

Insurance Law Ireland

Taking a look at the issues currently surrounding Insurance Law in Ireland, *Lawyer Monthly* speaks to Tom Carney and Matthew Ryan from Dillon Eustace. Dillon Eustace is one of Ireland's leading law firms focusing on financial services, banking and capital markets, corporate and M&A, litigation and dispute resolution, real estate and taxation. Headquartered in Dublin, Ireland, the firm's international practice has seen it establish offices in Tokyo, New York, Hong Kong and the Cayman Islands.

What have been the recent changes in the regulatory environment of insurance law in your jurisdiction?

There have been significant developments in the regulatory environment affecting Irish authorised insurance undertakings over the past number of months.

A revised Consumer Protection Code, applicable to all Central Bank regulated entities operating in Ireland, has been in application as of 1 January this year. The key revisions relate to the level of information that must be provided at pre-contractual stage and in advertisements, the errors and complaints handling process, product/consumer suitability and dealing with vulnerable consumers.

In September 2011 the Central Bank introduced a new regime to regulate the 'fitness and probity' of persons in both pre-approval controlled functions and controlled functions in regulated financial service providers. In respect of persons occupying pre-approval controlled functions in situ as at 1 December, 2011, regulated financial service providers had to confirm to the Central Bank that the necessary due diligence has been undertaken on or before 31 March 2012. Persons currently occupying a controlled function have until 1 December 2012 to comply.

The Central Bank has been engaged in consultation with industry concerning the introduction of revised inquiry guidelines. In its consultation paper, the Central Bank proposes that the Inquiry Guidelines (once finalised) will replace the 2005 Guidelines to reflect

amendments made to Part III(C) of the Central Bank Act 1942 (including proposed changes under the Central Bank (Supervision and Enforcement) Bill 2011 (see below)) and the Central Bank's Enforcement Strategy 2011-2012.

As of 1 January 2012, non-life insurers (to include non-life insurers authorised in another Member State) have been required to pay a contribution of 2% of the gross premium income they receive in respect of risks situated in Ireland to the Central Bank's Insurance Compensation Fund. This requirement relates to the ongoing administration of Quinn Insurance. In October 2011 the Irish High Court ruled that the administrators of that entity were to be paid €738m from the Fund.

The Finance Act 2012 has introduced several changes: an increase of 3% in the rate of exit tax applying to life assurance products, a reduced exit tax rate of 25% in the case of certain corporate policyholders and increased levies on all health insurance renewals and new contracts entered into from 1 January 2012.

The Central Bank is in consultation with the life assurance industry concerning the implementation of (supposedly non-binding) guidelines setting out the requirements to which life insurance undertakings authorised by the Central Bank are required to adhere to when distributing products on a cross-border basis in another EU/EEA Member State or third country.

The Health Insurance (Miscellaneous Provisions) Act 2011 has altered the information that must be submitted by health insurers to the Health Insurance Authority. Health insurers must now

provide information concerning the type of cover that is being provided to a particular age group and must also highlight any changes to the level of such cover during the relevant period. Where the level of such cover has materially changed, the Minister for Health and Children is now empowered to make regulations requiring a health insurer to make separate information returns in respect of each material level of benefit.

What are the common challenges faced by your clients when involved in the insurance and reinsurance sector?

Aside from general market conditions, perhaps the most challenging issue facing insurance undertakings in Ireland is the extent of compliance obligations they must meet - obligations that are being strenuously enforced by the Central Bank. In this regard, it is imperative that insurers keep abreast of all relevant legal and regulatory developments.

While Solvency II's implementation will undoubtedly serve to protect the wider insurance industry in the longer term, the process of adapting to its requirements is likely to be a great burden for insurers in the interim. The timeline for the implementation of national measures transposing Solvency II is incredibly tight leaving little time for industry consultation and implementation of operational changes by insurers.

Despite the ECJ's ruling (in September 2011) that by allowing the state-owned private health insurer (VHI) to operate outside the bounds

of regulation Ireland has failed to apply EU insurance directives on a non-discriminatory basis, no material change has occurred with regard to the VHI's supervision by the Central Bank. It is said that the Irish Government is unlikely to alter the VHI's position until 2014 at the earliest. In the interim, the Irish health insurance market remains an uneven playing field.

To help prevent a repeat of the 2008 global financial crisis, the International Association of Insurance Supervisors will now evaluate the "systemic importance" to designate insurance companies can be deemed as "systemically important". Those targeted with the label could be slapped with higher capital requirements and limits on business lines. What are your opinions on this?

The International Association of Insurance Supervisors has evidently recognised the important role that insurers have in the functioning of the wider economic and financial system. However, it is unlikely that the impact of an insurance company's failure would be in any way comparable to that of a bank. We would submit, therefore, that the use of the 'systematically important' tag should have limited application in respect of insurers.

Has the increased severity and frequency of both natural and man-made disasters had an impact on insurance law?

The recent increase in natural and man-made disasters has had a significant impact on insurance law and regulation, much of which is EU-driven. Perhaps the most significant change has been the increased level of regulator supervision of compliance with those laws and regulations.

The Central Bank has been actively following its 'Programme for Themed Reviews and Inspections for 2012'. In outlining its enforcement priority areas for 2012, the Central Bank noted that its enforcement effort is being directed towards the areas of greatest concern to its Supervisory Divisions. The priority areas include anti-money laundering and countering terrorist financing and compliance with the Central Bank's Consumer Protection Code and Corporate Governance Code.

Solvency II will have the effect of reducing the risk of firm failure through the imposition of more stringent capital requirements.

Do you foresee the need for legislative change in the next 12-24 months, if so why?

Aside from the adoption of national measures to implement Solvency II/Omnibus II, the most anticipated domestic legislative changes over the course of the next two years are the enactments of the Central Bank (Supervision and Enforcement) Bill, 2011 and legislation introducing a new permanent risk equalisation scheme.

The previous risk equalisation was deemed unconstitutional by the Irish Supreme Court in August 2008. A series of age-related tax credits have been applied in the interim.

The Central Bank (Supervision and Enforcement) Bill, 2011, if enacted, will significantly increase both the supervisory powers of the Central Bank and the penalties for failure to comply with 'designated enactments'. Changes will include significantly increased financial penalties for breaches of designated enactments, turnover-based financial penalties, the power to restrict an entity's activities, the power to suspend or revoke an authorisation and whistleblower protection. **LM**

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