Insurance Quarterly Legal and Regulatory Update

Period covered:
1 April 2019 – 30 June 2019

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) EIOPA publishes monthly technical information for Solvency II relevant risk free interest rate term structures

During the period of 1 April 2019 to 30 June 2019, the European Insurance and Occupational Pensions Authority ("**EIOPA**") published technical information in relation to risk free interest rate term structures, as follows:

- With reference to the end of March 2019 on 4 April 2019;
- With reference to the end of April 2019 on 7 May 2019; and
- With reference to the end of May 2019 on 6 June 2019 which was subsequently updated on 18 June 2019 due to an issue with the Icelandic Kruna ("**ISK**") government bond yields used for calculating the relevant risk-free interest rate term structures being incorrect.

The risk free interest rate term structures are published to ensure the consistent calculation of technical provisions for (re)insurance obligations across the European Union (the "**EU**"). Undertakings should note that EIOPA has stated on their website that, in certain circumstances, it may be necessary for EIOPA to amend and/or republish the technical information after it has been published.

EIOPA's background material and the monthly technical information on the relevant risk-free interest rate term structures can be accessed here.

(ii) EIOPA consults on amendments and corrections to the implementing technical standards on reporting and disclosure under Solvency II

On 2 April 2019, EIOPA launched its consultation on amendments and corrections to the following:

- Commission Implementing Regulation (EU) 2015/2450 with regard to the templates for the submission of information to the supervisory authorities ("**ITS on Reporting**"); and
- Commission Implementing Regulation (EU) 2015/2452, laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report ("**ITS on Disclosure**").

The proposed amendments were kept to the minimum and do not reflect a detailed review of the requirements, which will be part of the 2020 Reporting and Disclosure Review. The

proposals aim to align the reporting and disclosure with the amendments to the Solvency II Delegated Regulation (EU) 2015/35.

EIOPA will consider the responses it receives to this consultation and will finalise the draft amendments for submission to the European Commission for endorsement.

The consultation closed on 14 May 2019 and the consultation package and the feedback template can be obtained here.

(iii) EIOPA publishes supervisory statement on the application of the proportionality principle in the supervision of the Solvency Capital Requirement

On 11 April 2019, EIOPA published a supervisory statement '*Solvency II: Application of the proportionality principle in the supervision of the Solvency Capital Requirement*' (dated 11 March 2019) (the "**Supervisory Statement**").

The Supervisory Statement outlines the outcome of the discussion and analysis of the proportionality principle in the supervisory review process, in particular in the supervision of the Solvency Capital Requirement ("**SCR**") calculated in accordance with the standard formula. It must be noted that the Supervisory Statement is without prejudice to the application of the relevant provisions of the Solvency II Directive (2009/138/EC) (the "**Solvency II Directive**") and the Solvency II Commission Delegated Regulation (2015/35/EU), in particular on the simplifications in the standard formula.

In the Supervisory Statement, EIOPA identified potential divergences in supervisory practices concerning the supervision of the calculation of immaterial SCR sub-modules and is of the view that a consistent implementation of the proportionality principle is key to ensure supervisory convergence for supervision of the SCR. EIOPA advises that a number of key areas should be considered, such as:

- **Proportionate approach** – supervisory authorities may allow undertakings, when calculating the SCR at the individual-undertaking level, to adopt a proportionate approach towards immaterial SCR sub-modules, provided the undertaking is able to demonstrate certain facts to the supervisory authority's satisfaction. This approach should not be used when calculating the SCR at group level;

- **Prudent calculation** - for sub-modules identified as immaterial, the SCR sub-module should be calculated using prudently estimated inputs, leading to prudent outcomes at the time of the decision to adopt a proportionate approach. Such calculations should be subject to the consent of the supervisory authority;

- **Risk management system and own risk and solvency assessment** ("**ORSA**") – this system should ensure adequate monitoring of any evolution of risk, either triggered by internal or external sources. Such monitoring should include the setting of qualitative and quantitative early warning indicators defined by the undertaking and embedded in the ORSA processes;

- **Supervisory reporting and public disclosure** – undertakings should include information on the risk management system in the ORSA Report as well as structured information for which a proportionate approach is applied in the Regular Supervisory Report and in the Solvency and Financial Condition Report; and

- **Supervisory review process** - the approach should be implemented in the context of on-going supervisory dialogue, meaning that the supervisory authority should be satisfied and agree with the approach taken and be kept informed in case of any material change. Supervisory authorities should inform undertakings in case there is any concern with the approach.

EIOPA is closely monitoring the application of the proportionality principle using its regular supervisory convergence tools such as peer reviews.

A copy of the Supervisory Statement can be accessed here.

(iv) EIOPA publishes monthly symmetric adjustment of the equity capital charge

On a monthly basis, EIOPA updates information on the symmetric adjustment of the equity capital charge. The symmetric adjustment to the equity capital charge shall be included in the calculation of the equity risk sub-module in accordance with the SCR standard formula to cover the risk arising from changes in the level of equity prices. This adjustment is regulated mainly in Article 106 of the Solvency II Directive; Article 172 of the Solvency II Delegated Act (2015/35/EU) as well as in the Implementing Technical Standards ("**ITS**") on the equity index for the symmetric adjustment of the equity capital charge (Commission Implementing Regulation 2015/2016/EU).

EIOPA published the technical information on the symmetric adjustment of the equity capital charge for Solvency II as follows:

- With reference to the end of March 2019 on 8 April 2019;

- With reference to the end of April 2019 on 7 May 2019; and

- With reference to the end of May 2019 on 6 June 2019.

The monthly symmetric adjustment of the equity capital charge can be accessed here.

(v) Commission Implementing Regulation on technical information for calculation of technical provisions and basic own funds for second quarter 2019 reporting under Solvency II published in the Official Journal of the EU

On 7 May 2019, the Commission Implementing Regulation (EU) 2019/699 which lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March 2019 until 29 June 2019 under the Solvency II

Directive (the "**Commission Implementing Regulation**") was published in the Official Journal of the EU.

The Commission Implementing Regulation requires (re)insurance companies to use the technical information on the relevant risk-free interest rate term structures, the fundamental spreads for the calculation of the matching adjustment and the volatility adjustments referred to in Article 1 (2) of the Commission Implementing Regulation when calculating technical provisions and basic own funds for reporting with reference dates from 31 March 2019 until 29 June 2019.

The Commission Implementing Regulation entered into force on 8 May 2019 and applies from 31 March 2019.

The Commission Implementing Regulation can be accessed here.

(vi) EIOPA publishes Report on the calculations of the ultimate forward rate ("UFR") under Solvency II

On 21 May 2019, EIOPA published its risk-free interest rate term structures report on the calculation of the UFR for 2020 (the "**Report**"). EIOPA has calculated the UFR for 2020 in accordance with the methodology to derive the UFR.

The calculated UFR for the euro for 2020 is 3.55%, with the current UFR for the euro being 3.90%. The annual change of the UFR is according to the methodology limited to 15 basis points. The applicable UFR in 2020 is 3.75% and the UFR is applicable for the calculation of the risk-free interest rates of 1 January 2020.

A copy of the Report can be accessed here.

(vii) EIOPA launches consultation on opinion on sustainability within Solvency II

On 3 June 2019, EIOPA launched a consultation on a draft opinion on sustainability in relation to the Solvency II Directive.

The draft opinion aims at integrating sustainability risks, in particular those related to climate change, in the investment and underwriting practices of (re)insurers. The opinion addresses the valuation of assets and liabilities, assesses current investment and underwriting practices and seeks to contribute to the integration of sustainability risks in market risks and natural catastrophe underwriting risks for the Solvency Capital Requirements for standard formula and internal model users.

When drafting the opinion, EIOPA considered past and on-going policy and regulatory developments at European level. The draft opinion forms part of EIOPA's strategic activities on sustainable finance and builds on EIOPA's technical advice on the integration of sustainability risks and factors in the delegated acts under the Solvency II Directive and the Insurance Distribution Directive ("**IDD**").

The consultation closes on 26 July 2019. EIOPA will then consider the responses it receives and will finalise the draft opinion for submission to the EU institutions by 30 September 2019.

A copy of the consultation can be accessed here.

(viii) EIOPA, ECB and national authorities agree on common minimum standards for supervisory and statistical reporting by (re)insurance undertakings

On 13 June 2019, EIOPA and the European Central Bank ("**ECB**") published common minimum standards for data revisions agreed between the ECB, EIOPA, the National Central Banks ("**NCBs**") and the National Competent Authorities ("**NCAs**").

Data quality is crucial in any data management process. By agreeing on common minimum standards, all authorities have aligned their expectations for the minimum acceptable level of data quality for the purposes of the different uses of data. The common minimum standards specify:

- **Requests for revisions** – when NCAs or NCBs should request financial institutions to revise the data previously submitted;
- **Data synchronisation** – the same data has to be available at all levels (financial institutions, NCAs/NCBs, EIOPA, ECB) at all times;
- **Timelines** – the time when the revisions should be sent by NCAs and NCBs to EIOPA and the ECB respectively; and
- **Historical revisions** – when an issue is identified which would lead to significant revisions and which would affect back-data and how to provide the revisions.

A copy of the common minimum standards for data revisions document can be accessed here.

(ix) Commission Delegated Regulation amending Solvency II Delegated Regulation published in the Official Journal of the EU

On 18 June 2019, the Commission Delegated Regulation (EU) 2019/981 amending the Solvency II Delegated Regulation (EU) 2015/35 was published in the Official Journal of the EU (the "**Commission Delegated Regulation**").

The Commission Delegated Regulation introduces amendments to the Solvency II Delegated Regulation which include, among other things, amendments to the provisions on calculating the Solvency Capital Requirement.

