



Number 6 of 2008

**VOLUNTARY HEALTH INSURANCE (AMENDMENT) ACT
2008**

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ACTS REFERRED TO

Assurance Companies Act 1909	9 Edw. 7, c. 49
Central Bank and Financial Services Authority of Ireland Act 2003	2003, No. 12
Health Insurance (Amendment) Act 2001	2001, No. 17
Health Insurance Act 1994	1994, No. 16
Insurance Act 1989	1989, No. 3
Minimum Notice and Terms of Employment Acts 1973 to 2005	
Organisation of Working Time Act 1997	1997, No. 20
Protection of Employees (Part-Time Work) Act 2001	2001, No. 45
Redundancy Payments Acts 1967 to 2007	
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Voluntary Health Insurance (Amendment) Act 1996	1996, No. 4
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**VOLUNTARY HEALTH INSURANCE (AMENDMENT) ACT
2008**

AN ACT TO AMEND THE VOLUNTARY HEALTH INSURANCE ACT 1957, THE HEALTH INSURANCE ACT 1994, THE VOLUNTARY HEALTH INSURANCE (AMENDMENT) ACT 1996, THE HEALTH INSURANCE (AMENDMENT) ACT 2001, TO CONFER ADDITIONAL FUNCTIONS ON THE VOLUNTARY HEALTH INSURANCE BOARD, TO EMPOWER THE BOARD TO FORM AND ESTABLISH OR ACQUIRE SUBSIDIARIES TO PERFORM CERTAIN FUNCTIONS OF THE BOARD, WITH A VIEW TO OBLIGING THE BOARD TO APPLY FOR A GRANT TO THE RELEVANT SUBSIDIARY OF AN AUTHORISATION TO CARRY ON THE BUSINESS OF NON-LIFE INSURANCE, TO SPECIFY THE BORROWING POWERS OF THE BOARD AND SUCH SUBSIDIARIES, AND TO PROVIDE FOR RELATED MATTERS.

[15th April, 2008]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Definitions.

“Act of 1994” means the Health Insurance Act 1994;

“Act of 1996” means the Voluntary Health Insurance (Amendment) Act 1996;

“Act of 2001” means the Health Insurance (Amendment) Act 2001;

“authorisation date” means the date on which the authorisation (within the meaning of the Regulations of 1994) granted to the relevant subsidiary to carry on the business of non-life insurance comes into operation;

“Board” means the Voluntary Health Insurance Board;

“company” has the meaning it has in the Companies Acts;

“Minister” means the Minister for Health and Children;

“Regulations of 1994” means the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994);

“relevant subsidiary” shall be construed in accordance with *section 10*;

“services subsidiary” shall be construed in accordance with *section 16*;

“staff transfer day” means the day appointed under *section 15* to be the staff transfer day for the purposes of this Act;

“subsidiary” means a subsidiary (within the meaning of section 155 of the Companies Acts) of the Board;

“transferred business” means the business referred to in *section 10(1)*;

“transfer day” means the day appointed under *section 9* to be the transfer day for the purposes of this Act.

Non-application of Assurance Companies Act 1909, etc.

2.—(1) Section 13 of the Assurance Companies Act 1909 shall not apply to any amalgamation or transfer referred to in that section which is, or is to be, effected under this Act.

(2) Section 36 (as amended by Part 8 of Schedule 1 to the Central Bank and Financial Services Authority of Ireland Act 2003) of the Insurance Act 1989 shall not apply to any amalgamation or transfer referred to in that section which is, or is to be, effected under this Act.

Amendment of section 2 of Act of 1994.

3.—Section 2(1) of the Act of 1994 is amended—

(a) by the insertion of the following definition:

“ ‘Act of 2001’ means the Health Insurance (Amendment) Act 2001;”

(b) in the definition of “health insurance contract” (inserted by section 2 of the Act of 2001), by the substitution of the following paragraph for paragraph (d):

“(d) a contract of insurance, or any other insurance arrangement, the purpose of which is to provide for the making of payments specifically for the reimbursement or discharge of fees or charges in respect of the provision of hospital in-patient services or relevant health services to persons or any dependants of any of them and one of the following conditions is satisfied—

(i) neither the said persons nor any such dependants are ordinarily resident in the State, or

