



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

ENFORCEMENT ACTION

Central Bank of Ireland

and

AXA Life Europe DAC

AXA Life Europe DAC fined €3,640,000 and reprimanded by the Central Bank of Ireland for failures in Corporate Governance and Risk Management and handling of Conflicts of Interest.

On **8 December 2022**, the Central Bank of Ireland (the **Central Bank**) reprimanded and fined **AXA Life Europe DAC (ALE)** €3,640,000 pursuant to its Administrative Sanctions Procedure (**ASP**) for three breaches under the European Communities (Life Assurance) Framework Regulations 1994 (S.I. No. 360 of 1994) (**1994 Framework Regulations**), the **Corporate Governance Requirements**¹, and the Solvency II Commission Delegated Regulation (EU) 2015/35 (**Solvency II Delegated Regulation**).

ALE is an insurance undertaking authorised by the Central Bank to carry out life insurance business. In 2006, it set up a German branch and started selling an insurance product known as TwinStar. The German Federal Financial Supervisory Authority (**BaFin**) regulated the German branch for conduct of business. In 2012, ALE stopped underwriting new TwinStar policies, which were only sold in Germany, and closed its

¹ **Corporate Governance Requirements** refers to the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2010, the Corporate Governance Code for Credit Institutions and Insurance Undertakings 2013; and the Corporate Governance Requirements for Insurance Undertakings 2015.

German branch in 2014. Between 2006 and 2012, ALE sold approximately 350,000 TwinStar policies, of which approximately 203,000 remain in place.

Between 2006 and 2007, policy documentation in relation to the TwinStar policies referenced a Parental Claims Guarantee (the **PCG**), which had been provided by AXA S.A., ALE's parent company, to provide ALE with the necessary resources to pay all outstanding German policyholder claim liabilities, if ALE became unable to do so itself. The PCG was provided because ALE could not participate in the insolvency protection scheme for German life insurance companies. The PCG was never called upon and although it was deemed by ALE's parent to have terminated in 2011, a replacement guarantee has since been put in place.

In 2006, BaFin wrote to ALE's German branch, stating that the references to the PCG in some policy documentation suggested greater security than that which was actually being provided. This was because some policy documentation failed to make clear that the PCG was conditional and could terminate automatically if certain conditions were met.

In early 2018, the sale of ALE was considered by its parent (the **Proposed Sale**) but this sale did not ultimately proceed. As part of its consideration of the Proposed Sale, the Central Bank became aware that, although policy documentation had been updated for policies sold from 2008 onwards, policies sold in 2006 and 2007 may not have been updated to disclose the conditional nature of the PCG, despite the letter from BaFin. Subsequently, the Central Bank commenced an investigation.

The Central Bank's investigation found that ALE's risk management systems failed because, over a 13-year period, ALE did not put in place an effective process to identify, manage, monitor and report the risks arising from approximately 30,000 TwinStar policies with terms and documentation which referenced the PCG, 80% of which had not made it clear that the PCG was subject to certain conditions.

Further, the investigation found that ALE failed to establish effective conflict of interest policies and procedures and that it failed to conduct an adequate assessment of potential conflicts of interest when the Board of ALE considered issues relating to the PCG at a meeting in July 2018.

The Central Bank has determined the appropriate fine to be **€5,200,000**, which has been reduced by 30%² to **€3,640,000** in accordance with the early settlement discount scheme provided for in the Central Bank's ASP.

The three breaches have been admitted by ALE.

The Central Bank's Director of Enforcement and Anti-Money Laundering, Seána Cunningham, said:

“It is important that firms identify, assess and manage the risks to which they are or might be exposed, to ensure that they can meet their commitments to consumers. ALE's weak internal control framework meant that it failed to identify and monitor a cohort of policies in relation to which policy related documentation was unclear, despite having been made aware of concerns in this regard. This failure meant that ALE was unable to inform its policyholders of information which was relevant to them.

Firms must also manage conflicts of interest appropriately and establish and apply robust mechanisms for doing so. Conflicts of interest are an inherent risk to all regulated entities and, when not properly managed, they pose a risk to consumers and diminish market integrity. In this case, ALE's failure to implement effective processes and procedures to manage conflicts of interest, meant that it did not give adequate consideration to potential conflicts of interest.

The sound supervision of cross-border activities, be it under free provision of services or the right of establishment, is an important part of the Central Bank's mandate. This case demonstrates the effectiveness of close collaboration between the Central Bank and other financial regulators across the EU, in enhancing financial stability and the protection of consumers.”

² Further information is available on the Early Discount Scheme at point 6 of the Notes section.

Background

ALE is an insurance undertaking, authorised by the Central Bank on 20 January 2006 pursuant to the 1994 Framework Regulations.

In 2006, ALE established a German branch and started selling an insurance product in Germany on a freedom of establishment basis. This insurance product was known as TwinStar and involved complex unit-linked life and savings products with guaranteed minimum returns, commonly known as “variable annuities”, or “unit-linked policies” with options and guarantees.

