

## LEPPARD LEGISLATION WATCH

**MARCH 2017**

Welcome to the third Leppard Legislation Watch, a monthly newsletter providing selected updates on legislation which could have an impact on your business and the business of your clients. As stated previously, the amount of legislative activity on a monthly basis is mind-boggling (just look at the length of this newsletter), so of necessity, we can't go into the finer details of every proposed legislative change. The purpose of the Leppard Legislation Watch is to draw your attention to selected updates so that you (or your client) can make a more detailed study of the changes and their possible impact on your business.

### **What to watch – selected recent developments**

#### **Financial Zone**

- ❖ National Credit Act: Credit Life Insurance Regulations

#### **Employment and Staff Zone**

- ❖ Occupational Health and Safety Act: Draft Ergonomics Regulations

#### **General**

- ❖ Draft Cybercrimes and Cybersecurity Bill

### **A little more information**

#### **Financial Zone**

- ❖ National Credit Act: Credit Life Insurance Regulations - The Credit Life Insurance Regulations will commence 9 August 2017, and only apply to credit agreements entered into on 9 August 2017 or thereafter. The Regulations will, amongst others, prescribe: (i) Maximum cost of credit life insurance per life insured; (ii) Different amounts for different credit agreements, while introducing a new 'affordable housing mortgage agreements' category; (iii) Minimum cover arrangements in the event of a death, disability, unemployment and/or inability to earn (where relevant); (iv) A measure of allowable cover variation where the consumer is a person employed in the

informal sector, or is self-employed (whether in the formal or informal sector); (v) That a credit provider must be able to show that the credit life cost was determined with regard to actual associated risk and liabilities, if requested to do so by the National Credit Regulator; (vi) That a credit provider must respect the right of a consumer to substitute a credit life insurance; and (vii) Limited grounds for excluding or limiting cover, including limitations regarding unemployment or inability to earn cover where a person knew three months in advance that they would be retrenched.

### **Employment and Staff Zone**

- ❖ Occupational Health and Safety Act: Draft Ergonomics Regulations - The Draft Ergonomics Regulations (comment deadline 90 days from 27 January 2017) propose, amongst others: (i) Defining ergonomic risk factors as actions in the workplace and/or workplace conditions which may cause or aggravate a work-related-musculoskeletal-disorder; (ii) Targeting employers and self-employed persons (where physical or cognitive ergonomic risk factors may be present), as well as designers, manufacturers, erectors, installers or suppliers of machinery, equipment or articles for use at work (iii) Requiring that employers pay an ergonomics competent person to train employees before placement and at regular intervals, that employers give adequate information, instruction and training with regards to ergonomics, and that employers keep a training record; (iv) Reiterating the duty of persons exposed to ergonomic risk factors to obey lawful ergonomic instructions; (v) Requiring that affected designers eliminate ergonomics risk factors (or mitigate if elimination is not reasonably possible), and provide prescribed information to manufacturers and users; (vi) Requiring that affected manufacturers and suppliers make an item as safe as reasonably possible (including in relation to its construction, transport or installation), and give prescribed information for potential users on how to use and maintain items; (vii) Requiring that employers must conduct a prescribed risk assessment, record the results, review the assessment. and ensure that employees under control of the employer are informed, instructed and/or trained accordingly by a competent person, before they start work or when a review takes place; (viii) Requiring that employers and self-employed persons must prevent exposure to ergonomics risk factors (or adequately control such ergonomics risk factors where this is not reasonably practicable); (ix) Introducing ergonomics specific medical surveillance, control maintenance, records, appeals and offences.

### **General**

- ❖ Draft Cybercrimes and Cybersecurity Bill - The Draft Cybercrimes and Cybersecurity Bill (no comment period - left to Parliament to invite

comments) proposes, amongst others: Cybercrimes: It will be an offence to: (i) Unlawfully and intentionally secure access to data, a computer program, a computer data storage medium or a computer system (System); (ii) Unlawfully and intentionally overcome any protection measure which is intended to prevent access to data and use, examine, copy, move or divert data; (iii) Unlawfully and intentionally interfere (delete, alter, render ineffective, interrupt, deny access) with data or a computer program; (iv) Unlawfully and intentionally interfere with a computer data storage medium or a computer system; (v) Unlawfully and intentionally acquire, possess, provide or use a password, an access code or similar data or device to commit a cybercrime; (vi) Unlawfully and intentionally use, possess, manufacture, assemble, obtain, sell, purchase, make available or advertise any software or hardware tool to commit the above cybercrimes; (vii) Unlawfully and with the intention to defraud make a misrepresentation by means of data or a computer program or through any interference with a system which causes actual prejudice or is potentially prejudicial; (viii) Unlawfully and with the intention to defraud make or pass off false data or a false computer program to the actual or potential prejudice of another person; or (ix) It will be an offence to unlawfully and intentionally threaten to commit or commit certain cybercrimes to obtain any advantage from another person or compelling another person to perform or to abstain from performing any act.

In addition, a cybercrime can become an aggravated offence if: (i) A restricted computer system (under the control of, or exclusively used by, any financial institution, organ of state or critical information infrastructure) is involved; (ii) It endangers a life; (iii) It violates physical integrity or physical freedom or causes bodily injury; (iv) It causes serious risk to the health or safety of any segment of the public; (v) It causes the destruction of or substantial damage to any property; (vi) It causes a serious interference with, or serious disruption of an essential service, facility or system, or the delivery of any essential service; (vii) It causes any major economic loss; (viii) It creates a serious public emergency situation; or (ix) It prejudices the security, the defence, law enforcement or international relations of the Republic.

Malicious communications The Draft Bill will also make provision for offences relating to malicious communications: (i) **Incitement offence**: It will be an offence to unlawfully make available, broadcast or distribute a data message via a computer system with the intention to incite violence or property damage. (ii) **Harmful messages**: It will be an offence to unlawfully and intentionally make available, broadcast or distribute a data message via a computer system which is harmful (threatens violence or property damage); intimidate, encourage or harass a person to harm himself or herself or any other person; or is inherently false in nature and it is aimed at causing

mental, psychological, physical or economic harm). (iii) **Intimate distribution:** It will be an offence to unlawfully and intentionally make available, broadcast or distribute a data message via a computer system of an intimate image (as defined) of an identifiable person knowing that the person depicted in the image did not give his or her consent thereto. (iv) **Protection order:** Provision will be made for an order to protect a complainant pending finalisation of criminal proceedings to prohibit further distribution and to require an electronic communications service provider or person in control of a computer system to remove or disable access to the data message in question and/or to provide prescribed particulars to the court (within 5 ordinary days).

In addition, the Bill proposes extensive duties for financial institutions, electronic communications providers, and others in a position of authority. These include a duty to assist the police and investigators, compliance with preservation and data disclosure orders, providing assistance to foreign authorities, and an onerous reporting duty. Also, wide jurisdiction powers are proposed, as are warrantless search and seizures and arrests, and yet another regulatory entity is envisaged.

***Leppard Legislation Watch** is a monthly newsletter providing selected updates on legislation which could have an impact on the business of Leppard Underwriting and its clients. **Leppard Legislation Watch** is not intended as legal or professional advice and is published for general information purposes only. This newsletter is not a substitute for legal or other professional advice.*

