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This edition of our Global Insurance Review focuses on insurance news over the last few months and highlights key market developments across the global insurance market.

EU: EIOPA publishes technical standards and guidelines on Solvency II

On 1 April 2014, EIOPA published certain technical standards relating to approvals under Solvency II and on 2 April 2014, EIOPA followed this up with guidelines on the operational functioning of colleges. Both of which can be found here and EIOPA is inviting comments on them by 30 June 2014.

Please also see Clifford Chance's recent Solvency II Update which provides an update on where we are now in the Solvency II implementation process and the anticipated next steps and can be found here.

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EU: EU Parliament and Council reach agreement on the PRIPS regulation

EU Parliament and Council negotiators have reached an agreement on the proposed regulation on key information documents for investment products.

The proposed regulation requires the financial services industry to provide basic information about investment products, the risk and return that can be expected as well as the overall aggregate cost that will arise in making the investment. Clear, comparable and complete information on investment products is to be provided in a mandatory, three-page A4 key information document (KID), which will cover a wide range of investment products offered to retail customers. Products within the scope will include structured products offered by banks, insurance-based investments (including unit-linked and 'with-profit' products) and investment funds.

The EU Parliament is expected to put the agreed rules to a plenary vote in April 2014, followed by formal adoption by the Council. In a next step, the European Securities and Markets Authority (ESMA) will prepare implementing measures.

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China: Briefs on regulatory developments*

- The Reply on Issues Concerning the Administrative Measures for Insurance Salesperson and the Administrative Measures for Insurance Brokers and Insurance Claims Adjusters was issued by the China Insurance Regulatory Commission ("**CIRC**") on 8 December 2013.

  The Reply clarifies certain issues in respect of, among others, (i) the scope of licensing requirements on insurance salesperson, insurance brokers and claims adjusters; (ii) the educational degree (college above); and (iii) cross-regional use of qualification certificates.

- The Circular on Issues Concerning Investment in the Stocks of Listed Companies on the ChiNext Board by Insurance Funds was issued by CIRC on 7 January 2014.

  The Circular gives the green light to insurers investing in the stocks listed on the ChiNext board that do not have the following records:

  – the listed company is subject to any investigation of the competent regulatory authorities or has been subject to the imposition of any administrative penalties in the previous year;
  – the listed company has been criticized publicly by the Shenzhen Stock Exchange in the previous year;
  – the financial statements contain any conservative or negative opinions;
  – the listed company is suspected of any market manipulation behaviours; or
  – other circumstances as provided by CIRC.

  If the aggregate holding of a particular stock exceeds 5%, the insurer or the manager of the insurer shall report to CIRC and disclose the relevant shareholding.

- The Circular on Further Regulating Distribution of Insurance Products by Commercial Banks was jointly issued by CIRC and the China Banking Regulatory Commission on 8 January 2014.

  Among others, the Circular (a) requires commercial banks to establish a demand analysis and risk inclination evaluation system in order to sell suitable products to different customers – in particular, the circular restricts the product types that can be offered to the low-income group or aged people (above 65 or 60, depending on the products); (b) encourages bancassurance partners to develop risk-guaranteed and long-term savings insurance products and requires the aggregate premiums of accidental injury insurance, health insurance, term life insurance, whole life insurance and 10-year (or above) annuities insurance, 10-year (or above) endowment insurance, property insurance (excluding investment-type insurance), guarantee insurance and credit insurance products distributed by a commercial bank to not be less than 20% of the total premiums collected from bancassurance business by such bank; (c) provides additional requirements on distribution activities, including hesitation period, risk disclosures, etc.; and (d) requires that any outlet of a commercial bank cannot cooperate with more than three insurance companies (at the independent legal person level) within the same accounting year. The circular will take effect as of 1 April 2014.

- The Provisions on Qualification of Directors, Supervisors and Senior Management Personnel of Insurance Companies were issued by CIRC on 23 January 2014 and published on 11 February 2014.

  The Provisions were amended to adopt a unified approval regime and impose a higher requirement on working experience of senior management personnel. According to the Provisions, supervisors and chief auditors are also subject to the qualification approval regime. Managers of sub-branches and sales offices whose qualification involved a post-report only are now required to seek approval from CIRC. In particular, for general managers of an insurance company, they should have at least 8 years' insurance experience or 10 years' economic and financial experience. In addition, the Provisions also address the circumstances under which CIRC will not approve the qualification.

- The Circular on Enhanced Supervision over Ratio of Usage of Insurance Funds was issued by CIRC on 23 January 2014 and published on 19 February 2014.

