



SUBMISSION

TO THE

DEPARTMENT OF FINANCE CANADA

ON THE

REVIEW OF THE FEDERAL FINANCIAL SECTOR FRAMEWORK

BY THE

CANADIAN LIFE AND HEALTH INSURANCE ASSOCIATION

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REVIEW OF THE FEDERAL FINANCIAL SECTOR FRAMEWORK

The Canadian life and health insurance industry appreciates the opportunity to provide comments on the Department of Finance's second consultation paper on the review of the federal financial sector review, *Potential Policy Measures to Support a Strong and Growing Economy: Positioning Canada's Financial Sector for the Future*. The industry's comments are set out below.

About CLHIA

The Canadian Life and Health Insurance Association (CLHIA) is a voluntary association with member companies which account for 99 per cent of Canada's life and health insurance business. The life and health insurance industry is a significant economic and social contributor in Canada. It protects over 28 million Canadians and makes \$88 billion a year in benefit payments to residents in Canada (of which more than 90 per cent goes to living policyholders as annuity, disability, supplementary health or other benefits and the remaining 10 per cent goes to beneficiaries as death claims). In addition, the industry has over \$810 billion invested in Canada's economy. In total, 99 life and health insurance providers are licensed to operate in Canada. Canadian life insurers operate in more than 20 countries with invested assets of \$855 billion supporting their foreign operations. Three Canadian life companies rank among the 15 largest life insurers in the world.

General Comments

Overall, the industry is supportive of the Department's proposed areas for consideration as set out in the second consultation paper. We have provided specific comments in response to a number of the questions the Department is seeking views on. These are issues related to fintech, infrastructure, insurance resolution framework, earthquake insurance and climate risk disclosure, corporate governance, and open banking. We elaborate on each below.

The industry would welcome the opportunity to provide further comment on each of the issues raised below as well as separate policy and technical changes that could be made to the federal financial legislation/regulations.

Areas for Comment

SUPPORTING A COMPETITIVE AND INNOVATIVE SECTOR

Clarifying the Fintech Business Powers of Financial Institutions and Facilitating Fintech Collaboration

The Department of Finance is seeking views on whether to clarify and modernize the type of information and technology to undertake in-house, while maintaining the long-standing prohibition on commercial activities. In this context, the Department is seeking views on appropriate statutory language.

The Department is also seeking views on whether to provide federally regulated financial institutions with additional flexibility to make non-controlling investments in fintechs (which includes “insurtechs”) and the corresponding authority to make referrals, subject to appropriate consumer protection, prudential, and commercial activities limitations.

Greater investment and partnerships with fintechs and other innovative firms will allow life insurance companies to better serve our customers and meet the changing preferences and demands of the Canadian marketplace. Allowing greater investment and partnerships will also give Canadian fintechs and other innovative firms access to domestic financing, draw international firms to Canada, and help keep these firms here.

Insurers are also increasingly investing in internal innovation to develop technology and other solutions that will make their businesses more efficient and meet changing customer expectations. Insurers should be allowed to benefit from broader commercialization of these innovations.

We are supportive of the Department clarifying and modernizing the type of information and technology activities that insurers are permitted to undertake. We are also supportive of Finance clarifying and updating the types of investment that insurers are allowed to make in information and technology companies.

We believe the following categorization could be a useful framework for discussion.

Investment in Financial Services Companies

We understand that the *Insurance Companies Act* (ICA) generally allows insurers to engage in the business of financial services subject to restrictions in the Act. We also understand the ICA allows insurance companies to own up to 100% of the equity of firms if they are in the business of providing a financial service and are free to structure joint ventures or partnerships with such firms which may include arrangements with multiple other financial institutions or financial services providers.

For example, a firm that provides insurance policies or advice either through traditional means (e.g. human advisors or an insurer) or through a technology solution (e.g. robo-advice or a 'virtual' insurer accessible only via app or website) could be purchased by an insurer and continue as a stand-alone subsidiary. Alternatively, it could be owned by several insurers or financial services companies in partnership.

Investment in Non-Financial Services Companies

Insurers are restricted in their ownership of non-financial services companies. An insurer may only own up to 10% of the voting equity and up to 25% of the beneficial ownership in a non-financial services company.

We believe that an insurer could purchase a non-financial services company or assets of a non-financial services company where the insurer is going to use the company's technology or assets internally. For example, the ICA would allow an insurer to purchase a third party printing firm and use that firm for printing statements for delivery to the insurers customers. Similarly, an insurer could purchase a web-development company and use the services or goods of that company for internal use by the firm.

We believe that an insurer has broad powers to internally develop technology or other businesses/solutions for use inside the insurance company. For example, an insurer can internally develop technology and capacity to print statements for customers or develop websites.

We also believe that the ICA permits or has been interpreted to permit an insurer to sell or license these capabilities to other financial services companies but not to other types of companies or directly to consumers. For example, an insurer could enter into a commercial arrangement with another financial services company to print statements for customers of the financial services company but an insurer could not contract its printing services for use by a utility, government or a law office. Similarly, an insurer could enter into a contract to deliver or license access to an online application or a back-office administration system for a financial services company but it is not clear that the insurer could sell or license its technology or expertise to a utility, government or law office.

Further details on the above can be found in Annex B. The industry's recommended approach on direct commercialization, investment limits and further flexibility are set out below.

Direct Commercialization:

Insurers should be permitted to commercialize innovations outside the realm of financial services. Insurers should be permitted to directly sell or license their administrative services and technology unrelated to financial services for use by third parties (e.g. businesses and government) but not to the end consumer. Where an insurer develops a product, service or technology that may be of use to consumers, the insurer should be permitted to enter into licensing arrangements with a third party so that the third party can deliver the product, service or technology to the consumer. For example, if an insurer developed an online 'game'

for customers or employees to promote financial literacy and the game became commercially viable, then the insurer should be able to license it to a third party to commercialize the product.

Another example would be an insurer internally developing technology or purchasing a firm that had technology that could identify and monitor customer identity to facilitate compliance with AML legislation. We believe that where an insurer could currently use this internally, it could sell or license this technology to a bank, insurer or securities dealer but could not sell this technology to others with AML compliance responsibilities (law offices, real estate agents). The same insurer could make an application available to the public to help consumers understand whether they may have challenges related to AML legislation – for example – an ‘AML’ report similar to a credit report. In this instance, we believe that the insurer should be permitted to directly license or sell its AML capabilities to third party businesses and governments for their internal use. Insurers should also be permitted to enter into a licensing arrangement with a third party to commercialize the product or service with the third party making the product or service available directly to consumers.

