A Guide to Life Assurance Regulation in Ireland

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

A GUIDE TO LIFE ASSURANCE REGULATION IN IRELAND

Ireland is one of Europe's largest cross-border life assurance centres, a position it has enjoyed for over a decade. The free movement of insurance services guaranteed by the treaties establishing the European Union ensures that insurance operations established in Ireland can provide their services across all Member States of the European Union, Norway, Iceland and Liechtenstein. Ireland offers the prospect of an experienced and professional English speaking labour force with convenient access to well-established and highly skilled third party service providers to support the provision of all insurance services.

Although the State's favourable corporation tax rate is a factor in attracting financial services and other groups to Ireland, there are many other factors which attract cross border insurers to Ireland, including its solid legal traditions and a well-educated and adaptable workforce with regulated service providers.

In particular, Ireland offers a strong and transparent legislative, regulatory and fiscal regime in a common law jurisdiction but having adopted the harmonised EU authorisation and supervisory frameworks.

Ireland has implemented the Solvency II Directive (as amended by the Omnibus II Directive) which became effective across all EU Member States from 1 January 2016. The Solvency II regime has been given legal effect by secondary legislation in the form of Statutory Instrument namely, the European Communities (Insurance and Reinsurance) Regulations 2015 (the "**2015 Regulations**") which introduced a new prudential regulatory framework which reforms European insurance legislation affecting life undertakings.

Note that unless otherwise indicated, all references throughout to the Regulations are to be 2015 Regulations.

Dillon Eustace advises on the establishment and authorisation of life assurers with the structuring, formation and cross-border distribution of insurance products forming a key part of our service offering. We provide legal, regulatory and tax advice, as well as follow-on compliance advices, bringing to bear in-depth knowledge with a "*can do*" attitude.

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We hope you find this Guide of assistance.

1. Introduction

The carrying of insurance business is a regulated activity in Ireland which requires a life assurer to obtain an authorisation.

The competent authority responsible for the authorisation and supervision of insurance undertakings in Ireland is the Central Bank of Ireland (the "**Central Bank**"). The Central Bank maintains registers of all life insurance undertakings authorised to write business in or from Ireland whether through the establishment of a head office, a branch or by way of freedom of services and on a day-to-day basis is responsible for the regulation of life insurance undertakings in accordance with national and European Community legislative and regulatory provisions.

Ireland has a long established legislative framework for insurance business, with the principal legislative framework set out in EU membership domestic legislation, as amended and supplemented by national laws implementing EU laws. This framework is further supported by guidance notes and policy papers issued by the Central Bank.

Some of the main pieces of European and domestic legislation include:

1.1 European Legislation

Solvency II Directive (2009/138/EC)
Omnibus II Directive (2014/51/EU)
Commission Delegated Regulation (EU) (2015/35)
Solvency II specific implementing regulations
Third AML Directive (2005/60/EC)
Financial Conglomerates Directive (2002/87/EC)
Distance Marketing Directive (2002/65/EC)

1.2 Irish Legislation

The principal domestic legislation includes:

Assurance Companies Act, 1909
Insurance Act, 1936
Insurance (No. 2) Act, 1983
Insurance Act, 1964
Insurance Act, 1989
Unclaimed Life Assurance Policies Act 2003
Part IV of the Finance (Miscellaneous Provisions) Act 2015

European Communities (Financial Conglomerates) Regulations 2004
European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004
European Union (Insurance and Reinsurance) Regulations 2015
European Union (Insurance Undertakings: Financial Statements) Regulations 2015
Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Undertakings National Specific Templates Reporting Arrangements) Regulations 2016

1.3 Guidelines and Guidance Notes

Separately, Irish authorised life assurance undertakings need to adhere to European Insurance and Occupational Pensions Authority (**"EIOPA"**) Guidelines and Central Bank Guidelines.

(i) *EIOPA Guidelines*

EIOPA has issued a number of non-legally binding Guidelines (the **"Guidelines"**) relating to Solvency II. They are addressed to National Competent Authorities (**"NCAs"**) and financial institutions. The aim of the guidelines is to ensure the common, uniform and consistent application of EU law, as well as to establish consistent, efficient and effective supervisory practices. EIOPA states that the guidelines are "in line" with Solvency II and the Solvency II Commission Delegated Regulation (2015/35/EC) which the guidelines aim to clarify.

(ii) *Central Bank Guidance Notes*

The Central Bank issued Guidance Notes in 2015 relating to the completion and submitting of Life assurance applications to the Central Bank. Details of other guidelines applicable to life assurance undertakings are set out in the Authorisation section of this Guide.
Care needs to be taken in considering the extent to which any reliance may be placed on the Guidance Notes, in particular as to whether they represent current Central Bank's policy or position on a particular matter.

The purpose of this Guide is to outline the main regulatory requirements applicable to a life assurance undertaking in Ireland.

1.4 Other Dillon Eustace Insurance Publications

Related Dillon Eustace publications include:

(i) Final Countdown to Solvency II – The Own Risk Solvency Assessment

(ii) Solvency II – Aligning Risk and Capital Management

(iii) New Outsourcing Rules under Solvency II

(iv) Solvency II Look-Through

(v) Central Bank Programme of Insurance Sector Themed Inspections

(vi) Packaged Retail Investment and Insurance Products (PRIIPs)

(vii) Solvency II – the Central Bank's role under the Supervisory Review Process

(viii) Corporate Governance Code for Insurance Undertakings

We also publish a quarterly Insurance Legal and Regulatory Update available at www.dilloneustace.ie

2. Regulatory Regime

The Irish regulatory regime for life assurance is an extensive one covering the entire life of an undertaking from initial establishment through to winding-up. In a Guide of this nature, we can only cover the main areas to which the regulatory regime applies and readers must note that most actions taken by a life assurance undertaking during its life are subject to regulation, one of the reasons why a compliance matrix is an important document to be prepared at launch and followed and updated continuously.

2.1 Competent Authority

As noted above, the competent authority responsible for the regulation and supervision of life assurance undertakings in Ireland is the Central Bank.

The Central Bank maintains registers of all life assurance undertakings authorised to write business in Ireland whether through the establishment of a head office, a branch or by way of freedom of services.

The registers are available on the Central Bank's website www.centralbank.ie.

Additionally, the Central Bank publishes annually an Insurance Statistical Review, also available on its website.

2.2 Powers of the Central Bank

(i) *Authorisation and Supervision*

The Central Bank is the competent authority for both the authorisation and ongoing supervision of insurers. It has extensive powers to request a wide range of information from insurers, to carry out investigations of the business of an insurer and of connected persons, as well as powers of intervention where it considers an insurer is or may be unable to meet its liabilities or unable to provide the required solvency capital requirements. In such cases it can direct the insurer to take such measures as it deems appropriate. Similar powers of intervention arise in other circumstances, such as failure to comply with insurance legislation, inadequacy of reinsurance arrangements etc.

The Central Bank can also withdraw an authorisation where an undertaking does not make use of its authorisation within 12 months, expressly renounces it or ceases to pursue business for more than 6 months.

Regulation 26 of the 2015 Regulations provides the Central Bank with extremely broad supervisory powers and provides that the Central Bank may impose such conditions as it considers appropriate with respect to the conduct of insurance business with a view to ensuring the insurance undertaking carries out its responsibilities and obligations imposed by the 2015 Regulations in a proper manner.

(ii) *Power to appoint Adminitrator*

The Central Bank also has significant powers of intervention under the Insurance (No. 2) Act, 1983 to seek the appointment of an administrator to an insurer who can, upon court appointment, take over the management of the business of the insurer with a view to placing it on a sound commercial footing. Such an administrator is also granted power to dispose of all or any part of the business, undertaking or assets of the insurer concerned.

These powers have been used. In March 2010, the Central Bank successfully applied to the Irish High Court to appoint administrators to Quinn Insurance Limited on grounds of policyholder protection. The appointment allowed the business of Quinn Insurance to stay open for business, to continue to be run as a going concern under different management and to put the business on a sound commercial and financial footing.

(iii) Winding Up

The Central Bank may also petition for the winding up of a life assurance undertaking on the grounds of it being unable to pay its debts.

(iv) Enforcement/Sanctions

The Central Bank Act 1942 as amended by the Central Bank and Financial Services Authority of Ireland Act, 2004 empowers the Central Bank to impose significant monetary and other sanctions for “prescribed contraventions” of legislation or regulatory rules.

There is a particular enforcement framework commencing with an investigation or examination, potentially leading to an inquiry and sanctions being applied.

The sanctions include monetary penalties of up to the higher of Euro 10 million or 10% of annual turnover for regulated entities and of up to Euro 1 million for natural persons, as well as disqualifications (and several others).

The legislation provides that, at any time up to the conclusion of an inquiry, the Central Bank may enter into a binding settlement agreement with the undertaking and a person concerned in its management to resolve the matter.

(v) Other Powers

The Central Bank (Supervision and Enforcement) Act 2013 (the "**2013 Act**") has further enhanced the capacity of the Central Bank to supervise by giving the Central Bank the power to:

- give directions in the interests of the proper and effective regulation of financial service providers (which includes insurance undertakings);
- impose requirement on such an entity;
- order redress;
- require reports to be produced;
- and, other powers.

The 2013 Act also provides protection for persons making 'protected disclosures', which are disclosures made in good faith to the Central Bank commonly referred to as "whistle blowing".

Importantly, the Central Bank has the power under the 2013 Act to give directions in the interests of the proper and effective regulation of financial service providers (which includes insurance undertakings). Directions in relation to the business of the provider may cover areas such as suspension of the provision of services or the disposal of assets.

2.3 PRISM

The Central Bank supervises all regulated entities (including life assurance undertakings) by using a risk based approach called "**PRISM**". This model classifies financial entities in four groups based on their impact - High, Medium-High, Medium-Low and Low Risk - and dedicates resources to those entities with the largest impact on consumers and financial stability.

To be properly risk-based, one has to know where risks lie. Impact is a major component of this as impact indicates to the Central Bank the degree of damage a firm could cause to the financial system, economy and citizens were it to fail. The Central Bank considers that PRISM enables it to categorise based on impact so that supervisors can guard against the potential failure of firms posing higher potential impact.

2.4 Financial Supervision

The financial supervision of life assurance undertakings is the sole responsibility of the home State regulator, in Ireland , the Central Bank. This financial supervision must include verification, with respect to the entire business of the insurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the 2015 Regulations .

3. Authorisation

In order to carry on life assurance business in or from Ireland, an undertaking must hold an authorisation granted either by the Central Bank under the 2015 Regulations or by the competent insurance authority in its home EU Member State.

Authorisations are granted in one or more classes of life business (the full list of classes is set out in Appendix A) and, as provided for in Regulation 15(2) of the 2015 Regulations, an authorisation is valid throughout the EU Member States and allows an undertaking to carry on insurance business in other EU Member States by way of freedom of services or by way of establishment.

3.1 Central Bank Requirements

The Central Bank issues regulatory requirements and guidance applicable to life assurance undertakings, which can be viewed by clicking on www.centralbank.ie. Those issued at the date of this Guide include (but are not limited to):

(i) Guidelines for Insurance Undertakings on the Establishment of an EEA Branch (May 2009);

(ii) Guidance on the Risk Management of Derivatives (2010);

(iii) Guidelines on the Annual Compliance Statement in accordance with Section 25 (2011);

(iv) General Good Requirements for Insurance & Reinsurance Undertakings (2012);

(v) Guidelines on the Reinsurance Cover of Primary Insurers & the Security of their Reinsurers (2012);

(vi) Guideline for Life assurance Undertakings, Non-Life assurance Undertakings and Reinsurance Undertakings - Compliance Statements (2014);

(vii) Letter to Industry – Feedback on the Forward Looking Assessment of Own Risk (FLAOR) (2015);

(viii) Corporate Governance Requirements for Insurance Undertakings (2015);

(ix) Principles of Best Practice applicable to the distribution of Life assurance Products on a Cross-Border basis within the EU or a Third Country (2015);

(x) Withholding Tax - Guidance Note (2015);

(xi) Guidance for (Re)Insurance Undertakings on the Fitness and Probity Amendments (2015);

(xii) Domestic Actuarial Regime and Related Governance Requirements under Solvency II;

(xiii) Outsourcing Notification Process under Solvency II;

(xiv) FAQ - Day One Opening Balance Sheer Reconciliation Template (2016);

(xv) Letter to Industry - Solvency II Day One Reporting - May 2016Letter to Industry - Feedback on the Forward Looking Assessment of Own Risk (FLAOR) – (May 2016).

All of the above documents should be considered prior to establishing a life assurance undertaking and procedures should put in place to ensure compliance and adherence to these when conducting life assurance business.

3.2 Principal Conditions

The principal conditions applicable to an applicant for Irish head office authorisation are as follows:

(i) it must be a designated activity company, a public limited company, a company limited by guarantee, an unlimited company or a European Company (SE) and have its head office and registered office in Ireland;

(ii) it must submit to the Central Bank a scheme of operations to include particulars or proof concerning:

(a) the nature of the commitments which it proposes to cover;

(b) its guiding principals as to reassurance;

(c) the basic own fund items constituting the absolute floor of the Minimum Capital Requirement; and

(d) estimates of the cost of setting up the administrative services and the organisation of securing business and financial resources intended to meet those costs.

(iii) in addition, for its first three financial years, it must submit to the Central Bank a plan setting out detailed estimates of income and expenditure in respect of direct business, reassurance acceptances and reassurance cessions;

(iv) it must submit a forecast balance sheet and estimates of the future Solvency Capital Requirement and the Minimum Capital Requirement and the financial resources intended to cover technical provisions;

(v) it holds eligible own funds to cover the absolute floor of the Minimum Capital Requirement (€3,700,000 for a life assurance undertaking, including a captive insurance undertaking);

(vi) it must submit to the Central Bank evidence that it will be, and continue to be, in a position to hold eligible own funds to cover the Solvency Capital Requirement in accordance with the standard formula or by using an internal model under the 2015 Regulations;

(vii) it must submit to the Central Bank evidence that it will be, and will continue to be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement;

(viii) it must submit to the Central Bank evidence that it will be in a position to comply with the system of governance under the 2015 Regulations;

(ix) it must demonstrate that it must be effectively run by persons of good repute with appropriate professional qualifications or experience.

