



Number 21 of 2018

Insurance (Amendment) Act 2018



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Number 21 of 2018

INSURANCE (AMENDMENT) ACT 2018

An Act to amend and extend the law relating to insolvent insurers; to provide for the transfer of the administration of the Insurance Compensation Fund to the Central Bank of Ireland; to provide for the conferral of certain functions on the Central Bank of Ireland and the National Treasury Management Agency relating to the Insurance Compensation Fund and payments to certain persons in the case of insolvent insurers; to provide for the establishment of a fund to be known as the Motor Insurers Insolvency Compensation Fund and the manner in which that fund shall be administered, controlled and managed by the Motor Insurers' Bureau of Ireland; to provide for the making of contributions by vehicle insurers to that fund, the rate of the contribution to be made and adjustments to that rate; to provide for enforcement of the provisions relating to the making of those contributions; for those purposes to amend and extend the Insurance Act 1964 and the National Treasury Management Agency (Amendment) Act 2000; and to provide for related matters. [24th July, 2018]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, commencement, collective citation and construction

1. (1) This Act may be cited as the Insurance (Amendment) Act 2018.
- (2) *Part 4* shall come into operation on such day or days as the Minister for Finance may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions.
- (3) The Insurance Acts 1909 to 2015 and this Act (other than *Part 5*) may be cited together as the Insurance Acts 1909 to 2018 and shall be construed together as one.

Definitions

2. In this Act—

“Accountant” means the Accountant attached to the High Court by virtue of the Courts (Supplemental Provisions) Act 1961;

“Act of 1964” means the Insurance Act 1964;

“Bank” means the Central Bank of Ireland;

“Fund” means the Insurance Compensation Fund established by section 2 of the Act of 1964;

“State Claims Agency” means the National Treasury Management Agency when performing the functions conferred on it by this Act.

Expenses

3. The expenses incurred by the Minister for Finance in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Savings and transitional provisions

4. (1) Anything commenced and not completed before the coming into operation of this section by or under the authority of the Accountant may, in so far as it relates to a function conferred on the Bank by sections 2, 3A, 3B and 3C of the Act of 1964 (as amended by *Part 3*), be carried on or completed on or after such coming into operation by the Bank.
- (2) Anything commenced and not completed before the coming into operation of this section by or under the authority of the Accountant may, in so far as it relates to a function conferred on the State Claims Agency by sections 3A, 3B and 3C of the Act of 1964 (as amended by *Part 3*), be carried on or completed on or after such coming into operation by the State Claims Agency.

PART 2

THE FUND

Final accounts of Fund

5. (1) As soon as practicable, but not later than 3 months after the coming into operation of this Part, the Accountant shall cause to be prepared an abstract of the accounts of the Fund, and a report of the administration of the Fund, in respect of the accounting period or part thereof of the Fund ending immediately before the said coming into operation.
- (2) The Accountant shall arrange for the abstract and report referred to in *subsection (1)* to be audited and, as soon as is practicable after the audit, shall submit a copy of the abstract and report as so audited, together with the auditor’s report thereon, to the

Minister for Finance who shall cause copies of those documents to be laid before each House of the Oireachtas as soon as practicable.

Moneys to be paid to Bank

6. The Accountant shall, not later than 30 days after the preparation of the abstract and report referred to in *section 5(1)* pay moneys, if any, standing to the credit of the Fund to the Bank for the purposes of the performance by the Bank of its functions under the Act of 1964.

Records of Accountant

7. (1) Each record held, immediately before the coming into operation of this Part, by the Accountant under the Act of 1964 in relation to the accounts of the Fund shall, on such coming into operation, be transferred to the Bank and shall, on and after such coming into operation, be the property of the Bank and be regarded as being held by the Bank.
- (2) Each record held, immediately before the coming into operation of this Part, by the Accountant under the Act of 1964 in relation to applications to the High Court for approvals under section 3 of that Act and payments out of the Fund shall, on such coming into operation, be transferred to the State Claims Agency and shall, on and after such coming into operation, be the property of the State Claims Agency and be regarded as being held by the State Claims Agency.

