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Dear CEO

Principles of Best Practice applicable to the distribution of Life Insurance Products on a Cross-border Basis within the EU or a Third Country.

The attached document: “Principles of Best Practice applicable to the distribution of Life Insurance Products on a Cross-border Basis within the EU or a Third Country” (“the Principles”), sets out the general principles which the Central Bank of Ireland (“Central Bank”) regards as best practice for Insurance Undertakings, authorised by the Central Bank, when distributing life insurance products in another EU or EEA Member State or a third country on a cross-border basis.

Pursuant to Article 33 of the Consolidated Life Directive, 2002/83/EC, which applies in Ireland through the European Communities (Life Assurance) Framework Regulations, 1994, an Insurance Undertaking is required to comply with General Good requirements in the host Member State jurisdictions in which it carries on business. The responsibility for supervising compliance with host General Good requirements is that of the host regulator. However, the Principles set out what the Central Bank regards as best practice in this area. Their purpose is to ensure that Insurance Undertakings have a framework in place to demonstrate their compliance with those General Good requirements.

It is imperative that Undertakings conduct appropriate due diligence with regard to their proposed distribution framework and host legal and regulatory requirements before commencing activities in a new jurisdiction, and be satisfied that they are capable of complying with host requirements.

As a result of the occurrence of several issues in relation to the distribution of products on a cross-border basis, all of which have now been resolved, it was considered appropriate to issue the Principles at the current time. At the time the Principles were originally issued, the Central Bank undertook to update the document on an on-going basis, taking into consideration submissions received from Undertakings operating within this model. On the basis of feedback received from industry, it was considered appropriate to clarify aspects of the document, and subsequently this revised document is now being issued. It is the intention of the Central Bank to continue to update the Principles periodically.



The Principles do not constitute binding legal or regulatory requirements, nor do they modify or remove any obligation of an Undertaking under existing legislative or regulatory standards. Furthermore, if there is a conflict between the Principles and a General Good requirement in a host jurisdiction, the General Good requirement should apply. However, Undertakings are reminded that existing regulatory requirements which include, inter alia:

- The Corporate Governance Code for Credit Institution and Insurance Undertakings; and,
- The Fitness and Probity Standards;

that respectively impose specific requirements upon all Insurance Undertakings licensed or authorised by the Central Bank and specify the standards of fitness and probity which all persons performing controlled functions or pre-approval controlled functions shall at a minimum comply with.

Many Insurance Undertakings are already adhering to the spirit of the Principles. The Central Bank recognises that Insurance Undertakings legitimately adopt different practices in respect of the material covered in the Principles and where this is the case, Undertakings should endeavour to ensure that the measures they adopt are at least as effective as those set out in this document.

The Central Bank does not expect existing contracts to be renegotiated on the basis of the Principles. However, it does expect that Insurance Undertakings will work towards adhering to the Principles set out over a reasonable period of time. In particular, the Principles should be taken into account as new products are launched, and new contractual arrangements are entered into. Where a material gap has been identified on an existing arrangement, an Insurance Undertaking should contact the Central Bank.

The conduct of life insurance business on a cross-border basis will evolve as EU regulatory initiatives are pursued. For example, EIOPA has recently issued *Guidelines on Complaints Handling by Insurance Undertakings*, which set out Guidelines which each Competent Authority must endeavour to comply with. The Central Bank will continue to consult with industry in developing its approach to these changes.

Yours sincerely,

Mark Burke

Head of Life Insurance Supervision

Principles of Best Practice applicable to the distribution of Life Insurance Products on a Cross-Border Basis within the EU or a Third Country.

The principles set out herein are applicable to Insurance Undertakings that:

- Are authorised by the Central Bank of Ireland as a Life Undertaking ; and
- Distribute life insurance products in another EU or EEA Member State or a Third Country¹ on a Cross-Border Basis.

Any Undertaking that is caught by this definition must consider the principles as applying to them.

¹ Third Country meaning one outside of the EEA

Principles of Best Practice applicable to the distribution of Life Insurance Products on a Cross-Border Basis within the EU or a Third Country.

1 General Principles

The principles set out herein are applicable to Insurance Undertakings that:

- Are authorised by the Central Bank of Ireland as a Life Undertaking ; and
- Distribute life insurance products in another EU or EEA Member State or a Third country on a Cross-Border Basis.

