

Insurance Quarterly Legal and Regulatory Update

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INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

(i) EIOPA Publishes the Final Guidelines for the Preparation of Solvency II

The European Insurance and Occupational Pensions Authority ('EIOPA') published the final Guidelines for the Preparation of Solvency II (the 'Guidelines') on 27 September 2013. The Guidelines were finalised following the closing of the consultation on the Guidelines on 19 June. The consultation received over 4000 comments.

The Guidelines and the responses to the consultation can be viewed at the attached link:

<https://eiopa.europa.eu/consultations/consultation-papers/2013-closed-consultations/march-2013/guidelines-on-preparing-for-solvency-ii/index.html>

The Guidelines aim to ensure that National Competent Authorities ('NCAs'), insurance companies and groups take active steps towards implementing certain key elements of Solvency II (as set out below) in a consistent and convergent way:

-  The system of governance;
-  Forward looking assessment of an undertaking's own risk (based on the Own Risk and Solvency Assessment (OSRA) principles). This operates on the assumption that the Omnibus II measures and updated Technical Specifications on Pillar 1 quantitative issues will be available in time for companies to carry out a forward looking assessment of own risks during 2014 and 2015;
-  Submission of information to National Competent Authorities; and
-  Pre-application for internal models.

EIOPA has stated that it envisages making the Guidelines publicly available in all the official EU languages on 31 October 2013.

It is expected that the Guidelines will be effective on 1 January 2014 subject to phasing in certain provisions over the course of 2014 and 2015.

EIOPA understands that undertakings will need time to establish the appropriate internal processes and IT systems. EIOPA's approach is that for preparatory purposes the annual information is

submitted once before Solvency II is applicable and the quarterly information is submitted in relation to the two quarters prior to the application of Solvency II.

Based on the assumption that the Solvency II Directive will be applicable on 1 January 2016, the relevant guidelines therefore state that:

- For the annual submission, the first set of data will be expected in 2015 on the year end data from 2014. The deadline is 20 weeks for solo undertakings and 26 weeks for groups.
- For the quarterly submission, the first set of data will be expected from Q3 of 2015. The deadline is 8 weeks for solo undertakings and 14 weeks for groups.

These submission dates will be reviewed at the end of 2013 based on the latest developments with regard to Omnibus II.

The NCAs are required to report to EIOPA about their compliance or intention to comply before 27 November 2013. Now that the Guidelines have been finalised the Central Bank is expected to publish its Guidelines on Preparing for Solvency II shortly, which will closely reflect the EIOPA Guidelines. The Central Bank has revealed that its PRISM framework will be incorporated into its Guidelines and that all High and Medium High impact firms will be subject to the Central Bank Guidelines from 1 January 2014, with a phasing in period during 2014 and 2015 for Low and Medium Low firms.

The Central Bank plans to hold an industry event in November to provide further information on Solvency II preparation and how it will engage with firms when the Guidelines on Preparing for Solvency II apply.

(ii) Omnibus II

The European Parliament plenary vote on the Omnibus II Directive (which will amend the Solvency II Framework Directive) is scheduled for a plenary session on 3 February 2014, though this date is subject to change. The Central Bank has stated that its Solvency II preparation plans are based on an assumed Solvency II implementation date of 1 January 2016.

(iii) Central Bank Publishes Latest Edition of Solvency II Matters

The Central Bank published the eleventh edition of Solvency II Matters in September. 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:

- ▣ Guidelines on Preparing for Solvency II;
- ▣ Industry Events;
- ▣ Long Term Guarantee Impact Assessment;
- ▣ Omnibus II; and
- ▣ Undertaking Specific Parameters.

The newsletter can be accessed at the following link:

<http://www.centralbank.ie/regulation/industry-sectors/insurance-companies/solvency2/Documents/Solvency%20II%20Matters%20Issue%2011%20-%20September%202013.pdf>

EIOPA Update

The Joint Committee of the three European Supervisory Authorities (the EBA, EIOPA and ESMA) published draft Regulatory Technical Standards ('RTS') on the consistent application of the calculation methods described in the Financial Conglomerates Directive, covering the assessment of the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate on 29 July 2013. The draft RTS define the appropriate application of calculation methods for the determination of required capital at the financial conglomerate level and aim at harmonising the use of the calculation methods in order to ensure a consistent approach in the calculations is applied across different financial conglomerates.

The draft RTS are available here:

http://www.eba.europa.eu/documents/10180/361408/JC+RTS+2013+01%28Draft+RTS+on+consistent+application+of+Article+6+2_FICOD%29.pdf.

EMIR

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR') entered into force on 16 August 2012. EMIR is supplemented by a series of RTS and Implementing Technical Standards ('ITS') which came into effect on 15 March 2013. The main objective of EMIR is to mitigate the perceived risks associated with OTC derivative contracts by introducing the following obligations:

- ▣ Risk mitigation requirements for non-centrally cleared trades;

- ▣ Reporting to Trade Repositories ('TRs'); and
- ▣ Clearing obligations relating to standard OTC derivatives.

