

Insurance Quarterly Legal and Regulatory Update

Period covered:
1 July 2018 – 30 September 2018

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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 1 July 2018 to 30 September 2018, EIOPA published technical information in relation to risk free interest rate (“**RFR**”) term structures, as follows:

- ▣ With reference to the end of June 2018 on 5 July 2018;
- ▣ With reference to the end of July 2018 on 6 August 2018; and
- ▣ With reference to the end of August 2018 on 6 September 2018;

The RFR’s are published to ensure the consistent calculation of technical provisions for (re)insurance obligations across the European Union. 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.

The monthly technical information on the relevant RFR’s can be accessed [here](#).

(ii) **EIOPA publishes updated Solvency II Q&A**

During the period 1 July 2018 to 30 September 2018, EIOPA published updated Questions and Answers (“**Q&As**”) on the following:

- ▣ Two Q&A’s were added to the Q&As on the Solvency II Directive, which can be found [here](#) and examples of such questions include:
 - *What are the requirements that shall be met by the transactions on derivatives to be considered as facilitating effective portfolio management by the undertaking? What are the types of transactions on derivatives that cannot be considered as facilitating effective portfolio management;*
- ▣ In total sixteen new Q&A’s were added to the Q&As on the Commission Delegated Regulation supplementing the Solvency II Directive, which can be found [here](#). Examples of such questions include:
 - *In which cases are material basis risks or other risks reflected in the calculation of the Solvency Capital Requirements (“**SCR**”) according to the Standard Formula (“**SF**”)?*

- *Could you please explain how Premiums Earned should be calculated in case of the merger of 2 undertakings (e.g. one company takes over all business of another company and continues to operate, another company ceases operations)?; and*
- *How should the territories and dependencies of EU/EEA/OECD countries be considered in regards to classification of:*
 - 1) *EU/EEA/OECD equities for equity risk?*
 - 2) *Member States government bonds for spread risk?*

(iii) EIOPA submits to the European Commission final draft ITS revising Solvency II Delegated Regulations containing ITS on reporting and disclosure

On 16 July 2018, the EIOPA Chair published a letter to the European Commission, regarding the final draft implementing technical standards (“ITS”) amending and correcting two Implementing Regulations under the Solvency II Directive that it has submitted to the European Commission.

The amendments and corrections under the ITS are designed to provide legal certainty and facilitate correct reporting as well as the disclosure process for insurers. The ITS are as follows:

- Draft Commission Implementing Regulation amending and correcting Commission Implementing Regulation (EU) 2015/2450 laying down ITS regarding the templates for the submission of information to the supervisory authorities in accordance with the Solvency II Directive, can be accessed [here](#); and
- Draft Commission Implementing Regulation amending and correcting Commission Implementing Regulation (EU) 2015/2452 laying down ITS regarding the procedures, formats and templates of the solvency and financial condition report in accordance with the Solvency II Directive, can be accessed [here](#).

The final draft ITS will now be considered by the European Commission with a view to endorsing same.

A copy of the letter can be accessed [here](#).

(iv) EIOPA's response to the Europeans Commission's public consultation on the European Union Framework for public reporting by companies

On 24 July 2018, EIOPA published a response to the European Commission's public consultation on the issue of public reporting by companies within the European Union (the "**Response**").

The Response, which focuses on insurance and reinsurance undertakings, discusses the relevance and scope of the Insurance Accounting Directive having regard to the requirements as outlined in the Solvency II Directive and the Insurance Accounting Standards Regulation.

The Response also looks at the relevance of the IFRS Insurance contracts and opines that the introduction of the IFRS Insurance Contracts and IFRS 9 Financial Instruments will bring further effectiveness and efficiency into this area.

A copy of the Response can be viewed [here](#).

(v) Guidance on Fit and Proper Notification Process for Insurance Holding Companies and Mixed Financial Holding Companies under Solvency II

On 25 July 2018, the Central Bank issued guidance regarding the correct fit and proper ("**F&P**") notification process for insurance holding companies and mixed financial holding companies under the Solvency II Regulation (the "**Guidance**").

It is hoped that the guidance will assist holding companies to comply with their obligations under Solvency II regarding the F&P notification process.

The Guidance examines the following:

- ▣ The F&P requirements of those who run the holding company;
- ▣ The timing, form, content and supervisory receipt of the F&P process;
- ▣ Procedure to bring about any changes in the process; and
- ▣ Steps to be taken by holding companies before notifying the Central Bank.

A copy of the Guidance can be found [here](#).

(vi) The Commission Implementing Regulation on technical information for calculation of technical provisions and basic own funds for Quarter 3 of 2018 reporting under Solvency II published in the Official Journal of the European Union

On 31 July 2018, the Commission Implementing Regulation (EU) 2018/1078, which lays down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June 2018 until 29 September 2018 under the Solvency II Directive was published in the Official Journal of the European Union.

The European Commission adopted the Commission Implementing Regulation on 30 July 2018 and it entered into force on 1 August 2018.

The Commission Implementing Regulation (EU) 2018/1078 can be accessed [here](#).

(vii) The Commission Delegated Regulation aligning Solvency II Delegated Regulation with the Securitisation Regulation published in the Official Journal of the European Union

On 10 September 2018, the Commission Delegated Regulation (EU) 2018/1221, which amends the Solvency II Delegated Regulation as regards to the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised (“**STS**”) securitisations held by insurance and reinsurance undertakings, was published in the Official Journal of the European Union.

The Delegated Regulation entered into force on 30 September 2018 and will apply from 1 January 2019.

The Commission Delegated Regulation (EU) 2018/1221 can be accessed [here](#).

International Association of Insurance Supervisors (“**IAIS**”)

(i) IAIS updates core curriculum to reflect current ICPs

On 19 July 2018, the IAIS announced it has updated its core curriculum to reflect the current insurance core principles (“**ICPs**”). The core curriculum provides a resource for insurance supervisors and other parties to better understand the underlying concepts, terminology and interactions that will support their successful implementation of IAIS supervisory material.

The IAIS encourages its members and national competent authorities to use the core curriculum in their education and training programmes. The IAIS expects that as supervisory practices and experiences evolve the core curriculum will continue to evolve.

The core curriculum can be accessed [here](#).

(ii) IAIS issues Final version of the joint SIF issues paper on climate change risks to the insurance sector

On 27 July 2018, the IAIS published the final version of its issues paper on climate change risks to the insurance sector, which was produced jointly with the Sustainable Insurance Forum (“SIF”). The SIF is a group of global supervisors and regulators in the insurance industry which work together on sustainability challenges facing the insurance sector.

The aim of the issues paper is to raise awareness among insurers and supervisors of the challenges presented by climate change and the current and potential supervisory approaches for addressing these risks. The issues paper provides an overview of:

- ▣ How climate change is affecting the insurance sector now and in the future and also providing examples of material risks and impacts across underwriting and investment activities;
- ▣ Identifies gaps and emerging areas that need to be resolved to allow for effective supervision;
- ▣ Explores potential and contemplated supervisory responses;
- ▣ Reviews observed practices in different jurisdictions; and
- ▣ The applicability of the ICPs to climate change.

The issues paper can be accessed [here](#).

On 8 August 2018, EIOPA released a statement announcing it recently became a member of the SIF and welcomed the IAIS and SIF paper on climate change risks, which highlights the physical, transition and liability risk related to climate change for the insurance sector, with the analyses of extreme weather events pointing to a growing trend of damages for both the insured and uninsured goods that leads to a significant protection gap.

A copy of the press release can be viewed [here](#).

(iii) IAIS seeks feedback on consultation on draft version of ComFrame

On 31 July 2018, the IAIS published a draft of the overall Common Framework for the Supervision of Internationally Active Insurance Groups (“ComFrame”) for public consultation. Comframe is a set of international supervisory requirements focusing on the effective and group wide supervision of Internationally Active Insurance Groups (the “IAIGs”)

The consultation includes a comparison table which provides information on the changes made in previous versions of particular parts of the ComFrame material, along with a Frequently Asked Questions on ComFrame. There was a public background session on

the consultation on 29 August 2018 and IAIS seek comments on the draft ComFrame which is open until 30 October 2018.

The draft overall ComFrame, cover note and comparison table can all be accessed [here](#).

(iv) IAIS issues consultation paper on version 2.0 of risk-based global insurance capital standard

On 31 July 2018, the IAIS published a consultation paper on version 2.0 of its risk-based global insurance capital standard (“ICS”). The purpose of this consultation is to seek feedback from stakeholders on the ICS ahead of the completion of ICS Version 2.0, which is scheduled for completion in late-2019 and before the monitoring period begins on 1 January 2020.

This consultation covers issues related to the ICS Version 2.0 monitoring period and the technical aspects of the design and calibration of ICS Version 2.0. Feedback from the consultation and the field testing exercise will be used to refine the ICS version 2.0 before the monitoring period starts.

The consultation is open until 30 October 2018 and can be accessed [here](#).

(v) IAIS published response to consultation on integrating ComFrame materials into ICPs 8, 15 and 16

On 31 July 2018, the IAIS published the responses it received from the public consultation made on its November 2017 consultation on the integration of ComFrame material into the ICPs 8, 15 and 16. The comments provided valuable input for further improvements and revisions and an interim update with a summary of the main comments stated that:

- ▣ The Overall ComFrame material integrated into ICPs 8, 15 and 16 reflects comments received during the November 2017 – January 2018 public consultation; and
- ▣ The Draft revised ICPs 8, 15 and 16 will be published for information purposes only following their endorsement by the Executive Committee in November 2018 and are expected to be adopted in 2019.

A copy of the summary of main comments received during the public consultation and their resolution can be accessed [here](#).

(vi) IAIS publishes its 2018 Quantitative Field Testing Package

On 31 July 2018, the IAIS published its '2018 Quantitative Field Testing Package' (the "**Field Testing Package**"), which is a key part of the ComFrame project developing a risk-based global ICS for IAIGs. The Field Testing Package includes:

- ▣ The Field Testing Technical Specifications;
- ▣ The Field Testing Questionnaire;
- ▣ The IAIS Base Yield Curve Methodology for ICS Version 2.0; and
- ▣ The Field Testing Template and Yield Curves.

The Field Testing Package can be accessed [here](#).

(vii) IAIS seeks feedback on consultation on issues paper on digital technology and consumer outcomes

On 1 August 2018, the IAIS sought feedback for a consultation on a draft issues paper on the increasing use of digital technology in insurance and its potential impact on consumer outcomes.

The issues paper focuses on product design, underwriting and marketing, sales and distribution aspects of the insurance value chain and explains that digitalisation is rapidly transforming insurance business with mobile devices, big data, machine learning, artificial intelligence, "chat-bots" and distributed ledger technology having an impact on insurance business models.

The consultation closed on 30 August 2018 and the issues paper can be accessed [here](#).

(viii) IAIS launch Peer Review Process Questionnaire for ICPs 1 and 2

On 7 September 2018, IAIS invited members to participate in the peer review process ("**PRP**") questionnaire for:

- ▣ ICP 1: Objectives, Powers and Responsibilities of the Supervisor; and
- ▣ ICP 2: Supervisor.

The IAIS conducts thematic assessments of members' observance of supervisory material and publishes the aggregated findings from these assessments. The findings provide a global and regional picture of implementation and provide a key component of the feedback between the IAIS' standard setting and implementation activities.

A copy of the PRP questionnaire can be accessed [here](#).

European Insurance and Occupational Pensions Authority (“EIOPA”)

(i) EIOPA issues press release announcing plans to conduct thematic review of the use of Big Data

On 6 July 2018, EIOPA published a press release announcing its plan to conduct an EU wide thematic review on the use of Big Data in the motor and health insurance sector.

The review will focus on the following:

- ▣ The potential benefits and risks of Big Data in the Industry and the potential need for further supervisory and regulatory actions to be introduced;
- ▣ Assessing new business models and data quality issues arising from Big Data, including implications for consumers; and
- ▣ Enhancing the understanding of new types and sources of data and data analytics tools used by insurance undertakings and intermediaries.

EIOPA intends to collect the data necessary to conduct the review through close co-operation with national competent authorities (“NCAs”). EIOPA has sent the following quantitative and qualitative questionnaires to NCAs, consumer associations and representative sample of insurance undertakings:

- ▣ A Consumers Association Survey;
- ▣ A National Competent Authority Survey; and
- ▣ An Insurance Industry survey.

EIOPA plans to publish the review's key findings in the first quarter of 2019. A link to the press release can be found [here](#).

(ii) Opinion on EIOPA’s Mediation Panel

On 6 July 2018, EIOPA published an opinion from its Mediation Panel regarding the determination of the correct insurance class for the insurance policy known as “Statutory Risk” in France.

The opinion sets out the panel’s support of the classification of a "statutory risk" insurance policy as class 1 (Accident) and class 2 (Sickness) for new authorisations, pursuant to the Solvency II Directive. The opinion further sets out that in circumstances where the insurance policy contains death or any other life coverage, an authorisation for life insurance activity is also required.

A copy of the opinion is available [here](#).

(iii) EIOPA publishes updated Q&A on Regulation of Commission Implementing Regulations laying down Implementing Technical Standards

During the period 1 July 2018 to 30 September 2018, EIOPA published updated Questions and Answers (“**Q&As**”) on the following:

- ▣ (EU) 2017-2359 information requirements and conduct of business rules applicable (last updated 16 July 2018);
- ▣ (EU) 2017-2358 product oversight and governance requirements for insurance (last updated 16 July 2018);
- ▣ EU No 2015-2011 lists of regional governments local authorities exposures (last updated 10 August 2018);
- ▣ (EU) No 2015-2452 procedures formats and templates of the solvency and financial condition report (last updated 31 August 2018);
- ▣ (EU) No 2015-2450 templates for the submission of information to the supervisory authorities (last updated 17 September 2018);
- ▣ (EU) No 2015-2451 with regard to internal models (last updated 17 September 2018);

The updated Q&As can be accessed [here](#).

(iv) EIOPA publishes updated Q&A on Regulation on Guidelines

During the period 1 July 2018 to 30 September 2018, EIOPA published updated Questions and Answers (“**Q&As**”) on the following:

- ▣ Guidelines on the use of internal models (last updated on 16 July 2018);
- ▣ Guidelines on treatment of market and counterparty risk exposures in the standard formula (last updated on 16 July 2018);
- ▣ Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes (last updated on 10 August 2018);
- ▣ Guidelines on reporting for financial stability purposes (last updated on 31 August 2018);
- ▣ Guidelines on classification of own funds (last updated on 31 August 2018); and
- ▣ Guidelines on valuation of technical provisions (last updated on 17 September 2018).

The updated Q&As can be accessed [here](#).

(v) EIOPA launches thematic review on travel insurance consumer protection issues

On 17 July 2018, EIOPA announced its plans to conduct a thematic review on the issue of travel insurance and consumer protection (the “**Review**”). The purpose of the Review is to examine the following:

- ▣ Current disadvantages for consumers purchasing travel insurance;
- ▣ The consequences for consumers and the industry as a whole of the introduction of new business models;
- ▣ How consumer rights might better be protected through supervisory regulation; and
- ▣ Guidance on the national implementation of the Insurance Distribution Directive.

EIOPA will conduct the thematic review in close co-operation with national competent authorities, who will identify and gather data from participating insurance companies. It intends to publish the key findings from its review in the first quarter of 2019.

A copy of the press release is available [here](#).

(vi) EIOPA examines causes of insurers' failures and near misses

On 17 July 2018, EIOPA published a report examining the main causes of failures in the insurance sector and examining the early indications which often precede such failures (the “**Report**”).

The Report is based on data gathered by EIOPA from 1999-2016 and is part of a series of reports which EIOPA will seek to publish in an attempt to improve supervisory awareness in the sector and prevent similar problems in the future. The Report includes the following findings:

- ▣ The economic downturn following the crash of the financial markets led to largescale failures in the Insurance industry;
- ▣ A large number of these failures were a consequence of poor corporate governance and/or an insufficiently skilled/experience workforce; and
- ▣ It was often the case that a deterioration in an undertaking's capital and/or a low solvency margin, inadequate management control and decreasing financial gain were early signs of failures, which would later occur.

A copy of the Report can be found [here](#).

(vii) EIOPA's Risk Dashboard for the first quarter 2018 shows broadly unchanged risk levels for the European Union insurance sector

On 24 July 2018, EIOPA published its Risk Dashboard for the first quarter of 2018. The purpose of the Risk Dashboard is to identify the primary weaknesses in the insurance sector by applying gathered data to certain risk indicators.

The updated Risk Dashboard for the first quarter of 2018 shows a general stability and consistency in the sector for that period.

The updated Risk Dashboard can be viewed [here](#).

(viii) EIOPA publishes discussion paper on resolution funding and national insurance guarantee schemes

On 30 July 2018, EIOPA published a discussion paper on gathering feedback from stakeholders on the analysis and to further develop its stance on two distinct but related topics resolution funding and national insurance guarantee schemes which are essential elements of the resolution of failing insurers.

▣ **Resolution Funding** - Refers to the means of financing the costs of resolving failing insurers, with three sources of resolution funding:

(i) The assets and liabilities (including own funds) of the failing insurer;

(ii) National resolution funds; and

(iii) National insurance guarantee schemes (or other policyholder protection schemes).

A small number of national supervisory authorities are empowered to restructure, limit or write down liabilities of insurers and only two Member States have a resolution fund.

▣ **National Insurance Guarantee Schemes** – The main function of such schemes is to compensate policyholders for their losses in the event of insurance insolvency, however some schemes have additional functions related to the resolution framework.

There is no harmonised approach to guarantee schemes in insurance with Member States adopting their own approach to policyholder protection schemes. These differences in coupled with differences in insolvency laws, in each Member State have led to a situation where policyholders across or even within the same Member States are not protected to the same extent in a liquidation.

EIOPA proposes a minimum degree of harmonisation and establishing a European network of national insurance guarantee schemes that are adequately funded and sufficiently harmonised.

The discussion paper is open until 26 October 2018 to feedback from stakeholders regarding this assessment and the potential design features of insurance guarantee schemes such as scope, funding and coverage.

A copy of the discussion paper can be accessed [here](#).

(ix) EIOPA publishes paper on other potential macroprudential tools and measures to enhance the current framework

On 31 July 2018, EIOPA published a paper on other potential macroprudential tools and measures to enhance the current Solvency II Directive framework.

