Insurance Quarterly Legal and Regulatory Update

Period covered:
1 July 2014 to 30 September 2014

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) *Corrigendum* to Solvency II published in the Official Journal

On the 25 July 2014, a *corrigendum* to the text of the Solvency II Directive was published in the Official Journal of the EU ("**OJ**") and relates to "obvious" errors in 23 of the different language versions of Solvency II (including the English one). The errors relate to the correlation table set out in Annex VII to Solvency II.

The *corrigendum* was published by the Council of the EU on 2 July 2014. Member States are required to transpose Solvency II by 31 March 2015 and the new regime will apply from 1 January 2016.

A copy of the corrigendum is available at the following link:

http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2014_219_R_0013&from=EN

(ii) Central Bank Publishes FLAOR Reporting Tool for Medium-Low and Low Impact (Re)insurance Undertakings

On 4 July 2014, the Central Bank announced the availability of the Forward Looking Assessment of Own Risks ("**FLAOR**") reporting tool for medium-low and low impact (re)insurance undertakings and groups. The FLAOR reporting tool had already been made available for High and Medium-High impact (re)insurance undertakings and groups.

All the (re)insurance undertakings and groups (i.e. groups where the Central Bank expects to be the group supervisor under Solvency II) are required to submit at least annually a FLAOR Report in 2014 and 2015, on or before the 31 December of each year, using the Central Bank Online Reporting System.

The FLAOR reporting tool and the FLAOR Return User Manual are available at the link below:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/life-insurance-companies/Pages/reporting.aspx

(iii) EIOPA Updates Solvency II Data Point Model and XBRL Taxonomy Design

On 31 July 2014, the European Insurance and Occupational Pensions Authority ("**EIOPA**") updated its Solvency II reporting format webpage with revised information on the data point model ("**DPM**") and XBRL taxonomy design that have been developed in accordance with EIOPA's guidelines on submission of information to National Competent Authorities ("**NCAs**").

The updated webpage contains a link to the updated XBRL taxonomy (version 1.5.2). Information about how this has been updated is provided in the release notes and the taxonomy framework architecture documentation.

EIOPA has also published a test instance release package that contains a set of test cases allowing practical checks to be performed on the XBRL Taxonomy. The package is accessible from the EIOPA webpage.

EIOPA strongly recommends undertakings and software vendors to base their work only on the most recent version of the DPM and XBRL taxonomy. The previous versions published by EIOPA are now considered as outdated.

EIOPA outlines that harmonised EU-wide reporting formats are crucial to ensure a consistent implementation of the European regulatory and supervisory frameworks to support EIOPA's goal to improve the consistency and efficiency and consistency of the supervision of financial institutions practices across Europe.

EIOPA has advised that further major releases of the Preparatory Solvency II DPM and XBRL Taxonomy are not foreseen, unless outstanding issues are detected. Fixes will be released to solve potential minor issues.

The EIOPA press release may be accessed through the following link:

https://eiopa.europa.eu/home-news/news-details/news/eiopa-publishes-an-update-on-data-point-model-and-xbrl-taxonomy-design/index.html

(iv) EIOPA Publishes Paper on Underlying Assumptions of the Standard Formula used for the Solvency II SCR Calculation

On 31 July 2014, EIOPA published a paper which sets out the underlying assumptions in the standard formula for the Solvency Capital Requirement ("**SCR**") calculation required under the Solvency II Directive.

The purpose of this paper is to support supervisors and firms in their application of EIOPA's Solvency II preparatory guidelines on the Forward Looking Assessment of Own Risks ("**FLAOR**") and, from 2016 onwards, with the guidelines on the Own Risk and Solvency Assessment ("**ORSA**"). In the paper, EIOPA explains that the assessment of the significance with which the risk profile of a firm or group deviates from the assumptions underlying the SCR calculation is an important process that firms and groups are required to perform from 2015. The purpose of the assessment is not to review the appropriateness or calibration of the standard formula. The standard formula for the SCR aims to capture the material, quantifiable risks that most firms are exposed to. However, it might not cover all material risks a particular firm is exposed to. For this reason, in some cases, the standard formula might not reflect the risk profile of a specific firm and, consequently, the level of own funds it needs.

The paper covers all risk modules of the standard formula, addressing the assumptions related to the risks covered by the respective modules, as well as the assumptions for the correlation between the modules. It does not address why some risks are not explicitly formulated in the standard formula. However, this does not mean that these risks do not need to be considered for the purposes of the assessment of the significance of the deviation.

The paper is divided between the assumptions *per se*, which are given in boxes at the start of the chapters, and background information. The assumptions outlined in the paper are those that EIOPA would expect the administrative, management or supervisory body of a firm to be aware of in order to perform its role in the FLAOR and ORSA process. The background information is intended to assist persons in assessing the significance of the deviation. In line with the general approach that the assessment of the significance of the deviation itself is left to the firm or group, the paper does not seek to prescribe explicitly the circumstances under which it would be appropriate for a firm or group to consider possible deviations of its risk profile from the assumptions on which the SCR standard formula calculation is based, or what exactly the firm or group should take into account in the assessment.

EIOPA explains that the paper reflects Solvency II and the Omnibus II Directive as well as the draft (level 2) delegated acts available at the time the paper was drafted. EIOPA also advises that the legal status of the paper is similar to the technical specifications it issued in April 2014. EIOPA informally consulted on a draft of the paper with stakeholders in spring 2014 and revised the draft following the comments received. The paper may be further amended as supervisors, firms and groups gain experience in this area.

The paper and the related press release are both available at the following links, respectively:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/technical_specifications/EIOPA-14-322_Underlying_Assumptions.pdf

https://eiopa.europa.eu/home-news/news-details/news/eiopa-publishes-the-underlying-assumptions-in-the-standard-formula-for-the-scr-calculation/index.html

(v) EIOPA Launches Consultation on Guidelines for Solvency II

EIOPA has launched a Consultation on the first set of Guidelines for Solvency II and invited comments from stakeholders on same.

The Consultation have been grouped into the following topics:

- Pillar 1 Guidelines, including Guidelines on Technical Provisions, Own Funds, the Standard Formula SCR and Group Solvency;
- Internal Model Guidelines;
- Pillar 2 Guidelines, including ORSA and Governance;
- Supervisory Review Process ("**SRP**") Guidelines; and
- Equivalence Guidelines.

The final date for receipt of comments was 29 August 2014.

The Consultation can be accessed via the link stated below:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Pages/default.aspx

(vi) Central Bank Conducts Survey on Preparedness for Solvency II

On 7 August 2014, the Central Bank announced that a survey on preparedness for Solvency II will be conducted in both 2014 and 2015 in order to supplement on-going supervisory engagement during the preparatory period. This survey is aimed at assessing undertakings' progress towards complying with certain guidelines on preparing for Solvency II published by the Central Bank in November 2013, the so called System of Governance and Submission of Information to the Central Bank Guidelines.

On 7 August 2014, the annual survey was issued to compliance officers of all participating undertakings. This online survey closed on 26 September 2014.

The Central Bank's press release is available via the link below:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Pages/default.aspx

(vii) Central Bank Publishes Q&A on Guidelines on Preparing for Solvency II

In August 2014, the Central Bank provided answers to questions posed by various stakeholders regarding the Guidelines on Preparing for Solvency II (the "**Guidelines**"). The document released by the Central Bank states that the Questions and Answers ("**Q&A**") are generally arranged under the names of Guidelines documents to which they relate.

The Q&A provided by the Central Bank deals with the following matters:

- Introduction of the Central Bank of Ireland Guidelines on Preparing for Solvency II;
- System of Governance;
- Forward Looking Assessment of Own Risks ("**FLAOR**");
- Submission of Information to the Central Bank; and
- Groups Aspects of the Guidelines.

However, the Central Bank has advised that this document may be updated to reflect additional Q&A during the preparatory phase, where appropriate.

The Central Bank also advises that where stakeholders have questions on these Guidelines which are not addressed in this Q&A or through the EIOPA Q&A process, they are encouraged to:

1. Submit a question as part of the EIOPA Q&A process, if the question relates to EIOPA specific material, particularly the Technical Annexes of the EIOPA Guidelines on Submission of Information to National Competent Authorities; or
2. Submit a question to their usual supervisory contact; or
3. Submit a question to solvencyii@centralbank.ie.

A copy of the Q&A can be accessed at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Questions%20and%20Answers%20-%20CBI%20Guidelines%20on%20Preparing%20for%20Solvency%20II.pdf

(viii) Central Bank Publishes Letter on Quantitative and Qualitative Regulatory Reporting Required by Guidelines on Preparing for Solvency II

On 18 July 2014, the Central Bank published a letter regarding the "Quantitative and Qualitative Reporting" required by both the Central Bank Guidelines on Preparing for Solvency II – Submission of Information and by the Solvency II Directive.

This letter states that EIOPA has mandated the use of eXtensible Business Reporting Language ("**XBRL**") as the mechanism for receipt of quantitative information from the National Competent Authorities and consequently the Central Bank has mandated its use for companies reporting under the Preparatory Guidelines and Solvency II to the Central Bank. There will be no alternative submission mechanism available for these reports.

The Central Bank also advises that EIOPA is developing a Tool for Undertakings ("**T4U**") to assist firms in preparing the quantitative reporting in XBRL format and this is expected to become available during Quarter 4, 2014. Other tools may also be available on the market and the use of T4U or alternative tools is at the discretion of each firm.

Work on finalising the full reporting requirements under Solvency II is on-going, however the full reporting requirements are expected to be finalised and published by 30 June 2015.

A copy of the letter is available at the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/life-insurance-companies/Documents/Dear%20CEO%20re%20XBRL.pdf

EIOPA Update

(i) EIOPA Updates 2014 Insurance Stress Test Materials

In July 2014, EIOPA published updated versions of the following materials relating to its 2014 Insurance Stress Test. The updates are stated below:

- On 2 July 2014, EIOPA published the seventh set of Q&A relating to the 2014 stress test along with the seventh set of Q&A on the technical specifications for the Solvency II preparatory phase;

- On 3 July 2014, EIOPA released the eighth set of Q&A relating to the 2014 stress test together with updated versions of the reporting template for the 2014 stress test and automatic updater for completed templates; and

- On 9 July 2014, EIOPA published the ninth set of Q&A relating to 2014 stress test along with the updated reporting templates and the automatic updating tool.

EIOPA announced the launch of the EU-wide stress test on 30 April 2014 and, since then, has updated the related materials on a weekly basis. EIOPA intends to publish the results of this test analysis in November 2014.

The new sets of Q&A are available at the following link:

https://eiopa.europa.eu/en/activities/financial-stability/insurance-stress-test-2014/questionsanswers/index.html

(ii) EIOPA Updates Q&A on Submission of Information to NCAs

In July, August and September 2014, EIOPA updated its Q&A on its Guidelines on Submission of Information to National Competent Authorities ("**NCAs**") relating to the Solvency II Directive.

The new Q&A are as follows:

- On 8 July 2014, Q&A 83, 84 and 85, which relate to the latest version of the Data Point Model ("DPM") published on the EIOPA website (S.06.02) and the classification of IORP/OFS entities, the premium paid/received to date (S.08.01) were published;
- On 24 July 2014, Q&A 86 to 90 were added. They refer respectively to the quantitative reporting template S.26.03 and S.12.01 for the preparatory phase; the quarterly reports; the possible simplification for captives in relation to S.26.02 and the quantitative reporting template S.27.01;
- On 14 August 2014, Q&A 91 to 98 were published which deal with quantitative reporting template S.27.01 for the preparatory phase; the order of priority with regard to Lines of Business; unitised with-profits business; S.08.01; S.23.01; S.25.01 and S.17.01;
- On 20 August 2014, Q&A 99 to 104 were added. The guidelines which these new Q&A refer to are S.06.02; S.12.01; S.08.01 and S.06.02;
- On 21 August 2014, Q&A 105 to 107 (in respect of S.08.01, S.06.02 and S.01.01) were published; and
- On 4 September 2014, Q&A 108 to 113 were added. They refer to cross checks; S.08.01; S.06.02.01; S.28.02; S.06.02 and Structured Products Data – Portfolio List.