Risk Mitigation Requirements for non-centrally cleared trades

Counterparties who enter into OTC derivative transactions not cleared by a central counterparty ('CCP') must ensure "that appropriate procedures and arrangements are in place to measure monitor and mitigate operational risk and credit risk". Currently all OTC derivative transactions are subject to the risk mitigation requirements as the EMIR clearing obligations have not yet been imposed on any OTC derivative contract. Risk mitigation requirements for non-centrally cleared OTC derivatives as provided for in EMIR include (i) timely confirmations; (ii) portfolio reconciliation requirements; (iii) portfolio compression requirements; (iv) dispute resolution mechanisms; (v) daily marking to market; and (vi) collateral exchange and capital requirements. These requirements are all in effect save for (vi) above (collateral exchange and capital requirements) which is not expected to come into effect until 2015.

Reporting to Trade Repositories

Counterparties to all derivative contracts (OTC and exchange traded) are required to report post-trade details of any derivative contract which they have concluded to a registered TR. Counterparties are also required to report any modifications and terminations of such derivative contracts to a TR. Intragroup transactions should also be reported in the same manner as any other trades. ESMA has recently updated its EMIR implementation timetable and has indicated that the obligation by counterparties' to report to TRs is not expected to start before February 2014.

ESMA's EMIR implementation timetable is available at this link:

<http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR>.

Clearing obligations relating to standard OTC derivatives

One of the most significant changes introduced by EMIR is to require the clearing of certain OTC derivative contracts through an authorised CCP. On 12 July 2013, ESMA published a discussion paper (the 'Discussion Paper') regarding the clearing obligation under EMIR, which covers:

- ▣ The class of OTC derivatives that should be subject to the clearing obligation;
- ▣ The date or dates from which the clearing obligation takes effect; including any phase in and the categories of counterparties to which the obligation applies; and
- ▣ The minimum remaining maturity of OTC derivative contracts subject to the clearing obligations.

The Discussion Paper provides a description as to how ESMA will determine whether a class of OTC derivatives should be subject to the clearing obligation and the date from which the clearing obligation takes effect. The Discussion Paper was open for feedback until 12 September 2013. ESMA will now use the feedback received to draft its technical standards on the clearing obligation, which will be presented in future public consultations. It is expected that the clearing obligation will not take effect until 2015.

Relevance of EMIR to the Insurance Industry

EMIR is relevant to any entity that trades derivatives and in this way is relevant to the insurance industry. An insurance company may be caught by EMIR if:

- ▣ It enters into an OTC derivative contract for its own account or if a third party (e.g. such as an investment manager) enters into an OTC derivative contract on its behalf;
- ▣ Policyholder funds are invested into an index linked product, which in turn enters directly into an OTC derivative contract;
- ▣ It has defined benefit pension schemes that use OTC derivatives;
- ▣ It is an annuity writer and makes use of interest rate swaps;
- ▣ It sells with profit policies which make use of OTC derivatives to hedge guarantee and options.

Central Bank of Ireland

(i) Central Bank Appoints New Deputy Governor – Financial Regulation

On 21 August 2013, the Central Bank announced the appointment of Mr. Cyril Roux as the new Deputy Governor, Financial Regulation following Matthew Elderfield's resignation. Mr. Roux will be responsible for all regulatory activities at the Central Bank and will take up his new position on 1 October 2013. Prior to joining the Central Bank, Mr. Roux acted as the First Deputy Secretary General of the French prudential supervisory authority for banks and insurance companies (Autorité de Contrôle Prudentiel et de Résolution – 'ACPR').

(ii) Central Bank Granted New Powers under the Central Bank (Supervision and Enforcement) Act 2013

The Central Bank (Supervision and Enforcement) Act 2013 (the '2013 Act') has been fully effective since 1 September 2013. It significantly enhances the capacity of the Central Bank to supervise regulated financial services providers and enforce financial services legislation, particularly by:

- Increasing its powers to give directions and make regulations – the Central Bank now has regulation-making powers in a range of conduct of business areas, including consumer protection;
- Consolidating and augmenting the Authorised Officer role – their powers of inspection, investigation and information gathering have been enhanced;
- Providing for customer redress for problems that are widespread or regular, such as overcharging or systems failures;
- Providing protection for whistleblowers; and
- Increasing the level of sanctions it may impose – the Central Bank can now make orders of restitution and recoup the investigation costs from those found guilty of an offence. The maximum administrative sanction has doubled to €1 million for an individual and to €10 million (or 10% of the previous year's turnover, whichever is higher) for a firm.

In addition, the 2013 Act:

- Provides the Central Bank with the power to require an auditor to provide a written report on compliance by a financial service provider with certain requirements;
- Brings debt management firms into the regulatory regime for the first time;
- Provides the Financial Services Ombudsman with the power to name the financial service providers that are the subject of complaints; and
- Provides that a third country credit institution can now apply to the Central Bank to establish a branch in Ireland.

A Dillon Eustace article on the 2013 Act is available here:

<http://www.dilloneustace.ie/download/1/Central%20Bank%20Supervision%20and%20Enforcement%20Act%202013%20August%202013.pdf>

(iii) The Central Bank Publishes Guidance on the PCF Resignation Process

The Central Bank has published guidance on the PCF Resignation Process. This Guidance provides instructions for Regulated Financial Service Providers ('RFSPs') on how to notify the Central Bank of the resignation of an individual that is approved to hold a Pre-Approval Controlled Function ('PCF'). Such resignation notifications are now required to be submitted through the Central Bank's ONR System.