Investment Limits:

Many ‘fintech’ firms are developing innovative ways to deliver financial solutions to consumers. Others are developing technology that would improve processes and practices within the financial services industry. As noted above, we believe that the ICA allows insurers to purchase or partner with these firms.

Some fintechs are developing technologies that have utility both inside and outside the financial services industry. Where a fintech has technology that is of use both inside and outside the financial services sector, the ICA should be changed to permit an insurer (or group of FIs) to own a controlling interest in these information technology companies subject to appropriate consumer protection, prudential and commercial activities limitations. This will promote investment by insurers (and presumably other FIs) in fintech firms. Expanding investment powers should help spur the tech sector and help keep these companies in Canada by expanding funding options. We note that a non-controlling investment limit is not consistent with other ICA provisions and policy objectives and that it is preferable for insurers to make controlling investments.

Further Flexibility:

Further to the above, the industry would also be supportive of more flexibility in the legislation to take into account the rapid pace of technological changes. As set out in the ICA, insurers must first receive written approval from the Minister in order to engage in the additional activities set out above. The process to seek Ministerial approval can be slow and cumbersome, which can be problematic given the rapid pace of new technology. In order to encourage innovation in a timely manner in the financial services sector, the industry recommends a carve-out for fintech, whereby insurers do not require Ministerial approval prior to engaging in innovative activities.

Further, section 441(1)(d) of the ICA provides that an insurer may exercise certain powers outside of Canada as a right. The industry would like to see increased flexibility for activities outside of Canada to further support innovation.

INFRASTRUCTURE

Specialized Infrastructure Investment Powers

The Department is seeking views on whether to provide federally regulated life and health insurers with additional investment powers in infrastructure. The Department is also seeking views on the conditions that should be applied to additional infrastructure powers of life and health insurers to protect policyholders and maintain the long-standing limitation on commercial investments.

Infrastructure is very well aligned with the industry's long-term investment horizon. To this end, the industry has a strong interest in helping the Government of Canada achieve its infrastructure policy objectives.

As indicated in the industry's submission to the first consultation paper, we are supportive of the general goal of separating the financial and "real" economies. In the case of infrastructure, however, we feel there is a strong public policy rationale for providing relief from these provisions for carefully pre-qualified investments, such as infrastructure.

There are a number of ways that pre-qualified infrastructure investments could be defined. For instance, in Europe it was recognized that the rules that apply to insurance companies have a significant influence on whether or not they take on long-term investments in infrastructure. Similar to Canada, Europe has a large infrastructure gap and the insurance industry was ideally suited to help address that gap. Therefore, to encourage or support the industry in making infrastructure investments, legislative changes were brought forward to incent such investment.

Specifically, the Solvency II Delegated Regulation was amended to introduce the concept of 'qualifying infrastructure investments' (see Annex C for more detail). In order to be considered a 'qualifying infrastructure investment', an infrastructure project must, among other things, be able to generate predictable cash-flows and withstand stressed conditions. The investments can take the form of equities, bonds or loans and the contractual framework of the project is expected to protect investors. Insurers must be able to hold investments in bonds to their maturity. Further detail can be found in Article 164b, under qualifying infrastructure corporate investments.¹ The industry would support this type of approach in Canada. Further, the industry would propose that projects normally funded by governments for the benefit of Canadians and the economy be considered qualifying investments.

¹ <https://ec.europa.eu/transparency/regdoc/rep/3/2017/EN/C-2017-3673-F1-EN-MAIN-PART-1.PDF>

We would also reiterate the position that when investors take equity positions in a corporation, they generally want to have a degree of control over the management of the firm in order to have prudent oversight and risk management over their investments. This is generally seen as a best practice for equity investments in private companies.

Based on the above, the CLHIA is recommending the Department consider creating a new category for investment to capture “qualifying investments”, such as infrastructure investments, that would provide regulatory flexibility to encourage investment in these types of assets. Consideration should also be given to providing capital relief for these types of investments, whether it be through regulatory changes or through OSFI guidance.

SAFEGUARDING A STABLE AND RESILIENT SECTOR

Earthquake Insurance and Climate Risk Disclosure

The Department is considering how to limit the system-wide risks an extreme earthquake could pose to federal property and casualty insurers, and will be consulting with provinces, territories and stakeholders. The Department also noted its interest in recommendations related to climate disclosure and contributing to ongoing international work in this area.

It is important to address and mitigate the risks associated with climate change risk. Insurers, as risk experts, have a unique role to help Canadians mitigate the risks associated with catastrophic events or climate change. Often, the focus is on the property and casualty insurance sector when it comes to climate change or catastrophic risk, including the impact of events such as earthquakes. We note, however, that life and health insurers also manage risks associated with such events. There are specific morbidity and mortality risks from such risks and events that have impacts on the industry. For instance, insurers are interested in the health impacts associated with specific climate change or catastrophic events, such as PTSD and mental health impacts resulting from a natural disaster.

Therefore, as the Department engages how to limit the system-wide risks an extreme earthquake could pose, we would note that the industry is an interested stakeholder. To this end, the industry looks forward to working on this issue with the Department.

The industry is also supportive of improving the disclosure of climate-related risks to help mitigate risks, provided disclosure requirements are harmonized for all entities. The industry is and continues to be engaged with the Minister of Environment and Climate Change on these issues. The industry would welcome the opportunity for further engagement with the Department of Finance as the final recommendations of the Canadian Securities Administrators review on the disclosure of risks and financial impacts associated with climate change are released.

Insurance Resolution Framework

The Department is seeking views on possible enhancements to the life insurance resolution framework.

As noted in our previous submission, we support the position presented by Assuris. Assuris, the not for profit organization that protects Canadian policyholders if their life insurance company should fail, has provided input that recommends that the resolution system for life insurance companies in Canada should be strengthened by being made more efficient and more certain. With a view to minimizing disruption to the system and to best serving the evolving needs and interests of consumers, and given the evolving complexity of life insurance companies and their resolution, Assuris proposes that various improvements be made in the context of resolvability.

Assuris recommends that Finance consider expanding the powers of OSFI in the context of resolution, to ensure the resolvability and to facilitate the solvent resolution of life insurance companies. Assuris also recommends that the resolution provisions of the Winding-up and Restructuring Act (“WURA”) be clarified. The CLHIA is in agreement with and supports the recommendations made by Assuris.

CORPORATE GOVERNANCE

Promoting Diversity on Boards

The Department is seeking views on whether to implement a “comply or explain” model to promote the participation of women on boards of directors and in senior management of federally regulated financial institutions.

