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Download Date: 01 October 2018

Insurance & Reinsurance

in Ireland

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Ireland

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Market spotlight

Trends and prospects

What are the current trends in and future prospects for the insurance and reinsurance markets in your jurisdiction?

After a difficult few years, it appears that financial performance of insurers in the Irish market has begun to improve. Other common themes include the challenges of packaged retail and insurance-based investment products, the EU Insurance Distribution Directive, the General Data Protection Regulation and the Fifth Money Laundering Directive, Brexit challenges and regulatory enforcement.

Regulatory framework

Legislation

What is the primary legislation governing the (re)insurance industry in your jurisdiction?

The European Union (Insurance and Reinsurance) Regulations 2015 govern the authorisation and supervision of (re)insurers and impose Solvency II capital, governance, risk management, regulatory reporting and public disclosure requirements. (Re)insurers are also subject to the supplementing Solvency II legislation and, in addition to the Solvency II framework, there is a large body of domestic insurance legislation applicable to (re)insurers.

Regulators

Which government bodies regulate the (re)insurance industry in your jurisdiction and what is the extent of their powers?

The Central Bank of Ireland is the competent authority for the authorisation and ongoing supervision of (re)insurers. It has extensive powers of investigation of both the business of (re)insurers and of connected persons, as well as powers of intervention where it considers an insurer is or may be unable to meet its liabilities or the required capital requirements. In such cases, it can direct the insurer to take appropriate measures. Similar powers of intervention arise in other circumstances, such as failure to comply with insurance legislation or inadequate reinsurance arrangements. In certain cases, the Central Bank can also withdraw an authorisation.

Health insurance provision is subject to additional regulation under the framework created by the Health Insurance Acts where the Health Insurance Authority is the regulator.

Daily business may also bring (re)insurers into contact with other relevant Irish national regulatory bodies such as the Competition and Consumer Protection Commission, the Data Protection Commission or the Advertising Standards Authority for Ireland.

Ownership and organisational requirements

Ownership of (re)insurers

Are there any restrictions on ownership of or investment in (re)insurers in your jurisdiction, including any limits on foreign ownership/investment?

There are no specific ownership restrictions, but the Central Bank of Ireland pays particular attention to the direct and indirect ownership structure of applicants for authorisation. It will not grant an authorisation if, taking into account the need to ensure the sound and prudent management of the undertaking, it is not satisfied as to the qualifications of the owner(s). The Central Bank seems to prefer applications where ownership is held by one or more financial institutions or vested in a wide spread of owners. Close links rules also apply.

What regulations, procedures and eligibility criteria govern the transfer of control of/ acquisition of a stake in a (re)insurer?

The European Union (Insurance and Reinsurance) Regulations 2015 provide that the Central Bank of Ireland must be notified in advance of certain acquisitions and disposals of qualifying holdings, both direct and indirect, in (re)insurers. A 'qualifying holding' is a direct or indirect holding that represents 10% or more of the capital of, or voting rights in, the (re)insurer, or makes it possible to exercise a significant influence over the management of the (re)insurer.

In the case of acquisitions, a proposed acquirer may not directly or indirectly acquire a qualifying holding without

having previously notified the Central Bank of the size of the intended holding, and it must provide sufficient information to enable the Central Bank to consider the proposed acquisition. A specific Acquiring Transaction Notification Form is required.

A similar process applies where an entity which already holds a qualifying holding seeks to increase the size of its holding so that its holding would either reach or exceed a prescribed percentage level of 20%, 33% or 50%, or so that the undertaking would become its subsidiary.

An acquisition may only be completed where either the Central Bank has notified the proposed acquirer that it does not oppose the proposed acquisition or, by the end of the assessment period, the Central Bank has not notified it of its opposition.

In the case of the disposal of a qualifying holding or the disposal of part of the qualifying holding, where the remaining holding would fall to or below one of the prescribed percentage levels or would be such that the (re)insurer would no longer be a subsidiary of the disposer, there is a prior notification requirement only.

Organisational requirements

Must (re)insurers adopt a certain legal structure in order to operate? If no mandatory company organisation applies, what are the common structures used?

To obtain authorisation as an Irish head office, the European Union (Insurance and Reinsurance) Regulations 2015 require a (re)insurer to be a designated activity company (DAC), a public limited company, a company limited by guarantee, an unlimited company or a Societas Europaea, and have its head office and registered office in Ireland. The most common legal structure for (re)insurers in Ireland is a DAC.