Note that the figures given above are minimum figures only. The actual financial resources requirement for a life assurance undertaking will be determined in association with the Actuarial function and the Central Bank in line with its business plan.

3.3 Limit on Activities

An Irish head office life undertaking may only carry on the business of life assurance (except in circumstances where the Central Bank under the 2015 Regulations authorises an insurance undertaking which is authorised to carry on life assurance activities to carry on non-life insurance activities to cover accident or sickness cover) and must limit its operations to the types of business provided for in the 2015 Regulations and to operations directly arising therefrom, to the exclusion of all other commercial business.

3.4 Application for Authorisation

As an initial step in the application for the authorisation process, a pre-application meeting with the Central Bank should be held at which the applicant should outline its plans to the Central Bank in broad terms including:

(i) nature of the business;

(ii) broad projections;

(iii) staffing;

(iv) outsourcing; and

(v) target markets.

This is a very important meeting and needs to be planned for carefully. Once it is clear that the Central Bank is satisfied with the outcome of the initial discussions, a detailed application for authorisation should be submitted to the Central Bank. The information which should be submitted as part of the application is set out in Appendix B to this Guide, but, in summary, includes:

(i) details of the applicant;

(ii) overview of parent/group;

(iii) regulatory supervision;

(iv) ownership structure;

(v) legal structure;

(vi) objectives and proposed operations;

(vii) system of governance;

(viii) risk oversight;

(ix) key functions;

(x) other functions (including investment and finance);

(xi) scheme of operations;

(xii) capital and financial projections;

(xiii) proposed head of actuarial function;

(xiv) policy and claims administration;

(xv) policy documents;

(xvi) sales and distribution;

(xvii) IT/ Business Continuity Plan; and

(xviii) any other relevant information to the application.

Although draft policy documents etc. should be submitted as part of the application, there is no requirement for prior approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the insurance undertaking intends to use in its dealings with policyholders.

3.5 Grant of Authorisation

Prior to formal authorisation, a successful applicant will normally be provided with confirmation of "*authorisation in principle*" once the application has been fully examined, reviewed and approved by the Central Bank. The applicant must then address final outstanding matters (often the introduction of capital, formal appointment of directors, finalising the company's name and objects and demonstrating its ability to comply with its conditions of authorisation), before formal authorisation is granted in the form of a physical certificate of authorisation.

"Authorisation in principle" does not entitle an applicant to write any business before receiving a certificate of authorisation.

4. Organisation and Supervision

In order to be considered to be "established" in Ireland, and therefore be eligible for authorisation as an Irish head office life undertaking, the 2015 Regulations provide that a life undertaking must:

(i) have an office in Ireland open during business hours for the transaction of life assurance business; and

(ii) must employ at such office persons duly qualified to carry on the business transacted and empowered to issue cover for the authorised classes of life business and to settle claims.

The life assurance undertaking is also required to demonstrate that it is run by persons of good repute with appropriate professional qualifications or experience and is required to have administrative and accounting procedures and internal control mechanisms which the Central Bank deem sound and adequate.

4.1 Governance

Life assurance undertakings are required to establish and maintain an effective system of governance which provides for the sound and prudent management of the business carried on by them. The system of governance must include the following:

(i) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities;

(ii) an effective system for ensuring the transmission of information; and

(iii) compliance with the requirements laid down in the system of governance requirements set out in Regulations 45 to 51 of the 2015 Regulations. The system of governance requirements covers areas such as risk management, internal control, fit and proper requirements, actuarial function etc.

Life assurance undertakings are obliged to review their system of governance internally on a regular basis and the system of governance implemented should be proportionate to the nature, scale and complexity of the operations of the undertaking.

They are also required to establish and maintain written policies in relation to risk management, internal control, internal audit and outsourcing (if appropriate) (the **"Policies"**) and must ensure that Policies are implemented. The Policies (and any significant amendments thereto) should be approved by the board of directors and should be amended in light of any significant changes.

Life undertakings must also take reasonable steps to ensure continuity in the performance of their activities, including the development of contingency plans and for this purpose are required to put in place appropriate and proportionate systems, resources and procedures.

In addition to the above requirements, Section 2 of the Central Bank Corporate Governance Requirements for Insurance Undertakings 2015 requires life assurers to have:

(i) a board of directors whose members individually meet the Central Bank's fitness and probity tests, with a majority of independent non-executive members;

(ii) Committees governing Audit and Risk, each with set terms of reference;

(iii) a full time Chief Executive Officer , with clear delegated powers and reporting obligations;

(iv) a Head of Actuarial Function;

(v) a Compliance Officer;

(vi) a Chief Risk Officer

(vii) an internal audit function;

(viii) a financial control function; and

(ix) to the extent required, an investment management function.

The majority of the board should be independent non-executive directors (this majority may include the Chairman). However, in the case of institutions that are subsidiaries of groups, the majority of the board may also be composed of group directors or a combination of group directors and independent non-executive directors, provided that in all cases the subsidiary insurance undertaking has at least two independent non-executive directors (3 in the case of a Major Institution) or such greater number as is required by the Central Bank.

Group directors are required to act critically and independently so as to exercise objective and independent judgement.

4.2 Directors' Compliance Statement

By means of a notice served on insurance and reinsurance undertakings under section 25 of the Central Bank Act 1997 (the "**Notice**"), the Central Bank has required such undertakings to submit a compliance statement to the Central Bank.

It has also issued a "Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings - Compliance Statements" (the "**2014 Guidelines**") which prescribes the manner in which life assurance undertakings are required to comply with the obligation in the Notice to submit a compliance statement to the Central Bank.

The compliance statement should be comprised of the relevant forms set out in the 2014 Guidelines and includes the compliance statement relating to the Corporate Governance Requirements.

Prior to submitting the compliance statement, all directors of the life assurance undertaking as of the date of submission must attest to the accuracy of the information provided in the compliance statement, and must do so by signing the forms concerned.

4.3 Central Bank's Fitness and Probity Regime

In similar fashion to other regulated entities, the Central Bank's Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010) (the "**Standards**") applies to life assurance undertakings.

The regime commenced on December 1, 2011 for all existing staff and new staff holding senior positions, (i.e. those who hold a Pre-Approval Controlled Function ("**PCF**")) in regulated entities other than Credit Unions. Where a person is proposed to be appointed to a PCF position, the life undertaking must submit an electronic Individual Questionnaire to the Central Bank in respect of that person and the appointment is subject to the Central Bank's approval.

The PCFs relevant to a life assurance undertaking include:

PCF1 Executive Director
PCF 2 Non-Executive Director
PCF 3 Chairman of the board
PCF 4 Chairman of the audit committee
PCF 5 Chairman of the risk committee
PCF 8 Chief Executive
PCF 11 Head of Finance
PCF 12 Head of Compliance

PCF 13 Head of Internal Audit
PCF 14 Chief Risk Officer
PCF 18 Head of Underwriting
PCF 19 Head of Investment
PCF 42 Chief Operating Officer
PCF 43 Head of Claims
PCF 48 Head of Actuarial Function

In respect of new appointments to less senior positions (i.e. those who hold a Controlled Function ("**CF**")), the regime commenced on 1 March 2012. With effect from December 1, 2012 the Standards have applied to all staff in CF roles (i.e. including staff hired prior to and following the coming into force of the new Standards).

4.4 Four Key Functions

Under Solvency II, all life assurance undertakings are required to establish the four key functions of the System of Governance (Compliance, Internal Audit, Risk Management and Actuarial Functions) with effect from 1 January 2016. The individuals appointed to these functions are subject to the requirements set out in the Central Bank Guidance for (Re)Insurance Undertakings on the Fitness and Probity Amendments 2015.

4.5 Actuarial Function

The Actuarial Function is a key function under Solvency II. The Head of the Actuarial Function is a PCF role under the Central Bank's Fitness & Probity regime. Life insurers are required to comply with all requirements for the Actuarial Function under Solvency II as well as any additional requirements as specified by the Central Bank's requirements relating to the "Domestic Actuarial Regime and Related Governance Requirements Under Solvency II".

A life insurer must ensure that the Actuarial Function is carried out by persons who:

(a) have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business, and

(b) are able to demonstrate their relevant experience with applicable professional and other standards, as outlined in Regulation 50 of the 2015 Regulations.

The 2015 Regulations are very prescriptive in terms of the Actuarial Function, which includes:

(i) the coordination of the calculation of technical provisions;

(ii) ensuring the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;

(iii) to express an opinion on the overall underwriting policy;

(iv) to express an opinion on the adequacy of reinsurance arrangements; and

(v) to contribute to the effective implementation of the risk management system.

The Actuarial Function is also responsible for valuing liabilities to policyholders, certifying premium rates and for certifying the solvency of a life undertaking. The Central Bank relies on the professional expertise of the Actuarial Function which is one of the reasons why the Central Bank has not laid down detailed requirements in relation to premium rates, policy conditions, and reserving standards. In this way, companies enjoy considerable freedom to innovate but in a manner that does not place solvency at risk.

Although the Actuarial Function can be outsourced in line with the Board of Directors approved outsourcing policy (for all undertakings except for those designated as High Impact undertakings under the Central Bank PRISM regime). Responsibility for the function cannot be outsourced and a designated person from within the insurance undertaking must assume overall responsibility for the outsourced function. That designated person must be a PCF role and must:

(a) be notified to the Central Bank;

(b) be fit and proper, as assessed by the Central Bank; and

(c) possess sufficient knowledge and experience regarding the outsourced function.

Additional domestic Irish requirements introduced by the Central Bank under the Domestic Actuarial Regime and Related Governance Requirements under Solvency II (the "**Requirements**") include the following:

(a) the appointment of a Head of Actuarial Function ("**HoAF**");

(b) responsibility for the actuarial function to be held by one person and in the case of a High Impact undertaking, this person must be an employee of the undertaking;

(c) the provision of the actuarial opinion to the Central Bank on an annual basis;

(d) the preparation and submission of an actuarial opinion to Board in respect of each ORSA;

(e) the preparation and submission of an actuarial opinion on technical provisions ("**AOTP**");

(f) the preparation and submission of an actuarial report on technical provisions ("**ARTP**");

(g) the establishment of Reserving policy; and

(h) all High, Medium High and Medium Low impact undertakings are required to engage a reviewing actuary ("**RA**") to conduct peer review of the TPs of the undertaking and related AOTPs and ARTPs.

The domestic Actuarial Requirements also set out some sector specific requirements, provide for some exemptions from the requirements for non-life assurance undertakings only and also provide the Format of Actuarial Opinion on Technical Provisions.

These domestic Actuarial Requirements were introduced as conditions to which (re)insurance undertakings are subject pursuant to Regulation 26 of the 2015 Regulations (see section on Regulatory Regime for more details). A contravention of those Requirements may lead the Central Bank to use its regulatory powers against the offending undertaking.

4.6 Compliance Function

The role of compliance function of a life undertaking includes advising the board of directors on compliance with the 2015 Regulations and with all other laws applicable in Ireland and assessing the possible impact of any changes to laws in Ireland applicable to the business of the insurance undertaking and identifying and assessing compliance risk

Each life assurance undertaking is required to have a Compliance Officer whose functions generally encompass the following duties:

(i) to obtain the approval of the board and Chief Executive Officer for a policy statement on compliance with the Insurance Acts and Regulations, the guidelines issued by the Central Bank and with other applicable legislation;

(ii) to monitor the implementation of compliance and to report periodically to the Chief Executive Officer and to the Board thereon;

(iii) to review products, procedures and systems on a planned basis from the viewpoint of effective compliance and to advise as to steps necessary to ensure compliance;

(iv) to review staff training processes so as to ensure appropriate compliance competencies.

The appointment of a Compliance Officer is designed to supplement, not supplant, the responsibility of the board and of senior management to ensure compliance with legislation and applicable guidelines.

The Directors' annual Compliance Certificate must be signed by all the Directors and must accompany the Annual Returns of the life undertaking when filed with the Central Bank. The certificate covers issues such as general compliance with the regulatory regime, internal controls and use of derivatives etc.

4.7 Risk Management Function

Life undertakings also must establish and maintain an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis, the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

The risk management system must be well integrated into the organisational structure and in the decision making processes of the life assurance undertaking.

Once again, it is the board of directors of the life assurance undertaking which is ultimately responsible for ensuring the effectiveness of the risk management system, setting the life assurance undertaking's risk appetite and overall risk tolerance limits as well as approving the main risk management strategies and policies.

The risk management function should be required to report to the board on risks that have been identified as potentially material and should also report on other specific areas of risks both on its own initiative and following requests from the board.

The risk management system and the written risk management policy should cover at least the following areas:

(i) underwriting and reserving risk management;

(ii) operational risk management;

(iii) reinsurance and other risk-mitigation techniques;

(iv) asset-liability management policy;

(v) investment risk management policy; and

(vi) liquidity and concentration risk management.

The ORSA is part of the risk management system.

4.8 Internal Audit

Life undertakings are also required to establish and maintain an effective internal audit function that must include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

Importantly, any findings and recommendations of the internal audit must be reported to the board of directors to determine what actions should be taken with respect to each of the internal audit findings and recommendations and must ensure that those actions are carried out.

4.9 Internal Controls

An effective internal control system must also be established and maintained by a life company. Regulation 48(2) of the 2015 Regulations provides that the internal control system must include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function (see above for more details on the compliance function).

5. Capital Requirements

A variety of capital requirements are imposed on life undertakings as very briefly touched on below.

5.1 Technical Provisions

Life assurance undertakings must establish technical provisions with respect to all insurance obligations towards policyholders and the beneficiaries of insurance contracts in accordance with Regulations 83 – 101 of the 2015 Regulations (the "**Technical Provisions**").The Technical Provisions are to be calculated in accordance with Regulation 84.

Where a life assurance undertaking fails to comply with the Technical Provisions requirements, the Central Bank has the authority to restrict or prohibit the free disposal of the assets after having first communicated such intentions to the supervisory authorities of any Member State(s) in which the insurance undertaking operates.

5.2 Own Funds

Under Solvency II, the capital of the life undertaking is known as "own funds".

Own funds comprise of both *basic own funds* and *ancillary own funds*.