  The Circular marks the new regulatory regime for insurers' use of insurance funds by way of proportional limits over broad categories, rather than on specific products. The Circular divides insurance assets into five classes: liquid assets, fixed income assets, equity assets, real estate assets and other financial assets (mainly comprising the seven kinds of financial product listed in the former regulations). In the appendix to the Circular, CIRC sets out a detailed list of products under each of five classes, including offshore financial products. In respect of proportional requirements on each investment class:

  – the book balance of investments in equity assets and real estate assets cannot exceed 30% of the insurer's total assets at the end of the preceding quarter;
  – the book balance of investments in other financial assets cannot exceed 25% of the insurer's total assets at the end of the preceding quarter; and
  – the book balance of overseas investments cannot exceed 15% of the insurer's total assets at the end of the preceding quarter.

- The Circular on the Issues Concerning Regulation of Products with High Cash Value was issued by CIRC on 29 January 2014 and published on 19 February 2014.

  The Circular defines products with high cash value as products whereby the aggregate amount of cash value in the second policy year and cumulative survival cash value exceeds the accumulated premiums that have been paid, and more than 60% of policies under this product have a survival time of less than 3 years. Investment linked insurance products and variable annuities insurance products are excluded. Insurance companies must maintain their solvency at not lower than 150% for selling high cash value products. Effective from 1 January 2014, the Year premiums of high cash value products shall be controlled within two times capital of insurance companies. Insurance companies are also required to submit quarterly reports to CIRC for their operations of high cash value products.

- The Guideline on Management of Reputational Risk of Insurance Companies was issued by CIRC on 19 February 2014 and published on 4 March 2014.

  The Guideline requires insurance companies to set up a system to manage reputational risk, including appointing specific personnel to oversee the function, setting out internal policies, training its employees and salespersons, establishing handling processes, setting up an accountability system and maintaining an information database. Insurance companies would also have to submit reports to CIRC.

  The issuance of the Guideline followed rising complaints against insurance companies. According to CIRC's data, more than 21,300 complaints were lodged against insurance companies in 2013, representing an increase of one third over 2012. Around 9,000 complaints were made against non-life insurers and more than 12,200 complaints were against life insurers. Many of the complaints revolve around mis-selling and settlement of claims.

- The Circular on Issues regarding Reinsurance Transactions between Foreign-invested Insurance Companies and their Affiliated Companies was issued by CIRC on 19 March 2014.

  The Circular marks CIRC's intention to enhance the security of the reinsurance business while also looking to ensure that foreign-invested insurers (FFIs) do not transfer underwriting profits in this way. For this purpose, the Circular imposes more stringent requirements on FFIs wishing to use affiliated reinsurers. Among others, the following key points are worth noting:

  – the affiliate must have posted a net profit and stable cash flow for a prior three-year period, qualified solvency ratio and credit rating, etc.; and
  – among other application documents, the FFI shall provide the CIRC WITH a Chinese version of AoA and annual reports of the affiliate.

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China: Briefs on market developments

- CIRC will permit insurance companies to invest premiums earned from older policies in blue-chip stocks in a trial programme. Under the trial programme, premiums from insurance policies sold before 1999 can be reinvested in shares in large, stable listed companies. Insurers must meet certain conditions and use separate accounts to participate for the programme. As initial public offerings (IPOs) resume in China after a year-long freeze, it is estimated that the above regulatory move could allow 360 billion yuan (36.1 billion pounds) to flow from insurance funds into local stock markets.
- The opening of the ChiNext board to PRC insurers is expected to help insurers diversify their revenue streams and potentially bring more stability to the market. Moreover, according to the statement published by CIRC on its official micro-blog, the State Council has approved insurance companies to invest their historical inventory insurance policies in blue-chips. CIRC will issue detailed regulations such as the investment ratio and the qualification of blue-chips in the near future. These insurance policies include long-term life insurance products sold by insurers before 1999 under a circumstance of high interest rate. It is anticipated that these moves could solve many problems in the insurance industry and it will help reduce losses caused by the interest rate gap.
- With slowing growth in the world's second- largest economy hobbling China's equity market and its bond issuance market battered by the central bank's tight liquidity stance, insurance firms have increasingly tended to invest in insurance investment programs. However, some issuers are not properly backed up by their parent firms, which are supposed to guarantee the payments if the programs face financial difficulties, among other problems. According to some local reports, CIRC has recently issued an internal notice warning of risks involving insurance investment programs, off-balance debt schemes issued by asset management firms to raise money from insurers and other institutional investors to invest in industrial projects.
- According to local reports, the central bank (the People's Bank of China) is likely to announce rules covering the fast-growing Internet finance sector by midyear. Mr. Li Kemu, vice-chairman of CIRC, said that more licenses will be gradually granted to online insurance companies. At present, there is only one online insurance company. However, regulators will slowly ease access to the market. According to CIRC's data, as of the end 2013, 60 insurance companies in China had expanded to online sales channels.