Do any particular corporate governance requirements apply to (re)insurers, including any eligibility criteria for directors and officers?

The Central Bank of Ireland's Corporate Governance Requirements for Insurance Undertakings 2015 apply to all insurers authorised by the Central Bank (including reinsurers, but excluding captives). Among other things, the requirements deal with the composition of the board, roles of the chair, CEO, directors (including executive, non-executive and independent non-executive), chief risk officer and other matters, such as the risk appetite, meetings and committees. Additional obligations are placed on (re)insurers deemed to be 'high impact' under the Central Bank's Probability Risk and Impact System (PRISM) regime. A separate set of requirements applies to captives.

Directors and other senior officers also fall within the scope of the Central Bank's Fitness and Probity Regime, under which persons performing a wide range of functions in a (re)insurer are required to possess a level of fitness (ie, competence and capability) and probity (ie, honesty, ethical judgment and integrity, and financial soundness) befitting the relevant role.

Operating requirements

Authorisation procedure

Which (re)insurers must obtain authorisation from the regulator before operating on the market and what is the procedure for doing so?

Subject to certain exclusions, a person may not carry on (re)insurance business in Ireland unless it holds an authorisation granted by either the Central Bank of Ireland or the competent authority in another EU or European Economic Area member state covering the class of insurance or the reinsurance activity.

(Re)Insurers wishing to establish a head office in Ireland must seek the relevant authorisation from the Central Bank by submitting an application. The applicant must assess whether its proposed business model requires authorisation and is capable of complying with relevant legal and regulatory requirements. It must then hold a preliminary meeting with the Central Bank to discuss the application, after which it must provide supporting information. The Central Bank has published checklists for each type of (re)insurer which set out the information required to support an application. The checklist and all supporting documentation must be submitted to the Central Bank for review and it will assess whether the application is complete. Once a completed application has been received, the Central Bank will review it and issue comments, or request further information or clarification where required. In practice, the timeline for authorisation is between six to 12 months. Before formal authorisation, a successful applicant will be provided with confirmation of authorisation in principle. Formal authorisation is granted after the applicant's capital has been introduced and when any other remaining requirements are met.

For authorisation of branches of third country (re)insurers, the Central Bank has recently issued a policy notice, handbook and guidance and checklist to provide clarity on the Central Bank's expectations and to assist applicants and undertakings in their on-going compliance with insurance legislation.

Financial requirements

What are the minimum capital and solvency requirements for (re)insurers operating in your jurisdiction?

An undertaking must hold eligible own funds to cover the minimum capital requirement (MCR) which is calculated in accordance with the European Union (Insurance and Reinsurance) Regulations 2015.

For a life insurer (including a captive insurance undertaking), the absolute floor of the MCR is €3.7 million. For a non-life insurer (including a captive insurance undertaking), the absolute floor is €2.5 million, subject to certain exceptions which may increase it to €3.7 million.

For a reinsurer, the absolute floor is €3.6 million, except a captive undertaking for which the absolute floor is €1.2 million.

The (re)insurer must also hold eligible own funds to cover the solvency capital requirement (SCR) in accordance with the 2015 regulations and the MCR should not fall below 25% or exceed 45% of the SCR.

Do any other financial requirements apply?

(Re)Insurers must establish technical provisions with respect to all insurance and reinsurance obligations towards policyholders and the beneficiaries of insurance contracts in accordance with the European Union (Insurance and Reinsurance) Regulations 2015.

Where a (re)insurer fails to do so, the Central Bank of Ireland can prohibit the free disposal of the assets (after having first communicated such intentions to the supervisory authorities of any member state(s) in which the (re)insurer operates).

Personnel qualifications

Are personnel of (re)insurers subject to any professional qualification requirements?

The Central Bank of Ireland's fitness and probity regime requires that persons performing functions, known as controlled functions, must comply with certain standards and requires the person to have the appropriate qualifications, experience, competence and capacity.

Closely linked to the fitness and probity regime is the Minimum Competency Code 2017 and Minimum Competency Regulations which set out minimum professional standards for persons providing certain financial services, in particular, when dealing with consumers.

Business plan

What rules and requirements govern the business plans of (re)insurers?

There are no specific rules governing business plans of (re)insurers. The application for authorisation process – which includes a requirement for a scheme of operations – dictates the nature and content of the information required. The Central Bank of Ireland has a checklist of what is required.

