REVIEW OF THE FRAMEWORK FOR MOTOR INSURANCE COMPENSATION IN IRELAND

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An Roinn Iompair Turasóireachta agus Spóirt

Department of Transport, Tourism and Sport

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Executive Summary

The failure of Setanta Insurance in 2014 and the uncertainty that followed over the compensation arrangements for claimants highlighted weaknesses with the current insurance compensation framework in Ireland. The current framework has the potential to leave individuals who have suffered damage or injury through no fault of their own waiting for a significant period for any compensation; it creates an inequity in the compensation of third party motor insurance; and, potentially makes the Irish motor insurance market unattractive to new entrants due to the uncertainty over the operation of the compensation framework.

Following the placing into liquidation of Setanta, an issue arose as to which fund or scheme is liable to cover the Setanta claims (the Insurance Compensation Fund (ICF) or the Motor Insurers' Bureau of Ireland (MIBI)). Legal proceedings commenced in April 2015 between the Law Society of Ireland and the MIBI. In September 2015, the High Court ruled that the MIBI was liable for the claims in respect of Setanta Insurance. The MIBI subsequently appealed this decision and in January 2016, the Court of Appeal upheld the High Court judgement. The current position is that the MIBI has been granted leave to appeal the decision to the Supreme Court.

In December 2015, the motor insurance industry made representations on the matter to both the Minister for Finance and the Minister for Transport, Tourism and Sport. In January 2016, a Joint Working Group was established to review the motor insurance compensation framework in Ireland. The Joint Working Group has met with a number of stakeholders and has assessed the current framework.

This report sets out the Joint Working Group's assessment of the issues and makes recommendations to provide certainty regarding the compensation framework in Ireland. It also provides for a consolidation of the organisations involved in the management of that framework.

Further recommendations relating to the insurance market generally will be developed during the coming months in the context of the wider review of policy in the insurance sector which the Department of Finance is conducting.

Key recommendations

The key recommendations of the Joint Working Group are summarised below. The recommendations and the rationale behind them are set out in detail in chapter 5.

1. Coverage, eligibility and limits

Coverage of the ICF will be extended to include third party motor insurance claims in the event of a liquidation of an insurer.

The Joint Working Group has agreed to the proposal from the insurance industry which was submitted to the Group by the industry in October 2015 (see Appendix 1). This means that the ICF will be the port-of-call for a claimant in the event of a failure of an insurance company and the MIBI will continue be the port-of-call for claims relating to uninsured/untraceable vehicles.

The level of compensation from the ICF for third party motor claims to be increased from 65% to 100%, in line with that currently provided by the MIBI.

This is the second of the industry's proposals that the Joint Working Group has agreed to. The increase in cover will ensure that third party motor insurance claimants, in the event of a liquidation, will be covered to the same extent as those victims of uninsured/untraceable vehicles. This will avoid a situation where a claimant against a policy from an insurance company in liquidation would be worse off than a claimant who suffered damage from an uninsured driver.

2. Funding

The increased coverage of the ICF will be funded by a direct contribution to the ICF from the motor insurance industry via the MIBI, to the value of 35% of the third party motor insurance claims.

The proposed increased level of cover for third party motor claims creates an additional exposure of the ICF at a time when the Fund is already indebted up to approximately 2030. Therefore, it is recommended that the 35% balance of pay-out should be provided by the MIBI.

Accordingly, the MIBI's liability for the claims of a liquidated insurance company will be reduced from 100% under the current agreement to 35%.

This reduced liability for the MIBI takes account of industry's concerns over the costs of the capital required to be provided to cover 100% liability in the event of a liquidation. From the State's perspective, the recommendation provides for the possibility that some of the cost will be absorbed by industry and not passed on in full to motor policyholders, as highlighted in chapter 4.

Under this recommendation, the ICF will pay 100% of the claim and arrange for an end-year recoupment from the MIBI.

3. Governance and administration

Administration of the ICF to be transferred from the Accountant of the Courts of Justice to the Central Bank of Ireland

The Central Bank currently carries out a large number of tasks associated with or impacting the ICF including: (i) petitioning the High Court for the appointment of an administrator or liquidator of an insurance company; (ii) deciding the rate at which the ICF levy is set (up to max 2%); (iii) recommending the Minister for Finance to advance funds to the ICF; and (iv) bringing summary proceedings for certain offences in relation to the ICF.

The Joint Working Group considers that the Central Bank of Ireland is best placed to administer the ICF. Therefore, it recommends that the administration of the ICF to be transferred from the Accountant of the Courts of Justice to the Central Bank of Ireland.

Provide for a more formal role for the State Claims Agency in the event of a failure of insurance company resulting in a draw on the ICF.

The Joint Working Group acknowledges the expert assistance that the State Claims Agency (SCA) has provided previously and recommends that the SCA's role be clearly assigned.

4. Reporting obligations to establish an efficient motor insurance database

Amendment of the provisions contained in section 78A of the Road Traffic Act 1961 through the Road Traffic Bill 2016 in order to provide greater clarity on what is meant by the term *'details'*.

The amendment will require insurers to supply the specific detailed information to the Minister for Transport, Tourism and Sport:

- Particulars, including the name and address, of the holder of a motor insurance policy,
- The period of cover of the policy,
- Any limitations as to the use of a mechanically propelled vehicle under the policy,
- The persons or the classes of persons whose liability is covered under the policy,
- The vehicle (including the unique identification mark) or class of vehicle, the use of which is covered under the policy, and
- The names of any driver or the class of driver whose driving is covered under the policy.

This recommendation should provide for a more robust enforcement by An Garda Síochána of uninsured driving using the above information through the Garda ANPR technology (Automatic Number Plate Recognition), with the potential to result in significant annual savings to the MIBI in terms of compensation paid to victims of collisions involving uninsured vehicles/drivers.

View of the Insurance Industry

The insurance industry has made the case that the decision of the High Court in the case of the Law Society v the Motor Insurers' Bureau of Ireland (MIBI) is detrimental to the market for motor insurance in Ireland and that there is an urgent need to address this. The MIBI has indicated that the judgement has serious implications for the MIBI levy on insurers.

The industry has requested a revision to the 2009 MIBI Agreement with the Minister for Transport, Tourism and Sport together with an amendment to the Insurance Act 1964 (which provides for the Insurance Compensation Fund) to make it clear that the MIBI would not be liable in the case of an insolvent motor insurer.[1] This would place that liability onto the ICF.

The Joint Working Group presented the recommendations contained in this report to representatives of the insurance industry (Insurance Ireland and the MIBI) on 30th May 2016. Initial feedback from the industry states that the view of the majority of CEOs of companies in the non-life insurance market is that the recommendations will be detrimental to the protection of Irish consumers and will be ineffective in addressing the increase in motor premiums. The industry further states that the proposals will facilitate a reduction in capacity in the Irish motor insurance market rather than help increase it.

Next Steps

Subject to joint Ministerial approval, the recommendations contained in this report will be presented to Government for its information. Subsequently, both the Minister for Finance and the Minister for Transport, Tourism and Sport will separately make arrangements to implement the recommendations that fall under their respective responsibilities.

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[1] Details of the requested amendments are at Appendix 1.

Chapter 1
Background

1.1 Introduction

Insurance guarantee schemes provide last-resort protection to policyholders and beneficiaries when insurers are unable to fulfill their contractual commitments. They protect against the risk that claims will not be met in the event of a failure of an insurance undertaking. Such schemes can offer protection by paying compensation to policyholders or beneficiaries, or by securing the continuation of insurance contracts.

Similar last-resort protection schemes exist in other sectors of the financial services industry. In particular, deposit guarantee and investor compensation arrangements exist in all EU Member States. In both examples, minimum protection standards have been harmonised at European level. However, no such common European frameworks exists in the insurance sector in relation to insolvencies.

In Ireland, there are two insurance guarantee schemes in place – the Insurance Compensation Fund (ICF) which covers the liabilities of non-life insurance policyholders in the event of a failure of an insurance undertaking and the Motor Insurers' Bureau of Ireland (MIBI) for the primary purpose of compensating victims of road traffic accidents caused by uninsured and unidentified vehicles. As a result of the High Court decision in September 2015, the MIBI is also liable for third party motor insurance claims in the event of the liquidation of an insurance company.

In relation to motor insurance, the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles, requires Member States to establish a compensation body which will provide compensation for property damage or personal injury caused by unidentified vehicles or vehicles which are uninsured. Such a body had already been established in Ireland in 1955 with the establishment of the Motor Insurers' Bureau of Ireland (MIBI).

1.2 Overview of existing framework in Ireland

The Insurance Compensation Fund

The ICF was established under the Insurance Act 1964[2] as a fund created under Statue. This Act has been amended on several occasions and the most recent amendment was by the Insurance (Amendment) Act 2011. The Fund is maintained and administered under the control of the President of the High Court acting through the Accountant of the Courts of Justice.

[2] Throughout this Report, all references to the Insurance Act 1964, except where otherwise specified, refer to the Insurance Act 1964 as amended.

Under the current ICF legislation, the insurance industry can be required to make an *ex-post* contribution of up to 2% of gross written premium to the Fund to meet the liabilities of an insolvent company. An integral part of the scheme is that the Minister for Finance can make loans from the Exchequer to the Fund to allow payments from the Fund be made without delay. These loans are to be paid back to the Exchequer in due course from the industry contributions to the Fund.

The ICF is primarily designed to facilitate payments to policyholders in relation to risks in the State where an Irish authorised non-life insurer or a non-life insurer authorised in another EU/EEA Member State which is providing insurance in respect of risks within the State, goes into liquidation and the approval of the High Court has been obtained for such payments. Not all policyholder liabilities are covered and exclusions include health, dental and life policies. The ICF can also be availed of in circumstances where an administrator has been appointed under the Insurance Act (No.2) 1983 and the approval of the High Court has been obtained.

The ICF compensates only natural persons in the case of a liquidation of an insurer, while all claimants are protected when the Fund facilitates administration on a going-concern basis.

With the approval of the High Court, money may be paid out of the Fund to the liquidator of an insolvent insurer to meet claims (other than the refund of a premium) due to a natural person under a policy issued by the insurer, up to a limit of 65% of such claims and a ceiling of €825,000 per claimant.

However, in the case of administration, continuity of insurance cover is ensured – i.e. claims are paid in full to all claimants, not just natural persons.

The Motor Insurers' Bureau of Ireland (MIBI)

The Motor Insurance Directives, consolidated in the Sixth Directive 2009/103/EC[3] requires Member States to establish a compensation body which will provide compensation for property damage or personal injury caused by unidentified vehicles or vehicles which are uninsured.

The MIBI is the body through which effect is given to the Ireland's obligations under the EU Motor Insurance Directives. It was established in 1955 and since then has entered into a series of agreements with the Minister for Local Government and later the Minister for Transport. The latest of these agreements was entered into in 2009.

The MIBI is a private company set up by the motor insurance companies who operate in the motor insurance industry in the State. It was established under the Companies Acts and is limited by guarantee. Participation by motor insurance companies is a requirement under section 78 of the Road Traffic Act 1961.

[3] Directive 2009/103/EC of 16th September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability.