To allow non-life and health insurance firms time to prepare for the changes to the calculations of the non-life and health premium and reserve risk, the changes made by the

provisions in Articles 1(50), (59-61), (66) and (74) of the Commission Delegated Regulation will apply from 1 January 2020.

The Commission Delegated Regulation entered into force on 8 July 2019 and can be accessed here.

On 25 June 2019, a Corrigendum which amends Article 1(48) of the Commission Delegated Regulation was published in the Official Journal of the EU. The Corrigendum can be accessed here.

(x) European Commission publish report on group supervision provisions under Solvency II Directive

On 27 June 2019, the European Commission published a Report on the group supervision and capital management provisions under the Solvency II Directive (the "**Report**").

The Report assesses the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings, as required under Article 242(2) of the Solvency II Directive. The Report is divided into four parts:

- **Chapter II** - analyses supervisory practices and challenges related to the determination of the scope and the exercise of supervisory powers over groups;
- **Chapters III and IV** - assess challenges and legal uncertainties related to group solvency calculation, group governance and group reporting; and
- **Chapter V** - provides a brief overview of developments in the fields of mediation of supervisory disputes and insurance guarantee schemes ("**IGS**"), which are not directly related to group supervision.

The Report concludes that, overall, the prudential framework is proving to be robust, laying emphasis on capital management and governance and allowing for better understanding and monitoring of risks at group level. However, some areas of the framework may not ensure a harmonised implementation of the rules by groups and NSAs.

The Report has identified a number of important issues that may need to be addressed, potentially through legislative changes, and notes that further analysis is needed on the impact of the potential changes on the existing requirements. The European Commission deems it appropriate to include group supervision in the scope of its 2020 general review of the Solvency II Directive. As part of the 2020 review, the European Commission has invited EIOPA to provide technical advice on the issues identified in the Report, as well as other related issues that may be detrimental to policyholder protection by 30 June 2020.

A copy of the Report can be accessed here.

European Insurance and Occupational Pensions Authority ("**EIOPA**")

(i) EIOPA publishes updated Q&As

During the period 1 April 2019 to 30 June 2019, EIOPA published updated Questions and Answers ("**Q&As**") on the following:

- Answers to (EU) 2015/35 supplementing Directive 2009/138 (last updated 17 May 2019);
- Answers to (EU) No 2009/138 Solvency II Directive (Insurance and Reinsurance) (last updated 17 May 2019);
- Answers to (EU) No 2015/2450 templates for the submission of information to the supervisory authorities (last updated 17 May 2019);
- Answers to guidelines on classification of own funds (last updated 9 April 2019); and
- Answers to guidelines on reporting for financial stability purposes (last updated 17 May 2019).

The updated Q&As can be accessed here.

(ii) EIOPA's Fourth InsurTech Roundtable on the use of cloud computing

On 11 April 2019, EIOPA hosted its Fourth InsurTech Roundtable on the use of cloud computing by (re)insurance undertakings (the "**Roundtable**"). Cloud computing technology has become increasingly widespread since the late 2000's and the use of cloud computing services has been growing in all sectors of the economy, including the financial sectors.

The Roundtable continued EIOPA's work outlined in the December 2018 report on "Outsourcing to the Cloud: EIOPA's Contribution to the European Commission Fintech Action Plan". The aim was to discuss with the different market participants views and approaches to cloud outsourcing in a Solvency II and post-European Banking Authority Recommendations environment and determine best practices for the development of guidelines.

EIOPA presented an overview of its work on outsourcing to cloud service providers including a summary of the key issues to be addressed in the guidelines. Some of the key points made during the discussions were as follows:

- Cloud computing is expected to become the "new normal" for business and IT development due to its operational advantages;

- To embrace the cloud services, insurance undertakings must weigh the opportunities and risks and set up sound governance systems to properly manage cloud projects and adequately monitor cloud services on an ongoing basis;

- Negotiating non-standard contractual clauses with cloud service providers is challenging in particular for smaller undertakings;

- The cloud services industry is dedicating resources to increase the transparency of their services by providing tools and approaches to "auditing" the cloud; and

- To succeed with cloud services, it is important that there is a shared responsibility model, which requires a cultural shift of the management, business, IT risk management and control functions.

EIOPA will consider the outcome of the Roundtable discussions in its ongoing work on cloud outsourcing particularly in the currently developed principle based guideline for decision by EIOPA's Board of Supervisors.

The agenda of the Roundtable and EIOPA's presentation can be accessed here.

(iii) EIOPA issues Recommendations to NCAs to address vulnerabilities identified by the 2018 Insurance Stress Test

On 26 April 2019, EIOPA published its 2018 Insurance Stress Test Recommendations (the "**Recommendations**").

The Recommendations consider the risks and vulnerabilities identified through the findings of the 2018 Insurance Stress Test and are addressed to the NCAs. EIOPA analysed the 2018 Insurance Stress Test results at individual group level and then categorised the Recommendations as follows:

- **Supervisory convergence and financial stability (Recommendations 1 – 3):** EIOPA highlights the need to strengthen the supervision of the affected groups and requests the NCAs to review and to challenge capital and risk management strategies of those groups;

- **Efficiency and enhancing the stress test exercise process (Recommendation 4):** EIOPA requests that NCAs check the adequacy and flexibility of systems and risk models used by groups for stress testing; and

- **Cross-sectoral coordination (Recommendation 5):** EIOPA calls on NCAs to enhance cooperation and information sharing with relevant authorities, such as the ECB Single Supervisory Mechanism and/or other national supervisory authorities of affected insurers that are part of a financial conglomerate.

A copy of the press release and the Recommendations can be accessed here.

(iv) EIOPA publishes technical advice on integrating sustainability risk and factors into Solvency II and IDD

On 3 May 2019, EIOPA published the final version of its technical advice to the European Commission on integrating sustainability risks and factors into the delegated regulations made under the Solvency II Directive and the **IDD** (the "**Technical Advice**").

In the letter to the European Commission, EIOPA stated that it strongly supports the European Commission's aim to integrate sustainability considerations into the prudential and conduct framework for insurers, reinsurers and insurance distributors and advises the European Commission to carefully embed sustainability into the delegated regulations made under Solvency II and the IDD, while not being overly prescriptive. EIOPA believes that the Technical Advice integrates sustainability risks and factors in a relevant and proportionate manner in the delegated acts.

The Technical Advice is structured advice in two parts:

- A section related to those issues affecting the provisions of delegated acts under Solvency II which includes:

  (i) organisational requirements;
  (ii) operating conditions; and
  (iii) risk management.

- A section related to those issues affecting the provisions of delegated acts under IDD which includes:

  (i) organisational requirements (conflicts of interests); and
  (ii) product oversight and guidance (relating to target market assessment)

EIOPA plans to monitor issues raised in the Technical Advice and will consider whether any guidance relating to issues raised in the Technical Advice is needed. EIOPA developed its technical advice in co-operation with ESMA, as they both received similar mandates from the European Commission.

A copy of the Technical Advice can be accessed here and a copy of the letter can be accessed here.

(v) EIOPA publishes thematic review on big data analytics in motor and health insurance markets

On 8 May 2019, EIOPA published a report setting out the findings of its EU wide thematic review on the use of big data analytics ("**BDA**") in motor and health insurance (the "**Thematic Review**"). The aim of the Thematic Review was to gather empirical evidence on the benefits and risks arising from BDA.

The Thematic Review found there was a strong trend towards increasingly data-driven business models throughout the insurance sector with a majority of firms using, or contemplating using, BDA tools which includes artificial intelligence ("**AI**"), machine learning ("**ML**") and cloud computing services.

The Thematic Review concludes that, while there are many opportunities for BDA for the insurance industry and consumers, there are also risks that need to be addressed such as ethical issues with the fairness of the use of BDA, as well as regarding the accuracy, transparency, auditability, and explainability of BDA tools such as AI and ML. The Thematic Review, notes that biases inherent in data being used could be reinforced through ML algorithms if firms do not have adequate governance arrangements in place.

The Thematic Review, states that EIOPA's InsurTech Task Force will conduct further work in 2019 to address the BDA-related risks identified in the Thematic Review and sets out details of future BDA initiatives relating to:

- The supervision of AI and ML black box algorithms;
- Ethics and fairness;
- Outsourcing; and
- Cyber insurance and cyber security.

A copy of the Thematic Review can be accessed here.

Insurance Distribution Directive ("**IDD**")

(i) European Commission adopts Delegated Regulation on adapting base euro amounts for professional indemnity insurance and financial capacity of intermediaries under IDD

On 13 May 2019, the European Commission adopted a Delegated Regulation amending the IDD with regard to regulatory technical standards ("**RTS**") adapting the base euro amounts for professional indemnity insurance ("**PII**") and for financial capacity of insurance and reinsurance intermediaries.

Under Article 10(4) of the IDD, insurance and reinsurance intermediaries are required to hold a certain amount of PII or some other comparable guarantee against liability arising from professional negligence.

Under Article 10(6) of the IDD, one of the premium handling requirements which Member States can take to protect consumers is the requirement for the intermediary to have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of €18,750.

The amounts provided for in 10(4) and 10(6) need to be regularly reviewed by EIOPA to take account of changes in the European index of consumer prices published by Eurostat.

Article 10(7) of the IDD authorises the European Commission to adopt, following EIOPA's submissions of draft RTS, delegated acts that adapt the base amounts in euros referred to in Article 10(4) and (6) by the percentage change in the European index of consumer prices.

The Delegated Regulation adapts these base amounts to reflect the 4.03% increase in the index.

