A Guide to Non-Life Insurance Regulation in Ireland

DILLON EUSTACE

DUBLIN CAYMAN ISLANDS NEW YORK TOKYO

A GUIDE TO NON-LIFE INSURANCE REGULATION IN IRELAND

The key driver of insurance regulation over the past 30 years has been Ireland's membership of the European Union. 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 a 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 non- 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 non-life insurers 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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Contents

A Guide to Non-Life Insurance Regulation in Ireland

We hope you find this Guide of assistance.

1. Introduction

The carrying on of insurance business is a regulated activity in Ireland which requires a non-life insurer 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 non-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 non-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
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
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 non-life insurance 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. The Central Bank has indicated its intention to incorporate the Guidelines into its supervisory practices and expects insurance undertakings (non-life, life and reinsurance) to comply with the relevant EIOPA Guidelines.

(ii) *Central Bank Guidance Notes*

The Central Bank issued Guidance Notes in 2015 on completing and submitting life insurance, non-life insurance and reinsurance applications to the Central Bank. Details of other guidelines applicable to non-life insurance 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 non-life insurance 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

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

2. Regulatory Regime

The Irish regulatory regime for non-life insurance 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 non-life insurance 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 non-life insurance undertakings in Ireland is the Central Bank.

The Central Bank maintains registers of all non-life insurance 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 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 Administrator*

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 non-life insurance 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, known as the Administrative Sanctions Procedure, which commences 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 requirements 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 non-life insurance 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 non-life insurance 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 non-life insurance 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 non-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 non-life insurance 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) General Good Requirements for Insurance & Reinsurance Undertakings (2012);

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

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

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

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

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

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

(x) Outsourcing Notification Process under Solvency II;

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

(xii) Letter to Industry - Solvency II Day One Reporting - May 2016

(xiii) Letter to Industry - Feedback on the Forward Looking Assessment of Own Risk (FLAOR) – (May 2016).

(xiv) Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications

All of the above documents should be considered prior to establishing a non-life insurance undertaking and procedures should be put in place to ensure compliance and adherence to these when conducting non-life insurance 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 principles as to reinsurance and to retrocession;

(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.

In addition to the above, for its first three financial years, the scheme of operations must also include:

(e) a forecast balance sheet;

(f) estimates of the future Solvency Capital Requirement and the Minimum Capital Requirement;

(g) estimates of the financial resources intended to cover technical provisions, the Solvency Capital Requirement and the Minimum Capital Requirement;

(h) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(i) estimates of premiums or contributions and claims;

(iii) it holds eligible own funds to cover the absolute floor of the Minimum Capital Requirement (€2,500,000 for a non-life assurance undertaking, including a captive insurance undertaking, except in the case where all or some of the risks included in one of classes 10 to 15 in Part 1 of Schedule 1 are covered (Motor Vehicle Liability, Aircraft Liability, Liability for ships, General liability, Credit, and Suretyship) in which case the absolute floor shall be €3,700,000);

(iv) 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;

(v) 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;

(vi) 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;

(vii) 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 <u>minimum</u> figures only. The actual financial resources requirement for a non-life insurance 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 non-life undertaking may only carry on the business of non-life insurance 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 non-life undertaking, the 2015 Regulations provide that a non-life undertaking must:

(i) have an office in Ireland open during business hours for the transaction of non-life insurance 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 non-life business and to settle claims.

The non-life insurance 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

Non-life insurance 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 system of governance requirements set out in Regulations 45 to 51 of the 2015 Regulations. The system of governance requirements cover areas such as risk management, internal control, fit and proper requirements and actuarial function..

Non-life insurance 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.

Non-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 and in accordance with the Central Bank's Corporate Governance Requirements for Insurance Undertakings 2015 (the "Corporate Governance Requirements")non-life insurers are required 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 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 requires such undertakings to submit a compliance statement to the Central Bank on their compliance with relevant obligations as stated in the Notice.

Non-life insurance undertakings subject to Solvency II who received a Notice in August 2016 or thereafter must ensure that a compliance statement complies with the format set out in the Guideline for Solvency II (Re)Insurance Undertakings on Directors' Certifications. The compliance statement must be comprised of the relevant forms set out in the Guideline and include the compliance statement relating to the Corporate Governance Requirements.

Prior to submitting the compliance statement, all directors of the non-life insurance 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.

In respect of financial years ending on or before 31 December 2015, and for those undertakings not subject to Solvency II, compliance statements that should be submitted are dealt with in the "Guideline for Life Insurance Undertakings, Non-Life Insurance Undertakings and Reinsurance Undertakings - Compliance Statements".

4.3 Central Bank's Fitness and Probity Regime

In similar fashion to other regulated entities, the Central Bank's Fitness and Probity Regime (the "**Fitness and Probity Regime**") applies to non-life insurance undertakings and comprises Part 3 of the Central Bank Reform Act 2010, the Fitness and Probity Standards (Code issued under Section 50 of the Central Bank Reform Act 2010) (the "**Standards**") and the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011 (as amended) (the "**Principal Regulations**").

