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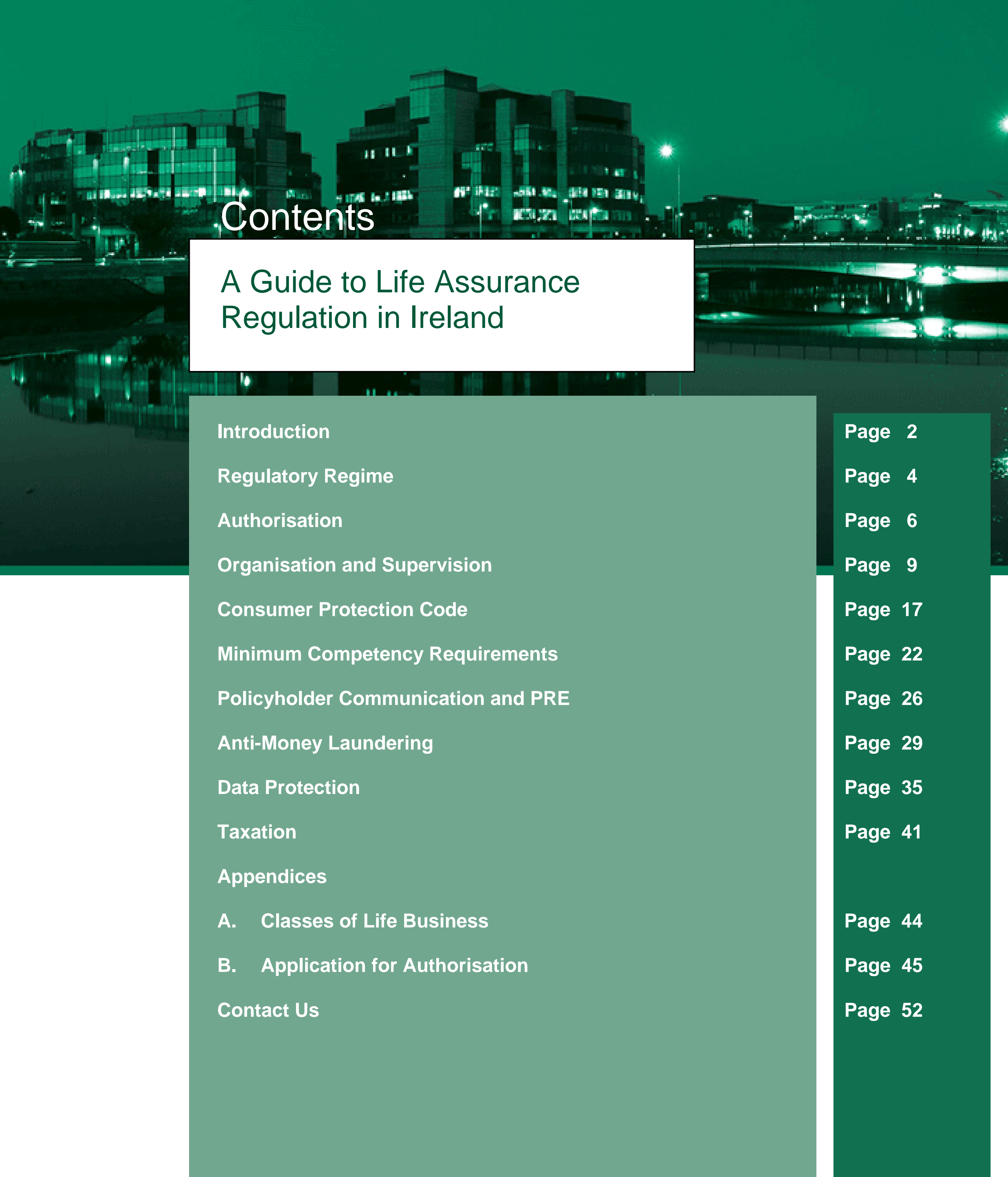

Contents

A Guide to Life Assurance Regulation in Ireland

Introduction	Page 2
Regulatory Regime	Page 4
Authorisation	Page 6
Organisation and Supervision	Page 9
Consumer Protection Code	Page 17
Minimum Competency Requirements	Page 22
Policyholder Communication and PRE	Page 26
Anti-Money Laundering	Page 29
Data Protection	Page 35
Taxation	Page 41
Appendices	
A. Classes of Life Business	Page 44
B. Application for Authorisation	Page 45
Contact Us	Page 52

A Guide to Life Assurance Regulation in Ireland

Introduction

Although Ireland has regulated life assurance activities for over 100 years, with many provisions of its historic regulatory regime still relevant today, the key driver of insurance regulation and the basis for the development of its cross-border industry, for the last 30 years, has been its membership of the European Union ("EU") and the harmonised insurance regime which has evolved at EU level since the introduction of the First Life Directive in 1979.

The Irish legal framework governing insurance business is set out in pre-existing domestic legislation as amended and supplemented by national laws which implement EU legislative provisions. This framework is further supported by guidance notes and policy papers issued by the Central Bank of Ireland (the "CBoI").