PART 3

AMENDMENT OF ACT OF 1964

Amendment of section 1 of Act of 1964 (definitions)

8. Section 1 of the Act of 1964 is amended by inserting the following definitions:

“ ‘financial services legislation’ has the meaning assigned to it by section 3(1) of the Central Bank (Supervision and Enforcement) Act 2013;

‘Member State’ means a Member State of the European Union and, where relevant, includes a contracting party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (as adjusted by the Protocol signed at Brussels on 17 March 1993), as amended;

‘MIBI’ means the Motor Insurers’ Bureau of Ireland;

‘MIIC Fund’ has the meaning given to it by section 3D(1);

‘percentage rate’ shall be construed in accordance with section 3F(4);

‘State Claims Agency’ means the National Treasury Management Agency when performing the functions conferred on it by this Act;

‘vehicle insurer’ means an insurer, or an insurer authorised in another Member State, issuing policies covering risk in the State classified under class 10 in Part 1 of Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);”.

Amendment of section 2 of Act of 1964 (Insurance Compensation Fund)

9. Section 2 of the Act of 1964 is amended—

- (a) by substituting the following for subsection (2):

“(2) The Fund shall, subject to the provisions of this Act, be maintained and administered under the control of the Bank.”,
- (b) by substituting the following for subsection (3):

“(3) Subject to subsection (9), the Bank may borrow for the Fund and, for the purpose of giving security with respect to such borrowing, may charge investments of the Fund.”,
- (c) in subsection (3A) by substituting “Subject to subsection (9), the Bank” for “The Accountant”,
- (d) in subsection (4) by substituting “Subject to subsection (9), the Bank” for “The Accountant”,
- (e) by deleting subsection (5),
- (f) in subsection (6)—
 - (i) by substituting the following for paragraph (a):

“(a) any sums paid under section 3E(5), 5 or 6,”,
 - (ii) by deleting paragraph (e),
 - (iii) in paragraph (f)—
 - (I) by substituting “3B(2)(b)” for “3B(2)(c)”, and
 - (II) by substituting “Bank” for “Accountant”,and
 - (iv) in paragraph (g) by substituting “Bank” for “Accountant”,
- (g) in subsection (7) by substituting the following for paragraph (a):

“(a) sums to meet the expenses incurred—

 - (i) by the Bank in performing its functions under this Act in respect of the maintenance and administration of the Fund, and
 - (ii) by the State Claims Agency in performing its functions under this Act,”,
- (h) by substituting the following for subsection (8):

- “(8) (a) The Bank shall, in respect of each financial year, cause to be kept proper and usual accounts of moneys paid into or out of the Fund and shall, not later than 6 months after the end of the financial year to which the accounts relate, cause to be furnished to the Minister an abstract of the accounts of the Fund for that year and a report of the administration of the Fund during that year.
- (b) Not later than 6 months after the end of the financial year to which the accounts relate, the Bank shall submit the accounts kept under this section to the Comptroller and Auditor General for audit.
- (c) As soon as practicable following the audit referred to in paragraph (b), the Bank shall present to the Minister—
- (i) copies of the audited accounts, and
- (ii) the Comptroller and Auditor General’s report on the audited accounts.
- (d) As soon as practicable after receipt of the audited accounts and the Comptroller and Auditor General’s report, the Minister shall cause copies of them to be laid before each House of the Oireachtas.”,

and

- (i) by inserting the following subsection after subsection (8):

“(9) The Bank shall not provide any funds to the Fund from its own resources nor shall the Bank have any liability arising from the Fund.”.