(ii) where any of the persons to whom the said contract or arrangement relates are temporarily resident in the State during the subsistence of the said contract or arrangement—

(I) those persons are so resident solely for the purpose of carrying out their duties as employees, and

(II) those persons constitute not more than—

- (A) 20 per cent of the total number of persons (other than dependants of them) to whom the said contract or arrangement relates, and
- (B) 20 of the total number of persons employed in the State by the one person;”,

and

(c) by the insertion of the following definition:

“ ‘in-patient indemnity payment’ means any payment made pursuant to a health insurance contract by a registered undertaking for the purposes of reimbursing or discharging, in whole or in part, fees or charges in respect of the provision of hospital in-patient services.”.

4.—Section 10 (as amended by section 13 of the Act of 2001) of the Act of 1994 is amended—

Amendment of section 10 of Act of 1994.

- (a) in subsection (1), by the substitution of “Subject to subsection (3), a health insurance contract effected by a registered undertaking” for “A health insurance contract effected by a registered undertaking (other than such a contract relating solely to relevant health services or solely to the public hospital daily in-patient charges made under the Health (In-patient Charges) Regulations, 1987 (S.I. No. 116 of 1987))”, and
- (b) by the insertion of the following subsection after subsection (2):

“(3) Subsection (1) shall not apply to a health insurance contract—

- (a) where, and without prejudice to the generality of paragraphs (a) to (d) of the definition of ‘health insurance contract’ (inserted by section 2 of the Act of 2001) in section 2(1), such a contract, either of itself or as construed with any linked or related other health insurance contract, makes no provision for the making of in-patient indemnity payments, or
- (b) relating solely to the public hospital daily in-patient charges made under the Health (In-patient Charges) Regulations 1987 (S.I. No. 116 of 1987).”.

5.—Section 12 (inserted by section 9 of the Act of 2001) of the Act of 1994 is amended, in subsection (2), by the substitution of the following paragraph for paragraph (c):

Amendment of section 12 of Act of 1994.

“(c) Without prejudice to the generality of paragraphs (a) to (d) of the definition of ‘health insurance contract’

(inserted by section 2 of the Act of 2001) in section 2(1), a scheme may include a provision specifying that the scheme shall not apply to so much of the activities of a registered undertaking as consist of effecting health insurance contracts where such a contract, either of itself or as construed with any linked or related other health insurance contract, makes no provision for the making of in-patient indemnity payments.”.

Amendment of
section 2 of Act of
1996.

6.—Section 2 of the Act of 1996 is amended—

- (a) in subsection (1), by the deletion of “, with the consent of the Minister,” and the deletion of “, with the like consent,”,
- (b) in subsection (2), by the deletion of “, with the consent of the Minister,”,
- (c) by the substitution of the following subsection for subsection (5):

“(5) Subject to subsection (5A), the Board shall conduct its business at all times in a cost effective and efficient manner and shall, for that purpose, fix the amount of subscriptions, premiums or other charges payable by or in respect of beneficiaries under schemes under this section so that the revenue therefrom together with other revenues (if any) of the Board, including monies raised or borrowed by the Board, are sufficient taking one year with another to—

- (a) meet all charges and costs which are properly chargeable to its income and expenditure account,
- (b) acquire—
 - (i) subject to subparagraph (ii), before 31 December 2008,
 - (ii) before such later date as the Minister may by order appoint if, and only if, he or she is satisfied that there is good and sufficient reason for so doing,

a fund greater than the minimum guarantee fund that it is required to possess pursuant to Regulation 13(1)(b) of the European Communities (Non-Life Insurance) Framework Regulations 1994 (S.I. No. 359 of 1994) to enable it to make an application for the grant to the relevant subsidiary (within the meaning of section 1 of the Act of 2008) of an authorisation (within the meaning of those Regulations) to carry on the business of non-life insurance, and

- (c) discharge the financial liabilities of the Board (including the repayment of borrowings and interest thereon) arising from the performance

of any functions of the Board to raise or borrow money.”,

- (d) by the insertion of the following subsection after subsection (5):

“(5A) For the purposes of acquiring the fund referred to in subsection (5)(b), the Board may do one or more of the following:

- (a) accrue a capital reserve;
- (b) secure subordinated loans;
- (c) re-insure part of its health insurance business;
- (d) raise or borrow money in accordance with section 19 of the *Act of 2008*;
- (e) seek the provision of capital by the State in return for shares in a subsidiary formed and established or acquired pursuant to the *Act of 2008*;
- (f) seek the provision of capital by such other means as may be approved by the Minister with the consent of the Minister for Finance.”,

and

- (e) in subsection (7), by the insertion of the following definition:

“ ‘Act of 2008’ means the *Voluntary Health Insurance (Amendment) Act 2008*;”.

