

Insurance Quarterly Legal and Regulatory Update

Period covered:
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DILLON  EUSTACE

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE





Solvency II

(i) EIOPA publishes discussion paper on Standard Formula Design and Calibration for Certain Long-Term Investments

On 8 April 2013, EIOPA published a discussion paper on the Standard Formula Design and Calibration for Certain Long-Term Investments following a request from the European Commission (“Commission”) to analyse whether the calibration and design of regulatory capital requirements for insurers’ long term investments in certain asset classes under the Solvency II regime necessitates any adjustment or reduction under the current economic climate without jeopardising the nature of the regime.

EIOPA carried out an in-depth analysis of some of the asset classes listed in the Commission’s letter. Therefore, the aim of this discussion paper was to present EIOPA’s preliminary findings and seek further insight from stakeholders on these findings which will assist EIOPA in producing a well-informed recommendation on the design and calibration of the standard formula in relation to the asset classes considered.

EIOPA’s preliminary findings covered the following investments:

-  Private Equity/Venture Capital;
-  Socially Responsible Investments (SRI) and social business debt and equity finance;
-  Infrastructure project debt and equity; and
-  Securitisations of Small and Medium sized Enterprises (“SME”) debt.

EIOPA analysed both quantitative and qualitative information on the size of the markets, the extent to which insurers invest in them and their risk profiles.

The deadline for feedback on this discussion paper was 28 May 2013. EIOPA will now use any feedback received to issue a final report in early July 2013. This also allows EIOPA to take full account of the Long-term Guarantee Impact Assessment (“LTGIA”) report issued on 14 June 2013 (see (iv) below).

An analysis of the results from both this discussion paper and the LTGIA will enable a full examination of whether the Solvency II framework should be amended to facilitate long-term investments.

This discussion paper can be viewed at the following link:

<https://eiopa.europa.eu/consultations/consultation-papers/index.html>

(ii) Central Bank publishes latest edition of Solvency II Matters

On 7 May 2013, the Central Bank published the tenth edition of Solvency II Matters. This newsletter is intended to keep insurance and reinsurance undertakings informed and up-to-date on Solvency II policy developments, implementation activities and events.

The latest edition of Solvency II Matters provides an update on the following:

- ▣ Industry Briefing – Guidelines on Preparing for Solvency II;
- ▣ Long Term Guarantee Impact Assessment;
- ▣ Update on Omnibus II; and
- ▣ Other EIOPA Consultations.

The latest edition of Solvency II Matters can be accessed at the following link:

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

(iii) Central Bank hosts industry briefing on draft Guidelines on preparing for Solvency II

On 24 May 2013, the Central Bank hosted an industry briefing on the draft EIOPA Guidelines on preparing for Solvency II which were published in March 2013. The aim of this briefing was to provide insurance and reinsurance firms with further detail on EIOPA's consultation on the draft Guidelines.

The briefing consisted of presentations from representatives of EIOPA and the Central Bank. These presentations gave an overview of the draft EIOPA Guidelines and an outline of the proposed approach by the Central Bank to the implementation of the EIOPA Guidelines when they are finalised.

The draft EIOPA Guidelines deal with the following areas:

- ▣ The system of governance;
- ▣ The forward looking assessment of the undertaking's own risks (based on the ORSA principles);

- ▣ The submission of information to national competent authorities; and
- ▣ The pre-application for internal models.

Some particular points to note include:

- ▣ It is expected that the final EIOPA Guidelines will be published in Quarter 4, 2013. The publication of the Central Bank Guidelines will follow the publication of the final EIOPA Guidelines.
- ▣ The Central Bank Guidelines will closely mirror the EIOPA Guidelines and will be aligned with the Central Bank's PRISM Framework. The Central Bank encourages insurance and reinsurance firms to analyse the draft EIOPA Guidelines and continue with preparatory work.
- ▣ It is likely that all high and medium high impact firms will be subject to the relevant Central Bank Guidelines from 2014. A phased approach will be adopted for low and medium low impact firms.

These presentations can be accessed at the following link:

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

(iv) EIOPA publishes Technical Findings on the Long-Term Guarantees Assessment

On 14 June 2013, EIOPA published a report on its Technical Findings on the Long-Term Guarantees Assessment ("LTGA"). This report was compiled following a request by the European Parliament, the Commission and the Council of the European Union for EIOPA to assess the impact of the market consistent approach on long-term guarantee products.

