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The International Comparative Legal Guide to:

Insurance & Reinsurance 2018

7th Edition

A practical cross-border insight into insurance and reinsurance law

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General Chapters:

Country Question and Answer Chapters:

Continued Overleaf →

Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Insurance & Reinsurance*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of insurance and reinsurance.

It is divided into two main sections:

Six general chapters. These are designed to provide readers with an overview of key issues affecting insurance and reinsurance work, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in insurance and reinsurance laws and regulations in 41 jurisdictions.

All chapters are written by leading insurance and reinsurance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Jon Turnbull and Michelle Radom of Clyde & Co LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Regulatory

1.1 Which government bodies/agencies regulate insurance (and reinsurance) companies?

The Central Bank of Ireland (the "**CBI**") is responsible for authorising and supervising all financial institutions in Ireland, including insurance and reinsurance companies.

1.2 What are the requirements/procedures for setting up a new insurance (or reinsurance) company?

In order to set up a (re)insurance company in Ireland, it is necessary to incorporate a company and obtain authorisation from the CBI.

When establishing a new (re)insurance company, promoters are permitted to adopt different types of corporate organisations (e.g. a public limited company, a private limited company in the form of a designated activity company ("**DAC**"), a company limited by guarantee, an unlimited company or a European Company (SE)). However, the most common form of company used is a private limited company in the form of a DAC. The incorporation process involves an application to the Companies Registration Office and a company can be incorporated within five business days of an application being made.

DACs were introduced into Irish law in June 2015 by virtue of the Companies Act, 2014 and are similar in form and substance to the private company limited by shares that existed prior to 1 June 2015. They will have a "constitution" comprising: (i) a memorandum of association; and (ii) articles of association. The constitution will retain a main objects clause which sets out the activities which the (re)insurance company has the corporate capacity to undertake.

To obtain authorisation from the CBI, the promoters are required to submit certain information, including a "scheme of operations" which comprises a detailed business plan for the proposed (re) insurer. The business plan should contain financial projections for a three-year period on a pessimistic, realistic and optimistic basis. It should also include comprehensive details of the nature of the (re) insurance products that it is proposed the (re)insurer will write, the intended market for the products and distribution channels. Draft policy documentation should be submitted as part of the application. The CBI has issued detailed guidance on the authorisation process, i.e. explaining the process and timing for the submission of the application for authorisation, together with a "Checklist" (discussed below) of the matters which should be addressed in the application and the documents that should be included in the application. The authorisation process takes between three and six months from the date the fully completed application is made. The process is iterative and typically there is a high degree of engagement with the CBI. It is advisable for applicants for authorisation to meet with the CBI in advance of submitting their application for authorisation.

The Checklist referred to above sets out the information to be contained in the applicant's business plan, as well as the broader information that the CBI require in assessing the application. Set out below are some of the key areas to be addressed in the business plan:

- ownership structure of the company's parent/group;
- legal structure of the company;
- underwriting strategy, outward reinsurance, outsourcing and investment strategy;
- capital and solvency projections; and
- governance structures (audit, risk management, compliance, financial, management and internal controls).

The role of director and certain senior management positions in (re)insurers constitute "controlled functions" or "pre-approved controlled functions" under the CBI's Fitness and Probity Regime, and any person who it is proposed will occupy a pre-approved controlled function must complete an online Individual Questionnaire.

Once the CBI is satisfied with an application, they issue an authorisation in principle with conditions to be satisfied. Once the conditions are satisfied and the CBI has granted formal approval, the (re)insurer can commence writing business.

1.3 Are foreign insurers able to write business directly or must they write reinsurance of a domestic insurer?

In accordance with the EU passporting provisions, an insurer authorised in another EEA Member State can write business directly in Ireland on a freedom of services or freedom of establishment basis. Insurers established outside of the EEA are permitted to write marine, aviation and carriers' liability insurance on a direct basis, subject to compliance with certain solvency requirements.

