
FINAL NOTICE

To: David William King

Address: 70 Wyatts Green Lane
Wyatts Green
Brentwood
Essex
CM15 0PY

Date: 4 June 2007

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (“the FSA”) gives you, Mr David William King (“Mr King”), final notice about a decision to make a prohibition order.

THE ORDER

The FSA gave you, Mr King, a Decision Notice dated 4 June 2007 (the “Decision Notice”) which notified you that the FSA had decided, pursuant to section 56 of the Financial Services and Markets Act 2000 (“the Act”), to make an order (“a prohibition order”) prohibiting you from:

- (a) carrying out any controlled function involving the exercise of significant influence (as defined in the FSA's Supervision Handbook at 10.5.1G) over any person; and

- (b) performing any function involving the exercise of management authority over any person including, but not limited to, being a controller (as defined in section 422 of the Act)

in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

You have confirmed that you will not be referring the matter to the Financial Services and Markets Tribunal.

Accordingly, for the reasons set out below and having agreed with you the facts and matters relied on, the FSA hereby makes an order, pursuant to section 56 of the Act, prohibiting you from (a) carrying out any controlled function involving the exercise of significant influence (as defined in the FSA's Supervision Handbook at 10.5.1G) over any person; and (b) performing any function involving the exercise of management authority over any person including, but not limited to, being a controller (as defined in section 422 of the Act) in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

REASONS FOR THE ORDER

1. Introduction

- 1.1 At all material times since 2002 Mr King has been the President and Joint Managing Director of Centennial Insurance Company AVV SA trading as 'CIC Insurance Company AVV of Costa Rica', 'CIC AVV SA' and 'CIC AVV' (hereafter referred to as 'CIC Costa Rica').
- 1.2 CIC Costa Rica is not, and never has been, authorised to carry on insurance business in the United Kingdom. It is not authorised or permitted to carry on insurance business in or from Costa Rica. At all material times it has purported to carry on business as an insurance company from an office in Amman, Jordan. However, CIC Costa Rica is not registered in Jordan and is accordingly not permitted to operate as an insurance company from Jordan.
- 1.3 From 1 September 2003, at the latest, Mr King held himself out as, and represented himself to be, the President and/or Chairman of CIC Insurance Company SA ('CIC Greece'). Further from 1 November 2003, at the latest, Mr King represented that CIC Greece had been successfully incorporated in Greece by the Hellenic Ministry of Development on 28 August 2003 and had been authorised by the Greek Ministry on 1 September 2003 to transact general insurance business throughout the European Union with effect from that date.
- 1.4 In fact CIC Greece was never incorporated in Greece much less was it ever authorised by any Greek authority to conduct insurance business in Greece or anywhere else. Leaving aside the fact that CIC Greece does not exist, and has

never existed as a company, it is not and has never been authorised to carry on any regulated activity in the United Kingdom.

- 1.5 Notwithstanding the foregoing, between April 2003 and December 2003 (when the FSA intervened to put a stop to the activities or purported activities of CIC Costa Rica and CIC Greece) CIC Costa Rica and CIC Greece carried on or purported to carry on the regulated activities of effecting and carrying out contracts of insurance as principal in the United Kingdom without authorisation. Through their underwriting agents, Firm A and Firm B, CIC Costa Rica and/or CIC Greece effected or purported to effect just under 1,800 policies of insurance in the United Kingdom, generating gross premium of approximately £4.5 million of which CIC Costa Rica and/or CIC Greece received a net amount of approximately £2.6 million.
- 1.6 The activities or purported activities of CIC Costa Rica and CIC Greece constituted breaches of the general prohibition. Mr King was involved in the activities or purported activities of CIC Costa Rica and CIC Greece and he was involved in conducting regulated activities in breach of the general prohibition. Mr King benefited personally from the unlawful activities of CIC Costa Rica and CIC Greece in breach of the general prohibition. He received 5% of all gross premium written by Firm A, amounting to approximately £55,000, and he received approximately £40,000 by way of commission on business written by Firm B.
- 1.7 By contrast policyholders who were issued with policies which were effected or purported to have been effected with CIC Costa Rica or CIC Greece were exposed to the very serious risk that legitimate claims under such policies would not be met either because there was no cover in place at all (as was the case as regards CIC Greece) or because the insurer did not have liquid assets with which to pay claims (as was the case as regards CIC Costa Rica).
- 1.8 Mr King's conduct poses a serious risk to consumers and to the financial system in general. His conduct was below the standards of competence and capability and honesty, integrity and reputation required of a participant in the insurance industry.
- 1.9 The business which CIC Costa Rica and/or CIC Greece wrote or purported to write in the United Kingdom included compulsory employer's liability insurance. By section 1 of the Employers' Liability (Compulsory Insurance) Act 1969 ('the 1969 Act') an employer carrying on business in the United Kingdom is required to purchase and maintain insurance under an approved policy with an authorised insurer or insurers against liability for bodily injury or disease sustained by its employees. An authorised insurer is defined in the 1969 Act as a person who has permission under the Act to effect and carry out contracts of insurance of a kind required by the 1969 Act or an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to the Act which has permission under paragraph 15 of that

Schedule to effect and carry out contracts of insurance required by the 1969 Act. Neither CIC Costa Rica nor CIC Greece was an authorised insurer for the purposes of the 1969 Act. By insuring or purporting to insure employers in the United Kingdom, CIC Costa Rica and CIC Greece put such employers in breach of the 1969 Act and exposed them to the risk of prosecution.