The stated goal of the LTGA was to assess the effects that the implementation of the various elements of the package may have on policyholders and beneficiaries, insurance and reinsurance undertakings, supervisory authorities and the financial system as a whole. The results from this LTGA are expected to be a very important element in facilitating trilogue negotiations on Omnibus II.

EIOPA's key technical findings covered the following topics:

- ▣ Extrapolation methodology;
- ▣ Counter cyclical premium;
- ▣ Matching adjustment;
- ▣ Transitional requirements from Solvency I to Solvency II; and
- ▣ Extension of recovery period.

Some of the key recommendations following on from the assessment include:

- ▣ Replacing the counter cyclical premium with a predictable volatility adjustment mechanism;
- ▣ In relation to extrapolation, EIOPA advises to select a convergence period that is significantly longer than 10 years (e.g. 40 years) for the Euro; and
- ▣ EIOPA advises to implement the “classical” Matching Adjustment including the strict criteria relating to credit quality step 3 investments. EIOPA advises to exclude the Extended Matching Adjustment from the Long Term Guarantee package.

The report can be accessed at the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/consultations/QIS/Preparatory_forthcoming_assessments/final/outcome/EIOPA_LTGA_Report_14_June_2013_01.pdf

(v) Central Bank publishes National Report on the Long Term Guarantee Impact Assessment

On 17 June 2013, the Central Bank published the National Report on the Long Term Guarantee Impact Assessment. This report presents the key findings of the Central Bank as a result of the LTGIA. To perform Ireland’s LTGIA, the Central Bank selected a sample of life and non-life undertakings to participate and these undertakings were required to submit results by 31 March 2013.

The quantitative and qualitative results collated at national level were then shared with EIOPA in April 2013. Consequently, the information and data submitted by the different Member States formed the basis of EIOPA’s report to the Commission which was published on 14 June 2013.

The National Report on the Long Term Guarantee Impact Assessment can be viewed at the following link:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/LTGA%20-%20Country%20Report%20-%20Ireland.pdf>

EIOPA Updates

(i) **EIOPA publishes discussion paper on a possible EU-single market for personal pension products**

EIOPA has been asked by the Commission to provide advice on the prudential regulations and consumer protection measures that would be needed in order to create a single market for personal pension products in the European Union.

The Commission previously expressed the view that the single market is a key instrument to support pension adequacy and fiscal sustainability and that there is untapped potential to realise further efficiency gains through economies of scale, risk diversification and innovation.

EIOPA has launched a discussion paper seeking stakeholders' views on what issues should be taken into account by EIOPA in the context of its work on creating a single market for personal pension products in the European Union. The consultation process is open until 16 August 2013.

EIOPA will then reassess its approach and provide a preliminary report to the Commission outlining different options.

The Consultation Paper may be found at the following link:

<https://eiopa.europa.eu/consultations/consultation-papers/index.html>

(ii) **European Parliament seeks views on the European System of Financial Supervision**

On 16 May 2013, the European Parliament commissioned two studies reviewing the operation of the European System of Financial Supervision. The first study deals with the work of the European Supervisory Authorities (including EIOPA). The second study relates to the work of the European Systemic Risk Board.

Stakeholders were invited to complete questionnaires covering the work and performance of the ESAs since their establishment in January 2011. The closing date for responses was 21 June 2013.

For more details on these studies please see the following link:

<https://eiopa.europa.eu/home-news/news-details/news/survey-review-of-the-european-system-of-financial-supervision/index.html>

(iii) EIOPA guidelines for complaints-handling by insurance intermediaries

Further to the introduction of its “Guidelines on complaints-handling by insurers” (published on 16 November 2012), EIOPA is now seeking to introduce guidelines for complaints handling by insurance intermediaries with a view to ensuring a “complete circle of protection” for consumers.







The intention is that the guidelines will provide guidance on insurance intermediaries’ internal systems and control for complaints-handling, the provision of information to consumers and procedures for responding to complaints. The guidelines will require national competent authorities to incorporate the rules into their regulatory or supervisory framework in an appropriate manner.

EIOPA held a consultation on the draft guidelines which ended on 28 June 2013 and expects to finalise the guidelines in Autumn 2013.

(iv) EIOPA launches Consultation Paper on good practices on comparison websites

EIOPA launched a Consultation Paper to seek input on good practices for comparison websites that compare insurance products. The overall aim of this Consultation Paper is to promote transparency, simplicity and fairness for internet users in the market for online comparisons of insurance products. It must be noted that these good practices are not legally binding and should be viewed as complementary guidance to applicable European and national legislation.