Amendment of section 3 of Act of 1964 (payments out of Fund)

10. Section 3 of the Act of 1964 is amended—

- (a) in subsection (2) by substituting “under subsection (1) or (5A)(d)” for “under subsection (1)”,
- (b) by substituting the following for subsection (3):
- “(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 that remains due after the assets of the insurer in liquidation have been used to satisfy a portion of the sum otherwise due to the person under the policy.”,
- (c) by substituting the following for subsection (5):
- “(5) Where any sum referred to in subsection (1) relates to the liability of the insured to a third party (other than under a policy issued by an insurer in liquidation that is a vehicle insurer) 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.”,

(d) by inserting the following subsection after subsection (5):

“(5A) (a) Where—

- (i) any sum referred to in subsection (1) relates to the liability of the insured to a third party under a policy issued by an insurer in liquidation that is a vehicle insurer, and
- (ii) the liquidator or, in the case of an insolvent insurer authorised in another Member State, the person who performs the equivalent functions to a liquidator in the Member State concerned, is appointed in respect of the vehicle insurer on or after 30 September 2011,

then, the limitations prescribed by subsections (3) and (4) on payment out of the Fund shall not apply to the sum required to meet the liability of the insured to that third party.

(b) In a case where paragraph (a) applies—

- (i) any amount approved under subsection (1) in respect of personal injuries shall be paid in full, and
- (ii) any amount approved under subsection (1) in respect of injury to property shall be limited to the sum specified in section 56(2) (a) of the Road Traffic Act 1961, applying at the time the event giving rise to the claim occurred.

(c) Where, on or after the coming into operation of *Part 3* of the *Insurance (Amendment) Act 2018*, a liquidator or, in the case of an insolvent insurer authorised in another Member State, a person who performs the equivalent functions to a liquidator in the Member State concerned, is appointed in respect of a vehicle insurer, any amount payable by virtue of this subsection, in excess of the limitation prescribed by subsection (4) on payment out of the Fund, shall be met by a payment out of the MIIC Fund to the Fund in accordance with section 3E(5).

(d) In a case where paragraph (a) applies, where an amount was approved under subsection (1) and paid to a person out of the Fund before the coming into operation of *Part 3* of the *Insurance (Amendment) Act 2018*, there may, with the approval of the High Court, be paid to the person out of the Fund such amount or amounts as that Court may authorise in respect of any sum that remains due to that person under the policy concerned after such coming into operation, together with the costs and expenses (if any) necessarily and reasonably incurred by the person in endeavouring to secure payment of the sum.”,

(e) in subsection (6) by substituting “under subsection (1) or (5A)(d)” for “under subsection (1)”, and

(f) by deleting subsection (7).

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

11. Section 3A of the Act of 1964 is amended—

(a) by inserting the following subsection after subsection (1):

“(1A) (a) Before applying to the High Court under subsection (1), the liquidator of an insolvent insurer shall provide the following information to the State Claims Agency for the purposes of that Agency assessing and verifying whether sums payable under section 3 are appropriate to the claim concerned on the basis of the information so provided:

- (i) details of the claims concerned, including an assessment and breakdown of the sum payable in respect of each claim;
- (ii) all documentary evidence in support of those claims (being documentary evidence in the form that the liquidator required such evidence to be submitted to him or her).

(b) The information specified in paragraph (a) shall be provided in such form and manner as the State Claims Agency may specify, from time to time, for the purposes of that paragraph.

(c) The State Claims Agency shall, in support of any application to the High Court by the liquidator under subsection (1), prepare a written report—

- (i) setting out the information provided under paragraph (a) and the process of verification carried out by it in relation to that information, and
- (ii) confirming that sums referred to in paragraph (a) have been verified by it as appropriate.”,

(b) in subsection (2)(b) by substituting “the Bank” for “the Accountant”, and

(c) in subsection (3)—

(i) in paragraph (a) by substituting “Fund,” for “Fund, and”,

(ii) by substituting the following for paragraph (b):

“(b) if the Bank recovers an amount in the proceedings for the winding-up of the insurer (other than a vehicle insurer) in respect of that sum, the Bank shall pay the amount to the extent of that excess to the Fund, and”,

and

(iii) by inserting the following paragraph after paragraph (b):

“(c) if the Bank recovers an amount in the proceedings for the winding-up of a vehicle insurer in respect of that sum, the Bank shall pay the amount to the extent of that excess, subject to the limitation prescribed by section 3(4) on payment out of the Fund, to the Fund, and any amount remaining after such payment to the Fund shall be repaid by the Bank to the MIIC Fund.”.