- 1.10 Mr King could and/or should have known that Firm A and/or Firm B were writing or purporting to write employers' liability insurance on behalf of insurers who were not authorised for the purposes of the 1969 Act. By failing to prevent this from happening, Mr King seriously undermined consumer's confidence in the insurance market and failed to demonstrate the competence and capability and honesty, integrity and reputation required of a person participating in the insurance industry.
- 1.11 On 26 November 2004, the Minister of Alberta Finance issued an Order directing CIC Costa Rica to cease, from either directly or indirectly, carrying on insurance business in Alberta on the grounds that it was conducting unauthorised insurance activity in Alberta.
- 1.12 In 2005 the Superintendent of Insurance with the Financial Institutions Commission, Ministry of Finance, Province of British Columbia ("the Superintendent") issued a 'Cease and Desist Order' preventing CIC Costa Rica from carrying out insurance business in British Columbia. On 19 May 2005 Mr King, in his capacity as President and Joint Managing Director of CIC Costa Rica, signed a personal undertaking, along with other principals of CIC Costa Rica, to the Superintendent. Mr King (and others) subsequently breached that undertaking. The Superintendent ordered Mr King to pay an administrative penalty of \$25,000, the maximum penalty which could be imposed upon an individual.
- 1.13 Mr King's reputation is below the level required of a participant in the insurance industry. He has failed to meet the standards of competence and capability and honesty, integrity and reputation required of a participant.
- 1.14 In the circumstances Mr King is not a fit and proper person to
 - (a) carry out any controlled function involving the exercise of significant influence (as defined in the FSA's Supervision Handbook at 10.5.1G) over any person; and
 - (b) perform any function involving the exercise of management authority over any person including, but not limited to, being a controller (as defined in section 422 of the Act)

in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm. Accordingly, the FSA proposes to make a prohibition order against Mr King in those terms.

- 1.15 In deciding to take the proposed action, the FSA has taken into account that Mr King was open and co-operative with the FSA during the course of its investigation, in particular Mr King substantially assisted the FSA with the refund of premia to policyholders.

2. Relevant Statutory Provisions

- 2.1 The FSA is authorised by the Act to exercise the following powers:

Section 56 of the Act provides as follows

- ‘(1) Sub-section (2) applies if it appears to the [Financial Services] Authority that an individual is not a fit and proper person to perform functions in relation to a regulated activity carried on by an authorised person.*
- (2) The Authority may make an order (‘a prohibition order’) prohibiting the individual from performing a specified function, any function falling within a specified description or any function.*
- (3) A prohibition order may relate to–*
- (a) a specified regulated activity, any regulated activity falling within a specified description or all regulated activities;*
- (b) authorised persons generally or any person within a specified class of authorised person.’*

3. Relevant Guidance

- 3.1 In deciding to take the action proposed, the FSA has had regard to guidance published in the FSA Handbook. The relevant guidance is set out at Appendix 1 of this Notice.

4. Facts and Matters Relied On

(1) CIC Costa Rica

- 4.1 Mr King has been the President and Joint Managing Director of CIC Costa Rica since it was set up in or about 2002. He is also a 34% shareholder in the company. Although CIC Costa Rica was incorporated in Costa Rica it is not, and never has been, authorised to carry on insurance business there. The insurance

industry in Costa Rica is a government monopoly and no private companies are permitted to operate. CIC Costa Rica purports to operate from an office in Amman, Jordan. However, CIC Costa Rica is not registered with the Jordanian Companies' House at the Ministry of Industry and Trade and is accordingly not permitted to operate from Jordan.

- 4.2 CIC Costa Rica's balance sheet for the year to 30 September 2004 showed tangible assets of just under US\$63 million, cash of US\$3.14 million, notes receivable of US\$2 million and accounts receivable of US\$859,395. The tangible assets purport to be comprised of gemstones and corporate bonds. The gemstones are said to be rubies and sapphires which were irrevocably assigned to CIC Costa Rica. The gemstones are said to be held in vault in New Orleans, Louisiana, and they were allegedly valued by an individual purportedly from the Gemological Institute of America ('the GIA') on 22 November 2002. The corporate bonds are said to be bonds issued by a company called Compania de Desarrollo l'EI Triangulo SA ('Compania de Desarrollo') and they are said to be collateralised by land owned by that company in Costa Rica.
- 4.3 So far as the FSA can establish there is no record of the purported valuer with the GIA. The validity of the valuation apparently provided by him must therefore be in doubt. The accounts of Costa Rica give no information as to the location of the land which is said to be security for the bonds, its value or the enforceability of any bond. Mr King himself has never seen the gemstones and is reliant purely upon what he has been told by others as to their existence, location and value. Similarly Mr King has not seen the land which forms the security for the bonds issued by Compania de Desarrollo and he has made no inquiries as to its existence, location or value.
- 4.4 In the circumstances the FSA has concerns whether CIC Costa Rica is properly capitalised or has suitable forms of capital in terms of quality, liquidity and valuation which will enable it to absorb significant unforeseen losses let alone pay ordinary foreseeable claims. As the President of an insurance company offering or purporting to offer policies of insurance to consumers it was incumbent upon Mr King to undertake due diligence to satisfy himself that the company of which he was President had sufficient assets in terms of quality, liquidity and value to honour the financial commitments which it was purporting to undertake. There is no evidence that Mr King took adequate steps to do so. He allowed or permitted CIC Costa Rica to carry on insurance business in circumstances where he could not have known whether the company would be able to pay claims. The Superintendent of Financial Institutions for the Province of British Columbia has informed the FSA that there are a number of claims against CIC Costa Rica which remain outstanding.

