
FINAL NOTICE

To: **RICHARD BAINES**

Of: 19 St George's Road
Badshot Lea
Farnham
Surrey
GU9 9LX

Date: **11 February 2008**

TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the "FSA") has decided to take the following action:

ACTION

The FSA gave Mr Richard E Baines ("Mr Baines") a Decision Notice on 7 November 2007 which notified Mr Baines that pursuant to section 56 of the Financial Services and Markets Act 2000 ("the Act"), the FSA had decided to make an order ("a prohibition order") prohibiting Mr Baines from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

In accordance with section 133(1) of the Act Mr Baines had the opportunity to refer the matter to the Financial Services and Markets Tribunal ("the Tribunal"). Mr Baines has not referred the matter, nor has he indicated at any time that he intended to refer the matter, to the Tribunal.

Accordingly, for the reasons set out below, the FSA imposes a prohibition order on Mr Baines prohibiting him from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

1. REASONS FOR THE ACTION

- 1.1 Mr Baines is the sole director and shareholder of Insureyourshop.com Limited (“IYS”). IYS acted as an underwriting agent selling insurance to small high risk retail catering businesses (typically fish and chip shops, pizza and kebab takeaways and Chinese restaurants) on behalf of CIC Insurance Company SA (“CIC Greece”), alternatively Centennial Insurance Company AVV SA trading as “CIC Insurance Company AVV of Costa Rica”, “CIC AVV SA” and “CIC AVV” (referred to as “CIC Costa Rica” in this Notice).
- 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 CIC Greece was never incorporated in Greece and was never 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.
- 1.4 Notwithstanding the foregoing, between 1 April 2003 and 23 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 carried on, and/or CIC Greece purported to carry on, the regulated activities of effecting and carrying out contracts of insurance as principal in the United Kingdom without authorisation through a number of underwriting agents, including IYS. IYS, through Mr Baines, wrote or purported to write, approximately 1,700 insurance policies on behalf of CIC Greece, alternatively CIC Costa Rica, generating total gross premium of approximately £1.1 million.
- 1.5 In either event, the activities or purported activities of CIC Greece and/or CIC Costa Rica constituted breaches of the general prohibition. Mr Baines knew that CIC Greece, alternatively CIC Costa Rica, was not authorised to effect or carry out contracts of insurance in the United Kingdom alternatively he was reckless thereto. Alternatively, Mr Baines ought to have known that CIC Greece, alternatively CIC Costa Rica, was not authorised to effect or carry out contracts of insurance in the United Kingdom. Mr Baines, through IYS, procured and/or assisted and/or facilitated in a breach (or breaches) of the general prohibition by CIC Greece, alternatively CIC Costa Rica, and accordingly he was involved in conducting regulated activities in breach of the general prohibition. Mr Baines benefited personally from the unlawful activities of CIC Greece, alternatively CIC Costa Rica, in breach of the general prohibition.
- 1.6 By contrast, policyholders who were issued with policies which were effected or purported to have been effected with CIC Greece or CIC Costa Rica 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).

- 1.7 The business which CIC Greece, alternatively CIC Costa Rica, wrote or purported to write in the United Kingdom included compulsory employers' 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 Greece nor CIC Costa Rica was an authorised insurer for the purposes of the 1969 Act. By insuring or purporting to insure employers in the United Kingdom, CIC Greece and/or CIC Costa Rica put such employers in breach of the 1969 Act and also exposed them to the risk of prosecution.
- 1.8 Mr Baines had operated as an underwriting agent in the United Kingdom under a binding authority before his involvement with CIC and so was aware that either the insurer must be authorised in the UK or the insurance business must be written offshore. Mr Baines knew, or should have known, that between May and December 2003 IYS was writing or purporting to write employers' liability insurance on behalf of insurers who were not authorised for the purposes of the 1969 Act. He thereby exposed policyholders to the risk of prosecution. Further, Mr Baines prepared and issued employers' liability insurance certificates in the name of CIC Greece, including the application of a signature without the knowledge or permission of the individual at CIC whose signature it was. On another occasion Mr Baines suggested tampering with documents to cover up the fact that IYS had been writing insurance on behalf of CIC Greece.
- 1.9 Despite conflicting messages about the existence and authorisation status of CIC Greece, Mr Baines failed to make adequate inquiries about the incorporation and authorisation of CIC Greece and whether CIC Greece and CIC Costa Rica had sufficient assets in terms of quality, liquidity and value to honour the financial commitments which it was purporting to undertake. As the sole director of an insurance underwriting agent acting on behalf of an insurance company offering or purporting to offer policies of insurance to consumers it was incumbent upon Mr Baines to carry out adequate due diligence to satisfy himself of these facts and matters.
- 1.10 As illustrated above, Mr Baines has been involved in a breach (or breaches) of the general prohibition. His conduct is and has been below the standards of honesty, integrity and reputation required of a participant in the insurance industry. His conduct was also below the level of competence and capability required of a participant in the insurance industry. It has seriously undermined consumers' confidence in the insurance market and continues to do so and it poses a serious risk to consumers and to the financial system in general.
- 1.11 In the circumstances, Mr Baines is not a fit and proper person to perform any functions in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm and the FSA has made a prohibition order against Mr Baines.