7.—In addition to the functions conferred on it by the Voluntary Health Insurance Acts 1957 to 1998, the Board may— Additional functions of Board.

- (a) carry out schemes for the provision of, or otherwise provide (whether as principal or agent or otherwise) services in respect of, health care, health insurance, illness related insurance, personal care or related activities, including—
 - (i) activities of an advisory or consultative nature, and
 - (ii) activities involving the exploitation of information technology or the provision of advice with respect to such exploitation,
- (b) carry out schemes, or otherwise provide or make arrangements, for the provision of, services to the Board, and
- (c) on or after the authorisation date—
 - (i) acquire, manage, operate and maintain medical facilities,
 - (ii) act as principal or agent or otherwise in respect of the provision of pensions and financial services, and

- (iii) engage in such other activities as are connected with the functions of the Board.

Board may form and establish or acquire subsidiaries to perform functions other than functions excluded from section.

8.—(1) The Board may, for the purposes of performing any one or more of its functions (other than the functions excluded from this section)—

- (a) form and establish or acquire one or more subsidiaries, and
- (b) acquire, hold and dispose of shares or other interests in a company and become a member of a company.

(2) For the purposes specified in *subsection (1)*, the Board or a subsidiary referred to in that subsection may, either by itself or with another person, promote and take part in the formation and establishment or the acquisition of a company, or enter into a joint venture or partnership.

(3) The memorandum and articles of association of a subsidiary referred to in *subsection (1)*—

- (a) shall be in such form as is consistent with the Voluntary Health Insurance Acts 1957 to 2008 as may be determined by the Board, and
- (b) may include all such objects and powers as are reasonably necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the subsidiary, consistent with the Voluntary Health Insurance Acts 1957 to 2008.

(4) In this section, “functions excluded from this section” means any functions referred to in section 2 of the Act of 1996 or *section 7(c)*.

Transfer day.

9.—The Minister may by order appoint a day to be the transfer day for the purposes of this Act.

Board may form and establish or acquire subsidiary for purposes of transferring business of health insurance schemes and health-related insurance schemes to such subsidiary.

10.—(1) Without prejudice to the generality of *section 8*, the Board may form and establish or acquire one and only one subsidiary (“relevant subsidiary”) for the purposes of transferring to the subsidiary on the transfer day the business of health insurance schemes and health-related insurance schemes carried out by the Board pursuant to section 2 of the Act of 1996.

(2) A transfer of the business referred to in *subsection (1)* effected under this Act shall be valid against policyholders, the insured persons and any other person having rights and obligations arising out of the policies assigned.

(3) *Section 8(3)* shall apply to the relevant subsidiary as that section applies to a subsidiary referred to in *section 8(1)*.

Transfer of land and other property.

11.—(1) On the transfer day, all land that immediately before that day was vested in the Board and all rights, powers and privileges relating to or connected with the land shall, without any conveyance or assignment, stand vested in the relevant subsidiary for all the

estate or interest therein that immediately before the transfer day was vested in the Board, but subject to all trusts and equities affecting the land continuing to subsist and capable of being performed.

(2) On the transfer day all property, excluding land but including choses-in-action, that immediately before that day was vested in the Board shall stand vested in the relevant subsidiary without any assignment.

(3) Every chose-in-action vested in the relevant subsidiary by virtue of *subsection (2)* may, on and after the transfer day, be sued on, recovered or enforced by the relevant subsidiary in its own name, and it shall not be necessary for the relevant subsidiary, or the Board, to give notice to any person bound by the chose-in-action of the vesting effected by that subsection.

12.—(1) Subject to *subsection (4)*, all rights and liabilities of the Board arising by virtue of any contract or commitment (expressed or implied) entered into by it before the transfer day shall on that day stand transferred to the relevant subsidiary.

