

Insurance Regulatory Group Update

Domestic News

JUNE & JULY 2018

EUROPEAN UNION (INSURANCE DISTRIBUTION) REGULATIONS 2018

On 29 June, the Department of Finance published the European Union (Insurance Distribution) Regulations 2018 (the **Regulations**), which transpose the Insurance Distribution Directive (Directive 2016/97/EU) into Irish law. The Regulations will come into effect on 1 October and represent a significant departure from the way in which the distribution of (re)insurance products are regulated. The Regulations also repeal the European Communities (Insurance Mediation) Regulations 2005 and make a number of insurance related amendments to the Investment Intermediaries Act 1995.

The Regulations are accessible [here](#).

CENTRAL BANK CONSULTS ON CHANGES TO THE DOMESTIC ACTUARIAL REGIME AND RELATED GOVERNANCE REQUIREMENTS UNDER SOLVENCY II

On 22 June, the Central Bank published consultation paper CP122 in respect of amendments that it proposes to make to the Domestic Actuarial Regime relating to: (a) the governance of with-profits funds; and (b) the format of the Actuarial Opinion on Technical Provisions (**AOTP**) as outlined in the Domestic Actuarial Regime.

The Central Bank proposes introducing additional requirements on (re)insurers and on the Head of Actuarial Function (**HoAF**) in relation to With-Profits business, as follows:

- (Re)insurers will be required to produce a With-Profits Operating Principles (**WPOP**) document, which will be available to fund members, and to provide With-Profits fund members with an annual report on compliance of the fund with the principles detailed in the WPOP;
- The HoAF will be required to report to the Board and fund members annually on the ongoing compliance of the With-Profits funds with the principles in the WPOP;
- The HoAF will be required to provide an opinion to the Board on the compliance of the Technical Provisions (**TPs**) with the WPOP in the Actuarial Report on TPs.

It is proposed that the Central Bank will have the discretion to grant exemptions to the With-Profits governance requirements, subject to certain criteria being met including: where the liabilities of the fund are less than €0.5bn, where there are fewer than 10,000 members in the fund and whether the fund is closed to new increments or new members.

The proposed amendments to the form of the AOTP are intended to clarify the level of reliance that the HoAF is placing on others, whether there are material limitations within the calculation of the TPs and any recommendations for improvement. These amendments to the AOTP are set out in track changes in the Appendix to the consultation paper.

It is proposed that the With-Profits governance requirements will not be applied to currently authorised (re)insurers with existing books of With-Profits business until 1 January 2020 to allow time to implement these requirements.

Submissions can be emailed to insurancepolicy@centralbank.ie and the closing date for submissions is 14 September 2018.

The Central Bank's consultation paper is [here](#).

CENTRAL BANK PUBLISHES INSURANCE QUARTERLY

The Insurance Directorate's newsletter published on 19 June provides an update of the activities of the Insurance Directorate for Q2 of 2018. This edition of the newsletter contains the third article in the Insurance Directorate's series on risk culture, which focuses on the role that 'competency' plays in a firm's risk culture.

The Central Bank has established a Brexit Insurance Supervisory Coordination Group to ensure that Irish policyholders of UK/Gibraltar insurers and UK policyholders of Irish insurers do not suffer a loss of service continuity as a result of Brexit. In this regard, the Insurance Directorate also encourages firms to consider the following in the event of the UK becoming a third country:

- What assumptions are you making in your plan to mitigate the risks from Brexit?
- If one or more of those assumptions turns out to be invalid, what is your contingency plan?
- For the most challenging scenario, in which the UK leaves the EU in March 2019 to become a Third Country, there is no implementation period and the UK has been unable to make the legislative changes to implement a temporary permissions regime, what is your contingency plan?

The Central Bank also urges firms to read EIOPA's Opinion of May 2018 on the solvency position of (re)insurers in light of the withdrawal of the UK from the EU. As discussed in [the May edition of the Arthur Cox Insurance Regulatory Update](#), the EIOPA Opinion sets out 14 areas related to the determination of technical provisions, own funds and capital requirements of Irish and other EU 27 firms that might be subject to changes.

The Central Bank's Insurance Quarterly Newsletter is [here](#).

CENTRAL BANK (NATIONAL CLAIMS INFORMATION DATABASE) BILL 2018

On 12 July, the Central Bank (National Claims Information Database) Bill 2018 (the **Bill**) was published. Under the terms of the Bill the Central Bank will be required to collect and study data from insurance undertakings in relation to the carrying on of certain non-life insurance business in the State. The research will be collated in a National Claims Information Database (the **Database**). The Database will facilitate the identification of emerging trends in the motor insurance claims industry. The research will focus on: (i) the effect of claims on premiums; (ii) the relationship between the amount of premium paid by a consumer and the cost to insurance undertakings; and (iii) identifying factors that cause movements in the price of motor insurance.

