Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement on Consultation Paper 115

Branches of Third-Country Insurance Undertakings Authorised by the Central Bank of Ireland

Contents

1 Introduction

On 13 November 2017, the Central Bank of Ireland (the Central Bank) published Consultation Paper 115 (CP115) on Branches of Third-Country Insurance Undertakings Authorised by the Central Bank of Ireland.

Solvency II[1] legislation requires that a third-country insurer seeking authorisation to pursue insurance business in the EU must establish a branch in the territory of the Member State in which it is seeking authorisation. It may not operate in other EEA Member States on a freedom of establishment or a freedom of services basis. Where a third-country insurer applies to a Member State to establish a branch, Solvency II sets out the minimum criteria that the Member State must apply.

The European Union (Insurance and Reinsurance) Regulations 2015[2] (the 2015 Regulations) which transpose Directive 2009/138/EC (the Solvency II Directive)[3] into Irish law, set out specific requirements for branches of third-country insurance undertakings related to, inter alia, authorisation, system of governance and solvency requirements. The European Commission Delegated Regulation (EU) 2015/35 (the Delegated Regulation)[4] and Commission Implementing Regulation (EU) 2015/2450 (the Reporting ITS)[5] set out specific requirements for branches of third-country insurance undertakings related to, inter alia, system of governance, supervisory reporting and solvency requirements. In addition, EIOPA[6] has issued Guidelines on the supervision of branches of third-country insurance undertakings (EIOPA's Branch Guidelines).

In line with the Solvency II Framework, the Central Bank has developed its approach to the authorisation and supervision of branches of third-country insurance undertakings (third-country branches) and outlined its proposals in the following documents in CP115:

1. **Policy Notice on branches of third-country insurance undertakings authorised by the Central Bank (CP Policy Notice);**

[1] Directive 2009/138/EC, European Commission Delegated Regulation (EU) 2015/35 (the Delegated Regulation), Commission Implementing Regulation (EU) 2015/2450 (the Reporting ITS) and the European Union (Insurance and Reinsurance) Regulations 2015.

[2] S.I. No. 485 of 2015.

[3] Directive 2009/138/EC of the European Council and of the Parliament of 25 November 2009.

[4] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking up and pursuit of the business of Insurance and Reinsurance (Solvency II).

[5] Commission Implementing Regulation (EU) 2015/2450 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council.

[6] The European Insurance and Occupational Pensions Authority

2. **Handbook of Requirements for branches of third-country insurance undertakings authorised by the Central Bank (CP Handbook);**

3. **Addendum to the Domestic Actuarial Regime and Related Governance Arrangements under Solvency II (CP Addendum to DAR);**

4. **Guidance and Checklist for Completing and Submitting Applications for Authorisation of a Branch of a Third-Country Insurance Undertaking (CP Checklist).**

The consultation period for CP115 closed on 5 February 2018 and 5 responses were received. The responses received can be categorised as follows:

- Industry bodies 1
- Insurance firms 3
- Legal firms 1

This paper summarises the responses received to CP115 and notes the Central Bank's comments and approach. This paper should be read in conjunction with CP115 as it refers to proposals, terms and numbering used in the consultation paper, which can be found on the Central Bank's website. All responses are available on our website at this link. A copy of CP115 is available for download at this link.

The Central Bank wishes to thank all parties who responded to CP115 for their contributions.

Financial Risks and Governance Policy Division

Central Bank of Ireland
4 May 2018

2 Feedback on Issues Raised in CP115

The respondents commented across a range of areas in CP115, which are addressed thematically below. A number of respondents sought clarity on Brexit specific issues for UK entities seeking to establish as a Third-Country Branch (TCB) within the State. It should be noted that CP115 introduced the Central Bank's policy position in relation to TCBs generally and was not Brexit specific. However, the Central Bank acknowledges that much of the current focus on potential applications for authorisation as a TCB are Brexit related and has therefore addressed and provided clarity on Brexit specific issues in this feedback statement.