The updated Q&A may be accessed via the link stated below:

https://eiopa.europa.eu/publications/eiopa-guidelines/qa-on-eiopa-guidelines/answers-to-questions-on-submission-of-information-to-ncas/index.html

(iii) EIOPA Updates Version of Way Forward Document produced by Steering Committee of EU-US Insurance Dialogue Project

On 1 August 2014, EIOPA published an updated version of the Way Forward Document produced by the Steering Committee of the EU-US insurance dialogue project.

The Way Forward Document provides a list of objectives and initiatives for the future which deal with the following matters:

- To promote the free flow of information between EU and US supervisors by removing the barriers to the exchanges of information;

- In respect of the group supervision the objective is establish a robust regime, under which there is:
  - A clear designation of tasks, responsibilities and authority amongst supervisors, including a single group/lead supervisor;
  - A holistic approach to determining the solvency and financial condition of the group that is consistent with the way companies manage their business, that avoids double counting of regulatory capital and that monitors risk concentrations, considers all entities belonging to the group and is complementary to solo/legal entity supervision;
  - Greater cooperation and coordination amongst supervisory authorities within colleges; and
  - Efficient enforcement measures at the group and/or solo level that allow for effective supervision of groups.

- In relation to the solvency and capital requirements, the objective is to further develop an approach to valuation which more accurately reflects the risk profile of companies, is sufficiently sensitive to changes in that risk profile and which has capital requirements that are fully risk-based, based on a clear and transparent calibration and that cover similar categories and subcategories of risks to which companies are exposed;

- In respect of reinsurance and collateral requirements, the objective is to work to achieve a consistent approach within each jurisdiction;

- Supervisory reporting, data collection and analysis – In this area the objective is pursue greater coordination in relation to the monitoring of the solvency and financial condition of

solo entities and groups through the analysis of supervisory reporting. The exchange of information is facilitated by the joint exchange of best practices for analysis and an evolution towards a greater consistency of reporting; and

- In relation to peer reviews the objective is ensure the consistent application of prudential requirements and commitment to supervisory best practices through different peer review processes that ensure an independent view of the jurisdiction being examined.

The updated version of the Way Forward Document and the related press release are available via the following links:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/protocols/Updated_Way_Forward_document.pdf

https://eiopa.europa.eu/home-news/news-details/news/eu-us-insurance-project-updates-its-strategy/index.html

(iv) EIOPA Welcomes the Publication of the European System of Financial Supervision Review Report

On 8 August 2014, EIOPA published a press release welcoming the "Report on the operation of the European Supervisory Authorities ("**ESAs**") and the European System of Financial Supervision ("**ESFS**").

EIOPA outlines that this report is a starting point for the upcoming discussions on the review of the ESFS, which constitutes an opportunity to further strengthen the framework. It is also acknowledges that an adequate level of resources for the ESFS is an important prerequisite for sound supervision.

In addition, EIOPA advises that the European Union will benefit from stronger, more consistent and coordinated supervision at the European Level that aims at ensuring financial stability and consumer protection.

The report consists of the following sections:

- Introduction;
- The mandate and the role of the ESAs;
- Assessment of the ESAs' work – Major achievements and areas for improvements; and
- Conclusion.

The press release and the report are available at the following links:

https://eiopa.europa.eu/fileadmin/tx_dam/files/pressreleases/2014-08-08_Statement_Chairman.pdf

http://ec.europa.eu/internal_market/finances/docs/committees/140808-esfs-review_en.pdf

(v) EIOPA Updates Risk Dashboard

On 17 September 2014, EIOPA published an updated version of its Risk Dashboard at September 2014 – Quarter 2 data.

The Risk Dashboard expresses the overall European situation and hence does not address country specific issues. This latest version summarises that the risk environment facing the insurance sector remains broadly unchanged since the last EIOPA Risk Dashboard in June 2014 and changes in the score in comparison to the last quarter emerged regarding specific matters as follows:

- Market risks remains unchanged since the last review – Geopolitical tensions remain high and 10-year swap rates in most counties marked new historic lows in the past months. Reinvestment risk hence remains high;
- With respect to global macroeconomic risks, the overall outlook seems to be unchanged, however the decline in the unemployment rate seems to be driven by falling participation rates. Geopolitical risks like the Ukrainian or Middle East crisis need to be monitored;
- Liquidity and funding risks changed – Cat bond issuance reached an all-time high;
- Profitability challenges remain – Return on equity and return on assets stayed around 10% and 0.4% respectively;
- Solvency II implementation will be in place in 2016 while Solvency I levels seems to be robust;
- Interlinkages/Imbalances still create uncertainties – Contagion risks from banks and sovereigns and high imbalances remain in both public and private finances;
- Credit risk conditions show some signs of improvement but the economic recovery came to halt in Quarter 2. The high private and public sector indebtedness also represents a challenge in several countries; and
- Insurance risks are not a major concern and are currently mainly driven by premium growth. However, the sustainability of overall life premium growth remains uncertain, especially as the attractiveness of life insurance premiums was reduced by fiscal measures in some countries. Falling premium rates and declining reinsurers' profit margins as well as massive alternative capital entering the industry could affect the structure of the reinsurance industry in the long term.

Insurance Mediation

On 29 September 2014, the Presidency of the Council of EU published its fourth compromise proposal (dated 26 September 2014) in relation to the European Commission's proposed Directive amending the Insurance Mediation Directive ("**IMD2**"). The proposed Directive is referred to as a Directive on insurance distribution.

In particular, the following changes are of note:

- Requirements to take into account the characteristics of tied insurance intermediaries which exist in certain Member States' markets and to establish appropriate and proportionate conditions applicable to such intermediaries;
- Requirements for establishing a branch; and
- Empowering competent authorities to impose additional administrative sanctions and measures than those provided for in the Directive.

The Economic and Financial Affairs Council ("**ECOFIN**") is due to meet on the 7 November 2014 to agree on the General Approach to IMD2.

The compromise proposal for IMD2 may be accessed through the following links:

http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2013635%202014%20INIT

Packaged Retail Investment Products

(i) European Commission Requests EIOPA's Advice on Possible Delegated acts to PRIIPs KID Regulation

The European Commission published a request, dated 30 July 2014, to the European Insurance and Occupational Pensions Authority ("**EIOPA**") for technical advice on potential delegated acts in respect of the proposed Regulation on key information documents ("**KIDs**") for packaged retail and insurance-based investment products ("**PRIIPs**") (the "**PRIIPs Regulation**").

Articles 16(8) and 17(7) of the PRIIPS Regulation provides for temporary product intervention powers for EIOPA and other competent authorities.

In April 2014, the PRIIPs Regulation was adopted by the European Parliament and it introduces a key information document that will deliver retail investors information regarding an expansive

range of investment opportunities, including insurance-based investment products, structured investment products and investment funds.

A deadline has been set by the Commission for EIOPA to deliver the technical advice within six months of the PRIIPs KID Regulation coming into force. It is anticipated that the Regulation will come into force by the end of 2014. It will become applicable two years from that date.

European Market Infrastructure Regulation ("EMIR")

(i) ESMA Launches First Round of Consultations to Prepare for Central Clearing of OTC Derivatives in the EU

ESMA launched a first round of consultations to prepare for central clearing of OTC derivatives within the European Union on 11 July 2014. The two consultation papers sought stakeholders' views on draft regulatory technical standards ("**RTS**") for the clearing of Interest Rate Swaps ("**IRS**") and Credit Default Swaps ("**CDS**") that ESMA has to develop under EMIR.

With the overarching objective of reducing systemic risk, EMIR introduces the obligation to clear certain classes of OTC derivatives in central clearing houses ("**CCPs**") that have been authorised ("**European CCPs**") or recognised ("**Third-Country CCPs**") under its framework. To ensure that the clearing obligation reduces systemic risk, EMIR specifies a process for the identification of the classes of OTC derivatives that should be subject to mandatory clearing. This includes the assessment of specific criteria that the relevant classes of OTC derivatives have to meet.

ESMA is required to draft RTS on the clearing obligation within six months of the authorisation or recognition of CCPs. ESMA has analysed the classes from several CCP notifications and has determined that some IRS and CDS classes should be subject to the clearing obligation. Although equity and interest rate futures and options are also offered for clearing, ESMA has decided that a clearing obligation is not necessary for these classes at this stage. However, the two consultation papers may be followed by one or more on other asset classes.

For IRS, the draft RTS propose the following four classes, on a range of currencies and underlying indices should be subject to central clearing:

- Basis swaps;
- Fixed-to-float interest rate swaps;
- Forward rate agreements; and
- Overnight index swaps.

For CDS, the draft RTS propose that European untranched index CDS (for two indices) should be subject to central clearing.

The IRS Consultation Paper closed on 18 August 2014 and the CDS Consultation Paper closed on 18 September 2014. ESMA will use the answers received to draft its final RTS on the clearing obligation for IRS and CDS and send them for endorsement to the European Commission. The clearing obligation will take effect following a phased implementation, with the current proposal ranging from six months to three years after the entry into force of the RTS, depending on the types of counterparties concerned.

For further information, please see: http://www.esma.europa.eu/news/Press-release-ESMA-defines-central-clearing-interest-rate-and-credit-default-swaps?t=326&o=home

IRS Consultation Paper: http://www.esma.europa.eu/system/files/2014-799.pdf
CDS Consultation Paper: http://www.esma.europa.eu/system/files/2014-800.pdf

(ii) ESMA Updates EMIR implementation Q&As

ESMA issued a revised "Questions and Answers" document on the implementation of EMIR, (the "**Q&A**") on 10 July 2014. The Q&A specifically addresses two main issues:

- Clarifies that the clearing exemption for certain European pension schemes does not extend to pension schemes established in third countries; and
- Contains information on the segregation requirements applicable to Third Country CCPs under Article 39 of EMIR.

The latest version of the Q&A can be found here; http://www.esma.europa.eu/content/QA-X-EMIR-Implementation

(iii) Updated EMIR FAQs from the European Commission

The European Commission has also updated its FAQs on EMIR (Part IV) on 10 July 2014 to include clarity around segregation requirements for non-EU clearing members of EU CCPs.

Please find the FAQs here: http://ec.europa.eu/internal_market/financial-markets/news/index_en.htm

(iv) List of Central Counterparties authorised to offer services and activities in the European Union

ESMA's list of European CCPs that have been authorised to provide services and activities in the European Union was last updated on 16 September 2014. There are now thirteen such European CCPs authorised in the European Union. The updated list can be found at this link; http://www.esma.europa.eu/system/files/ccps_authorised_under_emir.pdf

(v) IOSCO Consults on Risk Mitigation Standards for Non-Centrally Cleared OTC Derivatives

On 17 September 2014, IOSCO published a consultation paper on risk mitigation standards for non-centrally cleared OTC derivatives. The consultation proposes nine standards, which relate to the following areas which aim at mitigating risks in uncleared OTC derivatives:

- Standard 1 : Scope of coverage
- Standard 2 : Trading relationship documentation
- Standard 3 : Trade Confirmation
- Standard 4 : Valuation with counterparties
- Standard 5 : Reconciliation
- Standard 6 : Portfolio Compression
- Standard 7 : Dispute Resolution
- Standard 8 : Implementation
- Standard 9 : Cross-border transactions.