1.4 Are there any legal rules that restrict the parties' freedom of contract by implying extraneous terms into (all or some) contracts of insurance?

There are some restrictions on parties' freedom of contract under Irish law which are largely aimed at protecting consumers. Irish legislation implementing EU law in relation to consumer protection is the basis for some of the restrictions, e.g., the Distance Marketing of Financial Services Directive and the Unfair Terms in Consumer Contracts Directive.

The CBI's Consumer Protection Code (the "**CPC**") contains detailed requirements to be met by regulated financial service providers, including insurers, when they are dealing with consumers. The CPC contains certain overarching principles to be adhered to and detailed provisions in relation to the manner in which insurers conduct business with consumers.

1.5 Are companies permitted to indemnify directors and officers under local company law?

Irish law does not permit companies to exempt from liability or indemnity directors or officers in respect of negligence, breach of duty, default or breach of trust. However, it is possible for a company to reimburse a director and/or officer in respect of legal costs incurred as a result of successfully defending proceedings taken against him/her.

Companies are permitted to purchase directors' and officers' ("**D&O**") insurance. Such policies may include the advancement of legal costs, payment of awards and, in certain circumstances, costs incurred by a director in respect of an investigation by the regulatory authorities. D&O insurance generally contains exclusions in respect of fraud and dishonesty, liabilities for bodily injury or any annual fines.

1.6 Are there any forms of compulsory insurance?

Yes. The following insurances are compulsory:

- third-party motor vehicle insurance;
- solicitors' professional indemnity insurance;
- certain types of aircraft and shipping insurance; and
- professional indemnity insurance for (re)insurance intermediaries.

In addition, whilst not "compulsory" under Irish law, certain professional bodies require their members to maintain professional indemnity insurance as a condition of membership.

2 (Re)insurance Claims

2.1 In general terms, is the substantive law relating to insurance more favourable to insurers or insureds?

The substantive law relating to insurance tends to be more favourable to insurers. The perception, however, is that the Irish courts tend to take a pro-insured approach by strictly applying the legal principles set out in statute, for example under the Marine Insurance Act 1908, which sets out the law on avoidance of insurance policies for material non-disclosure of facts.

The common law principles which apply to insurance contracts include the principle of "*uberrimae fidei*", which obliges both parties to disclose all material information in relation to the insurance contract. The principle is generally invoked by the insurer in support of the insurer avoiding an insurance contract for material non-disclosure of fact by the insured.

2.2 Can a third party bring a direct action against an insurer?

There is a restriction on the ability of a third party to bring a direct action against an insurer. This restriction is due to the principle of privity of contract, which prevents a person who is not a party to a contract from enforcing it. There are three statutory exceptions to this general principle:

(a) Section 62(1) of the Civil Liability Act 1961 – a third party may bring a direct action against an insurer where a person, company, or partnership/association is insured under a liability policy and becomes bankrupt (or dies), is wound up or is dissolved, respectively. Generally, the third party will be required to obtain judgment against the insured before proceeding against the insurer.

(b) Section 76(1) of the Road Traffic Act 1961 (as amended) – a third party claiming damages arising from an incident involving a motor vehicle can submit his claim directly to the insurer.

(c) Section 7 of the Married Woman's Status Act 1957 – allows a spouse or child named as a beneficiary to a policy of life assurance or endowment to enforce the policy.

Third parties may also acquire rights under an insurance contract pursuant to the laws of agency or trust, or alternatively on an assignment.

2.3 Can an insured bring a direct action against a reinsurer?

There is no general right in this jurisdiction which allows an insured to bring a direct action against a reinsurer. The privity of contract principle restricts the insured's rights as the insured is not a party to the reinsurance contract.