The good practices outlined in this Consultation Paper cover the following areas:

-  Information about the comparison website;
-  Market coverage;
-  Presentation of information;
-  Criteria used to make the ranking;
-  Frequency of updating the information; and
-  Dealing with potential conflicts of interest.

EIOPA invites comments on this Consultation Paper which is open until 23 September 2013.

For more details on this Consultation, please see the following link:

<https://eiopa.europa.eu/consultations/consultation-papers/index.html>

(v) EU/US insurance dialogue agree 5 year plan

The Steering Committee of the EU/US Insurance Dialogue has agreed on a high level work plan from 2013 to 2017.

Particular focus will be kept on those initiatives relating to professional secrecy/confidentiality and reinsurance and collateral requirements, as well as other initiatives relating to solvency and capital requirements, group supervision and on-site examination practices.

Central Bank of Ireland

(i) **Central Bank appoints new Director of Enforcement**

On 11 April 2013, the Central Bank announced the appointment of Derville Rowland as the new Director of Enforcement following Peter Oakes' resignation. Derville Rowland assumed her new role with immediate effect. She joined the Central Bank in 2004, and was appointed Head of Enforcement I in June 2010. She is a qualified barrister in the UK and Ireland.

(ii) **Central Bank issues revised draft Administrative Sanctions Inquiry Guidelines**

Following the conclusions of CP57 and the Central Bank's report thereon, the Central Bank conducted a further consultation (CP65) relating to its revised draft Inquiry Guidelines which form part of the Central Bank's Administrative Sanctions Procedure.

The consultation period ended on 24 June 2013.

Once finalised, the revised draft Guidelines will replace the Administrative Sanctions Guidelines published by the Central Bank in 2005.

The revised draft Guidelines may be viewed at the following link:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Pages/default.aspx>

(iii) **Central Bank of Ireland published Annual Report 2012 and Annual Performance Statement for Financial Regulation 2012 - 2013**

On 30 April 2013, the Central Bank published its Annual Report 2012 ("Report") and Annual Performance Statement for Financial Regulation 2012 – 2013 ("Statement"). This Report and Statement set out a full account of how the Central Bank has carried out its activities during 2012.

One of the primary activities of the Central Bank during this period has been the restoration of financial stability to the Irish economy. The Central Bank's effort in this area included further reforms to the supervision of the repair of the domestic banking sector, the provision of necessary liquidity support, and the introduction of enhanced consumer protection measures.

During the period, there was also further considerable progress towards the delivery by Ireland on its commitments under the EU-IMF Programme.

This Report and Statement can be accessed at the following link:

<http://www.centralbank.ie/press-area/press-releases/Pages/CentralBankofIrelandAnnualReport2012.aspx>

(iv) Central Bank granted new powers under European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013

On 15 May 2013, the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2013 (“2013 Regulations”) were published. These Regulations amend the European Communities (Unfair Terms in Consumer Contracts) Regulations 1995 (“1995 Regulations”) and the European Communities (Unfair Terms in Consumer Contracts) (Amendment) Regulations 2000. The 2013 Regulations apply to any term in a contract concluded between a seller of goods or supplier of services and a consumer, which has not been individually negotiated. Under the 1995 Regulations a consumer means “a natural person who is acting for purposes which are outside his business”.

The 2013 Regulations insert a definition of “authorised body” into the 1995 Regulations which includes the Central Bank of Ireland, the National Consumer Agency or a consumer organisation. As a result the Central Bank has been granted the following powers:

- ▣ It may apply to the Circuit Court or High Court for a declaration that any term drawn up for general use in contracts concluded by sellers or suppliers is unfair and may, at the discretion of the Court, be granted an order prohibiting the use or continued use of such a term.
- ▣ It may apply for an injunction (including an interim injunction) against any seller or supplier using or recommending use of, a term which the authorised body considers to be an unfair term drawn up for general use in contracts concluded with consumers and the Court may grant an injunction on such terms as it deems appropriate.

If the Central Bank makes an application to the Court for a declaration that a term is unfair or for an injunction, this application shall be on notice to the National Consumer Agency. Further, it must be noted that an authorised body is not required to prove actual loss or damage, or recklessness or negligence on the part of the seller or supplier. However, in considering any application the Court must take account of all the interests involved and in particular the public interest.