Risk management

What risk management systems and procedures must (re)insurers adopt?

(Re)Insurers must establish and maintain an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report continuously the risks, at an individual and aggregated level, to which they are or could be exposed, and their interdependencies. The risk management system must be well integrated into the organisational structure and in the decision-making processes of the (re)insurer where the board of directors is ultimately responsible for ensuring the effectiveness of the system, setting the (re)insurer's risk appetite and overall risk tolerance limits, as well as approving the main risk management strategies and policies.

The risk management system should cover at least the following areas:

- underwriting and reserving risk management;
- operational risk management;
- reinsurance and other risk-mitigation techniques;
- asset liability management;

- investment risk management; and
- liquidity and concentration risk management.

The Own Risk and Solvency Assessment (ORSA) is part of the risk management system.

The Central Bank of Ireland has recently implemented a Risk Culture Model comprising of four factors:

- leadership;
- governance;
- competency; and
- decision making.

And also including an accompanying risk culture assessment tool for on-site inspections. A number of articles focusing on risk culture have recently issued from the Central Bank.

Reporting and disclosure

What ongoing regulatory reporting and disclosure requirements apply to (re)insurers?

The Solvency II regime introduced increased regulatory reporting and public disclosure requirements. As such, (re)insurers must make a number of filings to the Central Bank of Ireland including Quarterly Quantitative Reporting Templates, the Annual Quantitative Reporting Templates, the Solvency and Financial Condition Report (annually) and the Regular Supervisory Report (at least every three years). (Re)Insurers are also required to submit the ORSA annually and must submit their financial statements and reports as approved at the annual general meeting.

In addition to the Solvency II requirements, insurers are required to submit national specific templates.

Other requirements

Do any other operating requirements apply in your jurisdiction?

(Re)insurers are subject to general Irish and EU legislative provisions applicable to Irish companies, including, but not limited to, company law and legislation covering data protection, employment, health and safety, money laundering and terrorist financing, auditing and taxation.

Non-compliance

What are the consequences of non-compliance with the operating requirements applicable to (re)insurers?

Where a (re)insurer does not comply with technical provisions or with the SCR or MCR, the Central Bank of Ireland has extensive powers of intervention under the European Union (Insurance and Reinsurance) Regulations 2015 . More generally, under the Central Bank Act 1942, the Central Bank can initiate enforcement action against (re)insurers and their management for contraventions of legal and regulatory requirements which can result in significant fines being imposed (up to €10 million or 10% of turnover for regulated firms).

The Central Bank also has a wide range of powers of investigation, the power to give directions or to impose directions or requirements, or to order redress under the Central Bank (Supervision and Enforcement) Act 2013.

Contracts

General

What general rules, requirements and procedures govern the conclusion of (re)insurance contracts in your jurisdiction?

The standard principles of Irish contract law and common law apply to insurance contracts. However, insurance contracts are also subject to additional specific common law and statutory principles and rules, including – most importantly in relation to the conclusion of (re)insurance contracts – the principle of utmost good faith (which places a duty of disclosure on the insured at inception and/or renewal of the contract).

The main characteristics of an insurance contract are set out in case law in Ireland and include the requirement that the insured must have an insurable interest in the subject matter of the contract and that insurers will indemnify the insured in the event of a loss. The risk must also be clearly described.

A number of the principles and rules concerning insurance contracts, including the concept of insurable interest,

were examined by the Law Reform Commission (LRC) in its Consultation Paper on Insurance Contracts. The recommendations proposed by the LRC are largely incorporated into the Consumer Insurance Contracts Bill 2017 (draft legislation proposed by the Irish government) to amend a number of aspects of insurance contracts.

Mandatory/prohibited provisions

Are (re)insurance contracts subject to any mandatory/prohibited provisions?

There are a number of requirements in motor insurance policies, in marine insurance and in life assurance policies as a result of particular statutory requirements and obligations arise where the insured is a consumer (ie, under the Consumer Protection Code 2012 and the Consumer Protection Act 2007). The Sale of Goods and Supply of Services Act 1980 also applies.

The European Communities (Consumer Credit Act and Unfair Contract Terms in Consumer Contracts) Regulations 1995, the European Communities (Distance Marketing of Consumer Financial Services) Regulation 2004 and the Consumer Credit Act 1995 also apply, as well as there being pre-contractual provision of information requirements.

