THE INSURANCE AND REINSURANCE LAW REVIEW

SEVENTH EDITION

Editor
Peter Rogan

THE LAWREVIEWS

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Seventh Edition

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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 of the contributors for their work in compiling this volume.

Insured losses in 2018 have been estimated at between US$79 billion and US$90 billion, a 40 per cent reduction from the disastrous 2017, but still above the 10-year average. While no single event stands out, the aggregation of losses from hurricanes Michael and Florence in the United States, and typhoons Jebi, Trami and Mangkhut in the Asia-Pacific region, along with earthquake losses and the California fires has been significant. Also noteworthy in 2018 were the number and scale of cyber events, including the huge data breaches of Facebook and Marriott International, which may be a portent of things to come. 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.

Looking ahead, 2019 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 present challenges around the world. To reflect this, we have added a new chapter on artificial intelligence.

I hope that you find this seventh edition of *The Insurance and Reinsurance Law Review* of use in seeking to understand today's legal challenges, and I would like once again to thank all the contributors.

Peter Rogan
Ince Gordon Dadds LLP
London
April 2019

Chapter 20

IRELAND

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

I INTRODUCTION

The UK's decision to leave the European Union has resulted in a number of financial services firms engaging with the Central Bank of Ireland (the Central Bank) to discuss potential moves and authorisation, ranging from UK firms looking to re-establish themselves in advance of Brexit in a country with guaranteed access to the single market to a number of branches of UK entities in Ireland considering their future corporate structures post-Brexit. 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.

The moves come as the possibility of a no-deal Brexit arises, despite a 'standstill' transition agreement being struck between the EU and the UK government in March 2018, which was arguably designed to avoid such relocations.

II REGULATION

i The insurance regulator

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

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

In order to facilitate this supervisory process, insurance and reinsurance undertakings are obliged to submit annual and quarterly returns to the Central Bank in respect of their solvency margins and technical provisions. The Central Bank is also empowered to conduct regular themed inspections across the industry. There are certain requirements that regulated firms under the Central Bank'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 Fitness and Probity Standards, the Minimum Competency Regulations 2017 and the Minimum Competency Code 2017.

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

ii Requirements for authorisation

To operate as an insurance undertaking in Ireland, an entity must either be authorised and regulated by the Central Bank or authorised by another EU regulator, which in turn enables it to avail of the single passport regime.

As to the process applied by the Central Bank when reviewing a licence application made pursuant to European Union (Insurance and Reinsurance) Regulations 2015 (the Irish 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 Central Bank. Thereafter, the application proceeds through the submission of a detailed application and business plan to the Central Bank.

Broadly, subject to the applicant satisfying the requirements of the Central Bank in respect of minimum capital requirements and any additional preconditions or undertakings specified in the letter of authorisation in principle issued by the Central Bank, 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 Central Bank in comparison with fully regulated insurers.

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

a ensuring it retains authorisation from the Central Bank;
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 Central Bank;
e ensuring compliance with the general good requirements contained in the Consumer Protection Code (in the case of Irish resident undertakings); and
f ensuring compliance by all directors, executives and staff with the fitness and probity regime.

iii Regulation of individuals employed by insurers

As part of an application for authorisation, the Central Bank 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 Central Bank for prior approval to act as part of the Central Bank's Fitness and Probity regime. Forty-six senior positions are prescribed as pre-approval controlled functions (PCFs), including the positions of director, head of finance and head of compliance. PCFs are a subset of Controlled Functions (CFs) – in other words PCFs are by definition also CFs.

Unlike CFs, the prior approval of the Central Bank is required before an individual can be appointed to a PCF, to ensure that a person performing a PCF has a level of fitness and probity appropriate to the performance of that particular function. The individual must complete an online individual questionnaire that is endorsed by the proposing entity and then submitted electronically to the Central Bank for assessment.

