# THE INSURANCE AND REINSURANCE LAW REVIEW

NINTH EDITION

**Editor**
Peter Rogan

THE LAWREVIEWS

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# CONTENTS

# PREFACE

It is hard to overstate the importance of insurance in personal and commercial life. It is the key means by which individuals and businesses are able to reduce the financial impact of a risk occurring. Reinsurance is equally significant: it protects insurers against very large claims and helps to obtain an international spread of risk. Insurance and reinsurance play an important role in the world economy. It is an increasingly global industry, with emerging markets in Asia and Latin America developing apace.

Given the expanding reach of the industry, there is a need for a source of reference that analyses recent developments in the key jurisdictions on a comparative basis. This volume, to which leading insurance and reinsurance practitioners around the world have made valuable contributions, seeks to fulfil that need. I would like to thank all the contributors for their work in compiling this volume.

One of the defining features of 2020 has been the covid-19 pandemic, which has inflicted terrible human misery around the world. The insurance industry, like most other aspects of the economy, has been badly impacted by the pandemic. Although the financial loss to the industry seems likely to be manageable, it has undoubtedly raised issues about the suitability of a range of policy wordings for the modern commercial environment, while also raising a range of legal issues related to, for example, causation and the quantification of loss. The different jurisdictions represented in this book will have different responses to these developments so it is vital to hear from the lawyers in each of those countries on the factors that will govern the international response.

The year 2020 looks likely to have been a very bad year for insured losses from natural catastrophes, with record numbers of severe windstorms and wildfires. These losses reinforce the continuing concern that climate change will see a long-term increase in the number and severity of such losses. From a legal perspective, the changing nature of natural catastrophes will raise issues of policy construction in relation to, for example, aggregation clauses and the obligation on reinsurers to follow their insured's underlying settlements.

The past year also saw no respite in the number or scale of cyber events, including the data breaches at MGM Resorts and California University and global organisations such as the World Health Organization. Events such as these test not only insurers and reinsurers, but also the rigour of the law. Insurance and reinsurance disputes provide a never-ending array of complex legal issues and new points for the courts and arbitral tribunals to consider. Aggregation will also be an area of uncertainty in relation to the treatment of all losses of this kind, and again different jurisdictions are likely to provide different responses.

Most recently, the courts in England and Wales have held that cryptocurrencies such as bitcoin are 'property' for legal purposes.

Looking ahead, 2021 is likely to see new developments and new legal issues. In particular, the impact of insurtech on the way in which insurance is underwritten, serviced and distributed will continue to present challenges around the world. This is reflected in our chapter on artificial intelligence.

I hope that you find this volume of use in seeking to understand today's legal challenges, and I would like to thank once again all the contributors. Finally, I would like to thank Simon Cooper, a consultant at Ince and a colleague of many years, for his huge contribution to finalising this ninth edition of *The Insurance and Reinsurance Law Review*.

**Peter Rogan**
Ince
London
April 2021

Chapter 21

# IRELAND

*Sharon Daly, Darren Maher, April McClements and Gráinne Callanan*[1]

## I INTRODUCTION

Ireland has a thriving domestic and international insurance industry, which includes life, non-life, captive, reinsurance and intermediary activities. It is a leading jurisdiction for insurers targeting the European Union (EU) and European Economic Area (EEA) markets. The efficiency of Irish domestic regulators, well-established prudential regulation and a young, well-educated English-speaking workforce has cemented Ireland's status as a thriving hub for the insurance industry in the EU.

## II REGULATION

### i The insurance regulator

The Central Bank (CBI) has responsibility for the authorisation and ongoing supervision of insurance and reinsurance undertakings, insurance intermediaries and captives.

The supervisory role of the CBI involves ongoing review and assessment of an undertaking's corporate governance, risk management and internal control systems. The CBI's administrative sanctions regime provides it with a credible tool of enforcement and acts as an effective deterrent against breaches of financial services law.

To facilitate this supervisory process, insurance and reinsurance undertakings are obliged to submit annual and quarterly returns to the CBI in respect of their solvency margins and technical provisions. The CBI is also empowered to conduct regular themed inspections across the industry. There are certain requirements that regulated firms under the CBI's supervision must comply with on an ongoing basis, including the Corporate Governance Requirements for Insurance Undertakings 2015, the Corporate Governance Requirements for Captive Insurance and Reinsurance Undertakings 2015, the Consumer Protection Code 2012 (the CPC 2012), the Fitness and Probity Standards, the Minimum Competency Regulations 2017 and the Minimum Competency Code 2017 (MCC).

### ii Requirements for authorisation

To operate as an insurance undertaking in Ireland, an entity must either be authorised and regulated by the CBI or authorised by another EU regulator and availing of the single passport regime.

As to the process applied by the CBI when reviewing a licence application made pursuant to European Union (Insurance and Reinsurance) Regulations 2015 (the Irish

1 Sharon Daly, Darren Maher, April McClements and Gráinne Callanan are partners at Matheson.

Regulations), which transposed the EU Directive 2009/138/EC (Solvency II) into Irish law, the applicant first has a preliminary meeting with the Authorisations Team of the CBI. Thereafter, the application proceeds through the submission of a detailed application and business plan to the CBI.

Broadly, subject to the applicant satisfying the requirements of the CBI in respect of minimum capital requirements and any additional preconditions or undertakings specified in the letter of authorisation in principle issued by the CBI, the applicant will be issued with a formal final certificate of authorisation.

A reinsurance provider can also establish a special purpose reinsurance vehicle (SPRV), which can streamline the authorisation process and is subject to less rigorous supervision by the CBI in comparison with fully regulated insurers.

The ongoing regulatory requirements of regulated firms under the CBI's supervision include, where applicable:

*a* ensuring it retains authorisation from the CBI;
*b* maintaining technical reserves and required solvency margin;
*c* submitting quarterly and annual returns in respect of minimum capital requirements;
*d* ensuring compliance with the relevant corporate governance codes and guidance, as published by the CBI;
*e* ensuring compliance with the general good requirements contained in the CPC 2012 (in the case of Irish resident undertakings); and
*f* ensuring compliance by all directors, executives and staff with the Fitness and Probity (F&P) Regime.

### iii Regulation of individuals employed by insurers

As part of an application for authorisation, the CBI reviews both the proposed corporate governance structures and the individuals who are to be appointed to key roles within the insurance and reinsurance undertaking. This is to ensure that the undertaking has the necessary people, skills, processes and structures to successfully manage its insurance and reinsurance business.

