

Insurance
Quarterly Legal
and Regulatory
Update

Period covered

1 October 2015 – 31 December 2015

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

Table of Contents	Page
INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE	2
Solvency II.....	2
European Insurance and Occupational Pension Authority (“EIOPA”)	12
Alternative Regime for non-Solvency II undertakings.....	18
European Commission.....	18
International Association of Insurance Supervisors (“IAIS”).....	19
Insurance Distribution Directive (“IDD”) (formerly Insurance Mediation Directive 2 (“IMD2”))	20
European Market Infrastructure Regulation (“EMIR”).....	21
Packaged Retail and Insurance-based Investment Products.....	27
Transparency Directive	28
Market Abuse Directive.....	30
Prospectus Directive	31
Pensions Update.....	32
Health Insurance.....	33
Insurance Ireland	34
Central Bank of Ireland	34
Anti-Money Laundering/Counter-Terrorist Financing.....	40
Data Protection	43
Fitness and Probity	46
Companies Act 2014.....	47
Workplace Relations Act 2015.....	49
Irish Taxation Update.....	50

Solvency II

(i) Ireland transposes Solvency II Directive into Irish Law

On 4 November 2015, the Irish Government transposed the into Irish law the Solvency II Directive (Directive 2009/138/EC) as amended by the Omnibus II Directive (Directive 2014/51/EC) by way of statutory instrument, namely the European Communities (Insurance and Reinsurance) Regulations 2015 (S.I. 485 of 2015) (the “**2015 Regulations**”), which came into effect on 1 January 2016.

The 2015 Regulations will also be supplemented by more detailed technical Commission Level 2 measures which in turn will be supplemented by Level 3 guidance for national supervisors developed by the European Insurance and Occupational Pensions Authority (“**EIOPA**”).

The 2015 Regulations can be accessed via the following link:

<http://www.finance.gov.ie/sites/default/files/SI%20485%20of%202015.pdf>

Dillon Eustace has published an article on the 2015 Regulations which can be accessed via the following link:

<http://www.dilloneustace.ie/download/1/Publications/Insurance/IrelandtransposesSolvencyDirectiveintoIrishLaw.pdf>

(ii) Update on European Commission’s proposed amendments to the Solvency II Delegated Regulation (EU 2015/35) concerning the calculation of regulatory capital requirements for several categories of assets

On 30 September 2015, the European Commission (the “**Commission**”) adopted a Delegated Regulation amending the Solvency II Delegated Regulation concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings (the “**Amending Regulation**”).

The aim of this Amending Regulation is to remove specific regulatory impediments to financing long term investment projects by insurers by amending the treatment of infrastructure investments, of European Long Term Investment Funds (“**ELTIFs**”) and of equities traded on multilateral trading facilities under the Solvency II regime.

The revisions made include:

- ▣ A new concept of 'qualifying infrastructure investments': this type of investment presents better risk characteristics than other infrastructure investments and insurers will need to hold a lower level of capital against their investment in these

infrastructure projects. 'Qualifying infrastructure investments' will form a distinct asset category under Solvency II and will benefit from an appropriate risk calibration;

- ▣ Allowing investments in ELTIFs to benefit from lower capital charges under Solvency II. This brings them in line with investments in European Venture Capital Funds and European Social Entrepreneurship Funds, which benefit from the same equity capital charge as equities traded on regulated markets;
- ▣ Extending the application of a transitional measure for equity investments to unlisted equities, so that insurers will not suddenly withdraw from equity investments; and
- ▣ Granting equities traded on multilateral trading facilities (MTFs) the same capital charge as equities traded on regulated markets.

The European Parliament (the “**Parliament**”) and the Council of the European Union (the “**Council**”) had up to three months to exercise their right of objection, with the possibility to extend this period for another period of three months at their initiative.

On 24 November 2015, the European Council published a document confirming that it does not intend to object to this Amending Regulation. Please see link to this document below:

<http://data.consilium.europa.eu/doc/document/ST-14363-2015-INIT/en/pdf>

On 15 December 2015, the Committee of Economic and Monetary Affairs (“**ECON**”) published a letter (the (“**Letter**”) dated 30 November 2015 relating to the Amending Regulation informing the Commission that the deadline for raising objections to the Amending Regulation has been extended by three months to 30 March 2016.

The Letter is available at the following link:

https://polcms.secure.europarl.europa.eu/Hill_Solvency_Extending_the_scrutiny_period_by_three_months.pdf

(iii) Solvency II Commission Implementing Regulations published in the Official Journal of the European Union

On 12 November 2015, the following Commission Implementing Regulations were published in the Official Journal of the EU:

- ▣ Commission Implementing Regulation (EU) 2015/2011 of 11 November 2015 laying down implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2012 of 11 November 2015 laying down implementing technical standards with regard to the procedures for decisions to

set, calculate and remove capital add-ons in accordance with the Solvency II Directive.

- ▣ Commission Implementing Regulation (EU) 2015/2013 of 11 November 2015 laying down implementing technical standards with regard to standard deviations in relation to health risk equalisation systems in accordance with the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2014 of 11 November 2015 laying down implementing technical standards with regard to the procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities in accordance with the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2015 of 11 November 2015 laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2016 of 11 November 2015 laying down the implementing technical standards with regard to the equity index for the symmetric adjustment of the standard equity capital charge in accordance with the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2017 of 11 November 2015 laying down implementing technical standards with regard to the adjusted factors to calculate the capital requirement for currency risk for currencies pegged to the euro in accordance with the Solvency II Directive.

The above Commission Implementing Regulations, which are binding in their entirety and directly applicable in all Member States, entered into force on 2 December 2015, the twentieth day following that of their publication in the Official Journal of the EU.

The above Commission Implementing Regulations can be accessed via the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:295:TOC>

On 31 December 2015, the following Commission Implementing Regulations were published in the Official Journal of the EU:

- ▣ Commission Implementing Regulation (EU) 2015/2450 of 2 December 2015 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to the Solvency II Directive.
- ▣ Commission Implementing Regulation (EU) 2015/2451 of 2 December 2015 laying down implementing technical standards with regard to the templates and structure of the disclosure of specific information by supervisory authorities in accordance with the Solvency II Directive.

- Commission Implementing Regulation (EU) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with the Solvency II Directive.

These Commission Implementing Regulations, which are binding in their entirety and directly applicable in all Member States, will enter into force on 20 January 2016, the twentieth day following that of their publication in the Official Journal of the EU.

These Commission Implementing Regulations can be accessed via the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2015:347:TOC>

(iv) **Commission Delegated Decision on provisional equivalence published in Official Journal of the EU**

On 9 December 2015, the Commission Delegated Decision (EU) 2015/2290 of 12 June 2015 on the provisional equivalent solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (the “**Commission Delegated Decision**”) was published in the Official Journal of the EU.

On 12 December 2015, a corrigendum to the text of the Commission Delegated Decision was published in the Official Journal of the EU. The Corrigendum amends the references to the adopted date of the Delegated Decision from 12 June 2015 to 5 June 2015.

The Commission Delegated Decision is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.323.01.0022.01.ENG&toc=OJ:L:2015:323:TOC

The corrigendum is available at the following link:

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D2290R\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D2290R(01)&from=EN)

(v) **Central Bank’s Domestic Actuarial Regime and related Governance Requirements under Solvency II**

On 9 October 2015, the Central Bank published a feedback statement (the “**Feedback Statement**”) on Consultation Paper 92 - Domestic Actuarial Regime and related Governance Requirements under Solvency II (“**Consultation Paper**”).

This Feedback Statement summarised the responses received to the Consultation Paper and outlines the Central Bank’s considered decisions. The respondents commented on all

areas of the Consultation Paper, particularly in relation to the role of the Head of Actuarial Function (the “**HoAF**”) as a Pre-approval controlled function (“**PCF**”), outsourcing, opinion on the Own Risk and Solvency Assessment (“**ORSA**”) and clarification around applicability of existing legislation.

The Feedback Statement addresses the sections on which respondents commented or where a comment was received that has resulted in a change to the text of the requirements set out in the Consultation Paper.

The Statement and the responses thereto are available via the following links:

[http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP9 Domestic Actuarial Regime and Related Governance Requirements under Solvency CP92 Feedback Statement October 2015.pdf](http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP9_Domestic_Actuarial_Regime_and_Related_Governance_Requirements_under_Solvency_CP92_Feedback_Statement_October_2015.pdf)

<https://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/closed.aspx?CPNumber=CP92>

On 20 November 2015, following the transposition of the Solvency II Directive into national law, the draft Domestic Actuarial Regime and Related Governance Requirements under Solvency II (the “**Draft Requirements**”) were published on the Central Bank’s website for information purposes only. The Central Bank stated on the date of publication that they are consulting with entities regarding the Draft Requirements and until such consultation is complete the contents of the Draft Requirements should not be seen as, or be interpreted as, being requirements to which (re)insurance undertakings are subject.

The Draft Requirements introduce additional specific domestic requirements relating to the actuarial function and related governance arrangements that will apply to (re)insurance undertakings subject to Solvency II.

Under these Draft Requirements, the Central Bank requires the following:

- ▣ The appointment of the Head of Actuarial Function (“**HoAF**”);
- ▣ The responsibility for actuarial function held by one person and in the case of a High Impact undertaking, this person must be an employee of the undertaking;
- ▣ The provision of the actuarial opinion to the Central Bank on an annual basis;
- ▣ An actuarial opinion to Board in respect of each ORSA;
- ▣ An actuarial opinion on technical provisions (“**AOTP**”);
- ▣ An actuarial report on technical provisions (“**ARTP**”);
- ▣ The establishment of Reserving policy; and

- ▣ All High, Medium High and Medium Low impact undertakings to engage a reviewing actuary (“**RA**”) to conduct peer review of the TPs of the undertaking and related AOTPs and ARTPs.

The Draft Requirements set out some sector specific requirements and also provide for some exemptions from the requirements for non-life insurance undertakings only.

The Draft Requirements provides the Format of Actuarial Opinion on Technical Provisions.

The Draft Requirements can be accessed via the following link:

[http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Domestic Actuarial Regime and Related Governance Requirements under Solvency II.pdf](http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Domestic_Actuarial_Regime_and_Related_Governance_Requirements_under_Solvency_II.pdf)

(vi) Central Bank publishes policy notice on submission of information to the Central Bank under Solvency II

In October 2015, the Central Bank published a policy notice (the “**Notice**”) titled “Discretions and Options on Submission of Information to the Central Bank under Solvency II”.

The purpose of this Notice is to specify the Central Bank’s requirements and guidance in relation to the implementation of discretions and options arising under the Solvency II Directive, the Delegated Regulation, the Implementing Technical Standards (“**ITS**”) on templates for the submission of information to the supervisory authorities and the ITS on the procedures, formats and templates of the Solvency and Financial Condition Report.

More specifically, the Notice outlines whether the Central Bank will be exercising its discretion and if so, how it proposes to exercise the options and discretions with respect to the following:

- ▣ Exemptions from Solvency II quarterly supervisory reporting;
- ▣ The currency in which insurance and reinsurance undertakings and groups subject to group supervision under Solvency II must prepare and submit their Solvency II supervisory reports;
- ▣ The exchange rate that must be used when converting assets and liabilities into the reporting currency for the purposes of Solvency II regulatory reporting.