2.1 The Central Bank's Policy Approach

Section 2.10 of the CP Policy Notice provides that "A third-country branch authorised by the Central Bank may only pursue insurance business within the State" and further Section 3.2 of the CP Policy Notice, provides that " … the Central Bank considers that the primary purpose of establishing such branches should be the provision of insurance to policyholders within the State."

Submission

One respondent stated that they considered these two sentences should be omitted from the final Policy Notice as they could be interpreted in such a way as to discourage or prohibit TCBs from doing business with policyholders outside the State. The respondent also stated that a number of existing branches of UK undertakings operate business models that involve transacting business with policyholders not resident in the State. To the extent that such business models relate to non-EEA business, they consider that, post-Brexit, this will continue to be a valid business model.

Central Bank Response:

The purpose of the Policy Notice is to provide guidance to potential applicants on the Central Bank approach to third-country branches. While the spirit of the Solvency II third-country regime is to allow third-country insurance undertakings access to individual European markets, without the provision to passport into other jurisdictions, there is no specific prohibition in Solvency II on a TCB carrying on insurance business in the State in relation to risks located outside the State, including outside the EEA. Such scenarios would be considered on a case-by-case basis as part of the application process. However, the Central Bank's policy is that such risks should not form a material part of the overall business of the TCB.

Section 3.3 of the CP Policy Notice states that the Central Bank does not consider that the establishment of a TCB will be appropriate for all business models; as such it may deem certain operations unsuitable for establishment as a third-country branch due to the nature, scale and complexity of the proposed business model, and/or the proposed customer base.

Submission

One respondent suggested that in each case the Central Bank should take a holistic approach to its assessment of appropriateness for establishment as a TCB based on the nature, scale and complexity of the third-country branch and/or the proposed customer base, looking at all aspects, not just for example scale and not adopting any rules as to what is/is not suitable from the outset.

Another respondent stated that potential applicants should have clarity around the Central Bank's criteria as to the "nature, scale & complexity" that would render certain operations unsuitable as a TCB. It was also suggested that for, for clarity, the Central Bank consider articulating thresholds, similar to the UK PRA, expand on the meaning of nature, scale and complexity and provide examples of the types of operations deemed unsuitable.

Central Bank Response:

A TCB is not a separate entity and is part of the third-country insurance undertaking. Therefore, when considering the appropriateness for a TCB to be established in the State, the Central Bank will consider the risks posed by the TCB to the Central Bank's objectives of financial stability and protecting policyholders.

The Central Bank will take a holistic approach to the assessment; however, it may be that any one or more of the criteria of nature, scale or complexity could, in the view of the Central Bank, deem certain operations unsuitable for establishment as a third-country branch. Therefore the wording has been clarified to be 'and/or complexity'.

In order to address the comments and provide clarity on the operations the Central Bank considers unsuitable for establishment as a TCB, additional text has been included in the final Policy Notice.

The Central Bank has decided not to apply thresholds; however considers the scale of the business proposed as an important determining factor in whether to authorise an operation as a TCB.

2.2 Substance

Section 3.6 of the CP Policy Notice provides that in line with the Solvency II Framework, the Central Bank will exercise additional supervision over the TCB with a particular focus on the senior individuals in Ireland who are clearly responsible for management of both the TCB operations and business pursued in Ireland. In addition, Section 3.15 states that TCBs should have sufficient and appropriately skilled resources including senior management within Ireland. These resources need to be sufficient to ensure a level of local oversight and control, including the presence of senior management positions in Ireland (i.e. Branch Manager) and, as necessary given its nature scale and complexity, key function holders, who dedicate sufficient time to fulfil their duties.

Submission

All respondents commented that it would be helpful if the Central Bank could provide some guidance as to the level of substance required in the branch by way of illustrative examples. One respondent requested further clarity and guidance as to the Central Bank's interpretation of “sufficient” and “appropriately skilled”, suggesting this could include commentary on expectations in relation to experience and qualification.

One respondent commented that harmonisation of the head office and TCBs operations would be advantageous with management and oversight that would be as consistent as far as is practical.