Basic own funds consist of the excess of assets over liabilities and also subordinated liabilities whereas ancillary own funds consist of items other than basic own funds which can be called up to absorb losses. Own fund items are classified into 3 tiers – Tier 1, Tier 2 and Tier 3, with Tier 1 being the highest quality capital. The classification depends on whether the item is basic or ancillary and the extent to which it possesses certain characteristics. Eligibility criteria and quantitative limits apply in respect of the Tiers of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement.

5.3 Solvency Capital Requirement

Life assurance undertakings must put in place a solvency capital requirement ("**SCR**"). Regulation 113 requires that the SCR be calculated in accordance with the standard formula (as provided for in Regulations 116 – 124) or a life undertaking's internal model, subject to Regulations 125 – 138.

Where a life assurance undertaking is unable to comply with the SCR or where there is a risk of non-compliance in the following three months, it must immediately notify the Central Bank that the SCR is no longer being complied with or that there is a risk of non-compliance in the following three months. It must also submit to the Central Bank, within two months from the observation of non-compliance with the SCR, a realistic recovery plan.

In the event of non-compliance with the SCR, the Central Bank has the authority to restrict or prohibit the free disposal of the assets of the life assurance undertaking and it can inform the supervisory authorities of any Member State(s) in which the life assurance undertaking operates of the measures taken and it can request those authorities to take the same measures.

5.4 Minimum Capital Requirement

Regulation 140(2) provides that the minimum capital requirement ("**MCR**") of a life assurance undertaking shall have an absolute floor of €3,700,000 and in accordance with Regulation 140(4), the MCR must neither fall below 25% nor exceed 45% of the SCR.

Regulations 139 and 140 set out how the MCR shall be calculated and must calculate the MCR on a quarterly basis and report the results of such calculations to the Central Bank.

Where a life assurance undertaking is unable to comply with the MCR or where there is a risk of non-compliance in the following three months, it must immediately notify the Central Bank that the MCR is no longer being complied with or that there is a risk of non-compliance in the following three months. Within one month from the observation of non-compliance with the MCR, the life undertaking must submit a finance scheme for the restoration of a sound financial position to the Central Bank.

In the event of non-compliance with the MCR, the Central Bank can restrict or prohibit the free disposal of the assets of the life assurance undertaking and in such circumstances the Central Bank shall inform the supervisory authorities of any Member State(s) in which the life assurance undertaking operates of the measures taken and can also request those authorities to take the same measures.

A register showing the assets representing the technical provisions in respect of each class of insurance business must be kept by the insurance undertaking and it may be requested by the Central Bank to furnish the Central Bank with a certificate of the value of those assets.

5.5 Insurance Undertakings in Difficulty

Where a life assurance undertaking is experiencing a deteriorating financial condition, Regulation 151 confers extremely broad powers on the Central Bank whereby it can direct an insurance undertaking to take any measures necessary to safeguard the interests of policyholders, provided that such measures are proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance undertaking.

5.6 Capital Add-ons

In exceptional circumstances, the Central Bank may require an undertaking to hold more capital in the form of a *capital add-on*. In the event of a capital add-on being imposed on an undertaking, the amount of the capital add-on is added to the insurance undertaking's SCR to calculate the new SCR for that undertaking.

Once imposed by the Central Bank, a capital add-on should be reviewed at least annually by the Central Bank and if the circumstances that led to the imposition of the capital add-on have been remedied, then the undertaking can seek to have the capital add-on removed.

5.7 Solvency II Reporting Obligations

(i) Solvency II – Day 1 Reporting Requirements for 2016

Life assurance undertakings having a financial year commencing between 1 January 2016 and 1 July 2016 are required to submit to the Central Bank the following documentation:

(a) an opening valuation of assets and liabilities as the date of the commencement of the insurance undertaking's financial year;

(b) a qualitative explanation for each material class of assets and liabilities as to the main differences between the figures reported in the opening valuation (referred to above) and those calculated according to the solvency regime previously in place; and

(c) the insurance undertaking's MCR, SCR and eligible Own Funds as the date of the commencement of the insurance undertaking's financial year.

(ii) Quarterly QRTs

Quarterly QRTs are required to be submitted for each quarter in 2016 specifying in greater detail and supplementing the information contained in the solvency and financial condition report and regular supervisory report (outlined in further detail below). It should be noted that exemptions were granted under Article 35(6) of the Solvency II Directive to low and medium low impact undertakings.

(iii) Annual QRTs

Annual QRTs must be submitted to the Central Bank on an annual basis pursuant to Article 304(1)(d) of the Delegated Regulation, together with a directors' accuracy certificate attesting to the accuracy of the information submitted in the Annual QRT.

*(iv) Solvency and Financial Condition Report (“**SFCR**”)*

The SFCR is required to be submitted on an annual basis and publically disclosed on the life assurer’s website. It is a narrative that supports the Annual QRT and must contain the following information:

(a) a description of the business and the performance of the undertaking;

(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements; and

(e) a description of the capital management.

*(v) Regular Supervisory Report (“**RSR**”)*

The RSR must be submitted once every three years and must include a summary highlighting any material changes that have occurred in the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period, and provide a concise explanation of the causes and effects of such changes.

All undertakings are required to submit their first RSR at the same time as their first set of annual QRTs and their SFCR.

*(vi) Own Risk and Solvency Assessment (“**ORSA**”)*

Life assurance undertakings are also required to submit to the Central Bank an ORSA on an annual basis. The OSRA can be submitted at any time during the year and should contain at least the following details:

(a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

(b) the compliance, on a continuous basis, with the capital requirements and with the requirements regarding technical provisions; and

(c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the SCR.

The ORSA can be submitted together with a together with a Directors' Accuracy Certificate attesting to the accuracy of the information submitted in the ORSA.

(vii) Directors' Accuracy Certificate

Life assurance companies must annex a Directors' Accuracy Certificate, signed by at least two directors and the Chief Executive Officer, to the annual quantitative templates, each own risk and solvency assessment (the "**ORSA"**) and the regulatory supervisory report or the annual summary thereof attesting the accuracy of the information provided in those templates and reports.

(viii) Pre-Defined Events

In accordance with Guideline 30 of EIOPA's Guidelines on Reporting and Public Disclosure, life assurance undertakings must immediately notify in writing the Central Bank of any events which could reasonably lead or have already led to material changes in an undertaking's business and performance, system of governance, risk profile and solvency and financial position (a "**pre-defined event**").

(ix) Other Reporting Obligations

Since 1 January 2016, life assurance undertakings are subject to further reporting obligations, including:

(a) life assurance undertakings are required to submit their written policies and procedures of insurance and reinsurance undertakings for risk management, internal control and (where relevant) outsourcing to the Central Bank for prior approval;

(b) every insurance undertaking will be required to report any Internal Audit findings to the Central Bank who shall determine what actions are to be taken and ensure those actions are carried out.

6. Outsourcing

Solvency II introduces a number of detailed and prescriptive conditions in relation to outsourcing requirements for life insurance undertakings. Under the 2015 Regulations, a life assurer will fall within the scope of the outsourcing rules if it outsources a "critical or important" function or (re)insurance activity.

The concepts of "outsourcing" and "function" are defined terms in the 2015 Regulations

6.1 Definition of Outsourcing

The term "***outsourcing***" refers to the entry by a life assurer into contractual relationships with a third party service provider whereby it is agreed that the life assurer may delegate to that service provider the performance of specific functions and/or services.

Regulation 51 of the 2015 Regulations provides that insurance undertakings shall remain fully responsible for discharging all of its obligations under the 2015 Regulations when they outsource functions or any insurance or reinsurance activities.

6.2 Key Outsourcing Requirements

The 2015 Regulations impose key outsourcing obligations on insurance undertakings who wish to outsource critical or important functions including:

(i) Obligation to notify the Central Bank

Notification in a timely manner to the Central Bank will be required under Regulation 51(3) of the 2015 Regulations before outsourcing any critical or important functions or activities or implementing any material developments or changes in relation to them.

(ii) Written Outsourcing Policy

Regulation 44(5) of the 2015 Regulations places a mandatory legal obligation on (re)insurance undertakings that outsource critical or important functions or (re)insurance activities to a service provider to establish a written outsourcing policy which takes into account the impact of outsourcing on its business and the reporting and monitoring arrangements to be implemented in cases of outsourcing.

(iii) Intra-group outsourcing

Intra-group outsourcing is not necessarily different from external outsourcing. Outsourcing to group members also falls within the scope of the Solvency II rules.

The Solvency II rules require that consideration should be given to the extent to which the undertaking controls or has the ability to influence the actions of the service provider and the nature of the outsourced functions. Although intra-group outsourcing may allow for a more flexible selection process, it should not be seen as automatically requiring less care and oversight than external outsourcing.

(iv) Key features to be included in any outsourcing contractual documentation

Where a (re)insurance undertaking outsources any critical or important functions or (re)insurance activities, a written agreement must be entered into with the service provider. That outsourcing arrangement must include certain key provisions such as clearing defining the rights and obligations of both parties, granting the Central Bank access to all information relating to the outsourced activity, terms and conditions upon which the third party outsource entity may itself outsource activities etc.

6.3 Related Party Transactions

While no specific guidance has been issued by the Central Bank under Solvency II, the old DETE guidance notes relating to the corresponding section under the Solvency I regime indicated that "there is no bar on inter-company transactions in themselves but special prudential considerations can apply to such transactions, hence the provision for advance notification. It is not practicable to lay down a hard and fast rule as to the notice which should be given but it should be sufficient, given the nature of the proposed transaction, for it to be given proper consideration (including discussions with the undertaking). Neither can "material" be tightly defined but the Minister would naturally have most concern about transactions which could have a significant effect on the financial profile of the undertaking, e.g. inter-company loans affecting capital gearing, transactions designed to reduce solvency margin requirements, etc.".

7. Ownership and Qualifying Holdings

In addition to the requirement to disclose full details of shareholders and other persons who have qualifying holdings, direct or indirect in the applicant and the amounts of such holdings as part of the application for authorisation, prior Central Bank approval is required thereafter for certain acquisitions and disposals, both direct and indirect, in the ownership / voting rights of life companies.

7.1 "Qualifying Holdings"

A "qualifying holding" in an insurance undertaking means a direct or indirect holding:

(a) that represents 10% or more of the capital of, or voting rights in, the undertaking, or

(b) that makes it possible to exercise a significant influence over the management of the undertaking.

For the purpose of determining whether a holding:

(a) is a qualifying holding, or

(b) has reached or exceeded or will reach or exceed a prescribed percentage of the capital of or voting rights in the undertaking,

the rules regarding the calculation of voting rights in the Transparency (Directive 2004/109/EC) Regulations 2007 (as amended) and the conditions regarding aggregation of voting rights in those Regulations need to be taken into account.

7.2 Key Obligations

(i) Prior approval for Acquisitions

Under Regulation 60 of the 2015 Regulations, a proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in a life assurer without having previously notified in writing the Central Bank of the size of the intended holding, together with sufficient information to enable the Central Bank to consider the proposed acquisition in accordance with pre-set criteria (influence on the life assurer, suitability of the proposed acquirer, financial soundness of the proposed acquisition etc.). A specific Acquiring Transaction Notification Form is required to be completed. Depending on the proposal, a revised business plan, projections and reorganisational framework may be required.

A similar process applies where an entity who already holds a qualifying holding seeks to increase the size of its holding so that its holding would either reach or exceed a prescribed percentage or so that the life undertaking would become its subsidiary.

The prescribed percentages are 20%, 33% or 50%.

There are specific timeframes within which notifications must be assessed, criteria against which they must be assessed when dealing with such notifications and a formal decision must issue by the end of the assessment period, failing which the acquisition is deemed to have been approved.

Completion of an acquisition may only be made where the required notification has been made and acknowledged and either the Central Bank has notified that it does not oppose the proposed acquisition or has not notified that it does oppose by the end of the assessment period.

(ii) Prior notifications of Disposals

Regulation 61(1) of the 2015 Regulations provides that a person shall not, directly or indirectly, dispose of a qualifying holding in an insurance undertaking without having previously notified the Central Bank in writing of the intended size of the holding to be disposed of.

In addition, under Regulation 61(2) a person shall not, directly or indirectly, dispose of part of a qualifying holding in an insurance undertaking without having previously notified the Central Bank in writing of the intended size of the holding, if, as a result of the disposal that :

(a) the percentage of the capital of, or the voting rights in, the undertaking that the person holds would fall to or below a prescribed percentage; or

(b) in the case of a person who is a company or other body corporate, the undertaking would cease to be the person’s subsidiary.

(iii) Notification by Target

The life assurance undertaking itself is also required to make a notification under the 2015 Regulations of the above types of proposed changes.

8. Remuneration Policy

In accordance with Article 275 of the Delegated Regulation, life assurance undertakings must implement and maintain a remuneration policy (the "**Policy**") in line with the undertaking's risk profile, objectives and risk management practices.

The Policy shall apply to the life assurance undertaking as a whole and there must be clear and transparent governance with regard to remuneration.

The Policy should be formulated based on the following principles:

(a) where remuneration schemes include both fixed and variable elements, the fixed or guaranteed element of the remuneration shall represent a sufficiently high percentage of the total remuneration to avoid employees being overly dependent on the variable (or bonus) element and to allow the undertaking to operate a fully flexible bonus policy, including the possibility of paying no variable element.

(b) where the variable remuneration is performance-related, the total amount of the variable remuneration shall be based on a combination of the assessment of the performance of the individual and of the business unit concerned and of the overall result of the undertaking;

(c) a substantial portion of the variable remuneration, irrespective of the form in which it is to be paid, shall contain a flexible, deferred component that takes account of the nature and time horizon of the business of the life assurance undertaking: that deferral period shall not be less than three years and the period shall be correctly aligned with the nature of the business, its risks, and the activities of the employees in question;

(d) an employee's performance shall not be based solely on financial performance;

(e) the measurement of performance, as a basis for variable remuneration, shall include a downwards adjustment for exposure to current and future risks, taking into account the life assurance undertaking's risk profile and the cost of capital;

(f) termination payments shall be related to the performance of the employee achieved over their entire period of service and such payments shall be designed and structured in a manner that does not reward failure; and

(g) employees subject to the Policy shall be prohibited from using any personal hedging strategies and/or remuneration and liability-related insurance which would undermine the risk alignment effects embedded in their remuneration arrangement.