The 2009 Agreement states that the MIBI compensates for injury to person or death or damage to property which is required to be covered by an approved policy of insurance under section 56 of the Road Traffic Act 1961. The MIBI is not liable to compensate for injury or damage which is not required to be covered by an approved policy of insurance under the 1961 Act. The amounts payable in respect of claims under the Road Traffic Act is 100% to a current limit of €1,125,000 per claim for property, regardless of the number of claimants. The limit does not apply in the case of personal injury.

The MIBI has no central fund for the payment of claims, it is funded on an *ex-post* basis, i.e. payments are made to the fund after the event. As and when claims are settled by the relevant service providers on behalf of the MIBI, the MIBI levies all the motor insurers in order to allow it reimburse the service providers.

1.3 Current issues affecting the compensation framework

Liquidation of Setanta Insurance

Setanta Insurance Company Limited (Setanta) is a Maltese incorporated company which was both authorised and prudentially supervised by the Malta Financial Services Authority (MFSA). While its financial position was not supervised by the Central Bank of Ireland, the firm was supervised by the Central Bank for conduct of business rules, i.e. consumer protection obligations.

Setanta Insurance was formally placed into liquidation by the MFSA on the 30th April 2014 and a liquidator was appointed. Setanta was a member of the MIBI as required under the Road Traffic Act 1961, and at the time it entered liquidation, it had issued approximately 75,000 motor insurance policies, all of which were in respect of risks in Ireland. There are currently approximately 1,700 open claims in existence by and against Setanta policyholders which are potentially eligible for payment of compensation. The Liquidator continued to accept new claims up until May 2016 – two years after the insurance policies issued by Setanta were cancelled. The Liquidator has advised that the claims reserves position stands at between €87.7 million and €95.2 million. It is expected that no more than 30% of each claim will be available from the liquidation process.

Following the placing into liquidation of Setanta, an issue arose as to which fund or scheme is liable to cover the Setanta claims (the ICF or the MIBI) and legal proceedings commenced in April 2015 between the Law Society of Ireland and the MIBI. In September 2015, the High Court ruled that the MIBI was liable for the claims in respect of Setanta Insurance. The MIBI subsequently appealed this decision and in January 2016, the Court of Appeal upheld the High Court judgement. The current position is that the MIBI has been granted leave to appeal the decision to the Supreme Court.

The insurance industry's position

The insurance industry considers that the judgement is detrimental to the market for motor insurance in Ireland and that there is an urgent need to address this. The MIBI has indicated that the judgement has serious implications for the cost of motor insurance policies through the MIBI levy on insurers.

The industry has requested a revision to the 2009 MIBI Agreement with the Minister of Transport, Tourism and Sport together with an amendment to the Insurance Act 1964 (which deals with the Insurance Compensation Fund).[4] The requested changes would, in effect, make it clear that the MIBI would not be liable for cases of insolvency of motor insurers and this would place the liability onto the ICF.

Whichever mechanism is used to compensate Setanta claimants under the current framework, policyholders will ultimately pay either in full or part:

- If the ICF is liable for the payment of third party claims in respect of Setanta, the 2% levy on all non-life insurance policies will continue over a longer period of time; or
- If the MIBI is liable, the effect is in increased motor insurance premiums charged by insurers.

1.4 Wider issues facing the motor insurance sector

The Cost of Insurance

The Central Bank has advised that competitive conditions within the insurance market intensified in recent years and that many firms focused on maintaining market share which provided impetus to lower premiums. Competition on premiums was subsidised by investment income and other measures, but recent reversals in investment markets have generated investment losses which are a drag on profitability. In the view of the Central Bank, the recent premium increases[5] will help restore core underwriting profitability and secure the financial position of the firms concerned for the longer term.

In relation to the claims environment and the factors contributing to the increasing cost of premiums (particularly for motor insurance), both the Central Bank and Insurance Ireland acknowledge that the volume and severity of claims have increased. They also cite changes in Ireland's legal environment as resulting in higher claims costs.

The National Competitiveness Council has emphasised that insurance costs are of greatest concern to businesses in Ireland. It makes a number of policy proposals for improving insurance cost competitiveness.[6]

It is in this context that the Department of Finance has embarked on a review of policy in the insurance sector which is being undertaken in consultation with the Central Bank and other Departments and Agencies. The objective of the review is to recommend measures to improve the functioning and regulation of the insurance sector, which in turn may help reduce the cost of insurance. This Review of the Framework for Motor Insurance Compensation in Ireland will feed into the overall Review of Policy in the Insurance Sector, the work on which will continue over the coming months.

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[4] Details of the requested amendments are at Appendix 1.

[5] Inflation data compiled by the Central Statistics Office show that the cost of motor insurance increased by 35% year-on-year in May 2016.

[6] http://www.competitiveness.ie/Bulletins/Insurance-bulletin.pdf

Chapter 2
The Current Compensation Framework

2.1 Introduction

In Ireland, there are two insurance guarantee schemes in place – the Insurance Compensation Fund (ICF) and the Motor Insurers' Bureau of Ireland (MIBI). The ICF provides a certain level of compensation for the liabilities of non-life insurance policyholders in the event of a failure of an insurance undertaking. The primary purpose of the MIBI is to compensate victims of road traffic accidents caused by uninsured and unidentified vehicles. As a result of the High Court decision in September 2015, the MIBI is also liable for third party motor insurance claims in the event of the liquidation of an insurance company.

2.2 The Insurance Compensation Fund

The ICF was established under the Insurance Act 1964. This Act has been amended on several occasions and the most recent amendments were by the Insurance (Amendment) Act 2011 (following the failure of Quinn Insurance Limited). At that time, the ICF levy was reintroduced and a fundamental policy change was given effect in the legislation as Ireland changed from operating a home-based to a host-based insurance compensation scheme.[7]

Administration of the Fund
The Fund is maintained and administered under the control of the President of the High Court acting through the Accountant of the Courts of Justice. The Accountant provides an annual report on the accounts of the Fund to the Minister for Finance and this is laid before the Houses of the Oireachtas.

The State Claims Agency (SCA) has provided expertise and staffing resources to the Accountant of the Courts of Justice on an informal basis in recent years in respect of Quinn Insurance Limited (QIL) (in administration) and Setanta Insurance (in liquidation).

Financial position of the Fund
Under the Insurance Act 1964, the Central Bank carries out an annual assessment of the financial position of the ICF and determines an appropriate contribution to be paid to the ICF by non-life insurance companies. In addition, the Central Bank liaises with the Department of Finance in relation to interest rates and repayment terms on any loan advanced by the Exchequer to the ICF; and it publishes a notice on the Central Bank's website and delivers a notice to each non-life insurance company specifying the contribution to be paid to the ICF.

On recommendation from the Central Bank, the Minister for Finance can make loans from the Exchequer to the Fund, on the recommendation of the Central Bank, to allow payments

[7] Under a home-based scheme, compensation is paid by the insurance compensation scheme of the Member State of the regulator of the insolvent insurance company. Under a host-based scheme, compensation in paid by the Member State in which the risk is located.

from the Fund be made without delay. This can occur when the Central Bank is of the view that the annual contribution from companies envisaged would not be sufficient to discharge an insolvent company's liabilities within a short space of time. These loans are then paid back to the Exchequer in due course through the industry contributions to the Fund.

The Central Bank determines an appropriate contribution that the insurance industry must make by way of an *ex-post* contribution, of up to 2% of gross written premium to the Fund to meet the liabilities of an insolvent company.

At time of writing, the total amount outstanding to the Exchequer from the ICF amounts to €812.3 million (excluding interest). A total of €70 million was collected from the ICF levy in 2015. Based on this amount, it will take approximately 12 years for the ICF to be in a position to repay the full amount currently owed to the Exchequer.

Coverage

The ICF is primarily designed to facilitate payments to policyholders in relation to risks in the State where an Irish authorised non-life insurer or a non-life insurer authorised in another EU/EEA member state which is providing insurance for risks within the State, goes into liquidation or administration and the approval of the High Court has been obtained for such payments.

Exclusions from the coverage of the ICF include health, dental and life policies. Large commercial policies such as marine, aviation and reinsurance are also excluded. These exclusions generally reflect the principal that the primary purpose is to protect the interest of individuals.

The ICF compensates only natural persons in the case of a liquidation of an insurer, while all claimants are protected when the ICF facilitates administration on a going-concern basis. In the case of a liquidation, with the approval of the High Court, money may be paid out of the Fund to the liquidator of an insolvent insurer to meet claims (other than the refund of a premium) due to a natural person under a policy issued by the insurer, up to a limit of 65% or a maximum of €825,000 per claimant whichever is the lower. However, in the case of administration, continuity of insurance cover is ensured, i.e. claims are paid in full to all claimants, and not just natural persons.

Advances from the ICF

Since the early 1980s, the Fund has advanced monies to Primor plc (formerly PMPA Insurance Company) and Icarom plc (formerly Insurance Corporation of Ireland) and Quinn Insurance Limited. These were all administrations of insurance companies. In addition, the Fund has also made a relatively small payment in respect of the liquidation of an insurer authorised in another Member State (Lemma) and the Accountant of the Courts of Justice has been paid in respect of his own legal expenses.

2.3 The Motor Insurers' Bureau of Ireland (MIBI)

The EU Motor Insurance Directives, consolidated in the Sixth Directive 2009/103/EC requires Member States to establish a compensation body which will provide compensation for

property damage or personal injury caused by unidentified vehicles or vehicles which are uninsured.

The MIBI is the body through which effect is given to Ireland's obligations under these Directives. It was established in 1955 and since then has entered into a series of agreements with the Minister for Local Government and later the Minister for Transport.

The MIBI is a private company set up by the motor insurance companies that operates in the motor insurance industry in Ireland. It was established in 1955 under the Companies Acts and is limited by guarantee. Participation by motor insurance companies is a requirement under section 78 of the Road Traffic Act 1961.

The MIBI's main purpose is to pay financial compensation to innocent victims of uninsured and/or untraced vehicles.

The MIBI compensates for death or injury to a person, or damage to property which is required to be covered by an approved policy of insurance under section 56 of the Road Traffic Act 1961, i.e. mandatory third party motor insurance.

The amounts payable in respect of claims under the Road Traffic Act is 100% to a current limit of €1,125,000 per claim for property, regardless of the number of claimants. The limit does not apply in the case of personal injury.

The MIBI has no central fund for the payment of claims and is funded on an *ex-post* basis. It is funded by all insurers who write motor insurance in Ireland and the MIBI levies these insurers periodically in order to pay financial compensation to claimants as their claims become settled.

Prior to the introduction of Solvency II and recent accounting rule changes, insurers reserved for MIBI liabilities on a 'full run off' basis or the full amount they expected to pay out with regard to claims. Solvency II valuation reflects accounting rules and these specify that provision be made for the present MIBI obligation and not in respect of future events. On this basis, insurance undertakings would only provide for the following year's MIBI liability.

The Central Bank has notified the industry that consideration must be given to the MIBI reserving by each insurer in their Own Risk and Solvency Assessment (ORSA).[8] The Department of Finance has asked Insurance Ireland to provide an estimate of the additional capital add-on that may be required in the future by insurers operating in Ireland if the MIBI remained liable in the event of liquidation of an insurer. No numbers on the additional capital that may need to be retained have been provided to date.[9]

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[8] An ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios.

