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Insurance regulation newsletter
Issue 2 – June 2022

Q2 2022 saw continued regulatory emphasis on consumer protection, resilience frameworks, and sustainability goals in the insurance sector. Combining these challenges with the backdrop of economic and geo-political uncertainty, insurance professionals will remain as busy as ever this summer.

Upsetting scenes from Ukraine have sadly been a constant in recent months. Europe continues to react to the war with the EU recently confirming a sixth package of sanctions on Russia and Belarus that all firms are expected to comply with. But such disruptions also come with an economic cost as inflation rates start to creep toward double digits. The economic impact has hit all sectors with insurance no exception.

On the domestic regulatory front, the CBI continues to remain active. Consumer protection remains at the forefront, and the introduction of differential pricing rules is now imminent. Recent record-breaking fines issued by the CBI on domestic banks should be plenty incentive for insurers to pro-actively ensure the customer is placed at the heart of its culture. Following on from Covid-19, policy terms, conditions, and exclusion clauses are extremely topical, an area also under examination by EIOPA.

Resilience remains another primary regulatory theme. Recovery and Resolution planning continues to generate debate both domestically and in Europe. Firms are now expected to have solid outsourcing governance frameworks and outsourcing registers in place. Group exposure also retains its place in the spotlight with another industry consultation paper expected over the summer. Over the medium term, we can expect the CBI and EIOPA to consider the appropriates of existing regulatory frameworks in an increasingly digitised and technology driven environment.

There has been a recent flurry of activity across some underwriting and reserving departments with new statistics published by the Personal Injuries Assessment Board (“PIAB”), National Claims Insurance Database (“NCID”) and Health Insurance Authority (“HIA”). The High Court has also set precedent in making judgements in favour of the new Personal Injuries Guidelines and their application by the PIAB. These developments should eventually result in good news for consumers’ insurance premium rates.

And of course, substantiality is now fundamental to the supervisory regime. The CBI have facilitated the formation of a Climate Forum for financial service providers while EIOPA has expended plenty of energy researching the ability of the sector to respond to the climate change challenge. We have also seen EIOPA collaborate with the other European Supervisory Authorities to further develop Sustainable Finance Disclosure Regulations (“SFDR”).

Despite the economic uncertainty and regulatory demands, the Irish insurance industry continues to expand rapidly with new firm authorisations, portfolio transfers, and evolving business models keeping insurance professionals busy. With average solvency coverage ratios healthy, and premium volumes increasing, our clients remain bullish on their medium to long-term prospects.

Regardless of what the latest challenge may be, we, the Mazars in Ireland insurance team, looks forward to assisting our clients achieve continued business success.

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CBI Updates

Insuring for our Future: CBI Governor addresses Insurance Ireland

The CBI continues to remain active in shaping the future of insurance regulation in Ireland. Governor of the CBI, Gabriel Makhlouf, delivered a keynote speech at Insurance Ireland's Industry Lunch on 16 June.

While high-level, the tone of the Governor's speech sets out the key priorities of the regulator. Some of the key topics are explored further in this newsletter. But the highlights of the speech include:

- Irish insurers wrote €99bn of premium in 2021, over two-thirds of which was cross-border;
- In the past two years, 15 new firms were authorised, and 52 portfolio transfers and material changes of business plan were overseen;
- The average solvency coverage ratio at end-2021 was 187%;
- While direct exposures are limited, the Bank remains vigilant over the second-order risk posed by the war in Ukraine, in particular, asset valuations and inflation;
- Climate remains a key priority with the new Climate Risk & Sustainable Finance Forum now established;
- Group risks continue to be an area of interest and an industry consultation on intra-group transactions is due to be launched shortly;
- The importance of the Product Oversight & Governance framework was re-emphasised. Value for money on unit-linked products was specifically called out;
- Consumer outcomes remain important with differential pricing regulations to apply from 1 July;
- Recovery and resolution is an ongoing focus for both domestic and European regulators;
- The CBI remains committed to improving transparency of the industry, the latest NCID update being an example of this;
- On the medium to long-term horizon, digitalisation of financial services is a key regulatory priority.