The CBI is currently working alongside the Department of Finance to develop technical specifications in support of this Database. The Database is expected to be established in 2019.

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

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

INSURANCE (AMENDMENT) ACT 2018

On 24 July, Minister for Finance enacted the Insurance (Amendment) Act 2018 (the **Act**).

The Act confers certain functions regarding the administration of the Insurance Compensation Fund (**ICF**) on the Central Bank of Ireland and the National Treasury Management Agency. Industry players will be required to increase their contributions to an ex-ante fund, which will be established in order to fund any shortfall in the industry. Under the Act, the level of compensation payable under the ICF has increased from 65% to 100%.

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

CENTRAL BANK OF IRELAND ISSUES INDUSTRY LETTER REGARDING MINIMUM COMPETENCY CODE, CONSUMER PROTECTION CODE AND FITNESS AND PROBITY STANDARDS

On 13 July, the Central Bank of Ireland issued an industry letter (the **Letter**) in relation to the Minimum Competency Code 2011 (**MCC**), the Consumer Protection Code 2012 (**CPC**) and the Fitness & Probity Standards.

In relation to the Fitness & Probity Standards, the CBI reminds retail intermediaries that they are required to carry out due diligence on all persons performing controlled functions to ensure that each person meets requisite Fitness and Probity Standards. This due diligence must be recorded and made available to the Central Bank on request. Similarly, under the MCC, firms are required to maintain an adequate record of an individual's Continued Professional Development compliance and grandfathered status. Firms are required to identify issues and record the approach taken in addressing those issues in relation to an individual's proposed employment. The CBI also reminds retail intermediaries to adhere to the revised provisions of the CPC in relation to "Personal Visits and Contact with Customers".

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

International News

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EIOPA SUBMITS DRAFT REGULATORY TECHNICAL STANDARDS FOR PROFESSIONAL INDEMNITY INSURANCE AND FOR FINANCIAL CAPACITY OF INTERMEDIARIES

On 27 June, EIOPA submitted the draft Regulatory Technical Standards (**RTS**) adapting the base euro amounts for professional indemnity insurance (**PII**) and financial capacity of insurance intermediaries.

The draft RTS summarises the background on PII and the general importance of PII and financial capacity. It also publishes feedback from EIOPA's stakeholder group in relation to PII. The main focus of the draft RTS is to increase the levels of indemnity in line with the European Index of Consumer Prices.

The Insurance Distribution Directive (Directive 2016/97/EU) (**IDD**) requires this level of indemnity to be EUR 1,250,000 for a single claim, and in aggregate, EUR 1,850,000 per year for all claims. These are minimum limits required by the IDD and additional cover can be provided for under national law. The draft RTS has increased these minimum amounts from EUR 1,250,000 to EUR 1,300,380 and from EUR 1,850,000 to EUR 1,924,560. The minimum amount of financial capacity is also increased to EUR 19,510.

EIOPA has acknowledged that this increase is likely to increase costs for distributors, however, EIOPA feels that overarching consumer protection goals outweigh these costs. Overall, it was revealed that PII was not a barrier to entry to the EEA insurance intermediaries market.

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

A link the draft RTS is [here](#).

EIOPA PUBLISHES OPINION ON DISCLOSURE OF INFORMATION TO CUSTOMERS ON THE IMPACT OF BREXIT

On 28 June, EIOPA published an opinion on the disclosure of information to customers about the impact of the withdrawal of the UK from the EU (EIOPA-BoS-18/119) and FAQs (EIOPA-BoS-18/217).

The opinion concerns all cross-border insurance contracts between the UK and the EU27, which might be affected by the withdrawal of the UK, including contracts that will already be terminated on the withdrawal date, but for which open claims exist or might be reported thereafter. EIOPA expects insurers to inform customers "in due time" of the implications for existing and new contracts concluded before the withdrawal date to facilitate consumers in making informed decisions before renewing or concluding their insurance contracts. For these purposes, a "customer" includes a beneficiary of an insurance contract. EIOPA also expects insurers to inform new beneficiaries when they submit claims. National Competent

Authorities are required to ensure that insurers inform beneficiaries of how Brexit contingency plans may affect their contractual relationship or services, which may include:

- change of the contractual counterparty following the transfer of insurance contracts to another firm;
- any changes or loss of protection provided by existing national compensation schemes;
- changes to the claims management procedure or to other customer services;
- changes in the law applicable to the insurance contract; or
- tax implications of insurance contracts.

