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**Submission to the Financial Regulator on Minimum Competency
Requirements in the Private Medical Insurance Market**

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Summary

Since their introduction in January 2007, Hibernian Aviva Health has had the opportunity to assess the effects and implications of the Minimum Competency Requirements (“the Requirements”) on both insurance providers and intermediaries in the health insurance market. Hibernian Aviva Health believes that, with few exceptions, the Requirements have led to a higher level of service and professionalism being offered to consumers in the health insurance market and that consequently, the Requirements have had a positive impact on the market. Nonetheless Hibernian Aviva Health believes that some order of minor amendment and strengthening of the Requirements will lead only to their better achieving their stated goal while avoiding the need for multiple industry-specific exceptions and regulations.

In order to strengthen and improve the requirements, Hibernian Aviva Health believes an amendment to the existing Requirements so as to allow for the provision of specialist and general qualifications, as well as the recognising different streams or “subclasses” within various categories of financial services would provide for a comprehensive solution with regard to educational standards to be met in order to work in roles affected by the Requirements. Hibernian Aviva Health has also recommended that various other small adjustments be made to the Requirements and outlined its view that the dominant provider in the health insurance market, Vhi Healthcare, must be subjected to the Requirements as soon as possible. Hibernian Aviva Health has also made responses to the particular questions raised by the Financial Regulator in its call for submissions.

In making all recommendations within this document, Hibernian Aviva Health has sought to ensure that no element of divergence or exception be made with regard to the health insurance market, and therefore only recommended amendments within the spirit and overall structure of the existing Requirements. It is intended that the recommendations set out would ensure no proliferation of confusing or unnecessarily complex arrangements might occur and recognise the success of the Requirements in fulfilling their purpose to date.

Introduction

Hibernian Aviva Health Insurance Limited (“Hibernian Aviva Health”) is the smallest, and fastest growing, health insurer in Ireland, with more than 200,000 insured lives on cover as of May 2009. Hibernian Aviva Health one of the only two health insurance¹ providers regulated by the Financial Regulator (“the Regulator”) for the provision of health insurance, and therefore one of only two providers to which the Regulator’s obligations apply with regard to health insurance.

As part of a highly successful commercial strategy which has delivered robust business growth, Hibernian Aviva Health, alone in the health insurance market, has made use of an extensive network of intermediaries to sell its various health insurance policies. Since the Regulator’s implementation of the Minimum Competency Requirements in January 2007, Hibernian Aviva Health has gained a first-hand understanding of how these Requirements have been implemented in the health insurance market, what affects they have had, and what measures would be best effected so as to make the Requirements more effective in terms of their stated goals.

Given its unique position, as the only entity not only bound by the Requirements but using an extensive network of intermediaries also bound by the Requirements, this document has been prepared by Hibernian Aviva Health in order to put forward proposals which it believes will result in market where all consumers receive high quality advice from appropriately trained advisers, yet avoiding potential proliferation of potentially confusing or substandard arrangements for the health insurance market.

Nature of the Requirements

In December 2002, Directive 2002/92/EC (“the Directive”) on insurance mediation was adopted, having gained the approval of the Parliament and Council of the European Union (“the Union”). This directive set out certain measures which should be adopted with regard to insurance and reinsurance intermediaries throughout the European Union and furthered the process of embedding a common market in insurance mediation across the Union.

One core aspect of the Directive was that Member States of the European Union would act so as to ensure that those acting as insurance intermediaries meet a certain minimum standard of “Professional requirements”. For example, the Directive states that,

“Insurance and reinsurance intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities ...”²

¹ Herein the term “health insurance” shall be taken to mean “private medical insurance”, and vice versa.

² DIRECTIVE 2002/92/EC, Article 4, s. 2.

Another requirement laid down was that insurance intermediaries within the Union must possess appropriate knowledge and ability, as required by the intermediary's home Member State.

So as to ensure some order of national framework for knowledge and ability of those working in the field of insurance mediation was adopted, and so as to transpose the Directive, in 2005, the Government of Ireland brought into force the European Communities (Insurance Mediation) Regulations 2005 ("the Regulations"). At the most pertinent part, the Regulations state that,

"15. (1) An insurance intermediary or reinsurance intermediary shall, to the extent required by the Bank to do so, ensure that-

(a) a reasonable proportion of the persons concerned in the direction and management of the undertaking who are responsible for mediation in respect of insurance products, and

(b) all other persons directly involved in insurance or reinsurance mediation, demonstrate the knowledge and ability necessary to enable them to undertake their responsibilities with respect to insurance mediation or reinsurance mediation.

*(2) After consulting the Minister and other interested parties, the Bank shall, whenever it considers it appropriate, prescribe and promulgate requirements for the purposes of paragraph (1)."*³

In light of the above, and following extensive consultation with all relevant parties, the Financial Regulator published the Requirements in mid 2006, with their entering into force on January 1st, 2007.