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

12. Section 3B of the Act of 1964 is amended—

(a) by substituting the following for subsection (1):

“(1) In the case of 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, where there is an amount payable to one or more persons under section 3, then—

- (a) the State Claims Agency may, from time to time but not more frequently than once in every 3 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.”,

(b) by inserting the following subsection after subsection (1):

“(1A) (a) The person referred to in subsection (1) who is appointed in respect of an insolvent insurer authorised in another Member State shall provide the following information to the State Claims Agency for the purposes of that Agency assessing and verifying whether the amount payable under section 3 is appropriate to the claim concerned on the basis of the information so provided:

- (i) details of the claims concerned, including an assessment and breakdown of the amount payable in respect of each claim;
 - (ii) all documentary evidence in support of those claims (being documentary evidence in the form that the person so appointed required such evidence to be submitted to him or her).
- (b) The information specified in paragraph (a) shall be provided in such form and manner as the State Claims Agency may specify, from time to time, for the purposes of that paragraph.

- (c) The State Claims Agency shall, in support of any application by it to the High Court under subsection (1), prepare a written report—
 - (i) setting out the information provided under paragraph (a) and the process of verification carried out by it in relation to that information, and
 - (ii) confirming that the amount referred to in paragraph (a) has been verified by it as appropriate.”
- (c) by substituting the following for subsection (2):
 - “(2) Where an amount is approved for payment out of the Fund under section 3 in respect of a sum due under a policy issued by the insurer authorised in another Member State—
 - (a) the Bank shall arrange for payment out of the Fund to the State Claims Agency of the amount ordered by the High Court under section 3 to be so paid and the State Claims Agency shall pay the amount in respect of the sum so due to the person in respect of whom it is due, and
 - (b) the Bank shall, as respects the amounts paid out of the Fund, be a creditor of the insurer authorised in another Member State.”
- and
- (d) in subsection (3)—
 - (i) in paragraph (a) by substituting “Fund,” for “Fund, and”,
 - (ii) by substituting the following for paragraph (b):
 - “(b) if the Bank recovers an amount in the proceedings for the winding-up of the insurer (other than a vehicle insurer) authorised in another Member State in respect of that sum, the Bank shall pay the amount to the extent of that excess to the Fund, and”,
- and
- (iii) by inserting the following paragraph after paragraph (b):
 - “(c) if the Bank recovers an amount in the proceedings for the winding-up of a vehicle insurer authorised in another Member State in respect of that sum, the Bank shall pay the amount to the extent of that excess, subject to the limitation prescribed by section 3(4) on payment out of the Fund, to the Fund, and any amount remaining after such payment to the Fund shall be repaid by the Bank to the MIIC Fund.”.

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

13. Section 3C of the Act of 1964 is amended—

(a) in subsection (1) by inserting “by the Bank” after “paid”,

(b) by inserting the following subsection after subsection (1):

“(1A) (a) An application to the High Court for payment out of the Fund, to the administrator of an insurer pursuant to subsection (1), shall be accompanied by a report prepared by the State Claims Agency.

