respect of (i) processing of Fitness and Probity Pre-Approval Controlled Functions ("**PCFs**") Individual Questionnaire ("**IQ**") applications; and (ii) Authorisation of Regulated Financial Services Providers.

Section 1 reports on performance against the Fitness and Probity PCF service standards stating that the Central Bank exceeded targets for all four categories between 1 July 2014 and 31 December 2014.

The Central Bank has also stated in an Appendix the main reasons why PCF IQs continue to be returned as incomplete, as follows;

- Incorrectly answering yes to questions 1.4 and 1.5 and not completing Reputation and Character Section 5;

- Omitting 'Other relevant experience' from question 3.1 demonstrating the applicants experience in a particular sector and/or to a particular function;
- Incomplete documentation relating to compliance with the Minimum Competency Code, such as evidence of qualifications, grandfathering status, new entrant status, and proof of continuing professional development;
- Lack of supporting documentation in respect of a matter disclosed in Reputation and Character in section 5;
- For Passporting persons: Lack of documentation to demonstrate that the person is entitled under the laws of an EEA / EU member state to perform the equivalent to the PCF function;
- Incomplete list of directorships/senior positions provided by applicant in sections 6 and 9;
- IQ completed by and / or submitted by a person whose name does not match the name of the applicant or the name of the proposer and / or the proposer is not an approved person within the entity with the authority to submit the IQ.

Section 2 reports on performance against the Authorisation service standards, for the same period as section 1. It states that in total, sixteen applications were received between 1 July 2014 and 31 December 2014, and that all targets were exceeded. Applications however, were only received from Insurers and Investment Firms.

Click on the link below to view the performance report which is published on the Central Bank's website:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Service%20Standards%20Performance%20Report%20Jan%202015%20(REVISED%205%20Feb%202015).pdf

(ii) Fitness and probity frequently asked questions

The Central Bank published an amended set of Frequently Asked Questions ("**FAQ's**") on 18 February 2015 in order to address many of the commonly asked questions which have been raised in relation to operation of the Fitness and Probity Regime under Part 3 of the Central Bank Reform Act 2010 (the "**F & P Regime**"). The FAQs were previously updated in November 2014.

The amendments to the latest FAQs include Question 3.19 (of the previous FAQs) which has been removed. This question related to whether an individual who performs the role of Head of Compliance with responsibility for Anti-Money Laundering and Counter Terrorist Financing Legislation (PCF15) could also be designated as Head of Compliance (PCF12).

In addition, all references to Section 4 which consisted of 'Single Supervisory Mechanism Related Issues' have been removed from the FAQs.

Lastly, Question 8.13 (of the previous FAQs) has also been removed which related to whether you are able to obtain a Data Protection Disclosure from an Garda Siochana.

The amended FAQs for February 2015 can be accessed via the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Final%20FAQ%20-%20February%202015.pdf

Central Bank of Ireland

(i) Central Bank (Amendment) Bill 2014 Seanad Eireann second stage speech

On 22 January 2015, the members of Seanad Eireann met to discuss the Central Bank (Amendment) Bill (the "**Bill**"). The Government is bringing forward the Bill at the request of the Joint Committee of Inquiry into the Banking Crisis.

The Bill amends two main provisions, firstly, it amends Section 33AK of the Central Bank Amendment Act 1942 to allow the Central Bank to disclose confidential information to the Joint Committee of Inquiry under certain circumstances (as it stands, the Central Bank officials are subject to professional secrecy requirements, and could face criminal sanctions for sharing confidential information in this way) and secondly, it provides for the House of the Oireachtas to make Standing Orders setting out the sanctions to apply to members of the Houses for any failure to comply with these professional secrecy requirements. The purpose of amending the Standing Orders is to accommodate the constitutional position of the privilege of members of the Oireachtas which restricts the extent to which criminal sanctions could be applied.

The Bill states that the above case does not apply for any other persons who would disclose confidential information.

Under the EU Treaties, Ireland is required to consult formally with the ECB on any new legislative provisions relating to the Central Bank. The ECB have commented on the fact that the scope of section 33AK (6) of the Central Bank Act 1942 should be broadened to comply with Article 37.2 of the Statue of the European System of Central Banks ("**ESCB**"). This would have the effect of removing any ambiguity over the scope of professional secrecy requirements pertaining to persons who should receive information disclosed by the Central Bank.

The ECB opinion further notes that under the Capital Requirements Directive, specific conditions rather than prohibitions also apply when disclosing confidential information relating to the prudential super supervision of institutions to parliamentary Inquiry committees. The ECB identifies these conditions as follows:

- The parliamentary enquiry committee must have a 'precise mandate' under national law;
- The information must be 'strictly necessary' for fulfilling that mandate;
- Persons with access to the information are subject to professional secrecy requirements under national law at least equivalent to those referred to in the Capital Requirements Directive;
- Where the information originates in another Member State, that it is not disclosed without the express agreement of the competent authorities which have disclosed it and, solely for the purposes for which those authorities gave their agreement; and
- To the extent that the disclosure of information relating to prudential supervision involves processing of personal data, any processing by the parliamentary enquiry committee must comply with relevant national transposing law.

The Bill has since been amended, received for final consultation and passed by the Seanad.

The Bill (with amendments) is available via the following link:

http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2014/10814/document1.htm

(ii) Central Bank's enforcement priorities for 2015

The Central Bank has published its statement of enforcement priorities for 2015 (the "**Statement**"). The publication of the Statement provides for an opportunity for regulated entities to assess and raise compliance standards, where necessary, in key risk areas. In addition, the Statement also provides regulated entities with a list of the Central Bank's planned priorities for enforcement activity for 2015.