The industry is supportive of encouraging diversity on boards of directors and in the workforce. Life and health insurers recognize the importance of diversity, including gender diversity, in financial services as it provides broader knowledge, experience, backgrounds and skills.

As noted, this recommendation is consistent with proposed legislation, Bill C-25. This proposed legislation would make amendments to the *Canada Business Corporations Act*, the *Canada Cooperatives Act*, the *Canada Not-for-profit Corporations Act* and the *Competition Act* for publically traded companies. It is important to have consistency across federal legislation. As such, the industry would be supportive of adopting similar amendments to financial services legislation.

Establishing Annual Elections

Finance is considering whether to eliminate staggered director terms and establish annual elections for federally-regulated financial institutions.

The benefits of the policy would be to increase director accountability and allow shareholders and policyholders to voice their views more frequently. By contrast, a staggered (e.g., three year) election term promotes stability and continuity on the Board.

The move from staggered elections to annual terms is not an issue for publicly-traded insurers as they must currently abide by TSX rules which already require annual elections. Nevertheless, some CLHIA members are affected by the proposed change. For instance, some mutual companies and fraternal have staggered terms for their election of directors, they take the view that the stability and long-term outlook promoted by 3-year terms is important and, thus, they do not support the change.

CLHIA believes that there are advantages and disadvantages associated with staggered terms versus annual terms, and we suggest preserving the flexibility that allows a company to make a choice that addresses its particular needs.

Mandating Individual Director Elections

The discussion paper proposes the elimination of slate voting, where shareholders are presented with a collection of nominees that are voted upon as a group. The benefit of this approach is that the election's process is democratized by allowing stakeholders the right to express support or opposition for directors on an individualized basis. The CLHIA supports individual director elections.

Majority Voting for Directors of the Board in Uncontested Elections

Finance is seeking views on how a majority voting standard could work in an uncontested election, while ensuring minimum disruptions to the operations of boards and continued stability in the event of a failed election of one or more candidates.

The sudden death elections proposed by the Federal government in Bill C-25 have the potential to cause significant disruption to the operations and stability of boards of directors as the provisions in Bill C-25 do not provide appropriate safeguards to balance the risk of disruption and instability.

The TSX already imposes majority voting requirements on TSX listed companies. The majority voting provisions proposed under the Bill C-25 are materially different from the TSX majority voting provisions. The proposed provisions in Bill C-25 do not provide for board discretion to accept or reject a resignation, whereas the TSX allows a board to reject a resignation where there are "exceptional circumstances" (subject to TSX guidance on what constitutes "exceptional circumstances"). In addition, the provisions in Bill C-25 do not provide for any transition period where a director does not receive sufficient votes. Therefore, a failure to receive sufficient votes results in "sudden death", except where the board would fail to satisfy residency requirements or independent director requirements. In contrast, the TSX provisions do not result in an automatic removal and require that a board determine whether to accept or reject a resignation within 90 days.

These material differences in the provisions proposed under the Bill C-25 could result in a number of challenges where one or more candidates fail to be elected, including:

- the risk of a board not being able to identify or have available new directors with appropriate skills and experience on short notice;
- the risk of a reduced board not having an appropriate number of directors with the skills and experience required to exercise its oversight function;
- the risk that a reduced board does not satisfy securities law requirements applicable to a public company to have a majority of independent directors or an audit committee with appropriate independence or financial expertise;
- the potential to trigger change of control provisions in employment agreements, credit agreements and other agreements, where a majority of an existing board does not receive sufficient votes;
- the loss of flexibility in appointing additional directors between annual meetings, given these powers are tied to the number of directors last elected (which would be reduced by a failed election of a candidate) and given these appointments would be used to return to the status quo as opposed to being used to provide flexibility in appointing additional directors, as intended by these provisions; and
- activists may take advantage of the changes to director elections to take control of or exert significant influence on a board without a proxy contest, when combined with existing provisions allowing for director nominations.

As a result, if Finance followed the proposed amendments in Bill C-25, they create additional risk of disruption and instability and would eliminate important safeguards put in place by the TSX that help to minimize disruption to the operation of a board and provide stability where a director is not elected.

The CLHIA does not support the majority voting provisions proposed in in Bill C-25, given that these provisions do not appropriately balance the risk of disruption and instability with any intended benefit. Given the potential impact, the CLHIA would recommend that Finance take additional time to observe the impact of the TSX majority voting policy on TSX listed companies and the impact of the proposed amendments in Bill C-25, and revisit this issue in the next 5-year review. In addition, this would also give Finance an opportunity to further consider whether these provisions would be better addressed by securities regulators with a broader national application, as opposed to creating a fractured and inconsistent regime.

If majority voting is implemented, it is essential that there be appropriate safeguards in place. Any changes should align with current majority voting requirements under the TSX rules that provide flexibility in dealing with majority voting outcomes and consistency with what is applicable to a broader range of companies that do not fall within the requirements of the federal corporate statutes. This would help to lessen disruption to the operations of a board and provide for stability in the case of a failed election of a candidate. In order to achieve this, the CLHIA would recommend that at a minimum, any majority voting provisions should provide for:

- a failed vote resulting in a director being required to offer to tender a resignation, as opposed to automatic removal;
- the Board having the ability to reject the resignation in exceptional circumstances; and
- a transition period (e.g. 90-120 day period) where the board has time to consider whether to accept an offer to tender a resignation, to allow the Board time to replace the departing director with a director with appropriate skills and experience.

Distributing Meeting Materials

The Department is seeking views on whether to permit the use of the "notice and access" approach for distributing meeting materials for all federally regulated financial institutions. This recommendation is consistent with proposed legislation under Bill C-25. Under Bill C-25, the proposed amendments would allow companies to notify shareholders of a meeting and means to gain access to essential materials without sending an entire information package.

The industry is supportive of this proposal as it would lead to greater efficiency in distributing meeting material. It would also allow for significant reductions in paper and energy usage, and in print, handling and postage costs, and to communicate with shareholders and policyholders in a more environmentally-friendly way. Also, as noted above, it is important to have consistency across federal legislation and therefore, the industry would support adopting similar amendments to Bill C-25.

The industry also recommends that the use of "notice and access" approach for distributing meeting materials not be restrictive to shareholder meetings and should also apply to policyholders. In addition, the industry recommends expanding this proposal to include financial statements that are distributed, as financial statements can be quite large and cumbersome to mail out.

Strengthening Corporate Transparency

Finance is considering whether to prohibit bearer shares and bearer share warrants. The CLHIA is of the view that bearer shares and bearer share warrants facilitate money laundering and terrorist financing with little corresponding benefit. Accordingly, we support the elimination of bearer shares and bearer share warrants.

