

# Regulatory Conference 2016

Wednesday 16<sup>th</sup> November

Sefton Hotel, Douglas, Isle of Man

# Welcome

Matthew Hills ACII

Deputy President & Education Secretary  
Insurance Institute of the Isle of Man

# Agenda

Time	Topic	Speaker
08.30-08.35	Welcome	Matthew Hills ACII  Deputy President & Education Secretary, Insurance Institute of the Isle of Man
08.35-08.45	Introduction	Hon. Alf Cannan MHK  Treasury Minister, Isle of Man Government
08.45-09.00	FSA Developments	Colin Manley Acting Director, Insurance & Pensions Division, IOM Financial Services Authority
09.00-09.30	Developments in Insurance Regulation	Cheryl McGinley ACIS, FSI  Regulatory Manager, Compliance & Risk, IOM Financial Services Authority
09.30-10.15	Regulatory Enforcement is on the Rise	Sinead O'Connor  Head of Regulatory & Compliance Services, DQ Advocates Ltd
<b>COMFORT BREAK</b>		

Time	Topic	Speaker
10.30-11.00	Data Protection Principles & Industry Update	Iain McDonald Isle of Man Information Commissioner
11.00-11.30	Developments in Financial Services Regulation	Claire Whitelegg Deputy Director – Funds & Investment Services, Isle of Man Financial Services Authority
11.30-12.00	Probate/Enduring Power of Attorney	Libby Gordon Associate, DQ Advocates Ltd
12.00	Closing Remarks & Thanks	Matthew Hills ACII Deputy President & Education Secretary, Insurance Institute of the Isle of Man

# Introduction

Hon. Alf Cannan MHK

Treasury Minister, Isle of Man Government

# FSA Developments

Colin Manley  
Director Insurance and Pensions  
16 November 2016



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

# Regulatory Update

- Organisation
- Strategic Initiatives
- Insurance Specific



# Organisation

- Board
  - New Board in place and additional member added (March 2016) to bring further Insurance expertise
  - Established two advisory groups, Supervisory and Enforcement, to leverage expertise and experience of Board members
- Executive
  - Francesca Signorio-Hooper - Director of Business Change
  - Michael Weldon - Direct of Emerging Risks and International\*
  - Andrew Kermode - Banking and Funds & Investments Services\*
  - Colin Manley - Insurance, Pensions and Fiduciary Services\*
- Other
  - Culture -> Vision & Values
  - Consistency / commonality of risk reporting across sectors / firms
  - Cross FSA panels to consider:
    - (a) Remediation / enforcement & (b) AML/CFT

\*Jan 2017





# Key Initiatives

- Process Review
  - Vetting, Authorisation, Supervisory Methodology, Common Risk Assessments, Development of new FSA data system
- Outreach and Communication
- Enhanced Horizon Scanning Capability
- Insurance Core Principles (ICP) Project
- Bank Reform
- Retirement Benefits Schemes regulatory reform
- Collective Investment Schemes Review
- Credit Union Bill



# Insurance

- Supervision
  - Short Term
    - No significant change in approach / engagement
    - Annual Business Review Meetings
    - Use of thematic reviews
    - Review of Delegations
  - Longer Term
    - Approach will reflect the revised framework (post ICP)
    - Incorporate FSA wide view of risk / relativity of risks
- Engagement with Stakeholders
  - Quarterly with Industry bodies - management & sub-committees
  - Recently Board members with industry bodies
  - Industry Survey
- ICP Project



# ICP PROJECT IMPLEMENTATION PLAN

16 NOVEMBER 2016



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

# AGENDA

- Introduction
- Review of progress to date by work stream
- Review of implementation measures by work stream
- Communication



## KEY WORK STREAMS

- Insurance (Amendment) Bill
- Risk based capital
- Group supervision
- Conduct of business
- Intermediaries
- Governance and ERM for solvency purposes



## INSURANCE (AMENDMENT) BILL

- Recap on key changes
  - Capital framework
  - Transfer of insurance business
  - Group supervision
  - Financial risk and governance
  - Prohibitions, remedies and fees
  - Power to amend primary legislation by regulation.



# INSURANCE (AMENDMENT) BILL

- Feedback on consultation exercises - includes the following:
  - Long term business fund
  - Timescales for submissions
  - Breadth of power to amend primary legislation by regulation
  - Underlying regulations/guidance not available for review



# INSURANCE (AMENDMENT) BILL 2016

- Implementation
  - Introduced to House of Keys early 2017;
  - Royal Assent by end 2017;
  - Appointed Day Orders





# RISK BASED CAPITAL - LIFE

- **Progress to date**
  - QIS3 ongoing
  - QIS4 planned for April 2017
- **Implementation**
  - Regulations finalised 31/12/17
  - Regulations come in force - date to be determined
  - Consideration to be given to reporting period ends



## RISK BASED CAPITAL - NON-LIFE

- **Progress to date**
  - 1<sup>st</sup> QIS exercise (QIS3) in progress
  - Further QIS planned for April/May 2017
- **Implementation**
  - Aim is for implementation to be in line with life sector
  - Timescales to be reviewed post QIS3
  - Key issue is agreeing definition of a “captive” insurer



