Insurance Quarterly Legal and Regulatory Update

Period covered:
1 October 2011 – 31 December 2011

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

On 16 November 2011, the European Insurance and Occupational Pensions Authority ("EIOPA") hosted its first Annual Conference, where amongst other things EIOPA provided an update on its on-going work in preparing for the future implementation of the Solvency II Directive and the timeline of activities necessary to prepare for Solvency II.

The timeline proposed by EIOPA is based on a number of assumptions around the development of the political process, namely:

- the approval of the Omnibus II Directive by the European Parliament and the Council of the European Union and the publication of the proposal for a Delegated Act by the Commission in the first half of 2012;
- a phasing-in period of the new regime during 2013; and
- the application of Solvency II as of 1 January 2014. EIOPA emphasised that the work plan for the consultation may be adjusted depending on the realisation of these assumptions.

Under the current European Parliament and European Council proposals, a distinction is drawn between the implementation of Solvency II by Member States (1 January 2013) and the application of Solvency II to insurers (1 January 2014).

Despite the delayed implementation of Solvency II, it is likely that insurers will be obliged to prove their readiness in respect of its provisions before that implementation date.

EIOPA Consultations: Solvency II

EIOPA published two consultation papers setting out its draft proposals on:

- Own Risk and Solvency Assessment ("ORSA") guidelines; and
- Guidelines for Supervisory Reporting and Public Disclosure.

The ORSA guidelines paper sets out 24 guidelines, 15 of which relate to individual firms and groups and 9 of which relate to groups. The guidelines focus on identifying and assessing

firms' overall solvency needs (rather than just capital needs) and highlight the need to distinguish between risks which firms propose to cover with capital and those which will be managed through other risk mitigation techniques. The paper contains some useful guidance for firms using either the standard formula or an internal model for the calculation of their regulatory capital requirement and how the OSRA should link to and support this process. The principle of proportionality should be reflected throughout the ORSA and it should be noted that an ORSA should be performed at least annually and should trigger a corresponding Solvency Capital Requirement ("SCR") calculation.

The EIOPA Consultation Paper on guidelines for supervisory reporting and public disclosure contain proposals which define the content and format of insurers' Solvency II reporting consisting of private reporting to their supervisors and public reporting to all stakeholders. This Consultation Paper consists of guidelines which cover:

- the content of the narrative Solvency and Financial Condition Report;
- the content of the narrative Regular Supervisory Report;
- reporting in the case of predefined events; and
- processes for public disclosure and supervisory reporting.

This Consultation Paper represents an important milestone in the development of the Solvency II regime, particularly as many supervisory authorities have already indicated that preliminary Solvency II reports will be required in 2013.

The consultation period for both papers ends on 20 January 2012. This period provides the last chance for stakeholders to influence the reporting requirements before they are finalised. A copy of both papers can be found on EIOPA's website at: http://eiopa.europa.eu/consultations.

Central Bank Solvency II Matters: Issue 6

The sixth edition of the newsletter, circulated on 6 December 2011, focuses on the latest Solvency II policy developments and implementation activities and events, including the following:

- Industry Readiness Survey: This was issued to industry on 1 September. Approximately 220 firms submitted completed responses. Firms that did not respond to the survey should be aware that the Insurance Supervision teams will be following up to obtain updates on their Solvency II preparations.

- Implementation update: The Central Bank is working on the assumption that Member States will be required to transpose Solvency II by 1 January 2013, while insurers will have until 1 January 2014 to implement the provisions. However, insurers are advised that they may be subject to reporting and other requirements during 2013.
- Omnibus II*:* The European Parliament has revised its indicative timelines for the adoption of the Omnibus II Directive. The vote on the ECON Committee report on the Directive has been moved back from 20 December 2011 to 24 January 2012 and the indicative date for the wider plenary vote has moved from 13 February to 17 April 2012.

A copy of the newsletter is available on the Central Bank's website at: www.centralbank.ie.

UK Financial Services' Authority Publish Solvency II Information

On 9 November 2011, the Financial Services Authority ("FSA") published the first of their Consultation Papers (CP 11/22) on the transposition of Solvency II. The Consultation Paper contains an explanation of the draft rules and guidance which will form the new prudential sourcebook for insurers in the FSA Handbook (SOLPRU). Submissions are invited until 15 February 2012.

CP 11/22 can be found on the FSA website at: www.fsa.gov.uk.

