

FSC Newsletter

Insurance Managers

Introduction

This newsletter is intended to set out certain matters of principle for the guidance of those wishing to apply for a licence to carry on the activity of insurance management.

“Insurance Management” became a new class of Controlled Activity under the Financial Services Ordinance, 1989, as a result of Legal Notices Nos. 144, 146 and 147 of 1995.

The activity is defined as “Exercising managerial functions and/or giving, or offering or agreeing to give advice in relation to the business of one or more insurer or reinsurer, of which he is not an employee, that, in the opinion of the Commissioner appointed from time to time under section 8 of the Financial Services Commission Ordinance, 1989, is an activity which should not fall within any of the categories listed in Schedule 2 or within the categories defined in paragraphs 1 or 3 of this Schedule” (Schedule 3).

The scope of activity covered is that which can be readily carried on within the training and skills reasonably expected of the staff and executive officers of a company carrying on the business of insurance as principal.

All the provisions of the Financial Services Ordinance, and the Regulations made thereunder, relating to Controlled Activities apply to insurance managers.

Criteria for granting a licence

The functions of an insurance manager are similar to the functions of the staff and executive team of an insurance company. Accordingly, applications for this class of licence will be examined in that light.

A licence will only be granted to a corporate person and an applicant will not normally be granted a licence if it is carrying on, or intends to carry on, any other business. Also, it will not normally be granted a licence to carry on any other class of investment business or controlled activity. However, in exceptional cases, the Commissioner may relax the restrictions if he is satisfied that there are sufficiently good reasons for doing so, that the other business is fully compatible with insurance management and that the necessary skills exist.

- **Qualifications of Staff and Composition of board**

The executive officers of an insurance manager will be expected to have the same special skills, knowledge, experience, soundness of judgement, integrity and track record as if they were executive officers of the insurance companies under management. They should be fully competent in the particular business being carried on by companies under management. At least two individuals should effectively direct the business of the insurance manager.

The Directors of an insurance manager should be individuals and the Board should have a balance of skills, knowledge and experience, including those relating to corporate governance. Such a balance may not be demonstrable without at least one non-executive director. The Board should consist of a minimum of three directors, of which at least one director should be resident in Gibraltar. The Board should not be under the dominant influence of a single person or of persons likely to act together. The composition of the Board should not be the same as the Board of any company under management.

- **Systems, Controls and Sub-administration**

The systems and controls within an insurance manager, relating to the insurance business of companies under management, should be the same as those expected in a prudently run insurance company carrying on the type of business as those under management. The procedure for vetting the worthiness of a reinsurer is pertinent to that.

The administration of the companies under management must be carried out, and their up-to-date records maintained, in Gibraltar. That does not preclude “on line” and “real time” connections to computer systems located elsewhere.

An insurance manager should also have available, readily to hand, all information which is properly of interest to the Commissioner of Insurance and the Insurance Supervisor relating to the affairs of the companies under its management; all information necessary to prepare any returns the companies under its management may be required to make pursuant to the Insurance Companies Ordinance and the regulations thereunder; and all information necessary to enable management accounts and statutory accounts to be prepared for the directors of companies under its management.

- **Financial Resources**

Regulations require a licensee to maintain adequate financial resources to meet the commitments of its business and to withstand the risks to which its business is subject.

To comply with that criterion, an insurance manager should maintain at all times an appropriate stock of readily realizable tangible net assets, calculated on a break-up basis, commensurate with the scale of its business.

The terms of the Agreement under which management is carried on will influence the amount required. For example, cash flow and responsibility for

portfolio run-off are important considerations. Without the prior written consent of the Commissioner, such an amount of readily realizable tangible net assets should at no time fall below one-third of total expenditure of the insurance manager during the twelve months immediately preceding the date at which the last financial statements were, or should have been, made up. However, in the event of a material upwards or downwards change in the scale of business since the period covered by those last financial statements, the Commissioner may require, or may approve, an appropriate adjustment to the minimum amount required.

Minimum paid up capital at the time a licence is granted should be £10,000 or an amount equal to one-third of the estimated first year's expenses of the insurance manager, whichever is the greater. It should be free of any lien.

- **Mind and Management**

Mind and Management of an insurance manager must be in Gibraltar. That includes the central management of the insurance manager and the control of companies under management. When considering the question, the Commissioner will have regard to the balance of probabilities of a number of general considerations. These include, inter alia:

- where shareholders meetings are held,
- where the board routinely meets,
- where (and by whom) the strategy is determined,
- where the day to day management decisions are taken,
- where the staff and management responsible for the central administration and control perform their functions,
- where the Commissioner, the Commissioner of Insurance and the Insurance Supervisor, as the case may be, would find management able to answer the full range of questions about the day-to-day running of the insurance manager and the companies under its management,
- whether, and on what terms, other parties are able to commit the company to accept business, and
- what management functions are exercised by other parties or in other jurisdictions.

Such management functions, on behalf of companies under management, as granting of insurance, issuing policies, collecting premiums, paying commissions and brokerage, making claim settlement decisions, quantifying claims reserves, arranging reinsurance protection, paying reinsurance premium, making reinsurance recoveries, and issuing debit and credit notes should all take place from within Gibraltar. The only exception to the foregoing should be when powers are granted to other parties appointed in writing by the insurance manager or by companies under management, provided the activities of such appointed parties are controlled by the insurance manager from within Gibraltar. Bank accounts of the insurance manager, bank accounts relating to the insurance business of companies under management, and safeguarding the assets belonging to companies under management should also be controlled from within Gibraltar.

Records maintained in Gibraltar should capture and record completely, accurately, on a timely basis and in an orderly fashion every transaction or commitment which the insurance manager enters into, either on its own behalf or on behalf of companies under management, with sufficient information to:

- explain its nature and purpose,
- explain any asset and/or liability, actual or contingent, which arises from it,
- explain any income and/or expenditure, current and/or deferred, which arises from it, and
- clearly identify the parties.

An insurance manager must carry on its business from suitable premises in Gibraltar.

- **Professional Indemnity Insurance**

An insurance manager should be covered by adequate Professional Indemnity insurance and/or some other arrangement, agreed in writing by the Commissioner, which has a similar effect.

Such an insurance policy would typically cover, inter alia:

- breach of duty in respect of any negligent act, error or omission or dishonest or fraudulent act or omission,
- libel or slander,
- loss of money or other property arising from fraud or dishonesty by any employee, former employee, director or former director, and
- legal liability resulting from loss of documents, and costs and expenses of restoring and replacing such documents.

The excess or deductible under the policy should not be greater than can be reasonably borne by the financial resources of the insurance manager. In the case of a manager included in an international group policy, with an excess or deductible which does not satisfy that criterion as far as its resources are concerned, alternative arrangements having the required effect would be considered by the Commissioner.

The policy may be on the basis of claims reported during the period of insurance provided the retrospective date is not unreasonably restrictive.

- **Contractual Arrangements with Insurance Company**

An insurance manager must enter into a formal Agreement with insurance companies under its management. The Agreement should describe and govern the relationship between the parties and clearly invest each with their respective functions, duties and responsibilities.

An insurance company licensed under the Insurance Companies Ordinance, and managed by an insurance manager, would be required to show that its Management Agreement covered the following points:

- Power of the manager to act on behalf of and in the name of the principal.
- Acceptance by the principal of actions taken by the manager on its behalf.

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- Provision and maintenance by the manager of appropriately skilled staff.
 - The right of the company under management to approve each year budgets and expenses.
 - A business plan, indicating type and level of business to be written, to be agreed each year.
 - Regular management information reports by the manager to the directors of the company under management that would, inter alia, enable performance to be measured against the business plan.
 - Service of writs etc. on the company under management.
 - Records (including software) to be the property of the company under management and to be handed over by the manager, if required, without delay or charge on termination.
 - Free access to records (including after termination).
 - Submission of returns to, and dealing with queries from, the Commissioner of Insurance and Insurance Supervisor.
 - A requirement that the manager will observe all requirements imposed on the company under management by the Commissioner of Insurance and will make all records available on request.
 - Termination arrangements of the Agreement (notice period sufficient to give company under management time to make alternative arrangements) and provision for portfolio run-off.
 - Confidentiality relating to both parties.
 - Arbitration for the treatment of disputes.
 - Governing law should be the law of Gibraltar.

In addition, the Management Agreement should describe the arrangements agreed upon by the parties in respect of, inter alia, the following matters:

- The scope of duties to be performed by the manager.
 - Exclusivity or otherwise of relationship.
 - Classes and types of business to be transacted.
 - Underwriting limits (before and after reinsurance).
 - Setting of rates, premium, and retentions.
 - Payment of commission and brokerage.
 - Issuance of contracts of insurance.
 - Settlement of claims.
 - Calculation of technical reserves.
 - Appointment and control of agents of the company under management.
 - The powers the insurance manager may, or may not, have to delegate, and appoint other parties to perform, functions.
 - Arranging and administering reinsurance protection and entering into contracts of reinsurance.
 - Rules for the investment of funds belonging to the company under management.
 - Custody of assets.
 - Operation and ownership of bank accounts.
 - Provision of registered office and office facilities.
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- Powers, or otherwise, of the manager, on behalf of the company under management, to borrow money, dispose of assets, incur capital expenditure,

and to enter into any guarantee other than in the normal course of underwriting.

- Accounting arrangements and policies to be adopted including items of expenditure that may and may not be charged to the company under management.
- Treatment of foreign currencies.
- Preparation of accounts of the companies under management for auditing.
- Remuneration of the insurance manager, and method and timing of payment.

Additional Licensing Requirements

In the event that an insurance manager wishes to carry on an activity which is compatible with insurance management but requires management functions which go beyond the competence which can be reasonably expected of an executive officer holding an insurance qualification, a separate licence may be required. For example, an insurance manager may advise the directors of a company under management of appropriate currency matching and maturity dates relating to assets underlying technical reserves, and may also execute specific sale and purchase instructions by such directors. However, it cannot, under an insurance manager's licence, have discretionary powers to manage investments, or give investment advice. "Investments" are defined in Schedule 1 of the Financial Services Ordinance and do not include cash.

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