(v) Update on Payment Protection Insurance Review

On 17 May 2013, the Central Bank of Ireland issued an update on its investigation into the sale of Payment Protection Insurance (“PPI”).

Currently ten firms (including the major domestic banks) are undertaking a review of their PPI sales process since July 2007. This follows the publication by the Central Bank of a report in July 2012 concerning sales where claims relating to unemployment/redundancy were declined due to issues concerning the claimants' employment status at the time the policy was entered.

The Central Bank's main concerns on this issue are:

- ▣ A general failure on the part of insurers to gather sufficient information to enable them to determine whether the product sold to the consumer was in fact suitable;
- ▣ Firms treating certain sales as 'execution only' without complying with the relevant requirements of the Consumer Protection Code;
- ▣ The timing of the provision of key information to consumers;
- ▣ Failure on the part of insurers to bring key exclusions to the attention of consumers; and
- ▣ Poor record keeping and incomplete files.

The firms have been engaged in correspondence with effected customers on the issue and the Central Bank is expected to make a full statement concerning refunds to consumers at the conclusion of the overall review process.

IVASS

The Istituto per la Vigilanza sulle Assicurazioni (“IVASS”) in Italy is currently reviewing submissions made following public consultations on two matters:

- (i) The use of telematics in motor vehicles; and
- (ii) The requirement for insurers to provide policyholders with online access to information relating to their policy.

The first public consultation relates to the use of telematics for motor insurance. Telematics involves the installation of a black box-type device (or the use of a mobile phone app) in an insured’s vehicle which is then used to assess that person’s driving profile (for example their cornering speed, rate of braking and acceleration, the times at which the vehicle is used), allowing the insurer to individualise that person’s premium in as much as is possible.

The use of such devices has come to the fore since 21 December 2012, the date as of which insurers may no longer take a person’s gender into account when calculating insurance premiums. The net effect of this rule is that motor insurance premiums for women (but particularly young women) have increased dramatically, as the fact that they are statistically safer drivers may no longer be taken into account. Telematics offers a way around this, allowing each driver (male or female) to prove their safe driving on an on-going basis.

IVASS held a public consultation on how the use of telematics should be regulated, particularly the collection, management and use of data collected from the black-box devices. It is expected that IVASS will address the issue of outsourcing the processing of this data to third parties following its review of submissions.

The second public consultation relates to the proposed provision of online access to policy information for all customers (not just consumers) via the insurer’s website.

Under the proposal, policyholders must be given online access to the following information concerning their policies:

- (i) Details of policies in force;
- (ii) Terms and conditions;
- (iii) Status of payments;
- (iv) Surrender values for life assurance products; and
- (v) The values to which insurance performances are linked in the case of unit and index linked policies.

The consultation periods both ended on 30 April 2013.

Pensions Update

The Pensions Board has issued a Frequently Asked Questions document (“FAQs”) on the withdrawal of additional voluntary pension contributions.

The FAQs follow the introduction of a measure under the Finance Act 2013 allowing a once-off option for pension scheme members to withdraw up to 30% of the value of their AVCs (subject to tax) up until the end of March 2016.

The FAQ document may be viewed at the following link:

http://pensionsboard.ie/en/Regulation/Guidance_FAQs/FAQs_on_the_withdrawal_of_Additional_Voluntary_Contributions_AVCs_May_2013.pdf

Proposed Pyrite Levy Bill

On 16 April 2013, the Department of the Taoiseach published its legislation programme for the Summer Session 2013. One of the Bills to be considered during this session is the Pyrite Levy Bill. This Bill proposes to provide a statutory basis for the imposition of levies on the quarrying and insurance sectors to fund the remediation of certain pyrite damaged dwellings.





The Bill is expected to be published later this year.

Update on IMD2

On 3 July 2012, as part of a wider legislative package focusing on consumer protection related issues, the Commission announced a proposed reform of the Insurance Mediation Directive (2002/92/EC) (the ‘IMD’).

The aim of the proposed IMD2 is to improve consumer protection in the insurance sector through the requirements for increased information provision and advice and by creating common standards for insurance sales. It also aims to improve the regulation of retail insurance sales and distribution practices across the single European market.

On 30 April 2013, the European Parliament’s Internal Market and Consumer Protection Committee published an opinion on the proposals to amend the IMD (2002/92/EC). In particular the opinion focuses on the following areas:

-  Tying and bundling;
-  Remuneration;
-  Geographical scope; and
-  The scope of the directive.

