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Impact on Insurers of the Consumer Insurance Contracts Bill 2017

On 19 January a Private Members Bill entitled the [Consumer Insurance Contracts Bill 2017](#), which is largely based on the [Law Reform Commission's Report on Consumer Insurance Contracts \(2015\)](#), was introduced by Pearse Doherty. The bill passed second stage on 9 February 2017 and Minister Eoghan Murphy signaled government support for the legislation. The government have indicated that a number of amendments will be proposed by the government to the bill.

Minister Murphy highlighted a number of European Law developments and the cost of insurance working group report and signalled that consultation will need to take place with the Central Bank, the Financial Services Ombudsman, the insurance industry and advocates for consumers.

The Scope of the Bill

When considering the scope of the bill, it is important to note that while the bill is confined to consumers, **section 1** of the bill defines consumer along the lines used for the purposes of the Financial Services Ombudsman jurisdiction and the consumer protection code. The definition, which includes individuals and small businesses with a turnover of less than €3 million (provided such persons shall not be a member of a group having a combined turnover greater than €3 million), is quite far-reaching and is likely to present practical difficulties for insurers. For instance substantially different policy wordings for commercial insurance such as directors and officers

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(D&O) and professional indemnity insurance may be required for firms or companies with a turnover of less than €3 million (who will be consumers) compared to firms or companies with a slightly higher turnover (who will not be considered consumers).

Pre-Contractual Duties

One of the most significant reforms relates to the pre-contractual duties of insurers and consumers, in particular, the replacement of the principle of utmost good faith and any duty of disclosure with the provisions of **section 6** of the bill. Under the bill, the pre-contractual duty of disclosure of a consumer is confined to providing responses to the questions asked by the insurer. The consumer shall not be under any duty to volunteer any information over and above that required by such questions.

The insurer will be under a duty to ask specific questions and shall not use general questions when requesting information for the consumer. The consumer shall be under a duty to answer all questions honestly and with reasonable care.

An insurer must, before entering or renewing a contract of insurance, inform the consumer in writing of the general nature and effect of the pre-contractual disclosure.

The insurer will be deemed to have waived any further duty of disclosure of the consumer where it fails to investigate an absent or obviously incomplete answer to a question.

Misrepresentation

Section 7 introduces remedies that are proportionate to the effects of any misrepresentation on the interests of the insurer and the consumer. The bill retains the remedy of avoidance for fraudulent misrepresentation.

Warranties

A noteworthy change is **section 16** which replaces warranties with suspensive conditions and stipulates that “basis of contract” clauses will be invalid.

Section 16 provides that any term in a consumer contract of insurance which purports to convert any statement (being a statement made by or attributable to a consumer with respect to the existence of a state of affairs or a statement of opinion) into a warranty, including by means of a declared “basis of contract” clause, or by any comparable clause, shall be invalid.

This section also provides that any term which imposes a continuing restrictive condition on the consumer during the course of the insurance shall be treated as a suspensive condition, the effect of which is that the insurer’s liability is suspended for the duration of the breach but if the breach has been remedied by the time a loss has occurred, the insurers shall, in the absence of any other defence, be obliged to pay the claim. This provision applies to any term howsoever described which has the effect of reducing the risk underwritten by the insurers related to a particular type of loss, loss at a particular time, or loss in a particular location.

Insurable Interest

Section 5 deals with “insurable interest” and amends the requirement that a consumer must have an “insurable interest” in the risk being insured. There is one very small exception where the contract is also a contract of indemnity. Insurers will no longer be able to avoid a claim because after the fact it is decided that the insured had no interest in the policy. The “insurable interest” concept goes back to marine insurance and was designed to prevent gamblers or speculators from betting on the non-arrival of ships at their destinations. The bill therefore amends the concept of “insurable interest” and replaces it with a legislative provision suitable to the modern day.

Miscellaneous Sections

Section 8 sets out the information which must be provided to the consumer in writing, prior to entering into the contract. **Section 9** establishes cooling off periods (providing for a 14 day cooling off period for non-life insurance and a 30 day cooling off period for life assurance contracts in which consumers can withdraw from a contract without penalty).

Concluding Remarks

This bill will align Ireland’s consumer insurance contract law with the UK system in many ways with this legislation reflecting some of the provisions in the UK [Insurance Act 2015](#) which came into force on 12 August 2016 and the [Consumer Insurance \(Disclosure and Representations\) Act 2012](#). The new regime in the UK introduced many changes including to the duty of disclosure and the introduction of fair presentation on proposers; replacement of warranties and the introduction of suspensive conditions; and the abolition of “basis of contract” clauses.

It remains to be seen what amendments will be made at committee stage and what the final text of the bill will be. However we can expect significant changes on the horizon.

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