## CAPTIVE INSURERS

- ICPs allow proportionate approach for “captives”
  - Solvency
  - Public disclosure
  - Group supervision
- Ongoing discussions with IOMCA
- Data provided by insurers as part of QIS3 exercise
- Commercial implications & competitive position of the Island



## GROUP SUPERVISION - All insurers

- **Progress to date**
  - Discussion paper issued end April 2016
  - Focus on identifying the insurance groups for which the Authority expects to be group supervisor - (expect relatively few)
  - Communication with all insurers following the above exercise
- **Key components**
  - Group solvency
  - Group governance and conduct
  - Group reporting



## GROUP SOLVENCY - All insurers

- Additional QIS (4g) to run concurrently with QIS4
- Implementation in line with requirement at insurer level



## GROUP SUPERVISION (excluding solvency)

- Requirements in the areas of:
  - Governance
  - Conduct
  - Reporting
  - Consultation mid 2017
- Implementation
  - Aim is for regulations to be “ready” by end 2017
  - Implementation - to be determined



# CONDUCT OF BUSINESS - LIFE

- Progress to date
  - Consultation on conflicts of interest in the insurance sales process earlier in 2016
  - Further discussion on other conduct issues arising from previous consultation in 2015
- Proposal to implement Conduct of business Code
  - Principles based with guidance



# CONDUCT OF BUSINESS - LIFE

- Key Changes
  - Principles around product development
    - Customer segmentation
  - Commission disclosure
  - Key Information Documents (“KIDs”)
  - Terms of business with intermediaries





# CONDUCT OF BUSINESS - LIFE

- **Implementation**

- Review of consultation feedback by year end 2016
- Code itself to be consulted on H1 2017
- Code able to be put into force on 1/1/18
- Transitional arrangements being discussed with scope for later implementation for specific elements



# CONDUCT OF BUSINESS - NON-LIFE

- **Progress to date**
  - Initial discussion paper on conduct of business issued in 2014 addressed life and non-life business
  - Consultation paper due to be issued early 2017
- **Implementation**
  - Requirements based on previous discussion paper (DP14-05)
  - Date to be confirmed following consultation



# INTERMEDIARIES

- **Progress to date**
  - Discussion paper issued end October 2016
- **Implementation**
  - Consultation paper Q2 2017
  - All consultation complete by end 2017
  - Consider transitional period



# GOVERNANCE AND ERM

- **Progress to date**
  - Preparation for consultation mid 2017
  - Enhance CGC
  - Supplement with guidance
- Key new requirement of ORSA
- Aim is to finalise CGCII by year end 2017 with implementation during 2018



## OTHER WORK STREAMS

- Public disclosure
- Portfolio transfer (non-life insurers)
- Supervisory reporting



## PUBLIC DISCLOSURE

- **Progress to date**
  - Preparation for discussion paper underway
- **Implementation**
  - Depends to some extent on figures produced by new capital regime
  - Timescales will be reviewed on the basis of responses to the discussion paper



## PORTFOLIO TRANSFER - NON-LIFE

- **Progress to date**
  - Initial discussions on requirements
- **Implementation**
  - Regulations to apply Schedule 2 with appropriate amendments
  - Timescales not yet established



# SUPERVISORY REPORTING

- **Progress to date**
  - Partly addressed in other work streams
  - Exercise to identify which existing requirements will need to be replaced
- **Implementation**
  - Reporting linked to other work streams & so implementation aligned with those
  - Replacement of existing reporting requirements to be aligned with implementation of capital framework





## SUMMARY

- Primary and most secondary legislation complete by end 2017
- Implementation dates to be determined (but on the radar)
- Concurrent consultations during 2017



## COMMUNICATION

- Interim Roadmap as at end 2016
- Website
  - Regulatory developments / Insurance Framework
  - Consultation pages
- Meetings with Trade Bodies
- Engagement with individual firms