Most proposal forms include a declaration to be signed by the insured that all information provided is accurate and complete, and acknowledging that the information will form the basis of the contract (basis-of-contract clause). However, basis-of-contract clauses are strictly construed by the Irish courts and the Irish government has proposed draft legislation in the form of the Consumer Insurance Contracts Bill 2017 which provides, among other things, for the abolition of these clauses.

Implied terms

Can any terms be implied into (re)insurance contracts (eg, a duty of good faith)?

Parties to a contract of insurance have a duty of good faith, which, among other things, places a duty of disclosure on the insured at inception and/or renewal of the contract.. An insured must disclose all facts material to an insurer's appraisal of the risk. Every circumstance is material which would influence the judgment of a prudent insurer in fixing the premium, or determining whether it will take the risk. Breach of this duty and/or a misrepresentation by the insured (a representation of fact made that is untrue, which can be fraudulent, reckless or innocent) entitles the insurer to avoid the contract.

The government has proposed draft legislation in the form of the Consumer Insurance Contracts Bill 2017. One of the reforms in the bill relates to the duty of disclosure and introduces proportionate remedies for misrepresentation but retains the remedy of avoidance for fraudulent misrepresentation.

Standard/common terms

What standard or common contractual terms are in use?

While the terms of an insurance contract will vary depending on the type of policy, there are a number of standard or common terms. These terms define the scope of cover being provided by the contract (insuring clause), matters that are expressly excluded from cover (exclusions to cover), requirements or conditions which must be adhered to by an insured (conditions or conditions precedent) and statements of fact or intent by an insured in relation to the risk insured, which must be strictly complied with (warranties).

Most proposal forms also include a declaration to be signed by the insured that all information provided in the proposal form is accurate and complete and acknowledging that the information will form the basis of the contract (basis-of-contract clauses).

Warranties and basis-of-contract clauses are strictly construed by the Irish courts as breach discharges insurers from liability from the date of breach and the breach does not have to be material to the loss. The government has proposed draft legislation in the form of the Consumer Insurance Contracts Bill 2017 which provides, among other things, for the replacement of warranties with suspensive conditions and the abolition of basis-of-contract clauses.

'Smart' contracts

What is the state of development in your jurisdiction with regard to the use of 'smart' contracts (ie, blockchain based) for (re)insurance purposes? Are any other types of financial technology commonly used in the conclusion of (re)insurance contracts?

Technology such as smart contracts, blockchain and end-to-end (sales, service, renewal, claims) digital capability are all being explored by insurers in the Irish market. Technology such as telematics, mobile payments and social media complaints handling are already in use in the Irish market.

At a European level European Insurance and Occupational Pensions Authority is developing an InsurTech Task Force which will be responsible for the assessment of cyber risk. The Central Bank of Ireland has increased its focus in this area and has issued cross industry guidance on IT and cybersecurity risks. During 2017, the Central Bank also started to focus on how companies approach IT management.

Breach

What rules and procedures govern breach of contract (for both (re)insurer and insured)?

The effect of a breach of contract depends on the type of breach, but can result in an insurance contract being deemed void or voidable.

If the insured breaches a warranty (no matter how insignificant that breach may appear), the insurer will be entitled to repudiate. A breach of a basis-of-contract clause will allow the insurer to treat the contract as void from inception.

Insurers may also avoid a contract if there has been a material non-disclosure and/or misrepresentation by the insured at inception and/or renewal of the contract or if an insured makes a fraudulent claim.

The effect of a breach of a condition by an insured in a contract depends on whether that condition is a bare condition or a condition precedent to liability. If the breach relates to a bare condition, the remedy is damages. If the breach relates to a condition precedent to liability, the insurer will be entitled to decline the claim without any requirement to show prejudice.

Where the insurer has breached the contract, the general actions for breach of contract are available to the insured (subject to the terms of the contract). Where an insurer has failed to pay a valid claim, an insured would have an action for damages. If damages are inappropriate, the court may grant specific performance (this is a discretionary remedy).

Consumer protection

Regulation

What consumer protection regulations are in place to safeguard the rights of purchasers of insurance products and services?

The Central Bank of Ireland's Consumer Protection Code 2012 provides a set of principles and common rules for all regulated entities, combined with certain industry-specific requirements when providing financial products and services to consumers.