In summary the Guidance sets out the following:

- RFSPs are required to notify the Central Bank without delay of the resignation of an individual who held a PCF.

- ▣ Details of the resignation will need to be provided including the effective date of the resignation and the reason for the resignation via a drop down menu in the ONR System – e.g. Terms of Appointment Expired, Career Change, etc. If either of the options “Performance Issues” or “Other” are selected, further details are required to be provided.
- ▣ The RFSP must provide a declaration that it has informed the resignee of his/her right to contact the Central Bank concerning the reasons for his/her departure.
- ▣ Depending on the industry sector, certain additional documents are required to be uploaded.

A summary of the requirements for Credit Institutions and Insurance/Reinsurance Undertakings is set out below:

- ▣ A mandatory upload of a letter of confirmation signed by the resigning PCF holder (‘the resignee’), confirming that at the time of resignation there were no outstanding issues between the resignee and the regulated entity or its board of directors.
- ▣ An optional upload of the resignee’s letter of resignation.

(iv) New Fitness and Probity Requirement for a PCF Annual Confirmation Return

The Central Bank has introduced an Annual PCF Confirmation Return, which is required to be filed by each RFSP in respect of each active PCF holder within the RFSP confirming that he/she is compliant with the Fitness and Probity Standards and continues to agree to abide by those Standards. The PCF Confirmation Return must be submitted through the Central Bank’s ONR System. The requirement of the Board to confirm to the Central Bank upon the re-election/re-appointment of a PCF holder that his/her circumstances have not changed since pre-approval was granted, will also be covered by the completion of this return.

In terms of submitting the Annual PCF Confirmation Return, the Central Bank intends to write out to firms in October to notify them as to when exactly they will be required to submit the Annual PCF Confirmation Return to the Central Bank. It is likely that the reporting date will tie in with the date when a firm is required to submit its financial statements to the Central Bank.

Guidance and a ‘How To’ guide on completing the return are available on the Central Bank website:

<http://www.centralbank.ie/regulation/processes/fandp/Documents/Annual%20PCF%20Confirmation%20Guidance%20Instructions.pdf>

<http://www.centralbank.ie/regulation/processes/fandp/Documents/Quick%20Reference%20Guide%20-%20Annual%20PCF%20Confirmation.pdf>.

(v) Central Bank Publishes “Regulatory Transactions Review”

The Central Bank published a “Regulatory Transactions Review” (formerly the “IQ Bulletin”) in August. The update covers the new Annual PCF Confirmation Return and the new PCF Resignation Return, as well as:

- The Fitness and Probity Regime for Credit Unions;
- The publication of Fitness and Probity Service Standards Performance for the period January – June 2013. Further details are set out in (vi) below;
- The new Online Reporting System functionality to allow changes to PCF information; and
- The new In Situ PCF Return available for Credit Unions and other RFSPs yet to make their PCF submission.

RFSPs now have the facility to view all PCF holders associated with the RFSP via the ONR System and will have the ability to update an effective start date or confirm the election date of a recently approved person and update their residential address and/or contact details.

Going forward, all change of address and start date/election date notifications must be submitted through the Central Bank's ONR System.

This update is available on the Central Bank website:

<http://www.centralbank.ie/regulation/processes/fandp/Documents/Regulatory%20Transactions%20Review.pdf>.

(vi) Central Bank Publishes Fitness and Probity Service Standards Performance Report

The Central Bank published a Fitness and Probity Service Standards Performance Report for January – June 2013 in July. The Report provides that 95% of standard IQ applications made within the period January – June 2013 were processed within 15 business days. The Central Bank advises RFSPs submitting IQ's to familiarise themselves with the key reasons why applications are currently returned as incomplete in order to further improve turnaround times. These are contained in Appendix A to the Report and include the proposer not having authority within the regulated entity to submit the IQ and a lack of supporting documentation being submitted in respect of a matter disclosed in the Reputation and Character section.

The Report can be viewed here:

<http://www.centralbank.ie/regulation/processes/fandp/Documents/Service%20Standards%20Performance%20Report%20July%202013.pdf>.

(vii) Central Bank Publishes Feedback Statement on the Consultation on Impact Based Levies and Other Levy Related Matters ('CP61')

The Feedback Statement responds to the submissions made in relation to CP61 and sets out the approach that the Central Bank intends to take in making changes to the levy calculation process. In total twenty submissions were made by regulated entities and industry representative bodies in relation to CP61. The Feedback statement provides that:

- The Central Bank's levy calculation process will be based on the PRISM impact categorisation;
- Costs directly attributable to a particular industry sector will be charged solely to the industry sector concerned;
- Costs related to the investigation and follow-up of legacy issues related to the financial crisis will be borne solely by the particular industry sector concerned;
- Credit Institutions and Insurance Undertakings authorised in another EEA State and operating in Ireland on a branch basis will only be liable to a levy designed to contribute towards the cost of consumer protection regulation and not a prudential supervision levy; and
- The introduction of application fees has been deferred until 2014 to provide an opportunity for further consultation, the introduction of enabling primary legislation where required, and the establishment of service standards by the Central Bank.