(b) A report under paragraph (a) shall confirm that the methodology for estimating claims reserves and for assessing liabilities applied by the administrator, in determining the amounts that are 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, is in accordance with generally accepted accounting principles or practice for insurers.”,

and

(c) in subsection (4)—

(i) in paragraph (c) by deleting “and”,

(ii) in paragraph (d) by substituting “time, and” for “time.”, and

(iii) by inserting the following paragraph after paragraph (d):

“(e) the opinion of the State Claims Agency on the methodology for estimating claims reserves and for assessing liabilities referred to in a report under subsection (1A).”.

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

14. Section 6 of the Act of 1964 is amended by substituting the following for subsection (6):

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

(i) 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

(ii) in the case of an insurer by which such contribution is payable, on giving notice in writing of not less than 21 days to the insurer, suspend its authorisation until the Bank is satisfied that all appropriate contributions payable by that insurer in accordance with this section have been paid.

(b) If an insurer authorised in another Member State has not paid an appropriate contribution in accordance with this section, the Bank

may inform 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 (in this subsection referred to as ‘the supervisory authority’).

- (c) If an insurer referred to in paragraph (b) persists in its failure to pay the appropriate contribution, despite any measures taken by the supervisory authority or because those measures prove to be inadequate or are lacking in that Member State, the Bank may, after informing the supervisory authority and on giving notice of not less than 21 days to the insurer, in the exercise of its powers under financial services legislation, take appropriate measures to prevent further failure, including preventing that insurer from issuing any policies of insurance in relation to risks in the State.”.

Repeal of section 14 of Act of 1964 (regulations)

15. Section 14 of the Act of 1964 is repealed.

PART 4

MOTOR INSURERS INSOLVENCY COMPENSATION FUND

Motor Insurers Insolvency Compensation Fund

16. The Act of 1964 is amended by inserting the following sections after section 3C:

“Motor Insurers Insolvency Compensation Fund

- 3D.** (1) The MIBI shall, on the day that falls one month after the coming into operation of *Part 4* of the *Insurance (Amendment) Act 2018*, establish a fund to be known as the Motor Insurers Insolvency Compensation Fund (in this Act referred to as the ‘MIIC Fund’) for the purpose of payment to the Fund in accordance with this Act of any amount referred to in section 3(5A)(c).
- (2) The MIIC Fund shall, subject to the provisions of this Act, be maintained and administered under the control of the MIBI.
- (3) The MIBI shall open and maintain a separate account or accounts for moneys paid to the MIIC Fund under this Act.
- (4) The MIBI may invest any moneys paid to the MIIC Fund under this Act, which are not immediately required for the purposes of making any payments referred to in section 3E(1), in such manner as its board of directors (or one or more of the members of such board duly authorised in that behalf to do so) may from time to time determine, and such moneys and the income arising from such investment shall be

paid into and form part of the MIIC Fund and be available for those purposes.

- (5) (a) As soon as practicable, but not later than 31 July in each year, the MIBI shall make a report in writing to the Minister in relation to the performance during the previous year of the functions conferred on it by this Act.
- (b) The report referred to in paragraph (a) shall include a statement of at least the following:
- (i) the total amount of the contributions paid to the MIIC Fund under section 3F(1)(b) in the year to which the report relates;
 - (ii) the total amount (if any) paid to the Fund under section 3E(5) during the year to which the report relates;
 - (iii) the total anticipated amount due to the Fund under section 3(5A)(c) in respect of the current year based on notifications received from the Bank under section 3E(2) during the year to which the report relates;
 - (iv) the total amount standing to the credit of the MIIC Fund at the end of the year to which the report relates;
 - (v) the total amount standing to the credit of the MIIC Fund on a date specified in the report that is not earlier than 7 days before the date of the report;
 - (vi) any amounts due and owing to the Fund pursuant to a notice under section 3E(3) sent by the Bank during the year to which the report relates, and remaining unpaid after the due date;
 - (vii) the total amount of the expenses referred to in section 3E(1)(b) incurred for the year to which the report relates.
- (c) The Minister shall, as soon as practicable, cause copies of the report to be laid before each House of the Oireachtas.
- (6) The MIBI shall, not later than 21 days after receipt of a request in writing from the Minister, give the Minister—
- (a) a statement in writing of the total amount standing to the credit of the MIIC Fund on a date specified in the statement that is not earlier than the date of the request, and
 - (b) such information as the Minister may from time to time request as to the performance by the MIBI of the functions conferred on it by this Act.