The Policy shall be made available to the staff of the life assurance undertaking and shall be designed in such a way as to account for the nature, scale and complexity of the risks inherent in the business of the life insurer.

9. Investments

The rules concerning investments which can be made by a life assurance undertaking need to be considered in the context of the undertaking's minimum capital requirement, its solvency capital requirement, relevant product related rules as well as the undertaking's risk appetite. Other rules apply, such as those relating to derivatives.

(i) Solvency II

Solvency II also requires insurers to invest in assets in accordance with the *prudent person principle*. As such, they must only invest in assets whose risks they can properly identify, measure, monitor, manage, control and report, and appropriately take into account when conducting the ORSA.

A life insurer is required to invest all its assets, in particular those covering the MCR and the SCR in such a way as to ensure the security, quality, liquidity and profitability of the portfolio as a whole and, in addition the localisation of those assets should be such as to ensure their availability.

The life insurer should invest its assets held to cover the technical provisions in a manner appropriate to the nature and duration of its insurance and reinsurance liabilities and in the best interest of all policyholders and beneficiaries, taking into account any disclosed policy objective. In the event of a conflict of interest arising, the undertaking (or the entity managing its asset portfolio) must ensure that the investment is made in the best interest of policy holders and beneficiaries. In addition, it should be noted that Regulation 141(3) of the 2015 Regulations sets out specific requirements with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policyholder.

The Central Bank may, where it considers it appropriate in the exercise of its powers under financial services legislation, restrict the types of assets of reference values to which policy benefits may be linked but any such restriction will only be applied where the investment risk is borne by a policy holder who is a natural person and shall not be more restrictive than those set out in Directive 85/611/EEC.

*(ii) The Corporate Governance Code of Credit Institutions and Insurance Undertakings (the "**Code**")*

The Code requires undertakings to have a Risk Appetite Statement ("**RAS**") in place. The RAS should provide the directors, management and staff with a framework which facilitates the identification and management of both risks and opportunities. Clear and concise strategic objectives should underpin the RAS.

The board of a life undertaking needs to understand the risk capacity of the organisation prior to framing strategy and setting risk appetite. The risk capacity represents the upper limit beyond which a breach is likely to result in failure

(iii) Risk management of Derivatives

Derivative products have inherent risks that must be managed properly. As with traditional investment activities, life insurance undertakings must look at liquidity, cashflow and operational and legal risks in their derivatives activities.

It is important that life undertakings have a clear and prudent policy in place detailing the use of derivatives and have appropriate controls in place to ensure that the policy is implemented.

It should also be noted that life insurance undertakings are required to submit a Directors' Compliance Certificate with their Annual Returns. The certificate states that the undertaking's practice in relation to the management of derivatives complies with the Central Bank's Guidelines on the Risk Management of Derivatives.

10. General Good and Other Irish Legal Requirements

In addition to insurance regulation, an Irish head office life undertaking is required to comply with the following general good requirements:

(i) the provisions of the Consumer Information Act, 1978 (applicable to insurance contracts in the marketing and selling of insurance products);

(ii) the provisions of the Sale of Goods and Supply of Services Act, 1980 (applicable to insurance contracts in the marketing and selling of insurance products);

(iii) provision relating to the supervision and regulation of insurance intermediaries under the Investment Intermediaries Act, 1995 (as amended);

(iv) the Consumer Credit Act and the Unfair Contract Terms legislation;

(v) the Consumer Protection Code 2012; and

(vi) the Minimum Competency Code 2011.

Such companies are subject to general Irish and EU legislative provisions applicable to Irish companies including but not limited to the Companies Acts, data protection and anti-money laundering legislation, insurance mediation legislation, employment law, auditing and taxation legislation.

11. Consumer Protection Code

The Consumer Protection Code (the "**Code**") incorporates both a rigorous set of common rules applicable to most entities regulated by the Central Bank and other sector specific rules relevant to firms offering certain products and services. The Central Bank published a revised Code, which came into effect on January 1, 2012.

11.1 Specific Exclusions

The following are specifically excluded from the scope of the Code:

(i) services provided by regulated entities to persons outside the State;

(ii) MiFID services;

(iii) moneylending under the Consumer Credit Act 1995;

(iv) reinsurance business;

(v) bureau de change business;

(vi) credit union activities, other than when acting as insurance intermediaries;

(vii) the provision of credit involving a total amount of credit of less than €200; and

(viii) hire purchase and consumer hire agreements.

Life undertakings are subject to the Code when selling to customers in Ireland only.

11.2 General

All instructions received from or on behalf of consumers must be processed properly and promptly and maintain a record of any condition attaching.

The sale of products/services must not be contingent and any optional extras must be agreed to before any additional fee can be charged.

All warnings required under the Code must be prominently displayed – in a box, bold type and larger font than that used throughout the document or advertisement, and the name of a product or service must not be misleading as to benefits it can deliver.

11.3 Terms of Business

All regulated entities within scope of the Code are required to draw up a *terms of business* outlining the basis on which services are to be provided and which must be given to consumers prior to commencement of services. The minimum information to be included in the terms of business includes:

(i) general disclosure of the regulated entity's name, address and group affiliation;

(ii) confirmation of authorisation and regulatory status;

(iii) description of the services to be provided;

(iv) statement of the charges to be imposed;

(v) information on the firm's conflict of interest policy, complaints handling process and membership of compensation scheme; and

(vi) an outline of the firm's available remedies in light of default by the consumer.

11.4 Provision of Information to the Consumer

Regulated entities have a positive obligation to bring key information to the attention of consumers and information provided must be clear, comprehensible, timely to the situation and where altering its range of services must give at least 1 month's notice and where ceasing operations 2 months' notice.

When telephone conversations are being recorded there is a positive obligation upon a regulated entity to inform the consumer at the outset of the call.

When communicating via electronic media a regulated entity is required to have adequate measures in place to ensure the security of information passed to and received from the consumer.

Additional *ad hoc* requirements include the timely provision of receipts and terms and conditions attaching to a service or product where relevant.

11.5 Advertising

Under the Code more balanced information must be provided to consumers in advertisements. Where advertisements outline the benefits of a product or service, they must also outline the risks. Additionally, the Code requires that ‘key information’ on products and services must be made prominent in advertisements.

11.6 Product Producers

Product producers must give detailed information to intermediaries in relation to the investment products which the intermediaries sell on behalf of the product producers so that the intermediaries can assess the suitability of a particular product for a consumer.

11.7 Preservation of Consumer’s Rights

Regulated entities may not attempt to limit their responsibility, liability or duty of care to consumers, whether based in law, regulation or best practice, except where permitted by legislation.

11.8 Knowing the Consumer

A regulated entity is obliged to gather and record sufficient information from a consumer appropriate to the nature and complexity of proposed products and services. When subsequent products and services are to be provided, the regulated entity must gather and record any material changes to the consumer’s circumstances.

A regulated entity must endeavour to have the consumer certify the accuracy of information provided by them. Where the consumer refuses to either provide the information required or to certify the information, this must be recorded on the consumer’s record.

A regulated entity must maintain a register of its customers that are consumers and subject to the Code.

11.9 Vulnerable Consumers

A regulated entity will be required to identify vulnerable consumers and to provide such consumers with such reasonable arrangements and/or assistance that may be necessary to facilitate the vulnerable consumer in his/her dealings with the regulated entity.

11.10 Suitability

A regulated entity is obliged to ensure that, having regard to the facts disclosed by the consumer and facts to which the regulated entity is aware, any product or service offered, product selection offered or product recommended to a consumer is suitable to that consumer. Where a range of products is offered to the consumer the product options must also be the most suitable from that range. The reasons for suitability must be documented by the regulated entity within a written statement, a copy of which is to be provided to the consumer.

11.11 Unsolicited Contact with Consumers

Regulated entities may only make unsolicited contact with consumers under strict guidelines and between the hours of 9.00 a.m. and 9.00 p.m. Monday to Saturday.

Unsolicited personal or “doorstep” visits for the purpose of selling financial products to consumers are prohibited under the Code.

In the case of consumers who are existing customers contact by personal visit or telephone may only occur where authorisation exists, i.e. by way of direct consent: where the consumer has been provided with a similar product or service within the previous 12 months; where the consumer holds a product, which requires the regulated entity to maintain contact with the consumer in relation to that product, and the contact is in relation to that product; or in the situation where contact is limited to offering protection policies.

Regulated entities may only make unsolicited contact with consumers who are not existing customers (by personal visit or telephone) where written consent has been provided within the previous 12 months: where the consumer has a current business telephone or trade listing in the State (or is a director or partner in a firm with such a listing); the consumer is a director of a company, or a partner in a firm with an entry in one of these directories and contact is made via the business telephone number of the company or firm in question and is in connection with their role as director of the company or partner in the firm; where contact is limited to offering protection policies; or the consumer has been referred by an Irish authorised financial services provider, a group entity, a solicitor, a certified person or an existing customer (and where subsequent consent has been obtained).

Binding agreement may not be made by way of unsolicited contact except where allowed under the EC (Distance Marketing of Consumer Financial Services) Regulations, 2004.

11.12 Disclosure Requirements

A regulated entity must include its relevant regulatory disclosure statement on all business stationery, advertisements and electronic communication, including its website's homepage in respect of the provision of authorised products and services, entities are not permitted to use this disclosure when providing non-authorised products and services.

11.13 Charges

Where applicable a regulated entity must, prior to the provision of a product or service, provide consumers with details of all charges to be levied upon them including the amounts where possible. Where either increases are to occur, or new charges levied, 30 days' notice must be provided to the consumer and statements must contain details of all charges levied for the period. 10 days' notice and a breakdown must be given where charges are applied periodically to accounts.

11.14 Errors

A regulated entity will be required to resolve all errors speedily and no later than six months after the date upon which the error was first discovered. Up-to-date logs must be maintained of all errors and complaints. Where material errors are identified the action plan for correction must be detailed in writing to the Central Bank without delay and in any case no later than the next business day.

11.15 Complaints Handling

Regulated entities must have a written complaints handling procedure in place. Application of the procedure need not apply where the complaint is rectified to the complainant's satisfaction within 5 business days (this must be recorded).

A procedure must include inter alia that:

(i) the complaint will be acknowledged in writing within 5 business days of receipt along with details of a contact person(s);

(ii) that a written update will be provided to the complainant at least every 20 business days;

(iii) where possible the complaint will be resolved within 40 business days of receipt and where this has elapsed the expected time frame will be provided along with information relating to the right of the complainant to refer the matter to the Financial Services Ombudsman or Pensions Ombudsman and contact details of same;

(iv) written notification of the outcome of the investigation will be provided within 5 business days of its completion, along with details of any offer or settlement arising and the right of the complainant to refer the matter to the Financial Services Ombudsman or Pensions Ombudsman and contact details of same.

Consumers making verbal complaints must be given the opportunity to have it treated as a written complaint.

Regulated entities must maintain a record of all complaints that are subject to the procedure including details of each relevant complaint, all responses and correspondence associated and the action taken to resolve the complaint.

11.16 Consumer Records

Records relating to individual consumers as detailed within the Code must be held in readily accessible form by regulated entities for a period of 6 years from the date the relationship with the consumer ends. Records relating to individual transactions must be retained for 6 years from the date of the transaction.

Documentation required includes inter alia, those relating to identification, those required to comply with the Code, all correspondence relating to provision of a service or product, all documents and applications completed and signed by the consumer and all original supporting documents received from the consumer in support of an application.

11.17 Payment of Commissions, Fees and Other Rewards

A regulated entity may only pay a fee, commission or other reward to authorised persons as outlined within paragraph 3.25 of the Code.

11.18 Conflict of Interest, Soft Commissions and Chinese Walls

Where a conflict of interest exists and cannot be reasonably avoided, businesses may only proceed where the consumer has consented in writing. Soft commission agreements must be in writing and business conducted there under must not conflict with the best interests of consumers. Full disclosure must be made to affected consumers.

A documented and effective procedure detailing maintenance of Chinese Walls must be in place within differing businesses of regulated entities and connected parties in relation to information that could result in a conflict of interest or be open to abuse.

12. Minimum Competency Code

12.1 Minimum Competency Code

The Central Bank's Minimum Competency Code (the "**Code**") establishes minimum professional standards for financial services providers, with particular emphasis on areas dealing with consumers.

The Code is closely integrated with the revised Fitness and Probity Standards (the "**Fitness and Probity Standards**") which were issued under S.I. 437 Central Bank Reform Act (Sections 20 and 22) Regulations 2011 (as amended by S.I. 615 of 2011) (the "**Regulations**") which also came into effect on 1 December 2011.

12.1.1 Scope of the Code

The Code applies to persons carrying out a Pre-Approval Control Function ("**PCF**") or a Controlled Function ("**CF**") on a professional basis in a regulated firm, the exercise of which includes;

(i) providing advice to consumers on retail financial products;

(ii) arranging or offering to arrange retail financial products for consumers; and

(iii) carrying out one of the specified functions set out in Appendix 2 of the Code, for example assisting a consumer in making an insurance claim, determining the outcome of an insurance claim or adjudicating on a complaint which relates to advice about a retail financial product or the arranging or offering to arrange a retail financial product for a consumer.

The Code contains categories of products which are considered to be retail financial products which are set out in Appendix 1 of the Code and include savings, investments, collective investment schemes, life assurance products, tracker bonds, shares in a company listed on the Stock Exchange, pensions, insurance and housing loans. The Code sets out the minimum level of knowledge and competence required for each category of retail financial product.

12.1.2 Key Definitions

'Advice' in relation to a retail financial product means a recommendation or opinion provided to a consumer which may lead the consumer to enter into or become entitled to benefit under, terminate, exercise any right or option under, or take any benefit from one or more retail financial product.

'Retail Financial Products' include life assurance protection policies, general insurance policies, shares and bonds and other investment instruments, savings, investment and pension products, housing loans and associated insurances and consumer credit and associated insurances (a full list of Retail Financial Products is set out in the Code).

12.2 Exemption

The Code does not apply to regulated firms who provide services to customers who are not "consumers", i.e. the Code will only apply to regulated firms who deal with "consumers".