The main implication of being appointed to a PCF role is that a person must comply on an ongoing basis with the Fitness and Probity Standards introduced by the Central Bank Reform Act 2010 and confirm this in writing to the Central Bank.

Where a person comes within the Minimum Competency Framework (as defined in subsection vi), qualifications may be necessary but generally no set exams are mandatory. The Central Bank is required to set out a specification for each PCF role that might include a qualification (see Appendix 4 of the Minimum Competency Code 2017), 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 Consumer Protection Code 2012 (published by the Central Bank); 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 business carried on by a company is taxed at the standard rate of 12.5 per cent corporation tax. While profits liable to taxation are generally recognised in accordance with relevant accounting treatment, particular accounting treatment applies to certain aspects of the insurance business such as: the realisation of non-financial investment assets; treatment of equalisation or catastrophe reserves; and taxation of captive insurers (which is similar to the treatment of non-captives).

Life assurance companies

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.

Reinsurance companies

Reinsurance business is taxed in the same manner as non-life insurance businesses at the standard 12.5 per cent corporation tax rate. 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

The Financial Services and Pensions Ombudsman Act 2017 (the 2018 Act) came into force on 1 January 2018. The 2018 Act amalgamates the Financial Services Ombudsman and the Pensions Authority into the Office of the Financial Services and Pensions Ombudsman (FSPO). The 2018 Act strengthens the functions of the FSPO and extends the limitation period for bringing complaints to the FSPO.

The limitation period for consumer complaints in respect of long-term financial services has been extended from six years to: (1) six years from the date of the conduct giving rise to the complaint; (2) three years from the date on which the person making the complaint first became aware or ought to have become aware of that act or conduct; or (3) a longer period, as may be permitted by the FSPO.

Significantly, the 2018 Act applies retrospectively although it is limited to conduct complained of after 2002. Therefore, the FSPO can investigate conduct complained of before the enactment of the 2018 Act owing to the extended limitation period, in circumstances where such complaints would have been previously refused as a result of being statute barred. However, the service to which the complaint relates must also not have expired or have been terminated more than six years before the date of the relevant complaint.

On 24 January 2019, the FSPO published 228 legally binding decisions from 2018. The FSPO stated that the aim in publishing the decisions was to enhance transparency of its powers and services. It can now award compensation of up to €500,000. It can also direct a regulated provider to rectify the conduct that is the subject of a complaint, and there is no limit on the value of the rectification that can be directed. The vast majority of complaints are successfully resolved at mediation.

The EU (Non-Financial and Diversity Information Disclosure) Regulations 2017 (the 2017 Regulations) came into operation on 21 August 2017 and apply in respect of all financial years commencing on or after 1 August 2017. The 2017 Regulations introduce two distinct obligations based on different qualifying criteria: non-financial reporting and diversity reporting. It is possible for a company to fall within the scope of both reporting regimes. The 2017 Regulations apply to companies that:

a qualify as a large company under Section 280H of the Companies Act 2014 (the Act);
b have an average number of employees that exceeds 500; and
c is an ineligible entity under the Act, meaning an undertaking that:
  - has transferable securities admitted to trading on a regulated market of any Member State;
  - is a credit institution; and
  - is an insurance undertaking, or is another type of undertaking specified in the Act, for example, an investment company.

The non-financial statement should contain information relating to environmental matters, social and employee matters, respect for human rights, and bribery and corruption matters, to the extent necessary for an understanding of the development, performance, position and impact of the company's activity relating to these matters. A brief description of the company's business model, policies and an analysis of the non-financial key performance indicators relevant to the particular business should also be included.

The 2017 Regulations were amended, with effect from 17 October 2018, by the European Union (Disclosure of Non-Financial and Diversity Information by certain large undertakings and groups) (Amendment) Regulations 2018 (the 2018 Regulations). Most of the amendments introduced are technical in nature, designed to clarify perceived ambiguities in the drafting of the 2017 Regulations. There is now a requirement for non-financial information to be included in the director's report (in the Company's audited financial statements), or, in certain circumstances, in a separate statement.

