



Number 26 of 2011

INSURANCE (AMENDMENT) ACT 2011

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[No. 26.] *Insurance (Amendment) Act 2011.* [2011.]

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Number 26 of 2011

INSURANCE (AMENDMENT) ACT 2011

AN ACT TO AMEND THE INSURANCE ACT 1964 AND THE INSURANCE ACT 1989 TO PROVIDE FOR CONTRIBUTIONS TO AND PAYMENTS FROM THE INSURANCE COMPENSATION FUND AND FOR RELATED MATTERS.

[30th September, 2011]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act “Principal Act” means the Insurance Act 1964. Definition.

2.—Section 1 of the Principal Act is amended— Amendment of section 1 (definitions) of Principal Act.

(a) by substituting the following for the definition of “authorisation”:

“ ‘authorisation’ means an authorisation under one or more of the authorising regulations;”,

(b) by inserting the following definitions after the definition of “the Act of 1936”:

“ ‘authorising regulations’ means—

(a) the European Communities (Non-Life Insurance) Regulations 1976 (S.I. No. 115 of 1976),

(b) the European Communities (Non-Life Insurance) (Amendment) (No. 2) Regulations 1991 (S.I. No. 142 of 1991), and

(c) the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994);

‘excluded risk’, in relation to risk under an insurance policy, means—

(a) a risk relating to insurance of passengers in marine and aviation vehicles, carriers liability or export credit that falls within the following

classes of the Annex to First Council Directive 73/239/EEC of 24 July 1973¹, namely, classes 4, 5, 6, 7, 11 and 12, within classes 1 and 10 in so far as they relate to the insurance of passengers in marine and aviation vehicles and carriers liability insurance, respectively, and within class 14 in so far as it relates to export credit,

- (b) a risk insured against, where the policy concerned relates to insurance business in one or more of classes I, II, III, IV, V, VI, VII, VIII, and IX of Annex I to Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002²,
- (c) a risk insured against, where the policy concerned is a health insurance contract the effecting of which constitutes health insurance business within the meaning of section 2(1) of the Health Insurance Act 1994,
- (d) a risk relating to dental services, where the sole purpose of the policy concerned is to provide for the making of payments for the reimbursement or discharge in whole or in part of fees or charges in respect of the provision of dental services, other than those involving surgical procedures carried out in a hospital by way of hospital in-patient services within the meaning of section 2(1) of the Health Insurance Act 1994,
- (e) a risk insured against in a contract of reinsurance, within the meaning of the European Communities (Reinsurance) Regulations 2006 (S.I. No. 380 of 2006), or
- (f) a risk insured against where, at the time the policy concerned was issued, as the case may be—
 - (i) the authorisation of the insurer that issued the policy had been suspended or revoked, or
 - (ii) the authorisation granted, by the authority in another Member State charged by the law of that Member State with the duty of supervising the activities of insurance undertakings in that Member State, to the insurer authorised in another Member State that issued the policy had been suspended or revoked;”,

- (c) by substituting the following for the definition of “insurer”:

“ ‘insurer’ means an insurance undertaking that is authorised to carry on the business of a non-life insurer and includes an undertaking whose authorisation has been revoked by the Bank, but does not include—

¹OJ No. L 228, 16.8.1973, p. 3

²OJ No. L 345, 19.12.2002, p.1.

- (a) an insurer authorised in another Member State, or
 - (b) a captive insurance undertaking within the meaning of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009³;
- (d) by inserting the following definition after the definition of “insurer”:

“ ‘insurer authorised in another Member State’ means an insurance undertaking that has been granted an authorisation, under the law of another Member State, by the authority in that Member State charged by the law of that Member State with the duty of supervising the activities of insurance undertakings in that Member State, and is consequently authorised to carry on the business of insurance in the State in accordance with one or more of the authorising regulations;”,

- (e) by substituting the following for the definition of ‘policy’:

“ ‘policy’ means any document or other writing by which a contract of insurance is made or agreed to be made or which is evidence of any such contract;”,

- (f) by inserting the following definition after the definition of “policy”:

“ ‘risk in the State’, in relation to risk under an insurance policy, means a risk that is not an excluded risk and that is—

- (a) a risk relating to a building in the State or, if a building and its contents are covered by the same insurance policy, to the building in the State and those contents,
- (b) a risk relating to a vehicle of any type that is registered in the State,
- (c) a risk relating to travel or holidays where the policy holder took out the policy in the State and the duration of the policy is 4 months or less, or
- (d) in any other case, unless the risk is a risk relating to a building or its contents that is situated in another Member State, a vehicle that is registered in another Member State or a risk relating to travel or holidays where the policy is for a duration of 4 months or less and the policy holder took out the policy in another Member State and that the risk would therefore be a risk that is situated in another Member State, a risk where—
 - (i) if the policy holder is an individual, the habitual residence of the policy holder is in the State, or

³OJ No. L335 17.12.2009, p. 1

- (ii) if the policy holder is not an individual, the establishment of the policy holder to which the policy relates is in the State.”.