The opinion can be accessed at the following link:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-502.077%2b02%2bDOC%2bPDF%2bV0%2f%2fEN>

The proposals to amend the IMD2 (2002/92/EC) are now due to be considered at the 21-24 October 2013 plenary session.

Data Protection

(i) **Article 29 Data Protection Working Party adopts Opinion on purpose limitation**

On 2 April 2013, the Article 29 Data Protection Working Party adopted an opinion on the principle of purpose limitation. Purpose limitation protects data subjects by imposing limitations on how data controllers can use their data while also offering some degree of flexibility for data controllers.

This opinion analyses the principle of purpose limitation, provides guidance for the practical application of this principle and formulates policy recommendations for the future.

This opinion can be found at the following link:

http://ec.europa.eu/justice/data-protection/article-29/documentation/opinion-recommendation/files/2013/wp203_en.pdf

(ii) **European Parliament publishes a set of Questions and Answers on Data Protection Reform**

On 2 May 2013, the European Parliament published a set of Questions and Answers (“Q&As”) on Data Protection Reform. These Q&As provide information on:

- ▣ The legislative package;
- ▣ Key definitions;
- ▣ Key issues;
- ▣ Facts and figures;
- ▣ Key dates in Parliament;
- ▣ The next stages; and
- ▣ The MEPs dealing with this reform.

These Q&As can be accessed at the following link:

<http://www.europarl.europa.eu/news/en/pressroom/content/20130502BKG07917/html/QA-on-EU-data-protection-reform>

(iii) Article 29 Data Protection Working Party adopts Advice Paper on profiling

On 13 May 2013, the Article 29 Data Protection Working Party adopted an Advice Paper on essential elements of a definition of profiling within the EU General Data Protection Regulation.

In this Advice Paper, the Article 29 Data Protection Working Party:

- ▣ Deems it necessary to include a definition of profiling in Article 4 of the General Data Protection Regulation; and
- ▣ Welcomes the proposal to broaden the scope of Article 20 covering processing of personal data for the purpose of profiling or measures based on profiling.

This Advice Paper can be found at the following link:

http://ec.europa.eu/justice/data-protection/article-29/documentation/other-document/files/2013/20130513_advice-paper-on-profiling_en.pdf

(iv) Data Protection Commissioner publishes Annual Report 2012

On 20 May 2013, the Data Protection Commissioner published his Annual Report for 2012.

Some key points from the Annual Report:

- ▣ The Data Protection Office opened 1,349 complaints for investigation, up 188 from 2011;
- ▣ One third of these complaints related to individuals who had difficulty in accessing their personal data held by organisations;
- ▣ There were 606 complaints reporting unsolicited direct marketing text messages, phone calls, fax messages and emails under the Privacy in Electronics Regulations during 2012 (up from 253 in 2011); and
- ▣ Personal Data security breach notifications in 2012 increased to 1666 notifications which is an increase of over 400 on 2011.

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

http://dataprotection.ie/viewdoc.asp?m=&fn=/documents/annualreports/Annual_Report_2012.pdf

Anti-Money Laundering/Counter-Terrorism Financing

(i) Criminal Justice Act 2013

The Criminal Justice Act, 2013 (“2013 Act”), which amends the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“the 2010 Act”) was signed into law on 12 June 2013. Part 2 of the 2013 Act, which deals with the changes to the 2010 Act came into effect on the 14th June 2013 (with the exception of sections 5, 15 and 16). The amendments to the 2010 Act give rise to certain practical and technical improvements whilst also ensuring a closer alignment of Irish law with international standards.

Some of the main amendments to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (“2010 Act”) include:

- *Customer Due Diligence:* Section 33(1) of the 2010 Act, which deals with the requirement to complete customer due diligence prior to establishing the business relationship with the customer, has been amended whereby the designated person must consider whether it has reasonable grounds to suspect that the customer is involved in (or the service, transaction or product sought by the customer is for the purpose of) money laundering or terrorist financing.

Previously the designated person had to consider if there was reasonable grounds to believe that there is a real risk that the customer is involved in (or the service, transaction or product sought by the customer is for the purpose of) money laundering or terrorist financing.

Effectively the threshold has been now lowered to reasonable grounds to suspect as opposed to reasonable grounds to believe that there is a real risk that the customer is involved in money laundering or terrorist financing

- *Simplified Due Diligence:* The application of Simplified Due Diligence, under Section 34(1), of the 2010 Act, has been amended whereby the designated person is now required to take measures to satisfy itself that the customer is in fact a specified customer or specified product. In practice designated persons were already doing this, however it is now obligatory.