EIOPA Consultation: Complaints Handling by Insurers

On 9 November 2011, EIOPA issued a consultation paper - "The Proposal for Guidelines on Complaints Handling by Insurance Undertakings" (the "Draft Guidelines").

The Draft Guidelines are being issued to clarify EIOPA's expectations regarding the internal complaints handling system of insurers. In addition, it provides guidance on the provision of information to consumers and procedures for responding to complaints, thereby ensuring the adequate protection of both policyholders and beneficiaries.

The Draft Guidelines, which are addressed to the competent supervisory authorities in each Member State, set down minimum standards that insurance supervisors should apply in supervising complaints handling by insurers. Accordingly, supervisors may choose to specify more detailed requirements than those included in the Draft Guidelines. There are seven guidelines which deal with:

- Complaints management policy;
- Complaints managements function;
- Registration;
- Reporting;
- Internal follow-up of complaints-handling;
- Information to consumers; and
- Procedures for responding to complaints.

EIOPA has also published a 'Report on Best Practices by Insurance Undertakings in handling complaints', which provides more detailed provisions on insurance undertakings' internal controls when handling complaints.

This consultation period ends on 31 January 2012. Comments should be submitted via email to CP-010@eiopa.europa.eu.

Both the Draft Guidelines and Best Practices Report can be accessed on EIOPA's website at: https://eiopa.europa.eu

European Commission: Review of the Insurance Mediation Directive

On 25 November 2011, the European Commission published their final report on the review of the Insurance Mediation Directive ("IMD").

A key finding contained in the report is that the most common conflict of interest in the insurance mediation industry is the remuneration of persons selling insurance and their relationship to the consumer. The report indicates that mandatory disclosure on the nature and source of remuneration seems to be the best and most cost-efficient solution to this issue.

The report can be found at: http://ec.europa.eu/.

Financial Conglomerates Directive

On 9 December 2011, Directive 2011/89/EU of the European Parliament and of the Council entered into force.

The purpose of this Directive is to:

- Amend the existing Financial Conglomerates Directive (2002/87/EC) and also the relevant banking and insurance supervision legislation, including the Capital Requirements Directive and the Directive on Supplementary Supervision of Insurance Undertakings in Insurance Groups;
- Identify financial conglomerates throughout the EU according to the extent to which they are exposed to group risks, based on common guidelines issued by EIOPA, ESMA and the European Supervisory Authority (European Banking Authority), following cooperation within the Joint Committee of the European Supervisory Authorities; and
- Introduce regulatory oversight of legal and operational structures of financial conglomerates, including all legal entities, banks, insurers and financial conglomerates with cross-border activities by European supervision authorities and the Joint Committee, as appropriate, and ensure that information is made available to the relevant competent authorities.

The scope of Directive 98/78/EC (Supplementary Supervision of Insurance Undertakings in an Insurance Group) will be extended to mixed financial holding companies and alternative investment fund managers.

Directive 2011/89/EU requires transposition by Member States by 10 June 2013 (with the exception of some provisions which provide for transposition by 22 July 2013).

European Commission: Consultation on the application of Directive 2007/44/EC

The European Commission has issued a consultation paper on the application of Directive 2007/44/EC as regards acquisitions and increase of holdings in the financial sector.

The Directive was adopted in 2007 and lays down uniform rules and evaluation criteria for national supervisors to prudentially assess mergers and acquisitions in the financial sector. The main objective of the Directive was to make sure that all acquisitions of a qualifying

holding are treated in the same way throughout the EU and across sectors, in particular due to the frequent use of group structures that extend across multiple Member States whereby a single acquisition of a qualifying holding may be subject to scrutiny in several Member States by several sectoral authorities.

According to Article 6 of the Directive, the Commission has to review the application of the Directive and submit a report to the European Parliament and the Council, together with any appropriate proposals to review the Directive. The Commission is seeking evidence on how the Directive was applied in the EU Member States to assist it in the preparation of this report.

The public consultation has been grouped into four sections:

- General questions on the application of the Directive in the EU Member States;
- Specific questions regarding the procedure as laid down in the Directive for the prudential assessment of the acquisitions of qualifying holdings in the financial sector, i.e. notification requirements and time limits amongst others;
- Specific questions in relation to the assessment criteria, required information and competing proposals; and
- Other issues, including questions on sanctions and the uniformity of application of the provisions of the Directive.

The consultation period is open until 10 February 2012 and interested parties may respond via email to MARKT-02@EC.EUROPA.EU.

The Consultation paper may be viewed on the Commission's website at: http://ec.europa.eu/.

Reform of the EU Data Protection Directive

On 29 November 2011, the EU's Justice Commissioner Viviane Reding announced formal proposals to revise and update EU data protection law. It was indicated that the European Commission will submit proposals to reform the Data Protection Directive (95/46/EC) by the end of January 2012.

The proposals aim to fix weaknesses in the current data protection framework. The proposals suggested include:

- Creating a single and streamlined data protection regime whereby the binding corporate rules ("BCR") approved by any one Data Protection Authority in a

Member State are recognised in all other EU Member States with no need for further authorisation. Currently BCRs must be approved by the Data Protection Authority in each EU Member State before they are considered effective;

- Creation of a more business-friendly regulatory environment by removing unnecessary costs and administrative burdens; and
- Strengthening and coordinating the powers of data protection authorities so that all data protection agencies may use administrative sanctions whenever there is a breach of the law.

Insurance Compensation Fund

From 1 January 2012, non-life insurers (to include non-life insurers authorised in another Member State) will be required to pay a contribution of 2% of the gross premium income they receive in respect of risks situated in the Irish State. This requirement comes on foot of a notice published by the Central Bank on 4 November 2011, pursuant to Section 6 of the Insurance Act 1964 (as amended by the Insurance (Amendment) Act 2011) (the "Act") which requires non-life insurers to provide financial support for the Insurance Compensation Fund (the "Fund") where the Central Bank opines that such support is necessary.

The levy is payable on a quarterly basis, beginning with the period 1 January 2012 to 31 March 2012 and the Revenue Commissioners are the appointed collectors. Each quarter the non-life insurer, must provide the Revenue Commissioners with a written statement showing the aggregate gross premiums paid to it by its policyholders during that quarter in respect of risks situated in the Irish State. This statement must be delivered, and the relevant contribution paid, within 30 days of the end of the quarter to which the statement relates.

Accordingly the first statement and contribution should be delivered by 30 April 2012.

The Health Insurance (Miscellaneous Provisions) Act 2011

The Health Insurance (Miscellaneous Provisions) Act 2011 (the "Act"), enacted on 16 December 2011, amends the Irish State's existing tax credit system which seeks to offset the burden of increasing health insurance premiums for older people. This system is, in effect, funded by health insurers (and, ultimately, their policyholders) through the payment of a health insurance levy. The net effect of these changes is that the health insurance levy will

be increased from €205 to €285 for an adult and from €66 to €95 for a child from January 2012, representing an increase of approximately 40%.

In addition, the Act amends provisions of the Health Insurance Act 1994 relating to the provision of information returns by health insurers to the Health Insurance Authority. Health insurers must now provide information concerning the type of cover that is being provided to a particular age group and must also highlight any changes to the level of such cover during the relevant period. Where the level of such cover has materially changed, the Minister for Health and Children is now empowered to make regulations requiring a health insurer to make separate information returns in respect of each material level of benefit.

Credit Institutions (Eligible Liabilities Guarantee) (Amendment) Scheme 2011

On 8 December 2011, the Credit Institutions (Eligible Liabilities Guarantee) (Amendment) Scheme 2011 was signed into law by the Minister for Finance Michael Noonan. This scheme provides for further amendments to the Credit Institutions (Eligible Liabilities Guarantee) Scheme 2009 (S.I. No. 490 of 2009) by extending the Government Guarantee for short-term bank liabilities, including corporate and interbank deposits as well as debt securities with participating credit institutions up until the 31 December 2012 (subject to continuing EU state aid approval).

The full text of this legislation may be found on www.irishstatutebook.ie.

Central Bank of Ireland

(i) Revised Fitness and Probity Regime

On 1 September 2011 the Central Bank introduced a new regime to regulate the 'fitness and probity' of persons in Pre-Approval Controlled Functions ("PCF") and Controlled Functions ("CF") in regulated financial service providers (each a "Regulated Firm"). The new regime will apply to both new and existing PCFs from 1 December 2011 and to new CFs from 1 March 2012. Persons currently occupying a CF function have until 1 December 2012 to comply.

While the Central Bank had issued Regulations and Standards of Fitness and Probity on 1 September 2011, modified Regulations (S.I 615 of 2011) and Standards of Fitness and Probity ("Standards") were issued on 1 December 2011, in line with the publication of the final Guidance on the Fitness and Probity Standards on 23 November 2011.

The final Guidance ("Guidance") as well as the updated Regulations and Standards can be accessed on the Central Bank's website at: www.centralbank.ie.

The revised Guidance addresses issues raised during the consultation process by several industry participants. Some welcome clarifications in the revised guidance include:

- ***PCF Due Diligence Process***:
  Each Regulated Firm was required to identify persons performing PCFs who are in place on 1 December 2011 and provide the Central Bank with a list of all such persons by 31 December 2011. However, a Regulated Firm will now have until 31 March 2012 to carry out its due diligence process on persons performing PCFs and to confirm in writing to the Central Bank that it has carried out such due diligence and that it is satisfied on reasonable grounds, that those persons performing PCFs are compliant with the Standards.

- ***Outsourcing to a Regulated Entity***
  Where a CF or PCF is outsourced by a Regulated Firm to another regulated entity (which includes entities authorised in any country by an authority that performs functions comparable to those performed by the Central Bank in Ireland) and the functions are performed pursuant to a written outsourcing agreement, the Standards will not apply. Accordingly, no prior approval from the Central Bank is required for a PCF (e.g. Head of Internal Audit) that is outsourced to a regulated entity.

- ***Outsourcing to an Unregulated Entity***
  Where a PCF is outsourced to an unregulated entity, the position is unchanged from the draft Guidance. The agreement (i.e. a service level agreement) between the Regulated Firm and the service provider must identify the individual who will perform the outsourced PCF and the individual in the Regulated Firm who will be responsible for overseeing the performance of the outsourced PCF. The Regulated Firm must also ensure that it obtains the Central Bank's prior written approval for the appointment of the PCF in the unregulated entity. For CFs, the unregulated entity performing the outsourced activities must be able to identity the individuals who will perform the CFs, and assess whether such persons comply with the Standards. The entity must also obtain the CFs agreement to abide by the Standards.

- ***Company Secretary***
  The Company Secretary function is no longer a PCF and has been removed from the categories of PCF contained in the updated Regulations. However, the Central

Bank has noted, that where an individual in the position of Company Secretary exercises significant influence, they will continue to be captured under CF1.

- ***Provision of services on a branch basis***
  The Standards will not apply to EEA authorised institutions operating in Ireland on a cross border or branch basis, however it should be noted that this exemption does not extend to regulated third country entities.
  Where a Regulated Firm authorised by the Central Bank provides services in another EEA member state on a cross border or branch basis, the Standards will apply.

In line with the new regime, the Central Bank has issued a revised form of the Individual Questionnaire ("IQ") with effect from 1 December 2011. Since 1 December 2011, the IQ is an online application and the Central Bank will no longer accept the old paper based IQ. Persons proposed for appointment to a PCF will be required to complete the online IQ which must be endorsed by the Regulated Firm and submitted for approval to the Central Bank electronically using the Online Reporting System ("ONR"). Guidance on the use and navigation of the new IQ and the ONR system can be found on the Central Banks website at: www.centralbank.ie.

(ii) Guidance on Fitness and Probity Investigations

In December 2011, the Central Bank issued 'Guidance on Investigations Conducted under Part 3 of the Central Bank Reform Act 2010' which provides PCF/CFs and Regulated Firms with an overview of the manner in which investigations as to the Fitness and Probity of a PCF/CF and the decisions following from such investigations will operate.

This Guidance can be found on the Central Bank's website in the fitness and probity section at: www.centralbank.ie.

(iii) Updated FAQ document on the Corporate Governance Code for Credit Institutions and Insurance Undertakings

The Central Bank has updated the FAQ document which accompanies the Corporate Governance Code for Credit Institutions and Insurance Undertakings (the "Code"). The amended FAQ updates the Central Bank's earlier version which was published at the end of May 2011. The FAQ provides guidance on the application of the Code and the amendments

have been made in line with the Central Bank's developing practice and experience in applying the Code. The amendments provide clarification in respect of the following issues:

- Physical attendance at board meetings by directors is encouraged 'wherever possible', however, the Central Bank recognizes that physical attendance is not always possible and provides for attendance by way of video-conferencing/tele-conferencing;
- Counting of group directorships - All directorships held within a group, whether they are in financial or non-financial companies, shall be counted as one directorship; and
- Where the board comprises only five members, the full board, including the CEO and Chairman may act as the Audit Committee provided that the Chairman of the Audit Committee is an independent non-executive director.

The FAQ document relating to the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings has also been updated in relation to physical attendance at board meetings. This update also provides that physical attendance at board meetings is preferable 'wherever possible', however, also makes provision for directors to attend via video-conferencing/tele-conferencing. It also provides that physical attendance is required at a minimum of one board meeting annually.

These updated FAQ documents may be found on the Central Bank's website at: www.centralbank.ie.

(iv) Publication of Central Bank's Auditor Protocol

On 6 December 2011, the Central Bank published the Protocol between the Central Bank and Auditors of Regulated Financial Service Providers (the "Auditor Protocol"). The Auditor Protocol provides a framework which allows the Central Bank and the auditing profession to exchange relevant information on a timely basis with the aim of enhancing both the regulatory and statutory audit processes.

In order to fulfil its objectives, the Auditor Protocol requires that communication channels between the Central Bank and auditors should remain open. To achieve this, the Auditor Protocol requires that:

- Firms must advise the Central Bank of the contact details of the audit partner responsible for the audit within five days of their appointment and similarly firms

should advise their auditor of the contact details of its senior examiner in the Central Bank within 5 days; and

- Meetings between the Central Bank and auditors shall be governed by the principal of sharing information which will lead to higher quality audits and all communications between the Central Bank and auditors shall be deemed confidential under Section 33AK of the Central Bank Act 1942 (as amended).

In line with the proposals contained in the draft consultation paper (CP56), the Auditor Protocol highlights the need to identify and remove barriers to sharing information. As such, contractual agreements between auditors and firms should not hinder information sharing and provision should be made therein acknowledging that the Central Bank and firms' auditors can discuss issues relevant to their oversight of the firm and that such communication will not be determined to be a breach of duty by either party.

The framework provides a structure for bilateral meetings (i.e. between the Central Bank and auditors) which should take place at least twice a year at the pre-and-post audit stage and trilateral meetings (i.e. between the Central Bank, auditors and the audit committee or Independent Non-Executive Director).

The Auditor Protocol is subject to annual review and will be updated to reflect changes in legislation, auditing practice and other relevant developments.

The Auditor Protocol will in the first instance apply to those firms which are rated High Impact under the Central Bank's new regulatory risk model PRISM, and will become effective in 2012.

The Auditor Protocol can be found on the Central Bank's website at: www.centralbank.ie.

(v) Guidelines on Annual Compliance Statements for Captive Insurance and Reinsurance Undertakings

In October 2011, the Central Bank issued Guidelines to assist captives in preparing the Annual Compliance Statement (the "Statement") which is required by Section 18 of the Corporate Governance Code for Captive Insurance and Captive Reinsurance Undertakings ("the Code").

The Code sets out guidance on a number of areas, including:

- *Scope:* The Statement should include reports of any material deviations from the Code and ad hoc reports of material deviations already reported to the Central Bank.

- *Submission:* The Statement should be signed by all directors and submitted to the captives supervisory team.

- *Timeline:* The first Statement must be submitted by 31 January 2013 and shall cover the period 31 May 2012 (or such earlier date as the captive has complied with the Code) to 31 December 2012.

- *Material Deviations*: Where a material deviation from the Code is identified, a report on the material deviation must be submitted to the Central Bank. The Board is responsible in the first instance for determining whether a deviation is material. The Central Bank views all areas of the Code to be equally important.

- *Use of information:* If a captive reports a material breach of the Code, the Central Bank may use that information for any of its regulatory functions, which may expose the captive and/or persons concerned in its management to, inter alia, financial penalties and other sanctions.

- *Confidentiality:* The Statement does not have to be published in the captives annual report and is confidential when submitted to the Central Bank. However, where a Statement contains reports of material non-compliance in respect of which the Central Bank subsequently takes enforcement action, publication of such non-compliance may be required as part of that enforcement action.

- *Retention of documentation:* Directors must undertake reasonable enquiries to satisfy themselves as to whether the captive has complied with the Code, this may be supported by certain documents which should be retained for 6 years and made available to the Central Bank if required. The Guidelines specify certain types of supporting documentation which may be used for this purpose in relation to the board, directors, sub-committees, the captives corporate governance policies and procedures and risk appetite.

- *Availability to the Central Bank:* The majority of directors must be reasonably available to the Central Bank at “short notice”, the meaning of which will depend on the facts of the case and will be influenced, for example, by the urgency of the issue

and the reasonable travel time needed by directors and potentially whether contact by telephone or video conference would suffice.

The Guidelines include, at Appendix 1, minimum templates for completion as part of the Annual Compliance Statement.

The Central Bank has specified that the Guidelines are not exhaustive and should be read in conjunction with the Frequently Asked Questions on the Code, published on 16 August 2011.

The Guidelines and FAQs are available on the Central Bank's website at: www.centralbank.ie.

(vi) Revised Consumer Protection Code

On 19 October 2011, the Central Bank published a revised Consumer Protection Code (the "Code") which came into effect on 1 January 2012 for regulated entities (including insurance undertakings) operating in Ireland. The Code will also apply to EU/EEA authorised regulated entities when providing products or services in Ireland on a branch or cross-border basis.

The revised Code provides for the strengthening of consumer protection in a number of key areas, namely:

- **Arrears handling:** A regulated entity is required to have written procedures in place for handling of arrears. In particular, the Code sets out the manner in which regulated entities must deal with personal consumers whose accounts fall into arrears. A personal consumer is defined in the Code as a natural person acting outside of his/her business/trade/profession.

- **Contact with consumers:** Unsolicited personal or "doorstep" visits for the purpose of selling financial products to consumers are now banned.

- **Suitability:** New prescriptive requirements will be introduced around the information which regulated entities must gather about a particular consumer for the purposes of assessing whether a product or service is suitable for that particular consumer.

- **Product Producers:** Must give detailed information to intermediaries in relation to the investment products which the intermediaries sell on behalf of the product

producers so that the intermediaries can assess the suitability of a particular product for a consumer.

- **Information to be provided:** Prior to offering, recommending, arranging or providing a product, a regulated entity will be required to provide information in writing to a consumer about the main features and restrictions of the product to assist the consumer in understanding the product. In particular with respect to insurance business, the Code states that prior to offering, recommending, arranging or providing an insurance policy, where the premium may be subject to review by the insurance undertaking during the term of the policy, a regulated entity is required to explain clearly to the consumer the risk that the premium may increase and details must be provided of the period for which the initial premium is fixed.

- **Advertising:** More balanced information must be provided to consumers in advertisements. Where advertisements outline the benefits of a product or service, they must also outline the risks. Additionally, the Code requires that 'key information' on products and services must be made prominent in advertisements.

- **Vulnerable consumers:** A regulated entity will be required to identify vulnerable consumers and to provide such consumers with such reasonable arrangements and/or assistance that may be necessary to facilitate the vulnerable consumer in his/her dealings with the regulated entity.

- **Errors and Complaints handling:** A regulated entity will be required to resolve all errors speedily and no later than six months after the date upon which the error was first discovered. Up-to-date logs must be maintained of all errors and complaints.

The provisions of the Code are specifically stated not to apply to regulated entities providing services to persons outside of the State. Additionally the Code does not apply to the provision of MiFID services in Ireland nor does it apply in the context of reinsurance.

Whilst the Code is effective from 1 January 2012, the Central Bank has stated that it recognises that compliance with some of the new enhanced requirements under the Code will require regulated entities to introduce systems and procedural changes and to ensure staff are appropriately trained. As such, the Central Bank has confirmed that it will take account of this for the first six months of monitoring compliance with the provisions of the Code.

The Code and feedback document are both available on the Central Bank's website at: www.centralbank.ie.

(vii) Update on Minimum Competency Code

The provisions of the Minimum Competency Code ("MCC"), which was issued by the Central Bank in September 2011, are aimed at enhancing the minimum professional standards for persons who provide consumers with financial advice and products or undertake certain specific functions (including assisting consumers in making a claim under an insurance policy, adjudicating on a complaint or engaging in reinsurance mediation).

Clarification has been obtained from the Central Bank as to the scope of the MCC. It has been confirmed that the MCC will not apply to regulated firms when providing services to consumers in other EU/EEA Member States. This clarification is in line with the provisions of the revised Consumer Protection Code (the "Code"), (discussed above) which specifically excludes the application of the provisions of the Code to consumers outside of the State.

A key change arising out of the MCC, which should be emphasised, is the new Continuous Professional Development ("CPD") requirements. With effect from 1 January 2012, a person to whom the MCC applies must complete 15 hours of CPD each calendar year. This requirement replaces the existing 3 year CPD cycle requirement.

(viii) Industry Funding Levy

The Central Bank Act 1942 (Section 32D) Regulations came into effect in September 2011. The Regulations apply to all entities subject to regulation by the Central Bank and oblige such entities to pay an annual levy.

Insurance undertakings may be subject to two types of levy, a prudential levy and a consumer levy. Insurance undertakings are only required to pay the prudential levy if their head office is located in Ireland while the consumer levy is only applicable to insurance undertakings that generate premium income on Irish risk business. It follows that an insurance undertaking that does not write Irish risk business will not be required to pay a consumer levy and that insurance undertakings that are authorised in another EEA Member State but operating in Ireland on a branch or cross-border basis will not be subject to the prudential charge as prudential supervision is the responsibility of the home member state regulator. Such entities are, however, required to pay a consumer levy based on gross premium income written on Irish risk business for their financial year ended in 2009.

The Central Bank has published a Guide to Industry Funding Regulations 2011, which provide levy calculation templates for each category of regulated entity. This can be found on the Central Bank's website at: www.centralbank.ie.

(ix) Inspection finds majority of insurance firms settle personal injuries claims in compliance with the Consumer Protection Code

On 13 October 2011, the Central Bank published the results of a themed inspection into the handling of third party personal injury claims by insurance firms. The purpose of the inspection was to examine whether insurance firms were compliant with the claims processing requirements of the Consumer Protection Code and also to determine whether insurance firms were making appropriate settlement offers.

The findings revealed that overall, third party personal injury claims are being handled appropriately by insurance firms and in compliance with the Consumer Protection Code and that insurance firms are settling claims across the range of amounts outlined in the PIAB's 'Book of Quantum'.

The inspection findings further demonstrated that claims settled without referral to the Personal Injuries Assessment Board ("PIAB") (almost 4 out of 10 claims) took an average of 12 months from the date of claim notification to date of claim payment whilst those claims which were referred to PIAB took on average 20 months from the date of notification to the insurer to the date of claim payment, however, settlements assessed by PIAB were on average higher than the insurance firms' last recorded offer.

(x) Draft Inquiry Guidelines - Consultation Paper 57 ("CP 57")

On 25 November 2011, the Central Bank issued CP 57 on Inquiry Guidelines to be prescribed pursuant to Section 33BD of the Central Bank Act 1942 (as amended) (the "Act").

Under Part IIIC of the Act, the Central Bank has the power to impose sanctions in respect of breaches of regulatory requirements by Regulated Firms and persons involved in the management of such firms.

In cases where breaches of regulatory requirements are being investigated, it may be necessary for the Central Bank to convene an Inquiry to determine whether or not a prescribed contravention has been or is being committed and to determine the relevant sanction. Consequently, in 2005 the Central Bank prescribed guidelines on the Inquiry

process, the Administrative Sanctions Guidelines (the "2005 Guidelines"), pursuant to its powers under Section 33BD of the Act.

CP 57 proposes that the Inquiry Guidelines (once finalised) will replace the 2005 Guidelines to reflect both changes made to Part IIIC of the Act since 2004 (including proposed changes under the Central Bank (Supervision and Enforcement) Bill 2011) and the Central Bank's Enforcement Strategy 2011-2012.

The Draft-Inquiry Guidelines contained in CP 57 provide greater detail in terms of the practice and procedure to be adopted during an Inquiry and are divided into four sections:

- Referral
- Pre-Inquiry procedures
- Hearing
- Decision

Interested parties are asked to comment on the Draft Inquiry Guidelines by 13 January 2012. The Central Bank may publish any submissions received on: www.centralbank.ie.

(xi) Risk-Based Supervision Framework (PRISM)

On 1 December 2011, the Central Bank launched its new risk-basked supervision framework, PRISM (Probability Risk and Impact SysteM).

Under PRISM, the Central Bank will:

- Focus their supervisory activities towards those firms which pose the greatest threat to financial stability and consumers;
- Use PRISM to categorise all regulated firms into four separate impact categories, which are based on the level of damage a firm could cause to the financial system, economy and consumers were it to fail. Firms will be categorised as high impact, medium-high impact, medium-low impact or low impact, which will determine the number of supervisors assigned and level of interaction with each firm;
- Engage with firms at a level that corresponds to their impact category (i.e. the higher the impact, the higher the level of engagement). Engagement will involve reviews, inspections and meetings. The frequency and level of engagement will be associated with the firms' impact rating; and

- Assess firms in the impact categories high, medium-high and medium-low across ten risk categories which include, credit risk, market risk, insurance risk and capital risk, operational risk, liquidity risk, governance risk, strategy/business model risk, environmental risk and conduct risk.

PRISM was implemented for all banks and insurance firms on 25 November 2011 and will be introduced to all supervised firms by the end of June 2012.

The Central Bank has published an information note on PRISM which can be found on the Central Bank's website at: www.centralbank.ie.

Anti-Money Laundering/Counter-Terrorism Financing

(i) Central Bank Instructions on EU Financial Sanctions

On 14 December 2011, the Central Bank, as the Competent Authority responsible for the administration and enforcement of EU Financial Sanctions, issued a financial sanctions notification to institutions, setting out the list of EU Regulations and domestic Statutory Instruments in force at present for the purposes of implementing restrictive measures in respect of governments, individuals and entities currently subject to EU Financial Sanctions and requiring them to adhere to the provisions of the EU Regulations specified therein.

Pursuant to EU Regulations, institutions are reminded that they are:

(i) prohibited from making funds available either directly or indirectly to or for the benefit of any natural/legal person, group or entity listed under the relevant EU Regulation;
(ii) required to freeze all funds belonging to or held by such persons;
(iii) obliged to immediately provide the Central Bank with any information which would facilitate compliance with the EU Regulations; and
(iv) required, with respect to Iran and North Korea, to exercise continuous vigilance in activities with credit and financial institutions domiciled in those countries and their branches and subsidiaries abroad, in order to prevent such activities contributing to proliferation-sensitive nuclear activities or to the development of nuclear weapon delivery systems.

Persons who fail to comply with an instruction issued by the Central Bank are liable on conviction to imprisonment and/or a fine.

All correspondence with the Central Bank in relation to the information requested above should be addressed to:

Financial Sanctions Unit,
Enforcement,
Central Bank of Ireland,
Block D,
Iveagh Court,
Harcourt Road, Dublin 2.

Email: sanctions@centralbank.ie

The Central Bank's Financial Sanctions Notification December 2011, which includes information on EU Regulations and domestic Statutory Instruments in force at present for the purposes of implementing restrictive measures in respect of governments, individuals and entities currently subject to EU Financial Sanctions, is available on the Central Bank's website at: www.centralbank.ie.

(ii) Department of Justice Anti-Money Laundering Compliance Unit Update

On 17 October 2011, the Minister for Justice, Equality and Defence (the "Minister") gave an update on the activities of his department's Anti-Money Laundering Compliance Unit (AMLCU). Sections 60 and 62 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 ("the "CJA") designate the Minister as a Competent Authority and State Competent Authority for the purposes of securing compliance by certain categories of designated persons with statutory requirements to prevent money laundering or terrorist financing.

The objective of the AMLCU is to discharge the Minister's obligations to act as Competent Authority.

The AMCLU has been focusing on the AML/terrorist financing compliance of private member gaming clubs, trust and company service providers and tax advisors as these sectors have been identified as being potentially high-risk areas for AML/terrorist financing.

Under the Act, "designated persons" who provide trust or company services must be authorised by the Minister to provide such services. A total of 224 Trust or Company Service Providers have been authorised by the Minister to date.

Currently 27 Private Member Gambling Clubs are registered with the AMLCU.

To date, 300 inspections to check for compliance have been carried out and 37 Suspicious Transaction Reports have been processed by the Unit, mainly for failure to apply Customer Due Diligence.

(iii) European Commission Working Paper on Anti-Money Laundering Supervision and Reporting

The European Commission published on 7 October 2011, a working paper on Anti-money laundering supervision of, and reporting by, payment institutions in various cross border situations.

The purpose of the paper is to provide guidance on the interaction between the Payment Services Directive (2007/64/EC) and the Anti-Money Laundering Directive (2005/60/EC). The paper discusses two scenarios, namely:

- Where a Payment Institution authorised in Member State A (the 'home country') works with agents in Member State B (the 'host country'); and
- Where a Payment Institution authorised in Member State A has a branch in Member State B.

The paper reviews questions arising as to the legal rules to be applied to Payment Institutions agents and branches, the allocation of AML supervisory powers between the home and the host authorities and the national Financial Intelligence Units (FIU) competent for receiving the reporting of suspicious transactions.

The discussion paper (Document Number 15288/11) is available on the Commission's website at: http://ec.europa.eu.

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