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

A. European Legislation

Solvency II Directive (2009/138/EC) – will repeal other Directives from 1 November, 2012
Third AML Directive (2005/60/EC)
Consolidated Life Directive (2002/83/EC) – will be repealed from 1 November, 2012
Financial Conglomerates Directive (2002/87/EC)
Distance Marketing Directive (2002/65/EC)
Insurance Winding Up Directive (2001/17/EC) – will be repealed from 1 November, 2012
Insurance Groups Directive (98/78/EC) – will be repealed from 1 November, 2012

B. Irish Legislation

Life Assurance (Provision of Information) Regulations 2001
European Communities (Life Assurance) Framework Regulations 1994 (as amended)
Insurance Act, 1989
Insurance (No. 2) Act, 1983
Insurance Act, 1936
Assurance Companies Act, 1909

Guidance Notes

The CBoI has issued a set of Guidance Notes which explain and clarify various aspects of the European Communities (Life Assurance) Framework Regulations 1994 (as amended) (the "1994 Regulations").

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 CBoI's policy or position on a particular matter.

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

Related Dillon Eustace publications include:

- A Guide to Solvency II
- A Guide to Cross Border Life Assurance From Ireland
- Transferring an EEA Insurance Undertaking to Ireland
- Cross-Border Insurance Portfolio Transfers
- Corporate Governance Code for Insurance Undertakings

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

Regulatory Regime

The Irish regulatory regime for life assurance is an extensive one covering the entire life of an undertaking from initial establishment through to winding-up. In a brochure of this nature, we can only cover the main areas to which the regulatory regime applies but note that most actions taken by a life company 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 / updated continuously.

Competent Authority

The competent authority responsible for the regulation and supervision of life assurance undertakings in Ireland is the CBoI.

The CBoI maintains registers of all life assurance undertakings authorised to write business in Ireland whether through the establishment of a head office, a branch or by way of freedom of services. The registers are available on the CBoI's website www.financialregulator.ie. Additionally, the CBoI publishes annually an Insurance Statistical Review, also available on its website.

Powers of the CBoI

The CBoI is the competent authority for both the authorisation and ongoing supervision of insurers.

Under the Insurance Act, 1989, the CBoI 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 margin. 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 CBoI can also revoke an authorisation where no business is being carried on for two consecutive years or suspend an authorisation where business has ceased temporarily.

The CBoI also has significant powers 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.

In addition, the CBoI may petition for the winding up of a life company on the grounds of it being unable to pay its debts under the Insurance Act, 1936.

The Central Bank and Financial Services Authority of Ireland Act, 2004 also provides power to the CBoI to impose sanctions for prescribed contraventions of legislation or regulatory rules under its sanctions regime.

If the CBoI has reasonable cause to suspect that a regulated life assurance undertaking and/or person concerned in the management of the undertaking has committed or is committing a 'prescribed contravention'. There is a particular framework commencing with an investigation or examination, potentially leading to an enquiry and sanctions being applied.

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

Authorisation

An undertaking must hold an authorisation granted either by the CBoI under the 1994 Regulations or by the competent insurance authority in its home EU Member State to carry on life assurance business.

Authorisations are granted in one or more classes of life business (the full list of classes is set out in Appendix A) and, as provided for in Regulation 6(2) of the 1994 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.

The CBoI has issued the following list of regulatory requirements and guidance applicable to life assurance undertakings, full details of which can be viewed by clicking on the links below or found at www.financialregulator.ie:

- Guidelines for insurance companies on the risk management of derivatives
- Guidelines for insurance companies on Asset Management
- Guidelines for insurance companies on the Appointment of a Compliance Officer
- Guidelines for insurance companies on the Directors Compliance Certificate
- General Good Requirements for Life Insurance companies
- Guidelines on the Reinsurance Cover of Primary Insurers and the Security of their Reinsurers
- Guidelines for the establishment of an EEA Branch
- Guidelines on Actuarial Financial Condition Reports
- Guidance on Valuation Assumptions under Contracts covering more than one life

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

Principal Conditions

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

- it must be a company established under the Irish Companies Act, 1963 to 2009 and have its head office and registered office in Ireland;

- it must submit to the CBoI a scheme of operations to include particulars or proof concerning:

  (i) the nature of the commitments which it proposes to cover;
  (ii) its guiding principals as to reassurance;
  (iii) the items constituting its minimum guarantee fund;
  (iv) 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, for its first three financial years, it must submit to the CBoI a plan setting out detailed estimates of income and expenditure in respect of direct business, reassurance acceptances and reassurance cessions;

- it must submit a forecast balance sheet; and estimates relating to the financial resources intended to cover its underwriting liabilities and solvency margin;

- it possess a minimum guarantee fund (equal to one third of the solvency margin, subject to a minimum of Euro 3.2 million);

- it must have a paid-up share capital of at least Euro 635,000; and

- it must demonstrate that it shall be effectively run by persons of good repute with appropriate professional qualifications or experience.

Note that the figures given above are minimum figures only. The actual financial resources requirement for a life company will be determined in association with the Appointed Actuary and the CBoI in line with its business plan.

Limit on Activities

An Irish head office life undertaking may only carry on the business of life assurance (cannot carry on non-life insurance business) and must limit its operations to the types of business provided for in the 1994 Regulations and to operations directly arising therefrom to the exclusion of all other commercial business.

Application for Authorisation

A pre-application meeting with the CBoI should be held at which the applicant should outline its plans to the CBoI in broad terms including:

- nature of the business;
- broad projections;

- staffing;
- outsourcing; and
- target markets.

Once it is clear that the CBoI is satisfied with the outcome of the initial discussions, a detailed application for authorisation must be submitted to the CBoI. The information which should be submitted as part of the application is set out in Appendix B, but in summary includes:

- details of the applicant;
- overview of parent/group;
- regulatory supervision;
- ownership structure;
- legal structure;
- objectives and proposed operations;
- organisation of the applicant and governance arrangements;
- risk oversight;
- capital, solvency and financial projections (5 years projections required);
- proposed appointed actuary;
- policy and claims administration;
- policy documents;
- sales and distribution; and
- IT/ Business Continuity Plan.

