General Scheme of

INSURANCE (MISCELLANEOUS PROVISIONS) BILL 2021

Long Title

A Bill to require the Central Bank of Ireland to prepare a report to the Minister for Finance on certain insurance matters; to amend the Central Bank (National Claims Information Database) Act 2018; the Consumer Insurance Contracts Act 2019; the European Union (Insurance and Reinsurance) Regulations 2015; and to provide for related matters.

Arrangement of Heads

Part 1

General Provisions

Head

Part 2

Amendments to the Central Bank (National Claims Information Database) Act 2018

Part 3

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Amendment of European Union (Insurance and Reinsurance) Regulations 2015

ACTS REFERRED TO

Central Bank Act 1989 (No. 16)

Central Bank (National Claims Information Database) Act 2018 (No. 42)

Consumer Credit Act 1995 (No. 24)

Consumer Insurance Contracts Act 2019 (No. 53)

Finance (Miscellaneous Provisions) Act 2015 (No. 37)

Insurance Act 1989 (No. 3)

Investment Intermediaries Act 1995 (No. 11)

Judicial Council Act 2019 (No. 33)

Social Welfare and Pensions Act 2013 (No. 38)

PART 1

PRELIMINARY AND GENERAL

Head 1 Short title and Commencement

Provide that:

(1) This Act may be cited as the Insurance (Miscellaneous Provisions) Act 2021.

(2) This Act shall come into operation on such day or days as the Minister for Finance may appoint by order or orders whether generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Explanatory Note

This Head is a standard provision. It is intended to provide for the commencement of the provisions by commencement order, including the commencement of different sections at different times.

Head 2 **Interpretation**

Provide that:

In this Act, unless the context otherwise requires:

"the Act of 2018" means the Central Bank (National Claims Information Database) Act 2018;

"the Act of 2019" means the Consumer Insurance Contracts Act 2019;

"Regulations of 2015" means the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015).

Explanatory Note

This Head is a standard legislative provision.

PART 2

AMENDMENTS TO THE CENTRAL BANK (NATIONAL CLAIMS INFORMATION DATABASE) ACT 2018

Head 3 **Amendment of Sections 4 and 8 of the Central Bank (National Claims Information Database) Act 2018**

Provide that:

(1) The Act of 2018 is amended—

(a) In Section 4(1) by the insertion of the following after the definition of "policy":

""public moneys" means moneys charged on or issued out of the Central Fund or provided by the Oireachtas;"

(b) In Section 8 by the following:

i. In subsection (4), by the substitution of the following subparagraph for subparagraph (e):

"(e) details of the costs borne and provisions made associated with dealing with relevant claims, including details of deductions of public moneys by an insurance undertaking (excluding such amounts which are recovered by the State in accordance with the provisions set out in *section 13* and *section 14* of the *Social Welfare and Pensions Act 2013*) from the amounts paid in satisfaction of relevant claims;"

Explanatory Note

Head 3(1) amends the Central Bank (National Claims Information Database) Act 2018 in Sections 4 and 8.

In Section 4 (*Interpretation*), it inserts the definition of "public moneys".

In Section 8 (*Additional general function of Bank*), it substitutes a new Section 8(4)(e) which allows the Central Bank to collect data regarding the nature of any public moneys that insurers deduct from insurance claims settlements, but excluding such amounts that may be recovered

by the State through the Recovery of Benefits and Assistance Scheme[1], operated by the Department of Social Protection.

Further Background

Head 3(1) amends Section 8[2] of the Central Bank (National Claims Information Database) Act 2018 to explicitly allow the Central Bank to collect data in relation to insurers deducting the value of State supports funded by public moneys from insurance settlement amounts or the amounts paid in respect of insurance claims. It has emerged following the COVID-19 pandemic that a number of insurers have deducted COVID-19-related State supports from final business interruption insurance claims settlements. Insurers may be contractually entitled to make such deductions, but it is desirable to have data available to identify how widespread this practice is. Allowing the Central Bank to collect and publish this information on an ongoing basis – as part of the National Claims Information Database – should provide much greater transparency regarding the prevalence of this practice by insurers, including outside the exceptional circumstances of the pandemic and emergency COVID-19-related payments. This in turn will increase understanding of the issue and inform policymaker decision-making as to whether further action is needed to address it. In addition, arranging for the collection of this data will mean that any such decision to take further action at a later stage will be evidence-based.

