

Insurance Quarterly Legal and Regulatory Update

Period covered:
1 July 2012 – 30 September 2012

DILLON  EUSTACE

DUBLIN CAYMAN ISLANDS HONG KONG NEW YORK TOKYO



Contents

Insurance Quarterly Legal and Regulatory Update

Solvency II	Page 3
EIOPA Updates	Page 3
Proposed revision of the Insurance Mediation Directive	Page 5
KIDs for Life	Page 5
Increase in number of portfolio transfers	Page 6
Central Bank of Ireland	Page 6
Gender neutral insurance premiums	Page 8
Health Insurance	Page 9
Pensions Update	Page 10
Data Protection	Page 10
Anti-Money Laundering/Counter-Terrorism Financing	Page 11
Contact Us	Page 13



INSURANCE QUARTERLY LEGAL AND REGULATORY UPDATE

Solvency II

The current timetable for the transposition of the Solvency II Directive is June 30, 2013 with its implementation targeted for January 1, 2014. All existing insurance and reinsurance directives will be repealed as of January 1, 2014. There have been increasing reports, however, of a potential further one year delay in Solvency II's implementation.

The vote in the European Parliament on the Omnibus II Directive (which, if adopted, will amend the Solvency II Directive) is due to be held on November 20, 2012. Michel Barnier (European Commissioner for Internal Market and Services) has proposed that the negotiations relating to Omnibus II be delayed until March 2013 so as to await the completion of an impact study by the European Insurance and Occupational Pensions Authority ('EIOPA') on insurance products with long-term guarantees.

The Central Bank of Ireland (the '**Central Bank**') is still working from the following timetable:

-  Solvency II will be transposed by Member States by June 30, 2013; and
-  Solvency II will come into full effect on January 1, 2014.

EIOPA Updates

EIOPA report on Solvency II Reporting and Disclosure Requirements for Insurers

On July 10, 2012 EIOPA published a report on the outcome of its public consultation on the Solvency II reporting and disclosure requirements for insurers. In its report, EIOPA recommends that the insurance industry should use the existing reporting package as a basis to start the implementation phase.

EIOPA is proposing the use of 'Quantitative Reporting Templates' ('QRTs') which will have scope for Member States to adapt the QRTs to fit national specificities. The Central Bank has stated that it will communicate with the industry as to these national specificities in early 2013. The Central Bank already anticipates that there will be additional reporting requirements for profit and loss information.

This EIOPA report may be found on its website: eiopa.europa.eu

EIOPA final report on ORSA Level 3 Guidelines

On July 13, 2012 EIOPA published its report on the public consultation concerning draft Level 3 guidelines on the Own Risk and Solvency Assessment ('**ORSA**').

The report focuses on 17 specific issues raised by respondents and highlights how they will be included in the Level 3 guidelines. While respondents almost unanimously approved EIOPA's general approach of addressing what is to be achieved through the ORSA rather than how these goals might be achieved, concerns were raised regarding the prescriptiveness of some guidelines.

The issues raised by respondents relate to the proportionality and materiality of ORSA's application, definitions used in the guidelines (particularly those relating to risk), the role of the Administrative Management and Supervisory Body, ORSA policy, recording of ORSA, ORSA supervisory report, captives, quantification of risks, the requisite forward-looking perspective, regulatory capital requirements, significant deviation from the risk profile, the connection between ORSA and SCR calculations, internal models, the scope of the ORSA at group level (including third country groups), the working of the College of Supervisors and the explanation of group diversification effects.

This EIOPA report may be found on its website: eiopa.europa.eu

EIOPA hosts meeting on the EU/US insurance dialogue

On July 11, 2012 EIOPA hosted a steering committee meeting of the EU/US insurance dialogue.

The rationale behind the dialogue is to increase mutual understanding and co-operation between the two jurisdictions with a view to identifying the main similarities and differences of the two insurance regulatory and supervisory regimes.

The meeting focused on the analysis of the two regulatory and supervisory systems and related to the following areas: professional secrecy; group supervision; solvency and capital requirements; reinsurance and collateral requirements; supervisory reporting, data collection and analysis and transparency to the market; supervisory peer reviews; independent third party review and supervisory on/site exams/inspections.

The next steering committee meeting is due to take place this October and the parties are due to hold public hearings and a written consultation on the draft factual report prepared by the seven technical committees that are involved in the process. The European public hearing is to take place on October 16, 2012 in Brussels.

Proposed revision of the Insurance Mediation Directive

On July 3, 2012, as part of a wider legislative package focusing on consumer protection related issues, the European Commission (the '**Commission**') announced a proposed reform of the Insurance Mediation Directive (the '**IMD**').