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, technical reserves, forms and other printed documents which the insurance undertaking intends to use in its dealings with policyholders.

As a general guide, one should expect the authorisation process to take about 6 months.

Grant of Authorisation

Prior to formal authorisation, a successful applicant will normally be provided with confirmation of "authorisation in principle" when the application has been fully examined, reviewed and approved by the CBoI. 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.

Organisation and Supervision

In order to be considered to be established in Ireland, and therefore be eligible for authorisation as an Irish head office life undertaking, the 1994 Regulations provide that a life undertaking must:

- have an office in Ireland to open during business hours for the transaction of life assurance business; and

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

The life company is also required to demonstrate that 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 CBoI deem sound and adequate.

Governance

To meet the above requirements, life assurers are required to have:

- a Board of Directors whose members have individually met the CBoI's fitness and probity tests, with a majority of independent non-executive members;

- Committees governing Audit, Risk, Compliance and Investment, each with set terms of reference;

- a Managing Director / General Manager dedicated on a full time basis with clear delegated powers and reporting obligations;

- an Appointed Actuary;

- a Compliance Officer;

- an internal audit function;

- a financial control function; and

- to the extent required, an investment management function.

The board must be compiled of a majority of 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 be group non-executive directors, provided that in all cases the subsidiary institution shall have at least 2 independent non-executive directors (3 in the case of a Major Institution) or such greater number as is required by the CBoI. Group directors are required to act critically and independently so as to exercise objective and independent judgement.

CBoI's Fitness and Probity Regime

All Directors, senior executives and the Compliance Officer are subject to the fitness and probity regime and any appointments to the Board, senior executive positions and Compliance Officer require prior CBoI approval.

It is important to note that Board composition and responsibilities of boards and individual directors has recently been amended through the introduction of the CBoI's Corporate Governance Code for Credit Institutions and Insurance Undertakings. Furthermore, Solvency II will introduce new requirements for governance, internal control and assessment of risk for insurers.

Financial Resources / Solvency

An Irish head office life insurer is required to establish and maintain:

(a) technical reserves, including mathematical reserves in respect of all underwriting liabilities assumed by it; and

(b) an adequate solvency margin and guarantee fund in respect of its entire business. Detailed rules regarding the calculation/determination of the solvency margin and guarantee fund are set out in an Annex to the 1994 Regulations.

A register showing the assets representing the technical reserves and mathematical reserves in respect of each class of insurance business must be kept by the insurance undertaking and it must furnish the CBoI with a certificate of the value of those assets annually.

The Annual Accounts of the insurance company must be forwarded to the CBoI annually together with a set of completed regulatory returns and compliance certificates. A Directors Compliance Certificate signed by all the Directors must accompany the Annual Returns of the Company. The Certificate covers issues such as general compliance with the regulatory regime, internal controls and use of derivatives etc.

In addition, the Appointed Actuary must carry out an investigation into the financial condition of the insurance company's business on an annual basis which must be submitted to the

CBoI.

Particular rules (in addition to normal company law requirements) apply to the process for approving dividend/distributions by life companies including prior actuary approval.

Outsourcing

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

A life assurer may outsource certain activities to, for example, a third party administrator or asset manager or may appoint an external person as Appointed Actuary or to provide internal audit (often intra-group) or other services. Where outsourcing occurs, control over outsourced activities needs to be maintained and the outsourcing relationship must be governed by a service level agreement meeting certain minimum conditions imposed by the CBoI.

Related Party Transactions

Details of all proposed transactions of a material nature with a related company must be pre-notified to the CBoI in accordance with Regulation 10(4) of the 1994 Regulations.

Impact of Solvency II

Once implemented, Solvency II will place additional reporting obligations on insurance undertakings, including:

- insurance undertakings will be required to submit their written policies and procedures of insurance and reinsurance undertakings for risk management, internal control and (where relevant) outsourcing to the CBoI for prior approval;

- insurance undertakings will be required to submit their ORSA and SCR assessments to the CBoI; and

- every insurance undertaking will be required to report any Internal Audit findings to the CBoI who shall determine what actions are to be taken and ensure those actions are carried out.

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 CBoI approval is required thereafter for certain acquisitions and disposals, both direct and indirect, in the ownership / voting rights of life companies.

(i) 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 Regulations 9 and 10, paragraphs (4) and (5) of Regulation 12 and Regulations 14(5), 15 to 17 and 21(6) of the Transparency (Directive 2004/109/EC) Regulations 2007 and the conditions regarding aggregation of voting rights in Regulation 18 of those Regulations need to be taken into account.

(ii) Prior approval for Acquisitions

Under Regulation 40A(1) of the 1994 Regulations, a proposed acquirer shall not, directly or indirectly, acquire a qualifying holding in a life assurer without having previously notified the CBoI of the size of the intended holding, together with sufficient information to enable the CBoI to consider the proposed acquisition in accordance with pre-set criteria (influence on the life assurer, suitability of the proposed acquirer, financial soundness of the proposed acquisition etc.). A specific Acquiring Transaction Notification Form is required to be completed. Depending on the proposal, a revised business plan, projections and reorganizational framework may be required.

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

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

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

Completion of an acquisition may only be made where the required notification has been made and acknowledged and either the CBoI 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.