The Council of the EU and the European Parliament will consider the Delegated Regulation and if neither objects it will enter into force 20 days after it is published in the Official Journal of the EU. The Delegated Regulation will apply six months after it enters into force to allow Member States to adapt national legislation and to give insurance and reinsurance intermediaries and their insurance providers time to take the necessary implementation measures.

A copy of the Delegated Regulation can be accessed here.

Insurance Europe

(i) Insurance Europe issues position paper supporting the development of a voluntary EU Green Bond Standard

On 8 April 2019, Insurance Europe issued a position paper supporting the development of a voluntary EU Green Bond Standard ("**GBS**") (the "**Position Paper**").

The Position Paper is in response to the European Commission's Technical Expert Group's ("**TEG**") consultation on the recommendation for the development of a GBS and welcomes the TEG's aim of enhancing the comparability of green bonds across issuers.

In the Position Paper, Insurance Europe states that it appreciates the TEG's acknowledgment that a credible EU GBS should be based on the European sustainability taxonomy and that the alignment of the EU GBS with the EU taxonomy will allow the development of a more credible green bond market, while mitigating reputational and greenwashing risks for issuers and investors.

The Position Paper also welcomed the TEG's efforts to address the currently limited supply of suitable green projects to be financed by green bonds. Insurers support the proposals for incentives to improve the pipelines of suitable green projects. The Position Paper highlights that the green bond market is at an early stage of development. For this reason, Insurance Europe has warned that a mandatory disclosure regime related to EU GBS compliant green bonds appears premature and should be further investigated at a later stage.

A copy of the Position Paper can be accessed here.

(ii) Insurance Europe comments on the European Parliament's adoption of agreement on the review of European financial supervisors

On 16 April 2019, Insurance Europe commented on the European Parliament's vote to adopt an agreement reached between EU institutions regarding the review of the European System of Financial Supervision ("**ESFS**").

In the press release, Insurance Europe welcomed the vote and the technical aspects of the agreement, such as:

- **Governance** - EIOPA's board of supervisors will remain the main decision-making body and the current Management Board is retained. This will ensure national supervisors have the final say in decisions that impact them directly. Insurance Europe also welcomes that EIOPA will be able to directly set up panels to address breaches of EU law and cases of cross-border disputes;

- **Internal models** - national supervisors remain responsible for the oversight of internal models. The close links between an insurer's model, its risk profile and governance mean that such oversight must remain with the actual supervisor;

- **Stress tests** - EIOPA is not empowered to request disclosure of results at an individual level. This maintains the current position and is intended to allow EIOPA to identify adverse market developments and not to create a new and potentially confusing, basis for individual company solvency. Solvency II is designed and calibrated for solvency purposes and being itself a stress test-based system, means individual company information is already published;

- **Anti-money laundering** - the role of the EBA is strengthened in relation to anti-money laundering supervision for all financial institutions, but EIOPA has been given a role in the decision-making of the internal AML committee; and

- **Funding** - the current mix of funding from NCAs and the EU is maintained.

A copy of the press release can be accessed here.

(iii) Insurance Europe issues Response to EIOPA's Discussion Paper on Systemic Risk and Macroprudential Policy in Insurance

On 6 May 2019, Insurance Europe issued a Position Paper in response to EIOPA's Discussion Paper on Systemic Risk and Macro-prudential Policy in Insurance (the "**Position Paper**") which raised the question on whether the existing provisions of the Solvency II Framework allow for an appropriate macro-prudential supervision.

In the Position Paper, Insurance Europe highlighted that the current Solvency II regulatory framework ensures that any issues leading to concerns about systemic risk can be identified and managed in a timely manner. Insurance Europe went on to note that the existing

framework already includes specific reporting requirements for financial stability, biannual financial stability reports and the biennial stress test, as well as liquidity management requirements that are part of the own risk and solvency assessment and the system of governance. While it is possible for real systemic risks to emerge from the insurance sector, the existence of systemic risk in insurance has not been adequately substantiated. The Position Paper, also notes that the scope of EIOPA's work goes beyond what it was asked to advise on by the European Commission.

A copy of the Position Paper can be access here.

Packaged Retail Insurance-based Investment Products ("**PRIIPs**")

(i) Joint Committee of ESAs publishes updates to the Q&As on PRIIPs KID

On 4 April 2019, the Joint Committee of the European Supervisory Authorities (the "**ESAs**") published an updated version of its Q&As on the key information document ("**KID**") requirements for PRIIPs, as laid down in Commission Delegated Regulation (EU) 2017/653 (the "**PRIIPs Regulation**").

The updated Q&As include new Q&As in the following sections of the document:

- **General topics:** this contains a new Q&A on what aspects should be considered by the manufacturer when determining the recommended holding period ("**RHP**") of a PRIIP.

- **Multi-option products** ("**MOPs**")**:** this contains a new Q&A on the form and name that "specific information on each underlying investment option", referred to in Article 14(1) of the Delegated Regulation, should take.

The updated version of the Q&A can be accessed here.

European Markets Infrastructure Regulation ("**EMIR**")

(i) Council of the EU adopts EMIR Refit Regulation

On 28 May 2019 the Regulation (EU) 2019/834 (the "**EMIR Refit Regulation**") was published in the Official Journal of the EU. The EMIR Refit Regulation aims to simplify the rules for OTC derivatives and make them more proportionate, with a view to reducing regulatory costs and burdens on market participants.

The EMIR Refit Regulation makes a number of key changes for AIFs and UCITS including:

- **Financial counterparty** ("**FC**"): The EMIR Refit Regulation will broaden the definition of FC to capture all AIFs which are established in the EU, as well as AIFs which are managed by AIFMs authorised or registered in accordance with AIFMD. This is a change to the position currently under EMIR, as EMIR only captures AIFs which are

managed by AIFMs authorised or registered in accordance with Directive 2011/65/EU ("**AIFMD**") as FCs. UCITS and UCITS management companies remain captured as FCs under both EMIR and the EMIR Refit. AIFs which are securitisation special purpose entities, and AIFs/ UCITS which are established solely for employee share purchase plans, will be specifically excluded from the definition of an FC under the EMIR Refit Regulation;

- **Small financial counterparty** ("**SFC**"): The EMIR Refit Regulation introduces a new sub-category of FC which will be exempt from the EMIR clearing obligations termed an SFC. An FC will be deemed to be an SFC if its OTC derivative positions do not exceed any of the EMIR clearing thresholds. An SFC will remain subject to EMIR's risk mitigation requirements, including margin exchange requirements;

- **Determination of clearing threshold – FCs**: The EMIR Refit Regulation provides that an FC has the option to perform a calculation every 12 months to determine whether its aggregate month-end average position at group level (for the previous 12 months) exceeds the clearing thresholds. An FC that exceeds the clearing threshold for at least one asset class or does not calculate its positions, will become subject to a clearing obligation for all asset classes. Whilst the calculations are normally performed at group level, the EMIR Refit specifically provides that for UCITS and AIFs, these calculations are performed at the fund level;

- **Determination of clearing threshold - non-financial counterparties** ("**NFCs**")**:** The EMIR Refit Regulation replaces the 30 day rolling average determination of positions, as set out under EMIR, with an annual determination. The EMIR Refit Regulation provides that an FC has the option to perform a calculation every 12 months to determine whether its aggregate month-end average position at group level (for the previous 12 months) exceeds the clearing thresholds. If the calculation is performed and none of the clearing thresholds are exceeded, the NFC will be deemed to be an NFC- and will be exempt from the EMIR clearing obligations. In addition, under the EMIR Refit Regulation, an NFC will only be required to clear those OTC derivative contracts which relate to the particular asset class for which the clearing threshold is exceeded;

- **Notifications to Central Bank and ESMA:** All FCs or NFCs which do not calculate their aggregate month-end average position for the previous 12 months, or where the result of that calculation exceeds any of the clearing thresholds, whether previously subject to the clearing obligation or not, are required to immediately notify ESMA and their relevant competent authority. Such an entity has four months from making that notification to implement the clearing arrangements, as applicable; and

- **Removal of the frontloading requirements:** The EMIR Refit Regulation removes the clearing frontloading obligation. The frontloading obligation is the obligation to clear OTC derivative contracts entered into, or novated, before the clearing obligation for those classes of derivatives takes effect.

The EMIR Refit Regulation entered into force on 17 June 2019 (that is, twenty days after its publication in the Official Journal of the EU). There were certain actions which FCs and NFCs needed to take on the day the EMIR Refit Regulation entered into force.

An FC or an NFC that wished to avail of the exemption from the mandatory clearing obligations under EMIR (as an SFC or as an NFC-, as applicable) must have been in a position to perform the clearing threshold calculations on the day the EMIR Refit Regulation entered into force. The calculation was required to capture the average monthly derivatives activity in the last 12 months (i.e. ending on 31 May 2019). The calculation should then be repeated annually.

If the FC or NFC did not calculate its aggregate month-end average position for the previous 12 months, or if the result of that calculation exceeded any of the clearing thresholds, that FC or NFC was required to notify ESMA and the Central Bank on 17 June, 2019 and prepare to commence clearing four months from the notification date (with an FC being required to clear all OTC derivatives subject to the EU mandatory clearing determination, whilst an NFC need only implement clearing for the particular asset class which exceeded the applicable EMIR clearing threshold).

The EMIR Refit Regulation can be accessed here.

European Commission

(i) EU-US Bilateral Agreement on prudential measures regarding insurance and reinsurance

On 2 April 2019, the EU and the United States held the second meeting of the Joint Committee established under the EU - US agreement on prudential measures regarding insurance and reinsurance (the "**Agreement**"). The EU and the United States signed the Agreement on 22 September 2017 and it entered into force on 4 April 2018.