(2) CIC Greece

- 4.5 From about the beginning of 2003 Mr King and others attempted to establish an insurance company in Greece. Mr King's initial plan was to take over a Greek insurance company, which was in receivership and no longer active. He received advice in this regard from his Greek attorney. However, this plan was doomed from the start because the Greek insurance company had been put into compulsory liquidation by the Greek Ministry of Development for violating Hellenic rules and regulations and it could not therefore re-commence carrying on insurance business.
- 4.6 By letters dated 27 June 2003 and 23 July 2003 CIC Costa Rica, through its Greek attorney, submitted an application to the Greek Ministry of Development for permission to establish a branch office in Greece as a company originating from a third country. This application was refused because under Greek law it is prohibited for an offshore company in a third country to establish an insurance company in Greece. In order to establish a branch in Greece the applicant has to operate as an insurance company in its home state and to have obtained a licence from that state to open a branch in a third state. On 6 August 2003 the Ministry of Development informed CIC Costa Rica's Greek attorney that the application had been rejected.
- 4.7 On 1 September 2003 CIC Greece submitted an application to be established as a legal entity in Greece with a licence to carry out insurance business in Greece. The application was accompanied by articles of association for the intended company and by a business plan on behalf of CIC Greece. The application on behalf of CIC Greece was considered by the Insurance Committee on 19 December 2003. The Committee decided to postpone its decision until its next meeting and at that meeting on 23 January 2004 the Committee decided to reject the application on behalf of CIC Greece. Under Greek law, an application for an insurance licence must be made at the same time as an application to permit the establishment of a company. A company cannot be formed and then be granted an insurance licence. It follows that the effect of the decision of the Insurance Committee to reject the application on behalf of CIC Greece was that CIC Greece was never licensed to carry out insurance business in Greece and was never even established as a company in Greece. CIC Greece has never existed as a legal entity.

(3) Representations by Mr King about CIC Greece

- 4.8 In spite of the fact that CIC Greece has never existed as a legal entity, much less been licensed to conduct insurance business in Greece, and even much less been passported into the United Kingdom pursuant to the provisions of Schedule 3 of the Act and the Single Market Directives, Mr King has represented to third parties that CIC Greece is a properly constituted company which is licensed to carry out insurance business in Greece and that he is the President of CIC Greece. Mr King has further represented that CIC Greece is authorised to carry on insurance

business in the European Union and, in particular, in the United Kingdom. The FSA will rely upon the following facts and matters.

(a) At a meeting on 15 May 2003 attended inter alia by Mr King and two other individuals on behalf of CIC Greece and the Managing Director of Firm C, Mr King or alternatively one of the other individuals (in the presence of Mr King and with his implicit approval) represented as follows:

- '(1) Status CIC: Protocol nos x2 given by Greek authorities, Greek lawyer has informed them that they can start underwriting anywhere in EU.*
- (2) Shares to transfer fully within 10 days.*
- (3) Certificates of classes to come by fax, applications to trade in each EU country (establishment) to come by fax. Both from lawyer.*
- (4) Centennial capital/assets of US\$45 million to back into CIC.*
- (5) D&T to start on opening balance sheet to start after final paper work in 10 days.*
- (6) Board composition to be agreed. First Board meeting post 11 June on return to UK of Richard Whitney.'*

(b) By an underwriting agency agreement signed on 1 July 2003 on behalf of CIC Greece, with (it is to be inferred) the knowledge and approval of Mr King, and on behalf of Firm B on 7 (alternatively 21) July 2003 (the "Firm B Contract", see paragraph 4.17 below), CIC Greece authorised Firm B, subject to confirmation of full EU licensing by the Hellenic Ministry of Development, with effect from 1 July 2003 to bind insurance contracts for the account of CIC Greece within the United Kingdom and Ireland within the following classes of business namely contractors all risks ("CAR") insurance (as single contracts or as part of a commercial combined package that might include employers' liability risks) and contractors combined insurance (as single contracts or as part of a commercial combined package that might include employers' liability risks) in both cases for risks situated in the United Kingdom and Ireland.

(c) By an email dated 31 August 2003 to a number of individuals, Mr King stated as follows

'We are now completed in our application to obtain a new licence as a Greek Company and, as of the 1st September 2003, CIC Insurance Company SA is authorised to underwrite Insurance and Reinsurance risks in Greece and all other European States, subject to advice from the Hellenic Ministry of Development to each member State of our intention to provide services in their territories.'

- (d) By a letter, dated 1 September 2003 and addressed 'to whom it may concern', on the headed paper of CIC Greece and signed by Mr King as President of CIC Greece, Mr King represented as follows

'This letter is to confirm that we, CIC Insurance Company SA have given our authority to [Firm B], to act as our agent to underwrite insurance business on our behalf.

Accordingly, we are pleased to confirm that we meet all claims covered by our policies issued by the above named agency in our name.

We hereby confirm that if there are any changes to the authority granted to our agent, we will notify you in writing of such changes as soon as reasonably possible.'

- (e) By a fax message to the Managing Director of Firm B, on the headed paper of CIC Greece and dated 19 September 2003, Mr King, in his capacity as President of CIC Greece, stated as follows in relation to the CAR account which was the subject of the underwriting agency agreement between CIC Greece and Firm B as outlined above

'I write further to our meeting yesterday and we are pleased to see that this account is moving forward.