(iii) Prior notifications of Disposals

Under Regulation 40A(5) of the European Communities (Life Assurance) Framework Regulations 1994 a person shall not, directly or indirectly, dispose of a qualifying holding in an insurance undertaking without having previously notified the CBoI in writing of the intended size of the holding to be disposed of.

In addition, under Regulation 40(A)(6) a person shall not, directly or indirectly, dispose of part of a qualifying holding in an insurance undertaking without having previously notified the CBoI 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.

(iv) Notification by Target

The life company itself is also required to make a notification in accordance with Regulation 40B(1) and (2) of the above types of proposed changes.

Appointed Actuary

A life insurer must also appoint an actuary of appropriate knowledge and experience as its Appointed Actuary.

The Appointed Actuary's responsibilities - valuing liabilities to policyholders, certifying premium rates etc. are part of the process in certifying the solvency of a life undertaking and the CBoI relies on the professional expertise of the Appointed Actuary, one of the reasons why the CBoI has not laid down detailed requirements in relation to premium rates, policy conditions, and reserving standards. In this way, companies enjoy considerable freedom to innovate but in a manner that does not place solvency at risk.

The Appointed Actuary also has an important role in relation to customer protection - for both cross-border business and domestic business. In that regard, the Professional Guidance Notes from the Society of Actuaries in Ireland require Appointed Actuaries, inter alia, to "*take*

all reasonable steps to ensure that the company's incoming policyholders should not be misled as to their expectations." The 1994 Regulations require the Appointed Actuary to certify compliance with that requirement.

This requirement covers the worldwide business of long-term insurers supervised from Ireland. Its scope means that the Appointed Actuary of a life assurance company supervised from Ireland must try to ensure that purchasers of the company's products in other countries are not misled as to their expectations. This responsibility transcends the normal division of responsibilities between "home country" and "host country" regulators under EU rules.

The Appointed Actuary is required to conduct an annual investigation into the company's financial condition the results of which must be reported to the Board of Directors and to the CBoI. The form of the report to the CBoI is specified in the 1994 Regulations but the actual content in terms of assumptions for future mortality, expenses, etc. are at the actuary's discretion. The actuary's annual report and certificate to the CBoI must also include reference to provisions made in the valuation for mis-matching between assets and liabilities and to the adequacy of premium rates for new business.

Compliance Function

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

- obtain the approval of the Board and Managing Director/General Manager for a policy statement on compliance with the Insurance Acts and Regulations, the guidelines issued by the insurance supervisory authority and with other applicable legislation;

- monitor the implementation of compliance and to report periodically to the Managing Director/General Manager and to the Board thereon;

- 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;

- 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 Compliance Certificate should be signed by all the Directors and accompany the Annual Returns of the Company. The Certificate covers issues such as general compliance with the regulatory regime, internal controls and use of derivatives etc.

Asset Management

Life companies are required to put in place an asset management policy to ensure that they adequately manage the investment-related risks to solvency. The asset management policy should include consideration of regulatory restraints, investment-related risks, technical provisions and solvency which insurers need to monitor, measure, report and control. Main risks would normally be market risk (adverse movements in, for example, stocks, bonds and exchange rates), interest rate risk, credit risk (counterparty failure), liquidity risk (inability to unwind a position at or near market price), operational risk (system/internal control failure), and legal risk.

The Board of Directors should regularly review the adequacy of the insurer's overall investment policy in the light of its activities, product range, its overall risk tolerance, long-term risk-return requirements and solvency position, the results of which should be communicated to senior management in a written investment mandate(s) setting out the operational policies and procedures for implementing the overall investment policy.

Adequate systems of internal control need to be put in place to ensure that investment activities are properly supervised and that transactions have been entered into only in accordance with the insurer's approved policies and procedures. Internal control procedures should be documented and include regular and timely reporting of investment activity.

The life company's investment committee should focus on these matters, regularly (both on policyholder and shareholders funds as well) and report to the Board.

Clearly, the product range and, therefore, the investment related risks, will differ from company to company and procedures and policies need to be tailored appropriately.

General Good and Other Irish Legal Requirements

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

- the provisions of the Consumer Information Act, 1978 (applicable to insurance contracts in the marketing and selling of insurance products);
- 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);
- provision relating to the supervision and regulation of insurance intermediaries under the Investment Intermediaries Act, 1995 (as amended); and
- the Consumer Credit Act and the Unfair Contract Terms legislation.

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.

Consumer Protection Code

The Consumer Protection Code (the "Code") incorporates both a rigorous set of common rules applicable to most entities regulated by the CBoI and other sector specific rules relevant to firms offering certain products and services.

Specific Exclusions

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

- Provision of services **outside** the State;
- Provision of MiFID services (as defined within the Code);
- The provision of moneylender services within the meaning of Section 2(1) of the Consumer Credit Act, 1995 (as amended);
- Regulated firms carrying on reinsurance or reinsurance mediation;
- Carrying on the business of a bureaux de change or money transmission within the meaning of Part V of the Central Bank Act, 1997; or
- Credit Unions (when providing services for which they are not required to be authorised by or registered with the CBoI, other than under the Credit Union Act 1997).

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.

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:

- general disclosure of the regulated entity's name, address and group affiliation;
- confirmation of authorisation and regulatory status;

- description of the services to be provided;
- statement of the charges to be imposed;
- information on the firm's conflict of interest policy, complaints handling process and membership of compensation scheme; and
- an outline of the firm's available remedies in light of default by the consumer.

Provision of Information to the Consumer

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

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

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

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

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.