Differential Pricing Regulations

Following a review into differential pricing in 2021, new regulations come into effect on 1 July 2022. Most notably, a ban on 'price walking' will apply to home and private motor insurance renewals.

On 6 May, the CBI provided further clarity on the new rules by publishing a Q&A document. The publication covers commonly asked questions covering the likes of pricing, annual reviews, and automatic renewals. The full Q&A can be found here.

Individual Accountability Framework (IAF)

IAF legislation is now imminent and the CBI have been busy developing regulation and guidance for firms. A consultation package is expected to be issued immediately after legislation is adopted.

If not already done so, firms would be well advised to ensure their senior executive responsibility maps are updated and fit for purpose.

Fines & Reprimands

On 22 June, the CBI fined AIB **€83.3m**, the largest monetary penalty of its kind ever issued by the Central Bank. On the same day, EBS was fined **€13.4m**, bringing to a close the enforcement actions against both banks in respect of the long-running tracker mortgage investigations. These were the fourth and fifth tracker mortgage enforcement outcomes, following similar investigations into other lenders. In total, fines of **€174m** have now been issued on top of the **€737m** redress paid to customers.

While the tracker mortgage reprimands relate to the banking industry, there are themes highly relevant to insurers that should serve as a warning to the industry. Some of the common* failings across the tracker mortgage saga include:

- considerable failings against the Consumer Protection Code;
- failure to consider customer rights and product needs;
- breach of contract and inappropriate advice and warnings to customers in respect of product options;
- failures around clear, transparent and fair documentation issued to customers;
- wrongfully excluding certain customer groups from product options or entitlement to redress;
- lack of consistency and fairness in complaint handling;
- failure to 'Stop the Harm' by not installing adequate controls to prevent ongoing customer detriment after the issue was initially highlighted.

There now remains just one lender under investigation in respect of tracker mortgages.

**Not all sample failings apply to all banks and the reader is encouraged to read the CBI press release for each individual bank for full and accurate information.*

CBI Expectations on Outsourcing

In December 2021 the CBI issued Cross-Industry Guidance on Outsourcing. By way of reminder, all regulated financial service providers should now have their outsourcing registers prepared and compliant with expectations. If you are unsure of your requirements, you are advised to engage with you CBI supervisor at the earliest.

Climate

The CBI published a call for interest for participants in the newly established Climate Risk and Sustainable Finance Forum. The aim of this forum is to bring together a range of stakeholders, to collectively build and share best practices, and to advance the financial sector's response to climate change.

The inaugural meeting took place in June and focus will be on establishing a framework to make progress on high-priority issues affecting the financial sector.

National Resolution Framework for (Re)Insurers

The Department of Finance, in collaboration with the CBI, have published a feedback statement following the recent consultation on Development of a National Resolution Framework for (Re)Insurers.

The statement acknowledges that the European Commission has published a separate proposal for an Insurance Recovery and Resolution Directive ("IRRD") since the initial domestic consultation was launched. Hence the Department and CBI have indicated that they plan to provide input into the IRRD at European level whilst also reviewing the existing insolvency regime at a domestic level.

But the statement also notes that **"In a scenario where there is undue delay to the introduction of an EU framework, the Department and the Central Bank reserve the right to revisit the domestic proposal."** With precedent already set by the CBI's Pre-Emptive Recovery Planning Requirements for (Re)Insurers, there remains a distinct possibility that legislation may be introduced domestically first, moving before the rest of Europe.

Recovery Planning

Insurance and reinsurance undertakings have been required to have documented Pre-Emptive Recovery Plans in place since 31 March. Higher rated PRISM firms were required to submit their plans as a matter of course, while lower rated firms only expected to do so on CBI request. Nevertheless, there is already plenty of anecdotal evidence of the Central Bank requesting copies of plans from lower rated insurers. Similar to the introduction of the ORSA several years ago, we anticipate that Recovery Plans will see a lot of evolution in the first couple of years post introduction, especially when the CBI ultimately provides feedback to firms on expected standards.

Mazars are currently running an industry survey on Pre-Emptive Recovery Planning. To participate, and get access to survey results, please get in touch with your usual Mazars insurance contact.