The paper contains an initial assessment of other potential tools or measures to be included in the macroprudential framework for insurers and focuses on four classes of tools:

- ▣ The Capital and reserving-based tools;
- ▣ Liquidity-based tools;
- ▣ Exposure-based tools; and
- ▣ Pre-emptive planning tools.

A copy of the paper can be accessed [here](#).

(x) Technical Advices requested by European Commission regarding sustainable finance proposals

On 1 August 2018, a letter addressed to EIOPA and ESMA from the European Commission was published.

The letter requests the provision of technical advice from EIOPA and ESMA in relation to the proposals published by the European Commission in May 2018 on the subject of sustainable finance. Ultimately this will mean that level 2 measures adopted under directives including the Undertakings in Collective Transferable Securities Directive (“**UCITS**”), Alternative Investment Funds Managers Directive (“**AIFMD**”), Markets in Financial Instruments Directive II (“**MiFID II**”), Solvency II Directive and the Insurance Distribution Directive (“**IDD**”) will need to be amended.

EIOPA and ESMA are requested to provide such advice by 30 April 2019.

For further information please find a copy of the letter [here](#).

(xi) EIOPA publishes report on understanding cyber insurance

On 2 August 2018, EIOPA published a report on understanding cyber insurance. Cyber risk is a growing concern for institutions, individuals and financial markets. Some key findings of the report include:

- ▣ A clear need for a deeper understanding of cyber risk this relates to both the supply and demand side;
- ▣ Cyber insurance products are mainly focused on commercial businesses, however there is increasing interest in providing cyber insurance to individuals with the insurance industry expecting an increased demand for cyber insurance driven by new regulations, awareness and the frequency of cyber-attacks;
- ▣ The lack of data, specialised underwriters and pricing models being the key obstacles to the insurance industry properly estimating and pricing cyber risks; and
- ▣ The industry would welcome a moderate form of regulation to help address some of the challenges.

A copy of the report can be accessed [here](#).

(xii) EIOPA launches online survey on European Commission's call for advice on sustainable finance legislative proposals

On 13 September 2018, EIOPA launched an online survey and a webpage for the European Commission's call for advice on its May 2018 package of measures on sustainable finance legislative proposals.

EIOPA would like to involve market participants and stakeholders at an early stage seeking their input to build up a suitable "evidence base" for the thorough development of robust policy recommendations, which will be consulted on at a later stage and invites all interested parties to complete and submit the survey by close of business on 3 October 2018. The European Commission has invited EIOPA and ESMA to provide the final technical advice by 30 April 2019.

The online survey can be accessed [here](#), with the webpage being accessible [here](#).

(xiii) EIOPA publishes Single Programming Document 2019-2021 with Annual Work Programme 2019

On 27 September 2018, EIOPA released its "*EIOPA Single Programming Document 2019-2021 with Annual Work Programme 2019*".

This document sets out EIOPA's key priorities for the coming years and includes resource information for the years 2019 to 2021 as foreseen in two legislative proposals from the

Commission regarding the outcome of the review into the European Supervisory Authorities and the Pan-European Pension product.

EIOPA's primary goal is to create a common supervisory culture that allows businesses to flourish and be innovative while also protecting and benefiting the consumers.

The document also sets out other additions to EIOPA's forward looking strategy which include:

- ▣ Undertaking an assessment of the impact that digitalisation is having on the industry; and
- ▣ An assessment of the risk that climate change could have on financial stability.

The document can be accessed [here](#).

(xiv) EIOPA launch new webpage to identify registered insurance intermediaries

On 28 September 2018, EIOPA launched a new webpage to function as a databank for registered insurance intermediaries.

The webpage provides links to national registers in order to assist in determining whether an intermediary is registered.

The webpage is an interim approach taken by EIOPA in fulfilment of its requirements under Article 3(4) of the Insurance Distribution Directive. EIOPA is currently evaluating longer term solutions.

The webpage can be accessed [here](#).

Insurance Distribution Directive (“IDD”)

(i) EIOPA publishes first set of Q&As on POG and IBIPs requirements under the IDD

On 11 July 2018, EIOPA published two sets of Questions & Answers (“Q&As”) providing practical guidance on the application of the IDD and its implementing regulations:

- ▣ Q&As for requirements for the Product Oversight and Governance (“POG”) arrangements; and
- ▣ Q&As on the additional regulatory requirements for Insurance-based Investment Products (“IBIPs”).

The Q&As can be accessed [here](#).

(ii) Special Edition of the Central Banks ‘Intermediary Times’ Newsletter on the IDD

On 15 August 2018, the Central Bank published a Special Edition of its Intermediary Times Newsletter (the “**Newsletter**”) on the IDD. The Newsletter provides:

- ▣ A brief introduction to the IDD;
- ▣ The key requirements for insurance intermediaries under the European Union (Insurance Distribution) Regulations 2018 (the “**IDR**”) that was signed into law on 27 June 2018 and which came into effect on 1 October 2018;
- ▣ A number of changes that the IDR has introduced include:
 - (i) Change in the Definition of “Insurance Distribution”;
 - (ii) Change to the Investment Intermediaries Act, 1995 (“**IIA**”);
 - (iii) Ancillary Insurance Intermediaries; and
 - (iv) Website Comparison Operators;
- ▣ Professional Indemnity Insurance (“**PII**”);
- ▣ Remuneration;
- ▣ Cross-selling;
- ▣ Product Oversight and Governance;
- ▣ Additional Requirements for Insurance-Based Investment Products; and
- ▣ Tied Agents;

With the IDR raising the standards from the previous European Communities (Insurance Mediation) Regulations 2005, it is important for both insurance companies and insurance intermediaries to take the necessary steps to ensure compliance by the 1 October 2018 operational date.

A copy of the Newsletter and previous Intermediary Times newsletters can be accessed [here](#).

Pan-European Personal Pension Product (“PEPP”)

(i) ECON votes to adopt draft report on PEPP Regulation

On 3 September 2018, the European Parliament published a press release announcing that the Committee on Economic and Monetary Affairs (“ECON”) has voted to adopt the draft report on the European Commission's proposed Regulation for a pan-European personal pension product (“PEPP”).

The PEPP Regulation introduces a Basic PEPP as the default investment option that will provide a safe, cost-friendly long term retirement savings product, which should allow a saver to recoup the capital while at the same time ensuring that the overall costs and fees do not exceed 1% of the accumulated capital per annum.

On 7 September 2018, ECON published its final report on the European Commission's proposal for a Regulation on PEPP. The European Parliament will now consider the report in plenary.

A copy of the press release can be accessed [here](#) and the final report can be found [here](#).

Packaged Retail Insurance-based Investment Products (“PRIIPs”)

(i) Joint Committee of the ESAs publishes guidance on the PRIIPs KID

On 20 July 2018, the Joint Committee of the European Supervisory Authorities (“ESAs”) published further guidance on the Key Information Document (“KID”) requirements for Packaged Retail and Insurance-based Investment Products (“PRIIPs”).

The guidance seeks to promote common supervisory approaches and practices based on ongoing work to monitor the implementation of the KID. The guidance consists of:

- ▣ Updated Questions and Answers (“Q&As”), available [here](#); and
- ▣ Updates to the Flow diagrams for the risk and reward calculations (New calculation example for Category 3 PRIIPs stress performance scenario), available [here](#).

(ii) ESAs publish letter seeking Commission guidance on the scope of the PRIIPs Regulation

On 20 July 2018, the Joint Committee of the ESAs published a letter to Olivier Guersent, Directorate-General for Financial Stability, Financial Services and Capital Markets Union (“FISMA”). The letter, dated 19 July 2018, addresses the uncertainty as regards the scope of the PRIIPs Regulation and seeks Commission guidance in this respect.

The letter notes that concern has been raised by both market participants and national competent authorities (“NCAs”) that in the absence of guidance on the application of the

scope of the PRIIPs Regulation, product manufacturers are no longer making certain products available to retail investors in case they are deemed to fall within the scope of the PRIIPs Regulation. Furthermore, this uncertainty gives rise to the risk of divergent application of the PRIIPs Regulation by NCAs within the European Union.

The letter requests that the European Commission provide detailed public guidance as a matter of urgency on which types of products, and in particular bonds, fall within the scope of the PRIIPs Regulation.

A copy of the letter may be accessed [here](#).

(iii) European Parliament to raise no objections on PRIIPS RTS delegated regulation on the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents

On 23 August 2018, the European Parliament published its decision to raise no objections to the Commission delegated regulation supplementing the PRIIPs Regulation by providing regulatory technical standards in relation to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirements to provide such documents (“**Delegated Regulation**”).

This follows from the draft decision published by the European Parliament on 29 March 2017 to raise no objections to the Delegated Regulation.

A copy of the decision is available [here](#).

European Markets Infrastructure Regulation (“**EMIR**”)

(i) ESMA issues statement on clearing exemption for PSAs under EMIR Refit Regulation

On 3 July 2018, ESMA issued a statement providing clarity on the ‘clearing obligations for pension scheme arrangements’ in the context of the proposed EMIR Refit Regulation.

The statement clarifies that small and non-financial counterparties will enjoy simplified clearing rules while pension scheme arrangements (“**PSAs**”) will benefit from a temporary exemption from the mandatory clearing of derivatives, as was enjoyed by PSAs under the EMIR exemption which expired on 17 August 2018.

The statement provides that supervisory authorities are not to focus on PSAs between the expiration of the exemption under the EMIR Regulation and the extension of the exemption under the new proposed EMIR Refit Regulation, which remains to be finalised.

The EMIR Refit Regulation will be considered by the European Commission and the Council of the European in July 2018, while the European Parliament have already adopted the proposal as of 12 June 2018.

A copy of the communication on the ‘clearing obligations for pension scheme arrangements’ can be found [here](#) and the updated communication is available [here](#).

On 23 August 2018, the Central Bank issued a statement welcoming ESMA’s statement on the clearing and trading obligation for PSAs.

The Central Bank confirms that in accordance with the ESMA’s recommendation it will apply its risk-based supervisory powers in the day-to-day enforcement of applicable legislation, such as EMIR’s clearing obligation and MiFIR’s trading obligation in a proportionate manner.

A copy of the Central Bank’s statement can be accessed [here](#).

(ii) Decision to increase ECB’s regulatory powers over clearing systems adopted by European Parliament

On 4 July 2018, the minutes of the European Parliament’s plenary session where a report on a draft decision amending Article 22 of the Statute of the European System of Central Banks and of the European Central Bank (“**ECB**”) was published (the “**Decision**”).

The Decision provides the ECB with a greater role in the regulation of clearing systems for financial instruments including central counterparties (“**CCPs**”) by proposing that the ECB and national central banks of Eurozone Member States are granted the authority to monitor and assess risks posed by CCPs clearing substantial sums of euro-denominated transactions. The Decision also proposes that the ECB is empowered to adopt additional requirements for such CCPs where necessary.

Once the Council of the European Union has determined its negotiating position, then negotiations will commence between the two European institutions.

A copy of the plenary session minutes can be found [here](#) and the text of the amendments can be found [here](#).

(iii) Consultation on extending the temporary exemption from EMIR clearing obligations launched by ESMA

On 12 July 2018, ESMA published its consultation paper titled ‘Clearing obligation under the European Market Infrastructure Regulation (“**EMIR**”) No. 6’ (the “**Paper**”).

The Paper proposes extending the deferred date of application of the clearing obligations under EMIR for certain intragroup transactions where one of the counterparties is located in a third country until 21 December 2020. The existing exemptions to the clearing obligations apply where an equivalence decision in respect of the third country has not been made. These exemptions however expire on:

- ▣ 21 December 2018 for Commission Delegated Regulation (“**CDR**”) on interest rate swaps (“**IRS**”);
- ▣ 9 May 2019 for the CDR on credit default swaps; and
- ▣ 9 July 2019 for the second CDR on IRS.

To date the European Commission has made no equivalence decision on the legal, supervisory or enforcement framework of a third country under article 13(2) of EMIR regarding the clearing obligation prompting this consultation to extend the exemption timeframe.

All responses to the Paper were required to be submitted by 30 August 2018 and a copy of the Paper is available [here](#).

On 31 August 2018, ISDA and the Futures Industry Association (the “**FIA**”) published a joint response to ESMA’s consultation paper regarding Clearing Obligations under EMIR (the “**Response**”). The Response provides the following:

- ▣ ISDA and the FIA support the proposed extension of the temporary intragroup exemption;
- ▣ Regarding the proposed extension for the derogation of G4 IRS, ISDA and the FIA;
- ▣ Recommend a further extension of 2 years with an option to extend for a further year on a rolling basis;
- ▣ ISDA and the FIA are of the view that an equivalence test for a group entity from a non-EU jurisdiction is a pre-requisite to the application of the intragroup exemption is unnecessary.

A copy of the Response can be found [here](#).

On 27 September 2018, ESMA released a final report on the extension of the deferred date of application of the clearing obligation under EMIR.

The final report follows a public consultation on the amending draft regulatory technical standards (“**RTS**”) and presents a new set of RTS on the clearing obligation, relating to the treatment of certain intragroup transactions concluded with a third country.

The final report has been sent to the European Commission for endorsement.

The report can be accessed [here](#).

(iv) Q&A on EMIR data reporting updated by ESMA

During the period 1 July 2018 to 30 September 2018, ESMA published an updated version of its Question & Answers (“**Q&A**”) on the implementation of European Market Infrastructure Regulation. The revisions to the Q&As comprise:

- ▣ General Question (“**GQ**”) 1: An amendment to GQ1 has been inserted regarding the identification of counterparties to a derivative which confirms that a portfolio manager could be a counterparty to a derivative when entering into a derivative on its own account and own behalf;
- ▣ Trade Repositories (“**TR**”) Q&A 40: An amendment to Q&A 40 regarding Legal Entity Identifiers (“**LEI**”) to simplify the description of the existing process;
- ▣ Part IV of the Q&As (Reporting to TRs – Transaction scenarios): A new case for reporting derivatives to TRs has been added to explain the procedure for the reporting TRs in a transaction scenario involving portfolio management companies;
- ▣ CCPs Q&A 23: A new Q&A which clarifies access models at European CCPs, specifically models that typically aim at facilitating buy-side or small participant access to CCPs and allowing better capital treatment for clearing members; and
- ▣ TR Q&A 49: A new Q&A which explains how a reporting counterparty should report a foreign exchange (“**FX**”) swap derivative under Article 9 of EMIR. This Q&A applies from 26 September 2019.

For further information a copy of the Q&A on the implementation of EMIR can be accessed [here](#).

(v) FSB publishes self-assessment questionnaire for prospective UPIs

On 16 July 2018, a self-assessment questionnaire was published by the Financial Stability Board (“**FSB**”) to be used by prospective unique identifier (“**UPI**”) service providers that wish to be so designated by the FSB. Responses were requested to be submitted by 4 September 2018. The FSB also published an explanatory memorandum for this purpose.

The UPI identifies the product that is the subject of an over the counter (“**OTC**”) derivatives transaction and is designed to add transparency to the derivatives market. The FSB devised the self-assessment questionnaire with the assistance of the CPMI and IOSCO each of which have separately published technical guidance on the harmonization of UPIs in September 2017.

Responses are to consist of a self-governance plan setting out how key governance criteria would be met, which explains how it would meet the relevant governance functions and the technical guidance. By mid-2019, the FSB expects conclusions to have been reached in respect of the UPI governance arrangements.

For further information on the self-assessment questionnaire please find a copy of same [here](#) and the accompanying press release [here](#).

(vi) ISDA publish paper on Initial Margin for Non-Centrally Cleared Derivatives

On 19 July 2018, ISDA issued a paper on the topic of Initial Margin for Non-Centrally Cleared Derivatives (the “**Paper**”). The Paper looks at the requirements provided for in the ‘Final Framework on Margin Requirements for Non-Centrally Cleared Derivatives’, which was produced by the Basel Committee on Bank Supervision and International Organization of Securities Commissions.

The initial margin requirements will come into force under this framework by way of a phasing-in process up until 2020 and the Paper emphasises key issues which market participants must be aware of during the implementation phase.

A copy of the Paper can be found [here](#).

(vii) Amendments to Draft RTS of SFTR and EMIR proposed by Commission in Communication

On 27 July 2018, the European Commission published a communication announcing its intention to:

- ▣ Endorse the draft regulatory technical standards (“**RTS**”) and implementing technical standards (“**ITS**”) under the Regulation on reporting and transparency securities financing transactions 2015/2365 (“**SFTR**”) subject to certain amendments, and;
- ▣ To amend ITS under the European Infrastructure Regulation (“**EMIR**”) which concerns over the counter derivatives transactions, central counterparties and trade repositories.

The Communication provides that the Commission believes that a particular provision in the ITS and RTS of the SFTR which sets out details of securities financing transactions that market participants have to report to trade repositories needs to be amended. The Communication introduces a proposed amendment which clarifies that the Commission is responsible for the introduction of changes to the reporting requirements provided ESMA has presented a proposal, regarding same.

The proposed amendment also provides that all references to “endorsements by ESMA” shall be removed from the draft technical standards. Furthermore, the phrase “endorsements from ESMA” is also proposed to be removed from ITS for format and frequency of reports to trade repositories under EMIR under the Commission Implementing Regulation 2017/205.

The Annex to the Communication contains a letter which sets out that the Commission intends to endorse the draft RTS and ITS subject to the amendments stipulated in the

Communication and also requests that an amendment to the ITS under EMIR be submitted and sets out an explanation for such a request.

ESMA has a six-week period to re-submit the draft RTS and ITS containing the amendments proposed in the Communication, and the Commission may then adopt the amended standards.

For further information please find a copy of the Communication [here](#).

(viii) Central clearing interdependencies report by BCBS, CPMI, FSB and IOSCO published

On 9 August 2018, a second report titled 'Analysis of Central Clearing Interdependencies' and authored by the Basel Committee on Banking Supervision ("**BCBS**"), the CPMI, the FSB and IOSCO was published (the "**Report**").

The Report seeks to determine the interdependencies between central counterparties ("**CCPs**"), their clearing parties and other financial service providers. The Report notes that the findings are broadly consistent with the previous analyses which was published in the first report in July 2017. To ensure the comparisons are accurate the same twenty-six CCPs across fifteen jurisdictions were analysed in this second report. The results include:

- ▣ A small number of CCPs benefit from prefunded financial resources;
- ▣ A small number of entities have CCP exposures;
- ▣ A small number of entities provide the critical services required by CCPs; and
- ▣ Other critical services required by CPPs are provided by clearing members and clearing member affiliates and are shown to be able to maintain several types of relationships with multiple CCPs simultaneously.