All proposed directors and senior management will have to apply to the CBI for prior approval to act as part of the CBI's F&P Regimeto ensure that a person performing a pre-approval controlled function (PCF) has a level of F&P appropriate to the performance of that particular function. Fifty-four senior positions are prescribed as PCFs, including the positions of director, head of finance, chief information officer (CIO) and head of compliance. PCFs are a subset of Controlled Functions (CFs).

As part of the PCF approval process, the individual must complete an online individual questionnaire that is endorsed by the proposing entity and then submitted electronically to the CBI for assessment.

The main implication of being appointed to a PCF role is that a person must comply on an ongoing basis with the F&P Standards and confirm this in writing to the CBI.

Where a person comes within the Minimum Competency Framework, qualifications may be necessary but generally no set exams are mandatory. The CBI is required to set out a specification for each PCF role that might include a qualification,[2] and the PCF holder must meet that specification.

### iv The distribution of products

Once an insurance and reinsurance undertaking holds the relevant authorisation, it is entitled to market and sell both its services and contracts in Ireland. However, the manner in which insurance and reinsurance contracts can be marketed and sold to the consumer is subject to a number of general good requirements contained in the CPC 2012 (published by the CBI); Consumer Protection Act 2007; Sale of Goods and Supply of Services Act 1980; European Communities (Unfair Terms in Consumer Contracts) Regulations 1995; and the European Communities (Distance Marketing of Consumer Financial Services) Regulations 2004.

### v Taxation of premiums

#### *Non-life insurance companies*

Non-life insurance and reinsurance business carried on by a company is taxed at the standard rate of 12.5 per cent corporation tax. There is a divergence in the tax treatment of life assurance companies, depending on whether its life assurance business was contracted before or after 1 January 2001.

Business contracted prior to 1 January 2001 is taxed on investment return as apportioned between policyholders and shareholders, with the policyholder's share taxed at 20 per cent on an annual basis and the shareholder's share taxed at 12.5 per cent corporation tax rate. Conversely, for business contracted after 1 January 2001, income and gains within the fund are not liable to tax for the term of the policy. Exit taxes arise on payments made to certain classes of Irish policyholders. The exit tax rates applicable are 25 per cent where the policyholder is a company and opts to make an election or 41 per cent in all other cases. Policyholders that are not resident in Ireland and can provide a declaration to that effect are exempt from paying tax in Ireland. The insurer's income from business contracted after 1 January 2001 is liable to tax at the standard corporation tax rate of 12.5 per cent.

The distinction between business contracted before or after 1 January 2001 in respect of life assurance businesses does not apply to reinsurance companies. However, it is possible to establish SPRVs on a tax-neutral basis, provided they qualify under Section 110 of the Taxes Consolidation Act 1997. SPRVs are liable to tax at 25 per cent; however, this is charged on the company's net taxable profit, which, by virtue of specific tax-deductible expenditure, can be maintained at a very low level.

### vi Changes to the regulatory system

#### *CBI additions to the list of PCF roles*

Under Part 3 of the Central Bank Reform Act 2010, the CBI may designate what roles within firms fall into the category of CF or PCF. In October 2020, Statutory Instrument 410 of 2020 was enacted and introduced three new PCFs roles, PCF-49 CIO, PCF-50 Head of Material Business Line, PCF-51 Head of Market Risk, and split PCF-39 Designated Person into six PCF roles aligned to the specific managerial functions. The role of CIO is relevant to

2 See Appendix 4 of the MCC.

the insurance industry. The CBI has explained that the designation of this role as a PCF is in response to the increased role that information technology (IT) is playing in financial services firms and the associated exposure to IT-related risks.

***Business Interruption Insurance Supervisory Framework***

The Irish government's response to the covid-19 pandemic, in line with that of many countries worldwide, involved public health measures to reduce the spread of the virus and the closure of non-essential businesses and the loss of income for many households and businesses. Many businesses sought to rely on their business interruption (BI) insurance policies to recover their economic losses. The CBI on 5 August 2020 published the COVID-19 and Business Interruption Insurance Supervisory Framework (the BI Framework) to facilitate early identification and resolution of issues relating to BI insurance. The BI Framework outlines the CBI's expectations of insurers in addressing issues in the context of BI claims and identifying the CBI's overall approach to assessment and escalation where necessary. See below for more detail.

### vii Capital requirements

Insurance undertakings regulated by the CBI are required to meet the capital and solvency requirements set out under Solvency II and the Irish Regulations.

Irish-authorised insurance undertakings are required to establish and maintain technical provisions in respect of all insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts. The value of technical provisions must correspond to the current amount an undertaking would have to pay if it were to transfer its insurance and reinsurance obligations immediately to another insurance undertaking. The Irish Regulations set out detailed provisions for the calculation of technical provisions.[3]

In accordance with Solvency II, Irish-authorised insurance undertakings are also required to establish and maintain a further solvency margin as a buffer, to ensure their assets are sufficient to cover their liabilities. The Solvency II capital requirements are calculated based on the specific risks borne by the relevant insurer and are prospective in nature (i.e., each insurer must make the relevant calculations at least once a year to cover both existing business and the new business expected to be written over the following 12 months). Solvency II imposes a solvency capital requirement (SCR) and a lower minimum capital requirement (MCR).

An insurance undertaking may calculate the SCR based on the formula set out in the Irish Regulations or by using its own internal model approved by the CBI. The SCR should amount to a high level of eligible own funds, thereby enabling the undertaking to withstand significant losses and ensuring a prudent level of protection for policyholders and beneficiaries. The MCR should be calculated in a clear and simple manner, corresponding to an amount of eligible, basic own funds, below which policyholders and beneficiaries would be exposed to an unacceptable level of risk if the undertaking was allowed to continue its operations.

An insurance undertaking must have procedures in place to identify and inform the CBI immediately of any deteriorating financial conditions. As such, the SCR and MCR provide for clear channels by which the CBI can monitor the financial state of insurance

3 Regulations 83–101, Irish Regulations.

undertakings. In the event of a breach of the capital requirements, the CBI will employ an escalating ladder of supervisory intervention, allowing for the implementation of a recovery plan by an insurance undertaking, as approved by the CBI. Where there is a breach of the SCR or MCR, compliance must be re-established within six months or three months respectively, otherwise the CBI may restrict the free disposal of the assets of the undertaking and ultimately withdraw its authorisation.

## III INSURANCE AND REINSURANCE LAW

### i Sources of law

***Statute***

In general terms, insurers retain significant freedom of contract; however, this has been tempered in recent years by legislation enacted to comply with EU law in the area of consumer protection, including the Unfair Terms in Consumer Contracts Directive 1993/13/EC and the Distance Marketing of Financial Services Directive 2002/65/EC.