The Notice does not provide an exhaustive account of all discretions and options provided for under the Solvency II Regime.

The Notice is applicable to all insurance and reinsurance undertakings within the scope of Solvency II, as well as insurance and reinsurance groups of which the Central Bank is the group supervisor.

The Notice is available at the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/ReportingExemptionsPolicyNoteOctober 2015.pdf>

(vii) Central Bank publishes policy notice on Ring Fenced Funds under Solvency II

In November, the Central Bank published a policy notice titled “Solvency II Ring Fenced Funds (“**RRF**”)” (the “**Notice**”) The Notice specifies the Central Bank’s policy position and guidance in relation to the assessment of arrangements which may be subject to a RFF classification under Solvency II.

This Notice offers a non-exhaustive list of criteria that undertakings should consider when assessing whether certain arrangements could be subject to a RFF classification under Solvency II. This Notice is applicable to all insurance and reinsurance undertakings within the scope of Solvency II, as well as insurance and reinsurance groups of which the Central Bank is group supervisor.

The Notice provides that each undertaking is responsible for assessing all relevant arrangements and determining whether or not each such arrangement should be classified as a RFF. Furthermore, undertakings should be mindful that they may be required to justify the basis for such determinations to the Central Bank, and should ensure that all material used in the assessment is retained and available.

The Notice is available at the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/PolicyNoticeRing Fenced Funds-November 2015.pdf>

(viii) Central Bank to comply with EIOPA’s second set of Guidelines under Solvency II

In November 2015, the Central Bank published the Solvency II Information Note 8 – Set 2 of the Solvency II Guidelines indicating its intention to comply with the following list of guidelines published by EIOPA on 14 September 2015:

- ▣ Guidelines on Financial Stability Reporting;
- ▣ Guidelines on the Extension of the Recovery Period;
- ▣ Guidelines on the Exchange of Information within Colleges;
- ▣ Guidelines on the Implementation of the Long-Term Guarantee Measures;
- ▣ Guidelines on the Methods for Determining the Market Shares for Reporting;
- ▣ Guidelines on Reporting and Public Disclosure;

- ▣ Guidelines on Recognition and Valuation of Assets and Liabilities other than Technical Provisions;
- ▣ Guidelines on System of Governance; and
- ▣ Guidelines on Own Risk and Solvency Assessment (the “**ORSA**”)

Given the intention to comply, the Central Bank will be incorporating the above Guidelines into its supervisory practice as appropriate. The Central Bank expects insurance and reinsurance undertakings to comply with the provisions set out in Set 2 of the Guidelines.

The Solvency II Information Note 8 can be accessed via the following link:

[http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency II Information Note No.8- Set of the EIOPA Solvency II Guidelines.pdf](http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20Information%20Note%20No.8-Set%20of%20the%20EIOPA%20Solvency%20II%20Guidelines.pdf)

(ix) Central Bank updates its website for Solvency II

As part of the Solvency II Implementation process the Central Bank engaged in a review of the material on the insurance pages of its website. Following the transposition of the Solvency II Directive into Irish law, the Central Bank updated its website with the new legislative references and republished documents and forms. The following are a list of updated documents which can be found on the insurance pages of the Central Bank website:

- ▣ Checklist for Completing and Submitting Life Insurance Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Checklist for Completing and Submitting Non-Life Insurance Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Checklist for Completing and Submitting Reinsurance Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Checklist for Completing and Submitting Captive Non-Life Insurance Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Checklist for Completing and Submitting Captive Non-Life Reinsurance Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Checklist for Completing and Submitting Special Purpose Vehicle Applications under the European Union (Insurance and Reinsurance) Regulations 2015;
- ▣ Principles of Best Practice applicable to the distribution of Life Insurance Products on a Cross-Border basis within the EU or a Third Country 2015; and

- ☐ Withholding Tax - Guidance Note 2015.

The Central Bank has also published acquiring transaction notification forms for undertakings subject to Solvency II and those undertakings not subject to Solvency II.

The acquiring notification form for undertakings not subject to Solvency II can be found here:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Acquiring%20Transaction%20Notification%20Form%20for%20Undertakings%20not%20subject%20to%20Solvency%20II.pdf>

The acquiring notification form for undertakings subject to Solvency II can be found here:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Acquiring%20Transaction%20Notification%20Form%20for%20Undertakings%20subject%20to%20Solvency%20II.pdf>

In a letter issued to Compliance Officers dated 27 November 2015 the Central Bank noted that the following documents will be reviewed in 2016:

- ☐ Guidelines for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings – Compliance Statements 2014;
- ☐ Guidelines on the Annual Compliance Statement in accordance with Section 25(2011);
- ☐ Risk Appetite Statements – Letter to Industry;
- ☐ Guidelines on the Reinsurance Cover of Primary Insurers & the Security of their Reinsurers 2012; and
- ☐ Guidance on the Risk Management of Derivatives 2010.

(x) Central Bank publishes updated Withholding Tax – Guidance Note

On 16 December 2015, the Central Bank published an updated Guidance Note on the Italian Withholding Tax regime to set out how the Central Bank expects companies to take the tax asset into consideration in a Solvency II environment. The Central Bank's main concerns about the Italian Withholding Tax Regime are that an appropriate value is placed on the tax asset recoveries and that undertakings make provision for the adequate recognition of the illiquid nature of the tax asset and any concentration risk.

Under Solvency II, there are no quantitative restrictions on what assets insurers may invest in but insurers must now invest all their assets in accordance with the 'prudent person principle'. Undertakings must have policies on asset-liability management, investment risk management, liquidity and concentration risk management and, as part of

these policies, must consider the actions they take to ensure that they comply with the prudent person principle. The Central Bank expects at a minimum that undertakings establish and maintain a Risk Appetite Statement and a Liquidity Policy. Under the Own Risk and Solvency Assessment (“**ORSA**”) Process, undertakings should consider the impact the tax asset will have on its overall solvency needs.

The Guidance Note is available at the following link:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Withholding%20Tax%20-%20Guidance%20Note%202015.pdf>

(xi) Central Bank publishes final version of Data Point Model (“DPM”) and Taxonomy Templates

On 18 December 2015, the Central Bank published the final version of the DPM and Taxonomy Templates relating to information requirements defined by the Central Bank of Ireland in the National Specific Templates (“**NSTs**”).

The status of this release is a final publication complete with the full list of validations implemented and it is planned to be used for collection of NST quarterly submissions from May 2016 onwards.

Information on the NSTs can be found on the Central Bank’s website at the following link:

<https://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Pages/NationalSpecificTemplates.aspx>

(xii) Central Bank publishes the December edition of the Solvency II newsletter

The Central Bank published its December edition of the Solvency II Matters newsletter (the “**Newsletter**”) which provided updates to the (re)insurance sector on industry engagement, reporting, new legislation and other matters in the lead up to the Solvency II implementation date.

Commenting on Solvency II, Sylvia Cronin, Director of Insurance at the Central Bank stated:

“We are planning an industry workshop in February 2016 to provide guidance to undertakings on the Solvency II QRT’s, the ECB add-ons and the various National Specific Templates. Further information on this will follow in the new year”.

The Newsletter is available at the following link:

<http://centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/Solvency%20II%20Matters%20-%20December%202015.pdf>

(i) EIOPA publishes Action Plan for 2016

On 8 October 2015, EIOPA published its updated Action Plan (the “**Plan**”) for 2016 and Way forward for Colleges of Supervisors (the “**Colleges**”).

Some of the updates included:

- ▣ Bringing forward to 2016 discussions from 2015 on whether group supervision should be extended to the sub-group level, whether national or cross-border in nature;
- ▣ A call for Colleges to share views on how EIOPA could provide support for an efficient and secure exchange of information between Colleges; and
- ▣ An outline of a two-fold approach for setting themes for colleges in 2017.

The Plan is available at the following link:

https://eiopa.europa.eu/Publications/Administrative/EIOPAUpdate_on_Colleges_AP_2016_Final.pdf

(ii) Ultimate forward rates (“UFRs”) to remain unchanged

On 9 October 2015, EIOPA issued a press release (the “**Release**”) announcing that the UFRs used to calculate the risk-free interest rate term structures for Solvency II will remain unchanged until at least the end of 2016.

EIOPA stated that it is currently reviewing the methodology to derive the UFRs. The review will include a public consultation in 2016. EIOPA intends to decide on the outcome of the review in September 2016.

The Release is available at the following link:

<https://eiopa.europa.eu/Pages/News/Review-of-the-methodology-to-derive-the-ultimate-forward-rates.aspx>

(iii) EIOPA publishes Guidelines on the supervision of branches of third-country insurance undertakings

On 23 October 2015, EIOPA published guidelines on the supervision of branches of third-country undertakings (the ‘**Guidelines**’) with the aim of ensuring consistent, efficient and effective protection of policyholders within the EU. The Guidelines provide for alternatively proportionate supervision methods to protect branch policyholders in the context of valuation, own funds and submission of information under Solvency II.

The scope of the Guidelines cover only branches of third-country insurance undertakings that carry out direct life and non-life insurance business and also branches that are subject to either equivalent or non-equivalent supervision as provided for under Solvency II. The Guidelines do not cover third-country insurance undertakings taking on, or authorised to take on, only reinsurance business through an EU branch even if the third country insurance undertaking carries out direct insurance business through its head office or branches outside of the EU.

These Guidelines cover the following:

- ▣ Authorisation of branch of a third-country insurance undertaking;
- ▣ Supervisory powers and communication with other supervisory authorities;
- ▣ Financial soundness of the branch;
- ▣ Governance and risk management;
- ▣ Disclosure requirements;
- ▣ Means of communication;
- ▣ Quantitative reporting requirements for third-country insurance undertakings in relation to branch operations;
- ▣ Frequency and deadlines for reports and quantitative templates; and
- ▣ Transitional arrangements.

The Guidelines are addressed to supervisory authorities who must confirm to EIOPA whether they comply or intend to comply with the Guidelines and should incorporate these Guidelines into their supervisory framework. While these Guidelines were not mentioned in the Solvency II Information Note 8 (See Solvency II – section (viii)) published by the Central Bank in November 2015, we expect that the Central Bank will confirm compliance with these Guidelines in the next information note to be issued.

The Guidelines apply from 1 January 2016

The Guidelines are available at the following link:

<https://eiopa.europa.eu/Pages/Guidelines/Guidelines-on-the-supervision-of-branches-of-third-country-insurance-undertakings.aspx>

(iv) EIOPA publishes final report on public consultation No. 14/051 on the implementing technical standards (“ITS”) relating to the calculation of the equity risk sub-module

On 30 October 2015, EIOPA published its final report (the “**Final Report**”) on public consultation No. 14/051 on the implementing technical standards with regard to procedures for the application of the transitional measure for the calculation of the equity risk sub-

module.

The Final Report provides that the draft ITS will be submitted to the European Commission for endorsement. The Commission will then forward it to the European Parliament and the Council. Within three months of receipt of the draft ITS, the European Commission shall decide whether to endorse it in part or with amendments, where the Union's interests so require.

