



Levy Consultation CP61  
Industry Funding  
Financial Control Division  
Central Bank of Ireland  
PO Box 9708  
Dame Street  
Dublin 2

22<sup>nd</sup> February 2013

FAO: Industry Funding, Financial Control Division

**Re: CP61 – Consultation on Impact Based Levies and Other Levy Related Matters**

### **General comments**

DIMA appreciates the opportunity to consult with the Central Bank of Ireland (CBI) on its proposals to amend its levy system to align closer with the PRISM system of regulation which has been implemented by the CBI. We note that the CP61 proposals are to be applied across all types of regulated entities in Ireland; the majority of our comments in this response are from the perspective of, and related to the impact on, the international re/insurance sector.

DIMA has consulted widely with its membership, which comprises predominantly international re/insurance entities writing non-domestic business. DIMA member companies range across a wide spectrum of operations: captive and re/insurance management companies; self-managed captives; re/insurance companies writing predominantly group business (“quasi captives”); international non-life insurance companies; international life insurance companies; international non-life reinsurers; and international life reinsurers. Across this base, DIMA members write both specialist and general business, mainly with non-consumer counterparties.

The cost of regulation is an important factor for all our member companies, both in terms of internal systems and practices within the firms, and the annual regulatory levy from the CBI. It is fully recognised that Ireland needs a sound regulatory system with a strong reputation and that there is a commensurate cost involved in maintaining such a system. At the same time, it is equally important that the regulatory requirements and associated costs are not set so high as to deter reputable and soundly-run businesses from establishing, extending or continuing to operate from an Irish base.

The CBI’s mission as detailed in its Strategic Plan 2013-2015 is “safeguarding stability, protecting consumers”. It is important that aspects of stability such as business activity levels are not compromised by excessive costs of regulation in comparison with those applied in similar jurisdictions for this type of business, and particularly where consumer exposure is limited or absent.



## Specific comments

### 1 Executive Summary

Welcome aspects of the proposed amendments to the regulatory fee levy outlined in this section include a more equitable and transparent process, improved targeting of regulatory resources, closer alignment of funding and costs of supervision, and earlier issuance of the levy notices. With reference to the alignment of funding and costs of supervision, there is a significant difference in allocation both within impact categories and between impact categories (see comments on paragraph 3.3). The proposals contained within CP61 are purely at category level, and therefore do not wholly align with the supervisory resources required for each regulated entity.

Application fees are a new proposal to the regulatory charging structure in Ireland. It is understood and accepted that there is a cost associated with applications and authorisations, however, the fees for such activities should be cognisant of the future value of the potential new entrant to the wider environment of the Irish marketplace. Such fees should not be an automatic barrier to entry.

### Scope

It is understood that the current and future funding arrangements in respect of subventions and annual funding quantum are outside the scope of this consultation. It is important that irrespective of these arrangements and quanta, the CBI maintains the view of keeping the costs of regulation to an appropriate and achievable level, benchmarked to equivalent regulatory regimes and activities.

### 3 Case for Impact based Levies

3.1 We agree that risk-based supervision is beneficial to both industry and the regulatory authority, and that it is appropriate to base levies on such a system.

3.3 This table demonstrates the significant resource differences which exist both between PRISM categories and within them. Although there is a good case to have relatively wide bands within PRISM to reflect changes within the business being undertaken by the regulated entity, and noting the absence of an appeals mechanism if a regulated entity does not agree with the category to which it has been assigned<sup>1</sup>, this is an approximate tool with which to set fee levels. We understand that the PRISM rating applied to Category B firms (insurance – life and non-life – and reinsurance undertakings) takes into account

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<sup>1</sup> *PRISM Explained*, CBI, November 2011: “Impact classifications are a matter of supervisory judgement and are not subject to appeal. We have internal processes to allow all firms to have their impact category increased based on judgemental override but decreases are not permitted.”



impact metrics including solvency margin, premiums, technical provisions and liabilities<sup>2</sup>. It does not, however, appear to include consumer or non-consumer facing aspects of the regulated entity, which may have a direct and significant impact on the level of supervisory oversight required within a PRISM band.

