

Insurance & Reinsurance

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Domestically, the CBI issues Dear CEO Letter on consumer protection in insurance firms. At European level, EOIPA publishes technical information for Solvency II and provides initial information to policyholders affected by FWU AG's insolvency.

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Domestic

CBI issues Dear CEO Letter on consumer protection in insurance firms

On 29 August 2024, the Central Bank of Ireland (the **CBI**) issued a Dear CEO letter to the insurance industry, detailing its findings following a recent targeted Consumer Protection Risk Assessment (**CPRA**) of insurance firms' consumer protection risk management frameworks.

The aim of this assessment was to evaluate the overall appropriateness of insurer's existing consumer protection risk management frameworks, paying particular attention to how insurers identify, manage and mitigate risks to consumers.

The letter sets out certain follow-up actions which insurance firms are required to comply with in the coming months. Specifically, insurers must:

1. Complete a gap analysis of their consumer protection governance and control framework with a view to maturing and improving their plans. Firms are required to present these plans to their boards by **30 November 2024** and implement any changes by **30 June 2025**.
2. Confirm to the CBI by **30 September 2024**, which PCF role holder (by reference to the allocated responsibilities in the firms' management responsibility map) will be accountable for the delivery of the expectations set out in this letter.

CBL Insurance Europe DAC: High Court gives directions on the treatment of insurance contracts and claims in liquidation

The High Court delivered a judgement in the matter of CBL Insurance Europe Designated Activity Company (**CBL**) on 31 July 2024. The judgement addressed various issues surrounding the treatment of insurance contracts in a winding-up, the admissibility of claims made after a winding-up order, and the priority given by insurance legislation to policyholder claims for a return of premium.

CBL, a non-life insurance undertaking authorised in Ireland by the CBI and regulated under the Solvency II Regulations, received direction from the CBI to cease writing new insurance contracts and renewing existing contracts, on 9 December 2019. This was due to concerns about CBL's solvency. On 12 March 2020, CBL was ordered to wind up by the High Court, two joint liquidators were appointed to oversee this and CBL's authorisation was withdrawn, in alignment with the Solvency II Regulations.

The joint liquidators put questions concerning the treatment of insurance claims, in light of the liquidation of CBL, to the High Court, pursuant to section 631 of the Companies Act 2014 (**the Companies Act**). In response to the questions, the court found that:

- The point at which CBL's insurance contracts terminated was when the court ordered that CBL be wound up on 12 March 2024 and the cause of termination was CBL's repudiatory breach of contract, rather than frustration resulting from the CBI withdrawing CBL's authorisation to carry on insurance business.
- CBL incurred a contingent liability to pay the insured when it entered into an insurance contract, thus obligations were incurred to policyholders when CBL entered into a contract of insurance. Therefore, claims made under a policy of insurance should be admitted to proof in the winding up and in these circumstances joint liquidators should make a "just estimate" of those claims as stipulated in the Companies Act.
- A claim for return of unearned premiums is an "Insurance claim" within the meaning of the Solvency II Regulations where the insurance contract concerned was terminated by virtue of the opening of winding up proceedings.

The judgement helps to provide clarity in relation to the impact on policyholders in cases where a liquidator is appointed to an insolvent insurer.

European

Solvency II: EIOPA consults on new proportionality regime

The European Insurance and Occupational Pensions Authority (**EIOPA**) launched a public consultation on the future implementation of the new proportionality framework under Solvency II on 2 August 2024. The consultation focuses on:

1. the method for classifying insurers as 'small and non-complex'
2. the conditions for granting proportionality measures to insurers that do not fall into the 'small and non-complex category'

While EIOPA believes the methodology for classifying undertakings as small and non-complex is clear, it recognises that there may be practical difficulties for undertakings. On the conditions for proportionality measures, EIOPA suggests a hybrid approach based on both quantitative and qualitative elements.

Feedback on the consultation is welcomed until 25 October 2024.