Under the Standards, persons performing Controlled Functions ("**CFs**") in a non-life insurance undertaking are required to possess a level of fitness (i.e. competence and capability) and probity (i.e. honesty, ethical judgment and integrity, together with financial soundness) befitting the relevant role.

The definitions of CFs are set out in the Principal Regulations. The list of CFs is broader in scope than just head of organisational units and persons who effectively run the undertaking or those who hold key functions. Pre-Approval Controlled Functions ("PCFs") are a subset of CFs and are easier to identify than a CF. Appointment to a PCF role must be pre-approved by the Central Bank but appointment to a CF role does not require prior approval by the Central Bank.

Where a person is proposed to be appointed to a PCF position, the non-life undertaking must submit an electronic Individual Questionnaire ("**IQ**") to the Central Bank via the Online Reporting System in respect of that person and the appointment is subject to the Central Bank's approval. All due diligence in respect of a proposed appointment to a PCF must be undertaken prior to submitting the IQ to the Central Bank.

The PCFs relevant to a non-life insurance 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

The Standards provide that non-life insurance undertakings must identify and maintain a record of all persons performing CFs. They must also document and record all due diligence undertaken in relation to persons performing CFs together with any documentation provided by the person including any responses given and signed by the person in relation to standards of probity.

The Central Bank may require to see any such records or due diligence within the context of an investigation of a non-life insurance undertaking's compliance with the Fitness and Probity Regime or of an investigation in relation to a person's fitness and probity to perform a CF role.

Non-life insurance undertakings must ensure their on-going compliance with the Fitness and Probity Regime.

The non-life insurance undertaking must ensure that persons performing CF/PCF roles undertake to notify the non-life insurance undertaking of any material changes in respect of the initial due diligence carried out.

The Central Bank recommends that non-life insurance undertakings carry out an annual audit of persons performing CFs and PCFs by asking CFs/PCFs to confirm whether they are aware of any material developments in relation to their compliance with the Standards of which the non-life insurance undertaking should be aware. The non-life insurance undertaking must not permit a person to perform a CF/PCF role unless the person has agreed to abide by the Standards.

On an annual basis non-life insurance undertakings should ask CFs/PCFs to certify that they are aware of the Standards and agree to continue to abide by these Standards. The non-life insurance undertaking must also file an Annual PCF Confirmation Return which sets out the list of all active PCF Holders within the non-life insurance undertaking. It also provides for the non-life insurance undertaking to confirm that each active PCF Holder is compliant with the Fitness and Probity Standards and that they continue to agree to abide by those Standards.

4.4 Four Key Functions

Under Solvency II, all non-life insurance 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. Non-life insurance undertakings should refer to the Central Bank Guidance for (Re)Insurance Undertakings on the Fitness and Probity Amendments 2015 which sets out the Central Bank's expectations on (re)insurance undertaking's establishment of key functions and implementation of certain system of governance requirements under Solvency II.

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. Non-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 non-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 non-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.

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 "**Domestic 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 Own Risk and Solvency Assessment (the "**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 Requirements provide the Format of Actuarial Opinion on Technical Provisions.

The Domestic Requirements also set out some sector specific requirements. Non-life insurers who are designated as High Impact must establish a Reserving Committee, with powers delegated to it by the Board, which shall meet no less frequently than quarterly.

The Domestic Requirements provide for certain exemptions for non-life insurance undertakings. Non-Life insurers that do not carry on any third party business or motor, liability and financial guarantee business may apply to the Central Bank for an annual exemption from all sections of the Requirements except section 2.1.1 (requirement to appoint Head of Actuarial Function). and section 2.1.2.(The responsibility for tasks of actuarial function must be held by one person who is answerable to the Board in that regard). This exemption does not apply to the requirements arising from Solvency II which may be referred to in the Domestic Requirements document.

These Domestic 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 the Domestic 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 non-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 non-life insurance 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 non-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

Non-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 non-life insurance undertaking.

Once again, it is the board of directors of the non-life insurance undertaking which is ultimately responsible for ensuring the effectiveness of the risk management system, setting the non-life insurance 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

Non-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 non-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 non-life undertakings as very briefly touched on below.

5.1 Technical Provisions

Non-life insurance 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 non-life insurance 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.

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.

5.2 Own Funds

Under Solvency II, the capital of the non-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

Non-life insurance undertakings must hold eligible own funds to cover the 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 non-life undertaking's internal model, subject to Regulations 125 – 138 of the 2015 Regulations.

Where a non-life insurance 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 non-life insurance undertaking and it can inform the supervisory authorities of any Member State(s) in which the non-life insurance undertaking operates of the measures taken and it can request those authorities to take the same measures.