[1] This Scheme recovers the value of certain illness-related social welfare payments from compensation awards made to a person as a consequence of personal injuries claims. The benefits are recovered from the compensator, not from the injured person.

[2] Section 8 of the Central Bank (National Claims Information Database) Act 2018 confers the Central Bank with the function of establishing and administering the Database. Sub-section (4) sets out a number of types of data that may be collected by the Bank from insurers in execution of this function.

PART 3

REQUIREMENT FOR CENTRAL BANK TO MAKE REPORT TO THE MINISTER FOR FINANCE ON THE PRACTICE OF PRICE WALKING

Head 4 Central Bank report in relation to the practice of price walking

Provide that:

(1) The Bank shall, within 6 months of the first anniversary of the commencement of this section, submit to the Minister a report setting out —

(a) the measures the Bank has taken (if any) to regulate the practice of price walking in relation to personal consumers who hold motor insurance policies or home insurance policies or both;

(b) the views of the Bank in relation to the oversight of pricing practices by insurance undertakings and insurance intermediaries in relation to motor insurance and home insurance for personal consumers;

(c) the measures the Bank has taken (if any) to regulate the practice of automatic renewals for non-life insurance contracts sold to personal consumers; and

(d) the views of the Bank in relation to whether further legislative or regulatory action is required in relation to any of the above and the reasons for the Bank's views.

(2) The Minister shall lay the report referred to in subsection/subparagraph (1) before each House of the Oireachtas as soon as practicable after it is received.

(3) For the purposes of this Section XX, the following definitions shall apply—

"automatic renewal" means the practice where a contract for insurance allows for a policy to be automatically renewed, unless the personal consumer tells the insurance undertaking or insurance intermediary otherwise before the renewal date;

"equivalent first renewal price" means the price an insurance undertaking or insurance intermediary would offer to a personal consumer upon the first renewal of a particular home insurance policy or motor insurance policy;

"insurance intermediary" has the meaning given to it by Regulation 2 of the European Union (Insurance Distribution) Regulations 2018 (S.I. No. 229 of 2018);

"insurance undertaking" has the meaning given to it by section 15 of the Finance (Miscellaneous Provisions) Act 2015 (No. 37 of 2015);

"non-life insurance" has the meaning given to it by Regulation 3 of the European Union (Insurance and Reinsurance) Regulations 2015 (S.I. No. 485 of 2015);

"personal consumer" has the meaning given to it by the Consumer Protection Code issued by the Bank effective from 1 January 2012, pursuant to: (i) Section 117 of the Central Bank Act 1989; (ii) Section 23 and Section 37 of the Investment Intermediaries Act 1995; (iii) Section 8H of the Consumer Credit Act 1995; and (iv) Section 61 of the Insurance Act 1989;

"price walking" means the practice whereby an insurance undertaking or insurance intermediary sets a subsequent renewal price that is higher than the equivalent first renewal price;

"subsequent renewal price" means the price offered by an insurance undertaking or insurance intermediary to a personal consumer to renew a home insurance policy or motor insurance policy on any renewal subsequent to the first renewal of the insurance policy, including where more than one policy is sold together as part of a package;

"the Bank" means the Central Bank of Ireland;

"the Minister" means the Minister for Finance.

Explanatory Note

Head 4(1) requires the Central Bank to prepare a report for the Minister for Finance on the measures it has taken (if any) to regulate the practice of "price walking". Following the Central Bank's Final Report on its Differential Pricing Review, which was published in July 2021, the Central Bank is conducting a public consultation on its proposals in relation to price walking, which runs until 22 October.