2.4 What remedies does an insurer have in cases of either misrepresentation or non-disclosure by the insured?

Pursuant to the Marine Insurance Act 1908, avoidance of the policy is the remedy for non-disclosure (section 18) or material misrepresentation (section 20) by the insured. The policy is voidable by the insurer from inception. It should be noted that the Irish courts have not permitted insurers to avoid a policy for material misrepresentation where an incorrect answer is given by an honest proposer. An insurer is not entitled to opt to decline cover of the claim *in lieu* of avoidance, unless the policy in question contains an innocent non-disclosure clause with this effect.

2.5 Is there a positive duty on an insured to disclose to insurers all matters material to a risk, irrespective of whether the insurer has specifically asked about them?

Parties to contracts of insurance are subject to the duty of utmost good faith: both parties have an overriding duty to disclose all material facts to the other before the contract is made. This goes beyond the usual common law rules on misrepresentation, as the duty of utmost good faith imposes a positive obligation on the parties to make disclosure. It is possible to breach the duty by omission or silence in relation to a material fact.

The remedy for breach of duty is to declare the contract void. In practice, therefore, the duty owed by the insured to the insurer is the most significant.

If a breach of the utmost good faith is alleged, the insurer must show (on a balance of probabilities) that the breach influenced it to make the contract on the particular terms.

In *Chariot Inns Ltd v Assicurazioni General Spa*, the Supreme Court held that an insured must not only complete the proposal form correctly, but must also disclose every matter which is material to the risk.

However, a number of recent Irish decisions suggest that the courts in Ireland have moderated the impact of this duty through the consideration of the nature of the questions raised by an insurer (if

any) and by the application of the duty of utmost good faith to the insurer also.

2.6 Is there an automatic right of subrogation upon payment of an indemnity by the insurer or does an insurer need a separate clause entitling subrogation?

An insurer has an automatic right of subrogation once the insurer discharges its indemnity on foot of a valid contract of indemnity, but should include express subrogation clauses asserting and extending the right.

3 Litigation – Overview

3.1 Which courts are appropriate for commercial insurance disputes? Does this depend on the value of the dispute? Is there any right to a hearing before a jury?

The District Court limit is €15,000 and the Circuit Court limit is €75,000. Claims with a value in excess of the Circuit Court jurisdiction are heard by the High Court, which has an unlimited monetary jurisdiction. Typically, commercial insurance disputes are heard by the High Court or the Commercial division of the Court, which is a fast-tracked specialised division of the High Court. Insurance and reinsurance disputes can be heard in the Commercial Court if they meet certain criteria; namely that: (i) the value of the claim or counterclaim exceeds €1 million; or (ii) the court considers that the dispute is inherently commercial in nature. Cases are admitted into this list following a hearing before the head judge in the Commercial Court.

There is no right to a hearing before a jury for insurance or reinsurance disputes; such disputes are heard by a judge sitting alone.

3.2 How long does a commercial case commonly take to bring to court once it has been initiated?

The average length of a case heard by the Commercial Court from entry into the Commercial List to conclusion is 20 weeks. However, complex cases may take significantly longer; particularly where contentious issues relating to discovery may exist.

4 Litigation – Procedure

4.1 What powers do the courts have to order the disclosure/discovery and inspection of documents in respect of (a) parties to the action, and (b) non-parties to the action?

(a) A party to proceedings in the High Court may seek discovery of categories of documents which are relevant to the issues and necessary to dispose of the matter fairly and save costs. The Court will also consider whether the request is proportionate and whether the documents may be obtained from a more readily available source.

(b) A party must first request voluntary discovery of categories of documents and if agreement on discovery is not reached, an order for discovery can be sought from the court.

Parties must disclose all documents which fall within the categories of discovery and not only those documents which support their case. The contents of documents which are subject to privilege do not need to be disclosed.

The High Court may make an order for discovery against a non-party where it appears that the person is likely to have or has had in its possession, custody or power documents which are relevant to the proceedings.

The party seeking the non-party discovery must indemnify such person against the costs of the discovery. The court will also consider the possible prejudice or oppression which the non-party might suffer in complying with the order.