5.4 Minimum Capital Requirement

Non-life insurance undertakings must hold eligible basic own funds to cover the minimum capital requirement ("**MCR**"). Regulation 140(2) provides that the MCR of a non-life insurance undertaking shall have an absolute floor of €2,500,000 for a non- life insurance undertaking, except in the case where all or some of the risks included in one of classes 10 to 15 in Part 1 of Schedule 1 are covered (Motor Vehicle Liability, Aircraft Liability, Liability for ships, General liability, Credit, and Suretyship) in which case the absolute floor shall be €3,700,000. 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 non-life insurance 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 non-life insurance undertaking must submit a short-term finance scheme for the restoration of a sound financial position to the Central Bank for approval.

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

5.5 Insurance Undertakings in Difficulty

Where a non-life insurance 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

Non-life insurance 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 Quantitative Reporting Templates ("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 some 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 non-life insurer'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**")*

Non-life insurance 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

Non-life insurance companies must annex a Directors' Accuracy Certificate, signed by at least two directors and the Chief Executive Officer, to the annual quantitative templates, each 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, non-life insurance 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, non-life insurance undertakings are subject to further reporting obligations, including:

(a) Non-life insurance 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.

5.8 Domestic Reporting Requirements /National Specific Templates

Under the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Insurance Undertakings National Specific Templates Reporting Arrangements) Regulations 2016 (the "**2016 NST Regulations**"), the Central Bank, introduced a number of reporting templates ("**National Specific Templates**" or "**NSTs**") which it deemed necessary to address requirements specific to the local market and/or the nature of insurance undertakings supervised in Ireland and which are not catered for in the set of Solvency II harmonised reporting templates produced by EIOPA.

The 2016 NST Regulations apply to the following:

(a) All life and non-life insurance undertakings authorised under 2015 Regulations and which are rated as High Impact under the PRISM supervisory regime;

(b) Insurance undertakings transacting business in Ireland on a branch basis and whose Irish Risk annual gross written premium exceeds €25,000,000. (In relation to these undertakings the 2016 NST Regulations shall commence on 1 January 2017); and

(c) Insurance and reinsurance undertakings which transact Variable Annuity Business regardless of PRISM impact rating.

The 2016 NST Regulations set out the NST templates applicable to the different undertakings as well as the format and reporting frequency of the NSTs. The NST templates can be found on the Central Bank website.

6. Outsourcing

Solvency II introduces a number of detailed and prescriptive conditions in relation to outsourcing requirements for non-life insurance undertakings. Under the 2015 Regulations, a non-life insurer 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 non-life insurer into contractual relationships with a third party service provider whereby it is agreed that the non-life insurer 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.”.

Under the 2015 Regulations, all significant intra-group transactions by insurance undertakings and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, must be reported to the group supervisor on a regular basis and at least annually. Very significant intra-group transactions must be reported as soon as practicable.

The insurance or reinsurance undertaking at the head of the group is responsible for submitting the necessary information to the group supervisor. Where the group is not headed by an insurance undertaking or reinsurance undertaking, the insurance holding company, the mixed financial holding company or an insurance or reinsurance undertaking in the group must report the necessary information.

In cases where the Central Bank is the group supervisor, it will, following consultation with other supervisory authorities and the group itself:

a) identify the undertaking in the group to provide the information;

b) identify the type of intra-group transactions which insurance undertakings and reinsurance undertakings in the group shall report in all circumstances taking into account the specific group and risk-management structure of the group;

c) impose appropriate thresholds based on solvency capital requirements, technical provisions, or both, in order to identify intra-group transactions which should be reported, and

d) subject the intra-group transactions to supervisory review and, in particular, monitor the possible risk of contagion in the group, the risk of a conflict of interests and the level or volume of risks.

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 non-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 non-life insurer 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 insurer, 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 non-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, <u>dispose</u> 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 <u>part of</u> 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 non-life insurance undertaking itself is also required to make a notification under the 2015 Regulations of the above types of proposed changes.

7. Remuneration Policy

In accordance with Article 275 of the Delegated Regulation, non-life insurance 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 non-life insurance 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 non-life insurance 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 non-life insurance 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 non-life insurance 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 non-life insurer.

8. Investments

The rules concerning investments which can be made by a non-life insurance 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 non-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 non-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.

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 Requirements for Insurance Undertakings 2015 (the "**Requirements**")*

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 non-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, non-life insurance undertakings must look at liquidity, cashflow and operational and legal risks in their derivatives activities.

It is important that non-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 non-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.

9. General Good and Other Irish Legal Requirements

In addition to insurance regulation, an Irish head office non-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.

10. 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.

10.1 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.

Non-life undertakings are subject to the Code when selling to customers in Ireland only.

10.2 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.

10.3 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.

10.4 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 months' 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.

A non-life insurance undertaking is required to provide certain information to consumers on insurance products prior to the conclusion of any contract (See Section 13 on Policyholder Communication for more details).

10.5 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.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 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.

10.12 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.

10.13 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.

10.14 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.

10.15 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.

10.16 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.

10.17 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.

10.18 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.

11. Minimum Competency Code

11.1 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 Section 50 of the Central Bank Reform Act 2010. .

11.1.1. 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 sets out the minimum level of knowledge and competence required for each category of retail financial product.