The proposed standards have been developed in consultation with the Basel Committee on Banking Supervision ("**BCBS**") and the Committee on Payments and Market Infrastructures. They are intended to complement the margin requirements developed by BCBS and IOSCO in September 2013.
The consultation recognises that some jurisdictions have already implemented or are implementing requirements in this area and specifically recognises the risk mitigation measures which have been implemented in the U.S. and the European Union. IOSCO calls for the proposals contained in the consultation paper to be implemented as soon as possible. IOSCO also notes that, due to the global nature of the derivatives markets, any regulatory standards should be compatible across jurisdictions to avoid arbitrage, conflicting rules and to level the playing field.

The consultation closes on 17 October 2014.

(vi) IOSCO Launches Public Information Repository for Central Clearing Requirements

IOSCO unveiled an information repository for central clearing requirements for OTC derivatives, which provides regulators and market participants with consolidated information on the clearing requirements of different jurisdictions.

The repository sets out central clearing requirements on a product-by-product level, and any exemptions from them. The information in the repository will be updated quarterly.

The repository can be accessed at this link:

http://www.iosco.org/library/index.cfm?section=information_repositories

(vii) ESMA Discussion Paper on Calculation of Counterparty Risk by UCITS for OTC Derivatives subject to EMIR clearing

On 23 July 2014, ESMA published a discussion paper (the "**Discussion Paper**") on the calculation of counterparty risk by UCITS for OTC derivative transactions subject to clearing obligations under EMIR.

The Discussion Paper is seeking stakeholders' views on how the limits on counterparty risk in OTC derivative transactions that are centrally cleared should be calculated by UCITS, and whether the same rules should be applied by UCITS for both centrally cleared OTC transactions and Exchange Traded Derivatives.

The Discussion Paper is focused on the impact of a default of a clearing member or of other clients of that member on the UCITS that enters into centrally cleared OTC derivative transactions. This takes into account the fact that European CCPs and Third Country CCPs are already subject to stringent collateral requirements, and should generally be considered as entailing low counterparty risk.

This Discussion Paper distinguishes between different clearing arrangements:

1. Direct clearing arrangements, i.e. the UCITS is a client of the clearing member with:

    - Individual client segregation;
    - Omnibus client segregation;
    - Other types of segregation arrangement; or
    - Segregation arrangements with a non-EU CCP outside the scope of EMIR.

2. Indirect clearing arrangements between the CCP, the clearing member, the client of the clearing member and the UCITS.

The consultation is open for feedback until 22 October 2014. ESMA will use the feedback received from the public consultation to determine its final views on the appropriate way forward, including a possible recommendation to the European Commission on a modification of the UCITS Directive.

(viii) Joint Consultation on Draft RTS on Risk-Mitigation Techniques for OTC-derivative Contracts not Cleared by a CCP

The European Supervisory Authorities ("**ESA's"**) launched a consultation on 14 April 2014 regarding draft RTS on risk mitigation measures for OTC derivative contracts not cleared by a CCP. The consultation closed on 14 July 2014.

For those OTC derivative transactions that will not be subject to central clearing, the draft RTS prescribe that counterparties apply robust risk mitigation techniques to their bilateral relationships, which will include mandatory exchange of initial and variation margins. This will reduce counterparty credit risk, mitigate any potential systemic risk and ensure alignment with international standards.

The draft RTS elaborate on the risk-management procedures for the exchange of collateral and on the procedures concerning intragroup exemptions including the criteria that identify practical and legal impediments to the prompt transfer of funds.

The draft RTS lay down the methodologies for the determination of the appropriate level of margins, the criteria that define liquid high-quality collateral, the list of eligible asset classes, collateral haircuts and concentration limits.

Based on the responses received, the ESAs will prepare the final draft RTS and intend to submit these to the European Commission before the end of 2014.

The responses can be found at this link; http://www.esma.europa.eu/consultation/Joint-Discussion-Paper-Draft-Regulatory-Technical-Standards-risk-mitigation-techniques-#responses

(ix) Treatment of FX Forwards under EMIR

As previously reported, the treatment by regulators of FX Forwards under EMIR varies across the European Union. The reason for these diverging approaches is the fact that a derivative under EMIR is defined by reference to Directive 2004/39/EC (the "**MiFID Directive**") and Member States transposed the MiFID Directive differently.

Concerns have been expressed by both the European Commission and ESMA about the lack of consistency between EU Member States with regards to the definition of an FX Forward. On 31 July 2014, (further to previous correspondence between ESMA and the European Commission on the topic) ESMA published a letter (dated 23 July 2014), (the "**Letter**") from the European Commission on the need for clarity regarding the definition of a financial instrument relating to FX.

The Letter outlines the need for a consistent interpretation to ensure the effective application of the reporting regime of EMIR. However, unfortunately the European Commission has now clarified that it is not in a position to develop such a definition using an implementing act, for legal reasons[1]. However, the Letter provides that MiFID II and related implementing measures (which will apply from 3 January 2017) will be able to provide legal certainty as to the definition of a FX contract. In addition, the Letter suggests that ESMA should consider whether "the current approach by Member States achieves a sufficiently harmonised application of the EMIR reporting obligation in the period before the application of MiFID II or whether further measures by ESMA e.g. guidelines are necessary". The Letter sets out the "broad consensus" on a definition of FX spot contracts, which have been reached following extensive public debate and meetings of the European Securities Committee as follows:

- To use a T+2 settlement period to define FX spot contracts for European and other major currency pairs;
- To use the "standard delivery period" for all other currency pairs to define a FX spot contract;
- Where contracts for the exchange of currencies are used for the sale of a transferable security to use the accepted market settlement period of that transferable security to define a FX spot contract, subject to a cap of 5 days; and
- A FX contract that is used as a means of payment to facilitate payment for goods and services should also be considered a FX spot contract.

Following the publication of the Letter by ESMA, the Central Bank updated its "Frequently Asked Questions", (the "**Q&A**") to reflect the updated developments at European level. The Q&A now provides as follows;

- All FX transactions with settlement before or on the relevant spot date are not to be reported;
- All FX transactions with settlement beyond seven days are to be reported;
- All FX transactions with settlement between the spot date and seven days (inclusive) are to be reported only if, in a jurisdiction where one counterparty to the trade is located,

[1] Directive 2010/78/EU introduced a sunset clause in Article 64a of MiFID I which provides that "the powers conferred on the Commission in Article 654 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty on 1 December 2009 shall cease to apply on 1 December 2012".; i.e. the legal power of the European Commission to adopt implementing legislation that could clarify the definition of FX financial instruments lapsed on 1 December 2012.

local laws, rules or guidance would deem the transaction reportable. Where an Irish counterparty is entering into FX transactions with a counterparty located in another jurisdiction, the Irish counterparty should rely on documentation from that counterparty to inform it as to whether there is a requirement in the relevant jurisdiction to report the transaction.

- All FX transactions between two Irish counterparties with settlement between the spot date and seven days (inclusive) are not required to be reported. However, counterparties should have the capacity to report such trades (notwithstanding that there is no obligation to report) and that counterparties build a capacity to report such trades in the future.

The Central Bank has indicated that its guidance is a temporary measure and that the Q&A may be updated/superseded if there are any further developments at a European level on this topic.

(x) European Commission Response to ESMA letter setting out its Intention to Ease EMIR Frontloading Requirements

On 8 May 2014, ESMA sent a letter to the European Commission proposing to limit the scope of the frontloading requirement under EMIR.

The frontloading requirement imposes an obligation on counterparties to clear OTC derivative contracts which have been executed after a CCP has been authorised under EMIR (the first of which was authorised on 18 March 2014) and before the date of application of the clearing obligation (i.e. the date specified for the clearing obligation to apply by ESMA in the relevant regulatory technical standards).

In this way under the frontloading rules an OTC derivative contract concluded after the authorisation of a CCP might at a later date become subject to the clearing obligation before its expiration date. According to Recital 20 of EMIR, the objective of the frontloading requirement is to ensure a uniform and coherent application of EMIR and a level playing field for stakeholders when a class of OTC derivative contracts is declared subject to the clearing obligation.
This frontloading obligation has proved to be particularly controversial as many in the industry have argued that the uncertainty over which OTC contracts will become subject to the clearing obligation and the unknown duration of the frontloading period has created legal uncertainty about the status of OTC derivative contracts entered into after the CCPs are authorised and an inability to correctly price such transactions.

The period during which frontloading is relevant can be divided into two separate periods:

- Period A: the period between the notification of the classes to ESMA and the entry into force of the relevant regulatory technical standards ("**RTS**") on the clearing obligation; and

- Period B: the period between the entry into force of the RTS and the date of application of the clearing obligation.

In its letter, ESMA suggested that the frontloading requirement should not apply to transactions that are entered into during Period A and should only apply to transactions entered into during Period B. The determinant of whether an OTC contract entered into during Period B will be subject to the frontloading obligation is whether, as at the date of the application of the clearing obligation for that OTC derivative contract and for the counterparty in question, there is a certain minimum remaining maturity.

On 8 July 2014, ESMA received a response from the European Commission whereby the European Commission indicated its agreement with the proposals relating to frontloading which were contained in ESMA's letter of 8 May 2014.

A copy of the European Commission's letter can be found at this link; http://www.esma.europa.eu/system/files/d2392454.pdf

International Association of Insurance Supervisors ("IAIS")

(i) IAIS Publishes Consultation Paper on Basic Capital Requirements for Global Systemically Important Insurers and EIOPA Responses to it

On 9 July 2014, the International Association of Insurance Supervisors ("**IAIS**") published its second consultation paper on its proposed Basic Capital Requirements ("**BCR**") for Global Systemically Important Insurers ("**G-SIIs**"). This public consultation has been opened until 8 August 2014.

In the related press release, it is explained that the IAIS, in its first consultation, sought feedback on design options for the development of the BRC, while this second consultation is aimed to seek input on a specific proposal in order to facilitate the final design and calibration of the BCR before it is delivered to the G20 summit in November 2014.

According to the IAIS' press release, the IAIS is proposing that the BCR will be calculated on a consolidated group-wide basis, with all holding companies, insurance legal entities, banking legal entities and any other service companies included in the consolidation. In addition, consistent with the previously identified principles, the BCR has been developed to reflect major categories or

risks impacting the businesses of G-SIIs and to account for on- and off-balance-sheet exposures. It will be constructed in three basic components as identified by the IAIS:

- An insurance component;
- A banking component that applies the Basel III leverage ratio or risk weights; and
- A component for other non-insurance activities (financial and material non-financial) not currently subject to regulatory capital requirements.

It is also clarified that the BCR will be determined using a factor-based approach with 15 factors applying to defined segments within the main categories of insurance activity, that are Traditional Life insurance, Traditional Non-Life insurance, Non-Traditional insurance and Assets.

In addition, IAIS outlines that the following steps are required for the long-term project to develop risk-based, group-wide global insurance capital standards:

- The development of the BCR;
- The development of Higher Loss Absorption ("**HLA**") requirements to apply to G-SIIs, due to be completed by the end of 2015; and
- The development of a risk-based group-wide global insurance capital standard ("**ICS**"), due to be completed by the end of 2016 and applied to Internationally Active Insurance Groups ("**IAIGs**") from 2019.

In August 2014, the Insurance and Reinsurance Stakeholder Group ("**IRSG**") of EIOPA published its response to the IAIS second consultation paper.

In this response, the IRSG recognizes the considerable challenge facing the IAIS in terms of resolving trade-offs between simplicity, comparability and risk sensitivity in the design of the BCR and subsequently the ICS. The IRSG also believes that the valuation principles and framework should be finalised as soon as possible and that all companies should be required to apply a consistent valuation approach for assets and liabilities. Furthermore, the IRSG response states that the IAIS should clarify that capital charges imposed via national legislation might be above the HLA uplift and therefore enough to mitigate the systemic risk.

