

Group Briefing

February 2016

Insurance Regulatory Update

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This document contains a general summary of developments and is not a complete or definitive statement of the law. Specific legal advice should be obtained where appropriate.

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IN DOMESTIC NEWS...

CENTRAL BANK PUBLISHES SOLVENCY II NEWSLETTER

On 19 February, the Central Bank published issue 25 of Solvency II Matters. Since August 2010 the newsletter has reviewed the industry's progress towards full implementation of Solvency II. This is the penultimate issue of Solvency II Matters; the final edition will be published in late March. Starting in June, the Central Bank will publish an insurance newsletter on a quarterly basis.

This month's edition of the newsletter covers Solvency II developments at a European and domestic level since December 2015, many of which have been reported in previous editions of the Insurance Regulatory Update. Firms are reminded that the first set of Solvency II regulatory returns must be submitted in May 2016. A reporting update explains Day 1 reporting requirements under Solvency II. Firms are strongly encouraged to ensure their IT systems and end-to-end reporting process are both working

smoothly in advance of this deadline. A useful checklist is provided in relation to reporting and fitness & probity requirements, together with a forward planner, which sets out the key dates for Solvency II firms up to June 2016.

On the domestic front, individuals occupying the Head of Actuarial Function on or before 31 December 2015 must be notified to the Central Bank by 31 May 2016 through its in-situ notification process. Where an individual was not in-situ on or before 31 December, their appointment as Head of Actuarial Function is subject to the Central Bank's prior approval and this should be sought as soon as possible.

The Central Bank has designed draft regulations in relation to eleven National Specific Templates which will address data requirements and other issues that are specific to Ireland and not covered in the standard EIOPA Quarterly Reporting Templates. It is currently in consultation with the Minister for Finance and the Minister for Enterprise, Jobs and Innovation in relation to the draft regulations.

On the European front, the European Commission has published Implementing Technical Standards on Submission of Information and the Solvency and Financial Condition Report. EIOPA has also released the latest version of its XBRL Tool for firms to assist in quantitative reporting under Solvency II. EIOPA has announced its Insurance Stress Test 2016 and has also issued a consultation paper on facilitating effective dialogue between insurance supervisors and auditors.

A link to the newsletter is [here](#).

CENTRAL BANK PUBLISHES PAPER ON THE IMPLEMENTATION OF RISK-BASED REGULATION THROUGH PRISM

The Central Bank has published a paper on the implementation of risk-based supervision through its Probability Risk and Impact System (**PRISM**). First introduced in 2011, PRISM provides the

systematic risk-based framework within which the Central Bank supervises financial services firms. This paper is an update to a similar publication issued by the Central Bank in November 2011.

The 2016 paper is split into three sections. The first section outlines the Central Bank's rationale for risk-based supervision, being that it facilitates efficient supervision by focusing resources on firms which pose the greatest risk to financial stability and consumers. PRISM is designed to deliver value to the tax-payer by deploying supervisors where they can make the greatest difference. The second section expands on the concept of risk-based supervision and sets out a list of nine benefits of PRISM including the adoption of a consistent approach to assessing risk across all firms supervised by the Central Bank. The third section details the mechanics of PRISM and covers a number of different aspects of the system including what a firm's "impact" and "probability" means and how those are assessed by the Central Bank. It explains the resourcing of supervision under PRISM and how the Central Bank engages with firms under the model.

The four appendices expand on these points. They provide: (i) practical commentary around what PRISM means for your firm; (ii) details of the Central Bank's areas of focus (such as governance) and methods of engagement (including assessing firms' stress testing methodologies); (iii) the categories of risk probability including the separate probability risk categories developed for insurance firms as a result of Solvency II; and (iv) impact metrics for each category of firm across the financial services sectors.

A link to the paper is [here](#).

CENTRAL BANK PUBLISHES 2016 PROGRAMME OF THEMED INSPECTIONS IN INSURANCE

The Central Bank's planned themed inspections for 2016 will be a mixture of company focused inspections and thematic reviews. The Central Bank is also

developing data analytics and trend analysis to assist in more focused supervision.