As mentioned in subsection iii, the Minimum Competency Code 2017 and the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1) of the Minimum Competency Regulations 2017 (the Minimum Competency Regulations 2017)) replaced the existing Minimum Competency Code 2011 with effect from 3 January 2018. The Minimum Competency Code 2017 and the Minimum Competency Regulations 2017 form the Minimum Competency Framework.

The Minimum Competency Framework has been introduced to incorporate the implementation of the Insurance Distribution Directive (IDD), the Markets in Financial Instruments Directive II, the associated European Securities and Markets Authority Guidelines, and the European (Consumer Mortgages Credit Agreements) Regulations 2016.

The Minimum Competency Framework sets out certain minimum professional standards for persons providing financial services, in particular, persons exercising a controlled function on a professional basis. The revised framework aims to ensure that consumers obtain a minimum acceptable level of competence from staff acting for and on behalf of regulated firms in providing advice and information and associated activities in connection with retail financial products. The main changes under the revised Minimum Competency Framework relate to the qualification and experience requirements of the staff of financial services providers. All staff carrying out a relevant function must now:

a have a recognised qualification (as defined in the Minimum Competency Code 2017);
b comply with the grandfathering provisions; or
c comply with the new entrants' provisions, which includes participating in a training process.

Staff are also required to complete annual continuing professional development training, and regulated firms are required to maintain written records of this training and review their staff's development and experience needs. Additional standards must be complied with where staff exercise a controlled function involving:

a MiFID services and activities;
b mortgage credit;
c insurance and reinsurance undertakings and insurance intermediaries; and
d design of retail financial products.

Regulated firms are now required to conduct an annual review of their staff's development and experience needs. The Minimum Competency Code 2017 requires regulated firms to provide a certificate of such qualifications, if requested to do so by a consumer.

The EU Regulation on Packaged Retail and Insurance-Based Investment Products (PRIIPs) (the PRIIPs Regulation),[2] supplemented by the PRIIPs Regulatory Technical Standards 2017 (RTS),[3] came into effect on 1 January 2018. The PRIIPs Regulation is a key piece of legislation, which aims to enable retail investors to understand and compare the key features and the potential risks and rewards of investment products, funds and investment-linked insurance policies.

PRIIPs introduce the obligation to provide a key information document (KID), which is a pre-contractual fact sheet that will inform retail investors of the main features, risks, reward profile and costs associated with a product in a clear and accessible manner. The form and content of the KID is standardised by the RTS in order to facilitate the comparison of similar products and coordinate disclosure requirements across the European insurance market. The wide definition of PRIIPs under the PRIIPs Regulation means that all manufacturers and financial intermediaries that distribute PRIIPs to retail investors fall within its scope. However, certain products, including non-life insurance products and pension products, are specifically excluded from its application and entities subject to the Undertakings for Collective Investment in Transferable Securities are not obliged to comply with PRIIPs until 1 January 2020.

Data protection is governed by the Data Protection Acts 1988 to 2018 (DPA), as amended from time to time, and the General Data Protection Regulation (GDPR),[4] which came into force on 25 May 2018 (together with other EU Regulations, Directives, Decisions and Guidelines on data protection and data privacy, and guidance issued by the Irish Data Protection Commission (DPC) and the European Data Protection Board).

The GDPR is directly effective in Ireland, meaning that the Irish parliament did not have to implement national legislation for the GDPR to become law. However, the GDPR allows EU Member States to introduce national law derogating from some of its provisions and this has been done in Ireland through the DPA. It introduces a number of derogations, including an exemption, subject to suitable safeguards for data subject rights, to the general prohibition on the processing of data concerning health where the processing is necessary and proportionate for insurance and pension purposes.