The IRSG response paper deals with the points as follows:

- General comments on IAIS Executive Summary;
- Comments on Background & Mandate;
- Comments on BCR Design;
- Comments on Next Steps;
- Proposed BCR Approach;

- Qualifying Capital Resources;
- Market Adjusted Valuation Approach;
- Impact on G-SIIs and potential G-SIIs; and
- Communication plans and next steps.

The IAIS press release and the IRSG response may be accessed at the following links respectively:

http://www.iaisweb.org/News/Press-releases-51

https://eiopa.europa.eu/fileadmin/tx_dam/files/Stakeholder_groups/opinions-feedback/20140808-IRSG_response_to_IAIS_PC_on_BCR-template.pdf

(ii) IAIS Publishes Consultation Paper on Meeting Participation Procedures and Development of Supervisory and Supporting Materials

On 31 July 2014, the IAIS published a consultation paper providing draft procedures for meeting participation and the development of supervisory and supporting materials and a draft Policy for Consultation of Stakeholders.

In the consultation paper the IAIS proposed the following process for consulting with stakeholders:

- Publicly consulting on the development of all supervisory and supporting material;
- Holding public sessions with its executive committee;
- Conducting public dialogues and hearings; and
- Providing timely public information on IAIS activities.

The deadline for submitting comments was 2 September 2014.

Furthermore, the IAIS states that it is in the process of adopting a new strategic plan for 2015-2019.

More information may be accessed via the following link:

http://www.iaisweb.org/About-the-IAIS-28

(iii) IAIS Publishes Revised Multilateral Memorandum of Understanding on Co-operation and Information Exchange

On 8 September 2014, IAIS published a revised version of its multilateral memorandum of understanding on co-operation and information exchange ("**MMoU**"). The MMoU was first adopted in February 2007.

As stated in this MMoU, the objective is to establish a formal basis for co-operation and information exchange between supervisory authorities (i.e. IAIS Members – this includes the Central Bank of Ireland) relating to the supervision of insurance companies where cross-border aspects arise. It includes requesting and providing information on operations on insurance companies supervised by all supervisory authorities having a legitimate interest. Also this MMoU covers issues related to the supervision of insurance companies such as licensing, on-going supervision and winding-up processes (where necessary). However, it is clarified that this MMoU does not affect any provisions under other multilateral or bilateral agreements and does not affect the freedom of supervisory authorities to cooperate and exchange information on an informal basis or beyond the scope of this MMoU.

This MMoU is structured as follows:

- Preamble;
- Definitions;
- Objective and Scope;
- Principles;
- Valid Purpose and Confidentiality;
- Procedures;
- Points of Contacts;
- Costs;
- Participation in the MMoU, competent IAIS bodies, commencement and termination of the MMoU;
- Review and Amendments;
- Annex A – List of Signatory Authorities to the IAIS MMoU;
- Annex B – IAIS MMoU Confidentiality Regime;
- Annex C – Application and Accession to the IAIS MMoU; and
- Annex D – IAIS MMoU Request Sheet.

A copy of the MMoU is available at the following link:
http://www.iaisweb.org/Supervisory-Material/MMoU/MMoU-381

Joint Committee of European Supervisory Authorities ("ESAs")

On 31 July 2014, the Joint Committee of the European Supervisory Authorities (ESMA, EIOPA and EBA), ("**ESAs**") published a reminder to banks and insurance companies across the EU on the consumer protection requirements that apply to certain financial instruments they issue. Furthermore, ESMA highlighted specific risks posed to investors by contingent convertible instruments.

As part of their respective mandates to protect investors, depositors and policy holders, the three European Supervisory Authorities have analysed the practices employed by some financial institutions to comply with the new EU capital rules and requirements. These practices concern institutions engaging in "self-placement", which is placing financial instruments with clients that the institutions have themselves issued and that are eligible to comply with specific prudential requirements. The ESAs have stressed that these practices may breach some of the rules governing financial institutions and may result in significant consumer detriment.

In particular, as stated in the press release published by the ESAs, it has been noted that the loss bearing features of many self-placement products expose consumers to significant risks that do not exist for most other financial instruments, such as the risk of having to share losses. In addition, these products often lack fully harmonised structures, trigger points and loss absorption, making it difficult for consumers to compare them with other financial products and to fully comprehend what they are buying.

Separately, ESMA issued an additional statement on potential risks associated with contingent convertible instruments, which represent a specific category of instruments issued by financial institutions to comply with their prudential requirements. Contingent convertible instruments are highly complex and non-homogeneous in terms of trigger levels, necessary capital buffer levels and loss absorption mechanism. ESMA is concerned that consumers do not fully understand the potential risks of these products.

The full text of the ESAs' Reminder is available through the following link:
http://www.esma.europa.eu/hu/system/files/jc_2014-62_placement_of_financial_instruments_with_depositors_retail_investors_and_policy_holders_self_placement.pdf

Insurance Block Exemption

On 5 August 2014, the European Commission launched a consultation paper on the Review of the Insurance Block Exemptions Regulation ("**IBER**").

European Commission invites all citizens and organisations to contribute to this consultation and invited to submit relevant information on the functioning of the IBER, as well as their views on whether the Commission should renew any of the IBER provisions in a new block exemption regulation.

It is also stated that contributions are particularly sought from (re)insurance undertakings, industry associations, insurance intermediaries, public authorities, consumer organisations and customers, as well as competition practitioners, researchers and think tanks. Comments from other stakeholders who have direct experience with the application of the IBER are also welcome.

As clarified by the European Commission, the IBER is a sector-specific legal instrument that allows (re)insurers to benefit from an exemption to the prohibition of anti-competitive arrangements laid down in Article 101(1) of the Treaty on the Functioning of the European Union ("**TFEU**"). At present, the exemption covers two types of agreements between (re)insurance undertakings:

a) Agreements with respect to joint compilations, joint tables and studies; and

b) Common coverage of certain types of risks Co(re)insurance pools.

It is also explained that the insurance sector is one of three sectors that still benefits from a block exemption regulation, since the concept of the direct applicability of the exemption of Article 101(3) TFEU was introduced with Council Regulation 1/2003. The IBER expires on 31 March 2017 and the Commission will consider whether any parts of it would merit a renewal. In this regard, the Commission is required to submit a report on the functioning and the future of the IBER to the European Parliament and the Council by March 2016. The Commission is therefore gathering views and market information.

The consultation period has started on 5 August 2015 and is terminating on 4 November 2014.

The way through which contributions may be submitted is explained at the following link:

http://ec.europa.eu/competition/consultations/2014_iber_review/index_en.html

The European Commission has also published a questionnaire on this matter which can be accessed at the following link:

http://ec.europa.eu/competition/consultations/2014_iber_review/questionnaire_en.pdf

Market Abuse

(i) Opinion on ESMA's Discussion Paper on Policy Orientations on Possible Implementing Measures under the Market Abuse Regulation

On 21 April 2014, the Securities and Markets Stakeholder Group (the "**SMSG**") published a report in order to provide an opinion to ESMA on its Discussion Paper on policy orientations on possible implementing measures under the Market Abuse Regulation (the "**MAR**") (see ESMA/2013/1649). The SMSG welcomed ESMA's Discussion Paper. It outlines that the Discussion Paper is very detailed and will remain a reference for future interpretation.

The SMSG's opinion is focused on some specific topics which are the following: buy-back and stabilisation, market soundings, accepted market practices, public disclosure of inside information and delay, insider list, managers' transactions. There are no specific comments on investment recommendations but the SMSG thinks that their content is a very important element in order to ensure the fair and correct information provision to the client: sometimes the recommendation does not contain clear information about the interests and thus potential conflicts of interest, or it is hidden or found somewhere way back in the related documents. Increased transparency should be ensured in order to define exactly what would be the elementary sales approach when making use of the investment recommendation. The SMSG opinion is rendered both with some general remarks and with some specific answers to ESMA's questionnaire, following the numbering in the ESMA paper.

(ii) ESMA Consults on New Market Abuse regime

ESMA published a consultation paper on its draft technical advice on possible delegated acts concerning the MAR on 15 July 2014. It should be noted that the title of the consultation paper states that it is a "draft". However, due to the fact that it has an ESMA reference number it would appear to be the final version of the consultation paper. ESMA also produced a consultation paper relating to draft regulatory technical standards ("**RTS**") and implementing technical standards ("**ITS**") on MAR (ESMA/2014/809). Any comments relating to the consultation papers must be submitted by 15 October 2014. The new MAR framework will become applicable in July 2016.

(iii) Open Hearing on the Consultation Papers on Technical Advice and Technical Standards under the Market Abuse Regulation

ESMA will hold an open hearing in Paris on 8 October 2014 on the issues raised in the two recently published Consultation papers on technical advice and technical standards under the MAR. The itinerary in respect of the discussion of each of the respective consultation papers is as follows:

- Consultation Paper on ESMA draft technical standards:

a. Arrangement and procedures required for market soundings;
b. Technical means for Public disclosure of inside information and for delaying dis-closure of inside information;
c. Arrangements for objective presentation of investment recommendations and for disclosure of particular interests or indication of conflict of interests;
d. Format for Insider lists and for notification of managers' transactions; and
e. Others.

- Consultation Paper on ESMA technical advice to the Commission on possible delegated acts:

a. Minimum thresholds for the purpose of exempting certain emission allowance market participants for duty to disclose inside information;
b. Reporting of violations and related procedures;
c. Determination of the competent authority for notification of delays in disclosure of inside information;
d. Managers' transactions: type of transaction to report and trading during closed period; and
e. Non exhaustive list of indicators of market manipulation.

(iv) Implementation of 2014 Market Abuse Regulation

In September 2014, a representative of the Central Bank was requested to provide their view of how the full regime of the 2014 Market Abuse Regulation will look once fully implemented.

The items discussed were as follows:

- The new developments in the text of the Market Abuse Regulation itself;
- The sizable Level II legislative agenda under MAR; and
- A discussion of what, in an ideal world, market abuse regulation will look like in Europe when all of these regulatory measures are in place.

The speaker's concluding remarks concerned an exploration of what market abuse regulation will look like in Europe when all of the measures outlined were in place and indeed are operationalized by market participants and National Competent Authorities. In this regard, the observations of the speaker can be grouped into three headings, namely:

- the disclosure environment and the transparency architecture;
- enhanced pan-European detection of Market Abuse; and
- a reduction of regulatory arbitrage by the application of similar sanctions across the European Union.

This speech can be accessed via the following link:

https://www.centralbank.ie/regulation/marketsupdate/Documents/20140908%20MAR%202020%20M%20Moloney.pdf

Transparency Directive

(i) ESMA Releases its Final Guidelines on the Enforcement of Financial Information Published by Listed Entities in the EU

On 10 July 2014, ESMA published its final Guidelines on the enforcement of financial information published by listed entities in the European Union (the "**Guidelines**") under the Transparency Directive. Furthermore, the document includes ESMA's feedback on the responses to its consultation on these draft guidelines as launched in July 2013.

As stated in the press release published by ESMA, the aim of the guidelines is to strengthen and promote greater supervisory convergence in existing enforcement practices amongst EU accounting enforcers.

These Guidelines set out the principles to be followed by accounting enforcers throughout the enforcement process by defining the objectives, the characteristics of the enforcers, and some common elements in the enforcement process. They will strengthen the development of coordinated views on accounting matters prior to national enforcement actions, the identification of common enforcement priorities and common responses to the accounting standard setter to ensure consistent application of the financial reporting framework. It is also clarified that the Guidelines will apply to all national securities regulators and other bodies responsible for enforcing financial information requirements in the EU.

