

INSURANCE & PRIVATE PENSION LAW UPDATE

– Insurance Compliance Bulletin –

Who Should Read this Bulletin?

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A. Insurance Intermediaries Act, 2006

Legal Notice 180 published on the 25th August, 2006 brought into force a number of provisions in the new Insurance Intermediaries Act (Act XII of 2006) as well as a number of amendments to related legislation. The Act entered into force on 1st September, 2006 and consolidated the regulation of all insurance intermediaries under the Insurance Intermediaries Act, 2006 and incorporates amendments to other financial services sector legislation, including the Insurance Business Act, 1998. These amendments were primarily necessary in the light of new European legislation aimed at facilitating cross border business.

Under the old regime the activities of insurance agents and managers were regulated under the Insurance Business Act, 1998, while those of insurance brokers and insurance sub-agents were regulated under the Insurance Brokers and Other Intermediaries Act, 1998. The Insurance Intermediaries Act, 2006 repeals the Insurance Brokers and Other Intermediaries Act. The new Act introduces new provisions reflecting developments both in the domestic and international insurance market. As the EU Mediation Directive provides for all insurance intermediaries activities to be carried out by individuals and legal persons, it is now possible for the various intermediaries activities to be carried out both by individuals or legal entities.

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In terms of Article 55 of the Intermediaries Act, Insurance Agents, Insurance Brokers and Insurance Managers have been granted a 6 month transition period in order to comply with the provisions of the new Act. This applies to insurance intermediaries for insurance intermediaries who held an authorisation prior to the coming into force of the new Act. **This 6 month transition period will come to an end on 31st March, 2007.**

In terms of a compliance timetable circulated by MFSA towards the end of last year, the following compliance matters need to be dealt with by not later than the 31st March, 2007:



1. Insurance Brokers

By the 31st March, 2007:

Own Funds: The Own Funds of Insurance Brokers is to amount to not less than Lm 25,000 or 4% of annual gross premiums receivable. This may involve an increase in issued share capital.

Professional Indemnity Cover: The PI Cover is to amount to no less than €1m per claim and in the aggregate €1.5m per year for all claims.

Memorandum and Articles: The objects clause contained in the Memorandum of Association of the Broker Company is to be amended to read:

“To act as an insurance broker in terms of the Insurance Intermediaries Act (Cap. 487)”.

The following provisos are also to be inserted in the Memorandum of Association of the Broker Company:

“Nothing in the foregoing shall be construed as empowering or enabling the Company to carry out any activity or service which requires a licence or is otherwise regulated under the Investment Services Act (Cap. 370) and the Insurance Business Act (Cap. 403) and the Insurance Intermediaries Act (Cap. 487) without a licence or other appropriate authorisation from the relevant Competent Authority”.

“The exercise by the Company of the foregoing objects and powers is subject to such prohibitions and restrictions as are provided by and under the mandatory provisions of any law in force for the time being including the Companies Act (Cap. 386) and the Insurance Business Act (Cap. 403) and the Insurance Intermediaries Act (Cap. 487) and of any regulations or insurance rules or insurance intermediaries rules issued thereunder and any amendment, modification or substitution of any such laws, regulations or rules”.

2. Insurance Agents and Insurance Managers

By the 31st March, 2007:

Own Funds of Agents: The Own Funds of Insurance Agents is to amount to not less than Lm25,000 or 4% of annual gross premiums receivable.

Own Funds of Managers: Managers are to ensure the following minimum Own Funds:

Lm6,500 where the Manager only acts for or on behalf of affiliated insurance companies (Captives) or whose appointment does not include the authority to enter into contracts of insurance on behalf of a Company; or

Lm25,000 or 4% of the annual gross premiums receivable (whichever is the higher) where acting for or on behalf an insurance company whose business is not restricted to affiliated insurance and whose appointment includes the authority to enter into contracts of insurance on behalf of the Company or where it holds an appointment from an insurance broker.



Professional Indemnity Cover: The PI Cover of Insurance Brokers is to amount to no less than €1m per claim and in the aggregate €1.5m per year for all claims.

