Insurance Ireland submission to the Public Consultation on the Development of a National Resolution Framework for (re)Insurers

Ireland is a thriving global hub for insurance, reinsurance & captives and Insurtech. Ireland's Insurance market is the fifth largest in the EU, and our Reinsurance market is the second largest. Our members represent around 95% of the companies operating in the Irish market, making Insurance Ireland a strong leadership voice for the sector. Insurance Ireland members provide competitive and sustainable products and services to customers and businesses across the Life and Pensions, General, Health, Reinsurance and Captive sectors in Ireland and across the globe. In Ireland, our members pay more than €13bn in claims annually and safeguard the financial future of customers through €112.3bn of life and pensions savings.

Our members contribute €1.6bn annually to the Irish Exchequer and the sector employs 28,000 people in high skilled careers. The role of Insurance Ireland is to advocate on behalf of our members with policymakers and regulators in Ireland, Europe and Internationally; to promote the value that our members create for individuals, the economy and wider society, and to help customers understand insurance products and services so that they can make informed choices. Insurance Ireland represents over 130 member firms serving 25 million customers in Ireland and globally across 110 countries, including 24 EU Member States, providing protection and peace of mind to individuals, households, and businesses, and providing a firm foundation for the success of Irish economy and wider society.

Overview

A robust solvency framework alongside a proportionate prudential and conduct regime for the regulation and supervision of authorised insurers is the best form of consumer protection, and this is the overarching goal of the European prudential supervisory regime – Solvency II. The Solvency II framework strengthened requirements around capital, governance and risk management in all EU authorised (re)insurance undertakings. Solvency II also increased regulatory reporting and disclosure requirements. These requirements were

put in place to reduce the likelihood of an insurer failing and to provide policyholders with increased protection. Solvency II entered into force in 2016. Since then, the impact of insurance failures in Ireland has substantially decreased. The most recent failures of insurance undertakings operating in Ireland, Danish firms Qudos and Gefion, were not the result of deficiencies in the Irish regulatory and supervisory framework, as these firms passported on a freedom of services basis into Ireland and were prudentially regulated in their home state. Furthermore, in addition to the EU regulatory framework and its application in Ireland, the recently introduced pre-emptive recovery planning creates another layer of preparedness for insurers in the face of future potential financial stresses. This sets out the already strong and robust prudential framework that exists in Ireland.

Having a resilient well-functioning customer focussed and responsible insurance sector that contributes to the financial growth and stability of the wider economy is of utmost importance to the country. Deviation from a common EU-wide system of regulation will harm the ability of Irish insurers to compete and therefore create a disincentive for future investment in Ireland and undermine the value of the trademark which a strong and consistent regulatory framework presents to the market. Disproportionate regulation further weakens an insurers business case for new investment, potentially making Ireland a more expensive and difficult place to do business relative to our European peers, risking disinvestment if the balance is not proportionate and consistent with other EU member states. Insurance Ireland continue to advocate and support the development of a common and consistent recovery and resolution framework at European level and to avoid any member state level fragmentation.

While this public consultation is an important step in the discussions on possible resolution frameworks and preparedness for an expected European regime in the future, there should be no overlap or duplication in any resolution framework. Any national and European framework should not differ materially i.e., any national resolution framework put in place should be aligned with the core principles of resolution being discussed and developed at EU level, thereby ensuring a consistent framework across member states.

The implementation of national solutions before the legislative process at EU level commences, could lead to unnecessary costs for insurers firstly, by having to implement a system that is unlikely to be finalised before changes are required to move to an EU resolution regime, and secondly creating a disincentive for potential new market entrants considering Ireland as a place to do business.

1. Should any resolution objectives and the basis for completing a resolution action under a new domestic framework be aligned with the principles set out in the FSB's Key Attributes of Effective Resolution Regimes as applicable to the insurance sector and EIOPA's recommendations contained within its Opinion on the Review of Solvency II?