Introduced in 2002, the IMD aimed to create a Europe-wide market for insurance intermediaries by imposing minimum standards of regulation and consumer protection throughout the EU. Its implementation, however, has been inconsistent throughout the EU.

In its explanatory memorandum, the Commission explains that it hopes the proposed reform of the IMD will serve to improve consumer protection in the insurance sector through the requirements for increased information provision and advice and by creating common standards for insurance sales. Some of the key proposed changes are as follows:

- ▣ the scope of the IMD will be broadened so as to include all sellers of insurance products, companies that manage claims for insurers, loss adjustors and possibly those who sell insurance on an ancillary basis;
- ▣ the fee, basis and amount of remuneration and any variable remuneration received by individual sales employees will need to be disclosed;
- ▣ those who sell life insurance products containing an investment element will be subject to stricter conduct of business requirements and rules similar to those contained in MiFID II;
- ▣ new requirements will be introduced in relation to the bundling of products;
- ▣ under the proposal, Member States will be required to adopt effective, proportionate, and dissuasive administrative sanctions and measures to ensure compliance with the revised IMD.

An article giving a more in depth analysis of the proposed changes to the IMD may be found in the insurance publications section of our website: www.dilloneustace.ie

KIDs for Life

On July 3, 2012 the Commission issued a proposal for a Regulation on key information documents ('**KIDs**') for investment products sold to retail investors.

For the life insurance industry, this will be relevant particularly for unit-linked and with-profits business. The Regulation, when implemented, will require life companies to produce a short form

KID (generally two pages) in a standardised format, summarising the main terms of the product and to provide the KID document to prospective investors generally before a contract is concluded.

It is envisaged that the proposal will become effective at the end of 2014.

An article giving a more in depth analysis of the PRIPs regime entitled 'KIDs for Life: The PRIPS Initiative' may be found on the insurance publications section of our website; www.dilloneustace.ie

Increase in number of portfolio transfers

There has been a steady increase in the number of portfolio transfers presented to the High Court for sanction over the last 12 months which is indicative of the dynamic nature and structure of the European insurance market at this time.

Portfolio transfers must be effected within a pre-defined statutory framework which is set out in EU and Irish legislation. Portfolio transfers are often used as a means of intra-group reorganisation, including for example the re-domestication of overseas branches and the winding-up of captive reinsurers. They should also be considered as an effective solution when restructuring capital intensive business, reallocating funds or when exiting the market on wind up.

Dillon Eustace's cross-disciplinary Insurance Team has recognised expertise in the specialised area of portfolio transfers having advised its clients on a number of portfolio transfers. Most recently in the life assurance sector, Dillon Eustace acted for both petitioners in the successful transfer by Quinn Life Direct Limited of a majority of its life assurance business to Irish Life plc. This portfolio transfer was sanctioned by the High Court on July 17, 2012 and was put into effect by the parties in September 2012.

Central Bank of Ireland

Revised regulatory requirements for certain reinsurance undertakings

In July 2012, the Central Bank published (separate) revised regulatory requirements for life, non-life and composite reinsurance undertakings which update and replace the previous requirement papers for such undertakings dated July 2011.

The papers may be found on the Central Bank's website: www.centralbank.ie

Central Bank report on latest inspection into the sale of payment protection insurance

On July 2, 2012 the Central Bank published a report on its latest inspection into the sale (from August 2007 to date) of payment protection insurance. The investigation targeted sales where claims relating to unemployment/redundancy were declined due to issues concerning the claimants' employment status at the time the policy was entered.

The Central Bank's main concerns on this issue are:

- ▣ a general failure on the part of insurers to gather sufficient information to enable them to determine whether the product sold to the consumer was in fact suitable;
- ▣ firms treating certain sales as 'execution only' without complying with the relevant requirements of the Consumer Protection Code;
- ▣ the timing of the provision of key information to consumers;
- ▣ failure on the part of insurers to bring key exclusions to the attention of consumers; and
- ▣ poor record keeping and incomplete files.

The Central Bank is said to be considering enforcement action against certain insurers as a consequence of information attained during the course of its inspection process.

Fitness and Probity

December 1st deadline for completion of due diligence on those performing Controlled Functions

As you will be well aware, the Central Bank's Fitness and Probity Standards (the '**Standards**') have applied to all persons performing Pre-Approval Controlled Functions ('**PCFs**') since December 1, 2011 and to all persons newly appointed to Controlled Functions ('**CFs**') from March 1, 2012.

Under the Standards, persons performing CFs 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 implementation of the final phase of the Standards is fast approaching in that as of December 1, 2012 they will additionally apply to all persons performing CFs prior to March 1, 2012.