Knowing the Consumer

With the exception of the purchase or sale of foreign currency, the provision of execution only and other basic banking products or services, 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.

Suitability

With the exception of the purchase or sale of foreign currency, the provision of execution only and other basic banking products or services, 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.

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.

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; 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 6 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); 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.

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.

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.

Errors

All errors concerning charges or prices levied or quoted to a consumer must be corrected speedily, efficiently and fairly. Where material errors are identified the action plan for correction must be detailed in writing to the CBoI without delay and in any case no later than the next business day.

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:

- the complaint will be acknowledged in writing within 5 business days of receipt along with details of a contact person(s);
- that a written update will be provided to the complainant at least every 20 business days;
- 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;
- 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.

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.

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 50 in Chapter 2 of the Code.

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.

Minimum Competency Requirements

The Minimum Competency Requirements (the “Requirements”) were designed to establish minimum standards across all financial services providers from which consumers seek advice or seek to purchase retail financial products.

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

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

The Requirements apply to individuals who, on a professional basis, for or on behalf of a regulated firm:

- provide advice to Consumers on Retail Financial Products;
- arrange or offer to arrange Retail Financial Products for Consumers; or
- undertake certain specified activities.

Such individuals having attained and continuing to satisfy the specified minimum competency standards are referred to as accredited individuals and those that undertake certain specified activities are referred to as specified accredited individuals.

Exemption

Individuals whose only activity is referring or introducing Consumers to regulated firms are subject only to the following requirements on an ongoing basis:

- know the different types of entities regulated by the CBoI; and
- know the different registers maintained by the CBoI.

Such individuals must not provide any advice or assistance to Consumers in relation to a Retail Financial Product other than the referral or introduction to a regulated firm.

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:

1) the acceptance criteria, script and routine must be devised by an accredited individual;
2) the individual must have received relevant and appropriate training (required to be kept up to date on an ongoing basis);
3) the individual must refer requests for additional information and advice to an appropriately accredited individual;
4) the individual must be supervised by an appropriately accredited individual; and
5) the individual's activity must be monitored to ensure compliance with the Requirements.

Branch/Cross Border

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

Firms authorised/registered with the CBoI are not subject to the Requirements when providing services in other EU/EEA states. They must however comply with corresponding host state requirements.

Not Considered to be Advice

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

a) a brochure/booklet or other information to a Consumer without the provision of Advice;
b) 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;
c) 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;
d) advice to undertakings on capital structure, industrial strategy and related matters and advice relating to mergers and the purchase or sale of undertakings; and
e) 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.

Minimum Competency Requirements and Relevant Recognised Qualifications

Accredited individuals are required to meet the Requirements for the Retail Financial Products in respect of which they are advising. A full list of the current specified Requirements applying in respect of different Retail Financial Products is set out in Appendix 1 of the Requirements.

Specified accredited individuals are required to meet the Requirements for the specific Retail Financial Product or to hold a relevant recognised qualification for that Specified Activity. A list of qualifications that meet the Requirements for Retail Financial Products is set out in Appendix 2 of the Requirements. A list of additional qualifications recognised by the CBoI for specified accredited individuals is set out in Appendix 3 of the Requirements.

Where a firm takes full and unconditional responsibility for the investment business activities of tied agents or others, the firm is required to monitor the compliance with the Requirements of those tied agents or others.

Continuing Professional Development

All accredited/specified accredited individuals (including those grandfathered) must complete a number of hours of Continuing Professional Development ("CPD") each year.

For those individuals who hold a qualification requiring ongoing CPD attendance, such attendance will satisfy the Requirements and they will not be required to complete additional CPD hours.

The following CPD requirements will apply to accredited/specified accredited individuals who do not hold such qualifications:

- 60 hours CPD to be completed over three years (40 hours must be formal); and
- 15 hours minimum CPD per annum (10 hours must be formal).

Formal CPD would include attendance at seminars, lectures, conferences, e-learning tutorials, workshops and courses whilst informal CPD would include research, reading industry or other relevant material. The content of the CPD must be relevant to the activity.

The CBoI reserves the right to check any individual's compliance with the CPD requirements during the course of an inspection of a firm.

Proposed Amendment to the Requirements

On 30 June, 2010 the CBoI published Consultation Paper 45 ("CP45") regarding the Minimum Competency Requirements and sought industry views on the proposals by the 13

August, 2010. The CBoI is expected to publish their findings in the final quarter of 2010. In summary, CP45 proposed the following:

- changing the 3 year CPD cycle to an annual 15 formal hour requirement;
- phasing out ‘grandfathering arrangements’ over a 4 year period whereby a recognised qualification must be achieved by 2015;
- amendment to making public the register of accredited individuals on request; and
- detailed requirements are proposed regarding records to be maintained to demonstrate compliance with the Requirements.

The CBoI is aiming at introducing the new requirements in the second quarter of 2011.

Policyholder Communication and PRE

For business written in Ireland, specific pre-contractual information must be provided 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 Life Assurance (Provision of Information) Regulations, 2001.

Those Regulations, considered further below, do not apply to business written by an Irish life company in other EU Member States under freedom of establishment or freedom of services. In those cases, the general good requirements of the other Member State will apply.

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

The Life Assurance (Provision of Information) Regulations 2001

As noted above, the 2001 Regulations do not apply to policyholders resident outside Ireland, nor to contracts of creditor insurance, other than contracts in connection with a housing loan.

Pre-contractual information

Before a prospective policyholder signs a proposal or an application form for life assurance it must be provided with information as to the policy details, its appropriateness to the needs of the client, early encashment consequences, projected benefits and charges, intermediary or sales remuneration, review of premium, cancellation rights, as well as with other general and additional information.