[9] Letter was issued to Insurance Ireland on the 10th February 2016 regarding *inter alia* the reserving issue. The reply received on 24th March 2016 did not include the information on the additional capital.

The aggregate amount paid out by the MIBI in 2014 was €51.4 million (€47.9 million for domestic uninsured and untraced claims and €3.5 million for foreign related claims). In 2013 the total amount paid out was €61 million.

Chapter 3
The Legislative Framework

3.1 The Insurance Compensation Fund

The Insurance Compensation Fund has its legal basis in the Insurance Act 1964. The original purpose of the ICF was to cover the cost of claims due to a person under a policy issued by an insurer in the State where that insurer was in liquidation. The purpose of the legislation at that time was:

(i) to provide a framework for the provision of relief to the policyholders of the Equitable Insurance Company Ltd, which had become insolvent;
(ii) to establish the fund;
(iii) to provide a mechanism for the making of a grant or loan by the Minister for Finance to the Fund; and
(iv) for insurers to make contributions to the Fund.

Features of the ICF
Following a number of amendments to the legislation, the Insurance Compensation Fund currently has the following features:

- It is a fund created under statue, maintained and administered under the control of the President of the High Court acting through the Accountant of the Courts of Justice.
- The Fund covers non-life insurance, with certain exceptions (marine, aviation, reinsurance, life, health and dental).
- Payments are restricted to amounts due to or by an individual and includes both first and third party claims.
- Payments from the Fund are made only where it is determined by the High Court that it is unlikely that the claim can be met otherwise than from the Fund.
- It caters for payments due where the insurer is in liquidation and the company was authorised in any EU Member State. In the case of a liquidation, the Fund pays out up to 65% of the amount due up to a maximum limit of €825,000.
- The Fund makes payment when the insurance company is under administration but only where the company was authorised in Ireland and where 70% or more of its business over the previous 3 years was in relation to risk in Ireland. In this event, the Fund pays out 100% of the amount due in the form of general payments to the administrator of the insurance company who manages the business of the company generally.
- Where the amount of the business in relation to risk in Ireland over the three years prior to the company going into administration was less than 70% and the company was put into administration in another EU/EEA jurisdiction, the ICF can only pay the expenses of the company administrator in relation to the insurance claims and not the actual claims.The ICF operates on a host-country basis[10]. Payment is made in respect

[10] Under a host-based scheme, compensation in paid by the Member State in which the risk is located.

of risk in the State and insurance companies are levied in respect of premiums collected on all non-life policies in respect of risk in the State.

- The Fund operates on an *ex-post* basis, meaning that the Fund is not built up in advance. If, when ICF funding is required, there is an insufficient balance in the Fund, the Minister for Finance may make a loan to the Fund so that it can meet the demands being placed on it. Such a loan is required to be reimbursed to the Exchequer.
- The Central Bank may introduce an ICF levy to collect sufficient funding to repay the Minister the Finance and meet further expenses as required. The Central Bank may discontinue, increase or reduce the levy depending on the level of receipts and the demands on the Fund.
- The legislation provides that the ICF levy cannot be set at more than 2% of non-life premiums received by the insurance companies. It is collected by the Office of the Revenue Commissioners and paid into the ICF account.

3.2 Significant amendments to the Insurance Act 1964

The Insurance Act 1964 was amended on a number of occasions, most recently in 2011. These amendments are set out in detail at Appendix 2.

An amendment in 1983 introduced a provision for payments to be made to the administrator of an insurance company. In 1989, this provision was dis-applied in relation to future administrations but it was reintroduced in the Central Bank and Financial Services Authority of Ireland Act 2004. The 1989 legislation reduced compensation payments from 100% (with a max of IR£1,000,000 being paid out on a pro-rata basis) to 65% (with a max of IR£650,000).

The Central Bank and Financial Services Authority of Ireland Act 2004 established the independent financial regulator, clearly defining its regulatory responsibilities to cover all Irish financial institutions. This legislation transferred responsibility for the regulation of insurance from the Department of Enterprise, Trade and Employment to the Irish Financial Services Regulatory Authority of Ireland.

The Insurance (Amendment) Act 2011 made a major change to the scope of the compensation scheme, changing it from one which covered the risks of policyholders of Irish authorised companies to one which covers insured risk in the State. The ICF levy would now be decided by the Central Bank instead of the Minister for Finance; it was capped at 2% of non-life premiums; and, applied only to those policies relating to insured non-life risk in the State.

3.3 Statutory Roles relating the ICF

The Joint Working Group carried out an examination of the main statutory roles in relation to the Insurance Compensation Fund. These roles are summarised below and set out in more detail at Appendix 3.

1. The High Court

- The High Court approves all amounts to be paid out of the ICF and to whom, in line with the provisions of the legislation.

- The High Court approves the appointment of an administrator or a liquidator to an insurance company.

2. The President of the High Court

- The President of the High Court, acting through the Accountant of the Courts of Justice, controls the maintenance and administration of the Fund. He/she is required to keep proper and usual accounts of moneys paid into or out of the Fund and to furnish an annual report to the Minister for Finance.

3. The Central Bank of Ireland

- The Central Bank determines the amount of the insurance levy, not exceeding 2% of non-life premiums received and advises insurance companies as to how the payments of the levy should be made.
- It has significant powers to seek the appointment of an administrator to an insurance company.
- It makes recommendations to the Minister for Finance as to whether it expects advance sums will be required to be made to the ICF by the Minister.

4. The Minister for Finance

- The Minister advances funds to the ICF, appoints the collector of the levy and publishes the annual report of the ICF as prepared by the Accountant of the Courts of Justice.

5. The Office of the Revenue Commissioners (Revenue)

- Revenue collects the levy and advises the Central Bank in cases where the full amount due may not have been paid.

6 The Liquidator of an insurance company

- Where the insurer is authorised in Ireland, the liquidator applies to the High Court for approvals in respect of the persons to whom sums are payable and makes payments to persons accordingly upon receipt of these amounts from the ICF.
- The Insurance Act 1964 does not place any such obligations on a liquidator where the insolvent insurer is not authorised in Ireland and the liquidator is appointed in another Member State.

7 The Administrator of an insurance company

- The role of the administrator is to carry on the business of an insurance company on a going concern basis and meet policy obligations as they arise.

3.4 The Motor Insurers' Bureau of Ireland

The establishment of the MIBI followed from the signing of an Agreement in March 1955 between the then relevant Minister, the Minister for Local Government and some 44 motor insurers in Ireland that an organisation would be formed and that the MIBI would enter into a direct agreement with the Minister to establish a compensation mechanism for the victims of uninsured drivers. The MIBI was then registered as a company limited by guarantee in October 1955.

The first agreement between the Minister and the MIBI establishing a compensation mechanism for the victims of uninsured driving was signed on 30 November 1955. Section 78(1) of the Road Traffic Act 1961 required that all persons carrying out a motor insurance business in Ireland must be a member of the MIBI. Clause 62 of the MIBI Memorandum and Articles of Association, sets out that the MIBI is funded by reference to each motor insurer's share of the market.

The Second EU Directive on Motor Insurance of 30 December 1983 (84/5/EEC) directed that 'Each Member State shall set up or authorise a body with the task of providing compensation, at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or a vehicle for which the insurance obligation provided for in paragraph 1 has not been satisfied.' Such a body had already been established in Ireland in 1955, with the establishment of the MIBI (and the signing of the Agreement between the MIBI and the Minister).

The Agreement between the MIBI and the Minister was amended in 1964, 1988, 2004 and 2009 including to take into account Ireland's obligations under the various Motor Insurance Directives in relation to insurance against civil liability in respect of the use of vehicles.

Current Agreement with the MIBI

The MIBI is currently governed by the 2009 Agreement with the Minister for Transport, Tourism & Sport and its role is to provide financial compensation to innocent third party victims of uninsured and unidentified vehicles.

The opening sentence of the Agreement sets out the intent:
'Text of an Agreement dated the 29th day of January 2009 between the Minister for Transport and the Motor Insurers' Bureau of Ireland, extending with effect from dates specified in the Agreement the scope of the Bureau's liability, with certain exceptions, for compensation for victims of road traffic accidents involving uninsured or stolen vehicles and unidentified or untraced drivers to the full range of compulsory insurance in respect of injury to person and damaged property where under the Road Traffic Act, 1961'.

Method of operation

The MIBI's primary purpose is to pay financial compensation to innocent victims of uninsured and untraced vehicles. Within that it has two main functions:

- A Guarantee Fund which settled 2,198 domestic uninsured and untraced claims in 2014 (2,240 in 2013); and
- A Green Card Bureau which settled 896 foreign-related claims in 2014 (1,007 in 2013).

Both of these functions are grounded on the MIBI Agreement of 2009 with the Government and the EU Consolidated Motor Insurance Directive 2009/103/EC.

The MIBI has Service Level Agreements with its main service providers, these include claims management services. The MIBI deals directly with four major insurers (FBD, Aviva, Alliance and Zurich) which investigate, handle and pay claims on MIBI's behalf. Claims are assigned to these four Handling Offices on an agreed percentage basis which is calculated in relation to

their Gross Written Premiums in Ireland. The MIBI claims are dealt with by the Handling Offices in accordance with their own claims handling procedures.

The MIBI's Technical Claims Committee is charged with keeping the effectiveness of MIBI's claim cost control under review and to report to the MIBI Board; to review developments in the claims market; and, to review individual claims referred by Handling Offices for direction and make recommendations. It reviews any issues of dispute between insurers on MIBI related matters, makes recommendations for their resolution, and it provides a forum for Handling Offices to debate common issues relative to their MIBI claim handling role.

The handling of Green Card claims is governed by the European Council of Bureaux, of which the MIBI is a Member, and the Council of Bureaux governing document, commonly known as the Internal Regulations, which adhere to the requirements of the Motor Insurance Directives.

Where a motorist from another jurisdiction causes damage or injury which would be covered under the compulsory insurance laws of the country visited, the Green Card System allows the injured/third party to make a claim against the bureau of the visited country (the handling bureau). Once the handling bureau has paid the claim, it will seek repayment from the bureau of the visiting motorist (the paying bureau). The paying bureau will seek recovery from the insurer of the visiting motorist. Many claims do not need to follow this process, as the paying bureau or its member insurer (with the permission of the handling bureau) may appoint an agent in the country concerned. This agent has the powers of the handling bureau but will deal directly with the paying bureau or its member insurer.

Funding

The MIBI has no central Fund for the payment of claims. It is funded on an ex-post basis, i.e., it is a "pay as you go" system.

When claims are settled by the relevant service providers on behalf of the MIBI, the MIBI levies all the motor insurers so as to allow the MIBI to reimburse the service providers. The MIBI funding comes from all insurers who write motor insurance in the State and MIBI levies these periodically in order to pay financial compensation to claimants as their claims become settled.