The stated impetus behind the Requirements, and relevant parts of the Directive, has been to ensure that those working in the field of insurance mediation have appropriate knowledge and ability to advise⁴ consumers with regard to the products they counsel individuals upon. Whilst various methods of doing such have been adopted across the range of Member States, the Requirements mandate that, with limited exceptions, those entities bound by their terms see their staff commence upon, and achieve within a prescribed time period, certain listed qualifications felt to be especially pertinent to their business area. Entities bound by the terms of the Requirements are further bound to ensure that their staff obtain the most relevant qualification to their particular business area.

The Requirements also require those with certain listed qualifications undertake some order of "bridge exam" prior to their being able to advise upon certain orders of business product to which their qualification does not apply.

³ S.I. No. 13/2005: European Communities (Insurance Mediation) Regulations 2005.

For the Purposes of these Regulations, "the Bank" includes the Irish Financial Services Regulatory Authority.

⁴ It is perhaps important to note that the Requirements not only apply to those advising on the sale of retail financial products, but in relation to exercising any right under such product, and therefore to those acting in the fields of claims, complaints, and indeed those acting in supervisory positions in affected entities. Within these submissions, discussions surrounding those providing "advice" should be taken to include all persons working in roles to which the Requirements apply to any extent.

Having gained qualifications, persons working in roles affected by the Requirements are required to undertake a programme of documented continual professional development (“CPD”). Indeed, those capable of claiming some order of exemption are often required to undertake such a programme also.

A small number of exceptions to Requirements are set out within its terms and are, most pertinently, that those working in a role affected by the requirements for a certain number of years prior to the entry of the Requirement’s, or those “processing quotation requests”, are exempt from having to obtain qualification but nonetheless must undergo other training or CPD, and may be required to comply with various other applicable obligations.

Implications in the Health Insurance Market

As was the case with the insurance market in Ireland as a whole, the Requirements entered into force in the health insurance market on January 1st, 2007, in common with all other affected Financial Services markets.

It may be worthwhile to note at the outset that at the time the Requirements were first implemented, three health insurance providers were then active in selling health insurance to the public at large, i.e. the Voluntary Health Insurance Board (“Vhi Healthcare”), BUPA, and VIVAS Insurance Limited (subsequently Hibernian Aviva Health)⁵. With regard to these three providers, Vhi Healthcare were not at that time regulated by the Regulator for the conduct of health insurance business and have not become so regulated since. BUPA on the other hand conducted its Irish business through a tied intermediary operating under the name “BUPA Ireland”, who’s staff were subject to the Requirements. VIVAS Insurance Limited was also subject to the Requirements and uniquely in the health insurance market, sold such through both “direct” and “indirect” channels, i.e. as a direct seller and through insurance intermediaries.

With regard to its review of the effects of the Requirements and their fulfilling their stated purpose of the Requirements, Hibernian Aviva Health submits the following:

- The Requirements have set a clear and high standard for all those advising upon health insurance products for effected entities;
- The Requirements have similarly set a clear and high standard amongst other staff operating within affected roles, such as claims and complaints handling, with resultant higher understanding of principles at play and more informed interactions with consumers;
- The Requirements have provided for some order of scope for those working in affected roles within regard to more than one class of retail financial product, or those moving from one class of retail financial product to another;

⁵ These three providers are the sole entrants listed on the Health Insurance Authority’s Register of Health Benefit Undertakings as “Open Membership Undertakings”. Eight other undertakings hold registration (as of May 2009) as “Restricted Undertakings” and provide health insurance to certain closed groups, for example St Paul’s Garda Medical Aid Society offers insurance solely to members of an Garda Síochána, but not to the public at large.

- The Requirements have ensured that those working in affected roles remain abreast of key developments affecting the sector in which they operate through the requirement to undertake a certain level of continuing professional development;
- The Requirements have proven sufficiently flexible to a great extent in their taking account of experience gained in relevant sectors prior to the implementation of the Requirements and those processing quotation requests only;
- A key weakness in the Requirements' establishing minimum standards across all financial services providers in the health insurance market, dealing with consumers and applying equally to all those advising on or selling retail financial products, has been their not applying to Vhi Healthcare, which remains the largest single health insurance underwriter in this state with in excess of one million persons insured, or seventy percent market share;
- The Requirements are do not sufficiently take into account those persons working in affected roles on short term contracts;
- The Requirements may in certain circumstances be overly onerous with regard to those wishing to act in an affected role outside of their "grandfathered" area of expertise or those wishing to advise on a retail financial product not dealt with by a particular qualification; and
- The Requirements mandate certain qualifications must be obtained, however, often these may not fully represent the level of knowledge which should be gained prior to acting in an affected role for a particular class of retail financial product.