The Central Bank publishes enforcement priorities annually in order to help promote compliance in areas that are of greatest importance to the Central Bank.

The Enforcement Priorities for 2015 are:

- **All Sectors**:
  i. Prudential Requirements
  ii. Systems and Controls
  iii. Provision of timely, complete and accurate information to the Central Bank
  iv. Appropriate governance and oversight of outsourced activities
  v. Anti- Money Laundering/ Counter Terrorism Financing Compliance

- **MiFID Firms**
    i. MiFID Conduct of Business Rules
    ii. Client Asset Requirements

- **Credit Unions**
    i. Governance

- **Consumer Protection**
    i. Code of Conduct on Mortgage Arrears
    ii. Suitability of Sales
    iii. Fair Treatment of Customers

- **Low Impact Firms**

The Central Bank has stated that in the context of low impact firms, it has allocated resources for enforcement actions against firms with a low impact PRISM rating on the Central Bank's risk assessment framework. The Central Bank will utilise its enforcement powers in order to remind all firms irrespective of their nature, scale or complexity that all regulatory requirements must be compiled with and that non-compliance is regarded as a serious issue.

For further detail, please refer to the following Dillon Eustace article:

http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/Enforcement%20Priorities%202015.pdf

(iii) Central Bank publishes service report on regulatory transactions

On 30 January 2015, the Central Bank published its Regulatory Transactions Service Standards Performance Report (the **"Report"**) for the period from July 2014 to December 2014. The purpose of the Report is to demonstrate the turnaround time of the Central Bank in:

- Processing IQs in respect of persons proposed for PCFs; and
- Authorisation of regulated financial service providers.

The Report indicates that the Central Bank exceeded its performance targets in six of the seven targets set and that the Central Bank processed over 92.51% of 'standard' IQ applications (i.e. non QIFs and/or individuals not previously approved) within 15 days. The Central Bank failed however to reach its target of processing over 75% of authorisation applications within 3 months of completion, instead only reaching a figure of 60%.

The Report also contains an appendix in which it lists the reasons for returning IQ applications as incomplete.

A link to the report is available below:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Service%20Standards%20Performance%20Report%20July%202014.pdf

(iv) Central Bank publishes Consumer Protection Outlook Report

The Central Bank published its Consumer Protection Outlook Report on 6 February 2015 (the "**Report**"). The Report sets out a number of consumer protection themes that the Central Bank will be focusing on throughout 2015. It also outlines the risks associated with its consumer protection objectives, for example if the right product is sold to the right consumer in the right way.

The Report sends a clear message to all regulated firms of what is expected of them. This includes a consumer-centered culture from the top of the organisation, right through to the staff delivering products and services to their customers. The Report is structured by dealing with each of the 'five C's' – consumer, culture, confidence, challenge and compliance. The Report is aimed at all regulated firms and is accompanied by the Central Bank's expectations that regulated firms must act in the best interest of consumers at all times.

Some of the key priorities contained in the Report include:

- Additional protections for Small Medium Enterprises when accessing credit;
- Supervisory work on firms that are not meeting minimum consumer protection standards;
- Reviews and inspections to be carried out in order to support consumer protection objectives;
- Continuing to work with the Department of Finance to secure the necessary legislation to extend the same protections of Irish financial services legislation (including the Code of Conduct on Mortgage Arrears) to borrowers whose loans are sold on to non-regulated lenders. To this end, the Consumer Protection (Regulation of Credit Servicing Firms) Bill 2015 (the "**Bill**") was published on 14 January 2015 (see further detail below);
- Building on the Central Bank's engagement with Boards and CEOs, ensuring that they can demonstrate delivery of meaningful consumer outcomes based on a better understanding of the needs, expectations and experiences of their customers; and

- Monitoring and challenging how firms are responding to the Central Bank's 2014 guidance on appropriate variable remuneration arrangements in recognition of the impact of incentive structures on culture and practices.

The Bill aims to ensure that borrowers have the benefit of the regulatory safeguards that they enjoyed prior to the sale of their loans, including pursuant to the Central Bank Code of Conduct on Mortgage Arrears, Code of Conduct for Business Lending to Small and Medium Enterprises and the Consumer Protection Code (together the "**Codes**") as well as the right to make complaints to the Financial Services Ombudsman (the "**FSO**"). It is proposed that the legislative changes envisaged by the Bill will be brought about by way of amendment to the Central Bank Acts 1942 – 2014.

The Bill was published following the public consultation conducted by the Department of Finance in July and August 2014 (the "**Consultation Process**") on the initial draft of the proposed legislation, known as the "Consumer Protection on the Sale of Loan Books Bill 2014" (the "**Initial Proposals**"). The impetus to legislate in this area arose from the fact that the protections afforded to borrowers by the Codes, as well as borrowers' access to the FSO, no longer apply when their loans are transferred to unregulated entities.

The Initial Proposals had sought to regulate the ownership of retail credit as a means of ensuring continued regulatory protections for natural persons following the sale of their loans to unregulated purchasers.

