

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3448 of 7 January, 2005



I ASSENT,

DAVID BLUNT,

ACTING GOVERNOR.

6th January, 2005.



GIBRALTAR

No. 1 of 2005

AN ACT to amend the Financial Services Act 1989 in order to implement into the law of Gibraltar Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation; and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

Financial Services (Insurance Mediation) (Amendment) Act 2004
[No. 1 of 2005]

1.(1) This Act may be cited as the Financial Services (Insurance Mediation) (Amendment) Act 2004.

(2) This Act comes into operation on 15 January 2005.

Insertion of Part V(A).

2. After section 38 of the Financial Services Act 1989, insert—

“PART V(A)

38A. In this Part—

“Directive” means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

“durable medium” means any instrument which enables the customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored.

In particular, “durable medium” covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in the first paragraph of this definition;

“insurance intermediary” means any person who, for remuneration, takes up or pursues insurance mediation (as referred to in paragraph 3 of Schedule 3);

“insurance undertaking” means an undertaking licensed under the Insurance Companies Act;

“large risks” means large risks as defined by Article 5(d) of Directive 73/239/EEC;

“Minister” means the Minister responsible for Financial Services;

“reinsurance intermediary” means any person who, for remuneration, takes up or pursues reinsurance mediation (as referred to in paragraph 3 of Schedule 3);

“reinsurance undertaking” means an undertaking, other than an insurance undertaking or non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member country insurance undertaking or other reinsurance undertakings.

Competent Authority.

38B.(1) The Authority is designated as the competent authority for the purposes of Article 7 of the Directive.

(2) The Authority shall maintain a register of—

- (a) every person who is licensed under section 8 of this Act by virtue of his carrying on a controlled activity which falls within paragraph 3 of Schedule 3. As regards legal persons, the register shall detail the names of the natural persons within the management who are responsible for the mediation business;
- (b) the details of the competent authorities which have been designated under Article 7 of the Directive in each EEA state; and
- (c) information as to each EEA state in which a Gibraltar firm whose right derives from the Directive has established a branch or is providing services.

(3) The register referred to in subsection (2) shall be compiled electronically and kept up to date; and the Authority shall ensure that members of the public are able to access quickly and easily the information on the register.

(4) The validity of the registration of insurance and reinsurance intermediaries shall be subject to regular review by the Authority.

(5) If an insurance or reinsurance intermediary ceases to meet the requirements of this Act, his licence shall be cancelled in accordance with the provisions of this Act and he shall be removed from the register referred to in subsection (2).

Professional requirements.

38C.(1) An insurance or reinsurance intermediary operating in or from within Gibraltar shall be of good repute and, as a minimum, shall have a clean police record in relation to serious criminal offences linked to crimes related to financial services. An insurance or reinsurance intermediary should not have been declared bankrupt, unless he has been rehabilitated under the law of Gibraltar.

(2) An insurance or reinsurance intermediary operating in or from within Gibraltar shall, on a permanent basis—

- (a) hold professional indemnity insurance covering the whole territory of the EEA, or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1,000,000 (or sterling equivalent) applying to each claim and in aggregate EUR 1,500,000 (or sterling equivalent) per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions;
- (b) ensure that money paid by the customer to the intermediary is treated as having been paid to the undertaking, whereas money paid by the undertaking to the intermediary is not treated as having been paid to the customer until the customer actually receives it;
- (c) have financial capacity amounting to 4% of the sum of annual premiums received, subject to a minimum of EUR 15,000 (or sterling equivalent); and
- (d) ensure that customers' money is only transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy.

(3) The Minister may, by regulations, add to the requirements set out in subsection (1).

(4) Insurance undertakings shall use the insurance and reinsurance mediation services only of insurance and reinsurance intermediaries who are licensed under section 8 and of the persons referred to in paragraph 3(3)(a) of Schedule 3.

Requirements for providing insurance mediation in Gibraltar and other EEA states: duties of the Authority.

38D.(1) An insurance or reinsurance intermediary licensed in Gibraltar under section 8 of this Act who wishes to provide his services or open an establishment in another EEA state shall inform the Authority, and the Authority shall, within one month, inform the competent authority of that other EEA state, if that other EEA state wishes to know of the fact, and shall at the same time inform the intermediary concerned.

(2) An insurance or reinsurance intermediary authorised in another EEA state under the terms of the Directive wishing to provide services or open an establishment in Gibraltar may do so one month after notification by the competent authority of that other EEA state to the Authority that the intermediary concerned desires to do so.

(3) The Authority shall notify the Commission of the European Communities of its wish to be informed of an intermediary from another EEA state desiring to carry on business in Gibraltar.

Exchange of information between EEA states.

38E.(1) The Authority shall take steps to co-operate with another competent authority which has been designated under Article 7 of the Directive in any EEA state.

(2) In particular, the Authority shall exchange information with the competent authorities referred to in subsection (1) if an insurance or reinsurance intermediary has been subject to a sanction in the event of a failure to comply with a provision of this Act and such information is likely to lead to his removal from the register referred to in section 38B(2).

(3) Co-operation may include the sharing of information which the Authority would not be prevented from disclosing. The limitations of the Insurance Companies Act in respect of the disclosure of information shall apply in relation to insurance and reinsurance intermediaries.

Complaints.

38F.(1) Customers and other interested parties may make complaints about insurance and reinsurance intermediaries to the Consumer Protection Office of the Government, or such other person or entity as the Minister may designate by regulations (the “complaints authority”).

(2) The complaints authority shall register and reply to any complaint received in relation to insurance and reinsurance intermediaries.

(3) The Minister may make rules which set out the procedure for reference of complaints and for their investigation, consideration and determination by the complaints authority.

(4) Insurance and reinsurance intermediaries shall ensure that they have adequate mechanisms for receiving and dealing with complaints.

Information requirements.

38G.(1) Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:

- (a) his identity and address;
- (b) the register in which he has been included and the means for verifying that he has been registered;
- (c) whether he has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;
- (d) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the insurance intermediary; and
- (e) the procedures referred to in section 38F allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries.

(2) An insurance intermediary operating in or from within Gibraltar shall inform the customer, concerning the contract that is provided, whether—

- (a) he gives advice based on the obligation in subsection (3) to provide a fair analysis; or
- (b) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request provide the names of those insurance undertakings; or
- (c) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in subsection (3) to provide a fair analysis. In that case, he shall, at the customer's request provide the names of the insurance undertakings with which he may and does conduct business,

and in those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.

(3) When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

(4) Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product, according to the complexity of the insurance contract being proposed.

(5) The information referred to in subsections (1) to (4) need not be given when the insurance intermediary mediates in the insurance of large risks.

(6) All information to be provided to customers in accordance with this section shall be communicated—

- (a) on paper or on any other durable medium available and accessible to the customer;
- (b) in a clear and accurate manner, comprehensible to the customer; and
- (c) in English or any other language agreed by the parties,

but the information may be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be provided to the customer in accordance with subparagraphs (a) to (c) immediately after the conclusion of the insurance contract.

(7) In the case of telephone selling, the information given to the customer under this section shall be in accordance with Community rules applicable to the distance marketing of consumer financial services and shall be provided to the customer immediately after the conclusion of the insurance contract.”.

Amendment of Schedule 3.

3. In Schedule 3 to the Financial Services Act 1989, for paragraph 3 substitute—

“Insurance and Reinsurance Mediation.

3.(1) Carrying out, for remuneration, any one or more of the following activities—

- (a) introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance or reinsurance;
- (b) concluding contracts of insurance or reinsurance;
- (c) assisting in the administration and performance of contracts of insurance or reinsurance, in particular in the event of a claim.

(2) However, the following activities shall not be considered as insurance or reinsurance mediation—

- (a) the activities detailed in subparagraphs 3(1)(a) to (c) when undertaken by an insurance or reinsurance undertaking or an employee of an insurance or reinsurance undertaking who is acting under the responsibility of the insurance or reinsurance undertaking;
- (b) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of the activity is not to assist the customer in concluding or performing an insurance or reinsurance contract;
- (c) claims management, expert appraisal of claims or loss adjusting on behalf of an insurance or reinsurance undertaking.

(3) Paragraph 3(1) does not apply to—

- (a) persons providing mediation services for insurance contracts where the mediation concerned meets all of the conditions of subparagraphs (i) to (vi)—
 - (i) the insurance contract only requires knowledge of the insurance cover that is provided;
 - (ii) the insurance contract is not a life assurance contract;
 - (iii) the insurance contract does not cover any liability risks;
 - (iv) the principal professional activity of the person is other than insurance mediation;
 - (v) the insurance is complementary to the product or service supplied by any provider, where such insurance covers—
 - (aa) the risk of breakdown, loss of or damage to goods supplied by that provider, or
 - (bb) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is

ancillary to the main cover for the risks linked to that travel; and

- (vi) the amount of the annual premium does not exceed EUR 500 (or sterling equivalent) and the total duration of the insurance contract, including any renewals, does not exceed five years; and
- (b) insurance and reinsurance mediation services provided in relation to risks and commitments located outside the EEA.”.

Amendment of section 44

4. In section 44(1) of the Financial Services Act 1989—

- (a) in subparagraph (h), omit “or”; and
- (b) in subparagraph (i), after “authorisation” insert—
“;or
- (j) under Part V(A) of this Act”.

Amendment of Financial Services (Licensing) Regulations 1991.

5. In Schedule 1 of the Financial Services (Licensing) Regulations 1991—

- (a) in relation to class II(b), for “Life Assurance and Collective Investment Scheme Intermediary” substitute “Collective Investment Scheme Intermediary”;
- (b) in relation to class VI—
 - (i) in column 1, for “Acting as an Insurance agent or broker” substitute “Insurance or reinsurance mediation”;
 - (ii) in column 2, for class “VI”, substitute class “VI(a)” and “VI(b)”;
 - (iii) in column 3, for “Insurance broker” substitute—

Financial Services (Insurance Mediation) (Amendment) Act 2004
[No. 1 of 2005]

- (aa) “General Insurance Intermediary”, in relation to new class VI(a); and
- (bb) “Life Assurance Intermediary”, in relation to new class VI(b).

Amendment of Financial Services (Fees) Regulations 1991.

6.(1) In Part 1 of Schedule 1 of the Financial Services (Fees) Regulations 1991—

- (a) in the description of class II(b), “Life Assurance and” is omitted;
- (b) in the description of class VI(a), for “Insurance Broker” substitute “General Insurance Intermediary”; and
- (c) in the description of class VI(b), for “Insurance Agent” substitute “Life Assurance Intermediary”.

(2) In Part 2 of Schedule 1 of the Financial Services (Fees) Regulations 1991, after Note 4 insert—

“Note 5. Where the Class VI(a) licensed activity is restricted to acting as an insurance agent the licence fee will be £2,500.

Note 6. Where the Class VI(a) or VI(b) licensed activity is restricted to assisting in the administration and performance of contracts of insurance in the event of a claim the licence fee will be £2,500.”.

Passed by the Gibraltar House of Assembly on the 22nd day of December, 2004.

D J REYES,

Clerk to the Assembly.

Financial Services (Insurance Mediation) (Amendment) Act 2004
[No. 1 of 2005]

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