Payments out of MIIC Fund

3E. (1) The following shall be paid out of the MIIC Fund:

- (a) the amount payable out of the MIIC Fund to the Fund under section 3(5A)(c), pursuant to a notice under subsection (3);
 - (b) before any amounts referred to in paragraph (a) are paid to the Fund, sums to meet the expenses incurred by the MIBI in performing its functions under this Act.
- (2) Where a payment is made by the Bank out of the Fund in a case where section 3(5A)(c) applies, the Bank shall notify the MIBI in writing not later than 28 days after making such payment and provide details to the MIBI of the amount so paid in excess of the limitation prescribed by section 3(4) in respect of the claim or claims concerned.
- (3) (a) The Bank shall, not later than 3 months after the end of each relevant period, send to the MIBI a notice in writing which shall—
- (i) in respect of each such relevant period—
 - (I) set out a statement of the total amount of the payments notified to the MIBI under subsection (2) during that relevant period, or
 - (II) where no payment has been notified to the MIBI under subsection (2) during that relevant period, a nil statement,and
 - (ii) where applicable, request payment out of the MIIC Fund to the Fund of—
 - (I) the amount referred to in subparagraph (i)(I), and
 - (II) any amounts due and owing to the Fund pursuant to a notice under this subsection in any previous relevant period and remaining unpaid after the due date.
- (b) For the purposes of paragraph (a), ‘relevant period’ means—
- (i) in the case of the first notice under this subsection after the coming into operation of *Part 4* of the *Insurance (Amendment) Act 2018*, the period beginning on the day on which the said *Part 4* comes into operation and ending on 30 June next following that day, and
 - (ii) in the case of each subsequent notice under this subsection, the period of 12 months beginning on 1 July and ending on 30 June next following the immediately preceding relevant period.
- (4) The MIBI shall, not later than 28 days after receipt of a notice under subsection (3), determine its ability to pay the amount concerned out of the MIIC Fund, and—

- (a) where there are sufficient moneys in the MIIC Fund to pay the full amount concerned, notify the Bank in writing confirming that the full amount shall be so paid, or
 - (b) where there are insufficient moneys in the MIIC Fund to pay the full amount concerned—
 - (i) notify the Bank in writing confirming the amount (if any) which it shall pay, and
 - (ii) notify the Minister in writing of the amount of the shortfall concerned.
- (5) The MIBI shall, where a notification has been made under subsection (4)(a) or (b), as the case may be, pay the amount concerned not later than 2 months after receipt of the notice under subsection (3).

Contributions to MIIC Fund

- 3F.** (1) A vehicle insurer shall, not later than 30 June in each year beginning with the year following the year in which *Part 4* of the *Insurance (Amendment) Act 2018* comes into operation—
- (a) subject to subsections (2) and (3), give to the MIBI a statement in writing, certified as to its accuracy by an auditor duly appointed by the insurer in that behalf to do so, setting out the assessable amount—
 - (i) in the case of the first such statement after the coming into operation of *Part 4* of the *Insurance (Amendment) Act 2018*, in respect of the period beginning on the day on which the said *Part 4* comes into operation and ending on 31 December next following that day, and
 - (ii) in the case of each subsequent statement, in respect of the immediately preceding year,
- and
- (b) pay to the MIIC Fund a contribution calculated as a percentage of the assessable amount set out in the statement under paragraph (a) at the rate provided for by subsection (4) (in this Act referred to as the ‘percentage rate’).
- (2) A statement under subsection (1) shall be in such form as the MIBI may specify, from time to time, and shall include such information, particulars and documentation as the MIBI may reasonably require in order to be satisfied as to the assessable amount.
- (3) The MIBI may by notice in writing require a vehicle insurer to give to the MIBI within such period of not less than 7 days as is specified in the notice—