11.1.2. Key Definitions

'Advice' in relation to a retail financial product means the provision of advice to a consumer, whether at the consumer's request or at the initiative of the firm, in the course of providing or in relation to the provision of a retail financial product or in carrying out any of the specified functions.

'Retail Financial Products' include life assurance, pensions, savings and investments, personal general insurance, commercial general insurance, private medical insurance and associated insurances, housing loans, home reversion agreements and associated insurances, consumer credit agreements and associated insurances (a full list of Retail Financial Products is set out in the Code).

11.2 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 Consumer Protection Code which also excludes the application of that code to consumers outside of the State.

11.3 Administrator/Clerical Officer

Where an individual's only activity is the processing of quotation requests within a narrow and rigid set of acceptance criteria and according to a prescribed script 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

12 Policyholder Communication and PRE

Non-life insurance 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 the 2015 Regulations, the Insurance Act 1989 and the Consumer Protection Code 2012.

12.1 Solvency II

Prior to the conclusion of an insurance contract, a non-life insurance undertaking subject to Solvency II must inform the prospective policyholder (being a natural person), of the following:

(a) the law applicable to the contract, where the parties do not have a free choice; and

(b) the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

The non-life undertaking must also inform the policyholder of the arrangements for handling complaints by policyholders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policyholder to take legal proceedings.

Where non-life insurance is offered under the right of establishment or freedom to provide services in Ireland, the non-life insurer must inform the policyholder before any commitment is entered into, of the Member State in which its head office is situated or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents provided to the policyholder should include this information. These obligations, however, do not apply to large risks.

The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, must state the address of the head office or, where appropriate, of the branch of the undertaking which grants the cover. Where Motor Vehicle Liability (but excluding carrier’s liability) is to be covered, those documents should also contain the name and address of the claims representative of the undertaking appointed or to be appointed in respect of Motor liability risks (excluding carrier’s liability) pursuant to Article 4 of Directive 2000/26/EC in each Member State other than Ireland.

12.2 Insurance Act 1989

Under Section 43D of the Insurance Act 1989, the Central Bank has the power to require additional information to be provided to the prospective policyholder for business written in Ireland in relation to proposals, marketing, sale, distribution and conclusion of policies of insurance prior to the conclusion of such policies and during the term of such policies.

Section 43F of the Insurance Act 1989 sets out the additional information that non-life insurers may be required to provide to consumers. Regulations made under Section 43F include the Non-Life Insurance (Provision of Information) (Renewal of Policy Insurance) Regulations, 2007

The 2007 Regulations require insurance companies to provide that an insurer must, not less than 15 working days prior to the date of expiry of a policy of insurance:

(a) where the insurer wishes to invite a renewal, issue to the client in writing a notification of renewal of the policy of insurance; or

(b) issue to the client in writing a notification that it does not wish to invite a renewal, unless the insurer has reason to believe that the client would not wish to renew the policy.

Further, an insurance company, in respect of a policy of motor insurance, must notify a client in writing, within the 15 working day time period, of information concerning:

(i) the registration number of each vehicle insured under the policy where the policy includes private motor insurance;

(ii) the name of the drivers insured under the policy or a statement of the classes of drivers that are insured under the policy;

(iii) whether the policy is comprehensive, third party, fire and theft, third party only, or a combination thereof;

(iv) where applicable, the monetary amount of any portion of the premium which has been calculated on the basis of previous claims by the client or prior convictions of the client;

(v) the cost of any optional cover ancillary to the level of motor cover selected;

(vi) any fees or charges applied other than the premium;

(vii) changes to the terms of the policy including any restrictions or limitations;

(viii) details of the various payment options available; and

(ix) any discount to be applied in respect of such policy.

The insurance company must specify the percentage and monetary value of the discount, if any, the point on the discount scale, if any and the number of years, if any, in respect of which no claim has been made against the policy of insurance concerned in a separate or separable document and shall specify the date of issue of such document.

12.3 Consumer Protection Code

The Consumer Protection Code 2012 also requires non-life insurers to provide certain information to consumers. Prior to providing the first service to the consumer, the non-life insurer must provide a copy of its terms of business. Before offering, recommending, arranging or providing a product, the non-life insurer must provide information, on paper or on another durable medium, to the consumer about the main features and restrictions of the product to assist the consumer in understanding the product.

When providing a quotation to a consumer, a non-life insurer must include the monetary amount of the quotation, the length of time for which the quotation is valid and the full legal name of the relevant underwriter. In addition, a non-life insurer must set out clearly in the quotation provided to the consumer any warranties or endorsements that apply to the policy and any discounts or loadings that have been applied in generating the quotation.

The full legal name of the relevant underwriter must be stated on all insurance policy documentation and renewal notices issued to a consumer.

A non-life insurer must explain to a consumer, at the proposal stage, the consequences for the consumer of failure to make full disclosure of relevant facts depending on the policy.