The purpose of these principles is to ensure that a consistent set of standards are applied by Undertakings in relation to the sale of Life Insurance products on a cross-border basis. This document does not constitute a legal or regulatory requirement.

Non-adherence to the principles does not, in and of itself, constitute grounds for an enforcement action by the Central Bank. However, Insurance Undertakings should be aware that specific aspects of the principles may reflect other binding requirements that the Insurance Undertaking is subject to and will frame the Central Bank's judgement and decision making on a risk based approach under the PRISM engagement model. Furthermore, the document does not modify or remove any other requirements that an Insurance Undertaking may be subject to.

Every Undertaking operating on a cross-border basis in relation to the sale of Life Insurance products should endeavour to apply the Principles set out in this document so as to foster greater convergence within the market. In particular, the Central Bank expects Undertakings to take these Principles of Best Practice into account when launching new product lines and entering/renewing distribution arrangements.

Pursuant to Article 33 the Consolidated Life Directive, 2002/83/EC, which applies in Ireland through the European Communities (Life Assurance) Framework Regulations 1994, an Undertaking is required to comply with General Good requirements in the host Member State jurisdictions in which it carries on business. An Insurance Undertaking should have a framework in place to demonstrate to the host regulator that it is in compliance with General Good requirements.

Where an Insurance Undertaking is carrying on business in a Third Country, the Undertaking should have a similar framework in place, having regard for similar requirements which may apply in that country.

Where an Insurance Undertaking does not follow these principles the Board of the Undertaking satisfy itself that an alternative mechanism is in place that is at least as effective as those set out in this document. If there is a conflict between the Principles and a General Good requirement in a host jurisdiction, the General Good requirement should apply.

- 1.1 An individual at Executive level should be given responsibility for overseeing that the Undertaking seeks to adopt these principles or an equivalent alternative as deemed appropriate by the Board, or that the Board delegate this responsibility to an appropriate senior individual within the Insurance Undertaking.
- 1.2 Prior to launching into a new jurisdiction, or a materially different product line, an Insurance Undertaking should be able to confirm that sufficient due diligence has been carried out and presented to the Board, as indicated in the Board minutes. This Due Diligence should include, inter alia, confirmation that:
- The appropriate management have been assigned with ultimate responsibility for ensuring that a report is made to the Board and that the proposal is ratified by the Board;
 - Relevant legal, tax and regulatory advice to evidence adherence to all relevant local rules and legislation has been received, considered, and is documented;
 - The General Good requirements of the jurisdiction have been identified and complied with;
 - The risks associated with the new territory/country launch have been identified, considered and appropriately mitigated or accepted as being within the Undertaking's risk appetite;
 - Any outsourcing arrangements have been formalised with a signed service level agreement in place; and
 - The Insurance Undertaking has considered whether its systems and controls and other resources are appropriate for the risks associated with the product(s) in question, and has taken appropriate measures on the basis of that assessment.
- 1.3 Where an Insurance Undertaking operates in a number of different markets and there is a disparity in the level of host regulation across markets, the Insurance Undertaking should identify core operating principles which it strives to adhere to across its markets in a consistent manner. In determining whether or not the core operating principles are appropriate, an Insurance Undertaking should have regard to market practice in the host state and issues relating to policyholders' reasonable expectations.
- 1.4 Prior to entering into any arrangement with an intermediary for the distribution of its products in a host jurisdiction, best practice would indicate that the Undertaking considers the following steps:
- If required in the case of a third country, that the intermediary is authorised to conduct the business in question. This should be checked at the outset and reviewed on a periodic basis;
 - Satisfy itself that any actual or potential conflicts of interest are appropriately addressed and managed;

- Enter into a written agreement with the intermediary which clearly allocates the respective rights and obligations of the Insurance Undertaking and the intermediary;
- That the general terms and conditions of the distribution agreement are approved and understood by the Undertaking and that the material risks associated with the relationship are within the Undertaking's risk appetite;
- Should the Undertaking become aware that an intermediary has been sanctioned by the host regulator, the Undertaking should consider the impact, if any, of such a sanction on the Undertaking's contractual relationship with the intermediary and the intermediary's continuing authorisation to conduct the business in question; and
- That the intermediary is subject to the appropriate provisions that are applicable to the Insurance Undertaking regarding the safety and the confidentiality of customer information.