The Report also sets out the differences in the results identified between the first report and the second report such as a decrease in client clearing activity.

The Report provides a greater insight into the areas that are most vulnerable to systemic risk and will be used by policy members in efforts to prevent them.

For further information a copy of the Report is available [here](#).

(ix) ESMA introduces changes to the validation rules for reporting submitted under Article 9 EMIR

On 9 August 2018, ESMA published an update to its validation rules for the reports submitted under the revised technical standards on reporting under Article 9 of EMIR. ESMA explains that it has updated the validation rules, with effect from 5 November 2018, relating to the following fields:

- ☐ Reporting timestamp;
- ☐ Reporting counterparty ID;
- ☐ ID of the other counterparty;
- ☐ Underlying identification; and
- ☐ Confirmation means.

A copy of the new validation rules and the accompanying press release can be accessed [here](#).

(x) List of CCPs authorized to operate in Europe published by ESMA

On 9 August 2018, ESMA published a list of the central counterparties (“**CCPs**”) that are authorized to offer services and activities in the European Union as required under Article 88(1) of EMIR.

The changes include the extension of authorization for the following CCPs:

- ☐ ICE Clear Netherlands B.V. – established in the Netherlands with the extension from 13 July 2018; and
- ☐ ICE Clear Europe Limited (ICE Clear Europe) – established in the United Kingdom with the extension from 31 July 2018.

A copy of the list can be accessed [here](#).

(xi) Update to Public Register for Clearing Obligations under EMIR

On 9 August 2018, ESMA updated the ‘*Public Register for the Clearing Obligations under EMIR*’ as required under Article 6 of the Regulation on over the counter derivatives, central counterparties and trade repositories (EMIR) to ensure market participants are informed of their clearing obligations.

A copy of the register is available [here](#).

(xii) CPMI and IOSCO publish consultative report on governance arrangements for OTC derivatives

On 16 August 2018, the CPMI and IOSCO published the consultative report titled 'Governance arrangements for critical over the counter ("**OTC**") derivatives data elements (other than UTI and UPI)". All responses to the consultation report were due by 27 September 2018.

Critical data elements ("**CDE**") are used along with UTI, UPI and Legal Identifier Codes ("**LEI**") for reporting OTC derivatives. The consultative report assesses CDEs against these other methods for reporting OTC derivatives and includes an examination of the following in relation to CDEs:

- ▣ Key criteria for its maintenance and governance;
- ▣ The areas of its governance and governance functions;
- ▣ The governance functions proposed to be allocated to different bodies;
- ▣ Maintenance functions and whether such functions could be executed by a maintenance body and analysing the relevant factors to identify such a body; and
- ▣ The approach of CPMI and IOSCO's regarding its implementation.

This consultative report is part of CPMI and IOSCO's effort to develop a global guidance on harmonising data elements reported to trade repositories.

For further information please find a copy of the consultative report [here](#).

(xiii) ESMA updates list of recognised third-country CCPs

On 22 August 2018, ESMA has updated its list of recognised third-country CCPs to offer services and activities in the European Union on OTC derivatives, central counterparties and trade repositories. Recognition of third-country CCPs is required under EMIR by ESMA in order to operate in the European Union.

A copy of the updated list can be accessed [here](#).

(xiv) EFAMA feedback on Incentives to Centrally Clear over-the-counter Derivatives

On 7 September 2018, EFAMA published its views on a consultation paper on over-the-counter ("**OTC**") Derivatives which was released by the Basel Committee on Banking Supervision, the Committee on Payments and Market Infrastructures, the Financial Stability Board and the International Organization of Securities Commissions on 7 August 2018 (the "**Committees**") (the "**Consultation Paper**").

In the Consultation Paper EFAMA clearly replies to the questions raised in the paper and also provides general remarks on mandatory central clearing.

The Consultation Paper can be found [here](#) and EFAMA's response to the Consultation Paper can be viewed [here](#).

(xv) Updated Frequently Asked Questions on EMIR

On 10 September 2018, the Central Bank updated its Frequently Asked Questions (“**FAQs**”) on EMIR. In this update, the Central Bank has answered Question 8 relating to legal entity identifier (“**LEI**”) codes and national authorised LEI providers.

The Central Bank has indicated that LEI Codes are available from LEI issuers accredited by the Global LEI Foundation (“**GLEIF**”). A list of all LEI Issuers is available via the GLEIF website. The Central Bank has also announced the introduction of Registration Agents to assist legal entities to access the network of LEI organisations.

The updated FAQs can be accessed [here](#) and a full list of LEI issuers can be accessed [here](#).

(xvi) ESMA releases new version of Q&A document on the implementation of EMIR

On 26 September 2018, ESMA released an update to its Q&A on the implementation of EMIR, answers to newly posed questions from the general public, market participants and competent authorities with respect to the practical application of EMIR.

The Q&A document is intended to promote common supervisory approaches and practices under the ESMA Regulation.

New in this edition of the Q&A document, ESMA has clarified the position on central counterparties establishing access models and explained how a reporting counterparty should report a foreign exchange swap derivative under EMIR with effect from September 2019.

This Q&A document will be edited as and when new questions are received in order to assist competent authorities under the Regulation to ensure that their actions are converging along the lines of the responses adopted by ESMA.

The Q&A document can be accessed [here](#).

Securitisation Regulation

(i) Responses to ESMA's consultation paper on repositories published

On 3 July 2018, ESMA received responses in relation to two of its consultation papers:

- ▣ The first consultation paper was titled '*ESMA's technical advice to the Commission on fees for securitisation Repositories under the Securitisation Regulation*' and responses received in relation to it are available [here](#).
- ▣ The responses to the second consultation paper titled '*Draft technical standards on the application for registration as a securitisation repository under the Securitisation Regulation*' are available [here](#).

(ii) EBA publishes final RTS on the homogeneity of the underlying exposures in securitisation and risk retention

On 31 July 2018, the European Banking Authority ("**EBA**") published its final draft RTS on defining the homogeneity of the underlying exposures in securitisation.

The homogeneity requirement aims to facilitate the assessment of underlying risks by investors and to enable them to perform robust due diligence. The RTS further specify which underlying exposures are deemed homogeneous. The RTS are applicable to both asset-backed commercial paper ("**ABCP**") and non-ABCP securitisations. The draft RTS are available [here](#).

The EBA also published final draft RTS on risk retention for securitisation transactions. The RTS aim to provide clarity on the requirements relating to risk retention, thus reducing the risk of moral hazard and aligning interests. The draft RTS are available [here](#).

Both sets of draft RTS have been submitted to the European Commission for adoption.

(iii) ESMA publishes final report on technical standards and disclosure requirements under the Securitisation Regulation

On 22 August 2018, the ESMA published a final report on technical standards on disclosure requirements under the Securitisation Regulation. The final report contains draft regulatory and implementing standards ("**RTS / ITS**") which require certain information to be reported about securitisations by the originator, sponsor or special purpose entity.

Under the draft RTS, the information required includes detail on;

- ▣ The underlying exposures in the securitisation;
- ▣ Information on investor reports;

- ☐ Inside information that must be made public in accordance with the Market Abuse Regulation and significant events affecting the transaction.

The report includes the format for making required information available and the draft technical standards provide reporting templates for different types of securitisation, including asset and non-asset backed commercial paper and different types of underlying exposure, including real estate, corporate, automobile, consumer, credit card and other leases.

The draft RTS/ITS has been submitted to the European Commission for endorsement.

A copy of the final report can be accessed [here](#).

Association of Mutual Insurers and Insurance Cooperatives in Europe (“AMICE”)

(i) **AMICE publishes position paper on the European Commission's proposal to amend the Motor Insurance Directive**

On 24 July 2018, AMICE published its position paper on the European Commission's proposal to amend the Motor Insurance Directive.

The position paper welcomes the European Commission's recognition that most elements of the Directive remain fit for purpose and certain amendments in specific areas would be needed. AMICE supports the overall objectives of the revision, which would better protect victims of motor vehicles, improve the rights of drivers to get similar treatment and combatting uninsured driving. The position paper deals with:

- ☐ The Scope of the Directive;
- ☐ Technological Developments – such as autonomous vehicles and electric bicycles and other types of new electric vehicles;
- ☐ Checks on insurance;
- ☐ Minimum amounts of cover;
- ☐ Insolvency of insurers or lack of cooperation;
- ☐ Claims history statements;
- ☐ Insurance of dispatched vehicles.

A copy of the position paper can be found [here](#) and the European Commission's proposal to amend the Motor Insurance Directive can be accessed [here](#).

European Commission

(i) **Consultation Paper published to review Commission's efforts to attain better regulation in the European Union**

On 17 July 2018, the European Commission published a consultation paper to assess whether the changes introduced and/or updated by the better regulation package of May 2015 which comprise of evaluations, impact assessments, stakeholder consultations, the Regulatory Scrutiny Board, the REFIT Platform and the REFIT Programme have enabled the European Commission to attain their goal under the Juncker administration of better regulation in the European Union.

The consultation is seeking views from interested parties on aspects of the better regulation framework that have worked well and those where improvements are required. The deadline for the submission of such contributions is 23 October 2018.

A copy of the consultation paper is available [here](#).

European Parliament

(i) **Study published on FinTech competition law issues**

On 10 July 2018, a study titled 'Competition issues in the Area of Financial Technology ("FinTech")' ("Study") was published by the European Parliament's Committee on Economic and Monetary Affairs ("ECON").

The Study notes that the FinTech industry is yet to have an established practice regarding how to deal with competition concerns due to its very young and evolving nature. The Study sets out what constitute FinTech services, the market, users' perception and the providers of FinTech services before delving into the potential competition issues which may arise. The Study acknowledges that while certain competition issues in the FinTech industry may be similar to those dealt with in other sectors there are certain competitive issues which may arise exclusively in FinTech which it lists as including:

- ▣ Banking – A lack of clear regulatory standards in banking platform markets;
- ▣ Payments, transfers and forex – This has achieved the most attention from competition authorities with measures to ensure access to critical assets are enhanced;
- ▣ Digital currencies - Competition between currencies and between exchanges;
- ▣ Denial of access to alternatives to traditional banking activities such as card processor systems is another potential anti-competitive issue; and
- ▣ Wealth and Asset management - Fee policies of service providers and blurring of the boundaries of different types of services.

A copy of the Study is available [here](#).

(ii) Draft Report on relationship between the European Union and third countries regarding financial services regulation and supervision and equivalence decisions adopted by ECON

On 11 July 2018, a press release reporting the adoption of a draft report on relationships between the European Union and third countries in relation to financial services regulation and supervision (“**Draft Report**”) was published by the European Parliament’s Committee on Economic and Monetary Affairs (“**ECON**”).

In the press release ECON calls for Members of the European Parliament (“**MEPs**”) to be able to scrutinise decisions taken by the European Commission to determine whether a third country’s rules are equivalent to the European Union’s. ECON opines that MEPs should be able to scrutinise the European Commission’s decisions and determine whether such decisions should be adopted, withdrawn or suspended. More transparency in the decision making would be required for MEPs to carry this out. Consequently, ECON calls for decisions on equivalence to be taken via a delegated act.

Other proposals put forward by ECON in the Draft Report first published in April 2018 which has been adopted include:

- ▣ Introducing a ‘structured horizontal framework’ to recognise and supervise third country’s deemed to have equivalent regimes;
- ▣ Giving the European Supervisory Authorities (“**ESAs**”) the authority to advise the European Commission;
- ▣ Empowering the ESAs to review developments in third countries;
- ▣ Requiring the European Commission to report to the European Parliament on an annual basis on all decisions;
- ▣ Emphasises that Brexit may have a significant impact on supervision and regulation of financial services.

On 11 September 2018, the European Parliament adopted the resolution on relationships between the European Union and third countries concerning financial services regulation and supervision.

In a provisional edition of the resolution, the European Parliament recommends that third countries keep the ESAs informed of any national regulatory developments through the European Union’s future equivalence framework and for the European Commission to provide a clear framework for the application of equivalence procedures introducing a standardised process for the determination of equivalence.

A copy of the press release can be found [here](#), the Draft Report [here](#) and the provisional edition of the resolution is accessible [here](#).

(iii) Draft Reports for ESFS Reforms published by ECON

On 12 July 2018, a draft report on the proposal for an Omnibus Directive amending Markets in Financial Instruments Directive II 2014/65 (“**MiFID II**”) and Solvency II was published by the European Parliament’s Economic and Monetary Affairs Committee.

The draft report contains a one page legislative resolution from the European Parliament which proposes to amend Article 1, paragraph 1., point 9 of the Omnibus Directive in relation to a section therein purporting to amend Article 93(1) of the MiFID II Directive by the deletion of the wording “Member States shall apply those measures from 3 January 2018” to “Member States shall apply the measures from [x]”. A copy of the draft report is available [here](#).

A draft report dated 10 July 2018 on the regulation amending the Regulation on EU macro-prudential oversight of the financial system and establishing a European Systemic Risk Board 1092/2010 (“**ESRB Regulation**”) (“**Amending Regulation**”) was also published by ECON. The draft report proposes eleven amendments to the Amending Regulation. A copy of this draft report is available [here](#).

Both the Omnibus Directive and the regulation amending the ESRB Regulation form part of the European Commission’s plan to reform the European System of Financial Supervision (“**ESFS**”).

(iv) Proposal for a Regulation on the law applicable to third party effects of assignments of claims

On 25 July 2018, the Council of the European Union published the European Economic and Social Committee’s (“**EESC’s**”) opinion on:

- ▣ A communication from the European Commission on the applicable law to the proprietary effects of transactions in securities (COM(2018) 89 final);
- ▣ A proposal for a directive and regulation on cross-border distribution of collective investment fund (COM(2018) 92 final – 2018/0041 (COD));
- ▣ A proposal for a regulation on the law applicable to the third party effects of assignments of claims (COM(2018) 96 final – 2018/0044 (COD));
- ▣ A proposal for a regulation on facilitating cross-border distribution of collective investment funds (COM(2018) 110 final – 2018/0045 (COD)) (the “**Opinion**”).

In the Opinion the EESC’s observations and recommendations include that the EESC:

- ▣ Supports all the systematic measures being taken to launch the key aspects of the Capital Markets Union by 2019;
- ▣ Agrees with the European Commission regarding the primary regulatory barriers to the cross-border distribution of investment funds which include marketing requirements, regulatory fees, notification procedures and administrative requirements at national level. The EESC however notes that there are other existing obstacles that have not been addressed in the proposals such as the harmonisation of tax rules;
- ▣ Is of the opinion that the primary cause of the existing obstacles to cross-border distribution of investment funds is not due to the inadequacy of the current regulations and directives but rather due to a lack of detailed guidance and instructions from ESMA and suggests that the new proposals should therefore be accompanied by detailed instructions from ESMA to ensure uniform implementation across the European Union;
- ▣ Is of the opinion that national provisions for charging structures should be clearly defined, unambiguous and consistent across the European Union with “national inventiveness” to be discouraged;
- ▣ Supports the aim of improving transparency in regulatory fees which will facilitate the cross-border distribution of funds and notes that the role of ESMA is crucial in this regard;
- ▣ Calls for strict rules to be introduced that are for systematic notification of marketing communications to prevent practices that fragment the single market; and
- ▣ Welcomes the introduction of an ESMA database however provides that additional notification requirements should only apply to national authorities and not to asset managers.

For further information please find a copy of the Opinion [here](#).

ESAs

(i) **The Joint Committee of ESA report no immediate action required in ‘automation in financial advice’**

On 5 September 2018, the Joint Committee of the European Supervisory Authorities (“**ESAs**”) (i.e. EBA, EIOPA and ESMA) published a report setting out key findings following its completion of a survey involving NCAs over the past two years.

This report confirms that the risks and benefits of ‘automation in financial advice’ identified in their original discussion paper and related report (“**ESA 2016**”) have not materialised. In light of this finding and considering the limited growth of the phenomenon, the ESA believes that no immediate action is necessary. The ESA’s analysis shows that:

- ▣ The overall number of firms and customers involved in automated financial advice still seems to be quite limited;
- ▣ The risks and benefits of ‘automation in financial advice’, which were originally identified by the ESAs in their original discussion paper and related report, have been largely confirmed by NCAs and seem to still be valid;
- ▣ In terms of emerging business models, it appears that automated services are being offered through partnerships, by established financial intermediaries, rather than by pure Fintech firms; and
- ▣ While some trends seem to have emerged (such as the use of Big Data, chatbots and extension to a broader range of products), there seems to have been no substantial change to the overall market since the publication of the ESA report on automation in financial advice in December 2016.

Further monitoring by the ESA is expected if and when the development of the market and market risks warrant it. Copies of the ESA’s report can be accessed below:

- ▣ The ESA’s 2018 report can be accessed [here](#); and
- ▣ The ESA’s 2016 report can be accessed [here](#).

(ii) **Joint Committee of the ESAs publishes report on the risks and vulnerabilities in the European Union financial system**

On 11 September 2018, the Joint Committee of the ESAs published a report on the risks and vulnerabilities in the European Union financial system. The report sets out that in light of ongoing risks and uncertainties, such as Brexit, that supervisory vigilance and co-operation across all sectors remains key.

The ESAs are therefore advising that the following policy actions be taken by financial institutions and NCAs in the European Union:

- ▣ **Stress tests exercises** - Should continue to be conducted and developed across all sectors, with rising interest rates and the potential for sudden risk premia reversals should be factored into the scenarios;
- ▣ **Risk appetite of all market participants** - Supervisory authorities need to pay attention to risk appetites of market participants, with banks addressing their stocks of non-performing loans and adapt their business models to sustainable profitability and for financial institutions to carefully manage their interest rate risk;
- ▣ **Contagion risks** - Macro and micro prudential authorities should contribute to addressing possible contagion risks; and
- ▣ **Brexit** - European Union financial institutions, their counterparties, investors and retail consumers should plan appropriate actions to prepare for the United Kingdom's withdrawal from the European Union in a timely manner and the risks associated with a no-deal scenario.

A copy of the full Joint Committee report can be found [here](#).