At the meeting, participants on both sides provided updates regarding the implementation of the Agreement on reinsurance, group supervision and exchange of information and discussed procedural aspects of the Joint Committee.

Both sides acknowledged progress made toward implementing the Agreement and reconfirmed their commitment to full and timely implementation, including the removal of collateral and local presence requirements for reinsurers and the provisions on group supervision measures. In addition, they reaffirmed their commitment to continuous review of progress on the Agreement and close coordination between the two sides and are continuing to encourage relevant authorities to refrain from taking any measures that are inconsistent with any of the conditions or obligations of the Agreement.

A copy of the press release can be found here.

(ii) European Commission launches consultation on Distance Marketing Directive

On 9 April 2019, the European Commission launched a consultation relating to its evaluation of Directive 2002/65/EC, namely the Distance Marketing of Financial Services Directive ("**DMD**").

The European Commission explains that, since the DMD came into force, the retail financial sector has become increasingly digital, with new products and actors available on the market, and new sales channels being used.

The aim of the consultation is to ensure that all relevant stakeholders have the opportunity to express their views on the relevance, effectiveness, pertinence and coherence of the DMD to assess whether it is still fit for purpose.

The consultation closed on 2 July 2019. The Commission expects to publish the conclusions of the evaluation exercise by the end of 2019.

The consultation can be accessed here.

European Parliament

(i) European Parliament adopts texts at first reading position on ESFS reforms

On 16 April 2019, the European Parliament published the texts it adopted at first reading relating to the proposed reforms to the ESFS. These include:

- Legislative resolution on the proposed Regulation amending the Regulations relating to the powers, governance and funding of the ESAs and a number of Regulations on financial markets can be accessed here;
- Legislative resolution on the proposed Regulation amending the Regulation on EU macro-prudential oversight of the financial system and establishing a European Systemic Risk Board ("**ESRB**") (1092/2010) can be accessed here; and
- Legislative resolution on the proposed Directive amending the MiFID II Directive (2014/65/EU) and the Solvency II Directive can be accessed here.

The Council of the EU will now consider and adopt the proposals.

On 2 May 2019, the Council of the EU published an 'Information Note' relating to the proposals, which can be accessed here.

European Supervisory Authorities ("**ESAs**")

(i) ESAs issue consultation paper on revised draft ITS on the mapping of ECAIs' Credit Assessments

On 7 June 2019, the ESAs launched a Consultation on draft ITS amending Commission Implementing Regulation (EU) 2016/1800 on the allocation of credit assessments of External Credit Assessment Institutions ("**ECAIs**") to an objective scale of credit quality steps in accordance with Solvency II (the "**Consultation**").

Article 4(1) of the Solvency II Delegated Regulation provides that (re)insurance undertakings can only use external credit assessments for the purpose of calculating technical provisions and the Solvency Capital Requirement in accordance with the standard formula where they have been issued by a ECAIs or endorsed by an ECAI in accordance with the Credit Rating Agency ("**CRA**") Regulation.

The Commission Implementing Regulation (EU) 2016/1800 (most recently amended by Commission Implementing Regulation 2018/633/EU)) was adopted to specify the allocation of relevant credit assessments of 26 ECAIs to the credit quality steps set out in Article 3 of the Solvency II Delegated Regulation.

After monitoring the performance of mappings since the Commission Implementing Regulation entered into force, the ESAs concluded that the Commission Implementing Regulation needs to be amended to reflect developments on credit rating scales and the allocation of credit rating types and the draft ITS provide updated mappings for all registered or certified ECAIs.

The Consultation closed on 10 July 2019 and a copy of the Consultation paper can be accessed here.

Department of Finance

(i) Department of Finance launches Public Consultation on Consumer Insurance Contracts Bill 2017

On 12 April 2019, the Department of Finance launched a consultation on the Consumer Insurance Contracts Bill 2017 (the "**Bill**").

The Bill, which aims to reform and modernise the law of consumer insurance contracts in Ireland, was first introduced in the Dáil Éireann in January 2017 and passed the Second Stage in February 2017 where the Government expressed its support in principle for the objectives of the Bill.

In December 2018, the Joint Oireachtas Committee on Finance, Public Expenditure and Reform and Taoiseach published the Report on Scrutiny of the Bill which recommended that the Department of Finance undertake a cost-benefit analysis of the Bill in order to inform the

legislative process. The objective of the consultation was to seek the views of stakeholders on:

(i) The specific costs of implementing these measures;

(ii) The specific benefits to be gained for consumers and businesses;

(iii) A view on whether the benefits outweigh the cost (i.e. a cost benefit perspective on the principle legislation; and

(iv) Interested parties were invited to comment on the Bill and to provide any additional perspectives on it.

The consultation closed on 24 May 2019.

The Department of Finance published the Feedback Statement on the consultation on 2 July 2019 (dated June 2019) which contained feedback from those involved in the insurance industry and representative groups. The main findings from those involved in the insurance industry are as follows:

- The enactment of the Bill would replace long-standing principles of insurance which would increase costs for insurers and ultimately increase premiums;

- The current draft of the Bill is lacking precise definitions and has many ambiguous provisions, which makes it difficult for the insurance industry to set out in full what the impact would be, but it was noted that there would be operational and development costs arising from the uncertainty. There would also be an increase in compliance costs as the Bill contains duplication of existing regulations and these costs would ultimately be passed on to the consumer;

- In Section 7 of the Bill on Proportionate Remedies for Misrepresentation, if the term 'fraudulent misrepresentation' was used it would imply that insurers would have to apply a criminal standard of proof of 'beyond reasonable doubt' and doing so would make the identification of fraud difficult and result in increased costs for insurers.

The main findings from representative groups are as follows:

- They expressed their support for the Bill and took the view that the Bill should be enacted without any further delay and have indicated that the Bill is required to address the imbalance that exists between insurers and their insured. Representative groups noted that insurance companies should place the consumer at the heart of their concerns and operations and that the Bill should help improve the insurance industry's contractual relations with customers;

- The legislative protection for consumers of insurance contracts is overdue and the Bill has identified some of the main areas of concern such as non-disclosure, misrepresentation, warranties and claim payments; and

- The representative groups noted that the Bill could go further by:

  - Applying the EU definition for Small And Medium Enterprises ("**SMEs**");

  - Increase the length of time for renewals;

  - Introduce an insurance watchdog; and

  - Apply the IIF/IBEC communication guidelines for insurers and policyholders.

The consultation and the feedback can be accessed here and a copy of the Bill and the Bill's progress can be accessed here.

Central Bank of Ireland

(i) Central Bank issues letter to Regulated Financial Service Providers regarding their obligations under the Fitness and Probity Regime

On 8 April 2019, the Central Bank issued a "Dear CEO" letter (the "**Letter**") to all Regulated Financial Service Providers (the "**Firms**") regarding their obligations under the Central Bank's Fitness and Probity Regime. The focus of the Letter is to remind Firms of the significant obligations placed on them under the Central Bank's Fitness and Probity Regime and to highlight some of the main areas of compliance which the Central Bank have found to be deficient.

The Central Bank highlights in its Letter the shortcomings with regard to Firms ensuring that they do not allow persons to perform controlled function roles ("**CF**" roles) unless they are "satisfied on reasonable grounds" that the person complies with the Fitness and Probity Standards (the "**Standards**").

The Central Bank notes that (i) Firms are required to conduct due diligence on an on-going basis to ensure employees performing CF roles comply with the Standards and (ii) where Firms have taken steps to address any fitness and probity concerns they have about an individual, that they should report those concerns to the Central Bank.

The Central Bank also observed that there were individuals acting in senior roles known as pre-approved controlled functions ("**PCFs**") without the Firm having first sought the Central Bank's approval. The Central Bank operates a "gatekeeper" regime under the Central Bank Reform Act 2010 which allows the Central Bank to assess if individuals being appointed to PCF roles are fit and proper.

The Letter reminds Firms that when a PCF applicant is completing their individual questionnaire they are to be candid, truthful and provide a full, fair and accurate response to all questions. Where applicants are uncertain of how to respond or uncertain as to the level of detail that are expected to provide, they should endeavour to provide as much information as possible noting that it is for the Central Bank to determine whether a fact is material to a PCF application. Separately, the Central Bank noted that individuals applying for PCF roles in low and medium impact Firms, may, at the discretion of the Central Bank, be subject to interview in order for the Central Bank to assess their suitability for the role.

The Central Bank lists a number of recommended steps that Firms should take which focus on Firms being aware of the quality and integrity of those in PCF/CF roles. These steps include:

- Requiring those persons performing CF roles to undertake to notify them of any changes in their circumstances which might be material to their fitness or probity;
- Properly assessing if an individual still satisfies their obligations under the Standards;
- Requesting persons performing CF roles to certify, at least on an annual basis, that they are aware of the Standards and that they agree to abide by them (already required of PCF roles); and
- Notifying the Central Bank of any fitness and probity concerns regarding a person performing a CF role, and take action on foot of those concerns.

The Letter can be accessed here.

(ii) Publication of the Central Bank (National Claims Information Database) Regulations 2019

On 30 April 2019, the Central Bank (National Claims Information Database) Regulations 2019 (S.I. No. 174 of 2019) (the "**Regulations**") were published.

The purpose of the Regulations is to specify certain classes, or parts thereof, of non-life insurance that comprise policies of motor insurance as relevant classes of non-life insurance for the purpose of the Central Bank (National Claims Information Database) Act 2018 (No. 42 of 2018) (the "**Act**"). The Regulations also specify the circumstances in which risks falling within such relevant classes are to be regarded as risks based in the State.