Second Employers' Liability, Public Liability and Commercial Property Insurance Report of the NCID published

In June, the National Claims Information Database ("NCID") was updated and the second report on liability and property claims statistics published, following on from the first report in July 2021.

As expected, the report shows that Employer's Liability ("EL") and Public Liability ("PL") claims settled through litigation tend to take longer and cost more than if settled directly with the insurers or through the PIAB. Compensation levels may be similar, but additional legal costs are much higher in the case of litigation.

The report also reveals a 30% operating loss, across industry, in respect of Commercial Property ("CP") business. Albeit this loss is dampened after reinsurance mitigation. Overall, insurers continue to struggle to produce profits on EL, PL and CP classes with average net combined ratios in excess of 100% over the period 2009 – 2020.

Premium levels across these classes increased, on average, by 2% between 2019 and 2020.

CBI Response to Deputy Pearse Doherty re Business Interruption Insurance

The CBI have made public its response to queries raised by Pearse Doherty T.D. The letter reveals that, up to end 2021, over 5,000 Business Interruption claims had been settled or partially settled with pay-outs reaching €163m.

Deduction of Covid-19 state supports from insurance payouts (such as wage subsidy schemes) was a focal point of the letter. However, it appears that there remains a myriad of different approaches adopted and that the High Court is yet to address state supports as per the recent high-profile test case.

Russia & Belarus Sanctions

On 3 June the EU adopted a sixth package of sanctions relating to Russia and Belarus.

The CBI continue to update the dedicated page on their website with the most up to date sanctions. Firms are expected to ensure ongoing compliance as per the 'Dear CEO' letter issued earlier this year.

Furthermore, in June, the CBI issued a letter to business and representative bodies. The CBI reiterated that the adoption of sanctions places legally binding obligations on all individuals and entities, and that sanction breaches must be reported to An Garda Siochana.

EIOPA Developments

Changes to EIOPA Guidelines (SII) – Contract Boundaries and Technical Provisions

During the 2020 Review of Solvency II, EIOPA identified several divergent practices regarding contract boundary assessments and the valuation of best estimate. As such, revised guidelines have been drawn up and will apply from 1 January 2023.

Contract boundaries

The text brings greater clarity on unbundling of components of a contract and treatment of financial guarantees with respect to contract boundaries.

EIOPA's report includes four new guidelines, one amended guideline and one deleted.

Technical provisions

The main items revised are the use of future management actions and expert judgement, modelling of expenses, valuation of options, modelling of policyholder behaviour, and clarification in the calculation of expected profits in future premiums.

EIOPA's report includes 15 new guidelines and four amended guidelines.

Further detail can be found here.

Individual disclosures on EU-wide stress tests

EIOPA is proposing changes to the legal framework, to afford them greater scope to publish the outcomes of stress tests conducted.

EIOPA regularly runs Union-wide exercises in cooperation with the European Systemic Risk Board to assess the resilience of the European insurance industry against foreseen evolutions in market conditions and their potential negative implications for insurers.

The results of these exercises are published through a report based on aggregated data. In the last two editions EIOPA have pursued the publication of the individual results of the participants which has been met with reluctance.

In 2018, only four out of 42 consented to the publication of individual data, with only eight out of 44 undertakings giving consent in the last exercise.

EIOPA believes that individual communication of stress test results is important and looks set to pursue a more transparent regime.

Supervisory statement on the supervision of run-off undertakings

In April, EIOPA issued a statement aimed at improving standards and consistency of supervision applied to run-off undertakings and run-off portfolios. With run-offs becoming a growing and increasingly commoditised business model, EIOPA are keen that National Competent Authorities adequately supervise the bespoke set of risks that run-off models may present.

The statement provides good points to analsye for any firm considering entering run-off or putting a specific portfolio of business into run-off.

EIOPA assesses European insurers' exposure to physical climate change risk

Building on the sensitivity analysis of asset-side transition risks published in 2020, EIOPA launched a follow-up exercise on physical risks in the second half of 2021. A discussion paper published in May 2022 presents the results of this exercise which include a large collection of industry data on property insurance, contents cover, and business interruption insurance against a range of extreme weather risk. The risks assessed have been identified as the most relevant and potentially most disruptive on European property insurance portfolios.

