

## **Consultation Paper (CP-115) regarding the authorisation and supervision of third country branches in Ireland by the Central Bank of Ireland**

### **SUBMISSION**

#### **Background**

On 13 November 2017, the consultation paper (the “**Paper**”) regarding the authorisation and supervision of third-country branches in Ireland was issued by the CBI which invites submissions on the Paper until 5 February 2018 from interested parties in relation to, generally speaking, the CBI’s position and expectations on the authorisation process of third-country branches. The CBI has developed its approach to the authorisation and supervision of third-country branches in line with Solvency II and incorporates the relevant EIOPA Guidelines on third-country branch requirements along with applicable domestic requirements issued by the CBI. Similar to (re)insurer applications for authorisation, a checklist for completing the third-country insurance branch application is now available, in draft form, which details the likely information requirements for establishing a third-country branch in Ireland.

This document represents our submission in respect of the Paper and we welcome this opportunity to share our perspective with you and to provide feedback on the content and delivery of this important Paper.

		<b>Consultation Paper</b>	<b>Comment / Recommendation</b>
1.	<b>Timing of Final Paper</b>	<p>The Central Bank of Ireland (the “CBI”) invites submissions on its consultation paper (CP-115) for 12 weeks up to 5 February 2018 which is in line with the CBI’s policy on consultations.</p> <p>It is our understanding that the CBI will publish its final paper in May 2018 (i.e. within 3 months from the end of the consultation period) and that this will be the earliest date that the CBI will be accepting third country branch applications.</p>	<p>We would encourage that the CBI to publish its final paper at the earliest practicable date so applicants’ will have as much time as possible to prepare and submit its application and the CBI has time to review, process and grant final approval in advance of March 2019/Brexit deadline.</p>
2.	<b>Timing and capacity constraints with authorising third country branches pre-Brexit</b>	<p>Appendix 4 of the Consultation Paper, paras 3.2 and 4.4, p.4 provides 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.</p>	<p>We are committed to continuing to service our Irish business and our existing clients.</p> <p>Our target submission date for the third-country branch application is mid-May 2018 with a view of obtaining authorisation by the Brexit effective date i.e. 29 March 2019.</p> <p>The CBI should consider issuing authorisation in principle with final authorisation being made subject to the UK leaving the EU to ensure that each applicant will be able to administer its policies in the EU post Brexit.</p>

			<p>Will the CBI issue final authorisation even if a transitional arrangement is agreed between the UK and Ireland?</p>
<p>3.</p>	<p><b>Factors to consider when assessing the appropriateness of the third country branch option</b></p>	<p>Appendix 1 of the Consultation Paper, para 3.3, p. 6 states that the CBI does not consider that the establishment of a third-country branch 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 with the proposed customer base.</p>	<p>Based on the Consultation Paper (CP-115), the CBI will consider whether the establishment of a third-country branch is appropriate based on the nature, scale and complexity of the proposed business model, and/or the proposed customer base.</p> <p>We would request that the CBI take into account all of these factors, taking a proportionate approach in relation to this requirement, when examining the proposed business model of the applicant and should not focus purely on the scale of a life insurer for example but should look at all aspects of the nature, scale and complexity of the proposed operations in the round.</p> <p>Where a unit linked life insurer has a particular level of assets under management for example, this should not of itself determine the CBI's position as to whether the establishment of a third-country branch will be appropriate. In some circumstances a branch structure may be beneficial to policyholder security due to the larger asset base provided by the size and scale of the insurer. Likewise, a branch structure may also be advantageous to policyholders in terms of value – the scale or size of the insurer</p>

			<p>may afford lower costs, improved performance and improved operational aspects as a result of economies of scale.</p> <p>Aside from the scale of such an insurer, the nature and complexity of the business and the level of risk undertaken may otherwise point to the entity being entitled to establish a third country branch. For example, such an entity may have a low level of gross income, may write very simple low-risk unit-linked products which do not contain guarantees and the liabilities of which are fully matched by the underlying assets of the insurer and contain no material insurance risks.</p> <p>We would suggest therefore that in each case that the CBI would take a holistic approach to its assessment of whether an insurer is entitled to establish a third country branch based on the nature, scale and complexity of the branch and/or the proposed customer base rather than adopting any hard and fast rules as to what is or is not suitable from the outset.</p>
4.	<p><b>Specific requirements imposed on the third-country branches</b></p>	<p>Appendix 1 of the Consultation Paper, para 2.5, p. 4 provides that the CBI 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</p>	<p>It would be helpful if the CBI could 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.</p>