Insurance Ireland would agree that any objectives or basis for completing a resolution action under any new domestic framework should be aligned with the key attributes outlined by the Financial Stability Board (FSB). Further consideration should be given to EIOPA recommendations within its Opinion on the Review of Solvency II that a minimum harmonised recovery and resolution framework for (re)insurance undertakings should be established. Nonetheless, it needs to be noted that the overarching objective should be a framework which is as close as possible to the transposition of the final EU-regulatory framework. The legislative process at EU level has just begun and it will be essential that the Irish government forms a strong negotiation position, particularly if a domestic regime pushes ahead of the EU-wide initiative. We believe that this consultation can play an important role in developing this position. The establishment of a common set of resolution powers and procedures through EU legislation would help to harmonise national legislation and facilitate the resolution of an insurer active in several EU member states in an orderly manner.

Harmonised resolution principles applied in a proportionate way will contribute to continuing policyholder protection as well as maintaining financial stability within the EU. The overarching goal for undertaking any resolution action under a new framework should be;

- To protect policyholders, beneficiaries, and claimants under the terms of an insurance contract. The primary objective of a resolution action should be to protect policyholders, not to recapitalise an insurance undertaking which is the primary function of recovery planning/plans.
- To maintain financial stability and prevent any systemic risk to the provision of financial services.
- To ensure the continuity of insurance undertakings in the provision of their services, where disruption could harm the financial stability and/or real economy and lead to consumer detriment.
- To protect public funds.

To facilitate the coordinated resolution of firms active across multiple EU countries, the minimum harmonisation convergence of resolution regimes through legislative changes needs to incorporate the powers and levers set out in the key attributes into any national regime.

2. (a) Should the proportionality principle be applied with regard to defining the insurers that are in-scope for resolution planning?

The application of the principle of proportionality must be applied. At EU level, the Treaty on the Functioning of the European Union prescribes in Article 5(4) "Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties." It is essential that all measures are tailored and applied in a manner which is appropriate to achieve the objectives and do not go beyond the proportionality principle.

It should be noted that the definition of the scope of application of measures are not a proportionate application in itself. The measures should only be applied to insurers where the non-application will determine that the regulatory objectives cannot be achieved. A fundamental definition of a market coverage of X%, contradicts the proportionality principle as defined at EU level if no further evidence is provided. It is important that any framework put in place is cognisant of the nature, scale and complexity of an insurer's business and is capable of being proportionate in its application.

Thirdly, it is important that in the EU single market, the common EU supervisory approach should be safeguarded. In this respect, it will be important that any future Irish regime recognises the existence of respective measures at group level. Where a resolution plan exists at group level, the Central Bank of Ireland in its capacity as lead supervisor or member of the supervisory college, shall ensure that the college requests a resolution plan which is sufficient for the purposes of any future Irish regulation. Group plans should be considered as equally eligible to fulfil the Irish requirements and no additional regulatory measure should apply. In particular it would be disproportionate for Irish branches of Insurance undertakings to be required to produce and maintain resolution plans as this could create conflicts in the prudential regulation and accompanying national supervisory guidance and requirements issued by the Home and Host competent authorities on the Group or Branch entity – please also refer to our response to 5(c) below which further details our concerns on this matter.

Insurance Ireland would have concerns if Reinsurers were determined to be in-scope. Reinsurance is a business-to-business activity, with limited policyholder protection implications, and there is no empirical evidence or history of reinsurers contributing to

systemic risk or financial instability. Similarly with Captive insurer/managers, we believe it would not be proportionate to include them within the scope of any national resolution planning framework. Captives operate as an effective risk management tool to manage the total cost of risk by providing insurance or reinsurance cover for risks of the entity or parent company to which it belongs. The nature of a captive's operations differs from retail insurers who underwrite a balanced portfolio of diversified risks across different products and lines of business covering a multitude of policyholders in the market. Captives generally underwrite a limited number of lines of business for risks which are linked to the industrial/financial group to which they belong, with stability with regard to the type of risks underwritten over time with no imperative to pursue market share or take strategic or competitive decisions.

(b) Should the Central Bank's PRISM impact ratings be used as a guide when considering the scope of application?