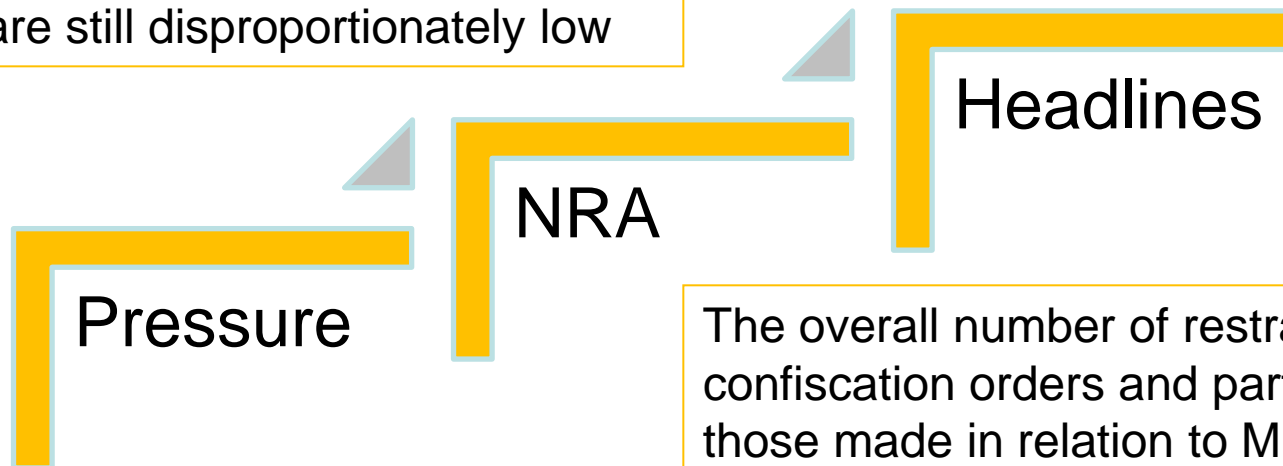
# Regulatory enforcement is on the rise

Sinead O'Connor

Head of Regulatory & Compliance Services

## Step change in the regulatory environment

While the statistics show an undeniable increase in the number of ML investigations, prosecutions and convictions in the last four years, the figures are still disproportionately low



The overall number of restraint and confiscation orders and particularly those made in relation to ML or other forms of economic crimes involving the financial industry is still relatively low

## Financial Services Group - Jersey

- JFSC Public Statement
  - Corporate governance was deficient
  - No effective monitoring by the Board of the MLRO function or the STR reporting processes
  - MLRO allowed to take control of a number of the areas of the business
  - MLRO trusted absolutely and went unchallenged by the Board
  - MLRO perceived as unapproachable by the staff
  - Compliance matters not considered in sufficient depth by a Board which met infrequently
  - Business development prioritised over compliance

## CSP - Guernsey

- Significant failings in AML/CFT controls identified in supervisory visit
- Directors failed to ensure that the business
  - Undertook and regularly reviewed risk assessments
  - Always completed CDD to an acceptable standard
  - Performed ongoing and effective monitoring
  - Had appropriate and effective procedures and controls in relation to STRs

## Trust business - Jersey

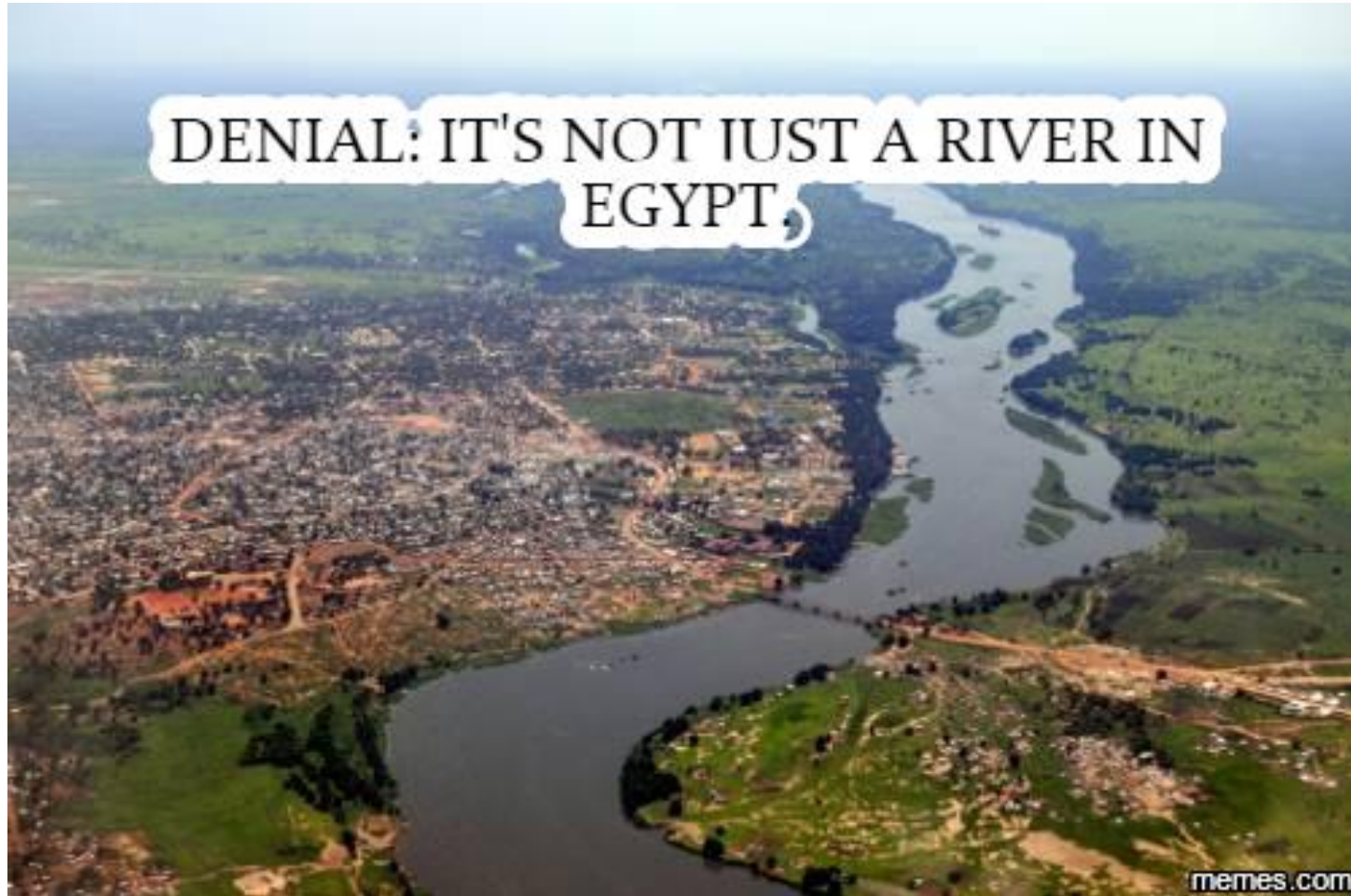
- Directions issued to two partners preventing employment in a regulated entity
  - Supervisory visit identified a number of significant concerns over the corporate governance of the TSP and the structures it administers
  - Subsequent reports identified a lack of effective governance and lack of effective compliance oversight in relation to the TSP