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Germany: Notes from BaFin on run-off

Run-off activity in Germany in the past used to focus largely on non-life portfolios with – according to various studies – as much as EUR 100 bn currently being tied up in technical reserves for discontinued non-life businesses in the German speaking regions alone. However, both against the background of the low interest environment and the enhanced capital and extensive reporting requirements under Solvency II, the German insurance market has anticipated for some time that levels of activity in the run-off market should increase also as regards life insurance portfolios. The market participants currently eagerly observe whether the acquisition by the private equity firm Cinven – with Hannover Re as minority co-investor – of the German life insurer Heidelberger Leben from Lloyd's Banking Group in autumn 2013 as a platform for run-off acquisitions triggers a wave of further transactions in the life insurance market.

The increased importance of run-off also for life insurance companies as well as the fact that seven of the ninety German life insurance companies have announced that they will not underwrite any or only insignificant new business has prompted the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) ("**BaFin**") to address the regulatory issues around insurance companies and insurance portfolios in run-off in an expert article.

In sum, BaFin describes the run-off situation as follows:

- The term "run-off" is not defined in the applicable supervisory statutes. In addition to the insurance company ceasing to underwrite new (re)insurance policies, the term contains an active element aiming at reaching finality in as profitable a way as possible. A wide array of tools and strategies, ranging from outsourcing of certain activities to spin-offs and subsequent share deals to portfolio transfers can be employed to this end;

- Generally and with few exceptions, the supervisory regime applicable to insurance companies or portfolios in run-off does not differ from the regime applicable to other insurance companies;
- However, whilst the regime governing the operation of the insurance business remains unchanged by the decision to terminate the underwriting, the repercussions of the run-off on the economic situation e.g. as regards own funds as well as the incentives of the insurers management and shareholders are significant.

Against this background, BaFin stresses that the focal points of supervision over insurance companies in run-off have to reflect the economic implications of the run-off situation:

- in relation to sales of insurance companies, BaFin will scrutinize the reliability, business model and structure of the acquirer as well as its ability to sufficiently capitalise the insurer. BaFin declares that it has no general reservations as regards run-off specialists as investors;
- in relation to portfolio transfers, it needs to be ensured that the acquiring entity is sufficiently capitalised so as to ensure that it will be able to meet its obligations towards the policyholders; this will require that the value of surplus participations (Überschussbeteiligungen) of the policyholders does not decrease as a result of the portfolio transfer. Since the respective provisions under German law do not have an equivalent abroad, this in itself according to BaFin constitutes an obstacle for approvals of cross-border transfers in with-profit business lines;
- outsourcing of functions e.g. as regards the portfolio management will require that control is retained by the management of the outsourcing insurance company and that the interests of the policyholders are safeguarded.

BaFin emphasises that in line with the aims of supervision, i.e., protection of the interests of the policyholders and securing that the obligations under the insurance contracts can be fulfilled on a sustained basis, it will consider the approval of run-off transactions carefully and may subject it to conditions such as additional capital requirements. It becomes clear that BaFin has – against the background of the current macroeconomic situation and its repercussions on life insurance companies – prepared itself for applying the applicable rules to run-off situations in the life insurance sector and pro-actively provides some guidance in this respect.

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Spain: Proposed amendment of Pension Schemes and Funds Regulations

A recent proposal of Royal Decree issued by the Spanish government aims to modify, among others, the Royal Decree 2486/1998, of 20 November, approving the Pension Schemes and Funds Regulations (the "**Pension Schemes and Funds Regulations**"). The proposal is intended to enter into force on 1 January 2015 and to introduce, among others, the following amendments:

- Application of the European packaged retail investment products (PRIPs) initiative to pension schemes.
- Establishment of new limits for the investment of pension funds, aiming to avoid an excessive concentration.
- Establishment of new limits and calculation method to applicable management and custodian fees.
- Establishment of a procedure for the transfer of consolidated rights between different vehicles.
- Possibility for Spanish pension funds to invest in long term cash deposits.

