



## REGULATORY UPDATE 2/2008

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[http://www.complianceireland.com/documents/CI\\_Newsletter\\_May08.pdf](http://www.complianceireland.com/documents/CI_Newsletter_May08.pdf)

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## COMPLIANCE IRELAND TRAINING

### 2008 Quarter 2 & Quarter 3 training course dates

Full details of all course seminars and workshops can be found at <http://www.complianceireland.com/Training.html> or <http://www.compliancetraining.ie>

All courses can be tailored for in-house delivery too. Please contact us at the details appearing at the end of this Newsletter for further information. Bookings can be made by email to [bookings@complianceireland.com](mailto:bookings@complianceireland.com).

**FORMAL CPD HOURS:** Our courses are accredited by the Institute of Bankers (including the Association of Compliance Officers in Ireland) and the Insurance Institute of Ireland under their Continuous Professional Development Programmes – including QFA, LCOI, CPD Members, CeB, CIP Diploma Holders and Chartered Insurance Institute designations. Different courses are accredited for different CPD hours. Please contact us at [email@complianceireland.com](mailto:email@complianceireland.com) or your professional body with CPD queries. *Attendees can also claim informal CPD hours by attending our courses towards their overall CPD requirements (subject to professional body rules).*

#### [MIFID - UNDERSTANDING MIFID AND ITS OPERATIONAL IMPLICATIONS \(HALF DAY\)](#)

9.00am to 1.00pm Tuesday 20th May 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

#### [DATA PROTECTION AND HOW TO CONDUCT A DATA PROTECTION AUDIT \(FINANCIAL INSTITUTIONS\) \(FULL DAY\)](#)

Financial Firms:

9.00am to 5.00pm, Tuesday 27th May 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

#### [RISK-BASED COMPLIANCE MONITORING FOR FINANCIAL INSTITUTIONS \(HALF DAY\)](#)

9.00am to 1.00pm, Thursday 12th June 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

#### [HOW TO HANDLE A FINANCIAL REGULATOR \(IFSRA\) INSPECTION \(HALF DAY\)](#)

9.00am to 1.00pm, Thursday 5th June 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

#### [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

##### [BANKS & INVESTMENT BUSINESS FIRMS:](#)

9.00am to 5.30pm, Tuesday 10th June 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

#### [THE ROLE OF THE COMPLIANCE OFFICER \(FULL DAY\)](#)

##### [INSURANCE FIRMS:](#)

9.00am to 5.30pm, Wednesday 2nd July 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

## **ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY) - (DUBLIN)**

9.00am to 5.00pm Wednesday 18th June 2008 (Clarion Hotel, North Wall Quay, IFSC)  
9.00am to 5.00pm Tuesday 9th September 2008 (Clarion Hotel, North Wall Quay, IFSC)  
Cost: €680 (no VAT)

## **COMPLAINTS HANDLING AND TREATING CUSTOMERS FAIRLY (HALF DAY)**

9.00am to 1.00pm, Thursday 11th September 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

## **DIRECTORS DUTIES AND CORPORATE GOVERNANCE OF CREDIT, FINANCIAL AND INSURANCE INSTITUTIONS REGULATED IN IRELAND (HALF DAY)**

9.00am to 1.00pm, Thursday 25th September 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

## **ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM RISK-BASED APPROACH UNDER 3RD EU DIRECTIVE (HALF DAY) - (DUBLIN)**

9.00am to 1.00pm, Tuesday 30th September 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

## **NEW COURSES:**

### **ESTABLISHING THE INTERNAL AUDIT FUNCTION (HALF DAY)**

9.00am to 1.00pm, Tuesday 7th October 2008 (Jurys Inn Custom House Quay, IFSC)  
Cost: €425 (no VAT)

## **UK ANTI-MONEY LAUNDERING & FINANCING OF TERRORISM FOR FINANCIAL INSTITUTIONS (FULL DAY) - (BELFAST)**

9.00am to 5.00pm DATE TO BE CONFIRMED (Europa Hotel, Belfast, Northern Ireland) – to be notified of next date email query to [email@complianceireland.com](mailto:email@complianceireland.com)

**NEWSLETTER CONTINUES ON NEXT PAGE**

## IRELAND

### Financial Regulator Regulations & Codes

#### Amendments to the UCITS & Non-UCITS Notices and related Guidance Notes

Following the CP31 public consultation process, the Financial Regulator published in late April its amendments to the UCITS Notices and Guidance Notes to update them for the provisions of the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2007 and the Committee of European Securities Regulators (CESR) guidelines concerning eligible assets for investment by UCITS.

The Financial Regulator made some changes with regard to techniques and instruments, including repurchase/reverse repurchase agreements and stock lending, for the purposes of efficient portfolio management. The Financial Regulator has also made a number of small technical adjustments and corrections to both sets of Notices. The Financial Regulator has also amended Guidance Note 2/03 – Acceptable investments in other CIUs, Guidance Note 3/03 – Financial Derivative Instruments, Guidance Note 1/05 – Publication of a Simplified Prospectus and Guidance Note 2/07 – Financial Indices.

Full details of all revised documents can be found at <http://www.complianceireland.com/Resources.html#UCITSFunds>.

#### Application as a Retail Credit Firm or a Home Reversion Firm

The Market in Financial Instruments & Miscellaneous Provisions Act 2007 amended the Central Bank Act 1997 to extend the Financial Regulator's authorisation and supervisory powers to encompass retail credit and home reversion firms with effect from 1 February 2008. As a consequence, it will be an offence, after 30 April 2008, to operate as a retail credit firm or home reversion firm without having applied to the Financial Regulator for authorisation.

The Financial Regulator issued a Guidance Note on Completing and Submitting an Application for Authorisation as a Retail Credit Firm or a Home Reversion Firm in December 2007, together with an Application Form.

The authorisation process will consist of assessing the fitness and probity of owners, directors and senior managers, and their expertise and ability to comply with regulatory requirements that include the CPC, Minimum Competency and AML Requirements. Firms will also be required to comply with any other supervisory requirements which the Financial Regulator deems appropriate.

Further information can be found at <http://www.financialregulator.ie>.

### Financial Regulator Reviews of Insurance sector

In March 2008, the Financial Regulator wrote to all insurance intermediaries with feedback from a number of themed inspections of the insurance intermediary sector. The purpose of these inspections was to monitor whether insurance intermediaries were disclosing all relevant fees and charges in their terms of business document and whether the charges applied for their services were within the limits stated in this document. The themed inspections also sought to establish whether premium rebates were being transferred to consumers in full.

The Financial Regulator noted that in general, compliance levels were good in the majority of firms inspected, although a number of serious issues were noted.