Thus, whilst Hibernian Aviva Health is of the opinion that the Requirements have had a generally positive effect on the health insurance market in Ireland as a whole, it is also of the opinion that certain elements for improvement exist which may be dealt with through minor adjustment, the net effect of which would be to make the Requirements more effective in terms of bringing about their stated goal.

Although in its document entitled "Limited Consultant on Minimum Competency Requirements for Private Medical Insurance", the Regulator states that in the two years since the Requirements entered into effect there have been "increased involvement by intermediaries in the provision of private health insurance" to such an extent that the requirements must be reconsidered, Hibernian Aviva Health is of the opinion that the problems set out above are the great extent of those which exist with regard to the requirements and the health insurance market, and that such have, by and large, remained the same since the introduction of the Requirements in January 2007.

Areas for Review

With regard to future reform of the Requirements, and in light of the positive and negative aspects which have emerged in relation to the market in the period since their introduction, Hibernian Aviva Health recommends the following be taken into account:

1. The primary area for redress with regard to the Requirements, in the health insurance market, is the need to ensure Vhi Healthcare is bound by their terms in the same manner as all other financial services providers. Hibernian Aviva Health is of the opinion that phrases such as “The Minimum Competency Requirements (the Requirements) established minimum standards across all financial services providers” are rendered a nonsense due to the fact that a provider of health insurance to over one million persons in the Republic of Ireland is not bound by the Requirements with regard to the provision of health insurance.
2. The Requirements are both sometimes excessively onerous, and often overly lackadaisical, for those advising on a single class (or subclass) of retail financial product. For example, those wishing to commence employment in an affected role with regard to health insurance must complete a four-module diploma in Private Medical Insurance⁶. Health insurance, or private medical insurance, is a sub-product falling within the definition of a ‘non-life’ insurance product⁷. So as to commence employment in an affected role regarding any class of life insurance, or indeed any other class of ‘non-life’ insurance on the other hand, an individual must complete a six module qualification⁸. Thus a six module qualification will allow an individual to advise on all classes of general insurance⁹, another six module qualification with a “bridge exam” allows an individual to advise on all classes of insurance, whilst a four module qualification allows an individual only advise on one small subclass of ‘non-life’ insurance.

Health insurance is not a particularly complex area when compared with other classes of ‘non-life’ insurance and justifiably fits within that class. Nor for that matter are travel or employers liability particularly complex or unique within the field of ‘non-life’ insurance and do not see separate qualifications required for each of these.

Hibernian Aviva Health posits that with regard to qualifications, the following should be adopted:

- i. so as to advise on only one sub-class of insurance, or stream, such as employers liability, motor, permanent health, or protection policies, individuals should be required to complete a “specialist” qualification dealing only with that sub-class, as well as general information on the class to which it belongs, which

⁶ Delivered by the Insurance Institute of Ireland.

⁷ This is the case for the Requirements, as well as a whole raft of Insurance Mediation of Framework Regulations setting establishing the regulatory regime applying to insurance services in Ireland.

⁸ Such as the Insurance Institute’s Certified Insurance Practitioner, or QFA Board’s Qualified Financial Adviser diplomas.

⁹ Including health insurance.

amounts to something along the lines of two modules of the CIP / QFA diplomas currently offered by the Insurance Institute of Ireland / QFA Board.

- ii. Should individuals wish to advise on a number of subclasses they should be required to complete a “generalist” qualification such as the CIP/QFA Diplomas, dependant on whether it is more appropriate that they complete a life assurance / non-life insurance qualification.
- iii. In the event that an individual is qualified in only one sub-class wishes to advise upon another, or an individual holds a more general qualification which does not cover a certain subclass (e.g. a holder of a QFA wishes to advise on travel insurance), that individual should be required to complete the two-module qualification in that subclass set out in point i. above, or the “generalist” qualification for that entire class.
- iv. In the event that an individual is qualified in only one sub-class and wishes to being advising on a whole class, or is qualified in one class and wishes to begin advising on another, (such as a QFA holder wishing to begin advising on ‘non-life’ products generally) that person should be required to undertake the “generalist” qualification as set out in point ii. above, or alternatively, multiple “specialist” qualifications.

In summary, Hibernian Aviva Health is of the opinion that approved qualifications be reformed so as to be structured along the following basis:

Type	Non-Life Insurance	Life Assurance
Specialist (Level 1)	Health, Travel, Motor, etc.	Investments, Protection, PHI, etc.
Generalist (Level 2)	CIP	QFA

Further, Hibernian Aviva Health is of the opinion that, as is currently transpires, unqualified persons should be allowed commence work in affected roles without having obtained qualification subject their commencing the process of being qualified, being adequately supervised and having undergone suitable training. With regard to more targeted “specialist” qualifications, however, Hibernian Aviva Health recommends that such must be obtained within 9 months of commencing employment in an affected role due to the “slimed down” nature of such qualifications and their particular relevance to the area concerned. Further, Hibernian Aviva Health submits that should a qualification not be obtained within the required time-frame, any person acting in an affected role should be prevented from acting in such a role again until they have completed a relevant qualification.