On foot of the concerns raised as part of the Consultation Process, the Bill has moved away from the approach outlined in the Initial Proposals and now proposes to regulate the activity of "credit servicing" and the "credit servicing firms" engaged in such activity, being the "customer-facing" activity. Pursuant to the terms of the Bill, a holder of legal title to a credit, who is not already a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland, will only be subject to regulation if the credit servicing is not undertaken by: (i) a regulated financial services provider authorised by the CBI (or in another EEA country) to provide credit in Ireland or; (ii) an authorised credit servicing firm.

While the Bill does seek to address the issue of providing regulatory protection for consumers, it does require some further consideration and amendment. For example, certain types of corporate lending, and the ownership of such corporate loans that, up to now, would not have constituted regulated activities and which are expressly excluded from the scope of the Codes (such as syndicated lending and lending to SPVs) would become regulated pursuant to the terms of the Bill. This is concerning, especially given the need for SME credit presently.

As such, Dillon Eustace expects further engagement on the Bill before its enactment. An article prepared by Dillon Eustace on the Bill is available via the following link:

http://www.dilloneustace.ie/download/1/Publications/Banking%20and%20Capital%20Markets/The%20Consumer%20Protection%20(Regulation%20of%20Credit%20Servicing%20Firms)%20Bill%202015.pdf

The Central Bank Report is available via the following link:

http://www.centralbank.ie/publications/Documents/Consumer%20Protection%20Outlook%20Report%202015.pdf

(v) Reserving Requirements for Non-Life Insurers and Non-Life Reinsurers

On 25 March 2015, the Central Bank published a set of Frequently Asked Questions ("**FAQs**") for the 'Reserving Requirements for Non-Life Insurers and Non-Life Reinsurers'. These FAQs were published on the Central Bank website and accessible via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/reinsurance-companies/Documents/Reserving%20Requirements%20for%20Non-Life%20Insurers%20and%20Non-Life%20and%20Life%20Reinsurers%20–%20Frequently%20Asked%20Questions.pdf

Anti-Money Laundering/Counter-Terrorist Financing

(i) Endorsement of AML package

On 27 January 2015, the Presidency of the Council of the EU announced that it has endorsed the agreement reached with the European Parliament of the Fourth Money Laundering Directive ("**MLD4**").

Both the Committee on Economic and Monetary Affairs ("**ECON**") and the Committee on Civil Liberties, Justice and Home Affairs ("**LIBE**") also voted in favour of MLD4 and the revised Wire Transfer Regulation (the "**WTR**") according to a statement published on 27 January 2015.

MLD4's aim is to oblige EU Member States to keep central registers of information on the ultimate beneficial owners of corporate entities and trusts. The registers will be accessible to regulatory authorities and their financial intelligence units, obliged entities (such as regulated funds, investment firms and life insurance companies conducting customer due diligence) and the general public. To gain access to the registers, a person will need to demonstrate a legitimate interest in suspected money laundering or terrorist financing. It is also stated that provisions have been inserted into MLD4 in order to protect personal data.

Rules on politically-exposed persons ("**PEPs**") have also been clarified and when there is a high risk relationship with PEPs, additional measures should be put in place (i.e. to establish source of wealth and source of funds involved).

Following the recent terrorist attacks in Paris, the Council alongside the European Commission have stated that in order to enhance the efficiency of both MLD4 and the revised WTR, efforts need to be made towards:

- Speeding up national implementation of the new rules;
- Strengthening of the co-operation between member states terrorist financing 'financial intelligence units' ("**FIUs**"); and
- Addressing terrorist financing risks by way of EU's supranational risk assessment.

On 10 February 2015, the Council of the EU approved the political agreement reached within the European Parliament on MLD4. The Council's approval of the political agreement paves the way for the adoption by the European Parliament of the proposals, which is expected to take place in April 2015.

After that, the MLD4 text will be reviewed and revised by legal linguists, before being published in the Official Journal of the EU (the "**OJ**") around June 2015. Member States will have two years to transpose the Directive into national law.

(ii) Financial sanctions alert

The Central Bank published an article on 'EU Financial Sanctions' and 'Targeted Financial Sanctions' on 29 January 2015. The article outlines the obligations of EU Member States and entities incorporated or constituted under the law of a Member State as well as all persons and entities doing business in the EU, including nationals of non-EU countries and outlines the penalties to those who do not comply with either sanctions.

It states that pursuant to 'EU Financial Sanctions Regulations' a person is:

- Required to freeze all funds and economic resources belonging to, or owned or held by a natural or legal person, body or entity listed under the relevant EU Financial Sanctions Regulation (known as listed persons or entities);
- Prohibited from making any funds or economic resources (within the definitions contained in the appropriate EU Financial Sanctions Regulation) available directly or indirectly to or for the benefit of listed persons or entities; and
- Obliged to immediately provide to the Central Bank any information which would facilitate compliance with the EU Financial Sanctions Regulations, such

information to include, but is not limited to, notification of any action taken to freeze or unfreeze assets or economic resources pursuant to EU Financial Sanctions Regulations.

A breach of the provisions of the EU Financial Sanctions Regulations is considered a criminal offence. Any person guilty of an offence under the relevant statutory instrument, including a failure to comply with instruction issued by the Central Bank, is liable on conviction to imprisonment and/or a fine.

Pursuant to 'Targeted Financial Sanctions', to ensure that a designated person is not facilitating the financing of terrorism it should monitor both the EU and UN Sanctions list relating to terrorism as these lists are regularly updated and must be checked to ensure the latest one is available. The links to the following lists are below:

EU - Link to the consolidated list of persons, groups and entities subject to EU financial sanctions: http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm

UN - Link to the consolidated United Nations Security Council Sanctions List-: http://www.un.org/sc/committees/consolidated_list.shtml.