The Report is available at the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-123_Final_report_ITS_Equity_transitional.pdf

(v) Chairman of EIOPA addresses ECON committee

On 17 November 2015, Gabriel Bernardino, Chairman of EIOPA addressed ECON on the future strategy and goals for EIOPA in the coming years. Mr Bernardino outlined that it is his desire to develop EIOPA further as a credible supervisory Authority within the European System of Financial Supervision. Mr Bernardino outlined three main strategic priorities which comprise of the following:

- ▣ Enhancing supervisory convergence;
- ▣ Reinforcing preventive consumer protection; and
- ▣ Preserving financial stability.

The address can be found at the following link:

<https://eiopa.europa.eu/Publications/Speeches and presentations Committee.pdf>

(vi) EIOPA consults on revised preparatory Guidelines on product oversight and governance

On 30 October 2015, EIOPA published a Consultation Paper (the “**Paper**”) on its revised proposal for preparatory Guidelines on product oversight and governance arrangements by insurance undertakings and insurance distributors. According to the press release accompanying the Paper, the preparatory Guidelines seek to promote cross-sectoral consistency with similar provisions on product oversight and governance to those already adopted or envisaged in the banking and securities sectors.

The Paper is divided into two separate chapters. For manufacturers of products, chapter 1 specifies procedures for designing insurance products, strengthening control before the launch of products and monitoring their performance. For distributors of products, chapter 2 provides guidance on product distribution arrangements and preparatory steps before products are distributed. Dillon Eustace has prepared an article (see link below) which sets out the steps required for a manufacturer and a distributor.

<http://www.dilloneustace.ie/download/1/Publications/Regulatory%20and%20Compliance/EIOPA%20consults%20on%20revised%20preparatory%20Guidelines%20on%20product%20oversight%20and%20governance.pdf>

EIOPA will consider the feedback received and expects to publish a final report on the consultation and to submit the Guidelines for adoption by the Board of Supervisors in the second quarter of 2016. Following approval by EIOPA's Board of Supervisors, the final Guidelines will be published once the Insurance Distribution Directive ("IDD") has been formally adopted by the European legislators and has been published in the Official Journal of the EU.

The press release is available at the following link:

<https://eiopa.europa.eu/Pages/News/EIOPA-consults-on-revised-preparatory-Guidelines-on-product-oversight-and-governance.aspx>

The Paper is available at the following link:

https://eiopa.europa.eu/Publications/Consultations/EIOPA-CP-15-008_Consultation_Paper_on_POG_Guidelines_for_insurance_undertakings_and_insurance_distributors.pdf

(vii) EIOPA publishes report on consumer protection issues arising from the sale of mobile phone insurance

On 12 November 2015, EIOPA published a report (the "**Report**") on Consumer Protection issues arising from the sale of mobile phone Insurance. The report is based on data from 50 insurance undertakings based in 21 jurisdictions and active in the mobile phone insurance ("**MPI**") sectors of 23 different European countries in 2013.

This Report includes a series of recommendations which address the key areas where there could be a gap between what insurance undertakings offer and what consumers believe they have purchased. According to the Report, it is important to ensure that the experience of consumers with MPI is a positive one, particularly taking into consideration that this could be many young people's first experience with insurance products.

Many of these recommendations are in line with the legislative developments that are taking place at EU level, namely the Insurance Distribution Directive, the text of which was adopted by the European Parliament on 24 November 2015 and the Council on 14 December 2015. The Report provides that EIOPA and its Members will continue to monitor the development of the MPI sector in the coming years in light of these new legislative developments and ongoing practice in the market.

The Report is available at the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA-BoS-15-235Mobile_Phone_Insurance_Report.pdf

(viii) EIOPA publishes consumer trends report in December

On 15 December 2015, EIOPA published its fourth consumer trends report (the “**Report**”) dated 18 November 2015. EIOPA analysed both the insurance sector and occupational and personal pensions sector.

The Report provides an overview of trends in Member States that may have led, or may in future lead, to consumer detriment in the insurance and pensions markets.

In the insurance market, the Report notes that while a number of the trends detected in the previous year remain significant such as the digitalisation of the insurance sector and the information provided to consumers about insurance coverage, new and emerging trends have been highlighted such as:

- ▣ The relationship between advanced analytics of consumers' characteristics and "big data" which allow products to be better adapted to the needs of consumers but at the same time, may give rise to certain consumer protection and privacy concerns. This will need to be carefully monitored;
- ▣ More efficient management of potential conflicts of interest is needed. This trend is heightened by the increasing complexity of some insurance products; and
- ▣ Training and professional competence requirements need to improve for insurance intermediaries to protect consumers' interests. However, the Insurance Distribution Directive will introduce important reforms in this respect.

In the pensions sector, EIOPA continues to observe trends such as the shift in risks to members and beneficiaries due to a change from Defined Benefit to Defined Contribution Schemes and the increasing importance of transferability of pension rights.

The Report is available at the following link:

https://eiopa.europa.eu/Publications/Reports/EIOPA_Fourth_Consumer_Trends_Report.pdf

(ix) EIOPA publishes Financial Stability Report

On 9 December 2015, EIOPA published a financial stability report (the “**Report**”) covering the European insurance sector, the global reinsurance sector and the European pension fund sector.

According to the Report, in the second quarter of 2015, the macroeconomic environment continued to be weak. Low yields and the subsequent reinvestment risk remain the main concern in the European insurance sector, especially for life insurers. Furthermore, gross written premiums (“**GWPs**”) grew in the first two quarters of 2015 with non-life business experiencing much higher growth rates than life. With regards to the European

occupational pension fund sector, total assets significantly increased in 2014.

The Report is available at the following link:

[https://eiopa.europa.eu/Publications/Reports/Financial Stability Report December 2015.pdf](https://eiopa.europa.eu/Publications/Reports/Financial_Stability_Report_December_2015.pdf)

(x) EIOPA provide the Solvency II Risk-free Interest Rate Term Structures

On 22 December 2015, EIOPA published the updated coding used to produce the Solvency II relevant risk-free interest rate (“RFR”) term structures which are a key component of the Solvency II framework. Technical information relating to RFR term structures is used for the calculation of the technical provisions for (re)insurance obligations. In line with the Solvency II Directive, EIOPA publishes technical information relating to RFR term structures on a monthly basis to ensure consistent calculation of technical provisions across Europe. As of 1 January 2016 the new supervisory framework will be applicable and this code, which underpins the already published technical documentation, will be used for the monthly RFR publications.

Between October and December 2015, the external reviewer PricewaterhouseCoopers (“PwC”) assessed the accuracy and replicability of EIOPA’s RFR model and the robustness of the RFR calculation process, including under stressed conditions. The full text of the PwC Report can be obtained via the following link:

<https://eiopa.europa.eu/Publications/PressReleases/2015-12-Risk Free Rate Coding.pdf>

In 2014, EIOPA launched a public consultation on the RFR technical documentation. Risk free rate technical information has been published monthly from February 2015. A quality-check of the coding was conducted both internally and externally. During the summer of 2015, the EIOPA called on its stakeholders and the MatLab community to spot possible errors and to help further improve the coding. Furthermore, the coding benefitted from EIOPA’s dialogue with key insurance stakeholders and the validation process conducted together with experts from national competent authorities.

The changes to the RFR code are summarised in an updated Frequently Asked Questions (“FAQ”) document also available via the following link:

https://eiopa.europa.eu/Publications/Standards/FAQ%20on%20RFR%20publication_8122015.pdf

The first monthly RFR term structures under Solvency II will be published on 8 January 2016. All the relevant documentation can be found at the link below:

<https://eiopa.europa.eu/regulation-supervision/insurance/solvency-ii-technical-information/risk-free-interest-rate-term-structures>

Alternative Regime for non-Solvency II undertakings

(i) **Finance (Miscellaneous Provisions) Act 2015 (the “Act”)**

The Finance (Miscellaneous Provisions) Act 2015 (No. 37 of 2015) was recently signed into law. Part 4 of the Act provides for the legislation to allow for the continued regulation of (re)insurance undertakings that will not be subject to the European Communities (Insurance and Reinsurance) Regulations 2015 (the “**Solvency II Regulations**”). On 11 December 2015 the Finance (Miscellaneous Provisions) Act 2015 (Part 4) (Commencement) Order 2015 (S.I. 558 of 2015) was published and 1 January 2016 was appointed as the commencement date of Part 4 of, and the Schedule to, the Act.

The Act can be accessed via the following link:

[http://www.oireachtas.ie/viewdoc.asp?DocID=30208&CatID=87&StartDate=01 January 2015&OrderAscending](http://www.oireachtas.ie/viewdoc.asp?DocID=30208&CatID=87&StartDate=01%20January%202015&OrderAscending)

European Commission

(i) **Proposal to amend Regulation (EU) 806/2014 in order to establish a European Deposit Insurance Scheme**

On 24 November 2015, the European Commission published a proposal for amending Regulation (EU) 806/2014 in order to establish a European Deposit Insurance scheme (the “**Proposed Regulation**”).

The Proposed Regulation envisages the establishment of a European Deposit Insurance Scheme (“**EDIS**”) as the third pillar of banking union in three successive stages, a reinsurance scheme for participating national Deposit Guarantee Scheme (“**DGS**”) in the first period of three years, a co-insurance scheme for participating national DGSs in the second period of four years, and full insurance for participating national DGSs in the steady state.

The proposed Regulation aims to preserve the integrity and enhance the functioning of the internal market. Uniform application of a single set of rules for deposit protection, together with access to a European Deposit Insurance Fund (the “**Deposit Insurance Fund**”) managed by a central authority would contribute to the orderly functioning of the financial markets and to financial stability in the EU.

According to the Proposed Regulation, the introduction of EDIS would be accompanied by ambitious measures in parallel to reduce risks in the banking sectors of Member States. The proposal outlines that the EDIS would contribute to reducing the link between the perceived fiscal position of individual Member States and the funding costs of banks operating in those Member States. This would increase the resilience of the banking sector against future crises and contribute to the overall objective of financial stability which underpins the economic and monetary policy of the EU.

Commenting on the proposal, Commissioner Hill stated the following:

“Overall, I think we have come up with a very balanced package. I think it shows that it is possible to take forward risk-sharing and risk-reduction hand-in-hand. This is a package that will strengthen the banking sector, reinforce protection for depositors, reduce the link between banks and their sovereigns and further strengthen financial stability”.

The Proposed Regulation is available at the following link:

<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-586-EN-F1-1.PDF>

Commissioner Hill’s speech on the subject is available at the following link:

http://europa.eu/rapid/press-release_SPEECH-15-6154_en.htm

International Association of Insurance Supervisors (“IAIS”)

(i) **IAIS Develop Higher Loss Absorbency (“HLA”) Requirement for Global Systemically Important Insurers (“G-SIIs”)**

On 5 October 2015, the IAIS announced that it concluded initial development of the HLA requirement for global systemically important insurers. The HLA has also been endorsed by the Financial Stability Board.

The primary purpose of the HLA requirement is to help reduce the probability and impact on the financial system of the distress or failure of a G-SII. The HLA will apply to G-SIIs from January 2019.