The term "consumer" can be taken to mean:

(i) "a person or group of persons, but not an incorporated body with an annual turnover in excess of three million Euro (for the avoidance of doubt, a group of persons includes partnerships and other unincorporated bodies such as clubs, charities and trusts, not consisting entirely of bodies corporate); or

(ii) Incorporated bodies having an annual turnover of three million Euro or less in the previous financial year (provided that such body shall not be a member of a group of companies having a combined turnover greater than the said three million euro); and includes, where appropriate, a potential "consumer".

Firms were not subject to the Minimum Competency Requirements when providing services in other EU/EEA Member States, however this is not expressly stated in the Code. Dillon Eustace has however received clarification from the Central Bank that the Standards will not apply to regulated firms providing services to consumers in other EU/EEA Member States. This interpretation is in line with the revised Consumer Protection Code which also excludes the application of that code to consumers outside of the State.

12.3 Administrator/Clerical Officer

Where an individual's <u>only activity</u> is the processing of quotation requests within a narrow and rigid set of acceptance criteria and according to a prescribed <u>script</u> and routine, the following requirements apply:

(i) the acceptance criteria, script and routine must be devised by an accredited individual;

(ii) the individual must have received relevant and appropriate training (required to be kept up to date on an ongoing basis);

(iii) the individual must refer requests for additional information and advice to an appropriately accredited individual;

(iv) the individual must be supervised by an appropriately accredited individual; and

(v) the individual's activity must be monitored to ensure compliance with the Code.

12.4 Branch/Cross Border

The Code will apply to a firm authorised/registered in another EU/EEA state if providing services into Ireland on a branch or cross-border basis. The firm will be exempt from compliance with the Code if the responsibility of the Code is reserved to the firm's home state regulator or to a provision of EU law.

Firms authorised or registered with the Central Bank are <u>not subject</u> to the Code when providing services in other EU/EEA states. They must however comply with corresponding host state requirements.

12.5 Not Considered to be Advice

For the purposes of the Code, the following are not considered to be Advice:

(i) a brochure/booklet or other information to a Consumer without the provision of Advice;

(ii) information given in a publication/broadcast where the principal purpose taken as a whole is not to lead a Consumer to use a specific Retail Financial Product or any specific provider of one;

(iii) information given in a seminar/lecture where principal purpose is not to lead a Consumer to use a specific Retail Financial Product and where the person engaged in such an event will earn no remuneration, commission, fee or other reward if an attendee out of such attendance uses any specific Retail Financial Product or provider of such product;

(iv) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings; and

(v) the provision of information on an incidental basis in conjunction with a professional activity, once the purpose of the activity is not to lead a Consumer to use a specific Retail Financial Product.

12.6 Minimum Competency Code and Relevant Recognised Qualifications

A person performing a CF or PCF on a professional basis will not be taken to comply with the Central Bank's Minimum Competency Standards, unless he or she:

(i) has completed one or more recognised qualification(s) which are relevant to the function to be exercised; or

(ii) is a grandfathered person in respect of the function to be exercised; or

(iii) is a new entrant participating in a training process under the supervision of a qualified person or a grandfathered person; or

(iv) is a person performing a prescribed script function in compliance with the Minimum Competency Standards; and

(v) in the case of a) and b) above, is compliant with the Continuing Professional Development ("**CPD**") requirement set out below.

A recognised qualification is regarded as relevant to the function to be exercised if it is included in the list of qualifications recognised for that function, as set out in Appendix 4 of the Code.

12.7 Continuing Professional Development

Persons subject to the provisions of the Code must complete formal continuing professional development ("**CPD**") hours on an annual basis.

A person who is the holder of a recognised qualification as set out in Appendix 4 of the Code where the ongoing maintenance of the qualification is not dependent on completion of CPD, must complete 15 formal hours of CPD each calendar year.

A grandfathered person must complete 15 formal hours of CPD in each calendar year. A person who is grandfathered in respect of specific functions and holds a recognised qualification for other functions is required to complete 15 formal hours of CPD in total in each calendar year, however the content of the CPD hours must be relevant to the functions in respect of which the individual is a qualified person and a grandfathered person.

A person who is the holder of a recognised qualification with a professional designation (e.g. a solicitor), the ongoing maintenance of which depends on the completion of CPD, must be taken to have complied with this section where he or she has successfully completed the CPD requirements of that recognised qualification. For all of the above, at least one hour of CPD in each calendar year must relate to "ethics".

Formal CPD hours must directly relate to the function(s) undertaken by each individual and may be obtained by attending seminars, lectures, conferences, workshops or courses dealing with a directly relevant topic. All formal CPD hours must be accredited by the provider of a recognised qualification or one of the professional educational bodies providing recognised qualifications that have a CPD requirement.

A regulated firm must ensure that it has procedures in place to ensure that qualified persons and grandfathered persons are in compliance with their CPD requirements. An individual's line manager must review a person's compliance with their CPD requirements including the relevance to the categories of product for which the person is accredited. All breaches of CPD requirements by a qualified person or a grandfathered person must be recorded on that person's file. The Central Bank reserves the right to check any individual's compliance with the CPD requirements during the course of an inspection of a firm.

Regulated firms must ensure that they retain certain records relating to CPD requirements.

13. Policyholder Communication and PRE

Life assurance undertakings must provide pre-contractual information to prospective policyholders in advance of concluding a policy and, during the term of the policy, certain information must be provided to policyholders. These obligations arise under Section 43B of the Insurance Act 1989

In this section, we also consider the concept of “policyholders reasonable expectations” or PRE which is relevant in all cases.

13.1 Pre-contractual information

Prior to the conclusion of an insurance contract, a life undertaking subject to Solvency II must provide information to a prospective policyholder about the life assurance undertaking, the commitment and other specific information to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

The following information on the life assurance undertaking should be provided to the prospective policyholder:

(i) the name of the life assurance undertaking and its legal form;

(ii) the name of the Member State in which the head office and, where appropriate, the branch concluding the contract is situated;

(iii) the address of the head office and, where appropriate, of the branch concluding the contract;

(iv) a concrete reference to the report on the solvency and financial condition as required by Article 51 of the Solvency II Directive, allowing the policy holder easy access to this information.

13.2 Information relating to the commitment

The life assurance undertaking must also communicate the following information relating to the commitment:

(i) the definition of each benefit and each option;

(ii) the term of the contract;

(iii) the means of terminating the contract;

(iv) the means of payment of premiums and duration of payments;

(v) the means of calculation and distribution of bonuses;

(vi) an indication of surrender and paid-up values and the extent to which they are guaranteed;

(vii) information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;

(viii) for unit-linked policies, the definition of the units to which the benefits are linked;

(ix) an indication of the nature of the underlying assets for unit-linked policies;

(x) arrangements for application of the cooling-off period; and

(xi) general information on the tax arrangements applicable to the type of policy;

In addition, specific information must be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

13.3 Post contractual information

The following information must be provided to policyholders during the term of the contract:

(i) the policy conditions, both general and special;

(ii) the name of the life company, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;

(iii) all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract;

(iv) annually, information on the state of bonuses.

Insurers must also provide the following:

(a) where, in connection with an offer for or conclusion of a life assurance contract other than a contract for term insurance, the insurer or insurance intermediary provides figures relating to the amount of potential payments beyond the contractually agreed payments, the insurer or insurance intermediary must provide the client with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest and the insurer or insurance intermediary must inform the client in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the client must not derive any contractual claims from the specimen calculation, and

(b) in respect of contracts of life assurance with profit participation, the insurer or insurance intermediary must inform the client annually in writing of the status of the claims of the client, incorporating the profit participation and where the insurer or insurance intermediary has provided figures about the potential future development of the profit participation, it must inform the client of differences between the actual development and the initial data.

Under Section 43D of the Insurance Act 1989, the Central Bank has the power to prescribe, by way of regulations, additional information to be provided to the prospective policyholder/policyholder for business written in Ireland in relation to proposals for and the marketing, sale, distribution, conclusion and issue of, policies of insurance and related matters and Section 43E of the Insurance Act 1989 sets out the additional information that may be required.

Currently, for business written in Ireland, the Life Assurance (Provision of Information) Regulations 2001 prescribe the additional information to be provided to prospective policyholders/ policyholders. These do not apply to business written by an Irish life assurance undertaking in other EU Member States under freedom of establishment or freedom of services. In those cases, the general good requirements of the other Member State will apply.

13.4 Policyholders' Reasonable Expectations

The Domestic Actuarial Regime and Related Governance Requirements under Solvency II (see the section on actuarial function for more detail) requires the Head of Actuarial Function to provide an Actuarial Report on Technical Provisions (the "**ARTPs**") to the Board of Directors on an annual basis. The ARTPs may be combined with the annual written report of the actuarial function to the Board of Directors as long as all requirements for the ARTPs are adequately addressed in the combined report.

The Requirements set out the information to be provided in the ARTPs. For the life assurance sector, the ARTP must include the Head of Actuarial Function's interpretation of "policyholders' reasonable expectations" and how these have been considered in establishing the technical provisions.

The expression 'policyholders' reasonable expectations' is not defined in Irish insurance legislation nor has the Central Bank itself defined the term, but it is one in common usage in Irish insurance law and practice. Prior to the implementation of the Solvency II regime, there was no statutory or regulatory obligation under Irish law which obliged insurance companies to ensure that they reserve adequately for policyholders' reasonable expectations. Nevertheless, it is clear that there existed in Ireland a clear practice which was followed in the prudential supervision of life assurance undertakings in relation to policyholders' reasonable expectations.

As the concept of 'policyholders' reasonable expectations' is not defined in Irish statute, any interpretation thereof is inevitably a matter for the Irish courts.

The board of directors of a life assurance undertaking has the ultimate responsibility for compliance with the 2015 Regulations and other laws applicable in Ireland adopted pursuant to the Solvency II Directive. In accordance with the 2015 Regulations, a Directors' accuracy certificate is to be annexed to the annual quantitative templates, own risk and solvency assessment report, each regular supervisory report (or annual summary thereof) attesting to the accuracy of the information submitted in the templates and reports. When ensuring compliance with solvency and reporting obligations, the Board of Directors of the life assurance undertaking will have regard to the opinions and reports provided by the Head of Actuarial Function, Central Bank.

14. Packaged Retail Investment and Insurance Products (PRIIPs)

The EU Regulation on key information documents ("**KIDs**") for packaged retail investment and insurance based investment products ("**PRIIPs**") (the "**PRIIPs Regulation**") introduces a pan-European standardised pre-contractual disclosure document requirement for manufacturers of PRIIPs.

14.1 Packaged Retail Investment and Insurance Products (PRIIPs)

The PRIIPs Regulation sets out rules for the content and format of the KID, with the aim of making it easier for retail investors to understand the key features and risks of retail investment products.

The KID is designed to give retail investors essential information so that they can make a more informed decision on whether an investment product is appropriate for them or not.

The PRIIPs Regulation, as a matter of EU law, is directly effective across all EU Member States without further enabling or implementing legislation at national level. It came into legal effect across all EU Member States on 31 December 2014 and is followed by an implementation lead-in period of two years during which product manufacturers PRIIPs will need to become compliant with the provisions of the Regulation.

Accordingly, all manufacturers of PRIIPs must be compliant with the EU PRIIPs Regulation by 31 December 2016.

14.2 Scope of the PRIIPs Regulation

The PRIIPs Regulation applies to manufacturers of packaged retail investment products and insurance-based investment products including life assurance based investment products.

Although a product may fall within the definition of a PRIIP, that product must also be sold to retail investors to fall within the scope of the PRIIPs Regulation.

14.3 Form and Content of the PRIIPs KID

The PRIIPS Regulation sets out the framework with regard to the form and content of the PRIIPs KID. The detail surrounding the form, content and implementation of the PRIIPs KID is still awaited as level 2 implementing standards have yet to be adopted by the European Supervisory Authorities.

The Joint Committee of the European Supervisory Authorities launched its Joint Consultation Paper on PRIIPs KIDs in November 2015 to gather stakeholder views on proposed rules on the content and presentation of the PRIIPs KID. On 7 April 2016, the Joint Committee published its final draft Regulatory Technical Standards ("RTS") on KIDs for PRIIPs. The Joint Committee stated that the proposed KID provides retail investors within the EU with simple and comparable information on PRIIPs and includes a 3-page document which increases the transparency and comparability of information about the risks, performance and costs of PRIIPs.

The draft RTS address the content and presentation of the KIDs and include:

(i) A mandatory template for the KID, covering the texts and layout to be used;

(ii) A methodology for the assignment of each PRIIP to one of the seven classes in the summary risk indicator and narrative explanations to be included;

(iii) Details on performance scenarios and a format for their presentation, including possible performance for different time periods;

(iv) A methodology for the calculation of costs and the requirements relating to the presentation of costs;

(v) Rules on revision and republication of the KID; and

Rules regarding the timeframe for providing the KID to a retail investor to ensure they have sufficient time to consider its contents when making an investment decision

Information and form to be included in the KID under the PRIIPs Regulation

The PRIIPs KID must consist of a maximum of three sides of A4 sized paper. It must be a standalone document, clearly separate from marketing materials and not contain cross-references to any such marketing materials.

The PRIIPs KID must be laid out in a way that is easy to read in characters of a readable size.

The PRIIPs Regulation mandates that the following provisions appear in a PRIIPs KID:

Product and Manufacturer information	The name of the PRIIPs, the identity and contact details of the manufacturer, the relevant regulator and the date of the document.

Title	The label "Key Information Document" must appear prominently at the head of the First page.
Explanatory Statement	A prescribed statement describing the function of the PRIIPs KID should appear directly below the title.
Comprehension Alert	Only where applicable, the KID must include a comprehension alert: "*You are about to purchase a product that is not simple and may be difficult to understand*".
"What is this product?"	This is a description of the main features of the PRIIPs.
"What are the risks and what can I get in Return?"	The PRIIPs KID will feature a summary risk indicator together with a narrative explanation of the relevant risks that are materially relevant to the PRIIPs but not captured by the indicator.
"What happens if [name of the PRIIP Manufacturer] is unable to pay out?"	A description of whether the related loss is covered by an investor compensation or guarantee scheme and if so, which scheme it is, the name of the guarantor and which risks are covered by the scheme and which are not.
"What are the costs?"	A list of the costs associated with the investment, in a summary format to ensure comparability between products. Level 2 measures will expand upon this requirement.
"How long should I hold it and can I take money out early?"	Details of cooling off periods, minimum recommended holding period, possibility of disinvestment before maturity (including penalties) and consequences of cashing in.
"How can I complain?"	Information about how to make a complaint.

