AN BILLE ÁRACHAIS (LEASÚ), 2011
INSURANCE (AMENDMENT) BILL 2011

EXPLANATORY AND FINANCIAL MEMORANDUM

Interpretation

The Bill proposes to amend the Insurance Act 1964 to change the scope of the Insurance Compensation Fund from one which covers the risks of policyholders of Irish authorised insurance companies to one which covers all insured risk in the State, except for specific excluded risks. The effect of this is that except for specified excluded risks all insurance policies taken out in relation to risks in the State come within the remit of the scheme. Insured risks outside the State are no longer covered by the scheme, where an insurance company is being liquidated.

The Bill proposes to restrict the availability of contributions from the Fund for the carrying on the business of an insurance company in administration to those companies which conduct at least 70% of their business in the Irish market averaged over a three year period.

A financial benefit of this proposal is that it secures the revenue base for the Insurance Compensation Fund going forward, because all insurance companies whether operating on a subsidiary, branch or freedom of service basis are required to pay the levy on the policies they sell. If these amendments are not put in place and the existing arrangements continue there is a danger that companies could convert to a branch of an undertaking authorised in another Member State and avoid any levy imposed.

Overview

The Bill comprises 10 sections, the main elements of which are set out below.

Section 1 — Definition

The purpose of this provision is to acknowledge that the Principal Act is the Insurance Act 1964.

Section 2 — Amendment of section 1 (definitions) of Principal Act

The purpose of this provision is to introduce a number of new definitions to section 1 of the Insurance Act 1964. These will allow the scope of the scheme to be extended to cover all insured risk in the State, except for specific excluded risks. The excluded risks include health insurance mainly because a large proportion of the market (VHI) is outside the scope of the current ICF legislation and life insurance which is similarly not covered by the existing scheme.

There is also a definition for ‘‘insurer authorised in another Member State’’ as this is required under the new scheme since such insurers can operate in the Irish market on a branch basis or on a freedom of service basis and policyholders of these companies are covered by the scheme in relation to risk in the State.

The opportunity is also being taken to update a number of the other definitions.

Section 3 — Amendment of section 2 (Insurance Compensation Fund) of Principal Act

The purpose of this provision is to make a number of minor cross-referencing changes to section 2 of the Insurance Act 1964, consequential on the amendments made in this Bill.

Section 4 — Payments out of Fund in respect of insolvent insurer

The purpose of this provision is to replace Section 3 of the Insurance Act 1964 and to introduce three new sections 3A, 3B and 3C.

These provisions are designed to facilitate payments out of the Fund to policyholders in relation to risks in the State where an Irish authorised or an EU authorised insurer goes into liquidation and the approval of the High Court has been obtained for such payments.

Section 3 provides context for 3A and 3B and also sets out the limitations to the payments which can be made from the Fund. These limitations replicate what is contained in the existing legislation, the most important of which is that the payment from the Fund under a policy shall not exceed 65% of that sum or €825,000 whichever is the less, in the event of payments being made to policyholders after the liquidation of an insurer.

Under the new scheme policyholders will be covered by the Fund in respect of ‘‘risks in the State.’’ The principal factors which will determine whether a risk is a ‘‘risk in the State’’ will be whether insured buildings are located in the State, whether insured vehicles are registered in the State, in the case of short term travel insurance whether the insurance was taken out in the State and in most other cases whether the habitual residence of the policy holder is in the State (or the establishment of the policyholder is in the State in the case of legal persons.)

Section 3A provides for the liquidator to make the payments from the Fund to policyholders of Irish authorised firms and that the Accountant of the High Court shall as respects the amount paid out of the Fund be a creditor of the insurer.

Section 3B provides that if an insurance undertaking in another Member State goes into liquidation and policyholders in relation to risk in the State are affected, that the Accountant of the High Court can make an application to the High Court on their behalf and can distribute any sums due to such policyholders.

Section 3C provides for the continuation of the administration provision as set out in the Insurance Act 1964, but prospectively intends confining the availability of funding from the Insurance Compensation Fund to firms under administration which conduct a large percentage of their overall business in Ireland (70% averaged over the 3 years before the appointment of the administrator). Companies currently under administration will continue to operate under the existing scheme as is provided in section 9.

Section 5 — Repeal of section 4 (grant to Fund by Minister) of Principal Act

The purpose of this provision is to repeal Section 4 of the Insurance Act 1964 which is obsolete as it relates to a specific insolvency in 1964 namely the Equitable Insurance Company Ltd.

Section 6 — Amendment of section 5 (advances to Fund by Minister) of Principal Act

The purpose of this provision is to make a cross-referencing change to section 5 of the Insurance Act 1964, consequential on the amendments made in this Bill.

Section 7 — Contributions to Fund

The purpose of this provision is to replace section 6 of the Insurance Act 1964. The section sets out the conditions for the levying of insurance companies in relation to the Insurance Compensation Fund.

This provision sets out a number of elements including the following:

(i) The Central Bank continues to be responsible for assessing the Fund from time to time to see if it needs financial support. In addition it determines the levy to be placed on insurers where funding is required and notifies them.

(ii) The Minister for Finance is provided with a power to appoint a collector to collect the levy who will pass the levy to the ICF. The collector will inform the Central Bank where no payment is made.

(iii) The Central Bank will continue to be responsible for enforcement in the event of non-payment of the levy.

(iv) The levy is required to be reviewed regularly.

(v) All insurance companies will be levied in respect of risks in the State under the new scheme. This contrasts with the existing scheme under which only Irish authorised insurers are levied, but they are levied in respect of risks inside or outside the State.

Section 8 — Repeal of section 31 (Insurance Compensation Fund) of Insurance Act 1989

Section 8 is a technical amendment. The purpose of this provision is to repeal section 31 of the Insurance Act 1989, which made amendments to section 3 of the 1964 Act. This repeal will remove any confusion which might arise in the event that Section 31 were to remain on the Statute Book.

Section 9 — Saving

The purpose of this provision is to provide a saving mechanism and to ensure that any liquidations or administrations commenced before this Act comes into effect will continue to be subject to the old rules. It will apply to any company which is currently under administration.

Section 10 — Short title

The purpose of this provision is to provide for the Short title of the Act.

Financial Implications

A call on the Insurance Compensation Fund by the administrators of a company currently under administration will require the Exchequer to provide almost the entire amount this year and may also require the Exchequer to provide a significant amount in the following years, pending the contribution from insurance companies to the Fund.

Any payments by the Exchequer to the Fund will be classified as a financial transaction and as such is not seen as expenditure, and therefore does not affect the General Government Deficit. It should also be noted that any interest paid to the Exchequer for the advance to the Insurance Compensation Fund will improve the GGB (marginally).

An Roinn Airgeadais,
Meán Fómhair, 2011

Wt. —. 635. 9/11. Cahill. (X58205). Gr. 30-15.