The Press release can be accessed via the following link:

<http://iaisweb.org/index.cfm?event=openFile&nodeId=57136>

(ii) **IAIS adopts revisions to the insurance core principles**

At its Annual General Meeting in Marrakech, Morocco on 12 November 2015, the IAIS adopted revisions to the Insurance Core Principles. Revisions were adopted to ICP 4 (Licensing), ICP 5 (Suitability of Persons), ICP 7 (Corporate Governance), ICP 8 (Risk Management and Internal Controls), ICP 23 (Group-wide Supervision) and ICP 25 (Supervisory Cooperation and Coordination). These changes were initiated following conclusion of comprehensive Self-Assessments and Peer Reviews (“SAPR”) of the related ICPs.

According to the IAIS, the insurance industry, like other components of the financial system, is changing in response to a wide range of social, technological and global

economic forces. In light of these changes, insurance supervisory systems and practices must be continually upgraded to cope with these developments. Insurance and other financial sector supervisors and regulators should understand and address financial and systemic stability concerns arising from the insurance sector as they emerge and their interaction with other financial sectors.

The revisions can be assessed in full at the following link:

<http://iaisweb.org/index.cfm>

Insurance Distribution Directive (“IDD”) (formerly Insurance Mediation Directive 2 (“IMD2”))

(i) European Parliament and the Council of the European Union have formally approved the text of the IDD

On 24 November 2015, the European Parliament formally approved the text of the IDD. The Council adopted the text of the IDD on 14 December 2015.

The European Parliament states that the current rules on sales of insurance have been amended to introduce consumer protection requirements for all insurance distribution channels unless they meet the conditions for exemption and clear information on costs and sales' incentives must be provided. The press release accompanying the European Parliament's approval states the following:

- ▣ Sales staff of the insurance distributors should be well trained to meet the requests and needs of customers;
- ▣ Home member states should be able to effectively control and assess the knowledge and competence of the insurance sales staff, both when starting their business and on a continuous basis; and
- ▣ Insurance distributors need to accomplish at least 15 hours of continuous professional training per year.

The European Parliament's press release is available at the following link:

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20151120IPR03614/20151120IPR03614_en.pdf

The Council's press release is available at the following link:

http://www.consilium.europa.eu/press-releases-pdf/2015/12/40802206665_en_635856873600000000.pdf

The text of the IDD that was adopted can be found at the following link;

<http://data.consilium.europa.eu/doc/document/PE-49-2015-INIT/en/pdf>

Member States will have 2 years to transpose the IDD from the date on which it enters into force after publication in the Official Journal of the EU.

European Market Infrastructure Regulation (“EMIR”)

(i) **EMIR Regulatory Return – Guidance Note**

Following a review of trade repository data as at 31 August 2015 a number of Non-Financial Counterparties (“NFCs”) were identified as having significant derivative positions. Trade repository data was reviewed by each derivative class (Commodity, Credit, Currency, Equity and Interest Rate) and from this review, the most significant NFCs were selected (NFCs that have significant derivative positions but are not classified as NFC+).

The Central Bank requires these NFCs to complete the EMIR Regulatory Return (“ERR”) for the period 1 January 2015 to 31 December 2015. Correspondence to the identified NFCs was issued on Wednesday 30 September 2015. The completed ERR for 2015 is due for submission to the Central Bank by 29 January 2016.

All completed ERRs should be addressed to, EMIR Unit, Securities and Markets Supervision Division, Central Bank of Ireland Block D, Iveagh Court, Harcourt Road, Dublin 2. Or alternatively responses may be emailed to emir@centralbank.ie.

A soft copy of the ERR along with guidance on completing the return is available on the Central Bank website;

[https://www.centralbank.ie/regulation/EMIR/Pages/EMIR%20Regulatory Return \(ERR\).aspx](https://www.centralbank.ie/regulation/EMIR/Pages/EMIR%20Regulatory%20Return%20(ERR).aspx)

(ii) **ESMA publishes Q&A on implementation of EMIR**

On 1 October 2015, ESMA published the 14th update of its Q&A document on the implementation of EMIR (the “Q&A”). The Q&A provides responses to questions posed by the general public, market participants and competent authorities in relation to the practical application of EMIR.

The content of the document is aimed at competent authorities under EMIR to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. It should also help investors and other market participants by providing clarity on the requirements of EMIR. The first version of this document was published on 20 March 2013, subsequent updates have been published on a regular basis. This document is expected to be updated and expanded as and when appropriate.

This updated version provides guidance on the procedure to be adopted where a counterparty obtains a new LEI number due to a merger or acquisition.

The ESMA Q&A on implementation of EMIR is available at the following link

<https://www.esma.europa.eu/databases-library/esma-library?page=8>

(iii) ESMA submits final draft regulatory technical standards on the Clearing Obligation – Credit Derivatives

On 2 October 2015, ESMA submitted draft regulatory technical standards (“**RTS**”) for the central clearing of Credit Default Swaps (“**CDS**”) to the European Commission. The draft RTS define the types of CDS contracts which will have to be centrally cleared, the types of counterparties covered by the obligation and the dates by which central clearing of CDS will become mandatory.

The CDS RTS relate to untranched index CDS for two indices; (i) iTraxx Europe Main and (ii) iTraxx Europe Crossover.

The European Commission may now proceed to adopt the 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, which then have a three month period in which to object to the RTS.

The RTS are available at the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1481_final_report_clearing_obligation_index_cds.pdf

(iv) ESMA updates list of authorised EU Central Counterparties (“CCPs”) – CME Clearing Europe extends services

On 4 November 2015, ESMA published an update of its list of CCPs which are authorised under EMIR.

The update concerns CME Clearing Europe which has been authorised to extend its activities and services to clear short term interest rate futures and deliverable swap futures.

The list can be accessed via the following link:

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

(v) ESMA consults on indirect clearing arrangements under EMIR and MiFID

On 5 November 2015, ESMA published a consultation paper (the “**CP**”) on draft regulatory

technical standards relating to indirect clearing arrangements. The CP sought views on indirect clearing arrangements for both OTC derivatives (under EMIR) and for exchange-traded derivatives (under MiFIR).

The phrase “indirect clearing arrangements” refers to circumstances in which a clearing member provides clearing services to an “indirect client”, that is, a client of the clearing member’s direct client.

The CP represents an attempt by ESMA to reconsider indirect clearing arrangements for both the Exchange Traded Derivatives (“**ETD**”) and OTC markets in a comprehensive and coordinated fashion, in order to produce a common approach to indirect clearing for both markets. ESMA’s proposals in the CP focus primarily on account structure and segregation models for indirect clients as well as the obligations on liquidation or porting of indirect client positions and assets as part of default management activities

The consultation closed on 17 December 2015.

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

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-1628_-_consultation_paper_on_indirect_clearing_under_emir_and_mifir.pdf

(vi) **ESMA updates EMIR standards on data reporting**

On 13 November 2015, ESMA published its final report (the “**Final Report**”) on changes to the reporting requirements under EMIR. The Final Report summarises the proposals set out by ESMA in a consultation paper dated 10 November 2014 and includes additions and changes to the reporting requirement.

The Final Report updates the existing technical standards to:

- ▣ Clarify data fields, including their description, format or both;
- ▣ Adapt existing fields to the reporting logic prescribed in existing Q&As or to reflect specific ways of populating them; and
- ▣ Introduce new fields.

The Final Report provides for a 9 month deferral period following the entry into force of the changed requirements. The Final Report has been sent to the European Commission for approval and the changed reporting requirements are likely to be in effect in late 2016.

A copy of the report can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

(vii) ESMA will not exempt the collateralisation of bank guarantees for energy derivatives under EMIR

On 19 November 2015, ESMA announced its decision not to extend the current three year grace period which permits non-financial firms to use bank guarantees that are not collateralised for their energy derivatives transactions that are cleared by EU central counterparties (“**CCPs**”) under EMIR. As of 15 March 2016, all CCPs will be required to fully collateralise commercial bank guarantees that cover transactions in derivatives relating to electricity or natural gas.

ESMA determined not to extend the existing grace period for the following reasons:

- ▣ The elimination of an undue source of risk for CCPs arising from non-collateralised guarantees;
- ▣ The current three-year grace period was deemed to be sufficient to permit the wholesale energy market to prepare for the incoming collateral requirements;
- ▣ Some European CCPs are already requiring fully collateralized bank guarantees;
- ▣ EMIR requires CCPs to only accept collateral that is highly liquid; and
- ▣ A further postponement would lead to discrepancies with international standards for CCPs.

A copy of the press release can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015-1750_emir_statement_re_bank_guarantees_energy_market.pdf

(viii) Memorandum of Understanding on Cooperation Arrangements and Exchanges of Information related to information on derivatives contracts held in trade repositories

The Securities and Futures Commission (“**SFC**”) of Hong Kong and ESMA have agreed a Memorandum of Understanding regarding arrangements for the exchange of information related to the information on derivatives contracts held in trade repositories registered in accordance with the respective laws and regulations (the “**MoU**”). The MoU, which came into effect on 19 November 2015, gives ESMA and the SFC indirect access to trade repositories established in the EU and Hong Kong.

A copy of the MoU can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/mou_esma-sfc_indirect_access_to_tr_data_-_mou.pdf

(ix) Interest Rate Swap Clearing to start in June 2016

On 1 December 2015, Commission Delegated Regulation (EU) 2015/2205 (the “**Delegated Regulation**”) for the regulatory technical standards in respect of central clearing for the first classes of interest rate derivatives under EMIR was published in the Official Journal of the EU. The Delegated Regulation came into force on 21 December 2015.

The Delegated Regulation covers interest rate swaps denominated in euro, pounds sterling, Japanese yen or US dollars that have specific features, including the index used as a reference for the derivative, its maturity, and the notional type (that is, the nominal or face amount that is used to calculate payments made on the derivative). The contracts are:

Category	Counterparty Type	Clearing Obligation Commencement
1	Clearing members of a recognised or authorised CCP for at least one of the classes of interest rate swaps covered by the Delegated Regulation	6 months after the Delegated Regulation enters into force; i.e. 21 June 2016
2	Financial Counterparties (“ FCs ”) and certain alternative investment funds (“ AIFs ”) belonging to a group whose group aggregate month-end average of outstanding notional amount of non-centrally cleared derivatives is in excess of €8 billion using the month end average for January, February and March 2016	12 months after the Delegated Regulation enters into force; i.e. 21 December 2016
3	FCs and AIFs not in either category 1 or 2 above	18 months after the Delegated Regulation enters into force; i.e. 21 December 2018
4	Non-Financial Counterparties that exceed the clearing threshold (“ NFC+ ”) not falling within another category	Three years after the Delegated Regulation enters into force; i.e. 21 December 2018

5	Category 1, 2 or 3 involving an intra-group transaction with a non-EU counterparty	21 December 2018 or, if by such date an equivalence decision has been adopted regarding a relevant third country, a specified date following such decision
---	--	--

- ▣ Fixed-to-float interest rate swaps (“IRS”), known as plain vanilla interest rate derivatives;
- ▣ Float-to-float swaps, known as basis swaps;
- ▣ Forward rate agreements; and
- ▣ Overnight index swaps.

The Delegated Regulation sets out five different categories of counterparties to which the clearing obligation applies and specifies the phase in periods for each. The different categories and the phase-in periods are as follows:

A contract between two counterparties in different categories would be subject to the clearing obligation from the later date.