Insurance Europe

(i) **Insurance Europe publishes response to the European Commission's consultation on its proposed investEU programme**

On 13 August 2018, Insurance Europe published its response to the European Commission's consultation on its proposed investEU programme, which aims to bring together various European Union financial instruments and expand the Investment Plan for Europe. Comments in the response by Insurance Europe included:

- ▣ *"...the insurance industry continues to strongly support the objectives and tools of the Investment Plan for Europe and Insurance Europe believes that the InvestEU Programme proposal represents a further positive step building on these EU initiatives aimed at mobilising investment and contributing to the EU objectives related to competitiveness, sustainability and growth. However, more changes are needed with important first steps such as the Solvency II 2018 review and completed in the wider 2020 review"; and*
- ▣ *"...the insurance industry welcomes the InvestEU Programme, but will only be able to act at its full investment potential if the EC addresses both the scarce availability of suitable assets and the barriers to long-term investment created by Solvency II."*

The insurance industry remains keen to contribute to achieving the best outcomes that would support increased engagement and investment by insurers in long-term sustainable growth.

A copy of the European Commission's consultation on its proposed investEU programme can be found [here](#).

A copy of the Insurance Europe press release and its comments on the proposal for the establishment of the InvestEU programme can be found [here](#).

(ii) Insurance Europe publishes its response to the European Commission's proposal for a regulation on disclosures for sustainable investments and sustainability risks

On 27 August 2018, Insurance Europe published its response to a consultation on the European Commission's proposal for a regulation on disclosures for sustainable investments and sustainability risks.

The response welcomes the European Commission's proposal particularly that:

- ▣ The definition of sustainable investment is not limited to an environmental objective, but also includes social and governance components;
- ▣ The proposal improves availability of information on sustainability which could limit greenwashing of unsustainable investments; and
- ▣ The proposal includes a certain degree of flexibility and a materiality condition with respect to the assessment of sustainability risks, which will support efficiency and proportionality in implementation.

However, Insurance Europe has set out that in its view the proposal requires a number of changes to ensure that:

- ▣ The scope and definitions used are consistent with existing legislations, such as:
 - (i) Existing pre-contractual requirements in respect to the integration of sustainability in the advisory process for insurance-based investment products ("IBIPs"); and
 - (ii) Address conflicts with the Insurance Distribution Directive ("IDD") and Markets in Financial Instruments Directive ("MiFID II") regarding the protection of individual customer/investor and ensuring that remuneration policies do not provide incentives to specific investments or asset classes;
- ▣ Key concepts like "impact" and "sustainability risks" are clarified;
- ▣ The scope of the European Supervisory Authorities ("ESAs") ability to develop draft regulatory technical standards is clearly defined;

- ▣ An appropriate sequencing and timing for implementation is achieved whereby Level 1 is not applied prior to finalising Level 2; and
- ▣ Pre-contractual disclosures are balanced that help consumers make informed financial decisions while avoiding information duplication and information overload.

A copy of the press release can be found [here](#) and Insurance Europe's response can be accessed [here](#). A copy of the European Commission's proposal can be found [here](#).

(iii) Insurance Europe publishes its response to the European Commission's proposal for a regulation to establish a framework to facilitate sustainable investment

On 27 August 2018, Insurance Europe published its response to the European Commission's proposal for a regulation to establish a framework to facilitate sustainable investment.

The response welcomed the recommendations of the European Commission's proposal to make the European economy greener and more resilient in line with the Capital Markets Union project and believes that reaching an understanding of sustainability must be the key priority of the European Commission such as its proposal on the framework.

The response also welcomes the proposed unified classification system as it would provide a foundation to harmonise standards and labelling schemes for green financial products, while enhancing comparability and transparency at a national and European wide level. The framework considers the degree of sustainability at the level of economic activities and includes all economic sectors in its scope as this will allow various sustainable investment strategies and instruments to be included.

Investment perspective, sustainability and long-termism are strongly linked and investors have the potential to direct capital to greener activities, however investors faces several constraints, such as limited supply of sustainable investment assets and barriers to long-term investments that currently exist in the Solvency II regime that governs insurers.

A copy of the press release can be found [here](#) with the response accessible [here](#) and the European Commission's proposal for a regulation to establish a framework to facilitate sustainable investment can be found [here](#).

(iv) Insurance Europe publishes response to the Financial Stability Board consultation on the effects of financial regulatory reforms on infrastructure finance

On 29 August 2018, Insurance Europe published its response to a Financial Stability Board ("FSB") consultation on the effects of financial regulatory reforms on infrastructure finance. Insurance Europe welcomed the opportunity to comment on the FSB's consultation and its assessment of the unintended impacts of financial regulation, however Insurance Europe reiterated that this analysis should be done before a regulation is implemented and not just afterwards.

Insurance Europe notes that most of the analysis is focused on the banking sector and banking regulatory provisions however, the insurance sector is one of the largest investors in international capital markets and therefore Insurance Europe focused its comments on the sections of the FSB paper that are of direct relevance to the insurance sector in terms of insurers investing in long-term assets in general, and infrastructure in particular.

The Solvency II prudential framework for insurers requires them to hold capital to cover the risks that they are taking when making investments. While more tailored capital requirements for qualifying infrastructure assets in Solvency II were very much needed and were welcomed by the industry, it has to be noted that the necessary work for assessing whether a particular infrastructure asset is “qualifying” for the tailored prudential treatment is often unnecessarily extensive and resource-intensive. One way to address this challenge would be to review the qualifying criteria with the intentions of simplifying them and making them more operational.

In addition, a consistent accounting treatment for both assets and liabilities is key to appropriately measuring and supporting insurers’ long-term business model and investments. The industry welcomes the alignment between the effective date of International Financial Reporting Standard (“IFRS”) 9 (Financial instruments) and IFRS 17 (Insurance contracts) for insurers, which is mentioned in the consultation paper.

The limited supply of suitable infrastructure assets remains a key concern for the European insurance industry and a key barrier to more investment.

A copy of the press release can be accessed [here](#) with its response available [here](#).

(v) Insurance Europe issues response to EIOPA stakeholder survey on InsurTech

On 3 September 2018, Insurance Europe published its response to EIOPA’s stakeholder survey on InsurTech. The response feeds into its work on the mapping of supervisory approaches to InsurTech and identifying possible regulatory barriers to financial innovation. The response states that:

- Regulation and supervision should be activity-based to ensure that customers have the same level of protection whether they purchase insurance products from established insurers or from new market entrants. Rather than automatically introducing new regulation to address new market developments, new market entrants should be brought within existing regulation, with no need for any additional, specific regulation; and
- The importance of ensuring proper and consistent application of the principle of proportionality must be applied to rules enabling both established insurers and new market entrants to provide innovative products. This would avoid giving a competitive advantage to one type of company over another when the activity and risk are the same. It would also allow consumers, established insurers and new market entrants to benefit from the opportunities digitalisation can offer.

The response also provides EIOPA with examples of obstacles created both by existing European insurance legislation and non-insurance legislation and its recommendations of ways to address them. It also highlights that insurance legislation, rules and guidelines must be digital-friendly, technologically neutral and sufficiently future-proof to be fit for the digital age that encourages digital innovation.

A copy of the press release can be found [here](#) with the response accessible [here](#).

(vi) Insurance Europe response to IAIS paper on composition of boards

On 5 September 2018, Insurance Europe published its response to a consultation by the IAIS on its application paper on the composition and role of boards.

The response welcomed the application paper's objective and format which pairs with the provisions in the Insurance Core Principle ("ICP") 5 'the suitability of persons' and ICP 7 'corporate governance'.

The response states that some of the measures put forward in the IAIS paper are overly intrusive, which includes:

- ❑ The required participation of supervisors in board meetings;
- ❑ The requirement that the chair of the board conveys supervisory views; and
- ❑ The role of supervisors in determining the composition of a board and influencing the composition/rotation of the Board over time.

The IAIS paper should also remind supervisors of the need to take a proportionate approach when applying requirements to insurers.

A copy of the press release can be found [here](#) and the response can be found [here](#).

(vii) Insurance Europe issues position paper on the European Commission's proposal to revise the Motor Insurance Directive

On 18 September 2018, Insurance Europe published its position paper on the European Commission's proposal to revise the Motor Insurance Directive (the "MID"). Insurance Europe strongly supports the European Commission's view that:

- ❑ Autonomous vehicles fall within the scope of the MID and that the Directive is fit for such vehicles;
- ❑ To allow new technological developments, such as number-plate recognition to be used in the fight against uninsured driving; and

- The principle behind the proposed mechanism to guarantee fund interventions in the case of an insurer insolvency.

However, Insurance Europe comments that the European Commission's proposal fails to:

- Provide enough clarity on the scope of the MID, as accidents resulting from agricultural, construction, industrial, motor sports or fairground activities should not be included within the MID's scope; and
- The proposal for the standardisation of claims history statements are concerning as this would require significant insurer investment, without any benefits to consumers, as is shown in the European Commission's own impact assessment.

The position paper can be accessed [here](#) with the press release available [here](#).

Insurance Ireland

(i) Insurance Ireland publish its CEO Pulse Survey Report 2018

On 11 September 2018, Insurance Ireland published its CEO Pulse Survey Report 2018 'Addressing the Challenges for Future Success' (the "**Report**"). The survey was conducted in the summer 2018 and captures the views of insurance CEOs across all classes of insurance. The key observations from the survey were:

- **Confidence** - Ireland continues to be one of the highest performing economies in the European Union despite continued disruption to the industry with Irish insurers remaining positive in their outlook. Globally, 90% of insurance leaders are confident about their own organisation's revenue growth and 45% plan to hire more people;
- **Emerging technologies** - Digital technologies are creating much more value for businesses compared to previous years with data analytics being by far the emerging technology providing the single greatest opportunity and one in five saying InsurTech provides the greatest opportunity. Other emerging technologies providing opportunities are artificial intelligence, robotics, and blockchain;
- **Brexit** - A fifth (17%) of participants surveyed with United Kingdom operations reported that their company is considering relocating some or all of its operations to Ireland or this is under consideration, which is down from 26% last year;
- **Regulation** – Along with Brexit, regulation is expected to be one of the greatest business disruptors for the Irish insurance industry over the next five years; and
- **Key Government priorities** - To ensure Ireland remains competitive with tax, wages and business rates. Other priorities are addressing the cost of claims, availability of key skills, reducing the personal tax burden and improving accommodation and infrastructure capacity.

A copy of the full Report can be accessed [here](#).

Market Abuse Regulation (“MAR”)

(i) ESMA publishes three guideline compliance tables on MAR

On 25 September 2018, ESMA published three Market Abuse Regulation (“MAR”) guideline compliance tables on:

- ▣ Guidelines on delay in the disclosure of inside information (ESMA70-145-67), which is available [here](#);
- ▣ Guidelines on information relating to commodity derivatives markets or related spot markets for the purpose of the definition of inside information on commodity derivatives (ESMA70-145-153), which can be accessed [here](#); and
- ▣ Guidelines for persons receiving market soundings (ESMA70-145-66), which is available [here](#).

Transparency Directive

(i) Central Bank updates its Guidance on Transparency (Regulated Markets) Law

On 14 September 2018, the Central Bank issued a notice of its intentions to amend its Guidance on Transparency (Regulated Markets) Law.

The amendments will reflect modifications to the Central Bank’s document management and workflow system and are largely concerned with updating procedures for submitting standard documents to the Central Bank.

Given that the nature of the changes, public input is not being sought in this instance.

The schedule of changes can be accessed [here](#).

Prospectus Regulation

(i) **ESMA publishes Consultation Paper on Guidelines on risk factors under the Prospectus Regulation**

On 13 July 2018, ESMA published for consultation its draft guidelines on risk factors under the Prospectus Regulation.

The draft guidelines aim to encourage appropriate, focused and more streamlined disclosure of risk factors, in an easily analysable, concise and comprehensible form. For example, the draft guidelines propose that risk factors be limited to those risks which are material and specific to the issuer and its securities and which are corroborated by the content of the prospectus.

The draft guidelines are addressed to NCAs in order to assist them in their review of the specificity and materiality of risk factors and of the presentation of risk factors across categories depending on their nature.

ESMA will consider all feedback received by 5 October 2018. The consultation paper is available [here](#).

(ii) **ESMA publishes Consultation Paper on minimum information content for prospectus exemption**

On 13 July 2018, ESMA published a consultation paper setting out its draft technical advice on the minimum information required for a document that is made available to the public under the prospectus exemption.

In accordance with the Prospectus Regulation, issuers may offer/admit securities connected with a takeover, merger or division without publishing a prospectus, provided that an alternative document is made available to investors which describes the transaction and its impact on the issuer.

The draft technical advice sets out the minimum information content of such a document provided for the purpose of describing a takeover, merger or division.

ESMA will consider all feedback received by 5 October 2018. The consultation paper is available [here](#).

(iii) **ESMA issues draft RTS under the Prospectus Regulation**

On 17 July 2018, ESMA issued the final draft of its regulatory technical standards (“RTS”) specifying the implementation of certain provisions in the Prospectus Regulation. The RTS address the following areas:

- ▣ Key financial information to be disclosed by issuers for the prospectus summary;

- ▣ Data for classification of prospectuses and the practical arrangements to ensure that such data is machine readable;
- ▣ Advertisements disseminated to retail investors;
- ▣ Requirements to publish supplements to a prospectus;
- ▣ Publication of a prospectus; and
- ▣ Arrangements for the notification portal used for passporting prospectuses.

The draft RTS have been sent to the European Commission for endorsement, and are available [here](#).

(iv) Minister for Finance signs Prospectus Regulations 2018 into law

On 16 August 2018, the Prospectus Regulations 2018 S.I. No. 317 of 2018 (“**New Prospectus Regulations**”) were signed into law transposing the provisions of the Prospectus Regulation 2017/1129.

The New Prospectus Regulations updates the existing prospectus framework, which has become outdated as a result of several legislative and market changes, by repealing and replacing the existing framework. While some of the provisions in the New Prospectus Regulations took effect in July 2018, the remaining provisions will have an effective date from July 2019.

For further information please find a copy of the New Prospectus Regulations [here](#).

(v) Central Bank updates its Prospectus Handbook

On 14 September 2018, the Central Bank issued a notice of its intention to amend the procedure and related sections of its Prospectus Handbook.

The amendments were driven by and reflect recent modifications to the Central Bank’s document management and workflow system. Given that the nature of the changes, public input is not being sought in this instance. The changes are expected to take effect from 8 October 2018.

The schedule of changes can be accessed [here](#).

The Pensions Authority

(i) **The Pensions Authority issued a press release seeking submissions to the Interdepartmental pensions reform and taxation group public consultation**

On 12 July 2018, the Pensions Authority issued a press release seeking submissions to the Interdepartmental pensions reform and taxation group public consultation.

The Roadmap for Pensions Reform 2018 - 2023 sets out a comprehensive plan with specific actions and implementation timelines to overhaul the pension system with the Interdepartmental Pensions Reform and Taxation Group (“**IDPRTG**”) undertaking a review of a number of pensions policy matters to inform Government policy in these areas. The consultation paper has three main sections:

- ▣ Section A - Simplification & Reform;
- ▣ Section B - Costs; and
- ▣ Section C - Approved Retirement Funds (“**ARFs**”).

Under each section there is a short background note followed by a number of questions to the specific action.

The Roadmap for Pensions Reform 2018 – 2023 can be accessed [here](#) and the consultation paper can be accessed [here](#), with interested parties being invited to make submissions by 5pm on Friday 19 October 2018.

(ii) **Consultation Paper on Defined Contribution Master Trusts**

On 26 July 2018, the Pensions Authority issued a consultation paper on the regulation of defined contribution master trusts (the “**Consultation Paper**”). In the Consultation Paper the Pensions Authority expresses its view that the forthcoming IORP II Directive, which will apply from 13 January 2019, may lead to some employers and trustees to seek alternative arrangements for future pension provision and therefore this may lead to an increase in the number of master trusts.

The Consultation Paper discusses the following aspects of defined contribution master trusts:

- ▣ Risks particular to master trusts;
- ▣ The requirements applicable to the trustee of a master trust;
- ▣ The requirements of the business plan for a master trust;
- ▣ The capitalisation requirements for a master trust;

- ▣ Master trust risk assessment;
- ▣ Master trusts and conflicts of interest;
- ▣ Member/employer communications in a master trust;
- ▣ Importance of transparency in master trust charges;
- ▣ Marketing requirements of a master trust;
- ▣ Wind up procedures of a master trust; and
- ▣ Master trust requirements in terms of reporting to the pensions authority.

A copy of the Consultation Paper can be found [here](#).

(iii) Annual Report and Accounts published

On 31 July 2018, the Pension Authority published its Report and Accounts for 2017 (the “**Report**”), in accordance with Section 32(2) of the Pensions Act 1990. The Report outlines the make-up of the Pensions Authority and summarises its goals.

The Report goes on to provide the Pension Authority’s financial statements for the year ending 31 December 2017.

The Report further sets out the Pension Authority’s prosecution convictions for 2017 and a list of the membership of occupational pension schemes and Personal Retirement Savings Accounts.

A copy of the Report can be found [here](#).

(iv) New EIOPA and ECB reporting requirements

On 7 September 2018, the Pensions Authority issued a press release on the new reporting requirements for pension schemes introduced by EIOPA and the European Central Bank (“**ECB**”).

Large pension schemes will be required to report detailed data on assets, liabilities and members on a quarterly and annual basis with small schemes required to report summary data annually. The first reporting deadline for these new requirements will be in Quarter 4, 2019.

Further information on the EIOPA requirements is available [here](#) and information on the ECB requirements is available [here](#).

Department of Business, Enterprise and Innovation

(i) **Stakeholder Consultation seeking feedback on EU Single Market and InvestEU proposals**

On 9 August 2018 the Department of Business, Enterprise and Innovation (the “**Department**”) published a stakeholder consultation seeking feedback on the proposed EU Regulations on regarding the Single Market Programme and the InvestEU Programme (the “**Consultation**”).

The Single Market Programme intends to amalgamate a number of activities which were previously financed under different programmes into one single programme, with the hope being that this will enable better access to market, prevent unnecessary administrative burden and ultimately increase competitiveness.

The InvestEU Programme intends to adapt the way in which financial instruments are offered in the EU so as to enable more efficient and effective investment in EU projects. The feedback received from the Consultation will go towards developing a united national response to the proposal. The deadline for the submission of feedback is 12 September 2018.

A copy of the Consultation can be found [here](#).

(ii) **The Second and Final Report of the Personal Injuries Commission published**

On 18 September 2018, the Second and Final Report of the Personal Injuries Commission (“**PICs**”) was published, which amalgamates the second and third phases of the PIC’s scheduled work.