Information regarding the policy requires that the Client be given information as follows:

(a) '*Make sure the policy meets your needs*'. There is a warning for policyholders who propose to effect the policy in replacement of an existing one.

(b) '*What happens if you want to cash in the policy early to stop paying premiums?*'

(c) '*What are the projected benefits under the policy?*' Again an illustrative table of benefits and charges must be provided in a particular format.

(d) '*What intermediary remuneration or sales remuneration is payable?*' Again a table is required.

(e) '*Are returns guaranteed and can the premium be reviewed?*'.

(f) '*Can the policy be cancelled or amended by the insurer?*'

(g) '*Information on taxation issues*'.

Where a service fee is charged by an insurer or insurance intermediary, the amount of the fee must be disclosed in writing to the client.

Information about the insurer or insurance intermediary or sales employee must be provided to the client, including:

- names of the insurer and insurance intermediary in full including their legal form and, where applicable, the name of the sales employee;

- contact telephone number, fax number, e-mail address and relevant address for correspondence;

- the Member State in which the head office of the insurer is situated and, where appropriate, the Member State of the branch of the insurer that will enter into the insurance contract; and

- where the client deals directly with insurance intermediary, any delegated authority or binding authority granted by the insurer, in relation to underwriting, claims handling and claims settlement, to that insurance intermediary.

Particular formats are required for the provision of such information.

Post contractual information

Life companies must provide policyholders with an annual written statement containing:

- the current premium payable;

- the current surrender or maturity value; and

- such further information as the assurer considers appropriate.

Policyholders' Reasonable Expectations

In February 2010, the CBoI wrote to the compliance officers of all domestic life assurance companies reflecting its view that *'there are obligations on insurance companies to ensure that they reserve adequately for policyholders' reasonable expectations'*

The expression 'policyholders' reasonable expectations is not defined in Irish insurance legislation and no statutory or regulatory obligation currently exists under Irish law which obliges insurance companies to ensure that they reserve adequately for policyholders' reasonable expectations. Furthermore, the Irish courts have never, to our knowledge, determined upon the concept of policyholders' reasonable expectations.

The first reference to 'policyholders' reasonable expectations' appears in the Guidance Notes issued by the Department of Enterprise, Trade and Employment ("DETE") in June 2009 in the context of 'with profits' business. Although the CBoI itself has not defined the term, it is one in common usage in Irish insurance law and practice.

It appears, therefore, that the CBoI's expectation that all life assurance companies should ensure adequate capital reservation to meet policyholders' reasonable expectations originates not in statute but in guidelines issued by DETE. Government Department Guidance Notes including DETE's Guidance Notes, do not (as a matter of Irish constitutional law) impose legal obligations which may be positively enforced by State authorities unless statutorily underpinned.

Nevertheless, it is clear for the purposes of superior European Community law and, in particular, Article 10 of the Consolidated Life Directive that there exists in Ireland a clear practice which is followed in the prudential supervision of life assurance undertakings in relation to policyholders' reasonable expectations that the Appointed Actuary must address, when advising the Board of Directors, policyholders' reasonable expectations having regard to all relevant Guidance Notes issued by the Society of Actuaries, including ASP LA-4 which specifically addresses policyholders' reasonable expectations.

In turn, the Board of Directors of the life company, when addressing matters of financial soundness and ensuring compliance with Irish solvency obligations, must have regard to the advices provided by the Appointed Actuary.

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

Anti-Money Laundering

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

Key Changes

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

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

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

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

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

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

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

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

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

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

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

A Risk Based approach to Customer Due Diligence

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

- nature of the customer base;
- nature of the products or services to be provided;
- methods of distribution; and
- geographic areas of operation.

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

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

Customer Due Diligence

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

- establishing a business relationship with a customer;
- carrying out a transaction or series of transactions for a customer greater than €15,000 (previously €13,000);
- carrying out a service for a customer if there is a suspicion of money laundering or terrorist financing;
- carrying out a service for a customer where there is doubt about the veracity or adequacy of previously obtained identification documentation.

There are a number of exceptions where a designated person is not required to operate CDD on a prior to basis as outlined above. In relation to life assurance business the

verification of the beneficiary of a life assurance policy can be deferred at the time a policy is taken out, however such verification must be carried out:

- prior to the policy being paid out, or
- prior to the beneficiary exercising any other right vested in the policy.

Other exceptions to the prior to rule are as follows:

- where a designated person has reasonable grounds to believe that prior identification would interrupt the normal conduct of business and there is no real risk that the service or customer is involved in money laundering/terrorist financing;
- a credit institution may allow a bank account to be opened before verifying identity, however no transactions can be carried out through the account until verification is completed.

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

- verify the customer's identity;
- identify any beneficial owner connected with the customer or service concerned;
- obtain information in relation to the purpose and nature of the business relationship;
- carry out ongoing monitoring.

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

Simplified Customer Due Diligence

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

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

- verify the customer's identity;
- establish the beneficial ownership;
- establish the purpose of the business relationship.

However, ongoing monitoring of the business relationship is required.

A specified customer is defined as:

- a credit institution or a financial institution that carries on business in Ireland or is situated in another EU Member State that has adopted the Third AML Directive or is in a prescribed third country which has requirements equivalent to the Third AML Directive;
- any listed company admitted to trading on a regulated market;
- a public body;
- certain other EU public bodies.