In order to get a better feeling for the workings of this contract, would you arrange for a bordereaux to be emailed to us for risks accepted to date. You will appreciate that this is a new class of business to us and it will assist us if we can establish the method of reporting and accounting before we get too far down the road.

We understand that the business for August was written on behalf of our overseas Company and a copy of the risk details would be helpful in completing the records of our Amman, Jordan office. We will of course arrange for a copy of this bordereaux to be signed, Stamped and returned to you for your records.'

- (f) By an email dated 30 September 2003 to the Managing Director of Firm C Mr King stated as follows

'...as promised I attach a copy of the English translation of the articles of incorporation of CIC Insurance Company – General Insurances SA

I have in my possession the original Greek issue, together with all the Hellenic Government stamps, confirming our incorporation as a Greek Insurance Company'

- (g) By an Underwriting Agency Agreement signed on 1 October 2003 by Mr King on behalf of CIC Greece and purporting to be a Director of CIC Greece and on behalf of Firm C (the "Firm C Contract", see paragraph 4.19 below), CIC Greece authorised or purported to authorise Firm C and another related firm as its underwriting agents to bind insurance policies on its behalf including employers' liability policies with effect from 1 October 2003 as regards countries in the European Union.
- (h) Further, at a meeting on 1 October 2003 attended inter alia by Mr King and another individual on behalf of CIC Greece and representatives of Firm C on 1 October 2003 Mr King or alternatively the other individual representing CIC Greece (in the presence of Mr King and with his implicit approval) represented as follows:
- ‘4) *It had been confirmed that the Greek authorities had written in August to FSA (UK). The Greek Authorities were ready to issue or had issued the relevant certificates to CIC lawyers in Athens. [Mr King] was going to Athens and would bring them back with him.*
- 5) *That CIC was in fact able to write in the UK since early September and that no problem giving full authority to Asset to [underwrite] EU insurances on behalf of CIC in London and Paris from 1/10/03. The Agency Agreement was signed on this basis.’*
- (i) By a Report on the headed paper of CIC Greece, in the name of Mr King and dated 1 November 2003, and purporting to be a report from the Chairman of CIC Greece, the Report stated as follows:

‘It gives me a great deal of pleasure to report the progress we have made during the past year.

In my last report, I wrote that it was our aim to purchase a Greek licensed Insurance Company, to be operated in association with CIC [Costa Rica].

Unfortunately, after much deliberation and the considerable assistance we received from our lawyers in Athens and the Hellenic Ministry of Development, such a purchase was deemed impractical. However, our business plan and actuarial report having been submitted to the Hellenic Ministry of Development and accepted encouraged us to submit an application for a new licence.

We are now pleased to report that CIC Insurance Company – General Insurances SA was successfully incorporated and licensed to transact general insurance business on the 28th August 2003.

The initial paid up capital of the new CIC insurance Company SA is €5,000,000, but this will shortly be increased to €50,000,000.’

- (j) By a further document dated 1 November 2003 and headed 'CIC Insurance Company – General Insurances SA' it was represented as follows:

'We are pleased to announce that on 28th August 2003 the Company was incorporated by The Hellenic Republic Ministry of Development, (Contract #5.390). The authorisation to transact insurance business throughout the EU was granted by the Greek Ministry on 1st September 2003.

Share Capital

The initial paid up share capital is Euros 5,000,000 but an infusion of a further amount of Euros 45,000,000 will be made within the near future.

Registered Office

The registered office of the Company is as follows ...

Management Structure

The Board of Directors of the Company is as follows:

Richard Aldon Whitney - Chief Executive

David William King – President

...'

- 4.9 The representations made by Mr King as to the existence of CIC Greece and as to its authorisation to carry out insurance business in either Greece or anywhere else were incorrect. Given that CIC Greece never in fact existed as a legal entity it is to be inferred that Mr King could and/or should have known that the representations made by him were incorrect or alternatively he was reckless as to their truth or correctness. Alternatively, and at the very least, Mr King failed to carry out any or any adequate due diligence to establish whether the representations which he was making were correct and/or whether there were reasonable grounds to support them. Mr King could easily have verified the veracity of the representations made by him by speaking to someone in authority at the Hellenic Ministry of Development. He failed to do so. Instead he made incorrect statements about the existence of CIC Greece and its authorisation to effect and carry out contracts of insurance with the ultimate consequence that consumers were induced to enter into contracts, which purported to be lawful contracts of insurance, with a company which did not exist and was therefore incapable of paying claims. Such conduct represents a serious threat to consumers and poses a serious risk to consumers' confidence in the financial system in the future. On any view it is conduct which is far below the standards of competence or capability and honesty, integrity and reputation to be expected of a professional participating in the insurance industry.

4.10 Yet further (and regardless of any representations made by Mr King about CIC Greece and/or its authorisation, as a person purporting to be the President and a Director of CIC Greece) it was incumbent upon him personally to satisfy himself that at all relevant times CIC Greece was properly formed under Greek law and duly authorised or licensed to carry out insurance business wherever it was proposing to do so. Mr King failed to do so. Had he conducted appropriate inquiries Mr King could and/or should have known that CIC Greece never existed at any time. At the very least he shut his eyes to the fact that it never existed. In terms of competence and capability and honesty, integrity and reputation his conduct fell far short of the standards expected of a professional participating in the insurance industry.