Memorandum and Articles: The objects clause contained in the Memorandum of Association of the Agent or Manager company is to be amended to read:

“To act as an insurance agent / manager in terms of the Insurance Intermediaries Act (Cap. 487)”

The provisos described above (for Brokers) are also to be inserted in the Memorandum of Association.

We are enclosing herewith a specimen set of Extraordinary Resolutions to implement the above described alterations to the Memorandum and Articles of Association that may be tailored to suit your particular company.

B. Income Tax Act – ITC – Advanced Revenue Ruling Requirement

The Government of Malta has recently published draft legislative amendments to the Maltese Income Tax Acts for the purpose of implementing the agreement reached by it last year with the European Commission regarding Malta's tax system. It is expected that the Maltese Parliament will shortly consider and approve the said amendments which will come into force with effect from 1st January, 2007.

One of the major amendments being proposed is the phasing out of the ITC regime and its substitution with an extended tax refund system. Companies incorporated before 1st January, 2007 will be able to continue to enjoy the current regime until 31st December, 2010. In this regard, the Bill stipulates that ITCs incorporated between the 18th April, 2006 and the 31st December, 2006 will have **until the 31st March, 2007** to apply for an Advanced Revenue Ruling on their ITC status. This deadline may be subject to change by the time the Bill is passed, however, one thing is certain: International Trading Companies wishing to retain their ITC status until 2010 should apply for an Advanced Revenue Ruling at their earliest opportunity. International Trading Companies established before the 18th March, 2006 and wishing to retain their ITC status until 2010 should also ensure that they have obtained an Advanced Revenue Ruling on their status.

Should you have any questions or comments about the matters raised in this bulletin please do not hesitate to contact Dr. Matthew Bianchi or Dr. David Borg Carbott on mbianchi@jmganado.com or dbcarbott@jmganado.com.

IMPORTANT NOTICE

DISCLAIMER: THIS BULLETIN IS NOT INTENDED TO IMPART ADVICE; READERS ARE ADVISED TO SEEK CONFIRMATION OF STATEMENTS MADE HEREIN BEFORE ACTING UPON THEM. SPECIALIST ADVICE SHOULD ALWAYS BE SOUGHT ON SPECIFIC ISSUES.

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[NAME OF COMPANY]

[Registration number]

[REGISTERED OFFICE]

EXTRAORDINARY RESOLUTIONS of all the shareholders of [Name of Company] (the “Company”) signed and adopted on the [insert date].

IT WAS RESOLVED:

1. That the following changes be made to the Objects Clause of the Memorandum of Association of the Company:

(a) That clause [insert clause number] sub-clause [insert sub-clause number] be deleted in its entirety and substituted by the following clause:

“To act as an insurance agent /broker /manager in terms of the Insurance Intermediaries Act (Cap.487)”

(b) That the paragraph following clause [insert clause number] sub-clause [insert sub-clause number] be deleted in its entirety and be substituted by the following paragraph:

“The exercise by the Company of the foregoing objects and powers is subject to such prohibitions and restrictions as are provided by and under the mandatory provisions of any law in force for the time being including the Companies Act (Cap. 386) and the Insurance Business Act (Cap. 403) and the Insurance Intermediaries Act (Cap. 487) and of any regulations or insurance rules or insurance intermediaries rules issued thereunder and any amendment, modification or substitution of any such laws, regulations or rules”.

(c) That the following paragraph be inserted in clause [insert clause number] immediately following the above paragraph:

“Nothing in the foregoing shall be construed as empowering or enabling the Company to carry out any activity or service which requires a licence or is otherwise regulated under the Investment Services Act (Cap. 370) and the Insurance Business Act (Cap. 403) and the Insurance Intermediaries Act (Cap. 487) without a licence or other appropriate authorisation from the relevant Competent Authority”.

2. That the Memorandum of Association of the Company be revised and updated in accordance with the above changes.

3. That any one director and/or the Company Secretary be authorised to issue a certified copy of the revised and updated version of the Memorandum and Articles of Association and of these resolutions.

Signed