The obligation to clear the above referenced OTC derivative instruments will apply not only to transactions entered after the effective date applicable to the relevant category of counterparty but also to transactions concluded between the first authorisation of a CCP under EMIR (which took place on 18 March 2014) and the later date on which the clearing obligation actually takes effect for the relevant category of counterparty (the “**frontloading requirement**”), unless the OTC derivative entered into has a remaining maturity lower than the minimum remaining maturities which are laid down in the Delegated Regulation and which are based on the category of counterparty and type of OTC derivative.

The text of the Delegated Regulation is available at this link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R2205&from=EN>

(x) **ESMA consults on draft regulatory technical standards (“RTS”) on access to data and aggregation and comparison of data under EMIR**

On 11 December 2015, ESMA published a consultation paper on draft RTS relating to data access, and aggregation and comparison of data across trade repositories (“**TRs**”) under Article 81 of EMIR. The consultation paper proposes amendments to the current regulatory technical standards to ensure direct and immediate access to data and aggregation and comparison of data across TRs.

The proposed improvements set out in the consultation paper refer to the following aspects:

- ▣ Standardised output format of the TR data, based on international ISO standards, allowing better comparison and aggregation of data across repositories;
- ▣ Minimum types of data queries that need to be available for the authorities;
- ▣ Standardised and secure data exchange, based on ISO standards, between TRs and national competent authorities;
- ▣ Standard frequencies for the provision of direct and immediate access to TR data; and
- ▣ Secure machine-to-machine connection and use of data encryption protocols.

The consultation closes on 1 February 2016 and the consultation paper is available at this link:

https://www.esma.europa.eu/sites/default/files/library/esma-2015-1866_-_consultation_paper_on_access_aggregation_and_comparison_of_tr_data.pdf

Packaged Retail and Insurance-based Investment Products

(i) **The 2016 Work Programme of the Joint Committee of the European Supervisory Authorities (“ESAs”)**

The 2016 Work Programme of the Joint Committee of the ESAs was published on 5 October 2015 (the “**Work Programme**”).

In 2016, the Joint Committee will continue to give a high priority to consumer protection, in particular the work on Packaged Retail and Insurance-based Investment Products (“**PRIIPs**”), and cross-sectoral risk analysis. Moreover, it will proceed with the joint regulatory work already underway in areas such as anti-money laundering, financial conglomerates and securitisation while being prepared to address any new developments in the European regulatory field if necessary.

The Work Programme can be accessed via the following link:

http://www.esma.europa.eu/system/files/jc_2015_055_2016_work_programme_of_the_joint_committee_of_the_european_supervisory_authorities.pdf

(ii) **Joint consultation paper on PRIIPs key information for EU information for EU retail investors**

On 11 November 2015, the joint committee of the ESAs launched its consultation paper on PRIIPs Key Information Documents (“**KIDs**”) (the “**Consultation Paper**”) in order to obtain

the views of stakeholders on the draft Regulatory Technical Standards (“**RTS**”) developed by the European Supervisory Authorities (ESAs: EBA, EIOPA and ESMA) pursuant to the Regulation (EU) No 1286/2014 on Key Information Documents for Packaged Retail and Insurance-based Investment Products (the “**PRIIPs Regulation**”).

The draft RTS relate to three Articles under the PRIIPs Regulation:

- ▣ The presentation and content of the KID, including methodologies for the calculation and presentation of risks, rewards and costs within the document, under Article 8 (5);
- ▣ The review, revision, and republication of KIDs, under Article 10 (2); and,
- ▣ The conditions for fulfilling the requirement to provide the KID in good time, under Article 13 (5).

The draft RTS text and accompanying Annexes (which contain a template for the KID, and the proposed methodologies underpinning the presentation of risks, rewards and costs) form the core of the Consultation Paper.

The KID, once finalised and implemented, aims to provide EU retail investors with consumer-friendly information to enable retail investors to understand and compare packaged retail and insurance-based investment products.

The Chair of the Joint Committee Steven Maijor commented:

“Today’s consultation is a major step forward for the EU’s retail investors by setting out clear proposals on the contents of the KID, which are aimed at improving safeguards and transparency around investment products.”

The Consultation Paper can be accessed via the following link:

https://www.esma.europa.eu/sites/default/files/library/2015/11/jc_2015_073_cp_priips_key_information_documentsb.pdf

Responses to the Consultation Paper must be filed on/before 29 January 2016.

Transparency Directive

(i) **ESMA prepares for entering into force of amended Transparency Directive**

The Transparency Directive (“**TD**”), which creates a common basis for disclosure and dissemination of regulated information to the markets on a regular and on-going basis, was amended in 2013 and entered into force on 26 November 2015.

In order to promote the implementation and contribute to a harmonised EU application, ESMA published the following four documents on 22 October 2015 relating to the amended TD:

▣ Updated Q&A

The Q&A addresses new and existing TD requirements and terminology and provides clarification on the definition of a home Member State, the division of responsibilities between home and host Member States, the disclosure and dissemination of regulated information and the aggregation rule for the calculation of notification thresholds of voting rights. In total, 7 new Q&As have been added, 4 revised and 10 deleted.

▣ A new standard Home Member State Disclosure form

The purpose of the form is for issuers to disclose their home Member State. Use of the new form will reduce the administrative burden for issuers by simplifying different types of disclosure forms into one single document and ensuring that all national authorities receive a consistent set of information. The use of this form is not mandated by the TD but recommended by securities regulators.

▣ A new standard form for the notification of major holdings

The purpose of the form is for shareholders to notify major holdings of voting rights to competent authorities and issuers as required under the TD. The use of this standard form is not mandated by the TD, however, its use is recommended by securities regulators as it will provide investors with comparable information on major holdings and simplify the process for persons subject to the notification obligation.

▣ Re-publication of the indicative list of financial instruments subject to notification requirements

For the benefit of market participants, ESMA has re-published the indicative list of financial instruments subject to notification requirements. ESMA will monitor developments in the financial markets and update the list as appropriate.

The above documents can be accessed via the following links:

https://www.esma.europa.eu/system/files/esma-2015-1595_document_gas_on_td.pdf

https://www.esma.europa.eu/system/files/esma-2015-1596_standard_form_for_disclosure_of_home_member_state.docx

https://www.esma.europa.eu/system/files/esma-2015-1597_standard_form_for_major_holdings.docx

https://www.esma.europa.eu/system/files/esma-2015-1598_indicative_list_of_financial_instruments.docx

(ii) Central Bank updates Transparency Rules:

The Central Bank's Transparency Rules (“**Rules**”) were updated effective 30 November 2015. In accordance with the provisions of Section 1383(7) of the Companies Act 2014, where appropriate the Central Bank has also included guidance in these Rules on the steps that may be taken to comply with Transparency law. The changes made to the rules are to reflect the transposition of Directive 2013/EU/2013.

The updated Rules include deletion of references to interim management statements, changes to the major shareholdings notification requirements, amendments to home Member State notification procedures, the inclusion of references to the new standard forms, deletion of guidance relating to filing of amendment to instruments of incorporation along with other minor changes.

The updated Rules provide that, in accordance with the provisions of the Companies Act 2014, the imposition of administrative sanctions shall apply in relation to a contravention of the Rules.

The Rules can be accessed via the following link:

[https://www.centralbank.ie/regulation/securities-markets/transparency/Documents/Transparency Rules.pdf](https://www.centralbank.ie/regulation/securities-markets/transparency/Documents/Transparency%20Rules.pdf)

Market Abuse Directive

(i) Market Abuse Directive published in Official Journal (“OJ”)

On 18 December 2015, the European Commission Implementing Directive ((EU) 2015/2392) on the Market Abuse Regulation (Regulation 596/2014) (“**MAR**”) relating to reporting to competent authorities of actual or potential infringements of MAR was published in the Official Journal of the EU.

The Implementing Directive lays down rules specifying the procedures relating to reporting actual or potential breaches of MAR set out in Article 32(1) of the Regulation, including the arrangements for reporting and for following-up reports, and measures for the protection of persons working under a contract of employment and measures for the protection of personal data.

The publication can be accessed via the following link:

Prospectus Directive

(i) Commission adopts legislative proposal for Prospectus Regulation

On 30 November 2015, the European Commission adopted the Proposal for a Regulation of the European Parliament and of the Council on the prospectus to be published when securities are offered to the public or admitted to trading (the '**Proposed Regulation**'). This Proposed Regulation was adopted following a review of the Prospectus Directive 2003/71/EC and proposes overhaul of the rules that allow companies to raise money on public markets or by means of a public offer with potential investors. According to the European Commission, the Proposed Regulation will enable investors to make informed investment decisions and simplify the rules for companies that wish to issue shares or debt and foster cross-border investments in the Single Market.

Commenting on the proposed new rules, Commissioner for Financial Stability, Financial Services and the Capital Markets Union Jonathan Hill stated:

"We need a prospectus regime that gives investors the information they need, but that does not pile up unnecessary costs and put companies off raising money on the public markets. Today's proposal strikes a better balance. It will make the system simpler, cheaper and quicker. It will safeguard investors, while making it easier for small and medium-sized enterprises and other businesses to raise money."

The Proposed Regulation will make the following changes:

- ▣ Exempting the smallest capital raisings;
- ▣ Creating a lighter prospectus for smaller companies;
- ▣ Shorter prospectuses and better investor information;
- ▣ Simplifying secondary issuance for listed firms;
- ▣ Fast track and simplified frequent issuer regime; and
- ▣ Single access point for all EU prospectuses.

The text of the Proposed Regulation is available at the following link:

<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015PC0583>

(ii) **Commission Delegated Regulation supplementing the Prospectus Directive (2003/71/EC) and amending Commission Regulation (EC) No 809/2004 has been adopted**

On 30 November 2015, the Commission adopted the Commission Delegated Regulation supplementing Directive 2003/71/EC of the European Parliament and of the Council with regard to regulatory technical standards for approval and publication of the prospectus and dissemination of advertisements and amending Commission Regulation (EC) No 809/2004.

The adopted text can be accessed via the following link:

http://ec.europa.eu/finance/securities/docs/prospectus/151130-delegated-regulation_en.pdf

Pensions Update

(i) **European Commission publishes 2015 Pension Adequacy Report**

On 5 October 2015, the European Commission published Volume 1 of its 2015 pensions adequacy report (the "**Report**"). The Report shows that the pension systems of the European Union can be expected to deliver adequate pensions to future generations of retirees provided there are strong policies to enable workers to stay in jobs until they reach the statutory pension age are pursued.

Commenting on the Report, Marianne Thyssen, Commissioner for Employment, Social affairs, Skills and Labour Mobility stated:

"Recent pension reforms have focused on ensuring pensions for a much larger older population without destabilising public finances. This can only be achieved if the great majority of people are offered enough opportunities to keep on working until they reach the regular retirement age that is set to rise across the EU. Our priority must be to invest enough in people's skills and health to enable them to use such opportunities. We also need solidarity with those who cannot and may need to rely on unemployment or invalidity benefits before reaching the retirement age."