Independent consultants were engaged to carry out the data validation/verification of the data received and work with the PIC on the benchmarking exercise with their reports forming part of the Second and Final Report that deals with the benchmarking of Irish personal injury award levels and an examination of alternative compensation and resolution models in other jurisdictions. The Report also includes an update on the implementation of recommendations from the PIC’s First Report.

The PIC was one of the key recommendations from the Cost of Insurance Working Group (“**CIWG**”) Report on the Cost of Motor Insurance that was approved by the Irish Government and published in January 2017.

The CIWG recommended that a Personal Injuries Commission be established to examine a number of areas including to:

- ▣ Assess systems for handling personal injury claims particularly soft tissue claims, focussing on the causes, frequency, diagnosis, treatment and appropriate compensation level;

- ▣ Perform a high-level benchmarking exercise of international awards for personal injury claims with domestic ones as referred to in the Book of Quantum; and
- ▣ Analyse and report on alternative compensation and resolution models internationally focussing on common law systems while taking account of social welfare, healthcare and related factors associated with each jurisdiction.

The Second and Final Report recommends:

- ▣ The guidelines for appropriate general damages for various types of personal injury be reviewed at regular intervals, for example every three years and recommends a judicial recalibration of the existing Book of Quantum guidelines;
- ▣ The Judicial Council Bill 2017, establishing the Judicial Council, be progressed through the Houses of the Oireachtas as a matter of urgency;
- ▣ The Law Reform Commission has been requested to undertake a detailed analysis of the possibility of developing constitutionally sound legislation to cap the amount of damages which a court may award. The PIC recommends that this analysis is informed and assisted by the PIC's findings;
- ▣ A 'care not cash' system of compensation for soft tissue injuries is incompatible with European Union Law;
- ▣ Where an insurer deals with a claimant directly, no offer of a settlement or payment of a personal injury claim should be made unless a medical report has been obtained. The medical report should detail the nature, extent and prognosis of the injury;
- ▣ Claimants must give prompt notification of any potential injury claim so that a proper investigation of the accident circumstances may be undertaken by a defendant;
- ▣ Recognising exaggerated and fraudulent claims have an adverse impact on overall claims costs which in turn impact premium costs. This issue needs to be addressed by the development and deployment of suitable strategies, including technological strategies, to prevent and detect such activity and supports recommendation 26 of the CIWG Report on the Cost of Motor Insurance regarding the potential for further cooperation between the Insurance Sector and An Garda Síochaná in relation to insurance fraud investigation and the establishment of an Irish Garda Fraud Investigation Bureau along the lines of the Insurance Fraud Enforcement Department in the United Kingdom without further delay;
- ▣ Insurers need to step up their anti-fraud capacity through the recruitment of suitably trained personnel and the development of various technological means of combating fraud and report any suspected fraud to An Garda Síochaná so that they can be investigated and be the subject of criminal prosecutions;

- ▣ There is a lack of consistent and detailed industry-wide coding of injury data and recommends that insurers and other relevant parties consider adopting the same internationally recognised injury coding system. It is suggested that the appropriate system to be used is the World Health Organisation’s ICD-10 system. ICD is the international standard for reporting diseases and health conditions and the diagnostic classification standard for all clinical and research purposes; and
- ▣ The insurance industry should establish a national medical research study on the prevention and management of soft-tissue injuries which will provide a means of facilitating evidence based improvements in approaches to treatment, informing policy and delivering benefits to consumers, business and wider society.

A copy of the Second and Final Report of the Personal Injuries Commission can be accessed [here](#).

Department of Finance

(i) Press Release on continued development of Capital Markets Union

On 18 July 2018, the Department of Finance issued a press release containing the joint stance of Finance Ministers from Denmark, Finland, Latvia, Lithuania, Sweden, Estonia, the Netherlands and Ireland in which the importance of the continued growth of mobilisation of capital in Europe through the Capital Markets Union (“**CMU**”) is discussed, particularly in light of Brexit.

The press release outlines the following steps which should be taken:

- ▣ Focussing on the outstanding areas of the CMU Action plan which have the potential to have the most positive impact;
- ▣ The increased use of financial technologies in the financial services industry to enhance effective and efficient co-operations;
- ▣ Focusing on maintaining a well-functioning supervisory regime to ensure the consistent application of programmes across the European Union; and
- ▣ Encouraging national reforms which will develop local capital markets.

A copy of the press release can be found [here](#).

(ii) Publication of the Cost of Insurance Working Group's Sixth Quarterly Progress Update

On 30 August 2018, the Cost of Insurance Working Group published its Sixth Progress Update. This quarterly report is the second to provide details on the implementation of both the Report on the Cost of Employer and Public Liability Insurance and the Report on the Cost of Motor Insurance.

Progress has been made on a fully-functioning National Claims Information Database with the recently published Central Bank (National Claims Information Database) Bill 2018 (the “**Bill**”). The enactment of the Bill will provide a greater insight into the identification of settlement channel information, which in turn should lead to a greater consistency in award levels and a greater use of the Personal Injuries Assessment Board. This in turn should facilitate the creation of a more stable claims environment and a positive price of insurance paid by consumers.

The second and third Reports of the Personal Injuries Commission, which have merged into one substantive report, have been issued to the Cabinet for approval. The implementation of its key recommendations should impact upon the awarding of personal injury damages in the future.

Another area of progress has been the engagement and cooperation between An Garda Síochána and the insurance industry since the creation of the Fraud Roundtable. This has led to the agreement of a protocol between the Gardaí and insurers in relation to the reporting of suspected fraudulent personal injury claims and a commitment for the Garda National Economic Crime Bureau and Insurance Ireland's Anti-Fraud Forum to meet on a regular basis in order to discuss and act upon current and ongoing relevant issues in this area.

A copy of the press release can be found [here](#) and the Sixth Quarterly Progress Update can be found [here](#).

Central Bank of Ireland

(i) Regulated Disclosures Submission Process updated

On 26 July 2018, the Central Bank published an article on its website providing an update to 'Enhancements to the Regulated Disclosures Submission Process' initiated in February 2018 under the 4th Issue of the Markets Update.

Under the 4th Issue of the Markets Update, the Regulated Disclosures teams in the Central Bank were mandated to upgrade their documents and to replace them with "submission templates".

The update sets out the progress made to the "submission templates" and reports that:

- ▣ User testing is being conducted;
- ▣ Submission templates will be available for use;
- ▣ Prior to the templates becoming available for use, instructions will be issued 7 to 10 days in advance detailing how the templates should be completed; and
- ▣ Further updates will be provided on an ongoing basis.

For further information please find a copy of the market update [here](#) and a copy of the 4th Issue [here](#).

(ii) Central Bank publishes positive results in its Service Standards Report H1 2018

On 1 August 2018, the Central Bank published their 'Regulatory Service Standards Performance Report H1 2018' setting out the Central Bank's performance during the first half of 2018 regarding its compliance with standards and deadlines when authorising financial service providers and reviewing fitness and probity applications.

The Report provides statistics on the Central Bank's performance such as that 27 of the 29 standards which applied during the first half of 2018 were either met or exceeded.

In an accompanying statement in the press release the Deputy Governor Ed Sibley noted that courtesy of Brexit an unprecedented volume of applications have been made to the Central Bank, however by increasing the number of employees the Central Bank has managed to maintain a timely yet rigorous system when processing applications.

For further information please find a copy of the Report [here](#) and a copy of the accompanying press release is available [here](#).

(iii) The Central Bank Publish Consultation Paper 124

On 3 August 2018, the Central Bank published Consultation Paper number 124 (“**CP124**”), which is its second consultation paper on the topic of Non-Life Insurance Amendments to the Non-Life Insurance (Provisions of Information) (Renewal of Policy of Insurance) Regulations 2007.

The first paper published on this issue was CP 114, in which the Central Bank sought feedback from interested stakeholders on the recommendations which had been put forward by the Government’s Cost of Insurance Working Group, namely:

- ▣ Insurers should provide greater detail to consumers regarding the breakdown of their premium; and
- ▣ The renewal notification period should be extended from 10 working days to 15 working days.

CP 124 outlined the feedback received in response to CP 114 and also seeks to make additional proposals, namely:

- ▣ The cost of the premium and the cost of any mid-term adjustments should be set out separately; and
- ▣ An annualised premium figure should be provided following a mid-term adjustment.

The closing date for feedback on CP 124 was 14 September 2018 and a copy of the Consultation Paper can be viewed [here](#).

(iv) The Central Bank publishes Aggregate Insurance QRT

On 9 August 2018, the Central Bank published its Aggregate Insurance QRT for 2018 (the “**QRT**”).

The QRT is part of the Central Bank’s supervisory function under the Solvency II Directive and outlines data in relation to the reporting requirements provided thereunder. Using data received from quarterly and annual Solvency II quantitative reporting timetables the Central Bank outlines aggregate metrics and trends from which it is hoped that reporting companies can benefit.

A copy of the QRT can be viewed [here](#).

(v) The Central Bank imposes first fine for Solvency II breaches

On 16 August 2018, the Central Bank published a press release announcing that a fine of a cumulative sum of €1,540,000 had been imposed on two insurance firms – PartnerRe Ireland Insurance DAC (“**PRIID**”) which was fixed with a fine of €910,000, and Partner Reinsurance Europe SE (“**PRESE**”) which was fixed with a fine of €630,000.

These fines are the first ever to be imposed by the Central Bank pursuant to breaches of Solvency II, and more specifically breaches of the Solvency II Regulations, the Solvency II Delegated Regulations and the Corporate Governance Requirements. The breaches included:

- ▣ Both companies over stating their solvency position, despite being alerted to their questionable calculation methods by external advisors – the Central Bank noted that it is “unacceptable” for regulated firms to “knowingly submit potentially unreliable information”;
- ▣ Both firms failed to provide their boards and risk committees with important information on uncertainties raised by accounting and actuarial firms of their treatment of particular reinsurance arrangements; and
- ▣ PRIID was also found to have breached its own policy statement on ‘Risk Appetite’.

For further information please find a copy of the press release [here](#).

(vi) The Central Bank’s Plans for Individual Accountability

The Central Bank wants more powers to make senior management in regulated entities accountable for their actions. It has set out these requests in different fora, including in its response to a Law Reform Commission paper which it published late last year (see previous article on the topic [here](#)) and in its recent report to the Minister of Finance on behaviour and culture in Irish retail banks (July 2018).

On 27 August 2018, the Central Bank’s Director of Enforcement and Anti-Money Laundering has again set out its proposals for reform in the area.

What are the Central Bank’s proposals?

The Central Bank wants an Individual Accountability Framework to be introduced which consists of the following:

- ▣ **Conduct Standards** – the Central Bank recommends that three sets of enforceable Conduct Standards should be introduced:
 - (i) *Common Conduct Standards For All Staff In Regulated Entities* – These would require all staff in regulated entities to adhere to certain standards, including

requirements to act honestly, ethically and with integrity and to be open and cooperative with the Central Bank/other regulators and to deal with them in good faith;

- (ii) *Additional Conduct Standards For Senior Management* – Additional conduct standards would be imposed on those performing pre-approval controlled functions (“PCFs”) or who are captured by the Senior Executive Accountability Regime (see below), such as requiring them to take all reasonable steps to ensure that where they delegate a task it is delegated to an appropriate person and they oversee its delegation. The Standards would also, for example, require individuals in scope to take all reasonable steps to ensure that the business of the relevant firm is controlled effectively; and
- (iii) *The Standards for Businesses* – These would apply to all firms regardless of the sector in which they operate and would include requirements around communications with customers, customers’ interests and financial prudence, among others matters.

▣ **The Senior Executive Accountability Regime** (the “SEAR”) – it is proposed that a SEAR would be applied initially to a sub-set of regulated entities (credit institutions, insurance undertakings, investment firms and their third country branches, with specified exemptions in each sector) where certain “*prescribed responsibilities*” set out by the Central Bank would be assigned to individuals performing Senior Executive Functions (“SEFs”). The SEFs would include board members, executives reporting directly to the board and heads of critical business areas. Each SEF would have a documented “Statement of Responsibilities” clearly setting out his/her role and area of responsibility. The Central Bank notes that this would make it harder for individuals to argue that the responsibility for wrongdoing lay elsewhere.

The Central Bank also recommends that each in-scope firm would be required to produce a “Responsibility Map” documenting key management and government arrangements in a clear single source of reference.

▣ **Enhancements to the fitness and probity regime** – the Central Bank would like firms to be required to certify annually that all individuals performing controlled functions are fit and proper to perform their functions. The Central Bank has said it would also like the power to publish details of where it has refused to approve an individual’s appointment to a PCF role and the power to investigate those who performed controlled functions in the past.

Other

Separately, the Central Bank has said that it would also like the legislation underpinning its Administrative Sanctions Procedure (“ASP”) to be changed so it can pursue individuals directly in an enforcement action, without needing to show that the individual “participated” in some wrongdoing by the firm.

What does this mean?

The Central Bank cannot implement its proposals without legislative change and has recommended the introduction of such changes to the Minister for Finance. It has also acknowledged that even if it is given these powers, it would “*be a multi-year project*” before the Individual Accountability Framework would become operational, as it would need to be underpinned by policies, procedures and supporting guidance and the Central Bank would also consult with stakeholders.

However, if the proposals are introduced they will result in more exposure for senior management in regulated entities. Firstly, their areas of responsibility will be explicitly spelt out. Hopefully this will benefit everyone in terms of clarity but if the Central Bank deems that there are issues which fall within an individual’s remit, that person could find themselves personally on the hook for any failures. Senior managers will therefore want to ensure that they are receiving adequate support from their firm to discharge the functions which have been assigned to them.

In the future, the Central Bank expects to see more settlements with individuals under the ASP, as the Central Bank would be able to proceed against personnel directly instead of being required to tie their actions into a regulatory breach by the firm. To date only a small proportion of settlements have been with individuals, possibly due to evidential difficulties in bringing such cases. Lastly, where an individual’s application to the Central Bank for approval to perform a PCF is refused, details of the refusal could potentially be published on the Central Bank’s website, having negative consequences for the person’s reputation.

A copy of the proposals from the 27 August 2018 can be accessed [here](#).

(vii) The Central Bank releases its System Risk Pack August 2018

On 31 August 2018, the Central Bank released a System Risk Pack (“**SRP**”) as a means of providing macro-prudential analysis to policy makers in the Irish financial sector. Each edition of the bi-annual publication draws from a broad range of data available to the Central Bank and presents indicators and visualisation methods for monitoring the financial system.

The August 2018 SRP can be accessed [here](#).

(viii) The Central Bank Governor sets our Macro-Financial Risk Management Agenda

On 5 September 2018, the Central Bank published a speech by Governor Philip R Lane’s on Macro-Financial Risk Management delivered at the annual economics roundtable.

The Governor set out the macro-financial risk management agenda in light of the country’s current favourable economic conditions. In addition to tackling legacy issues, such as the excessive stock of non-performing loans (“**NPL**”), the Governor highlighted the regulatory policies and national fiscal policies that the Central Bank are pursuing as a pro-active step to better prepare for future potential downturns.

The Governor's speech can be accessed [here](#).

(ix) Director of Enforcement and Anti-Money Laundering sets out supervision and enforcement approach and priorities in speech

On 13 September 2018, the Director of Enforcement and Anti-Money Laundering for the Central Bank, Seana Cunningham (the “**Director**”), delivered a speech entitled ‘*Enforcement and AML – our approach and priorities*’. In her speech, the Director set out the Central Bank's approach and future priorities with respect to Anti-Money Laundering (“**AML**”) and Countering the Financing of Terrorism (“**CFT**”) supervision and enforcement.

The Director described the approach to AML/CFT supervision adopted by the Central Bank as a graduated risk based approach. At present, different levels of supervision are applied to firms based on the level of existing and emerging risks identified in each of the different sectors and firms. The Central Bank anticipates that their approach will continue to evolve in line with environmental demands.

Four priorities for the Central Bank in the area of supervision, include:

- ▣ Publishing AML/CFT guidelines to the Bill currently before the Oireachtas to transpose the Fourth European Union AML Directive;
- ▣ Promoting a top-down compliance culture;
- ▣ Continued engagement with industry on AML/CFT related technological innovations through the recently established unit the Innovation Hub; and
- ▣ Pursuing the introduction of a Senior Executive Accountability Regime to require firms clearly delineate the responsibility and decision making authority of senior personnel.

The Director also highlighted the Central Bank's three tiered approach to AML/CFT enforcement which comprises of an administrative sanctions regime, a fitness and probity regime and a protected disclosure regime.

Since 2006, €64 million euros have been imposed in administrative sanctions against firms that have committed regulatory breaches. The Director urged firms to pay attention to the statements on these settlements which will assist firms with future compliance. The Central Bank anticipates that future enforcement investigations will explore all possible angles of non-compliance and misconduct, including individual culpability.

The Central Bank remains committed to ensuring that individuals with questionable probity and fitness profiles are prevented from taking up or are removed from holding senior roles in the financial sector. Since the Central Bank's Fitness and Probity Regime came into effect, 57 applications have already been withdrawn by firms seeking to fill senior roles where the Central Bank has raised the prospect of a refusal.

Finally, the Central Bank will continue to focus on the protected disclosure regime which allows members of the public or staff of regulated firms to provide information directly to the Central Bank where regulatory wrongdoing is suspected. In the period June 2017 to June 2018, 113 protected disclosures were filed. The Central Bank expects that protected disclosure will continue to be an important component in their enforcement arsenal.

The Director's full speech can be accessed [here](#).

(x) Central Bank gives broad support to objectives of Private Members Bill on Consumer Insurance Contracts

On 13 September 2018, the Central Bank published an opinion on the Consumer Insurance Contracts Bill 2017 (the "**Bill**") in a letter to the Finance Committee. The Bill which is currently at Committee stage in the Oireachtas seeks to enhance the rights of consumers, clarify the duties of the parties involved and streamline the claims process.

The Central Bank has given its broad support to the Bill's overall objectives but has called on the Finance Committee to take the following steps in advancing the Bill:

- ▣ Conduct a cost benefit analysis on the measures proposed in the Bill based on the experiences of other jurisdictions with similar legislation; and
- ▣ Ascertain the views of the Financial Services and Pensions Ombudsman ("**FSPO**") and the Personal Injuries Assessment Board ("**PIAB**").

The Central Bank expressed reservation about some measures in the Bill which have the potential to overlap or are inconsistent with existing domestic and European Union legislation in this area and has proposed drafting and technical amendments to the Bill in the Annex to their opinion.