In circumstances where the insured is a consumer, the insurer must also comply with the CPC 2012 and Consumer Protection Act 2007. The Sale of Goods and Supply of Services Act 1980 is also applicable to insurance contracts.

With the exception of the transposition of EU legislation, there have been very few substantive legislative amendments to the law in this area in recent years. The Marine Insurance Act 1906 (the Marine Insurance Act) remained the most recent codification of general principles of insurance law until the enactment of the Consumer Insurance Contracts Act 2019 (the 2019 Act). Following the enactment of the 2019 Act, the Marine Insurance Act only applies to non-consumer contracts.

The 2019 Act, which was signed into law on 26 December 2019, seeks to reform the area of consumer insurance law and was partially commenced on 1 September 2020. In July 2020, the Minister for Finance announced that there would be a partial delay to commencement of the 2019 Act, noting that it would be commenced in two stages, on 1 September 2020 and 1 September 2021. This announcement followed industry pressure to allow sufficient time for the insurance industry to account for the far-reaching changes imposed by the 2019 Act. The sections of the 2019 Act that have been delayed until 1 September 2021 are Sections 8, 9, 12 and 14(1) to (5) and include some of the key changes in respect of the duty of disclosure and renewal requirements. In addition, Section 18(4) has not yet been commenced and it is not clear if or when it will be commenced. Once fully commenced, the 2019 Act will replace the duty of utmost good faith and the consumer's duty of disclosure with a duty to provide responses to questions asked by the insurer, honestly and with reasonable care. There are some similarities between the 2019 Act and the reforms introduced by the Insurance Act 2015 and Consumer Insurance (Disclosure and Representations) Act 2012 in the United Kingdom (UK).

The European Union (Insurance Distribution) Regulations 2018 (as amended) (IDR) transposed the Insurance Distribution Directive (IDD)[4] into Irish law with effect from

4 Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).

1 October 2018. The IDD creates a minimum legislative framework for the distribution of insurance and reinsurance products within the EU and aims to facilitate market integration and enhance consumer protection.

The IDR introduces general consumer protection principles for all insurance distributors to act honestly, fairly and professionally and in accordance with the best interests of the customer. Insurance distributors may not incentivise or remunerate their employees in a manner that would conflict with their duty to act in the customers' best interests. In addition, insurance intermediaries are required to disclose the nature of any remuneration received in relation to an insurance contract to the customer.

Insurance undertakings and intermediaries that manufacture any insurance product for sale to customers are required to implement product oversight and governance procedures prior to distributing or marketing an insurance product to customers. A target market must be identified for each product to ensure that the relevant risks to that target market are identified, assessed and regularly reviewed.

***Common law***

The law in relation to insurance contracts in Ireland is primarily governed by common law principles, the origins of which can be found in case law.

### ii Making the contract

***Essential ingredients of an insurance contract***

Insurance contracts are governed by the general principles of contract law, common law and the principle of good faith (which, following the 2019 Act, continues to apply to non-consumer contracts only). There are no specific rules for the formation of an insurance contract beyond these general duties. There is no statutory definition of a contract of insurance under Irish law and the legislation does not specify the essential legal elements of an insurance contract. As a result, the courts have considered it on a case-by-case basis.

The common law definition of an insurance contract is of persuasive authority.[5] The main characteristics of an insurance contract were set out in the leading Irish authority, *International Commercial Bank plc v. Insurance Corporation of Ireland plc*,[6] and are as follows:

*a* generally, the insured must have an insurable interest in the subject matter of the insurance policy;
*b* payment of a premium;
*c* the insurer undertakes to pay the insured party in the event of the happening of the insured risk;
*d* the risk must be clearly specified;
*e* the insurer will indemnify the insured against any actual loss (indemnification); and
*f* the principle of subrogation is applied, where appropriate. This is generally not appropriate in relation to life assurance or personal injury policies.

There is no difference between an insurance contract and a reinsurance contract.

The 2019 Act applies to consumer contracts and defines a contract of insurance as 'a contract of life insurance or non-life insurance made between an insurer and a consumer'.

5 *Prudential Assurance v. Inland Revenue* [1904] 2 KB 658.
6 [1991] ILRM 726.

It reforms the law relating to insurable interests. The 2019 Act provides that an insurer cannot reject an otherwise valid insurance claim on the basis that the insured does not or did not have an insurable interest.

An insurance policy will usually comprise a proposal form, policy terms and conditions and supporting documentation provided to the insurer by the insured. The policy will typically contain express terms defining the cover being provided, exclusions to cover, excess, conditions or conditions precedent and warranties (subject to the reforms of conditions and warranties contained in the 2019 Act).

***Information provided to the insurer at placement***

The information provided to the insurer at placement depends on the risk and the requirements of the insurer in question; however, there has been a trend towards very short proposal forms that do not request detailed information about the risk.

***Utmost good faith, disclosure and representations***

Parties to non-consumer insurance contracts are subject to the duty of utmost good faith.[7] The proposer or insured has a duty prior to inception or renewal to disclose all material facts (a material fact is one that would influence the judgement of a prudent underwriter in deciding whether to underwrite the contract; and, if so, on what terms). The duty goes beyond answering questions on a proposal form correctly (although the questions posed on the proposal form will inform the duty). There is no requirement to show inducement under Irish law. Every material representation made by the proposer or insured, or their agent, to the insurer must be true.

Misrepresentation is closely related to non-disclosure and attracts the same remedy. To rely on misrepresentation, the insurer must establish that there has been a representation of fact made by the insured that is untrue. Misrepresentations can be fraudulent, reckless or innocent. The common law position is that a misrepresentation is fraudulent if made with knowledge of its falsity or without belief that it was true or with reckless disregard as to whether it was true or false.

In practice, many insurance policies contain 'innocent non-disclosure' clauses that prevent the insurer from avoiding the policy for an innocent non-disclosure or misrepresentation.

The 2019 Act replaces the duty of good faith in respect of consumer insurance contracts and the Marine Insurance Act no long applies to these contracts. The consumer proposer's duty is limited to a duty to provide responses to specific questions asked by the insurer, honestly and with reasonable care (by reference to the average consumer). However, the new duty will not apply until 1 September 2021. An insurer must establish inducement in order to avail of the remedies available under the 2019 Act for a breach of the duty. The 2019 Act introduces new remedies: there is no remedy for an innocent misrepresentation; there are proportionate remedies available for a negligent misrepresentation and only a fraudulent mispresentation entitles an insurer to avoid the contract.