OTHER ISSUES

Examining the Merits of Open Banking

The Department intends to examine the merits of open banking. This would include consideration of how other jurisdictions are implementing open banking and the potential benefits and risks for Canadians. The Department is also seeking views on other specific adjustments to the federal financial sector framework that could further support competition and innovation.

The industry is supportive of initiatives that will spur greater competition and innovation in the financial services sector. To this end, the industry supports further examination of the merits of open banking in the Canadian financial services market. There are a range of issues that, in our view, will require careful consideration. These issues relate to, for example, privacy of data, security of data, authorization and ownership of data.

Open banking is progressing in a number of jurisdictions, including Australia and the EU. However, it is important to note that international developments in this area are relatively new. Australia recently released an issues paper on the review of open banking in the context of the government's decision to introduce an open banking regime. Similarly, the EU proposed PSD2, a revised payment services directive with the aim of promoting the development and use of innovative online and mobile payments. The directive set out strict data sharing requirements to ensure consumer data is protected, including safe authentication of data and the rights of users and providers of payment data. The directive comes into national law in January 2018. As such, it may be prudent to wait and see what happens internationally to gain any lessons learned.

The industry would welcome the opportunity to provide further comment and to work with the Department to determine whether to implement open banking in Canada.

Conclusion

The industry appreciates the opportunity to provide input on the consultation of the 2019 financial sector framework review and would be pleased to assist in any way we can, including providing further detail on our comments, if it would be helpful.

Annex A: Other/Technical Amendments

We are pleased to offer the following comments on the technical proposals in the discussion paper:

1. Information Publication Requirements

The paper proposes formalizing OSFI's current practice of publishing on its website basic information on all federally regulated financial institutions in the financial institutions statutes. Examples of such information include the legal name of a company or its chief agent.

CLHIA Recommendation

We do not object to the publication of the two examples cited. However, as a matter of principle, OSFI should only publish information where it has the legal authority to do so. The ability of OSFI to continue posting basic information must be supported by enabling legislation. Where OSFI now publishes company information on its website, it is not clear how this is reconciled with s. 22(1) of the OSFI Act or s. 998/999 of the ICA, which stipulates that information collected under OSFI's authority is confidential, subject to certain listed exceptions.

It is important to codify when OSFI can publish information so OSFI understands the ambit of its power. Will specific instances be enumerated, or will a broader discretion be conferred on OSFI to decide which information may be made accessible on its website? If the power is discretionary, what are the guiding principles informing when information will be released and when not?

If the intention is to set out specific cases where publication will be encouraged, our members would appreciate the opportunity to see the list and comment on it.

2. Transactions of Public Interest

Finance is considering broadening the list of approvals that require advance publication in the Canada Gazette (e.g., financial establishment in Canada). Notices would call upon objections from the public, which would provide an opportunity for public input and an opportunity to object.

CLHIA Recommendation

CLHIA does not believe that the purported advantages of the proposal outweigh the costs. First, the requirement to publish in the Gazette with a commentary period would create delay. The Minister would need to investigate any objections which could increase resource requirements and could further delay any approval.

Currently, the Act requires public notice for major transactions such as: continuance, amalgamation, incorporation, sale of substantially all assets, liquidation, and cessation of business. Beyond these fundamental changes, it is not clear which transactions would require Gazette publication.

A line will need to be drawn between such major transactions and more “routine” approvals, since it is not practical to require public notice to be given for **all** transactions requiring approval. CLHIA recommends that any new publication requirements be limited to infrequent and major transactions similar in nature to the ones currently required under the Insurance Companies Act.

3. Place of Records

Consideration is being given to allow foreign insurers to hold records in Canada at a location other than the location of the chief agency. The change would promote consistency between the regulatory regime covering foreign banks and the one covering foreign insurers.

CLHIA Recommendation

CLHIA welcomes the proposal, but encourages the government to consider removing the requirement that physical records be maintained in any particular location.

The ICA (and corresponding legislation governing banks and trust companies) requires that certain records (e.g., accounting records, records for each policyholder showing amounts owed or owing under a policy) be kept in Canada. In a technologically enabled world, most corporate information is stored digitally, not in paper form, and the requirement to maintain physical records in any particular location is an anachronism.

OSFI’s Outsourcing Guideline restates the requirement to maintain records in Canada, but it also notes that a FRFI is expected to ensure that OSFI can access in Canada any records necessary to enable OSFI to fulfill its mandate. Our members have taken this to heart and have even noted that OSFI has quicker, more preferential access to outsourced records than does the company itself. This latter point should be the real litmus test for record maintenance—whether OSFI can access corporate records within the timeframe it requires.

4. Structured Settlement Agreements

Finance is considering allowing federally-regulated property and casualty (P&C) insurers and marine insurers to enter into structured settlement agreements under which they would make periodic (rather than one-time payments). They would be able to do this directly, rather than engage a party that is not restricted in its ability to write life-contingent annuities.

Under the Act as currently written only life insurers may issue life annuities. Over many years, casualty insurers and life insurers have jointly acted to provide an efficient and effective structured settlement process that best serves the interests of claimants.

This proposed change may not “provide greater regulatory consistency” and although it may “facilitate the reinsurance of the three-party structured settlement agreements” the current process is an easier and more transparent process. The current process works very well with well-defined roles for each participant. The insurance risks remain with appropriate risk experts and intermediaries drive to achieve the best results for claimants.

Background

A structured settlement is a way of paying or settling a claim for damages through a series of periodic payments over either a specified period or for life. The periodic payments series typically extends well beyond 5 years, sometimes as long as 75 years. Provided certain conditions are met, payments are received tax free by the claimant.

Typically, damage claims are received by and adjudicated by a casualty insurer. Disputed claims may result in a lawsuit against the casualty insurer. Once the claim amount is determined, or a court awarded settlement is made, intermediaries (independent life insurance brokers specializing in structured settlement annuities) enter into a market process to ensure the best deal is obtained for the claimant in terms of income, safety, and convenience. The intermediary achieves this outcome by obtaining competitive bids from the life insurance companies active in the structured settlement market and placing the resulting annuity with the company having the best bid. Intermediaries also draw upon years of experience when designing structured settlements for the disabled, which expertise is critical because, once implemented, structured settlements cannot be varied.

The structured settlement annuity policy is owned by the casualty insurer, with the periodic payment stream irrevocably directed to the claimant. Generally, for accounting purposes, the casualty insurer is able to offset its claim liability with the annuity policy.

There are many advantages to the current system to the claimant. Since the structured settlement annuity policies are considered life insurance, any death benefit to beneficiaries of the claimant is not subject to probate. In addition, as these are life insurance policies, there is creditor protection to the claimant.