“Other relevant information”	Any additional information documents to be provided to the investor (either pre-contract or post-contract), excluding any marketing material.

14.4 Distribution of the PRIIPs KID

The PRIIPs KID is designed to be a pre-contractual document and the general rule is that it must be provided to all retail investors before they enter into the contract. However, there is an exception to this rule that allows PRIIPs to be provided post-sale in the case of distance contracts. Before a PRIIP can be sold to retail investors, its KID must be published to the product manufacturer’s website.

15. Anti-Money Laundering

Life assurance undertakings are subject to the anti-money laundering regime set out in the Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010 (as amended by the Criminal Justice Act 2013) ("**the Act**") which transposed the Third-Anti Money Laundering Directive (2005/60/EC) (the "**Third AML Directive**") into domestic Irish law. The aim of the Third AML Directive is to widen the scope of previous anti-money laundering legislation based on the revised 40 recommendations of the Financial Action Task Force ("**FATF**").

15.1 Key Changes

The responsibilities of designated persons in relation to the prevention and detection of money laundering and terrorist financing has widened significantly with the implementation of the Act.

The Act introduces the following important changes for "designated persons":

(i) the definition of money laundering has widened to include the proceeds of any criminal conduct, however minor;

(ii) the terminology of "Know Your Customer" has been replaced by "Customer Due Diligence" ("**CDD**");

(iii) the level of CDD required will be determined using a risk based approach. This can range from "simplified" where there is a low risk of money laundering or terrorist financing to "enhanced" where there is high risk of money laundering or terrorist financing;

(iv) there are enhanced obligations to identify the "beneficial owner" whereby the designated person must ensure that they take reasonable measures to understand the ownership and control structure of the client;

(v) the requirement to not provide a service and discontinue the business relationship (if any) with a client where the client has failed to provide the necessary CDD;

(vi) there is a requirement to screen both new business and existing business to identify non domestic politically exposed persons ("**PEPs**") i.e. those persons in a prominent public position and their families or close associates;

(vii) an obligation to establish procedures to ensure documents and information relating to clients are kept up to date;

(viii) those persons who meet the definition of "trust and company services provider" will need to be authorised;

(ix) a guard at superintendant level or higher and/or a District Court judge has the power to direct a designated person not to carry out a specified service for a specific timeframe where a customer is subject to investigation;

(x) the number of offences that can arise under the Act are significantly greater than under the old legislation;

(xi) the Minister for Justice and Law Reform, in conjunction with the Minister for Finance, can approve the Guidance Notes to be used by designated persons. A Court can have regard to these Notes when determining if a designated person took all the appropriate measures.

15.2 A Risk Based approach to Customer Due Diligence

To be in a position to determine what is the appropriate level of customer due diligence, designated persons will be required to assess the risk of money laundering or terrorist financing by conducting an internal risk assessment which considers factors such as the:

(i) nature of the customer base;

(ii) nature of the products or services to be provided;

(iii) methods of distribution; and

(iv) geographic areas of operation.

The risk assessment will need to take into consideration the matters outlined in the Act as being deemed low risk and high risk.

If on completion of the risk assessment the designated person determines that the risk of money laundering or terrorist financing is "low" then "Simplified Due Diligence" can be applied to the customer. At the other end of the scale where the designated person determines that the risk of money laundering or terrorist financing is "high" then "Enhanced Due Diligence" is required. All other customers will have normal Customer Due Diligence applied to them.

15.3 Customer Due Diligence

Customer due diligence is required to be made <u>prior to</u> the occurrence of any of the following circumstances:

(i) establishing a business relationship with a customer;

(ii) carrying out a transaction or series of transactions for a customer greater than €15,000 (previously €13,000);

(iii) carrying out a service for a customer if there is a suspicion of money laundering or terrorist financing;

(iv) carrying out a service for a customer where there is doubt about the veracity or adequacy of previously obtained identification documentation.

15.4 Exceptions

There are a number of exceptions where a designated person is not required to operate CDD on a prior to basis as outlined above. In relation to life assurance business the verification of the beneficiary of a life assurance policy can be deferred at the time a policy is taken out, however such verification must be carried out:

(i) prior to the policy being paid out, or

(ii) prior to the beneficiary exercising any other right vested in the policy.

Other exceptions to the prior to rule are as follows:

(a) where a designated person has reasonable grounds to believe that prior identification would interrupt the normal conduct of business and there is no real risk that the service or customer is involved in money laundering/terrorist financing;

(b) a credit institution may allow a bank account to be opened before verifying identity, however no transactions can be carried out through the account until verification is completed.

15.5 Completion of CDD

In order to complete CDD, a designated person must complete the following:

(i) verify the customer's identity;

(ii) identify any beneficial owner connected with the customer or service concerned;

(iii) obtain information in relation to the purpose and nature of the business relationship;

(iv) carry out ongoing monitoring.

It should be noted that it is permitted to verify a customer's identity using an electronic format, however due to the higher risk of exposure to impersonation when using electronic verification, one or more additional checks should be used. Typically, if electronic verification is relied upon then the first payment should be through an Irish/EU bank account in the customer's name.

Where a client fails to provide the requested CDD in a timely manner, the designated person must not provide the service and must discontinue the business relationship with the client.

15.6 Simplified Customer Due Diligence

The full CDD procedure outlined earlier is not required where a designated person is deemed to be dealing with a "specified customer" or a "specified product" so long as a number of conditions are satisfied. In such cases a Simplified CDD can be applied as the risk of money laundering or terrorist financing is deemed to be low.

Under Simplified CDD a designated person is <u>not required</u> to:

(i) verify the customer's identity;

(ii) establish the beneficial ownership;

(iii) establish the purpose of the business relationship.

However, ongoing monitoring of the business relationship is required.

15.7 Definition of specified customer

(i) A specified customer is defined as:

(a) a credit institution or a financial institution that carries on business in Ireland or is situated in another EU Member State that has adopted the Third AML Directive or is in a prescribed third country which has requirements equivalent to the Third AML Directive;

(b) any listed company admitted to trading on a regulated market;

(c) a public body;

(d) certain other EU public bodies.

(ii) A specified product is defined as:

(a) a life assurance policy where the annual premium is no more than €1,000 or the single premium is no more than €2,500;

(b) an insurance policy in respect of a pension scheme, which does not have a surrender clause and cannot be used as collateral;

(c) a retirement pension scheme for employees where the contributions are made by way of deduction from payroll and the rules of the scheme do not permit a member's interest to be assigned;

(d) electronic money up to certain limits.

(iii) There are certain circumstances where a designated person may be dealing with a "specified customer" or a "specified product", but cannot avail of Simplified CDD because:

(a) the customer is an individual and has not been physically present for identification purposes;

(b) the customer is from a country not deemed to have adequate procedures for the detection of money laundering or terrorist financing;

(c) there are reasonable grounds to believe there is a real risk that the customer is involved in money laundering or terrorist financing; or

(d) there are doubts about the adequacy of documentation previously received.

15.8 Enhanced Customer Due Diligence

The Act sets out that Enhanced CDD will apply:

(i) in any situation where there is a high risk of money laundering or terrorist financing;

(ii) where the customer (who is an individual) has not been physically present for identification purposes;

(iii) in the case of a non-domestic politically exposed person (PEP); and

(iv) in the case of a correspondent banking relationship with a non EU institution.

Enhanced CDD involves seeking additional identification documentation and requiring the first payment to be made through an Irish/EU bank account in the customer's name.

15.9 Politically Exposed Persons (PEPs)

A PEP is defined as an individual who is, or has been entrusted with a prominent public function, or an immediate family member, or a known close associate of that person. It is important to note in this context that an individual ceases to be a PEP one year after he or she has left office. Prominent public functions include among others - heads of state, heads of government, members of parliament, ambassadors and members of the courts of auditors or of the boards of Central Banks.

In relation to PEPs a designated person is required to:

(i) have appropriate risk-based procedures to determine whether the customer is or has become a PEP;

(ii) have senior management approval for establishing business relationships or retaining such business relationships with such customers;

(iii) take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction; and

(iv) conduct enhanced ongoing monitoring of the business relationship.

While the domestic insurance sector has a very low exposure to PEPs, those companies that are established to provide services to parties outside of Ireland have a higher exposure to PEPs and will need to implement measures to check PEP status such as a PEP database developed either in-house or sourced from an external provider.

15.10 Reliance on Third Parties

Where a customer is introduced to a designated person by certain third parties, then the designated person can rely on the due diligence measures already taken by that third party. However, it is important to remember that ultimate responsibility remains with the designated person. To manage this risk, the designated person should obtain a confirmation from the third party setting out that the appropriate due diligence measures have been carried out on the customer and that records will be retained and made available on request to the designated person.

In terms of the ongoing monitoring requirements applicable to a business relationship and transaction with the customer, this activity cannot be outsourced to a third party.

15.11 Reporting Suspicious Transactions

In terms of reporting suspicious transactions, designated persons and their directors and employees remain responsible for reporting any know or suspected suspicious transaction relating to money laundering or terrorist financing. Where a designated person has appointed a Money Laundering Reporting Officer (MLRO), employees should be instructed to file the suspicious transaction report (STR) with the MLRO who should investigate the matter and if necessary, report it without delay to the appropriate authorities, i.e. the Garda Siochana and the Revenue Commissioners.

15.12 Record Keeping

Under the Act, a designated person is obliged to keep the following documents and information for use in any investigation by the Garda Siochana or the Revenue Commissioners or other competent authorities into any suspected cases of money laundering or terrorist financing:

(i) in the case of customer due diligence, the designated person must keep records of the procedures applied and the information obtained about the customer. An original or copy of all documents used to verify the identity of the customer / beneficial owner must be retained for a period of at least five years after the relationship ceases with the customer or the date of the last transaction, whichever is the later;

(ii) in the case of the ongoing monitoring, the designated person must keep records evidencing the history of services and transactions carried out in relation to that customer for a period of at least 5 years from the date on which the transaction was completed;

(iii) copies of STRs made to the Garda Siochana and the Revenue Commissioners should be retained for at least five years;

(iv) records relating to staff training including material used and attendance records should also be retained for a period of at least five years.

(v) documentation and information relating to clients are required to be kept up to date.

The records referred to above may be retained electronically so long as they are capable of being reproduced in electronic form.

15.13 Staff Training

To ensure compliance with the relevant provisions of the Act, designated persons will need to review and update their internal procedures to reflect the new requirements. Staff training in relation to customer due diligence and how transactions are classed as low and high risk will be required. To meet the ongoing monitoring obligation designated persons will need to have a thorough understanding of the nature and type of business activities that their customers are engaged in to determine what might constitute suspicious activity related to money laundering or terrorist financing. To this end, employees, directors and officers of the designated person will be required to participate in ongoing education and training programmes to assist them in recognising practices that may be related to money laundering or the financing of terrorism and the appropriate action to take in such circumstances. Training should be conducted at least on an annual basis.

16. Data Protection

Life assurers are clearly subject to the full rigours of the data protection regime.

16.1 Data protection obligations

In Ireland, the data protection obligations are found in the Data Protection Act, 1988 (the "**1988 Act**") which was amended by the Data Protection (Amendment) Act, 2003 (the "**2003 Act**") (collectively known as the "**Acts**"). "*Personal data*" is defined under the Acts as data relating to a living individual who is or can be identified either from data or from data in conjunction with other information that is in, or is likely to come into, the possession of the data controller. Therefore, personal data does not include business names and addresses but it would include a business email address which relates to a living individual. If you process, hold, store, transfer or do anything involving the personal data of a living individual, then you will need to comply with the provisions of the Acts.

It is worth noting that the Acts only apply to information which allows an individual to be identified. There are no prohibitions on the disclosure of information from which all identifiers have been removed i.e. anonymised data.

Under the Acts, entities that control the content and use of personal data, either alone or with others are defined as "data controllers". Entities that process personal data on behalf of data controllers are defined as "data processors". Some data controllers and data processors are also required, under Section 16 of the Acts, to register as such with the Data Protection Commissioner (the "**DPC**"). Registration must be renewed on an annual basis and the cost varies according to the number of employees an entity has working for it. It is worth noting that all data controllers and data processors are required to comply with the provisions of the Acts and only those within the ambit of Section 16 are required to register with the DPC and renew this licence on an annual basis.

Also of note is that personal data does not include data consisting of information that is required by law to be made available to the public.

16.2 Appointment of a Data Processor

The identification of the data controller and data processor status is important as the application of the legislation differs in each case. Data controllers are obliged to comply with all eight of the data protection principles (set out in detail below). A data controller that appoints another party to process personal data must ensure that the data processor: acts solely on its instructions; complies with security arrangements equivalent to those to which the data controller is subject; and provides sufficient safeguards in respect of security and organisational measures governing the processing. The data controller is obliged to enter into a written agreement with the appointed data processor setting out parameters and that certain security measures are in place and adhered to by the data processor.

Under Section 21 of the Acts a data processor may not disclose information without the prior authority of the data controller on behalf of whom the data is processed and contravention of this provision is an offence.

16.3 Security Measures (onus on the data controller)

Under Section 2 of the Acts, data controllers are required to ensure that any processing carried out by a data processor on its behalf is governed by a contract in writing. This contract must provide that;

(i) the data processor carries on the processing only on and subject to the instructions of the data controller; and

(ii) the data processor takes appropriate security measures to guard against unauthorised access, alteration, disclosure or destruction of the data, particularly where the processing involves transmission over a network and against all other unlawful forms of processing.

The data controller must also;

(a) ensure that the processor provides sufficient guarantees in respect of the technical security measures and organisational measures, governing the processing; and

(b) take reasonable steps to ensure compliance with those measures i.e. monitor/audit this outsourcing arrangement.