Head 4(2) requires the Minister for Finance to lay this report before both Houses of the Oireachtas as soon as practicable once it is received.

Head 4(3) defines the terms referred to throughout Head 4.

Further Background

In 2019, the Central Bank began a Review of the pricing practices in private car and home insurance in a number of the largest non-life insurance providers operating in the market to understand the prevalence and specific impact of differential pricing[3] on consumers, and to determine the potential for consumer risk and harm arising from these practices. In the Interim Report, published in December 2020, the Bank concluded that differential pricing was evident across the private car and home insurance markets. In the Final Report, which was published in July 2021, the Bank's analysis showed that the premiums paid by certain policyholders deviate significantly from the expected costs. It also found that oversight of pricing practices

[3] The Central Bank defines differential pricing in insurance services as a circumstance or practice whereby customers with a similar risk and cost of service are charged different premiums for reasons other than risk and cost of service.

is lacking and that the automatic renewals process, which is a common feature of the insurance market, lacks transparency.

To remedy the above, the Bank is currently proposing to ban the practice of price walking[4] for personal home and motor insurance policyholders. It is also proposing to introduce measures to require insurers to review their pricing policies annually and to strengthen the provisions regarding automatic renewals of all personal non-life insurance contracts. The Bank is currently undertaking a public consultation on its proposals, which runs until 22 October 2021. The Bank is proposing that it uses its own powers under current legislation to implement its proposals on 1 July 2022.

Head 4 would require a report to be produced by the Bank 18 months after the section is commenced, to show the steps it has taken (if any) with regard to the above and to provide views on a number of areas, including whether further legislative or regulatory action is required. In the Final Report on differential pricing, the Bank states that it "*will continue to analyse developments in the private car and home insurance markets, following this Review, to ensure that insurance providers are acting in the best interest of their customers and delivering fair outcomes*". The report contemplated in this Head will enable the Department of Finance to similarly analyse these developments, to facilitate robust policy formulation in the future.

[4] Price walking is a form of differential pricing. It is where customers are charged higher premiums relative to the expected costs the longer they remain with an insurance provider.

PART 4

AMENDMENTS TO THE CONSUMER INSURANCE CONTRACTS ACT 2019

Head 5 **Amendment of Section 3 of the Consumer Insurance Contracts Act 2019**

Provide that:

(1) Section 3 of the Act of 2019 is amended by the replacement in the table of "Sections 10, 11, 12, 13, 14 and 16" with "Sections 10, 11, 12, 13, 14, 16 and 16A".

Explanatory Note

Head 5(1) amends Section 3 of the Consumer Insurance Contract Act 2019.

Further Background

Section 3 provided for an amendment to Part 1 of Schedule 2 to the Central Bank Act 1942 so that certain sections of the Consumer Insurance Contracts Act 2019 are "designated enactments" under the Central Bank Act 1942. This enables the Central Bank to enforce the obligations contained in the specified sections of the Consumer Insurance Contracts Act 2019 against insurers as "regulated financial service providers" using its various statutory powers. Specifically, the amendment was made in tabular form as follows:

47	No. ___ of 2019	*Consumer Insurance Contracts Act 2019*	*Sections 10, 11, 12, 13, 14* and *16*

Head 5 ensures that the new section 16A provided for in Head 7 will also be enforceable by the Central Bank. This is in line with the fact that the Bank previously had a role with regards to the duties of disclosure set out in 16(10) of the Consumer Insurance Contracts Act 2019 which will now feature in the new Section 16A.

Subject to the advice of the Office of Parliamentary Counsel, this policy may also be achieved by direct amendment to Part 1 of Schedule 2 to the Central Bank Act 1942.

Head 6 Amendment of Section 16 of the Consumer Insurance Contracts Act 2019

Provide that:

(1) Section 16 of the Act of 2019 is amended by the deletion of subsection (10).

Explanatory Note

Head 6(1) deletes Section 16(10) and replaces it by the provisions of a new section 16A, provided for and explained in Head 7.