- (a) such additional information, particulars and documentation as the MIBI determines for the purposes of this section, and
 - (b) such evidence as the MIBI may reasonably require in order to verify any information, particulars or documentation given to the MIBI under this section.
- (4) The percentage rate shall be—
- (a) 2 per cent of the assessable amount, or
 - (b) in a case where an order is made under section 3G(1)(b), such percentage of the assessable amount as stands specified in such order.
- (5) In this section and in section 3G ‘assessable amount’, in relation to a year (or, for the purposes of subsection (1)(a)(i), part of a year) and a vehicle insurer, means the gross premiums paid to the vehicle insurer in respect of all policies issued by it covering risk in the State classified under—
- (a) class 10, and
 - (b) class 10 together with all or any of classes 1(d), 3 and 7,
in Part 1 of Schedule 1 to the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).
- (6) The MIBI shall pay into the MIIC Fund the amount of any contribution received from a vehicle insurer under this section.

Adjustment of percentage rate

- 3G.** (1) The Minister, not more than 3 months after receiving a report under section 3D(5) or a statement under section 3D(6)(a) as to the total amount standing to the credit of the MIIC Fund on the date specified in the report or in the statement, as the case may be (in this section referred to as ‘the relevant amount’)—
- (a) shall review the percentage rate, and
 - (b) may, following consultation with the MIBI and the Bank and subject to subsections (2) to (5), by order specify a percentage rate in lieu of the current percentage rate.
- (2) An order under subsection (1)(b) shall take effect from 1 January of the year next following that in which the order is made.
- (3) The Minister shall not specify a percentage rate of more than 3 per cent of the assessable amount for the purposes of an order under subsection (1)(b).
- (4) Subject to subsection (5), where the Minister makes an order under subsection (1)(b), the percentage rate specified in the order shall be—

- (a) save where paragraph (d) applies, 2 per cent of the assessable amount, where the relevant amount is not more than €150 million,
 - (b) 1 per cent of the assessable amount, where the relevant amount is more than €150 million but not more than €200 million,
 - (c) 0 per cent of the assessable amount, where the relevant amount is more than €200 million, or
 - (d) where the Minister has received a notification from the MIBI under section 3E(4)(b)(ii), 3 per cent of the assessable amount until the total amount standing to the credit of the MIIC Fund is more than €50 million.
- (5) Subject to subsection (3), the Minister may make an order under subsection (1)(b) specifying a percentage rate other than the percentage rate applicable under any of paragraphs (a) to (d) of subsection (4), as he or she considers appropriate, having regard to—
- (a) the relevant amount,
 - (b) an estimate of the total amount of contributions payable under section 3F(1)(b) before 30 June in the year next following that in which the order is made, based on the total amount of the contributions paid under section 3F(1)(b) as set out in the report under section 3D(5),
 - (c) any sums due and owing to the Fund pursuant to a notice under section 3E(3), and
 - (d) the desirability of ensuring that the total amount standing to the credit of the MIIC Fund is likely to be sufficient to meet any payments that may become due to the Fund under section 3(5A)(c).
- (6) The MIBI shall publish on its website and by such other means as it considers appropriate notice of the making of an order under subsection (1)(b).
- (7) An order under subsection (1)(b) shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done under that order.

Failure to make contribution to MIIC Fund

- 3H.** (1) The MIBI may recover as a simple contract debt, in any court of competent jurisdiction, from a vehicle insurer by which it is payable the amount of any contribution due and owing to the MIIC Fund under section 3F(1)(b).