- Incomplete prior disclosure of all charges
- Fees charged in excess of those stated in the terms of business document
- Premium rebates not remitted within time limits or subject to deduction
- Optional benefits sold without consumer indication

This followed a similar letter to industry from the Financial Regulator in January 2008 giving feedback on a thematic review of sales and claims handling relating to Serious Illness cover. In that earlier review the Financial Regulator identified the following issues:

- The need to fully inform consumers of the key aspects of the product, especially restrictions and exclusions, was highlighted
- Further focus on promoting full disclosure by the consumer at point of sale was encouraged as this was a major cause of subsequent claims being declined
- Firms were asked to consider how best to highlight to customers the restrictions and exclusions regarding children's claims

Full details can be found on <http://www.complianceireland.com/HotTopics.html>.

## Financial Regulator Settlement Actions

### OHC Insurances Limited

The Financial Regulator has entered into a Settlement Agreement with effect from 17<sup>th</sup> April 2008 with OHC Insurances Limited in relation to breaches of regulatory requirements.

It was suspected that breaches of regulatory requirements occurred in relation to the failure of OHC Insurances Limited to comply with certain provisions of the Consumer Protection Code, resulting in certain customers being overcharged.

The Financial Regulator reprimanded OHC Insurances Limited and required it to pay a monetary penalty in the sum of €10,000.

The link to the Settlement Agreement is below:

<http://www.complianceireland.com/Resources.html#Enforcement>

### Fexco Stockbroking Limited

The Financial Regulator has entered into a Settlement Agreement with effect from 20<sup>th</sup> March 2008 with Fexco Stockbroking Limited in relation to breaches of regulatory requirements.

It was suspected that the breaches occurred in relation to the failure of Fexco to have adequate control systems to ensure compliance with Client Money Requirements and failures to develop and maintain systems to monitor and control credit risk.

The Financial Regulator reprimanded Fexco and required it to pay a monetary penalty of €80,000.

The link to the settlement agreement is below:

<http://www.complianceireland.com/Resources.html#Enforcement>

### The Irish Times Limited

The Financial Regulator has concluded a Settlement Agreement with effect from 10<sup>th</sup> April 2008 with the Irish Times Limited in relation to a single breach which occurred of the disclosure requirements in

relation to a recommendation with respect to financial instruments included in Regulation 18 of the Market Abuse Directive.

The matter has been settled on the basis that the breach is admitted and a fine of €10,000 has been imposed.

The link to the Settlement Agreement is below:

<http://www.complianceireland.com/Resources.html#Enforcement>

## Marsh Ireland Limited

In March 2008, the Financial Regulator published a Settlement Agreement with Marsh Ireland Limited, relating to the alleged non-issuance of receipts in accordance with section 30 of the Investment Intermediaries Act 1995. The Financial Regulator reprimanded Marsh Ireland Limited and required it to pay a monetary penalty in the sum of €5,000.

The most recent previous settlement actions published in November 2007 by the Financial Regulator (Johnstone Properties and Don Harte / DGH Associates) did not feature monetary penalties.

Full details can be found on <http://www.complianceireland.com/Resources.html#Enforcement>.

## Financial Regulator Publications

### Financial Regulator publishes Regulatory Connection Issue No. 14

Regulatory Connection Issue No. 14 was published by the Financial Regulator on 1 May 2008. A copy of the document is available at

[http://www.complianceireland.com/documents/RegCon14\\_080501.pdf](http://www.complianceireland.com/documents/RegCon14_080501.pdf)

Interesting areas commented upon by the Financial Regulator include A Look at Themed Inspections, the Release of the Annual Report 2007, Revising of Individual Questionnaire Forms, Review of the Sales and Claims Handling of Serious Illness Policies, Review of Charges and Premium Rebates in the Insurance Intermediary Sector, Administrative Sanctions Procedure Settlement Agreements (see our commentary above at **page 7**), Eligible assets for UCITS, Revised Notices and Guidance Notes, Statement of Estimated Income and Expenditure, Anti-Money Laundering Update, European and Internal Updates (including MiFID) and recent authorisations.

### Statement of Estimated Income and Expenditure for the year ending 31 December 2008: Estimated expenditure up by 8%

The Financial Regulator expects income and expenditure for the forthcoming year to be €55,764,000, an increase of 8% over the previous year's estimates. The breakdown of expenditure (which matches estimated income) will be spent on Operating Costs comprising of: Staff Costs (€26,236,000) Administrative Expenses (€8,062,000), Shared Services Expenses (€15,487,000), Pension Costs (€3,725,000), and Depreciation (€2,254,000). Fifty per cent of estimated income will be derived by way of levies on industry and the remaining 50% from government.

The 2007 estimated income and expenditure was €51,577,000.

## Presentation on Complaints Handling and the regulator's approach to *Themed Inspections*

The Financial Regulator presented to members of the ACOI on 15 May 2008 on the topic of complaints handling. The regulator explained:

- that an effective complaints procedure is paramount in determining the overall effectiveness of consumer protection.
- the importance of compliance with General Principle 8 (Consumer Protection Code ('Code')), i.e. that a firm "*correct errors and handle complaints speedily and efficiently*"
- that all firms must have a written complaints handling procedure in place
- that verbal complaints must be treated in the same manner as written complaints
- that firms maintain up-to-date records of all complaints
- that firms must provide a summary of their complaints procedure in their "terms of business"
- the 5, 20 and 40 day rules for dealing with complaints
- the interaction between the Code and the independent role of the Financial Services Ombudsman
- that complaints are an important management information tool for firms
- the Financial Regulator is concerned that while individual complaints may be resolved, statistics and the lessons (that should have been) learned do not always feed into management information
- the compliance culture of firms can be judged by how complaints are perceived internally (at a firm)
- the themed inspection focus of the Financial Regulator, providing pointers to the manner that inspections are conducted.

Looking ahead in 2008, the Financial Regulator stated that themed inspections would cover:

- complaints handling by Credit Institutions
- travel insurance claims for loss of damage to personal items by non-life insurance companies
- sales and periodic reviews of unit linked whole of life products carried out by life insurance companies
- common rule 45 of the Code and reporting of material errors to the Financial Regulator
- MIFID Client categorisation

The issues raised by the Financial Regulator above are crucial to the way a firm manages its compliance risk vis-à-vis its regulatory obligations under the Code. A breach of the Code, such as a breach of any part of the complaint handling procedures, is a breach of law and may lead to an administrative/enforcement sanction.