The Feedback Statement is available on the Central Bank's website:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/Feedback%20Statement%20on%20Consultation%20Process%20for%20CP61.pdf>.

(viii) Central Bank Publishes Consultation Paper on Proposed Revisions to the Corporate Governance Code for Credit Institutions and Insurance Undertakings ('CP69')

The Central Bank is currently carrying out a review of its Corporate Governance Code for Credit Institutions and Insurance Undertakings (the 'Code'), which sets out minimum statutory requirements on how credit institutions and insurance undertakings (including reinsurers but excluding captives) should organise the governance of their institutions. The Code has been effective since 1 January 2011. CP 69, which was published on 1 August 2013, contains the proposed amendments to the Code as well as an invitation to comment on certain topics. These include:

- The board directorship limits;
- Amendments relating to the Chairman and the CEO;
- A new requirement to appoint a Chief Risk Officer; and
- Amendments relating to the Audit Committee, Risk Committee and board sub-committees generally.

Interested parties are invited to comment on the proposed amendments and topics by 1 October, 2013. Submissions should be made to codereview@centralbank.ie. The Central Bank proposes to publish its revised Code in December 2013.

A Dillon Eustace article on the proposed changes to the Code is available at this link:

<http://www.dilloneustace.ie/download/1/Proposed%20Changes%20to%20the%20Corporate%20Governance%20Code%20for%20Credit%20Institutions%20and%20Insurance%20Undertakings.pdf>.

The consultation paper is available here:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP69%20Consultation%20on%20the%20Review%20of%20the%20Corporate%20Governance%20Code%20for%20Credit%20Institutions%20and%20Insurance%20Undertakings/Consultation%20on%20the%20Review%20of%20the%20Corporate%20Governance%20Code%20for%20CIs%20and%20Ins%20Undertakings.pdf>.

(ix) Central Bank Publishes Insurance Statistics for 2011

In July the Central Bank published a summary of the Life Assurance and Non-Life Insurance returns made to the Central Bank pursuant to the EC (Life Assurance) Framework Regulations 1994 and the EC (Non-Life Insurance Accounts) Regulations 1995 in respect of business written during 2011.

The statistics show a general decline in premiums between 2010 and 2011. Total life and industrial assurance premiums for undertakings with their head offices in Ireland declined from €26,635m in 2010 to €24,873m in 2011, while total life and industrial assurance premiums for undertakings with their head offices outside Ireland declined from €1,645m in 2010 to €657m in 2011.

Non-life insurance premium income declined also. The statistics show that in 2011 total gross Irish risk insurance premium income amounted to €3,553m versus €3,701m in 2010.

The statistics are available at this link to the Central Bank's website:

<http://www.centralbank.ie/publications/pages/statistics-research.aspx>

(x) Central Bank Publishes Consultation Paper on Investment Intermediaries ('CP72')

The Central Bank published CP72 on the Review of the Handbook of Prudential Requirements for Authorised Advisors and Restricted Intermediaries (the 'Handbook') on the 30 August 2013. The Central Bank is seeking to update the current Handbook, which applies to investment intermediaries authorised under the Investment Intermediaries Act, 1995 (as amended) ('IIA'), to reflect the significant regulatory changes that have occurred in the retail intermediary sector since the Handbook was last revised in 2006 and to provide better protection to consumers and a clearer framework for firms to operate in.

The consultation paper sets out a series of proposed amendments to existing prudential rules, including:

- ▣ Reclassifying the various intermediary types into "Investment Product Intermediaries" ('IPIs');
- ▣ Abolishing the minimum regulatory capital requirement and instead requiring all IPIs to maintain a positive capital balance (other than intermediaries acting as Product Producers which are required to hold a minimum capital of €50,000);
- ▣ Requiring that IPIs maintain a positive net asset position at all times and IPIs must be in a position to meet their obligations in full as they fall due; and
- ▣ Harmonising the Professional Indemnity Insurance requirements with the requirements under the Insurance Mediation Regulations applicable to insurance brokers.

Submissions are invited to be made to handbookipi@centralbank.ie from interested parties by 29 November 2013. The consultation paper is available at this link:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP72%20Consultation%20on%20the%20Review%20of%20the%20Handbook%20of%20Prudential%20Requirements/Consultation%20Paper%2072%20on%20Prudential%20Handbook%20FINAL.pdf>.

(xi) Central Bank Publishes Consultation Paper on Requirements for Reserving and Pricing for Non-Life Insurers and Reinsurers ('CP73')

The Central Bank's CP73 on the Proposed Requirements for Reserving and Pricing for Non-Life Insurers and Reinsurers was issued on 19 September 2013. CP73 outlines that the purpose of the proposed requirements is to improve the existing supervisory regime in areas of relevance to pricing and reserving so as to provide assurance to the Central Bank that non-life insurers and reinsurers are maintaining appropriate reserves. The Central Bank also proposes to impose

requirements on non-life insurers and reinsurers in respect of their governance structures in order to ensure that such companies have appropriate governance structures in place in relation to reserving.