Regulated entities will need to take measures to ensure all persons performing CFs within their organisation are in compliance with the Standards. In order to do so, the regulated entity must conduct an appropriate level of due diligence on the individual concerned.

It should be noted that the Central Bank recently corresponded with the Irish Funds Industry Association concerning the level of due diligence it expects to be conducted on those persons performing the role of company secretary. In this correspondence, the Central Bank states that in relation to corporate secretaries it may be inadequate for a regulated entity to only perform due diligence on directors or heads of function of such an entity. In addition the Central Bank states that all individuals in the role of company secretary must comply with the Standards.

We have published a note (entitled 'Fit and Proper Update') in the Regulatory and Compliance section of our website setting out how to ensure the December 1st deadline is met.

Frequently Asked Questions

On July 13, 2012 the Central Bank issued an updated version of its frequently asked questions on the fitness and probity regime. The document includes the Central Bank's responses to frequently asked questions on CFs, PCFs, the scope of the regime, outsourcing, due diligence requirements and individual questionnaires.

The FAQ document is available on the Central Bank's website: www.centralbank.ie

Central Bank issues guidance manual on the submission of Individual Questionnaires

On August 20, 2012 the Central Bank published guidance entitled 'Online Reporting System User Manual, Fitness & Probity Individual Questionnaire Applications'. The manual provides support for authorised and applicant firms submitting Individual Questionnaires for persons proposed to hold a PCF through the online system.

The guidance manual is available on the Central Bank's website: www.centralbank.ie

Gender neutral insurance premiums

In December 2004, the European Community adopted Council Directive 2004/113/EC (the '**Directive**') implementing the principle of equal treatment of men and women in the access to and supply of goods and services. Member States were obliged to bring into force the laws, regulations and administrative procedures necessary to comply with this Directive by December 21, 2007, however, Article 5.2 of the Directive permits Member States to allow proportionate differences in individuals' premiums and benefits in limited instances.

In March 2011 the European Court of Justice ruled that Article 5.2 of the Directive will be invalid with effect from December 21, 2012. The ruling only applies to insurance contracts that are private, voluntary and separate from the employment relationship.

The net effect of the decision is that Member States will have an obligation to introduce measures ensuring that the premiums for 'new' contracts of insurance and related financial services entered from December 21, 2012 are calculated on a gender neutral basis.

The Commission has published guidance on this matter, determining that a 'new' contract will include:

- ▣ a contract that is concluded for the first time on or after December 21, 2012; and
- ▣ agreements concluded on or after December 21, 2012 to extend contracts concluded before that date, provided that the contract would otherwise have expired.

The following will not be determined as 'new' contracts:

- ▣ the automatic extension of a pre-existing contract without notice;
- ▣ adjustments to individual elements of an existing contract where the consent of the policyholder is not required; and
- ▣ the taking out, by the policyholder, of top-up or follow-on policies whose terms were pre-agreed in contracts concluded before December 21, 2012 in circumstances where the policy is activated by a unilateral decision of the policyholder.

Health Insurance

VHI Update

In September 2011, the Court of Justice of the European Union ruled that, by failing to apply EU insurance directives to all insurance undertakings on a non-discriminatory basis, Ireland has failed to fulfil its obligations under those directives.

The decision relates to Ireland's favourable treatment of the VHI, in permitting the VHI to conduct insurance business without the requisite authorisation from the Central Bank.

The Irish State has been in recent communication with the Commission, responding positively to the Commission's proposals on the matter. Under the Commission's proposals, the VHI's business will be transferred to a corporate structure and thereby be subject to the same regulatory regime as its competitors.

It is proposed at this stage that the transfer of business will take place on a phased basis with full transfer to have completed by December 31, 2013.

New Risk Equalisation Scheme for 2013 onwards

It is expected that the Minister for Health Dr. James Reilly TD will publish draft legislation in the coming weeks which, it is intended, will lead to the introduction of a new (permanent) risk equalisation scheme as of January 1, 2013.

Initial reports suggest that there will be four separate rates for the new levy, differentiating between adults, children, those with private hospital plans and those whose policies cover them for treatment in public hospitals only.

Pensions Update

The Pensions Board publishes FAQ's on the funding standard

In June 2012 the Pensions Board published revised rules for defined benefit schemes and announced the deadlines by which trustees must submit funding proposals to deal with scheme deficits following changes introduced following the enactment of the Social Welfare and Pensions Act 2012 (as more fully considered in our previous Insurance Quarterly Legal and Regulatory Update).