The report looks at the consequences of major European natural catastrophes and finds that companies included in the sample have historically been well placed for handling the pursuing claims.

The findings of the report indicate that a lot of work still needs to be done to prepare for climate change. Climate risks are long-term and a standardised methodology for assessment is not yet widely developed.

Clarifications on Regulatory Technical Standards (RTS) under the Sustainable Finance Disclosure Regulation (SFDR)

On 2 June, the three European Supervisory Authorities (EIOPA, EBA & ESMA) published a joint statement providing clarity on the draft RTS under the SFDR. The clarifications include areas such as:

- sustainability indicators;
- financial product disclosures;
- direct and indirect investments;
- products with investment options;
- principal adverse impact disclosures;
- ‘do not significantly harm’ disclosures.

The application of the RTS are expected to apply from January 2023.

Blockchain in insurance

EIOPA has recently released a feedback statement following on from the April 2021 discussion paper on blockchain and smart contracts in insurance. In short, many insurers see potential value in blockchain but are still exploring use cases in the insurance value chain.

While the emerging technology may present future opportunities to speed up transactions and lower costs, most insurers recognise that new cyber and operational risks must be tackled. The high energy consumptions rate of blockchain also raises ethical concerns.

EIOPA will continue to assess the use of blockchain in the supervisory and regulatory process.

Consultation Papers: Exclusions in insurance products arising from systemic events and management of non-affirmative cyber exposures

On 17 June, EIOPA published two consultation papers:

i. The supervisory statement on exclusions related to systemic events such as pandemics, natural catastrophes or large cyber-attacks and
ii. The supervisory statement on the management of non-affirmative cyber exposures.

The Covid-19 pandemic had brought insurance policy terms and conditions, and extreme event exclusion clauses, into sharp focus. The rapidly evolving cyber exposure landscape further highlights the need for clearer policy wording definitions.

EIOPA expects insurers to appropriately consider these risks throughout the product design process and policy lifecycle. Clarity to policyholders is a key priority.

The consultation on both papers is open until 18 July 2022.

Risk Free Rate (“RFR”)

As required, EIOPA continue to publish monthly RFRs across a range of different currencies and term durations. But the end May spot rates certainly provide extra food for thought for insurers.

The Euro one-year spot rate now stands at 0.38% (-0.61% in May 2021), the ten-year rate is 1.78% (0.20%), and twenty-year rate 1.87% (0.41%).

With the current inflationary and economic growth uncertainty, many insurers are experiencing volatility in their Technical Provisions and Solvency Capital calculations. It will no doubt continue to be a key area of focus in the coming months.

Ultimate Forward Rate

Also in April, EIOPA published the calculation of the ultimate forward rate for 2023. As of 1 January 2023, the applicable Ultimate Forward rate for the Euro will remain unchanged at 3.45%.

EIOPA Q&A on regulation

EIOPA continue to publish responses to queries on regulation, particularly in relation to Solvency II.

Responses in recent months included clarification on the treatment of investments Special Purpose Acquisition Companies (“SPACs”) – which are expected to be treated as equities in the Standard Formula. EIOPA also commented on the treatment of foreseeable dividends within SII returns.

Readers are encouraged to view to full log to analyse the Q&A most relevant to their specific firms.

Other Industry News

Ombudsman Complaints 2021

The Financial Services and Pensions Ombudsman (FSPO) recently published an overview of complaints for 2021, of which insurance accounted for 27% of all complaints received.

Motor, health, life, and travel insurance were the leading insurance classes for complaints lodged. Complaints related to claims accounted for 51% of the total, compared to 37% in the prior year.

The FSPO acknowledged that the 2020 and 2021 statistics were both heavily influenced by Covid-19. Business interruption insurance in particular has been a contentious issue and the Ombudsman has highlighted the importance of clarity within policy wordings.

The report also highlights that a high volume of complaints continue to be resolved by mediation through the Dispute Resolution Service with such settlements exceeding €4.6m cumulatively. However, some notable compensation payments were also made during the FSPO's formal investigation process and through legally binding decisions following investigation.