7 Section 17, Marine Insurance Act.

***Recording the contract***

Insurance contracts are generally required to be evidenced by a written policy. There are various legislative provisions that impose mandatory requirements concerning the form and content of insurance contracts, some of which are derived from EU law. As set out in Section III.ii, the 2019 Act defines a contract of insurance in the context of consumer contracts.

### iii Interpreting the contract

***General rules of interpretation***

Insurance contracts are subject to the same general principles of interpretation as other contracts. The Supreme Court has confirmed in two judgments, *Analog Devices v. Zurich Insurance and ors* and *Emo Oil v. Sun Alliance and London Insurance Company*, that the principles of construction as set out by Lord Hoffman in *ICS v. West Bromwich Building Society* should be applied to the interpretation of insurance contracts.

In summary, interpretation is the ascertainment of the meaning that the document would convey to a reasonable person having all the background knowledge that would reasonably have been available to the parties in the situation in which they were at the time of the contract. The background or 'matrix of fact' should have been reasonably available to the parties and includes anything that would have affected the way in which the language of the document would have been understood by a reasonable person. The previous negotiations of the parties and their declarations of subjective intent are excluded from the admissible background. The meaning that a document (or any other utterance) would convey to a reasonable person is not the same thing as the meaning of its words. The meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common-sense proposition that it is not easy to accept that people have made linguistic mistakes, particularly in formal documents. However, if it could nevertheless be concluded from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention that they plainly could not have had.

The court will apply an objective approach to determine what would have been the intention of a reasonable person in the position of the parties.

Where a contractual term is ambiguous, the interpretation less favourable to the drafter is adopted using the *contra proferentem* rule. The rule also applies to consumer contracts, so the interpretation most favourable to the consumer will prevail.

***Incorporation of terms***

In general, there are no mandatory provisions that are implied by the law or regulation in insurance policies, although the following exist:

*a* implied restrictions contained in motor insurance policies;

*b* provisions in the Criminal Justice (Drug Trafficking) Act 1996 concerning minimum disclosure requirements; and

*c* professions whose professional bodies set professional indemnity insurance requirements. For example, practising solicitors, accountants and architects are required to have appropriate professional indemnity cover.

Prior to the 2019 Act, basis-of-contract clauses were commonly found in insurance contracts. In making the proposal the basis of the contract, the proposer would warrant the truth of his or her statements and, in the event of a breach of the warranty, the insurer could repudiate liability under the policy without reference to issues of materiality. However, the 2019 Act abolishes basis-of-the-contract clauses in consumer insurance policies.

***Types of terms in insurance contracts***

Typically, insurers in the Irish insurance market have standard policy conditions for each product that have developed over time. These policy conditions are influenced by industry norms as well as Irish judicial decisions in cases involving contractual clauses. Further, most Irish insurers and reinsurers underwriting international business are familiar with London market terms (International Underwriting Association and Lloyd's Market Association).

In non-consumer contracts there is no specific form of wording required to create a warranty. The word 'warranty' is not required but may be considered as evidence of the intention to create a warranty. Further, a warranty may be express or implied, as set out in Section 33 of the Marine Insurance Act. A warranty is treated differently from a contractual term in that it must be exactly complied with, whether it is material to the risk or not, and the insurer is discharged from liability from the date of breach of the warranty, but without any prejudice to any liability incurred before that date.

The Irish courts construe warranties strictly. Breach of a warranty entitles the insurer to repudiate liability even if the breach is not material to the loss. This remedy is considered to be draconian and warranties were replaced in the 2019 Act with suspensive conditions.

Almost all insurance policies list terms of the contract as conditions. The effect of a breach of a condition in an insurance contract depends on whether the condition is a condition precedent to liability. Conditions precedent to liability relate to matters arising after a loss has occurred, most commonly in relation to notification. The Irish courts will generally not construe an insurance condition as a condition precedent unless it is expressed as a condition precedent, or the policy contains a general condition precedent provision. Breach of a condition precedent means that an insurer can repudiate liability for the claim without any requirement to demonstrate prejudice. There is no requirement for a link between the breach and the damage.[8] The only remedy for a breach of a bare condition is in damages.

Following commencement of the 2019 Act, if conditions precedent in consumer contracts purport to require a customer to do or not do a particular act or to act in a particular manner, they could now be considered a 'continuing restrictive condition' and are treated as suspensory conditions.

'Follow the fortunes' and 'follow the settlements' clauses are common in reinsurance agreements.

### iv Intermediaries and the role of the broker

***Conduct rules***

To undertake insurance and reinsurance distribution activities in Ireland, a person must be registered as an insurance and reinsurance intermediary pursuant to the IDR.

The IDR removed 'insurance policies' from the definition of investment instruments within the Investment Intermediaries Act 1995 (IIA), which means that certain intermediaries

8 *Kelly Builders (Rosemount) Ltd v. HCC Underwriting Agency Ltd* [2016] IEHC 72.

who were previously required to be registered under both the IIA and the IDR are now no longer required to be authorised under the IIA as well and have contacted the CBI to revoke their IIA registration.

Insurance and reinsurance distribution involves work undertaken in connection with entering into contracts of insurance and reinsurance, work undertaken prior to entering into such contracts, introducing persons to insurance and reinsurance undertakings or other insurance and reinsurance intermediaries with a view to entering into such contracts or assisting in the administration and performance of such contracts (including loss assessing and dealing with claims under insurance contracts).

In fulfilling its statutory role, the CBI operates a robust authorisation process that requires applicants to demonstrate compliance with the authorisation standards set out in the legislation described above. Before the CBI will authorise an insurance or reinsurance mediator and enter it into the register, the applicant must satisfy the CBI that:

*a* the directors satisfy the Minimum Competency Framework as published by the CBI;
*b* the undertaking holds certain minimum levels of professional indemnity insurance;
*c* senior management and key personnel possess the requisite knowledge and ability; and
*d* the undertaking will implement internal procedures for the proper operation and maintenance of client premium accounts.

***Agency and contracting***

The general law on agency applies equally to insurance intermediaries in Ireland. An insurance intermediary means a person who, for remuneration, undertakes or purports to undertake insurance distribution. As discussed previously, any person carrying on insurance distribution activities in Ireland is required to comply with the requirements of the IDR.

The wide definition of insurance distribution under the IDR captures the activity of nearly all insurance agents who assist a customer in entering into an insurance contract with an insurance undertaking or provide services that are complementary to an insurance product subject to specific exemptions.

