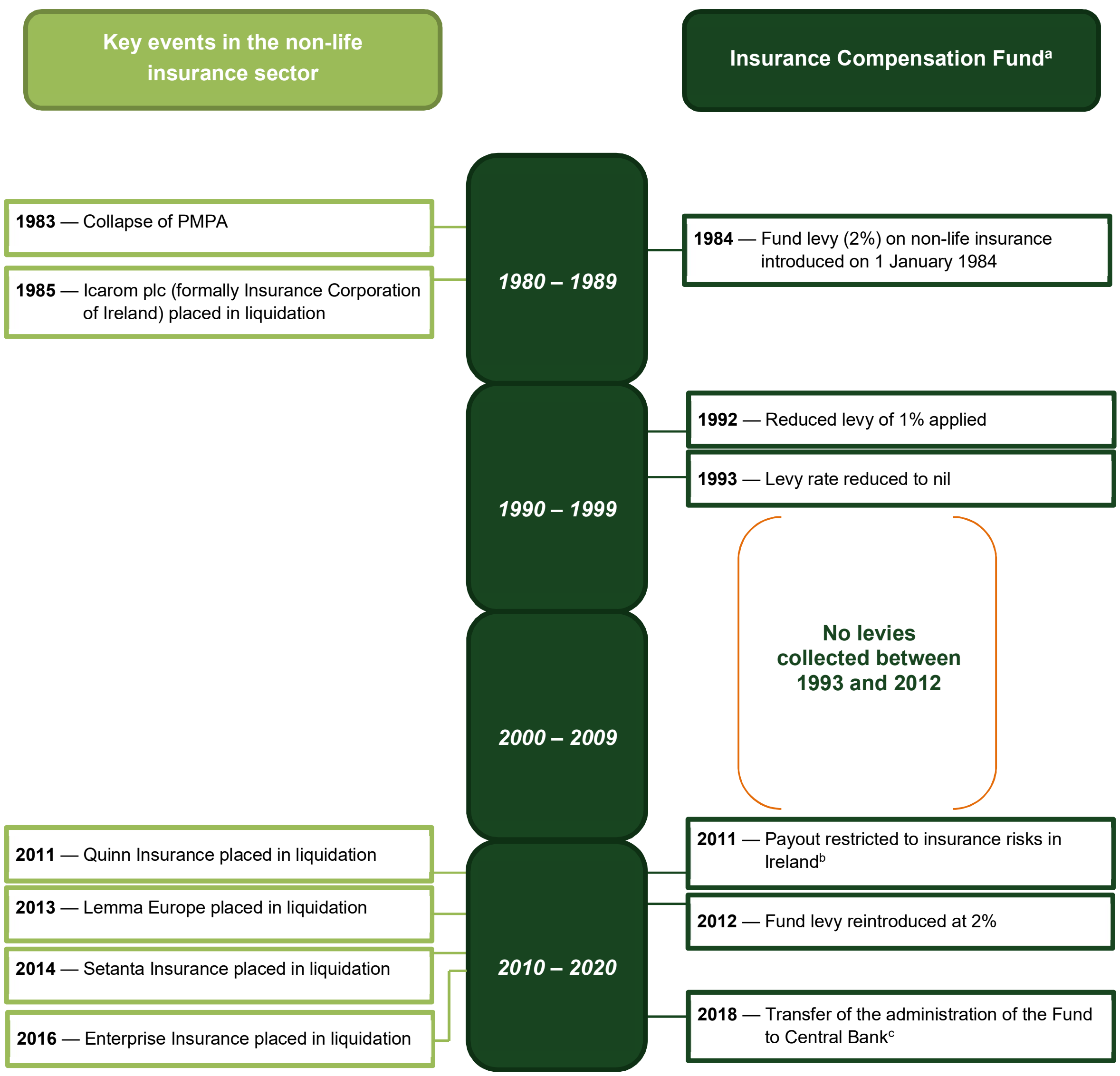
14 Assessment and collection of Insurance Compensation Fund levies

14.1 The Insurance Compensation Fund was established under the Insurance Act 1964 (the Act). It is designed, as and when required, to facilitate payments to insurance policyholders in relation to risks in the State where, for example, an Irish authorised non-life insurer, or a non-life insurer authorised in another EU member state, goes into liquidation. The development of the fund since 1980 is set out in Figure 14.1.