IAIS draft application paper on operational resilience objectives (and toolkit)

The International Association of Insurance Supervisors (**IAIS**) has recently developed operational resilience objectives (the **objectives**) for the insurance sector. The objectives are outcomes-based and do not set out new requirements but rather provide clarity on the application of existing supervisory materials. The aim of these objectives is to provide a consistent foundation to support supervisory authorities in improving their approaches to supervising insurers' operational resilience.

The objectives represent the first phase of a two-part consultation. The second phase is a draft toolkit which will set out relevant supervisory practices. Feedback on the application paper can be given until Friday 11 October 2024.

EIOPA assesses progress on the collaboration of insurance supervisory authorities

A follow-up report to EIOPA's 2020 peer review on their decision regarding the collaboration of insurance supervisory authorities (the **decision**) was published on 14 August 2024 (the **report**). The report outlines the extent to which recommended actions issued to national supervisory authorities (**NSAs**) have been implemented. It also details how best practices have been taken into consideration by NSAs.

The reference period for this follow-up exercise is July 2019 - June 2023 and it was conducted using a self-assessment mechanism with customised questionnaires issued to the relevant NSAs. In total, 50 recommended actions were addressed to 24 NSAs (out of 30 NSAs participating in the peer review). Recommended actions were issued in respect of the following areas: effective application of the decision, authorisation, notification, data storage and supervision on a continuous basis. The report notes that, of the 50 recommended actions, 33 (66%) were fulfilled in full, five (10%) were fulfilled in part, and 12 (24%) were not yet fulfilled.

EIOPA provides initial information to policyholders affected by FWU AG's insolvency

On 19 August 2024, EIOPA published a news article addressing questions that policy holders may have following the insolvency of German holding company, FWU AG, and restrictions on the licence of its Luxembourgish subsidiary FWU Life Insurance Lux S.A.

On 19 July 2024, FWU AG filed for insolvency, and its subsidiary, FWU Luxembourg disclosed to the Luxembourgish regulator that it was unable to comply with its regulatory capital requirements. The disclosure led to FWU Luxembourg's assets being frozen and its outgoing payments being suspended. The Court of Luxembourg accepted FWU Luxembourg's file for a suspension of payments on 2 August 2024 and appointed an administrator to oversee the company's management of its assets and liabilities.

Discussing the options available to consumers in light of this case, EIOPA state that factors including the financial situation of the undertaking under review, terms and conditions of their insurance contract, the provisions of contract and insolvency laws, and relevant national laws, are all relevant factors that policyholders should consider. EIOPA advise that policyholders "carefully read the terms and conditions of their contracts" and "seek professional advice".

EIOPA publishes technical information for Solvency II

EIOPA published its monthly technical information on 5 August 2024 in relation to the relevant risk-free interest rate term structures with reference to the end of July 2024, for Solvency II purposes. This information is used for the calculation of technical provisions for (re)insurance obligations. EIOPA also

published technical information on the symmetric adjustment of the equity capital charge for Solvency II with reference to the end of July 2024.

EIOPA consults on the capital treatment of insurers' direct exposure to central clearing counterparties in the standard formula

EIOPA has launched a consultation on the standard formula capital requirements for exposures to qualifying central counterparties (**CCPs**) when (re)insurance undertakings become direct clearing members. While traditionally not the case, changes to CCPs access models means that (re)insurers may now become direct members of CCPs, with a sponsor handling default fund contributions and default management obligations on their behalf. (Re)insurers with direct exposure to CCPs will be required to maintain greater capital than those with indirect exposure. To cater for this development, EIOPA proposes three options:

- implement no changes to the current solvency II regime (which treats direct exposures as bilateral exposures)
- extend the treatment of indirect exposures to direct exposures
- align the treatment of default fund contributions with the [Capital Requirements Regulation](#).

The consultation remains open until 23 October 2024.

For more information on these topics please contact any member of A&L Goodbody's [Insurance & Reinsurance](#) team.

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