The 100% difference in the level of regulatory resource allocated within each impact category (e.g., between 50% and 100% of a supervisor for all medium-high firms) could lead to a regulated entity which naturally falls towards the bottom of the band being charged the same as an entity at the top end of the band, thus both paying disproportionate fees. Similarly if a regulated entity is on the cusp of two bands, it will see a doubling of the resource applied to its supervision should it be allocated to the higher category (e.g., the top end of the medium-high impact category is 100% of a supervisor; the bottom end of the high impact category is two supervisors), and under the proposed regime would be paying an “average” fee for all entities within the impact category.

In the spirit of the risk-based approach being taken, there is a case for more a specific approach within each impact category to closer reflect the resource cost for regulating each entity, and relativity within bands. This could be based on regulator activity levels, premiums, technical reserves, required capital or similar to better match the CBI input, perhaps reflecting the PRISM assessment outcome for each regulated entity.

- 3.4 Some of the projects referred to in this section, such as the EU/IMF Financial Measures Programme are finite, and the future resources of the CBI should be calibrated to these activity levels.

This section identifies that the CBI has a dedicated team addressing consumer protection risks. Where a regulated entity does not engage with consumers, it would be inappropriate to pass on such a cost to that entity.

- 3.5 The CBI’s involvement with European and international fora is welcomed and important in ensuring that Ireland, as an international financial services centre, is both properly represented and is at the forefront of regulatory practice.

**Question:** *Do you agree with the Central Bank’s proposal to used firms’ impact categorisation under PRISM as the basis for the setting of the levies it charges regulated entities on an annual basis? If you disagree, what would you propose instead?*

**Answer:** In principle, DIMA agrees with using the PRISM category as a guide for setting levies, but strongly recommends that the CBI adopts a more detailed rating approach within each PRISM band to more accurately reflect the cost of regulatory

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<sup>2</sup> *PRISM Explained*, CBI, November 2011, p28



supervision. DIMA would welcome the implementation of a process for regulated entities to engage with the CBI to discuss their PRISM rating.

#### **4 Allocation of the cost of financial regulation activity to industry funding categories**

4.3 The CBI's methodology aligns with the European System of Central Bank's COMCO. The COMCO methodology is not accessible to industry, therefore presents something of a "black box" on which to comment, and there is no context in which the external auditors' review of the methodology and outputs can be placed.

4.4 As per comments relating to paragraph 3.3, PRISM categorisation is a somewhat inexact tool for different regulated entities within each band and therefore the charging of related costs, whether supervisors' time or other costs of financial regulation activity, may be similarly proximate. A more granular approach would be more accurate for both supervisory time and other regulatory activities.

#### 4.6 Components of the proposed impact based levy

This model is a clear explanation of the different components for the proposed levy. For companies which are not engaged in consumer-facing activities, there is an argument that elements of the CPRE component should not be applied to them. In addition, where companies are no longer actively involved in business and are in run-off, the CBI should, subject to certain criteria such as solvency position and consumer exposure, consider a proportionately lower fee charge reflecting the lower risk and requirement from supervisory resources. Also, for companies engaged in specific projects – for example, from the re/insurance sector's perspective, the Solvency II internal model pre-application process – such work could be applied to the individual regulated entity rather than applied across a number of entities, whether they are involved in the project or not.

**Question:** *Do you agree with the Central Bank's proposal to allocate the cost of financial regulation activity on a basis consistent with the allocation of supervisory resources to regulated entities? If not, what cost allocation methodology would you propose?*

**Answer:** In principle DIMA agrees to the CBI's proposal, but encourages a greater degree of granularity in its allocation, reflecting the nature of the business and other regulatory activities relating to each entity. Transparency in such cost allocation is an important factor.



## **5 Estimated impact of proposed reforms on annual levies payable by regulated entities**

An analysis by industry of the impact of the proposed reforms indicates that if the proposals are implemented as they currently stand, they will have very different impacts at individual regulated entity level, as would be reasonably expected. As previously discussed, in general industry welcomes the revised approach to funding, but believes that some of the principles of the proposals are diluted by not implementing a graduated basis within the PRISM bands, and do not fully reflect the nature of the regulated entity.

## **6 Application of impact categorisation to certain sectors**

DIMA does not represent Collective Investment Schemes and Self Managed Investment Companies with umbrella structure, or Credit Unions, and therefore does not have a view as to the application of impact categorisation to these sectors, beyond a general view that it is important that all financial services entities are properly and appropriately regulated.