Figure 14.1 Development of Insurance Compensation Fund, 1980 to 2020



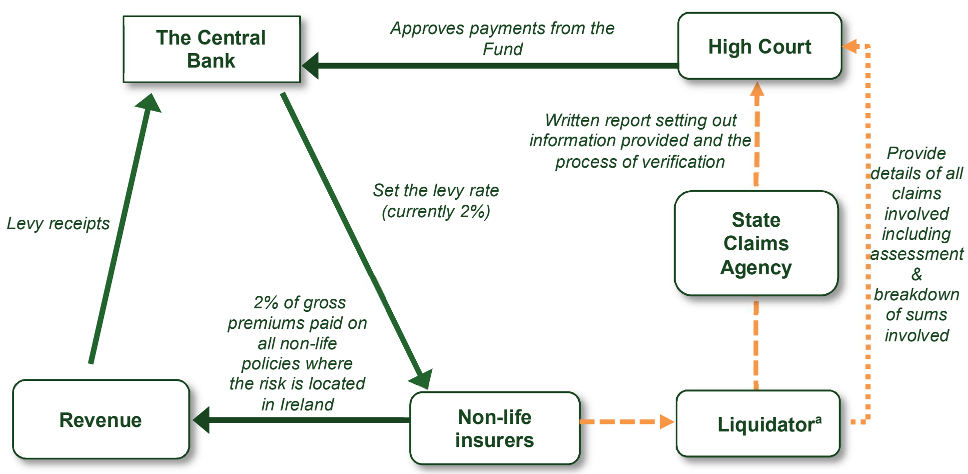
Source: The Office of the Comptroller and Auditor General

Notes:
a Established under the Insurance Act 1964.
b The Insurance (Amendment) Act 2011 restricted the risks covered by the fund to risks insured in the State only.
c The Insurance (Amendment) Act 2018 provided for the transfer of functions from the Accountant of the High Court to the Central Bank of Ireland.

14.2 Since 2018, the fund has been maintained and administered by the Central Bank of Ireland and is financed by a levy collected by the Office of the Revenue Commissioners (Revenue). The current levy rate of 2% is imposed on premiums paid by policyholders to insurers. In 2020, just over €100 million of levy receipts was paid over from Revenue to the Central Bank.

14.3 Payments from the fund to settle claims are approved by the High Court and capped at 65% of the claim or €825,000, whichever is the lesser.[1] The Minister for Finance (the Minister) may make advances from the Exchequer if the fund is unable for the time being to meet a payment(s) approved by the High Court. An overview of the fund operations is set out in Figure 14.2.

Figure 14.2 Insurance Compensation Fund process overview



Source: The Central Bank of Ireland. Analysis by the Office of the Comptroller and Auditor General.

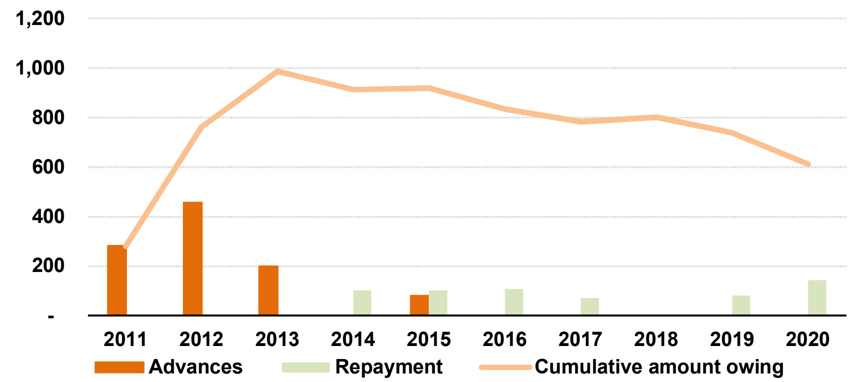
Note: a In the event of a liquidation of an insurance company, the liquidator will make an application to the High Court for approval of payments (Irish insurance entity). The State Claims Agency makes applications to the High Court on behalf of liquidators in other EU member states in cases involving non-Irish regulated entities.