Further Background

See detail in Head 7.

Head 7 Insertion of Section 16A into the Consumer Insurance Contracts Act 2019

Provide that:

(1) The Act of 2019 is amended by the insertion of the following section after section 16:

"Section 16A: Claims Handling: Mutual duties of disclosure in claims handling

(1) 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, would 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 such information to the other party.

(2) Where the information referred to in subsection 1 is contained in a report prepared for the purpose of pending or contemplated civil proceedings notwithstanding any enactment or rule of law by virtue of which that report is in certain circumstances privileged from disclosure, for the purposes of subsection 1 the consumer or the insurer should disclose to the other party such report within 60 days of receipt.

(3) For the purposes of this section 16A, the following definitions shall apply—

"claim" means any claim made under or in relation to a contract of insurance; and

"report" means a report, letter or statement (whether in physical or electronic form) from accountants, actuaries, architects, dentists, doctors, engineers, occupational therapists, psychologists, psychiatrists, scientists, or any other expert whatsoever, excluding any reports prepared by lawyers containing legal advice, procured by or on behalf of a consumer or an insurer for the purposes of assessing the validity of a claim, or which contains information which tends to either support or prejudice a claim, and shall include any maps, drawings, photographs, graphs, charts, calculations or other like matter referred to in any such report.

Explanatory Note

Head 7(1) introduces a new Section 16A into the Consumer Insurance Contracts Act 2019.

Further Background

In 2015 the Law Reform Commission produced a report entitled "*Consumer Insurance Contracts*". Chapter 8 of the Report made recommendations in relation to the post-contractual

duties of insurers and consumers and, in particular, at paragraph 8.65 the Commission recommended that the law be reformed in circumstances where:

> It is undesirable that an insurer during the course of an investigation into a claim should discover information that would benefit a consumer, but fail to reveal it on grounds of privilege with resultant **prejudice to the interests of the consumer**. It is equally undesirable that a consumer, having made a claim, should withhold information that he or she has discovered that would impact on the claim and fail to reveal it with resultant prejudice to the interests of the insurer.
>
> The Commission considers that if such information goes to the **essence of the claim** then it should be disclosed on a mutual basis.

Section 16(10) of the Consumer Insurance Contracts Act 2019 was enacted to give effect to this recommendation. However, it has subsequently emerged that the wording of section 16(10) may have the unintended consequence of encroaching too far on legal professional privilege. In particular, there was no intention to interfere in the legal professional privilege which protects legal advice from disclosure. In this regard, the Commission noted at paragraph 8.61:

> Legal advice privilege attaches to advices issued by solicitors and counsel, and the Commission makes no proposal to disturb this important aspect of civil litigation.

In order to address this issue, section 16(10) will be repealed and replaced with section 16A, which is designed to clarify the scope of the disclosure requirements under the Consumer Insurance Contracts Act 2019.

The section is modelled on section 45 of the Courts and Court Officers Act 1995, and Order 39 Rule 45 of the Rules of the Superior Courts enacted by the High Court Rules Committee pursuant to section 45. However, the section has been modified in order to adapt it to the consumer insurance context.

In particular, Order 39 Rule 45 is designed as a procedural rule that applies during the course of personal injuries actions. Section 16A is intended to apply in the consumer insurance context, and is designed to prevent disputes between insurers and consumers being litigated. Accordingly, the time at which disclosure of privileged material is required has been modified. Rather than requiring disclosure within one month of the service of a notice of trial as contemplated by Order 39 Rule 45, disclosure is required within 60 days of the receipt of the relevant report.

Further, section 45 and Order 39 Rule 45 are designed to apply where the party which has procured a privileged expert report intends to rely on that report in forthcoming legal proceedings. Section 16A is designed to apply whether or not the insurer or consumer intends to rely on the relevant report – as can be seen from the Commission report, it is intended that information should be disclosed where it goes to the essence of the claim. Section 16A is designed to require the insurer or consumer to disclose information which may be to their disadvantage, as well as information which is to their advantage. Section 16A has been modified accordingly.