A specified product is defined as:

- a life assurance policy where the annual premium is no more than €1,000 or the single premium is no more than €2,500;
- an insurance policy in respect of a pension scheme, which does not have a surrender clause and cannot be used as collateral;
- a retirement pension scheme for employees where the contributions are made by way of deduction from payroll and the rules of the scheme do not permit a member's interest to be assigned;
- electronic money up to certain limits.

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

- the customer is an individual and has not been physically present for identification purposes;
- the customer is from a country not deemed to have adequate procedures for the detection of money laundering or terrorist financing;
- there are reasonable grounds to believe there is a real risk that the customer is involved in money laundering or terrorist financing; or
- there are doubts about the adequacy of documentation previously received.

Enhanced Customer Due Diligence

The Act sets out that Enhanced CDD will apply:

- in any situation where there is a high risk of money laundering or terrorist financing;
- where the customer (who is an individual) has not been physically present for identification purposes;
- in the case of a non-domestic politically exposed person (PEP); and
- in the case of a correspondent banking relationship with a non EU institution.

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

Politically Exposed Persons (PEPs)

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

In relation to PEPs a designated person is required to:

- have appropriate risk-based procedures to determine whether the customer is a PEP;
- have senior management approval for establishing business relationships with such customers;
- take adequate measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction; and
- conduct enhanced ongoing monitoring of the business relationship.

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

Reliance on Third Parties

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

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

Reporting Suspicious Transactions

In terms of reporting suspicious transactions, designated persons and their directors and employees remain responsible for reporting any know or suspected suspicious transaction relating to money laundering or terrorist financing. Where a designated person has appointed a Money Laundering Reporting Officer (MLRO), employees should be instructed

to file the suspicious transaction report (STR) with the MLRO who should investigate the matter and if necessary, report it without delay to the appropriate authorities, i.e. the Garda Siochana and the Revenue Commissioners.

Record Keeping

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

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

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

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

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

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

Staff Training

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

Data Protection

Data protection obligations are set out 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.

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.

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;

- the data processor carries on the processing only on and subject to the instructions of the data controller; and
- 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;

- ensure that the processor provides sufficient guarantees in respect of the technical security measures and organisational measures, governing the processing; and
- take reasonable steps to ensure compliance with those measures i.e. monitor/audit this outsourcing arrangement.

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.

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:

- obtaining consent from the data subject for the processing;
- the processing being necessary for the performance of a contract with the individual;
- the processing being necessary in order to take steps to enter into a contract with the individual at his/her request;
- the processing being necessary for compliance with a legal obligation (other than one imposed by contract); and/or
- the processing being necessary for the legitimate business interests of the data controller or a third party to whom the data are disclosed.

Sensitive Personal Data

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

- racial/ethnic origin;
- political opinions;
- religions or philosophical beliefs;
- trade union membership;
- physical or mental health;
- sexual life; and/or
- 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 shall not be processed unless one of a number of further conditions is met. The additional conditions include:

- obtaining "explicit" consent for the processing (i.e. clear and unambiguous consent);
- processing being necessary for the purposes of obtaining legal advice;
- processing carried out through legitimate activities of non-profit organisations that exist for political, philosophical, religious or trade union purposes;
- information already in the public domain;
- processing necessary for medical purposes;
- processing necessary to prevent injury to the health of the data subject or another person or otherwise to protect their vital interests (including property);
- processing necessary for the purpose of exercising a right imposed by law in connection with employment; or
- processing being carried out by political parties, candidates for election for the purpose of compiling data on peoples' political opinions.

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

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. The US Safe Harbor arrangement has also been approved, for US companies which agree to be bound by its data protection rules. 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.

- 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, and the US Safe Harbor arrangement has been approved for US companies which agree to be bound by it.

- 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.

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:

- the destination country has been approved by the EU;
- the transfer is allowed by an exemption under the Acts (see below);
- the data subject has consented to the transfer;
- the company importing the personal data enters into a contract in a form prescribed by the EU;
- the specific transfer is approved by the DPC; or
- the transfer is a type already approved by the DPC.

Furthermore, the transfer is exempt from statutory restrictions if:

- it is made to comply with international law;
- it is made in connection with a legal claim;
- it is made to protect the vital interests on the data subject;
- the transfer is of information held on public registers;
- the transfer is necessary for the performance/conclusion of a contract; or
- the transfer is necessary for reasons of substantial public interest.

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 **and** 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 **and** 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) **and** it affects no more than 100 data subjects **and** it does not include sensitive personal data or personal financial data 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.

Taxation

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

Calculating Shareholder Profits

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

Policyholder Profits

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

Non-Irish Resident Policyholders

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

1. Policyholders who are neither Irish resident nor ordinarily resident in Ireland and who have either:

    i) provided the company with the appropriate relevant declaration of non-Irish residence;
    ii) the company has availed of the Branch Business exemption (see below); or
    iii) the company has availed of the Freedom of Services exemption (see below).

Branch Business exemption

With effect from 1 January 2002, where an Irish life assurance company offers its policies through a branch established in an offshore state (i.e. an EU or EEA member state), the requirement to obtain a declaration of non-residence from the policyholders may be waived

where the life assurance company has obtained written approval from the Irish Tax Authorities ("***ITA***") absolving them of the obligation to obtain a declaration of non-residence before making a payment to a policyholder without deduction of exit tax. However, such approval is subject to certain conditions as follows:

a) the branch has a full legal and tax presence in the local jurisdiction in which it is established;
b) the branch will not sell any products to Irish residents and will not offer any products in Ireland;
c) the branch will not knowingly distribute any material in connection with any products in Ireland;
d) the branch should take all reasonable steps to satisfy itself that all policyholders of the branch are neither resident nor ordinarily resident in Ireland.