The proposals cover:

- ▣ Governance requirements;
- ▣ Role of the signing actuary and its prescription as a Pre-Approval Controlled Function;
- ▣ Statement of Actuarial Opinion requirements;
- ▣ Internal Audit requirements;
- ▣ Risk Margin Report;
- ▣ Peer Review; and
- ▣ Pricing Policy.

The closing date for submissions, which should be made to insurance@centralbank.ie, is 10 December 2013. The consultation paper is available here:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP73/CP73%20Consultation%20on%20Requirements%20for%20Reserving%20and%20Pricing.pdf>

(xii) Central Bank Publishes Consultation Paper on CRD IV Competent Authority Discretions ('CP74')

The Central Bank published CP74 on the Competent Authority Discretions and Options in the Capital Requirements Directive IV ('CRD IV') and Capital Requirements Regulation ('CRR') on 20 September 2013.

CRD IV and CRR are the mechanisms by which the EU is implementing Basel III and will apply to credit institutions and investment firms from 1 January 2014.

CP74 outlines the Central Bank's proposed approach and perspectives in relation to provisions contained within CRD IV and CRR where the competent authority (i.e. the Central Bank) can or must exercise its discretion. Both competent authority discretions and options that may apply to credit institutions and investment firms, as well as those specific to credit institutions or investment firms are covered in the consultation paper.

Implementation of the competent authority discretions and options identified will, in many cases, be subject to binding technical standards ('BTS') developed by the European Banking Authority ('EBA'). The Central Bank states that it expects institutions to adhere to EBA outputs where these are applicable to them and places the onus on the regulated firm to keep up to date with the latest

European pronouncements. The Central Bank also discusses the five new capital buffers required to be met with Common Equity Tier 1 (the highest quality capital) in the consultation paper.

In addition, CP74 covers the application of discretions to MiFID firms. The Central Bank notes that a change in definitions will mean a significant increase in the number of MiFID firms subject to the full rigour of CRD IV, from 13 to approximately 60. The Central Bank has signalled that it does not intend to automatically apply the national discretion for Risk Committees and Audit Committees to be combined and instead will accept applications for this discretion to be exercised on a case-by-case basis for smaller, less complex investment firms.

Given CRD IV and CRR will apply from 1 January 2014, the comment period for CP74 is only **6 weeks**. Submissions are invited from interested parties by 1 November 2013 as follows:

- For credit institutions and other non-investment firm stakeholders: CRDIV@centralbank.ie
- For investment firm stakeholders: invfirmpolicy@centralbank.ie

CP74 is available here:

<http://www.centralbank.ie/regulation/poldocs/consultation-papers/Documents/CP74/Consultation%20on%20Competent%20Authority%20Discretions%20and%20Options%20in%20CRDIV%20and%20CRR%20-%20CP%2074-%20pdf%20Version.pdf>.

Pensions Update

(i) 2013 Edition of Revenue Pensions Manual Published

The Revenue Commissioners have published the latest version of the Pensions Manual. The Revenue Pensions Manual gives general guidance on how the Revenue Commissioners' discretionary powers in relation to the approval of occupational pension schemes are exercised. The Manual also contains guidance on other topics, for example, Retirement Annuity Contracts, Approved Retirement Funds, and Personal Retirement Savings Accounts.

The 2013 edition can be accessed at this link:

<http://www.revenue.ie/en/about/foi/s16/templates/pensions/>.

(ii) Social Welfare and Pensions (Miscellaneous Provisions) Act 2013

The Social Welfare and Pensions (Miscellaneous Provisions) Act 2013 (the 'Act') provides for the restructuring of the current Pensions Board. Under the Act the Pensions Board will change its

name to the Pensions Authority. The Act provides for the regulation of the pensions industry to be undertaken by the new Pensions Authority and for a new Pensions Council to take up the advisory function for the Minister for Social Protection. The Chief Executive of the Pension Authority will be re-named the 'Pensions Regulator'. These provisions have yet to be commenced.

In addition, the Act gives the Pensions Board/Authority new powers to order the winding up of a pension scheme in certain circumstances of underfunding. New information disclosure requirements are also provided for where a direction is given on restructuring.

(iii) Pensions Board Consultation on the Future of Defined Contribution Pensions

The Pensions Board has begun a consultation on the future of defined contribution ('DC') pensions in Ireland. The consultation document states that the future of occupational pension provision in Ireland is likely to be DC and that one of the Pensions Board's current objectives is a "review of the regulation and future structure of DC provision with a view to supporting the DC market in delivering good outcomes for members". The consultation document provides:

- ▣ An overview of the current DC system, with the Pensions Board's view on problems within the DC system;
- ▣ An outline of the Pensions Board's vision of the future regulation of DC pensions; and
- ▣ Specific questions the Pensions Board is seeking responses on.