Life insurers have well developed administration, mortality assessment, risk management and investment systems, processes and expertise in place to underwrite, price and service structured settlement annuity payments. The regulatory and accounting infrastructure for life insurers ensures that their long term obligations such as structured settlement annuities are properly measured, reported and funded.

Core Business of Life Insurers and Casualty Insurers

Life insurers cover risks associated with human mortality and morbidity. Casualty insurers are focused on risks that result in loss to property. There is a fundamental difference in the risks of the core business of life insurers and the core business of casualty insurers, which over the

years has led to different legislative structures, both federally and provincially, different prudential regulation standards and public policy differences. Canada has been well served by this long standing, clearly defined separation within the Act of the business powers of life insurers and casualty insurers. The separation of life and casualty insurance powers has been the foundation upon which the legislative, prudential regulation and public policy setting frameworks governing the insurance industry have been built. Effective regulation and supervision has been facilitated and systemic risk within the Canadian insurance industry has been reduced.

We believe the potential change raised in the consultation paper will weaken this strong foundation, resulting in adverse consequences for both the insurance industry and claimants.

Impacts of Proposed Change

The current system works well and serves the best interests of claimants and the insurance industry as a whole. Allowing the proposed change will adversely affect the structured settlement market through added costs which will eventually be paid for by those claimants and reduced choice. Serious prudential regulatory risks could be also result. These impacts may include:

1. **Added administration costs.** Payment of annuities of all kinds is a core life insurance business. Life insurers have developed efficient administration systems with effective controls and processes in place to ensure timely and accurate payment of annuity obligations. Casualty insurers in many cases will need to develop similar systems and are unlikely to have the business volume needed to efficiently operate an annuity payment business. Life insurers and their intermediaries also offer critical after sales service, free of charge, to claimants with respect to a variety of structure-related needs, including banking assistance, beneficiary changes and death claims.
2. **Pricing of mortality risks.** Mortality risk is at the core of the life insurance business. Developing similar expertise in casualty companies in a low volume, non-core business would be challenging.
3. **Experience in long-tailed risks.** Life insurers have well defined investment and asset liability management policies, systems, processes and expertise to meet the requirements of their core business of assuming, measuring and funding long tailed liability risks such as structured settlement annuities. Appropriate governance and expert understanding of these risks are already in place for life insurers. All this will need to be developed by casualty insurers.
4. **Loss of value provided by independent intermediaries.** Intermediaries are independent brokers who work with many life insurers to ensure the claimant receives the best value from their settlement. By removing the independent intermediary from the sales process, opportunities to choose the best annuity provider are reduced and claimants may not receive the best value that the current competitive market provides.

5. **Blurring Core Businesses.** Changing the core businesses that insurers are allowed to offer will have significant follow on impacts to legislative and regulatory environments as outlined above.
6. **Loss of other benefits.** Claimants may lose inherent benefits of creditor protection and pass-through of probate.

CLHIA Recommendation

In our view, the Structured Settlement market, as currently constituted, operates efficiently and effectively and in the best interests of claimants. Casualty insurers, independent intermediaries and life insurers all work well together within their well-defined and transparent roles. The benefits of the current system far outweigh whatever benefits the proposed change may bring. The proposed change is more likely to adversely affect the Structured Settlement market to the detriment of claimants and present several challenges to the prudential regulation of the insurance industry.

Canada's well established, balanced legislative and regulatory framework has been built on the foundation of different core businesses for life insurers and casualty insurers. Upsetting this balance is not in the best interest of either claimants, intermediaries, life insurers or casualty insurers.

5. Increases in Significant Interest

A proposed change is being considered which would exempt persons who already control a federally regulated financial institution (FRFI) from having to seek Ministerial approval for indirect increases in their share ownership (either by gaining control of a third party which has a significant interest in the FRFI or by having an entity controlled by the person increase its interest). This would align indirect increases in share ownership with the treatment of direct increases in ownership, the latter of which does not require any approval.

CLHIA Recommendation

CLHIA supports this proposed change because it would ensure the same treatment for controlling shareholders (who will have had to seek approval for the initial controlling stake) whether they are increasing their ownership directly or indirectly.

6. Electronic Meetings

Finance is seeking views on the appropriate conditions for increasing electronic participation in meetings, so long as access to a physical meeting in Canada is provided.

CLHIA Recommendation

CLHIA supports the proposal, provided the mechanism to increase electronic participation is voluntary.

7. Advanced Voting (Electronic or otherwise)

Finance is seeking views on whether to clarify the rules regarding advance voting and how this may impact current practices, including determining record dates and notice of meetings.

CLHIA Recommendation

CLHIA believes that the current system works well, including the ability for stakeholders to vote in advance by proxy.

8. Related Party Regime

Finance is considering broadening the related party regime to include indirect investments in a FRFI. Consideration is also being given to clawing back the exemption as a related party for foreign insurers who have both a branch and a subsidiary. In both cases, transactions would be subject to the related party rules, including potential approvals from the conduct review committee, the Board, or the Superintendent.

Finance also proposes expanding the scope of the definition of “related party” to include a person who (i) owns a non-controlling significant interest in an entity that controls a FRFI and (ii) an entity controlled by an entity in which a person who controls a FRFI has a substantial investment. We believe that this expanded definition is not workable. As a practical matter, it is not possible for the insurance company to compel a shareholder of an upstream non-controlling entity to provide information to the insurance company. The insurer may not even be aware that the person holds more than 10% of the upstream holding company. These difficulties are compounded if the insurer is expected to look upstream through multiple layers all the way up the ownership chain. Similarly, for a person who controls a FRFI, it is not likely possible for that person to obtain information of downstream investments made by an entity in which it merely holds a substantial investment (and investments by those downstream entities).

It is for those reasons that section 518(8) and (9) were added to the legislation in 1991 to limit the application of certain related party provisions to entities which were **legally** controlled by a related party. Nothing has changed in our view since the 1991 overhaul of the ICA that would warrant revisiting the decision. Designing a related party regime that overreaches is particularly troubling since the ICA makes directors specifically liable for transactions made contrary to the related party regime.

Lastly, section 518(4) confers broad discretion on the Superintendent to designate a related party where a relationship might reasonably be expected to affect the exercise of the best judgement of the company in respect of a transaction and, therefore, the changes would appear unnecessary.

CLHIA Recommendation

We are uncertain why Finance is considering subjecting foreign insurers who have both a branch and a subsidiary to the related party regime, and we seek clarity on the reason for the removal.