- (2) (a) The MIBI shall, if a vehicle insurer does not make a contribution to the MIIC Fund under section 3F(1)(b), notify the Bank in writing of the name and address of the vehicle insurer.
- (b) A notification under paragraph (a) shall include—
- (i) particulars of any steps taken by the MIBI to recover the amount of the contribution concerned, including documentary evidence of any such steps so taken, and
 - (ii) a copy of any order of the court obtained pursuant to subsection (1).
- (3) Where the Bank receives a notification from the MIBI under subsection (2), the Bank may require the MIBI to provide such further information, as the Bank considers necessary and appropriate, in relation to the failure of the vehicle insurer to make the contribution to the MIIC Fund under section 3F(1)(b).
- (4) In the case of a vehicle insurer (other than a vehicle insurer which is an insurer authorised in another Member State), where the Bank receives a notification under subsection (2), the Bank may, on giving notice in writing of not less than 21 days to the vehicle insurer by which the contribution to the MIIC Fund under section 3F(1)(b) is payable, suspend its authorisation until the Bank is satisfied that all such contributions to the MIIC Fund payable by the vehicle insurer under section 3F(1)(b) have been paid.
- (5) In the case of a vehicle insurer which is an insurer authorised in another Member State, where the Bank receives a notification under subsection (2), the Bank may inform 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 (in this section referred to as ‘the supervisory authority’) that it has received such a notification.
- (6) If a vehicle insurer referred to in subsection (5) persists in its failure to pay the contribution to the MIIC Fund under section 3F(1)(b), despite any measures taken by the supervisory authority or because those measures prove to be inadequate or are lacking in that Member State, the Bank may, after informing the supervisory authority and on giving notice in writing of not less than 21 days to the vehicle insurer, in the exercise of its powers under financial services legislation, take appropriate measures to prevent further failure, including preventing that vehicle insurer from issuing any policies referred to in the definition of ‘vehicle insurer’ in section 1.

Offence of failing to make contribution to MIIC Fund

- 3I.** (1) A vehicle insurer that does not make a contribution to the MIIC Fund under section 3F(1)(b) 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.
- (2) 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.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) 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.
- (4) Summary proceedings for an offence under this section may be brought and prosecuted by or on behalf of the Bank.

Liability for acts, omissions, etc.

- 3J.** Any person who is or was a director, or other officer or employee, of the MIBI shall not be liable in damages for anything done, anything purported to be done or anything omitted to be done by that person in performing functions conferred on the MIBI by this Act unless the act or omission is shown to have been in bad faith.”.

PART 5

CONSEQUENTIAL AMENDMENTS

Amendment of National Treasury Management Agency (Amendment) Act 2000

- 17.** The National Treasury Management Agency (Amendment) Act 2000 is amended by inserting the following section after section 8A (inserted by section 10 of the Medical Practitioners (Amendment) Act 2017):

“Additional function in relation to Insurance Compensation Fund under sections 3A, 3B and 3C of Insurance Act 1964

- 8B.** (1) In this section ‘Act of 1964’ means the Insurance Act 1964.
- (2) The Agency shall perform the following functions conferred on it in respect of the Insurance Compensation Fund:
- (a) the application by it under section 3B(1)(a) of the Act of 1964 to the High Court for approvals under section 3 of that Act;

- (b) the assessment and verification by it of information provided to it under section 3A(1A)(a) or 3B(1A)(a), as the case may be, of the Act of 1964;
 - (c) the preparation by it of a report under section 3A(1A)(c) or 3B(1A)(c), as the case may be, of the Act of 1964;
 - (d) the payment by it to a person under section 3B(2)(a) of the Act of 1964 of the sum due to such person;
 - (e) the preparation by it of a report under section 3C(1A) of the Act of 1964;
 - (f) the clerical and other administrative functions relating to the performance by the Agency of its functions under sections 3A, 3B and 3C of the Act of 1964.
- (3) The Agency shall be known as the State Claims Agency when performing the functions conferred on it by the Act of 1964.”.