According to the words of the ESMA Chair, "one of the key objectives of accounting enforcement is to contribute to the consistent application of the financial reporting standards and ensure the disclosure of high quality financial information relevant to investors' decision-making processes, thus strengthening investor protection and confidence in financial markets. And also: "these Guidelines constitute a key step in strengthening supervisory convergence across Europe, by further building a common approach to the enforcement of financial information and reinforcing coordination among European enforcers".
The Guidelines provide a common approach in several areas as follows:

- Enforcement objectives and scope;
- The enforcement process at national level, such as selection methods, examination procedures and enforcement actions; and
- Coordination of enforcement activities at European level, such as setting up European common enforcement priorities, defining criteria for selecting accounting matters for further discussion at European level and their reporting.

In relation to the next steps of these Guidelines, ESMA affirms they will now be translated into the official languages of the EU and national securities regulators will then have two months from the date of the publication of the translations on ESMA's website, to confirm to ESMA whether they comply or intend to comply with the Guidelines by incorporating them into their supervisory practices.

A copy of the Guidelines is available at the following link:

http://www.esma.europa.eu/system/files/2014-807_-_final_report_on_esma_guidelines_on_enforcement_of_financial_information.pdf

(ii) ECB Publishes Opinion on Proposed Regulation for Reporting and Transparency of Securities Financing Transactions

On 10 July 2014, the European Central Bank ("**ECB**") published an opinion (dated 24 June 2014) in respect of the European Commission's proposal for a Regulation on reporting and transparency of securities financing transactions ("**SFTs**"). The opinion was released in response to requests from the European Parliament and from the Council of the EU on 18 March 2014 and on 27 March 2014, respectively.

As stated in the opinion, the ECB broadly welcomes the proposed Regulation, which is aimed to increase the safety and transparency of the financial market. It also makes specific observations on several matters as follows:

- Exemption for central bank transactions from transparency and reporting obligations;
- Clarification of the Commission's power to amend the list of exemptions;
- Rehypothecation; and
- Modalities for the reporting of data on SFTs.

In addition, the ECB drafting proposals are provided in an annex included in the opinion.

The opinion released by the ECB may be accessed via the following link:

https://www.ecb.europa.eu/ecb/legal/pdf/en_con_2014_49_f_sign.pdf

European Union Insurance and Reinsurance Groups and Financial Conglomerates Regulation

On 26 September 2014, the Minister for Finance signed the European Union (Insurance and Reinsurance Groups and Financial Conglomerates)(Amendment) Regulations 2014 (S.I. 416 of 2014) ("the **Regulations**") into law.

These Regulations affect the following provisions:

- The European Communities (Insurance and Reinsurance Groups Supplementary Supervision) Regulations 2007 are amended as set out in Schedule 1;
- The European Communities (Financial Conglomerates) Regulations 2004 are amended as set out in Schedule 2;
- The European Communities (Capital Requirements) Regulations 2014 are amended as set out in Schedule 3;
- The Central Bank Act 1971 is amended as set out in Schedule 4; and
- The Building Societies Act 1989 is amended as set out in Schedule 5.

The Regulations may be accessed via the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0416.pdf

Pensions Update

(i) Amendment to the Social Welfare and Pension Act 2013 (Section 13 and 14) (Commencement) Order 2014

On 4 July 2014, the Social Welfare and Pensions Act 2013 (Section 13 and 14) (Commencement) Order 2014 (S.I. 308 of 2014) (the "**Order**") was signed into law bringing Section 13 and 14 of the Social Welfare and Pension Act 2013 (the "**Act**") into operation on 1 August 2014.

Section 13 of the Act provides for the recovery of the value of certain illness-related social welfare payments from compensation awards made to persons as a consequence of personal injuries claims, while Section 14 of the Act makes amendments to the Personal Injuries Assessment Board Act 2003 in the light of the recovery provisions contained in Section 13.

The Order may be accessed through the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0308.pdf

(ii) EIOPA Report on Issues which may Lead to Occupational Pension Scheme Members' Detriment

On 27 June 2014, EIOPA published its report on issues which may lead to occupational pension scheme members' detriment and EIOPA's proposed response to same.

The Report clarifies that its purpose is threefold, as follows:

- It outlines EIOPA's strategy towards addressing consumer protection issues related to occupational pensions;
- It describes the areas and topics in this field identified in 2013/2014 for future work by EIOPA; and
- It sets out the following priorities for the coming years namely:

    - Finalisation of the Report on Good Practices on transferability of supplementary pensions rights (likely to roll-over from 2014);
    - Tools/communication channels that employers/scheme managers use in practice to communicate to pension scheme members;
    - Practices observed in the market allowing comparability of information disclosed;
    - Charges;
    - "Value for money";

- Training standards related to occupational pensions taking the review of the IORP Directive into account; and
- IORP II: Possible advice on delegated acts regarding a Pension Benefit Statement.

The Report also sets out key issues which EIOPA may analyse in more detail in the future namely:

- Governance issues in the management of occupational pension schemes;
- Lack of European convergence;
- Insufficient/inappropriate disclosure of relevant information to occupational pension scheme members; and
- Other areas such as financial education; collecting, analysing and reporting on consumer trends and monitoring of new and existing financial activities.

The Report is available via the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/8_1__EIOPA-BoS_-14-071_Report_on_Issues_leading_to_detriment_of_pension_scheme_members.pdf

(ii) EIOPA Publishes 2014 Report on Cross-Border IORP Market Developments

Early in June, EIOPA published its eighth report in a series on Market Developments with regard to cross-border activities, following the implementation by Member States of Activities and Supervision of Institutions for Occupational Retirement Provision Directive ("**IORP Directive**").

EIOPA advises that the format of this year's report is different to those of previous years. Besides providing information on new cross-borders IORPs and withdrawals during the period 2 June 2013 and 1 June 2014, additional data has been added in order to provide a more comprehensive and detailed overview of the European occupational pensions landscape as a whole.

During the period, 86 IORPs have finalised the notification procedure for operating cross border of which 75 are actively operating cross border. Of the 75 active cross border IORPs, the UK acts as host for 27, while Ireland acts as host for 22.

The report may be accessed via the link provided below:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-BoS-14-083-Market-Development-Report-2014-deff.pdf

(iv) The Pension Authority Publishes Draft Guidelines on Financial Management of Defined Benefit Scheme

On 23 July 2014, the Pensions Authority published draft guidelines on financial management of defined benefit schemes and announced a consultation period until the end of September 2014.

These draft guidelines are intended to be a practical guide to what the trustees should do to understand the financial position of their scheme and to manage their scheme's funding and investment, however the Pensions Regulator has advised that these guidelines are a minimum and trustees are expected to be doing more in practice.

The consultation process closed on the 30 September 2014.

The guidelines may be accessed through the following link:

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Consultation_on_financial_management_guidelines_for_DB_schemes_21_July_2014.pdf

(v) European Commission Request for Advice from EIOPA on the Development of Single Market for Personal Pensions

On 23 July 2014, the European Commission requested EIOPA to provide technical advice regarding the development of an EU single market for personal pension products.

The aim of this initiative is to support the development of personal pension products in Europe which can contribute to meeting the challenges of an aging economy, the sustainability of public finances, an adequate retirement income and long-term investment.

EIOPA is asked to consider in its response the merits of the Commission considering the following legal approaches:

- A Directive on product features, information disclosure requirements and conduct of business rules providing financial institutions with a "passport" to operate across the EU;
- A Regulation on product features and information disclosure requirements (2nd regime), as well as a Directive on conduct of business rules providing financial institutions with a "passport" to operate across the EU. EU rules in a 2nd regime do not replace national rules but are an alternative to them; and

- A Regulation on product features, information disclosure requirements and requirements for the financial institutions that sell them (2nd regime).

EIOPA is requested to work in consultation with the European Securities and Markets Authority ("**ESMA**") and the European Banking Authority ("**EBA**") in formulating its advice. EIOPA's must submit its final advice to the European Commission by 1 February 2016. The European Commission will take the advice into account in examining whether a legislative initiative for personal pension products is necessary, and if so, what measures should be proposed.

The request of advice follows the publication of a preliminary report by EIOPA in February 2014 and may be accessed through the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/otherdocuments/Personal_pension_EIOPA_Anexx_-_CfA_EIOPA.pdf

(vi) New Regulations relating to Occupational Pensions Schemes (Section 50 and 50B)

On 2 September 2014, the Occupational Pension Schemes (Section 50 and 50B) Regulations 2014 (S.I. 392 of 2014) (the "**Regulations**") were signed into law.

Sections 50 and 50B of the Pensions Act 1990 (as amended) (the "**Act**") respectively give the Pensions Authority the power to direct trustees of a defined benefit scheme to restructure the benefits of the scheme or a direction to wind up the scheme. These powers may be exercised by the Pensions Authority where a defined benefit scheme fails to meet the statutory funding standard under the Act.

The Regulations set out the procedure to be followed when the Pensions Authority is considering making a unilateral direction under Section 50 or Section 50B of the Act. These Regulations set out the:

- Requirement on such persons as may be specified, to provide specified information to the Pensions Authority in its consideration on proposals to issue a direction under Section 50 or Section 50B of the Act;

- Requirement on the employer and the trustees of a pension scheme to notify scheme members, beneficiaries and the authorised trade union of proposals by the Pensions Authority to issues a direction to restructure scheme benefits or to wind up a pension scheme; and

- Provisions for scheme members, beneficiaries and the authorised trade unions to make a submission to the Pensions Authority in respect of proposals by the Pensions Authority to issue a direction to restructure scheme benefits or to wind up a pension scheme.

At 12 September 2014 there were 61 defined benefit schemes which are non-compliant with the funding standard and the Pensions Authority will shortly begin to take action in respect of these schemes.

Where the Pensions Authority proposes to issue a direction under Section 50 or 50B of the Act, all members (actives, deferred and pensioners) will be afforded the opportunity to make submissions to the Pensions Authority. Scheme members who have concerns about the funding status of their scheme should in the first instance contact the trustees of their scheme.

The Regulations and the explanatory note are available at the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0392.pdf

(ix) Pension Authority Publishes Model Disclosure Documents

On 29 September 2014, the Pensions Authority published the first in a series of model documents concerning disclosure of information requirements.

As clarified by the Pension Authority, these documents have been released in response to submissions received to its Defined Contribution ("**DC**") pensions' consultation paper published last year which indicated that the quality of member information needs to be improved considerably and made more user-friendly. The first documents in the series are a model DC Annual Benefit Statement (including statement of reasonable projection requirements) and a model Statement of Reasonable Projection ("**SRP"**).

In respect of the model documents, the Pensions Regulator has affirmed that the Pensions Authority considers that these model documents have been prepared in accordance with the relevant legislation. Trustees or their administrators preparing such documents for scheme members should satisfy themselves that the information given is compliant with the applicable legislative requirements. An instructions note to this effect accompanies the model documents. Furthermore, according to the words of the Pensions Regulator, it is important that pension scheme members receive accurate and understandable information in a structured manner so that they can make informed decisions about their retirement savings.

It is anticipated that the Pensions Authority will issue further model disclosure documents over the next few months.

Further details may be found via the following link:

http://www.pensionsauthority.ie/en/News_Press/News_Press_Archive/Model_disclosure_documents_published_by_the_Pensions_Authority.html

Health

(i) Health Insurance Act 1994 Regulations 2014 Provide for Premium Loadings to be Applied to In-Patient Indemnity Health Insurance Contracts

On 11 July 2014, the Minister for Health signed the Health Insurance Act 1994 (Determination of Relevant Increase under section 7A and Provision of Information under section 7B) Regulations 2014 (S.I. 321 of 2014) (the "**Regulations**") into law.