As an Irish-based insurer, ALE could not avail of the protections afforded by Protektor Lebensversicherungs-AG, a guarantee scheme set up to safeguard policyholders against the consequences of a German life insurance company becoming insolvent. As a result, the PCG came into operation on 1 February 2006. The PCG guaranteed that ALE’s parent would provide ALE with the necessary resources to pay all outstanding German policyholder claim liabilities, if ALE became unable to do so itself. However, the PCG would automatically terminate if certain conditions were present such as ALE obtaining a sufficiently high financial strength rating on a standalone basis or if a purchaser from outside the parent group with a sufficiently high financial strength rating took control of ALE.

The PCG was referenced in ALE’s sales and marketing literature for TwinStar policies sold between 2006 and 2012. It sold over 350,000 of these policies of which approximately 203,000 remain in place, representing around 90% of ALE’s liabilities.

In 2006 and 2007, the PCG was also referenced in the mandatory customer information which formed part of the policy terms and conditions issued by ALE to TwinStar policyholders. In relation to these references, BaFin issued a letter to ALE’s German branch on 27 November 2006, which was received on 5 December 2006 (the **BaFin Letter**). The BaFin Letter advised ALE that references to the PCG in the customer information issued with TwinStar policies suggested greater security than was actually being provided, due to the potential for the PCG to automatically terminate if certain conditions were met. Following the BaFin Letter, ALE took steps to

remove references to the PCG in policy terms issued from 2008. No steps were taken to identify references to the PCG in policy terms already issued.

Conflict of Interest

In the context of the Proposed Sale, ALE's parent considered that it would be inappropriate to continue to guarantee ALE's German business post-sale, by way of the PCG. In July 2018, ALE was notified by its parent that the PCG had terminated in 2011 (the **PCG Termination Notification**). This was on foot of new information in relation to a financial strength rating obtained by ALE, which ALE's parent deemed had triggered the termination of the PCG.

The PCG Termination Notification was considered by the Board of ALE at a meeting on 23 July 2018, at which matters that might give rise to potential conflicts of interest were disclosed by certain members. However, the remainder of the Board, having sought legal guidance on the matter, did not consider that this should prevent those individuals from participating in the discussion. In this consideration, the Board did not adequately assess whether third parties, such as policyholders, might reasonably perceive potential conflicts of interest to arise.

Customer Information

In August 2018, ALE's parent entered into exclusive talks with a potential purchaser regarding the Proposed Sale. The potential change in ownership led to an assessment of the Proposed Sale by the Central Bank³, resulting in extensive supervisory engagement.

During the course of the Central Bank's assessment of the Proposed Sale, it was alerted to concerns which had been notified to ALE by BaFin in 2006, which included among other things, the nature and broad description of the PCG in the customer information document relating to TwinStar policies.

³ Further information in relation to assessments carried out by the Central Bank of acquisitions and increases in holdings in the financial sector is available at Point 5 of the Notes section.

Information submitted by ALE to the Central Bank in February 2019 indicated that when TwinStar policy terms and documentation along with some marketing material did reference the PCG, any such references made it clear that the PCG was subject to certain conditions (**Qualified PCG Wording**).

In April 2019, the Central Bank obtained a sample of 2006 TwinStar policy terms and documentation from ALE. A review of those documents suggested that some TwinStar policies did in fact refer to the PCG without making it clear that it was subject to certain conditions. The Central Bank pointed out this inconsistency to the Firm and asked for confirmation of how many TwinStar policy terms and documents or other marketing and customer information documentation did not describe the PCG as being subject to certain conditions (**Unqualified PCG Wording**). The Central Bank also sought clarification on the steps taken by ALE to address the matters set out in the BaFin Letter.

In response to the Central Bank's query, an independent review was commissioned by ALE (**2019 Independent Review**), following which ALE acknowledged that, of around 350,000 policies issued, approximately:

- 30,000 policies issued between 2006 and 2007 contained reference to the PCG;
- 25,500 of these contained Unqualified PCG Wording; and
- 4,500 contained Qualified PCG Wording.

Following the 2019 Independent Review, ALE also acknowledged that various marketing materials, broker documentation and customer information which were made available by ALE between 2006 and 2012 also contained references to the PCG, and primarily contained Unqualified PCG Wording.

The Investigation

The Investigation identified three prescribed contraventions, as set out below.

Failure to Establish and Maintain Sound and Adequate Corporate Governance and Risk Management

Over 13 years between 2006 and 2019, ALE failed to have effective processes or sound and adequate internal control mechanisms in order to identify, manage, monitor and report the risks to which it was or might be exposed, as required under the 1994 Framework Regulations and / or 6.3 of the Corporate Governance Requirements. Although references to the PCG were removed from policies issued from 2008, ALE did not identify, manage, monitor and report risks arising from the 30,000 policies or various marketing materials, broker documentation and customer information which had already been issued, despite the notification by BaFin. In addition, as a result of this failure, ALE's Board was unable to consider relevant information in the context of the PCG Termination Notification, despite the BaFin Letter also being brought to ALE's attention again in March 2018.

Failure to Establish Effective Conflict of Interest Policies and Procedures

Between 18 January 2015 and 22 March 2021, ALE breached Article 258 (5) of the Solvency II Delegated Regulations. ALE did not have effective policies and / or procedures established to identify potential sources of conflicts of interest or ensure that directors understood where conflicts of interest could arise and how such conflicts should be addressed if they did arise.

Failure to Adequately Assess Reasonably Perceived Potential Conflicts of Interest on 23 July 2018

When considering the PCG Termination Notification at a Board Meeting on 23 July 2018, ALE failed to adequately assess whether any reasonably perceived potential conflict of interest existed, in line with the requirements of paragraph 7.13 of the Corporate Governance Requirements 2015. Although the Firm conducted a conflict assessment with the benefit of legal guidance, it was inadequate as they did not consider whether a third party, such as their policyholders, might reasonably perceive a potential conflict of interest to exist.

Penalty Decision Factors

In deciding the appropriate penalty to impose, the Central Bank had regard to the Outline of the Administrative Sanctions Procedure, dated 2018 and the ASP Sanctions Guidance, dated November 2019. It considered the need to impose a level of penalty proportionate to the nature, seriousness and impact of the contraventions.

The following factors are highlighted in this case:

The Nature, Seriousness and Impact of the Contraventions

- The duration of two of the contraventions was lengthy. ALE's failure to have effective controls processes for identifying, monitoring, managing and reporting risk persisted for over 13 years and its failure to establish effective conflicts of interest policies and procedures continued for over 6 years.
- These failures represent serious weaknesses in ALE's controls, processes and procedures to identify, manage, monitor and report the risks to which it is or might be exposed.
- ALE was put on notice in 2006 by BaFin that it had provided unclear information to customers regarding the PCG. The Central Bank views ALE's subsequent failure for a period of 13 years to put in place an effective process to identify, manage, monitor and report on the affected policies to have been reckless.
- The Central Bank views the breaches in this case to be a serious departure from the required industry standard and from ALE's obligations pursuant to the legislative framework set out above.

Mitigating Factors

Early Admissions and Previous Record of the Firm

The Central Bank is satisfied that ALE made early admissions to the three breaches in this case. The Central Bank also acknowledges that no previous enforcement action has been taken against ALE.

Other Considerations

The Firm's financial position and the need to impose a proportionate level of penalty, which would serve as an appropriate deterrent were also taken into consideration when determining the appropriate sanction.

The Central Bank notes that ALE has provided the expected level of co-operation during this investigation.

This enforcement action against ALE is now concluded.

Notes

1. The fine imposed by the Central Bank was imposed under Section 33AQ of the Central Bank Act 1942. The maximum penalty under Section 33AQ is €10,000,000, or an amount equal to 10% of the annual turnover of a regulated financial service provider, whichever is the greater.
2. This is the Central Bank's 154th enforcement outcome, bringing the total fines imposed by the Central Bank to over €404.5 million.
3. Funds collected from penalties are included in the Central Bank's Surplus Income, which is payable directly to the Exchequer, following approval of the Statement of Accounts. The penalties are not included in general Central Bank revenue.
4. While ALE's German branch is now closed, ALE's German operations are regulated by the Central Bank and BaFin. The Central Bank is ALE's prudential regulator in relation to capital, solvency and systems of governance. BaFin regulates ALE for conduct of business which includes consumer protection.
5. The Central Bank must be made aware of and assess proposed acquisitions or increases in holdings for Irish authorised firms in the financial sector, including insurance and reinsurance undertakings, in accordance with the European Communities (Assessment of Acquisitions in the Financial Sector) Regulations 2009, which implemented Directive 2007/44/EC into Irish law. Further information can be found in the [Guidelines for the Prudential Assessment of Acquisitions and increases in holdings in the financial sector required by Directive 2007/44/EC](#).
6. The fine reflects the application of an early settlement discount of 30%, as per the discount scheme set out at pages 24 – 25 of the Central Bank's [Outline of the Administrative Sanctions Procedure 2018](#). Under the 'Early Settlement Discount Scheme', the Central Bank may allow a discount up to a set maximum to be applied to a sanction that it would otherwise expect to be imposed on a regulated entity after considering the sanctioning factors. Any discount applied

pursuant to the Early Settlement Discount Scheme will be applied to the overall sanction, which will have been arrived at by reference to the relevant sanctioning factors. Further information on the 'Early Settlement Discount Scheme' is included as [an FAQ on the Central Bank website](#).

7. The [ASP Sanctions Guidance November 2019](#) provides further information on the application of the sanctioning factors set out in the [Outline of the Administrative Sanctions Procedure 2018](#) and the [Inquiry Guidelines prescribed pursuant to Section 33BD of the Central Bank Act 1942](#). These documents should be read together.