Clause 62 of the MIBI's Memorandum and Articles of Association sets out that:

62.1 In addition, to the annual membership fee payable by a Member in accordance with Article 7 the Bureau shall be funded by, inter alia, a levy charged on each of the Members based on the gross written premium (GWP)[11] of each Member, such levy to be made from time to time as and when necessary and any changes to the basis upon

[11] GWP is defined as 'A Member's total gross written premiums receivable (less rebates and refunds) arising from insurance of motor vehicle risks in the State as required to be made by the Member to the Financial Regulator or any other appropriate regulatory authority responsible for the regulation of motor vehicle insurance in the State. No deductions shall be made for reinsurance, brokerages, commissions or any other expenses.'

which the levy is calculated (but not its amount from time to time) shall be agreed by the Members in a general meeting. Credit will be given to each Member for the membership fee paid in toward that Member's levy liability in the same calendar year.

62.2 Any such levy shall be apportioned between the Members pro rata to the GWP of each Member transacted in the State during the preceding calendar year.

Payments by the MIBI

The aggregate amount paid out by the MIBI in 2014 was €51.4 million (€47.9 million for domestic uninsured and untraced claims and €3.5 million for foreign related claims). In 2013, the aggregate amount was €61 million.

The limitations on payments by the MIBI is governed by the 2009 Agreement for injury to person or death or damage to property which is required to be covered by an approved policy of insurance under section 56 of the Road Traffic Act 1961. The MIBI is not liable to compensate for injury or damage which is not required to be covered by an approved policy of insurance under section 56 of the Road Traffic Act 1961. The limit for claims under the Road Traffic Act is unlimited for personal injury and €1,125,000 per claim for property, regardless of the number of claimants.

Chapter 4
Insurance Compensation Frameworks in Other Jurisdictions

4.1 Introduction

In 2013, the OECD examined policyholder protection schemes on a cross-sectoral, comparative basis, as part of a broad work programme on effective and efficient financial regulation.[12] The paper explores some of the main features of compensation schemes with a particular focus on the insurance sector. The European Commission also commissioned an analysis of insurance guarantee schemes in the European Union in 2007 which was carried out by Oxera Consulting Limited.[13] This chapter summarises the findings of these two studies and provides a synopsis of research conducted by the Joint Review Group into the insurance compensation arrangements in France and the United Kingdom.

4.2 Insurance compensation schemes in operation

Many countries have established some form of an insurance compensation scheme, although coverage is often limited and, in many cases, restricted to a particular line of insurance. The OECD contends that the countries that have comprehensive coverage of the insurance sector often tend to be those with larger financial systems or have experienced a severe financial crisis, which may not necessarily have stemmed from the insurance sector. The number and severity of insolvencies in the insurance sector, as well as their expected likelihood, will often influence the decision to establish a scheme.

The OECD report states that twenty six of its member countries have schemes that cover all or part of the insurance sector. Those that have comprehensive coverage for the entire insurance sector are few in number and can be divided into sector-wide schemes (Korea, Spain, United Kingdom) and effective sectoral coverage by means of multiple schemes (Canada, France, Japan, United States). In some countries, the scheme covers only non-life policies (Australia, Denmark, Ireland and Norway) or only life policies (Austria, Germany, and Greece).

Motor third-party liability and motor guarantee funds are the most widely protected line-specific scheme given the large, potentially catastrophic, exposure for policyholders in the event of an insurer insolvency. EU Directive 84/5/EC of 30 December 1983[14] requires the establishment of motor guarantee funds in EU member states. According to the OECD, 22 of the 27 member states have established a motor guarantee scheme which provides

[12] OECD (2013), "Policyholder Protection Schemes: Selected Considerations", *OECD Working Papers on Finance, Insurance and Private Pensions*, No. 31, OECD Publishing.

[13] Oxera (2007) "Insurance Guarantee Schemes in the EU: Comparative analysis of existing schemes, analysis of problems and evaluation of options. http://ec.europa.eu/finance/insurance/docs/guarantee_schemes_en.pdf

[14] Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles.

compensation for accidents where the owners of vehicles are unidentified or when the vehicle owner failed to purchase insurance, and also compensates motor accident victims when an insurer fails.

Work accident schemes also exist in Belgium, Finland and Portugal. Other specific schemes provide compensation for annuities (Estonia, only for the mandatory second pillar of the pension system), mandatory patient insurance (Finland), private health (Germany), hunting (Italy) and third party liability (Australia, Poland, Turkey).

As well as the significant differences between the schemes established in other jurisdictions, significant differences also relate to other dimensions of the insurance compensation schemes such as eligibility restrictions, protection limits, the nature of intervention, the funding arrangements and the corresponding financial capacity of the schemes.

4.3 Coverage levels and limits

The OECD's analysis shows that many countries provide unlimited protection through their schemes. For non-life contracts, including coverage for specific lines which have a shorter maturity, unlimited protection is offered in Australia, Belgium, Denmark, Finland, France, Israel, Japan and United Kingdom. Where limits are applied, Ireland had the highest maximum coverage level of €825,000 (USD916,000) for non-life contracts. Switzerland's National Guarantee Fund for motor third-party liability has a similar maximum coverage level at USD1.1 million although this amount of coverage is per accident. Korea has the lowest maximum coverage level for all lines at USD45,000.

The extent of unlimited payment coverage may be due to the fact that, financially, policies are often transferred to another insurance undertaking, making the possibility of a pay-out less likely. The scheme may, from this perspective, be viewed as a guarantee of last resort, providing a backstop should it prove difficult to transfer liabilities.

While many schemes provide unlimited protection, some have, what the OECD classes as 'co-insurance' to limit the amount of protection. Co-insurance is described as a situation in which the policyholder also shares the burden of an insurer's failure. This is widely used in the insurance sector when there is a defined, maximum coverage level (Canada, Estonia, France, Ireland, Japan, Norway, Poland, and United Kingdom). The level of co-insurance varies between 50% and 90%.

The OECD considers that co-insurance may be based on the view that the consumer, due to his or her exposure to potential loss, can be expected to exert market discipline on the insurer by providing some form of monitoring through the purchasing process, which should in theory ultimately reward prudent managed insurers. Therefore, co-insurance may help to limit moral hazard, ensuring that consumers take into consideration the financial condition of insurers in their insurance purchasing decisions.

Alternatively, co-insurance may simply reflect an effort by the industry to share losses more explicitly with policyholders, and so reduce the costs associated with the scheme. In this context, the co-insurance share borne by the scheme may represent the expected recovery

rate for policyholders in an insolvency or the proportion of the policy value that can be expected to be retained in a portfolio transfer.

Therefore, if the extent of unlimited payment coverage is due to the fact that the possibility of a pay-out is less likely, then the extent to which co-insurance is provided may reflect expected recoveries in the event of an insolvency.

Some countries have also taken into account the differences in product features and applied varying levels of protection to reflect the nature of the product. However, a universal approach is not apparent other than granting full protection to compulsory insurance lines in non-life lines. While death benefits usually have a higher level of maximum coverage than other life lines, there is some divergence. Accumulated value products, or insurance with saving features, are often granted greater protection, but this treatment is not universal either.

4.4 Funding

In the countries examined by the OECD and Oxera, both *ex-ante* and *ex-post* methods of funding are equally used, and some combine *ex-ante* and *ex-post* funding.

The costs of insurance compensation schemes are mainly or exclusively funded by levies raised from insurance companies participating in the scheme. While some schemes raise levies irrespective of the incidence and cost of intervention to build up reserves in anticipation of future liabilities (*ex-ante* funding), others raise levies to cover the cost of failures that have occurred (*ex-post* funding). Therefore, depending on the nature of the failure, the impact on the industry differs according to the type of funding mechanism implemented.

There are considerable differences across jurisdictions, particularly in terms of when contributions are collected, the extent to which funds are pooled between different types of business, how contributions are calculated, and whether there are any limits on the amount that can be collect from firms for a given period.

***Ex-ante* funding**

Many schemes are *ex-ante* funded (Canada, Denmark, Estonia, France, Germany, Israel, Italy, Japan, Korea, Norway, Poland, Portugal, Spain, Turkey), charging an annual levy which can vary depending on the level of funding. Italy has a high funding requirement at 5% of premiums. Estonia, Greece, Israel, Japan, Korea, Poland and Turkey charge annual levies as a percentage (0.038% to 2%) of gross premiums. Australia charges levies for its motor scheme depending on the number and types of cars insured. The Canadian life protection scheme assesses members based on their share of total capital required among members (using a three-year moving average). Denmark also uses the number of policies for its non-life levies. France charges a percentage of mathematical provisions (0.15%) as levies. Germany uses net reserves (0.02%). Ireland, Norway and United Kingdom base contributions on premium income. Portugal charges the total amount of wages (0.15%) which are insured for its workers' compensation insurance.

A large number of *ex-ante* schemes have the power to impose additional contributions (*e.g.*, Canada, Denmark, France, Germany, Korea and Poland). The Estonian scheme can take out a loan in the event of insufficient funding, which would be funded *ex-post*. The Japanese schemes are able to tap government funding if the funds are depleted and the annual levy proves to be insufficient.

In Spain, *ex-ante* funds are collected from policyholders, not insurers. Non-life insurance policyholders are charged 0.15% of premiums for the purpose of the policyholder protection scheme. The Swiss motor third-party liability scheme also collects *ex-ante* funds from policyholders, although this is done together with insurance premiums, with a fixed amount per annum.

***Ex-post* funding**

There are a number of ex-*post* schemes (Australia, Belgium, Finland, Ireland, Poland, United Kingdom and United States). As the pay-out of claims by a scheme for a failed insurer may, depending on the nature of the product and type of protection provided by the protection scheme, span over a number of years, *ex-post* funding enables the industry to spread the collection of funds over a number of years.

Ex-post funding can be allocated based on the gross premiums of each insurer (Finland, Poland, Ireland and United Kingdom), and net reserves (Germany (private health)). The United States National Association of Insurance Commissioners recommends basing levies on market share in the State, with a cap set at a level of 2% of annual average premiums. However, some countries do not have a predetermined method for *ex-post* funding (Austria, Belgium).

Additional contributions

The OECD considers that there should be a provision to collect additional funds when a scheme becomes underfunded to ensure that the fund is able to meet its obligations and is ultimately financially sustainable.

Ex-post or *ex-ante* schemes that can demand additional contributions (Belgium, Canada, Finland, Estonia, Finland, France, Greece, Ireland, Israel, Japan, United Kingdom and United States) often have a role in supporting the portfolio transfer of a failed insurer or in maintaining the continuity of contracts. Japan and Korea have *ex-ante* funds, but the Japanese scheme can benefit from governmental capital support, and the Korean scheme from funds of the deposit insurance.

4.5 Participation

The coverage of insurance compensation schemes can be classified into home state principle and host state principle. The home state principle applies when the scheme covers policies issued by a domestic insurer that participates in the scheme, including its branches abroad. The host state principle applies when all insurers operating in the country, regardless of where they are headquartered, are required to participate in the scheme.

The OECD lists the countries with a home state principle as Denmark, France, Germany, Israel, and Spain. Foreign resident policyholders or foreign branches of insurance undertakings headquartered in these countries would be protected by the compensation scheme in the home countries. In Spain, if the insurance undertaking of a branch established in Spain is headquartered outside the EU/EEA, the policyholders of that branch are protected by the Spanish compensation scheme. Australia, Austria, Belgium, Estonia, Finland, Greece, Ireland, Italy, Japan, Korea, Norway, United Kingdom and United States have a host country principle, whereby, all insurers regardless of their origin are required to participate in the compensation scheme.