The Consumer Protection Code also sets out other specific information requirements relevant for motor insurance, permanent health insurance, serious illness policies

Where the premium may be subject to review during the term of the policy, the non-life insurer must, prior to offering, recommending, arranging or providing an insurance policy:

(i) explain clearly to the consumer the risk that the premium may increase; and

(ii) provide the consumer with details of the period for which the initial premium is fixed.

In this case a warning statement must be included on the application form for the product.

13 Data Protection

Non-life insurers are clearly subject to the full rigours of the data protection regime.

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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 non-life insurance undertakings should be mindful of this.

13.7 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.

13.8 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.

13.9 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.

14 Taxation

The Irish tax regime governing non-life (general) insurance business is set out in domestic tax legislation as amended and supplemented by national tax laws, which implement EU legislative provisions.

14.1 Irish Corporate Tax System

Companies that are tax resident in Ireland are subject to Irish corporation tax in respect of their worldwide profits, whereas companies not tax resident in Ireland are not subject to Irish corporation tax unless they carry on a trade in Ireland through a branch or agency. A company which is neither tax resident in Ireland nor has a branch or agency in Ireland will be subject to income tax on income arising from sources within the state.

Generally speaking, a company, which is incorporated in Ireland, shall be regarded as resident in Ireland for tax purposes. The incorporation test cannot however be relied upon where the company is regarded as not tax resident in Ireland under a double taxation treaty between Ireland and another country. The residence of a company under a double taxation treaty normally depends on the location of central management and control.

There is no statutory definition of management & control in Irish tax legislation. However, case law has laid down some “guidelines”. In short, the key ingredient is where the main policy decisions affecting a company are made (what the courts regard as “central management and control”). Central management and control is directed at the highest level of control (not necessarily the day-to-day activities of a company) and involves such matters as the formulation of company policy (how the company deals with such matters as financing and capital structure, etc.). It is usual, although not always so, that such key decisions are decided at board meetings. Assuming such key decisions are made at board meetings, then the location of those directors meetings is the key to determining Irish tax residence.

If a company is not resident for tax in Ireland then it will only be subject to Irish corporation tax if it carries on business through a branch or agency in Ireland.

There are two rates of corporation tax applicable in Ireland, a 12.5% rate in respect of income from a trade and the 25% rate in respect of non-trading/investment income. The term “trade” is broadly defined in Irish tax legislation and the question of whether or not a trade is in fact being carried on will depend upon the exact circumstances having regard to relevant case law and guidance provided by the Irish Revenue Commissioners ("**IRC**").

In this regard, the IRC is also willing to express their opinion as to whether they would regard a particular activity as falling within the ambit of a trade for corporation tax purposes. To avail of the 12.5% trading corporation tax rate generally requires some level of activity on the part of the company in question as opposed to mere ownership of income producing assets.

The carrying on of an insurance business in Ireland is generally regarded as carrying on a trade for Irish corporation tax purposes and consequently the 12.5% corporation tax rate in respect of resultant trading profits should apply.

14.2 General Insurance Companies – Tax Treatment for Policyholders

Premiums paid or payable on general insurance policies are usually allowed as a deduction in arriving at trading taxable profits, subject to certain exceptions (e.g. the premiums are not incurred for the purposes of the trade).

14.3 General Insurance Companies – Corporate Taxation

Typically, the profits of a general insurance company carrying on a trade in Ireland will be taxed at a rate of 12.5% under the provisions of Case I of Schedule D which is the applicable case for taxing trading activities carried on in Ireland. General insurance companies are usually taxed in the same manner as other trading companies subject to industry specific differences that have arisen as a result of practical rules rather than statutory ones.

A. *Investment Income and Realisation of Investments*

Investment income is generally subject to corporation tax in Ireland at a rate of 25%. However Irish tax law has regard to the particular nature of an insurance business and does not generally impose the 25% corporation tax rate on the investment income of non-life, life and reinsurance companies (i.e. their investment income may instead be taxable at the 12.5% trading rate).

The 12.5% corporation tax rate applies to investment income which is generated for the purpose of an insurance business. Similarly, profits or gains arising to a general insurance company from the disposal of assets held for the purpose of the insurance business would also be subject to the 12.5% trading corporation tax rate.

Any realised losses incurred on disposals of investment assets held for the purpose of the insurance business - should be available to offset against the trading income for the purpose of determining taxable profits. It is important to note however that the tax treatment outlined above does not apply to assets which are pure investment assets (which are not held for the purpose of the insurance business). In such cases, the income (non-trading) will be treated as non-trading income and any gains subject to tax under Capital Gains Tax ('CGT') rules.

In principle, insurance companies make investments as part of their trade but they are not regarded as a dealer in investments nor do the investments represent the trading stock of the insurance business. As a result, generally no deduction is obtained in computing trading profit or loss for unrealised investment losses.

In relation to bank interest income the IRC have confirmed that interest arising from deposits held by insurance companies (i.e. life and non-life, including reinsurance) is taxable as part of the trading income of the company on the grounds that such deposits are integral to the trade of insurance.

