An Bille Árachais (Leasú), 2018
Insurance (Amendment) Bill 2018

Meabhrán Mínitheach
Explanatory Memorandum

AN BILLE ÁRACHAIS (LEASÚ), 2018
INSURANCE (AMENDMENT) BILL 2018

EXPLANATORY MEMORANDUM

Purpose of the Bill

The Insurance (Amendment) Bill 2018 seeks to repeal and replace certain provisions of the Insurance Act 1964, as amended, to clarify the role of the Insurance Compensation Fund (ICF) and to implement the recommendations of the Review of the Framework for Motor Insurance Compensation in Ireland Report (2016). The Bill also provides for the retrospective compensation of third-party claims in respect of motor insurers who have gone into liquidation since 30 September 2011, which fell outside the scope of the 2016 review, in line with the Motor Insurance Bureau of Ireland (MIBI) limits. In personal injury cases this will mean 100% compensation.

The main provisions of the Bill are as follows:

Section 1 - Short title, commencement, collective citation and construction

Section 1 sets out the short title of the Bill. It also provides for a collective citation of the Insurance Acts 1909 to 2018 and a separate commencement of Part 4 to allow the MIBI adequate time to put arrangements in place for the new Motor Insurers Insolvency Compensation (MIIC) Fund.

Section 2 - Definitions

Section 2 defines the terms used in the Bill.

Section 3 - Expenses

Section 3 provides the authority for any expenses incurred by the Minister for Finance in the administration of the Bill to be met out of funds provided by the Oireachtas.

Section 4 - Savings and transitional provisions

Section 4 provides for the transfer of functions relating to the administration of the ICF from the Office of the Accountant to the High Court to the Central Bank and relevant functions in relation to applications to the High Court, to the State Claims Agency, where liquidations are already in progress.

Section 5 - Final accounts of Fund

Section 5 provides that within three months of enactment of the Bill, the Accountant to the High Court will prepare final accounts of the ICF, have them audited and submit them to the Minister for Finance. The final accounts will be laid before the Oireachtas.

Section 6 - Moneys to be paid to Bank

Section 6 provides that within three months of enactment of the Bill, the Accountant to the High Court will pay any moneys in the ICF to the Central Bank of Ireland.

Section 7 - Records of Accountant

Section 7 provides that upon enactment the Accountant to the High Court will transfer records relating to the accounts of the ICF, and relating to applications to the High Court to the Central Bank of Ireland and the State Claims Agency respectively.

Section 8 - Amendment of section 1 of Act of 1964 (definitions)

Section 8 amends some of the existing definitions contained in the Insurance Act 1964 and inserts some new definitions as they apply to the Bill.

Section 9 - Amendment of section 2 of Act of 1964 (Insurance Compensation Fund)

Section 9 amends section 2 of the Insurance Act 1964 to provide that the Central Bank of Ireland will take over the functions performed by the Accountant to the High Court in relation to the administration and Governance of the ICF. This section also clarifies that the Central Bank of Ireland shall not provide financing arrangements to the ICF from its own resources. It provides that the accounts of the ICF be given to the Office of the Comptroller and Auditor General, not later than 6 months after the end of each financial year to be audited and thereafter laid before the Houses of the Oireachtas by the Minister for Finance.

Section 10 - Amendment of section 3 of Act of 1964 (payments out of Fund)

Section 10 amends section 3 of the Insurance Act 1964 - which currently provides for a limit of 65% or €825,000 whichever is the lesser to be paid to claimants from the ICF in the event of the failure of an insurance company - to provide for the payment of personal injury claims in full and to a maximum of €1,220,000 for injury to property in the case of third party motor insurance claims, in line with the amounts paid by MIBI where a driver is unidentified or uninsured. It also provides that in such a scenario the ICF will be able to recoup the balance – over the above 65% limits – from a new Motor Insurers Insolvency Compensation Fund to be established under section 16. Finally, it facilitates the payment of 100% compensation for existing motor insurance liquidations, therefore addressing the needs of third party claimants of those companies that have gone into liquidation since 30 September 2011.