Generally, the programme of inspections reflects the implementation of Solvency II, with a focus on the domestic non-life insurance sector. Four key themes identified are: (i) risk management and capital planning (e.g. evidence the ORSA is embedded in the risk management and decision making processes of the company); (ii) motor insurance pricing, oversight and governance review (focused on the sustainability of premium levels and the adequacy of pricing risk assessments carried out by firms given current pressures in the sector); (iii) claims management and underwriting discipline; and (iv) increased focus on lower impact firms – low impact firms under PRISM will be inspected for efficiency in governance and risk management frameworks. The effectiveness of governance and risk management frameworks around reinsurance and outsourcing arrangements is also a key focus.

A link to the press release is [here](#).

CENTRAL BANK PUBLISHES CONSUMER PROTECTION OUTLOOK REPORT FOR 2016

The Central Bank has published its annual Consumer Protection Outlook Report which highlights the Central Bank's consumer protection objectives and identifies key risks to these objectives. The consumer protection objectives set out in the report include: ensuring that management imbued a consumer-focused culture in their companies; assessing the effect on consumers of intermediary payment structures; increasing the frequency of on-site inspections of companies, in particular, small retail firms; and, as mentioned in the January edition of the Arthur Cox Insurance Regulatory Update, the carrying out of themed inspections of the sale of health insurance, structured investment products and the handling of insurance claims.

Included in the risks highlighted by the Central Bank is claims handling and settlement by insurance companies.

General insurers currently face a number of challenges in relation to underwriting, claims and profitability. The Central Bank emphasised that any changes that insurers make to meet these challenges must not be at the expense of customer service. The report also identifies the following key risks facing consumers of financial services: the return of irresponsible lending; the use of new technologies to deliver services; the lack of a consumer focused culture in firms; and poor standards of service.

The document also sets out its priority themes under its 5C headings (consumer, culture, confidence, challenge and compliance).

A link to the report is [here](#).

CENTRAL BANK PUBLISHES INTERMEDIARY TIMES

On 26 February, the Central Bank published the latest edition of the Intermediary Times newsletter. Reminder letters to pay the 2015 Industry Funding Levy were sent out on 5 February 2016. Any firm that has not paid the levy must either pay the overdue amount or contact the Central Bank's Industry Funding Team to avoid legal action.

The Central Bank also provides updates on: the highlights of the Consumer Protection Outlook Report for intermediaries; a reminder to submit the Annual Pre-Approval Control Function Confirmation Return; the reclassification of multi-agency intermediaries and authorised advisors as investment intermediaries; Grandfathered persons' compliance with the Consumer Protection Code (CPC); and compliance by self-employed agents of intermediaries with certain provisions of the CPC.

A link to the Intermediary Times newsletter is [here](#).

ADDRESS BY THE DIRECTOR OF INSURANCE SUPERVISION, SYLVIA CRONIN, AT INSURANCE IRELAND'S MILLIMAN CRO FORUM

On 24 February, the Central Bank's Director of Insurance Supervision,

Sylvia Cronin, addressed Insurance Ireland's Milliman CRO forum on the new supervisory regime for the insurance industry and areas of focus for the year ahead.

Ms Cronin outlined recent structural changes to the Central Bank's Insurance Directorate. The new single supervisory division, divided into sectoral teams for life, non-life, cross border and reinsurance, will encourage a consistent cross-sectoral supervisory approach whilst facilitating a flexible sector specific focus where required. Changes to the PRISM engagement model were also explained, covering the mechanism by which firms will now be rated according to both their impact and the riskiness of business areas such as operations, insurance and governance.

Summarising the impact of the modified supervisory framework under Solvency II, Ms Cronin indicated supervision will increase in relation to interaction with firms' executives and non-executives, targeted risk assessments and on-site activity by supervisory teams. Firms are encouraged to contact their Central Bank supervisory team to discuss the applicable engagement rating and firm-specific areas of focus for 2016.

Turning to the Insurance Directorate's overall focus for 2016, Ms Cronin spoke about the importance of embedding an effective risk management culture and the CRO's role in shaping it. The Central Bank will look to see evidence of risk management operating in practice through, for example, the ORSA process. The Central Bank will also focus on the core area of insurance risk, specifically on pricing and reserving, as well as operational risk, product oversight and governance and group risk. Other areas of interest will be: (i) firms' culture and how that impacts on risk management; (ii) conducting a financial services sector thematic review on cyber risks; and (iii) consideration of how firms respond to external factors such as instability in financial markets and legal and political risks.