The nature of any national resolution framework should be based on insurers whose failure could have a systemic impact on the wider functioning of the economy, and where considerable consumer detriment could be envisaged. Under the CBI's PRISM impact ratings, the most significant firms, those with the capacity to have the greatest impact on financial stability and consumers, receive a greater level of prudential supervision with respect to recovery planning and early intervention to mitigate any potential risks. Using the CBI's risk based supervisory model could offer a starting point in considering the scope to apply. Other firms could remain out of scope for much of the day-to-day requirements of any future national resolution framework.

Again, it needs to be ensured that any domestic measure is consistent with the future European framework, and that it applies proportionality in a consistent manner, and it considers group resolution plans to which an Irish entity is subject as equivalently compliant.

(c) Should third country branches be considered within the scope of application of relevant provisions of any envisaged domestic framework?

Any approach to the scope of any national resolution framework should be focused on the single market and systemic risks. The starting point of the approach should not be at national market and single entity level, but at an EU-wide and group focus level. Single entities should only be subject to the new resolution framework provisions where they are not essential for the overall exposure of their group entity.

There needs to be alignment between domestic framework with the Insurance Recovery and Resolution Directive (IRRD). For example, depending on an insurer's structure, the preparation of a resolution plan will differ considerably depending on the number of third

country branches it operates, which in turn could increase the regulatory burden and cost within its branches. The other local competitors, where these branches are located, will not have to incur these costs or the increased regulatory burden of preparing a resolution plan and therefore could be at potential competitive advantage.

3.(a) Should a public interest assessment (PIA) be used to ensure that the deployment of resolution tools would be on an exceptional basis, i.e., for the few rather than the many?

Insurance Ireland agree that a public interest assessment should be used to ensure that any deployment of resolution tools is only performed on an exceptional basis for the orderly resolution of a failing or failed insurer, and that there is a clear and fundamental public interest in doing so.

Clear and tangible criteria would have to be determined such as the critical need to safeguard policyholders potentially affected, public funds, and critical insurance services are protected, and that financial stability is maintained in the wider financial services ecosystem.

(b) Are there sectoral specific considerations that should be taken into account when determining the public interest rule for deploying resolution tools?

We are not aware of any at this time.

4. (a) Would a resolution toolkit be of benefit to the resolution authority in seeking to protect policyholders in situations where liquidation or administration may not offer the same level of protection?

Insurance Ireland considers the Dutch resolution mechanism as a very good benchmark for a resolution toolkit as it provides a practicable and balanced approach. The guiding principle of their resolution mechanism is that no creditor is worse off with the resolution than with an ordinary liquidation procedure. In contrast to an Insurance Guarantee Scheme or the Bank resolution schemes, the Dutch system is focused on the continuity of policies. In order to ensure this continuity, the Dutch National Bank (DNB) has four major tools: a bail-in tool, the sale of business, installation of bridge institutions, and asset separation (the latest only when applying one of the other tools). Resolution regimes providing for efficient measures for a portfolio transfer, like the recently established Dutch regime, are particularly focussing on covering the administrative and operational costs of this transfer.

There is a need to ensure than any regulatory burden or costs arising from the introduction of a resolution toolkit are kept to a minimum. Insurer failures or potential failures do not necessarily pose the same inherent risk, and financial arrangements of such would need to

be further explored. Notwithstanding Insurance Ireland's position, a consistent and common framework at EU level will be essential.

4. (b) Are the resolution tools proposed in this consultation document appropriate to the Irish insurance sector, or are there other options that should also be considered?

We consider the resolution tools proposed in the consultation document as the most practical options available to effectively manage the orderly resolution of a failing insurer. It should be noted that the resolution tools proposed in the consultation document do not include "solvent run-off" which is one of the tools considered in European Commission proposals i.e., withdrawal of authority from the insurance undertaking to write new business, and to run-off all existing contracts.

Notwithstanding Insurance Ireland's position, a consistent and common framework at EU level will be essential.

(c) Would the use of a write-down and conversion tool in limited circumstances be a means to facilitate burden-sharing, with the cost of failure borne by the insurer's investors in the first instance rather than by policyholders, the broader industry, or by the public/taxpayer?

