



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Policy Notice

Branches of Third-Country
Insurance Undertakings

Authorised by the Central Bank of Ireland

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1 Introduction

- 1.1 This Policy Notice is addressed to third-country insurance undertakings intending to establish a branch in Ireland pursuant to Regulation 176 of the European Union (Insurance and Reinsurance) Regulations, 2015 (the 2015 Regulations). It should be read alongside the relevant European and Irish legislation¹ and any guidelines published by the European Insurance and Occupational Pensions Authority (EIOPA). This Policy Notice sets out the Central Bank of Ireland's (the Central Bank) expectations of branches of third-country insurance undertakings (third-country branches).
- 1.2 Under Regulation 176 of the 2015 Regulations, any third-country insurance undertaking proposing to establish a branch in Ireland to carry on the business of insurance must make an application for authorisation to the Central Bank.
- 1.3 The Central Bank may periodically update elements of this Policy Notice to reflect changes in Central Bank policy or other developments stemming from, inter alia, changes to EU or Irish law.

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

2 Requirements on Third-Country Branches

- 2.1 The Solvency II Framework for third-country branches includes the requirements outlined in the 2015 Regulations, the Commission Delegated Regulations (EU) 2015/35 (Delegated Regulations), the Commission Implementing Regulation (EU) 2015/2450 (Reporting ITS) and EIOPA's Guidelines on the supervision of branches of third-country insurance undertakings (EIOPA's Branch Guidelines).
- 2.2 The Central Bank expects third-country branches to comply with EIOPA's Branch Guidelines. Relevant aspects of EIOPA's Branch Guidelines have been incorporated into the Central Bank's *'Handbook for Branches of Third-Country Insurance Undertakings Authorised by the Central Bank of Ireland'* (the Central Bank's Handbook) which will be imposed as a condition of authorisation upon third-country branches.
- 2.3 The Central Bank also expects that any third-country branch will comply with Guidelines published by EIOPA that are relevant to it, including but not limited to:
- Guidelines on System of Governance;
 - Guidelines on Own Risk and Solvency Assessment;
 - Guidelines on Classification of Own Funds;
 - Guidelines on Valuation of Technical Provisions;
 - Guidelines on Reporting and Public Disclosure.
- 2.4 The Central Bank's Handbook supplements, and is to be read in conjunction with, the relevant Solvency II Framework requirements outlined in paragraph 2.1 above. The Central Bank's Handbook will be imposed on third-country branches as a condition of authorisation pursuant to the Central Bank's powers to impose such conditions under Regulation 176(5) of the 2015 Regulations.
- 2.5 The Central Bank may, where it considers it appropriate, on a case-by-case basis, and having regard to the nature, scale and/or 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 Central Bank's Handbook.
- 2.6 Where a third-country insurance undertaking has been authorised by the Central Bank to establish a third-country branch under Regulation 176 of the 2015 Regulations, the third-country branch will then be a 'regulated financial services provider' (RFSP) within the meaning of Section 2(1) of the Central Bank Act 1942 (the 1942 Act). All relevant financial services legislation will apply to third-country branches as RFSPs including, the 1942 Act, the Central

Bank Reform Act 2010, the Central Bank (Supervision and Enforcement) Act 2013, the 2015 Regulations, the Insurance Acts (as defined in the 2015 Regulations), European Communities (Insurance Mediation) Regulations 2005², Life Assurance (Provision of Information) Regulations 2001 and Non-Life Insurance (Provision of Information) (Renewal of Policy of Insurance) Regulations 2007.

Accordingly, the following, amongst other requirements, will also apply to authorised third-country branches:

- The Central Bank's Fitness and Probity Regime and Fitness and Probity Standards³;
- The Central Bank's Minimum Competency Code;
- The Central Bank's Consumer Protection Code 2012.

2.7 When supervising a third-country branch, the Central Bank will exercise, where appropriate, the supervisory powers laid down in the 2015 Regulations, to the same extent as the Central Bank would exercise such powers in respect of insurance undertakings authorised under Regulation 14 of the 2015 Regulations.

2.8 The Central Bank's Domestic Actuarial Regime and Related Governance Requirements under Solvency II will apply to third-country branches and will be imposed as a condition of authorisation upon third-country branches by way of an 'Addendum to the Domestic Actuarial Regime and Related Governance Requirements under Solvency II', which will outline any relevant changes to the Domestic Actuarial Regime and Related Governance Requirements under Solvency II, applicable to third-country branches.

2.9 All third-country branches authorised to pursue non-life insurance business will be required to contribute to the Insurance Compensation Fund (ICF) as directed by the Central Bank.

2.10 A third-country branch authorised by the Central Bank may only pursue insurance business within the State. It may not operate in other EEA Member States on a freedom of establishment or a freedom of services basis.

2.11 All third-country branches will be supervised under the Central Bank's Probability Risk and Impact Assessment System (PRISM) Framework.

² The European Communities (Insurance Mediation) Regulations 2005 will be replaced by new regulations transposing the Insurance Distribution Directive (the "IDD") into Irish law.

³ Third-country branches authorised by the Central Bank will be required to comply with Schedule 2 of the Central Bank Reform Act 2010 (Sections 20 and 22) Regulations 2011, Part 1(4), Part 2(1) and Part 3(1).