## **7 Review of significant practices and policies**

### **7.1 Application Fees**

Industry acknowledges that the application and authorisation process, which has been without charge to date, is one which takes time and resource from the CBI's perspective. Thus it is understandable that the CBI wishes to divest at least a portion of the costs of applications and authorisations, and aims to discourage spurious applications. The table in Appendix C identifies the proposed levels of application fees for different types of entity, and it is further proposed that any fees are non-refundable. DIMA understands that the proposed levels of application fees in Appendix C do not take into account any external subventions which may currently apply to other regulatory costs.

DIMA has significant concerns that the proposed structure will be overly rigorous, creating a draconian barrier to market entry. In particular:

- an authorisation may not be concluded for a number of valid reasons which may not be clear from the outset of the application process; a non-refundable fee representing the total cost of application would deter companies from considering Ireland as a possible option for establishing new operations;
- re/insurance companies which are regarded in other jurisdictions as captives but which the CBI considers, uniquely, as not being captives, would be subject to a €50,000 non-refundable application fee according to these proposals. Such companies would no longer consider Ireland as a potential location for their operations; and
- many international re/insurance operations have often established small operations in new jurisdictions which then have grown into substantial businesses over time. The proposed €50,000 application fee would be perceived as a

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disproportionate charge for start-up businesses and therefore Ireland would not be viewed as a potential location for such types of business.

These outcomes are inconsistent with the stated aims of the Department of An Taoiseach's "Strategy for the International Financial Services Industry in Ireland 2011-2016" which states: "It is a strategy which recognises and fully supports the critical importance of a credible, responsible and proportionate regulatory system whose own capacity and reputation provides, in itself, a source of competitive advantage for this jurisdiction, attracting reputable, responsible and sustainable financial services activity." Such attraction and sustainability will be damaged not by the imposition of application fees per se, but by the methods and levels proposed in this consultation.

We recommend that the CBI consider amending its proposals in a number of ways:

- bifurcate the system to an application fee element and an authorisation fee element. Such a structure would deter spurious applications, while not deterring welcome potential entrants to the market;
- the application fee element should be non-refundable (again to deter the spurious applicant), but the authorisation fee element may be refundable depending on the reasons why the authorisation wasn't completed; and
- apply a range of application fee levels to re/insurance companies, depending on their proposed activities. We would like the opportunity to discuss this in greater detail in a meeting with the CBI.

## 7.2 Pro rata levies

DIMA supports the CBI's proposal that newly authorised entities are levied pro rata to their authorisation dates.

## 7.3 Unpaid levies

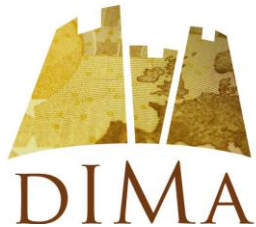
In principle, DIMA supports the CBI's proposal that firms which do not pay the levy within a reasonable timeframe should be subject to a penalty. In the interests of transparency, this should be a formalised regime following consultation, incorporating elements such as timing issues, the type of penalty and level of penalty. The reasons behind non-payment should be taken into account before a penalty is applied.

## 7.4 Treatment of monetary penalties

Monetary penalties are an important element in encouraging regulated entities to maintain high standards, and are purely deterrents to contravening behaviour.

There are merits to both proposals put forward by the CBI about how to treat income from such penalties. Remitting the income in full to the Irish Exchequer means that the cost of the CBI's enforcement activity leading to these penalties is borne in its entirety by the

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whole of the regulated community without an offset from the proceeds of such activity; however, the current Department of Finance subvention would make this an equitable system for the duration that the subvention remains. Should that system change, then there is a stronger argument for the proceeds to be used to offset the cost of regulation.

Alternatively, the CBI could consider a “blended” structure in which any penalties above the net cost of enforcement would be submitted to the Exchequer.

This response provides an overview of the DIMA members’ response to CP61. We would appreciate the opportunity to further discuss some of the issues within this response, in particular DIMA’s recommendation that the CBI takes a more detailed approach with respect to the PRISM bands, better reflecting each regulated entity’s demands on its resource, and the proposals for application fees.

Yours faithfully

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