Head 8 Insertion of Section 16B into the Consumer Insurance Contracts Act 2019

Provide that:

(1) The Act of 2019 is amended by the insertion of the following section after Section 16A:

"Section 16B: Claims Handling: Duty to inform a consumer regarding deductions to claim settlement amounts

(1) For the purposes of this section 16B, the following definitions shall apply—

"claim settlement amount" means the gross amount before any deductions that is payable to a consumer in respect of a claim made under a relevant contract of insurance;

"public moneys" means moneys charged on or issued out of the Central Fund or provided by the Oireachtas;

"relevant contract of insurance" means a contract of non-life insurance made between an insurer and a consumer.

(2) Where an insurer has deducted from the claim settlement amount any amount including amounts received by the consumer out of public moneys, but excluding such amounts which are recovered by the State in accordance with the provisions set out in *section 13* and *section 14* of the *Social Welfare and Pensions Act 2013*), the insurer shall be under a duty to—

(a) identify any such deduction to the claim settlement amount and notify the consumer of same;
(b) provide the reason for the deduction outlined in *subparagraph (a)* to the consumer; and
(c) inform the consumer of the total amount of the deduction outlined in *subparagraph (a).*

(3) The insurer shall provide the information referred to in *subsection (2)* on paper or on another durable medium.

Explanatory Note

Head 8(1) inserts a new Section 16B into the Consumer Insurance Contracts Act 2019 to require insurers to notify a claimant of any deduction made to a final claim settlement amount (excluding such amounts that may be recovered by the State through the Recovery of Benefits and Assistance Scheme); the reason for same (including naming any State support relevant to

such deductions); and the final amount deducted from the settlement. It is intended that the scope of this provision will apply to individual consumers and smaller businesses, in line with the rest of the Act of 2019; however it will apply only to non-life insurance contracts.

It should be noted that for the purpose of this Head, the definition of "public moneys" used has been taken from the Taxes Consolidation Act 1997. This definition is intended to cover any payments made by the State to an insured person or business. It may be that there is an alternative term or definition, which would be more appropriate to use to reflect this intention.

Further Background

The addition of a new Section 16B within the Consumer Insurance Contracts Act 2019 (CICA) arises from issues that arose in the context of the assessment of business interruption claims made by businesses during the COVID-19 pandemic. In particular, some insurers have deducted or have sought to deduct the value of COVID-19-related State supports, such as the COVID-19 Restrictions Support Scheme (CRSS) and wage subsidy schemes, from business interruption insurance claims settlements.

The aim of Head 8 is to ensure that insurers are fully transparent with consumers with regard to any deductions that are made in relation to the settlement of a claim, in particular with regard to State supports that may have been provided to the consumer for a particular reason. It will provide increased transparency to ensure greater clarity for policyholders and enable them to be better informed when making decisions, e.g. whether to renew a specific policy. In the event that a consumer feels they have been unfairly treated with respect to any deductions to a claim settlement, this provision should also ensure that they have the necessary information in order to make a complaint to their insurer, or the Financial Services and Pensions Ombudsman. It should therefore serve to increase consumer confidence in making a complaint.

It should be noted that this new provision should not have any impact on existing requirements of the Recovery of Benefits and Assistance (RBA) scheme. The RBA scheme enables the Minister for Social Protection to recoup the value of specific departmental payments, made to individuals in personal injury claims, from an insurer who pays compensation in relation to the claim. The insurer in turn can offset the value of these payments to the Minister against the amount of compensation paid for loss of earnings or profit. Section 13 of the Social Welfare and Pensions Act 2013, which underpins the scheme, requires the Department to provide both the insurer and the injured party with a statement of the relevant recoverable benefits that must be repaid to the State. The intention of Head 8 is therefore for insurers to provide policyholders with a similar level of transparency through a statement outlining any other deductions that have been made from a final claim settlement amount.