An insurance intermediary can at different times act as agent of either client or the insurer.

Generally speaking, an agent is one who is authorised by a principal to enter into binding contractual relationship with a third party. For example, an insurance intermediary may only handle premium rebates due to consumers where there is an express agreement to act as the agent of the relevant insurance undertaking.

An agent's authority to act on behalf of the principal may be actual or apparent. Actual authority may be expressed or implied and is most commonly expressed in an agreement. Apparent or implied authority exists where the principal's actions or words would lead a reasonable person to believe that the agent was authorised to act.

An agent's duties are typically to the principal alone although this may not always be the case in an insurance context and depends on the nature of the party undertaking the activity. An insurance agent will be deemed to be acting as the agent of the insurer when he or she completes, or assists the proposer to complete, a proposal for insurance with the insurer (from whom the agent holds an appointment). In these circumstances, the insurer is responsible for any error or omission in the completion of the proposal. Similarly, an insurer will be responsible for any act of its tied agent with regard to a contract of insurance offered

or issued by that insurer. An independent insurance intermediary may act on behalf of both their client and the insurer (e.g., although acting for the client, it will be the agent of the insurer when collecting premiums).

The agent is entitled to remuneration from the principal as well as an indemnity from the principal for any expenses or losses incurred in action for the principal.

There are numerous types of insurance intermediaries in insurance law. For example, an insurance broker typically works independently from insurance companies when advising customers on the range of insurance products available on the market. Insurance brokers guide clients in selecting the most appropriate insurance product for their needs by obtaining quotes from a number of insurance companies and assessing the suitability of the various products for the individual customer. There is no defined number of insurance companies that the broker must review as part of its fair analysis of the market. In practice, it will be reviewed on a case-by-case basis and will depend on many factors such as the number of providers offering insurance products in that market.

On the other hand, a multi-tied insurance intermediary is an intermediary that has a limited number of exclusive arrangements in place with a small number of insurance undertakings, whereas a tied insurance intermediary is an intermediary that has an exclusive arrangement in place with the insurer.

Outsourcing is permitted provided that the insurance intermediary otherwise has an appropriate level of substance, such as a full-time Irish resident senior management team. Generally, any functions of an insurance intermediary may be outsourced intra-group or to a third party provided that appropriate oversight and control is retained by an Irish registered intermediary.

Any outsourcing must not: (1) materially impair the insurance intermediary's system of governance; (2) cause an undue increase in operational risk; (3) impair the supervisory monitoring of compliance with obligations; or (4) undermine the continuous and satisfactory service to policyholders.

***How brokers operate in practice***

Intermediaries act as agents on behalf of insurance undertakings and are typically appointed by an insurance undertaking under the terms of a distribution agreement or claims administration agreement. An intermediary must be registered with the CBI as an authorised insurance intermediary (in accordance with the legislative provisions referenced above) before being permitted to advise consumers on insurance products and carry out other specified activities on behalf of insurance companies (e.g., loss-assessing and claims administration). Important requirements for registered intermediaries in Ireland include:

*a* ensuring the proper maintenance and reconciliation of designated client premium accounts;

*b* ensuring that the undertaking has sufficient professional indemnity insurance cover; and

*c* ensuring that senior management are sufficiently experienced to manage the business and to carry on activities on the intermediary's behalf.

### v Claims

#### *Notification*

Notice requirements will vary depending on whether the policy in question is claims-made or losses-occurring. Claims-made policies typically require insurers to be notified of circumstances that may give rise to a claim within a short period of the insured becoming aware of the circumstances and usually the policy will require notification of the circumstances and claims as soon as reasonably practicable. Some policies will specify time limits for notification.

Where the notice requirements in a non-consumer contract are stated to be a condition precedent to cover, the insurer will be entitled to decline cover for a breach of these requirements without establishing prejudice as a result of the breach. If the notice requirement is not stated to be a condition precedent and is a bare condition, the only remedy available to an insurer for breach of a condition is damages.

The courts are reluctant to allow insurers to decline claims for technical breaches of notice conditions, particularly where that breach is failure to notify a circumstance. The test applied by the courts is objective; however, the court will consider whether the insured had actual knowledge of the circumstance that allegedly should have been notified to the insurers. The knowledge of the insured is a subjective test.

#### *Good faith and claims*

While much of the case law regarding the duty of good faith is focused on the pre-contractual duty, the duty continues post-contract (for non-consumer contracts only) and is a mutual duty. There is, however, no common law duty on the insured to disclose changes in the risk insured during the policy period (although the contract may contain a requirement to this effect).

The consequence of making a fraudulent claim is avoidance and the policyholder also forfeits the premium paid under the insurance contract. Under the 2019 Act, an insurer may notify the consumer it is avoiding the policy on the basis of a fraudulent claim and the policy will be treated as terminated from the date of the claim.

As noted above, the duty of good faith is mutual in nature; however, in practice, breach of the duty by the insurer is rarely ever pursued because the only remedy for breach of the duty of good faith is avoidance of the contract. As set out in Section III.ii, the 2019 Act replaces the duty of good faith in respect of consumer insurance contracts.

There are no statutory rules that relate to the time in which a claim should be settled by an insurer, although provisions on claims settlement are included in the CBI's CPC 2012.

Section 16 of the 2019 Act sets out the duties of the consumer and the insurer in respect of claims handling. Notably, under Section 16(10) of the 2019 Act, if, after a claim has been made, the consumer or the insurer becomes aware of information that would either support or, as the case may be, prejudice the validity of the claim made by the consumer, the consumer, or as the case may be, the insurer, shall be under a duty to disclose that information to the other party.

#### *Set-off and funding*

Pursuant to Regulation 20 of the European Communities (Reorganisation and Winding-up of Insurance Undertakings) Regulations 2003, the right of creditors to demand set-off of their claims against the claims of the insurance undertaking where set-off is permitted by the

law applicable to the insurance undertaking's claim is not affected by winding-up proceedings against the insurance undertaking. However, a creditor must be in a position to demonstrate mutuality of claims between the parties to be able to rely on statutory set-off.

***Reinstatement***

The principle of indemnity has, to an extent, been eroded by insurers offering policies on a 'new for old' or 'reinstatement as new' basis, without any deduction for betterment or wear and tear, particularly in the areas of property damage and motor insurance.

A policy written on a reinstatement as new basis is subject to the principle of indemnity in that the insured cannot recover more than his or her loss. The sum insured in the policy is the maximum sum payable by insurers, but not necessarily the amount paid. If the work of reinstatement is not carried out, or is not carried out as quickly as is reasonably practicable, the insurer is only liable to pay the value of the property at the time of the loss.

