EUGENE F COLLINS

Insurance

Why is the Insurance (Amendment) Act, 2011 required?

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This levy is paid into an Insurance Compensation Fund (the "Fund") that was originally established under the Insurance Act, 1964 (as amended) (the "1964 Act") to protect policyholders of insolvent insurers. Its scope was subsequently extended twenty years later to cover insurers in administration.

The Fund had net assets of c. €40 million, a figure that had taken many years to accumulate before the claim made on the Fund as a result of the collapse of Quinn Insurance Limited of many multiples of that amount.

The 1964 Act required Irish authorised non-life insurance companies to contribute a levy to the Fund. Any insurance companies writing business in Ireland through a branch or on a freedom of service basis can currently avoid the levy.

The revenue base for the Fund had to be increased to cope with the Quinn Insurance claim and any possible future claims if the Fund is to survive.

If the levy was substantially increased but continued to be imposed only on Irish authorised non-life insurance companies, such businesses may consider establishing in another EU Member State and writing business in Ireland through a branch or on a freedom of service basis, thereby avoiding the levy and possibly resulting in loss of tax receipts to the Exchequer.

Initially it was suggested that a levy should be imposed on all non-life insurers. Some large scale insurers that write no business in Ireland threatened to withdraw from Ireland, a measure which would cause a huge loss of Irish jobs if such a measure was implemented. Also extraterritorial fiscal charges are prohibited by EU insurance law.

A tightrope had to be walked; the revenue had to be raised but jobs maintained and EU law not breached.

The Act increased the revenue base by extending the scope of the levy to cover all non-life insured risks in the State except for specific excluded risks. Factors which will determine whether a risk is a “risk in the State" include the habitual residence of the policyholder (or in the case of a company policyholder, its place of establishment), whether insured buildings are located in the State, whether insured vehicles are registered in the State or in the case of short term travel insurance whether the insurance was taken out in the State.

The effect is that all non-life insurance policies taken out in relation to risks in the State shall come within the ambit of the levy payable to the Fund, regardless of whether the insurer is entitled to write business in Ireland as an Irish authorised non-life entity, or on a freedom of establishment or freedom of services basis.

As insurance is now a business that can be authorised in one EU member state but operated in another, the Act amends and adapts existing legislative provisions, introduces definitions and makes cross-referencing changes in recognition of the current complicated cross-border regulatory regime. For example, the Act amends the provisions for payments out of the Fund and how the High Court should treat the various applications that may come before it in relation to the Fund. Different scenarios arise depending on whether an Irish authorised insurance company enters liquidation or administration. It also sets out when an insolvent EU authorised insurer may make application for a payment from the Fund.

Fund Payment Restrictions

Limitations on payments from the Fund contained in the Act are replicated in the Act, the most important of which is that any payment under a policy shall not exceed 65% of that sum or €825,000 (whichever is the less) where payments are made after the liquidation of an insurer. The Act also further restricts the availability of the Fund by only covering:

- insured risks in the State where an insurance company is being liquidated i.e. no longer covering insured risks outside the State; and

- a non-life insurance company under administration that conducted at least 70% of its business in the Irish market over the three year period before the appointment of the administrator.

In summary, the Act increases the revenue base for, and the scope of, the levy for the Fund. Its aim is to ensure that everyone insuring a non-life risk in the State pays the levy, regardless of whether its insurance company is authorised in Ireland or operating here on a freedom of establishment or freedom of services basis. The Act also limits the Fund's exposure and in so doing, it is hoped that the duration for which Irish non-life policyholders have to pay the levy will be reduced.

Author: Garrett Miller