The Consolidated list maintained on this website was last updated on 2 January 2015, and supersedes all previous versions.

(iii) Central Bank publishes report on anti-money laundering/countering the financing of terrorism and financial sanctions compliance in the Irish banking sector

The Central Bank published its Report on 'Anti-Money Laundering/Countering the Financing of Terrorism ('**AML/CFT'**) and Financial Sanctions Compliance in the Irish Banking Sector' (the **"Report"**) on 26 February 2015. The Report sets out the deficiencies identified by the Central Bank in five different areas as well as expressing the Central Bank's expectations for further compliance in this area. The Report only deals with the Irish banking sector, however lessons can be learned for all other sectors including funds, investment firms and life assurance.

The Report is broken down into five key areas:

- *Governance and Compliance***:** The Report states that pursuant to Section 54(1) of the Criminal Justice Act 2010 (as amended) (the "**CJA**"), banks must adopt policies to prevent and detect the commission of Money Laundering/Financing Terrorism ("**ML/TF**"). Some inadequacies detected by the Central Bank under the remit of Governance and Compliance, along with expectations for improvement include incomplete and insufficient detailed risk assessments as well as policies and procedures that are not subject to regular review and some not sufficiently documented to demonstrate where current policies are appropriate and effective to manage such risks. Training records were also not sufficient to show who had completed training, with some board members having not participated fully;

- *Customer Due Diligence*: The Report states that banks are required to identify and verify customers before the establishment of a business relationship or carrying out any transaction or service. Several deficiencies identified in current due diligence processes involved a failure to update customer due diligence information and reassess the risks and in the context of new customers, risk assessment questions were very subjective which in turn gave rise to inconsistencies;
- *EU Financial Sanctions*: The Report states that Financial Sanctions are generally implemented into Irish law autonomously at EU level. Banks must ensure that they comply with all applicable financial sanctions. The Central Bank observed that the policies and procedures do not provide enough detail to gauge the banks' compliance programme requirements;
- *Identification and Escalation of Suspicious Transactions*: Deficiencies identified involved a failure to report as soon as practicable, failure to document the process of blocking an account or freezing a transaction on receipt of a court order despite the fact that section 41(1) of the CJA requires any suspicion to be reported as soon as practicable; and
- *Testing of AML/CFT and Financial Sanctions Systems:* It is very important that all systems used to facilitate the management and monitoring of ML/TF are operating correctly and efficiently, thus a key deficiency identified was that banks only performed very limited IT assurance testing on systems and controls.

In conclusion, Domhnall Cullinan, Head of Anti-Money Laundering at the Central Bank states that 'satisfactory processes and controls were found in place in areas. However, the number and nature of issues identified suggests that more work is required in Ireland to effectively manage Money Laundering and Terrorist Financing'.

The Central Bank hopes that its observations and expectations will be taken on board by all financial and credit institutions in Ireland.

(iv) FATF plenary meeting opens with terrorist financing high on the agenda

On 25 February 2015, Mr Michel Sapin, the French Prime Minister of Finance and Public Accounts opened the Financial Action Task Force (the "**FATF**") Plenary meeting which continued until the 27 February 2015.

The main issues dealt with during the meeting included:

- The issuing of a statement on FATF action on terrorist finance;
- The adoption and publishing of a report on the financing of the terrorist organisation Islamic State in Iraq and the Levant;

- The production of two public documents identifying jurisdictions that may pose a potential risk to the international financial system. These included jurisdictions with strategic AML/CFT deficiencies for which a call of action applies and jurisdictions with strategic AML/CFT deficiencies for which an action plan has been developed between them and the FATF;
- Receiving an update on AML/CFT improvements in Albania, Cambodia, Kuwait, Namibia, Nicaragua, Pakistan and Zimbabwe;
- The discussion of the fourth round mutual evaluation reports on compliance with the FATF Recommendations of Australia and Belgium;
- Increasing collaboration between FATF and the Egmont Group of Financial Intelligence Units, including a briefing by the Chair of the Egmont Group on recent developments in financial intelligence units;
- The reviewing of the voluntary tax compliance programmes in several jurisdictions;
- The continuation of its work on the issue of 'de-risking', in line with the effective implementation of a risk-based approach; and
- Building on the 2014 report on virtual currencies, the FATF wants to progress this issue for a decision at the scheduled June 2015 Plenary meeting.

(v) FATF to work on ensuring UN consolidated list

On 12 March 2015, the FATF published a speech given (on 10 March 2015) by Je-Yoon Shin, FATF Vice President, on the FATF's current agenda and priorities.

Among other things, Mr Shin comments on the FATF's action on terrorist financing. He explains that this area of work is fundamental to FATF as terrorism is an increasingly global problem that requires global action by a united international community. He explains that whilst this has been a priority for many years, FATF will enhance its focus on the freezing of terrorist assets without delay and implementation of on-going prohibitions. He refers to the United Nations who has recently created a consolidated sanctions list with the designated persons and entities from all the sanctions committees. The list is now published on the UN website.

Mr Shin explains that feedback from the private sector would be helpful to ensure that the list is "more useable" by the private sector. The FATF will facilitate this feedback process, as the consolidated sanctions list is important for effective implementation of the freezing of terrorist asset requirements.