3. Those having become “grandfathered” with regard to one particular subcategory / stream, or indeed a number of such subcategories, should treated as though they have obtained a “specialist” qualification as set out able. Should they wish to undertake activity in only one other subcategory, they should complete the relevant exam, and should they seek to undertake activity in a range of subcategories, they should be

required to undertake a number of subcategory examinations or one “generalist” (e.g. CIP / QFA style) qualification.

4. The Regulator should take a more active role in issuing instruction as to what constitutes acceptable CPD. Failure to do such to date has led to a great deal of uncertainty and creation of a market in such education which may not be at all responsive to the particular needs of the needs of the great number of people active in the various fields of financial services in Ireland.

Response to questions raised

1. *Do you think there are any special considerations that should be taken into account in the case of individuals grandfathered for life assurance who wish to deal with private medical insurance? If so, what are they?*

As outlined above, Hibernian Aviva Health is of the opinion that such persons should be required to undertake a short, concise, qualification on health insurance, comprising no more than two “modules” before being fully qualified to act in an affected role with regard to health insurance. As previously stated, should persons “grandfathered” in life assurance be adequately trained and supervised they should be allowed commence in an affected role with regard to health insurance, so long as the additional qualification is gained within nine months.

Should such a solution not prove workable, in the interim Hibernian Aviva Health posits that such persons should have the same opportunity to do a “bridge” exam as those otherwise qualified to sell life assurance so as to recognize that they may well possess as much knowledge of ‘non life’ insurance as those holding a QFA Diploma, and to not unfairly penalize these persons for having gained experience prior to 2007.

2. *Do similar or other considerations apply in the case of individuals grandfathered for other forms of non-life insurance?*

Again, Hibernian Aviva Health is of the opinion that such persons should be required to complete a “specialist” qualification before being fully qualified to act in an affected role with regard to health insurance.

Where it is not the case that such persons will be afforded the opportunity to undertake such a qualification, Hibernian Aviva Health believes that the Regulations should remain as they are currently styled, i.e. those “Grandfathered” in regard to ‘non-life’ insurance are grandfathered for “the specified categories of *retail financial products*” for which they have previously dealt with, and as health insurance falls within the meaning of classes 1 and 2 (Accident and Sickness), those grandfathered for activities relating to products falling within the meaning of classes one and two should remain qualified to sell such.

3. *Should different criteria apply for grandfathering in relation to private medical insurance? If so, please set out the relevant criteria.*

As set out above, the same order of “grandfathering” should apply to health insurance as applies to every other order of insurance. With regard to all material classifications (for example, S.I. No. 359 of 1994 / European Communities (Non- Life Insurance) Framework Regulations), health insurance exists as a class of ‘non-life’ insurance and given that no cogent reason existed to frame it as a third class at that time, none should exist for the purposes of the Requirements.

For this reason the exemption from the Requirements for Vhi Healthcare should be removed forthwith.

Further, provisions for those wishing to act in affected roles for which they are not “grandfathered” should reflect those set out in section 2 above.

4. *What qualification(s) do you think are appropriate for individuals*
- i) grandfathered for life assurance or*
 - ii) grandfathered for other forms of non-life insurance who wish to provide services in relation to private medical insurance?*

As set out above, Hibernian Aviva Health holds that health insurance is rightly classified as a sub-category of ‘non-life’ insurance. To that end, a short specialist qualification dealing in a comprehensive manner with the core tenants of ‘non-life’ insurance in Ireland generally, and health insurance in particular, would be of most use to not only providers and intermediaries, but also employees working in, and consumers receiving advice on, the health insurance market in Ireland. Such a qualification could act in place of a “bridge” exam for those qualified in other areas of insurance, while affording those who wish to act with regard to ‘non-life’ insurance more generally the opportunity to undertake a more general “high-level” qualification.

Conclusion

In conclusion, Hibernian Aviva Health submits that the Requirements have had a positive effect in the health insurance market which has seen the adoption of uniform standards across a great range of providers and intermediaries and a greater level of protection for consumers generally. In order to lead to a more effective working of the Requirements in terms of their desired objective, Hibernian Aviva Health recommends a number of changes are made primarily to the nature and number of qualifications which may be undertaken, grandfathering and continuing professional development. Should such recommendations be adopted, Hibernian Aviva Health contends higher professional standards shall be exhibited within the health insurance market generally, in preference of interim or unjustifiable measures which may unfairly penalise some or lead to a plethora of differing standards within the Requirements as a whole.