We do not support the extension of the related party regime to include a person who (i) owns a non-controlling significant interest in an entity that controls a FRFI and (ii) an entity controlled by an entity in which a person who controls a FRFI has a substantial investment.

9. Substantial Investments Regime--Approvals

Finance is giving consideration to changes to the approval regime by (i) eliminating the need for Superintendent approvals for the acquisition of unregulated entities if the value of the acquisition does not exceed 2% of the consolidated assets of the acquirer, and (ii) eliminating Superintendent approval where a FRFI acquires control of a limited partnership investment fund only because it controls the general partner.

Conversely, Finance is looking at requiring Superintendent approval for an acquisition of a factoring or financial leasing entity, for which an exemption is now provided in s. 495(9)(b).

CLHIA Recommendation

CLHIA supports the proposal to eliminate Superintendent approvals for acquisitions of unregulated entities, subject to the proposed materiality threshold.

In addition, we support the proposal to eliminate Superintendent approval for the acquisition of control of a limited partnership investment fund simply because the regulated entity controls the limited partnership's general partner. Such structures should really be viewed as an investment fund product rather than an operating business entity.

That said, we would suggest taking the proposal one step further: general partnerships that are set up for the sole purpose of acting as a general partnership to an investment fund that is structured as a limited partnership should also be exempt from seeking Superintendent approval. Otherwise, in the case of a single purpose partnership structure that is intended to be an investment fund, the regulated entity might end up still requiring Superintendent approval for acquiring control of the general partner.

Finally, we believe that it would be helpful to examine the original rationale for exempting financial leasing and factoring entities from the approval regime. The exemption was very clear and it applies only to these two types of entities. At the time the Act was drafted, there would have been a recognition that the risk associated with these types of entities could have been similar to risks posed by finance companies, yet the exemption was nonetheless included.

10. Mutual Fund Distribution and Real Property Brokerage Entities

Finance is contemplating removing the “principal and primary” tests, and requiring mutual fund distribution entities and real property brokerage entities to exclusively engage in authorized activities.

Mutual Fund Distribution Entities currently engage in activities that are beyond the scope of “acting as a selling agent of units, shares or other interests in a mutual fund and acting as collecting agent in the collection of payments for any such interests” (Insurance Companies Act (ICA) s. 490(1)). This is currently not an issue due to the word, “principal”, in the definition of Mutual Fund Distribution Entity. However, if “principal” is removed it may become problematic under section 495 of the Act, for companies to find the right category in which to slot a given entity that operates in the mutual fund/investment fund industry. There are a number of players in that industry and a mutual fund or investment fund management business may have, as part of its operation, an entity that acts solely as a fund “manufacturer” (as opposed to a dealer or advisory firm). Where this is the case, if “principal” is deleted, there may be confusion into which category of permitted investment the entity should be placed. Section 440(2)(b) allows for portfolio **management/advisory** services (and the corresponding ability in s. 495(2)(a) to own a subsidiary that engages in such services), but not in fund manufacturing. Similarly, “pure” mutual fund management firms (which market and develop strategy for the fund but subcontract advising to other firms) do not have an obvious home in the list of permitted investments. The Insurance Companies Act has not remained current in ensuring these firms are listed specifically as permitted investments (as applicable securities instruments have added a number of different registration categories).

CLHIA Recommendation

CLHIA urges caution in removing the “principal and primary” tests, since the entity would need to engage exclusively in described permitted activity. If this change is adopted, CLHIA recommends a revision to the definition of mutual fund distribution entity in section 490(1) to make it clear that its activities include all of those currently permitted under provincial securities laws (i.e., both distribution and manufacturing). Otherwise, a mutual fund dealer owned by an insurance company could have limited powers vis-à-vis a dealer owned by someone other than an insurer. Cross-referencing securities registration categories also ensures that the investment powers and permitted investments in the ICA remain current as the permitted activities of independent mutual funds evolve. We would also like to see an insurer-owned real property brokerage with the same powers as any other real estate brokerage.

The same difficulty can arise with other permitted investments if their activities are narrowly confined to certain activities, with no flexibility at the margins. For FRFIs' permitted investments to remain competitive in a rapidly evolving marketplace, it is important that their activities not be unduly constrained, particularly given the breadth of activities of certain entities in the 21st century. For this reason, we suggest extending the "principally or primarily" language to any permitted investment.

11. Reclassification of Investments

Finance is proposing that, once an investment is initially classified as, for example, a temporary investment or a specialized financing corporation, the investment horizon would be defined at that point in time. Any reclassification could not extend the holding period.

CLHIA Recommendation

The paper notes that a reclassification that extends the holding period of an investment would frustrate the policy intent. We believe that there could be instances where it would be appropriate if a reclassification were to be accompanied by an extension of the holding period. For example, where the nature of an investment changes because the business evolves and the second classification basis was less suitable at the time of initial classification.

We also expect that this proposal would not prevent a company from seeking to reclassify a temporary investment (or any other category of non-permanent investment) into a permanent one at any time during the 2-year holding period. Following an acquisition, for instance, our members often require the full 2-year period in which to identify and reclassify the businesses undertaken by subsidiaries following a transaction.

With these caveats in mind, we support the proposed change.

12. Frequently Traded and Easily Valued Assets

The Department is seeking views on whether to require review by the Superintendent of large asset transactions (over 10% of assets) for certain assets such as collateralized debt obligations and credit default swaps.

CLHIA Recommendation

We are uncertain about which investments would be caught by this proposal, due to the inclusion of the words, "such as", and recommend that those words be removed if the intent of the proposal is limited to CDOs and CDS transactions. If not, we would ask that there be a dialogue on other asset categories that are being considered.

As far as CDOs and CDSs are concerned, these can be time-sensitive and we would suggest that OSFI's approval could negatively affect the timing of these transactions. In the case where those assets are frequently traded (and likely very liquid), adding a layer of regulatory approval can have a disruptive impact with little corresponding benefit.

Other Issues

In addition to our comments above, we would like to reiterate a number of technical issues that remain important to our members, which were not addressed in the second consultation paper. These are not listed in any particular order:

1. Transferring Policies under Assumption Reinsurance

We raised this issue in our letter of April 4, 2017, but our comments were limited to the question of voting rights, described below. The issue is actually broader, touching upon the contingent liability of the transferring company to policyholders.