Mr Shin closed his speech by saying that "it is important that we build a strong anti-money laundering/counter terrorism financing compliance culture to safeguard the integrity of our financial system. There is still much work to be done, and there will always be new threats to mitigate".

Also discussed throughout the speech were key areas of the Global Regulatory Arena, the Risk-Based Approach, De-risking and the FATFs Mutual Evaluation Process.

The full speech is available via the following link:

http://www.fatf-gafi.org/topics/fatfrecommendations/documents/je-yoon-shin-speech-japanese-regulatory-summit.html

Data Protection

(i) Data protection regulation

On 7 January 2015, German MEP Jan Philipp Albrecht, the European Parliament's lead rapporteur, warned that concerns raised by the UK, Germany and France expressed doubts as to whether or not the Regulation could be finalised and adopted before the end of 2015.

These comments follow previous statements with the intention of having the Regulation adopted by 2015. The concerns raised by Germany and France are primarily related with the "one-stop shop" approach proposed, which essentially enables international organisations to process personal data in EU Member States under the supervision of one single national data protection authority. The UK has also expressed concerns with the structure of the proposed reforms to the EU data protection regime which they believe should be affected by means of a directive and not a regulation. Their reasoning for this is because an EU directive has to be integrated into national laws of each Member State through legislation, where in comparison, an EU regulation automatically applies across the EU. The UK has also suggested watering down the meaning of 'consent' suggested by the Working Group. The UK suggests reverting to the definition of consent in Article 2(h) of the Data Protection Directive, effectively removing the requirement that 'unambiguous' consent is given.

The EU Council, which is comprised of the justice ministers of each EU Member State, is the only institution that has still not agreed on the Regulation, which must occur before the commencement of trilogues between the European Commission, the Parliament and the Council, to agree on the final working of the Regulation.

Mr Albrecht also referred to various differences of opinion between the EU institutions on the Regulation which need to be resolved before further progress can be made. It is hoped, however, that Mr Albrecht's comments will help to focus minds at both EU and national level on reaching agreement as to the form and content of the Regulation, and delivering on the commitment made by EU leaders in October 2014 to introduce the proposed reforms before the end of 2015.

(ii) ENISA recommendations for financial services sector on network and information security

The European Network and Information Security Agency ("**ENISA**") published a research report on 20 January 2015 on Network and Information Security ("**NIS**") in the finance sector including financial service activities.

The purpose of the report is to understand both the coverage of NIS obligations in the European regulatory landscape (both at EU and Member State level), and compare it with the industry's prospects. This comparison has led to a high-level overview of the situation and to recommendations on the alignment of policies and needs where possible.

The report provides relevant information at a strategic and governance level. It is primarily intended for Chief Information Officers/Chief Technology Officers in the Finance sector, NIS Experts in National Financial Supervisory Authorities, NIS Experts in the European System of Financial Supervision ("**ESFS**") (i.e. the EBA, ESMA and EIOPA), and Professional Associations.

It also includes four main recommendations for the finance sector:

- The EBA and ENISA should consolidate NIS obligations in supervisory guidelines;
- ENISA should establish guidelines on how NIS supervision practices apply by extension to their supply chain, including cloud providers that operate financial services;
- ENISA should establish guidelines summarising the key conditions for the adoption of cloud-based applications or services; and
- ENISA should support the ECB and the ESFS to organise regular and voluntary NIS stress tests in the finance sector.

ENISA is the centre of network and information security expertise for the EU and works to develop advice and recommendations on good practice in information security.

(iii) Irish data protection matters

The Irish Government has joined Microsoft in its landmark case against the US government in a bid to help stop the company being forced to hand over confidential data on Irish citizens. Data Protection Minister, Dara Murphy stated that this case involved "important principles of public policy that were at play" despite the fact that both governments have co-operated on criminal matters in the past. He also stated that "The right of individuals to the protection of their personal data is an essential foundation for modern society and the growing digital economy" and that "We must ensure that individuals and organisations can have confidence in the rules and processes that have been put in place to safeguard privacy".

Big tech firms including Apple and eBay have backed Microsoft by also handing in submissions against the US government.

(iv) Data protection challenges and themes for 2015

On 7 January 2015, Helen Dixon, the newly appointed Irish Data Protection Commissioner, highlighted several challenges facing the Office of the Data Protection (the "**DPC**") as well as outlining themes to be expected for 2015.

The Commissioner spoke about several comments that have been made from our EU counterparts claiming that:

- Ireland is facilitating forum shopping by data companies;
- The DPC is not as independent from government as it should be; and
- Ireland does not enforce data protection penalties against multinational companies.

The DPC responded to these comments by simply stating that these were issues of perception as opposed to reality.

However, to improve this perception the Commissioner highlighted that the DPC will not hesitate in sanctioning those who do not comply with data protection legislation. In addition, a number of measures are to be introduced throughout 2015:

- The development of media and PR activity by the DPC;
- The re-orientation of how data protection complaints are dealt with by the DPC, in order to eliminate unmeritorious referrals;
- The establishment of a Dublin office of the DPC (the regional office in Portarlington will still be maintained);
- The start of an active recruitment process to increase the levels of staffing and expertise of the office;
- More active co-operation between the DPC and other EU data protection regulators;
- Deeper Irish engagement with the Article 29 Working Party; and
- Encouraging government bodies to engage with data protection issues at an early stage of major data projects such as Eircode.