B. *The Funded Basis of Accounting*

The general provision of Irish tax law that the taxation treatment will follow the accounting treatment in a trading context will apply to general insurance companies, subject to any adjustments authorised or required by Irish tax law (i.e. the accounting profit is essentially the starting basis for tax purposes). However, general insurance companies may also use the funded basis of accounting to defer recognition of profit until such time as the extent of associated claims can be established with reasonable certainty. When the company's statutory accounts are prepared on the funded basis, this treatment will generally be followed for tax purposes.

C. *Provisions and Reserves*

As will be evident from earlier sections, insurance companies are required to maintain a minimum solvency margin and to establish and maintain adequate technical reserves. In accordance with established tax principles, provisions are generally tax deductible whereas amounts set aside for reserves are not so deductible.

Such provisions and reserves include:

(i) *Outstanding Claims*

This will exhibit claims settled in the accounting period and will include provisions in respect of claims which have not yet been settled. Certain claims will have been notified at the end of the accounting period whilst other claims identified will have been incurred but not reported (see below).

(ii) *Claims Notified* - Provisions for known liabilities that can be estimated at the year-end with reasonable certainty are deductible for tax purposes. Where there are exceptionally large claims, these should be specific and supported by statistical evidence.

(iii) *Incurred but not Reported (IBNR)* – Claims in relation to incidents in a year will often only be reported after the books for an accounting period are closed. As such, insurance companies will often provide for IBNR. These provisions are deductible for tax purposes provided they are calculated with substantial accuracy and do not contain a reserve over the amount provided for based on statistical evidence.

(iv) *Unearned Premium & Unexpired Risk (technical) Provisions*

Insurance policies often span the year-end of the insurer. Therefore the practice is to recognise the premium in full in the accounts but to set-up an Unearned Premium Provision for the period of premiums not yet earned. Where it is anticipated that claims and expenses in respect of business in force at the end of an accounting period will exceed related premiums, an unexpired risk provision will usually also be made to provide for the anticipated loss. The practice of the IRC is to allow a deduction for the provisions included in the accounts of an insurance company in respect of unearned premiums and unexpired risks.

(v) Equalisation Reserves

Insurance companies may establish reserves to meet solvency requirements or reserves to provide against unexpected incidence of claims (e.g. catastrophic events). These reserves are generally not deductible for tax purposes.

(vi) Acquisition Expenses

Under the accruals concept, where unearned premiums are deferred it is appropriate to defer an equivalent proportion of the related acquisition expense. The IRC generally is of the view that a deduction is allowed for deferred acquisition expenses where a corresponding restriction is made for the unearned premium provision.

(vii) Claims Handling & Settlement Expenses

A deduction for tax purposes is generally allowed for provisions relating to claims handling and settlement expenses.

(viii) *Solvency Capital Requirements*

Generally no deductions are allowed for solvency capital requirements.

14.4 Value Added Tax (VAT)

Ireland in common with other EU Member States operates a system of Value Added Tax ("**VAT**") which is applied to the supply of most goods and services in Ireland. In general, VAT should not be a cost for suppliers making VATable supplies (as any VAT incurred in making such supplies should be fully recoverable save for certain restrictions under Irish VAT law).

However Irish VAT law provides for a specific exemption from Irish VAT for "*insurance and reinsurance transactions, and the supply of related services by insurance brokers and insurance agents*". Therefore insurers do not charge VAT on the supply of their products. Consequently as the provider of VAT exempt insurance services; an insurance company will have limited recovery of VAT on their input costs in respect of insurance activities that are regarded for VAT purposes as supplied within the EU (including Ireland). Generally there is scope for VAT recovery where the relevant insurance services are regarded as taking place outside the EU.

14.5 Stamp Duty & Premium Taxes

No Irish stamp duty or premium taxes are payable on insurance policies where the risk is not located in Ireland.

(i) Fixed Duty

A fixed stamp duty of Euro €1 is payable on a policy of insurance (excluding life assurance) where the risk to which the policy relates is located in Ireland. However from an administrative perspective a company can enter into an “Agreement as to payment of Stamp Duty on Instruments” (Composition Agreement) with the IRC. The essential feature of a composition agreement is that instruments which are liable to stamp duty and which are covered by an agreement need no longer be individually stamped. The agreement provides that duty which would otherwise have been paid on each individual instrument will be paid by way of composition i.e. a bulk payment will be made at the end of an accounting period equal to the total stamp duty which would have been paid, but for the operation of the agreement, on all instruments executed in that period. Agreements are entered into at the discretion of the IRC. They are of most benefit in circumstances where an institution issues a large number of standard instruments which are liable to stamp duty.

(ii) Levy

A 3% levy applies to the gross amount received by an insurer in respect of certain general insurance premiums to the extent that the risks to which the policies relate are located in Ireland. The exceptions to the 3% levy are are re-insurance, voluntary health insurance, marine, aviation and transit insurance, export credit insurance and certain dental insurance contracts.