Financing the fund

14.4 In 2011, Quinn Insurance went into liquidation. At the time, the balance in the fund was €31 million which was significantly less than was forecast to be required to meet the Quinn Insurance claims. As a result, the Minister for Finance advanced Exchequer loans totalling €933 million to the fund between 2011 and 2013. A further €79 million was advanced in 2015. There have been net repayments to the Exchequer totalling €599 million. At 31 December 2020, the balance owed to the Minister was just over €610 million, including interest (see Figure 14.3).

1 Under the Insurance (Amendment) Act 2018, the level of compensation from the Fund is increased to 100% for third party motor insurance claims, with the additional coverage financed by the Motor Insurers Insolvency Compensation Fund.

Figure 14.3 Advances by the Minister to the fund and repayments 2011 – 2020[a]



Source: Report on administration and movement of the Insurance Compensation Fund 2011 – 2020, Courts Service and Central Bank of Ireland. Analysis by the Office of the Comptroller and Auditor General.

Note: a The Central Bank undertakes a bi-annual assessment of the fund taking into account the cash position and future commitments of the fund as notified by the State Claims Agency. If there is a surplus, an amount is paid over to the Department of Finance to repay monies advanced by the Minister.

14.5 In the period 2012 to 2020, Revenue transferred €696.3 million to the fund in respect of the fund levies. This facilitated the ongoing repayment of the Exchequer loans.

14.6 Insurance Compensation Fund levy receipts totalling €33 million relating to the period 2016 – 2018 were initially misclassified in Revenue as stamp duty receipts.[1] The control mechanisms in place over the assessment and collection of the fund levy had not detected this shortfall in the receipts collected. This resulted in a delay in those receipts being transferred to the fund.

14.7 This examination sought to identify if the controls over the assessment and collection of the fund levies are effective and if the financial reporting in respect of the fund is adequate.

1 Account of the receipt of revenue of the State collected by the Revenue Commissioners in the year ended 31 December 2019.

Responsibility for assessment and collection

14.8 The respective responsibilities of Revenue and of the Central Bank under the Act in relation to the assessment and collection of levies are set out in Figure 14.4.

Figure 14.4 Responsibilities pertaining to the assessment and collection of the levy

The Central Bank	Revenue
▪ Determine an appropriate levy to be paid to the Fund by non-life insurers. ▪ Publish a notice specifying the levy to be paid to the Fund and issue notices of liability to individual non-life insurance companies. ▪ Enforcement role in relation to non-life insurers who fail to pay the appropriate levy.	▪ Collect the appropriate levy and transmit the monies promptly to the Central Bank. ▪ Inform the Central Bank of the name of the insurer and the amount collected. ▪ Inform the Central Bank of the name and address of insurers if it appears a levy is not paid.

Source: Insurance Act 1964 (as amended). Analysis by the Office of the Comptroller and Auditor General.

Assessment of levies paid

14.9 The Central Bank maintains a notice on its website detailing the obligation on each insurer to pay the 2% levy set.[1]

Revenue

14.10 Under the legislation, Revenue as collector of the levy is required to inform the Central Bank of the name and address of any insurer it considers has not paid an appropriate contribution.