The Report outlines that recent pension reforms have postponed retirement and restricted early exits from the labour market. According to the Report, the success of such reforms will depend to a great extent on the ability of older workers to stay in employment as pension ages go up. In 2012 only about half of retirements from the labour market occurred because people had reached the pensionable age. Many people retired earlier for reasons such as health, unemployment, and caring duties. It will therefore be crucial to provide people with the necessary skills, as well as health and social support to maintain

their employability as they age. The Report confirms that the Commission is pursuing initiatives in that area, such as the recent Recommendation on long term unemployment, which aims at better supporting the long-term unemployed so they can return to the labour market and avoid becoming inactive.

The Report is available at the following link:

<http://ec.europa.eu/social>

(ii) Pensions Authority publishes responses to consultation on trustee qualifications

On 2 December 2015, the Pensions Authority (the “**Authority**”) published a synopsis of the responses to its consultation on trustee qualifications which was published on 1 September 2015. The Authority received a total of 30 written submissions in response to the consultation.

A synopsis of the submissions can be found at the following link:

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Synopsis_of_responses_to_trustee_qualifications_consultation1.pdf

Health Insurance

(i) Health Insurance (Amendment) Bill 2015

The Minister for Health published the Bill on 2 November 2015. The Bill makes a number of changes to credits and levies on health Insurance products, with the aim of sustaining the community rating in our health insurance market so that older citizens and people with illnesses can afford health insurance and are not discriminated against in favour of younger, healthier people.

The revised rates were recommended by the Health Insurance Authority and will take effect from 1 March 2016.

The Bill can be accessed via the following link:

<http://www.oireachtas.ie/viewdoc.asp?DocID=29910&&CatID=59>

Insurance Ireland

(i) **Insurance Ireland welcomes publication of the bodily injuries thematic review by the Central Bank**

On 24 November 2015, Insurance Ireland announced in a press release (the “**Release**”) that it welcomed the publication of the Bodily Injuries Thematic Review (the “**Review**”) by the Central Bank. The Review concurs with Insurance Ireland’s views in relation to the key drivers behind the increase in the costs of claims in the Irish Motor Insurance market.

Commenting on the Review, Kevin Thompson, CEO of Insurance Ireland, stated:

“The Central Bank has identified a number of key drivers of claims costs including increasing court awards, increasing economic activity, legislative changes and increasing miles travelled. All of these factors combined have resulted in a very dynamic environment for Irish Motor Insurance companies. It is vitally important that the necessary steps are taken to address the increasing cost of motor claims.”

The Release is available at the following link:

<http://www.insuranceireland.eu/news-and-publications/news-press-release/insurance-ireland-welcomes-publication-of-the-bodily-injuries-thematic-review-by-the-central-bank-of-ireland>

Central Bank of Ireland

(i) **Revised Industry Funding levies**

The Central Bank Act 1942 (Section 32D) Regulations 2015 (the “**2015 Funding Regulations**”) were signed into law on 7 October 2015 and became effective on that day. As of that date, all financial service providers are liable to pay an annual levy which must be paid no later than 28 days from the date of the levy notice. If a financial service provider fails to pay the levy by the required date the Central Bank may take steps to recover the levy and this may include court proceedings. A financial service provider must keep all records on which the levy has been calculated for so long as the 2015 Funding Regulations stipulate which currently is for a period of six years.

On 21 October 2015, the Central Bank published the Guide to Industry Funding Regulation 2015 (the “**Guide**”) to provide a background to the 2015 Industry Funding Regulations, to

explain the significant changes and to outline the process for the calculation of the industry funding levy for the various industry sectors.

Some of the significant changes for 2015 are as follows:

- ▣ Treatment of Pension Costs – Under the current funding arrangements, industry is levied for 50 per cent of the costs incurred on financial regulation activities, with certain exceptions. In general, these costs are levied on various sectors of industry on a proportionate basis, depending on the level of regulatory input and oversight required. In August 2015, representatives of the key industry groups were briefed by the Central Bank on the proposed 2015 levies applicable to their sectors. Concerns were expressed in relation to the increasing costs of financial regulation with particular emphasis on the sharp increase in costs associated with the Central Bank's Pension Scheme.

The Central Bank acknowledges the impact that this volatility has on individual levies and for this reason introduced a change in the method of levying current service pension costs. Under the revised approach, the impact of pension volatility will be spread over a rolling ten year period. This will partially mitigate the increases from the previously advised 2015 levy amounts which are now circa eight per cent lower than originally communicated.

In planning the approach to the 2016 levy year the Central Bank will consider:

- (i) The views expressed by industry bodies over recent weeks; and
- (ii) The responses to the consultation paper on the review of funding arrangements.

- ▣ Collection of Outstanding Levies – To ensure that those who do pay their levy are not required to subsidise those who do not pay, the Central Bank has appointed external legal services to assist in the collection of outstanding levies
- ▣ Changes to Industry Funding Categories – The ICAV Act, 2015, provides an additional legal structure, namely the ICAV, for Irish authorised investment funds. The definition of available fund structures has been extended in the 2015 Industry Funding Regulations to capture these new fund structures.

The 2015 Funding Regulations and the Guide are available via the following link:

[http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/S.I. No 429of 2015 Central Bank Act 1942 \(Section32D\) Regulations2015.pdf](http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/S.I._No_429of_2015_Central_Bank_Act_1942_(Section32D)_Regulations2015.pdf)

[http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/CLEANA Guide To IndustryFunding Regulations 2015 DRAFT.pdf](http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/CLEANA_Guide_To_IndustryFunding_Regulations_2015_DRAFT.pdf)

(ii) **Central Bank publishes Insurance statistics for 2014**

The Central Bank has published insurance statistics for 2014. The statistics provide a summary of the Life Assurance and Non-Life Insurance returns made to the Central Bank pursuant to the European Communities (Life Assurance) Framework Regulations, 1994 and the European Communities (Non-Life Insurance Accounts) Regulations, 1995 in respect of business written during the year-ended 31st December 2014.

The statistics can be found at the following link:

<https://www.centralbank.ie/publications/Documents/Insurance%20Statistics%202014.pdf>

(iii) **Central Bank publishes corporate governance requirements for insurance undertakings**

The Central Bank split the previous Corporate Governance Code for credit institutions and insurance undertakings in November 2015 and published the Corporate Governance Requirements for Insurance Undertakings (the “**Requirements**”) which apply to both insurers and reinsurers authorised by the Central Bank. The Requirements do not apply to captive insurers or foreign incorporated subsidiaries of Irish (re)insurance undertakings.

The Requirements impose minimum core governance standards on (re)insurance undertakings and also impose additional requirements on those undertakings that have been designated as High Impact undertaking for the purposes of PRISM. The Requirements apply from 1 January 2016.

The Requirements are available at the following link:

http://www.centralbank.ie/regulation/Documents/Corporate_Governance_Requirements_for_Insurance_Undertakings_2015.pdf

(iv) **Central Bank publishes corporate governance requirements for captive insurance and reinsurance undertakings**

The Central Bank has recently published corporate governance requirements for captive insurance and reinsurance undertakings (the “**Requirements**”). The Requirements impose the minimum core standards upon captive insurance undertakings and captive reinsurance undertakings as defined in the Requirements. Pursuant to the Requirements, the Central Bank may from time to time impose such additional corporate governance requirements on any captive where it considers it necessary to do so.

According to the Requirements, a captive shall submit to the Central Bank a compliance statement specifying, in accordance with any relevant guideline issued by the Central

Bank, whether the captive has complied with the Requirements to which the statement relates.

The Requirements are available in full at the following link:

http://www.centralbank.ie/regulation/Documents/CorporateGovernance_Requirements_for_Captives_2015.pdf

(v) Central Bank publishes guidelines on completing and submitting life insurance, non-life Insurance and reinsurance applications

The Central Bank has recently published Guidelines on completing and submitting life insurance, non-life Insurance and reinsurance applications (the “**Guidelines**”).

The Guidelines provide that in order to obtain an authorisation, an undertaking must make an application to the Central Bank. Throughout the authorisation process, the Central Bank ascertains if, in its opinion, the applicant complies with the appropriate provisions of the 2015 Regulations.

The Guidelines advise firms that in advance of contacting the Central Bank, each potential applicant must assess whether its proposed business model:

- ▣ Requires an insurance or reinsurance authorisation;
- ▣ Falls within the ‘captive’ definition;
- ▣ Is capable of complying with the Regulations;
- ▣ Is capable of complying with the Central Bank’s requirements for authorisation; and
- ▣ Will comply with the requirements that must be adhered to by insurance or reinsurance undertakings on an on-going basis.

The Guidelines can be accessed at the following link:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/Documents/GuidelinesonCompletingandSubmittingLifeInsurance,NonLifeInsuranceandReinsuranceApplications2015.pdf>

(vi) Central Bank publishes strategy for 2016-2018

On 23 November 2015, the Central Bank published its Strategic Plan for the three year period 2016 to 2018.

This Strategic Plan builds on work already started in preceding years, such as:

- ▣ Implementing and assessing unconventional monetary policy measures;
- ▣ Stepping up engagement with firms' boards and senior management towards a strong consumer-centred culture; and
- ▣ Extending on-site inspection capabilities across all sectors of the financial services industry.

It will also take on new and increased responsibilities in the coming years, including:

- ▣ Delivering the new Central Credit Register;
- ▣ Implementing new European insurance requirements, Solvency II; and
- ▣ Working in close co-operation with the new Single Resolution Board on resolution matters concerning Significant and Cross Border Institutions.

Key projects will be undertaken during the lifetime of the plan including:

- ▣ Reviewing the Central Bank's organisational design and structure and ensuring the organisation can attract and retain the right people with the right skills and experience to meet its needs; and deploying a major new data and information management strategy; and
- ▣ Moving the Central Bank's city centre staff to a new head office, in order to improve the Central Bank's efficiency, collaboration and ways of working.

In recognition of the importance of transparency in its activities and performance the Central Bank will prepare a report of its progress in relation to this Strategic Plan which will be published annually within six months of each year end.

A copy of the Strategic Plan is available at the following link:

[http://www.centralbank.ie/publications/Documents/StrategicPlan2016 2018.pdf](http://www.centralbank.ie/publications/Documents/StrategicPlan2016%202018.pdf)

(vii) Feedback on Desk Based Review on Governance of Errors' Processes within Banks and Insurers

On 8 December 2015, the Central Bank published a letter setting out its Feedback on a desk based review on Governance of Errors' Processes within Banks and Insurers (the "**Letter**").

The Central Bank undertook a desk-based review of the errors resolution processes across 22 firms in the banking and insurance sectors (the "**Review**"). In-scope firms were

requested to explain in detail, to the Central Bank, their governance processes for dealing with errors and to demonstrate how they are delivering fair outcomes for consumers in compliance with the Consumer Protection Code (the “**Code**”) in terms of how errors are handled.

The Code contains a number of important requirements to ensure that errors are dealt with speedily, efficiently and fairly for consumers, including timely resolution, remediation and contact with customers when errors are detected. Firms are required to have systems and controls in place to ensure compliance with the Code.

While responsibility for ensuring compliance with the Code rests with the firm, the purpose of the Letter is to provide feedback based on both the Central Bank’s expectations of firms and good practices identified during the Review.

