

# Looking forward.

## Linklaters

### Year to Come – English Law in 2012

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**Eurozone:** It is impossible to predict the extent of regulatory and legislative change as the debt crisis evolves. Linklaters is monitoring events as they unfold and working in close collaboration with clients to respond to them. [Read more...](#)

**Data protection reform:** Proposals will be published in January by the European Commission (Commission) to make significant and wide-ranging changes to European privacy laws. Leaked drafts suggest fines of up to 5 per cent of global turnover, enhanced rights for individuals and additional compliance obligations on companies. [Read more...](#)

**Reform of the UK competition regime:** The Government's response to its consultation on proposed reforms to the UK competition regime is expected in January. The proposed reforms include the merger of the Office of Fair Trading with the Competition Commission to create a single Competition and Markets Authority, streamlining the current competition law processes and a possible change to a mandatory merger regime. [Read more...](#)

**Executive remuneration:** Proposals relating to remuneration are expected in early 2012 following the Government's consultations on executive remuneration in September 2011. [Read more...](#)

**Annual reporting:** The Government has proposed replacing the current directors' report with two new documents: a strategic report and an annual directors' statement. Draft regulations are expected in early 2012 with the changes to apply for financial years beginning on or after 1 October 2012. In February, a Panel chaired by Lord Sharman is expected to publish final recommendations to the Financial Reporting Council on going concern reporting. [Read more: Directors Report](#) and [Going concern and liquidity reporting...](#)

**PRIPs:** Legislative proposals are expected in February for a short Key Information Investor Document (KIID), as developed for UCITS, as pre-contractual product disclosure for packaged retail investment products sold in the EU. Debate continues as to the KIID's purpose, who should prepare it and what the liability regime should be, particularly in light of the changes to prospectus summaries under the Prospectus Directive.

**Sweeping US disclosure and withholding obligations:** The US Foreign Account Tax Compliance Act (FATCA) will require "foreign financial institutions" (including, among others, banks, insurers, private equity funds and hedge funds) to disclose to the IRS details about US customers, or be subject to withholding on certain payments to the institution. If a customer fails to comply, the institution must apply a withholding tax and/or terminate the customer's account. Although a US statute, it raises difficult data protection, confidentiality and bank secrecy issues in the UK and elsewhere. The IRS will issue proposed regulations on FATCA in early 2012 and the withholding will begin in January 2014.

**EU Third Energy Package:** New rules on unbundling take effect in March. They will place significant restrictions on the joint ownership and operation of energy network assets on the one hand and energy production, generation and supply assets on the other. This is likely to impose significant constraints on capital investment choices. [Read more...](#)

**Electricity market reform:** The Government's radical proposals to shake up the UK electricity market to encourage investment in low carbon generation continue. Draft legislation and a policy document are due in the spring. Ofgem's parallel initiative to boost electricity wholesale market liquidity is due to result in draft proposals in early 2012. The legislative process should conclude in 2013 and the regime come into force in April 2014.

**Independent Banking Commission:** A White Paper is expected in spring 2012 in which the Government will set out, in greater detail, its thinking for implementing the ICB's recommendations published in 2011. The Government is seeking to enact all necessary primary and secondary legislation by the end of the current Parliament in May 2015, with implementation by 2019. [Read more...](#)

**Employment law reforms:** From April, the qualifying period of service required by employees to bring a claim of unfair dismissal will increase from one to two years. The Government intends to progress a number of proposals, including looking at TUPE legislation, the consultation periods for collective redundancies and the efficiency of the Employment Tribunal system. [Read more...](#)

**EU Credit Rating Agency Regulation:** The Commission's proposed amendments, "CRA3", include measures to reduce regulatory over-reliance on credit ratings, increase transparency in relation to structured finance instruments, limit the

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length of time for which a rating agency may rate an entity or its debt instruments and impose civil liability to investors in respect of the ratings. The changes will be debated by the European Parliament in spring 2012, and the Council of the EU is expected to seek political agreement by summer 2012.

**Derivatives market reform:** The Regulation on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR) is due to be fully operational by the end of 2012 with ESMA and the EBA to produce detailed technical standards by 30 June 2012. Political agreement is expected in the first quarter of 2012. In addition, the Regulation on Short Selling and Credit Default Swaps will come into effect in November 2012, imposing greater transparency for short selling and restricting uncovered credit default swaps in sovereign debt.

**Prospectuses:** The amendments to the Prospectus Directive are due to come into effect in July and will require a number of changes to the content of approved prospectuses. This may affect the timing of public offers. [Read more...](#)

**Review of UK equity markets:** An interim report by Professor John Kay is expected in February with final conclusions in July. He has been appointed by BIS to “examine the mechanisms of corporate control and accountability provided by UK equity markets and their impact on the long term competitive performance of UK businesses”. [Read more...](#)

**AIFMD:** Member States must implement the Alternative Investment Fund Managers Directive by 22 July 2013, before which the Commission is due to prepare Level 2 secondary implementing measures. These measures are expected to be adopted by the middle of 2012. By then the FSA and HM Treasury are due to publish two consultation papers on the AIFMD’s implementation. Visit the [Linklaters AIFMD site...](#)

**Controlled Foreign Companies:** The UK’s unpopular rules are to be reformed in full in 2012. New rules are expected to target business profits artificially diverted from the UK and certain UK connected finance income. Additionally, by 2014 an effective tax rate of 5.75 per cent will apply to certain intra-group financing income. Groups may therefore seek to use offshore finance companies.

**Pensions law:** Rules under which employers must enrol workers who meet the relevant age and earnings criteria into a qualifying pension scheme, are to be phased in over four years starting on 1 October 2012. They will apply to employers with the most people in their PAYE schemes first.

**Transparency Directive:** The draft directive to amend the Transparency Directive is going through the legislative process with implementation expected in 2014. Key proposals include greater transparency of economic interests in companies; requiring extractive and logging companies to disclose payments to governments; and removing the requirement for quarterly reports or interim management statements... [Read more...](#)

**Mandatory audit firm rotation and ban on non-audit services:** The Commission has published proposals to reform the audit market. For listed companies and financial sector companies, these include the rotation of audit firms every six years, a ban on large audit firms providing non-audit services, and more transparent tendering for audit mandates. They would lead to major changes in the audit market, increased costs and a greater role for audit committees. [Read more...](#)

**MiFID and the Market Abuse Directive:** Legislative proposals have now passed to the European Parliament and the Council to be negotiated and adopted. MiFID is expected to be in force in the UK by 2018. Implementation of MAD’s replacement is expected in 2014. [Read more on MiFID and visit the Linklaters MiFID site.](#) [Read more on MAD...](#)

**Basel III and CRD IV:** “CRD IV” proposals, published in 2011, will implement in Europe the more stringent international Basel III bank capital and liquidity standards. The reforms will mark a new era in European bank capital: the extent to which CRD IV will prescribe maximum standards will be a key debate. Reaching political agreement is expected to take well into 2012. Visit the [Linklaters Prudential Regulation Tracker.](#) [Read more...](#)

**UK financial regulatory structure:** The draft Financial Services Bill is subject to pre-legislative scrutiny before being presented to Parliament. The Government plans for the new structure to be in place at the beginning of 2013. Visit the [Linklaters Prudential Regulation Tracker.](#) [Read more...](#)

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