The €3.65 million increase in funding for 2015 has been widely welcomed and allocated to the DPC, however, the Commissioner acknowledged that adequately resourcing the office has remained a constant challenge in the past. The Commissioner also noted that

Ireland's ability to contribute to the activities of the Article 29 Working Party has suffered from lack of resources, however, that it is hoped that with the increase in funding for the office, Ireland will now be able to "take a seat at the table" with the aim of contributing to EU data protection policy and ensuring that the expertise of the DPC will be recognised at EU level.

Important themes that will affect the DPC as well as EU data protection authorities in 2015 were also discussed by the Commissioner, and include;

- Jurisdiction: How Google Spain's "right to be forgotten" decision of the European Court of Justice ("**ECJ**") is impacting how data protection authorities are dealing with regulation and complaints. The Commissioner referred to the example of the Netherlands deciding to open an investigation into Facebook's new privacy policy and terms and conditions, despite these having been recently agreed with the Irish DPC.

- Surveillance: This was flagged as a matter to be addressed by the Commissioner due to the revelations about the widespread use of cable and phone tapping by national authorities as surveillance is not currently a topic fully within the scope of the current Data Protection Directive. It was further noted however, that this will be a matter for the Courts and/or the legislature.

- Big Data and Internet of Things: This mainly includes how to regulate when technology developments are outpacing existing legislation, dealing with refusals of search engines to de-list references to an individual as a result of the Google Spain decision and the implications of the ECJ judgement in which the court held the private use of CCTV was, in the given circumstances, not covered by the "household exemption".

- Draft Data Protection Regulation: Concerns were expressed by the Commissioner over recent proposals to amend the "one stop shop" element of the draft Data Protection Regulation and how the amended proposal may have the outcome where "Ireland could be cast in the role of chief co-ordinator rather than lead decision maker" if the proposals were followed through. The Commissioner lastly noted however that the proposals are not finalised yet and are still in draft form, so hope it still there.

Financial Services Ombudsman

(i) Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulations 2015

The Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees Regulation 2015 (the "**Regulation**") was published on 10 February 2015. The Central Bank and Financial Services Authority of Ireland Act 2004, Sections16, 57 BE and BF, provides that levies are payable by financial service providers to enable the Financial Services Ombudsman's Bureau carry out its statutory functions. The levy amounts are prescribed by the Financial Services Ombudsman Council with the consent of the Minister for Finance

The Regulation extends to entities that come within categories A – R listed below and amends the levies which were previously prescribed by S.I. No. 137 of 2014, Central Bank Act 1942 (Financial Services Ombudsman Council) Levies and Fees (Amendment) Regulations 2014:

a) Credit Institutions;
b) Insurance Undertakings;
c) Intermediaries;
d) Investment Business Firms (other than Investment Product Intermediaries), Collective Investment Schemes and other service providers, and Exchanges;
f) Credit Unions;
g) Approved Moneylenders;
h) Approved Professional Bodies;
(j) Bureaux de Change and Money Transmission Service Providers;
(k) Electronic Money Institutions;
(l) Home Reversion Firms/Retail Credit Firms;
(m) Other Regulated Service Providers;
(o) Business Transfers;
(p) Default Assessments;
(q) All other Regulated Entities; and
(r) Debt Management Companies.

In order to view each of these categories in full detail, click on the following link:

http://www.irishstatutebook.ie/pdf/2015/en.si.2015.0042.pdf

(ii) Annual review 2014

The Financial Services Ombudsman Annual Review (the "**Review**") was published on the 25 February 2015 for the year January to December 2014. This is the first time a full year's statistics have been published since the new reporting powers were granted to the Financial Services Ombudsman (the "**FSO**") in September 2013.

The Review is also the first review to set out the number of complaints against the Financial Service Providers (the "**FSPs**") in an entire calendar year. Throughout the Review, it can be seen that 4,477 complaints were received for 2014 which is a decrease overall of 42% year on year. The Review has stated that 3,166 complaints were closed by way of formal investigation, finding and settlement. 45% of complaints closed during 2014 had some form of customer redress. Investment complaints have decreased by 65% from 770 in 2013 to 271 in 2014. Insurance complaints have also decreased by 49% from 3,835 in 2013 to 1,955 in 2014. These were followed by banking which also decreased by 27% from 2,925 in 2013 to 2,127 in 2014.

On a product basis, mortgage issues consisted of 28% of all complaints received, continuing to be the highest, while Payment Protection policy complaints also continue to be the main factor of Insurance complaints representing a figure of 15% of the 3,835 received last year.

It is hoped that the publication of the above information will continue to drive FSPs to provide a better service, change procedures and policies where possible to minimise the need for customers to complain, and to settle cases at an early stage in the process.

The following link will bring you to the published Review:

https://www.financialombudsman.ie/publications/FSO%20Annual%20Review%202014%20Digital.pdf

Workplace Relations Bill 2014

(i) Update on the Workplace Relations Bill 2014

The Workplace Relations Bill 2014 (the "**Bill**") is a significant development in Irish Employment Law, introducing reforms for how workplace disputes are processed. The Government's objective is to deliver a world-class workplace relations service which is simple to use, independent, effective, impartial, cost effective and provides for workable means of redress and enforcement, within a reasonable period of time. The Bill provides a statutory basis for a new structure which will see the existing five State bodies replaced by two. The Labour Relations Commission (the "**LRC**"), the National Employment Rights Authority ("**NERA**"), the Equality Tribunal, the first instance functions of the Employment Appeals Tribunal (the "**EAT**") and the first instance functions of the Labour Court will be replaced by the new Workplace Relations Commission (the "**WRC**"), and the appellate functions of the EAT will be transferred to a new expanded Labour Court. Appeals will be heard in public and decisions will in general be published. Labour Court Appeals will be appealable to the High Court, but only on a point of law. Current Labour Court members will continue in their role, and a new division will be recruited for the Labour Court by way of competition.