Central Bank Response:

It is the responsibility of the third-country insurance undertaking to consider the level of resource required in the TCB is order to manage the branch operations.

The Central Bank recommends that the third-country insurance undertaking engage with the Central Bank as early as possible in the authorisation process to discuss the proposals regarding the level of substance proposed for the TCB.

The Central Bank will consider the proposals taking into consideration the nature, scale and/or complexity of the proposed TCB structure.

In relation to 'sufficient and appropriately skilled resources' third-country insurance undertakings should have regard to any code setting out standards of fitness and probity issued by the Central Bank under section 50 of the Central Bank Reform Act, 2010.

Section 2.1.7 of the CP Handbook states that the Central Bank reserves the right to require that key functions are established within Ireland depending on the nature, scale and complexity of the third-country branch operations.

Submission

A number of respondents requested that the Central Bank take a proportionate approach to requiring key functions to be based in Ireland, maintaining that as the TCB is part of the third-country insurance undertaking it should be able to rely on the key functions established at head office level.

Central Bank Response:

The wording of this section of the Handbook has been amended to clarify that key functions can be established at the head office or at the branch, however in certain circumstances based on, inter alia, the proposed business operations and risks of the branch, the Central Bank may deem that the TCB should establish key functions in Ireland.

Section 2.1.12 of the CP Handbook states that subject to the overall responsibilities of the third-country insurance undertaking's board, a Branch Management Committee (BMC) shall be established within the State for each authorised TCB and this BMC will retain primary responsibility for corporate governance within the TCB at all times. The responsibilities and composition of the BMC may be specified by the Central Bank on a case-by-case basis and will depend on the nature, scale and complexity of the branch operations. The Branch Manager shall be a member of the Branch Management Committee.

Submission

A number of respondents enquired as to the circumstances where a BMC would be required and if the Central Bank could provide further information on the composition of the BMC, including minimum requirements. One respondent also stated it would be helpful if the Central Bank could clarify its views on the respective responsibilities of the third-country insurance undertaking's board and the BMC in relation to corporate governance, in particular the terminology regarding 'primary responsibility'.

Central Bank Response:

It should be noted that the Handbook states that a BMC _shall_ be established. The Central Bank requires all TCBs to establish a BMC. When setting up a BMC, the TCB should ensure that the composition, responsibilities and skills of the members reflect the nature, scale and/or complexity of the branch operations. As such, this may also require independent representation at the BMC.

With regards to 'primary responsibility' of the BMC, to provide further clarity, the wording has been amended to state that the BMC retains the 'day to day' responsibility for the governance and operations of a TCB.

2.3 Brexit Authorisations

Paragraphs 3.2 and 4.4 of the CP Checklist provide that following receipt of a fully completed application, the expected timeline to authorisation is 6 months and that authorisation is granted (in the form of a Certificate of Authorisation) once all pre-authorisation requirements have been met.

Submission

A number of respondents requested clarity on the timing of TCB applications and suggested that the Central Bank consider issuing authorisation in principle in advance of Brexit with final authorisation granted subject to the UK leaving the EU in order to ensure that applicants will be able to administer policies in the EU post Brexit. The respondents also queried whether the Central Bank would issue final authorisation even if a transitional arrangement is agreed.

One respondent suggested that the Central Bank introduce a preparatory regime ahead of the UK leaving the EU to facilitate early applications for existing operations or introduce transitional provisions automatically authorising existing FOE branches as TCBs, initially allowing firms up to 2 years after the UK leaving the EU to meet the Central Bank's requirements for TCBs.

Central Bank Response:

At this point in time undertakings should be preparing for Brexit and its resulting implications for their business operations. Where a UK entity is currently operating in the State as a branch (under FOE) or under FOS, it will not be entitled to continue operations once the UK leaves the EU. The UK entity must therefore take appropriate steps such as applying to the Central Bank for authorisation to either establish a subsidiary or, where appropriate, a TCB.