The Regulations provide for premium loadings to be applied to in-patient indemnity health insurance contracts purchased on and from 1 May 2015 and require registered undertakings to set different premium prices depending on the age at which an individual takes out health insurance. The Regulations provide that the loading in respect of an insured person shall be his or her premium before tax relief multiplied by 2% for each year by which his or her age at entry exceeds 34 years, subject to a maximum loading of 70%. The specified date of 1 May 2015, on and from which loadings will apply, will facilitate a grace period from 1 August 2014 (9 months) during which time people who are not currently members of the health insurance market can join without incurring loadings. A 9 month grace period will also apply for anybody who has his or her principal residence outside the State on 1 May 2015 and who has, after 1 May 2015, his or her principal residence in the State.

The Regulations also set out the circumstances when the loadings will be reduced, where the member has a qualifying "credited period". A "credited period" will apply where individuals previously had health insurance. A "credited period" of up to 3 years will also apply for individuals who previously had health insurance prior to the introduction of premium loadings and ceased to be an insured person on or after 1 January 2008 by reason of being in receipt of a relevant social welfare payment. The individual's "age of entry" will be reduced by the "credited period", in years and complete months, thus reducing the applicable level of loadings.

Furthermore, the Regulations include a requirement for registered undertakings to provide another undertaking with a written statement of a person's previous period or periods of health insurance cover and to do so in as practicable a timeframe as possible, but in any event no later than 30 days after receiving the request and place a requirement on registered undertakings to retain relevant records for a period of not less than 20 years from the date of termination of the contract.

The Regulations are available at the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0312.pdf

(ii) The Health Insurance Authority Makes New Regulations referred to Health Insurance Act 1994 (Section 11E(2)) (No.3)

On 29 August 2014, the Health Insurance Authority published the Health Insurance Act 1994 (Section 11E(2)) (No.3) (S.I. 389 of 2014) (the "**Regulations**") pursuant to Section 11E(2) of the Health Insurance Act 1994, as inserted by Section 15 of the Health Insurance (Amendment) Act 2012.

The Regulations explain that the Health Insurance Authority is satisfied that certain relevant contracts (as set out in the Schedule to the Regulations) do not provide for advanced cover.

The Regulations may be accessed via the following link:

http://www.irishstatutebook.ie/pdf/2014/en.si.2014.0389.pdf

Fitness and Probity

(i) Guidance on the Fitness and Probity Amendments 2014

On September 2014, the Central Bank published the Statutory Instrument No. 394 of 2014 (the "**Amending Regulation**") prescribing a further six pre-approval controlled functions ("**PCFs**") according to the Fitness and Probity regime.

Part 3 of the Central Bank Reform Act 2010 (the "**Act**") prescribes that a certain person performing a controlled function ("**CF**") in a regulated financial service provider must have a level of fitness and probity appropriate to the performance of that particular function. Furthermore, the Central Bank has the power to prescribe a subset of CFs as functions for which the prior approval of the Central Bank is required in order to appoint the person.

The PCFs affected by the amendments are the functions 42 to 47 as follows:

- The office of Chief Operating Officer (PCF-42) for all regulated financial service providers;
- Head of Claims (PCF-43) for Insurance Undertakings;
- Signing Actuary (PCF-44) for Non-Life Insurance Undertakings and Reinsurance Undertakings;

- Head of Client Asset Oversight (PCF-45) for Investment Firms;
- Head of Investors Money Oversight (PCF-46) for Fund Service Providers; and
- Head of Credit (PCF-47) for Retail Credit Firms.

The Amending Regulation, besides prescribing the above six new PCFs, serves to update other parts of the Fitness and Probity regulations which deal with the following matters:

- Clarification on the exclusion of Certified Persons – It is specified that regulated financial service providers cannot avail of the outsourcing exemption when outsourcing PCFs or CFs to certified persons;
- PCF Title Changes – The title of PCF-14 has been changed from "Head of Risk" to "Chief Risk Officer" and the title PCF-26 has also been changed from "Head of Markets Supervision" to "Head of Regulation";
- Stock Exchange Amendment – the Amending Regulations reflect the fact that on 11 April 2014 the Irish Stock Exchange ("**ISE**") Ltd was demutualised and it became a public limited company;
- Alternative Investment Fund Managers – The Amending Regulation incorporates the AIFMs as introduced by the AIFM Directive into the scope of the fitness and probity regime.

The Central Bank issued Guidance on the Fitness and Probity Amendments 2014 (the "**2014 Guidance**"), the purpose of which is to assist regulated financial providers in complying with their obligations under the Amending Regulation.

As clarified in the 2014 Guidance, the Amending Regulation will come into effect on 31 December 2014. It is also clarified that persons in situ in any of the six new PCFs on 31 December 2014, may continue in those positions and do not require the approval of the Central Bank to continue to perform that PCF.

The full Guidance is available at the following link:

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

(ii) Central Bank Publishes Fitness and Probity Services Standards Performance Report

On July 2014, the Central Bank published its Regulatory Transactions Service Standards Performance Report (the "**Report**"), covering the period January – June 2014.

As stated in the Report, this document sets out the Central Bank's performance against Service Standards it has committed to in relation to the processing of Fitness and Probity PCF Individual Questionnaire ("**IQ**") applications and the authorisation on new entities.

These authorisation service standards are being introduced on a phased basis from January 2014 for a number of entities as follows:

- Credit Institutions;
- Insurers;
- Investment Firms; and
- Regulated Markets.

It is also clarified by the Central Bank that there are now a total of seven Service Standards and the performance against the targets was exceeded in six of the seven cases for the period from January to June 2014.

This Report consists of two Sections and an Appendix as follows:

- Section 1 outlines performance against the fitness and probity service standards;
- Section 2 highlights performance against authorisation service standards for the relevant period; and
- Appendix A sets out the reasons why an IQ application may be returned as incomplete.

The full report is available through the following link:

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

(iii) Central Bank Issues CP83 on Fitness and Probity Regime for Credit Unions that are also Authorised as Retail Intermediaries

On 1 August 2014, the Central Bank published a consultation paper ("**CP83**") namely Fitness and Probity regime for Credit Unions that are also authorised as Retail Intermediaries.

As recalled in the paper, on December 2012, the Central Bank had published a previous consultation paper concerning Fitness and Probity regime for Credit Unions ("**CP62**"). CP62 also proposed that credit unions that are authorised as retail intermediaries would become subject to the Fitness and Probity regime which applies to all regulated financial service providers, with the exception of credit unions, from 1 July 2015 for the retail intermediary portion of their business.

Following the initial implementation of the Fitness and Probity regime for credit unions, the Central Bank has reviewed the proposed approach on applying fitness and probity requirements to credit unions that are also authorised as retail intermediaries and is now proposing a renewed tailored approach.

The CP83 sets out the Central Bank's proposals in respect of this revised approach and is seeking feedback on the same proposals. The structure of the paper is as follows:

- Section 1 – Introduction;
- Section 2 – Background;
- Section 3 – Overview of the revised approach;
- Section 4 – Implementation of the Fitness and Probity regime for credit unions that are also authorised as retail intermediaries;
- Section 5 – Making Submission; and
- Appendix 1 – CFs and PCFs in the general Fitness and Probity regime.

The CP83 can be viewed via the following link:

http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP83%20Fitness%20and%20Probity%20regime%20for%20Credit%20Unions%20that%20are%20also%20authorised%20as%20Retail%20Intermediaries/CP%2083%20Fitness%20and%20Probity%20regime%20for%20Credit%20Unions%20also%20authorised%20as%20Retail%20Intermediaries.pdf

Central Bank of Ireland

(i) Central Bank Announces the appointment of Director of Insurance Supervision

On 3 July 2014, the Central Bank of Ireland (the "**Central Bank**") published a statement announcing the appointment of Ms. Sylvia Cronin as the Director of Insurance Supervision. It is expected she will take up her position later in the year.

Ms. Cronin will assume responsibility for the prudential oversight of all general insurance, life insurance and reinsurance companies regulated by the Central Bank, therefore both the General Insurance and Life Insurance divisions will report to her.

Ms. Cronin has spent the majority of her career working in the insurance industry most recently as the Chief Executive of Augura Life Ireland Ltd., a position she has held since 2010. Previously Ms. Cronin was the Chief Executive of MGM International Assurance Ltd. and spent several years with

the AXA Group where she was head of Business Development, Services and Marketing in Ireland. She started her insurance career with the Fortis Group where her focus was on IT Management.

The Central Bank's statement can be accessed through the following link:

http://www.centralbank.ie/press-area/press-releases%5CPages%5CDirectorofInsuranceSupervisionannouncement.aspx

(ii) Central Bank Publishes Research on the Irish Reinsurance Industry and the Introduction of the Macroeconomic Imbalance Procedure

On 28 July 2014, the Central Bank published two articles from the Central Bank's Quarterly Bulletin for Quarter 3, 2014, one concerning the Irish Reinsurance Industry and the other regarding the Macroeconomic Imbalance Procedure.

The Central Bank's article named *Reinsurance in Ireland: Development and Issues* examines factors which encourage reinsurance companies to locate in Ireland and uses aggregated company-level data to examine the contribution of the reinsurance industry to the Irish economy. It also considers the financial stability implications arising from the location of these companies in Ireland.

The key findings are as follows:

- Ireland is a major centre for reinsurance services, with the second-highest number of reinsurance companies in Europe;
- The industry had total assets of €55 billion at end-2012, which corresponds to over 30 per cent of GDP. The size of the industry's assets is in contrast with the estimates of value added, which represented just 0.4 per cent of GDP in 2011;
- The number of employees in the industry is low, with just over 400 employees in Ireland in 2011;
- The solvency ratio, measured as the ratio of the available solvency margin relative to the required regulatory margin was shown to have strengthened since 2008; and
- The recent low interest-rate environment has contributed towards the industry's search for higher-yielding assets. An analysis of its investments from 2008 to 2012 shows a movement towards lower grades of investments, while maintaining investment grade status.

The other article, *Ireland and the Macroeconomic Imbalance Procedure ("**MIP**")*, introduces the MIP, one of the central elements of the strengthened EU economic governance framework, and takes a close look at developments in Irish imbalances since the downturn.

The key findings are as follows:

- The introduction of an EU-wide procedure focusing on macroeconomic surveillance is to be welcomed as it complements the Stability and Growth Pact and has the potential to prevent inconsistencies between economic and fiscal policies;
- It is crucial that there is strong implementation of both the preventive and corrective arms of the MIP to ensure it fulfils its objectives effectively;
- Had such a procedure existed in the 2000s, it would have resulted in more formal external surveillance of the Irish economy and placed increased attention on competitiveness, credit and house price developments;
- It is unclear whether a MIP would have helped reduce imbalances to sustainable levels before the downturn, given the performance of other EU governance measures of the time;
- Overall, Irish imbalances have reduced since the downturn and external imbalances are not currently a significant concern, given current account surpluses and favourable trends in competitiveness; and
- Some internal imbalances will take time to unwind from their current high levels and, as a result, require on-going monitoring. This includes imbalances which existed prior to the crisis (private sector debt) and those that emerged due to the downturn (unemployment, public debt).

Both the articles may be accessed via the following links, respectively:

http://www.centralbank.ie/publications/Documents/Reinsurance%20in%20Ireland%20Development%20and%20Issues.pdf

http://www.centralbank.ie/publications/Documents/Ireland%20and%20the%20Macroeconomic%20Imbalance%20Procedure.pdf

(iii) Central Bank Publishes Guidelines on Variable Remuneration Arrangements for Sales Staff

On 25 July 2014, the Central Bank published Guidelines on the Variable Remuneration Arrangements for Sales Staff following the completion of a cross-sectoral review of incentives payable to employees of banks, insurance companies and investment firms.

The cross-sectoral review examined the incentive arrangements to employees under the Consumer Protection Code 2012 and the Conflict of Interest requirements applicable to investment firms under the Markets in Financial Instruments Directive ("**MiFID**").