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

In making the prohibition order, the FSA had regard to guidance published in the FSA Handbook. The relevant guidance is set out in the Appendix to this Notice.

4. FACTS AND MATTERS RELIED ON IN THE DECISION NOTICE

(1) Mr Baines and IYS

4.1 IYS (previously known as Recatel Limited) was incorporated in 1997 and Mr Baines was and is the sole shareholder and director. IYS acted as an underwriting agent selling insurance to small high risk retail catering businesses (typically fish and chip shops, pizza and kebab takeaways and Chinese restaurants). Mr Baines had previously operated as an underwriting agent in the United Kingdom under a binding authority and so was aware that either the insurer must be authorised in the UK or the insurance business must be written offshore.

4.2 From 1 April 2003 until 23 December 2003 (when the FSA intervened) IYS acted as underwriting agent for CIC Greece, alternatively CIC Costa Rica, writing material damage insurance. From 1 May 2003, IYS also began writing employers' liability risks on behalf of CIC Greece, alternatively CIC Costa Rica.

4.3 IYS wrote a total gross premium of approximately £1.1 million (including employers' liability business) on behalf of CIC Greece, alternatively CIC Costa Rica. Pursuant to IYS's contracts with CIC (see below), IYS was entitled to 30% commission on the

insurance premiums it wrote. As the sole shareholder and director of IYS, as well as being an employee, Mr Baines personally benefited from IYS' activities.

(2) CIC Costa Rica

4.4 CIC Costa Rica was established in or about 2002. 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.

(3) Lack of Due Diligence by Mr Baines about CIC Costa Rica

4.5 Mr Baines, though IYS, failed to perform any, or any adequate, due diligence checks to confirm whether CIC Costa Rica was a legitimate company and/or whether it was authorised to write insurance business whether in the United Kingdom or at all, and/or whether it owned the assets which it claimed to own.

4.6 If policies were placed with CIC Costa Rica, as the director of an insurance underwriting agent acting on behalf of a company offering or purporting to offer policies of insurance to consumers, it was incumbent upon Mr Baines to undertake due diligence to satisfy himself that the insurance company was authorised to write the business in question and that it 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 Baines took any, or any adequate, steps to do so. He allowed or permitted IYS to place insurance business on behalf of CIC Costa Rica in circumstances where he could not have had any confidence that the company would be able to pay claims.

(4) CIC Greece

4.7 From about the beginning of 2003, there was an attempt to establish an insurance company in Greece. The initial plan was to take over a Greek insurance company, Elliniki Pisti, which was in receivership and no longer active. This plan was doomed from the start because Elliniki Pisti had been put into compulsory liquidation by the Greek Ministry of Development for violating Hellenic rules and regulations and, as a matter of Greek law, if an insurance company is in compulsory liquidation, it cannot re-commence carrying on insurance business.

4.8 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 Greek Ministry of Development informed CIC Costa Rica's Greek attorney that the application had been rejected.

4.9 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 Greek Insurance Committee on 19 December 2003 (the “Insurance Committee”). The Insurance Committee decided to postpone its decision until its next meeting and at that meeting on 23 January 2004 the Insurance Committee decided to reject the application on behalf of CIC Greece.