The Central Bank will accept applications from third-country insurance undertakings wishing to establish a branch within the State, ahead of the UK officially leaving the EU. The Central Bank will, where it is satisfied that the establishment of a TCB is appropriate and on completion of its assessment of the application, issue an authorisation in principle letter to the TCB. Subject to confirmation from the TCB of no material change in circumstances, the Certificate of Authorisation will be issued by the Central Bank when the UK leaves the EU (and becomes a third country).

Practical arrangements will be kept under review as political negotiations proceed and agreements, transitional or otherwise, are finalised and agreed.

One respondent requested clarity on the Central Bank's position in relation to legacy books of business that have been written by UK firms in Ireland in the event no transitional/grandfathering arrangements are agreed between the UK and the EU. The respondent requested that particular consideration should be given to instances where such undertakings do not intend to write new business in Ireland post Brexit.

Central Bank Response:

The Central Bank follows EIOPA's opinion on this matter as set out in its publication: 'Opinion on service continuity in insurance in light of the withdrawal of the United Kingdom from the European Union'. This states:

'Insurance contracts concluded before the withdrawal date by UK insurance undertakings in the EU27 and by EU27 insurance undertakings in the UK by way of freedom of establishment and freedom to provide services are in principle valid after that date. The insurance undertakings would however not be authorised anymore to carry out insurance activities with regard to these cross-border insurance contracts by way of freedom of establishment or freedom to provide services. This includes insurance portfolios in run-off. ... The aim of this Opinion is to remind supervisory authorities and insurance undertakings to take the necessary steps in order to prevent insurance activities without authorisation and ensure service continuity with regard to insurance contracts concluded before the Withdrawal date by way of freedom of establishment or freedom to provide services so that these contracts will be fulfilled also after the withdrawal of the UK from the European Union.'

As such, the Central Bank will require that firms in run-off take appropriate steps such as being authorised as a subsidiary or TCB, where appropriate, to ensure continuity of service to policyholders.

2.4 Assessment of the Third Country Supervisory Regime

Section 3.7 of the CP Policy Notice states that the Central Bank must be satisfied that relevant regulatory and supervisory requirements and arrangements in the third country correspond, such that they deliver equivalent outcomes, to requirements and arrangements in the State. The Central Bank will require the third-country insurance undertaking to provide it with an independent assessment of the third-country regime.

Submission

A number of respondents queried whether the Central Bank will require such an assessment from UK insurers who apply to establish a TCB pre-Brexit given that they will be fully compliant with Solvency II at that time.

One respondent also queried, what constitutes an independent assessment for the purpose of this requirement, the level of detail of the assessment and what competencies would the assessor have to present to demonstrate the ability to carry out such an assessment.

Central Bank Response:

EIOPA's Branch Guidelines provide that the host supervisory authority should ensure that the third-country insurance undertaking includes in its scheme of operations of the branch an analysis of the differences between the home country solvency rules and the rules of the Solvency II Directive, including an explanation on the reasons that justify such differences. This facilitates the host supervisory authority's assessment of the adequacy of the third-country insurance undertaking's solvency margin under the prudential requirements of the home supervisory authority, including an assessment of the appropriateness of the home jurisdiction rules for the branch operations. As such, the Central Bank will expect this analysis to be included as part of the TCB's application.

Such an assessment is likely to be similar to, but not necessarily the same as, formal determinations of equivalence in respect of Solvency II. The Central Bank expects that a third-country insurance undertaking nominate an independent assessor to carry out the assessments referred to in Section 3.7. The independent assessor should be suitably qualified/ experienced in respect of the regulatory regime of the third-country. The Central Bank also expects that the third-country insurance undertaking should consult the Central Bank in advance, on the proposed nominee, as well as the terms of reference for the assessment.

However, the Central Bank accepts that until the UK leaves the EU all UK authorised entities are required to comply with Solvency II; therefore the Central Bank will not require this analysis from any UK entity that has applied to establish a TCB prior to Brexit. For any TCB authorised by the Central Bank, a standard Condition of Authorisation will be included that the TCB must advise the Central Bank of any changes to the regulatory regime and the Central Bank may request an assessment at that point.