While the cross-sectoral review established that all firms had a process in place for the design and approval of incentive schemes, there was a failure to recognise the inherent risks in remuneration arrangements and to mitigate those risks accordingly. The key findings of the cross-sectoral are as follows:

- A greater emphasis was placed on rewarding higher amounts of sales than achieving suitable consumer outcomes;
- Bonus payments paid fully or largely on the achievement of sales volumes and targets, with little emphasis on the quality of sales to the consumer;
- Limited use of penalties or deterrents against poor sales practices;
- Widespread use of branch targets in the banking sector as a means of focusing on the bank's goals;
- Incentives earned on an "all or nothing" basis; and
- Regular and robust sales quality monitoring not performed consistently.

The purpose of the Guidelines on the Variable Remuneration for Sales Staff is to set out what the Central Bank considers to be best practice by firms in meeting the needs of the consumer and aligning variable remuneration arrangements with a positive cultural focus on needs based selling. The Guidelines are applicable to the banking, insurance and investment firms sectors initially, and engagement with the remaining sectors will follow in due course.

The best practice principles are set out under the following headings:

- Governance;
- Use of Quality Measures;
- Inclusion of Penalties / Deterrents and Clawback;
- Managing Performance;
- Managing Conflicts of Interest and Risky Components of Incentive Schemes;
- Sales Quality Monitoring and Controls; and
- Client Service and Standards of Documentation.

The best practice is set out in addition to and not in conflict with any other remuneration related rules or requirements imposed on financial services providers.

The Central Bank now requires insurance companies to review the final Guidelines and provide a confirmation that this review was conducted and changes have been implemented by 1 January 2015. This confirmation should be provided by 11 January 2015. In addition, the Central Bank states that insurance companies are expected to make any further changes to sales quality

monitoring and governance structures as soon as possible rather than waiting for a full review of any such scheme.

Moreover, during the first half of 2016 all insurance companies are required to have their Internal Audit function conduct a review of changes implemented in remuneration arrangements in line with the Guidelines.

The Guidelines and the related information release are available at the following links, respectively:

http://www.centralbank.ie/press-area/press-releases/Documents/Guidelines%20on%20Variable%20Remuneration%20Arrangements%20for%20Sales%20Staff%20July%202014.pdf

http://www.centralbank.ie/regulation/processes/consumer-protection-code/compliance-monitoring/Documents/Information%20Release%20%20Sales%20Incentives%20final%2025.07.14.pdf

(iv) Central Bank Publishes updated Guidance for Life Assurance Companies on Italian Withholding Tax Regime

On 28 July 2014, the Central Bank published its updated Guidance for Irish-authorised life assurance companies that have opted into the Italian withholding tax regime.

In November 2009, the Central Bank had issued a letter to life assurance companies setting out Guidance on valuing tax asset recoveries available under the Italian withholding tax regime, as well as guidance on liquidity considerations, reserving for future prepayments and disclosures to the Central Bank. The updated Guidance is designed to take into consideration preparation for Solvency II as well as relevant changes to Italian Stability law in 2012 and a subsequent survey of life assurance companies by the Central Bank in 2013.

As stated in the updated Guidance, the Central Bank's main concerns remain that:

- A prudent value is placed on the tax asset recoveries;
- Companies make provision for adequate recognition of any concentration risk; and
- Companies make provision for adequate recognition on any concentration risk.

The Central Bank also wishes to ensure that companies adopt consistent practices, where appropriate, in relation to the tax asset held with a view to ensuring a level playing field.

The updated guidance deal with the contents as follows:

- Current Guidance and Solvency II;
- Changes to Guidance;
- Updated requirement; and
- Guidance of FLAOR.

In relation to the requirements as updated, the topics covered deal with –

- Overall Requirements on Expected Recoveries;
- Maximum Values to be taken on Expected Recoveries;
- Requirement for a Liability for Future Payments;
- Specific Restrictions on How the Asset is Used;
- Requirements for a Liquidity Policy;
- Risk Appetite Statement; and
- Requirements for Disclosure.

The updated Guidance can be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/life-insurance-companies/Documents/2014%20Withholding%20Tax%20Guidance%20Requirements.pdf

(v) Central Bank Publishes Regulatory Notice on the Adaptation of Solvency I Minimum Guarantee Fund

On August 2014, the Central Bank published a Regulatory Notice on the Adaptation of Solvency I Minimum Guarantee Fund ("**MGF**").

Article 41 of Reinsurance Directive 2005/68/EC and amending Council Directives 73/239/EEC, 92/49/EEC, as well as Directives 98/78/EC and 2002/83/EC, outline the procedure for an annual review of the MGF for Reinsurance and Captive undertakings. This review procedure showed that the cumulative increase in the European index of consumer prices, since the Solvency I rules came into force, was above the 5% threshold and, therefore, an adaptation was required.

This adaptation is provided for in paragraph 2(2) of Schedule 2 of the 2006 European Communities (Reinsurance) Regulations (S.I 380 of 2006).

As stated in the Notice, following agreement between Member States, the adaptations are to be implemented prior to 1st January 2015. Therefore, in Ireland, the adaptation will come into effect for all undertakings on 31st December 2014, and will apply to all Annual and Quarterly Returns for

reporting periods ending on or after that date.

The relevant changes involve the points as follows:

- A revised MGF of €3,600,000 for Reinsurance Undertakings as opposed to the current base amount of €3,400,000; and
- The MGV for captive reinsurance undertakings of €1,200,000 does not change.

It is also clarified by the Regulatory Notice that these changes will be incorporated in the OnLine Reporting system to be utilised by all undertakings in the filing of their 2015 returns in respect of the period ended 31st December 2014.

The Regulatory Notice can be viewed via the following link:

http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/reinsurance-companies/Documents/Regulatory%20Notice%20on%20the%20Adaptation%20of%20Solvency%201%20Minimum%20Guarantee%20Fund%20with%20effect%20from%2031st%20December%202014.pdf

(vi) Central Bank Publishes Guide to the 2014 Industry Funding Regulations

Following recent approval of the Central Bank Act 1942 (Section 32d) Regulations 2014 by the Minister for Finance, the Central Bank has published its Guide to the 2014 Industry Funding Regulations.

Pursuant to Section 32D of the Central Bank Act, 1942 (as amended) the Commission of the Central Bank may, with the approval of the Minister for Finance, make regulations requiring regulated entities to pay a levy to the Bank.

The objective of these Regulations is to raise approximately 50 per cent of the budget attributable to the Bank's financial regulation activities directly from the financial service providers it regulates. The balance is funded by the Central Bank by means of a subvention.

The Guide released by the Central Bank is intended to provide a user-friendly guidance as to how the industry funding levy for 2014 is calculated. It is divided into five sections which deal with the following points:

- Section 1 – "Background to the 2014 Industry Funding Regulations" which sets out the background of the levy and summarises these Regulations;

- Section 2 – "Significant Changes in 2014" which sets out significant changes to the levy in 2014 together with changes to the categorisation of regulated financial service providers;
- Section 3 – "Calculation of the Industry Funding Levy" which explains how the levy is calculated for each industry sector;
- Section 4 – "Financial Information for Industry Sectors" which is intended to explain how to calculate the levy rates for individual financial service providers and how the net Annual Funding Requirement is determined; and
- Section 5 – Appendices.

In September 2014, the Central Bank commenced issuing the 2014 Industry Funding Levy notices. Regulated entities are reminded that all levy notices are due and payable 35 days following the issue of these notices. Accounts may be settled by cheque, electronic funds transfer or direct debit. Those firms that have opted to settle their account by means of direct debit should note that the Central Bank expects to carry out a direct debit run during the week beginning 20 October 2014.

Further details can be found in the Guide which is available at the following link:

http://www.centralbank.ie/regulation/processes/industry-funding-levy/Documents/A%20Guide%20To%20Industry%20Funding%20Regulations%202014%20DRAFT%202.pdf

Financial Services Ombudsman ("FSO")

On 21 August 2014, the Financial Ombudsman Service ("**FSO**") published a new online technical resource relating to private medical insurance ("**PMI**").

The resource addresses issues such as:

- The types of complaints received by the FOS relating to PMI;
- The FOS' approach to dealing with PMI complaints;
- The distinction between acute and chronic conditions and the potential for disagreements to arise over interpretation of these terms;
- The restrictions an insurer may impose relating to paying for treatment under a policy and when a decision may be challenged; and
- Considerations applicable when calculating compensation if a complaint is upheld.

A link to the online technical resource is available at the following link:

http://www.financial-ombudsman.org.uk/publications/technical_notes/private-medical-insurance.htm

Anti-Money Laundering/Counter-Terrorism Financing

On 25 February 2014, the Central Bank published its planned series of Themed Reviews and Inspections for 2014, as well as its 2014 Enforcement Priorities. It is clear from these publications that a key focus of the Central Bank is the area of anti-money laundering and counter terrorist financing ("**AML/CTF**") and the controls which designated persons are required to put in place to mitigate against the risk of AML/CTF. It is also clear from these publications that the Central Bank expects regulated entities to have appropriate systems, controls and procedures in place to meet with their regulatory obligations.

The following is a summary of the information which may be requested by the Central Bank as part of the themed AML/CTF inspections;

List of documentation to be submitted to the Central Bank in advance of inspection

1. An up-to-date organisation chart, which includes the names of directors and senior managers and the date of their respective appointments, together with a breakdown of those with day-today management of AML/CTF responsibilities of the entity;
2. A copy of the entity's current AML/CTF policy and procedures;
3. A copy of the entity's customer due diligence procedures if separate to the AML/CTF procedures requested at point 2 above;
4. A copy of the entity's current AML/CTF Risk Management Strategy, policies and procedures, including details of the risk based approach employed;
5. A copy of any relevant outsourcing or similar agreements;
6. Copies of all board minutes (where they relate to AML/CTF) from inception date to date of Central Bank letter advising entity of proposed themed inspections (the "Central Bank Letter");
7. A copy of the entity's suspicious transaction reporting procedures.
8. An outline from end to end of the process which has been put in place to deal with suspicious transactions reporting;
9. An outline of the entity's transaction monitoring procedure/system;
10. Details and results of any AML/CTF testing and/or internal or external audits carried out between inception date and date of the Central Bank letter;
11. Details of number of suspicious transactions received by the MLRO together with details of how many suspicious transaction reports ("STRs") were submitted to An Garda Síochána

and the Revenue Commissioners between inception date and date of the Central Bank letter;

12. Copies of AML/CTF training provided to persons involved in the conduct of the business from inception date to date of the Central Bank letter;
13. A list of all customers, in the form of a spread-sheet, categorised into natural and legal persons, since 15 July 2010, including date of entry and date of verification;
14. A list of any customers on which redemptions were placed prior to the identity of the customer having been verified; and
15. A list in the form of a spread-sheet of all transactions (including new subscriptions, additional subscriptions, transfers and partial or full redemptions) processed by the entity for one week as per the date specified in the notification letter.

List of documentation to be available to the Central Bank for inspection on the first day of the onsite visit

1. Access to AML/CTF training records for period from inception date to date of the Central Bank letter, including copies of training material and staff training records;
2. The current list of all Politically Exposed Persons and high risk customers in the entity;
3. Access to customer due diligence records and transaction/service records;
4. Access to STRs information, including sight of original information provided to An Garda Siochana and the Revenue Commissioners and details of suspicious transactions received by the MLRO but not reported; and
5. Access to the entity's transaction monitoring system (where applicable).

Investment Funds and their service providers should be aware that the Central Bank has recommenced its themed AML/CTF inspections. In this regard, such entities should ensure that they have robust AML/CTF controls in place. In particular, in accordance with section 54 of the Acts, an entity which falls within the description of designated person is required to have its own standalone AML/CTF policy. This means that in the case on an Investment Fund, it is required to have its own AML/CTF policy, notwithstanding that it outsources the day to day AML/CTF responsibilities to a separately appointed Administrator.