The Regulations came into operation on 26 April 2019 and can be accessed here.

(iii) Government announce individual accountability framework legislation to be drafted

On 18 June 2019, the Government announced that new legislation is to be drafted so that the Central Bank's proposals for an Individual Accountability Framework can be introduced. These proposals will be included in the Central Bank (Amendment) Bill 2019.

According to the Government, the Heads of Bill of this new legislation will provide for the following:

- Senior Executive Accountability Regime which will place obligations on firms and their senior management to set out where responsibility for decision-making lies. If the Government adopts the Central Bank's proposals as set out in its report on "Behaviour and Culture of the Irish Retail Banks" (the "**Report**"), regulated entities will be required to prepare "Statements of Responsibilities" for each senior staff member falling within the regime's scope and to produce a "Responsibility Map" documenting key management and government arrangements;

- Conduct Standards for firms and individuals which will be imposed on regulated entities and on their staff and be enforceable if they are breached;

- Enhanced Fitness and Probity Regime which, if the Central Bank's proposals as per the Report are adopted, will result in regulated firms being required to annually certify that all individuals who are performing controlled functions are fit and proper;

- Breaking the "participation link" which currently requires the Central Bank to show that an individual "participated" in a breach by a regulated entity in order to pursue an individual under its Administrative Sanctions Procedure, so that individuals can be subject to the process without any requirement to link their behaviour back to some wrong-doing by the regulated firm; and

- Technical amendments to improve existing legislation and clarify certain statutory processes.

A copy of the press release can be accessed here.

(iv) Central Bank publishes report on protected disclosures

On 28 June 2019, the Central Bank published its report on protected disclosures (the "**Report**"). The Report provides details of whistleblowing to the Central Bank in a 12 month period. The Central Bank is required to publish an annual report relating to the number of protected disclosures made to the Central Bank in the preceding year in addition to detailing the action taken in response to the disclosures made. The Central Bank received 150 protected disclosures between 1 July 2018 and 30 June 2019. There was an assessment of each disclosure and action was taken where appropriate.

The Report can be accessed here.

Anti-Money Laundering ("**AML**") / Counter-Terrorist Financing ("**CTF**")

(i) FATF publishes new consolidated assessment ratings

For the period 1 April 2019 to 30 June 2019, the Financial Action Task Force ("**FATF**") updated the consolidated assessment ratings which provide a summary of:

- the technical compliance; and
- the effectiveness of the compliance, of the assessed parties against the 2012 FATF Recommendations on combating money laundering and the financing of terrorism & proliferation. FATF also released new mutual evaluations for the same period.

The updated consolidated rating table can be accessed here and the full set of reports for each country can be accessed here.

(ii) EBA centralises information on administrative sanctions or measures under MLD4

The European Banking Authority ("**EBA**") has updated its website to provide links to NCAs websites. On the NCAs website users will be able to access information on sanctions and administrative measures NCAs have imposed for breaches of AML and CTF obligations under Directive (EU) 2015/849 (the "**Fourth Money Laundering Directive**" or "**MLD4**").

The EBA website with the links to NCAs websites can be accessed here.

(iii) Council of the EU adopts Directive to fight non-cash payment fraud and is published in Official Journal

On 9 April 2019, the Council of the EU formally adopted the directive on combating fraud and counterfeiting of non-cash means of payment (Directive (EU) 2017/0226) (the "**Directive**"). The Directive updates the existing rules to ensure that a clear, robust and technology-neutral legal framework is in place.

The Directive encompasses traditional non-cash payments such as bank cards or cheques and also new ways of making payment which have appeared over recent years, such as electronic wallets, mobile payments and virtual currencies.

On 10 May 2019, the Directive was published in the Official Journal of the EU. Member states will have two years from the publication in the Official Journal of the EU to implement the new provisions.

The Directive can be accessed here and the Council of the EU press release can be found here.

(iv) FATF Ministers give FATF an open-ended Mandate

On 12 April 2019, the FATF adopted an open-ended mandate. The FATF members agreed to greater ministerial engagement and support for the FATF through regular and more frequent ministerial-level meetings, and by extending the term of the FATF Presidency, and by agreeing to a new funding model for the organization.

The FATF's new mandate recognises the need for the FATF to continue to lead global action to counter the threats of the abuse of the financial system by criminals and terrorists, and strengthens its capacity to respond to these threats.

The FATF mandate can be accessed here.

(v) European Parliament increases oversight powers of EBA and ESMA

On 16 April 2019, the European Parliament adopted the amended proposal for a Regulation which aims at preventing and combating money laundering and terrorist financing (the "**Proposed Regulation**"). The most notable changes include:

- **Helping consumers and sustainable finance** – ESMA has been entrusted with direct supervisory power in specific financial sectors, such as markets in financial instruments or benchmarks. ESMA will also coordinate national actions in the areas of Financial Technologies and promote sustainable finance, including when conducting EU-wide stress tests to identify which activities could have a negative effect on the environment; and

- **New powers to improve fight against money laundering** - The Proposed Regulation strengthens the EBAs mandate, tasking it with preventing the financial system from being used for money-laundering and terrorist financing. Specifically, the EBA will now have the power to adopt measures to prevent and counter money laundering and terrorist financing. National authorities will be obliged to provide the EBA with information necessary to identify weaknesses in the EU financial system regarding money laundering.

EU ministers will now have to formally confirm the Proposed Regulation before the reforms enter into force.

The press release for the new rules can be found here and the Proposed Regulation can be accessed here.

(vi) European Parliament and Council of EU adopt texts on Directive laying down rules facilitating the use of financial and other information for the prevention of crime

On 17 April 2019, the European Parliament adopted the texts for a Proposed Directive laying down rules facilitating the use of financial and other information for the prevention,

detection, investigation or prosecution of certain criminal offences (the "**Proposed Directive**").

The Proposed Directive aims at allowing law enforcement authorities to quickly access crucial financial information for criminal investigations and improving cooperation between national authorities, Europol and the Financial Intelligence Units ("**FIUs**").

On 7 June 2019, the European Commission adopted the proposal. On this date, Italy and Germany also released statements on the Proposed Directive. While they both broadly supported the purpose of the Proposed Directive, Italy had stressed the need for greater flexibility for its implementation while Germany had some issues with the legitimacy of national bodies accessing data as currently drafted.

On 14 June 2019 the Council of the EU adopted the texts of the Proposed Directive. The Proposed Directive will enter into force 20 days after being published in the Official Journal of the EU.

The Proposed Directive can be accessed here.

(vii) Commission Delegated Regulation with AML requirements applying to financial institutions with branches or subsidiaries in certain non-EU countries published in Official Journal

On 14 May 2019 Commission Delegated Regulation (EU) 2019/758 (the "**Regulation**") was published in the Official Journal of the EU. The Regulation supplements MLD4. The Regulation sets out the RTS which are required to be taken where the local law of a third country does not permit the implementation of group-wide AML/CTF policies and procedures.

The Regulation imposes general obligations on every credit or financial institution that has an established branch or subsidiary in a third country. These obligations include:

- assess AML/CTF risk, record it and keep it up-to-date;
- reflect that risk assessment in its group-wide AML/CTF policies and procedures;
- obtain senior management approval at group level for the risk assessment and updated policies and procedures; and
- provide targeted, effective AML/CTF training to relevant staff in the third country.

The Regulation also requires credit or financial institutions that have an established branch or subsidiary in a third country to inform the national competent authority when there is a restriction or prohibition, consider whether customer consent is appropriate to overcome the restriction and where necessary to take additional measures.

The Regulation sets out a number of additional measures which a credit or financial institution that has an established branch or subsidiary in a third country could take. These measures include:

- restricting the nature and type of financial products provided by the branch/subsidiary;
- ensuring other entities in the same group do not rely on customer due diligence carried out by the branch/subsidiary;
- carrying out enhanced reviews, including onsite checks and independent audits;
- ensuring approval from group senior management is sought for higher risk transactions;
- ensuring the branch/subsidiary determines the source and destination of funds;
- ensuring the branch/subsidiary carries out enhanced ongoing AML/CTF monitoring;
- ensuring the branch/subsidiary shares underlying suspicious transaction report information with the group including the facts and documents giving rise to the suspicion;
- carrying out enhanced ongoing monitoring of any customer of the branch/subsidiary or the customer's beneficial owner who has been the subject of suspicious transaction reports made by other group entities;
- ensuring the branch/subsidiary has effective systems and controls are in place for identifying and reporting suspicious transactions; and
- ensuring the branch/subsidiary keeps customer risk profiles and due diligence information up to date and secure as long as legally possible.

Where additional measures under the Regulation are required to be taken then the extent of such measures needs to be determined upon a risk-sensitive basis and the group needs to be able to demonstrate to its competent authority that the extent of the measures is appropriate. If the AML/CTF risk cannot be effectively managed by applying the additional measures then some or all of the operations of the branch or subsidiary are required to be closed down.

It should be noted that most third countries' legal systems will not prevent groups from implementing group-wide AML/CTF policies and procedures, in which case the additional measures set out in the Regulation will not be required. However, unless or until the ESA produce a list of relevant third countries, then it will be up to each individual group to make its own determination.

The Regulation will apply from 3 September 2019 and can be accessed here.

(viii) Central Bank publishes Guidance for Completion of the Schedule 2 Anti-Money Laundering Registration Form

On 20 May 2019, the Central Bank of Ireland published Guidance for the Completion of the Schedule 2 Anti-Money Laundering Registration Form (the "**Guidance**"). The purpose of the Guidance is to provide information to firms who are required to register with the Central Bank as a Schedule 2 firm. The Guidance sets out:

- When the obligation to register as a Schedule 2 firm arises;
- Exemptions from Obligation to Register;
- How to register as a Schedule 2 firm; and
- Guidance on completing the registration form.