EIOPA's opinion and FAQs are [here](#) and [here](#).

EIOPA PUBLISHES 2017 ANNUAL REPORT

On 15 June, EIOPA published its annual report which provides an overview of EIOPA's activities in 2017. In 2017, EIOPA completed its first review of the Solvency II regime, which resulted in EIOPA advising the European Commission to adopt a simplified calculation of solvency capital requirement (**SCR**) standard formula. EIOPA also published an opinion calling for a minimum harmonisation of a recovery and resolution framework for the insurance sector and provided technical advice to the European Commission on the Insurance Distribution Directive (Directive 2016/97/EU), covering issues such as conflicts of interest in selling practices and technical standards on the insurance product information document.

In response to a growing number of issues relating to cross-border business, EIOPA took steps to address these concerns through the use of collaboration platforms. The aim of these platforms is to facilitate stronger and timely collaboration between home and host supervisory authorities, enabling quicker identification and assessment of market risks.

In terms of its supervisory focus for 2018, EIOPA intends to concentrate on InsurTech and sustainable finance in particular. In this regard, EIOPA has established a task force on InsurTech, the priorities of which are to address: (i) any ethical aspects of the use of big data for pricing; (ii) cyber risks; and (iii) setting best practices for supervisory approaches to InsurTech including sandboxes. Digitalisation has been identified as a cross-cutting theme in EIOPA's 2018 work programme and earlier this month EIOPA's InsurTech taskforce launched a survey on current regulatory approaches towards InsurTech firms.

EIOPA's 2017 report is [here](#).

EIOPA OUTLINES KEY FINANCIAL STABILITY RISKS

On 25 June, EIOPA published its Financial Stability Report (the **Report**). The Report outlines the current financial stability risks facing the (re)insurance and pensions industry. The Report identifies the emergence of new types of risks, including risks relating to climate change (which are categorised as (i) physical risks and (ii) transitional risks); and the risks posed by technological advances such as cyber risks and InsurTech.

The report concludes that the persistent low yield environment remains the main risk for the insurance and funds sector. Overall, the Report shows that the insurance sector has continued to improve in 2017. In 2018 insurance companies appear to be adequately capitalised and in a position to deliver positive profitability despite the low yield environment.

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

EIOPA LAUNCHES EU-WIDE THEMATIC REVIEW ON CONSUMER PROTECTION ISSUES IN TRAVEL INSURANCE

On 17 July, EIOPA launched a thematic review to identify consumer protection issues in travel insurance. EIOPA will assess potential sources of consumer detriment arising from the design, distribution and sale of travel insurance products within the EU, and will focus in particular on cross-selling. Where areas of consumer detriment have been detected, EIOPA will identify steps to ensure fair treatment of consumers.

National Competent Authorities will identify and gather data from participating insurance companies. EIOPA aims to publish the findings in the first quarter of 2019.

EIOPA's questionnaire is [here](#).

EIOPA PUBLISH FIRST SET OF QUESTIONS & ANSWERS ON THE APPLICATION OF THE INSURANCE DISTRIBUTION DIRECTIVE

On 11 July, EIOPA published the first set of Questions & Answers (**Q&As**) in respect of the Insurance Distribution Directive (Directive 2016/97/EU) (**IDD**). The Q&As provide practical guidance on the application of the IDD and its implementing regulations. The Q&As address two key topics: (i) issues surrounding product oversight and governance; and (ii) regulatory requirements of Insurance-based Investment Products.

A link to the Q&As can be found via the press release [here](#).

EIOPA SEEKS EVIDENCE ON THE USE OF BIG DATA

On 6 July, EIOPA launched a European Union-wide thematic review on Big Data. This is a follow-up to the European Supervisory Authorities' cross-sectorial review of the use of Big Data, which was published in March 2018. This thematic review, which will cover each Member State of the EU, is being completed to gather empirical evidence on the use of Big Data by both insurers and intermediaries. The purpose of the thematic review is to analyse the potential benefits and risks for consumers resulting from Big Data. The review will focus on the impacts of data quality issues on financial inclusion and fair treatment of consumers by using consumer profiling techniques.

National Competent Authorities will conduct the review in conjunction with EIOPA. The data is being collected during July and August 2018. EIOPA aims to publish the key findings in the first quarter of 2019.

EIOPA's questionnaire is [here](#).

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