Amendment of section 2 (Insurance Compensation Fund) of Principal Act.

3.—Section 2 of the Principal Act is amended—

- (a) in subsection (6), by substituting the following for paragraph (a):

“(a) any sums paid under section 5 or 6,”,

- (b) in subsection (6), by substituting the following for paragraph (f):

“(f) amounts referred to in sections 3A(2)(b) and 3B(2)(c) and paid to the Accountant on the winding-up of an insurer by the High Court or, as the case may be, the winding-up of an insurer authorised in another Member State,”

and

- (c) in paragraph (c) of subsection (7), by substituting “sections 3, 3A, 3B and 3C” for “section 3”.

Payments out of Fund in respect of insolvent insurer.

4.—The Principal Act is amended by substituting the following for section 3:

“Payments out of Fund.

3.—(1) Subject to the provisions of this section and sections 3A and 3B, there may, with the approval of the High Court, be paid to a person out of the Fund, in relation to an insurer in liquidation, such amount or amounts as that Court may from time to time authorise in respect of any sum (other than a sum payable in respect of the refund of a premium) due to a person under a policy issued by the insurer in liquidation in respect of a risk in the State, together with the costs and expenses (if any) necessarily and reasonably incurred by the person in endeavouring to secure payment of the sum.

(2) The High Court shall order a payment under subsection (1) only if it appears to the High Court that it is unlikely that the claim can be met otherwise than from the Fund.

(3) The amount that the High Court may order to be paid to a person in respect of a sum due to the person under a policy shall not exceed the amount of the difference between the sum that would have been due to the person under the policy and the sum that remains due after the assets of the insurer in liquidation have been used to satisfy a portion of the sum otherwise due under that policy.

(4) The total amount that may be paid out of the Fund under subsection (1) in respect of any sum due to a person under a policy shall not exceed (whether as one payment or as the total of

a series of payments) 65 per cent of that sum, or €825,000, whichever is the less.

(5) Where any sum referred to in subsection (1) relates to the liability of the insured to a third party, the limitations prescribed by subsections (3) and (4) on payment out of the Fund apply to the sum required to meet the liability of the insured to that third party.

(6) An amount due to a body corporate or unincorporated body of persons may not be paid out of the Fund under subsection (1) unless the sum is due in respect of the liability of the body to an individual or in respect of the liability of an individual to that body.

(7) Where, in respect of a sum due under a policy, a payment equal to the whole of the sum is made by the Motor Insurers' Bureau of Ireland, a payment shall not be made out of the Fund under this section in respect of the sum, and where, in respect of such a sum, a payment equal to part of the sum is made by that Bureau, a payment out of the Fund in respect of the sum shall not exceed the amount of the sum less the amount of the payment by that Bureau.

(8) In this section 'insurer in liquidation' means an insolvent insurer or an insolvent insurer authorised in another Member State in respect of which a liquidator, or a person who performs the equivalent function to a liquidator in the Member State concerned, has been appointed.

Application by liquidator of insolvent insurer.

3A.—(1) A liquidator appointed for an insolvent insurer may apply to the High Court for approvals in respect of the persons to whom sums are payable under section 3 in respect of policies issued by that insurer.

(2) Where an amount is paid out of the Fund under section 3 to the liquidator of an insolvent insurer in respect of one or more sums due under one or more policies issued by that insurer and the costs and expenses (if any) incurred in relation to the sum or sums—

- (a) the liquidator shall pay the amount in respect of the sum due to the person in respect of whom it is due, or, as the case may be, apportion the amount as directed by the High Court in its approval, and
- (b) the Accountant shall, as respects the amount paid out of the Fund, be a creditor of the insurer, and that amount shall be admitted in the proceedings for the winding-up as a proved debt of the insurer having priority to any sum remaining due under the policy.