Normally, parties seek voluntary discovery following delivery of the defendant's defence. In limited circumstances it is possible to obtain discovery by court order prior to the commencement of proceedings. The likelihood is that such orders are only likely to be made in cases where a clear proof of wrongdoing exists and where the information sought are the names and identities of wrongdoers rather than factual information concerning the commission of a wrong.

4.2 Can a party withhold from disclosure documents (a) relating to advice given by lawyers, or (b) prepared in contemplation of litigation, or (c) produced in the course of settlement negotiations/attempts?

The concept of legal professional privilege enables a party to protect itself from disclosure of certain communications between a client and his solicitor. When legal privilege has been established, neither the client nor the solicitor can, for any reason, be compelled to disclose details of this communication. The two principal types of legal privilege are:

(a) Litigation privilege arises only after litigation or other adversarial proceedings are contemplated or commenced and it protects all documents produced for the sole or dominant purpose of the litigation in question. Litigation privilege includes all communications between:

(i) a solicitor and his client;

(ii) a solicitor and his non-professional agent; and

(iii) a solicitor and a third party.

The communications over which privilege is claimed must be made for the dominant purpose of advancing the prosecution or defence of the case or the seeking or giving of legal advice in connection with it.

(b) Legal advice privilege protects communications between a solicitor, acting in his professional capacity, and his client, provided that the communication is confidential and for the purpose of seeking or giving legal advice.

(c) A third category of documents which may be withheld relate to communications made without prejudice for the purpose of negotiating a settlement, including mediation, is protected from disclosure or admissibility as evidence in court.

4.3 Do the courts have powers to require witnesses to give evidence either before or at the final hearing?

A party may obtain a subpoena requiring a person to attend as a witness at the final hearing of an action. Failure to attend can amount to contempt of court.

Generally, witnesses are only required to give evidence at the final hearing (except where necessary for an interim application). In proceedings admitted to the Commercial Court, the witnesses are required to provide witness statements which are exchanged in advance of the final hearing.

4.4 Is evidence from witnesses allowed even if they are not present?

It is a fundamental rule of the adversarial court system that witnesses

are examined orally in open court. However, it is possible in certain circumstances to give oral evidence by way of video-link where the case is suitable.

A witness may also give evidence by way of a sworn affidavit, which may be presented as primary evidence, although they may subsequently be cross-examined on the contents of the affidavit.

In limited circumstances, such as illness of the witness, evidence can be given by commission. This involves the questioning of the witness in a place other than the court by an independent lawyer commissioned by the court to take the evidence.

4.5 Are there any restrictions on calling expert witnesses? Is it common to have a court-appointed expert in addition or in place of party-appointed experts?

Expert witnesses are generally retained by a party to the litigation and the courts rarely appoint an expert witness. However, there are incidences where the High Court has chosen to appoint its own expert in intellectual property litigation. Expert witnesses have a duty to the court to give objective judgment on the matter at hand.

There are no general restrictions on calling expert witnesses.

The rules of the Commercial Court require the parties to exchange expert reports in advance of the trial, and pre-trial directions will include directions in relation to expert reports. Such directions regularly include a pre-trial expert meeting in an effort to reduce the number of issues between the parties.

4.6 What sort of interim remedies are available from the courts?

Interim injunctions or interlocutory injunctions are the main form of interim relief available in this jurisdiction. Interim injunctions are granted *ex parte* (without notice to the other party) for a short period until a hearing for an interlocutory injunction involving the other party can take place. The test generally applied by the court in considering an interlocutory injunction application is 1) whether there is a serious/fair issue to be tried, 2) whether damages would be an adequate remedy, and 3) whether the balance of convenience lies in granting or refusing an injunction. An applicant for an injunction will be required to provide an undertaking to cover any damages for which he may be liable as a result of the injunction in the event that he is ultimately unsuccessful in the proceedings.