Data Protection

(i) Minister for Justice Commences Additional Sections of Data Protection Act

On 18 July 2014, three sections of the Irish Data Protection Acts 1988 and 2003 (the "**DPA**") that had not yet been enacted were commenced by the Minister for Justice, thereby bringing the remaining sections of the DPA into force with effect from that date. As a result, data controllers now have a broader duty to notify third party recipients of personal data when that data has been

changed or deleted. Employers are also restricted from requiring certain individuals in the employment context from making an access request for their personal data.

Section 6 of the DPA outlines that a data controller must rectify, block or erase personal data that is collected, processed or otherwise dealt with in contravention of the DPA and to notify the data subject accordingly. Following the commencement of section 6(2)(b), the data controller is also now required to notify any person to whom the personal data was disclosed during the preceding 12 months unless such notification proves impossible or involves a disproportionate effort. The data controller is obliged to make the notification within 40 days of receipt of the request from the data subject to rectify, block or erase personal data that was collected, processed or otherwise dealt with in contravention of the DPA.

Section 10(7) of the DPA provides that a data controller is obliged to notify the data subject where it blocks, rectifies, erases, destroys or adds a statement to personal data in compliance with an enforcement notice issued by the Data Protection Commissioner. Following the commencement of section 10(7)(b), the data controller is now also required to notify any person to whom the personal data were disclosed during the preceding 12 months unless such notification proves impossible or involves a disproportionate effort. The data controller is obliged to make the notification within 40 days of compliance with the enforcement notice.

Furthermore, following the commencement of section 4(13) of the DPA, an employer is prevented from "*requiring*" an individual (i.e. the data subject), in the context of their role as an employee, potential employee or contractor, to make an access request under section 4 of the DPA to another data controller or to provide data received in response to such a request. The changes introduced in respect of certain employment situations may be directed at employers who utilise the right of access as a means to inspect a person's background. An employer must ensure to take extra care if suggesting that an individual use their right of access. A breach of this section incurs criminal penalties. This could result in fines of up to €100,000 in serious cases.

Statutory Instrument 337 of 2014 and Statutory Instrument 338 of 2014, which enact the abovementioned sections of the Act, can be accessed via the following links, respectively:

http://www.betterregulation.com/rulebooks.php?T=http://www.betterregulation.com/doc/1/77054

http://www.betterregulation.com/rulebooks.php?T=http://www.betterregulation.com/doc/1/77054

(ii) New Guide to Audit Process Published

In August 2014, the Office of the Data Protection Commissioner issued new guidance on its powers under Sections 10(1A) and (1B) of the Data Protection Acts to carry out investigations into organisations' data protection compliance.

As clarified in the preface, this guidance was originally published in 2009 and its revised version has been updated to take into account legislative developments as well as reflect any changes in the approach of the Office of the Data Protection Commissioner to the audit process. This guidance is designed to assist organisations selected for audit by the Office of the Data Protection Commissioner. It is also stated in the guide that it is hoped that this resource will provide organisations holding personal data with a simple and clear basis to conduct a self-assessment of their compliance with their obligations under Irish Data Protection Law.

The updated guide to audit process consists of the sections set out below:

- Introduction (concerning Compliance Audits; Audit Focus and Potential Benefits for Organisations);
- Audit Model;
- Legal Basis for Audits/Inspections;
- Pre-Audit Procedures;
- Audit Methodology;
- Inspection Day;
- Audit Report; and
- Appendices.

The new guide to audit process is available through the following link:

http://www.dataprotection.ie/docimages/documents/GuidetoAuditProcessAug2014.pdf

(iii) EU Justice Commissioner's Speech on the Right to be Forgotten and the EU Data Protection Reform

On 18 August 2014, the European Commission published a press release in relation to the speech of EU Justice Commissioner, named "The right to be forgotten and the EU data protection reform: Why we must see through a distorted debate and adopt strong new rules soon", held at the IFLA World Library and Information Congress in Lyon, France.

According to the words of the EU Justice Commissioner, since the business is moving faster than the political machine, it is high time for Member States to catch up. Negotiations on the data

protection reform have been on-going for more than two and a half years and they have made good progress. But there is more work to be done. Heads of State and Government have committed themselves to a swift conclusion of negotiations several times. At the European Council at the end of June, they affirmed the importance of adopting "a strong EU General Data Protection framework by 2015".

The EU Justice Commissioner urges Member States to stick to this goal, exhorting them to be ambitious and help to give Europe the data protection rules it needs since they “cannot afford to delay such significant opportunities for growth and run the risk of having others' standards imposed on them by others”. It is also underlined that EU needs a strong, modern data protection framework, and they need it soon.

The press release including the EU Justice Commissioner’s speech may be accessed via the following link:

http://europa.eu/rapid/press-release_SPEECH-14-568_en.htm

Whistleblowing

The Protected Disclosure Act 2014

On 15 July 2014, the Protected Disclosures Act 2014 (the “**Act**”) became operational.

As clarified by the Minister for Public Expenditure and Reform, the legislation meets the commitment included in the Programme for Government to introduce comprehensive whistleblower protection legislation. The commencement of the Act also addresses the recommendation contained in the Final Report of the Mahon Tribunal advocating the introduction of pan-sectoral whistleblower protection legislation. Furthermore, the legislation closely mirrors international best practice recommendations on whistleblower protection made by the G20/OECD, the UN and the Council of Europe and draws on recent developments in legislative models adopted or being put in place in other jurisdictions.

The key features of the legislation are as follows:

- Comprehensive coverage, including all employees, contractors, agency workers, members of the Garda Siochana and the Defence Forces;
- The absence of any good faith or public interest test which could otherwise act as a significant deterrent to making a protected disclosure;
- The scope for protection of a disclosure made prior to the legislation coming into effect;

- The availability of interim relief if an employee is dismissed for having made a protected disclosure;
- Access to the State's industrial relations machinery for securing redress against penalisation for having made a protected disclosure;
- Compensation of up to five years remuneration; and
- Strong protections against the disclosure of a whistleblower's identity.

The legislation is also particularly focused on seeking, as much as possible, to protect the identity of a whistleblower and identifies a number of distinct disclosure channels for potential whistleblowers.

A protected disclosure is the disclosure of "relevant information". To qualify as relevant information:

- A worker must reasonably believe that the information disclosed tends to show one or more "relevant wrongdoings";
- The wrongdoing must come to the worker's attention in connection with his/her employment. For example, a disclosure will not be protected if it relates to matters in someone's personal life outside and unconnected to the workplace.

"Relevant wrongdoings" are defined in an exhaustive list and include the following:

- The commission of an offence;
- A miscarriage of justice;
- Non-compliance with a legal obligation;
- Health and safety threats;
- Misuse of public monies;
- Mismanagement by a public official;
- Damage to the environment; or
- Concealment or destruction of information relating to any of the foregoing.

Special arrangements are also put in place for disclosures regarding law enforcement matters and to disclosures which may adversely affect Ireland's security, defence or international relations.

The Protected Disclosures Act 2014 and the related Commencement order may be accessed via the following link:

http://www.per.gov.ie/protected-disclosures-i-e-whistleblowing/

Companies Bill Update

(i) Implementation of the Companies Bill

The Companies Bill 2012 is currently being reviewed by the Oireachtas but given the number of amendments that have been introduced it is expected that the Companies Bill will not be enacted until December 2014 at the earliest. Notwithstanding the date of enactment of the Bill, the commencement date of the Act will be 1 June 2015.

Some of the key changes under the Companies Bill include:

- The Codification of Directors' Common Law Fiduciary Duties

The Companies Bill gives statutory recognition to the current common law and equitable principles regarding director's duties which will ensure greater clarity for directors.

- New Model Company – Private Company Limited by Shares

The new model private company limited by shares is intended to replace the existing private company limited by shares. There are many similarities between these legal entities, however there are some important changes such as:

- A model company limited by shares can be formed with just one director; and
- A model company limited by shares will have unlimited legal capacity and the "ultra vires" rule, whereby a company's legal capacity is limited to the objects set out in its memorandum of association, will be abolished.

- Elective Regime

All private companies will be obliged to either register as a designated activity company or adopt a new form of constitution and be registered as a private company limited by shares within the 18 month transition period. Otherwise, the private company will be deemed to be a private company limited by shares and a default form of constitution deemed to have replaced its memorandum and articles of association.

- Summary Approval Procedure

The new summary approval procedure will authorise activities that might otherwise require High Court sanction or approval to be approved by the shareholders of a company. In certain circumstances, a reduction of capital or a merger may be effected without the need for High Court approval once the process set out under the Companies Bill is complied with.

- Directors' Compliance Statements

Directors of the following companies will be obliged to sign a compliance statement acknowledging responsibility for compliance with company law obligations:

- Public Limited Companies; and
- "Large" private companies limited by shares, designated activity companies and guarantee companies (i.e. which have a balance sheet total exceeding €12.5 million and a turnover exceeding €25 million).

Directors of unlimited companies and investment companies are excluded from these obligations.

- Changes to the Insolvency and Corporate Recovery Regimes

The Companies Bill proposes a welcome consolidation and modernisation of the law relating to liquidations, receiverships and examinerships. The Companies Bill seeks to reduce the Court's supervisory role in Court liquidations such that it is more closely aligned to creditors' voluntary liquidations and introduces greater consistency between the three types of liquidations, being members' voluntary, creditors' voluntary and Court liquidations. The Companies Bill also proposes more extensive powers of intervention and scrutiny over liquidators for the Director of Corporate Enforcement. While the changes in relation to examinerships are relatively modest, the Companies Bill does also reform and consolidate the law relating to receivers including, for example, providing that receivers' powers will be enumerated in a non-exhaustive list, that list being without prejudice to powers which may be granted by a debenture.

- Re-classification of all Company law offences

All company law offences have been allocated into four categories of offences with penalties attaching to each offence.

- Priority of charges and registration of charges

Where security is taken over assets which do not require specific registrations for priorities in registries other than the Companies Registration Office (such as the Land Registry), the current law provides that the priority rests with the creditor who has taken the security first in time. It is proposed under the Companies Bill that this will no longer be the case and instead where security is taken over such assets, the priority will rest with the creditor who has been the first to register the security interest with the Companies Registration Office. In addition, whilst the existing procedure for the registration of the particulars of charges with the Companies Registration Office

within a 21 day period will remain (the "**one stage procedure**"), a new "two stage procedure" will also be introduced for the registration of the particulars of charges.

Irish Taxation Update

In the last Quarterly Legislative Update we advised that, on 27 June 2014, the Irish Revenue Commissioners (in conjunction with the Department of Finance) finalised the relevant Regulation (S.I. No. 292 of 2014) with respect to FATCA (the "**FATCA Regulations**"), which came into operation on 1 July 2014.

On 1 October 2014 the Irish Revenue Commissioners issued finalised Guidance Notes with respect to Ireland's implementation of FATCA.

The FATCA Regulations along with the Irish IGA, Section 891E of the Taxes Consolidation Act 1997 and finalised Guidance Notes set out the framework for Irish Financial Institution to implement and comply with the provisions of FATCA.

A copy of the finalised Guidance Notes is available at the following link:

http://www.revenue.ie/en/practitioner/ebrief/2014/no-882014.html

Dillon Eustace

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 30 September 2014, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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

Hong Kong
604, 6/F, Printing House
6 Duddell Street
Central
Hong Kong
Tel: +852 35210352

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

Authors: Breeda Cunningham

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 team members below.

Breeda Cunningham
e-mail:
breeda.cunningham@dilloneustace.ie
Tel : + 353 1 6731846
Fax: + 353 1 6670042

Michele Barker
e-mail: michele.barker@dilloneustace.ie
Tel : + 353 1 6731886
Fax: + 353 1 6670042

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO