Insurance Quarterly Legal and Regulatory Update

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

The Solvency II Directive has moved a step closer to implementation following a vote held on 22 March 2012 in which the European Parliament's Economic and Monetary Affairs Committee ("ECON") passed the majority of the Omnibus II proposals.

In its vote, ECON acknowledged the need for a matching premium (or "matching symmetrical adjuster") and for a mechanism that would enable insurers to avoid the forced sale of their assets in adverse market conditions at a time when the insurer's liabilities have not crystallised. Details as to the workings of such a mechanism are yet to be agreed upon.

However, not all issues have been resolved from an insurer-perspective. Under Omnibus II, Member States will gain the right not to recognise equivalent group supervision. While details on general temporary equivalence were established for certain third countries, no reference was made to the "different approach" that is said to be required for the US. The current text includes conditions that the US will be incapable of meeting.

Omnibus II will now be the subject of trilogue discussions between the European Parliament, the Council of Ministers and the European Commission, during the course of which the parties will seek to reach agreement on the final text of Omnibus II. The first such meeting is expected to be held in April, with the plenary vote by the European Parliament expected to take place on 2 July 2012

It is expected that the overall implementation timetable for Solvency II will not change as a consequence of these developments. From an Irish perspective, it is the Central Bank's view that:

- Solvency II will still be transposed by Member States by 1 January 2013;
- During 2013, there will be certain requirements for undertakings to report to supervisors on their progress towards full Solvency II implementation; and
- Solvency II will come into full effect for all undertakings on 1 January 2014.

EIOPA Updates

EIOPA Consultation: Risk mitigation techniques for OTC derivatives, CCPs and Trade Repositories

On 6 March 2012, EIOPA issued a consultation paper - “Draft Regulatory Technical Standards on risk mitigation techniques for OTC derivatives not cleared by a central counterparty under the Regulation on OTC derivatives, central counterparties and Trade Repositories” (the “Draft Technical Standards”).

The Draft Technical Standards 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.

This consultation paper relates to the European Commission’s legislative proposals over-the-counter (OTC) derivatives, central counterparties (CCPs) and trade repositories. EIOPA (together with EBA and ESMA) are seeking feedback from stakeholders in order to assist it in developing technical standards.

This consultation period ends on 2 April 2012. Comments should be submitted online at www.esma.europa.eu.

EIOPA voices its concerns regarding the delays affecting Solvency II

EIOPA has published a letter it sent the European Commission outlining its concerns as to the delay in the implementation of Solvency II. In the letter (dated 31 January 2012), EIOPA suggests that a delay in the application of Solvency II will lead to the development of national solutions by supervisors and undertakings seeking to ready themselves for Solvency II. The letter also refers to the fact that EIOPA’s timeline for the completion of consultation with stakeholders on standards and guidelines is becoming ever-tighter. Finally, EIOPA encourages the European Commission, the European Parliament and the Council of the European Union to work together in ensuring Solvency II is implemented, as scheduled, in 2014.

EIOPA publishes its Action Plan 2012 for the Colleges of Supervisors

On 13 February 2012, EIOPA published its Action Plan 2012 for the Colleges of Supervisors.

The document represents a follow up on substantial efforts already made by supervisors and EIOPA in preparing, organising and contributing to the colleges of supervisors during 2011.

The two key goals of the Action Plan 2012 are:

- the establishment of a work plan on the activities of the college for an insurance group's internal model application; and
- the establishment of a regular information exchange within colleges in accordance with EIOPA's guidelines

In addition, EIOPA has published its report on the Functioning of Colleges and the Accomplishments of the 2011 Action Plan.

The Action Plan and Report are available on the EIOPA website: eiopa.europa.eu.

EIOPA publishes overview on key consumer trends

On 13 February 2012, EIOPA published its "Initial Overview of Key Consumer Trends in the EU".

The issues raised in the overview may be summarised as follows:

(i) Consumer protection issues around payment protection insurance have been identified by some EIOPA Members as a key consumer trend, given the size of the market and the regulatory issues which arise from certain types of selling practices. The issues have led to tighter regulation in some Member States including enforcement action in certain cases;

(ii) There has been increased interest in unit linked life insurance products. This has highlighted certain issues, however, as the underlying funds of such products can be complex and the associated risks and/or costs are not necessarily sufficiently transparent to consumers. Regulators are requiring increased cost and risk transparency in respect of such products; and

(iii) There has been increased use of comparison websites by consumers. The overview highlights the fact that such websites often result in an over-reliance by consumers on the price of products rather than the underlying terms and conditions of such products. The overview also refers to the fact that there are often commercial links between a comparison website and an insurer, giving rise to a potential conflict of interest.

European Commission proposal for Data Protection Reform

On the 25 January, 2012 the European Commission published a proposal for a Data Protection Reform Package which includes a proposal for the new Data Protection Regulation for the Police and Criminal Justice Data Protection Directive (the "Data Protection Regulation"). This Data Protection Regulation, when implemented, will replace the current Data Protection Directive 95/46/EC. It should be noted that an EU regulation does not require any implementing measures at local member state level and therefore becomes immediately enforceable as law in all member states simultaneously.

The implementation of the proposed new Data Protection Regulation will lead to a uniform and coherent data protection legal system across all Member States, whereby companies will only have to deal with the national data protection authority of the Member State in which they have their main establishment. However, the Data Protection Regulation will introduce stricter rules and procedures, which will involve many significant changes and costs for both EU and non-EU companies. As the Data Protection Regulation will be directly effective, preparations should be made as soon as possible to ensure compliance.

The following issues arise under the proposed Data Protection Regulation:

- The current definitions 'data processor' and 'data controller' which are contained in the Data Protection Directive 95/46/EC will not change under the Data Protection Regulation, therefore neglecting the opportunity to update the definitions to take account of the prevalence of online and digital mediums in use today.

- Where a business is based outside of the EU but it offers goods or services for sale to, or monitors the behaviour, of consumers in the EU, then that business must have a nominated representative based in the EU. In other words, they must set up a company established in the EU which may be addressed by any supervisory authority instead of the controller. A business that fails to appoint an EU-based representative could face fines of up to 2% of its global turnover.

- The Data Protection Regulation will modify the current system of export of personal data outside of the EU. Pursuant to the Data Protection Regulation, the export of personal data outside the EU will be possible only if the European Commission has issued a specific decision that the third country in question ensures an adequate level of protection. Alternatively, the third country is required to adopt binding corporate rules and such agreement must contain standard data protection clauses adopted by the European Commission or authorised by a Member State and validated by the European Commission. In the absence of these measures, transfer is only possible if the data subject has consented to the proposed transfer.

- The Data Protection Regulation sets out that any processing of personal data within the EU must be carried out on the basis of the consent of the data subject. The difference introduced by the Data Protection Regulation is that ‘consent’ is defined as ‘specific, informed and explicit indication of wishes either by a statement or by a clear affirmative action by which the data subject signifies agreement to personal data relating to them being processed.’ The concept of ‘explicit and informed’ concept has been used so far in Data Protection Directive 95/46/EC only for sensitive data. Thus, the Data Protection Regulation makes “explicit” consent a general requirement, and thereby removes an important distinction between “personal data” and “sensitive data” under the current Data Protection Directive 95/46/EC. It also means that passive consent will no longer be sufficient in any given set of circumstances. This places a greater burden upon the individual processing the data.

- The Data Protection Regulation proposes to introduce substantial fines for breach of obligations set out therein. For example, fines up to €1,000,000 (or, in the case of a company, up to 2% of its annual worldwide turnover), will be imposed on anyone who does not adopt data protection policies or implement appropriate measures, who processes personal data without prior authorisation or prior consultation of the supervisory authority, who does not designate a representative, or who does not alert or notify a personal data breach in a timely manner.

European Commission guidance on gender discrimination

The European Commission has published guidelines intended to assist insurers in meeting their obligations with regard to unisex pricing following the Court of Justice of the European Union's ruling in the Test-Achats case.

In Test-Achats, the Court ruled that the charging of different premium to otherwise equivalent males/females constitutes sex discrimination. Following this judgment, insurers were given until 21 December 2012 to treat individual male and female customers on a equal basis having regard to premiums and benefits.

The guidelines provide that the Test-Achats ruling will only apply to new contracts of insurance that have been concluded after 21 December 2012. In addition, the guidelines provide examples of gender-related insurance practices which are compatible with the principle of unisex premiums and benefits and therefore will not change because of the Test-Achats ruling.

Insurance Compensation Fund

As of 1 January 2012, non-life insurers (to include non-life insurers authorised in another Member State) have been required to pay a contribution of 2% of the gross premium income they receive in respect of risks situated in Ireland.

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, with the first quarter having commenced as of 1 January 2012. 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 Ireland. 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 must be delivered to the Revenue Commissioners by 30 April 2012.

Last October, the High Court sanctioned the draw-down of €738 million from the Fund by the administrators of Quinn Insurance.

Law Reform Commission conducts review of the law surrounding insurance contracts

In December 2011, the Law Reform Commission issued its "Consultation Paper on Insurance Contracts". The Consultation Paper examines whether the following issues would benefit from statutory consolidation:

- the concept of insurable interest;
- the duty of disclosure placed on the insured;
- the nature and scope of pre-contractual misrepresentation by the insured;
- the nature and effect of warranties in insurance contracts, and their connection with basis of contract clauses;
- the relationship between exclusions in insurance contracts and the general law on unfair contract terms;
- formalities (including specific terms that need to be drawn to the insured's attention);
- the duty of utmost good faith (uberrimae fidei) in insurance contract law;
- the rights of third parties; and
- remedies available for breach of the contract.

Some of the recommendations contained in the Consultation Paper include:

- the term "insurable interest" be defined broadly in legislation;
- legislation should provide that an otherwise valid insurance claim cannot be rejected by the insurer solely because the insured lacks an insurable interest as it has been traditionally defined;

- the pre-contractual duty of disclosure be limited to a person’s actual (and not constructive) knowledge;
- statements of fact or opinion will not be converted into a contractual warranty by anything stated in the contract, so that “basis of contract” clauses shall be deemed invalid; and
- avoidance of an insurance policy should no longer be the main remedy, and that in cases of non-disclosure and misrepresentation the principal remedy should be one of damages in proportion to the failure by the insured.

A copy of the Consultation Paper is available on the Law Reform Commission website: http://www.lawreform.ie/

The deadline for submissions in respect of the Consultation Paper has now closed, but we can expect further developments in due course.

Financial Services Ombudsman publishes its bi-annual review

In its review for the period of July - December 2011, the Financial Services Ombudsman highlighted the fact that the insurance sector generated 47% of total complaints received by the Ombudsman in the last six months of 2011, down slightly on the previous six months. 18% of these complaints related to Payment Protection and Mortgage Protection policies. Motor insurance continues to be the most complained about product, representing 16% of all insurance complaints.

Finance Bill 2012

The Finance Bill 2012 (the “Bill”) was published on 8th February 2012 and has passed through both Houses of the Irish Parliament. Once the Bill is signed by the President it will be enacted into Irish law. This year’s Bill contained relatively few amendments specific to the insurance sector.

Life Assurance

The Bill provides for an increase of 3% in the rate of exit tax applying to life assurance products. Additionally a Committee State amendment to the Bill provides for a rate of 25% exit tax in the case of certain corporate policyholders as opposed to the 33% rate of exit tax.

The categories of policyholders who are regarded as not having made a gain on the occurrence of a chargeable event has been extended by the Bill to include Approved Retirement Funds ("ARF"), Approved Minimum Retirement Funds ("AMRF") and certain other pension schemes. Given that the exit tax regime does not apply to life policies relating to pension business of a life company such entities will not in the past have been subject to the exit tax where this specific exclusion of pension business applied.

As is the case with the existing category of exempt policyholders the relevant pension schemes, ARF and AMRF now provided for under the Bill will be required to provide the relevant declaration so as to avoid the imposition of the exit tax, although this requirement for declarations may not be required where the existing exclusion of pension business mentioned in the previous paragraph applies.

General Insurance Levies

The Bill brings forward the due date for the payment of both the 3% levy on non-life insurance polices and 2% Insurance Compensation Levy to the 25th day of the month following the quarter end.

The 3% duty and 2% contribution will be collected together via a return form (the first such return being due on or before 25th April 2012).

Health Insurance Levy

The Bill also provides for an increased levy to all health insurance renewals and new contracts entered into from 1st January 2012. The rate will increase from €205 to €285 for each insured person. In the case of insured person under the age of 18 the increase is from €66 to €95.

Central Bank of Ireland

(i) Inspection of Retail Intermediaries

The Central Bank has indicated that it will be conducting a themed review of retail intermediaries' Professional Indemnity Insurance ("PII") cover.

The Central Bank has highlighted the fact that a failure to have an appropriate level of PII cover not only poses a significant risk to consumers, but also amounts to professional negligence and may be a criminal offence on the part of the retail intermediary in accordance with Regulation 32 (2) EC (Insurance Mediation) Regulations 2005.

The Central Bank highlighted its regulatory powers in relation to a such a failure including its power to cancel the registration of any firm found to be in breach of this requirement.

Certain firms will be targeted, that is, firms that are non-compliant in terms of submitting annual returns, the payment of levies and/or based on other concerns.

(ii) Regulatory Notice on the Adaptation of Solvency I Minimum Guarantee Fund and Claims/Premium Indices

The Central Bank has issued a regulatory notice on the adaption of the Solvency I Minimum Guarantee Fund ("MGF"). Such adaption is permitted in accordance with Article 30 of Life Directive and Article 17(a) of Non-Life Directive.

The adaption comes as a consequence of the cumulative increase in the European index of consumer prices since the Solvency I rules came into force. As this cumulative increase is now above the 5% threshold an adaptation was required.

In Ireland the adaptations will come into effect on 31 December 2012.

These changes involve the following:

- a revised MGF of €2,500,000 for non-life undertakings who are not authorised in any of non-life classes 10, 11, 12, 13, 14 and/or 15 and a revised MGF of €3,700,000 for all other non-life undertakings and life undertakings as opposed to the current base amounts of €2,300,000 and €3,500,000 respectively; and

- a revised premium index of €61,300,000 and a revised claims index of €42,900,000 instead of the current base amount of €57,500,000 and €40,300,000. This will apply to all non-life undertakings (non-life form 14) and to life undertakings required to hold an additional solvency margin for supplementary insurance and permanent health insurance (life form 29).

The full text of the regulatory notice may be found on the Central Bank's website at: www.centralbank.ie.

(iii) Central Bank issues Guidelines in respect of the distribution of products on a cross-border basis

The Central Bank has issued "Guidelines for Insurance Undertakings – Distributing Products on a Cross Border Basis" which set out the requirements to which life insurance undertakings authorised by the Central Bank are required to adhere to when distributing products on a cross-border basis in another EU/EEA Member State or third county.

A copy of the letter was issued directly to all relevant companies by the Central Bank on 29 March 2012.

The Central Bank has set out that the guidelines reflect what it considers to be best practice in this area, however unfortunately the Central Bank has not indicated the legislative basis on which it has issued such guidelines.

The full text of the guidelines may be found on the Central Bank's website at: www.centralbank.ie.

(iv) Central Bank Announces End of Market Abuse Delegation Arrangement with the Irish Stock Exchange

The Central Bank has announced that its Market Abuse delegation arrangement with the Irish Stock Exchange (the "ISE") pursuant to the Market Abuse (Directive 2003/6/EC) Regulations 2005, in place since 2005, has been unwound.

As a result, the monitoring and investigation functions previously conducted by the ISE are now being conducted by the Markets Supervision Directorate of the Central Bank.

The Central Bank has updated its Market Abuse Rules, effective as of 1 February 2012. These updated rules may be found on the Central Bank's website www.centralbank.ie.

(v) Central Bank highlights concerns about advertising by regulated entities

The Central Bank has announced that it will be actively reviewing the advertising practices of regulated entities with regard to the provisions of the revised Consumer Protection Code which came into effect at the start of the year. This follows action taken by the Central Bank in respect of several advertisements which it has required to be either amended or withdrawn.

The Central Bank is seeking to ensure that the advertisement of financial products and services is clear and provides balanced information as regards the product/service.

The Central Bank has highlighted several advertising practices with which it is not satisfied:

- Certain advertisements have been identified in respect of which the Central Bank is concerned about fairness, clarity, accuracy and potential to mislead in terms of content and presentation;

- Key information in relation to the product has not been sufficiently prominent in some advertisements; and

- Certain advertisements have been identified in which the qualifying criteria are not included with the minimum price or potential maximum saving in the main body of the advertisement.

(vi) Director of Insurance Supervision to assume responsibility for supervision of Credit Institutions

The Central Bank has announced that its director of Insurance Supervision, Fiona Muldoon, has assumed responsibility for the supervision of Credit Institutions with effect from the start of March. The announcement follows the decision by Jonathan Mahon to return to the UK at the end of April.

(vii) Fitness and Probity

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 applies 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.

In respect of PCFs in situ as at 1 December, 2011, Regulated Firms had to confirm to the Central Bank that the necessary due diligence has been undertaken on/before 31 March 2012. The Central Bank prepared a guidance note setting out a template declaration and PCF information file, which were required to be filed via the Online Reporting System. The link to the guidance note is set out below:

http://www.centralbank.ie/regulation/processes/fandp/Pages/InSituPCFsConfirmationofDueDiligence.aspx

In line with the new regime, the Central Bank has also 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.

On the 27 March, 2012, the Central Bank published a Frequently Asked Questions document which can be viewed at the following address:

http://www.centralbank.ie/regulation/processes/fandp/Documents/FAQ%20on%20Fitness%20and%20Probity.pdf

(viii) Central Bank sets out enforcement priorities

In outlining its enforcement priority areas for 2012, the Central Bank noted that its Enforcement effort is being directed towards the areas of greatest concern to its Supervisory Divisions. The priority areas have been aligned to the areas identified in the Central Bank's 'Programme for Themed Reviews and Inspections for 2012'.

The pre-defined enforcement priorities for 2012 are:

- Anti-Money Laundering and Countering Terrorist Financing
- Client Asset Requirements
- Prudential Requirements

- Retail Intermediaries
- Mortgage Arrears
- Transaction Reporting (MiFID Firms)
- Systems and Controls
- Payment Protection Insurance
- Dissemination of inaccurate/incorrect information in the market (Transparency and Prospectus Directives)
- Timeliness and Accuracy of Information submitted to the Central Bank

These pre-defined enforcement priorities are not the only areas which will receive attention from the Central Bank. Allocation of its resources for 2012 have been calculated to allow for a proportion of its work to relate to 'reactive' enforcement in respect of issues identified through day-to-day supervisory work and from other information sources.

(ix) Central Bank sets out inspection priorities for 2012

The main themes include an examination of the following areas:

- Mortgage Arrears – Ensuring lenders are delivering appropriate solutions to customers in mortgage arrears;
- Consumer Protection Code – How is the new code being implemented in banks and insurance companies;
- Payment Protection Insurance – Suitability of sales by banks and other lenders;
- Best Execution of Investment Transactions – How are investment firms meeting the minimum standards;
- Retail Intermediaries (insurance agents and brokers) – Review of firms where compliance concerns have arisen;
- Anti-Money Laundering and Counter Terrorist Financing – Inspections of firms in sectors where risks exist;
- Corporate Governance – Review of investment firms corporate governance standards;
- Outsourcing – Examination of outsourcing arrangements in fund administration firms;
- Client Asset Requirements – inspections of investment firms to assess compliance.

Themed reviews are to play a much larger part of the Central Bank's regulatory toolkit following the introduction of the PRISM risk assessment regime. The stated aim of publishing the plan for Themed Inspections is *"to bring greater transparency and to signal our themed priorities for the year. This should allow the relevant sectors to prepare and should also help raise standards across the firms in each sector."*

Anti-Money Laundering/Counter-Terrorism Financing

(i) Publication of Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 Guidelines

On 10 February 2012, the Department of Finance published guidelines in respect of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the "Guidelines"). The Central Bank has stated that they "*will have regard to these guidelines in assessing compliance by designated persons with the Act.*"

The Guidelines are available for viewing from the following address:

http://www.centralbank.ie/regulation/processes/anti-money-laundering/Pages/requirements-guidance.aspx

(ii) Third Anti-Money Laundering Directive

On 16 February 2012, the Financial Action Task Force (FATF) revised its 40 Recommendations (the "Recommendations") relating to anti-money laundering. The European Commission, which was involved in the revision process, has already launched a process to review the 3rd AML Directive to determine what amendments will be necessitated as a result of the changes to the Recommendations.

It is likely that FATF will start to check that the Recommendations are being implemented from the end of 2013 and in this regard the European Commission has stated that the EU will rapidly implement the new standards into its legislation ahead of the new round of FATF evaluations. The intention was to commence work on an impact assessment and the accompanying legislation by the end of March 2012. The ultimate intention is to adopt an amendment to the 3rd AML Directive by end 2012.

Key Changes introduced by the new Recommendations:

- **Introducing a risk-based approach:** For the first time, the new FATF standards introduce a risk based approach, however the 3rd AML Directive already adopts this approach.
- **Improving transparency measures:** FATF contends there is little transparency at the moment around some of the parties involved in various transfers, in particular electronic transfers making them vulnerable to misuse by criminals and terrorists. The

Recommendations require reliable information available about the ownership and control of companies, trusts, and other legal persons or legal arrangements. It also means more rigorous requirements on the information which must accompany electronic funds transfers. The 3rd AML Directive already requires designated person(s) to identify the beneficial owner(s) on a risk sensitive basis.

- **More effective International Cooperation:** A call for enhanced international cooperation between government agencies and between financial groups (e.g. simplified extradition mechanisms). The Recommendations seek more effective exchanges of information, tracing of, freezing of, confiscation of and repatriation of illegal assets.
- **New threats & new priorities:** FATF to respond more actively to priorities set out by the international community, particularly the G20.
- **Financing of WMD Proliferation:** FATF has issued a new Recommendation which aims to ensure consistent and effective implementation of targeted financial sanctions against the proliferation of weapons of mass destruction when these are called for by the UN Security Council.
- **Corruption & Politically Exposed Persons:** The definition of "politically exposed persons" is expanded to cover domestic persons, not just foreigners.
- **Tax Crimes:** The list of predicate offences for money laundering has been expanded to specifically include tax crimes.
- **Terrorist Financing:** Remains an area of major focus for FATF.

(iii) UK FSA fines Coutts £8.75 million for AML failings

The FSA recently imposed a fine on Coutts& Co (“Coutts”) for a failing to comply with AML requirements in the United Kingdom.

The following deficiencies and failures in compliance by Coutts were identified by the FSA:

1. Failure to gather sufficient information about prospective PEP’s and other high risk customers;
2. Failure to establish the source of funds received from high risk customers;
3. Failure to gather sufficient information about prospective high risk corporate customers, such as information concerning business activities, ownership and control structures and the intended purpose of the business relationship;
4. Failure to identify and/or assess adverse intelligence about prospective and existing high risk customers properly and take appropriate steps in relation to such intelligence;
5. Failure to keep information held on existing PEP’s and other high risk customers up-to-date; and

6. Failure to scrutinise transactions made by PEP's and other high risk customer accounts appropriately.

In deciding on the level of fine to be imposed, the FSA pointed to the standing and important position which Coutts holds in the private banking sector.

This case shows that domestic regulatory bodies are imposing sizable fines on designated persons who fail to comply with obligations imposed by the Third Anti-Money Laundering Directive.

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