The Pensions Board has now published a frequently asked questions document relating to these changes to the funding standard. The FAQ's will be treated as a 'living' document and will be updated as deemed necessary.

The FAQ's may be found on the Pensions Board website; www.pensionsboard.ie

Data Protection

Data Protection Commissioner publishes guidance on the use of 'Cloud Computing'

On July 4, 2012 the Data Protection Commissioner published a guidance note which addresses the data protection issues that can arise from the use of cloud computing. The publication is aimed at Irish based entities and reflects guidance issued by the Article 29 Working Group and the National Standards Authority of Ireland in conjunction with the Irish Internet Association.

In the guidance note, the Data Protection Commissioner sets out the parameters for the use of cloud computing by Irish based entities.

The guidance can be found on the Data Protection Commissioner's website: www.dataprotection.ie

Anti-Money Laundering/Counter-Terrorism Financing

Revised Prescribed Countries list

On September 12, 2012 the Minister for Justice signed the Criminal Justice (Money Laundering and Terrorist Financing) (Section 31) Order 2012 (SI No. 347/2012) which sets out a revised list of places designated as places imposing requirements equivalent to the Third Money Laundering Directive (Prescribed Countries list). This list replaces the countries designated in SI No. 343/2010.

The list has been amended to remove Argentina, New Zealand and the Russian Federation and to include India and South Korea. The reference to the Dutch overseas territories of Netherlands Antilles and Aruba has been replaced with "Dutch overseas territories of Netherlands Aruba, Curacao, Sint Maarten, Bonaire, Sint Eustatius and Saba".

Fourth Anti-Money Laundering Directive

The Commission plans to bring forward a proposal for a Fourth Anti-Money Laundering Directive on November 7, 2012.

Prompted by the new international Financial Action Task Force ('**FATF**') recommendations published in February 2012, the Fourth Anti-Money Laundering Directive will most likely address the following issues;

- ▣ broadening the risk based approach to incorporate more risk based elements so that resources can be focused where they are most needed;
- ▣ possible clarification of the Customer Due Diligence ('**CDD**') rules so that it is clear that the simplified procedures are not wrongly perceived as full exemptions from CDD;
- ▣ incorporating new provisions to deal with Politically Exposed Persons ('**PEPs**') at domestic level;
- ▣ clarification as to how AML supervisory powers will apply in cross border situations;
- ▣ strengthening the powers and co-operation between the different Financial Intelligence Units; and

- ▣ incorporating new provisions on data protection to deal with the Commission's proposals on data protection reform as published in January 2012.

The Commission is planning to organise a public hearing in relation to this new Directive on November 23, 2012. It is expected that the new Directive will be implemented in 2014.

Dillon Eustace

This Insurance Quarterly Legal and Regulatory Update is for information purposes only and does not constitute, or purport to represent, legal advice. It has been prepared in respect of the current quarter and, accordingly, may not reflect changes that have occurred subsequent to the start of such period. If you have any queries or would like further information regarding any of the above matters, please refer to your usual contact in Dillon Eustace

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.

Tel: +353 1 667 0022
Fax: +353 1 667 0042

Cayman Islands

Landmark Square
West Bay Road
PO Box 775
Grand Cayman KY1-9006
Tel: +345 949 0022
Fax: +345 945 0042

Hong Kong

604, 6/F, Printing House
6 Duddell Street
Central
Hong Kong
Tel: +852 35210352

New York

245 Park Avenue
39th Floor
New York, NY 10167
United States
Tel: +1 212 792 4166
Fax: +1 212 792 4167

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006, Japan
Tel: +813 6860 4885
Fax: +813 6860 4501

e-mail: enquiries@dilloneustace.ie
website: www.dilloneustace.ie

Contact Points

Authors: Breeda Cunningham / Matthew Ryan

For more details on how we can help you, to request copies of most recent newsletters, briefings or articles, or simply to be included on our mailing list going forward, please contact any of the team members below.

Mary Canning
Regulatory and Compliance
e-mail: mary.canning@dilloneustace.ie
Tel: + 353 1 673 1759
Fax: + 353 1 667 0042

Breeda Cunningham
Regulatory and Compliance
e-mail: breeda.cunningham@dilloneustace.ie
Tel : + 353 1 6731846
Fax: + 353 1 6670042

Michele Barker
Regulatory and Compliance
e-mail: michele.barker@dilloneustace.ie
Tel : + 353 1 6731886
Fax: + 353 1 6670042

Matthew Ryan
Regulatory and Compliance
e-mail: matthew.ryan@dilloneustace.ie
Tel : + 353 1 6731716
Fax: + 353 1 6670042

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal or tax advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:
© 2012 Dillon Eustace. All rights reserved.

