April 2022

# Impact on insurers of the Insurance (Miscellaneous Provisions) Bill 2022

## **Background to the Bill**

The Insurance (Miscellaneous Provisions) Bill 2022 was presented by the Minister for Finance on 1 April 2022 and will now be progressed through the legislative stages in the Oireachtas.

The aim of the Bill is to increase transparency in the Irish insurance sector and to address issues which have arisen in relation to business interruption insurance claims and from other insurance related legislation.

The Bill provides for amendments to the Central Bank (National Claims Information Database) Act 2018 ("the NCID Act"), the Consumer Contracts Act 2019 ("CICA"), and the European Union (Insurance and Reinsurance) Regulations 2015 ("Solvency II Regulations") as well as containing provisions seeking to target the practice of price walking.

#### **National Claims Information Database**

The purpose of the National Claims Information Database ("**NCID**"), which is a database for aggregate claims data, is to increase transparency around the cost of claims. The Bill seeks to replace section 8(4)(e) of the NCID Act with new wording to explicitly allow the Central Bank to collect data on insurers deducting public monies (i.e. State supports) from settlement amounts. A new definition of "public monies" is also to be included in the NCID Act.

## **Price Walking**

The term 'price walking' is used to refer to a practice of insurance providers charging consumers higher premiums after the first renewal despite no increase in risk, while new customers are offered reduced premiums. It is also referred to as a 'loyalty penalty'.

For further information on any of the issues discussed in this article please contact:



Rachel Turner DD: + 353 1 673 1845 Rachel.turner@dilloneustace.ie



Peter Bredin DD: + 353 1 674 1013 Peter.bredin@dilloneustace.ie

Section 6 of the Bill obliges the Central Bank to provide a report to the Minister for Finance, within 6 months of the commencement of the section, setting out the measures taken by the Bank to regulate both the practice of price walking in motor and home insurance policies, and automatic renewals for non-life insurance contracts, as well as whether further measures in the area are required.

While outside the scope of this article, the price walking regulations were published on 15 March 2022 – Central Bank (Supervision and Enforcement) Act 2013, Section 48(1) (Insurance Requirements) Regulations 2022. The regulations, which are due to commence on 1 July 2022, will, in summary, mean that from that date, an insurance undertaking or insurance intermediary will not be allowed to charge consumers, who are on their second or subsequent renewal of a home or motor insurance policy, a higher premium than the equivalent first renewal price.

#### CICA

The Bill looks to address certain technical issues in CICA, which was enacted to provide increased protection to insurance consumers. It seeks to address concerns around the disclosure requirements of section 16(10) of CICA which, it was considered, had the unintended consequence of encroaching too far on legal professional privilege.

The Bill proposes to delete section 16(10) and add two new sections to the act, namely section 16A, which provides for mutual duties of disclosure in claims handing, and section 16B, which relates to disclosure of deductions from claim settlements.

Section 16A(1) requires the disclosure of information where, after a claim has been made by a consumer, the consumer or the insurer becomes aware of information that would either support or prejudice the validity of the claim. The Bill proposes that where such information is contained in a report prepared for the purposes of pending or contemplated civil proceedings, the consumer or insurer, must disclose the report within 60 days of receipt of the report.

"Report" is defined in the section as a report, letter or statement, in draft or final form, prepared by "an accountant, actuary, architect, dentist, doctor, engineer, occupational therapist, psychologist, psychiatrist, scientist or other expert" and which has been procured for the purposes of assessing the validity of a claim, or contains information which either supports or prejudices a claim. It includes "any maps, drawings, photographs, graphs, charts, calculations or other like matter referred to in any such report, letter or statement".

The obligation to disclose applies notwithstanding any enactment or rule of law by virtue of which the report would otherwise be subject to litigation privilege. The intention of the section is to prevent disputes between insurers and consumers being litigated and the obligation to disclose applies not only where the party which has procured an expert report intends to rely on that report in legal proceedings, but also whether or not the party intends to rely on the report.

Section 16A(3) clarifies that the section shall not affect the operation or any enactment or rule of law by virtue of which a report prepared by a lawyer, or a communication between a lawyer and another person, is privileged.

Section 16B obliges insurers to inform consumers of deductions to claim settlement amounts. This applies to non-life insurance contracts only. Where deductions are made, an insurer must identify the deductions (including State supports) and notify the consumers of this, give reasons for the deductions, and inform consumers of the total amount of those deductions. This does not apply to deductions related to the Recovery of Benefits and Assistance Scheme.

Lead-in time is required for this new provision and it is intended that section 16B will commence at a later date to facilitate adequate preparation by insurers.

The Bill also provides for amendments to section 18(4) of CICA to ensure the section addresses the specific circumstances it was intended to address. It provides that where a contract of insurance, under which two or more consumers are co-insureds, the innocent co-insured consumer is not excluded from making a claim in circumstances where the damage or loss is caused by a criminal or intentional act or omission by the other co-insured. This is provided that the innocent co-insured has not abetted or colluded in the act or omission, or consented to it and knew or ought to have known that the act or omission would cause the loss or damage.

The Bill clarifies who will be deemed a co-insured, by providing for the insertion of a new paragraph into section 18(4) which provides that "... two or more consumers are each a co-insured under a contract of insurance where each of those consumers – (i) has an interest in the insured property, and (ii) is insured against loss or damage to the insured property".

There is also a proposed new addition to section 18(4)(b) whereby it makes clear that the operation of a term or condition in a contract of insurance which excludes cover for loss or damage to property caused by war, an act of terrorism, a nuclear attack or a cyberattack, shall not be affected by section 18(4)(a).

## Solvency II Regulations

The Bill provides for amendments to the Solvency II Regulations related to the Temporary Run-off Regime (TRR). The TRR was established to facilitate the orderly withdrawal of UK or Gibraltar insurers from the Irish market following Brexit.

The Bill proposes to amend the regulations to allow UK and Gibraltar insurers in the TRR, which are in the process of winding down their existing portfolios in Ireland, to continue to carry out third country reinsurance business while also administering their existing portfolios under the TRR. It also proposes amendments to allow firms in liquidation, which would otherwise satisfy the TRR requirements, not to have their TRR authorisation revoked for entering into liquidation.

### Conclusion

It remains to be seen what changes are made to the draft Bill as it progresses through the legislative stages in the Oireachtas. However, if enacted the changes will be significant and insurers should be cognisant of the proposed changes to the existing legislation coming down the line.

If you require advice in relation to the matters covered in this briefing please contact a member of our Commercial Litigation Team.

The authors would like to thank Jack Doyle for his contribution to this article.



#### Dublin

33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

#### Cayman Islands

Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

#### New York

Tower 49, 12 East 49<sup>th</sup> Street, New York, NY10017, U.S.A. Tel: +1 646 770 6080

#### Tokyo

12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.

#### DISCLAIMER

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace LLP.

Copyright Notice:© 2022 Dillon Eustace LLP. All rights reserved.