16.4 8 Principles

Section 2 and Section 4 of the Acts impose certain key responsibilities on data controllers in relation to the information that is kept about living individuals. These obligations are summarised by the DPC using eight principles which must be followed, and are listed below.

- *Principle 1: Fair obtaining*

  Personal data must be obtained and processed fairly.

- *Principle 2: Purpose specification*

  Personal data must only be kept for specified, explicit and legitimate purpose(s).

- *Principle 3: Use and disclosure of information*

  Personal data must not be used and disclosed in a manner incompatible with the purpose(s) for which it was initially obtained. Companies must take care to ensure that personal data is not disclosed to third parties in a manner, which is inconsistent with the purpose for which the data was originally collected.

- *Principle 4: Security*

  Appropriate security measures must be taken against unauthorised or unlawful access, alteration, disclosure or destruction of data, particularly where the processing involves transmission over a network.

- *Principle 5: Accurate and up-to-date*

  Personal data must be accurate, complete and, where necessary, kept up-to-date.

- *Principle 6: Adequate, relevant and not excessive*

  Personal data must be adequate, relevant and not excessive in relation to the purpose(s) for which it was collected or processed.

- *Principle 7: Retention time*

  Personal data must not be retained for any longer than is necessary for the specified purpose. Companies should be mindful of this requirement when drafting record retention policies and should ensure that staff are aware of the statutory retention periods applicable to the company (e.g. 6 years for accounting records under the Companies Act, 1990). Electronic and manual records held in respect of individuals should be disposed of following the expiry of the statutory retention period in the absence of a legitimate reason for retention.

- *Principle 8: Right of access*

  Individuals are entitled to a copy of their personal data on written request. There are detailed requirements for handling access requests from individuals prescribed by Section 4 of the Acts. These cover the format of the response and timescales imposed. A reasonable fee may be charged by data controllers for dealing with access requests. Individuals may also rectify incorrect information maintained.

16.5 Fair Processing

Under Section 2A of the Acts in order to process personal data at least one of a number of conditions must be met by data controllers. These conditions include:

(i) obtaining consent from the data subject for the processing;

(ii) the processing being necessary for the performance of a contract with the individual;

(iii) the processing being necessary in order to take steps to enter into a contract with the individual at his/her request;

(iv) the processing being necessary for compliance with a legal obligation (other than one imposed by contract); and/or

(v) the processing being necessary for the legitimate business interests of the data controller or a third party to whom the data are disclosed.

16.6 Sensitive Personal Data

Sensitive personal data is defined in the Acts as data relating to:

(i) racial/ethnic origin;

(ii) political opinions;

(iii) religions or philosophical beliefs;

(iv) trade union membership;

(v) physical or mental health;

(vi) sexual life; and/or

(vii) the commission or alleged commission or an offence and/or criminal proceedings.

In addition to the general conditions imposed under Section 2 of the Acts, sensitive personal data must not be processed unless one of a number of further conditions is met. The additional conditions include:

(a) obtaining "explicit" consent for the processing (i.e. clear and unambiguous consent);

(b) processing being necessary for the purposes of obtaining legal advice;

(c) processing carried out through legitimate activities of non-profit organisations that exist for political, philosophical, religious or trade union purposes;

(d) information already in the public domain;

(e) processing necessary for medical purposes;

(f) processing necessary to prevent injury to the health of the data subject or another person or otherwise to protect their vital interests (including property);

(g) processing necessary for the purpose of exercising a right imposed by law in connection with employment; or

(h) processing being carried out by political parties, candidates for election for the purpose of compiling data on peoples' political opinions.

It should be noted that in some instances 'personal financial data' is being construed by industry and the DPC as sensitive personal data and life assurance undertakings should be mindful of this.

16.7 Transfers Abroad

Because data protection laws within the EEA are broadly harmonised and personal data is similarly protected, transfers to the UK and other EU/EEA countries are permitted. Section 11 of the Acts specifies conditions that must be met before personal data may be transferred to third countries. If a company transfers personal data from Ireland to third countries (i.e. jurisdictions outside of the EEA), it will need to ensure that the country in question provides an adequate level of data protection. Some third countries have been approved for this purpose by the EU Commission. In the case of countries that have not been approved in this way, there are a number of measures that a data controller can including: obtaining the consent of the individuals in question; entering into an EU approved model contract; or entering into a set of Binding Corporate Rules.

The rules regarding transfers to third countries can be summarised below.

(i) The general rule is that personal data cannot be transferred to third countries unless the country ensures an adequate level of data protection. The EU Commission has prepared a list of countries that are deemed to provide an adequate standard of data protection - Hungary, Switzerland and Argentina have been approved in full, Canada has been approved for some types of personal data. Following the European Court of Justice ruling in October 2015 the US Safe Harbor framework previously available to facilitate the transfer of EU citizen data to US companies has become invalid. The European Commission has developed a new framework call the EU-US Privacy Shield to safeguard the transfer of EU citizen data to the US, however this framework has yet to be finalised by Article 29 Working Party.

(ii) If the country does not provide an adequate standard of data protection, then the Irish data controller must rely on one of the alternative measures (see below), including the consent of the data subjects, and the use of approved contractual provisions.

The DPC retains the power to prohibit transfers of personal data to places outside of Ireland if he considers that data protection rules are likely to be contravened and that individuals are likely to suffer damage or distress as a result.

16.8 Exemptions to Restrictions on Transferring Data

Under Section 11 of the Acts, there are a number of exemptions to the restrictions on transferring data outside the EEA which include:

(i) the destination country has been approved by the EU;

(ii) the transfer is allowed by an exemption under the Acts (see below);

(iii) the data subject has consented to the transfer;

(iv) the company importing the personal data enters into a contract in a form prescribed by the EU;

(v) the specific transfer is approved by the DPC; or

(vi) the transfer is a type already approved by the DPC.

Furthermore, the transfer is exempt from statutory restrictions if:

(a) it is made to comply with international law;

(b) it is made in connection with a legal claim;

(c) it is made to protect the vital interests on the data subject;

(d) the transfer is of information held on public registers;

(e) the transfer is necessary for the performance/conclusion of a contract; or

(f) the transfer is necessary for reasons of substantial public interest.

16.9 Breach Notification

Section 2 of the Acts obliges that appropriate security measures be taken to prevent unauthorised access to or unlawful processing of personal data. The DPC advises that any loss of control of personal data by a data controller leading to or that may lead to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data constitutes a breach of this requirement.

In July, 2010 the DPC authorised the Personal Data Security Breach Code of Practice (the "Code"). The Code states that all incidents of loss of control of personal data must be reported to the DPC as soon as the data controller becomes aware of the incident, except:

"(i) where the personal data was inaccessible in practice due to being stored on encrypted equipment secured to a high standard with a strong password ***<u>and</u>*** *the password was not accessible to unauthorised individuals;*

(ii) where the personal data was stored on equipment with a strong password and a remote memory wipe feature that was activated immediately after the incident ***<u>and</u>*** *there is no reason to believe that the personal data was likely to have been accessed before such deletion took place;*

(iii) where the full extent and consequences of the incident has been reported without delay directly to the affected data subject(s) ***<u>and</u>*** *it affects no more than 100 data subjects* ***<u>and</u>*** *it does not include sensitive personal data or <u>personal financial data</u> that could be used to carry out identity theft."*

The Code further states that a data controller must keep a record of each incident and the remedial steps taken to rectify the incident, even where there is no requirement to notify the DPC.

The DPC has confirmed that it will investigate the issues surrounding any data breach and may conduct onsite examinations of systems and procedures which could lead to legal enforcement.

17. Taxation

Life assurance companies establishing operations in Ireland can avail of an attractive tax regime for both shareholder and policyholder profits. Shareholder profits are generally taxable at Ireland's low rate of corporation tax of 12.5% and policyholder profits can be rolled up free of tax (i.e. gross roll-up).

17.1 Calculating Shareholder Profits

The statutory accounts together with certain supporting data extracted from the company's regulatory return forms the basis for determining the shareholder profits of the company. The basis of the computation will be the transfer to the non-technical account. Profits which are allocated to or expended on behalf of policyholders are excluded but profits reserved for policyholders are included in shareholder profits. A proportion of the transfer to the fund for future appropriations (FFA) will be regarded as taxable shareholder profits with the balance treated as belonging to policyholders. The annual transfer to the shareholder non-distributable reserve will be taxable (as it is allocated fully to shareholders). Normal add-backs and deductions for tax purposes are made with a deduction permitted in respect of Irish dividend income included in shareholder profits.

17.2 Policyholder Profits

Policyholder profits benefit from Ireland's gross roll-up regime and as a result can be rolled-up free of Irish tax. How policyholder profits are treated for Irish taxation on distributions, encashment etc depends on whether the policyholder is Irish tax resident or not.

17.3 Non-Irish Resident Policyholders

A life assurance company is not required to deduct tax ("**exit tax**") in respect of a distribution of payments on the maturity, surrender, assignment, etc of policies made by the company to:-

Policy holders who are neither Irish resident nor ordinarily resident in Ireland and who have either:

(i) provided the company with the appropriate relevant declaration of non-Irish residence;

(ii) the company has availed of the Branch Business exemption (see below); or

(iii) the company has availed of the Freedom of Services exemption (see below).

17.3.1 Branch Business exemption

With effect from 1 January 2002, where an Irish life assurance company offers its policies through a branch established in an offshore state (i.e. an EU or EEA member state), the requirement to obtain a declaration of non-residence from the policyholders may be waived where the life assurance company has obtained written approval from the Irish Revenue Commissioners (“***IRC***”) absolving them of the obligation to obtain a declaration of non-residence before making a payment to a policyholder without deduction of exit tax. However, such approval is subject to certain conditions as follows:

(a) the branch has a full legal and tax presence in the local jurisdiction in which it is established;

(b) the branch will not sell any products to Irish residents and will not offer any products in Ireland;

(c) the branch will not knowingly distribute any material in connection with any products in Ireland;

(d) the branch should take all reasonable steps to satisfy itself that all policyholders of the branch are neither resident nor ordinarily resident in Ireland.

17.3.2 Freedom of Services Business (FoS) exemption

With effect from the passing of Finance Act 2008 the exemption from the requirement to obtain the declarations is extended to life companies writing on a freedom of services basis where the policyholder is resident in an EU or EEA member state. This exemption must be approved by the IRC prior to making a payment to a policyholder without deduction of exit tax. The IRC has not issued any written guidance on the process for FoS business. However, based on prior experience, the conditions for approval include the following:

(i) The life assurance undertaking writes the business from Ireland on a FoS basis under Regulation 50 of the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) or other equivalent arrangement in an EEA State and has complied with the conditions in Regulation 50 or other equivalent regulation in an EEA State;

(ii) The life assurance undertaking should take all reasonable steps to satisfy itself that all policyholders are neither resident nor ordinarily resident in Ireland. To satisfy this last point, the IRC typically requires the company to give an undertaking that:

(a) the company will verify the proposed policyholders identity by complying with local anti-money laundering procedures;

(b) the company will only accept direct debit mandates from the country where the proposal originates;

(c) the company will not accept any policyholder who provides an Irish address; and

(d) the proposal form will require the proposed policyholder to declare in writing that they are resident in the country where the proposal originates.

However, it should be noted that there is no written guidance from the IRC on this and as such they may impose further conditions/require additional undertakings having reviewed the facts of each specific case.

Policyholders which although Irish resident fall within a category known as exempt Irish investors (e.g. approved pension schemes, charities, other life companies, etc) who have made an appropriate relevant declaration to the company.

17.4 Irish Resident Policyholders

When a life assurance company makes a distribution on the maturity, surrender, assignment, etc of policies, to Irish residents the company has to deduct tax at a rate of 25% where the Policyholder is a company and 41% in the case of any other Policyholder (aside for certain exempt Irish resident investors such as regulated funds, approved pension schemes, etc) from the investment gain included in the payment.

17.5 8 Year Rule for Irish Resident Policyholders

In 2005 Ireland introduced legislation to counteract Irish investors being able to roll-up (indefinitely) their share of the underlying income and gains of a life policy for more than 8 years. As such a life assurance undertaking must deduct tax on any deemed gain on their policy on the ending of an 8 year period beginning with the inception of the life policy and each subsequent 8-year period beginning when the previous one ends. This 8 year rule does not apply to non-Irish resident investors.

17.6 Stamp Duty on policies of insurance for Irish Policyholders

A 1% stamp duty is payable on premiums for policies of insurance falling under certain of the “Classes of assurance” listed in Annex I to Directive 2002/83/EC concerning life assurance to the extent that the risks to which those policies of insurance relate are located in Ireland. The risk will be deemed to be located in Ireland has his or her habitual residence in Ireland or, in respect of a policyholder who is a person other than an individual, if the policy holder's head office or branch to which the policy relates is situated in Ireland.

17.7 VAT

Generally speaking insurance and related services are VAT exempt services, therefore insurers do not charge VAT on their products but consequently may have limited recovery of VAT on their input costs.

17.8 Reporting of certain payments

Life assurance companies are required under Irish tax legislation to to file annual returns with the IRC in relation to certain payments made to policyholders.

Reporting Requirement - The reporting requirement applies to life assurance companies who make payments to Irish policyholders in relation to certain types of business. Certain types of life assurance contracts are outside the scope of the rules (e.g. permanent health insurance contracts, many pension contracts (including annuities) and pure protection policies which do not acquire a surrender value are exempt.

Reportable Payments - Section 891B applies to any payments made by assurance companies other than excepted payments. Excepted payments include payments to non-residents who have provided an appropriate declaration, protection payments made by reason of death or disability, payments relating to certificates of deposit, commercial paper and medium term notes, and payments to certain resident entities such as pension schemes, banks and building societies.

Information required by Revenue - The details required include the payee's name, address and payment amount. A separate report must be made for each separate policy on which a payment is made. Where an investment is made by two or more persons, a report must be made for each person. If no payment is made to a policyholder then there is no requirement to make a report. Revenue has also issued guidance in relation to the format the reports should take.

Reporting Deadlines – 31 March of the year following the year in which the payments were made.

Payments to non-Irish residents are not required to be returned so international insurers based in Ireland are likely to be affected by the Regulations only if they have customers living in Ireland.