14.11 In undertaking this exercise, Revenue uses a spreadsheet to record the amount remitted by insurers each quarter in respect of the standard Government stamp duty of 3% and the Insurance Compensation Fund levy of 2%.[2] Revenue compares the amount received under the Government stamp duty against the amount received for the Insurance Compensation Fund in each quarter. Since the base for both levies is the same, (with the exception of captive insurers who are not liable to pay the levy under the Act), the ratio between the stamp duty receipts and fund levy receipts should be constant.[3,4] Any difference between the two amounts is notified to the Central Bank.

14.12 The following are the main findings in relation to the fund levy assessment and notification.

- Payments are received from circa 280 non-life insurers, four times each year. In that context, the number of anomalies notified to the Central Bank for investigation is relatively small at under 50 per year.
- There were delays in Revenue completing the reconciliation and notifying the Central Bank (see Figure 14.5). For example, anomalies in relation to the first quarter of 2018 were only notified to the Central Bank in March 2019.
- In some of the anomalies notified, the insurers were captive insurers and are not liable to pay into the Fund under the legislation.

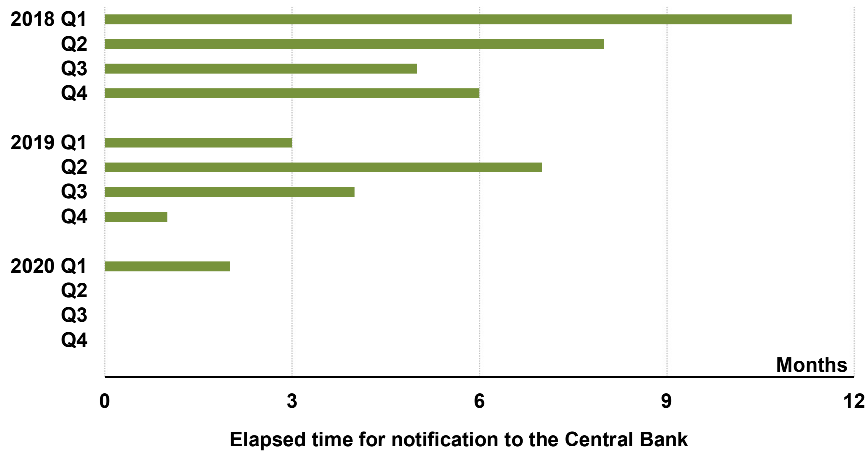
1 The Central Bank does not issue notices to individual non-life insurance companies notifying them of the requirement to pay the levy. The Central Bank stated that when another EU regulator notifies it that an insurance firm intends to sell insurance in Ireland under freedom of service or freedom of establishment, the letter of reply to the regulator from the Central Bank states that details in relation to the Insurance Compensation Fund are available on the website.

2 Under section 125 of the Stamp Duties Consolidation Act 1999, Government stamp duty of 3% is payable on non-life insurance premiums.

3 A captive insurer is an insurance company set up and wholly owned by a non-insurance company to insure its own specific risks only. It does not sell insurance to the public. Under the Act, captive insurers are excluded from payment of the levy.

4 Revenue has stated that the process of comparing the stamp duty and levy receipts has been updated. Since August 2020, it now checks the 2% levy against the assessable amount as declared by insurers on tax returns.

Figure 14.5 Delay in notification to the Central Bank of anomalies in Revenue receipts for investigation[a]



Source: Revenue Commissioners. Analysis by the Office of the Comptroller and Auditor General.

Note: a There were no discrepancies notified by Revenue to the Central Bank during Q2 to Q4 2020 as they did not arise.