Generally, an injunction will restrain/prohibit a person from doing something or will require a person to do something. Specific types of injunction include the following:

- *Quia Timet*: used to prevent an anticipated infringement of a legal right;
- *Mareva*: used to prevent the removal or disposal of assets;
- *Anton Piller* Orders: allow for entry onto the premises of a defendant for the inspection and removal of items of evidence; and
- *Ne Exeat Regno Writ* and *Bayer* Injunction: these orders can be sought to prevent a defendant from leaving the jurisdiction.

These particular types of orders are rarely granted because of the onerous impact they may have on an individual's rights. The court, at its discretion, may make an interim attachment order to preserve assets pending judgment. An application for an order can be brought where it can be established that the defendant has assets within the jurisdiction and there is a serious risk of those assets being dissipated with the intention of evading judgment prior to the hearing of the action. The plaintiff in such an application is responsible for any loss resulting from the freezing of the defendant's assets if the order was not honestly obtained with full and frank disclosure.

4.7 Is there any right of appeal from the decisions of the courts of first instance? If so, on what general grounds? How many stages of appeal are there?

The Supreme Court has appellate jurisdiction from a decision of the High Court (including the Commercial Court) in respect of matters of law and fact. However, the Supreme Court will generally be slow to overturn a finding of fact arrived at by the High Court, unless it is satisfied that the evidence that was acted on could not reasonably have been correct. Successful appeals tend, therefore, to turn on the interpretation and application of the law.

It is generally not possible to adduce oral evidence (or new evidence) on appeal to the Supreme Court and the hearing is primarily based on the consideration of the transcripts of the evidence provided in the High Court and the submissions of the parties.

Cases decided in the District Court may be appealed to the Circuit Court and decisions of the Circuit Court (including appeals from the District Court) may be appealed to the High Court. Decisions of the High Court on appeal from the Circuit Court cannot be appealed to the Supreme Court. However, either party may appeal on a point of law directly to the High Court from the District Court (which may be ultimately appealed to the Supreme Court).

As a consequence of a significant backlog in the Supreme Court, significant changes were made to the Supreme Court's appellate jurisdiction with the establishment on the 28 October 2014 of the Court of Appeal. Appeals in civil proceedings from the High Court, which prior to the above date would have been heard by the Supreme Court, now lie with the Court of Appeal.

4.8 Is interest generally recoverable in respect of claims? If so, what is the current rate?

Section 22(1) of the Courts Act, 1961 provides that in proceedings where a court orders the payment of a sum of money (damages), the court also has discretion to order the payment of interest on the whole or any part of such damages in respect of a part or the entire period between the dates when the cause of action accrued and the date of judgment. This rate of interest currently stands at 8 per cent. This is discretionary and it is only awarded in cases where the trial judge deems it appropriate. Once judgment is awarded, Courts Act interest applies on the monetary sum awarded.

4.9 What are the standard rules regarding costs? Are there any potential costs advantages in making an offer to settle prior to trial?

In this jurisdiction, the general rule is that "costs follow the event". This means that the party in whose favour judgment is given will be awarded their costs against the unsuccessful party. As with any general rule, this rule is subject to exceptions, such as where a party's conduct in the proceedings is deemed improper by the court.

There are a number of tools which a defendant can use to put the plaintiff "on risk for costs", including lodgments, tenders and Calderbank offers or open offers. The Rules of the Superior Courts (High and Supreme Courts) (Order 22, rule 1(1) RSC) provide for a lodgment procedure to encourage early settlement of cases, thereby avoiding the expense and court time involved in a full trial. A defendant can lodge money in court by way of offer to the plaintiff in full and final settlement of the plaintiff's claim. If the plaintiff refuses or fails to accept the lodgment and is not awarded a sum

which is in excess of the lodgment at the hearing of the action, the plaintiff will be penalised as to costs. Generally, the plaintiff will have to bear their own costs from the date of lodgment onwards and also discharge the defendant's costs from that date onwards, unless the court orders otherwise. Insurers are permitted to make a tender offer in *lieu* of lodging the money into court.