Freedom of Services Business (FoS) exemption

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

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

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

   (i) the company will verify the proposed policyholders identity by complying with local anti-money laundering procedures;
   (ii) the company will only accept direct debit mandates from the country where the proposal originates;
   (iii) the company will not accept any policyholder who provides an Irish address; and
   (iv) the proposal form will require the proposed policyholder to declare in writing that they are resident in the country where the proposal originates.

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

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

Irish Resident Policyholders

When a life assurance company makes a distribution on the maturity, surrender, assignment, etc of policies, to Irish residents the company has to deduct tax (currently at a rate of 28%) from the investment gain included in the payment.

8 Year Rule for Irish Resident Policyholders

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

Stamp Duty on policies of insurance for Irish Policyholders

A 1% stamp duty is payable on premiums for policies of insurance falling under certain of the “Classes of assurance” listed in Annex I to Directive 2002/83/EC concerning life assurance to the extent that the risks to which those policies of insurance relate are located in Ireland.

VAT

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

Appendix A

Classes of Life Assurance Business

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

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

Class III - Contracts linked to investment funds

Class IV - Permanent health insurance contracts

Class V - Tontines

Class VI - Capital redemption operations

Class VII - Management of group pension schemes

Appendix B

Application for Authorisation

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

Details of the Applicant

(i) Full name and address of applicant.

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

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

(iv) Confirmation that the CBoI can liaise with the named professional advisors in respect of the licence proposal.

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

Overview of Parent/Group

Full name and address of Parent/Group. Confirmation that the Board of the Parent has approved the submission of the application for the establishment of a life assurance company to the CBoI (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 CBoI 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.

(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 CBoI or any other regulatory authority; and
- provide internal audit reports on the Irish operation(s) in the previous 12 months. A summary of the internal audit reports will suffice where more than five internal audit reports have been carried out.

(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) Financial standing detail for parent/group i.e. summary for the last five years of:

- income and profitability;
- balance sheet;
- solvency position /capital adequacy.

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

Regulatory Supervision

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

(ii) Confirmation that Parent/Group's Home Regulator/Supervisor applies consolidated supervision to the Group.

(iii) 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.

Ownership Structure

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

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

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

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

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

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

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, i.e. limited company, unlimited company, etc.

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

- certificate of incorporation
- 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.

Objectives and Proposed Operations

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

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

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

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

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

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

(vii) The following should also be included:

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

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

- Overview of market research which has been undertaken regarding the establishment of a life assurance undertaking and its proposed activities, or

any information supporting the applicant's expectations in relation to its target market and the level of expected sales.

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

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

- The applicant's new product approval process.

Organisation of the Applicant and Governance Arrangements

(i) Demonstrate how 'heart and mind' will be present in Ireland (The day-to-day operations must be conducted within the State.)

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

- Executive directors
- Non executive directors
- Independent directors
- Proposed frequency of board meetings and location; and
- Potential conflicts of interest (if any, including details of how they will be addressed).
- Provide Organisation chart of the applicant's corporate governance structure;
- Details of all management committees and members [e.g., Audit Committee, Risk and Compliance Committee, Remuneration Committee, Investment committee, other relevant committees.]

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

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

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

(vi) Note: 'Individual Questionnaire' in respect of each of the applicant's board of directors/senior management with original signatures of the parties in question must be completed and returned with the application.

(vii) Provide outline of projected staffing requirements over the first 3 years of the applicant's operations (broken down on a yearly basis).

Risk Oversight

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

- Audit.
- Compliance
- Risk Management
- Underwriting
- Reinsurance
- Financial Control
- Investment Management
- Internal Controls/ Policies
- Anti Money Laundering Procedures
- Conflicts of Interest
- Outsourcing

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

Capital: The applicant must possess a Minimum Guarantee Fund, which is currently Euro 3.2 million.

Share Capital: The minimum paid up share capital must be not less than Euro 635,000.

Financial Projections: The financial estimates should be submitted in the format outlined in the schedule to the European Communities (Life Assurance) Framework Regulations, 1994 and the currency used should be Euro.

Proposed Appointed Actuary

Submit Individual Questionnaire and Certification of Financial Projections for proposed appointed actuary.

Policy and Claims Administration

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

Policy Documents

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

Sales and Distribution

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

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

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

IT/ Business Continuity Plan

Provide details of:

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

CONTACT US

Our Offices

Dublin
33 Sir John Rogerson's Quay,
Dublin 2,
Ireland.
Tel: +353 1 667 0022
Fax.: +353 1 667 0042

Boston
26th Floor,
225 Franklin Street,
Boston, MA 02110,
United States of America.
Tel: +1 617 217 2866
Fax: +1 617 217 2566

New York
245 Park Avenue,
39th Floor,
New York, NY 10167,
United States of America.
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

Date: November, 2010

Author: David Nolan
Contact Details: Andrew Bates

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.

Andrew Bates
e-mail: andrew.bates@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

Tom Carney
e-mail: tom.carney@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

Paula Kelleher
e-mail: paula.kelleher@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

Breda Cunningham
e-mail: breeda.cunningham@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

David Nolan
e-mail: david.nolan@dilloneustace.ie
Tel : +353 1 6670022
Fax: + 353 1 6670042

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DUBLIN BOSTON NEW YORK TOKYO

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

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