(4) The First Firm A Underwriting Agreement (the "First Firm A Contract")

4.11 On 1 March 2003, CIC Costa Rica entered into a slip contract with Firm A, which authorised Firm A to accept insurance business on its behalf with insureds domiciled or operating in the United Kingdom. The authority was expressed to take effect from 1 March 2003 and authorised Firm A, in accordance with agreed Guidelines and Terms and Conditions, to accept property damage, liability and business interruption insurance in respect of all classes of takeaway and restaurant businesses and retail shops excluding licensed premises. The First Firm A Contract imposed limits in respect of the cover which Firm A was authorised to accept. In respect of employers' liability business, the limit was £10 million for any one loss but unlimited in any one year. In addition to being authorised to accept business, Firm A was authorised to market and receive submissions, proposals and applications for registration on behalf of CIC. Further Firm A was authorised to settle uncontested indemnifiable claims up to £2,500 without prior reference to CIC Costa Rica. Firm A was required to produce to CIC Costa Rica two bordereaux within seven days of the end of each and every calendar month. The bordereaux in respect of liability business were to detail (inter alia) the gross premium, commission, insurance premium tax and the net amount due to CIC Costa Rica.

4.12 The First Firm A Contract authorised Firm A to effect and carry out contracts of insurance on behalf of CIC Costa Rica in the United Kingdom. However, CIC Costa Rica was not authorised to effect and carry out contracts of insurance in the United Kingdom. With effect from April 2003 Firm A proceeded to effect and carry out of contracts of insurance in the United Kingdom on behalf of CIC Costa Rica pursuant to the First Firm A Contract. This constituted a breach of the general prohibition by CIC Costa Rica.

4.13 Mr King knew that CIC Costa Rica was not authorised to effect and carry out contracts of insurance in the United Kingdom. Further he knew that it was illegal for an offshore insurer, which was not authorised to effect and carry out contracts of insurance in the United Kingdom, to conduct such activities through an underwriting agent in the United Kingdom. Mr King knew of the existence, terms

and nature of the First Firm A Contract. Mr King took did not take adequate steps to prevent Firm A acting as an underwriting agent for CIC Costa Rica in the United Kingdom. Despite his knowledge of the First Firm A Contract he took no steps to terminate the agreement. On the contrary he accepted a 5% commission on all business written by Firm A in the United Kingdom pursuant to the First Firm A Contract. In the circumstances Mr King was involved in conducting regulated activities (namely the effecting and carrying out of contracts of insurance in the United Kingdom) in breach of the general prohibition.

- 4.14 Mr King could and/or should have known that, pursuant to the terms of the First Firm A Contract, Firm A was authorised to write employer's liability business on behalf of CIC Costa Rica in the United Kingdom. On any view CIC Costa Rica could never have been an authorised insurer for the purposes of section 1 of the 1969 Act and as defined therein. By implicitly permitting and/or facilitating the writing of employers' liability cover with CIC Costa Rica, Mr King exposed policyholders who were purchasing such cover in the belief that they were obtaining cover which was compliant with the 1969 Act, to the risk of prosecution under the 1969 Act. Such conduct seriously undermines the confidence which consumers can have in the insurance market.

(5) The Second Firm A Underwriting Agreement (the "Second Firm A Contract")

- 4.15 By an underwriting agency agreement signed on behalf of CIC Costa Rica on 1 July 2003, with (it is to be inferred) the knowledge and approval of Mr King, and on behalf of Firm A on 6 August 2003, Firm A was authorised, subject to confirmation of full EU licensing by the Hellenic Ministry of Development, to bind insurance contracts in the United Kingdom for the account of CIC Greece with effect from 1 July 2003, to sign insurance contracts, certificates and endorsements, to administer the insurance contracts so bound and to settle claims thereunder. The Second Firm A Contract was expressed to supersede the First Firm A Contract. By clause 2 of the Second Firm A Contract authority to bind contracts of insurance was limited to two named individuals of Firm A. The classes of business which Firm A was authorised to bind on behalf of CIC Greece included property damage, liability and business interruption and the maximum limit of liability for employers' liability risks was £10 million for any one risk.
- 4.16 Even if (which is denied) Mr King thought that CIC Greece was incorporated and licensed by the Greek Ministry of Development to transact general insurance business with effect from 28 August 2003, he could never have believed that it existed as at the beginning of July 2003 much less that CIC Greece was in position to authorise underwriting agents to underwrite insurance business on its behalf in the United Kingdom as at that date. In spite of this Mr King did not take steps to terminate the authority granted to Firm A pursuant to the First and Second Firm A Contracts although he could and/or should have known that Firm A was purporting to write insurance business on behalf of CIC Greece pursuant to it, or

to alert persons, who had been issued by Firm A with what purported to be policies of insurance underwritten by CIC Greece, to the fact that they had no cover at all. On the contrary, Mr King implicitly permitted Firm A to continue to operate the underwriting agency agreement as agent for a non-existent company and accepted a 5% commission on all gross premium written by Firm A.

(6) Firm B Underwriting Agency Agreement (the "Firm B Contract")

4.17 The terms of the Firm B Contract have been summarised at paragraph 4.8(b) above. The Firm B Contract was made in July 2003 and by it Firm B, subject to confirmation of full EU licensing by the Hellenic Ministry of Development, was authorised with effect from 1 July 2003 to bind contractors' insurance contracts (including employers' liability cover) for the account of CIC Greece within the United Kingdom and Ireland.

4.18 Whatever Mr King subsequently came to believe about the status of CIC Greece, he could never have reasonably believed that CIC Greece existed as a legal entity as at the date of the Firm B Contract. In spite of this he did not take steps to terminate the underwriting agency agreement despite the fact that he could and/or should have known that Firm B was purporting to issue policies of insurance pursuant to it and he did not take steps to alert consumers of the risks which were being posed to them by the continued existence of the underwriting agency agreement.

