Consultation Paper 138 Consultation on Cross Industry Guidance on Outsourcing

Irish Life and Canada Life Companies Submission

July 2021

INTRODUCTION

ABOUT IRISH LIFE AND CANADA LIFE

Canada Life was founded as Canada´s first life insurance company in 1847. It has now grown into one of the world´s largest and most financially secure providers of life insurance. Since 2003, Canada Life has been a part of Great-West Lifeco Inc., one of the leading financial service providers in Canada. Great-West Lifeco Inc. cares for more than 28 million clients around the world.

Irish Life empowers its customers to look to the future with more confidence and certainty. We manage the financial needs of more than 1.3 million Irish customers. We think ahead to find opportunities and anticipate challenges to help deliver more security and certainty for their futures. We have over 75 years' experience serving corporate and private customers in Ireland. So we pride ourselves on having a deep understanding of our customers' needs, interests and concerns for themselves and their families.

Irish Life Group (ILG) includes inter alia Irish Life Assurance and Irish Life Health as well as its associated companies Irish Life Investment Managers and Setanta Asset Management. We currently have 2,400 people working at our campuses in Dublin and Dundalk, and we continue to grow.

There are three significant businesses operating under the Canada Life brand in Ireland, Canada Life Assurance Europe, Canada Life Re Ireland dac and Canada Life International Assurance (Ireland) dac.

Canada Life Assurance Europe plc has been operating in Germany since the year 2000 and is regulated by the Central Bank of Ireland and regulated by the German regulator Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) for business conduct purposes.

Canada Life Re Ireland dac forms part of the Reinsurance Division of Great West Lifeco. The primary focus of the Reinsurance Division is on life and non-life reinsurance business in Europe and the United States.

Canada Life International Assurance (Ireland) dac sells unit-linked life assurance and capital redemption bonds to UK residents through UK independent regulated intermediary channels.

EXECUTIVE SUMMARY

Irish Life Group and the Canada Life companies welcome the opportunity to participate in this consultation paper with the Central Bank on Cross-Industry Guidance on Outsourcing and the particular focus on IT and Cloud arrangements.

The Irish Life Group companies and the Canada Life companies based in Ireland is one of the largest and most diverse financial services groups in Ireland, focussed on providing a wide range of investment, reinsurance, protection and health insurance products to consumers. As such, we actively seek opportunities to ensure better outcomes for our customers through meeting their needs in a cost efficient, flexible and timely manner.

There can be instances where utilising the benefits of an outsource provider helps us to achieve our objectives without materially impacting on our risk profile, subject to the right controls being in place to address specific risks, including third party risks associated with cloud and other cyber technology use. In fact, there is often a strong case to use such services in order to further enhance our products and services. Cloud computing for example can increase scalability and flexibility in sourcing computing resources, while also potentially introducing security benefits. As a Group we are very aware of the additional risks to which the use of outsourced providers may expose firms and the importance of identifying and managing these risks, as well as the need to have regulations and guidelines to establish good practice for the effective management of these risks.

The degree, nature and risk posed by outsourcing can vary extensively depending on the type of outsourcing used. Therefore, blanket governance arrangements may be neither appropriate, proportionate nor ultimately beneficial to the customer. In addition, setting out of a list of requirements in a prescriptive, rather than principles-based, approach may render some requirements inoperable. For example, significant and granular expectations are set for what must be included in a written contract with an outsource provider. The degree of prescription is not helpful and commercially will be extremely difficult to implement where outsource providers are not covered by the same regulatory requirements. As these guidelines may be more prescriptive than those applicable to other EU countries, suppliers may not be willing to accept such clauses. In the event that suppliers will not accept such clauses in contracts there is no flexibility to achieve the desired outcomes of risk mitigation in a different manner, more acceptable to the supplier.

As written, the current guidelines could tie firms into severing ties with suppliers. In a worst case we could be generating a ‘cliff edge’ for operational resilience of firms if they feel they must terminate contracts at a future transition date where the supplier will not accept mandatory contractual terms expected by the regulations. Despite the size of the Irish Life and Canada Life Group companies we have experienced similar contractual negotiation difficulties with large international partners that operate global standard contractual provisions.

It would not be to the benefit of either the undertaking or the consumer or the cedant if services were curtailed or restricted due to the prescriptive nature of certain requirements.

Consultation General Questions:

Questions 1. Are there are any aspects of the Guidance that are unclear? If so, please advise what these are and provide suggestions on the additional clarity required.

Set out below are a number of examples of where additional clarity is required. Fundamentally however, clarity is sought as to what occurs if an outsourcer, who is not regulated by the CBI, refuses to implement key contractual provisions i.e. audit and testing rights, to the level that is required to meet the expectations from the Central Bank of Ireland (CBI). In particular, where the provider is a large global operator and has standard form terms, some of which are non-negotiable, and as a result is unwilling to amend its terms purely for Irish financial services providers.

Further clarity is also sought on:

- Section 5.1 (g) - Is it reasonable to expect a sub-outsourcer to give the same access and audit rights as the primary Outsourced Service Provider (OSP) in particular given these are likely to be smaller entities? This may require contractual changes which could pose difficulty in the case of existing contracts. Also we assume that reports such as ISAE3402 reports for asset managers are an acceptable standard and this is not an additional requirement.