(3) Where a person to whom a sum is due in respect of the risk in the State receives (whether under this Act or otherwise and whether the amounts are received in the State or otherwise) amounts that, in the aggregate, exceed that sum, then—

- (a) if an amount has been paid to the person out of the Fund, the person shall, without delay, repay that excess to the Fund, and
- (b) if the Accountant recovers an amount in the proceedings for the winding-up of the insurer in respect of that sum, the Accountant shall not pay an amount received on foot of those proceedings to the person to the extent of that excess but shall instead pay that amount to the Fund.

(4) A person who fails to pay an amount required to be paid to the Fund under subsection (3)(a) is guilty of an offence and—

- (a) is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

(5) Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(7) Summary proceedings for an offence under this section may be brought and prosecuted by or on behalf of the Bank.

Application where insurer in liquidation is insurer authorised in another Member State.

3B.—(1) Where an insolvent insurer authorised in another Member State in respect of which a person has been appointed who performs, in the other Member State concerned, the functions that a liquidator would perform in the State if the insolvent insurer authorised in another Member State

were an insurer, and there is an amount payable to one or more persons under section 3, then—

- (a) the Accountant may, from time to time but not more frequently than once in every 6 month period, apply to the High Court for approvals under that section in respect of those persons, and
- (b) the amount of the reasonable and proper costs and expenses of the application to the High Court under that section shall be paid out of the Fund.

(2) Where an amount is paid out of the Fund under section 3 to the Accountant in respect of a sum due under a policy issued by the insurer authorised in another Member State—

- (a) the Accountant shall pay the amount in respect of the sum due to the person in respect of whom it is due, and
- (b) the Accountant shall, as respects the amounts paid out of the Fund, be a creditor of the insurer authorised in another Member State.

(3) Where a person to whom a sum is due in respect of the risk in the State receives (whether under this Act or otherwise and whether the amounts are received in the State or otherwise) amounts that, in the aggregate, exceed that sum, then—

- (a) if an amount has been paid to the person out of the Fund, the person shall, without delay, repay that excess to the Fund, and
- (b) if the Accountant recovers an amount in the proceedings for the winding-up of the insurer authorised in another Member State in respect of that sum, the Accountant shall not pay an amount received on foot of those proceedings to the person to the extent of that excess but shall instead pay that amount to the Fund.

(4) A person who fails to pay an amount required to be paid to the Fund under subsection (3)(a) is guilty of an offence, and—

- (a) is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

(5) Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(7) Summary proceedings for an offence under this section may be brought and prosecuted by or on behalf of the Bank.

Payments out of Fund where administrator appointed.

3C.—(1) Subject to the provisions of this section, there may, with the approval of the High Court, be paid out of the Fund to the administrator of an insurer—

- (a) where the average of the business of the insurer concerned, over the 3 years before the appointment of the administrator, was, in the opinion of the Bank, at least 70 per cent in respect of risks in the State of policy holders, the amounts that are, in the opinion of that Court, required to enable the administrator to carry on the business of the insurer and to perform his or her functions in relation to the insurer, or
- (b) where the average of the business of the insurer concerned, over the 3 years before the appointment of the administrator, was not, in the opinion of the Bank, at least 70 per cent in respect of risks in the State of policy holders, the amounts that are, in the opinion of that Court—
 - (i) required to defray the expenses of the administrator in the performance of his or her functions in relation to the insurer, and
 - (ii) unlikely to be defrayed otherwise than from the Fund.

(2) Where any sum has been paid out of the Fund to an administrator pursuant to subsection (1)—

- (a) the amount of the sum paid shall be an unsecured debt of the insurer, and

(b) the Minister may at any time, with a view to facilitating the placing of the business of the insurer on a sound commercial and financial footing, waive all or part of that debt on behalf of the Fund, having due regard to any amounts that may be realisable on a winding-up of the insurer and to any representations made to him or her by the administrator or by any other insurer.

(3) After an administrator has been appointed to an insurer, no dividends or other distributions to shareholders of the insurer shall be payable by the insurer so long as any debt due to the Fund by the insurer (not including any debt waived under this section) has not been paid.