The uneven coverage between different jurisdictions could lead to uneven protection and liability in an insurance insolvency. Countries with large insurance groups, if not subject to a home state principle, may find uneven protection of their products in each country. There could also be situations in which policyholders resident in a country without a compensation scheme would prefer to purchase a policy from a country, on a cross-border basis, that does provide protection, although this would also assume that the consumer is a well-informed one. The OECD states that unless all countries that engage in cross-border insurance transactions have a compensation scheme, a host country principle may provide better protection and certainty for policyholders in general. The systems in Ireland, United Kingdom and Greece are based on the location of the risk. The OECD states that this is a useful way to cut across the various factors, such as origin of insurer and location of policyholder, to enable the breadth of protection to be clear.

4.6 Recoveries

Some jurisdictions provide relatively strong protection to policyholders in the liquidation procedure of insurers, giving policyholders a higher priority on the assets of the failed institution. Germany, Italy, and Spain grant policyholders a special claim on the assets of the failed insurance company. Other countries, including Canada, Estonia, France, Norway, and United Kingdom grant policyholders a general claim to all the assets of the company over any other claims other than those that are given a higher priority by bankruptcy provisions of the national law concerned (typically employees' claims and tax liabilities).

In Spain, the Consorcio de Compensación de Seguros (CCS), attached to the Ministry of Economy, acts as the liquidator of the insolvent insurer, as well as carries out the pay-out of insurance policies. Policyholders have a special insurance claim on the assets of the failed insurance company corresponding to technical provisions. In addition, Spain can adopt measures that grant seniority to policyholders in the insolvency procedure with respect to any other assets of the failed insurer by taking so-called "special control measure" (blocking of assets).

4.7 Key features of the insurance compensation arrangements in France and the United Kingdom

A summary of the Joint Working Group's analysis of the schemes in France and the United Kingdom is presented in the box below.

France	United Kingdom
Establishment	
A guarantee fund was first established in France in 1951 to protect victims of motor accidents by uninsured or untraceable drivers. It was extended in 1966 to include motor and hunting insurance in the event of an insolvency of an insurance undertaking. A compensation fund for terrorist attacks was created in 1986 and extended to victims of other attacks in 1990 and included in the Fonds de Garantie des assurances obligaoires de dommages (FGAO). The FGAO was extended again in 2003 to include compulsory classes on non-life insurance. There is a separate fund for life insurance. The FGAO is a legal entity established under private law. The Fund employs 300 people who deal primarily with claims settlement.	The Financial Services Compensation Scheme (FSCS) is the UK's compensation fund of last resort for customers of authorised financial services firms. It can pay compensation if a firm is unable, or likely to be unable, to pay claims against it. The FSCS is an independent body established under the Financial Services and Markets Act 2000 (FSMA) and became the single compensation scheme on 1 December 2001 when FSMA came into force, replacing former schemes. The FSCS is funded by levies on authorised firms. The Motor Insurers' Bureau (MIB) in the UK deals separately and exclusively with compensation for victims of uninsured/untraceable drivers.
Participation	
The FGAO covers insurance undertakings authorised and supervised in France and that cover risks subject to compulsory insurance. Branches of EU insurers excluded except with regard to their provision of motor liability and hunting insurance. Compensation provided irrespective of both place of residence within the EU and the location of risk. Risks located outside the EU and victims resident outside the EU are not eligible for protection.	The FSCS covers business conducted by firms authorised by the Financial Conduct Authority (FCA), the financial services regulator in the UK. Whether the FSCS covers contracts of insurance issued by UK firms through their establishment in other EEA countries (or outside the EEA) depends on the location of risk: if issued by an establishment in another EEA country, the FSCS covers only the contract for risks located in the UK; risks located outside the UK are not covered.
Coverage	
The FGAO covers compulsory insurances which total over 100. The FGAO does not cover maritime, air transport, fluvial, financial guarantees, nuclear etc.	The FSCS consists of five sub-schemes: – deposits – insurance business (life and general) – insurance mediation (from 14 January 2005) – investment business – home finance advice and arranging (from 31 October 2004). The FSCS does not cover re-insurance or marine, aviation, transport business and credit insurance.
Eligibility	
The Regulator must declare that the company is unable to meet its obligations. The regulator will then commence the transfer of all or part of the insurer's portfolio. The FGAO is used to facilitate the transfer and protect those not fully covered by the transfer.	The FSCS can pay compensation only when an authorised firm is unable, or likely to be unable, to pay claims made against it. The FSCS describes this as being in default. The FSCS carries out investigations to establish the financial position of any particular firm.

The liquidation process is automatically initiated following the transfer of the portfolio and the triggering of the scheme. The FGAO covers natural and legal persons only, with some exclusions.	The FSCS was set up mainly to assist private individuals, although smaller businesses are also covered. Larger businesses are generally excluded, although there are some exceptions to this for deposit and insurance claims.
Compensation limits	
Policyholders are entitled to 90% compensation and victims receive 100%.	The FSCS compensates 100% of claims that arise under long-term insurance and compulsory insurance (motor and employers' liability) contracts. Since July 2015, it has increased the compensation limit for professional indemnity claims (from 90% to 100%) and introduced a new category of claims covered at 100% (death and incapacity claims due to injury, sickness or infirmity). It compensates 90% for claims arising from other types of general insurance policies.
Funding	
The FGAO as a whole, including functions other than insurance guarantee, is funded from different sources: – A charge on policyholders amounting to 1.2% of motor liability insurance policies; – A contribution from insurance undertakings of 1% of premiums; – Contribution from those responsible for uninsured accidents; – Fines and penalties; – Investment income; – Funds from recoveries in the liquidation process of relevant companies. In addition to their ordinary contribution, if the FGAO's reserves fall below €250m for a period of more than six months, participating insurers are obliged to make extraordinary contributions. Contributions of individual insurance companies are based on premium income from compulsory insurances that are covered by the scheme.	The FSCS is funded by levies on firms authorised by the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA). The FSCS's costs are made up of management expenses and compensation payments. The amount levied for compensation payments is primarily driven by the FSCS's forecast of compensation costs. Since 1 April 2014, the FSCS uses a 36-month funding model which allows it to levy the greater of one-third of the next 36 months' expected compensation costs which is then adjusted to reflect both unspent balances or deficits (carried over from the previous year) and recoveries. The management expenses levy is subject to an annual limit but is based on the FSCS's budget requirements for each year. In general, the FSCS charges the levy once a year. It may also make additional levies during the year, if necessary. There are limits to the amounts the FSCS can levy in a financial year. Each insurer's contribution is calculated on a tariff basis and insurers contribute predominantly in proportion to their relevant net premium income. Any costs exceeding specific thresholds could trigger the retail pool and be shared more widely.
Recoveries	
The FGAO receives funds from recoveries in the liquidation process. A contribution is also sought from those responsible for uninsured driving which results in compensation being paid.	The ability to make recoveries is dependent upon claimants assigning rights against the firms in default and third parties. FSCS then "stands in the shoes" of the claimant. An assignment of rights is required by FSCS in most cases. However, if FSCS decides not to pursue any recovery, at the claimant's request it reassigns the claim to the claimant.

4.8 Conclusion

The findings of the OECD and Oxera studies and the Joint Working Group's assessment of the insurance compensation frameworks operating in France and the United Kingdom highlight the significant differences between the schemes established in other jurisdictions. These differences include: eligibility restrictions; protection limits; nature of intervention; the funding arrangements; and the corresponding financial capacity of the schemes. Motor third party liability and motor guarantee funds are the most widely protected line-specific schemes.

The costs of insurance compensation schemes are mainly or exclusively funded by levies raised from insurance companies participating in the scheme. There are considerable differences across jurisdictions particularly in terms of when contributions are collected, the extent to which funds are pooled between different types of business, how contributions are calculated, and whether there are any limits on the amount that can be collect from firms for a given period. Both *ex-ante* and *ex-post* methods of funding are used, and some jurisdictions combine *ex-ante* and *ex-post* funding.

The OECD considers that there should be a provision to collect additional funds when a scheme becomes underfunded to ensure that the fund is able to meet its obligations and is ultimately financially sustainable. However, the Oxera analysis highlights that most countries it examined have adopted an overriding limit on the amount that can be levied in a given year. This is to avoid a situation where contributions could be so large that the resulting costs to firms could have a significant impact on their ability to continue operating in the market. Among the countries whose schemes provide for additional funding are France and the United Kingdom and both have a cap on the level of contributions.

Chapter 5
Assessment of Issues and Recommendations

5.1 Introduction

The failure of Setanta Insurance in 2014 and the uncertainty that followed over the compensation arrangements for claimants highlighted weaknesses with the current insurance compensation framework. The current framework has the potential to leave individuals who have suffered damage or injury through no fault of their own waiting for a significant period for any compensation; it creates an inequity in the compensation of third party motor insurance; and, potentially makes the Irish motor insurance market unattractive to new entrants due to the uncertainty over the operation of the compensation framework.

In order to address these issues, measures must be introduced to provide certainty on the structure of the compensation framework in the event of liquidation of an insurer that is providing motor insurance in Ireland.

Also, it is clear that there is a need to consolidate the administration of the Insurance Compensation Fund (ICF), as there are numerous parties involved, with some having important, but informal roles.

The Joint Working Group focussed on the key issues relating to the insurance compensation framework and this chapter presents recommendations, and the rationale behind those recommendations, that the Joint Working Group believes will provide the certainty required and which will facilitate the effective management of that framework.

The issues and recommendations are set out under the following four categories:

1. Coverage, eligibility and limits
2. Funding
3. Governance and Administration
4. Reporting obligations to establish an efficient motor insurance database.

5.2 Coverage, eligibility and limits

An insurance compensation scheme needs to strike a balance between what can be demanded by policyholders and what such a scheme can be expected to or can afford to cover. Factors to consider include seeking to ensure that the compensation scheme provides a minimum level of protection to policyholders, without resulting in over-reliance on the scheme, moral hazard[15] and excessive costs.

[15] Moral hazard is a situation in which one party becomes involved in a risky event knowing that it is protected against the risk and the other party will incur the cost.

In addition to individual coverage limits and payment levels, measures such as loss-sharing between the insurer and policyholder should be considered in order to address the potential for moral hazard.

Certain classes of products are currently excluded from coverage of the ICF such as marine, aviation, reinsurance, life, health and dental. Large commercial risks are more difficult to assess and could be too costly for the ICF to cover in the event of a liquidation. Therefore, **the Joint Working Group recommends that the scope of the ICF's application to non-life lines of business remains unchanged.**

The Joint Working Group considered the merit in extending the level of cover of the ICF to small or micro businesses. Currently, the 1964 Act specifies that, in the case of a liquidation of an insurance company, an amount due to a body corporate or unincorporated body of persons is payable where the liability is by or in respect of an individual. The Joint Working Group decided that a change in the current legislative position to extend coverage for small or micro businesses is not warranted. In addition, it was decided that any increased exposure of the ICF would prove too costly at this time. Therefore, **the Joint Working Group recommends that the limitation of cover to natural persons only in the event of liquidation, will remain unchanged.**

Based on the High Court decision of September 2015 in relation to Setanta Insurance, the MIBI is now liable in full for third party motor claims in the event of a liquidation of an insurer. The MIBI, and the insurance industry, is of the view that that the original intention of the MIBI was to provide an entity to compensate victims of uninsured or unidentified drivers, with the ICF liable for the compensation matters arising from the failure of an insurance company.