Many of the principles relating to the processing of personal data under the GDPR are broadly the same as those set out under the EU Data Protection Directive[5] (which was repealed by the GDPR). However, the GDPR enhances the EU data protection framework in a number of ways, including enhancing data subject rights and transparency, greater penalties for breach, and extraterritorial effect in certain circumstances. It also introduced the principle of accountability pursuant to which controllers and processors must be able to demonstrate compliance with their respective obligations under the GDPR.

With regard to enforcement of data protection laws, the DPA introduces enhanced powers for the DPC, and the government has significantly increased the DPC's budget in recent years. The DPC has indicated that it will continue to proactively undertake initiatives to build awareness of the GDPR, and has increased its staff numbers accordingly. These

2 No. 1286/2014.
3 Delegated Regulation 2017/653.
4 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.
5 Directive 95/46/EU.

developments reflect a commitment to enforcing compliance with the GDPR, and suggest that the DPC will be in a strong position to take action against controllers and processors that breach the rights of individuals under the GDPR.

vii Capital requirements

Insurance undertakings regulated by the Central Bank 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.[6]

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 Central Bank. 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 Central Bank immediately of any deteriorating financial conditions. As such, the SCR and MCR provide for clear channels by which the Central Bank can monitor the financial state of insurance undertakings. In the event of a breach of the capital requirements, the Central Bank will employ an escalating ladder of supervisory intervention, allowing for the implementation of a recovery plan by an insurance undertaking, as approved by the Central Bank. Where there is a breach of the SCR or MCR, compliance must be re-established within six months or three months respectively, otherwise the Central Bank may restrict the free disposal of the assets of the undertaking and ultimately withdraw its authorisation.

6 Regulations 83–101, Irish Regulations.

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 Consumer Protection Code 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 remains the most recent codification of general principles of insurance law.

The Law Reform Commission (LRC) has, however, recommended reforms to consumer insurance law and published a draft bill in July 2015. The LRC recommendations were largely incorporated into the Consumer Insurance Contracts Bill 2017 (the 2017 Bill), which was referred to the Select Committee on Finance, Public Expenditure and Reform, and Taoiseach in February 2017. The 2017 Bill is at the third stage before the Dáil, however, there is no clear timeline for implementation.

The definition of a consumer in the 2017 Bill is quite broad and includes individuals and small businesses with a turnover of less than €3 million (provided that these persons are not a member of a group having a combined turnover greater than €3 million). This is the definition used for the purpose of complaints to the FSPO and under the Central Bank's Consumer Protection Code 2012.

The European Union (Insurance Distribution) Regulations 2018 (as amended) (IDR) transposed the IDD into Irish law with effect from 1 October 2018. The IDD creates a minimum legislative framework for the distribution of insurance and reinsurance products within the European Union, 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. 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.[7] 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*,[8] 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.

In the context of consumer policies, the 2017 Bill proposes to reform the area of insurable interests. Section 5 of that Bill provides that an insurer cannot reject an otherwise valid insurance contract on the basis that the insured does not or did not have an insurable interest. Where the contract of insurance is also a contract of indemnity, the insured must have an interest, however, it does not need to extend past a factual expectation of an economic benefit from preserving the subject matter or loss on its destruction damage or loss. In addition, an insurer may not refuse liability under a contract on the basis that the name of the person who may benefit is not specified in the policy.

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.

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. It was anticipated this would change in line with the changes in the UK driven by the Insurance Act 2015; however, it remains to be seen whether there will in fact be a significant change in Ireland.

7 *Prudential Assurance v. Inland Revenue* [1904] 2 KB 658.
8 [1991] ILRM 726.

Utmost good faith, disclosure and representations

Parties to contracts of insurance are subject to the duty of utmost good faith. As a result, the insured or proposer has a duty prior to renewal or inception to disclose all material facts. The remedy for breach of the duty is avoidance.

A material fact is one that would influence the judgement of a prudent underwriter in deciding whether to underwrite the contract; and, if so, the terms (such as the premium) on which it might do so.