2.5 Assessment of the Bankruptcy Regime

Section 3.10 of the CP Policy Notice states that the Central Bank must be satisfied that the home jurisdiction bankruptcy regime provides at least the same level of protection of TCB policyholders in winding up proceedings as that provided under the 2015 Regulations. The Central Bank will require an analysis from the third-country insurance undertaking of the applicable winding up regime analysing the priority given to policyholders of the TCB and how the assets of the third-country insurance undertaking would be distributed to those policyholders.

Submission

A number of respondents queried whether this analysis will be required from UK based insurers who submit their application to establish a TCB in Ireland pre-Brexit given that the UK will still be a member of the EU at that time.

Central Bank Response:

This analysis will be required in all cases. As rules in relation to bankruptcy regimes differ between jurisdictions, be they in the EU or otherwise, the Central Bank expects all third-country insurance undertakings to submit this analysis as part of their application to establish a branch within the State. The detail required as part of this analysis is outlined in EIOPA's Branch Guidelines (Guidelines 4, 6 and 26).

The wording has been amended to clarify that this must be an independent assessment; the assessor must be suitably qualified in the laws and practices of the third country.

Section 2.3.10 of the CP Handbook states that "The third-country branch shall deem any significant changes to the winding up regime applicable to the third-country branch in Ireland as a significant development."

Submission

One respondent requested clarification as to whether the Central Bank's expectation is limited to considering and quantifying any impacts in third-country branch reports arising from changes to winding-up regimes outside of Ireland, i.e. the jurisdiction of the third- country undertaking.

Central Bank Response:

The wording of this section has been amended to clarify the intention that any changes to the winding-up regime of the third-country will have implications for branch policyholders and should be included in any such report.

2.6 Supervision

Section 2.11 of the CP Policy Notice provides that "All third-country branches will be supervised under the Central Bank's Probability Risk and Impact Assessment System (PRISM) Framework.

Submission

A number of respondents queried whether the supervisory model for a TCB will be similar to the supervisory model for (re)insurance undertakings and whether any allowances are likely to be made for TCBs. In addition, the respondents inquired as to the extent the Central Bank will rely on the PRA/FCA supervision in respect of the UK insurers having a TCB in Ireland and whether the Central Bank will enter into a memorandum of understanding ('MOU') (or similar) with the PRA.

Central Bank Response:

TCBs will be supervised under the PRISM engagement model and will be assigned with an appropriate PRISM rating. The engagement model will depend on the PRISM rating, and, while tailored for the specifities of a TCB (i.e. governance structures, etc.), in principle, it will be similar to the engagement model applied by the Central Bank to (re)insurance undertakings.

The Central Bank will cooperate with the home state supervisors to the extent possible. This will include the decision to enter into an MOU, with a view to enabling the Central Bank to gain a better understanding of the nature and extent of the risks facing the undertaking that operates a TCB in Ireland and/or the wider group. The Central Bank may also provide appropriate input to the supervisory strategies of the home state supervisor from the perspective of the operations of the branch.

2.7 Domestic Requirements

Section 2.8 of the CP Policy Notice states that the Central Bank's Domestic Actuarial Regime and Related Governance Requirements under Solvency II (DAR) will apply to TCBs and will be imposed as a condition of authorisation upon TCBs.

Submission

One respondent stated that while this policy would place TCBs in the same position as Irish head office undertakings, as the DAR is not specifically required under Solvency II and is unique to Ireland it would place a TCB in Ireland at a disadvantage to one established elsewhere in the EU. In addition, a number of respondents requested that the Central Bank provide clarification as to whether the TCB is required to appoint a Head of Actuarial Function (HoAF) in Ireland or whether the third-country branch could rely on the Group's HoAF.