The code's common requirements provide that firms must act in the best interests of customers by:

- selling consumers products that are suitable;
- explaining why the products offered are suitable for that consumer;
- not misleading consumers; and
- dealing with any complaints in an efficient and fair manner.

Insurance industry-specific requirements include:

- requirements relating to quotations, proposals and policy documentation;
- claims processing;
- client premium account;
- premium handling and the payment of premium rebates; and
- the disclosure of certain information relating to the insurer and its relationship with the insured.

Other consumer protection legislation in Ireland includes the:

- Consumer Protection Act 2007;
- Sale of Goods and Supply of Services Act 1980;
- European Communities (Unfair Terms in Consumer Contracts) Regulations 1995;
- European Communities (Distance Marketing of Consumer Financial Services) Regulation 2004; and
- Consumer Credit Act 1995.

The EU Insurance Distribution Directive (2016/97) will come into force via domestic implementing legislation on 1

October 2018.

Claims

General

What general rules, requirements and procedures govern the filing of insurance claims?

The terms of the insurance contract will govern the filing of claims with an insurer. Notification requirements differ depending on whether the policy in question is claims-made or losses occurring. In claims-made policies, the requirement will typically be to notify the insurer of a claim or circumstance which may give rise to a claim, as soon as possible or within a stipulated time after the insured becomes aware of it. Typically, notification must be in writing and copies of the relevant documents must be provided, along with details of the claim/circumstance.

The Consumer Protection Code 2012 also sets out claims processing requirements which apply to insurers, including a requirement to have in place a written procedure for the effective and proper handling of claims and to ensure any claim settlement offer made is fair. If a claim is declined, insurers must provide the claimant with the reason for the decision and written details of any internal appeals mechanisms available. The code also sets out requirements which apply to insurance intermediaries who assist a policyholder in making a claim.

Time bar

What is the time bar for filing claims?

The terms of the contract, in particular the notification requirements, will set out the requirements for filing of a claim with an insurer.

The Statute of Limitations Act 1957 governs limitation periods. If the action is for breach of contract, then it must be brought within six years from the date on which the cause of action accrued. The time limit for a consumer to make a complaint to the Office of the Financial Services and Pensions Ombudsman is six years. The Financial Services and Ombudsman Act 2017 extends the limitation period for consumer complaints in respect of long-term financial services.

Denial of claim

On what grounds can the (re)insurer deny coverage?

Insurers will not provide cover if the claim does not fall within the insuring clause of the policy or is specifically excluded.

Insurers can repudiate if there has been a breach of a warranty or basis of contract clause. Warranties are strictly construed by the Irish courts as breach entitles insurers to repudiate liability even if the breach is not material to the loss or the warranty is not material to the risk.

Insurers can decline a claim, without any requirement to show prejudice, if there has been a breach of a condition precedent. The remedy for breach of a bare condition is in damages.

Insurers can also avoid the policy for material non-disclosure and/or misrepresentation or if an insured makes a fraudulent claim.

What rules and procedures govern the insured's challenge of the denial of a claim?

The rules and procedures governing the insured's challenge of the denial of a claim depend on the forum in which they choose to challenge it.

The insured should first look at the complaints handling and dispute resolution provisions of the insurance contract.

If the contract contains an arbitration clause, the dispute must be referred to arbitration (the Arbitration Act 2010 applies to all Irish arbitrations). A consumer is not bound by an arbitration clause where the agreement has not been individually negotiated and the dispute involves a claim for an amount not exceeding €5,000.

Action for breach of contract are available to the insured (subject to the terms of the contract). Where the insurer has failed to pay a valid claim, the insured would have an action for damages. Claims are brought through the Irish courts and are subject to the Rules of the Superior Courts, Circuit Court Rules or District Court Rules (depending on the jurisdiction). If damages are inappropriate, the court may grant specific performance (this is a discretionary remedy).

Limitation periods for all forums should be adhered to.

Third-party actions

On what grounds can a third party file a claim directly with the (re)insurer?

A third party generally has no rights at common law against the insurer. Such a person is caught by the privity of contract rule which means that only the parties to the contract have enforceable rights and obligations under the contract.

There are certain exceptions to the privity of contract rule, for example, Section 76(1) of the Road Traffic Act 1961, which affords a person claiming against an insured motorist certain remedies against the insurer.