14.13 Revenue also undertake a review of Central Bank registers. In 2017, using the registers, Revenue identified 456 insurers across Europe who had advised of their intention or obtained an administrative authorisation to carry on non-life insurance business in Ireland and who were not paying levy amounts. Revenue directly notified the companies of their stamp duty and insurance compensation fund obligations, if selling insurance in Ireland. There was a response rate of 30% from the companies, including seven disclosures with a combined yield of €203,000 in levy receipts. Nearly one quarter of letters (24%) were returned to Revenue as the insurers' office was no longer in existence or was no longer at that address. There was no follow up on these cases. Revenue stated that due to Covid-19 restrictions, a planned review of Central Bank registers for 2021 has been postponed until staff from insurance undertakings return to the office.

14.14 In 2017, Revenue also undertook a project to test compliance with the levies on non-life policies. Revenue completed 41 compliance interventions which yielded €823,000. Of this, nearly €160,000 relating to three entities can be attributed to the Fund. Revenue has stated that while it has not repeated this compliance activity since 2017, it is something that will be looked at on a cyclical basis and may be considered for inclusion in the Divisional Business Plan for 2022.

Central Bank

14.15 Revenue provide the Central Bank with the detail of the insurers it considers may not have paid the correct levy. The examination found that the follow up process by the Central Bank was limited.

- The Central Bank issues a letter to the insurance company drawing attention to an anomaly requesting that the company contact Revenue directly to clarify the matter. The Central Bank does not as standard follow up with either Revenue or the company but noted that it would follow up with the company if requested to do so by Revenue.
- Central Bank letters in relation to discrepancies identified for Q4 2019 and Q1 2020 issued in June 2021, 17 months after notification by Revenue.[1] The total value of the discrepancies noted was just under €53,000. The Central Bank stated in that regard, that in line with government guidance on Covid-19 restrictions, staff were working from home and only attended the office for essential reasons.

14.16 In its role of oversight of the fund, the Central Bank conducts a review of the completeness of levies paid by insurers to Revenue. The Central Bank categorises the review as a reasonableness review intended only to ensure the companies with a large liability to the fund are paying their share. While the Central Bank has statutory power in relation to recovering debt from liable parties that have not paid and a statutory role to keep proper and usual accounts, it notes that the reasonableness review conducted is a non-statutory role.

14.17 The review involves the Central Bank comparing the value of levies paid over to the fund from Revenue with details of the value of insurance premium written by the companies. The Central Bank receives the latter information directly from

- domestic insurers via its online reporting system in April (for the prior year) and
- the European Insurance and Occupations Pensions Authority (EIOPA) for branches operating in Ireland under freedom of establishment and firms selling into Ireland under freedom of service basis in September (for the prior year).[2]

14.18 The operation of the Central Bank checks was reviewed as part of this examination and the following was noted.

- The information received directly from domestic insurers and from EIOPA relates to the value of premiums written whereas the levy is payable on insurance premiums paid. Due mainly to the timing of payments, the value of premiums written can differ from the value of premiums paid.[3]
- The Central Bank has stated that the information provided by domestic insurers and EIOPA is treated as an estimate only and used as a starting point for the review only as some insurers may incorrectly complete the regulatory returns and/or may not allocate premium correctly based on where risk is located in the EU.
- For receipts in 2018, the review relative to all data was finalised in August 2020, over 19 months after the financial reporting year-end. However, the Central Bank noted that it is not possible to commence this review until October as the information from EIOPA is only available nine months after the year-end. It is the Central Bank's view that the process is not time critical as there is no time limit on enforcing the 2% levy charge.

1 There were no discrepancies notified by Revenue to the Central Bank during Q2 to Q4 2020 as they did not arise.

2 Under the Solvency II directive, there are reporting requirements at EU level which all insurance entities must comply with. All entities are required to report detailed data on insurance premiums written under each type of insurance at an individual member state level on an annual basis to the regulator in their country. This data is provided to EIOPA by each of the member state regulators. EIOPA collate this information and provide it to each regulator including the Central Bank in September of each year.

3 Gross written premium is the total value of an insurance policy written. Gross premium paid is the value of premiums paid by the consumer to the insurer in the period. This may be paid in instalments over a 12-month period or over two calendar years, depending on when the contract was written.