CLHIA recommends that the legislative framework be amended to improve the process for transferring policyholders from one insurance company to another. The parties of a transaction should have the choice under Canadian law to structure a transaction with certainty that policies subject to assumption reinsurance are legally transferred to the assuming insurer, with the cedant being freed of contingent liabilities. OSFI's position, taking into consideration OSFI's Assumption Reinsurance Transaction Instructions (Index A No.10.1), acknowledges that assumption reinsurance is characterized under accounting and actuarial principles as a transfer of risk and can be used by companies as a way to ultimately dissolve or terminate business in Canada. However, OSFI views the assumption of policies as a form of reinsurance that does not legally relieve the cedant of contingent liabilities, unless each affected policyholder provides consent, which can often be impracticable to obtain. This approach to assumption reinsurance contrasts with other jurisdictions that allow for a full legal transfer of policies, subject to regulatory and/court approval, such as the United Kingdom. An amendment to the ICA would be required to give Canadian companies certainty of being off-risk when assumption reinsurance is the only viable way to transfer policies.

Even in the absence of such reforms, we recommend that the ICA be amended so that the voting rights attached to par policies terminate on an assumption reinsurance transaction. Currently, the ICA defines a "participating policy" as "a policy...that entitles its holder to participate in the profits of the Company". A technical argument can be made that a par policyholder has no right to vote because there is no right to participate in the profit of the ceding company following the assumption reinsurance. It would be more appropriate for policyholders to have voting rights at meetings of the assuming insurer, who administers their policies. An amendment to the ICA is therefore recommended.

2. Equity Holdings for Insurers

We also noted, in our April letter, that some insurance companies provide products containing investment options whereby policyholders can choose among a list of indices to which the savings component of their policy may be linked (i.e., universal life policies). The risk of market fluctuations on these products is borne entirely by the investor and not by the insurer. The insurer must purchase underlying equities/real estate to match its policy liabilities to its customers. Such purchases count against the limit on the amount of real property and equity securities such an insurer can have in its investment portfolio. As a consequence, some insurers are “bumping up against” the limits set out in the Investment Limits (Insurance Companies) Regulations.

In our earlier letter, we recommended that the distinction between widely-held and closely-held companies be dropped given that all companies are subject to the same prudential requirements. We would also ask that insurer purchases of equities/real property which are made to hedge UL policy liabilities be carved out from the calculation of the insurers investment limits, because the investment risk lies with the policyholder in these cases.

3. WURA Set-Off Issue

Section 73(1) of WURA recognizes the right of set-off by a debtor "for the recovery of debts due or accruing due to a company **at the commencement of the winding up of the company** ... as if the business of the company was not being wound up." By contrast, the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* both enshrine the right of set-off, but without the language denoted in bold, above.

In the 2008 case *Canada (Attorney General) v. Reliance Insurance Co.* ("Reliance"), the Superior Court interpreted the WURA language to mean that only those quantifiable amounts at the date of liquidation may be set off against one another.

Reinsurance treaties, which typically provide for set-off, reflect the expectation of the parties that set-off will be available in respect of all claims arising after the commencement of winding-up proceedings, whether liquidated or not. The Reliance decision requires a reinsurer to pay claims without set-off even if the ceding insurer has not paid all of its premiums under the treaty. The problem is particularly acute where the cedant retains the reinsurers' reserves backing the liabilities (a "funds withheld" transaction), on the understanding that these funds will be set-off against future claims to be paid by the reinsurer. The result of the Reliance decision is to create a windfall for the estate of the insolvent insurer and also to produce a chilling effect on the market for new funds withheld transactions.

Funds withheld transactions achieve important objectives -- allowing investment risk to remain with the party best able to manage it; controlling the counterparty credit risk assumed by a cedant; removing the need for the parties to sell assets to back liabilities, which can be problematic from a tax, liquidity timing, or capital perspective. Other arrangements are far less efficient in achieving these benefits, if they can be realized at all.

CLHIA supports amended WURA language which would mirror the other insolvency statutes, and which would preserve the benefits of funds withheld transactions and also remove the uncertainty around set off for regular reinsurance treaties. While we continue to hope that this amendment can be made prior to 2019, we are including it here for completeness as to outstanding issues.

4. Equal Treatment for Registered and Unregistered Shareholders – section 334 of the ICA

Consistent with the provisions of business corporation statutes, such as the *Canada Business Corporations Act* ("CBCA"), section 334 of the ICA provides that the annual financial statements of an insurance company must be delivered to shareholders before the annual meeting. The requirement can be waived by the shareholders in writing.

The term "shareholder" in the context of the ICA means a registered shareholder. For most public companies, the number of registered shareholders is very small as the Canadian Depository for Securities ("CDS"), under the book entry system, is the registered shareholder. Most traded shares are beneficially owned by institutions or individuals in brokerage accounts with CDS as the registered shareholder. This means that a company would be entitled to treat CDS as the shareholder entitled to annual statements under section 334 (or its equivalent in the CBCA).

Under securities regulations, a public company must annually send a request card to its securities holders that the security holders can use to request a hard copy of annual and interim statements. The company is only required to send materials to requesting security holders. This process applies to beneficial shareholders in addition to registered holders.

In effect, corporate law and the securities law creates different rights for shareholders depending on whether their holdings are registered or not. Under the ICA, registered holders must receive an annual mailing while beneficial holders must positively request materials in order to receive them. For most companies, the difference probably matters little, as the vast majority of shareholders are non-registered (through CDS). However, for the demutualized companies, the difference is material because hundreds of thousands of policyholders became registered shareholders on demutualization. As we noted in our comments on "notice and access", those companies are happy to send materials to shareholders who desire it, but are concerned that many of the packages to registered shareholders are thrown away unread.

There does not appear to be any policy rationale for treating the registered shareholders differently than beneficial shareholders. Consequently, we recommend that the ICA be amended to defer to the requirements of securities legislation in these matters for publicly traded insurers.

5. Fraternal Benefit Societies – Part XII of the ICA

Part XII of the ICA, relating to fraternal benefit societies, is long overdue for modernization and update. Since this part was put in place in 1992, there have been various adjustments to parallel changes made to other parts of the Act and to place greater responsibilities on societies. One of the results, for example, is that societies in Canada are subject to much of the same regulatory and governance regimes as commercial insurers, yet their powers are significantly restricted to generally the “insuring of risk” (section 542). There should be more balance in this regard and we recommend an in-depth review of Part XII.

Two examples of specific areas that should be considered as part of that review are as follows:

- Section 542 should be revised and should incorporate the wording in subsections 440(1) and (2) of the ICA by adding the phrases ‘business of providing financial services’ and ‘investment counselling and portfolio management services’. These changes should be accompanied by appropriate approval processes.
- Section 554, which deals with permitted investments, is unnecessarily convoluted and somewhat restrictive. With respect to addressing the investments provisions more generally (i.e., sections 550 to 570 of the ICA), consideration should be given to deleting these provisions and incorporating, by reference, the investment sections that apply to “companies” (i.e., sections 490 to 514 of the ICA) so that they apply to fraternal benefit societies as well. Again, these changes should be accompanied by appropriate approval processes.

