



Captive Insurance and Reinsurance – Ireland

Introduction

This briefing explains why Ireland is proving so attractive a location to the captive industry. It also explains the application processes involved in establishing a captive insurer or reinsurer and the ongoing supervisory controls to which a captive is subject.

Advantages of Ireland

There are many advantages to locating an insurance or reinsurance captive operation in Ireland:

- Ireland is a full member of the European Union ("EU") and has implemented both the Third Non-Life Directive and the Reinsurance Directive so that captives regulated by the Irish Financial Services Regulatory Authority ("the Financial Regulator") can service all other EU markets without the need for further authorisation (see paragraph on passporting below);
- The Financial Regulator has implemented a streamlined supervisory regime for captive insurers (this regime is summarised in greater detail below);
- Captive insurers and reinsurers are exempt from the requirements imposed on third party insurers and reinsurers to appoint two Independent Non-Executive Directors to their Boards and a dedicated General Manager;
- The Financial Regulator is widely regarded as a responsible yet responsive regulator – applications for authorisation typically take 4 to 6 months from the date of submission of a completed application to the Financial Regulator;
- The standard rate of corporation tax on trading profits is 12.5%;

- Ireland has an extensive network of double taxation treaties with most of the world's leading industrialised nations. There are currently 46 treaties in force but this will soon increase to over 50 as a number of new treaties are expected to come into effect in 2010;
- An exemption can be obtained from the 20% dividend withholding tax by many companies resident in or controlled by residents in EU member states or countries with which Ireland has a tax treaty;
- With a plentiful supply of top quality legal, accounting, insurance management and banking service providers, there is an experienced pool of service providers;
- Ireland's close proximity to London enables close interaction with brokers and other insurance entities operating in the London market;
- It is a well developed insurance market with many of the world's leading insurers and reinsurers based here;
- No value added tax payable on the supply of insurance services.

Authorisation Process

When a group is considering Ireland as a location for a captive insurer or reinsurer, one of the initial steps it takes is to arrange a preliminary meeting with the Financial Regulator to discuss, at a high level, its proposed operations. Thereafter, the applicant, generally with the assistance of local advisers, will prepare an application containing prescribed information, which is submitted to the Financial Regulator. Following its review of the application, the Financial Regulator will typically issue a series of follow up queries to the applicant seeking additional information in respect of aspects of the application. Once the

Financial Regulator is happy with the application, it will present it to the Authority of the Financial Regulator for its formal approval. An applicant cannot commence business until the Financial Regulator has granted the formal authorisation. There is currently no fee payable to the Financial Regulator to process an application for authorisation as a captive.

Application to the Financial Regulator

The applicant must provide detailed information to the Financial Regulator in relation to the proposed operation. The information required is set out in a checklist issued by the Financial Regulator and the following is a non-exhaustive list of the information/documentation that would need to be prepared:

- Overview of the parent/group to which the applicant belongs;
- Ownership structure including details of all qualifying shareholders;
- Applicant's objectives and proposed operations including product types and target markets;
- Legal structure including the constitutional documents of the proposed operation;
- Internal governance structures including details of board of directors;
- Risk oversight arrangements including compliance, risk management, underwriting, claims handling, reinsurance, financial control, investment management and outsourcing providers including captive managers; and
- Capital and solvency projections and financial information.

Additionally, the Financial Regulator must be satisfied with the fitness & probity of the directors and senior management (if any) of the captive. Directors and senior managers (if appointed) are required to complete an Individual Questionnaire in the prescribed form that should be submitted to the Financial Regulator with the application in accordance with the Financial Regulator's Fit and Proper Requirements.

Authorisation in Principle

When the Authority of the Financial Regulator has approved the application and before the formal authorisation is granted, the applicant will receive confirmation of "authorisation in principle". Attached to the "authorisation in principle" will be a list of conditions which the applicant must satisfy prior to Reinsurers are

also required to maintain a minimum guarantee fund. The amount of the guarantee fund must be equal to one-third of the solvency margin required to be established, subject to a minimum of €3,200,000 as and from 31 December 2009.

final authorisation being granted. One important condition is a requirement on the applicant to provide evidence that the appropriate capital has been received by the proposed Irish entity, to enable it to satisfy its regulatory requirements in relation to the business projected in the application. Once all the relevant conditions have been satisfied, the formal authorisation is granted to the applicant and the Certificate of Authorisation will be issued.

Ongoing Supervision

Both insurance and reinsurance captives are supervised on an ongoing basis by the Financial Regulator. The principal requirements derive from the European Communities (Non-Life Insurance) Framework Regulations 1994 (the "Framework Regulations") for captive insurers and the European Communities (Reinsurance) Regulations 2006 (the "Reinsurance Regulations") for captive reinsurers. Below is a description of some of the main ongoing requirements applicable to both types of captive.