## Investment business - Bermuda

- Fined \$50,000 for serious regulatory breaches
  - Corporate governance, conduct of business and risk management
- Prohibited from taking on new business
- Not allowed to engage in marketing
- Restrictions to remain in place until BMA satisfied that business is fully compliant



DENIAL: IT'S NOT JUST A RIVER IN  
EGYPT,



## IOMFSA Annual Report 2015/16

“I am very mindful of our regulatory mandate and we will continue to pursue this with vigour and balance, taking into account the type of business that is being undertaken here. We will seek to understand the issues, remediate with proportionality and use our enforcement powers where necessary”

Chief Executive Officer, IOMFSA

## FSA Powers

Authorisation  
condition

Withdrawal of  
authorisation for  
new business

Residual power  
to impose  
requirements

**Prohibition**

Public  
Statement

Schedule 5  
inspection or  
investigation

**Warning  
Notice**

**Special  
remedies**

Civil penalty

## Prohibition – Focus areas

Collective  
responsibility

Demonstrating  
satisfactory  
oversight

Monitor and  
audit  
delegated  
functions

Key person –  
end to end  
understanding

Personal  
accountability

## Avenues for enforcement

- Tax Information Exchange Requests arising out of AEOI
- Customs & Excise
- Restraint Orders
- Off Island agency enquiries – e.g. SFO, DWP
- UK police investigations
- HMRC actions – corporate offence of failing to prevent tax evasion
- AML Code breach
- Auditors

## Avoiding the pitfalls

- Is our corporate governance framework up to scratch?
- Is what we do, the decisions we take and the reason we take them sufficiently documented?
- Do we keep records of sufficient detail that would help our case when challenged?

## Avoiding the pitfalls

- Are we letting things drift which could look like consent or connivance?
- Are we following the procedures that we have?
- If anything that we've heard today has resonated, what actions are we going to take?
- What about whistle-blowers?

# Questions

Sinead O'Connor

[sinead@dq.im](mailto:sinead@dq.im)

632980



# Comfort Break



information  
commissioner

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*Barrantagh Fysseree*

Iain McDonald, Information Commissioner

# The EU General Data Protection Regulation (GDPR)



# IoM data protection history

- Data protection legislation since 1986
- Council of Europe Convention 108 was extended to the IoM, at its request, in January 1993
- Implemented the 1995 EU Directive via DPA 2002
- DPA 2002 was recognised as being “adequate” (in terms of the 1995 Directive) in April 2004
- “adequacy” means that personal data can be transferred to the Island without barriers (compliance with the 8<sup>th</sup> principle)
- Fit for 21<sup>st</sup> century?

# GDPR

The GDPR is the "*biggest attempt so far by a legislator to grapple with the realities of global, ubiquitous data in the internet era*"

15 April 2016



Giovanni Buttarelli  
European Data Protection Supervisor

# GDPR

## The game changers include:

### Accountability

- Onus upon data controllers & processors to demonstrate compliance,
- to maintain processing records,
- to have robust security measures – regularly tested and certified,
- to adhere to codes of practice,
- and employ Data Protection Officers and Representatives

### Sanctions & Penalties

- Fines up to €20 million or 4% of global turnover
- and effective and dissuasive penalties (criminal offences).

### Extraterritorial

- applies directly to businesses outside the EU providing goods or services to an EU resident or processing on behalf of an EU data controller
- non-EU controllers & processors operating in the EU will be supervised by an EU Data Protection Authority

# Extra-territorial application

- **Where are your personal clients based?**

You must comply with the GDPR if you offer goods or services to, or monitor the behaviour of, individuals resident in the EU/EEA

- **Inbound personal data**

As EU/EEA businesses are subject to the GDPR, in particular the penalties, they will require any IoM service provider to comply with the GDPR

# GDPR

**REGULATION 2016/679**

**In force from: 24 May 2016**



**25 MAY 2018**



# Preparing for the GDPR

## Get “buy in”

*“It is essential to start planning your approach to GDPR compliance as early as you can and to gain ‘buy in’ from key people in your organisation.”*



*Preparing for the GDPR: 12 steps to take now*

*UK Information Commissioner's Office*

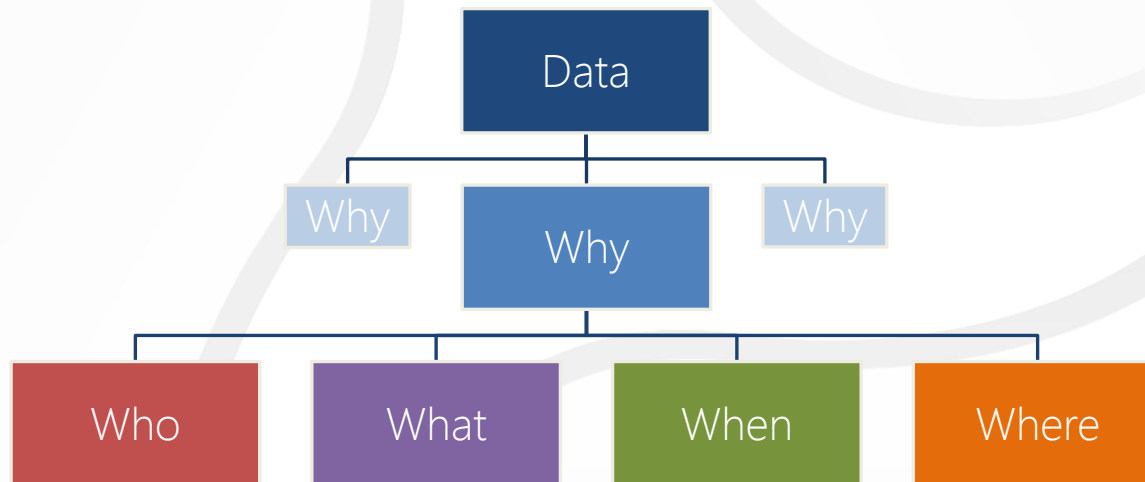
*<https://ico.org.uk/for-organisations/data-protection-reform/>*



# Preparing for the GDPR

## “Know Your Data”

- document your processing and data flows



# Accountability & demonstrable compliance

*Accountability is more than simple compliance with the rules - it implies a culture change ... organisations and not Data Protection Authorities or Data Protection Officers must demonstrate that they are compliant.*



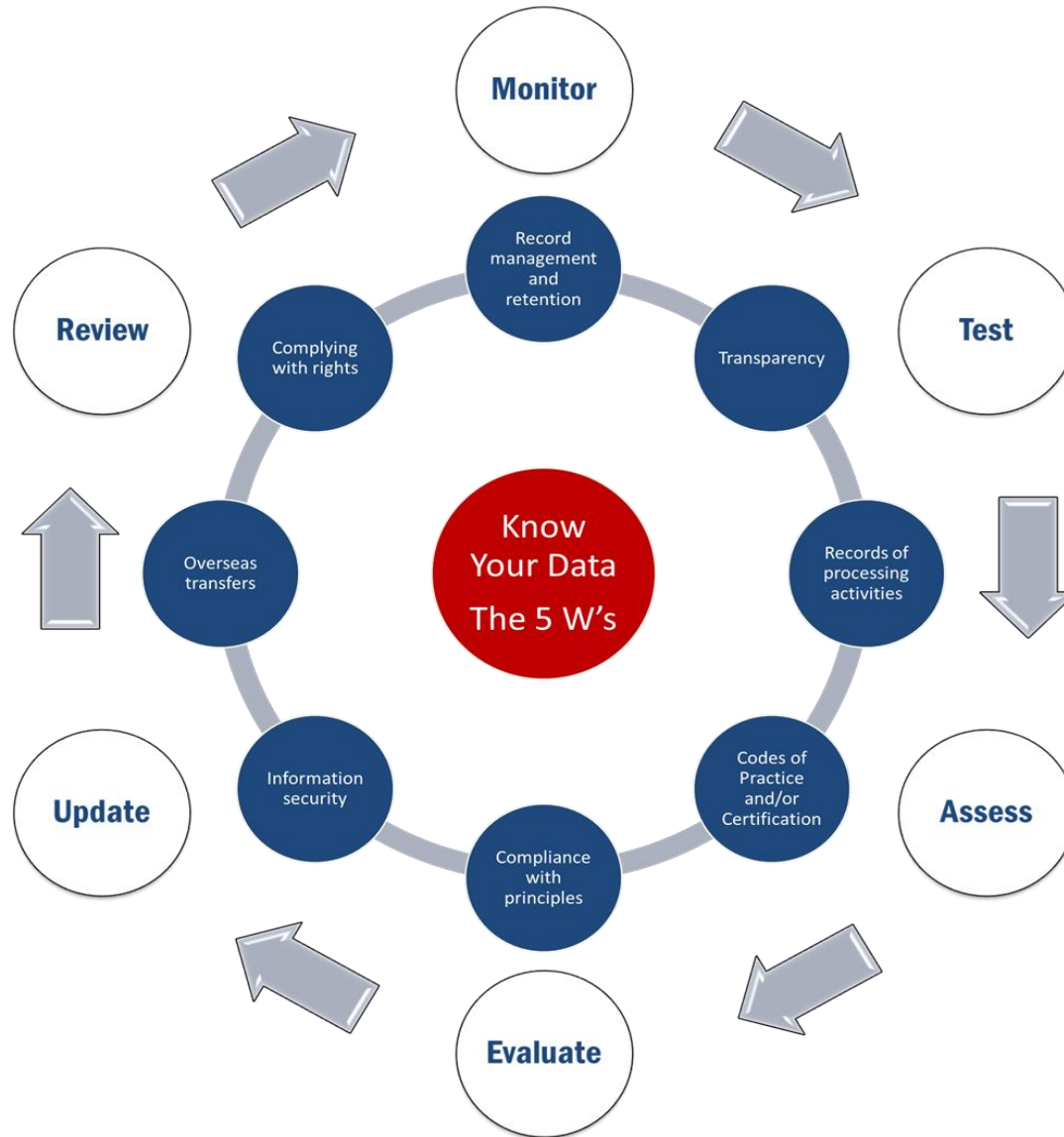
Giovanni Buttarelli  
European Data Protection Supervisor

# Records of processing activities

## You need to document:

- Comprehensive, clear and transparent privacy policies for individuals.
- Name and details of your organisation (and where applicable, of other controllers, your representative and data protection officer).
- Purposes of the processing.
- Description of the categories of individuals and categories of personal data.
- Categories of recipients of personal data.
- Details of transfers to third countries including documentation of the transfer mechanism safeguards in place.
- Retention schedules.
- Technical and organisational security measures.

# Preparing for the GDPR



**ACCOUNTABILITY**

# Preparing for the GDPR

## Other Steps before 25 May 2018:

- Appoint a Representative in an EU member state  
*Revisit after Brexit ?*
- Appoint Data Protection Officer - ?  
*Further guidance due at end of year*
- Staff Training

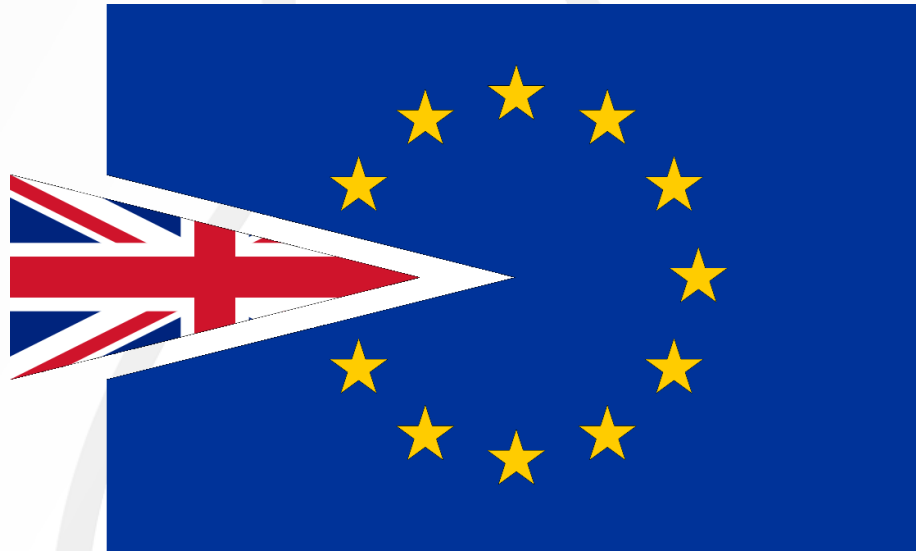
## New projects:

- Data Protection by default and design
- Data Protection impact assessments

# Only one law to comply with?

- DPA 2002 will not meet the GDPR standard
- Until “essentially equivalent” legislation to the GDPR is implemented and “adequacy” achieved, businesses will be required to comply with the GDPR in respect of their EU clients **and** the DPA 2002 in the case of all other processing of personal data
- IoM Information Commissioner will continue as regulator under the DPA 2002
- Contraventions of the GDPR will be dealt with by the most relevant EU data protection authority (this is likely to be the UK in most cases – at least until Brexit)

# The "B" word





# The “B” word, GDPR & UK

- GDPR takes full effect on 25 May 2018
- GDPR will apply to the UK as an EU Member State
- UK DCMS is currently preparing secondary legislation to give full effect to the GDPR in the UK

# The “B” word, GDPR & UK

## After Brexit:-

- If ‘EEA membership’ or full access to single market retained then as GDPR is “Text with EEA relevance” it will continue to apply and the UK not need to seek adequacy
- ‘Hard’ Brexit - UK will become a “third country” and will need to seek “adequacy.”

# The “B” word, GDPR & IoM

## Irrespective of the form Brexit takes:

- GDPR will continue to apply, to Island businesses providing goods or services to EU Residents or processing personal data on behalf of an EU business
- The Island will need to implement new DP law and seek adequacy if it wishes to continue barrier-less business with EU Member states

# The “B” word, GDPR & IoM

Summary of Proceedings in the Council Of Ministers  
Month of June 2016

## General Data Protection Regulation

Council considered a paper submitted by the Cabinet Office and approved the policy statement which would provide businesses with a commitment that the Isle of Man Government intends to adopt the General Data Protection Regulations by mid-2018.

*Await view of new administration*

# GDPR Resources

- IOM Information Commissioner
  - [www.inforights.im](http://www.inforights.im)
- UK Information Commissioner
  - <https://ico.org.uk/for-organisations/data-protection-reform/>  
*Overview of GDPR*
- UK European Commission
  - <http://ec.europa.eu/justice/data-protection/>

***Data protection is "an afterthought no longer"***  
***Claire Milne, Appleby Global***

# The Insurance Institute of the Isle of Man

## Developments in Financial Services Regulation

Claire Whitelegg



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

16 November 2016

# Key Projects/ Initiatives

## External Focus

- Alternative Banking Regime
- Credit Unions
- Post- Money-Val visit
- Pensions Transfers - UK Defined Benefit Schemes
- Rule Book 2016
- Crowd funding



## UK Defined benefit pension scheme transfers

Requirement - UK FCA regulated pension transfer specialist advice on transfers valued over £30k

- Issues for IOM advisers and investors
  - Dual advisers
  - Suitability and knowledge of IOM
  - Cost & Delays
  - Scheme members with no link to UK





## UK Defined benefit pension scheme transfers

- UK Department of Work and Pensions (DWP) sought views of IOMFSA and other regulators
- Meeting in London September 2015
- Feedback sought from IOM advisers and provided by IOM representative
- Potential solution - level 6 pension specialist qualification



## UK Defined benefit pension scheme transfers

- DWP has launched a formal call for evidence
- IOMFSA will be responding
- We are encouraging industry to respond



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
  - Tabular format and re-numbering
  - General Changes
    - Whistleblowing Procedures
    - Removal of Resident Officer role
    - Record Keeping Requirements



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
  - Clients Moneys/ Clients Assets
    - **NEW** Client Asset Report (not AUP)
    - Raison d'etre - IOMFSA has observed issues with reconciliations and in some cases a total absence of transactional testing
    - Proper control of client money and client assets is a key investor protection and risk management issue



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
  - Clients Moneys/ Clients Assets
    - Client Asset Report (**CAR**)
    - Years ending **after** 1 January 2017 )
    - 1<sup>st</sup> reports expected for Year ended Dec 2017 (June 2018)
    - 1<sup>st</sup> CAR report - prepared by licenceholder with auditor review. Thereafter annual licenceholder CAR report: auditor review as agreed with IOMFSA



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
- Clients Moneys/ Clients Assets
  - Sample sizes - per 2 tables
    - » no of client accounts (money and custody) (max 10 accounts in sample)
    - » Volume of transactions (max 25 transactions per account sampled)
  - Review focus - reconciliations and transactions



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
  - Clients Moneys/ Clients Assets
    - Compliance Officer oversight
    - Independence of person undertaking the review
    - Review is not all encompassing
  - **Review does not replace need for daily compliance on every account and every transaction**



# Key Initiatives - Financial Services

- Update to Rule Book - January 2017
  - Conduct of Business
    - Non retail clients - suitability
    - Terms of Business
    - Scope of Advice
    - Independence
    - Product disclosures - Structured Deposits





# Key Initiatives - Financial Services

- Crowd Funding
  - Loan and investment based - Now a regulated activity
  - Novel area - not yet specifically covered in Rule Book
  - Licence conditions - implement rules for interim
  - Supervision - Funds and Investment Services Team



# Key Initiatives - Investment Business

## Supervisory focus

### Investor outcomes

- Positively suitable
- Consider whole transaction including any surrenders
- Fees/commission in existing v new investments
- Updating IFA Guidance
- Liaison with Ombudsman



# Key Initiatives - Investment Business

## Supervisory focus

- Investment Management (record keeping)
- Operational issues
- Understanding business relationships
- Conflicts
- Corporate governance
- Licenceholder handling of breach situations
- Complaints recognition



Any Questions?





# **ENDURING POWERS OF ATTORNEY AND PROBATE**

**The Insurance Institute of the Isle of Man**

**16 November 2016**

**Libby Gordon,  
Associate, Private Client Department, DQ**

# Overview of presentation

## Enduring Powers of Attorney (“EPOA”)

- formalities and considerations
- benefits
- default position

## Probate

- when is probate needed
- who can apply
- digital assets / digital Wills



A photograph in the top left corner showing a young woman with dark hair, wearing a blue sleeveless top, sitting and talking to an elderly woman with white hair, wearing a white long-sleeved shirt. They are both smiling and appear to be in a comfortable setting.

## EPOA's

# planning for the unexpected

An EPOA is a legal document that allows an individual (the “**donor**”) to appoint someone else (the “**attorney**”) to make decisions on their behalf in relation to their property and financial affairs in the event that they become mentally incapable of doing so themselves

- England and Wales introduced a system of Lasting Powers of Attorney (“**LPA**”) in 2007 replacing Enduring Powers of Attorney
- Two different types of LPA:–
  - health and welfare
  - property and financial affairs
- IOM does not have a separate document to deal with health and welfare decisions



# Formalities

- EPOA must be in the form prescribed by the legislation
- donor must be over the age of 18 and have the requisite mental capacity to grant the power
- EPOA must be signed by both donor and attorney(s) before an independent witness and dated



# Considerations

- more than one attorney can be appointed
- if more than one attorney is appointed, they can be appointed jointly or jointly and severally
- power can be general or restricted
- EPOA can be used immediately (helpful where the donor is frail or immobile) or only in the event of mental incapacity
- can be revoked at any time by the donor before they lose mental capacity
- must be registered when the donor has lost capacity



## Benefits

- certainty and peace of mind for donor and family - the donor can appoint a trusted person to either act immediately for them or in the event of loss of capacity
- minimises immediate financial hardship in the event of loss of mental capacity i.e straightforward registration process as opposed to an application to Court
- maintains confidentiality in respect of a donors financial and property affairs as opposed to an order for receivership via the Court
- EPOA's can be utilised for a wide range of affairs including selling property, operating bank accounts, dealing with tax affairs, claiming benefits, dealing with digital assets such as online accounts

# Limitations

- EPOA's are only as good as the attorney appointed – often issues with regard to the management of a donor's affairs do not come to light immediately and may depend on 'whistle blowers'
- attorneys do not always fully understand their legal duties and obligations i.e record keeping, duty to act in the best interests of the donor, duty to register the power
- EPOA's are not always fully understood by asset holders
- problems with poor drafting

## No EPOA?

- family or friends must apply for a receivership order through the Court
- more costly
- Court may require a professional to be appointed for example when an individual's affairs are complicated
- time delays in accessing assets / added stress at an already difficult time
- donor's property and financial affairs must be disclosed as part of the application – confidentiality considerations
- can only be applied for when a patient has lost capacity

## EPOA Conclusion

- much like having insurance – you may never need it, but if you do it's already there in place
- EPOA's are not just for older clients
- further guidance available from IOM Courts – [www.courts.im](http://www.courts.im)

# Probate

- probate is the Court's authority given to a personal representative to administer a deceased person's estate
- duty of personal representatives is to collect and get in the real and personal estate of the deceased and administer according to law (s.35 of the Administration of Estates Act 1990)
- if an asset holder such as a bank / insurance provider wants to ensure that they have paid monies out to the right person they will usually request a Grant of Probate as an ultimate form of protection



# Types of Grant

- grant of representation – general term used to refer to the various types of grant which can be obtained (frequently simply referred to as probate)
- specific types of Grant:-
  - (i) Grant of Probate
  - (ii) Letters of Administration with Will annexed
  - (iii) Letters of Administration





## Is Probate always needed?

- it will depend upon the nature and value of the assets comprising the estate of the deceased - always check with each asset holder what its requirements are before applying for a Grant
- banks, insurance companies and other financial institutions will have their own internal risk procedures and account closure requirements
- if the value of the asset is significant then it is likely that probate will be required as the asset holder will not want to risk being sued by the beneficiaries of the estate if money is paid to the wrong person
- where the deceased owned a house / land probate is usually required when this is sold on to a third party to ensure a good root of title

A close-up photograph of a red and black pen resting on a white notepad with a grid pattern.

## When is it not required?

- may not be necessary where, for example, a home is held in joint names and is passing by survivorship to the other joint owner or where a joint bank / building society account or joint insurance policy is held and production of a death certificate may be sufficient
- certain institutions / asset holders may release monies without a Grant being produced if the amount held by them is not significant and they may simply require a death certificate and some form of indemnity to be signed
- important to check - probate is a costly exercise with the maximum filing fee due to IOM Government for an estate worth over £1 million now being **£8,000** (having increased from a maximum of **£649** in 2013)
- point to note - if the only asset of the estate is a policy of life assurance with an IOM Company where the deceased died domiciled outside of the Isle of Man and the gross value of the policy exceeds £50,000 then the filing fee is **£250**

# Probate - death in the digital age

- Executor / Administrator - duty to deal with all assets of the deceased including their online affairs
- financial, professional and personal lives now largely managed online
- most people have Facebook, twitter, eBay, PayPal, amazon, Instagram, LinkedIn and e-mail accounts and store photographs and music online
- a 2013 PWC survey valued UK digital assets at \$25 billion



# Digital asset considerations



- what should an Executor / Administrator consider when dealing with a deceased's digital assets?
- each online provider has its own requirements
- iTunes accounts, for example, are non transferable and the testator only has a licence to listen to music for personal use
- google – since 2013 users can now select a digital heir (“inactive account manager”) for its Gmail and other services. You can tell google what you'd like to do with your data i.e deleting it / transferring it to a family member / friend. Alternatively you can choose to delete data after 3, 6, 9 or 12 months of inactivity
- twitter – Executors / Administrators can deactivate your account or obtain a back up of the public tweets of the deceased
- jurisdiction issues to consider with digital assets – service providers may be based in different jurisdictions to the deceased. PayPal for example is registered as a bank in Luxembourg and so it is important to ensure that a deceased's Will covers all of their assets

## Make things easier for your Executor / Administrator

- be organised with your affairs now
- make a Will, consider all of your property and affairs wherever they are situate including your digital assets
- collate details of your affairs, primary contacts etc to be stored with your Will

# The future - digital Wills?

*Re Yu* [2013] QSC322

the iPhone Will case





## Contact Details

**Libby Gordon**

Associate

[libby@dq.im](mailto:libby@dq.im)

+44 1624 632952

**Annemarie Hughes**

Director

[annemarie@dq.im](mailto:annemarie@dq.im)

+44 1624 632965

# Thanks & Closing Remarks



# Upcoming Events

- 17<sup>th</sup> November PFS Regional Conference & AGM
- 7<sup>th</sup> December Ice Skating @ Tynwald Mills
- 24<sup>th</sup> February Annual Dinner, Palace Hotel & Casino

Further details & booking information can be found at:  
**[www.cii.co.uk/isleofman](http://www.cii.co.uk/isleofman)**