Transfer of rights and liabilities, and continuation of leases, licences and permissions by Board.

(2) Every right and liability transferred by *subsection (1)* to the relevant subsidiary may, on and after the transfer day, be sued on, recovered or enforced by or against the relevant subsidiary in its own name, and it shall not be necessary for the relevant subsidiary, or the Board, to give notice to the person whose right or liability is so transferred by such transfer.

(3) Every lease, licence, wayleave or permission granted by the Board in relation to land or other property vested in the relevant subsidiary by or under this Act, and in force immediately before the transfer day, shall continue in force as if granted by the relevant subsidiary.

(4) *Subsection (1)* shall not apply to the rights and liabilities of the Board arising by virtue of any contract or commitment referred to in that subsection where the contract or commitment, as the case may be, is between the Board and a member of the staff of the Board in the member's capacity as such (and whether or not the member only acquired that capacity upon the entering into of the contract or commitment, as the case may be).

13.—(1) A claim in respect of any loss or injury alleged to have been suffered by any person, arising out of the performance before the transfer day of the functions of the Board in so far as they relate to the transferred business, shall, on and after that day, lie against the relevant subsidiary and not against the Board.

Liability for loss, etc., occurring before transfer day.

(2) Any legal proceedings pending immediately before the transfer day to which the Board is a party, and that relate to the transferred business, shall be continued, with the substitution in the proceedings of the relevant subsidiary, in so far as the proceedings so relate, for the Board.

(3) Where, before the transfer day, agreement has been reached between the parties concerned in settlement of a claim to which *subsection (1)* relates, the terms of which have not been implemented, or judgment in such a claim has been given in favour of a person but has not been enforced, the terms of the agreement or judgment, as the case may be, shall, in so far as they are enforceable against the

Board, be enforceable against the relevant subsidiary and not the Board.

(4) Any claim made or proper to be made by the Board in respect of any loss or injury arising from the act or default of any person before the transfer day shall, where the claim relates to the transferred business, be regarded as made by or proper to be made by the relevant subsidiary and may be pursued and sued for by the relevant subsidiary as if the loss or injury, as the case may be, had been suffered by the relevant subsidiary.

Provisions supplementary to sections 9 to 13.

14.—(1) Anything commenced and not completed before the transfer day by or under the authority of the Board may, in so far as it relates to the transferred business, be carried on or completed on and after the transfer day by the relevant subsidiary.

(2) Every document (including any certificate) granted or made, and every register established, in the performance of a function of the Board in so far as it relates to the transferred business shall, if and in so far as it was operative immediately before the transfer day, have effect on and after that day as if it had been granted or made, or established, as the case may be, by the relevant subsidiary.

(3) References to the Board in the memorandum or articles of association of any company and relating to the transferred business shall, on and after the transfer day, be construed as including references to the relevant subsidiary.

(4) Any money, stocks, shares or securities transferred by this Act that immediately before the transfer day were standing in the name of the Board shall, on the request of the relevant subsidiary at any time on and after that day, be transferred into its name.

Staff transfer day.

15.—The Minister may by order appoint a day to be the staff transfer day for the purposes of this Act.

Transfer of staff.

16.—(1) Every person who immediately before the staff transfer day was a member of the staff of the Board shall, on the staff transfer day, stand transferred to—

(a) subject to *paragraph (b)*, the staff of the subsidiary (if any) formed and established or acquired by the Board in accordance with *section 8* for the purposes of providing services to the Board and any of the subsidiaries of the Board (“services subsidiary”),

(b) the staff of such other subsidiary (“other subsidiary”), if any, of the Board as the Board has specified in writing, for the purposes of that day, in respect of the member of staff concerned or class of members of staff concerned, as the case may be.

(2) Save in accordance with a collective agreement negotiated with any recognised trade union or staff association concerned, a person referred to in *subsection (1)* shall not, while in the service of the services subsidiary or other subsidiary, as the case may be, be subject to less beneficial conditions of service (including conditions in relation to tenure of office) or of remuneration than the conditions of service (including conditions in relation to tenure of office) or

remuneration to which he or she was subject immediately before the staff transfer day.