The full details of the opinion can be accessed [here](#).

(xi) The Central Bank publishes 2018 deadlines for fund applications

On 19 September 2018, the Central Bank published its 2018 deadlines for receipt of fund applications from Irish funds seeking a pre-Christmas or pre-year-end effective date.

The schedule of deadlines can be accessed [here](#) and for further information on the topic please read the Dillon Eustace [here](#).

(xii) The Central Bank issues Guidance for retail intermediaries on completing the "Application Form for Authorisation as a Retail Intermediary"

On 26 September 2018, the Central Bank issued a guidance note on completing and application for authorisation as a retail intermediary. The guidance note is directed to firms seeking authorisation as a retail intermediary to act as:

- ☐ An investment intermediary within the meaning of Section 26 of the Investment Intermediaries Act 1995;
- ☐ An insurance intermediary, ancillary insurance intermediary or reinsurance intermediary within the meaning of Regulation 2 of the European Union (Insurance Distribution) Regulations 2018;
- ☐ A mortgage credit intermediary within the meaning of Regulation 4 of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016; and/or
- ☐ A mortgage intermediary within the meaning of Section 2 of the Consumer and Credit Act 1995.

The guidance note can be accessed [here](#).

(xiii) **Central Bank publishes September Insurance Quarterly**

For the period 1 July 2018 to 30 September 2018, the Central Bank issued its Insurance Quarterly publication (the “**Publication**”). In this edition, the Director of Insurance focuses on cyber-attacks which is reportedly one of the top-five evolving risks identified by the World Economic Forum’s 2018 Global Risks Report.

The Director said that an increased awareness of cyber risk is essential for insurance undertakings in light of the option insurance providers have in providing insurance products to mitigate against potential losses arising from cyber-attacks. The Publication also contains information on the following topics:

- ☐ Risk Culture Model ‘*Decision Making*’;
- ☐ Solvency II Reporting;
- ☐ Industry Readiness for the Implementation of the new standard for insurance contracts;
- ☐ Fit and Proper Notification Process guidance;
- ☐ Industry participation in European Insurance and Occupational Pension’s Authority’s Survey on Sustainable Finance;
- ☐ Disclosure of information to customers on the impact of Brexit;

The Publication can be accessed [here](#).

Personal Injuries Assessment Board (Amendment) Bill 2018

(i) Personal Injuries Assessment Board (Amendment) Bill 2018 published in Ireland

On 5 July 2018, the text of the Personal Injuries Assessment Board (Amendment) Bill 2018 was published in Ireland (the “**Bill**”). The aim of the Bill is to amend and extend certain provisions of the Personal Injuries Assessment Board Acts 2003 and 2007.

The Bill sets out the ability of the court to take into consideration the failure of a claimant to furnish additional information to the Personal Injuries Assessment Board as required under Section 23 of the 2003 Act or where the Claimant refuses to attend a medical examination under Section 24 of the 2003 Act.

The Bill also requires that Personal Injuries Assessment Board review and/or update the book of quantum at least every 3 years. As of 30 September 2018, the Bill is before Dáil Éireann at Second Stage.

A copy of the Bill, as initiated, is available [here](#).

Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018

(i) Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018

On 13 August 2018, the text of the Personal Injuries Assessment Board (Amendment) (No. 2) Bill 2018 was published in Ireland (the “**Bill**”). The purpose of the Bill is to strengthen the Personal Injuries Assessment Board (“**PIAB**”) in order to ensure greater compliance with the PIAB process and encourage more claims to be settled through the PIAB model, mainly in terms of operational issues.

The Bill addresses the recommendations that the Cost of Insurance Working Group Report on the Cost of Motor Insurance published in January 2017. The Bill also facilitates the greater use of technology by PIAB and the main provisions include:

- ☐ Clarifying the documents required from a claimant before a formal notice seeking consent to an assessment will be issued to a respondent;
- ☐ Ensuring early notification of incomplete claims to respondents;
- ☐ Providing additional categories of claims where the Board has discretion not to proceed with an assessment;
- ☐ Ensuring consistency in the application of limitation periods within the process;
- ☐ Providing the PIAB with the power to obtain information from any person or body to fulfil its functions;

- ▣ Changes to the composition of the Board membership and tenure of members in line with Government policy that more Board positions are filled through publicjobs.ie and the Public Appointments Service process;
- ▣ Providing for different levels of fees to be levied by the PIAB on claimants and respondents for the submission of electronic and paper formats of documents;
- ▣ Providing that the Book of Quantum will be published every three years;
- ▣ Addressing issues relating to non-cooperation, such as non-attendance at medicals and failure to provide details of special damages or loss of earnings, and
- ▣ Enabling the PIAB to serve documents electronically or through a document exchange mail service, thus modernising and expediting the administrative process.

A copy of the Bill, its related explanatory memo and its regulatory impact analysis can be accessed [here](#). The Bill has completed Dáil Eireann First Stage and will now be debated at the Dáil Eireann Second Stage.

Civil Liability (Amendment) Act 2017

(i) **Minister signs Commence orders for Parts 1, 2 and 3 of Civil Liability (Amendment) Act 2017**

On 26 September 2018, the Commencement Order was signed bringing Parts 1, 2 and 3 of the Civil Liability (Amendment) Act 2017 (the “**Act**”) into operation with effect from 1 October 2018.

The primary purpose of Parts 1, 2 and 3 of the Act is to empower the courts to make awards of damages in cases of catastrophic injury by way of periodic payments orders. The Act addresses the concerns raised repeatedly by the courts about the absence of legislation to enable periodic payments orders in appropriate cases.

Part 4 of the Act contains important detailed provisions on the issue of open disclosure of patient safety incidents.

The press release can be accessed [here](#) and the Act can be accessed [here](#).

Insurance (Amendment) Act 2018

(i) Insurance (Amendment) Act 2018

On 24 July 2018, the Insurance (Amendment) Act 2018 (the “**Act**”) was signed into law by the President. The aim of the Act is to repeal and replace certain provisions of the Insurance Act 1964, in order to:

- ▣ Clarify the role of the Insurance Compensation Fund;
- ▣ Implement the recommendations of the Review of the Framework for Motor Insurance Compensation in Ireland Report (2016); and
- ▣ Provide for the retrospective compensation of 100% of third party claims in respect of Setanta and Enterprise who are currently under liquidation.

The Act will increase the level of insurance compensation fund coverage for all future third party motor claims from its current 65% level to 100%, in order to bring it into line with the compensation levels paid out by the Motor Insurer’s Bureau of Ireland.

A copy of the Act, as signed into law, is available [here](#) and a copy of the Explanatory Memorandum is available [here](#).

On 13 September 2018, Part 4 of the Act, which provides for the establishment and operation of the Motor Insurers Insolvency Compensation Fund, came into effect.

The Order can be accessed [here](#).

Whistle-blowing

(i) The Irish government publishes statutory review of domestic whistle-blowers statute

On 15 July 2018, the Department of Public Expenditure and Reform published a ‘Statutory review of the Protected Disclosures Act 2014 (“**PDA**”)’ (“**Statutory Review**”). The Statutory Review, conducted in accordance with Section 2 of PDA analyses its operation since being signed into law four years ago and identifies its impact, its operation in practice and issues and challenges it presents to workers and employers.

The Statutory Review concludes that overall the PDA is having a positive effect on Irish society with an increase in the disclosure figures recorded each year since its entry into force, however further work to raise awareness is necessary. The Statutory review also seeks to determine whether any amendments to the existing legislation are necessary and concludes that no amendments are necessary at this juncture.

The Statutory Review was subject to a consultation period which received twenty five submissions. Reference to some of the submissions is made throughout the Statutory Review.

For further information the Statutory Review is accessible [here](#).

Euronext (formerly the Irish Stock Exchange)

(i) Migration of Euronext Dublin onto Euronext systems to take place November 2018

On 27 March 2018, the Irish Stock Exchange joined the Euronext federal model, and now trades as Euronext Dublin. As a consequence of this integration, the migration of a range of Euronext Dublin activities and instruments onto Optiq® and the related Euronext systems is planned to occur on 12 November 2018, pending regulatory approval.

On 9 July 2018, Euronext Dublin released an information note for clients setting out the timeline and details of the migration of a range of Euronext Dublin activities and instruments onto the Euronext platform.

This note is available [here](#).

On 20 July 2018, Euronext Dublin released an information note for clients providing updates to the migration timeline and the technical specifications. More specifically, the note provides information on the availability of the Optiq® Order Entry Gateway (“**OEG**”) and Market Data Gateway (“**MDG**”) in the EUA test environment on 2 August 2018 and in the Saturn test environment on 3 September 2018. Euronext also published Optiq® (OEG and MDG) specifications.

This note is available [here](#).

(ii) Euronext Dublin publish New Member Firm Rules

On 1 August 2018, Euronext Dublin published Release 23 of their Member Firm Rules. These rules govern the operations and activities of member firms on Euronext Dublin’s markets. The rules are effective from 1 August 2018.

Release 23 of the Member Firm Rules is available [here](#).

(iii) Version 7.0 of the Irish Stock Exchange Trading Platform scheduled for release

On 28 September 2018, Euronext announced the release of version 7.0 of their electronic trading system (“**ISE T7**”) scheduled for 3 December 2018. Enhancements to the trading platform anticipated in version 7.0 include:

- ☐ Enhancements of quote functionality;

- ▣ Data format change of quantity fields to 8-byte fields with 4 Decimals; and
- ▣ Removal of connection gateways.

A T7 cloud simulation environment and a dedicated simulation environment are available to all members to test their trading applications independent of the production environment.

Supporting documentation in the form of information releases, preliminary versions and final versions will be available from the ISE website commencing in September 2018.

The press release can be accessed [here](#).

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

(i) **European Parliament issues Report on Virtual Currencies**

On 2 July 2018, the European Parliament published a report on virtual currencies and the problems they pose to financial regulators (the “**Report**”). The Report looks at whether virtual currencies will threaten the dominant position of sovereign currencies and central banks.

The Report concludes that at present virtual currencies are not a threat to the status quo, but it recommends that regulations concerning virtual currencies to be harmonised across the European Union.

A copy of the Report may be viewed [here](#).

(ii) **Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018**

On 3 July 2018, Dáil Éireann passed the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2018 (the “**Bill**”) which proposes to:

- ▣ Amend the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the “**Act of 2010**”) in order to transpose, in part, the Fourth EU Money Laundering Directive (2015/849) into national law;
- ▣ Give effect to the recommendations of the Financial Action Task Force (“**FATF**”);
- ▣ Increases the obligations on a range of entities, such as credit and financial institutions, lawyers, accountants and high-value goods dealers, in relation to money laundering and terrorist financing;
- ▣ Impose requirements on those entities relating to assessing the risks of money laundering and terrorist financing involved in carrying out their businesses;

- ▣ Putting policies in place to mitigate that risk and carrying out customer due diligence measures; and
- ▣ Set out functions and powers of the Financial Intelligence Unit of the Garda Síochána.

On 25 September 2018, the Bill is currently before Seanad Éireann, at Second Stage. The stage, history and text of the Bill can be accessed [here](#).

(iii) Study on cryptocurrencies and blockchain conducted by European Parliament's Policy Department a highlights anonymity as key issue

On 4 July 2018, the European Parliament's Policy Department A's study requested by the TAX3 committee titled 'Cryptocurrencies and blockchain: legal context and implications for financial crime, money laundering and tax evasion' was published.

The research is limited to cryptocurrencies and blockchain and while it acknowledges that the fifth Money Laundering Directive will have a significantly positive impact on this area the study provides that the existing European legal framework is failing to deal with the issues arising in this area. The study provides that the key issue is the anonymity surround cryptocurrencies.

Policy recommendations developed from the study's findings regarding standards in the European Union which will be necessary despite the introduction of MLD5 are set out in the study. These recommendations include:

- ▣ The introduction of a system of mandatory registration of users to tackle the anonymity of cryptocurrency users;
- ▣ The expansion of the list of 'obliged entities' under MLD5 to include players identified in the study as at risk of providing a loophole for parties with mala fides. The risky areas currently outside of MLD5 include miners, pure cryptocurrency exchanges that are not also custodian wallet providers, software and hardware wallet providers, trading platforms and coin offerors;
- ▣ The imposition of a ban on the specific characteristics of cryptocurrencies designed to make it impossible to verify users;
- ▣ In the long term developing a comprehensive crypto-currency framework setting out standards and license requirements for providers of cryptocurrencies which could add a 'middleman' to those technologies which has specifically removed such middleman thereby providing an individual to be accountable to the authorities; and
- ▣ Not focusing on blockchain and leaving the technology 'be' as the development of the technology should be encouraged. It is therefore recognised as being separate from the underworld of money laundering, terrorist financing and tax evasion.

For further information please find a copy of the study [here](#).

For further information on MLD5 please find a Dillon Eustace article setting out its primary provisions [here](#).

(iv) Risk based approach to AML and CTF draft guidance published for consultation in the insurance sector and securities sector

On 6 July 2018, FATF published for public consultation two draft guidelines, namely the 'Draft Risk-based approach Guidance for the Life Insurance Sector' (the "**Draft Life Assurance Guidance**") and the Draft Risk-based approach Guidance for the Securities Sector (the "**Draft Securities Guidance**"):

- ▣ The Draft Life Assurance Guidance updates the 2009 guidance to align with the anti-money laundering ("**AML**") and counter terrorist financing ("**CTF**") standards introduced in 2012 by FATF which adopted a risk-based approach ("**RBA**"). The guidance is intended to be useful to parties in both the private and public sector. In the private sector the guidance is aimed at insurers and intermediaries providing investment-related insurance products such as life insurance, while in the public sector countries and competent authorities comprise of the target audience. The guidance seeks to assist the common understanding, design and implementation of a RBA to AML and CTF. Examples are utilised throughout the guidance of current practices and risks arising in such practices across various sectors. Mitigating techniques against these risks are also provided; and

- ▣ The Draft Securities Sector Guidance applies to the provision of securities products and services and it provides key principles for the application of the RBA to AML/CTF in the securities sector and seeks to assist market participants in its application. The guidance looks at how AML and CTF risks are to be identified, assessed and mitigated and provides useful examples of various supervisory practices used for the implementation of the RBA to the securities sector.

The consultation process for both Draft Guidelines ran until 17 August 2018 and comments in relation to whether the guidance provides sufficient clarity on the implementation process of RBA to firms in the private sector were welcomed in particular.

On 9 August 2018, Insurance Europe issued its response to the Draft Life Assurance Guidance. Insurance Europe welcomed the consultation and provided the following feedback in relation to the following areas of the Draft Life Assurance Guidance:

- ▣ Guidance for the private sector;

- ▣ The inclusion of an Annex on non-life insurance; and

- ▣ The inclusion of an Annex on reinsurance;

On 17 August 2018, the European Banking Federation (the “EBF”) published its response to the Draft Securities Guidance. The EBF provides numerous observations and recommendations on the Draft Securities Guidance, including the following:

- ▣ The EBF is of the opinion that the Draft Securities Guidance should highlight the different categories of services/service providers;
- ▣ The EBF suggests that the Draft Securities Guidance should clarify whether its application is intended for the retail or wholesale sector and, if both, the EBF recommends adopting its definitions for “Retail Investor” and “Professional clients”, as outlined in the EBF’s response;
- ▣ The EBF feels that the Draft Securities Guidance should in its analysis differentiate between the distinct types of securities; and
- ▣ The EBF would welcome further clarification in relation to the “Securities Providers” chapter of the Draft Securities Guidance.

A copy of the Draft Life Assurance Guidance can be found [here](#), a copy of the Draft Securities Guidance can be found [here](#).

For a copy of Insurance Europe’s response please see [here](#) and to view a copy of the EBF’s response please see [here](#)

(v) Objectives of the US Presidency of FATF

On 17 July 2018, FATF published a paper from its incoming President, Mr. Marshall Billingslea setting out the objectives for FATF during his tenure as President of FATF from July 2018 to June 2019. In the paper the objectives of the FATF are set out as follows:

- ▣ Preventing the financing of the proliferation of weapons of mass destruction;
- ▣ Maintaining emphasis on combatting terrorist financing;
- ▣ Action against the expansion of virtual currencies;
- ▣ Financial and regulatory technologies;
- ▣ Private sector outreach; and
- ▣ Capacity building at FATF style-regional bodies.

A copy of the paper is available [here](#).

(vi) FATF's Report on concealment of beneficial ownership published

On 18 July 2018, a report on the 'Concealment of beneficial ownership' ("**Report**") was published by FATF. The Report sets out its conclusions including:

- ▣ A "hide-in plain sight" strategy is the predominant scheme utilised by parties attempting to obscure their beneficial ownership;
- ▣ Limited liability corporations and nominee directorship services are some of the mechanisms used to facilitate money laundering, tax evasion and corruption;
- ▣ Shell companies are a "key feature" of schemes attempting to disguise beneficial ownership and notes that front companies and bearer shares are less frequently utilised to this end;
- ▣ Nominee directors and shareholders are key vulnerabilities;
- ▣ Use of professional enablers is a key feature noting that professionals may be assisting willingly or negligently and in particular lawyers were found to be less aware of their vulnerability for involvement particularly in comparison to accountants which has been considered a controversial finding in the context of the contrary finding by the United Kingdom's national risk assessment report published in October 2017; and
- ▣ 17% of jurisdictions participating in the FATF do not place AML or CTF obligations on professionals, which is a significant chink in the international armor.

For further information a copy of the report is available [here](#).

(vii) FATF paper on AML and CTF for judges and prosecutors published

On 19 July 2018, FATF President's Paper titled 'Anti-money laundering and counter terrorist financing for judges and prosecutors' was published (the "**Paper**"). The Paper has three primary objectives:

- ▣ Strengthening the relationship between FATF and the criminal justice sector while also generating a framework to enhance international working relationships since these crimes generally occur in the international sphere;
- ▣ To prepare a report identifying difficulties facing judges and prosecutors when investigating and prosecuting money laundering, terrorist financing and when recovering the proceeds of crime and providing best practices for such scenarios; and
- ▣ To get FATF and FATF style regional bodies to work together on these elements to ensure an effective anti-money laundering and counter-terrorist financing system.

Research for this paper involved engaging with over four hundred judges and prosecutors across the globe making enquiries regarding their experiences, challenges, what they deem to be best practice and their knowledge.

A copy of this Paper is available [here](#).