*The issues above are covered in two of our courses: *Treating Customers Fairly – Complaints Handling* (Thursday 11<sup>th</sup> September 2008 –see <http://www.complianceireland.com/TCF.html>) and *How to Handle a Financial Regulator Inspection* (Thursday 5<sup>th</sup> June 2008 - see <http://www.complianceireland.com/FRIInspections.html>).*

## Financial Regulator Publishes Annual Report for 2007

The Financial Regulator's Annual Report for 2007 was released in late April. While the most notable regulatory challenge in 2007 was the onset of turbulence in the financial markets, the following areas are also highlighted in the Annual Report:

### *Consumer*

- Implementation of the Consumer Protection Code and Minimum Competency Requirements to protect consumer interests;

- Extensions of themed inspections such as sales processes of mortgage lenders, charges and premium rebates practices of insurance intermediaries;
- Redevelopment of consumer site [itsyourmoney.ie](http://itsyourmoney.ie) saw a 59% increase in visitors;

## *Industry*

- Implementation of the Market Abuse, Transparency and Markets in Financial Instruments Directives;
- Application of the Capital Requirements Directive and revised Fitness & Probity Regime;
- Over 4,000 new authorisations were granted, bringing the number of firms and entities regulated by the Financial Regulator to almost 13,000;
- Nearly 65,000 financial returns were analysed;
- Nearly 450 on-site inspections and review meetings took place;
- 3,000 prospectuses were approved;

## *Credit Unions*

- 104 inspections or visits undertaken;
- Over 1,900 returns analysed;
- New increased lending limits approved;

## *Organisational*

- Implementation of Stakeholder Protocol;
- Supported and participated in the work programme of EU and other International Committees, 171 Meetings attended;
- Initiation of major Business Process Review;
- Commenced development of curriculum-based training programme for staff;
- Commenced rollout of tailored Management Development programme;
- Published 2008 - 2010 Strategic Plan;

## *Suspicious transaction filed by the Financial Regulator and Garda*

Unfortunately, unlike previous years the Financial Regulator did not release the number of section 57 Criminal Justice Act 1994 (i.e. suspicious transaction) reports filed with Garda and Revenue Commissioners. Hopefully this information will be made public soon and we will then know whether the 30 firms reported (under section 57) up until the end of December 2006 were joined by other firms in 2007. At page 10 of the Annual Report, the Financial Regulator discloses that the number of reports (in total) filed with enforcement agencies increased to 38 up from 23 in the previous year.

*Interestingly, the Revenue Commissioners disclose in their 2007 Annual Report that it received 12,016 section 57 reports from designated bodies during 2007. This is a decrease of 454 reports from the previous year.*

The full report can be found on <http://www.complianceireland.com/Resources.html#AdminIssues>

## Statement on Market Abuse

With recent allegations of Market Abuse, both in Ireland and the UK, the Financial Regulator and the Financial Services Authority (FSA) have released the following statements.

The Financial Regulator stated it was "concerned with false and misleading rumours circulating in financial markets in recent days are connected to unusual trading patterns in Irish shares. The Financial Regulator is examining certain transactions in this regard." Con Horan, Prudential Director of the Regulator confirmed they "would be working closely with other regulators, including the FSA in relation to concerns about this type of activity."

It has since been reported that the Financial Regulator has asked all of the stockbroking companies in the Irish market to provide all details of phone recordings and transaction records that are linked to recent dealings in Anglo Irish Bank shares and Irish Life and Permanent.

The FSA confirmed that it is investigating trading in UK financial shares. Sally Dewar, MD, wholesale and institutional markets of the Financial Regulator stated "there has been a series of completely unfounded rumours about UK financial institutions in the London market over the last few days. We will not tolerate market participants taking advantage of the current market conditions to commit abuse by spreading false rumours and dealing on the back of them. We remind market participants to adhere to the market code of conduct."

The FSA have reported they will be examining particular hedge funds in the UK market, as well as the recent false and misleading rumours about the financial positions of banks and other financial institutions. The FSA have also confirmed they will be investigating share trades in Halifax Bank of Scotland.

The issue will be whether investors engaged in short-selling following the false rumours. Short-selling involves investors borrowing stock in a firm and selling it a higher price in the hope of buying it back at a lower price later. The investor will then return it to the original owner, with the difference being the profit. There is nothing illegal about short selling, but market manipulation is illegal. It has always been difficult to prove market manipulation, and as such, there has not been one successful prosecution to date. It will be interesting to see how both the Irish Financial Regulator and the UK Financial Services Authority deal with these cases over the coming weeks and months, and how this may effect other institutions going forward.

#### Warnings regarding Firms not authorised to conduct business in the State

30 April 2008: LA Policies, Ireland

3 April 2008: J.S. Knight & Co., West Indies

#### Address by Patrick Neary at the IFSC 2.0 Conference

On 5 March 2008, the Chief Executive of the Financial Regulator, Patrick Neary, gave a speech at the IFSC 2.0 Conference – the Next Phase. During the course of the speech, Mr. Neary stated "we expect financial service providers to have in place sound corporate governance procedures and conduct their functions in a transparent and accountable manner, maintain oversight and reporting systems that allow the board and management to monitor and control all operations, act with prudence and integrity and in the best interests of their customers at all times, maintain sufficient financial resources, have in place internal controls, risk management policies and risk control systems, comply with requirements relating to solvency and capital adequacy, liquidity, segregation of client funds and be able to produce accurate, complete and timely information." For the speech in full, please go to: <http://www.financialregulator.ie>

#### Patrick Neary's Opening Statement to the Joint Oireachtas Committee on Finance and the Public Service

On 30 January 2008, the Chief Executive of the Financial Regulator, Patrick Neary, gave a speech to the Joint Oireachtas Committee on Finance and the Public Service. Whilst commenting on the Financial Regulator's approach to regulation, Mr. Neary stated "we cannot guarantee a zero-failure outcome, but we try to ensure that our focus is on the areas that need that focus." For the speech in full please go to: <http://www.financialregulator.ie>

#### Address by Patrick Neary to the Association of Compliance Officers in Ireland

On 26 November 2007, the Chief Executive of the Financial Regulator, Patrick Neary, spoke to the Association of Compliance Officers in Ireland. Mr. Neary commented on the contract between the Financial Regulator, the Compliance Officer and the Regulated Firm. In relation to this, Mr. Neary said "in a principles-led system, the Financial Regulator cannot examine or vet every move and every file. We must rely on the infrastructure put in place in the firm to ensure compliance and on the independence and professionalism of the compliance officer in insuring that this infrastructure is appropriate, robust and working effectively. That is the implied contract between the compliance officer and the Financial Regulator." The speech in full can be found here:  
[http://www.financialregulator.ie/data/news\\_files/Final%20Speech%20ACOI%20speech.pdf](http://www.financialregulator.ie/data/news_files/Final%20Speech%20ACOI%20speech.pdf)

## Financial Regulator Consultations

### CP33 Consumer Protection Code for Licensed Moneylenders

The Financial Regulation issued CP33 Consumer Protection Code for Licensed Moneylenders in March 2008.

Following a review of the sector in 2007, the draft Code extends to the money-lending sector the general principles originally set out in the Consumer Protection Code. It imposes a set of common rules for the sector with regard to conduct of business and imposes certain advertising restrictions. The closing date for submissions on CP33 is Friday 16 May 2008.

Full details of the Consultation Paper can be found on  
<http://www.complianceireland.com/Resources.html#Consultations>.

### CP32 Voluntary Consumer Protection Code for Credit Unions

The Financial Regulator issued CP32 Voluntary Consumer Protection Code for Credit Unions (in respect of their core services) in March 2008. Unlike the case with the money-lending sector, there is no legislative basis for the imposition of a statutory Consumer Protection Code on credit unions.