***Dispute resolution clauses***

Insurance policies often contain a dispute resolution clause enabling either party to refer a contractual dispute to a particular dispute resolution forum before proceeding to litigation. Arbitration clauses are the most common in this regard; however, mediation has developed into a common form of dispute resolution.

## IV DISPUTE RESOLUTION

### i Jurisdiction, choice of law and arbitration clauses

Where an insurance or reinsurance contract contains an arbitration clause, the dispute must be referred to arbitration. This rule does not apply to insurance contracts with consumers where the value of the claim is less than €5,000; and where the agreement has not been individually negotiated. If court proceedings are brought and there is an arbitration agreement, the proceedings may be stayed in favour of arbitration. In circumstances where there is no arbitration clause in the contract, subject to the terms of the contract, the dispute will be brought before the Irish courts.

Mediation is also a common form of dispute resolution in Ireland and since the introduction of the Mediation Act 2017 (the Mediation Act) on 1 January 2018 solicitors have been required to advise their clients on the merits of mediation as an alternative dispute resolution (ADR) mechanism prior to issuing court proceedings. In addition, to issue proceedings, the Mediation Act requires the solicitor to swear a statutory declaration confirming that such advice has been provided and this declaration must be filed with the originating document in the relevant court office.

Choice of forum, venue and applicable law clauses in insurance and reinsurance contracts are generally recognised and enforced by the courts in Ireland. However, where the insured is domiciled in an EU Member State, the following European regulations may limit the application of these provisions in insurance contracts:

*a* Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I Regulation);

*b* Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation), which replaces the Brussels I Regulation in respect of proceedings and judgments in proceedings commenced after 10 January 2015;

c Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I Regulation); and

d Lugano Convention (L339, 21/12.2007) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

The Brussels Regulations and the Lugano Convention no longer apply to the UK for proceedings commenced after 31 December 2020. Questions of jurisdiction in civil and commercial matters across EU Member States are now dependent on rules of private international law unless they relate to proceedings to which the Hague Convention[9] applies (as the UK is still a contracting state to it). The Hague Convention provides for the allocation of jurisdiction to courts of contracting states but is much more limited in scope.

### ii Litigation

#### *Litigation stages*

The jurisdiction in which proceedings are brought depends on the monetary value of the claim: the District Court deals with claims up to a value of €15,000 and the Circuit Court deals with claims up to a value of €75,000 (€60,000 for personal injuries cases).

Claims with a value in excess of the Circuit Court jurisdiction are heard by the High Court, which has an unlimited monetary jurisdiction.

The Commercial Court is a division of the High Court that deals exclusively with commercial disputes. The Court retains the discretion to refuse admission to the commercial list, for example where there is delay. Proceedings are case-managed and tend to move at a much quicker pace than general High Court cases. Insurance and reinsurance disputes may be heard in the Commercial Court if the value of the claim or counterclaim exceeds €1 million; and the Court considers that the dispute is inherently commercial in nature.

Insurance disputes before the courts are heard by a judge sitting alone and not a jury.

A Court of Appeal was established in 2014 to deal with appeals from the High Court. The Court of Appeal hears appeals from the High Court except when the Supreme Court believes a case is of such public importance that it should go directly to the highest court in the state.

#### *Evidence*

Except in the most limited circumstances evidence is to be given orally. Where the attendance of a witness is required at the trial of an action, the lawyer for either party can issue a witness summons on an individual resident in Ireland. If the person required to give evidence is out of the jurisdiction, it is possible to take evidence on commission or use letters rogatory or, in some cases, where the witness is in the United States, rely on a procedure under Title 28 of the United States Code 1782 to compel a witness in the United States to give evidence or produce documents in proceedings before the Irish courts.

Where a party intends to rely on the oral evidence of a fact or expert witness at trial, witness statements or expert reports must be served on the other party at least 30 days before the trial of the action.

9 Hague Choice of Court Convention 2005.

In light of the restrictions introduced to curtail the spread of covid-19, restrictions were introduced in 2020 on the numbers of people who could attend court in person. Most court lists are currently proceeding remotely (where possible).

***Costs***

The general rule is that costs follow the event (i.e., the loser pays). However, there is a growing body of case law, mainly emanating from the Commercial Court, that suggests that if the litigation is complex, the court should engage in a more detailed analysis and should not just award full costs to the winning side if the plaintiff has not succeeded in all claims.

Where the parties cannot agree on the costs incurred during the proceedings, the matter will be referred to the Office of the Legal Costs Adjudicator, where the legal costs adjudicator will review the bill of costs and decide on the appropriate figure to be awarded to a party for its costs.

There are a number of tools that a defendant can use to put the plaintiff 'on risk for costs' including lodgements, tenders and Calderbank offers. In essence, all these involve the defendant offering a figure to settle the matter; if the plaintiff rejects the offer and is then awarded a lower amount at the hearing of the action, the plaintiff is penalised for costs.

### iii Arbitration

The United Nations Commission on International Trade Law (UNCITRAL) Model Law has applied to all Irish arbitrations since the introduction of the Arbitration Act 2010 on 8 June 2010. This Act introduced increased finality to the arbitral process by restricting the basis for appealing awards and decisions and reducing the scope for court intervention or oversight.

The High Court has powers for granting interim measures of protection and assistance in the taking of evidence, although most interim measures may now also be granted by the arbitral tribunal under the 2010 Act. Once an arbitrator is appointed and the parties agree to refer their dispute for the arbitrator's decision, then the jurisdiction for the dispute effectively passes from the court to the arbitrator.

### iv ADR

It is common for insurance contracts to contain a clause requiring the dispute to be dealt with by ADR. Mediation is the most common form of ADR for insurance disputes.

The Financial Services and Pensions Ombudsman (FSPO) is an independent body, established to resolve disputes between consumers and insurance providers either through informal means, such as mediation, or by way of formal investigation and adjudication. The FSPO's decision is legally binding, with a right of appeal to the High Court.

### v Mediation

***The role of the courts***

The courts cannot compel the parties to mediate disputes; however, in the High Court and Circuit Court, a judge may adjourn legal proceedings on application by either party to the action, or of its own initiative, to allow the parties to engage in an ADR process. When the

parties decide to use the ADR process, the rules provide that the courts may extend the time for compliance with any provision of the rules. A party failing to mediate following a direction of the court can be penalised in costs.