The Letter sets out three key areas:

1. **Errors Governance framework** – The Review found that all firms have governance processes in place, supported by various governance framework documents for the purpose of the resolution of errors. However, potential areas of weakness were noted, including a lack of clarity around the level at which the governance framework is approved, when it was last approved, by whom/what party it was approved and/or what area was ultimately responsible for oversight of the governance framework.

The Review identified that most of the in-scope firms have a process in place for escalation to senior management and to the Central Bank. However, a number of firms have no set criteria for determining escalation levels, with each business area responsible for adhering to the policy and investigating each error and resolving it.

2. **Review of Errors Logs** - The majority of in-scope firms confirmed that reviews are carried out on the error logs and there are escalation processes in place, although the frequency of such reviews varied across firms.
3. **Review of Errors Processes** – Each firm demonstrated an awareness of the requirement to report errors affecting consumers, which had not been fully resolved within 40 business days, to the Central Bank. However, there was a variance in firms’ application of the commencement of the 40 business days. Firms are reminded that Section 10.3 of the Code provides that the 40 business days’ requirement commences on the date on which the error was first discovered by the firm. However, it is important to note that the primary focus on resolving an error should not be solely on this 40-day timeframe, but rather on ensuring that the error is properly investigated and remediated, with customers’ interests first and foremost, ensuring controls for prevention are in place going forward and wider implications have been considered and mitigated/managed.

For each of the above headings the Central Bank sets out its expectations. Firms are required to consider the feedback and confirm consideration of same to the Central Bank by 30 April 2016.

The Letter is available at the following link:

<https://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/ReviewonGovernanceofErrorsProcessesinBanksand%20InsurersDecember2015.pdf>

(viii) Central Bank publishes programme of themed inspections in Markets Supervision for 2016

On 14 December 2015, the Central Bank published its programme of themed inspections (the “**Programme**”), reflecting its supervisory priorities for 2016 and anticipating areas of emerging risk.

The Programme, which supplements the Central Bank’s day to day supervisory work, will focus on 12 areas, building on the supervisory work in 2015 in the areas of cyber-security, operational risk and pricing of investment funds.

Dillon Eustace has published an article on this topic which can be accessed via the following link:

http://www.dilloneustace.ie/download/1/Publications/Regulatory_and_Compliance/Central_Banks_programme_of_themed_inspections_for_2016.pdf

Anti-Money Laundering/Counter-Terrorist Financing

(i) Joint Committee of European Supervisory Authorities (“ESAs”) consults on the Fourth Money Laundering Directive (“MLD4”) risk based supervision and risk factors guidelines

On 21 October 2015, the Joint Committee of the ESAs published two consultation papers on guidelines required under MLD4. As previously reported in our last update Member States are obliged to transpose MLD4 into national law by 26 June 2017.

The consultation paper (JC 2015 060) on the risk-based supervision guidelines focuses on the characteristics of a risk-based approach to anti-money laundering (“**AML**”) and counter financing of terrorism (“**CFT**”) supervision, and the steps supervisors should take when conducting supervision on a risk-sensitive basis. The aim is to create both a common understanding of risk-based supervision and to establish consistent and effective

supervisory practices across the EU, complaint with the Financial Action Task Force's ("FATFs") standards.

The consultation paper on the guidelines (JC 2015 061) covers simplified and enhanced customer due diligence and the factors which credit and financial institutions should consider when assessing the AML/CFT risk associated with individual business relationships and occasional transactions. The aim is to promote the development of a common understanding by firms and competent authorities across the EU of what the risk-based approach to AML/CFT entails and how it should be applied. The proposed guidelines which are contained in the consultation paper are divided into two parts; Title II is generic and applies to all firms whereas Title III is sector specific and complements the generic guidance in Title II. Title III sets out risk factors that are of particular importance in certain sectors and provides guidance on the risk-sensitive application of Customer Due Diligence measures by firms in those sectors.

The Central Bank as a member of ESA's AML Committee has inputted into the drafting of both consultation papers. Comments on the consultation papers should be received by 22 January 2016. It is intended that the guidelines will be finalized in early 2016 and that they will be updated as necessary on an on-going basis. It is hoped that once finalized the guidelines will help firms identify, assess and manage the money-laundering and terrorist financing risk associated with individual business relationships and occasional transactions in a risk-based, proportionate and effective way.

The consultation papers are available at the following links:

http://www.eba.europa.eu/documents/10180/1240311/JC+2015+060+%28Joint+Consultation+on+Guidelines+on+AML_CFT+RBS_Art.pdf

http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+Joint+Draft+Guidelines+on+AML_CFT+RFWG+Art.pdf

(ii) **Central Bank publishes guidelines on completing trust or company service provider applications**

On 4 November 2015, the Central Bank published guidelines on completing trust or company service provider applications (the "**Guidelines**") which provide guidance on the requirements for applying for authorisation as a Trust or Company Service Provider ('**TCSP**') under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (as amended) ("**CJA 2010**").

A TCSP means any person whose business it is to provide any of the following services:

- ▣ Forming companies or other bodies corporate;

- ▣ Acting as a director or secretary of a company under an arrangement with a person other than the company;
- ▣ Arranging for another person to act as a director or secretary of a company;
- ▣ Acting, or arranging for a person to act, as a partner of a partnership;
- ▣ Providing a registered office, business address, correspondence or administrative address or other related services for a body corporate or partnership; and
- ▣ Acting, or arranging for another person to act, as a trustee of a trust acting, or arranging for another person to act, as a nominee shareholder for a person other than a company whose securities are listed on a regulated market.

The Guidelines provide that all the information requested in the application form and the listed documentation in Appendix 1 of the application form must be provided to the Central Bank in support of a TCSP application. In addition, the Central Bank notes that:

- ▣ Two directors of the applicant firm must sign the declarations on pages 14, 15 and 20 of the form; and
- ▣ Two directors of the parent firm must sign the declaration on page 16.

The application and supporting documentation should be submitted electronically to tcsp@centralbank.ie. The original signed application form must also be posted to the address listed on the application form. A non-refundable fee of €130 must accompany each application.

The Guidelines can be accessed via the following link:

[https://www.centralbank.ie/regulation/processes/anti-money-laundering/TCSP/Documents/TCSP Application Guidance.pdf](https://www.centralbank.ie/regulation/processes/anti-money-laundering/TCSP/Documents/TCSP%20Application%20Guidance.pdf)

(iii) Central Bank briefing on ESA’s AML guidelines and FATF mutual evaluations review 2016

On 14 December 2015, the Central Bank provided a brief outline to industry on the ESA’s anti-money laundering (“**AML**”) draft guidelines (detailed at (i) above) and the forthcoming FATF mutual evaluation review (“**MER**”) that is due to take place in 2016 and to explain what involvement the private sector will have during the process.

At the briefing the Central Bank highlighted the following resources;

- ▣ Further information on ESA’s Guidelines and how to submit comments;

- ▣ Further information on the FATF MER Process;
- ▣ FATF Methodology;
- ▣ FATF Recommendations.

These resources are available on the Central Bank's website at the following link:

<https://www.centralbank.ie/events/Pages/home.aspx>

Data Protection

(i) **Safe Harbour principles declared invalid by the European Court of Justice**

On Tuesday 6 October, 2015 the Court of Justice of the European Union ("**ECJ**") ruled, in the case of *Schrems v Data Protection Commissioner*, that the 'Safe Harbour' arrangements between the United States and the European Commission are invalid.

Arrangements, agreed between the United States and the European Commission, allowed companies based in the U.S. to store personal data about European citizens on U.S. based computer servers without breaching EU data protection law, which in Ireland have been implemented by the Data Protection Acts 1988 and 2003. This has allowed Irish subsidiaries of U.S. companies, or even Irish companies which use service providers based in the U.S. to transfer personal data to the U.S. without breaching data protection laws.

This case is the culmination of an action brought against Facebook in the Irish High Court by an Austrian student, Max Schrems. Mr Schrems argued that personal data processed by Facebook is unprotected because it is transferred to the United States, where it is not treated in accordance with EU data protection laws. The ECJ found that the European Commission had neither the legal means to police the Safe Harbour agreement nor the power to prevent U.S. intelligence from collating EU citizens' data. Rather than wait for a successor agreement, the ECJ dismissed the existing arrangement as a breach of EU data protection rules and the fundamental rights of EU citizens. The ECJ also found that the DPC was not precluded from investigating the original complaint.

Until a new transatlantic agreement is put in place, the outcome of this ruling creates legal uncertainty for all companies currently relying on the Safe Harbour arrangements as a legitimate means of transferring personal data to the U.S.

In light of the ruling, the European Commission issued a guidance note (the "**Guidance**"). According to the Guidance the Commission's top priorities are:

- ▣ To ensure a high level of protection of personal data when transferred across the Atlantic;
- ▣ The continuation of transatlantic data flows with adequate safeguards; and
- ▣ A coordinated response with national Data Protection Authorities (DPAs) to ensure the uniform application of EU law in the internal market and clear guidance for European businesses.

The Guidance can be assessed at the following link:

[http://europa.eu/rapid/press-release MEMO-15-6014 en.htm](http://europa.eu/rapid/press-release_MEMO-15-6014_en.htm)

Dillon Eustace has published an article on this topic which can be assessed at the following link:

<http://www.dilloneustace.ie/download/1/Publications/Corporate/European Court of Justice Data Protection Ruling.pdf>

(ii) **European Commission welcomes EU-wide legislation on cybersecurity**

On 8 December 2015, the European Commission issued a press release (the “**Release**”) welcoming the first EU-wide legislation on cybersecurity. According to the Release, information systems are affected by an increasing number of security incidents and therefore it is a priority for the Commission to help prevent these incidents.

The proposed legislation aims to ensure a high common level of cybersecurity in the EU by:

- ▣ Improving Member States’ national cybersecurity capabilities through setting out strong policies to maintain a level of network and information security;
- ▣ Improving cooperation between Member States, and between public and private sector bodies against risks and incidents affecting network and information systems;
- ▣ Requiring companies in critical sectors, such as energy, transport and banking to adopt risk management practices.

Commenting on the proposed legislation, the European Commission Vice President for the digital single market, Andrus Ansip stated:

“Trust and security are the very foundations of a Digital Single Market. If we want people and businesses to use and make the most of connected digital services, they need to trust them to be secure in the case of attack or failure. The internet knows no border – a problem in one country can have a knock-on effect in the rest of Europe. This is why we

need EU-wide cybersecurity solutions. Last night's agreement is an important step in this direction, but we cannot stop here: we plan an ambitious partnership with the industry in the coming months to develop more secure products and services."

The Release is available at the following link:

http://europa.eu/rapid/press-release_IP-15-6270_en.htm

(iii) Insurance Europe comments on the General Data Protection Regulation ("GDPR"), in light of the trialogue discussions

Insurance Europe has recently issued a paper commenting on the GDPR in light of the trialogue discussions. The paper outlines that data processing lies at the very heart of the insurance business.

Insurance Europe supports both the Council approach in Recital 39 and the position of the Article 29 Working Party, which acknowledge that fraud prevention falls under the non-exhaustive list of "legitimate interests" in Article 6(1)(f). According to Insurance Europe this would provide the necessary legal basis to allow processes for combatting insurance fraud and thus protecting honest policyholders.

Insurance Europe welcomes the European Parliament's approach in Articles 22 (3a) and 82(1d) and the Council's proposed Recital 38a as they explicitly allow the transmission of necessary data within groups of undertakings of companies.