The draft Voluntary Code extends to the credit union sector the general principles originally set out in the Consumer Protection Code. It imposes a set of common rules for the sector with regard to conduct of business and imposes certain advertising restrictions, as well as specific provisions relating to loans, share and deposit accounts. The closing date for submissions on CP32 is Monday 30 June 2008.

Full details of the Consultation Paper can be found on  
<http://www.complianceireland.com/Resources.html#Consultations>.

## Financial Services Ombudsman

### Financial Services Ombudsman Publishes 2007 Annual Report

On 22 April 2008, the Financial Services Ombudsman published his 2007 Annual Report. He found that over 13,000 complaints have been received since the office was established on 1<sup>st</sup> April 2005. This includes the 4,374 received in 2007, an increase of 15% over 2006. 4,534 cases were concluded in 2007 after review or investigation with 59% resolved in complainants favour.

So far in 2008, 1,600 complaints have been received, an increase of 17%.

13 decisions have been appealed to the High Court since April 2005, while another one was subject to a judicial review. To date, only one decision has been overturned on appeal, Quinn Direct.

The full report can be found at:

<http://www.financialombudsman.ie/about-us/Financial-Ombudsman-2007-Annual-Report-English.pdf>

## Financial Services Ombudsman Publishes Enfield Credit Union / Davy Stockbrokers Decision

On 11 February 2008, the Financial Services Ombudsman, Joe Meade, published the final decision made on 21 January 2008 in the Enfield Credit Union v Davy Stockbrokers, in relation to the case about the credit union's €500,000 investment in three perpetual bonds arranged by Davy. Davy lodged an appeal and also sought a judicial review of the decision in the High Court on 8 February 2008. Davy is also challenging the constitutionality of the Financial Service Ombudsman's powers.

The Financial Services Ombudsman held inter alia that:

- The credit union was not informed as to the real nature of the investment;
- Davy failed to exercise its proper duty of care in advising the credit union to purchase the bonds;
- The bonds have no definite maturity date;
- The bonds have no step up clauses and are subordinated.

For these reasons, Mr. Meade held that the bonds were an unsuitable investment for the credit union. Mr. Meade has directed Davy to pay the credit union the sum of €500,000 in exchange for the three bonds and to refund all fees and commissions paid in relation to the purchase of the bonds.

Davy has argued that:

- Enfield Credit Union fully understood the nature of the bonds;
- Enfield Credit Union relied exclusively on Davy for advice; and
- The bonds fell in value because of the deterioration in the credit markets.

To date, only Enfield Credit Union has formally complained about the marketing of perpetual bonds to credit unions but a number of other credit unions are known to be concerned about the losses being incurred.

A copy of the final decision can be seen by following the link below:

[http://www.financialombudsman.ie/case-studies/Enfield\\_Davy\\_decision.pdf](http://www.financialombudsman.ie/case-studies/Enfield_Davy_decision.pdf)

## Irish Legislation

### Finance Act 2008

Section 39 of the Finance Act 2008 introduced a number of welcomed amendments to the taxation of investment undertakings covered by the gross roll up regime. Under gross roll up, funds may accumulate without the imposition of tax. However, an exit tax applies when a "chargeable event" occurs. Changes were introduced in section 50 of the Finance Act 2006 to provide for a deemed disposal (on which tax would be payable) that would arise at the ending of each "relevant period" (defined as an 8-year period) following the acquisition of the units. The purpose of this deemed disposal was to ensure that exit tax could not be deferred indefinitely by Irish taxpayers.

It was felt that these provisions were unduly burdensome on fund transfer agents given the limited participation in such funds by Irish taxpayers. The changes announced permit the substitution of the withholding requirements with a reporting regime where less than 10% of the units in the fund are subject to the deemed disposal provisions. An option has been introduced to set the reporting date as 30 June or 31 December and provision made for the Revenue Commissioners to directly refund overpayments of tax to the taxpayer where less than 15% of the value of the fund is affected, freeing the transfer agent of the obligation to maintain tax cost records for Irish investors.

## UCITS Regulations Amendment

On 19 December 2007, the Minister for Enterprise, Trade and Employment signed the European Communities (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2007 [S.I.832 of 2007]. These amending Regulations implement the Eligible Assets directive for UCITS funds [Commission Directive 2007/16/EC] and set out various clarifying definitions with regard to assets which may be held by a UCITS fund.

The Financial Regulator published Consultation Paper CP31 the next day setting out a scheme for incorporating the provisions of the Regulations into the UCITS Notices and Guidance Notes. The updated UCITS Notices and Guidance Notes were published in late April.

Full details of revised Notices and Guidance Notes can be found at <http://www.complianceireland.com/Resources.html#UCITSFunds>. Full details of CP31 and related draft documents can be found on <http://www.complianceireland.com/Resources.html#Consultations>.

## Irish Litigation

### Burns -v- Bank of Ireland & Others [2007] IEHC 318

The High Court judgement in the case of Burns v Bank of Ireland & Others was published in November 2007. This case provides an important clarification in the area of anti money laundering for financial institutions. The judgement for the case clarifies the protection an institution might enjoy where acting pursuant to a direction from An Garda Síochána following the filing of a suspicious transaction report.

The plaintiff, Mr. Burns, is a citizen of the United States of America who faced charges pursuant to a grand jury indictment in West Virginia on 7 September 2001 relating to matters involving fraud and money laundering. Prior to the indictment being handed down the plaintiff left the United States of America in June 2001, settling in Ireland. Subsequent to the indictment, and having been tracked to Ireland, he was arrested on 14 January 2002, pursuant to a United States extradition warrant. He was detained until December 2004 while the extradition request was litigated before the High Court and the Supreme Court with the plaintiff ultimately successfully contesting the extradition warrant. In July 2005, Mr. Burns went to the Bank of Ireland, and sought to lodge a cheque drawn by MoNY Life of America in the amount of \$95,890.07 payable to him. The bank accepted the cheque for clearing. On 19 August, 2005 when cleared funds were received, a report was made by the bank to An Garda Síochána pursuant to section 57 of the Criminal Justice Act 1994. When the plaintiff went to Dún Laoghaire on 22 August to withdraw the money the bank refused to pay because it said it had been directed by An Garda Síochána not to pay. The direction from the gardaí also advised the bank that there was protection under the relevant provision of the law if the person in possession acted in accordance with the directions from An Garda Síochána.

Arising out of Garda enquiries, restraining order proceedings were taken against Mr. Burns, which failed in the High Court in December 2006. Mr. Burn's solicitors then wrote to the Chief State Solicitor seeking in effect, the withdrawal of the Garda direction issued in August 2005. It was stated in the judgement that the Detective Garda who gave the direction was aware himself by the end of August, 2005 that there was not going to be a prosecution against Mr. Burns for money laundering and, but for the institution of these proceedings, he accepts that the direction would have been withdrawn. It follows that once the direction was withdrawn, Mr. Burns would have had access to his funds in the account.