## V YEAR IN REVIEW

### i Brexit

Following the UK's withdrawal from the EU on 31 January 2021 and the end of the transition period on 31 December 2020, UK insurers can no longer avail of the European passporting regime to service Irish customers. To address this issue, on 10 December 2020, the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 was signed into law by the President. Part 10 addresses insurance contract continuity introducing a Temporary Run-Off Regime to permit UK insurers (subject to meeting certain criteria) to administer their existing portfolio and terminate their activities in Ireland, up to a maximum period of 15 years from 31 December 2020.

### ii Covid-19: consumers, dividends and BI

As noted above, the response to the covid-19 pandemic in Ireland has led to policyholders seeking to claim for financial losses on BI policies. The CBI, aligned with other supervisory authorities in Europe, issued a number of communications to the financial services sector on its expectations of firms in their response to the crisis.

In March 2020, the CBI wrote to the chairs and chief executive officers (CEOs) of insurance firms outlining its expectation that firms put forward consumer-focused solutions for insurance payment breaks, policy rebates and claims arising from the covid-19 pandemic.

In relation to dividends, the CBI advised in its covid-19 regulated firms 'frequently asked questions' on its website, that 'insurance firms should postpone any payment of dividend distributions or similar transactions until they can forecast their costs and future revenues with a greater degree of certainty'. It did, however, state that where the board of an insurance firm forms the view that a high level of certainty has been reached and wishes to make a distribution, it expects the firm to engage with their supervision team before proceeding with the distribution. Satisfactory forward-looking solvency, liquidity and operational resilience positions must be demonstrated and the insurer is expected to exercise prudence in respect of its variable remuneration policies, including considering whether postponement of related payments would be appropriate at that time. The approach taken by the CBI is consistent with the approach taken by the European Insurance and Occupational Pensions Authority.

Claims have been made by policyholders under BI policies, generally seeking cover under non-material damage extensions.

The aim of the BI Framework is to facilitate early identification and resolution of issues relating to BI insurance. The BI Framework communication outlines the four-moduled approach that the CBI is taking to its analysis, and details its expectations of insurers in addressing issues relating to BI claims and the escalation process (where necessary). The CBI sets out its expectation in the BI Framework that where parties have an agreed 'test case' and insurers will have the benefit of a court's interpretation of their BI Insurance wording, insurers should agree to pay the reasonable costs of customer plaintiffs and should not seek their costs against those plaintiffs.

On 17 February 2021, the CBI published a further statement stating that it was continuing the system-wide supervisory examination of BI issues in line with the BI Framework and that they expect insurers to ensure the fair treatment of consumers, including:

*a* that insurers honour valid claims and pay them promptly;

*b* that where there is doubt about the meaning of a term, the interpretation most favourable to the customer should prevail;

*c* that where legal action results in an outcome that has a beneficial impact for similar customers, firms are required to take swift action to ensure those customers benefit from the final outcome; and

*d* that insurers make interim payments to policyholders who make or have made claims pending the final determination of the sums due. The CBI is actively monitoring firms' progress in the resolution of such claims.

Currently, there is litigation before the Irish courts on the interpretation of BI policies. A number of test cases have been taken under the BI Framework involving individual insurers and policyholders. The High Court delivered judgment in the first test case under the BI Framework on 5 February 2021. This was a case taken by a number of policyholders, who were publicans, against FBD Insurance Plc. The Court found for the policyholders, ruling that there was cover for business interruption losses caused by the covid-19 pandemic under the particular policy wording considered by the Court.

Complaints by consumer policyholders are also being dealt with by the FSPO.

### iii Differential pricing proposals

In November 2019, the CBI wrote to the insurance sector outlining the potential risk to consumers arising from the practice of differential pricing, and informing firms of its intention to conduct a multi-phase review of differential pricing in the private car and home insurance markets (the Differential Pricing Review). In September 2020, following the conclusion of the first phase of the Differential Pricing Review, the CBI issued a letter to the insurance sector setting out its expectations in respect of the pricing of insurance policies. The Differential Pricing Review is due to be concluded with published findings and recommendations in 2021.

In January 2021, Pearse Doherty, TD brought legislation before Dáil Eireann (the Dáil), the Insurance (Restriction on Differential Pricing and Profiling) Bill 2021, with the aim of prohibiting or restricting discriminatory pricing and the use of profiling techniques of certain insurance premiums. The bill was discussed in the Dáil in February 2021, upon which a government amendment was passed to allow the bill's progress through the Dáil to be postponed for nine months to allow for the completion of the CBI's Differential Pricing Review.

### iv Individual accountability

The Central Bank (Amendment) Bill proposes to introduce an Individual Accountability Framework incorporating a Senior Executive Accountability Regime to bring clarity on the expected standards, regulatory responsibilities and accountability of senior management. This Bill is expected to bring widespread reform and has been anticipated for some time.

The Central Bank (Amendment) Bill was listed as priority legislation in the Legislation Programme Autumn Session 2020 released by the Irish government; however, it was not listed as priority in the Legislation Programme Spring Session 2021 and was removed from

pre-legislative scrutiny. The CBI and Department of Finance have advised, however, that they are working to develop this Framework to bring the legislative proposals forward. The CBI is proposing to conduct a consultation process with industry in 2021 prior to implementation of the regime. Following this there will be a short transition period for firms to prepare for implementation of the regime.

### v F&P

In November 2020, the CBI issued a 'Dear CEO' letter to the management of regulated firms addressing their obligations under the F&P Regime. In the letter, the CBI noted a lack of general awareness among firms of their obligations under the F&P Regime and highlighted some of the areas where compliance had been found lacking. In particular, the CBI noted deficiencies in relation to the role of the board, the conduct of due diligence and the outsourcing of CF roles.

### vi Consultation Paper 131: 'Regulations for pre-emptive recovery planning for (re)insurers'

In June 2020, the CBI published consultation paper 'CP131– Regulations for pre-emptive recovery planning for (re)insurers' (CP131) to consult on proposals to introduce formal recovery planning requirements for insurers and reinsurers under Section 48(1) of the CBI (Supervision and Enforcement) Act 2013. The CBI sought stakeholder feedback on the proposed proposals to introduce formal recovery planning requirements for insurers and reinsurers regulations.

### vii CBI thematic assessment of diversity and inclusion in insurance firms

In July 2020, the CBI published the outcome of its 'Thematic assessment of Diversity & Inclusion [D&I] in insurance firms'. The assessment found deficiencies in firms' D&I strategies and in the prioritisation of D&I and clear evidence of significant gender pay gaps in most firms.