The Joint Working Group recommends amending the Insurance Act 1964 and the 2009 MIBI Agreement, to provide that the MIBI will, in the future, no longer be fully liable in respect of third party motor claims unable to be met due to the liquidation of an insurance entity. This makes clear that the ICF will be the port-of-call in the event of a failure of an insurance entity and the MIBI will deal with claims related to uninsured and unidentified vehicles.

This change raises the issue of how third party claims are dealt with in the event of a liquidation of an insurer. As these are claimants on policies that are required by law[16], limiting pay-out to €825,000 or 65% of the claim, whichever is lower, would mean that a claimant covered by an insurance company in liquidation would be worse off than a claimant who suffered damage from an uninsured driver.

This could have a negative impact on consumer confidence in the motor insurance system and potentially increase the level of uninsured drivers on Irish roads. In turn, this could further increase the cost of insurance due to the potential for increased pay-outs from the MIBI on an annual basis.

[16] Road Traffic Act 1961.

To ensure confidence is maintained in the motor insurance system and to remove dis-incentives for motorists to have insurance cover in place, **the Joint Working Group recommends that the level of cover provided by the ICF in respect of third party motor claims is increased to the same level provided for under the MIBI scheme.**[17]

Recommendations

- The scope of coverage of the ICF to non-life lines of business will remain unchanged and the limitation of cover to natural persons in the event of a liquidation will also remain unchanged.
- Amend the Insurance Act 1964 and the 2009 MIBI Agreement to provide that the ICF is the port-of-call in the event of a failure of an insurance company and that the MIBI is liable for claims relating to uninsured and unidentified drivers.
- Extend the level of cover provided by the ICF for third party motor insurance from 65% to 100% and to the equivalent limits provided for under the MIBI scheme.

5.3 Funding

Increasing the level of cover being provided by the ICF raises the issue of how to fund this increase in potential exposure. As outlined in chapter 3, the ICF currently has a significant liability outstanding to the Exchequer which will continue over the next number of years.

At time of writing, the total amount outstanding to the Exchequer from the ICF amounts to €812.3 million (excluding interest). A total of €70 million was collected from the ICF levy in 2015. Based on this amount, it will take approximately 12 years for the ICF to be in a position to repay the full amount currently owed to the Exchequer to cover this amount.

Any further advances made by the Exchequer to the ICF, on the recommendation of the Central Bank, will impose an additional cost to all taxpayers. Although this is to be repaid over time with interest, future loans would be of a significant duration and extend the period of time over which the ICF levy will continue.

The Joint Working Group considered the advantages and disadvantages of *ex-ante* funding arrangements for the ICF (summarised below), both as part of its research into arrangements in other jurisdictions as outlined in chapter 4, and its assessment of the current financial position of the ICF.

[17] The amounts payable in respect of claims is 100% to a limit of €1,125,000 per claim for property, regardless of the number of claimants. The limit does not apply in the case of personal injury.

This work concludes that an *ex-post* funding model is the best and most practical option, particularly because of the current financial position of the ICF and the size of the levy currently in place.

Ex-Ante and _Ex-Post_ Funds

Payments can be made into the fund before (*ex-ante*) or after (*ex-post*) the event, or a combination of both could be put in place.

Ex-ante
With *ex-ante* funding arrangements, insurers make a payment with a view to accumulating and maintaining a fund that can be used in the event of an insurer becoming insolvent. Under this method, funds can be built up slowly, and will be available immediately, when required. This method may help to mitigate moral hazard as all of the relevant insurers (including the insolvent insurer) contribute to the funding. It may also reduce potential adverse effects of levying funds on the industry after the event, such as the impact on capital.

With *ex-ante* funding, it is difficult to predict exactly how much funding will be needed to cover future insurance insolvencies. Collecting funds in advance results in an opportunity cost of tying up funds that could be used for other purposes as well as increased administrative and governance costs associated with maintaining a permanent fund.

Another issue is the length of time to build an *ex-ante* fund up to a meaningful level. For example, the estimated cost of the failure of Setanta is between €68 million and €92 million. To have an *ex-ante* fund building up to €100 million would take 10 years based on an additional 0.25% levy on motor premiums in Ireland and it would take over 3 years if a 1% additional levy was applied.

Ex-post
With *ex-post* funding arrangements, solvent insurers pay contributions after the insolvency has occurred. Thus, the insolvent insurer does not contribute into the *ex-post* fund that compensates its policyholders. The *ex-post* compensation scheme has to take account of the impact of imposing financial obligations on insurance companies, and consequentially on consumers of insurance products, while also recognising the need to ensure that funds are sufficient.

The Joint Working Group discussed how best to finance the increased exposure for the ICF in the event of a liquidation of an insurance company in a way which would limit the cost to the Exchequer. It concluded that an *ex-post* funding model is the best and most practical option. Therefore, **the Joint Working Group recommends that the ICF will remain an *ex-post* compensation scheme.**

Options for funding the increased exposure to the ICF in the event of a liquidation
As the research into other jurisdictions found, the costs of insurance compensation schemes are mainly or exclusively funded by levies raised from insurance companies participating in the scheme. However, there are considerable differences across jurisdictions particularly in

terms of how contributions are calculated and when they are collected. Alternative financing approaches are also available in some jurisdictions, including state funding and extra-ordinary contributions from the industry.

The analysis found that the direct cost of compensation schemes are largely distributional, presenting transfers to policyholders or other claimants and thereby shielding the government, and thus taxpayers, from liabilities related to insurer insolvencies. The extent to which these costs are passed on to policyholders, depends on the design of the scheme.

Therefore, how the contribution from industry is structured is an important consideration for Ireland's scheme. Adding to the current levy imposed on all non-life policies would likely be passed through to the policyholder, as is the case with the current 2% levy. One alternative would be to impose a tax on the profits of insurers providing motor insurance in Ireland, but that would be difficult to calculate and to collect cross-border.

Another alternative would be for the industry to contribute a share of the cost of the increased exposure to the ICF in the event of a liquidation. This would be via a payment or payments to the ICF from the MIBI in order to fund a portion of the third party motor claims when an insurer is liquidated. This is the preferred option of the Joint Working Group.

Currently, the cost of the MIBI is passed through to motor insurance policyholders and this charge is included in the calculation of the cost of the premium, and not added on as an additional percentage after the premium is calculated, as is the case for the ICF levy. This process of charging for the cost of the MIBI onto policyholders leaves open the possibility that at least some of the cost of the MIBI could be absorbed by insurance companies as a way of competing, for example to gain market share.

The treatment of the ICF levy by industry is to add it onto the cost of the insurance premiums in the same manner as the stamp duty of 3%. The Joint Working Group is of the view that it is unlikely that industry would absorb any increase in the levy.

Prior to the introduction of Solvency II and recent accounting rule changes, insurers reserved for MIBI liabilities on a 'full run off' basis or the full amount they expected to pay out with regard to claims. Solvency II valuation reflects accounting rules and these specify that provision be made for the present MIBI obligation and not in respect of future events. On this basis, insurance undertakings would only provide for the following year's MIBI liability.

Also, the MIBI already has a framework for charging its members on a pro-rata basis when dealing with claims related to uninsured/unidentified drivers, so the infrastructure is in place to allow the MIBI raise the contribution from its member insurance companies to make payments to the ICF.

The funding recommendation could also act as an incentive for industry to attempt to reduce the cost of the MIBI. In Ireland, the cost of MIBI claims in 2013 was €61 million, compared with €88 million in France for the same period - a country with a population 15 times the size of Ireland. The Department of Transport, Tourism and Sport has highlighted to the insurance industry the benefit of establishing and funding a properly functioning motor insurance database which would help reduce the number of uninsured drivers. A reduction in these

numbers would have a corresponding reduction in the number of MIBI claims. In turn, this reduction would impact the cost to insurance companies and consequently the cost of insurance for the policyholder.

The level of contribution that should be made by the MIBI will be in line with the increased exposure being taken on by the ICF, i.e. the additional amount required to ensure third party motor claims are covered in full. The ICF would continue to cover what the legislation currently allows for, in the event of a liquidation of an insurer - 65% of the cost of the claim or €825,000, whichever is lower. The industry will then contribute, via the MIBI, the additional amount required to ensure third party motor claims are covered 100% in the event of a liquidation (or to the maximum limit of €1,125,000 in the case of a property claim).

The Joint Working Group consider that from the industry's perspective, this is more advantageous to that which currently applies since the High Court judgement of September 2015. It also resolves the concern that the ICF should be the fund that deals with failures, while the MIBI deals with the issue of uninsured and unidentified vehicles. Consequently, the recommendation provides clarity on the compensation framework that applies in Ireland, under the various scenarios.

In conclusion, **the Joint Working Group recommends that the liability for the payment of claims in respect of mandatory third party motor insurance where the insurer is insolvent and in liquidation, is shared 35% to 65% between the MIBI and the ICF, subject to the limits which currently apply under each scheme.**

The Central Bank has highlighted that the working of this arrangement is particularly important from a consumer perspective and that the complexity of the arrangements should be limited for consumers. **The Joint Working Group recommends that the procedures developed for the operation of the new arrangement will ensure that claimants will have a single point of contact when submitting a claim and a single payment to them via the ICF.**

Recommendations

- The ICF is to remain an *ex-post* compensation scheme.
- The liability for the payment of claims in respect of mandatory third party motor insurance where the insurer is insolvent and in liquidation, is shared 35% to 65% between the MIBI and the ICF, subject to the limits which currently apply under each scheme.
- The new procedures that will be developed for the operation of the new arrangement will ensure that claimants will have a single point of contact when submitting a claim and a single payment to them from the ICF.

5.4 Governance and administration

Following consultation with the Central Bank of Ireland, the Accountant of the Courts of Justice, the Revenue Commissioners and the State Claims Agency, the Joint Working Group has identified elements of the administration of the ICF that require improvement such as: the calculation, collection and reconciliation of the ICF levy from insurance companies; the analysis of the funding requirements of the ICF; and, the level of expertise required to deal with claims in the event of an insurance failure.

In its Financial Services Assessment Programme (FSAP) Technical Note on the Insurance Sector, the International Monetary Fund (IMF) recommended *inter alia* that consideration should be given to increasing the role of the Central Bank in the winding-up of insurers. The IMF specifically recommended that consideration should also be given to expanding the role of the Central Bank with regard to the ICF. The IMF also stated that the scope and role of the ICF and of the MIBI should to be clarified.

As part of the process of reviewing the compensation framework, the Accountant to the Courts of Justice made a strong case for the removal of the role of administrator of the ICF from that Office. He cited the lack of expertise in insurance claims assessment in the event of liquidation as an issue as well as dealing with multiple claims in the event of a liquidation of an insurance entity that is not in this jurisdiction.