In his judgement Gilligan J noted "The lack of a specified time limit does not and cannot be held to authorise the open-ended maintenance of the direction by the Garda authorities, who, in their own words in the direction, clearly envisaged that the bank would be given further instructions by them.... The bank, having been issued with this direction, given the mandatory nature of the terminology used

therein, clearly believed that it had no alternative but to comply. The bank, in honouring its obligations under s.57, having become suspicious of the circumstances in which the plaintiff sought to have the cheque lodged, made the report. It then received the direction from the Detective Garda and found itself in the position where refusal to comply with the direction, as issued, could leave it open to potential criminal liability. For that reason, it is hard to see how any liability can attach to the bank in these circumstances where it complied with a lawfully issued direction by a member of An Garda Síochána. The bank cannot be held liable for the effects of the duration of the direction, since only the Detective Garda could withdraw it”

## UNITED KINGDOM

### Financial Services Authority Enforcement Actions

#### Mansion House Securities Limited fined £122,500 for poor sales practices

On 2 April 2008, the FSA announced it had fined Mansion House Securities Limited £122,500 for giving customers unsuitable and inaccurate advice when selling higher risk shares. The FSA reviewed 30 recommendations relating to higher risk shares, and found that Mansion House’s advisers had given customers inaccurate information and failed to highlight the risks associated with the recommended shares. Its advisers also used inappropriate sales practices to pressure customers into buying shares.

The review also showed that Mansion House had not set up adequate compliance procedures or ensured that its employees were properly trained. Also, Mansion House had not disclosed the commission and charges it received in relation to the shares.

The link to the article can be found here:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/031.shtml>

#### Third party administrator fined £525,000 for customer document failings

On 9 April 2008, the FSA announced they had fined third party administration firm Liberata Financial Services Limited £525,000 for failures in its system and controls for producing and issuing documents to life and pensions policyholders. The failings meant that there was an unacceptable risk that any of the 1.3million policyholders whose policies it administered would not receive important financial information to help with their investment decisions and could have suffered financial loss.

The failings resulted in 30,000 policyholders not receiving information, of whom, 161 suffered financial losses amounting to £17,584.

The link to the article can be found here:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2008/032.shtml>

#### Mr. John Paul Keay trading as Jack Keay Mortgage Services

Mr. John Paul Keay has received final notice to cancel trading on regulated activities and performing any function in relation to regulated activities.

In the opinion of the FSA that Mr. Keay, as a sole trader operating in Northern Ireland, did not have adequate human resources in relation to regulated activities and as an authorised person, was not fit and proper having regard to all the circumstances including the nature of the regulated activities that

the forenamed carried on, and failed to ensure that business affairs were conducted soundly and prudently.

## Martin Onoabagbe

On 21 April 2008, Mr. Onoabagbe received final notice to cancel the permission granted to him to carry on regulated activities.

The FSA took this action because Mr. Onoabagbe failed to comply with the regulatory requirements to submit accurate data in the Retail Mediation Activities Returns, despite the FSA's repeated requests to do so.

These failures led the FSA to conclude that the business was not being run soundly and prudently and in compliance with proper standards and by a fit and proper person.

## The Travel Insurance Agency

On 25 April 2008, Simon Cohen, trading as the Travel Insurance Agency, received final notice to cancel the permission granted to him to carry on regulated activities.

The FSA took this action because Simon Cohen failed to comply with the regulatory requirements to submit accurate data in the Retail Mediation Activities Returns, despite the FSA's repeated requests to do so.

These failures led the FSA to conclude that the business was not being run soundly and prudently and in compliance with proper standards and by a fit and proper person.

## TOAOTR Limited

On 28 April 2008, TOAOTR Limited received final notice to cancel the permission granted to it to carry on regulated activities.

The FSA took this action because TOAOTR Limited failed to comply with the regulatory requirements to submit accurate data in the Retail Mediation Activities Returns, despite the FSA's repeated requests to do so.

These failures led the FSA to conclude that the business was not being run soundly and prudently and in compliance with proper standards and by a fit and proper person.

## FSA tackles financial crime in the Insurance Industry

Insurance firms and intermediaries are being called to inform the FSA when they suspect criminal behaviour, so that the FSA can decide whether to investigate further. This may arise when an insurer terminates an agency agreement with an intermediary where they see doubtful practice or suspect misconduct. It may also arise where an insurance intermediary has concerns about another intermediary they do business with.

The FSA is calling on all insurance firms to supply it with the following information:

- The name of the firm;
- Details of any individuals involved;
- Details and evidence of the suspected and/or proven financial crime;
- The names of the customers involved; and,

- A summary of investigations.

Examples of possible financial crime involving insurance fraud include:

- Misappropriation of client money or money held under risk transfer agreements;
- Failure to pass on premiums, refunds or claims;
- Falsifying customer details to obtain insurance business that would otherwise be turned down or be more expensive; and,
- Issuing false cover notes or false insurance certificates.

## FSA Fines for 2007 are the lowest in 6 years

The Financial Services Authority imposed fewer fines in 2007, than they had in the previous six years. In 2007, fines totalled £5.3million, in comparison to the £13.3million in 2006. The average fine handed out was £232,000. This was also less than half the average of 2006. (see <http://www.telegraph.co.uk/money/main.jhtml?xml=/money/2007/12/30/cnfsa130.xml>)

It is important to observe that the total number of fines given was 23, compared to the 28 given in 2006. Fines in previous years have been made up of large single payments. For example, in 2006, Deutsche Bank was fined £6.3million, whereas in 2007, only one firm, Norwich Union, was fined greater than £1million.

Through research carried out by Compliance Ireland, we have found that for Q1 2008, a total of £1,387,500 in fines has been issued. This looks to compare favourably with those figures from 2007. Once again, one institution, HFC Bank Limited, has been fined greater than £1million.

Since the turn of the year, the FSA have sentenced an unauthorised stockbroker to 15 months imprisonment, and have suspended one other firm, an exempt charity, for 3 months.

## The EU Payments Regulations 2007

The Payments Regulation came into effect, in the UK, on 1 January 2007 for anyone carrying out business within the EU as a Payment Service Provider.

The Regulations require that Payment Service Providers must:

- Obtain Complete Information on the Payer;
- Verify Complete Information on the Payer;
- Ensure that Complete Information on the Payer is kept with the transfer;
- Keep Records.

For more details and further analysis, please use the link below to access the page on the HM Revenue and Customs (UK) site: <http://www.hmrc.gov.uk/mlr/eu-pymt.htm>

## The Transfer of Funds Regulations 2007

The Transfer of Funds Regulations came into effect in the UK on 15 December 2007. This Regulation gives HM Revenue and Customs powers to supervise money transmitters in respect of the Payments Regulation and powers to impose penalties on businesses not complying.

For more details and information, please use the link below to access the page on the HM Revenue and Customs (UK) site: <http://www.hmrc.gov.uk/mlr/eu-pymt.htm>

## Corporate Governance

In a report issued by the Association of British Insurers (ABI), research showed that well-governed companies produced better returns for shareholders over time than poorly-governed companies. The research showed a clear connection between good governance, company performance and investor returns.

This research was conducted using the ABI's Institutional Voting Information Service (IVIS) and was gathered over a four-year period. All of the companies studied were all listed in the FTSE All-Share Index.

The research was based on how many times these companies were awarded a 'red top' or 'amber top' by the ABI during the reporting period. A 'red top' is the most serious signal of governance breaches awarded by the ABI.

Full details of the report can be found at:

[http://www.abi.org.uk/BookShop/ResearchReports/Research\\_Feb\\_08.pdf](http://www.abi.org.uk/BookShop/ResearchReports/Research_Feb_08.pdf)

## EUROPEAN UNION

### The Assessment of Acquisitions in the Financial Sector Directive 2007

The Assessment of Acquisitions in the Financial Sector Directive 2007 is due to be transposed into Irish Law by 21 March 2009. This Directive was adopted on 5 September 2007, and its full title is the 'Directive 2007/44/EC of the European Parliament and of the Council amending Council Directive 92/49/EEC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector'.

The Directive:

- Introduces a clear and transparent notification and decision making process for competent authorities and firms;
- Reduces deadlines for competent authorities to carry out the assessment and limits to one occasion and clear conditions any 'stopping of the clock' interventions;
- Sets out the prudential criteria for the supervisory assessment and these will be known up front by market participants;
- Sets out a closed set of assessment criteria for the acquirer.

Competent Authorities shall take the following into account when assessing a suitable acquirer:

- Reputation of the proposed acquirer;
- Reputation and experience of Directors of the undertaking resulting from the acquisition;
- Financial soundness of the proposed acquirer;
- The ability of the acquired undertaking to comply or continue to comply with its existing prudential requirements;
- Grounds for suspecting terrorist financing or money laundering or an increased risk of such as a result of the proposed acquisition.

The Assessment of Acquisitions in the Financial Sector Directive 2007 amends a number of Directives and consequently, it will be required to amend the relevant Irish legislation. These Directives are:

- Third Non-Life Directive;
- Life Directive;
- Markets in Financial Instruments Directive;
- Reinsurance Directive;

- Directive 2006/48/EU of the European Parliament and of the council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions.

Compliance Ireland will be involved in the consultation phase of the Directive with the Department of Finance. The full text of the Directive can be found here:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:247:0001:0016:EN:PDF>

## Payments Services Directive 2007

The Payments Service Directive must be transposed into the national law of the EU Member States before 1 November 2009.

The Directive establishes a harmonised legal framework for payment services in the EU/EEA. The Directive deals with three key issues:

- It establishes who may provide payments services;
- It establishes transparency requirements to ensure that payment service providers give requisite information to their customers as related to payments; and,
- It sets out the relative rights and obligations of payment service providers and payment service users.

The full text of the directive can be found here:

[http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l\\_319/l\\_31920071205en00010036.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_319/l_31920071205en00010036.pdf)

## ANTI MONEY LAUNDERING AND TERRORIST FINANCING

*Note: See comments on suspicious transaction reports filed by Financial Regulator and those received by the Revenue Commissioners in 2007 above at **page 10***

## Directors' Obligations under the proposed New Anti-Money Laundering and Counter-Financing of Terrorism Law

**This is not legal or professional advice! It is written for the educational benefit of our readers.**

Directors for hire and those that arrange the appointment of directors may be in for a big shock when the new Irish anti-money laundering and counter-financing of terrorism laws come into effect in the coming months.

On the 12 February 2008, the Minister for Justice, Equity and Law Reform released for consultation a Scheme for the Criminal Justice (Money Laundering) Bill 2008. The Scheme, in accordance with the underlying European Directive, extends the remit of those required to comply with onerous anti-money laundering and counter-financing of terrorism obligations to persons defined as 'Trust and Company Service Providers'. In addition, the Regulatory Impact Analysis released by the Minister, notes that such persons will need to be registered or licensed.

The definition of 'Trust and Company Service Providers' extends to:

- "any person which by way of business provides any of the following services to third parties –
- a) Forming companies or other legal persons;

- b) Acting as, or arranging for another person to act as –
  - i. A director or secretary of a company;
  - ii. A partner or a partnership; or,
  - iii. A similar position in relation to other legal persons;
- c) Providing a registered office, business address, correspondence, or administrative address and other related services for a company, a partnership or any other legal person or arrangement;
- d) Acting as or arranging for another person to act as –
  - i. A trustee of an express trust or similar legal arrangement;
  - ii. A nominee shareholder for another person other than a company listed on a regulated market which is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards; requirement Bill”

A non-executive director will be required to meet the same identification and on-going compliance standards vis-à-vis the company for which he/she acts, as a bank does when opening an account for a customer.

Where a non-executive director falls within the scope of the law, he/she is required to:

- i. Identify and verify his/her customer and the customer's beneficial owners;
- ii. Retain identification and transaction records for the relevant 5 year periods;
- iii. Implement on-going compliance and risk-based measures to know his/her customer on an on-going basis;
- iv. Report suspicious transactions of money laundering and financing of terrorism to the Garda and Revenue.

In the context of this note and the law, directors should view the companies, on whose board they sit, as their customers.

However, if the non-executive director is a practising solicitor or accountant, he/she can ignore the above requirements because he/she is already required, by virtue of profession, to comply with the requirements. Also, a person authorised by the Central Bank and Financial Services Authority of Ireland, or the Financial Regulator, will also escape the requirements.

Non-executive directors of non-financial companies, i.e., manufacturing, technology, pharmaceutical etc, exist outside the scope of financial regulation and therefore would appear to be squarely caught by the proposed law.

The Minister's consultation period ended on the 15 April 2008. If you would like to read more, please visit [www.complianceireland.com/HotTopics.html](http://www.complianceireland.com/HotTopics.html) or [www.justice.ie](http://www.justice.ie) for copies of the Scheme, Regulatory Impact Assessment and Press Release.

It is Compliance Ireland's view that 'directors for hire' who believe the requirements will not apply to them may be mistaken and might have misinterpreted the Directive's application. The fear is that Irish directors for hire will incorrectly conclude that someone else will deal with this issue and ignore the point themselves.

This is an EU Directive and Ireland has to implement it. Thus, it is useful at this point to ensure that we do not introduce a more onerous law than that of the UK and other European States. In an extract taken from the FSA, the types of businesses that will be covered are:

- Company formation agents;
- Providers of registered offices, business addresses, accommodation or correspondence addresses for businesses other than sole proprietors;

- Recruitment agencies and interim management agencies, involved in arranging for the appointment of directors, shadow directors, company secretaries or professional trustees;
- Individuals providing their services as either a permanent or interim director, shadow director or company secretary or professional trustee to a client by way of business;
- Personal service companies of people acting as directors, shadow directors or company secretaries etc;
- Family offices and other businesses when they act or arrange for others to act as professional trustees;
- Accountants, auditors, tax advisers when they provide any of the services listed above unless you are already supervised by the FSA or by certain professional bodies.