The Irish government has proposed draft legislation in the form of the Consumer Insurance Contracts Bill 2017 which, among other things, provides for third parties intended to benefit under an insurance contract to be permitted to make a direct claim against insurers in certain circumstances.

Punitive damages

Are punitive damages insurable?

Insurers can choose to cover or exclude punitive damages. Whether an insurer will be exposed to claims in respect of punitive damages depends on the terms and conditions of the insurance contract. From an insurer's perspective, the contract would ideally exclude the payment of punitive or exemplary damages. Punitive damages are likely to involve some manner of wilful deceit or neglect on the part of the insured, and this is likely to be exempted from cover.

Subrogation

What regime governs (re)insurers' subrogation rights?

Once the insured has been fully indemnified by the insurer in respect of an insured loss, the insurer is entitled to issue proceedings (in the insured's name) against the person(s) responsible for the loss which gave rise to the insurer's obligations under the insurance contract.

Certain conditions must be satisfied before an insurer may exercise rights of subrogation, namely that, the insurance is an indemnity insurance, the insurer has made payment under that contract and there is a connection between the subject matter of the insurance and the rights of the insured to which the insurer are subrogated. These rights can originate under contract, tort or statute.

Insurers can modify these rights by incorporating into the policy conditions which enable insurers to take over the right before they indemnify an insured or which exclude the insurers' rights of subrogation.

In certain circumstances an insurer may agree to waive its subrogation rights at the request of an insured.

Some insurance contracts will not have a condition entitled 'subrogation' but will have a condition giving insurers' control of claims and the right to prosecute any claims at their own cost.

Intermediaries

Regulation

How are the services of insurance intermediaries regulated in your jurisdiction?

The Central Bank of Ireland is the competent authority for the authorisation and ongoing supervision of insurance intermediaries.

The activity of insurance mediation is currently regulated by the European Communities (Insurance Mediation) Regulations 2005 which transposed the EU Insurance Mediation Directive 2002 (2002/92/EC) into Irish law. Prior to the 2005 Regulations, intermediaries were subject to the Investment Intermediaries Act 1995. This act was extended to insurance intermediaries in 2000. The act was not displaced by the 2005 regulations and where an intermediary intends to participate in both insurance mediation and investment business, they will have to be separately registered under act or Markets in Financial Instruments Directive and the 2005 regulations.

Insurance intermediaries conducting mediation business in Ireland are also subject to the conduct of business rules such as the Central Bank's Consumer Protection Code 2012.

The 2005 regulations will be replaced by the EU (Insurance Distribution) Regulations 2018, implementing the EU (Insurance Distribution) Directive (2016/97/EC) from 1 October 2018.

Tax

Tax liability

What tax liabilities arise in the conduct of (re)insurance business?

Shareholder and policyholders of life insurers establishing operations in Ireland can benefit from an attractive tax regime. Shareholder profits are generally taxable at a rate of corporation tax of 12.5% and policyholder profits can be rolled up free of tax (ie, gross roll-up). Exit tax arises on payments made to Irish (non-exempt) policyholders where the rate is 25% where the policyholder is a company and makes an appropriate election, or 41% in all other cases. Once non-resident policyholders appropriately provide a declaration of non-residence, they will not suffer exit tax.

In the case of a non-life insurer trading in Ireland, profits will typically be taxed at a rate of 12.5%. General insurers are usually taxed in the same manner as other trading companies, subject to industry-specific differences (eg, treatment of investment incomes, realisation of non-financial investments and provisions and reserves) that have arisen as a result of practical rather than statutory rules.

Reinsurance business is taxed in the same manner as non-life insurance businesses, at the standard 12.5% corporation tax rate. However, it is possible to establish special purpose reinsurance vehicles on a tax-neutral basis, provided they satisfy the conditions to be a qualifying company within the meaning of Section 110 of the Taxes Consolidation Act 1997.

Insolvency

Regulation

What regime governs the insolvency of (re)insurers?

Winding-up proceedings in respect of an insurer, including its branches in other member states, are governed by the Companies Act 2014 and the Insurance Acts, as appropriate, unless otherwise provided by the European Union (Insurance and Reinsurance) Regulations 2015.

Effect on insureds

How does a (re)insurer's insolvency affect insureds and the (re)insurer's obligations to insureds?

Insureds are afforded a certain level of protection under the European Union (Insurance and Reinsurance) Regulations 2015 in the event of the commencement of winding-up proceedings in respect of an insurer. Insurance claims will generally, with respect to the assets representing the technical provisions, take absolute precedence over any other claims on the insurer, including certain claims afforded preference under Irish company law.