Central Bank Response:

The Central Bank seeks to apply a consistent approach to the regulation and supervision of entities it authorises to carry out insurance business. In keeping with the requirements of the DAR, where a firm is designated as a High Impact firm the HoAF shall be an employee of the firm. The term "employee" means a direct employee of the firm or an employee provided through a group services company on a full-time basis. The HoAF role may be outsourced for low, medium low and medium high firms but for high impact firms this must be an internal role.

The Central Bank will expect that all Pre-Approval Controlled Function (PCF) holders dedicate sufficient time to discharging their responsibilities for the TCB. As outlined in Section 2.1.7 of the Handbook key functions may be established either at the head office or specifically established for branch operations.

2.8 Insurance Compensation Fund

Section 2.9 of the CP Policy Notice states that TCBs authorised to pursue non-life insurance business will be required to contribute to the Insurance Compensation Fund (ICF) as directed by the Central Bank.

Submission

A number of respondents commented that EU insurance branches carrying on business in Ireland today contribute to the ICF and queried whether the existing levies will continue to apply to TCBs.

Central Bank Response:

Based on the Insurance Act 1964 (as amended) the ICF is financed through contributions received from non-life insurance undertakings up to a maximum of 2% of the aggregate of the gross premiums paid to that insurer or insurer authorised in another Member State in respect of policies issued in respect of risks in the State.

To the extent that TCBs engage in providing cover for risks covered by the ICS, they will be required to contribute appropriately.

2.9 Other Comments

2.9.1 Capital Requirements

Section 2.2.5 of the CP Handbook states that a third-country branch must hold assets to cover the branch-attributed MCR in Ireland and the SCR in the EU. In addition, the TCB shall inform the Central Bank immediately if it no longer complies with these conditions.

Submission

It was noted by a respondent that the corresponding Guideline 18 of EIOPA's Branch Guidelines states that the localisation requirement on assets to cover the branch attributed MCR/SCR applies to assets held at entity level. Hence, the draft wording of this section appears more onerous than the EIOPA requirement and as a result it would imply reduced fungibility of capital and/or ring-fencing.

Central Bank Response:

Guideline 18 of EIOPA's Branch Guidelines states that the host supervisory authority should ensure that the third-country insurance undertaking has sufficient assets covering the branch MCR and maintains them at any time within the host Member State and that the branch assets covering the SCR, in excess of the MCR must be held within the EU. The Central Bank does not agree that the requirement in 2.2.5 of the Handbook imposes a more onerous requirement regarding these assets and considers it is in line with Guideline 18.

2.9.2 Ring Fencing

Annex I, Section 12.3 of the CP Checklist requires certification that the projected financial resources of a third-country branch are sufficient for the first 5 years after the branch is established.

Submission

One responded queried whether, based on the above section, it is the Central Bank's intention to require ring-fencing of branch assets or whether the relevant projected financial resources can be based on the assessment at entity level.

Central Bank Response:

It is anticipated that ring-fencing would only apply in particular circumstances where the Central Bank is not in a position to verify that the branch assets are sufficiently protected so that policyholders of the branch are given at least the same level of protection that they would have if they were dealing with an EEA insurance undertaking subject to Solvency II.

2.9.3 Single Reporting

Section 2.4.2 of the CP Handbook provides that "Where any of the advantages set out in Regulation 181 of the 2015 Regulations are granted, and the Central Bank has been appointed group supervisor[7], a third-country insurance undertaking shall submit a single branch balance sheet in relation to all branch operations pursued in Member States to the Central Bank."

Submission

One respondent queried whether the above should be interpreted such that, based on Regulation 181, all the requirements proposed in the CP Handbook are intended to apply at the level of all of the EEA

[7] In accordance with the application process described in Regulation 181 whereby a third-country insurance undertaking shall state the authority of the Member State which is to supervise the solvency of the business within the European Union.

branches of the third-country insurance undertaking, rather than at the level of the Irish branch. Based on that, the respondent enquired whether it will be sufficient to submit quantitative templates and ORSA reports to the Central Bank that reflect the aggregate of all EEA branch operations, rather than submitting such information exclusively for the Irish branch operations. Additional clarification was sought whether the submissions are expected at the Irish branch and the aggregated EEA branch levels.