In the case of Quinn Insurance and Setanta Insurance, the State Claims Agency provided support to the Accountant of the Courts of Justice on an informal basis. It provided its significant experience in the area of claims management and settlement together with the infrastructure it has in place to assess these claims.

The tasks associated with the administration of the ICF include: determining the financial support required by the ICF; setting the rate of the levy; collecting the levy; reconciling the amounts received under the levy; and administering payments to claimants of an insurance company in administration/liquidation.

Appointing a single body to administer the ICF would ensure that a comprehensive view of the Fund is taken and that all of the tasks are carried out consistently. In addition, the reduction in the number of organisations involved in the administration would provide a more efficient and effective use of resources and would provide clarity on the roles and responsibilities of those involved.

The Joint Working Group considers that the Central Bank of Ireland is best placed to administer the ICF. Therefore, it **recommends that the administration of the ICF to be transferred from the Accountant of the Courts of Justice to the Central Bank of Ireland.** This recommendation acknowledges that the Central Bank currently undertakes a large number of the roles associated with the Fund in the context of its responsibility for the supervision of the insurance sector. For example, the Central Bank can decide to petition the High Court for the appointment of an administrator or liquidator of an insurance company. The Central Bank also decides at what rate to set the ICF levy, and it recommends to the Minister for Finance to advance funds to the ICF in order for payments to be made out of the Fund expeditiously.

The Central Bank has significant knowledge and experience of the insurance sector which is not available in the Office of the Accountant to the Courts of Justice. This experience includes its expertise in a supervisory role of insurance entities operating in Ireland and its involvement at a European level with the European Insurance and Occupational Pensions Authority (EIOPA). The IMF supports this view in its FSAP review.

Collection of the Levy

The levy is currently collected by the Revenue Commissioners and is collected together with the stamp duty imposed on non-life insurance contracts for risks within the State. The Joint Working Group considers that it is more efficient to leave this role with the Revenue Commissioners rather than assign a different collection agent. The Revenue Commissioners have collected the 2% levy since its re-introduction in 2012 and it has the systems and processes in place. The appointment of a new collection agent would necessitate a recreation of these systems and processes. **The Joint Working Group recommends that the responsibility for the collection of the ICF levy will remain with the Revenue Commissioners.**

Role of the State Claims Agency

The Joint Working Group recommends that the role in relation to oversight of the claims assessment and settlement process should be clearly assigned to one party and it recommends that to be the State Claims Agency (SCA).

From a supervision perspective, the Central Bank examines claims on a macro level in order to determine if a firm is provisioning correctly and, therefore, has sufficient capital to meet future liabilities. However, the Central Bank would not have the experience and expertise in dealing with the settlement and management of claims on a micro level. In the event of a liquidation/administration, the Central Bank would require external support in the settlement and management of claims as has the Accountant to the Courts of Justice.

The role played by the SCA in the case of Quinn and more recently Setanta, proved it is well placed to provide this expertise. It is recommended that in the event of a failure of an insurance entity, the SCA would be included in the process to oversee the settlement and management of the claims. The creation of a Claims Committee chaired by the SCA as happened with the Quinn claims, including the administrator/liquidator would be an option to ensure oversight on the settlement of claims and aim to minimise the cost of the failure.

In discussions, the SCA has stated that it is agreeable to support the administrator of the ICF, as it has done in the past, and would have no objection to this arrangement being placed on a more formalised basis. This would enable it to plan budgets and resourcing requirements more effectively.

Recommendations

- The administration of the ICF to be transferred from the Accountant of the Courts of Justice to the Central Bank of Ireland. This will include all of the roles previously carried out by the Accountant, with the Central Bank maintaining its current roles relating to the Fund.

- The responsibility for the collection of the ICF levy will remain with the Revenue Commissioners.

- The role in relation to oversight of the claims assessment and settlement process should be clearly assigned to the State Claims Agency.

5.5 Reporting obligations to establish an efficient motor insurance database

Road Traffic Act 1961 Reporting Obligations

Section 78A of the Road Traffic Act 1961, amended by section 77 of the 2010 Act, requires insurers to make available, within 5 working days, to the Minister for Transport, Tourism and Sport, to An Garda Síochána and to the Motor Insurer's Bureau of Ireland, *details* of new motor insurance policies issued and existing motor insurance policies cancelled by it, in so far as they relate to third party cover. The purpose for restriction to third party cover is that it is only third party cover which is actually a legal requirement.

The main purpose of such reporting obligations is to enable robust enforcement by An Garda Síochána of uninsured driving. A key element of such enforcement is the use of Automatic Number Plate Recognition (APNR) technology, which is installed in a number of Garda Vehicles (used primarily by the Garda Traffic Corps). Based on the information provided under section 78A of the Act, the intention is that the Gardaí should be able to initiate an on-the-spot query through their APNR technology, using the registration number of the vehicle being queried, to determine whether or not that vehicle is currently insured.

However, following experience to date, which resulted in a high level of 'false positives' for no insurance, the Gardaí have informed the Department of Transport, Tourism and Sport that greater clarity with respect to the information provided under section 78A of the Act is now required for the APNR technology to operate effectively.

Road Traffic Bill 2016

It is recommended to amend the provisions contained in section 78A through the Road Traffic Bill 2016 so as to provide greater clarity on the definition of the term *'details'*. As it stands, section 78A does not clarify the definition. The new amendment will clarify this proposed definition. The amendment will propose that 'details' will mean:

- Particulars, including the name and address, of the holder of a motor insurance policy,
- The period of cover of the policy,
- Any limitations as to the use of a mechanically propelled vehicle under the policy,
- The persons or the classes of persons whose liability is covered under the policy,
- The vehicle (including the unique identification mark) or class of vehicle, the use of which is covered under the policy, and

- The names of any driver or the class of driver whose driving is covered under the policy.

At the time or writing, the Bill has passed all stages in the Seanad and is currently awaiting passage through the Dáil. The intention thereafter is to commence the amended provisions when the necessary administrative supports have been agreed with the Insurance Industry and put in place. It is believed that, armed with a more reliable source of data for use through the Garda APNR system, more robust and targeted enforcement of uninsured driving can take place. Detection of an uninsured vehicle by the Gardaí may result in the vehicle being seized and the driver disqualified from driving.

Consequently, such robust enforcement has the capacity to deliver significant savings to the MIBI in terms of reducing the number of claims with respect to compensating victims of road traffic collisions where uninsured vehicles were responsible for the collision. Those savings should, in turn, have the effect of reducing the overall costs of motor insurance premiums.

Recommendations

- Amend the provisions contained in section 78A of the Road Traffic Act 1961 through the Road Traffic Bill 2016 in order to provide greater clarity on what is meant by the term *'details'.*

This amendment (summarised below) will require insurers to supply the following information to the Minister for Transport, Tourism and Sport:

- Particulars, including the name and address, of the holder of a motor insurance policy,
- The period of cover of the policy,
- Any limitations as to the use of a mechanically propelled vehicle under the policy,
- The persons or the classes of persons whose liability is covered under the policy,
- The vehicle (including the unique identification mark) or class of vehicle, the use of which is covered under the policy, and
- The names of any driver or the class of driver whose driving is covered under the policy.

A more robust enforcement by An Garda Síochána of uninsured driving, using the above information through the Garda ANPR technology (Automatic Number Plate Recognition) should result in significant annual savings to the MIBI in terms of compensation paid to victims of collisions involving uninsured vehicles/drivers.

Appendix 1
Legislative amendments proposed by the insurance industry

PROPOSED AMENDMENT TO THE INSURANCE ACT 1964

Amendment to clarify that MIBI is not liable on insolvency

Long version:

Section [ ]: The Insurance Act, 1964 is amended by the substitution of the following for sub-section (7) of Section 3:

The Motor Insurers' Bureau of Ireland shall have no liability (whether to the person concerned, the Fund or otherwise) in respect of any amount or sum due to any person under a policy issued by

An insurer in liquidation, or

The holder of an authorisation to which (i) an administrator has been appointed under the Insurance (Amendment) Act 1983 or (ii) an examiner has been appointed pursuant to part 10 of the Companies Act 2014, [or]

an insurer authorised in another Member State subject to any equivalent or analogous process to those referred to at (i), [or]

The holder of an authorisation or an insurer authorised in another Member State that, other than for reasons set out at (i) and (ii), has failed to pay any such amount or sum.

Short version:

The Motor Insurers' Bureau of Ireland shall have no liability (whether to the person concerned, the Fund or otherwise) in respect of any amount or sum due to a person under a policy issued by the holder of an authorisation or an insurer authorised in another Member State.

Removal of Cap

The Insurance Act, 1964 is amended by the substitution of the following for sub-section (4) of Section 3:

The total amount that may be paid out of the Fund under sub-Section (1) in respect of any sum due to a person under a policy shall not exceed (whether as one payment or as the total of a series of payments):

in respect of a sum due under a policy that is an approved policy of insurance within the meaning of Section 62 of the Road Traffic Act, 1961 and to the extent that the sum concerned relates to any injury to persons or property as provided for at Section 56(1)(a) and Section 56(2A) of the Road Traffic Act 1961, 100% of that sum; and

(b) in respect of any other sum, 65% of that sum or €825,000 whichever is the less."

Provisional draft text from MIBI to amend MIBI Agreement 2009 – received from Department of Transport 5th October 2015

1. Additional Wording

We would suggest that following wording be inserted into the agreement:

> ***"Liability of MIBI***
> *For the avoidance of doubt, the liability of MIBI under this Agreement does not extend to a claim for compensation arising from or as a result of the inability of the Insurers, or any of them, to discharge all or a portion of any sums due for any reason including, but not limited to, the insolvency of such Insurer and whether the claim arises pursuant to an unsatisfied judgment or otherwise. Nothing in this Agreement should be interpreted as extending or imposing a liability on MIBI in those circumstances."*

A copy marked up against our earlier version is attached. This new wording looks to deal with the concerns identified about the use of the word "*insolvency*" in our earlier draft.

2. Location of the Clause

In terms of a location for this new clause, we suggest that it be inserted after Clause 1

3. Clause 4.1.1

This clause needs to be significantly revised in conjunction with a general review of the Agreement but for the moment our view is that the changes suggested herein address some of the difficulties in the language that the court focused on in the Setanta case.

One additional insertion is that the wording at the beginning of clause 4.1.1 ("Subject to the provisions of clause 4.4") be amended to say:

> *"Subject to the provisions of clause [number of the new exclusion clause] and clause 4.4…""*

Appendix 2
Significant Amendments to the Insurance Act 1964

1. The first significant amendments to the Insurance Act 1964 were by the **Insurance (No.2) Act 1983.** The amendments addressed two main areas:
   i. they updated the liquidation provisions; and
   ii. they introduced Section 3(2B) which allowed, with the approval of the High Court, be paid out of the Fund to the Administrator of an insurer such amounts as are necessary to enable the Administrator carry on the business of the insurer.

2. The next significant set of amendments was in **Section 31** of the **Insurance Act 1989**. These amendments were as follows:
   i. they updated the liquidation provisions, in particular they limited the amount that could be paid in respect of a claim under a policy to 65% or £650,000 whichever is the less, (down from a maximum of IR£1,000,000 with all other payments being made on a pro-rata basis).
   ii. They disapplied Section 3(2B) (introduced in the 1983 Act) for future administrations, i.e. the ability of the Administrator to go to the High Court for funding to run an insurance company on a going concern basis.