Finally, Ms Cronin acknowledged firms' efforts in implementing the ORSA process. Useful feedback was provided in relation to ORSAs received by the Central Bank during 2015, which firms should bear in mind when preparing them in 2016.

A link to the speech is [here](#).

CENTRAL BANK PUBLISHES APPLICATION FORM FOR REVOCATION OF AUTHORISATION/REGISTRATION

On 22 February, the Central Bank published an application form that investment, (re)insurance and mortgage intermediaries (**Intermediaries**) can use to apply for revocation of their authorisation/registration. Under the Consumer Protection Code, an Intermediary is required to notify the Central Bank immediately if they intend to cease operating, merge or transfer its regulated activities to another regulated entity and must also provide at least two months' notice to affected customers. The Central Bank warns in the form that failure to complete the voluntary revocation process may result in the Central Bank commencing an involuntary revocation procedure against the Intermediary and regulatory action being brought against the Intermediary and those running it.

A link to the form is [here](#).

FINANCIAL SERVICES OMBUDSMAN INTRODUCES DEDICATED DISPUTE RESOLUTION SERVICE

In anticipation of the amalgamation of the Financial Services Ombudsman Bureau (**FSO**) and the Office of the Pensions Ombudsman (**OPO**), the bodies commissioned a review to help plan for the future of the amalgamated organisation. The recently published findings of the Strategic and Operational Review have led the FSO to introduce a new dedicated Dispute Resolution Service.

The review found low levels of user satisfaction on the basis that the complaints process was drawn out,

overly formal, too legalistic and that the findings seemed unpredictable and inconsistent. The new Dispute Resolution Service aims to fix these problems by providing a more informal process that resolves disputes before they have to go to the FSO's Adjudication Service. When a complaint is received, the FSO will now assign a Dispute Resolution Officer (DRO) who will contact the complainant and provider. The DRO will use telephone conversations, email, mediations and conciliations to facilitate a resolution quickly and informally. DROs do not decide who is in the right and if the parties fail to enter a settlement agreement between them the dispute will go to the Adjudication Service.

Details on the new process can be found in the Information Booklet titled "*How Complaints Made to the Financial Services Ombudsman are Handled*" on the FSO's website [here](#).

A link to the review is [here](#).

A link to the FSO press release announcing the change is [here](#).

FURTHER NATIONAL SPECIFIC TEMPLATES ARE PUBLISHED FOR SOLVENCY II REPORTING

The Central Bank of Ireland has produced a further 9 National Specific Templates (NST03 to NST11) on its website for Solvency II reporting purposes. These NSTs are the reporting templates which address local Irish market requirements and/or the nature of Irish insurers and which are not accommodated under the EIOPA templates. The new templates fall into two categories – the first five NSTs relate to non-life technical provisions and claims templates. Technical specifications are also provided in relation to those templates. Note that reinsurers are not subject to these NSTs. The second set of four NSTs are provided for insurers conducting variable annuity business. The Central Bank's webpage sets out information on the frequency of submission of these templates together with the dates the first NSTs will be due.

The Central Bank has also published two further NSTs for gathering data for national statistical purposes. This information is required from the entire Solvency II reporting population on a quarterly basis. A Q&A document in respect of the statistical NSTs is also provided.

A link to the National Specific Templates can be found on the Central Bank website [here](#).

IN EUROPEAN AND INTERNATIONAL NEWS...

SMSG, THE STAKEHOLDER GROUP OF THE EUROPEAN SECURITIES AND MARKETS AUTHORITY (ESMA) VOICES CONCERNS ON THE PRIIPS REGULATION

SMSG has expressed its grave concern that the Key Information Documents (KIDs) to be issued in the context of the PRIIPS regulation will not include historical data in explaining performance measures to investors. In an Opinion Paper published on 5 February, SMSG cautions that to exclude historical data would be seriously detrimental to retail investors and their ability to understand and compare PRIIPS.

The European Supervisory Authorities (ESAs) are charged with producing the drafts of the KIDs for the Commission to approve as level 2 regulatory technical standards (RTS). SMSG believes that they have misunderstood the legislature's intention under the PRIIPs Regulation. The ESAs believe that if there is not a direct reference to historical data on past performance, it is not mandated to include it in the KID. However, SMSG does not believe that is correct – in its view, the EU legislature may wish to remove an emphasis on past performance that could lead to retail investors' over reliance on historic data, but it did not intend for historical data not to be included as a relevant factor, along with a broad scope of other factors when considering performance measures of an investment. The Opinion goes on to set out the benefits of including historical

data in the performance measures (e.g. for any given PRIIP, the future may hold many different outcomes but history provides only one). The SMSG urges the European Parliament to revisit the issue and make it clear to ESAs that it was not intended that the KID exclude historical data entirely.