(7) Firm C Underwriting Agency Agreement (the "Firm C Contract")

4.19 The terms of the Firm C Contract have been summarised at paragraph 4.8(g) above. The Firm C Contract was made on 1 October 2003 by Mr King on behalf of CIC Greece and Firm C. Pursuant to the Firm C Contract CIC Greece authorised or purported to authorise Firm C and another related firm as its underwriting agents to bind insurance policies on its behalf including employers' liability policies with effect from 1 October 2003 as regards countries in the European Union.

4.20 On 14 November 2003 Firm C informed a representative of CIC Greece's management company that Firm C was arranging alternative cover for all policies which had been issued by it in the name of CIC Greece. Firm C was then advised by email on behalf of CIC Greece to cease and desist from '*representative marketing of CIC Greece*' until its status was confirmed. By an email dated 14 November 2003 Firm C then informed a representative of CIC Greece that Firm C had issued notices of cancellation on all policies issued by it on behalf of CIC Greece because of its concern in relation to compliance issues concerning CIC Greece. Firm C also advised that it was proposing to write to the FSA to explain the position. By letter dated 28 November 2003 on the headed paper of CIC Greece Mr King wrote to Firm C as follows:

'Underwriting Agreement

Kindly accept this letter as formal confirmation that the agency agreement you have with this Company dated 1st October 2003 was suspended with effect from 17th November 2003.

As such you appreciate that you are not authorised to underwrite any business on behalf of the Company until further notice.

I would like to thank you for your co-operation to date in the various underwriting matters in which you have been involved. ...'

- 4.21 Although Mr King suspended the Firm C Contract with effect from 17 November 2003, he did not take similar action in relation to the First and Second Firm A Contracts and the Firm B Contract which remained in force between CIC Greece and Firm A and CIC Greece and Firm B respectively. On the contrary Mr King permitted both Firm A and Firm B to continue to bind policies on behalf of CIC Greece even though it had been specifically drawn to his attention that CIC Greece was not authorised to effect and carry out insurance contracts in the United Kingdom.

(8) Insurance business effected by Firms A, B and C

Firm A

- 4.22 Firm A effected or purported to effect physical damage contracts of insurance on behalf of CIC Greece from the beginning of April 2003. It purported to effect employers' liability contracts of insurance on behalf of CIC Greece from the end of April 2003. Firm A supplied Mr King with regular bordereaux of business written by Firm A on behalf of CIC Greece, alternatively CIC Costa Rica including the following:
- (a) By an email dated 4 August 2003 Firm A supplied Mr King with bordereaux of claims paid and a bordereaux of risks written. The bordereaux of risks started with policies whose inception date was 1 February 2003. These policies bore a file number beginning with the letters 'AG' indicating that the policy was underwritten by Arab German Insurance Company. All policies incepting up to and including 30 March 2003 also bore a file number beginning with the letters 'AG'. Of the policies written thereafter, approximately 320 in number, only 3 bore the letters 'AG'. The remainder bore the letters 'CC'. It is to be inferred that Firm A had purported to effect these policies with CIC Greece. The bordereaux of risks listed for each risk insured, inter alia, the inception date, the premium excluding employers' liability premium, the employers' liability premium, the total premium and the insurance premium tax. In each case, as was to be expected, the total premium represented the sum of

the premium excluding employers' liability insurance and the employers' liability premium. The total premium on the bordereaux was £375,972.06. From this total Firm A was entitled to deduct 30% commission pursuant to the terms of the First and Second Firm A Contracts. The covering email dated 4 August 2003 stated that the total premium due to CIC was £281,887.12. It is the FSA's view that Mr King could and/or should have known from the bordereaux that the premium being remitted on behalf of Firm A included premium in respect of employers' liability business.

- (b) By an email dated 21 August 2003 Firm A supplied Mr King with bordereaux dated 21 August 2003 of paid claims and claims. It listed approximately 180 paid claims in respect of policies incepting on or after 1 April 2003. With one exception the file numbers of all of the policies included the letters 'CC'. The paid bordereaux stated the premium (excluding employers' liability), the employers' liability premium and the total premium, being the sum of the two. It listed insurance premium tax and deductions in respect of Firm A's brokerage and the commission paid to a third party. The column on the extreme right was headed 'Net CIC'. This figure represented the sum of the premium including employers' liability premium less brokerage and commission. It is the FSA's view that Mr King could and/or should have known from the bordereaux that the net amount said to be due to 'CIC' included premium in respect of EL business.
 - (c) By a yet further email dated 25 September 2003 Firm A supplied Mr King with a further bordereaux of paid claims. As in (b) above the bordereaux set out the net amount due to 'CIC'. It is the FSA's view that Mr King could and/or should have known from the bordereaux that the net amount said to be due to 'CIC' included premium in respect of EL business.
- 4.23 Between 1 April 2003 and December 2003 Firm A wrote business on behalf of CIC Greece (alternatively CIC Costa Rica) which generated gross premium of approximately £1.1 million. Of this sum Firm A paid £482,972.98 to CIC Greece. Mr King personally received a commission of 5% on these sums.

Firm B

- 4.24 Firm B started underwriting pursuant to the Firm B Contract. The first policy written by Firm B incepted on 1 August 2003 and the last such policy incepted on 24 December 2003. Firm B wrote a total of 62 policies on behalf of CIC Greece. The total gross premium in respect of this business was £3,453,356.27. Of this sum the total gross amount paid to CIC Greece was £3,043,597.18 and the total net amount paid to CIC Greece was £2,101,531.39. Mr King personally received in excess of £40,000 from the writing of this business by Firm B.