1.5 An Undertaking should ensure that it has the ability to comply with all applicable rules and regulations. In this regard the Central Bank draws particular attention to anti-money laundering (AML), data protection requirements or other local privacy laws and the need for the firm to satisfy itself that it is aware of how these inter-relate.

2. Product Design

- 2.1 The name of the product should not be misleading in terms of the nature of the benefit that the product can deliver.
- 2.2 When designing a product the specified entity should identify the target market for the product, the nature and extent of the risks inherent in the product and the level, nature, extent and limitations of any guarantee attaching to the product. The target market should only comprise the types of consumer for which the product is likely to be suitable. In this regard, it is important that Undertakings monitor on a periodic basis that the product remains suitable for the target market.
- 2.3 An Insurance Undertaking should ensure that the information it provides to an intermediary about its products is clear, accurate and not misleading. This product information should be sufficient to enable those who sell the product to understand it so as to be able to determine whether it is suitable for a consumer.
- 2.4 An Insurance Undertaking should respect and adhere applicable General Good requirements, including complaints handling processes as required in the host jurisdiction, and engage with ombudsman and other non-judicial and judicial investigations as required,
- 2.5 An Insurance Undertaking should check whether the product is continuing to meet the general needs of the target market for which it was designed in line with its own policies and procedures. Where the Insurance Undertaking establishes that the product no longer meets the general needs of the target market, the Insurance Undertaking should:
 - a. reassess the product to identify the consumer type for which it is suitable;
 - b. update in a timely manner the information it provides under Provision 2.3 above.

3 Distribution

- 3.1 Where an Undertaking is conducting cross-border business through intermediaries in other jurisdictions, the responsibility for compliance by the intermediary with regulation in the host state lies with the intermediary itself. Thereafter responsibility lies with the regulatory authorities in that jurisdiction. Notwithstanding this, the Central Bank expects that where an Insurance Undertaking becomes aware of any issues with any of its intermediaries that are relevant and material to the distribution of the Undertaking's products by the intermediary, that the Undertaking has a framework in place to manage such issues. This applies regardless of the existence of a further master/sub-distributor arrangement.
- 3.2 The launch of a new product or a launch into a new territory that may have a material impact on the risk profile of the Undertaking should be notified to the Central Bank in advance, as it may be considered by the Central Bank to be a material change to the Business Plan of the Undertaking.

This may already be a condition of authorisation for an Insurance Undertaking.

- 3.3 An Insurance Undertaking should not knowingly engage in distributing products to third countries if it is aware that this is a breach of legislation in the third country.
- 3.4 A written agreement to be concluded between the Insurance Undertaking and the intermediary should, inter alia, include the following:
- a. The rights and obligations of both parties;
 - b. For each party, a commitment to comply with all applicable legal and regulatory requirements;
 - c. The Insurance Undertaking's reasonable right to terminate the arrangement with the intermediary with reasonable period of notice for failure by the intermediary to discharge obligations under the agreement;
 - d. Where the intermediary acts in the capacity of an agent of the Insurance Undertaking, the Insurance Undertaking's right to information about the intermediary's performance and activities in respect of the business of the Undertaking as well as a right to issue general guidelines and specific instructions as to what is to be taken into account when performing its functions or activities.

- e. The intermediary's obligation to protect any confidential information relating to the Insurance Undertaking and its customers; and
- f. That the rights of the Insurance Undertaking in respect of an intermediary will not be affected by the existence of a further master/sub-distributor arrangement.

In respect of independent intermediaries, having regard to the responsibility of the intermediary for compliance with the intermediary's regulatory obligations, and the responsibilities of the relevant regulatory authorities in respect of the intermediary, the Insurance Undertaking should satisfy itself that the contractual provisions between the Undertaking and intermediary allow the Undertaking to fulfil its legal and regulatory obligations.

While provisions in respect of access to information should be in accordance with relevant data protection and privacy provisions in the host jurisdiction, this should not conflict with an Insurance Undertaking's ability to fulfil its home state obligations and Undertakings are reminded of Paragraph 1.5 in this regard.