However, limitations to the precedence of insurance claims apply in certain circumstances including those where the assets (which do not represent the technical provisions) are insufficient to meet the expenses arising out of the winding-up proceedings, and also in relation to rights in rem of third parties, rights based on reservation of title and certain creditors' rights to demand set-off where certain conditions apply to the asset(s).

Following the recent case regarding the liquidation of Setanta Insurance Company Limited in relation to whether the Insurance Compensation Fund must pay in relation to third-party claims made in respect of insolvent motor insurers, the Insurance (Amendment) Act 2018, has come into effect. The act amends and extends the law in relation to insolvent insurers.

Dispute resolution

Litigation

Are there any compulsory or preferred venues for insurance litigation in your jurisdiction?

Many insurance contracts in Ireland contain a dispute resolution clause. Arbitration clauses are the most typical, although mediation and adjudication clauses are common.

If an insurance contract contains a compulsory arbitration clause, the dispute must be referred to arbitration (the Arbitration Act 2010 applies to all Irish arbitrations). If there is no such clause, the dispute will generally be litigated in the Irish courts.

Mediation is common in Ireland. The Mediation Act 2017, which commenced in January 2018, requires solicitors, prior to issuing court proceedings, to advise their clients to consider mediation and to provide information about the benefits of mediation.

The potential monetary value of the claim determines the relevant court in which proceedings are issued in Ireland. The District Court hears claims up to €15,000. The Circuit Court hears claims up to €75,000 (except for personal injury actions where its jurisdiction is limited to €60,000). The High Court, which has an unlimited monetary jurisdiction, hears claims in excess of the Circuit Court jurisdiction. The Commercial Court, a division of the High Court established to deal with commercial cases, deals with cases where the value of the claim exceeds €1 million and the dispute is commercial in nature.

A personal injury claim must first be submitted for assessment to the Personal Injuries Assessment Board (the statutory body established to assess claims for personal injury) before court proceedings may be commenced.

The Financial Services and Ombudsman Act 2017, which commenced in January 2018, established the Office of the Financial Services and Pensions Ombudsman (FSPO). The FSPO has jurisdiction to investigate complaints from consumers about their individual dealings with insurers that have not been resolved by the providers subject to certain time limits.

How are insurance disputes with a cross-border element handled in your jurisdiction?

Insurance contracts in Ireland generally contain jurisdiction and governing law clauses, which are typically recognised and enforced. Where an insured is domiciled in an EU member state, the Brussels I Regulations, the Recast Brussels Regulation (and the Rome I Regulation may limit the application of these clauses.

What issues are commonly the subject of insurance litigation?

This depends on the type of insurance contract. Common issues Include:

- breach of warranty and/or basis of contract clauses claims leading to repudiation;
- breach of condition precedents (eg, notification conditions) leading to claims being declined; and
- material non-disclosure and/or misrepresentation by an insured at inception and/or renewal of the contract and/or fraudulent claims, leading to avoidance.

Other disputes relate to the scope of cover provided for by a contract (eg, the interpretation of an insuring clause or an exclusion clause).

What is the typical timeframe for insurance litigation?

If the parties are engaging in arbitration or mediation they can agree a timetable and can seek to have the arbitration or mediation case-managed by the arbitrator or mediator. This can result in a quicker resolution than litigation.

If the parties are engaged in litigation, the timeline can be longer. However, cases in the Commercial Court are case managed and are heard often within one year of admission. Cases in the ordinary High Court lists can take up to two years.

A review of the civil litigation system is underway and its aim is, among other things, to streamline court processes and procedures.

Arbitration

What regime governs the arbitrability of insurance disputes?

An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement to the contract.

Many insurance contracts in Ireland contain a dispute resolution clause. Arbitration clauses are the most typical of these, although other forms of alternative dispute resolution (eg, mediation and adjudication) are common.

If an insurance contract contains a compulsory arbitration clause, the dispute must be referred to arbitration. Consumers are not bound by an arbitration clause where the agreement has not been individually negotiated and the dispute involves a claim for an amount not exceeding €5,000.

The Arbitration Act 2010 (which came into force in June 2010) adopts the United Nations Commission on International Trade Law Model Law and applies it to all arbitrations which take place in Ireland.