In addition, if a designated person wishes to avail of the exemption under Section 36 of the 2010 Act whereby it is not required to establish the purpose of the business relationship, the designated person must now take measures to satisfy itself that the customer is in fact a specified customer or specified product.

- **PEP Obligations:** Section 37 of the 2010 Act, which deals with non-domestic PEPs has been amended whereby the obligation to perform the source of wealth and source of fund checks and obtain senior management sign-off will now extend to existing business in addition to new business.

There is also a new obligation under Section 37 to monitor source of wealth and source of funds checks (as opposed to source of wealth or source of funds checks) for on-going transactions where the designated person considers this to be warranted by the risk of money laundering and terrorist financing.

- **Enhanced Customer Due Diligence:** Section 39 of the 2010 Act, which deals with enhanced due diligence in cases of heightened risk, has been amended to require designated persons to apply additional customer due diligence measures where the designated person has reasonable grounds to believe that there is a higher risk of money laundering or terrorist financing. This was previously a discretionary requirement.

- **Internal Policies and Procedures:** The requirement for internal policies and procedures, under Section 54(3) of the 2010 Act, has been amended whereby there is now a requirement to keep documents and information relating to customers up to date. In other words there is now an obligation to keep customer due diligence records up to date. However, the legislation does not provide any guidance on how this will work in practice – such as will it be sufficient to review customer due diligence documentation once a year (every two years) or should it occur on a trigger event (e.g. when documentation such as a passport expires). Some guidance from the Central Bank on this matter would be useful to ensure consistency of application of this new requirement.

Section 54(3) of the 2010 Act has also been amended to provide for additional measures to be taken to give effect to enhanced due diligence rules as well as steps to manage the risk of money laundering or terrorist financing, which may arise in technological developments, including the use of new products and new practices, and the manner in which services relating to such developments are delivered.

- **Record Retention:** The record retention obligations, under Section 55 of the 2010 Act, have been amended whereby it is no longer mandatory to retain records in the State provided such records are capable of being reproduced in the State as soon as practicable.

FATCA Update

In December 2012, the Irish and US Governments concluded an intergovernmental agreement (“Irish IGA”) in relation to the US Foreign Account Tax Compliance Act – commonly referred to as FATCA. This agreement aimed to reduce and simplify the administrative and compliance burdens for relevant Foreign Financial Institutions or “FFI’s” (which is broadly defined under FATCA and would include Irish funds and other financial institutions such as investment managers, insurance companies, etc.) and therefore may provide a competitive advantage as compared to other countries which may not be able to reach a similar agreement with the US.

Under the Irish IGA, relevant FFI’s will report directly to the Irish Revenue Commissioners and will therefore not be required to enter directly into potentially onerous FFI Agreements with the US Internal Revenue Service (which would generally be required in the absence of an IGA). Under the Irish IGA, a relevant FFI will also typically not be required to apply the 30% withholding tax that FATCA could generally impose.

On 3 May 2013, the Irish Revenue Commissioners published the draft Financial Accounts Regulations 2013 and the supporting draft Guidance Notes on the Implementation of FATCA in Ireland. These draft Regulations and draft Guidance Notes are intended to give effect to the Irish IGA. These draft Regulations and draft Guidance Notes provide further guidance for financial institutions in complying with the reporting provisions set out in the Irish IGA.

In light of the implementation of FATCA, Irish FFIs must give consideration to how they will manage their FATCA compliance.

Also, FFIs are under an obligation to register with the Internal Revenue Service of the United States of America for the purposes of FATCA. An application for registration must be made by 25 October 2013 or if the FFI has not commenced to carry on a business on that date, no later than 30 days following the commencement of that business. The FATCA Registration Portal is meant to open no later than 15 July 2013.

Revenue sought comments and observations on these draft Regulations and Guidance up to 31 May 2013.

These draft Regulations and Guidance notes can be accessed at the following links:

<http://taxpolicy.gov.ie/wp-content/uploads/downloads/2013/05/FATCA-Draft-Financial-Accounts-Reporting-Regulations-2013.pdf>

<http://taxpolicy.gov.ie/wp-content/uploads/downloads/2013/05/Draft-Guidance-Notes-on-the-Implementation-of-FATCA-in-Ireland.pdf>

Dillon Eustace

This Insurance Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter ending 30 June 2013, and, accordingly, may not reflect changes that have occurred subsequently. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace.

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