The duty goes beyond a duty to answer questions on a proposal form correctly; however, the courts have confirmed that the questions posed on the proposal form will inform the duty. There is no requirement to show inducement under Irish law.

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.

In respect of consumer insurance only, the 2017 Bill proposes to replace the duty of disclosure with a duty to answer specific questions honestly and with reasonable care. The questions posed by the insurer should identify the material risk and the relevant information actually to be relied upon by the insurer. There is no duty to provide additional information on renewal unless specifically requested by the insurer. The 2017 Bill also proposes that in cases of innocent or negligent non-disclosure and misrepresentation, the principal remedy should be to adjust the payment of the claim taking account of the carelessness of the insured and whether the breach in question affected the risk. The 2017 Bill retains avoidance as a remedy for fraudulent breaches on public policy grounds.

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. The 2017 Bill proposes to consolidate the essential requirements concerning the form of consumer insurance contracts in a single general legislative framework.

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.

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.

The all-important element in the declaration usually contained in a proposal form is the phrase that makes the declaration the 'basis of the contract'. In making the proposal the basis of the contract, the proposer warrants the truth of his or her statements and, in the event of a breach of the warranty, the insurer can repudiate liability under the policy without reference to issues of materiality. However, basis of the contract clauses are considered to be very draconian by the courts and there is a judicial reluctance to enforce these clauses. The 2017 Bill proposes to abolish 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).

A policy will typically include express terms defining:

a coverage: the extent of the insurer's potential liability to the insured;
b exclusions: matters expressly excluded from cover;
c excess: the initial amount of any loss that the insured must bear themselves;
d conditions precedent to cover, for example notification provisions; and

e warranties: statements of fact or continuing intention by the insured in relation to the risk underwritten, such as a warranty that certain precautions will be taken in respect of particular activities.

Warranties are construed very strictly by the courts in circumstances where the breach discharges the insurer from liability from the date of breach (irrespective of whether the breach is material to the loss) and they are thus considered to be draconian. The 2017 Bill proposes to abolish warranties in consumer insurance contracts and replace these with suspensive conditions.

Almost all insurance policies list terms of the contract as conditions. The effect of a breach of condition in an insurance policy depends on whether that condition is a condition precedent to liability. Breach of a condition precedent entitles the insurer to decline cover for a claim in the event of a breach without the necessity to demonstrate that the insurer has suffered any prejudice. The remedy for breach of a bare condition is in damages. The courts will 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.

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

iv Intermediaries and the role of the broker

Conduct rules

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

a the directors satisfy the Minimum Competency Framework as published by the Central Bank;
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 which are complimentary 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 (eg, although acting for client, it will be the agent of the insurer when collecting premium).

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 Central Bank 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 are stated to be a condition precedent to cover, the insurer will be entitled to decline cover for a breach of these requirements without needing to establish that it has suffered 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 on the basis of a technical breach 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 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).

Once a contract of insurance has been concluded, the relationship between insurer and insured is predominantly governed by the terms of the policy and typically the policy will impose obligations on the insured in relation to matters such as payment of premium, notification of claims and claims cooperation.

The consequence of making a fraudulent claim is avoidance and the policyholder also forfeits the premium paid under the insurance contract.

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. 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 Central Bank's Consumer Protection Code 2012. In addition, the 2017 Bill proposes that, in the case of consumer insurance contracts, the insurer should be under a duty to handle claims promptly and fairly, and the insured should be entitled to damages where an insurer unreasonably withholds or delays payment of a valid claim.

Set-off and funding

As per 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 in order 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

Any dispute arising under an insurance or reinsurance contract that contains an arbitration clause must be referred to arbitration. 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 on 1 January 2018 solicitors are 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.

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 not possible to require attendance through service of a summons. In such circumstances, it is possible to apply 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 US 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, a witness statements or expert reports must be served on the other party at least 30 days before the trial of the action.