Similar to other provisions contained within the CICA, a lead-in time for this new measure will be required in order to facilitate adequate preparation by insurers (such as making any necessary adjustments to internal systems). It is therefore intended that the provisions in Head 8 will be commenced by order and come into operation at a future date determined by the Minister for Finance.

Head 9 **Amendment of Section 18 of the Consumer Insurance Contracts Act 2019**

Provide that:

(1) Section 18(4)(a) of the Act of 2019 is deleted and replaced with the following:

"Notwithstanding any other provision of this Act, where a contract of insurance under which two or more consumers are co-insureds or potential claimants contains a term or condition excluding coverage for loss or damage to property caused by a criminal or intentional act or omission of a consumer co-insured or potential claimant, the exclusion applies only to the claim of a person—

(i) whose act or omission caused the loss or damage,

(ii) who abetted or colluded in the act or omission, or

(iii) who consented to the act or omission and knew or ought to have known that the act or omission would cause the loss or damage."

Explanatory Note

Head 9(1) amends Section 18(4)(a) of the Consumer Insurance Contracts Act 2019.

Further Background

Section 18(4) was enacted to give effect to a recommendation made by the Law Reform Commission in its 2015 Report on Consumer Insurance Contracts at paragraph 8.113, to ensure that where a policy of insurance is held in the name of more than one consumer, and the insured property is damaged by the criminal or intentional act of one of those co-insured consumers, the fraud perpetrated by one co-insured will not exclude a claim made by an innocent co-insured.

After enactment, concerns emerged that the current wording of section 18(4) could have the unintended consequence of precluding any contractual exclusion contained in a policy of insurance relating to criminal damage that was not caused by the insured or co-insured, such as for example risks relating to cybercrime and terrorism which are routinely excluded from the cover provided in policies of insurance.

To address these concerns, it is proposed that section 18(4) should be amended to reflect the wording put forward by the Commission in its report. In addition, it is proposed that the phrase "*any other person*" is replaced with the phrase "*any co-insured*" to ensure that the section addresses the specific circumstances which it was designed to address.

PART 5

AMENDMENT OF EUROPEAN UNION (INSURANCE AND REINSURANCE) REGULATIONS 2015

Head 10 **Amendment of the European Union (Insurance and Reinsurance) Regulations 2015**

Provide that:

(1) The 2015 Regulations are amended—

(a) In Regulation 10(3) by the substitution of the following subparagraph for subparagraph (c):

"(3) These Regulations do not apply to the reinsurance activities of an undertaking which -

(a) has its head office in a third country,

(b) is lawfully carrying on reinsurance in that third country, and

(c) is carrying on reinsurance (but no other activity, except for any activities carried on by a person to whom Regulation 13A applies) in the State."

(b) In Regulation 13A by the following—

(i) In Regulation 13A(1) by the substitution of the following subparagraph for subparagraph (a):

"(a) the person was:

(i) immediately before the relevant date, authorised as an insurance undertaking, within the meaning of the Directive, under the law of the United Kingdom or Gibraltar giving effect to the Directive; or

(ii) before the relevant date, authorised as an insurance undertaking, within the meaning of the Directive, under the law of the United Kingdom or Gibraltar giving effect to the Directive and the person's authorisation was withdrawn as a consequence of the person entering winding-up proceedings or re-organisation measures where such winding-up proceedings or re-organisation measures are continuing;"."

(ii) In Regulation 13A(2) by the substitution of the following subparagraph for subparagraph (a):

"(a) satisfying either of the conditions described in subparagraph (a) of paragraph (1), and"

(c) In Regulation 13B by substitution of the following subparagraphs for subparagraphs (2)(a)(xvii), (2)(a)(xviii) and (2)(a)(xix):

"(xvii) Regulations 215 to 299;

(xviii) Parts 1 to 4 of Schedule 3;"

Explanatory Note

Part 10 of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2020 established a "Temporary Run-off Regime" (the "TRR") to facilitate the orderly withdrawal of UK/Gibraltar-authorised insurers from the Irish market following the withdrawal of the UK from the European Union. This was effected by the insertion of new Regulations 13A and 13B into the European Union (Insurance and Reinsurance) Regulations 2015 (the "2015 Regulations").