A Calderbank offer is an offer to settle the proceedings made "without prejudice save as to costs" and has a statutory basis pursuant to Order 99 of the Rules of the Superior Courts. Where the settlement offer is declined, and the plaintiff does not beat the Calderbank offer, this can severely reduce any award for court costs that the party might otherwise have been legally entitled to, and in some cases can result in the winning party being made to pay the losing party's legal costs. The courts have recognised the desirability of imposing financial consequences on a plaintiff who refuses what ultimately proves to have been a reasonable offer of settlement notwithstanding that the same was made on a without prejudice basis. A Calderbank offer will not be effective where a lodgment or tender could have been made.

4.10 Can the courts compel the parties to mediate disputes? If so, do they exercise such powers?

The courts cannot compel the parties to mediate. However, in the High Court and Circuit Court, a judge may adjourn legal proceedings on application by either party to the action or of its own initiative, to allow the parties to engage in an Alternative Dispute Resolution ("**ADR**") process. The courts may also make any orders or directions it considers necessary to facilitate effective use of the mediation process.

In addition, there are costs sanctions for parties who unreasonably refuse to mediate.

The recently enacted Mediation Act 2017 aims to encourage and facilitate the use of mediation in resolving civil, commercial and family disputes. Under the Act, solicitors are required to advise clients, prior to initiating proceedings, to consider mediation and sign a certificate accordingly, confirming that they have been so advised.

4.11 If a party refuses to a request to mediate, what consequences may follow?

A party failing to mediate following a direction of the court can be penalised as to costs.

5 Arbitration

5.1 What approach do the courts take in relation to arbitration and how far is the principle of party autonomy adopted by the courts? Are the courts able to intervene in the conduct of an arbitration? If so, on what grounds and does this happen in many cases?

The Arbitration Act, 2010 adopted the UNCITRAL Model Law on International Commercial Arbitration (the "**Model Law**") into Irish law in June 2010. The Arbitration Act, 2010 applies to all arbitration agreements entered into after that date, although agreements which pre-date the commencement of the Arbitration Act, 2010 may remain subject to the previous regime.

Article 5 of the Model Law provides that no court shall intervene in arbitration except where provided by the Model Law. The High Court has a limited supervisory role under the Arbitration Act, 2010 and the Model Law. The parties may refer matters, such as the appointment of an arbitrator (in default of agreement) or the removal of an arbitrator for failure to carry out his functions, to the High Court. Further, the courts have a role in, *inter alia*, staying any litigation pending the arbitration, making interim orders for the purpose of the arbitration and recognising/enforcing an interim measure or final award issued by an arbitrator.

5.2 Is it necessary for a form of words to be put into a contract of (re)insurance to ensure that an arbitration clause will be enforceable? If so, what form of words is required?

It is an essential prerequisite that for arbitration and any subsequent award to be binding there must be an agreement to arbitrate between the parties. The Arbitration Act, 2010 does not prescribe the content of an arbitration agreement or the form of words to be used. At a minimum, it must reflect an agreement between the parties where disputes or differences which may arise will be referred to arbitration. An agreement to arbitrate must be made in writing to come within the meaning of the Arbitration Act, 2010.

A particular feature of the 2010 Act is that it gives the parties autonomy over a range of issues which include not only the arbitration procedure but the powers to be given to the arbitral tribunal and to the court.

5.3 Notwithstanding the inclusion of an express arbitration clause, is there any possibility that the courts will refuse to enforce such a clause?