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 taxation, where the taxing master will review the bill of costs and decide on the appropriate figure to be awarded to a party for its costs. The successful party will normally recover approximately 60 per cent of its recoverable costs known as party and party costs. These will usually be approximately 50 per cent to 75 per cent of the total costs incurred by the party in the litigation.

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 of 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

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 the agreement has not been individually negotiated.

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.

A contract that does not contain a written arbitration agreement is not arbitrable and is specifically excluded from the application of the 2010 Act. The arbitration agreement must be in writing whether by way of a clause in the substantive contract or by way of separate agreement. While Section 2(1) of the 2010 Act stipulates that these clauses should be in writing, this provision has been given a broad interpretation to include an agreement concluded orally or by conduct as long as its content has been recorded in writing.

Article 34 of the 2010 Act deals with applications to the court for setting aside an award. The grounds on which a court can set aside an award are extremely limited and correspond with those contained in Article V of the New York Convention, which requires the party making the application to furnish proof that:

a a party to the arbitration agreement was under some incapacity or the agreement itself was invalid;
b the party making the application was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;
c the award deals with a dispute not falling within the ambit of the arbitration agreement;
d the arbitral tribunal was not properly constituted; or
e the award is in conflict with the public policy of the state.

Arbitration can be a more expensive option than litigation in circumstances where the arbitrator and the venue must be paid for while access to the courts is subject only to the payment of stamp duty, which is relatively modest in comparison with the costs of arbitration. Arbitration may be a favourable option, particularly for insurers, however, as the courts are traditionally seen as pro-insured in insurance disputes, given the draconian provisions in insurance contracts. There is also the benefit of confidentiality of the dispute in arbitration.

iv ADR

Mediation is the most common form of ADR for insurance disputes.

v Mediation

The role of the courts

As discussed above, the Mediation Act 2017 (which came into effect on 1 January 2018) requires solicitors to advise their clients of the merits of mediation as an ADR mechanism in advance of issuing court proceedings. Prior to issuing proceedings, the 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 when issuing proceedings.

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

As mentioned in Section I, Brexit has resulted in a number of financial services firms considering re-establishing themselves in Ireland, including UK firms and branches of UK entities.

ii Developments related to litigation funding

Third-party professional litigation funding is not generally permitted. In July 2018, in the case of *SPV Osus Ltd v. HSBC Institutional Trust Services (Ireland) Ltd*, the Supreme Court called on the legislature to urgently reform the area, failing which the Supreme Court itself may intervene.

The High Court has previously made clear that after-the-event insurance (ATE) is valid; therefore, ATE insurance is the only valid third-party funding.

iii Representative actions in consumer litigation

The European Commission has published a draft Directive that proposes a new type of EU-wide collective redress mechanism for consumers. This would allow a 'qualified entity' to take a representative action before a Member State court on behalf of a group of consumers that has been affected by a breach of consumer protection laws, to seek redress for the affected group. This would increase litigation risk for industry sectors that are subject to EU regulation, including insurers. The draft Directive will require further consultation in the European Parliament and the European Council, and is likely to be amended prior to publication in the Official Journal. It is anticipated that it will be adopted prior to the next EU Parliament elections, scheduled for May 2019.

iv Civil Liability Amendment Act 2017

The Civil Liability Amendment Act 2017 came into effect in late 2018. The Act empowered the courts to make awards in catastrophic injury cases by way of periodic payments, rather than as a lump sum. The aim of the legislation is to ensure continuity of payment throughout the life of the plaintiff.

v The Insurance (Amendment) Act 2018

The Insurance (Amendment) Act 2018 came into force in July 2018, which amends and extends the scope of the law in relation to insolvent insurers.