The aim of the Bill is to create a modern, user-friendly, world-class employment workplace relations system that will provide significant benefits for its users and society as a whole. The focus will be on resolving the workplace disputes as quickly and inexpensively as possible. The Bill will also give significant powers to workplace inspectors as well as introducing two new services to assist employers and employees in resolving and settling disputes in the workplace without the need for formal adjudication by a third party.

The Bill itself does not deal with the issue of whether a party to proceedings before a WRC Adjudication Officer or the Labour Court will be liable for the other party's legal costs. It has stated however, that it permits fees to be charged for new services as well as previously stating that there will be no fee for taking claims before the WRC or the Labour Court. There are current talks by the Department about introducing a refundable fee of €300 which will be applied to a party who lodges a fee before the Labour Court after failing to attend an initial hearing before the WRC. In order for the fee to be refunded, the appellant will have to demonstrate good cause for not having attended the WRC hearing.

The Bill states that if an employer fails to comply with the decision of an Adjudication Officer or the Labour Court, the employee (or their representatives) can apply to the District Court for an order directing the employer "to carry out a decision in accordance with its terms". Under the Bill, it also states that inspectors will either be appointed or transferred from previous inspectorate roles to the WRC under the Bill and granted new powers. Their roles will include issuing Fixed Payment Notices, that is, on the spot fines to employers of up to €2,000 in the case of failure to produce wage statements and written statements of hourly rates of pay for a pay reference period to employees or failure to notify the Minister of proposed collective redundancies. They are also able to issue Compliance Notices in order to compel employers to rectify contraventions of certain employment laws.

The Department of Jobs, Enterprise and Innovation has set the end of 2015 as the target date for enacting the Bill. Disputes will continue to be heard by the current workplace relations bodies up to a cut-off date to be specified in the legislation.

Companies Act 2014

(i) Key impacts

The Companies Act 2014 (the "**Act**") is planned to be commenced as of 1 June 2015, with a further 18 month transitional implementation period appropriate to certain provisions therein. The Act reforms Irish company law, consolidating the Companies Acts 1963 to 2013 in a single statute. Essentially, it is a product of over a decade's work by the Company Law Review Group (the "**CLRG**") and the largest piece of legislation in the history of the State, comprising a total of 25 Parts (over 1440 sections) and 17 Schedules.

The Act aims to simplify Irish Company law and provides Ireland with a legislative framework which is fit for purpose in the 21st century business environment. Given every company, director and shareholder will be affected by the Act, Irish companies should start to assess and prepare for the choices they may have to make.

Some considerations for the Irish Insurance Industry include:

*Re-registration as a Designated Activity Company (“**DACs**”)*

An insurance company will be obliged to re-register as a DAC post the commencement of the Act.

The key features of a DAC are as follows:

- The DAC will continue to have a memorandum in its constitution. This will state the objects for which the company is incorporated (the validity of an act done by a DAC shall not however be questioned on the grounds of lack of capacity by reason of anything contained in the DACs objects);
- The DAC will have limited liability and will have a share capital or is a private company limited by guarantee;
- The DAC will have at least two directors;
- The DAC will be able to pass majority written resolutions but cannot dispense with the need to hold an AGM; and
- The name of the company must end in "Designated Activity Company" or "Cuideachta Ghníomhaíochta Ainmnithe", unless exempted.

The Act provides two straight forward mechanisms for re-registration as a DAC as follows:

- An existing private company may re-register as a DAC by passing an ordinary resolution not later than 3 months prior to the end of the 18 month transition period (i.e. the 18 month transition period is expected to expire on 1 December 2016); or

- An existing private company shall be required to re-register as a DAC before the end of the 18 month transition period, if, not later than three months before the expiry of that period, a notice in writing requiring it to do so is served on it by a shareholder or shareholders holding in aggregate more than 25% of the voting rights.

The Act also makes provision for relief where a company does not re-register as a DAC before the end of the 18 month transition period.

Codification of Director Duties

An aspect of the Act that applies to all Irish companies is the introduction of a non-exhaustive codification of the principal fiduciary duties of the directors of an Irish company, whether private or public.

Reorganisations, Acquisitions, Mergers and Divisions

Chapter 3 (Mergers) of Part 9 of the Act provides for a statutory procedure allowing two private Irish companies to merge so that the assets and liabilities of one transfer by operation of law to the other after which the former company is dissolved. Chapter 3 has been modelled on the European Communities (Cross-Border Mergers) Regulation 2008 (as amended) which implements Directive 2005/56/EC on cross border mergers in Ireland. It allows mergers by acquisition, where one company acquirers another by way of a merger; merger by absorption where a wholly owned subsidiary is merged into its parent; and mergers by formation of a new company, where one or more companies transfer their assets and liabilities to the newly formed company. Mergers under the Act can be affected by a court order or by using the new summary approval procedure introduced by the Act. This is a new validation procedure involving the passing of a special resolution by the shareholders of a company and the swearing by the directors of that company of a statutory declaration of solvency.

Limitations exist in chapter 3 however as it does not apply to public limited companies. Chapter 16 of Part 17 applies where one of the merging companies is a public limited company, with provisions similar to Chapter 4 of Part 9 of the Act but the summary approval procedure is not available.