Head 10 will amend the 2015 Regulations to address two issues that have arisen in connection with the TRR, relating to (i) reinsurance activity and (ii) insurers in liquidation.

Head 10(1)(a) amends Regulation 10(3) in order to address an issue that has arisen as regards the interaction between the conditions for availing of the TRR, as set out at Regulations 13A and 13B of the 2015 Regulations, and Regulation 10(3) of the 2015 Regulations, which impacts on the provision of reinsurance to the Irish market. The amendment would make clear that third-country firms in the TRR, which are in the process of running off their insurance liabilities in the State, may provide third-country reinsurance business in the State pursuant to Regulation 10(3).

Regulation 13(A)(1)(c) of the 2015 Regulations provides that it is a condition of the TRR that: the person - (i) on or before the relevant date, ceased to conduct new insurance contracts in the State, and (ii) after that date, exclusively administers its existing portfolio in order to terminate its activity in the State. Where a person is carrying on reinsurance activity in the State, namely activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking, that person may not be said to be exclusively administering its existing portfolio in order to terminate its activity in the State.

However, Regulation 10(3) of the 2015 Regulations provides that: These Regulations do not apply to an undertaking that - (a) has its head office in a third country, (b) is lawfully carrying on reinsurance in that third country, and (c) is carrying on reinsurance (but no other activity) in the State. Regulation 10(3) of the Regulations may not be said to apply to a person, where that person is administering insurance business in the State pursuant to Regulation 13A and 13B for the purpose of running off their insurance portfolio.

Based on the foregoing, it appears that firms in the TRR cannot lawfully carry out third-country reinsurance activity in the State, which would otherwise be permitted by Regulation 10(3).

In order to preserve re-insurance capacity in the Irish market, Regulation 10(3) will be amended to make clear that third-country firms in the TRR, which are in the process of running off their insurance liabilities in the State, may provide third-country reinsurance business in the State pursuant to Regulation 10(3).

Head 10(1)(b) and Head 10(1)(c) amend Regulation 13A and Regulation 13B of the 2015 Regulations respectively, to permit firms in liquidation, that otherwise satisfy the conditions of the TRR, to enter the TRR, as well as to provide that the Bank would not need to withdraw the TRR authorisation of a firm that enters liquidation.

In its current form, Regulation 13A(1)(a) of the Regulations of 2015 provides that it is a condition of the TRR that the person was, immediately before the relevant date, authorised as an insurance undertaking, within the meaning of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance (the "Directive") under the law of the United Kingdom or Gibraltar giving effect to the Directive.

Article 279 of the Directive, and Regulation 279 of the 2015 Regulations, provides that where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn.

It is likely that some insurance undertakings, who may seek to avail of the TRR, would prior to 1 January 2021, have had their authorisation withdrawn on the opening of winding up proceedings under the law of the United Kingdom or Gibraltar.

In those circumstances, Regulation 13A(1)(a) of the 2015 Regulations would not apply to an insurance firm in liquidation, which is seeking to run-off-off its Irish insurance portfolio in order to terminate its activity in the State, where that firm's authorisation was withdrawn under the law of the United Kingdom or Gibraltar prior to "immediately before the relevant date". Accordingly, Regulation 13A(1)(a) is amended to enable such firms in liquidation, which otherwise satisfy the conditions of the TRR, to enter the TRR.

The amendments proposed to Regulation 13A(1)(a) and Regulation 13A(2)(a) are intended to permit firms in liquidation, that otherwise satisfy the conditions of the TRR, to enter the TRR.

The amendment proposed to Regulations 13(B)(2)(a) (xvii) to 13B(2)(a) (xix) is to disapply Regulation 279 of the 2015 Regulations in respect of firms in the TRR, in order that the Bank would not need to withdraw the TRR authorisation of a firm that enters liquidation.