### viii Sustainable finance and climate risk

Sustainable finance and climate risk was a key priority of the CBI in 2020. The CBI established a centralised Climate Change Unit to operate as a motor of its strategy in this area. In the third quarter of 2020, the CBI issued a climate and emerging risk survey to the insurance sector to capture the level of awareness of, identify the exposure to and collate possible actions to manage or mitigate climate risks. Feedback on this is expected to be provided to the industry in 2021.

### ix Consultation Paper 138: 'Consultation on Cross-Industry Guidance on Outsourcing'

In February 2021, the CBI launched a public consultation 'CP138 – Consultation on Cross-Industry Guidance on Outsourcing'. The stated aim of the draft Guidance is to assist firms in developing their outsourcing risk management frameworks to effectively, identify, monitor and manage their outsourcing risks. The consultation builds on the concepts outlined and stakeholder responses received to 'Discussion Paper 8 – Outsourcing – Findings and Issues for Discussion', issued by the CBI in November 2018.

## VI OUTLOOK AND CONCLUSIONS

There are a number of test cases on different wordings currently before the Irish courts and so further judgments on the interpretation of different policy wordings are expected in 2021 and 2022.

As outlined above, the CBI has taken a very active role in dealing with claims being brought by policyholders under BI insurance policies.

There has been little guidance issued to date regarding the interpretation and application of the 2019 Act. It is hoped that as the 2019 Act is implemented by the industry, with the final sections commencing in September 2021, some guidance will be issued as regards market concerns over certain of its provisions. The 2019 Act has required a number of changes to insurers processes and procedures, in addition to changes to wordings, and it is likely these changes will raise a number of issues to be determined for the market in the coming years.

From a regulatory perspective, the CBI is conducting a review of the CPC 2012, which is expected to included significant changes to the current regime. As noted above, climate and climate risk is gaining more significance in the insurance market. In light of this, a regulatory focus in this area is likely to be a key focus in 2021. In November 2020, Gerry Cross, Director of Financial Regulation, Policy and Risk at the CBI, advised that the focus is on addressing conduct issues and the prudential and financial stability risks associated with climate change.

Following the impact of the covid-19 pandemic, resolution and recovery planning is expected to be a key priority of regulators across the EU for 2021. The outcome of consultation paper CP131 is expected in 2021. Domhnall Cullinan, Director of Insurance Supervision at the CBI, has indicated that the CBI 'anticipates finalising the Regulations in early 2021 with a view to having plans in place by late 2021'.

**Appendix 1**

# ABOUT THE AUTHORS

## SHARON DALY

*Matheson*

Sharon Daly is head of Matheson's London office and a partner in the commercial litigation and dispute resolution department. Sharon is widely acknowledged as one of the leading corporate litigators in Ireland, with over 25 years' experience in all aspects of commercial litigation and dispute resolution. Sharon has been involved in some of the most significant commercial litigation to come before the Irish courts in the past 10 years, including defending a major financial institution in a series of multibillion, multi-jurisdictional disputes arising from investments in Bernard L Madoff's business.

Sharon also acts for insurers in the largest property damage dispute to come before the Irish courts, establishing a duty of care to downstream property owners for the operators of hydroelectrical dams. Causation and quantum will now be determined following the liability hearings.

Sharon and her team advise a wide range of clients on highly technical insurance issues, including policy wordings, coverage and policy disputes, resulting in significant cost and time savings for clients and minimising reputational risk. In this regard, in 2020, Matheson won numerous instructions as a result of business interruption losses arising during the covid-19 pandemic.

Continuously recognised for her ability to respond creatively to complex issues, Sharon was recently awarded 'Lawyer of the Year' at the Benchmark Litigation Europe Awards 2019.

As head of Matheson's Brexit advisory group, Sharon leads a multidisciplinary team advising and assisting clients on the implementation of their Brexit plans.

Sharon's experience includes acting for a financial institution in achieving the dismissal of a multibillion fraud claim on an interlocutory motion on public policy grounds; defending a financial institution in a fund custody negligence claim seeking recovery of $500 million; acting for Kenmare Resources in the appeal of a €10 million libel award and achieving a 97.5 per cent reduction; acting for University College Cork against the Electricity Supply Board (ESB) in a claim alleging ESB mismanaged a hydroelectric dam and caused millions of euros of damage as a result of downstream flooding in Cork city; and acting for a major media company in litigation following a data breach.

**DARREN MAHER**

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Darren Maher is a partner and head of the financial institutions group at Matheson. He has advised a wide range of leading domestic and international insurance and reinsurance companies on all aspects of insurance law and regulation, including establishment and authorisation, development and distribution of products, compliance, corporate governance and reorganisations, including cross-border mergers, schemes of arrangement, portfolio transfers and mergers and acquisitions. Darren is a member of the firm's Brexit Advisory Group and is advising a significant number of the world's leading financial services firms on their plans to establish a regulated subsidiary in Ireland to maintain access to the EU Single Market following the United Kingdom's exit from the EU.

Darren frequently publishes articles in insurance and reinsurance publications and is co-author of the Irish chapter of PLC's *Cross-border Insurance and Reinsurance Handbook*. Darren lectures at the Law Society of Ireland and the Insurance Institute of Ireland.

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April McClements is a partner in the insurance and dispute resolution team. She is a commercial litigator and specialises in insurance disputes.

April advises insurance companies on policy wording interpretation, complex coverage disputes (in particular relating to financial lines policies), D&O claims, cyber, professional indemnity claims, including any potential third-party liability, and subrogation claims. April also manages professional indemnity claims for professionals, including insurance brokers, architects and engineers, for a variety of insurers.

April is a member of the Law Society of Ireland, the Insurance Institute of Ireland and the British Insurance Law Association. She has contributed to various industry publications and has participated in seminars as a speaker on insurance issues. She is a lecturer on the Law Society of Ireland Insurance Law Diploma course.

**GRÁINNE CALLANAN**

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Gráinne Callanan is a partner in the financial institutions group and leads Matheson's Cork office. Gráinne advises a wide range of leading domestic and international financial institutions doing business in and from Ireland, including life and non-life insurance and reinsurance companies, captive insurers and intermediaries on corporate transactions, regulatory and compliance and corporate governance.

Gráinne has extensive expertise in the areas of new authorisations, portfolio transfers, cross-border mergers, corporate restructurings, distribution arrangements and health insurance. She has advised on a wide range of innovative transactions in the insurance market in recent times and has advised clients on a number of significant acquisitions of closed books of life insurance businesses.

Gráinne lectures at the Law Society of Ireland and the Insurance Institute of Ireland. Gráinne is also a member of the Cork Financial Services Forum.

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