Responses should be submitted to the Pensions Board Policy Unit by 30 October, 2013 via the Pensions Board website, post or email (policy@pensionsboard.ie). The results of this consultation may lead to proposals for legislative change. The Pensions Board is holding a series of public meetings to discuss the issues contained in the consultation paper, details of which are available here: http://www.pensionsboard.ie/en/News_Press/News_Press_Archive/Invitation_-_Consultation_on_the_future_of_DC_pensions.html

The consultation paper is available at this link:

http://www.pensionsboard.ie/en/News_Press/Consultation_on_the_future_of_defined_contribution_pensions_.pdf

(iv) EIOPA Publishes Final Report on the Quantitative Impact Study on Institutions for Occupational Retirement Provision

On 4 July 2013, EIOPA published its final report on the Quantitative Impact Study ('QIS') on Institutions for Occupational Retirement Provision ('IORPs'). The QIS was undertaken in connection with EIOPA's Advice on the Review of the IORP Directive and is the first of its kind in assessing the financial situation of EU pension funds in a comparable way. The outcomes of the

QIS show how far occupational pension promises are supported by financial assets and security mechanisms and depict a range of impacts, from surpluses in some member states to large shortfalls in other member states. EIOPA has concluded that the QIS outcomes reinforce the need to continue working towards a market-consistent and risk-based regulatory regime in Europe.

The Final Report is available at this link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/reports/EIOPA-BoS-13-124_-_Report_on_QIS_on_IORPs-20130704.pdf

Update on IMD2

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

The aim of the proposed Insurance Mediation Directive II ('IMD2') is to improve consumer protection in the insurance sector through 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 1 August 2013, the EIOPA Insurance and Reinsurance Stakeholder Group ('ISRG') published a Position Paper on IMD2. The Position Paper provides that the ISRG supports the IMD2 initiative, in particular the proposals to improve consumer information, enhance consumer protection and establish a level playing field for sellers of insurance products. The ISRG has stated that it believes that member states should be allowed to introduce or maintain stricter provisions where appropriate to their market.

The Position Paper can be accessed at the following link:

https://eiopa.europa.eu/fileadmin/tx_dam/files/Stakeholder_groups/opinions-feedback/EIOPA-IRSG-13-11_Position_paper_on_IMD2.pdf

The proposals to amend the IMD2 (2002/92/EC) are due to be considered by the European Parliament at the 10 December 2013 plenary session.

Data Protection

(i) EU Data Protection Reform

A major overhaul of current EU data protection rules is currently being debated by the European Parliament. The Data Protection Reform package comprises of a draft Directive and draft Regulation. MEPs had been set to decide whether to ratify the latest set of proposals in early July, however the vote is now scheduled to take place in October 2013, with a view to publishing the amended legislation before the European elections in May 2014.

The key proposals under the Data Protection Reform package are:

- ▣ The right to be forgotten – whereby people can request that their data be deleted if they no longer want it to be processed and there are no legitimate reasons for holding such data;
- ▣ Explicit consent – whereby a company could process personal information only after obtaining clear permission from the person who could withdraw his/her consent at any time;
- ▣ Profiling (automated analysis of personal data to predict behaviour) – whereby this practice can only be carried out in certain limited circumstances;
- ▣ Data portability – whereby a person would have the right to request a copy of all his/her data in electronic form to be transferred to another provider;
- ▣ Clear and plain language – whereby data controllers should use clear, plain language adapted to the data subject; and
- ▣ Data Protection Officer – whereby companies employing at least 250 employees would be required to appoint a Data Protection Officer.

While the above are the key proposals, the final wording of the Regulation and Directive has yet to be approved. It is hoped that the current proposals will be ratified in October 2013 with a view to having the final Regulation and Directive available in 2014. The Regulation (once finalised) will have immediate effect, however the Directive will need to be transposed at national level.

It is likely that Data Protection and Data Privacy policies as adopted by firms will need to be reviewed once the Data Reform Package is finalised.

(ii) Review of 'Safe Harbour' Agreement Between the EU and US

The Commission has confirmed that the 'Safe Harbour' agreement between the EU and US is under review. This follows a call by the European Parliament for the Commission to undertake the review, in light of reports that parties to the agreement have been involved in the US intelligence service's PRISM programme. The basis for the Commission's 'Safe Harbour' review is the concern that data transfers may currently be taking place at a lower standard of data protection than is permitted by EU law. Article 3 of the agreement requires the Commission to reverse or suspend the Safe Harbour agreement if its standards are not being complied with.

Anti-Money Laundering/Counter-Terrorism Financing

It is proposed to revise the Third Money Laundering Directive (2005/60/EC) in order to update it in line with revised Financial Action Task Force Recommendations and, in particular, to enhance the risk-based approach to AML compliance and supervision. The proposed Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (the 'Fourth Money Laundering Directive'), which was published earlier this year:

- ▣ Clarifies and reinforces the rules on customer due diligence;
- ▣ Introduces new provisions to deal with politically exposed persons;
- ▣ Consolidates the risk-based approach;
- ▣ Improves transparency measures;
- ▣ Allows more effective international co-operation; and
- ▣ Identifies clear operational standards.

The Fourth Money Laundering Directive is due to be considered by the European Parliament in its 11 March 2014 plenary sitting.