3 The Central Bank's Approach

- 3.1 This Policy Notice is guided by the Central Bank's objectives of safeguarding stability and protecting consumers.
- 3.2 The Solvency II third-country regime provides third-country insurance undertakings access to individual European Member State markets. In developing its policy on the authorisation of third-country branches in the State, the Central Bank considers that the primary purpose of establishing such branches should be the provision of insurance to policyholders within the State.
- 3.3 The Central Bank 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/or complexity of the proposed business model, and/or having regard to the proposed customer base. In making this assessment the Central Bank will consider a number of factors. These include, but are not limited to, the amount and type of business, the numbers of Irish policyholders, the impact of failure, whether operations are closed to new business/policyholders, the complexity of the proposed business, the significance of the business of the branch in the market and the availability of substitute products. Examples of operations that the Central Bank would consider unsuitable for establishment as a third-country branch include those of significant scale, operations with significant numbers of Irish policyholders, operations where there are proposals to grow the business to a significant scale, and/or where the primary purpose of the operation is to provide insurance to policyholders outside the State.
- 3.4 The Central Bank will authorise a third-country branch based on the business model at time of authorisation. Any proposed significant changes to that business model are subject to the prior approval of the Central Bank, which reserves the right to deem whether the operations continue to be appropriate for a branch structure.
- 3.5 The Central Bank's approach to the authorisation and supervision of third-country branches aims to ensure that policyholders who deal with branches of third-country insurance undertakings are afforded at least the same level of protection that they would have if they were dealing with an EEA insurance undertaking subject to Solvency II.
- 3.6 The Central Bank will adopt a proportionate approach to the authorisation and supervision of third-country branches.
- 3.7 A third-country branch is not a separate legal entity for regulatory purposes. As such, ultimate responsibility for prudential supervision of the third-country insurance undertaking, including

the third-country branch, remains with the home supervisory authority. In line with the Solvency II Framework, the Central Bank will exercise additional supervision over the branch with a particular focus on ensuring that there are senior individuals in the State who are clearly responsible for management of both the branch operations and business pursued in the State.

- 3.8 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. The Central Bank may also have regard to any relevant third-country equivalence assessments carried out by the European Commission and/or the most recent International Monetary Fund (IMF) Financial Sector Assessment Programme Report relevant to the third country in making its assessment. The Central Bank will draw its own conclusions regarding regulatory and supervisory arrangements in the third country and reserves the right to appoint a third party to assess or verify whether the relevant requirements are met or to take such other steps as it deems appropriate.
- 3.9 Where the Central Bank is satisfied that the home regulatory regime applied to the insurer as a whole will deliver equivalent outcomes to requirements and arrangements in the State and where the Central Bank is satisfied with the home regulator's supervisory approach, the Central Bank will rely where appropriate, on the home regulator's prudential supervision as regards the whole insurer. In these cases, the Central Bank will focus on collaboration with home regulators (including via supervisory colleges). The Central Bank will discuss and agree with home regulators the areas in which the Central Bank will seek to rely on the home regulator's supervision.
- 3.10 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. Assets will be deemed to be available, where either all of the third-country insurance undertaking's assets would be available to pay policyholders in priority to other creditors, irrespective of the location of the policyholders, or where all of the third-country branch's assets would be available to pay third-country branch policyholders in priority to other creditors.
- 3.11 The Central Bank 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. The Central Bank will require an independent 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 policyholders.

The analysis must be carried out by an assessor who is suitably qualified in the laws and practices of the third country. The Central Bank may have regard to analyses that have been made available by EIOPA in which case the analysis expected from the third-country insurance undertaking may only need to address the application of that regime to the third-country insurance undertaking's own circumstances.

- 3.12 The Central Bank must be satisfied that the proposed business model of the third-country branch and prudential soundness of the third-country insurance undertaking have been verified by the relevant third-country supervisory authority. The Central Bank expects the third-country insurance undertaking to provide sufficient information so that the Central Bank may form an opinion on the adequacy of the solvency margin of the third-country insurance undertaking.
- 3.13 The Central Bank expects a Memorandum of Understanding (MOU) to be concluded with the third-country supervisory authority before a formal decision is made to grant an authorisation to a third-country branch.
- 3.14 Any deficiencies in the third-country regulatory and supervisory frameworks will be afforded careful consideration and weight by the Central Bank when considering whether to authorise a third-country branch. Where deficiencies in any particular area are deemed by the Central Bank to outweigh positive assessment outcomes in other areas, the Central Bank will be minded to discontinue the third-country branch application for authorisation at this stage.
- 3.15 All authorised third-country branches will be subject to a standard condition of authorisation that their authorisation will be subject to the Central Bank's prerogative to periodically review whether the relevant corresponding regulatory and supervisory requirements in the third country continue to be deemed equivalent to the requirements in the State as set out in paragraph 3.8.
- 3.16 Third-country branches should have sufficient and appropriately skilled resources including senior management within the State. These resources need to be sufficient to ensure a level of local oversight and control, including the presence of senior management positions in the State, i.e. the Branch Manager and, as necessary given its nature scale and/or complexity, key function holders, who dedicate sufficient time to fulfil their duties.
- 3.17 The Central Bank reserves the right to consider a broader range of factors in forming its overall conclusions in relation to the authorisation of a third-country branch than those set out in this Policy Notice.

3.18 The authorisation process for branches of third-country insurance undertakings is outlined in the Central Bank's *Guidance and Checklist for Completing and Submitting Applications for Authorisation of a Branch of a Third-Country Insurance Undertaking*.

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