- For the 2018 receipts verification process, all Irish authorised non-life insurers and all EU regulated non-life insurers with a branch in Ireland were investigated for payment discrepancies by the Central Bank. These accounted for €76.8 million, or 83% of total levies received in 2018. A sample of 17 non-life insurers writing business into Ireland on a 'freedom of service' basis was investigated representing 7% of insurers in this category. There was no additional recovery of monies on completion of this exercise.
- The examination selected a sample of 13 cases where differences occurred between the amount of levy received and anticipated levy payable based on EIOPA returns to review the follow up action undertaken by the Central Bank. The Central Bank use a risk-based framework to rank each firm based on the impact it has on financial stability and the consumer in Ireland. If the Central Bank judges the risks they pose to the economy and the consumer to be of a high impact, a discrepancy of up to 2% is allowed between actual amount received and expected value. It allows a discrepancy of up to 10% in the case of firms regulated in other EU states and operating in Ireland under freedom of establishment or service. In 12 of the 13 cases, possible discrepancies had been followed up and differences arose due to the data from EIOPA not being ideal for use as a reasonableness check against the levy.[1]

Levy collection and pay over

14.19 The examination reviewed the procedures in place to ensure timely and accurate payover to the Central Bank of levies collected by Revenue. Issues were identified in relation to allocation (or matching) of levy receipts to individual insurers' returns.

14.20 All insurance companies within the scope of the levy complete a quarterly return which relates to the two separate levies payable by non-life insurers — the stamp duty levy of 3% and the insurance compensation fund levy of 2%.

14.21 The process for allocating monies received is labour intensive. Revenue must match each payment received against completed forms. The average time taken to allocate receipts increased from 74 days in 2019 to 83 days in 2020. In 2020, in the case of sixteen of the receipts allocated, the payments had been received over three years previously.

14.22 In some cases, Revenue is unable to allocate receipts against an individual insurer. This arises in cases where a matching return has not been completed or the payment reference information is incomplete. At 31 December 2020, Revenue confirmed that it held unallocated receipts totalling €2.2 million.[2]

- Nearly half of the unallocated receipts relate to payments made in 2017.
- Revenue has stated that there are no unallocated receipts relating to the fund for periods prior to 2017 remaining in the bank account.
- In 2018, a project was undertaken to process all aged payments and an amount of €358,000 was unresolved. In May 2018, the unresolved balance was transferred to the Exchequer and allocated to government stamp duty. Revenue did not allocate the monies between stamp duty receipts and the fund on a pro-rata basis.

1 In one case, the value of the difference between the levy received compared to what was expected based on EIOPA returns was below 10% and there was no follow up action undertaken as per the Central Bank policy (value of difference €16,000).

2 The unallocated amount relates to receipts for both stamp duty and the insurance compensation fund levy.

14.23 The examination reviewed a sample of 25 completed returns allocated in 2020.

- For 24 of the 25 returns reviewed, the completed return was correctly allocated.
- In one case, the return had been incorrectly completed by the insurance company and all monies had been incorrectly allocated to stamp duty (€53,295). The amount proper to the fund was €21,318.

Co-operation between the Central Bank and Revenue

14.24 While the responsibilities of both the Central Bank and Revenue are set out in legislation, they have not been formalised by way of an operational agreement between Revenue and the Central Bank setting out the respective responsibilities. Such an agreement would include definition of responsibility for timely checks and controls over amounts paid by insurers, allocation of receipts and timely pay over by Revenue to the Central Bank.

Financial reporting

14.25 The requirement for the preparation and audit of the fund's accounts is set out in the Act.[1] The legislation specifically requires the Central Bank to

- keep 'proper and usual accounts' of moneys paid into or out of the fund
- submit accounts to the Comptroller and Auditor General for audit within six months of the end of the financial year to which the accounts relate, and
- present the audited accounts and the Comptroller and Auditor General's report on the audited accounts to the Minister for Finance.