(4) When exercising its jurisdiction under subsection (1), the High Court shall have regard to—

(a) the amount of the assets of the Fund at the time when that Court is exercising that jurisdiction,

(b) the amount of income that the Court ascertains, at the time when that Court is exercising that jurisdiction, to be income that will accrue to the Fund after that time,

(c) the amount of the sums properly payable out of the Fund at the time when that Court is exercising that jurisdiction, and

(d) the amount of the sums that the Court ascertains, at the time when that Court is exercising that jurisdiction, to be sums that will be properly payable out of the Fund after that time.”.

5.—Section 4 of the Principal Act is repealed.

Repeal of section 4 (grant to Fund by Minister) of Principal Act.

6.—Section 5(1) of the Principal Act is amended by substituting “sections 3, 3A, 3B and 3C” for “section 3”.

Amendment of section 5 (advances to Fund by Minister) of Principal Act.

7.—The Principal Act is amended by substituting the following for section 6:

Contributions to Fund.

“6.—(1) Where, in the opinion of the Bank, the state of the Fund is such that financial support should be provided for it, the Bank shall determine an appropriate contribution to be paid to the Fund by each insurer or insurer authorised in another Member State, calculated as a percentage determined by the Bank, not exceeding 2 per cent, of the aggregate of the gross

premiums paid to that insurer or insurer authorised in another Member State in respect of policies issued in respect of risks in the State.

(2) Where the Bank is of the opinion referred to in subsection (1), it shall publish a notice on a website maintained by it, and deliver a notice to each insurer and each insurer authorised in another Member State, specifying the following particulars:

- (a) the date on and after which each insurer and insurer authorised in another Member State shall be obliged to pay the appropriate contribution, which date shall be not earlier than 30 days after the date of the publication of the notice;
- (b) the percentage referred to in subsection (1);
- (c) the person to whom the appropriate contribution is to be paid (in this section referred to as the ‘collector’).

(3) In respect of each quarter in every year during which there is a percentage determined, published on a website maintained by the Bank and in force under subsection (2) or (8), an insurer or, as the case may be, an insurer authorised in another Member State shall, whether or not that insurer or insurer authorised in another Member State has received a notice under one or both of those subsections, and not later than the last day on which that insurer or insurer authorised in another Member State is required to deliver the statement under section 125(2) of the Stamp Duties Consolidation Act 1999 in respect of that quarter, or such other date as the Minister may fix by order if he or she is of the opinion that it would be more efficient or effective for the administration of the Fund to do so—

- (a) deliver to the collector a statement in writing showing the aggregate of the gross premiums paid in that quarter by the holders of policies that the insurer or insurer authorised in another Member State issued in respect of risks in the State, and
- (b) pay to the collector the appropriate contribution calculated in accordance with this section.

(4) Without delay after receiving an appropriate contribution under subsection (3)(b), the collector shall—

- (a) transmit that contribution to the Fund after deducting the costs associated with performing functions under this section, and
- (b) inform the Bank of—
 - (i) the name of the insurer or insurer authorised in another Member State that made the contribution, and
 - (ii) the amount of that contribution.

(5) The collector shall, if it appears to the collector that an insurer or insurer authorised in another Member State is liable to pay an appropriate contribution in accordance with subsection (3) but has not done so, inform the Bank of the name and

address of that insurer or insurer authorised in another Member State.

(6) If an appropriate contribution is not paid in accordance with this section the Bank may—

- (a) recover it as a simple contract debt in any court of competent jurisdiction from the insurer or insurer authorised in another Member State by which it is payable, and
- (b) on giving notice of not less than 21 days to the insurer or insurer authorised in another Member State by which that contribution is payable—
 - (i) in the case of an insurer, suspend its authorisation until the Bank is satisfied that all appropriate contributions payable in accordance with this section by the insurer concerned have been paid, or
 - (ii) in the case of an insurer authorised in another Member State, take any action that the Bank considers appropriate, after consultation with the authority in that Member State charged by the law of that Member State with the duty of supervising the activities of insurance undertakings in that Member State, including any action that would prevent the insurer authorised in another Member State from issuing any policies of insurance in relation to risks in the State until the Bank is satisfied that all appropriate contributions payable in accordance with this section by the insurer authorised in another Member State concerned have been paid.

(7) After an appropriate contribution is recovered under subsection (6)(a), the Bank shall transmit the appropriate contribution to the Fund, after paying to the collector the amount of the costs associated with performing functions under this section.