All Insurance Europe's comments on the GDPR are available at the following link:

http://www.insuranceeurope.eu/sites/default/files/attachments/Comments_on_the_General_Data_Protection_regulation_in_light_of_the_trialogue_discussions.pdf

(iv) Agreement reached on new Data Protection Regulation

On 15 December 2015, trilogue negotiations between the EU Commission, the European Parliament and the EU Council concluded with agreement being reached on the new General Data Protection Regulation (the "GDPR"). Agreement was also reached on a new data protection directive for the police and criminal justice sector (the "Directive").

The draft agreements were passed by the Committee on Civil Liberties, Justice and Home Affairs on Thursday 17 December 2015. The final texts of the GDPR and the Directive are expected to be agreed in early 2016 and should become applicable in Member States in 2018.

More information can be found at the following link:

Fitness and Probity

(i) **Central Bank Publishes amendments to the Fitness and Probity Regime for re(insurance) undertakings under Solvency II**

On 4 December 2015, the Central Bank published the Central Bank Reform Act 2010 (Sections 20 and 22) (Amendment) Regulations 2015 (S.I. 545 of 2015) (the “**Amending Regulations**”). The Amending Regulations amend the Central Bank’s Fitness and Probity Regime by prescribing an additional PCF (PCF48-Head of Actuarial Function) and removing two PCFs (PCF 20 - Chief Actuary and PCF44 – Signing Actuary).

The Central Bank previously notified industry of these changes and other changes to the Fitness and Probity regime for insurance undertakings under Solvency II in a Policy Note published in October 2015.

In addition to the changes to PCFs, the Policy Note noted the following:

- ▣ Key function holders for the four key governance functions (compliance (PCF12), internal audit (PCF13), risk (PCF14) and actuarial (PCF48)) which must be in place are subject to the Fitness and Probity notification requirements. In the case of smaller and less complex undertakings, a number of these functions may be carried out by a single person or organisational unit provided each key function is operationally independent and conflicts of interest are addressed;
- ▣ Where key functions are outsourced, a current PCF within the undertaking must be designated with overall responsibility for the outsourced arrangement, and notified to the Central Bank. Depending on the nature, scale and complexity of the undertaking, there may be more than one PCF designated responsibility for the outsourced function. The Central Bank published Guidance for (Re)Insurance Undertakings on the Fitness and Probity Amendments (the “**Guidance**”) to assist undertakings in complying with the requirements introduced by the Amending Regulations. The Guidance also includes the Central Bank’s expectations on (re)insurance undertaking’s establishment of key functions and implementation of certain system of governance requirements in particular outsourcing requirements under Solvency II. The Amending Regulations are available at the following link:

http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Amending_Regulation_2015_SI_545.pdf

The Policy Note can be accessed via the following link:

[http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Amendments for Insurance Undertakings under SII.pdf](http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Amendments%20for%20Insurance%20Undertakings%20under%20SII.pdf)

The Guidance can be found at the following link:

[http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance for \(Re\)Insurance UndertakingsonFPAmendments2015.pdf](http://www.centralbank.ie/regulation/processes/fandp/serviceproviders/Documents/Guidance%20for%20(Re)InsuranceUndertakingsonFPAmendments2015.pdf)

Companies Act 2014

(i) Conversion of an existing private company

The Companies Act 2014 (the “**Act**”) became law on 1 June 2015 with a transition period of 18 months for certain elements. The Act represents a significant reform of Ireland’s company law regime by consolidating, reforming and amending existing company law legislation. The Act impacts every Irish company together with all directors and shareholders.

In particular all existing private companies will need to make a decision whether to convert to:

- ▣ A company limited by shares (“**LTD**”); or
- ▣ A designated activity company (“**DAC**”); or
- ▣ Another type of company (public limited company, Societas Europaea).

It is likely that most companies will choose to be either a LTD or a DAC therefore we have set out the key features of both these company forms below.

The key features of an LTD are:

- ▣ An Ltd can have between 1 and 149 shareholders;
- ▣ The liability of shareholders in an LTD is limited;
- ▣ An LTD may have just 1 Director;
- ▣ An Ltd must have a Company Secretary. If there is only one Director, the sole Director cannot also act as Company Secretary;

- ▣ An Ltd must have a one-document constitution (to replace the current memorandum and articles of association);
- ▣ An LTD cannot have an objects clause (which is a clause which limits the objects and business of the company to those listed in the clause). This means an LTD has full unlimited capacity to carry on and undertake any business or activity, to do any act or enter into any transaction;
- ▣ The board (including a sole director) of an LTD will automatically be deemed to have authority to bind the company;
- ▣ An LTD cannot list any securities (including debt). If your company needs to list securities, then the DAC option should be chosen; and
- ▣ An LTD may dispense with holding an Annual General Meeting even where it has more than one member.

The Act sets out a clear framework for the conversion process to an LTD, however the most efficient way in which to do this is for the shareholders of the company to pass a special resolution to adopt a new constitution replacing the existing memorandum and articles of association.

However, it should be noted that a DAC is the closest of the new company types to an existing private company.

Some of the key feature of a DAC are:

- ▣ A DAC will be suitable where the company is, or needs to be, limited to carrying on a specific activity;
- ▣ A DAC will also be suitable for those who want to list debt securities on a stock exchange or publish an offering document;
- ▣ Existing credit institutions and insurance companies are also obliged under the Act to convert to a DAC;
- ▣ A DAC will have a two-document constitution;
- ▣ A DAC will have an objects clause, so the company's corporate capacity will be restricted;
- ▣ A DACs name must end with "designated activity company" or the Irish equivalent;
- ▣ A DAC must have at least two directors; and

- ❑ Single-member DACs may dispense with holding an Annual General Meeting, multi-member DACs may not.

The Act also sets out a clear framework for the conversion process to a DAC. The most efficient way in which to do this is for the shareholders to pass an ordinary resolution adopting a new constitution to replace the existing memorandum and articles of association and changing the company name within 15 months of the commencement date of 1 June 2015 (i.e. before 1 September 2016).

The Act provides for an 18 month transition period, commencing on 1 June 2015, for companies to convert. Until a company converts to an LTD, it will be treated as a DAC during the 18 month transition period.

It should be noted that, in circumstances where the shareholders fail to take the necessary action to convert the company, the directors are obliged to convert the company to an LTD before the end of the transition period. At the end of that transition period, where an existing private company fails to elect to convert to some other type of company, that company will be deemed to have become an LTD. However, the LTD legal form may not be appropriate for the company in question and certain companies may be obliged to register as a DAC based on their regulatory status (for example insurance companies).

The Act makes provision for relief where a company does not re-register as a DAC before the end of the 18 month transition period. Essentially, one or more of a company's shareholders holding not less than 15% of its issued share capital, or one or more creditors meeting certain qualification criteria, may apply to the Irish courts for an order directing the company to re-register as a DAC.

Workplace Relations Act 2015

(ii) The Work Place Relations Act 2015

The Workplace Relations Act, 2015 ("the **Act**") came into operation on 1 October 2015 and applies to employment legislation and equal treatment legislation and provides for the resolution, mediation and adjudication of employment disputes and complaints. The Act will remove the existing dispute resolution infrastructure of the Employment Appeals Tribunal and the Equality Tribunal and replace them with a new Workplace Relations Commission ("the **Commission**" or "the **WRC**"). The Labour Court will hear any appeals from the Commission.

The Act creates a number of offences and provides that where an employee is employed by a corporate entity, a prosecution may be brought against a director, manager, secretary or other officer where the offence is committed with their consent or connivance. As to

sanctions, in addition to any fine, a convicted person will have to pay the Commission's costs and expenses unless there are special and substantial reasons.

Under the Act, the Commission is given a wide role in promoting good workplace relations, providing guidance, doing research, and providing advice and information. The Chief Executive of the WRC will be called the "Director General" ("DG") and will hold office for an initial term of 5 years (with a maximum of up to 10 years) and will report to the Minister for Jobs, Enterprise and Innovation ("the Minister"). The Commission may furnish draft Codes of Practice to the Minister (except in respect of the Employment Equality Act 1998) and, once approved, a Code of Practice will be admissible in any proceedings.

Further information is provided in an article on this topic published by Dillon Eustace, which is available at the following link:

http://www.dilloneustace.ie/download/1/untitled_folder/The_Workplace_Relations_Act_2015.pdf

Irish Taxation Update

(i) Common Reporting Standard (CRS) – Gone Live

While legislation to implement the CRS in Ireland was introduced in Finance Act 2014 by inserting Section 891F of the Taxes Consolidation Act 1997, the Regulations implementing CRS (Statutory Instrument 583 of 2015) were approved in late December and are **effective from 1 January 2016**.

Under the CRS, participating jurisdictions will be required to exchange certain information held by financial institutions regarding their non-resident customers. Over 90 jurisdictions have committed to exchanging information under the CRS and a group including Ireland, have committed to the early adoption of the CRS (known as the 'Early Adopter Group') with the first data exchanges taking place in September 2017. Ireland's published list of Participating Jurisdictions for CRS/DAC2. In line with the above, DAC2 (which is a revised Directive on Administrative Co-operation which came into force in December 2014 and extends Council Directive 2011/16/EU from Revenue held information to financial account information) essentially imports the CRS into EU legislation and legislation to implement the Directive in Ireland was introduced in Finance Act 2015 by inserting Section 891G of the Taxes Consolidation Act 1997.

A copy of the list of participating jurisdictions can be accessed via the following link:

<http://www.revenue.ie/en/business/aeoi/participating-jurisdictions.pdf>

Guidance & Commentary

The CRS, along with its related Commentary sets out exactly what information is to be exchanged and is available below. In addition to this the OECD have developed a CRS Handbook to help with the implementation of CRS globally, and have published some FAQs on the OECD website. The Irish Revenue Commissioners have also issued some FAQs regarding local implementation, but do not intend, unlike for FATCA, to issue specific Guidance Notes on CRS.

The FAQs are available via the following links:

<http://www.oecd.org/tax/automatic-exchange/>

<http://www.revenue.ie/en/business/aeoi/crs-faqs.pdf>

(ii) Finance Act 2015

Non-Resident Declarations

Life assurance policies held by non-residents are exempt from exit tax but there is currently a requirement that a non-resident declaration is completed “*at or about the time*” the policy is incepted. The Act removes this requirement so that exit tax will not apply provided the non-resident declaration has been made prior to maturity, encashment or assignment of the policy.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022
Fax: +1 345 945 0042

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

E-mail: enquiries@dilloneustace.ie

Website: www.dilloneustace.ie

Contact Points

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the Regulatory and Compliance team members below.

Breda Cunningham

E-mail:

breda.cunningham@dilloneustace.ie

Tel : + 353 1 673 1846

Fax: + 353 1 667 0042

Valerie Bowens

E-mail: *valerie.bowens@dilloneustace.ie*

Tel : + 353 1 673 1858

Fax: + 353 1 667 0042

Michele Barker

E-mail: *michele.barker@dilloneustace.ie*

Tel : + 353 1 673 1886

Fax: + 353 1 667 0042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2016 Dillon Eustace. All rights reserved.

This Insurance Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 31 December 2015, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO