

## Insurance Update.

### LLMA publishes documents for standardised longevity swap structures

The Life & Longevity Markets Association (a UK not-for-profit venture established to promote a liquid traded market in longevity and mortality-related risk) has recently published a framework for pricing longevity exposures, together with sample termsheets and accompanying explanatory notes for two types of longevity transactions. The first of the termsheets, the “q-forward”, relates to a mortality forward contract. The second, the “S-forward”, relates to a survivor forward contract.

The publications are intended to assist in the creation of a standardised longevity market which would make it easier to trade longevity and mortality risks and increase liquidity in what is currently an embryonic and relatively illiquid market.

Whilst not intended to produce firm prices for executed longevity transactions, the LLMA hopes its pricing framework will facilitate a shared understanding of the nature of longevity exposure and produce a benchmark price against which market transaction pricing may be compared.

The proposed product termsheets, if adopted by market participants, could form the basis for standardised longevity and mortality hedging transactions. Standardisation would reduce the timing and cost implications connected with the negotiation of bespoke longevity and mortality contracts. However, the effectiveness of these standardised products may be limited where an annuity provider or pension fund is seeking to hedge its specific exposure profile, as the products will be based upon national rather than purchaser specific population statistics.

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### Recent regulatory developments in India

There have been some recent developments affecting the sector in India:

- > The Insurance Regulatory and Development Authority of India has issued draft guidelines on outsourcing of activities by insurance

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companies. These classify the activities of insurers into 'core' activities (such as underwriting, investment and collecting premium) and 'non-core' activities (such as facility management, pay roll management, human resources services). All activities which are not listed as 'non-core' activities will be treated as 'core' activities. An insurance company is prohibited from outsourcing core activities. The guidelines also set out certain criteria that have to be followed by insurance companies while outsourcing any non-core activity.

- > The Authority has also prescribed additional anti-money laundering and counter financing of terrorism guidelines that must be complied with by life insurers from 1 January 2011. Key requirements are set out below:
  - the life insurer must verify the status of non-natural policyholders (or other relevant persons) (e.g. body corporate, partnership etc) by collecting prescribed documents;
  - the life insurer must implement appropriate systems and processes to prevent money laundering; and
  - the life insurer must implement on-going risk management procedures to identify and then apply enhanced due diligence measures in respect of politically exposed persons and their close relatives.

This article has been provided by Talwar Thakore & Associates. TT&A is a "best friend" of Linklaters.

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## **UK FSA rule change relating to unfunded reinsurance**

The UK FSA has recently changed the rules relating to the ability of long-term insurers to recognise unfunded reinsurance transactions (i.e. transactions that are structured so that the reserves are held by the reinsurer and no cash flows are expected to take place for a significant period of time) as core Tier 1 capital. As a result of the rule change, positive valuation differences giving rise to core Tier 1 capital will only be recognised up to the value of reinsurance cash in-flows which have already been received by the insurance undertaking under the reinsurance contract (plus an allowance for investment return). Transactions effected before 10 December 2009 are grandfathered under the old rules up to the implementation of Solvency II.

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## **Banks to be banned from selling Payment Protection Insurance**

In October, the UK's Competition Commission confirmed that banks will be banned from selling payment protection insurance (which covers loan

repayments in the case of unemployment, illness or death – at the same time as they sell the underlying financial product). They will instead have to wait seven days before offering PPI to their customers. The Competition Commission first attempted to introduce the PPI ban last year, together with other restrictions, after concluding that businesses which offer PPI alongside credit face little or no competition. Some banks appealed the ban, however, delaying its introduction. The ban, which does not extend to retail PPI (to which other restrictions apply), comes just days after the British Bankers' Association announced that it was seeking a judicial review of the FSA's new PPI complaints handling measures (an action which the FSA has said that it would contest "vigorously"). PPI, which generates as much as £5.5 billion for the banks, has been the source of increasing controversy in the UK with some consumer groups alleging mis-selling by the banks. An implementation date for the ban will shortly be announced and it is likely to be April 2012, with remedies requiring the provision of additional information coming into force in October next year. The draft Order giving effect to the remedies is likely to be consulted upon before Christmas and be made in February or March 2011.

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## **UK FSA Policy Statement on Corporate Governance**

The UK FSA has published a policy statement with new rules on effective corporate governance. These rules will become effective from 1 May 2011 and various transitional periods apply. The rules apply to regulated firms (including insurance companies), parents of regulated firms and individuals who hold significant influence functions. Key proposed changes are set out below:

- > nine new significant influence controlled functions will be introduced, these being: chairman, senior independent director, chairman of risk committee, chairman of audit committee, chairman of remuneration committee, parent entity, finance function, risk function and internal audit function. (The last three are as a result of splitting the previous controlled function (CF28 (systems and controls)) into three.) Individuals performing these roles will need prior FSA approval.
- > Individuals within parent undertakings or holding companies who are likely to exercise significant influence over a FSA regulated firm will be subject to the approved persons regime. This rule applies irrespective of the corporate status of the FSA regulated firm. The only exception to this rule is for EEA authorised parent undertakings or holding companies.
- > Firms will be required to consider establishing a governing body risk committee and appointing a Chief Risk Officer. The FSA cites insurers that are included in the FTSE 100 index as examples of the types of firms that should structure their risk control arrangements in this way.

## Recent Deals

Our recent deal experience in the sector (details of which we are able to disclose) include:

- > advising the underwriters on the spin-off by American International Group, Inc. of its pan Asian insurance business, AIA Group Limited, and the listing of AIA on the Hong Kong Stock Exchange by way of a US\$20.5 billion initial public offering (the biggest offering in Hong Kong history);
- > advising New York Life Insurance Company on the sale its life insurance businesses in Hong Kong and South Korea to ACE Group;
- > advising the finance parties in relation to a facility agreement to be used for the purpose of paying part of the consideration for the acquisition of Brit Insurance Holdings N.V. and refinancing certain of its existing indebtedness;
- > advising the finance parties in relation to a Euro 650,000,000 facility agreement for Aon, to be used for general corporate purposes (including the refinancing of any existing indebtedness);
- > advising the Arranger on the update of Aviva plc's £5,000,000,000 Euro Note Programme to reflect new requirements relating to tier two capital for insurance companies as set out in the QIS5 Technical Specifications for the new Solvency II regime;
- > advising MS&AD Insurance Group Holdings, Inc. on the buy out and consequential termination of a Japanese joint venture with MetLife Worldwide Holdings, Inc., (a subsidiary of MetLife Inc);
- > advising Meiji Yasuda Life Insurance Company, Tokyo, Japan on a strategic alliance consisting of capital and business alliances with Talanx AG, including with respect to a convertible perpetual subordinated bond issued by Talanx and acquired and held by Meiji Yasuda Life (which has been structured to comply with the QIS5 Technical Specifications relating to tier 1 capital treatment and convertible into common stock upon an IPO of Talanx);
- > advising Ageas (in Belgium) on the successful defeat (in summary proceedings) of a group of bondholders to unilaterally change the terms of its issued bonds; and
- > advising Aviva France on the acquisition of the remaining 16.3% stake held by Messrs Gérard Athias and André le Saux and their family investment vehicle in SEV, a French life insurance company and joint underwriter of AFER life insurance products in France.

## EU Parliament approves final form of AIFM Directive in plenary

After over 18 months since the first draft of the AIFM Directive was published by the European Commission, the European Parliament and Council agreed the text of the AIFM Directive in their trilogue process, on 26 October 2010. The European Parliament voted in plenary on 11 November 2010 to approve the text and the European Council is expected to vote to approve the text on 7 December 2010. The text will then be subject to legal and linguistic review which is already underway, but the process may take an additional one to three months to complete. Implementation by EU member states is expected by early 2013. The Directive will significantly change the manner in which alternative investment funds are managed, regulated and marketed throughout Europe and, as such, will have a significant impact on various players in the alternative investment funds industry, including anyone managing or investing in alternative investment funds. For further information, please click [here](#).

## A head for heights

The global Linklaters insurance team was delighted to see those of you who came to our annual London reception at Vertigo 42, Tower 42 on Thursday 30 September 2010. We were joined by many of our major clients in the sector, together with other key players including actuaries, accountants and banks. From the top floor of the tallest occupied building in the historic City of London, we enjoyed spectacular views of the sunset over six English counties, with canapés from the Michelin Star restaurant, Rhodes Twenty Four. Many thanks, in particular, to those of you who travelled to London to join us. We look forward to seeing you at future events.

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This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

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