Article 5 of the Model Law significantly restricts the court's role in respect of arbitration. The Arbitration Act, 2010 provides that an arbitration clause will survive a finding that a contract, of which the clause forms part, is void. This would include a case where a contract of insurance is repudiated for non-disclosure of a material fact. Given the restrictions on the court's role, it may no longer be theoretically or practically possible to obtain an injunction restraining the appointment of an arbitrator or the conduct of arbitration. There is no restriction as to when an arbitration agreement must be concluded and it may be reached before or after a dispute has arisen.

5.4 What interim forms of relief can be obtained in support of arbitration from the courts? Please give examples.

The High Court or the Circuit Court may adjourn proceedings for the parties to consider reaching an agreement to arbitrate, and should they fail to so agree, the court may make such order as it sees fit in respect of the proceedings.

The Irish courts are not precluded from granting interim measures, although most interim measures may now also be granted by the arbitral tribunal; for example, the tribunal has a default power to order interim measures such as the grant of interim injunctions and securing monies or goods in dispute. The High Court can further assist the arbitral tribunal or a party in relation to the provision of evidence; however, it has no jurisdiction with regard to discovery without the express agreement of the parties. Section 10 of the 2010 Act provides that the High Court may not, unless otherwise agreed by the parties, make any order for the security of costs or discovery of documentation.

5.5 Is the arbitral tribunal legally bound to give detailed reasons for its award? If not, can the parties agree (in the arbitration clause or subsequently) that a reasoned award is required?

Pursuant to the provisions of the Arbitration Act, 2010 and the Model Law, an arbitrator must provide his award in writing and must provide reasons unless the parties agree that no reasons should be provided or if it is a consent award.

Section 31 of the 2010 Act places a requirement on the arbitral tribunal, unless the parties have agreed otherwise, to give reasons for its award.

5.6 Is there any right of appeal to the courts from the decision of an arbitral tribunal? If so, in what circumstances does the right arise?

A decision of an arbitrator under the Arbitration Act, 2010 may generally not be appealed to the courts. However, there are grounds under which the decision may be reviewed and set aside by the High Court.

The grounds for setting aside a decision are limited and are set out in the Model Law and include the following:

(a) a party to the arbitration agreement was under some incapacity or the arbitration agreement was otherwise invalid;

(b) the applicant was not provided with proper notice of the arbitration or was otherwise unable to present his case;

(c) the decision deals with matters beyond the scope of the arbitration agreement;

(d) the composition of the arbitration tribunal was not in accordance with the arbitration agreement; or

(e) the award is in conflict with public policy.

An application to set aside the award under article 34 must be made within three months from the date on which the party making the application has received the award, or if a request for correction and interpretation of the award has been made to the arbitral tribunal under article 33, then within three months of the date when a decision on the request has been made by the arbitral tribunal.

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According to *The Legal 500*, Elizabeth Bothwell has "a very strong grasp of the industry". In *The Legal 500, 2015*, it was commented that Elizabeth Bothwell "consistently exceeds expectations". According to *Chambers Europe: Europe's Leading Lawyers for Business, 2016*, sources describe her as "a super lawyer … she was extremely helpful in navigating us through a lot of moving parts and complexities in our organisation, and in steering us through troubled waters". Elizabeth is ranked as a Leading Individual for Insurance in *The Legal 500: EMEA 2016*, and as an Expert in Insurance and Reinsurance in *Who's Who Legal 2016*.

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David is a Partner in the Litigation & Dispute Resolution Department. David advises on a wide range of commercial disputes including insurance/policyholder disputes, intellectual property litigation, professional indemnity and financial services litigation. David has extensive experience in litigating commercial disputes in the Commercial Court in Ireland for both plaintiffs and defendants. Our Litigation and Dispute Resolution Group is particularly recognised for its extensive experience in the areas of Medical, Personal Injuries and General Liability Insurance.

According to *Chambers Europe: Europe's Leading Lawyers for Business, 2016*: "Commercial litigator David O'Donohoe continues to advise on some of the highest profile insurance disputes in the market, particularly complex policy coverage disputes, as part of his broad contentious practice."

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