



Insurance  
Regulation in  
Ireland  
July 2010

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## INSURANCE REGULATION IN IRELAND JULY 2010

### Industry Overview

Ireland's insurance industry covers a wide variety of business lines across the life, general, captive, reinsurance and special purpose sectors, with both a domestic focused as well as a thriving international focused industry. Supported by a large number of third party administrators, captive managers and professionals (actuarial, legal, tax and accounting) current industry statistics show:

- 68 life insurers,
- 154 non-life/general insurers (including captives), and
- 117 reinsurers (including captives and SPRVs)

with Irish head offices (*Financial Regulator's Industry Registers, July 1, 2010*).

At the end of 2008, direct employment numbers in the insurance industry were in the region of 13,021 (*Financial Regulator's Insurance Statistical Review 2008*).

On the international side, Ireland is one of the leading European jurisdictions for domiciling head office insurers targeting the wider European market place. Latest available aggregate industry statistics for the year ended December 31, 2008 show that life business gross premium income amounted to €28.5 billion split between €12.5 billion of Irish risk and €16 billion of foreign risk representing a 31% and 22% decrease respectively on the prior year. On the non-life side, gross premium income in 2008 was €7.4 billion with the split between Irish domestic and foreign risk being €3.86 billion and €3.54 billion respectively.

### Overview of Regulatory Regime

Whilst the development of its international industry has been due to Ireland's membership of the European Union and the creation of a single market for insurance products, Ireland has a long established legislative framework for insurance business stretching back to the Life Assurance Act, 1774 (which remains applicable!). The main legislative framework however is found in:

- the Insurance Act, 1936
- the Insurance Act, 1989
- the European Communities (Non-Life Insurance) Framework Regulations, 1994;
- the European Communities (Life Insurance) Framework Regulations 1994; and
- the European Communities Reinsurance Regulations 2006,

with future developments coming down the line being EU driven, such as the Solvency II Directive (2009/138/EC) ("the Directive"). On December 17, 2009, the definitive text of the Directive was published in the Official Journal having being signed by both the Council of the European Union and the European Parliament on November 25, 2009.

The Directive aims to strengthen the supervision and prudential regulation of insurance and reinsurance undertakings, particularly through the imposition of new solvency and governance requirements. It also establishes a new framework for EU regulation through the recasting of 13 insurance directives into a single text.

In terms of corporate governance requirements, the Directive contains more rigorous requirements which include:

- ▣ Under Article 41(3) the written policies and procedures of insurance and reinsurance undertakings for risk management, internal control and where relevant outsourcing shall be subject to prior approval of the Financial Regulator. These written policies must be reviewed annually;
- ▣ Under Article 45(1) every insurance and reinsurance undertaking shall, as part of its risk assessment, conduct its own risk and solvency assessment;
- ▣ Under Article 47(3) any Internal Audit findings shall be reported to the Financial Regulator who shall determine what actions are to be taken and ensure those actions are carried out.

The implementation date for the Directive is October 31, 2012 and the new regime will come into force across the European Union on that date.

#### *Authorisation Process*

Whilst there are some important distinctions between the regulation and the authorisation and supervision regimes for life, non-life, reinsurance and captive and SPRVs businesses, they are governed by reasonably similar frameworks, with each allowing for passporting cross border within the EU on either a freedom of services or on a branch basis.

In order to be considered established in Ireland, an insurance undertaking must (a) have an office in Ireland which is open during business hours for the transaction of insurance business (once its authorised) and (b) must employ at such office persons duly qualified to carry on the business transacted and empowered to issue cover for the authorised classes of business and to settle claims. The classes of business are those set out in the relevant EU Life, Non-Life and Reinsurance Directives.

Importantly, insurers are obliged to limit their operations to insurance business and operations directly arising therefrom, to the exclusion of all other commercial business.