Insurance Ireland suggest more analysis be undertaken regarding the use of any write-down or conversion tools.

5. (a) Should a resolution plan be prepared on a before the event basis for insurers where there may be a public interest in using resolution tools in the event of failure?

Insurance Ireland believe any resolution plan for in-scope insurers could be developed on a before the event basis where there is a clear public interest in using resolution tools in the event of an insurer failure, however any funding on an ex-ante basis could contribute to an effect where Irish insurance undertakings are at a competitive disadvantage compared to similar undertakings authorised in another EEA member state. Placing an additional regulatory burden on Irish firms will have an impact on their cost base and competitiveness, costs which may ultimately be passed on to policyholders, while reduced competitiveness could have unwelcome implications for Ireland's future attractiveness as a location in which to establish and operate a (re)insurance undertaking. It could also cause groups with existing operations in Ireland to consider investing in other EEA carriers within their group rather than maintaining their investment or investing further in Ireland, as this would entail less additional measures or divergence from group solutions while still maintaining the integrity of the financial system and protection for consumers.

Again, it needs to be ensured that any domestic measures are consistent with the future European framework and that they consider group resolution plans to which an Irish entity is subject as equivalently compliant. Notwithstanding Insurance Ireland's position, a consistent and common framework at EU level will be essential.

Reference in the consultation paper is made to a single "Preferred Resolution Strategy", indicating that one unique resolution strategy is to be defined, nevertheless, multiple resolution strategies can co-exist and be feasible and practical.

(b) Do you agree that this plan be developed by the resolution authority? Or do you see a role for the insurers in developing such plans?

Resolution authorities should develop the plan in conjunction with the supervisory authority and with insurer participation to it. This will avoid unnecessary duplication and conflicts between the resolution and supervisory authority and will allow the insurer to provide key input to the preferred resolution strategy, while also providing practical expertise of any issues insurers may face. The resolution authority would typically be involved in the resolution planning by working with the failing or failed insurer to implement any resolution plan or by taking action and resolving the situation as part over its overarching role and function. Insurers employ subject matter experts across Risk, Finance, Actuarial, Operations and Legal functions who can play a significant role in developing robust resolution plans. In the development of such plans, it would be important that they are aligned with IRRD (Article 10.1) or with IAIS Common Framework.

(c) Where an Irish authorised insurer is a subsidiary of an international regulated entity, should the resolution authority liaise with the resolution/competent authority of the parent entity for resolution planning purposes?

It is important that the system of group supervision is safeguarded. In this respect, it will be essential that any future Irish regime recognises the existence of respective measures at group level. Group plans, where available, should be considered as equally eligible to fulfil the Irish requirements and no additional regulatory measure should apply. Any derogation from this principle would place a disproportionate burden on the branch and the group and could result in conflicting rules regarding the prudential regulation and accompanying supervisory guidance and requirements issued by the Home and Host competent authorities being placed on the Branch vs Group entity. Please also refer to our response outlined in 2(a) above. Transmission of group resolution plans, where available, should be arranged with the respective group resolution and group supervisory authorities.

6. (a) Should insurers, which may require resolution tools in the event of failure, hold an additional buffer of capital or eligible debt to enhance loss absorbing capacity and minimise the risk of costs being borne by policyholders or the public?

Any additional capital buffer above the Solvency Capital Requirement of Solvency II contradicts the common EU regulatory regime and its risk-based nature. Where a firm is exposed disproportionately to additional risk, Solvency II allows national competent authorities to apply a capital buffer under certain pre-defined provisions.

(b) What is the anticipated impact of the holding of additional capital buffers on the Irish market in terms of costs and supply?

As stated earlier in our submission, the requirement to hold an additional capital buffer on an ex-ante basis could contribute to a position where Irish insurance undertakings are at a competitive disadvantage compared to similar undertakings authorised in another EU member state. Placing additional regulatory burdens on Irish firms will have an impact on their costs base and competitiveness, costs which may ultimately be passed on to policyholders, while reduced competitiveness could have unwelcome implications for Ireland's future attractiveness as a location in which to establish and operate an (re)insurance undertaking. It could also cause groups with existing operations in Ireland to consider investing in other EEA carriers within their group, where such additional capital buffers are not envisaged, rather than maintaining their investment or investing further in Ireland.