17.9 International Reporting

(i) Foreign Account Tax Compliance Act

The foreign account tax compliance provisions ("**FATCA**") of the Hiring Incentives to Restore Employment Act 2010 represent an expansive information reporting regime enacted by the United States ("**US**") aimed at ensuring that Specified US Persons with financial assets outside the US are paying the correct amount of US tax. FATCA will generally impose a withholding tax of up to 30% with respect to certain US source income (including dividends and interest) and gross proceeds from the sale or other disposal of property that can produce US source interest or dividends paid to a foreign financial institution ("**FFI**") unless the FFI enters directly into a contract ("**FFI agreement**") with the US Internal Revenue Service ("**IRS**") or alternatively the FFI is located in a IGA country (please see below). An FFI agreement will impose obligations on the FFI including disclosure of certain information about US investors directly to the IRS and the imposition of withholding tax in the case of non-compliant investors. For these purposes a life assurance company will be an FFI if it falls within the definition of a Specified Insurance Company[1].

In recognition of both the fact that the stated policy objective of FATCA is to achieve reporting (as opposed to being solely the collecting of withholding tax) and the difficulties which may arise in certain jurisdictions with respect to compliance with FATCA by FFIs, the US developed an intergovernmental approach to the implementation of FATCA. In this regard the Irish and US Governments signed an intergovernmental agreement ("**Irish IGA**") on the 21st December 2012 and provisions were included in Finance Act 2013 for the implementation of the Irish IGA and also to permit regulations to be made by the Irish Revenue Commissioners with regard to registration and reporting requirements arising from the Irish IGA. In this regard, the Revenue Commissioners (in conjunction with the Department of Finance) have issued Regulations – S.I. No. 292 of 2014 which is effective from 1 July 2014. Supporting Guidance Notes (which will be updated on an ad-hoc basis) were first issued by the Irish Revenue Commissioners on 1 October 2014 with the most recent version issued on 30th May 2016.

(ii) Common Reporting Standards

Drawing extensively on the intergovernmental approach to implementing FATCA, the OECD developed the Common Reporting Standard ("**CRS**") to address the issue of offshore tax evasion on a global basis. The CRS provides a common standard for due diligence, reporting and exchange of financial account information. Pursuant to the CRS, participating jurisdictions will obtain from reporting financial institutions, and automatically exchange with exchange partners on an annual basis, financial information with respect to all reportable accounts identified by financial

[1] The term "Specified Insurance Company" means an entity that is an insurance company (or the holding company of an insurance company) that issues, or is obligated to make payments with respect to, a cash value insurance contract or an annuity contract

institutions on the basis of common due diligence and reporting procedures. The first information exchanges are expected to begin in 2017. Ireland has legislated to implement the CRS. As a result Life assurance companies to the extent they are considered a “Specified Insurance Company” (similar to definition for FATCA purposes) will be required to comply with the CRS due diligence and reporting requirements, as adopted by Ireland. As such, policyholders may be required to provide additional information to the life assurance company to enable the company to satisfy its obligations under the CRS.

Appendix A

Classes of Life Assurance Business

Class I - Life assurance and contracts to pay annuities on human life but excluding those in Classes II and III below

Class II - Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year

Class III - Contracts linked to investment funds

Class IV - Permanent health insurance contracts

Class V - Tontines

Class VI - Capital redemption operations

Class VII - Management of group pension schemes

Appendix B

Application for Authorisation

The information which will be sought by the Central Bank as part of an application for authorisation of a new Irish Head Office life assurance undertaking is summarised below.

1. Details of the Applicant

(ii) Full name and address of applicant.

(iii) Contact details of a principal who will accept receipt of any correspondence from the Central Bank in respect of the application proposal (i.e. name, address, telephone, fax and e-mail details).

(iv) Contact details of professional advisors in relation to the application proposal (if applicable), (i.e. name, address, telephone, fax and e-mail details).

(v) Confirmation that the Central Bank can liaise with the named professional advisors in respect of the licence proposal.

(vi) Details of the applicant's Company Secretary, Bankers, Legal Advisor and External Auditor.

2. Overview of Parent/Group

Full name and address of Parent/Group. Confirmation that the Board of the Parent has approved the submission of the application for the establishment of a life assurance company to the Central Bank (a certified copy of the board minute confirming that the Parent has consented to **the** establishment of the applicant should be submitted).

(i) Brief history/background of Parent/Group. This should include overview on the ownership and structure of parent/group (ideally the Central Bank prefers ownership to be vested in one or more financial institutions of standing e.g. subsidiary of an international insurance company/ group, etc).

(ii) Confirmation that the parent/group has obtained the prior consent of its home country supervisory authority.

(iii) Copy of organisation chart of the group outlining:

- the legal structure of each of the entities concerned (i.e. whether the entities are incorporated, limited liability companies, unlimited, etc.);

- the percentage holding of each shareholder; and

- details as to where the applicant will be positioned in the group.

(iv) Provide audited annual accounts in respect of the parent/group for the last 3 years.

(v) Information on industry ranking, size of parent on local and global scale.

(vi) Main group activities/lines of business. Details of main areas of global activity of parent/group and details of main areas of EU activity of parent/group should be given.

(vii) Details of all existing group operations in Ireland including:

- a description of the activities being carried out by each of the existing Irish operations;

- details as to whether the operations are supervised by the Central Bank or any other regulatory authority; and

- details of any material control deficiencies that have arisen in any of the Irish regulated operations in the last 12 months including an overview of the deficiency, the mitigating actions taken and the current status of the issue.

(viii) Details of any proposed association of the applicant with:

- existing Irish operations; and

- other group operations providing details of any proposed links between existing operations (including Irish operations) and the applicant.

(ix) Confirmation as to whether close links exist between the applicant and other natural or legal persons. If so, evidence must be provided to the Central Bank to show that these close links will not prevent the Central Bank's ability to carry out its supervisory functions.

(x) Debt ratings for parent/group/institutional shareholders (this should include details of any upgrades/downgrades in the last 3 years and reasons why).

(xi) Confirmation as to whether the applicant's parent subject to group supervision.

(xii) Confirmation as to whether the applicant's parent is subject to any consolidated supervision within the EU.

(xiii) Confirmation as to whether the applicant's parent is subject to any consolidated supervision outside the EU.

(xiv) Confirmation that the applicant (if relevant) intends to have subsidiaries or significant investments in other regulated entities. If this is the case, full details must be provided.

(xv) Confirmation whether the Parent/Group has any other regulated entities in other jurisdictions.

3. Regulatory Supervision

(i) Contact details for Parent/Group's Home State regulator/supervisor.

(ii) Confirmation that the applicant has consulted with its home supervisory authority, of its intention to submit an application for the establishment of a life assurance company to the Central Bank.

(iii) Provide a copy of correspondence with the Home State regulator/supervisor.

(iv) Provide details of other regulated entities in other jurisdictions and contact details for the supervisory authorities in these jurisdictions.

(v) Confirmation (and details where relevant) whether the Parent/Group, within the last 5 years has:

- received regulatory approval for new entities in any other jurisdiction;

- applied to establish a regulated entity in any other jurisdiction, which was either withdrawn or refused;

- been subject to an investigation into allegations of fraud, misconduct or malpractice by any regulatory authority in any other jurisdiction;

- the parent/group or any its director/senior manager/executive, been censured or disciplined by any regulatory body further to its professional activities.

4. Financial Conglomerates Directive

Confirmation whether the applicant's parent is subject to supervision pursuant to the Financial Conglomerates Directive (Directive 2002/87/EC).

5. Ownership Structure

(i) Details of all direct and indirect holders of shares or other interests in the applicant.

(ii) Submit the most recent audited accounts for all direct and indirect qualifying shareholders, if applicable (i.e. those who hold 10% or more of the capital or of the voting rights).

(iii) Arrange for Individual Questionnaires (standard applicable from Central Bank website) to be completed by all individual qualifying shareholders.

(iv) Demonstrate that the applicant is independent of dominant interest if the applicant is owned or ultimately owned or controlled by one or a small number of individuals.

(v) Demonstrate that there will be cohesion, continuity and consistency in the manner in which the business of the life assurance undertaking is directed by its owners.

(vi) Briefly summarise the rationale of using a plc (if applicable) as opposed to a private company.

(vii) Clearly outline whether there are any holding companies involved in the ownership structure.

(viii) Provide a description of the financial and non-financial interest or relationships of the direct and indirect shareholders of the company with:

(a) any shareholders of the new company or current shareholders of the group;
(b) any person entitled to exercise voting rights of the new company/or currently with the group; and
(c) any member of the board, or the senior management of the new company/or currently the group.

6. *Legal Structure*

(i) Confirmation that the applicant will be registered in Ireland and subject to Irish law.

(ii) Outline the full legal structure of the applicant.

(iii) The following should be included with the application:

- certificate of incorporation (and Certificate of Name Change if applicable);
- draft copy of the Memorandum and Articles of Association of the Applicant;
- latest audited accounts where the applicant has already been incorporated for more than 18 months.

7. *Objectives and Proposed Operations*

(i) Outline the classes of life assurance business being applied for.

(ii) Provide full details of the applicant's proposed insurance business and products

(iii) Confirm that the operations of the company will be limited to life assurance.

(iv) The application should be specific as to the activities, which the applicant proposes to carry out if granted a licence. The proposal should also set out the countries in which business will be written and whether this will be on a freedom of services or establishment basis.

(v) The application should provide the rationale for the proposed Freedom of Establishment (i.e. setting up a head office in Ireland) or Freedom of Services structure (i.e. selling into Ireland from outside Ireland).

(vi) Where other Member States are involved, applicants should note that there may be further legal requirements to be fulfilled in each Member State. These are usually communicated by the relevant authorities in the countries by means of their 'General Good Requirements'.

(vii) The following should also be included:

- Rationale for seeking an insurance licence and establishing in Ireland.

- Detailed information on the sources of funding for the applicant.

- Overview of market research which has been undertaken regarding the establishment of a life assurance undertaking and its proposed activities, or any information supporting the applicant's expectations in relation to its target market and the level of expected sales.

- Overview of the applicant's distribution network for its products.

- Likely sources of new business/future business activities for the applicant.

- The applicant's new product approval process.

- If the applicant intends to write business outside the EU, it should provide an overview of how the applicant can underwrite that business from an Irish authorised undertaking and provide evidence for permission to write on non-admitted basis.

8. System of Governance

(i) Provide the proposed organisation structure of the applicant including reporting lines and demonstrate the segregation of responsibilities.

(ii) Provide details of the proposed board of directors and key function holders and their activities, specifically identifying:

- Executive directors;
- Non-executive directors;
- Independent non-executive directors;
- Senior management including a list of persons who will carry out the pre-approval controlled functions (PCFs) for the applicant (including PCFs that are proposed to be outsourced) and the PCF they will be performing;
- Outline the projected staffing requirements for the first 3 years of the applicant's operations (broken down on an annual basis);
- Provide details and terms of reference for the Audit, Risk, Remuneration, Nomination and other relevant committees;
- Submit a copy of the applicant's proposed ORSA;
- Provide written policies on risk management comprising policies relating to

underwriting and reserving, asset liability management, investment, liquidity and concentration risk, operational risk and reinsurance and other risk-mitigation techniques;
- Proposed frequency of board meetings and location; and
- Potential conflicts of interest (if any, including details of how they will be addressed).
- Provide Organisation chart of the applicant's corporate governance structure;
- Confirm that the applicant will comply with all the requirements of the Corporate Governance Requirements for Insurance Undertakings 2015.

(iii) Details should include composition thereof, frequency of meetings, general responsibilities/terms of reference, reporting lines; and details of sub-committees (if applicable).

(iv) Provide details of organisation structure/management team (to include the Compliance Officer and Money Laundering Reporting Officer), i.e. biographies, job titles, responsibilities, reporting lines, etc.

(v) Provide operational process map for the entire company including functions outsourced to service providers.

(vi) **Note:** 'Individual Questionnaire' in respect of each of the applicant's board of directors/senior management must be submitted as part of the application. directors/senior management.

9. Risk Oversight

Details must be provided in respect of the following key functions:

- The applicant's proposed ORSA;
- Risk Appetite Statement;
- Internal audit;
- Actuarial function
- Compliance
- Risk management
- Underwriting
- Reinsurance

- Financial
- Investment Management
- Internal Controls/ Policies
- Anti Money Laundering Procedures
- Conflicts of Interest
- Outsourcing

10. Capital, Solvency and Financial Projections (5 years projections required)

Capital: The applicant must hold eligible own funds to cover the absolute floor of the Minimum Capital Requirement (€3,700,000 for a life assurance undertaking, including a captive insurance undertaking).

Financial Projections: The financial estimates should be submitted in the format outlined in the format outlined in the Solvency II Quantitative Reporting Templates (**QRTs**).

Capital and Financial Projections (only applicable to a subsidiary of an insurance holding company that has its head office in the State): The applicant must provide consolidated group solvency calculated in accordance with Regulations 221 – 263 and 311(3) of the 2015 Regulations and the group's solvency and financial condition report.

11. Proposed Head of Actuarial Function

Submit the Certification of Financial Projections confirming that the Head of the Actuarial Function:

(a) considers the premium rates (including charges/loadings) to be suitable;
(b) considers that the financial resources of the undertaking are sufficient for the first 3 financial years following authorisation; and
(c) agrees that the information provided in the financial projections (balance sheets and statements of solvency).

12. Policy and Claims Administration

Provide details of the remit and staffing of the policy admin function including the reporting lines of the function, the key reports utilised and the frequency of reporting.
Policy Documents

Provide details of Policy Documents and Marketing Literature and other information provided to policyholders e.g. Key Features Information

13. Sales and Distribution

Provide details of all distribution channels and projected sales for each product and regulatory status of distributors (need for qualifications/authorisation e.g. Minimum Competency Requirements or equivalent in other Member States).

Confirm process whereby applications are accepted and recorded and cash handling procedures and controls over same.

Outline procedures to ensure adherence to the Central Bank's Consumer Protection Code or equivalent consumer related rules in other Member States Personnel and procedures to ensure adherence to the Central Bank's Minimum Competency Requirements.

14. IT/ Business Continuity Plan

Provide details of:

- all IT systems to be used in relation to front and back office operations;
- the main IT service providers and back up IT service providers;
- the business continuity plan.

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