- 3.5 The Insurance Undertaking should act appropriately when it becomes aware of instances of potential mis-selling or inappropriate policy replacement, and in particular sales to demographics or classes of policyholder for which a product is manifestly unsuitable.
- 3.6 An Insurance Undertaking should act upon and inform the appropriate regulatory authorities where the Insurance Undertaking has an on-going concern that an intermediary may be acting contrary to relevant regulation in the host state.
- 3.7 When a change of business plan involves distributing through non EEA intermediaries or to non-EEA residents, the Insurance Undertaking should also satisfy itself that it has taken appropriate legal advice to confirm that there is nothing that precludes the distribution of the specified Undertaking's products in the manner planned.
- 3.8 With regards to commission payments, an Insurance Undertaking should ensure that all applicable host jurisdiction sales and remuneration rules and legislation are complied with.

4 Errors, Complaints Handling and Communications with Policyholders

- 4.1 An Insurance Undertaking should review, monitor and test its internal control systems on a periodic basis in order to provide reasonable assurance that the potential for errors is minimised in accordance with Section 6.3 of the Corporate Governance Code for Credit Institutions and Insurance Undertakings.
- 4.2 An Insurance Undertaking should have written procedures in place for the effective handling of material errors in compliance with error handling rules in the host jurisdiction. Such procedures may include, inter alia:
- a. the identification of all affected parties;
 - b. appropriate analysis of patterns of errors;
 - c. proper control of the correction process; and,
 - d. escalation of errors to compliance/risk units and senior management.
- 4.3 An Insurance Undertakings should establish appropriate and reasonable standards to determine the materiality of errors in compliance with requirements in the host jurisdiction, or in line with the Undertaking's best practice in the absence of local rules, taking into account policyholders' reasonable expectations.
- 4.4 An Insurance Undertaking should ensure that material errors are corrected in a timely and fair manner, in compliance with error handling rules in the host jurisdiction. Corrections may be effected as permitted by local rules in the host jurisdiction or where in line with the Insurance Undertaking's normal practices in the absence of local rules. Procedures should ensure no resulting policyholder detriment.
- 4.5 An Insurance Undertaking should not benefit from an error at the expense of a policyholder. If for any reason the Undertaking cannot refund a policyholder, a donation to a charity may be an appropriate course of action.
- 4.6 An Insurance Undertaking should disclose in their annual compliance statement the occurrence of material errors that may be relevant to the Undertaking's compliance with the Corporate Governance Code, and in particular, to the robustness of the Undertaking's internal control systems in accordance with Paragraph 4.1.

- 4.7 In instances where a material error has had a negative impact on a policyholder transaction, the policyholder should be specifically notified of the error. This notification should include the steps that are being taken to correct the error.
- 4.8 An Insurance Undertaking should maintain a log of all errors identified and actions taken to rectify the errors should be appropriately documented. This log may include details such as:
- a. details of the error;
 - b. how it was discovered;
 - c. the period over which the error occurred;
 - d. the number of consumers affected;
 - e. the monetary amounts involved;
 - f. the status of the error;
 - g. the number of consumers refunded;
 - h. the total amount refunded; and
 - i. date of notification.
- 4.9 An Insurance Undertaking should take all reasonable steps to seek to resolve any complaints, including verbal complaints, with consumers.
- 4.10 When an Insurance Undertaking receives a verbal complaint and the complaint cannot be resolved at that time the consumer should be given the opportunity to have the complaint treated as a written complaint.
- 4.11 An Insurance Undertaking should maintain an up-to-date record of all complaints subject to the complaints procedure.
- 4.12 Where a consumer elects to have all correspondence from the Insurance Undertaking directed to an intermediary the Insurance Undertaking should obtain a written declaration submitted from the consumer.

4.13 Subject to its obligations under relevant data protection legislation, and where necessary to fulfil existing requirements, the following information should be retained by or on behalf of an Insurance Undertaking, and should be accessible by the Undertaking when required:

- a. a copy of all documents required for consumer identification and profile;
- b. the consumer's contact details;
- c. details of and means of establishing the products and services provided to the consumer;
- d. all correspondence with the consumer and details of any other information provided to the consumer in relation to the product or service;
- e. all documents or applications completed or signed by the consumer;
- f. copies of all original documents submitted by the consumer in support of an application for the provision of a service or product; and
- g. all other relevant information concerning the consumer where required by existing legal and regulatory requirements.

4.14 The Insurance Undertaking should consider performing regular spot checks and/or surveys of new business policyholders across all intermediaries and markets to ensure that they are satisfied with both the service and product provided.