Firm C

- 4.25 Firm C commenced writing property and casualty risks pursuant to the Firm C Contract with effect from 1 October 2003. As explained above, Firm C issued notices of cancellation to its clients on 14 November 2003 and arranged alternative cover for them after it became concerned about the status of CIC Greece.

Summary

- 4.26 Mr King could and/or should have known that Firm A and Firm B were purporting to effect contracts of insurance in the United Kingdom on behalf of CIC Greece (alternatively on behalf of CIC Costa Rica). In either event he could and/or should have known that the carrying out of such activities by Firm A and Firm B was a breach of the general prohibition by either CIC Greece or CIC Costa Rica. CIC Greece never existed and could never have been authorised to carry out any insurance business anywhere. Whatever the status of CIC Costa Rica, it was not authorised to effect contracts of insurance in the United Kingdom but such contracts were plainly being effected by Firm A and Firm B in the United Kingdom. Further, Mr King could and/or should have known that the contracts of insurance effected by Firm A and Firm B included employer's liability insurance. Neither CIC Greece nor CIC Costa Rica was ever an authorised insurer in respect of such business. This had the effect that employers who were unwittingly provided with what purported to be employers' liability cover from an unauthorised were exposed to the risk of prosecution.
- 4.27 Mr King could and/or should have been well aware of all of these facts as the facts and matter set out above show. He purported to be the President of CIC Greece and he was the Joint Managing Director of CIC Costa Rica. He was involved in the conduct of regulated activities in the United Kingdom in breach of the general prohibition on a repeated basis. He could have taken steps to prevent such breaches by terminating the underwriting agency which had been granted to Firm A and Firm B. He failed to take any steps to do so.

(9) Other activities

- 4.28 On 26 November 2004, the Minister of Alberta Finance issued an Order directing CIC Costa Rica to cease, from either directly or indirectly, carrying on insurance business in Alberta on the grounds that it was conducting unauthorised insurance activity in Alberta.
- 4.29 In 2005 Mr King was the subject of investigation by the Superintendent. The Superintendent issued a 'Cease and Desist Order' against CIC Costa Rica prohibiting it from carrying out insurance business in British Columbia and certain assets belonging to CIC Costa Rica. Having initially contested the 'Cease and Desist Order', CIC Costa Rica withdrew its appeal on 19 May 2005 and agreed to a Consent Order by which (inter alia) certain assets remained frozen.

On 19 May 2005 Mr King, in his capacity as President and Joint Managing Director of CIC Costa Rica, signed a personal undertaking, along with other principals of CIC Costa Rica, to the Superintendent. Mr King (and others) subsequently breached that undertaking. The Superintendent concluded that the breach of the undertaking *'threaten[ed] to damage the integrity of financial markets and authorised financial institutions that conduct[ed] business under the regulatory laws of British Columbia'* and *'demonstrate[d] a wanton disregard for the regulatory environment and a disregard for the laws of British Columbia'*. The Superintendent ordered Mr King to pay an administrative penalty of \$25,000, the maximum penalty which could be imposed upon an individual. So far as the FSA is aware Mr King has not paid that penalty.

DECISION MAKER

The decision which gave rise to the obligation to give this Final Notice was made by the Executive Settlement Decision Makers on behalf of the FSA.

IMPORTANT

This Final Notice is given to you in accordance with section 390 of the Act.

Publicity

Sections 391(4), 391(6) and 391(7) of the Act apply to the publication of information about the matter to which this notice relates. Under those provisions, the FSA must publish such information about the matter to which this notice relates as the FSA considers appropriate. The information may be published in such manner as the FSA considers appropriate. However, the FSA may not publish information if such publication would, in the opinion of the FSA, be unfair to you or prejudicial to the interests of consumers.

The FSA intends to publish such information about the matter to which this Final Notice relates as it considers appropriate.

FSA contacts

For more information concerning this matter generally, you should contact Penni Cornelius at the FSA (direct line: 020 7066 2910 /fax: 020 7066 2911).

for and on behalf of the FSA

.....

Jonathan Phelan

Project Sponsor

Date

Appendix One

Relevant Guidance

ENF 8.8.1:

‘The guidance in ENF 8.8 applies to individuals, other than individuals referred to in ENF 8.5 to ENF 8.7. The FSA will consider exercising its power to make a prohibition order against such individuals where they have shown themselves to be unfit to carry out functions in relation to regulated activities.’

ENF 8.8.2:

‘The FSA will consider the individual’s fitness or propriety where, for example, it appears that:

- (1) the individual has been involved in conducting regulated activities in breach of the general prohibition;*
- (2) ...*
- (3) he appears likely to pose a serious risk to consumers confidence in the financial system in the future.’*

ENF 8.8.2A:

‘In cases where it is considering whether to exercise its power to make a prohibition order against individuals not referred to in ENF 8.5 to ENF 8.7, the FSA will not have the option of considering whether other enforcement action may adequately deal with the misconduct in question. In these cases, the FSA will consider the severity of the risk posed by the individual. It may prohibit an individual where it considers this necessary to achieve the FSA’s regulatory objectives of maintaining confidence in the financial system, promoting public awareness, protecting consumers and reducing financial crime.’

ENF 8.8.3:

‘When determining the fitness and propriety of an individual, who is not an individual referred to in ENF 8.5 to ENF 8.7, the FSA will consider the criteria set out in ENF 8.5.2 G (1), ENF 8.5.2 G (3) and ENF 8.5.2 G (5).’