14.26 The audit of the accounts for financial year ending on 31 December 2019 was completed in October 2020 and the accounts received a clear audit opinion. The format of the 2019 financial statements was examined for the purpose of this examination.

- The account of the fund is prepared on a cash basis as opposed to an accruals basis. The accruals basis is most commonly used in the preparation of financial statements and is governed by standards and therefore considered good practice.
- The accounts do not include a statement of financial position or a cash flow statement. As a result, key information potentially of use to the reader, such as amounts owed to the Fund are not recognised and do not form part of the audited accounts.
- The financial statements do not set out the accounting policies or principles governing their preparation and a statement on internal control is not included.

1 Section 2(5) the Insurance (Amendment) Act 2018.

Conclusions and recommendations

14.27 The annual receipts into the Insurance Compensation Fund are substantial. In 2020, receipts totalled over €100 million. Surpluses over the costs incurred by the fund each year are available to contribute to reducing the liability of the fund to the Central Fund of the Exchequer. Steady progress has been made in reducing the liability from its peak of almost €1 billion in 2013.

14.28 The Central Bank took on responsibility for the administration and management of the fund in 2018. Revenue has statutory responsibility for collection of the proceeds of the levy on the premiums paid by consumers of non-life insurance in Ireland.

Controls over the collection of levy income

14.29 Revenue matches payments received to returns submitted from insurers and subsequently pays over the proceeds to the Central Bank.

14.30 The matching of receipts is a lengthy manual process and leads to delays in identifying and paying over receipts to the Central Bank. In 2019, a misclassification error was identified. It resulted in approximately €33 million of levy receipts relating to the period 2016 to 2018 being paid over late to the Central Bank. At end December 2020, there was a balance of €2.2 million of accumulated receipts over the period 2017 to 2020 held in a Revenue bank account. An as-yet undetermined part of this money relates to levy proceeds.

14.31 Revenue has an existing system in place for EU and non-EU companies who supply services to Irish residents through its VAT 'mini one stop shop' (VAT MOSS) platform. This online platform allows a company to submit returns and pay VAT simultaneously. A similar approach may be useful for the fund levy receipts.

Recommendation 14.1

Revenue should consider modernising its system for the collection and allocation of the fund levy such as the introduction of an online levy return form within Revenue's payment platform which would enable payment alongside the submission of gross premium paid in the quarter.

Accounting Officer's response

Agreed.

A project is already underway to modernise the collection and allocation system and is due to go live in February 2022. This new system will allow taxpayers to pay and file the stamp duty levies and Insurance Compensation Fund (ICF) contributions through ROS. This will eliminate the current manual matching and reconciling process and facilitate the timely transfer of levy proceeds to the Central Bank.

Controls over the assessment of levy income

14.32 Insurers calculate and pay the fund levy proceeds on a self-assessment basis. A successful self-assessment system requires[1]

- effective collection enforcement — prompt detection of taxpayers failing to file tax returns and/or pay the tax due is critical to improve tax compliance
- selective risk-based audit — reliance on a strong audit program focused on higher-risk taxpayers with a reasonable percentage reviewed each year using a variety of audit techniques.

Revenue

14.33 Revenue performs a high-level review by comparing receipts for the fund with receipts for stamp duty and notifies potential discrepancies to the Central Bank. The notification process has not been timely with delays of up to one year occurring. In 2017, Revenue undertook a compliance project to review the 3% stamp duty levy and parallel 2% fund levy imposed by insurers. The project identified underpayments of nearly €160,000 relating to three entities. A similar project has not been conducted since.

14.34 In 2017, Revenue conducted a review of the Central Bank registers comparing them to levies received by non-life insurance entities. A similar review was planned for 2021 but has not yet commenced.