The Guidance also provides completion notes setting out any definitions that may be involved in the process.

The Guidance can be accessed here.

(ix) European Commission publishes report on the Regulation concerning the information accompanying the transfers of funds

On 19 June 2019, the European Commission published a report (the "**Report**") on the application of Chapter IV of Regulation (EU) 2015/847 on information accompanying transfers of funds (the "**Regulation**"). Chapter IV of the Regulation requires Member States to set up a regime of administrative sanctions and measures applicable to breaches of the Regulation allowing the transfer of funds to be more transparent. The European Commission is required to prepare this Report under Article 22(2) of the Regulation as the Member States have notified these sanctions and measures to the ESAs.

The Report details the state of play of the implementation by Member States of Chapter IV of the Regulation with particular focus on important horizontal implementation issues which the European Commission believes to be common to several Member States. The Report also provides a brief overview of the sanctioning activities of different national supervisory authorities.

The Report can be accessed here.

(x) FATF notes jurisdictions with AML/CTF deficiencies at third plenary meeting

On 21 June 2019, the FATF held its third plenary meeting. The FATF identified jurisdictions that they believe have AML/CTF deficiencies. The FATF notes the particular deficiencies of each jurisdiction and the strategic improvements that they must make to meet the necessary

standards. The jurisdictions with deficiencies include the Bahamas, Cambodia and Pakistan among others.

The press release can be accessed here.

(xi) CRO announces that Central Register of Beneficial Ownership will be delayed

On 24 June 2019, the Companies Registration Office announced that the opening of the central register of beneficial ownership of companies (the "**RBO**") has been postponed temporarily. The RBO was due to accept filings commencing on 22 June 2019 which aimed at setting out details of the beneficial ownership of companies in Ireland. Companies are required to submit information in relation to their beneficial owners to the RBO before 22 November 2019.

The press release can be accessed here.

(xii) FATF publishes reports to G20 on current and future focus of work

On 27 June 2019, the FATF published its report to the G20 for the G20 leaders' summit in Osaka, Japan (the "**Report**"). The Report provides an overview of FATF current and future AML/CTF work. The Report notes that the FATF has is focusing on the following:

- Strengthening the institutional basis, governance and capacity of the FATF;
- The FATF's Work Programme on Virtual Assets;
- Countering the financing of terrorism;
- Countering the Financing of Proliferation of Weapons of Mass Destruction;
- Improving Transparency and the Availability of Beneficial Ownership Information;
- Financial Technologies, Regulatory Technologies: Digital Identity; and
- De-risking by Banks.

The Report can be accessed here.

Anti-Corruption Legislation & Law Reform

(i) European Parliament adopts proposed Directive to protect whistleblowers reporting on breaches of EU Law

On 16 April 2019, the European Parliament formally adopted a proposed Directive on the protection of persons reporting on breaches of EU law (the "**Proposed Directive**").

The proposal is part of a package of measures adopted by the European Commission on 23 April 2018. The package also includes: a 'Communication on strengthening whistleblower protection at EU level' and two staff working documents setting out the European Commission's Impact Assessment on the proposal and an Executive Summary of the Impact Assessment.

It is expected that the Council of the EU will formally adopt the proposed Directive at one of its next meetings, after which it will be published in the Official Journal of the EU.

The Proposed Directive can be accessed here.

Civil Liability and Courts (Amendment) Bill 2019

(i) Civil Liability and Courts (Amendment) Bill 2019

On 10 April 2019, the Civil Liability and Courts (Amendment) Bill 2019 (the "**Bill**") was initiated in Dáil Éireann. The purpose of the Bill is to increase the penalties for those found guilty of an offence under Section 26 of the Civil Liability and Courts Act 2004 (the "**Act**") which deals with fraudulent actions.

This Amendment Bill states that where a person's case has been dismissed pursuant to Section 26 of the Act, the plaintiff must pay the legal expenses of the defendant. The Bill does permit Judges to have discretion however.

The Bill also amends section 29 of the Act to increase the fine the District Court can impose from €3,000 to the maximum permitted by the District Court which is a class A fine, which currently stands at €5,000.

The Bill completed the second stage in Dáil Éireann (where the general principles of the Bill are debated) and a copy of the Bill can be accessed here.

Data Protection / General Data Protection Regulation ("**GDPR**")

(i) EIOPA Cyber Insurance Workshop

On 1 April 2019, EIOPA hosted a workshop on Cyber Insurance with representatives from the insurance industry, brokers, policyholders, regulators, think tanks and other stakeholders. The goal of the workshop was to discuss and identify possible solutions to address the challenges facing the European cyber insurance market. The workshop focused on two main challenges:

- Covering cyber risks; and
- Quantifying cyber risks.

The workshop continued the structured dialogue with the insurance industry on cyber insurance which resulted in a first EIOPA report published in 2018.

Further information on the workshop can be accessed here.

(ii) Insurance Europe issued its Position Paper on the EDPBs public consultation on draft guidelines on Codes of Conduct & Monitoring Bodies

On 10 April 2019, Insurance Europe issued its position paper on the European Data Protection Board's ("**EDPB**") public consultation on draft guidelines on Codes of Conduct & Monitoring Bodies.

Insurance Europe is of the view that the draft guidelines go beyond the text of the General Data Protection Regulation (EU) 2016/679 ("**GDPR**") by stating that the approval of a code of conduct will depend on the appointment of a mandatory body that will police compliance with the code, whereas GDPR says this is optional. Therefore, Insurance Europe has urged the EDPB to acknowledge that the draft guidelines go beyond the text of the GDPR and to clarify that the appointment of a monitoring body is optional. Recognising that the appointment of mandatory monitoring bodies would impose excessive burden and costs on national associations across all industry sectors, Insurance Europe also calls on the EDPB to consider feasible solutions in line with the GDPR for the monitoring of compliance of codes of conduct, keeping in mind that codes of conduct are an instrument of self-regulation.

The position paper also recommends, amongst other things, that the draft guidelines should introduce the possibility of consultation between the relevant supervisory authority and the code owner to provide clarifications on the draft code where necessary and allow for the draft code to be amended at the approval phase.

A copy of Insurance Europe's position paper can be accessed here.

(iii) Joint Committee of ESAs provide advice on risk management requirements and cyber resilience to European Commission

On 10 April 2019, the Joint Committee of the ESAs published two advices to the European Commission on the need for legislative improvements on information and communication technology ("**ICT**") risk-management requirements in the EU financial sector and on the costs and benefits of a coherent cyber-resilience testing framework for significant market participants and infrastructures.

The advice regarding risk management requirements can be accessed here and the advice regarding cyber-resilience can be accessed here.

(iv) European Commission Stocktaking exercise on GDPR and Insurance Europe's Response

By way of background, the European Commission circulated to the members of the GDPR Multistakeholder Expert group a list of questions to gather feedback on their experience, and/or the experience of their own members, of the application of GDPR since 25 May 2018. The deadline for responding was initially set for the 5 April 2019 and was then extended until 11 April 2019. The responses to the questionnaires formed the basis of the stocktaking report on the application of the GDPR that the European Commission published on 13 June 2019.

On 11 April 2019, Insurance Europe, a member of the Multi-stakeholder Expect Group, issued a position paper responding to these questions from the European Commission on insurers' experiences and concerns about the application of GDPR.

In the position paper, Insurance Europe welcomed the opportunity to contribute to the stocktaking exercise and highlighted the importance of continuing to allow insurers to provide feedback on the application of GDPR to guarantee the best outcome possible for consumers and industry in the GDPR review expected in 2020.

Insurance Europe raised concerns about the following:

- Difficulties in updating IT systems to ensure compliance;
- Difficulties in classifying suppliers as either controllers or processors;
- Difficulties in adapting processor agreements and allocating liability between the controller and the processor;
- The impact GDPR provisions can have on the use of innovative technologies in the sector; and

- The variety of legal bases across Member States for processing health data in insurance creates difficulties for insurers that conduct their business in multiple Member States.

On 13 June 2019, the Multistakeholder expert group published the stocktaking report which consists of ten sections on which members from business, civil society and individual members (professional or academic) provided feedback which include:

- Main issues experienced by organisations in complying with the GDPR;
- Impact of the GDPR on the exercise of data subjects' rights;
- Impact of Article 7(4) GDPR regarding the conditions for valid consent;
- Complaints and legal actions under GDPR / Use of representative actions under Article 80 GDPR;
- Experience with Data Protection Authorities and the one-stop-shop mechanism;
- Experience with accountability and the risk-based approach;
- Data Protection Officers;
- The controller/processor relationship;
- Adaptation/further development of Standard Contractual Clauses ("**SCCs**") for international transfers; and
- Experience with the national legislation implementing the GDPR in the Member States.

A copy of Insurance Europe's position paper can be accessed here.

The Multi-stakeholder stocktaking report on the application of the GDPR can be accessed here.

(v) EDPB launches public consultation on processing of personal data under GDPR

On 12 April 2019, the EDPB launched a public consultation on guidelines on the processing of personal data under Article 6(1)(b) of GDPR in the context of the provision of online services to data subjects.

The guidelines concern the applicability of Article 6(1)(b) to processing of personal data in the context of contracts for online services, irrespective of how the services are financed.

The guidelines will outline the elements of lawful processing under Article 6(1)(b) GDPR and consider the concept of 'necessity' for the performance of a contract and whether a requested service can be provided without the specific processing taking place.

The public consultation finished on 24 May 2019.

The guidelines for public consultation can be found here and the press release can be found here.