ENF 8.5.2(1), (3) and (5):

‘When it decides whether to exercise its power to make a prohibition order against an approved person, the FSA will consider the following factors:

- (1) whether the individual is fit and proper to perform functions in relation to regulated activities. The criteria for assessing the fitness and propriety of approved persons are contained in FIT 2.1 (Honesty, integrity and reputation); FIT 2.2 (Competence and capability) and FIT 2.3 (Financial soundness). The criteria include:
 - (a) honesty, integrity and reputation; this includes an individual's openness and honesty in dealing with consumers, market participants and regulators and ability and willingness to comply with requirements placed on him by or under the Act as well as with other legal and professional obligations and ethical standards;*
 - (b) competence and capability; this includes an assessment of the individual's skills to carry out the controlled function that he is performing;*
 - (c) financial soundness; this includes whether the individual has been the subject of any judgment debts or awards in the United Kingdom or elsewhere that are continuing or were not satisfied within a reasonable period.**
- ...*
(3) the relevance, materiality and length of time since the occurrence of any matters indicating unfitness;
...
- (5) the severity of the risk which the individual poses to consumers and to confidence in the financial system.’*

ENF 8.5.4 states that it is impossible to produce a definitive list of the matters which the FSA might take into account when considering if an individual is a fit and proper person to carry out a controlled function. Therefore the list at ENF 8.5.2 is not intended to be exhaustive.

As regards the Fit and Proper Test for Approved Persons, FIT sets out and describes the criteria that the FSA will consider when assessing the fitness and propriety of a candidate for a controlled person. The relevant provisions are as follows:

FIT 1.3:

'Assessing fitness and propriety

1.3.1 The FSA will have regard to a number of factors when assessing the fitness and propriety of a person to perform a particular controlled function. The most important considerations will be the person's:

- (1) honesty, integrity and reputation;*
- (2) competence and capability; and*
- (3) financial soundness.*

1.3.2 In assessing fitness and propriety, the FSA will also take account of the activities of the firm for which the controlled function is or is to be performed, the permission held by that firm and the markets within which it operates.

1.3.3 The criteria listed in FIT 2.1 to FIT 2.3 are guidance and will be applied in general terms when the FSA is determining a person's fitness and propriety. It would be impossible to produce a definitive list of all the matters which would be relevant to a particular determination.'

FIT 2.1:

'Honesty, Integrity and Reputation

2.1.1 In determining a person's honesty, integrity and reputation, the FSA will have regard to matters including, but not limited to, those set out in FIT 2.1.3G which may have arisen either in the United Kingdom or elsewhere. The FSA should be informed of these matters (see SUP 10.13.16 R), but will consider the circumstances only where relevant to the requirements and standards of the regulatory system. ...

2.1.2 In considering the matters in FIT 2.1.1G, the FSA will look at whether the person's reputation might have an adverse impact upon the firm for which the controlled function is or is to be performed and at the person's responsibilities.

2.1.3 The matters referred to in FIT 2.1.1 G to which the FSA will have regard include, but are not limited to:

- (1) whether the person has been convicted of any criminal offence; this must include, where relevant, any spent convictions excepted under the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (see Articles 3 and 4 of the order); particular consideration will be given to offences of dishonesty, fraud, financial crime or an offence whether or not in the United Kingdom or other offences under legislation relating to*

companies, building societies, industrial and provident societies, credit unions, friendly societies, banking and or other financial services, insolvency, consumer credit companies, insurance, and consumer protection, money laundering, market manipulation or insider dealing;

...

- (3) whether the person has been the subject of, or interviewed in the course of, any existing or previous investigation or disciplinary proceedings, by the FSA, by other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;*
- (4) whether the person is or has been the subject of any proceedings of a disciplinary or criminal nature, or has been notified of any potential proceedings or of any investigation which might lead to those proceedings;*
- (5) whether the person has contravened any of the requirements and standards of the regulatory system or the equivalent standards or requirements of other regulatory authorities (including a previous regulator), clearing houses and exchanges, professional bodies, or government bodies or agencies;*
- (6) whether the person has been the subject of any justified complaint relating to regulated activities;*
- (7) whether the person has been involved with a company, partnership or other organisation that has been refused registration, authorisation, membership or a licence to carry out a trade, business or profession, or has had that registration, authorisation, membership or licence revoked, withdrawn or terminated, or has been expelled by a regulatory or government body;*
- (8) whether, as a result of the removal of the relevant licence, registration or other authority, the person has been refused the right to carry on a trade, business or profession requiring a licence, registration or other authority;*
- (9) whether the person has been a director, partner, or concerned in the management, of a business that has gone into insolvency, liquidation or administration while the person has been connected with that organisation or within one year of that connection;*
- (10) whether the person, or any business with which the person has been involved, has been investigated, disciplined, censured or suspended or criticised by a regulatory or professional body, a court or Tribunal, whether publicly or privately;*

...

- (13) *whether, in the past, the person has been candid and truthful in all his dealings with any regulatory body and whether the person demonstrates a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards.*

FIT 2.2

‘Competence and Capability

2.2.1 In determining a person's competence and capability, the FSA will have regard to matters including but not limited to:

- (1) whether the person satisfies the relevant requirements of the FSA's Training and Competence sourcebook (TC) in relation to the controlled function the person performs or is intended to perform;*
- (2) whether the person has demonstrated by experience and training that the person is able, or will be able if approved, to perform the controlled function.’*