A link to the Opinion Paper is [here](#).

EUROPEAN COMMISSION ADOPTS SOLVENCY II IMPLEMENTING REGULATION ON TECHNICAL INFORMATION FOR THE CALCULATION OF TECHNICAL PROVISIONS AND BASIC OWN FUNDS

On 5 February 2016, the Commission adopted an Implementing Regulation under Article 77(e)(2) of the Solvency II, prescribing technical information for the calculation of technical provisions and basic own funds for the period from 1 January to 30 March 2016.

It sets out the information to be used to calculate the best estimate, in line with Article 77 of Solvency II, as well as the information required for calculating the matching adjustment and volatility adjustment in accordance with Articles 77(c) and 77(d) respectively.

The Implementing Regulation has immediate effect pursuant to the Commission's powers under Regulation (EU) No 182/2011 to derogate from the usual implementation procedure. The recitals explain that this is necessary to ensure (re)insurance undertakings have immediate access to the technical information and calculate technical provisions and basic own funds uniformly with effect from the first reporting reference date of 1 January 2016.

A link to *Commission Implementing Regulation (EU) 2016/165* is [here](#).

EIOPA PUBLISHES CONSULTATION PAPER ON DIALOGUE BETWEEN SUPERVISORS AND AUDITORS OF (RE)INSURANCE COMPANIES

On 3 February, EIOPA published a Consultation Paper on the Proposal Guidelines facilitating an effective

dialogue between insurance supervisors and auditors that carry out statutory audits of (re)insurance companies (**Draft Guidelines**). The Draft Guidelines relate to the provisions on encouraging an effective dialogue as provided for in the Audit Regulation (Regulation (EU) No 537/2014).

The Draft Guidelines propose that competent authorities should ensure that dialogue between statutory auditors and the audit firms carrying out statutory audits is open and constructive and, in addition, is flexible enough to ensure it can accommodate unexpected developments in the future. The Guidelines state that competent authorities should promote the mutual understanding of the roles and responsibilities of the parties involved in line with the requirements on confidentiality and professional secrecy laid down in the Audit Regulation and Solvency II. Articles 68 and 72 of Solvency II set out legal requirements of statutory auditors to report promptly facts which are likely to have a serious effect on the financial situation or administrative organisation of a (re) insurance undertaking. Supervisory and auditor tasks can be supported by an effective dialogue between supervisors and statutory auditors.

The draft Guidelines set out relevant principles dealing with the nature of the information to be exchanged, the form, the frequency and timing as well as the representatives involved in these dialogues. The consultation will end on 28 April 2016.

A link to the Draft Guidelines is [here](#).

EIOPA PUBLISHES WORK PROGRAMME FOR 2016

On 16 February, EIOPA published its annual Work Programme for 2016. Its objectives are to: (a) ensure transparency, simplicity and fairness across internal markets for consumers; (b) lead the development of sound and prudent regulations supporting the EU internal market; (c) improve the quality, efficiency and consistency of the supervision of EU insurance and occupational pensions; and (d) identify, assess, mitigate and manage risks and threats to the financial stability of the insurance and occupation pension sector.

EIOPA has four priorities for the year 2016 reflecting the major demands and important developments that need to be factored into planning its work programme:

- » **Focus on Solvency II implementation** – The ongoing and intensive demands of Solvency II implementation and the role of EIOPA in safeguarding consistency will impact most areas of its work;
- » **Whole product life cycle focused consumer protection with greater emphasis on preventative, risk based regulation and supervision** – Review the entire value chain and strengthen focus on prevention of risks from product design all the way to insurance guarantee schemes;
- » **Constant cycle quality for regulation** – Maintain a focus on the underlying principles and rationale to ensure that regulation is sound and risk based; and
- » **Proactive approach to international developments**

with clear links to Solvency II implementation – EIOPA will continue to be highly involved in the development of international capital standards within the framework of the International Association of Insurance Supervisors.

A link to EIOPA's 2016 Work Programme is [here](#).

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