Public Consultation on the Development of a National Resolution Framework for (re)Insurers

Response: Aviva Insurance Ireland DAC and Aviva Life and Pensions Ireland DAC Redacted

Introduction/Overview

Aviva Insurance Ireland DAC and Aviva Life and Pensions Ireland DAC ("Aviva") welcome the opportunity to provide comments on the Department of Finance Public Consultation on the Development of a National Resolution Framework. As a long standing and leading life and general insurer in the Irish market, Aviva is committed to working with Department of Finance ("DOF") and Central Bank of Ireland ("CBI") to ensure the best interests of consumers are protected in all contingencies, including the failure of an insurance entity authorised to write life or general insurance in the Irish market.

We have provided a detailed response to the individual questions and a high-level overview below:

The existing framework provides robust levels of policyholder protection

- Aviva believes that the robust solvency and supervision of authorised insurers including proportionate prudential and conduct regulation, as currently exists and as experienced in Ireland, is the best form of consumer protection and oversight of insurers. Solvency II ("SII") is one of the most sophisticated and prudent insurance regimes; it is risk based in nature and has policyholder protection at its core. We support this framework, with its strengthened requirements around capital, governance, and risk management for insurance entities in Ireland. SII also increased regulatory reporting and disclosure requirements for insurance entities. We agree as noted in the consultation document that the (SII) requirements are intended to reduce the likelihood of an insurer failing and should also provide policyholders with increased protection.

- In addition, the recently introduced recovery planning requirement provides another pillar of protection for insurers and their customers when confronted by a range of extreme financial and other stress scenarios and so acts as a measure to prevent failure which in turn is in addition to the ORSA process. This requirement further supplements the prudential protection framework for insurance entities that are prudentially regulated by the CBI. We therefore believe that the recovery planning framework, combined with existing SII requirements provides sufficiently robust protection against the probability of failure and further levels of protection are likely to be required only in very extreme circumstances.

Prioritise improving the freedom of services framework

- The resolution framework is being proposed to further mitigate the likelihood of an insurer failing and to provide customers with protection in the event that an insurer does fail or is confronted with serious financial difficulties. However, more recent failures (since the introduction of SII) in the Irish general insurance market have resulted from insurers passporting under freedom of services provisions with the support of local Managing General Agents and who were therefore not subject to the same prudential oversight as locally regulated insurance entities. While impacted policyholders were able to benefit partially from the Insurance

Compensation Fund ("ICF"), they did not benefit at the outset from the same prudential oversight as customers of locally regulated entities operating under freedom of establishment. (We also note that the Motor Insurers Insolvency Compensation Fund and ICF is a measure for general insurers only.)

- We would also point to the protracted liquidation of Setanta Insurance which resulted in additional costs being passed on to locally regulated insurers and ultimately to all policyholders in the form of an additional levy. As a result of Setanta Insurance and the more recent failures of other general insurers who operated in this market under freedom of services provisions, we believe that strengthening freedom of services provisions and supervisory cooperation in the SII framework must be the priority. This is currently under review at EU level and would seem the most effective means of addressing one of the underlying causes of recent failures in the domestic market.

- We also noted that supervisory convergence is a strategic priority for EIOPA and therefore a proposal for a bespoke national resolution framework could contravene that priority.

A domestic framework should be aligned to a European approach

- Further steps to implement an additional resolution framework in Ireland should be done on a harmonised European basis rather than on a pre-emptive national basis. This should only be progressed after detailed consideration of the wider impact of additional resolution measures beyond those required at a European level on domestic insurers and consumers. Presently, we have seen no evidence that the structure and characteristics of the Irish insurance market would warrant additional measures beyond those deemed necessary at a European level in the European Commission's proposed directive, which is based on EIOPA's recommendations to the European Commission for its Review of SII.

- The implementation of national solutions before the legislative process at EU level is completed could lead to unnecessary costs for insurers; including the cost of implementing a new system in advance of EU level changes and of having to make further changes, should that be necessary to incorporate the specifics of an EU framework.

- Any additional resolution framework should apply to all life and general insurers operating in the Irish market including those operating on a Freedom of Establishment and Freedom of Services basis. This will ensure that consumers can benefit from the same scope and form of protection from all insurers.

- We also remain concerned of the potential commercial impact of additional pre-emptive regulation to ameliorate potential and actual failures, and its impact on the quantum and cost of capital required for insurance entities operating in this market. In particular we are concerned about the proposal for an additional capital buffer which is at odds with the idea of harmonisation across Europe and we believe systemic additional capital buffers are not an appropriate resolution tool.

- Further, additional capital requirements could lead to reduced value for money for customers at a point when the industry remains under considerable scrutiny for a perceived lack of delivery of value for money to consumers. This follows circumstances where it has already had to accommodate additional significant regulatory costs, e.g., from the Consumer Insurance Contracts Act most recently.

- These additional capital buffer requirements and other proposed measures in the proposal for a pre-emptive domestic resolution framework could place Ireland at a competitive disadvantage to our UK or European peers. As noted previously, we have not seen any evidence that would justify the Irish market requiring stricter, and more costly, measures than what is being proposed at EU level.

In summary, Aviva believe that any proposed new resolution framework in Ireland should be developed and implemented on a harmonised European basis rather than a national basis. No clear rationale for a pre-emptive national basis has been set out or indeed seems to exist. We contend that a harmonised European framework must only be progressed after further detailed consideration on the wider impact on both insurers and consumers of additional resolution measures different to that required at a European level. Aviva further advocates that any regulatory burden or costs arising from the introduction of a new resolution framework on this basis are kept to a minimum. We also propose that any additional costs incurred by life and general insurers in implementing a new framework should be passed onto customers by way of additional levies. In a situation where a levy was ringfenced to the insurer only without the ability to pass it on to its customers, Ireland will become a deeply unattractive market for new entrants and shareholders of existing providers; additional costs which cannot be absorbed through traditional levy methods (i.e., on premiums) will simply be seen as additional State taxation on insurers.