The Central Bank

14.35 The Central Bank also reviews for reasonableness the value of levies paid over by Revenue for the bigger insurers with information it receives directly from domestic insurers and from EIOPA (available nine months after each year end). The reconciliation is complex and generally results in a large number of apparent inconsistencies requiring investigation. The datasets used are not designed for this purpose, giving rise to inevitable anomalies. The review of the 2018 receipts was completed 19 months after the financial reporting year end. Overall, the process in place does not facilitate prompt detection of incomplete/non-payment of levies due from insurers.

14.36 The reviews and checks performed by both entities up until 2019 were not sufficiently robust to detect levy proceeds paid by insurance companies but not transferred to the fund.

Recommendation 14.2 (both entities)

Both the Central Bank and Revenue should explore the possibility of a co-operative approach to introducing risk-based reviews to underpin the self-assessment approach adopted for the fund levy and to provide timely assurance over the accuracy and completeness of levy payments by relevant insurers.

1 *Managing income tax compliance through self-assessment*, IMF, 2014.

Accounting Officer's response

Agreed.

Revenue has already held meetings with the Central Bank to discuss the implementation of a co-operative approach. Revenue will have further discussions with the Central Bank with a view to maximising compliance and clarifying the respective roles of Revenue and the Central Bank.

Governor's response (the Central Bank)

Agreed.

The Central Bank will continue to engage with Revenue to discuss the implementation of a co-operative approach. The Central Bank is prepared to have further discussions with Revenue with a view of maximising compliance and clarifying the respective roles of Revenue and Central Bank.

14.37 A formal agreement that sets out the specifics of how the process of assessing and collecting the levy should operate is not in place. A memorandum of understanding is a useful document to ensure clarity of roles and implementation of effective procedures and governance structures. Such an agreement would include clear allocation of responsibility for timely checks and controls over amounts received, allocation of receipts and timely pay over to the Central Bank.

Recommendation 14.3 (both entities)

The Central Bank and Revenue should put in place a memorandum of understanding (MOU) specific to the fund to ensure clarity of roles and responsibilities to ensure effective controls over the assessment of the fund income. The MOU would set out protocols for the administrative arrangement for collection and remittance of receipts, issue resolution, data exchange and liaison arrangements.

Accounting Officer's response

Agreed.

Revenue would welcome the implementation of an MOU along the lines recommended and will initiate discussions with the Central Bank immediately with a view to implementing an MOU in 2022.

Governor's response (the Central Bank)

Agreed.

The Central Bank will discuss agreeing MOU material with Revenue detailing the roles of each party and agreeing timelines where applicable.

Financial reporting of the Fund

14.38 The Fund's accounts are prepared on a cash basis which provides a report of the amount received in the year rather than the amount that is due to be received as required under an accruals based format. Cash based accounts do not present a statement of financial position. Furthermore, the fund's account do not have a statement of accounting policies or statement on internal control.

14.39 The cash format of the financial accounts for the fund do not provide the type of information expected to properly manage and account for the fund. There is scope to improve the quality of the information for the users of the account. Most legislation in relation to accounting for public monies provides a role for ministerial approval of the format of accounts, but the Minister for Finance has no role in prescribing or approving the format of the accounts of the fund.

Recommendation 14.4

The Central Bank should conduct a review of the format of the financial statements. The review should consider how the accounts could be improved to provide a more complete picture of the financial position of the fund.

Governor's response (the Central Bank)

Agreed.

The Central Bank had previously considered the format of the Report on Administration and Movement of the Insurance Compensation Fund (accounts). However, given the issue identified in relation to under lodgements to the fund, the Central Bank considered it prudent to continue preparing the accounts on a cash receipts basis as it was considered to be the most reliable method to provide information to the users of the fund information. The Central Bank will review the format of the accounts for the 2021 iteration and give consideration to how the accounts could be improved to provide a more complete picture of the financial position of the fund. A statement on internal control has been included in the 2020 accounts.