- While the Consultation Paper allows for proportionate application based on the nature, scale and complexity of a regulated firm's business, as it is cross industry, can proportionality be clarified based on consumer facing and non-consumer facing firms?

- Part B Section 5.4 also refers to an expectation that a regulated entity, when evaluating concentration risk, considers multiple other regulated firms outsourcing to the same OSP, either on a sectoral or cross sectoral basis, and a firm's contribution to systemic outsourcing concentration risk. We would note that the EIOPA Guidelines for Cloud Outsourcing set out in Guideline 16 that it should be the Supervisory Authority which monitors concentration risk at country and sectoral level rather than the entity.

- Section 7.3 relates to access, information and audit rights, noting that within the contract or written outsourcing agreement the OSP grants the regulated entity or any other person appointed by them or the competent authorities full access to all relevant business premises and unrestricted rights of inspection and auditing related to the outsourcing arrangement. The request for OSPs is significant and it is unclear how this would work operationally should a provider refuse to provide the full breadth of rights outlined in this section.

- Section 9 includes a number of requirements relating to the business continuity plans of the OSP (e to h). While it is important that a regulated entity has appropriate sight of an OSPs BCM plans, testing and limitations, there may be practical limitations with some of these, in particular where it is a smaller entity outsourcing to a much larger specialist entity.

- Section 10 references the provision of outsourcing information to the CBI in January 2022. Given that the consultation closes on 26 July with feedback to be subsequently published, which could

be in Q4, this leaves a short time period to review the final template and prepare submissions within the proposed timeline.

2. What, if any, are the other areas/topics that should be covered in the Guidance (specify sections) or in future versions of the Guidance?

The Guidance should align as far as practicable with the guidelines set out by EIOPA on outsourcing to cloud service providers.

3. What, if any, are the significant issues /or concerns or unintended consequences that might arise due to the provisions of the Guidance?

As stated above, the key concern in relation to the Guidance is the inoperability of certain provisions, in particular where these entities are not required by regulation to comply. If the guidelines were to remain as currently drafted they could limit the outsource providers available to firms, potentially preventing the use of those third parties best placed to provide secure, efficient services to customers. This in turn could impact customer services and products in the future, limiting them by the parameters of the regulation, while at the same time firms such as Fin Tech providers, with which they compete, may have no such constraints.

In addition, Section 5.1 relating to sub-outsourcing of critical or important functions notes regulated firms should have in place monitoring of the sub-outsourced service providers. Depending on the level of monitoring expected, it may be extremely challenging to implement this in practice. It would also appear to duplicate other controls such as notification of issue with sub-outsourcers.

Section 5.1 requires that for sub-outsourcing of critical or important functions regulated firms should themselves apply an appropriate level of monitoring of the sub-outsourced service providers. Based on our reading of the Guidelines, this appears disproportionate and may be practically and commercially difficult to deliver. If we have robustly assessed our direct 3rd party's capabilities to monitor their own sub-contractors (our 4th parties) and established contractual notification requirements linked with sub-outsourcer performance issues, then it would appear excessive for us to duplicate such oversight. It is also highly unlikely that a 4th party would be prepared to submit to monitoring from an organisation it has no direct contractual relationship with, limiting our oversight strictly to monitoring of public information. Similarly, it seems commercially unrealistic that a sub-outsourcer would provide the regulated firm and the Central Bank the same contractual rights of access and audit as those granted by the primary (direct) supplier.

Section 9 requires the firm to have sight of reports on business continuity measures and testing undertaken by the outsourced provider and be informed of any relevant actions or remediation arising as a result of this testing, as appropriate. It is unknow how comfortable all outsourced providers may be to provider such information, in particular where this information may be commercially sensitive.

4. The Central Bank has considered existing sector specific legislation and guidance as they pertain to outsourcing and is of the view that this Guidance serves to provide additional clarity on the Central Bank's expectations and best practice when firms utilise outsourcing. Are there any particular aspects of the Guidance that appear to be at odds with existing sectoral requirements and could give rise to confusion/ misinterpretation? If so please provide details on any aspects which you believe may cause confusion and suggest how best to address such issues.

Sections 4.1 and 4.2 place a higher standard than required by the Solvency II Directive. The guideline requires that a Firm has a comprehensive outsourcing policy in place, which is reviewed and approved by the board at least annually. The Directive only requires that policies forming part of the risk management system are approved by the Board and reviewed annually. Then, under the Solvency II Directive, the Board prior approval is required only for significant change to such policies. The Consultation Paper requirement to require annual Board approval, irrespective of material change, imposes a higher governance bar. Whilst management should ensure that the outsourcing policy is reviewed annually, and the Board should be notified of the results of the review, annual re-approval of the policy by the Board should only be necessary upon significant change.

The guidance should also be in alignment to the extent possible to the EIOPA guidance on Cloud Outsourcing and the principle set out therein. In particular, the differentiation of responsibilities between the role of the supervisory authorities and that of the regulated entities.

Conclusion

The proposals set out within the Cross Industry Guidance on Outsourcing need to be assessed to ensure that they are operational, proportionate and also do not act to the detriment of innovation or the provision of services to customers. The observations set out above are proposed to support the proper functioning of the Guidance and to ensure that regulated entities can efficiently and properly organise their business models.

The Irish Life and Canada Life companies would welcome the opportunity to meet with the Central Bank to discuss any of the matters set out above.