In developing these proposals, we have specifically consulted with those CLHIA members that are societies as well as the American Fraternal Alliance, which represents fraternal benefit societies across North America.

6. Subsidiaries in Annual Report – sections 331 and 334 of the ICA

Subsections 331(3)(b) and 334(3) of the *Insurance Companies Act* (“ICA”) provide that if an insurance company is found not to have included a list of its subsidiaries, “other than subsidiaries that are not required to be listed by the regulations ...” in its annual report, then the company’s annual meeting shall be adjourned until it is in compliance. For insurers that may deem some of their subsidiaries to be immaterial, these provisions do create some risk in that an argument could be made that the company is not in compliance.

We strongly recommend that the ICA be amended to remove the need to disclose immaterial subsidiaries in insurers’ annual reports. Alternatively, we recommend that the regulation-making power set out in the Act be utilized to achieve the same objective. The use of a regulation could address this matter more quickly.

7. Compliance Self-Evaluative Privilege – ICA

The life and health insurance industry recommends that a compliance self-evaluative privilege be enacted into law for effective risk management. Self-evaluative activities are an integral part of OSFI's supervisory framework. Such a privilege would cover documents that are requested by or filed with a regulator and self-evaluative activities related to an insurance company's risk management framework, as expected by its regulator.

Enactment of a compliance self-evaluative privilege would have many benefits:

- Consumers would benefit from greater scrutiny of company compliance with laws and regulations designed to protect consumers – at no additional taxpayer expense.
- Insurers would benefit from protection against unwarranted litigation.
- Regulators would benefit by being able to redirect resources currently consumed in examinations of compliant companies towards areas of greater need.

The industry endorses the Privilege Model set out by the Canadian Council of Insurance Regulators in its *"Final Report on Privilege Model and Whistle Blower Protection"* dated May 2008. The CCIR Model was developed by a working group of provincial, territorial and federal insurance regulators, including OSFI, that *"examined the role of privilege and whistle blower protection within the risk-based system of regulation and consulted at length with various stakeholder groups to best reflect the balance of views in presenting a privilege model."* To date, Alberta, Saskatchewan (to be proclaimed), and Manitoba have added a provision to their Insurance Act which addresses this important issue, based on the CCIR model.

It is important to note that the incorporation of a compliance self-evaluative privilege in the ICA would not inhibit the exercise of the regulatory and supervisory authority of OSFI in protecting insurance consumers. In fact, it would enhance such supervision by promoting full and frank disclosure between insurers and OSFI, make regulatory review more efficient and effective and, as noted above, allow OSFI to focus scarce resources where they are most required.

Annex B: Information and Technology Activities

Activity	Permissions	Example
Firms that provide a financial service including through a technology solution	Section 441(1) in ICA permits insurance companies to own firms if they are in the business of providing a financial service. May also develop these solutions in-house.	A firm providing a financial service through a phone app
Firms that provide an information/technology solution to a financial services company	<p>Section 441(1) in the ICA permits insurance companies to own firms that provide information/technology solutions primarily for the purposes of facilitating a financial service. May also develop these solutions in-house.</p> <p>Insurance companies are permitted to commercialize or license these technology solutions to other financial institutions.</p>	A firm designing distributed ledger software for asset management firms
Firms that provide a solution used by a financial services companies and have broader application	<p>Insurers should be permitted to provide technology and business solutions for use by to other businesses or government.</p> <p>Insurers should be permitted to license technology or products to third parties for delivery to end consumers</p>	Financial literacy game AML or credit report
Firms that provide a non-financial services information/technology product or solution to businesses and consumers outside of financial services.	<p>ICA limits insurers to non-controlling investments in these firms; subject to a threshold.</p> <p>Caveat that they are permitted to own 100% of the firm providing the service or develop the solution in-house if it is limited to <i>internal or non-commercial purposes</i>.</p>	A cybersecurity software provider that provides services to business and consumers

Annex C: New EU Rules to Promote Infrastructure Investment

In 2015, the European Commission adopted an action plan to help mobilize capital in Europe and channel it into infrastructure and long term sustainable projects that were needed to create jobs. The purpose of the action plan was to create incentives for private capital to invest in long-term infrastructure in order to free up government funding for investments in other areas to boost Europe's competitiveness.

The European Investment Bank estimated that the EU would need up to €2 trillion in investment by 2020. Insurers were viewed as a natural fit for investment in infrastructure, given their need to match long-term liabilities with long-term assets with steady cash flows. However, many insurers were reluctant to invest in infrastructure because they are obliged to hold a high level of capital against those investments.

At the time, EU insurers invested approximately €22 billion in infrastructure, representing less than 0.3% of their total assets. If insurers were to increase their investment in infrastructure to even 0.5% of total assets, which seems achievable, this would mean an extra €20 billion of investment, bringing a boost to infrastructure projects in Europe.

Infrastructure businesses in Europe can be broadly classified into two categories: "infrastructure projects" and "infrastructure corporates". The former category typically involves the construction of new infrastructure facilities. Infrastructure corporates on the other hand are infrastructure businesses that are already operational. For example, many existing airports in the European Union that have funding requirements for expansion or redevelopment would be classified as "infrastructure corporates".

At the request of the European Commission, the European Insurance and Occupational Pension Authority consulted on changes to the treatment of infrastructure under prudential regulation. Following its final report, in September 2015, the European Commission created a new category of assets, namely "infrastructure projects" in the insurance prudential framework known as "Solvency II"² to promote investments in infrastructure.

The amended regulation introduces a new concept of 'qualifying infrastructure investments': these are investments that present better risk characteristics than other infrastructure investments. For example, infrastructure projects must be able to generate predictable cash-flows and withstand stressed conditions.

Insurers are now required to hold a lower level of capital against their investment in these infrastructure projects. 'Qualifying infrastructure investments' benefit from an appropriate risk calibration, lower than that which would otherwise apply. This will ultimately lead to a lower capital charge.

² Solvency II is a review of prudential regulation for the European insurance industry. It provides a risk measurement framework for defining capital requirements for insurance companies.

On 8 June 2017, the Commission introduced a further category of assets called "infrastructure corporates". Like infrastructure projects, they will benefit from a more favourable treatment so as to encourage insurance companies to invest in these corporates.

Further details can be found here:

[http://europa.eu/rapid/press-release MEMO-15-5734_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-15-5734_en.htm?locale=en).