(viii) FATF Report to G20 Ministers and central bank governors focuses on crypto currencies and assets

On 19 July 2018, a Report to the G20 finance ministers and central bank governors setting out findings pursuant to its ongoing mandate issued in March 2018 to examine anti-money laundering and counter-terrorism financing was published by FATF. The Report addresses amongst other things:

- ▣ Whether changes ought to be introduced to its guidance and standards to be tailored specifically to virtual currencies and crypto-assets since the current guidance and standards make no specific reference to same and provides that detailed proposals on this subject will be presented in October 2018 – the next meeting; and
- ▣ The high priority of identifying beneficial ownership and provides the executive summary to the FATF Egmont Group *‘report on the concealment of beneficial ownership’* in its Annex which includes an analysis on the role professional money launders play in such concealment.

A copy of the Report is available [here](#) and a copy of the report on the concealment of beneficial ownership is accessible [here](#).

(ix) FAFT publish procedures for its latest round of AML/CFT evaluations

On 20 July 2018, FAFT published the procedures which it will follow when conducting its fourth round of AML/CFT Mutual Evaluations (the **“Procedures”**). Mutual evaluations are reviews of the level of implementation by FAFT members of the FAFT Recommendations.

The Mutual Evaluation will look at whether members can show technical compliance with the FATF Recommendations (2012).

A copy of the Procedures can be found [here](#).

(x) FATF provides updates on procedures regarding High Risk/Non-Co-operative Jurisdictions

On 23 July 2018, FATF provided an update in relation to its procedures regarding the monitoring of high risk/non-cooperative jurisdictions (the **“Publication”**). The Publication highlights FATF’s continued commitment to identifying jurisdictions whose AML/CFT safeguards are deemed insufficient and vulnerable and which therefore potentially pose a risk to the wider financial community.

The Publication outlines the review process by which FATF will identify that a particular jurisdiction should be monitored and outlines the steps which follow once the initial identification has taken place. The Publication sets out that once a jurisdiction is deemed worthy of monitoring it shall be put on an action plan by FATF with the aim of correcting any identified issues. FATF public statements and the process of removal of a jurisdiction from FATF monitoring is also outlined.

A copy of the publication may be viewed [here](#).

(xi) G20 July meeting communique published

On 24 July 2018, the press release and communique setting out the conclusions reached at the G20 meeting of Finance Ministers and Central Bank Governors between 21 and 22 July 2018 was published (“**Communique**”).

The Communique notes that among other things that the G20:

- ▣ Recognises that money laundering and terrorist financing risks are real and increasing, particularly in relation to crypto-assets;
- ▣ Are committed to fighting money laundering and terrorist financing and called for the full effective implementation of FATF standards; and
- ▣ Recognises the importance of clarifying how the FATF standards apply to virtual currencies and crypto-assets restating that FATF’s report on the matter will be due by the next meeting in October 2018.

For further information a copy of the communique is available [here](#) and a copy of the press release relating to the meeting is available [here](#).

(xii) FATF publish new Mutual Evaluations and Consolidated Ratings

For the period 1 July 2018 to 30 September 2018, FATF updated the consolidated assessment ratings which provides a summary of (1) the technical compliance and (2) the effectiveness of the compliance of the assessed parties against the 2012 FATF Recommendations and using the 2013 Assessment Methodology and 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](#).

(xiii) Report detailing identity and activities of professional money launderers published by FATF

On 26 July 2018, a Report on ‘Professional Money Laundering’ (“PML”) (the “Report”) was published by FATF. The Report is the first of its kind focusing exclusively on PML and in particular money-laundering threats opposed to vulnerabilities in the current framework.

The Report sets out the characteristics of professional money-launderers noting that some act in a professional capacity including lawyers and accountants and even serve legitimate clients, while performing their criminal money laundering services on a part-time basis. The Report details the services money-launderers provide which include setting up the infrastructure to enable criminals and organised crime groups launder the proceeds of illegal activities to avoid anti-money laundering and counter terrorist financing safeguards in place.

Through the identification of the services provided by PMLs, the Report aims to provide supervisory authorities and countries with an enhanced ability to identify and thereby dismantle PMLs. The Report provides that by disrupting PMLs it will impact on the criminal organisations with which they are associated so that “crime does not pay”.

For further information a full copy of the Report is available [here](#).

(xiv) Commission Delegated Regulation (EU) 2018/1100 enters into force

On 7 August 2018, Commission Delegated Regulation (EU) 2018/1100 entered into force (the “Delegated Regulation”). The Delegated Regulation amends EC Regulation No 2271/96 which relates to the extra-territorial application of legislation adopted by a third country.

The decision to amend the Regulation was brought about by the United States withdrawing from the Joint Comprehensive Plan of Action, to which the European Union was party and deciding to re-impose certain sanctions on Iran.

A copy of the Delegated Regulation can be found [here](#) and a guidance note in relation to same may be viewed [here](#).

(xv) Commission Implementing Regulation (EU) 2018/1101 published

On 7 August 2018, the European Commission published Commission Implementing Regulation 2018/1101 (“Implementing Regulation”). The Implementing Regulation sets out the processes and requirements which European Union economic operators are to satisfy if they are to be authorised to apply the sanctions which have recently been imposed on Iran by the United States.

A copy of the Implementing Regulation can be viewed [here](#).

(xvi) Delegated Regulation setting RTS for CCPs under MLD4 published in the Official Journal of the European Union

On 10 August 2018, the Commission Delegated Regulation 2018/1108 setting out the regulatory technical standards (“**RTS**”) relating to central contact points (“**CCPs**”) pursuant to Article 45(11) of the Fourth Money Laundering Directive (“**MLD4**”) was published in the Official Journal of the European Union.

The RTS set out the criteria to determine when a CCP for electronic money issuers and payment service providers may be appointed and rules regarding the functions of CCPs once appointed.

The RTS entered into force on 30 August 2018, having been adopted by the European Commission on 7 May 2018.

A copy of the Delegated Regulation is available [here](#).

(xvii) Pakistan added to European Commission’s list of ‘high risk countries’ under MLD4

On 22 August 2018, the European Commission published a Delegated Regulation amending Delegated Regulation 2016/1675 adding Pakistan to the list of third countries categorized as ‘high-risk’ (“**List**”) pursuant to Article 9(2) of MLD4.

‘High-risk’ countries are countries that have inadequate anti-money laundering (“**AML**”) and counter-terrorist financing (“**CTF**”) regimes and consequently pose a significant threat to the European Union’s financial system. As a result of being added to the List, all firms will now have to apply enhanced due diligence (“**EDD**”) when dealing with natural or legal persons from Pakistan.

On 18 September 2018, the Council of the European Union voted not to object to the delegated Regulation. Provided the European Parliament do not object to the Delegated Regulation, it will be entered into the Official Journal of the European Union and apply twenty days from its publication therein.

Pakistan’s position on the List however will be reassessed by the European Commission once it completes the implementation of its action plan that it devised with the Financial Action Task Force. The European Commission has also been provided with a high-level written political commitment by Pakistan to address their AML and CTF deficiencies which it has also welcomed.

A copy of the new Delegated Regulation [here](#).

(xviii) European Commission communication on strengthening AML supervision and revised legislative proposal on EBA AML mandate

On 12 September 2018, the European Commission published a communication on strengthening the European Union's framework for prudential and AML supervision for financial institutions.

The European Commission recommends a broader strategy designed to ensure that the supervision of financial institutions and markets is effective and robust when addressing money-laundering and terrorist financing.

The proposed strategy covers a range of short-term legislative and non-legislative measures that include:

- ▣ Addressing the absence of a clear obligation for prudential supervisors to cooperate with the relevant anti-money laundering authorities and bodies under the Capital Requirements Directive;
- ▣ Enhancing the mandate of the EBA to specify the modalities of cooperation and information exchange; and
- ▣ Optimising the use of expertise and resources dedicated to anti-money laundering related tasks.

In the long term, the European Commission seeks to transform the Anti-Money Laundering legislative framework as recommended by a joint working group, comprising the chairpersons of the ECB.

The communication is accessible [here](#).

(xix) European Parliament adopts first reading position on proposed amendments to European Commission legislative proposals on AML/CFT

On 12 September 2018, the European Parliament adopted its first reading position on two legislative proposals put forward by the European Commission relating to AML and CFT, in which the European Parliament introduces amendments to both texts. The legislation proposed include a:

- ▣ Proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the European Union and repealing Regulation (EC) 1889/2005; and
- ▣ Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law.

The next step regarding the proposed legislation is for the European Council to agree with the European Parliament on the proposed legislation and amendments put forward by the European Parliament.

A copy of the proposed legislation can be found [here](#) and a copy of the proposed Directive can be found [here](#).

(xx) The Central Bank issues Anti-Money Laundering Bulletin 5 on training standards for money remittance sector

On 19 September 2018, the Central Bank issued its second publication of the Anti-Money Laundering (“**AML**”) bulletin in 2018. The bulletin is directed at firms in the money remittance sector and sets out the Central Bank’s expectations regarding the implementation of an AML and countering the financing of terrorism (“**CFT**”) agent training model.

The Central Bank expects firms in the money remittance sector to ensure, that:

- ▣ All agents receive mandatory training prior to commencement of services on behalf of the firm and that training is designed to reinforce their AML/CFT obligations as well as provides instructions on how to detect suspicious activity;
- ▣ Training materials are aligned with the Irish and European Union legislative requirements to manage money-laundering and terrorist financing risks and are regularly updated in light of emerging risks;
- ▣ Training is monitored and recorded and a measure is in place to deal with a failure to complete training;
- ▣ The role of the agent in detecting suspicious activity is not diminished in favour of an over reliance on systems; and
- ▣ The Board and Senior Management regularly receive management information on the implementation of the firm’s AML/CFT training programme which is proportionate to the firm’s nature, scale and complexity.

The Bulletin can be accessed [here](#).

(xxi) Third quarter update on Proposal for a Directive on the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences

For the period 1 July 2018 to 30 September 2018, the European Commission published updates to the Proposal for a Directive of the European Parliament and of the Council laying down rules for facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences and repealing Council Decision (the “**Directive**”).

The updates are in the form of two cover letters addressed to the Council of the European Union and contain:

- ▣ A notification communicating the intention of the United Kingdom and Ireland to adopt the draft Directive (“**Cover Note 1**”); and
- ▣ The formal comments of the European Data Protection Supervisor’s on the proposed Directive (“**Cover Note 2**”).

Cover Note 1 can be accessed [here](#) and Cover Note 2 can be accessed [here](#).

Anti-Corruption Legislation

(i) How companies can minimise the corruption conundrum

The Irish government identified the introduction of the Criminal Justice (Corruption Offences) Act 2018 (the “**Act**”) as one of the key measures to be taken in the fight against white collar crime.

The Act which came into effect on 30 July 2018 contains six main offences – five of which apply to both the public and private sectors - as well as the section 18 offence, under which corporates can be prosecuted for corrupt acts committed by certain parties on their behalf.

For the first time, corporates can be prosecuted if someone acting on their behalf commits an offence under the Act.

For further information on the Act please refer to an article prepared by Dillon Eustace which was first published in Finance Dublin’s September 2018 Edition, the full article can be accessed [here](#).

Data Protection / General Data Protection Regulation (“GDPR”)

(i) The Financial Stability Board publishes a draft Cyber Lexicon for public consultation

On 2 July 2018, the Financial Stability Board (“FSB”) published a draft Cyber Lexicon for public consultation, which comprises a set of 50 core terms related to cyber security and cyber resilience in the financial sector. A lexicon could be useful to support work in the following areas:

- ▣ A cross-sector common understanding of relevant cyber security and cyber resilience terminology;
- ▣ Monitoring and assessing financial stability risks of cyber risk scenarios;
- ▣ Information sharing; and
- ▣ Work by the FSB, authorities and/or standard-setting bodies to provide guidance related to cyber security and cyber resilience.

The lexicon was developed from the October 2017 stocktake report on regulations and supervisory practices with respect to cyber security in the financial sector. The consultation closed to comments on 20 August 2018, with the lexicon finalised by November 2018.

A copy of the October 2017 stocktake report on regulations and supervisory practices can be accessed [here](#), and the Cyber Lexicon consultative document available [here](#).

(ii) Overview of Consumer’s Rights under GDPR

On 3 July 2018, Insurance Europe published an overview of Insurance Consumers’ main rights under GDPR. The publications sets out the following rights of the consumer:

- ▣ The right to be informed before your insurer can process your personal data;
- ▣ The right to know if your insurer holds your personal data, and if so the right to receive a copy of same;
- ▣ The right to ask your insurer to amend your personal data if it is not accurate;
- ▣ The right to have your data erased in certain circumstances;
- ▣ The right to have your data to be transferred to you or to another company;
- ▣ The right to object to your personal data being processed by your insurer; and
- ▣ The right to ask for human involvement in the processing of your data, as opposed to the use of a purely automated processing system.

A copy of the document is available [here](#).

(iii) European Data Protection Board Second Plenary Meeting

On 4 and 5 July 2018, the European Data Protection Board (“**EDPB**”) held its second plenary meeting. The various national data protection authorities which make-up the EDPB engaged in the following activities at the second plenary meeting:

- ▣ Discussed among other things: consistency and cooperation mechanisms, the one-stop shop mechanism, Internal Market Information System (“**IMI**”), challenges experienced and queries received by the authorities since 25 May 2018. Most data protection authorities noted a sharp increase in complaints of data breaches with thirty cross-border complaints in the IMI currently ongoing. Despite this, the chair of the EDPB reported that the work load is manageable.
- ▣ Adopted a letter addressed to the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) providing guidance on their development of a GDPR compliant model where personal data is accessed in relation to WHOIS – a query response protocol used for, among other things, identifying registered users or assignees of an internet resource such as a domain name, IP address block, etc.
- ▣ Adopted a letter responding to the European Parliament’s queries in relation to ensuring that the implementation of the second Payment Services Directive is in keeping with GDPR.
- ▣ Meeting with the US Ombudsperson in relation to concerns raised by the Article 29 Working Party (the EDPB’s predecessor) in relation to the Privacy Shield and in particular on issues including how the Ombudsperson interacts with the intelligence services in the United States. Conclusive answers to the various queries however were not answered at the meeting.

For further information on the plenary meeting please find a copy of the press release [here](#).

(iv) Data Sharing and Governance Bill 2018 Update

In June 2018, the ‘Data Sharing and Governance Bill 2018’ (the “**Bill**”) was published, following approval by the Government. The Bill has the objective of:

- ▣ Regulating the sharing of information, which includes personal data, between public bodies which occurs extensively at present;
- ▣ Regulating the management of information by public bodies;
- ▣ Establishing a base of registries;
- ▣ Collecting public service information;

- ▣ Establishing a data governance board; and
- ▣ Providing for related matters.

A copy of the Bill, as initiated on 12 June 2018, is available [here](#).

The Bill is before Seanad Éireann, at Fifth Stage and can be tracked [here](#).

(v) The European Agency for Network and Information Security and a new Cybersecurity Act

On 10 July 2018, the European Parliament issued a draft report and a press release on the ‘*Cybersecurity Act: build trust in digital technologies*’ that a new certification framework for connected devices and a stronger role for the European Union Cybersecurity Agency, was backed by Industry Committee MEPs.

The European Union cybersecurity scheme will certify that an information and communications technology product (“**ICT**”), process or service has no known vulnerability at the time of the certification’s release and that it complies with international standards and technical specifications.

The Cybersecurity certification framework will be voluntary and where appropriate make the certification mandatory, will specify three risk-based assurance levels and provide a stronger mandate for the European Agency for Network and Information Security (“**ENISA**”).

A copy of the draft report can be found [here](#) and the accompanying press release can be found [here](#).

(vi) Insurance Europe issues comment on observing GDPR codes of conduct

On 12 July 2018, Insurance Europe published a comment note on the creation of codes of conduct in relation to assisting with compliance under the GDPR (the “**Note**”). The Note highlights the importance of the existence of codes of conduct in preparing and assisting with the GDPR implementation process, however it also raises concern about the length of time it can take for a code of conduct to come into being.

The Note therefore calls for guidance in terms of the conditions which need to be met before a code of conduct can be applied. The Note seeks that any such guidance will make clear that the implementation of a code of conduct does not require the establishment of a monitoring body under Article 41 of the GDPR. The Note outlines the importance of codes of conduct being implemented swiftly and efficiently and not being unnecessarily delayed or defeated.

A copy of the Note can be viewed [here](#).

(vii) FSI Publishes Insight on Innovative technology in financial supervision

On 16 July 2018, the Financial Stability Institute (“**FSI**”) published an Insight (Insights are part of a publication series issued by the FSI on policy implementation) on innovative technology in financial supervision (the “**Insight**”). The Insight focuses on the early experiences of supervisory agencies who have begun to use innovative technology as part of their operations and outlines the risks, benefits, challenges and legal issues involved. It further outlines how supervisory agencies can best utilise this innovative technology.

A copy of the Insight can be found [here](#).

(viii) Press Release providing update on cross-border GDPR application

On 20 July 2018, the EDPB issued a press release in which it outlines the current application of GDPR in terms of cooperation between Member States so as to ensure a consistent application of the new procedures (the “**Press Release**”).

The Press Release provides that as at present the number of disputes arising out of consistency of application is manageable, however it emphasises the importance of close cooperation between supervisory bodies going forward to ensure efficiency.

A copy of the press release can be viewed [here](#).

(ix) Insurance Europe issues letter to European Commission regarding transfer of personal data requirements post-brexit

On 26 July, 2018 Insurance Europe sent a joint letter, signed together with DigitalEurope, the Trans-Atlantic Business Council and the European Association of Craft, Small and Medium-sized Enterprises, to the European Commission on the issue of the transfer of personal data between the UK, the EU and the EEA post-Brexit.

The letter stresses the importance of legal certainty post-Brexit regarding the transfer of personal data and suggests that the best way to guarantee this legal certainty would be by way of an adequacy decision under Article 45 of GDPR. Article 45 provides that a transfer of personal data to a third country may take place where the European Commission decides that the third country in question ensures an adequate level of protection. The letter urges the European Commission to begin the Article 45 process without delay.

A copy of the letter may be found [here](#).

(x) EDPB issued a statement on the data protection impacts of economic concentration

On 27 August 2018, the EDPB issued a statement on the data protection impacts of economic concentration.

This was noted by the European Commission's intention to analyse the effects of further concentration of 'commercially sensitive data about customers' personal data in the context of its investigation into the proposed acquisition of Shazam by Apple.