		branch at point of authorisation, in addition to those outlined in the Central Bank's Handbook.	
5.	<b>Actuarial question 1</b>	Appendix 2 para 2.2(5) states a third-country branch must hold assets to cover the branch-attributed MCR/SCR in Ireland/EU. However, the corresponding EIOPA Guideline on third-country branches (Guideline 18) states that this localisation requirement on assets to cover the branch-attributed MCR/SCR applies to assets held at entity level.	The draft CBI wording therefore appears more onerous than EIOPA expectation and would seem to imply reduced fungibility of capital and/or ring-fencing. Is this the intention of the CBI?
6.	<b>Actuarial question 2</b>	Appendix 1 para 3.9 appears to require priority to Irish policyholders over other creditors. However, this seems to be inconsistent with Appendix 2 paragraph 2.2(2) which allows all policyholders to be given equal priority.	Please could we clarify the intention regarding priority of Irish policyholders versus all other policyholders?
7.	<b>Actuarial question 3</b>	Appendix 4 para 12.3 requires certification that the projected financial resources of the branch are sufficient for the first 5 years after the branch is established.	Is it intended to require ring-fencing of branch assets or can the relevant projected financial resources be assessed at entity level?
8.	<b>Process for UK insurers with existing third country branches</b>	The CBI is familiar with the prudential supervision of insurance undertakings carried out by the PRA.	Has the CBI concluded the areas in which it will seek to rely on PRA/FCA supervision in respect of UK insurers having a third country branch in Ireland?  Will the CBI enter into a memorandum of understanding or otherwise with the PRA?

9.	<b>Substance</b>	<p>Appendix 1 of the Consultation Paper, para 3.6 p. 6 provides that in line with the Solvency II Framework, the CBI will exercise additional supervision over the branch with a particular focus on the senior individuals in Ireland who are clearly responsible for management of both the branch operations and business pursued in Ireland and in what would happen in the event of failure.</p> <p>Appendix 1 of the Consultation Paper, para 3.15 p. 7 states that third country branches 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.</p> <p>Appendix 2 of the Consultation Paper 115, section 2.1, para 7, p. 9 states that the CBI reserves the right to require that key functions are established within Ireland depending on the nature, scale and complexity of the branch operations.</p>	<p>It would be helpful if the CBI could provide guidance on the level of substance required by way of illustrative examples.</p> <p>We would request that the CBI take a proportionate approach in relation to this requirement to have key functions based in the third country branch in Ireland. In this regard, when reviewing applications of this nature, whilst acknowledging that from a regulatory perspective, branches of third country insurers established in Ireland will be treated as a separate legal entity (i.e. being obliged to obtain a license and comply with all legal and regulatory requirements as if it was a subsidiary), the CBI should be cognisant of the fact that the existing operations of the UK 'parent' entity/group will be available to and relied upon by the third country branch in carrying on its business.</p> <p>We would encourage the CBI to note that the harmonisation (as opposed to duplication) of the UK 'parent' entity's and third country branch's operations will allow for a smooth transition of processes, limit disruption of systems and avoid increased costs for the end customer.</p> <p>Also, the third country branch should have management and oversight that will be as consistent with the UK 'parent' entity as far as practical.</p>
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			Adopting this approach will be operationally efficient for customers and serve their best interests.
10.	<b>Branch Manager Committee (“BMC”)</b>	<p>Appendix 2 of the Consultation Paper, section 2.1, para 12, p. 10 provides that a branch management committee (“BMC”) may need to be established.</p> <p>Appendix 2 of the Consultation Paper 115, section 2.1, para 3, p. 8 states that the governance structure adopted by each third-country branch shall be sufficiently sophisticated to ensure that there is effective oversight of the activities of the third-country branch taking into consideration the nature, scale and complexity of the business being conducted.</p>	In general, it could be helpful if the CBI could provide some guidance as to when a BMC is likely to be required by way of illustrative examples.
11.	<b>Analysis of the third-country regimes and assessment of the equivalence</b>	<p>Appendix 1 of the Consultation Paper, para 3.10, p. 7 provides that the CBI must be satisfied that the home jurisdiction bankruptcy regime provides at least the same level of protection of third-country branch policyholders in winding up proceedings as that provided under the 2015 Regulations.</p> <p>The CBI will require an analysis from the third-country insurance undertaking of the applicable winding up regime analysing the priority given to policyholders of the third-country branch and how the assets of the third-country insurance undertaking would be distributed to those</p>	<p>We understand that there are certain requirements for an assessment of the equivalence between Irish and UK rules in relation to: (i) investor protection; and (ii) insolvency protection.</p> <p>As this analysis will be prepared by our external counsel in the UK and Ireland, we want to ensure that this is obtained at an appropriate time.</p> <p>Given that Brexit discussions are still ongoing at a political level, at what stage would the CBI expect to receive this analysis? Is it likely to be required as part of a third insurance country branch application?</p>

		policyholders.	Will this analysis be required from UK based insurers who submit their application to establish a third country branch in Ireland pre-Brexit given that the UK will still be a member of the EU at that time on the basis that the UK has implemented, and is fully compliant, with Solvency II? We struggle to see that this analysis would serve much purpose from UK based insurers who submit their application to establish a third country branch in Ireland pre-Brexit.
12.	<b>Independent Assessment of Regulatory and Supervisory Regime in the UK</b>	Section 5.6 of the Checklist requests an applicant to provide an independent assessment of the home jurisdiction's regulatory and supervisory regime.	Will the CBI require such an assessment from UK insurers who apply to establish a third country branch pre-Brexit given that they will be fully compliant with Solvency II at that time?
13.	<b>CBI's Probability Risk and Impact Assessment System (PRISM) Framework</b>	Appendix 1 of the Consultation Paper, para 2.11 p. 5 provides that all third country branches will be supervised under the CBI's PRISM Framework.	Will the supervisory model be similar to the supervisory model for insurers or are any allowances likely to be made for third country branches?