vi Payment protection insurance

Following the UK Supreme Court decision in *Plevin v. Paragon Personal Finance Limited*, a further redress scheme in respect of payment protection insurance (PPI) is underway in the UK. On 26 June 2018, a judgment was handed down in the Manchester County Court in the case of *Doran v. Paragon Personal Finance* (unreported). The amount awarded in this case was higher than the amount that would have been awarded under the Financial Conduct Authority guidelines for a case similar to the *Plevin* case, and that would have been awarded by the Financial Ombudsman. It is possible, particularly in light of the changes to the limitation period for claims to the Financial Services and Pensions Ombudsman in relation to long-term financial products, that there could be further litigation in relation to the sale of PPI in Ireland.

vii Emerging risks

There was an increase in cybersecurity threats and data breaches in 2018. A regulated online sphere, in the context of cybersecurity and data privacy, is, therefore, becoming more important. It follows on from this that the flow of data between states and the control that governments should exercise over this data is an important consideration in 2019. The enforcement of the GDPR is also important in this context.

VI OUTLOOK AND CONCLUSIONS

The UK Part VII transfer under the Financial Services and Markets Act 2000 (the UK Act) has been a key part of UK insurers' Brexit contingency plan, enabling transfers of EU and EEA insurance business between the UK and Ireland through a court-sanctioned legal transfer process. To date, many UK Part VII insurance transfers have been completed, with more to be completed later in 2019.

Compared to 2018 levels, despite the uncertainty caused by Brexit, trade wars and protectionism, we anticipate an increase in the levels of insurance industry mergers and acquisitions (M&A) activity in the second half of 2019. While the lack of clarity about specific proposals under Brexit may be a short-term inhibitor of insurance M&A in the first half of 2019, proposed transactions that have been put on hold in the wake of Brexit are expected to continue and increase post-Brexit.

Technology has been identified as a key driver of M&A activity. Insurtech investments are also expected to lead to a more innovative approach, with examples of insurers buying insurtech start-ups increasing in 2018.

Cloud computing is gaining more significance in the insurance market. In light of this, a focus on upgrading talent in this area is likely to be a key focus in 2019. Insurers will also be expected to modernise and personalise their policies, as a result of increased customer expectations. Some products will become more reliant on data from connected devices.

We expect an increase in 2019 in Irish companies taking out cybersecurity cover and potentially related coverage disputes. In the next few years, we also anticipate litigation from insureds challenging claims decisions made by automated claims processing systems and on the interpretation of rights conferred by the GDPR on individuals in relation to automated decision-making.

Appendix 1

ABOUT THE AUTHORS

SHARON DALY

Matheson

Sharon Daly is a partner and heads the commercial litigation insurance team, which is described by *The Legal 500* as 'second to none' with Sharon being personally commended for her ability to respond creatively to complex disputes.

Sharon and her team have been involved in some of the most significant commercial litigation before the Irish courts in the past 10 years, including defending a major financial institution in a multibillion, multi-jurisdictional dispute arising from investment in Bernard L Madoff's business. Sharon also acted for insurers in the largest property damage dispute to come before the Irish courts in relation to the liability of hydroelectric dams and flood damage arising therefrom.

Sharon and her team advise a wide range of clients on insurance issues including coverage, policy disputes and defence of large complex claims. Sharon and her team also advise on regulatory issues for insurers and support commercial transactions for insurers buying and selling their businesses.

As a member of the Matheson's Brexit Advisory Group and a council member of the Dublin Chamber of Commerce, Sharon is working with government and other key stakeholders to encourage UK-based multinationals to relocate to Dublin in order to facilitate the growth of Dublin as a leading global business centre, building on Brexit and beyond.

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 in order to maintain access to the EU Single Market in advance of the Brexit date.

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.

APRIL McCLEMENTS

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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 has been involved in obtaining High Court approval for various insurance portfolio transfers or schemes of arrangement arising from reorganisations or mergers and acquisitions involving life, non-life and captive insurers. April also works in the area of general commercial litigation with a particular focus on contractual disputes, most of which are litigated in the Commercial Court. She is also a strong advocate of ADR and has acted for clients in mediation and arbitration.

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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