This is particularly so within the technology sector, when a significant merger is proposed that increases market concentration in digital markets which has the potential to threaten the data protection and freedom enjoyed by consumers and has longer term implications for the economic protection, data protection and consumer rights.

A copy of the statement can be accessed [here](#).

(xi) EDPB adopts Opinion 11/2018 on the draft list of the competent supervisory authority of Ireland regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35.4 GDPR)

On 25 September 2018, the EDPB adopted '*Opinion 11/2018 on the draft list of the competent supervisory authority of Ireland regarding the processing operations subject to the requirement of a data protection impact assessment (Article 35.4 of GDPR)*' (the "**Opinion**").

The Data Protection Commission (the Irish Supervisory Authority) submitted its draft list to the EDPB on 11 July 2018, with the period of adoption being extended until the 25 September 2018, to take into account the complexity of the subject matter and to consider the draft lists submitted by the twenty-two other competent Supervisory Authorities across the European Union.

In compliance with article 64.1 of GDPR, the EDPB has to issue an opinion where a Supervisory Authority intends to adopt a list of processing operations subject to the requirement for a data protection impact assessment pursuant to article 35.4 of GDPR with the aim of creating a harmonised approach when processing data cross border or that can affect the free flow of personal data or natural persons across the European Union.

GDPR does not impose a single list, however, it does promote consistency, therefore the EDPB seeks to achieve this in its opinions by requesting that Supervisory Authorities include some types of processing in their lists and requesting them to remove some criteria which the EDPB does not consider as necessary creating high risks for data subjects and requesting them to use some criteria in a harmonized manner.

A copy of the Opinion can be accessed [here](#).

(xii) Statute of Limitations (Amendment) Bill 2018

On 26 September 2018, the Statute of Limitations (Amendment) Bill 2018 (the “**Bill**”) was initiated and currently before Dáil Éireann, at the First Stage. The Bill was introduced to provide that people who suffered as a result of maternal ingestion of thalidomide are not excluded from pursuing their cases because of time limits in the Statute of Limitations Act 1957.

To view the stage, history and text of the Bill can be accessed [here](#).

(xiii) European Data Protection Board - Third Plenary session

On 25 and 26 September 2018, the EDPB held their third plenary session, during which a number of different topics were discussed:

- ▣ The EU-Japan adequacy decision: The EDPB discussed the implications of the EU-Japan draft adequacy decision with a view to providing an opinion on same. The purpose of the EU-Japan draft adequacy decision is for Japan to commit to implementing a level of protection of personal data transferred to Japan that is equivalent to European standards.
- ▣ Data Protection Impact Assessment (“**DPIA**”) lists: The DPIA is a process in which data protection risks potentially affecting the rights and freedoms of individuals are identified and mitigated. To assist in the DPIA process, the GDPR requires national supervisory authorities to create and publish lists of types of operations that are likely to result in a high risk to data protection. The EDPB reached an agreement on establishing common criteria for the DPIA lists.
- ▣ Guidelines on territorial scope: The EDPB adopted new draft guidelines to assist in the provision of a common interpretation of the territorial scope of the GDPR. The Guidelines will also assist in the application of the GDPR generally;
- ▣ E-evidence: The EDPB adopted an opinion on the new E-evidence regulation, as proposed by the European Commission.

A copy of the press release can be accessed [here](#).

Brexit

(i) **Brexit and the Irish Law ISDA Master Agreement**

On 3 July 2018, ISDA published an Irish law and a French law version of the ISDA Master Agreement. Both will act as an alternative option to the English law version of the document for organisations who intend to continue trading under EU law following Brexit. It is worth noting that only those provisions relating to governing law and submission to jurisdiction have been amended in the Irish law version of the ISDA Master Agreement and that Irish courts will often have regard to decisions of the English courts with respect to points of law

The prospect of being able to enter into Irish law governed agreements and to ensure that any proceedings arising out of those agreements will be heard in the Irish courts will no doubt give those entities greater legal certainty as to the impact of Brexit on their derivatives trading whether derivatives form a core part of the investment strategy or are used for hedging and other efficient portfolio management purposes.

A copy of the ISDA press release can be found [here](#) with the Irish law ISDA Master Agreement available [here](#).

(ii) **ISDA Legal Opinions & Brexit**

On 5 July 2018, ISDA published an opinion on the impact of Brexit on contractual arrangements between European Union/European Economic Area - based counterparties and contractual arrangements governed by the law of a European Union/European Economic Area Member State (the “**Opinion**”).

The Opinion specifically focuses on the existence of any Member State requirements in local law in respect of the implementation of the Winding up Directive and the Financial Collateral Directive.

The Opinion further highlights the following:

- ▣ Once Brexit has completed the Brussels 1 Recast Regulation will no longer apply to the enforcement of judgments of English Court in other member states; and
- ▣ The requirement, post Brexit, for agreements governed by English Law to include a provision relating to the recognition of bail under Article 55 of the Bank Recovery and Resolution Directive.

A copy of the Opinion is available [here](#).

(iii) The United Kingdom's White Paper and BSG's response to it

On 6 July 2018, the United Kingdom published their Chequers statement setting out the United Kingdom government's blue print for their white paper ("**Chequers Statement**") and on 12 July 2018, the government of the United Kingdom published its white paper titled '*the future relationship between the United Kingdom and the European Union*' ("**White Paper**").

The White Paper restates the policy of the United Kingdom's government which is to:

- ▣ Leave the single market and customs union;
- ▣ Gain flexibility when entering international trade agreements specifically service agreements; and
- ▣ End the free movement of people and the jurisdiction of the Court of Justice of the European Union in the United Kingdom.

In relation to the future UK-EU relationship, the White Paper suggests an overarching institutional framework taking the form of an association agreement between the European Union and United Kingdom. More specifically the White Paper sets out that there would be an:

- ▣ **Economic partnership:** This would comprise of a free trade area for goods, maintenance of current antitrust prohibitions and merger controls with close cooperation by the European Union with United Kingdom enforcement, a common rule book to state aid, maintaining the Unified Patent Court Agreement on a firm legal basis, and a digital relationship that covers digital trade and e-commerce, telecommunications and digital infrastructure, digital technology, and broadcasting;
- ▣ **Security partnership:** Cooperation between law enforcement and criminal justice; including law enforcement and criminal justice co-operation; and
- ▣ **Cross-cutting and other co-operation in areas such as data protection.**

On 12 July 2018, the European Parliament's Brexit Steering Group ("**BSG**") welcomed the White Paper and the Chequers Statement as the first step to establishing a new relationship between the United Kingdom and the European Union in its response (the "**Response**").

In the Response, the BSG welcomed the proposal that the EU-UK relationship take the form of an Association Agreement structured in the dimensions of economic, sectoral, security and foreign policy, on a firm footing within a coherent governance structure. However, the BSG reiterated that the signing of a Withdrawal Agreement remains conditional on the agreement on certain aspects of the withdrawal including:

- ▣ **The Northern Ireland issue:** Requires a credible "back stop" provision for the Northern Ireland/Ireland border to avoid a hard border whilst safeguarding the integrity of the

single market. The BSG insisted on the presence of a “backstop” more recently in a press release published on 27 July 2018; and

▣ **Credible dispute settlement mechanism.**

The BSG’s provided that the closest trade and economic partnership possible is their goal while ensuring amongst other things the four freedoms are not divided, the single market is protected and any agreement with the United Kingdom is not done on a sector-by-sector approach.

The BSG continues to dissect the White Paper with updates expected to be released.

A copy of the White Paper is available [here](#), a copy of the Response is available [here](#) and copy of the press release published on 27 July 2018 is available [here](#).

(iv) ESMA urges firms authorised in the United Kingdom and providing services in other Member States to apply for authorisation before it is too late

On 12 July 2018, a public statement titled ‘*Timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union*’ was published by ESMA urging all market participants to submit their authorisation requests in the context of Brexit.

In the event of no deal being made for Brexit with the United Kingdom no transitional period will begin on 30 March 2019 rendering firms authorised in the United Kingdom and providing services in other Member States unable to do so after 29 March 2019. Such firms are encouraged to gain authorisation in one of the 27 Member States remaining in the European Union to protect against this scenario.

In the statement ESMA notes amongst other things that certain NCAs have already reported that they will not guarantee authorisation before 29 March 2019 to firms who submit their authorisation application after June/July 2018.

A copy of ESMA’s statement is available [here](#).

(v) Contractual continuity issues of OTC Derivatives considered by AFME and ISDA

On 30 July 2018, the Association for Financial Markets in Europe (“**AFME**”) and the International Swaps and Derivatives Association (“**ISDA**”) published a paper titled ‘Contractual continuity in over-the-counter (“**OTC**”) derivatives – challenges with transfers’ (“**Paper**”).

The Paper sets out the challenges facing both firms in the United Kingdom and the European Union and their clients in relation to the uncertainty of transferring OTC derivative contracts to a licensed affiliate in one of the twenty-seven Member States of the European Union remaining due to the removal of passporting rights for firms licensed in the United

Kingdom to provide services in other Member States and vice versa. The potential challenges reviewed include:

- ▣ The transfer of United Kingdom's derivatives business outside of the UK to an affiliate in the European Union-27 using the statutory mechanisms available under UK law, which allow the transfer of existing contracts with third parties without the need for the individual consent of the third parties;
- ▣ Execution and timing in a large-scale novation of OTC derivative contracts to an entity in a Member State may cause issues; and
- ▣ Solutions that policymakers and regulators could consider to minimise risks and provide certainty to the market by permitting continued maintenance, risk management, performance, termination or disposal of existing contracts post-Brexit.

A copy of the Paper is available [here](#).

(vi) Central Bank issues Press Release on European Supervisory Authorities Brexit Opinion

On 31 July 2018, the Central Bank issued a press release in which it welcomed the publication of the ESA's opinions on Brexit, which focused on the impact of the United Kingdom's exit:

- ▣ ESMA's statement reminded regulated entities of the need to make timely submission of requests for authorisation in the context of the United Kingdom's withdrawing from the European Union. ESMA has noted that, as there is no assurance that a transition period will be agreed, entities need to consider the worst-case scenario where a hard Brexit would take place on 30 March 2019;
- ▣ The EBA published an opinion relating to the risks posed by lack of preparation of financial institutions for the withdrawal of the United Kingdom from the European Union. Financial institutions must take practical steps now to prepare for the possibility of a withdrawal of the United Kingdom from the European Union with no ratified Withdrawal Agreement in place and no transition period; and
- ▣ EIOPA published an opinion on the obligations of insurance undertakings and insurance intermediaries to inform customers about the impact of the withdrawal of the United Kingdom from the European Union.

The Central Bank emphasises the importance of undertakings having the necessary plans in place when it comes to facing Brexit and in this regard it adopts the opinions of ESMA, the EBA and EIOPA. The Central Bank is highlighting the importance of being Brexit-ready by endorsing these opinions.

A copy of the Central Bank's press release can be found [here](#), with the statement from ESMA available [here](#), the EBA's opinion [here](#) and EIOPA's opinion accessible [here](#).

(vii) ECB updates Q&A on Relocating to Euro Area

On 2 August 2018, the ECB updated its Q&A which provides guidance for banks seeking to relocate their activities to the European Union. The production of the Q&A forms part of the ECB's function in supervising banks in the EU. The Q&A was updated by insertion of the following questions:

- ▣ Would the ECB accept a business model whereby a bank carries out business, including capital market transactions, in the euro area while it continues to use group-wide infrastructure, expertise and arrangements in a third country?
- ▣ What are the requirements regarding the staffing of banks?
- ▣ Can I continue to provide services to customers in the EU from a branch in London post-Brexit?
- ▣ Can I start carrying out banking activities in a euro area country if not all the necessary arrangements are yet in place, but I plan to put them in place in the near future?
- ▣ Will the use of a back-to-back booking model be accepted? What arrangements do you expect to be in place when it comes to booking models generally?
- ▣ How will booking models be assessed? What are the supervisory expectations vis-à-vis back-to-back booking?
- ▣ What are your supervisory expectations when it comes to outsourcing arrangements? Which functions and services would it be possible for a euro area bank to outsource?

A copy of the updated Q&A can be found [here](#).

(viii) Effect of a no-deal Brexit

On 23 August 2018, the United Kingdom government published guidance on the possible effect on the banking, insurance and financial services industries if a no-deal Brexit materialises, meaning that the United Kingdom would leave the European Union without a withdrawal agreement being agreed between the two parties, which would result in a sudden break from the European Union on 29 March 2019, without any transitional period (the "**Guidance**").

The Guidance outlines the government's strategy should a no-deal Brexit occur and attempts to protect United Kingdom undertakings and United Kingdom citizens by outlining steps which can be taken to prepare for such a scenario. The Guidance provides that, should a no-deal Brexit occur, the United Kingdom government intends to, if needs be, act

unilaterally without European Union co-operation to ensure as much continuity and stability as it can in the short term, however will remain open to discussion with the European Union regarding exit strategies and procedures.

A copy of the Guidance can be found [here](#).

(ix) Brexit Statement by Michel Barnier

On 31 August 2018, a statement was published by Michel Barnier, the European Chief Negotiator for Brexit, following his meeting with the UK Secretary of State for Brexit, Dominic Raab. In his speech Mr Barnier outlined what was discussed at the meeting, namely the following:

- ▣ Internal security;
- ▣ Translating United Kingdom's White Paper into concrete guarantees;
- ▣ Reciprocal rights for citizens;
- ▣ Foreign Policy;
- ▣ External Security; and
- ▣ Defence.

A copy of the full statement may be found [here](#).

(x) European Parliament resolution on the state of play of negotiations with the United Kingdom published in the Official Journal of European Union

On 27 September 2018, the European Parliament resolution of 3 October 2017 on the state of play of negotiations with the United Kingdom was published in the Official Journal of the European Union. The resolution contains information on:

- ▣ Citizens' rights;
- ▣ Ireland and Northern Ireland;
- ▣ Financial settlement; and
- ▣ Progress of the negotiations.

The state of play of negotiations with the United Kingdom can be accessed [here](#).

Financial Services and Pensions Ombudsman (“FSPO”)

(i) The Financial Services and Pensions Ombudsman Launches Strategic Plan for 2018 – 2021

On 5 July 2018, the Financial Services and Pensions Ombudsman (“FSPO”) launched a Strategic Plan, ‘*Enhancing the Customer Experience*’, (the “Plan”) which sets out the vision for the FSPO over the next three years.

The Plan is the first for the organisation since the amalgamation of the former offices of the Financial Services Ombudsman and the Pensions Ombudsman in January 2018 and is a response since an increase in the number of complaints and a further increase in projected complaints are expected in 2018 and beyond. The Plan is built on three key pillars:

- ▣ Delivering for Our Public;
- ▣ Innovating for Our Future; and
- ▣ Developing Our People and Our Organisation.

The overall objective of the Plan is to ensure that the organisation can deal efficiently with this increase and enhance the experience of customers by delivering services faster and better to improve the quality and speed of complaints handling. To this end, the FSPO will establish a “Customer Operations and Information Management Directorate” with a dedicated focus on improving customers’ experience and the time taken to investigate complaints, making better use of information technology and providing new and easier ways to interact with the FSPO.

A copy of the Plan can be found [here](#) with the accompanying press release can be found [here](#).

Competition and Consumer Protection Commission (“CCPC”)

(i) The Competition and Consumer Protection Commission publishes its 2017 Annual Report

On 30 August 2018, the Competition and Consumer Protection Commission (“CCPC”) published its 2017 Annual Report.

The Annual Report compiles the impact of the CCPC’s work on behalf of consumers and businesses in Ireland, which included the first criminal conviction in Ireland for bid rigging; and the first custodial sentence for misleading a consumer in the sale of a car.

The CCPC’s was also active in a number of sectors across the economy such as motor vehicle crime, ticketing, motor insurance, nursing homes sector, mortgages, waste collection, PCP car finance and the import of unsafe products.

In the retail sector, the CCPC took enforcement action against a number of traders for breaching consumer protection law with 35 Fixed Payment Notices paid by traders and Compliance Notices issued to 12 traders directing them to comply with consumer law.

Regarding mergers, the CCPC's role is to review the merger process to ensure there is not a substantial lessening of competition in Ireland. During 2017, 72 mergers were notified to the CCPC and 68 determinations were issued in 2017.

A copy of the Annual Report 2017 can be accessed [here](#).

Office of the Director of Corporate Enforcement ("ODCE")

(i) ODCE publishes draft paper on transfer pricing in financial transactions

On 3 July 2008, the Office of the Director of Corporate Enforcement ("ODCE") published a draft paper on transfer pricing in financial transactions (the "Paper"). The purpose of the Paper is to give further guidance on the application of the OCED's transfer pricing guidelines of 2017. The Paper focuses particularly on the following aspects of transfer pricing of financial transactions:

- ▣ Treasury functions;
- ▣ Intra group loans;
- ▣ Cash pooling;
- ▣ Hedging;
- ▣ Guarantees; and
- ▣ Captive Insurance

The Paper invites feedback on the draft by giving a specific set of questions to answer. The deadline for submission for feedback was 7 September 2018 and all feedback shall publically accessible.

A copy of the Paper can be found [here](#).

Companies (Statutory Audits) Act 2018

(i) The Companies Act (Statutory Audits) Act 2018 takes effect

On 25 September 2018, much of the Companies (Statutory Audits) Act 2018 (the “**Act**”) came into effect. The Act introduces a new stand-alone Part 27 and makes certain amendments to the Companies Act 2014 (the “**2014 Act**”). The introduction of a new Part 27, which is largely concerned with statutory and audit matters, does not change the structure and numbering of the Companies Act.

The Act makes the following key amendments to the 2014 Act:

- ▣ Where a company taking advantage of an audit exemption, is late in filing their annual returns, such a company will lose their entitlement to exemptions for the two financial years following the one to which the late filing relates;
- ▣ Companies have 56 days after the annual return date (as opposed to 28 days after its annual return date under the 2014 Act) within which to file their annual return and financial statements; and
- ▣ The Irish Auditing and Accounting Supervisory Authority (“**IAASA**”) is empowered under this Act to prescribe additional requirements in relation to the content of the statutory auditor’s report and to administer sanctions on a statutory auditor.

The Act also introduces a small number of amendments largely concerned with the internal workings of the IAASA. Since the Act only seeks to amend the 2014 Act, the correct citation for the 2014 Act will continue to be simply, the Companies Act 2014.

The Act can be accessed [here](#).

Dillon Eustace
30 September 2018

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