## 'Financial Adviser' Charged with Money Laundering in Cork

On 19 March 2008, a financial adviser appeared in court in Cork facing ten money laundering charges linked to the £26.5million Northern Bank robbery. The ten offences of money laundering are alleged to have occurred between 20 December 2004 and 24 February 2005.

Timothy 'Ted' Cunningham was charged with having more than £3.5million worth of sterling and euro cash and cheques from the robbery in Belfast.

Mr. Cunningham had previously been arrested in February 2005 and questioned for two days after detectives raided his home.

The ten charges include:

- Possession of £3.01million from the Northern Bank robbery;
- A cheque for €56,000 from the Northern Bank robbery, which he gave to his son;
- Two cheques worth €144,000 from the Northern Bank robbery, which Mr. Cunningham lodged into a bank account in Co. Wicklow;
- Two cars, both bought with money from the Northern Bank robbery, which Mr. Cunningham gave to a former Sinn Fein election candidate and a Belfast Financial Controller.

The judge has remanded Mr. Cunningham on continuing bail, on his own bail of €200,000 and an independent surety of €200,000 to appear again on 23 April 2008.

## AML responsibilities of Auditors – UK

In March 2008, the Auditing Practices Board (APB) issued an update to Practice Note 12 (Revised), 'Money Laundering - Interim guidance for auditors in the United Kingdom' which replaced the version issued in January 2007. The APB plans to publish Practice Note 12 (Revised) in final form once approval under the Proceeds of Crime Act 2002 has been received from HM Treasury.

The guidance in Practice Note 12 (Revised) has been updated to reflect the implementation of the Money Laundering Regulations 2007 and a recent update to the Proceeds of Crime Act 2002, both of which have come into force since the last version of the guidance was issued.

## Gangsters Face EU-Wide Seizure of Crime Proceeds

A move, sanctioned by the EU, will make it easier for governments to recover assets that have been hidden away in other jurisdictions. The Criminal Assets Bureau (CAB) has identified a number of Irish criminals who have hidden their wealth overseas.

Governments in each of the 27 EU member states are to establish a network of asset recovery offices to boost the prospects of tracing and identifying the proceeds of crime. The European Council decision will back up legislation and is expected to be passed by the Dáil and Seanad in the coming months.

The Criminal Justice (Mutual Assistance) Bill allows Ireland to legally seek confiscation of property orders in other states, while implementing similar requests here. The setting up of this network should result in a better flow of information between states and make it easier to seize criminal's assets.

## Financial Action Task Force

### Study on Terrorist Financing - Released

The FATF issued a Study of Terrorist Financing in March 2008. This study examines the means used by terrorists to raise funds and the wide variety of methods used to move money within and between organisations. The adaptability and opportunism shown by terrorist organisations suggests that all the methods that exist to move money around the globe are to some extent at risk. Further details and a copy of the report can be found at <http://www.antimoneylaundering.ie/AML&IFSRA1.html>

### Expression of Concern Statement - Issued

On the 28 February 2008, FATF released a statement declaring they are concerned about the lack of comprehensive AML/CFT systems in Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé & Príncipe and the northern part of Cyprus.

For a copy of the full statement, please use the link:  
<http://www.fatf-gafi.org/dataoecd/16/26/40181037.pdf>

### Mutual Evaluation – Canada

In February 2008, FATF published an assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) standards in Canada. The full text is available here:  
[http://www.fatf-gafi.org/document/58/0,3343,en\\_32250379\\_32235720\\_40199098\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/58/0,3343,en_32250379_32235720_40199098_1_1_1_1,00.html)

### Mutual Evaluation – Singapore

In March 2008, FATF published an assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) standards in Singapore. The full text is available here:  
[http://www.fatf-gafi.org/document/29/0,3343,en\\_32250379\\_32235720\\_40212509\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_40212509_1_1_1_1,00.html)

### Revised interpretative note to Special Recommendation VII: Wire Transfers

In February 2008, Special Recommendation VII was developed with the objective of preventing terrorists and other criminals from having unfettered access to wire transfers for moving their funds and for detecting such misuse when it occurs. It aims to ensure that basic information on the originator of wire transfers is immediately available:

- To appropriate law enforcement and/or prosecutorial authorities to assist them in detecting, investigating, prosecuting terrorists or other criminals and tracing the assets of terrorists or other criminals;
- To financial intelligence units for analysing suspicious or unusual activity and disseminating it as necessary; and,
- To beneficiary financial institutions to facilitate the identification and reporting of suspicious transactions.

The full note can be seen here: <http://www.fatf-gafi.org/dataoecd/16/34/40268416.pdf>

## Revised Methodology for assessing compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations

The FATF updated their 2004 Methodology Report in February 2008. This report consists of three parts:

- Section One is an overview of the assessment mythology, its background, how it will be used in evaluations/assessments, and a description of what is necessary for an effective anti-money laundering and combating the financing of terrorism system;
- Section Two contains guidance and interpretation concerning the methodology, including the essential criteria, the additional elements and on compliance;
- Section Three sets out the essential criteria and the additional elements for each of the FATF Recommendations.

The full report can be seen here: <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf>

## DATA PROTECTION

### Slides from presentation by Compliance Ireland and Data Protection Commissioner available for download

To download the slides from our recent joint presentation with Billy Hawkes, Data Protection Commissioner on Thursday 8 May 2008 please go to <http://www.complianceireland.com/Resources.html#DP> .

*Ed: Again, many thanks to Suzanne Feeney and her colleagues at Robert Walters ([Suzanne.Feeney@robertwalters.com](mailto:Suzanne.Feeney@robertwalters.com)) for sponsoring this event attended by more than 120 professionals.*

### Data Protection Commissioner releases 2007 Annual Report

We recommend that all relevant personnel download and read this report, in which the Billy Hawkes, the Data Protection Commissioner emphasised:

- the responsibility of public and private sector organisations to respect the privacy of those who entrust them with their personal information.
- the need for an appropriate balance to be struck between the ever increasing desire to seek the personal data of all of us as part of the security agenda and the individual's right to privacy. In this respect he raises the question, "Have we not succumbed to terror and

submitted to extremism when we loose the liberty to live our lives without constant intrusion by the State in the name of security?"

- the opening of 1,037 new complaint investigations, up substantially from 658 in 2006.
  - this increase relates in part to an increase in complaints in relation to unsolicited text (SMS) messages.
  - that currently he has more than 350 prosecutions before the Courts in this area.
  - these prosecutions follow strong action taken by the Commissioner who sent teams of investigators into the premises of those involved to collect evidence.
  - the Commissioner has increasingly made use of his powers to send his officers into premises which contain personal data without notice to ensure that data protection requirements are being met.
- the release of 15 case studies and the use of personal data by:
  - Sky in the area of direct marketing.
  - Baxter Healthcare of two medical reports relating to a former employee.
  - West Wood Club relating to inappropriate use of CCTV footage by the club in Sandymount.
  - Gresham Hotel relating to covert use of CCTV.
  - Newtel resulting in the suspension of the operations of a cold-call marketing operation by Newtel communications.
  - Aer Lingus - inappropriate disclosure of employee information;
  - Revenue Commissioners - A very serious case of inappropriate access to personal information held by them.
  - Ryanair - failure to supply a reasonable means for opting-out from email direct marketing.
  - Eircom - extensive engagement with following the receipt of a large number of complaints in relation to unwanted marketing telephone calls. This resulted in a €35,000 donation by Eircom to charity to resolve the complaints.
  - Croke Park - excessive information of local residents retained by it.
  - Tesco - unsolicited email marketing by arising from technical difficulties.
- that his office dealt with approximately 20,000 telephone enquiries and over 4,000 email enquiries and a smaller number of enquiries by post.
- an (unscientific) list of the top ten threats to privacy as identified by his staff.

### ***Other Activities of the Data Protection Commissioner noted in his 2007 Annual Report***

- The benefits that flow from an **increasing awareness** of privacy and data protection issues on the part of members of the public, the media and institutions holding our data;
- The occasions **when he was obliged to resort to the use of his legal powers** to protect and promote the interests of data subjects;
- The **responsibility of private sector organisations** to protect the personal data of their customers and clients;
- **Breach notifications** as an example of good practice;
- Developing **codes of practice** within particular sectors and public bodies to allow a better understanding of data protection requirements among those entrusted with personal data;
- The continuing challenges posed by **new technology and the use made of the internet**.
- The Commissioner has taken the opportunity to highlight his engagement with Government on a variety of issues including the proposed DNA database, the intention to introduce what is known as an "eBorders" system to track all of our movements as we enter and leave the country and a very satisfactory outcome in terms of ensuring that the planning system respects privacy while maintaining transparency.

## Illegal Access to CVs on Jobs.ie Website

On 31 March 2008, the Office of the Data Protection Commissioner confirmed that it has been informed by the recruitment website [www.jobs.ie](http://www.jobs.ie) of an incident on its website which resulted in the copying of the CVs of people who have availed of the company's recruitment services.

An investigation has been launched into the circumstances surrounding the incident, to seek to establish the security procedures that were in place at the time of the incident and make recommendations, as appropriate.

The Commissioner advised any person affected to be careful in relation to any unsolicited contact, and not to give out any personal information about themselves on foot of such contact.

The link to the release can be found at: <http://www.dataprotection.ie/viewdoc.asp?DocID=702>

## Investigation into Theft of Personal Data on BOI Laptops

On 28 April 2008, the Data Protection Commissioner confirmed that his office is investigating the circumstances surrounding the theft of a substantial amount of personal data on four Bank of Ireland laptops over the past year.

A more detailed report has been sought from Bank of Ireland into the exact circumstances surrounding the loss of the personal data.

The investigation will focus on the justification for the personal data being placed on the laptops in the first place, the security arrangements in place and the exact circumstances which led to the delay in the reporting of this matter internally within the Bank of Ireland to the appropriate personnel for the taking of further action.

The Data Protection Commissioner and the Financial Regulator are cooperating on this matter and the Data Protection Commissioner will refer any relevant issues to the Financial Regulator.

The link to this release can be found at: <http://www.dataprotection.ie/viewdoc.asp?DocID=718&m=f>

## And when the same happened across the water.....

On 14 February 2008, the FSA fined Nationwide Building Society £980,000 for failing to have effective systems and controls to manage its information security risks. These issues became known following the theft of a laptop from the home of a Nationwide employee in 2007. During the investigation, the FSA found that the building society did not have adequate information security procedures and controls in place, potential exposing customers to an increased risk of crime. The FSA also found that Nationwide was not aware that the laptop contained confidential customer information and that Nationwide did not start an investigation until 3 weeks after the theft.

The link to the article can be found at:

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2007/021.shtml>

## FSA Warns Firms to Protect Customers Personal Data

The FSA has urged firms to change their attitude to data security and do more to help prevent their customers falling victim to identity fraud and other types of financial crime.

The warning came following a review by the FSA of 39 firms that included banks, building societies, insurance companies and financial advisers.

There were examples of good practice across the industry, however many firms still underestimate the risk of data loss and fraud to their business and customers. On occasions of significant data loss, firms seem more concerned about adverse media coverage than on being open and transparent to their customers.

The findings showed that:

- Many firms are not proactively checking that third party suppliers vet their employees or have adequate security arrangements in place to prevent unnecessary access to customer data;
- Many large and medium sized firms devote adequate resources to data security risk but placed too much emphasis on IT controls and not enough on staff awareness and training or regular assessments;
- Many small firms were wholly reliant on compliance consultants, who did not understand the importance of data security within the firm.

Following the review, one firm has been referred to enforcement.

## Our Services

Compliance Ireland is a management consultancy firm specialising in regulatory affairs for financial services and other regulated industries. We provide a wide range of consulting and training services:

**Authorisation Applications** - project managing your authorisation application to the Financial Regulator.

**Director Services** – provision of corporate governance specialists to act as non-executive directors for your management company, fund or securitisation vehicle.

**Board Support Services** – assisting your fund boards to discharge their monitoring and oversight responsibilities over delegated service providers.

**Risk Management Services** – assisting UCITS 3 fund boards to monitor and control the fund's exposures to Financial Derivative Instruments.

**Compliance Support Services** – assisting your firm to meeting its initial regulatory compliance requirements and providing ongoing specialist advice and expertise.

**Managing Regulatory Inspections** - assisting you to manage Financial Regulator regulatory inspections and desk audits.

**Directors' and Senior Management coaching** - coaching your staff to quickly absorb updated regulatory requirements and expectations.

**Compliance Manuals & Procedures** - drafting your business orientated compliance and operational procedures and manuals.

**Anti-Money Laundering** - conducting assessments of your AML controls and systems, assisting you implement remedial action & drafting your AML policies and manuals.

**Data Protection** - conducting assessments of your Data Protection controls and systems, preparing you for an inspection by the Data Protection Commissioner, assisting you to implement remedial action & drafting your Data Protection policies and manuals.

**Health Checks** - performing pre-regulatory inspection audits of your business covering general Financial Regulation & Compliance.

Visit our other informative websites – [www.mifid.ie](http://www.mifid.ie), [www.antimoneylaundering.ie](http://www.antimoneylaundering.ie), [www.compliancejobs.ie](http://www.compliancejobs.ie) and [www.compliancectraining.ie](http://www.compliancectraining.ie)

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## Newsletter – May 2008