(8) The Bank shall, not earlier than 60 days before each anniversary of the publication of the relevant effective date and not later than each such anniversary, review the state of the Fund to determine whether it is such that financial support should continue to be provided for the Fund, and—

- (a) if it is of the opinion that financial support need not continue to be provided for the Fund, the Bank shall publish on a website maintained by it, and deliver to each insurer and each insurer authorised in another Member State, a notice of the date on which the obligation for each insurer and insurer authorised in another Member State to pay the appropriate contribution shall cease, or
- (b) if it is of the opinion that financial support should continue to be provided for the Fund, the Bank—
 - (i) if it is of the opinion that the financial support required could be provided if a percentage lower than the percentage determined by the

Bank, and in force, of the aggregate of the gross premiums paid to that insurer or insurer authorised in another Member State, in respect of policies issued in respect of risks in the State, were used to calculate the appropriate contribution, shall determine a new percentage and publish on a website maintained by it, and deliver to each insurer and each insurer authorised in another Member State, a notice of the new percentage and the date on and after which the new percentage is to be used in the calculation of the appropriate contribution,

- (ii) if it is of the opinion that the financial support required could be provided only if a percentage higher than the percentage determined by the Bank, and in force, of the aggregate of the gross premiums paid to that insurer or insurer authorised in another Member State, in respect of policies issued in respect of risks in the State, were used to calculate the appropriate contribution, shall determine a new percentage and publish on a website maintained by it, and deliver to each insurer and each insurer authorised in another Member State, a notice of the new percentage and the date on and after which the new percentage is to be used in the calculation of the appropriate contribution, or
- (iii) if it is of the opinion that the financial support required could continue to be provided if the percentage determined by the Bank, and in force, of the aggregate of the gross premiums paid to that insurer or insurer authorised in another Member State, in respect of policies issued in respect of risks in the State, continued to be used to calculate the appropriate contribution, need do nothing further in relation to the determination of such a percentage until the next such anniversary.

(9) An insurer or insurer authorised in another Member State that does not make an appropriate contribution in accordance with subsection (3) is guilty of an offence and—

- (a) is liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or
- (b) is liable on conviction on indictment to a fine or to imprisonment for a term not exceeding 5 years or to both.

(10) Where an offence under this section is committed by a body corporate and it is proved that the offence was committed with the consent or connivance, or was attributable to any wilful neglect, of a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in that capacity, that person, as well as the body corporate, is guilty of an offence and may be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(11) Where the affairs of a body corporate are managed by its members, subsection (10) applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

(12) Summary proceedings for an offence under this section may be brought and prosecuted by or on behalf of the Bank.

(13) (a) The Minister shall by order, appoint as collector for the purposes of this section the Bank, the Revenue Commissioners or any other person who, in the opinion of the Minister, has the requisite knowledge, expertise and experience to perform the functions of collector under this section.

(b) If the Bank is appointed by order under paragraph (a) to be the collector, subsections (4) and (5) shall be read without reference to the collector informing the Bank.

(c) If the Revenue Commissioners are appointed by order under paragraph (a) to be the collector, the Revenue Commissioners may require that the statement under subsection (3) be delivered, and the payment of the appropriate contribution under that subsection be made, in an electronic format that the Revenue Commissioners may specify from time to time.

(14) In this section—

‘effective date’ means the date mentioned in a notice published under—

(a) subsection (2),

(b) paragraph (a) of subsection (8), or

(c) subparagraph (i) or (ii) of paragraph (b) of subsection (8);

‘premium’ in relation to a policy issued in respect of risks in the State, includes a premium paid if the policy is issued both in respect of risks in the State and risks not in the State;

‘quarter’ means a period of not more than 3 months—

(a) beginning on the effective date, or at the end of the previous quarter, whichever is the later, and

(b) ending on 31 March, 30 June, 30 September or 31 December.”.

8.—Section 31 of the Insurance Act 1989 is repealed.

Repeal of section 31 (Insurance Compensation Fund) of Insurance Act 1989.

9.—Notwithstanding *section 4* of this Act, payments under the Principal Act in respect of an insolvent insurer proceedings for the winding-up of which were commenced before the commencement of

Saving.

S.9 [No. 26.] *Insurance (Amendment) Act 2011.* [2011.]

this Act, or in respect of an insurer to which an administrator was appointed before the commencement of this Act, shall be made as though section 3 of the Principal Act read as it did before the enactment of *section 4* of this Act.

Short title. **10.**—This Act may be cited as the Insurance (Amendment) Act 2011.