3. **The Central Bank and Financial Services Authority of Ireland Act 2003** established the financial regulator which had clearly defined regulatory responsibilities to cover all Irish financial institutions, including those previously regulated by the Central Bank of Ireland, the Department of Enterprise, Trade and Employment, the Office of the Director of Consumer Affairs and the Registrar of Friendly Societies.

4. **The 2004 Central Bank and Financial Services Authority of Ireland Act** made a number of amendments. These are as follows:
   i. The 2004 Act (Part 6 of Schedule 3) deletes paragraph 31(3) of the 1989 Insurance Act thus reinstating Section 3 (2B) of the 1964 Act (introduced by 1983 Act) allowing the Administrator to go to the High Court for funding to run an insurance company on a going concern basis.

5. The Insurance (Amendment) Act 2011: Following issues arising after the placing into administration of Quinn Insurance Limited in 2010, the scope of the compensation scheme was changed from one which covered the risks of policyholders of Irish authorised companies to one which covers insured risk in the State only in a liquidation situation. The consequences of this are twofold:
   i. All policies in relation to risk in the State are now covered under the scheme, except for specific excluded areas. Previously the scheme would only have applied to risks covered by Irish authorised firms.
   ii. Risks outside the State are no longer covered by the scheme. Under the old arrangements non-Irish based risk of Irish authorised firms came within the remit of the scheme.

Provisions of the 2011 Act also include:

i. Limiting the availability of funding in an administration situation to firms which conduct over 70% of their business in the Irish market;
ii. Providing that the Central Bank may apply the levy, instead of the Minister, and providing that the levy is capped at 2% of policies relating to insured non-life risk in the State;
iii. Health insurance is excluded from the levy; and
iv. Allowing the Revenue Commissioners to be appointed by the Minister for Finance as collector of the levy on behalf of the ICF (before that the Minister for Finance collected the levy, if and when it was in place).

Appendix 3
Details of the current statutory roles in relation to the Insurance Compensation Fund

1. The High Court

General

- When exercising its jurisdiction, the High Court will have regard to the assets of the ICF, income either due to or expected by the Fund and amounts due to be paid out of the Fund.

Liquidations

- The amount or amounts to be paid out of the Insurance Compensation Fund (ICF) in relation to an insurer in liquidation may be made only with the approval of the High Court and in accordance with limits set out in section 3 of the Insurance Act 1964.
- Where the insurer in liquidation was authorised in Ireland, the High Court may approve payments to the Liquidator in respect of payments due to persons under a policy, as they arise.
- Where the insurer in liquidation was authorised in another Member State, the High Court may approve payments directly to the persons due a payment under a policy and these approvals are made not more frequently than once every six months.
- The High Court may apportion the amounts to be paid out under a policy.

Administrations

- The High Court may, following a petition from the Central Bank of Ireland under the Insurance (No. 2) Act 1983, make an order for the administration of the insurer and appoint an administrator if it considers that:
  - the manner in which the business of the insurer is being or has been conducted has failed to make adequate provision for its debts, including contingent and prospective liabilities, or
  - the business of the insurer is being or has been so conducted as to jeopardise or prejudice the rights and interests of persons arising under policies issued by the insurer, or
  - the insurer has become unable to comply with the requirements of the Regulations in a material respect, and that the making of such an order for administration, and
  - the appointment of an administrator would assist in the maintenance, in the public interest, of the proper and orderly regulation and conduct of non-life insurance business.
- The High Court may approve payments to the administrator of an insurer from the Insurance Compensation Fund sufficient to carry on the business of the insurer, only in cases where at least 70% of the business of the insurer in the previous three years was in relation to risk based in Ireland,
- In cases where less than 70% of the business of the insurer in the previous three years was in relation to risk based in Ireland, the High Court may approve payments to the Administrator of an insurer sufficient only to cover the expenses of the Administrator except where those expenses amounts may be otherwise defrayed.

2. The Accountant of the Courts of Justice

The President of the High Court acting through the Accountant of the Courts of Justice

General

- The President of the High Court, acting through the Accountant of the Courts of Justice, controls the maintenance and administration of the Fund.
- The Accountant may borrow for the Fund and, for the purpose of giving security with respect to such borrowing, may charge investments of the Fund.
- The Accountant may, for the purpose of giving security with respect to any borrowings for the Fund:
  - charge the Fund and payments into the Fund; and
  - determine, and give undertakings in relation to, the order in which payments out of the Fund shall be made to specified creditors of the Fund and specified other persons entitled to such payments and determine, and give undertakings in relation to, the amounts of such payments; and
  - determine, and give undertakings in relation to, the order in which payments out of the specified future income of the Fund shall be made to specified creditors of the Fund and specified other persons entitled to such payments.
- The Accountant many invest moneys of the Fund in securities in which trustees are authorised by law to invest trust funds.
- The Accountant may insure against risk relating to the Fund.
- The Accountant shall cause to be kept proper and usual accounts of moneys paid into or out of the Fund and shall, within ninety days after the end of each accounting period, or such longer period as the Minister for Finance shall in any particular case allow, cause to be furnished to the Minister for Finance an abstract of the accounts of the Fund for that accounting period and a report of the administration of the Fund during that accounting period.

Liquidations

- In respect of amounts paid out of the Fund in relation to an insolvent insurer authorised in Ireland, the Accountant shall be a creditor of the Liquidator having priority to any sum remaining due under the policy.
- In respect of amounts paid out of the Fund in relation to an insolvent insurer authorised in Ireland, where the Accountant received sums due to a person under a policy from the Liquidator, the Accountant must pay to the person due only such sums as to ensure that the aggregate of the amounts paid to such person does not exceed the total amount due to them. The Accountant must pay the balance to the Fund.

Administrations

- The Accountant makes payments to the administrator of an insurer from the ICF as approved by the High Court.

3. The Central Bank of Ireland

General

- In cases of Irish authorised insurers, the Central Bank may suspend authorisation.
- The Central Bank makes recommendations to the Minister for Finance regarding the question of the Minister advancing sums to the Fund and consults with the Minister as to terms which should be applied.

- The Central Bank supervises all insurance firms selling insurance products in Ireland in relation to conduct of business rules.

The ICF Levy

- The Central Bank shall carry out an annual assessment of the financial position of the ICF not less than 60 days before that anniversary of the publication of the levy amount for the previous year.
- If the Central Bank determines that the Fund is in need of support, it will determine an appropriate percentage to be paid by insurance companies to the Fund, not exceeding 2% of non-life premiums received.
- The Central Bank may cease the requirement for a levy if it is of the view that financial support for the Fund does not continue to be required.
- The Central Bank may decide to continue the amount of levy at the same rate.
- The Central Bank may reduce the levy to an amount lower than the percentage already in force if it is of the view that the application of the current percentage of gross premiums received by the insurance industry is sufficient to provide continued support to the Fund.
- The Central Bank may increase the levy to an amount higher than the percentage already in force, but not higher than 2%, if it is of the view that the application of the current percentage of gross premiums received in the industry is insufficient to provide continued support to the Fund.
- The Central Bank shall publish a notice on the Central Bank's website and deliver a notice to each non-life insurance company specifying the contribution to be paid to the ICF and the deadline for payment and the person to whom it should be paid.
- Where the appropriate levy amount is not paid by an insurer:
  - the Central Bank may recover it as a simple contract debt;
  - in cases of Irish authorised insurers, the Central Bank may suspend authorisation;
  - in the cases of insurer authorised in other Member State not paying the levy, the Central Bank may, after consulting with that insurer's authority, take any action the Central Bank sees fit to ensure that such insurer does not issue insurance policies in respect of risk in Ireland;
  - in cases on non-payment or under payment of the levy the Central Bank shall recover it, pay it over to the Fund and reimburse the Revenue Commissioners for its costs involved; and
  - summary proceedings for an offence of non-payment of the ICF levy may be brought and prosecuted by or on behalf of the Central Bank.
- Summary proceedings for an offence in relation to failure to repay excess amounts obtained from the ICF by a person under a policy may be brought and prosecuted by or on behalf of the Central Bank.
- The Central Bank may make regulations as it thinks necessary to the purpose of giving full effect to the provisions of the Insurance Act 1964 and arrange to lay these regulations before each House of the Oireachtas.

Administrations

- The Central Bank of Ireland has significant powers under the Insurance (No. 2) Act 1983 to seek the appointment of an administrator to an insurer who can, upon court appointment, take over the management of the business of the insurer with a view to placing it on a sound commercial footing. Such an administrator is also granted power

to dispose of all or any part of the business, undertaking or assets of the insurer concerned.

- The Central Bank of Ireland may petition the court for an order for the administration of an insurer and the appointment of an administrator in relation to such insurer and may do so notwithstanding that there is or may be another remedy or course of action available to him in relation to such insurer.
- Where required, the Central Bank provides an opinion as to whether at least 70% of the business of the insurer was in relation to risk based in Ireland.
- Where an insurance company authorised in Ireland is put into administration, the Central Bank continues to be the prudential supervisor of that firm.

4. The Minister for Finance

General

- The Minister for Finance may advance to the Fund such sums as he/she thinks proper on the recommendation of the Central Bank and on whatever terms as the Minister decides after consulting with the Central Bank.
- The Minister may borrow for the purposes of providing for advances to the ICF from the Central Fund.
- The Minister for Finance shall cause each abstract and report furnished to him/her annually by the Accountant of the Courts of Justice in relation to the moneys paid into and out of the Fund to be published.
- The Minister shall appoint by order as the collector of the levy the Central Bank or the Revenue Commissioners or whosoever else the Minister is satisfied has the requisite knowledge, experience and expertise to collect the levy.

Administrations

- The Minister, on behalf of the Fund, may waive all or part of the debt owed by the administrator of an insolvent insurance company under administration.

5. The Office of the Revenue Commissioners

- The Office of Revenue Commissioners (Revenue) shall, immediately on receipt of the funds, deduct its own costs associated with collection of the levy and transmit receipts;
- If it appears to Revenue that an insurer has not paid the correct amount due, it will inform the Central Bank of the name and address of the insurer.

6. The Insurer issuing policies in respect of non-life risk in the State

- The insurer shall deliver a statement each quarter to the collector showing the aggregate of the gross premiums paid that quarter to the insurer in respect of risks in the State.
- Pay the appropriate amount to the collector.

7. The Liquidator of an insurance company

- The liquidator of an insolvent insurer authorised in Ireland may apply to the High Court for approvals in respect of the persons to whom sums are due under a policy. Such a liquidator may pay out to a person to whom it is due, amounts paid to the Liquidator from the ICF.

- Where the insolvent insurer is not authorised in Ireland and the liquidator is appointed in another Member State, the liquidator does not have obligations under the Insurance Act 1964. The position with regard to persons due will differ depending on which Member State is involved. Amongst other things, the full cooperation of such a liquidator is required in order to ensure payments from the ICF can be made at an early date to those dues insurance compensation.

8. The Administrator of an insurance company

- The role of the administrator is to carry on the business of an insurance company on a going concern basis and meet policy obligations as they arise.