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Spain: reform proposals of Spanish insurance legislation

The Spanish Insurance Authority (Dirección General de Seguros y Fondos de Pensiones) ("**DGSFP**") have announced that they are working on several proposals to reform certain aspects of the Insurance Mediation Act (Ley 26/2006) (the "**IMA**") and to approve regulations developing the IMA (the "**IMA Regulations**"), specifically regarding (i) aggregator websites, (ii) external assistants (auxiliares externos), (iii) fair analysis and (iv) sufficient and accurate information prior to the approval of the proposed Insurance Mediation Directive and PRIPs Regulation.

- Aggregator websites: article 2 of the IMA will be amended to extend the scope of the IMA to aggregators. This will entail that any website which offers insurance aggregator tools will have to be run by an insurance intermediary or under the control of and insurance intermediary.
- External assistants: the legal figure of external assistants is regulated in article 8 of the IMA and provides for 2 different kinds of assistants to insurance mediators (general external assistants and advisory assistants). This figure will be simplified to only one type of external assistant which will be allowed to carry out any external assistant activities which are delegated or specified in the assistant's agreement with the insurance mediator and any incompatibilities applicable to the insurance mediator will also apply to its external assistants.
- Fair analysis: the obligation of fair analysis set out in article 42 of the IMA for insurance brokers will be amended to eliminate the reference to the presumption that fair analysis has taken place if 3 agreements have been analysed. Therefore, the number of contracts which a broker will be obligated to analyse will depend on the circumstances of each case.
- Sufficient and accurate information: the current obligation to provide sufficient and accurate information set out in article 6 of the IMA will be more clearly defined.

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Spain: EMIR supervision

The DGSFP will be the entity in charge of supervising compliance of EMIR by insurance undertakings in Spain.

The DGSFP has announced it will be creating a working group in 2014 with the other Spanish supervisors (namely, the Bank of Spain, which will supervise compliance of EMIR by credit institutions, and the Spanish Stock Exchange Commission, which will supervise compliance of EMIR by any other entities subject to EMIR) in order to establish common criteria for action in this area and coordinate the transmission of information to ESMA.

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UAE: New insurance broker regulations**

The UAE Insurance Authority (established in 2007) has issued regulation No.15 of 2013 on the regulation of insurance brokers, published in the UAE Federal Official Gazette in November 2013 ("**The Regulations**") which is applicable to insurance brokers in the UAE outside of the Financial Free Zones. The Regulations provide for an extensive overhaul of the existing regime for brokers, with the following key changes:

- Capital: The prudential requirements of brokers have increased substantially in respect of the amount of capital, on-demand bank guarantee and professional indemnity policy cover.
- Management: New ongoing obligations have been introduced in respect of staff competence, governance and reporting, including required senior positions, technical systems and work procedures plans, internal control systems and organisational structures, quarterly and annual reporting.
- Conduct of Business: New rules governing the conduct of the broker vis-a-vis customers have been introduced. These requirements are on a broad principles basis, including prudence, advice to and observing the interests of customers, transparency and good faith.
- Insurers: A detailed prescribed form of insurance brokerage agreement is included in the Regulations.
- New Branches/Broker: Reference to the ability of brokers established in certain freezones to open a branch in the UAE is included in the Regulations and, with the increased prudential requirements imposed, the expectation is that new brokers will be permitted to be established in the UAE.

- Mergers and Acquisitions: The Regulations cover the requirement for approval of the Insurance Authority for transfers of brokerage business to another insurance broker and set out a statutory procedure for mergers of insurance brokers by consolidation or amalgamation.
- Application: there is a one year grace period for implementation and compliance which expires at the end of November 2014.

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UAE: New insurance anti-money laundering procedures

Resolution of Chairman of Insurance Authority Board of Directors No. (16) of 2013 Concerning Directives on Procedures against Money Laundering and against Combating Financing Terrorism in Insurance Activities (the "**Directives**") has also been published in the UAE Federal Official Gazette. The Directives replace the previous rules in place for insurance (Resolution No.1 of 2009 of the Insurance Authority Board of Directors) and enhance the previous regime in a small number of areas, including the internal governance of compliance with AML policies and procedures, the requirement to refer to an external auditor to verify compliance and conduct assessments for the risks of money laundering and terrorism financing and a lowering of the threshold for a large insurance transaction (requiring enhanced customer due diligence). Insurers and professionals related to insurance were required to implement and comply with the revised rules by 24 January 2014 and notify the Insurance Authority of procedures adopted for such implementation.

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