Section 11- Amendment of section 3A of Act of 1964 (application by liquidator of insolvent insurer)

Section 11 amends section 3A of the Insurance Act 1964 to provide that the High Court may approve payments from the ICF following an application by the liquidator (in the case of an insolvent insurer authorised in Ireland) in respect of claims which have been assessed and validated by the State Claims Agency. A provision is also included to ensure that any moneys recovered from the liquidation of a motor insurer be repaid on a pro rata basis to the ICF and the Motor Insurers Insolvency Compensation Fund.

Section 12 - Amendment of section 3B of Act of 1964 (application where insurer in liquidation is insurer authorised in another Member State)

Section 12 amends section 3A of the Insurance Act 1964 to provide that in the case of an insolvent insurer authorised in another Member State, the High Court may approve payments from the ICF following an application by the State Claims Agency who will have assessed and validated claims on the basis of information provided by the person appointed to perform the functions of a liquidator in that other State. The amounts approved by the High Court will be paid by the Central Bank of Ireland from the ICF to the State Claims Agency for disbursement to individual claimants. Section 12 also provides that the time limit for making applications to the High Court for payments from the ICF is changed from no more than once in any 6 month period to no more than once in any 3 month period, to allow payments to be made more frequently. A provision is also included to ensure that any moneys recovered from the liquidation of a motor insurer be repaid on a pro rata basis to the ICF and the Motor Insurers Insolvency Compensation Fund.

Section 13 - Amendment of section 3C of Act of 1964 (payments out of Fund where administrator appointed)

Section 13 amends section 3C of the Insurance Act 1964 to provide that an application to the High Court for payment out of the ICF to the administrator of an insurer shall be accompanied by a report prepared by the State Claims Agency confirming that the methodology for estimating claims reserves and for assessing liabilities applied is appropriate and in line with generally accepted accounting principles or practice.

Section 14 - Amendment of section 6 of Act of 1964 (contributions to Fund by insurers)

Section 14 amends section 6(6) of the Insurance Act 1964 to update the existing regulatory powers of the Central Bank of Ireland to take action in the event of an insurer failing to contribute to the ICF.

Section 15 - Repeal of section 14 of Act of 1964 (regulations)

Section 15 repeals section 14 of the Insurance Act 1964 which provided for regulation-making powers of the Central Bank in relation to the Act. The Central Bank has appropriate regulation-making powers under section 48 of the Central Bank (Supervision and Enforcement) Act 2013.

Section 16 - Motor Insurers Insolvency Compensation Fund

Section 16 provides a legal basis and sets out the arrangements for motor insurers operating in the Irish market to contribute an amount under normal circumstances equivalent to 2% of gross written motor premiums (GWP) to an ex-ante fund to be held by MIBI, to be known as the Motor Insurers Insolvency Compensation (MIIC) Fund. The purpose of this payment is to build up a fund to enable industry meet its 35% commitment should a motor insurer be liquidated in the future. The contribution rate will be subject to annual review by the Minister and may be varied between 0 and 3% depending on factors such as the amount held in the MIIC Fund and the likelihood of a call on that Fund in line with the following parameters:

- An amount equivalent to 2% of GWP until the MIIC Fund reaches €150 million;
- Reducing to a contribution equivalent to 1% until the MIIC Fund reaches €200 million. Contributions to be then suspended until such time as there is a call on the fund;
- In the event of a significant call on the MIIC Fund and there being insufficient moneys in the fund, the contribution can be increased to

the equivalent of 3% of GWP until the fund reaches €50 million after which time a contribution equivalent to 2% of GWP would again apply.

It also sets out the circumstances in which payments will be paid out of the MIIC Fund to the ICF. In the event of an insurer failing to make a contribution to the MIIC Fund, this section provides that MIBI may seek to recover the debt and refer the matter to the Central Bank for regulatory action if deemed appropriate, and such a failure would be a criminal offence as is the case with non-contribution of the ICF levy.

Section 17 - Amendment of National Treasury Management Agency (Amendment) Act 2000

Section 17 amends the National Treasury Management Agency (Amendment) Act 2000 to provide the statutory basis for the State Claims Agency to carry out the additional functions given to it under this Bill.

An Roinn Airgeadais,

Meitheamh, 2018.

Wt. —. 330. 6/18. Essentra. (72781). Gr. 30-15.