Chapter 4 (Divisions) of Part 9 of the Act permits (i) divisions by acquisition where two or more companies (of which one or more but not all may be a new company) acquire between them all the assets and liabilities of another company that is dissolved without going into liquidation in exchange for the issue to the shareholders of the transferring company of shares in the successor companies (with or without cash payment); and (ii) by formation of new companies (an operation consisting of the same elements as a division by acquisition except that the successor companies have been formed for the purposes of the acquisition of the assets and liabilities).

Limitations also exist in chapter 4 as none of the companies in a chapter 4 division may be a public limited company and the summary approval procedure cannot be used to approve a procedure. Chapter 17 or Part 17 applies where one of the companies involved in a division is a public invited company.

Despite the limitation to the mergers and divisions regimes, they are essentially a welcoming improvement on the current methods of reconstruction and reorganisation of companies in Ireland.

Continuing Obligation to have a Company Secretary

In both private and public companies, the position of company secretary has been retained under the new legislation demonstrating the importance of the role of company secretary in the eyes of the legislature, however there are some reforms that need mentioning.

The responsibilities of the modern day company secretary have evolved to one which encompasses a much broader role of acting as "Board Adviser" and having responsibilities for the organisation's corporate governance. The fiduciary duties of the company secretary have not been codified under the Act and therefore will be delegated by the Board of Directors. The Act removes the obligation for company secretaries to ensure compliance with the Act, acknowledging the lack of power secretaries have to procure it. The Act imposes duties on the directors of a company to ensure that the person appointed to the role of company secretary has the skills or resources necessary to discharge their statutory, legal and other duties.

Company secretaries are now required to sign a declaration acknowledging their legal duties and obligations when consenting to act. The Act similarly extends an existing provision to an act of a director or a secretary which shall be valid notwithstanding any defect which may afterwards be discovered in his or her appointment or qualification.

The Act consolidates previous requirements relating to annual return dates and documents to be annexed to the return. The Act also provides that an express authorisation may now be registered with the CRO. Finally, the Act introduces greater flexibility in regards to affixing of the seal. There is now nothing in the Act to prevent the constitution of a company authorising one person only to affix the seal (for example, any director or secretary).

The Act has been published on the Oireachtas (the Irish parliament) website, in order to see the Act in full, use the following link:

http://www.oireachtas.ie/documents/bills28/acts/2014/a3814complete.pdf

(ii) Registration of charges and priority

The Act defines a charge as being a mortgage or a change (written or oral) created over any interest in any property of a company. The Act however, states that it specifically excludes the following from the definition of a charge:

- A mortgage or charge created over cash;
- Money credited to an account of a financial institution, or any other deposits;
- Shares, bonds or debt instruments;
- Units in collective investment undertakings or money market instruments; or
- Claims and rights, such as dividends or interest, in respect of any of the foregoing, except for cash.

The exclusions have the ability to narrow and refine as to what will constitute a security interest that requires registration in the Companies Registration Office (CRO).

Registration of Charges

The Act also states that any charge which is not filed in the CRO shall be void as against any liquidator or creditor of a company. It is necessary to note that when a charge becomes void, the money secured by it become immediately payable.

Priority of Charges

The Act sets out that registration of the particulars of a charge will be able to be processed by way of either the one-stage procedure or the two-stage procedure. The procedure chosen may affect the determining of the priority of a charge for the particular company. It is necessary to note that the date of creation of the charge will no longer determine priority; however exceptions to this do apply in certain circumstances. Circumstances where exceptions apply include where priority is governed by some other regime, such as by the Property Registration Authority of Ireland, or where lenders agree between themselves to priorities that differ from those set out in the Act.

One-Stage Procedure

This procedure is very similar to what is used under the current regime where particulars must be delivered in the prescribed form, called a form C1. This must be delivered not later than 21 days after the date of the charge's creation.

Two-Stage Procedure

This is a new procedure which involves the submission of prescribed particulars in two separate forms. The first of the forms to be submitted to the CRO is the form C1A which is a notice of intention by a company to create a charge; however this must be submitted to the CRO in advance of the Company making the charge.

The second involves a form C1B which must be delivered to the CRO within 21 days of the submission of the form C1A. The C1B essentially confirms that the charge in relation to the C1A has been created. The CRO will reject and return the C1A form in the case where there is a failure to file a form C1B. It is also necessary to note that the particulars on the C1A form cannot be altered. This procedure allows a lender to improve the priority of its security which will essentially run from the date the form C1A has been filed. Therefore, even if a form C1, which is filed pursuant to the one-stage procedure, is filed after a form C1A but before a form C1B, the submission made following the two-stage procedure will be given priority (provided the C1B for is filed within 21 days from the C1A form submission).

The CRO has requested that all the particulars of a charge be completed online. After the commencement date, it will no longer be possible to submit a paper form C1, C1A or C1B to the CRO.

Pursuant to the Act, particulars contained in a form C1, C1A or C1B which attempt to fix notice on a subsequent lender of the existence of a negative pledge will be deemed to be “extraneous material”, and will not be entered on the register as a result. Finally, The Slavenburg file will be closed permanently from June 1st. No obligation will exist from this date to register a charge created by a foreign or external company unless such a company has established a branch in the state. Only charges submitted against an Irish or external company already registered with the CRO will be accepted.

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.

Dillon Eustace

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