The Irish Stamp Acts specifically provide that the risk to which a policy of insurance relates shall be deemed to be located in Ireland where:

(a) the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, if the property is situated in Ireland;

(b) the insurance relates to vehicles if such vehicles are registered in Ireland;

(c) in the case of policies of a duration of 4 months or less covering travel or holiday risks, if the policyholder took out the policy in Ireland;

(d) in any other case, if the policyholder has his or her habitual residence in Ireland, or where the policyholder is a legal person other than an individual, if the policyholder's head office or branch to which the policy relates is situated in Ireland.

14.6 Dividend Withholding Tax

Withholding tax of 20% must be applied in respect of dividends paid and other profit distributions made by companies resident in Ireland. The obligation to withhold tax is placed on the company making the distribution.

Exemption from dividend withholding tax is available to non-resident shareholders in the following circumstances:

(i) under domestic law, where the dividend is paid to individual recipients resident in the EU (other than Ireland) or in a country with which Ireland has concluded a DTT (or in a country with which Ireland has signed but not yet ratified a DTT) ("**Qualifying Country**");

(ii) under domestic law, where the dividend is paid to a company resident in a Qualifying Country and which is not controlled (more than 50%) by Irish residents;

(iii) under domestic law, where the dividend is paid to a company that is under the ultimate control of persons resident in a Qualifying Country;

(iv) a listed company or a 75% subsidiary of a listed company;

(v) in accordance with the EU Parent-Subsidiary Directive as implemented into Irish domestic law, where the dividend is paid by a subsidiary company to its EU parent.

With the exception of a subsidiary company relying on the EU Parent-Subsidiary Directive, when making a dividend payment to an EU/ Swiss parent, all of the foregoing persons must make a declaration in a specific format laid down in the legislation in order to avail of the above exemptions (i.e. no declaration is required if a company is relying on the EU Parent-Subsidiary Directive). If there are no changes in circumstances, the declaration should remain operative for five years. Please note that on the making of a relevant dividend to which one of the above exemptions applies (including the EU Parent-Subsidiary Directive) it is still necessary to complete and file a nil dividend withholding tax return with Revenue on or before the 14th day of the month following the month in which the dividend is made (i.e. a return is required to be made with Revenue even in the event that nil withholding tax applies).

Appendix A

Classes of Non-Life Insurance Business

A. Classes

1. Accident (including industrial injury and occupational diseases)—
   - a) fixed pecuniary benefits,
   - b) benefits in the nature of indemnity,
   - c) combinations of the 2, and
   - d) injury to passengers.

2. Sickness—
   - a) fixed pecuniary benefits,
   - b) benefits in the nature of indemnity, and
   - c) combinations of the 2.

3. Land vehicles (other than railway rolling stock).

   All damage to or loss of—
   - a) land motor vehicles, and
   - b) land vehicles other than motor vehicles.

4. Railway rolling stock.

   All damage to or loss of railway rolling stock.

5. Aircraft.

   All damage to or loss of aircraft.

6. Ships (sea, lake and river and canal vessels).

   All damage to or loss of—
   - a) river and canal vessels,
   - b) lake vessels, and
   - c) sea vessels.

7. Goods in transit (including merchandise, baggage, and all other goods).

   All damage to or loss of goods in transit or baggage, irrespective of the form of transport.

8. Fire and natural forces.

   All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to—
   - a) fire,

b) explosion,
c) storm,
d) natural forces other than storm,
e) nuclear energy, and
f) land subsidence.

9. Other damage to property.
All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than that included in class 8.

10. Motor vehicle liability.
All liability arising out of the use of motor vehicles operating on the land (including carrier’s liability).

11. Aircraft liability.
All liability arising out of the use of aircraft (including carrier’s liability).

12. Liability for ships (sea, lake and river and canal vessels).
All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier’s liability).

13. General liability.
All liability other than the liabilities referred to in classes 10, 11 and 12.

14. Credit—
a) insolvency (general),
b) export credit,
c) instalment credit,
d) mortgages, and
e) agricultural credit.

15. Suretyship—
a) suretyship (direct), and
b) suretyship (indirect).

16. Miscellaneous financial loss—
a) employment risks,
b) insufficiency of income (general),
c) bad weather,
d) loss of benefits,
e) continuing general expenses,

f) unforeseen trading expenses,
g) loss of market value,
h) loss of rent or revenue,
i) other indirect trading loss,
j) other non-trading financial loss, and
k) other forms of financial loss.

17. Legal expenses

Legal expenses and costs of litigation.

18. Assistance

Assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence as described in Article 2(2) of the Directive.

B. Authorisations for more than one class of insurance

The following names shall be given to authorisations which simultaneously cover the following classes:

a) Classes 1 and 2: “accident and health insurance”;
b) Classes 1(d), 3, 7 and 10: “motor insurance”;
c) Classes 1(d), 4, 6, 7 and 12: “marine and transport insurance”;
d) Classes 1(d), 5, 7 and 11: “aviation insurance”;
e) Classes 8 and 9: “insurance against fire and other damage to property”;
f) Classes 10, 11, 12 and 13: “liability insurance”;
g) Classes 14 and 15: “credit and suretyship insurance”;
h) All classes, at the choice of the Member States, which shall notify the other Member States and the Commission of their choice

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 non-life insurance 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 application for authorisation.