It has to be noted that the excessive regulatory burden which Solvency II already puts on EU insurers, substantially limits the availability of EU insurers to provide additional risk cover and their ability to invest.

7. (a)In order to offer greater protection to policyholders, is there merit in amending the existing insolvency legislative processes? And if so, what would be the key issues of concern to stakeholders?

There is merit in exploring the existing legislative process and identifying any issues of concern to relevant stakeholders. Further analysis and policy options could then be considered.

(b) Are there other enhancements that should be considered to strengthen the administration and winding-up processes

We are unaware of any further enhancements at this time.

8. (a) In the event of resolution actions requiring additional financing, should the ICF be utilised, or a separate resolution financing facility established?

Insurance Ireland strongly suggest that the mechanisms of IGS and Resolution be kept separate. Following the above mentioned Dutch example, resolution funding is focussed on covering administrative and operational costs. The funding of such operations should be funded on an ex-post basis. While we agree that the powers of a resolution authority must be established in Ireland, we strongly disagree that it requires a funding facility.

The ICF should remain restricted to Irish policyholders. The ICF is primarily designed to facilitate payments to policyholders in relation to risks in the State where an Irish authorised non-life insurer or a non-life insurer authorised in another EU/EEA member state which is providing insurance for risks located within the State, goes into liquidation or administration.

If the ICF guarantees are extended, this will impair the level playing field for all Irish authorised Insurers with overseas business, who would be facing an additional cost.

(b) Should such a fund be built up using contributions collected on a before the event or after the event basis?

Any ex-ante funding mechanism will harm the competition in the Irish market, and the competitiveness of the Irish market, and ultimately drive consumer costs. The funding of such a facility should be funded on an ex-post basis.

(c) Should arrangements be put in place to ensure any levy contributions are not directly imposed on the policyholders

The question of whether a levy is directly applied to an insurance policy related figure (e.g., Gross Written Premium) or applied to the insurer as an indirect tax is of an academic nature, and a government policy decision to be made. The question would need to be asked as to what determining factors which are risk appropriate, could be defined as a basis for introducing such a levy.

Generally, policyholders' premiums are a function of an Insurer's claims costs, operational costs and expenses, and attributable levies such as;

- 3% levy on gross premiums on non-life policies.
- 2% on gross premiums on non-life policies to the Insurance Compensation Fund.
- 1% on gross premiums on certain classes of life insurance policies.
- The Motor Insurers Insolvency Compensation Fund (MIICF).

Conclusion

Post the publication of this public consultation, the European Commission adopted a proposal for an Insurance Recovery and Resolution Directive. The new EU Insurance Recovery and Resolution directive (IRRD) will create a harmonised resolution framework, which will begin to apply no later than 18 months after the IRRD becomes law, ensuring that competent authorities have a harmonised, credible set of resolution tools allowing them to intervene early and quickly if insurance companies are failing or likely to fail. The proposals are modelled on the EU Bank Recovery and Resolution Directive (BRRD), however, there are many differences between IRRD and BRRD, reflecting the different nature of risks presented by the insurance sector.

The proposed Directive will allow authorities to;

- Protect policyholders, beneficiaries, and claimants.
- Maintain financial stability.
- Ensure the continuity of the insurer's critical functions.
- Protect public funds by minimising reliance on public finance support.
- Comprehensive and effective arrangements to prepare for and deal with (near) failures of insurers at member state level, and co-operation arrangements to tackle cross-border insurance failures.

These priorities align with the overriding ambition of any domestic resolution framework. The IRRD proposals should be the focus of the work of all stakeholders over the short to medium term and there should be no duplication of efforts, given there are already extensive safeguards already in place to protect policyholders. The Commission's proposals should strive to achieve a framework that is aligned to internationally agreed standards, which does not overburden Insurers with unnecessary or costly requirements, with such costs ultimately borne by policyholders.

Ends.