Regulatory Capital Requirements for Captives Insurers

Captive insurers are required to maintain technical reserves, a solvency margin and a minimum guarantee fund in accordance with the rules contained in the Framework Regulations. Third party non-life insurers are required to maintain a solvency margin of 200% of the required minimum solvency margin for its first three years of operation (typically the Financial Regulator reduces this to 150% thereafter). However, this requirement can be reduced to 125% for captives writing pure property business and ancillary business interruption and 150% for all other captives. In both cases the solvency margin is subject to the minimum guarantee fund requirement, which is the greater of one third of the solvency margin or as and from 31 December 2009, either €2,300,000 or €3,500,000 depending on the classes of business being written by the captive.

In addition to the reduced solvency margin requirements, captive insurers may also avail of other modifications to the regulatory regime applicable to third party insurers including the ability to write up to 50% of gross premium income by way of reinsurance as well as a more relaxed supervisory attitude to the admissibility of reinsurance obtained from an affiliate reinsurer when the reserves of the captive are being calculated.

Before a captive insurer can avail of any of these modified regulatory requirements, it must apply to the Financial Regulator and must also satisfy certain conditions prescribed by the Financial Regulator. The application of any of those modified requirements to a given captive will be determined by the Financial Regulator on a case by case basis. The streamlined regime is only applicable to captives writing risks limited to the group of which it is a part. Therefore, a captive writing any non-group risks will not be entitled to avail of the modified regulatory requirements.

Regulatory Capital Requirements for Captive Reinsurers

Captive reinsurers are required to maintain technical reserves, a solvency margin and a minimum guarantee fund in accordance with the rules contained in the Reinsurance Regulations. Generally, captive reinsurers are required to maintain a solvency margin of 150% of the minimum requirement. If a captive reinsurer proposes to maintain a solvency margin of less than 150% (subject always to it not being below 100%), it must justify its proposal to the Financial Regulator. Captive reinsurers are also obliged to maintain a minimum guarantee fund that must contain an amount equal to at least one-third of the reinsurer's required solvency margin subject to a minimum of €1,100,000 as and from 31 December 2009.

Regulatory Return

Captive insurers and reinsurers are obliged to file returns with the Financial Regulator. In addition to the annual return requirement, captives may be requested to provide quarterly returns to the Financial Regulator. Regulatory returns are the main method by which the Financial Regulator supervises the activities of captives.

The returns comprise various forms and guidance on their completion is available on the Financial Regulator's website (www.financialregulator.ie).

Financial Regulator Guidelines

Captives are subject to a variety of regulatory requirements issued by the Financial Regulator. There are different requirements applicable to captive insurers and reinsurers. Information on these requirements is available on the Financial Regulator's website.

On-site Supervisory Visits

From time to time the Financial Regulator carries out on-site inspections of captives. In practice, the inspection will be carried out at the offices of, and will be co-ordinated by, the captive management firm appointed by the captive. The captive receives prior notification of the inspection and is typically requested to provide certain documentation to the Financial Regulator in advance of the inspection. The inspection itself begins with a preliminary meeting and ends with a close out meeting which is followed by a post-inspection report that contains issues identified by the Financial Regulator that must be addressed by the captive.

Passporting

Captive insurers and reinsurers that are authorised by the Financial Regulator are entitled to write business in all other EEA markets either by establishing a branch in the market (known as a freedom of establishment ("FOE")) or by way of freedom of services ("FOS"). This facility does not require additional authorisation from the supervisory authorities in the target markets. Prior to operating into another market for the first time, captive insurers are required to submit an appropriate notification to the Financial Regulator. An FOE notification must contain reasonably detailed information concerning the proposed branch operation. The branch is entitled to commence operations at a date no later than 5 months after the date the completed FOE notification was filed with the Financial Regulator. An FOS notification is more straight forward and captives are entitled to commence operations on an FOS basis into another market within 1 month from the date that the relevant notification was filed with the Financial Regulator.

There are no formal notification requirements for captive reinsurers wishing to passport. However, a captive reinsurer intending to establish a branch in another Member State, should notify the Financial Regulator of its intention and provide the Financial Regulator



with certain limited information on the branch operation.

William Fry

William Fry is one of the largest law firms in Ireland with a substantial corporate, commercial and financial services practice, including considerable experience in international transactions. The Firm has specialist expertise in the legal aspects of the authorisation and supervision of insurance companies (both life and general), captive insurance and reinsurance companies.

Further Information

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