(vi) DPC examines right of rectification concerning diacritical marks

On 30 April 2019, the Data Protection Commissioner ("**DPC**") issued a note examining the right to rectification in the context of diacritical marks. The right of rectification allows individuals to have inaccurate personal data rectified, or completed if it is incomplete. In particular, this note examined the case of recording of names of individuals that contain diacritical marks (for example, fadas in the Irish language).

The DPC determined that there must be a balancing of the purpose for processing with the data subject's fundamental rights. It should be noted that this guidance is not binding and the DPC emphasised that any complaint would be judged on its individual merits.

The note can be accessed here.

(vii) European Commission publishes guidance on the interaction of free flow of non-personal data with the EU data protection rules

On 29 May 2019, the European Commission published guidance on the interaction of the free flow of non-personal data with the EU data protection rules. The Regulation on the free flow of non-personal data (Regulation (EU) 2018/1807) (the "**Regulation**") come into effect on 28 May 2019 in Member States.

This guidance aims to help users, in particular SMEs, understand the interaction between this new Regulation and the GDPR.

The Regulation prevents Member States from putting laws in place that unjustifiably force data to be held solely inside national territory. The guidance gives examples on how the Regulation and the GDPR should be applied when a business is processing datasets composed of both personal and non-personal data.

The press release can be accessed here.

(viii) EPDS summary opinion on the negotiating mandate of an EU-US agreement on cross-border access to electronic evidence published in Official Journal

On 3 June 2019, a summary of the opinion of the European Data Protection Supervisor ("**EDPS**") on the negotiating mandate of an EU-United States agreement on cross-border access to electronic evidence (the "**Opinion**") was published in the Official Journal of the EU. The Opinion arises as a result of the European Commission recently issuing a recommendation for a Council Decision authorising the opening of negotiations to conclude an international agreement with the United States on cross-border access to electronic evidence.

The Opinion aims at solving the issue of access to content and non-content data held by service providers in the EU and the United States. The EDPS made the following conclusions:

- The EDPS supports the efforts to identify innovative approaches to obtain cross-border access to electronic evidence quickly and effectively;
- The EDPS agrees that the envisaged agreement should be conditional on strong protection mechanisms for fundamental rights;
- The EDPS believes that further safeguards are needed to ensure that the final agreement meets the proportionality condition. The involvement of judicial authorities designated by the United States is recommended to review compliance of the orders with fundamental rights and raise grounds for refusal; and
- The EDPS also lists more specific recommendations including the definition and types of data covered by the envisaged agreement and the categories of data subjects concerned.

The Opinion of the EDPS can be accessed here.

(ix) EDPB holds eleventh plenary session

On 5 June 2019, the EDPB issued a press release detailing its eleventh plenary session held on 4 June 2019. During this session the following was discussed:

- **Guidelines on Codes of Conduct**: The EDPB adopted a final version of the Guidelines on Codes of Conduct. The aim of these guidelines is to provide interpretative assistance and practical guidance when applying Articles 40 and 41 GDPR which deal with the issuing and monitoring of codes of conduct. The EDPB intends for the guidelines to help clarify the rules and procedures involved in the submission, approval and publication of codes of conduct at both national and EU level;
- **Annex to the Guidelines on Certification**: The EDPB adopted a final version of annex 2 to the Guidelines on Certification which gives extra detail to certain sections in the

guidelines such as the obligation to keep records of the processing activities. The primary aim of these guidelines is to identify overarching criteria which may be relevant to all types of certification mechanisms issued in accordance with Articles. 42 and 43 GDPR which deal with certification and the relevant bodies. The annex contains a non-exhaustive list of criteria used to determine certification; and

- **Annex to the Guidelines on Accreditation**: The EDPB adopted a final version of the annex to the Guidelines on Accreditation. The aim of these guidelines is to assist Member States, supervisory authorities and national accreditation bodies to establish a harmonised and consistent baseline for the accreditation of certification bodies that issue certification in accordance with Article 43 GDPR. The annex provides guidance on the additional requirements for the accreditation of certification bodies to be established by the supervisory authorities.

The press release can be accessed here.

(x) Insurance Europe published an insight briefing 'GDPR one year on'

On 11 June 2019, Insurance Europe published an insight briefing 'EU General Data Protection Regulation: one year on' (the "**Briefing**") that examined whether GDPR has delivered on its aims of enhanced protection and greater harmonisation of data protection rules. It also considers whether GDPR is compatible with insurers' need to innovate for the benefit of customers.

The Briefing highlights the positive effects the new rights have had on consumers and how this helps insurers to build and maintain trustworthy relationships with consumers. However, the Briefing notes that GDPR has not fully achieved the level of harmonisation that was intended and, while GDPR has secured to a certain degree the same level of protection for consumers in all Member States, it is not always applied uniformly across Member States noting that the legal bases for processing health data for insurance vary between Member States and this creates legal uncertainty.

The Briefing also highlights that GDPR and the guidelines adopted by the EDPB introduce, in some instances, rules that are at odds with fast-evolving technology and that may slow the pace of digital innovation for insurers, for example, regarding the use of blockchain and automated processing. The European Commission and the EDPB will have a key role in ensuring that the application of GDPR and its guidelines allow insurers to continue operating cross border and guarantee the safe development and introduction of innovative products that can benefit consumers.

The European Commission is currently taking stock of stakeholders' experiences of implementing GDPR in order to prepare a report on the evaluation and review of the GDPR which is due by May 2020.

A copy of the Briefing can be accessed here.

(xi) DPC provides guidance on the transfer of personal data to third countries or international organisations

On 24 June 2019, the Data Protection Commission issued a note providing guidance on the transfer of personal data to third countries or international organisations (the "**Note**"). The Note focuses on providing summary guidance on the provisions of Chapter V of the GDPR which deals with the transfer of personal data to third countries or international organisations. The Note provides guidance on:

- Transfers on the basis of an adequacy decision;
- The types of agreements that will satisfy transfers subject to appropriate safeguards; and
- Derogations for specific situations.

The Note can be accessed here.

(xii) DPC provides guidance on data processing contracts

On 24 June 2019, the Data Protection Commission issued a note (the "**Note**") providing guidance on contracts governing the processing of personal data when a data processor is engaged to process personal data on the instruction of a data controller (a "**Data Processing Contract**"). The Note provides guidance on:

- The context of the obligation on controllers and processors to enter into a data processing contract under the GDPR;
- When data controllers and data processors need to enter into a data processing contract; and
- The minimum provisions which should be included in a data processing contract.

The Note can be accessed here.

Shareholder Rights Directive ("**SRD II**")

(i) Impact of the Second Shareholders Rights Directive on Life Assurers

The second Shareholders Rights Directive (Directive (EU)2017/828) ("**SRD II**") was due to be transposed into the national law of all EU member states by 10 June 2019. It is our understanding that the Irish government is still currently working on the draft legislation and there is no firm indication yet of when the finalised legislation will be published. SRD II imposes a number of obligations on:

(i) life insurers and IORPs ("**institutional investors**"); and

(ii) asset managers (which include MiFID firms providing portfolio management services to investors, AIFMs, UCITS management companies and UCITS SMICS) ("**asset managers**").

The obligations imposed on institutional investors – including life assurers who invest in shares in EEA companies admitted to listing on EEA regulated market - which are set to apply from June 10 2019, are outlined below.

The original Shareholders Rights Directive 2007/36/EC (Directive 2007/36/EC) ("**SRD I**") was introduced to enhance shareholders rights and to facilitate and encourage effective shareholder control in companies whose shares were admitted to trading on a regulated EEA market. Its focus was on imposing rules on such companies regarding the operation of general meetings, including as to information, proxy voting, electronic participation and related matters. The focus of SRD II is broader, as it imposes:

- requirements relating to the right of companies to identify their shareholders;

- requirements relating to intermediaries' obligations concerning communication with shareholders and the exercise of shareholder's rights where shareholders hold their shares through intermediaries;

- obligations on institutional investors (life insurers and IORPs) and on asset managers to publicly disclose their investment strategies, their shareholder engagement policy and the implementation thereof;

- obligations on institutional investors who use asset managers (either via discretionary mandate or through pooled funds) to publicly disclose certain key elements of their arrangement with the asset manager, including in particular how they incentivise the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, how they evaluate the asset manager's performance, including its remuneration; how they monitor portfolio turnover costs incurred by the asset manager and how they incentivise the asset manager to engage in the best medium to long- term interest of the institutional investor; and

- obligations on asset managers to provide information to the institutional investor which is sufficient to allow the institutional investor to assess whether the asset manager pursues a strategy that provides for efficient shareholder engagement. The required disclosure includes how the investment strategy and its implementation contribute to the medium to long-term performance of the assets of the institutional investor or of the fund.

Asset managers must also disclose to institutional investors the composition, turnover and turnover costs of their portfolio as well as their policy on securities lending. They must also inform the institutional investor whether and, if so, how the asset manager makes investment decisions on the basis of an evaluation of the medium to long-term performance

of the investee companies, including its non-financial performance. Proper information on conflicts of interest which have arisen in connection with the engagement should also be disclosed to the institutional investor by the asset manager and how it has dealt with such conflicts:

- obligations concerning proxy advisors;
- obligations relating to the remuneration of the directors of investee companies and the need for shareholders to have an effective say on the company's remuneration policy; and
- requirements relating to related party transactions.

This article only focuses on the obligations imposed on institutional investors.