Personal Injuries Assessment Board (PIAB) award values

The PIAB recently released statistics on award values up to end December 2021. Average awards to date under the guidelines are 42% lower than the average for 2020 under the old Book of Quantum. The drop in value has been consistent across motor, public, and employer's liability classes.

49% of awards were for amounts of less than €10,000 during the period spanning late April 2021 to end December 2021. This compares to just 12% in 2020.

Overall average awards are now under €14,000 as outlined in the report.

High court judgement on Personal Injuries guidelines

In June 2022, the High Court made two judgements in favour of the Personal Injuries guidelines constitutionality and their application by PIAB.

PIAB believes this removes uncertainty and provides clarity on the application of the guidelines. PIAB anticipates these judgements will result in more claims being resolved through PIAB, removing avoidable costs and delivering for awards faster than litigation.

Health Insurance – Risk Equalisation Scheme ("RES")

On 31 March 2022, the European Commission issued a decision of "no objection" in relation to Ireland's RES. This decision allows for the continuation of the RES which underpins the community rating feature of the health insurance market.

From April 2022, RES now includes a High Cost Claims Pool ("HCCP") feature, in addition to the two existing credits; age-related credits, and hospital utilisation credits.

The HCCP is a mechanism to share the cost of high severity claim costs across health insurers.

The Risk Equalisation Fund is funded by stamp duty levies paid on health insurance policies sold domestically.

Health Insurance – Market Statistics

As of end-March 2022, the Health Insurance Authority reports that 2.4 million people in Ireland, or 47.5% of the population, hold private health insurance. The proportion of the population with health insurance has been steadily rising over the last few years, increasing from 44% in 2014. VHI Healthcare remains the largest provider with 49% market share, followed by Laya Healthcare at 27% and Irish Life Health with 20%.

The average adult premium paid across the market is €1,450 per year, a slight reduction from the 2021 average of €1,466.

Consumer Price Index ("CPI")

Domestic prices, as measured by CPI, were 7.8% higher in May 2022 compared with May 2021. Unsurprisingly, energy and oil prices were a major driving factor, consistent with trends being observed across Europe.

The 'Housing, Water, Electricity, Gas & Other Fuels' grouping was up 20.9% while 'Transport' was up 16.5%.

ECB Key Interest Rate

After a long-running stimulus package, the ECB will deliver its first-rate hike in over a decade and cease bond buys. The key interest rate is expected to increase by 0.25% in July with potential for a larger increase in September. The move comes as little surprise as the Eurozone grapples with inflation rates exceeding 8%.

UK – Solvency II Reforms

UK regulators continue to consider changes to the insurance market with HM Treasury ("HMT") releasing a consultation on potential Solvency II changes. Overall, there appears to be focus on reducing regulatory burden for firms. One of the more notable proposed reforms includes Risk Margin reductions of up to 70% for life insurers and circa 30% for non-life firms.

Government and PRA consultations remain open with responses from firms due in the summer months.

Mazars insurance services

Our local team of insurance professionals have the knowledge and expertise to meet your organisation's needs. Click the hyperlinks below for more information or get in touch.

Actuarial

- Outsourced Actuarial Function services;
- Peer reviews;
- Pricing & underwriting;
- Data analytics;
- Portfolio transfers, mergers and acquisitions.

Assurance

- External Audit;
- Internal Audit support;
- Outsourced Head of Internal Audit;
- Tax;
- IT.

IFRS 17

- Transition support;
- Systems development;
- PAA eligibility testing;
- Yield curve assessment;
- Disclosures advice;
- Training programmes.

Regulatory

- Board training and governance;
- IAF & SEAR preparation;
- GDPR compliance;
- ESG gap analysis;
- CBI licence applications.

Risk Management

- Risk framework and internal control reviews;
- ORSA support;
- Recovery & Resolution;
- Outsourced Risk Function Services.

Solvency II

- Capital management;
- Pillar II governance;
- Pillar III support (QRTs, NSTs, SFCR, RSR);
- Third-country branch services.

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