FATCA

The United States Internal Revenue Service (the 'IRS') issued Notice 2013-43 to confirm that the period for implementation of the Foreign Account Tax Compliance Act ('FATCA') has been extended by 6 months.

Accordingly:

- ▣ The withholding of 30% of certain payments to foreign financial institutions ('FFIs') has been delayed until 1 July 2014 (from 1 January 2014);

- ▣ Account opening procedures must now be in place by 1 July 2014; and
- ▣ Reports on US accounts that are required to be filed with the IRS by 31 March 2015 must only cover the 2014 calendar year.

The extension was granted in order to provide additional time for countries to enter into FATCA intergovernmental agreements ('IGAs'). In that regard, the Irish IGA was signed on 21 December 2012.

The IRS registration portal (the 'Portal') is now live. FFIs are required to register via the Portal by 25 April 2014 in order to appear on the 2 June 2014 first list of FFIs. However, FFIs in IGA countries such as Ireland are not required to produce a GIIN (Global Intermediary Identification Number) until 1 January 2015. As such, the deadline for registration for Irish financial institutions will be in late 2014.

Market Abuse

The European Parliament voted on 10 September 2013 to formally endorse the political agreement on a Regulation on insider dealing and market manipulation (the 'Market Abuse Regulation'), subject to alignment with the final political agreement on MiFID II and revisions by legal linguists and revisers. The Market Abuse Regulation, together with a Directive on criminal sanctions for insider dealing and market manipulation, will update and strengthen the framework created by the the Market Abuse Directive (2003/6/EC).

The new framework will:

- ▣ Prohibit market abuse occurring across commodity and related derivative markets;
- ▣ Explicitly ban the manipulation of benchmarks, such as LIBOR;
- ▣ Reinforce the investigative and sanctioning powers of regulators; and
- ▣ Extend the scope of the market abuse rules to include all financial instruments which are traded on organised platforms and over the counter.

Final adoption of the Market Abuse Regulation will only take place after political agreement on MiFID II has been reached, since the scope and other aspects of the Market Abuse Regulation depend on the final MiFID II text. The date as of which the Market Abuse Regulation will apply is to be aligned with that of MiFID II. The update on MiFID II is set out in the next section.

The proposed new Directive on criminal sanctions for insider dealing and market manipulation ('CSMAD') sets out the criminal market abuse regime and will require national transposition and implementation. It requires member states to:

- ▣ Take the necessary measures to ensure that the criminal offences of insider dealing and market manipulation are subject to effective, proportionate and dissuasive criminal sanctions; and
- ▣ Impose criminal sanctions for inciting, aiding and abetting market abuse, as well as for attempts to commit such offences.

The European Parliament will consider the CSMAD during the 13 - 16 January 2014 plenary session.

MiFID II Update

The draft MiFID II Directive and the draft MiFID II Regulation require a qualified majority for adoption by the Council, in agreement with the European Parliament. This is based respectively on Articles 114(1) and 53(1) of the Treaty on the Functioning of the European Union.

The European Parliament has updated its legislative observatory pages and it now proposes to consider these legislative proposals in its plenary session to be held from 9 - 12 December 2013 (previously this was due to be 21-24 October 2013). The likely implementation date of MiFID II will all depend on the outcome of the plenary session in December 2013 (assuming this date will not change again).

Given that members states will generally have two years to transpose the Directive once it enters into force (usually 20 days after its publication in the Official Journal of the European Union), the earliest possible implementation date is early 2016.

Whistleblower Protection

The Protected Disclosures Bill 2013 was published in July. This Bill proposes to provide for whistleblower protection in all sectors of the economy. 'Workers' are defined broadly to include employees, contractors, agency staff, trainees and home workers. It is proposed that 'workers' are to be provided with employment and other protections from penalisation for making 'protected disclosures' to certain persons. The Committee Stage of the Bill is scheduled for 1 October 2013.

Financial Services Ombudsman

In August the Financial Services Ombudsman ('FSO') published the FSO's Bi-Annual Review (January-June 2013).

The Review for January to June 2013 shows that:

- ▣ 4,676 complaints were made by consumers to the FSO in the first half of 2013, a 27% increase on the same period last year;
- ▣ Insurance complaints make up 50% of all complaints received by the FSO;
- ▣ Payment Protection Insurance ('PPI') complaints increased by 150% over the same period last year and account for 44% of all insurance complaints so far in 2013;
- ▣ Most PPI complaints concern alleged mis-selling of PPI; and
- ▣ Travel, Household and Motor Insurance complaints are mainly about repudiation of claim and settlement amounts. The FSO has commented that this reflects a need for the insurance industry to do more to inform consumers as to insurance products and relevant conditions at point of sale.

The FSO's 2012 Annual Report states it has received the highest number of complaints in 2012 since the establishment of the office, with complaints received being 12% higher than 2011. Complaints concerning PPI are reported as being a source of the increase in complaints. The FSO commented that it was encouraging to note that an increased number of complaints were resolved by settlement in 2012.