(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 non-life insurance 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 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.

(xii) 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 non-life insurance 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.

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

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

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

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

4. Ownership Structure

(i) Confirmation whether the ownership of the applicant is vested in:

- One or more financial institutions; or
- A wide spread of owners

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

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

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

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

(v) Provide certain details in respect of each holder of a qualifying holding.

(vi) Indicate whether the group or holders of qualifying holding if applicable have any perceived conflict of interest with the proposed new company

5. 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) If the applicant has a legal structure other than a designated activity company, please outline the rationale for using a different structure

(iv) 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.

6. Objectives and Proposed Operations

(i) Provide rationale for seeking a non-life insurance authorisation and establishing in Ireland.

(ii) Confirm that the operations of the company will be limited to non-life insurance and to operations arising directly there from.

(iii) Outline the classes of non-life insurance business being applied for.

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

(v) Provide the target financial objectives of both the group and the applicant and indicate when the applicant will meet the target

(vi) Set out the countries in which business will be written and whether this will be on a freedom of services or establishment basis.

(vii) 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).

(viii) If the applicant intends to write business outside the EU, provide an overview of how the applicant can underwrite that business from an Irish authorised undertaking.

(ix) Provide details of the applicant's initial and future location and infrastructure plans.

(x) If the applicant intends to underwrite motor vehicle liability insurance, as defined in class 10 in Part 1 of Schedule 1 of the 2015 Regulations:

- Provide the name and address of the claims representative appointed or to be appointed in each Member State other than the State; and
- A declaration attesting that the applicant will become a member of the Motor Insurers' Bureau of Ireland and the national guarantee fund of the State.

7. 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;

(iii) Confirm that the applicant will comply with all the requirements of the Corporate Governance Requirements for Insurance Undertakings 2015.

8. Risk Oversight

(i) Provide a copy of the applicant's proposed ORSA which demonstrates how the risk management system will cover risks relating to underwriting and reserving, asset liability management, investment, liquidity and concentration risk, operational risk and reinsurance and other risk-mitigation techniques and provide written policies on these risk management areas

(ii) Demonstrate that an effective risk management system will be established comprising strategies, processes and reporting procedures necessary to measure, monitor, manage and report the risks which the undertaking could be exposed to. Set out the procedures for the following:

- Continuous measuring, monitoring and controlling of risks;
- Accurate and reliable management information systems;
- Timely management reporting; and
- Thorough audit and control procedures.

(iii) Submit a copy of the Risk Appetite Statement;

(iv) Provide additional information is required in respect of the following:

- Investment
- Reinsurance and other Risk Mitigation Techniques
- Conflicts of Interest
- Outsourcing
- Information Technology/Business Continuity Plan

9. Key Functions

(i) The applicant must provide information on the following key functions:

- Internal Audit
- Compliance
- Actuarial
- Risk Management

(ii) The information to be provided includes (but is not limited to):

- An outline of the structure of the key function including reporting lines;
- An overview of the team of the key function including their experience and qualifications;
- Details of the role and objectives of the key function;
- Details of internal control/risk management procedures within each key function

10. Other Functions

The applicant must also provide information on other functions including;

- Underwriting Function
- Policy and Claims Administration
- Finance Function
- Investment Function
- Policy Documents
- Distribution

11. Scheme of Operations

(i) The applicant must submit the following as part of the scheme of operations;

- The nature of the risks or commitments which the applicant proposes to cover;
- The guiding principles as to reinsurance and to retrocession;
- The basic own fund items constituting the absolute floor of the Minimum Capital Requirement; and
- Estimates of the costs of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in Part 1 of

Schedule 1 of the Regulations, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

(ii) In addition to the requirements set out above, the following information for the first 3 financial years must also be submitted:

- A forecast balance sheet;
- Estimates of the future Solvency Capital Requirement, on the basis of the forecast balance sheet, as well as the calculation method used to derive those calculations;
- Estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
- Estimates of management expenses other than installation costs, in particular current general expenses and commissions; and
- Estimates of premiums or contributions and claims

12. Capital and Financial Projections (3 years projections required)

Capital:

(i) The applicant must set out full details of Basic Own Funds and Ancillary Own Funds in accordance with Regulation 103 and 104 and EIOPA's Guidelines on Ancillary Own Funds and Own Funds.

(ii) The applicant must hold eligible own funds to cover the absolute floor of the Minimum Capital Requirement(2,500,000 for a non- life assurance undertaking, including a captive insurance undertaking);, except in the case where all or some of the risks included in one of classes 10 to 15 in Part 1 of Schedule 1 are covered (Motor Vehicle Liability, Aircraft Liability, Liability for ships, General liability, Credit, and Suretyship) in which case the absolute floor shall be €3,700,000);

(iii) Provide detailed information on the sources of funding for the applicant

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.

13. 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).

14. Other

Applicants should provide any other information relevant to the application.

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