Central Bank Response:

Where advantages have been granted to a third-country insurance undertaking under Regulation 181 of the 2015 Regulations and the Central Bank has been appointed to supervise the solvency of the entire business of the branches established in the EU, the Central Bank will require a submission of the relevant quantitative and qualitative solo reporting for the TCB established in the State and the aggregate reporting on the balance sheet and capital position of the entire business of the TCBs established in the EU. Any aggregated qualitative reporting (the ORSA, RSR) must be presented in such a way that the results of each branch must be individually identifiable to the Central Bank. The Central Bank will liaise with other relevant supervisory authorities to obtain the information necessary for supervision of the overall solvency of all TCB branch operations within the EU.

2.9.4 Business Model and Governance

Section 3.11 of the CP Policy Notice provides that "The Central Bank must be satisfied that the proposed business model of the third-country branch ... [has] been verified by the relevant third-country supervisory authority."

Section 2.1.20 of the CP Handbook states that the risk appetite of a third-country branch “shall be subject to annual review by the Branch Management Committee and board of the third-country insurance undertaking."

Section 1.4.2 of the CP Handbook requires that "Any third-country branch that becomes aware of a material deviation from the requirements contained in the Handbook shall within 5 business days report the deviation to the Central Bank, advising of the background and the proposed remedial action."

Submission

On section 3.11 of the CP Policy Notice, one respondent suggested that it would be beneficial if the Central Bank could clarify what form this "verification" would take. The respondent queried whether a confirmation by the third-country supervisory authority of the receipt of the same information from the undertaking on the proposed business model will be sufficient from the Central Bank's perspective or whether further requirements are envisaged (e.g. an approval of the proposed business model).

Central Bank Response:

The Central Bank will consider the "verification" on the basis of the home authority's awareness of the proposed business model and whether there is evidence that such a model forms part of the TCIU's overall business plan approved by the TCIU's Board (e.g. extract of the minutes of the relevant board meeting).

On section 2.1.20 of the CP Handbook, one respondent queried whether, in practice, this implies an obligation on the Board of the third-country insurance undertaking to carry out its own review, independently to that carried out the by Branch Management Committee. If that is the case, how does the Central Bank intend to monitor and enforce such obligation and whether this will require a MOU between the Central Bank and the relevant third-country supervisory authority.

Central Bank Response:

The Central Bank expects that, given the Board of the third-country insurance undertaking has ultimate responsibility for the branch, any review of the Risk Appetite performed by the BMC will be discussed and approved by the Board of the third country insurance undertaking. This approval shall be documented by the BMC and provided to the Central Bank as requested and/or as part of the Central Bank's overall supervisory engagement with the TCB.

Regarding the responsibilities of the BMC as set out in section 1.4.2 of the CP Handbook, it was suggested by one of the respondents that further clarification should be provided in this paragraph so that any material deviations from the requirements contained in the Handbook are escalated without delay to the BMC. It was proposed that the BMC, within 5 business days of being informed, shall report the deviation to the Central Bank, advising of the background and the proposed remedial action.

Central Bank Response:

The Central Bank considers that while as part of the application assessment the Central Bank will review the appropriateness of the governance structure of the TCB, it is the TCB responsibility to put in place the appropriate structures for the purpose of reporting breaches. As such, no amendments were made to this section.

2.9.5 Branch Assets

Section 3.9 of the CP Policy Notice states that the third-country insurance undertaking should ensure that only those assets that are available to pay the claims of third-country branch policyholders in the event of a winding up event are included in the calculation of third-country branch assets. Third-country branch assets will be deemed available, where all of the third-country branch's assets would be available to pay third-country branch policyholders in priority to other creditors.

Submission

One respondent queried whether Section 3.9 of the CP Policy Notice, which appears to require priority to Irish policyholders over other creditors is inconsistent with Section 2.2.2 of the CP Handbook which allows all policyholders to be given equal priority and asks the Central Bank to clarify the intention regarding priority of Irish policyholders versus other policyholders.

Central Bank Response:

We do not consider these two sections to be inconsistent, in that Section 3.9 of the CP Policy Notice refers to the availability of branch assets to pay branch policyholders in priority to other claims, which is consistent with Section 2.2.2 of the CP Handbook.

The wording of the Policy Notice has however been further amended to provide clarification.

2.9.6 Qualifying Holdings

Section 1.6 (t) of the CP Handbook defines a qualifying holding as a direct or indirect holding in the third-country branch which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking.

Submission

One respondent suggested that this definition should be amended to refer to the third-country insurance undertaking that has established, or wishes to establish a branch.

Central Bank Response:

Agreed. Wording amended.

Section 2.1.9 of the CP Handbook states that a third-country branch shall, at times specified by the Central Bank and at least once a year and once the third-country branch becomes aware of the acquisition or proposed acquisition of any qualifying holding in the third-country branch, notify the

Central Bank of the names of shareholders or members who have qualifying holdings in the third-country insurance undertaking and the size of each such holding.

Submission

One respondent suggested that this section be amended to refer to the third-country insurance undertaking that has established a branch. In addition, clarification was requested regarding the frequency of the notifications (noting the phrase "at times specified by the Central Bank" above) contending that this is not required in order to fulfil the practical requirements in this regard.

Central Bank Response:

Proposed wording change agreed, further wording changes made for clarification.
As regards the frequency of the notifications, regular reporting is currently required by the Central Bank on an annual basis, however the Central Bank may decide from time to time to require such reporting more frequently.

Annex II of the CP Checklist states "Please complete the relevant section below in relation to all holders of qualifying holdings."

Submission

One respondent suggested that it would be helpful to clarify the requirements of this Annex by elaborating on this sentence as follows: "Please complete the relevant section below in relation to all holders of qualifying holdings in the Applicant."

Central Bank Response:

Agreed. Wording amended.

2.9.7 Conditions of Authorisation

Section 2.5 of the CP Policy Notice provides that the Central Bank may, where it considers it appropriate on a case-by-case basis and having regard to the nature, scale and complexity of the third-country branch; impose specific requirements on the third-country branch at point of authorisation, in addition to those outlined in the Handbook.

Submission

One respondent requested that the Central Bank provide some guidance on the type of specific requirements it would impose on the third-country branch at point of authorisation by way of illustrative examples.

Central Bank Response: *In general, as part of the authorisation process it may be deemed necessary to impose specific conditions on an undertaking, based on the particulars of the business model and authorisation. As these are specific to an authorisation, as opposed to the general conditions outlined in the Handbook it is not possible to provide illustrative examples.*

2.9.8 Other Changes

Section 4.1 of the CP Checklist requires the applicant to "Confirm the applicant will be registered in Ireland and subject to Irish law."

Submission

One respondent requested clarification that the TCB should be registered rather than the third-country insurance undertaking.

Central Bank Response: *Agreed. Wording amended to clarify.*

Section 7.5 of the CP Checklist requests the applicant to set out the organisational structure of the third-country branch, and outline the associated resourcing and staffing of the third-country branch along with the projected staffing requirements over the next 5 years of the third-country branch (broken down on a yearly basis), assuming it is authorised.

Submission

One respondent noted that this is not consistent with the checklists for life and non-life undertakings, which require the provision of projected staffing requirements over 3 years.

Central Bank Response: *Agreed. Changed to 3 years for consistency.*

Section 10.7 of the CP Checklist requires the applicant to provide full details regarding the possible conflicts of interest arising in the conduct of the different types of activity under the applicant's control, demonstrating that adequate arrangements have been made to protect the interest of policyholders.

Submission

One respondent stated that there may be an unintended excessive scope to this requirement in its current form and to avoid this suggested that the word "policyholders" be replaced with "proposed branch policyholders.

Central Bank Response:

Agreed. Wording amended to clarify.

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