The Bi-Annual Review and the Annual Report are available at the following links:

http://financialombudsman.ie/documents/FSO_Bi-Annual_Review_2013.pdf

http://financialombudsman.ie/documents/FSO_AR_2012_Eng.pdf

Joint Forum / IAIS

(i) Consultation on Point of Sale Disclosure

In August 2013, the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors (the 'Joint Forum') published a consultative document on point of sale disclosures in the insurance, banking and securities sectors. The Joint Forum intends to develop cross-sectoral standards in order to harmonise point sale disclosure across the various sectors where appropriate.

Comments on the consultative document should be submitted by Friday 18 October 2013 by e-mail to baselcommittee@bis.org or by post to: Secretariat of the Joint Forum (BCBS Secretariat), Bank for International Settlements, CH-4002 Basel, Switzerland.

The consultative document may be viewed here:

<http://www.bis.org/publ/joint32.pdf>.

(ii) Joint Forum Publishes Consultative Document on Longevity Risk Transfer Markets

The Joint Forum also published a consultative document entitled “Longevity Risk Transfer Markets: Market Structure, Growth Drivers and Impediments, and Potential Risks” in August. The objective of this consultation is to analyse the size and structure of the longevity risk transfer markets, the factors affecting their growth and development and to raise awareness of the associated potential risks and cross-sectoral issues for market participants, policymakers and supervisors.

Comments on the consultative document should be submitted by Friday 18 October 2013 by e-mail to baselcommittee@bis.org or by post to: Secretariat of the Joint Forum (BCBS Secretariat), Bank for International Settlements, CH-4002 Basel, Switzerland.

The consultative document may be viewed here:

<http://www.bis.org/publ/joint31.pdf>.

(iii) Joint Forum Releases Final Paper on Mortgage Insurance

The Joint Forum has released its final report on Mortgage Insurance: Market Structure, Underwriting Cycle and Policy Implications. The report examines the interaction of mortgage insurers with mortgage originators and underwriters and makes recommendations directed at policymakers and supervisors which aim at reducing the likelihood of mortgage insurance stress and failure. An earlier version of the report was issued for consultation in February 2013.

The report may be viewed here:

<http://www.bis.org/publ/joint33.pdf>.

(iv) IAIS Releases Global Systemically Important Insurers Assessment Methodology and Policy Measures, Macroprudential Policy and Surveillance Framework

The International Association of Insurance Supervisors (‘IAIS’) released its assessment methodology and policy measures for global systemically important insurers and an overall framework for macroprudential policy and surveillance in July. On the same day, the Financial Stability Board published an initial list of nine global systemically important insurers which they have identified using the IAIS methodology. They are as follows:

- ▣ Allianz SE;
- ▣ American International Group, Inc.;
- ▣ Assicurazioni Generali S.p.A.;
- ▣ Aviva plc;
- ▣ Axa S.A.;
- ▣ MetLife, Inc.;
- ▣ Ping An Insurance (Group) Company of China, Ltd.;
- ▣ Prudential Financial, Inc.; and
- ▣ Prudential plc.

The relevant IAIS documents are available at this link: <http://www.iaisweb.org/G-SIIs-988>.

Irish Stock Exchange

All financial organisations, including listed legal entities, will need to comply with new global legal entity identifier ('LEI') requirements. A LEI is a global reference code which uniquely identifies each legal entity that engages in a financial transaction. The LEI is designed to enable the identification and linking of parties to financial transactions in order to manage counterparty risk.

The range of entities requiring LEI codes is broad and includes the following:

- ▣ All entities listed on an exchange;
- ▣ All entities that issue equity, debt or other securities for other capital structures;
- ▣ All entities that trade stock or debt, investment vehicles constituted as corporate entities or collective investment funds (including hedge funds, private equity funds, umbrella funds and in certain cases sub-funds where contracts are entered at sub-fund level);
- ▣ All financial intermediaries; and
- ▣ Banks and finance companies.

How to apply

The Irish Stock Exchange is now issuing pre-LEI codes in advance of full operation of the system. LEI codes can be applied for directly through www.isedirect.ie. While entities can apply for codes directly through this portal, the listing team in Dillon Eustace is already a registered user and can assist you with any such applications.

What information is needed in order to apply?

- ▣ Official name of the legal entity;
- ▣ Legal entity address;

- ▣ Country of incorporation;
- ▣ Company registration number;
- ▣ VAT number (if it is an EU entity incorporated outside of Ireland); and
- ▣ Signed letter of authorisation (PDF) where the application is being made through an agent (such as Dillon Eustace)

Cost

The cost per pre-LEI is €150 (excluding VAT).

Annual renewal cost per pre-LEI is €100 (excluding VAT).

Transfer from another LEI operating unit is free.

The cost of bulk orders (20 + codes) can be agreed directly with the ISE.

Office of the Director of Corporate Enforcement

The Office of the Director of Corporate Enforcement has published Information Notice I/2013/1 entitled 'Company Disclosure of Information'. The Information Notice explains the disclosure requirements imposed on Irish companies by the Companies Acts and various EU Regulations, such as publishing director's names on business letters and displaying company details on websites.

The Information Notice can be downloaded from this link:

<http://www.odce.ie/MediaPresentations/PressReleases/PressReleases2007/tabid/171/ArticleID/539/ArtMID/479/language/en-GB/Default.aspx>.

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 September 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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