(3) In relation to persons transferred to the services subsidiary or other subsidiary, as the case may be, previous service with the Board shall be reckonable for the purposes of, but subject to any exceptions or exclusions in, the Redundancy Payments Acts 1967 to 2007, the Protection of Employees (Part-Time Work) Act 2001, the Organisation of Working Time Act 1997, the Minimum Notice and Terms of Employment Acts 1973 to 2005 and the Unfair Dismissals Acts 1977 to 2007.

17.—(1) Without prejudice to the generality of *section 8*, the Board may, on or after the authorisation date, for the purpose of performing any one or more of its functions referred to in *section 7(c)*—

Board may form and establish or acquire subsidiaries to perform functions referred to in *section 7(c)*.

- (a) form and establish or acquire one or more subsidiaries, and
- (b) acquire, hold and dispose of shares or other interests in a company and become a member of a company.

(2) For the purposes specified in *subsection (1)*, the Board or a subsidiary referred to in that subsection may, either by itself or with another person, promote and take part in the formation and establishment or the acquisition of a company, or enter into a joint venture or partnership.

(3) The memorandum and articles of association of a subsidiary referred to in *subsection (1)*—

- (a) shall be in such form as is consistent with the Voluntary Health Insurance Acts 1957 to 2008 as may be determined by the Board, and
- (b) may include all such objects and powers as are reasonably necessary or proper for, or incidental or ancillary to, the due attainment of the principal objects of the subsidiary, consistent with the Voluntary Health Insurance Acts 1957 to 2008.

18.—The Board shall report on a six monthly basis to the Competition Authority giving particulars of its insured membership figures.

Report to Competition Authority.

19.—(1) Subject to *subsection (2)*, the Board or a subsidiary may raise or borrow money (including money in a currency other than the currency of the State) for the purpose of performing its functions.

Borrowing by Board and subsidiaries.

(2) Subject to *subsection (3)*, the aggregate at any one time of moneys raised or borrowed under this section by the Board and subsidiaries shall not exceed 10 per cent of the total premium charged in the preceding financial year by the Board.

(3) The aggregate referred to in *subsection (2)* shall not include moneys raised or borrowed for the purposes of acquiring a fund greater than the minimum guarantee fund that the Board is required to possess pursuant to Regulation 13(1)(b) of the Regulations of 1994 to enable it to make an application for the grant to the relevant

subsidiary of an authorisation (within the meaning of those Regulations) to carry on the business of non-life insurance.

(4) For the purposes of this section, moneys raised or borrowed in a currency other than the currency of the State shall be deemed to be the equivalent in the currency of the State of the actual moneys raised or borrowed, as the case may be, such equivalent being calculated according to the rate of exchange at the time of the raising or borrowing, as the case may be, for that currency and the currency of the State.

(5) A State guarantee shall not be provided to enable the Board or a subsidiary to raise or borrow money under this section or under any other provision of the Voluntary Health Insurance Acts 1957 to 2008.

Orders.

20.—Every order made by the Minister under section 2(5)(b)(ii) (inserted by *section 6(c)*) of the Act of 1996 or under *section 9* or *section 15* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Repeals.

21.—The enactments specified in *column (3)* of the *Schedule* opposite a reference number specified in *column (1)* are repealed to the extent specified in *column (4)* of that *Schedule*.

Short title,
collective citation,
construction and
commencement.

22.—(1) This Act may be cited as the Voluntary Health Insurance (Amendment) Act 2008.

(2) The Voluntary Health Insurance Acts 1957 to 1998 and this Act may be cited together as the Voluntary Health Insurance Acts 1957 to 2008 and shall be read together as one.

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

SCHEDULE

Section 21.

ENACTMENTS REPEALED

(Reference Number)	Number and Year	Short Title	Extent of Repeal
(1)	(2)	(3)	(4)
1.	No. 1 of 1957	Voluntary Health Insurance Act 1957	Section 18
2.	No. 16 of 1994	Health Insurance Act 1994	Paragraph (c) of the definition of "health insurance contract" (inserted by section 2 of the Health Insurance (Amendment) Act 2001) in section 2(1)
3.	No. 4 of 1996	Voluntary Health Insurance (Amendment) Act 1996	Section 3
4.	No. 17 of 2001	Health Insurance (Amendment) Act 2001	Section 14