The principal conditions applicable to an applicant for Irish Head Office authorisation are as follows:

- (a) it must be a company established either under the Irish Companies Act, 1963 to 2009 or as a European Company (SE),
- (b) it must submit to the Financial Regulator a scheme of operations to include particulars or proof concerning:
  - ▣ the nature of the risks which it proposes to cover;
  - ▣ its guiding principles as to reinsurance;
  - ▣ the items constituting its minimum guarantee fund;
  - ▣ estimates of the cost of setting up the administrative services and the organisation of securing business and financial resources it intends to meet those costs,
- (c) in addition, for its first three financial years, it must submit to the Financial Regulator:
  - ▣ a plan setting out detailed estimates of premium income and claims along with estimates of management expenses;
  - ▣ a forecast balance sheet;
  - ▣ estimates relating to the financial resources intended to cover its underwriting liabilities and solvency margin.
- (d) it is required to possess a minimum guarantee fund (equal to one third of the solvency margin, subject to a minimum of €3.5 million);
- (e) it must have a paid-up share capital of at least €635,000; and
- (f) it must demonstrate that it shall be effectively run by persons of good repute with appropriate professional qualifications or experience.

It is important to note that the above are minimum figures only. The actual financial resources requirement respectively will be determined by the Financial Regulator in line with the applicant's business plan.

Full details of all entities having a shareholding in excess of 10% or more of the capital or voting rights (directly or indirectly) in the applicant must also be disclosed to the Financial Regulator.

Although draft policy documents etc. must be submitted as part of the application for authorisation, there is no requirement for prior approval or systematic notification of general and special policy conditions, scales of premiums, forms and other printed documents which the insurance undertaking intends to use in its dealings with policyholders.

#### *General Good and other Irish Legal Requirements*

Irish insurers are also required to comply with Irish general good requirements, including:

- ▣ the provisions of the Sale of Goods and Supply of Services Act, 1980 (applicable to insurance contracts in the marketing and selling of insurance products);
- ▣ the Consumer Protection Act, 2007 and the Unfair Contract Terms legislation;
- ▣ the Electronic Commerce Act, 2000 and the Electronic Privacy Regulations;
- ▣ the European Communities (Insurance Mediation) Regulations, 2005, relating to the supervision and regulation of insurance intermediaries.

## Ongoing Supervisory Requirements

Again at a high level, the main ongoing supervisory requirements applicable to Irish insurers include the following:

#### *Procedures, Reserves and Accounts*

- (a) every Irish Head Office insurer is required to have administrative and accounting procedures and internal control mechanisms which the Financial Regulator deem sound and adequate;
- (b) details of any proposed transaction of a material nature with a related company must be pre-notified to the Financial Regulator;

- (c) an obligation to establish and maintain technical reserves, including mathematical reserves in respect of all underwriting liabilities assumed by it; an adequate solvency margin and guarantee fund in respect of its entire business.
- (d) a register showing the assets representing the technical reserves and mathematical reserves in respect of each class of insurance business must be kept by the insurer and it must furnish the Financial Regulator with a certificate of the value of those assets annually;
- (e) the Annual Accounts of the insurance company must be forwarded to the Financial Regulator annually;
- (f) the Appointed Actuary of a Life insurer must carry out an investigation into the financial condition of the insurance undertaking's business on an annual basis which must be submitted to the Financial Regulator;

#### *Compliance Function*

Insurers must have a Compliance Officer and compliance function designed to supplement, not supplant, the responsibility of the Board and of senior management to ensure compliance with legislation and applicable guidelines.

#### *Directors Compliance Certificate*

On an annual basis the Board of the insurance company must certify compliance with regulations. The Compliance Certificate must be signed by all Directors and cover issues such as general compliance with the regulatory regime, internal controls and use of derivatives etc.

#### *Asset Management*

Each company must have an asset management policy to ensure that it adequately manages the investment-related risks to its solvency. This should include consideration of regulatory restraints, investment-related risks, technical provisions and solvency which insurers need to monitor, measure, report and control.

The Board of Directors should continually review the adequacy of its overall investment policy.

### *Authorisation Process*

There is a detailed process for seeking an insurance authorisation in Ireland involving submission to the Financial Regulator of a scheme of operations and a significant amount of supporting documents outlining, inter alia,

- ▣ the nature of the business
- ▣ broad projections
- ▣ staffing
- ▣ outsourcing
- ▣ target markets.

As a general guide, one should expect the authorisation process to take 6 months, with good/early communication with the Financial Regulator as to initial plans and thereafter during the authorisation process being a key driver of the authorisation timetable.

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