An institutional investor is defined as follows:

> *"(i) an undertaking carrying out activities of life assurance within the meaning of points (a),(b) and (c) of Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council (***), and of reinsurance as defined in point (7) of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive;*
>
> *(ii) an institution for occupational retirement provision falling within the scope of Directive(EU) 2016/2341 of the European Parliament and of the Council (****) in accordance with Article 2 thereof, unless a Member State has chosen not to apply that Directive in whole or in parts to that institution in accordance with Article 5 of that Directive;*"

Asset managers are defined as: MiFID investment firms; AIFM (including any internally managed AIF but excluding small AIFM); UCITS management companies; and UCITS SMICS. Externally managed funds who have appointed a UCITS management company/AIFM will not constitute an "*asset manager*" under SRD II.

Life assurers are therefore subject to the institutional investor obligations set out below, and their asset managers must provide them with certain information.

The transparency obligations under SRD II apply to institutional investors and asset managers who invest in a "company" where:

(i) which has a registered office in an EEA member state; and

(ii) whose shares are admitted to trading on a regulated market situated or operating within an EEA member state.

This would appear to include UCITS or AIF type investment companies whose shares are listed on an EEA regulated market.

In scope institutional investors must put in place a shareholder engagement policy and make it publicly available on their website or alternatively must publish a statement setting out why they have chosen not to do so on their website. The shareholder engagement policy should address the following:

(a) how the institutional investor integrates shareholder engagement in its investment strategy; and

(b) how the institutional investor:

- monitors investee companies on relevant matters, including strategy, financial and non-financial performance, risk, capital structure, social and environmental impact and corporate governance;
- conducts dialogues with investee companies;
- exercises voting rights and other rights attached to shares;
- cooperates with other shareholders and other stakeholders of the investee companies; and
- manages actual and potential conflicts of interests in respect of their engagement.

Institutional investors may also want to consider setting down the criteria they apply for determining whether a vote is considered "*insignificant*" for the purposes of disclosing how voting rights were exercised.

SRD II does not provide any guidance on the circumstances in which it may be appropriate for an institutional investor to publish a statement explaining why it has chosen not to prepare a shareholder engagement policy, save for requiring that such explanation be "*clear and reasoned*". It would appear reasonable that institutional investors whose funds only invest to a very limited extent in EEA listed companies and/or EEA listed funds could avail of the flexibility to publish a statement stating that they do not consider it appropriate to prepare a shareholder engagement policy given the very limited exposure to such issuers.

Where institutional investors do decide to publish a shareholder engagement policy, they must also publish on an annual basis a statement on their website setting out how they have implemented their policy. This should include a general description of voting behaviour, an explanation of the most significant votes and the use of the services of proxy advisors. They must also disclose how they have voted on matters relating to in-scope companies (with the exception of votes which are considered insignificant due to the subject matter of the vote or the size of the holding in the company). This information must be available free of charge on the institutional investor's website.

Where an asset manager implements the engagement policy, including voting, on behalf of an institutional investor, the institutional investor must make a reference as to where such voting information has been published by the asset manager.

Institutional investors must also publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets.

Where an asset manager invests on behalf of an institutional investor, whether on a discretionary client-by-client basis or through a collective investment undertaking, the institutional investor must publicly disclose the following information regarding its arrangement with the asset manager:

- how the arrangement with the asset manager incentivises the asset manager to align its investment strategy and decisions with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities;

- how that arrangement incentivises the asset manager to make investment decisions based on assessments about medium to long-term financial and non-financial performance of the investee company and to engage with investee companies in order to improve their performance in the medium to long-term;

- how the method and time horizon of the evaluation of the asset manager's performance and the remuneration for asset management services are in line with the profile and duration of the liabilities of the institutional investor, in particular long-term liabilities, and take absolute long-term performance into account;

- how the institutional investor monitors portfolio turnover costs incurred by the asset manager and how it defines and monitors a targeted portfolio turnover or turnover range; and

- the duration of the arrangement with the asset manager.

Where the arrangement with the asset manager does not contain one or more of such elements, the institutional investor shall give a clear and reasoned explanation why this is the case. The above information must be available, free of charge, on the institutional investor's website and be updated annually unless there is no material change. Institutional investors regulated by Solvency II can include this information in their solvency and financial condition report.

Asset managers must disclose, on an annual basis, to the institutional investor whose assets they manage via a discretionary mandate or pooled fund how their investment strategy and the implementation thereof complies with that arrangement and contributes to the medium to long-term performance of the assets of the institutional investor or of the fund. Such disclosure must include reporting on:

- key material medium to long-term risks associated with the portfolio investments (including corporate governance matters);

- portfolio composition, turnover and turnover costs of their portfolio (turnover providing a good indicator as to whether the equities are held for a sufficient length of time to allow the asset manager to engage with the company in an effective way or whether they are being held for too long which may indicate inattention to risk management or a passive investment approach);

- whether the asset manager uses proxy advisors for the purposes of engagement activities. Its policy on securities lending and how it fulfilled its engagement activities (as sold shares under a securities lending arrangement must be recalled for engagement purposes, including voting at the general meeting);

- whether, and if so, how the asset manager makes investment decisions based on an evaluation of the medium to long-term performance of the investee company; and

- whether, and if so, how any conflicts of interest have arisen in connection with engagement activities and how it has dealt with same.

If the above information is already publicly available, the asset manager is not required to provide this information directly to its institutional investors.

Next Steps

- Review investment universe to determine whether you invest in EEA listed companies/EEA listed UCITS or AIF;

- Determine whether it is more appropriate to prepare a shareholder engagement policy or a statement explaining why it is not considered necessary to put in place a shareholder engagement policy;

- If relevant, consider the form that the shareholder engagement policy may take in light of any delegation arrangements in place with EU MiFID regulated investment firms or any existing group policy which addresses the area of stewardship.

- Gather the information on your arrangements with asset managers;

- Engage with your asset manager with regard to their obligations to provide certain information on engagement with investee companies to institutional investors; and

- Draft your disclosures and get them ready to publish once the Irish implementing regulations issue.

FCA Proposed Approach

It is interesting to note that in its Consultation Paper 19.7 on the proposals to improve shareholder engagement (and transpose SRD II into UK law), the FCA suggested that for an initial period after 10 June next, in-scope firms could publish a statement on its website by 10 June advising interested parties that it is in the process of developing an engagement policy or is considering whether to have one.

We would highlight that the Irish authorities have not issued anything similar.

Brexit

(i) Central Bank issues updated Brexit FAQ for consumers

During the period 1 April 2019 to 30 June 2019, the Central Bank issued an updated Brexit related FAQ document providing general information to consumers on the potential implications of Brexit. The Central Bank's FAQ for consumers discusses a variety of topics including:

- The Central Bank's work in preparation for Brexit;
- The impact of Brexit on financial services firms providing services to Irish customers;
- The Central Bank's proposed approach to issues concerning Irish consumers who have insurance policies with UK insurers or brokers;
- The effects of Brexit on Irish banks; and
- The effects of Brexit on the Irish economy.

A copy of the Central Bank's updated FAQ for consumers can be found here.

(ii) Central Bank issues updated Brexit FAQ for financial services firms

During the period 1 April 2019 to 30 June 2019, the Central Bank issued an updated Brexit related FAQ document providing general information to financial services firms considering relocating their operations from the UK to Ireland. The Central Bank's FAQ for financial services firms addresses a number of topics including:

- The Central Bank's approach to authorisation, its timelines and requirements;
- The impact of Brexit on existing Irish authorised firms;
- The Central Bank's proposed approach to issues concerning a firm's substance in Ireland; and

- The Central Bank's approach to outsourcing to the UK firms.

It also deals with other questions such as whether Ireland has a similar regime to the UK's Senior Managers Regime and Certification Regimes. In addition, the document addresses the Central Bank's views on centralised risk management in the UK or elsewhere and whether a firm's key employees can hold more than one position before the entity goes live.

The FAQ provides links to the Central Bank's relevant web-site application documentation as well as explanatory material on the authorisation processes for the different regulatory regimes.

A copy of the Central Bank's updated FAQ for financial services firms can be found here.

Sustainable Finance

(i) Council of the EU announces amendments to proposed regulation for a taxonomy framework to facilitate sustainable investment

On 4 April 2019, the Council of the EU announced that it had made a significant number of amendments to the proposed regulation for a framework to facilitate sustainable investment (the "**Proposed Regulation**") as adopted by the European Parliament on 28 March 2019.

The Proposed Regulation seeks to establish an EU-wide taxonomy with the objective of providing businesses and investors with uniform language to determine what degree economic activities can be considered environmentally-sustainable. The amendments change the focus of the Proposed Regulation from mostly focusing on preventing carbon exposures to putting in safeguards for other environmental objectives, such as biodiversity and energy efficiency.

On 24 June 2019, the Council of the EU published a progress report on the Proposed Regulation. The Council of the EU is continuing to work towards a final text as there is still some debate over what economic activities should be captured.

The Proposed Regulation can be accessed here and the progress report can be accessed here.

(ii) The European Parliament adopts proposed Regulation on disclosures relating to sustainable investments and sustainability risks

On 18 April 2019, the European Parliament published the provisional edition of the proposed regulation on disclosures relating to sustainable investments and sustainability risks (the "**Proposed Regulation**").

The Proposed Regulation aims to integrate environmental, social and governance ("**ESG**") considerations when taking decisions on investments in order to make investments more sustainable. Under the Proposed Regulation, UCITS, AIFMs, EuSEF managers and

EuVECA managers that receive a mandate from their clients or beneficiaries to take investment decisions on their behalf would integrate ESG into their internal processes and inform their clients in this respect.

The Council of the EU is due to consider the Proposed Regulation, if not objected then the Regulation will enter into force twenty days after it is published in the Official Journal of the EU.

The provisional edition of the text can be accessed here.

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