



Reinsurance Regulation in Ireland

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REINSURANCE REGULATION IN IRELAND

A New Regime for Reinsurance Regulation in Ireland

The European Communities (Reinsurance) Regulations 2006 (the “Reinsurance Regulations” or “Regulations”), which give effect to Directive 2005/68/EC (the “Directive”), came into effect on 15 July 2006. The Reinsurance Regulations, under the supervision of the Irish Financial Regulator (the “Financial Regulator”) establish a new regulatory framework for the authorisation and regulation of reinsurers and provide a separate regime for ‘special purpose reinsurance vehicles’ (“SPRVs”) whilst imposing particular requirements for the carrying on of ‘finite reinsurance’. Those familiar with the regulatory regime for non-life insurers will find similarities in the approach taken with the Reinsurance Regulations as the latter are largely based on the non-life insurance regime.

The Old Regulatory Regime

Historically, the activities of reinsurers in Ireland were not supervised by the Irish regulatory authorities. Irish reinsurers were not required to submit accounts or maintain a solvency margin, but likely maintained both internally as a matter of good business practice. This environment changed, however, with the Insurance Act, 1989 (the “1989 Act”), which introduced the first regulatory measures to the industry.

Section 22 of the 1989 Act required reinsurers to identify themselves to the Irish regulatory authorities but did not require them to provide significant details of their business operations. However, the measure did allow the authorities to keep track of the number of companies operating in the Irish reinsurance market. Section 22 was amended by the Insurance Act, 2000 which introduced some transparency to the Irish industry by requiring undertakings that wished to carry on reinsurance business to give at least 30 days notice of such intention to the Financial Regulator. Such undertakings were also required to submit certain information including details of ownership and share capital, information about directors and senior management and a statement of the risks proposed to be covered and related policy and other arrangements. The Financial Regulator had the power to direct a reinsurer to cease carrying on business on a number of grounds including where the undertaking was undercapitalised, had an insufficient number of suitably qualified members of management or staff or had engaged in illegal operations outside Ireland.

The New Regulatory Regime – The Reinsurance Regulations

The Reinsurance Regulations apply to all persons who undertake reinsurance business or operate a SPRV within Ireland. The term “*reinsurance*” is defined to mean the activity of consisting in accepting risks ceded by an insurance undertaking, or by another reinsurance undertaking. SPRVs are typically used in securitisation or structured risk transactions in which the SPRV enters into a contract with a ceding insurance or reinsurance undertaking under which the SPRV agrees to pay such undertaking a set amount if a triggering event, as specified in the contract, occurs.

The Reinsurance Regulations do not apply to reinsurance undertakings or SPRVs that were established prior to 10 December, 2007 and are in the process of being “run off”. Reinsurers which are being “run off” cease to enter into any new contracts and exclusively administer their existing portfolios in order to wind up their businesses. Notwithstanding the non-application of the Regulations in these cases, the Financial Regulator is monitoring such reinsurers so as to ensure that they are wound up in an orderly fashion.

The Regulations make it an offence for a person to carry on reinsurance business without proper authorisation or to carry on a type of reinsurance business that is beyond the scope of an authorisation granted. In order to apply for authorisation, an applicant must have both its head and registered office located in Ireland and be a company limited by shares or guarantee or be an European company. Furthermore, the objects of the applicant must be limited to carrying on reinsurance business. In reviewing applications for authorisation, the Financial Regulator requires, amongst other submissions, a set of three-year pro forma financial statements and scheme of operations (or strategic business plan). Such schemes must address the following: the nature of risks that the undertaking proposes to cover, the kinds of reinsurance arrangements that the undertaking proposes to make with respect to ceding insurance business, the principles that will guide the undertaking when retroceding insurance business, the establishment of an acceptable guarantee fund, and estimate of the costs likely to be incurred in establishing administrative services and obtaining the financial resources necessary to meet those costs.

The Financial Regulator has indicated that it intends to regulate reinsurance undertakings, at least in part, by focusing on corporate governance requirements. Regulation 10 provides that the Financial Regulator will refuse an application if it is satisfied that the applicant is not of good repute or will not be able to fulfil the responsibilities that are imposed by the Regulations. Moreover, the Financial Regulator will refuse an application where it is of the view that the officers do not have the professional qualifications or experience necessary to properly operate the business. To assist applicants with corporate governance issues, the

Financial Regulator has issued standards of corporate governance for reinsurers, which are available on its website. These standards are effective from 30 June 2008 (except as otherwise indicated therein) and will cover the following areas: heart and mind (a reinsurer must have sufficient resources and decision-making capabilities in the State); board of directors; independent non – executive directors; senior management; internal controls; audit and compliance.

Once authorised, reinsurance undertakings are required to establish and maintain sound and adequate administrative and accounting procedures, internal control mechanisms and risk management requirements. Authorised reinsurers are also required to establish and maintain the following in respect of their entire businesses: technical reserves, a solvency margin that complies with Schedule 1 of the Regulations, and a guarantee fund that complies with Schedule 2. Authorised reinsurers are also required to lodge prescribed annual returns and other statistical documents which allow the Financial Regulator to verify solvency margins and that technical reserves are being maintained.

Finally, it is worth noting that the Regulations will introduce a licence that once granted is valid throughout the EU. Regulation 13 provides that reinsurers that have been authorised in Ireland are entitled to carry on the same kind of reinsurance business in every other Member State of the EU.

Guidance from the Financial Regulator

The Reinsurance Regulations allow the Financial Regulator to impose additional conditions with respect to conduct of reinsurance business to ensure that reinsurers meet all of the responsibilities that are imposed on them under the Reinsurance Regulations. Following detailed discussion with the reinsurance industry, the Financial Regulator has issued a number of Papers, described below, setting the additional supervisory requirements for undertakings carrying on various types of reinsurance:

Paper on Special Purpose Vehicles

In June 2007, the Financial Regulator issued a paper on SPVRs having had regard to the relevant provisions of the Reinsurance Regulations, the principles devised by the International Association of Insurance Supervisors (IAIS), and consultations with industry. The paper describes the general process for applying to the Financial Regulator for authorisation as an SPRV, and the systems, controls and solvency requirements required.

Papers on Non-Life, Life and Composite Reinsurance Undertakings

In July 2007, the Financial Regulator published respective papers on Non-Life, Life and Composite Reinsurance Undertakings ('Composite' in this respect refers to undertakings that carry on both non-life and life reinsurance business). In respect of Non-Life Undertakings, the Paper provided an update of an earlier Paper entitled "Transitional Requirements for Non-life Reinsurance Undertakings", published in May 2006.

The respective Papers set out the Financial Regulator's position on technical provisions, assets covering technical provisions, solvency margins and regulatory returns for each type of reinsurer and also set out the information required for each type of reinsurer's annual compliance submissions.

Prescribed Forms for Reinsurance Undertakings

The Financial Regulator has published on its website the final Forms to be submitted as part of the returns for Non-Life Reinsurance Undertakings, Life Reinsurance Undertakings and Composite Reinsurance Undertakings. The forms may be submitted in the reporting currency of the particular reinsurance undertaking.

Conclusion

Ireland has been at the forefront of implementing the EU Directive and it is hoped that the new regulatory regime will result in a balanced and not overly-restrictive regulatory environment for the Irish reinsurance industry. Reinsurers should make themselves fully aware of the requirements set out in the Regulations and applicable Guidance Papers as the Regulations give the Financial Regulator the power to impose sanctions on reinsurers, which can include full or partial revocation of a reinsurer's authorisation, for a breaches of the Regulations.

Date: February 2008

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