4.10 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, much less been passported into the United Kingdom pursuant to the provisions of Schedule 3 of the Act and the Single Market Directives.

(5) Lack of Due Diligence by Mr Baines about CIC Greece

4.11 During the course of 2003 Mr Baines continuously received conflicting messages about the status of CIC Greece.

4.12 Mr Baines was advised that CIC Greece was incorporated and authorised to conduct insurance business in the United Kingdom on a number of occasions, including the following:

4.12.1 By an email dated 20 March 2003 from CIC Greece’s Business Development Officer, Mr Stephen Fryett (“Mr Fryett”), to Mr Baines, Mr Baines was advised:

“...’go for it’ on the basis that attachment of said risks after April 1st but do not – DO NOT make mention of it at this time to DK for we do not need him to have a burden of knowledge at this time.

I am your representative Director as so stated in the CIC Contract...

CIC Insurance Co SA is now legalised and accepted purchaser with the Greek Ministry, but we have not yet completed the final ‘phase’ i.e. a pre-sale contract not signed, which hopefully with our local representative officer tomorrow.

...You can make mention of CIC et al but do not give any addresses at this time other than that of IYS and make sure that there zero reference to the ABI, FSA, or UK Ombudsman, for none of them have jurisdiction over an EU – non UK carrier unless we in breach of protocols.

Worst case scenario – as with AGI, CIC can write this program ‘offshore’....

Also remember, that as of January 28th 2003, the undersigned was invited and accepted a Directorship of CIC so I do have a little discretion provided it not abused!"

4.12.2 By an email dated 3 April 2003 Mr Fryett advised Mr Baines:

"Pursuant our exchanges yesterday can confirm that having discussed the matter with my associate -

David King Esq we are agreed you may now issue Cover Notes in the name of CIC Insurance company pending finalisation of our acquiring the Greek EU Licensed Insurance Co.

You must be discreet towards this temporary authority and not publicise this approval, until we have concluded the final phase of our negotiations in Athens.

No formal Certificates or Policies are to be issued in advance of our written agreement to do so.

We have extended this undertaking solely based on the fact that it has been indicated we are allowed to proceed 'without publicity' by the Greek Authorities, thus it is imperative that you respect the need for such discretion."

4.12.3 Mr Baines was given a copy of CIC Costa Rica's Greek attorney's legal opinion dated 7 July 2003 which stated:

"This letter is to express my legal opinion as to the ability of CIC Insurance Company to commence insurance operations in Greece.

It is my opinion that the Ministry of Development has agreed to CIC Insurance Company issuing Insurance Coverages and supporting documents with effect from 1st July 2003.

Through the issuance of protocol number K3-6908 of the 27th June 2003, The Ministry of Development has approved CIC Insurance Company as a Company qualified to transact insurance business in Greece."

4.12.4 On 31 August 2003 Mr Fryett forwarded Mr Baines an email from Mr David King ("Mr King"), the President and Joint Managing Director of CIC Costa Rica and the purported President and/or Chairman of CIC Greece, which stated:

"...as of 1st September 2003, CIC Insurance Company S.A. is authorised to underwrite Insurance and Reinsurance risks in Greece and all other European Union States, subject to advice from the Hellenic Ministry of Development to each member state of our intention to provide services in their territories."

4.12.5 On 26 September 2003 Mr King emailed Mr Baines stating:

“Everything is now becoming very “warm and chocolaty” this end! We have received our VAT number in Athens and, I am told, we are now legal.

With a bit of luck, the letter for the FSA will be with us today or Monday and we can then poke our necks out and wait for the bang!”

4.12.6 By a Report on the headed paper of CIC Greece, dated 1 November 2003, issued in the name of Mr King it is stated that:

“[I]t 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.”

4.12.7 By a further document dated 1 November 2003 and headed ‘CIC Insurance Company – General Insurances SA’ it was represented as follows:

“We are please 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...”

4.13 Contrary to the above, Mr Baines also received a number of representations that CIC Greece was not yet licensed or authorised and that he should not place insurance business with CIC Greece, including the following:

4.13.1 Mr Baines was aware of Mr Fryett's email dated 3 April 2003 (referred to in 14.12.2 above) that the Greek Ministry of Development had not finalised CIC Greece's licence. Mr Fryett then advised Mr Baines in an email dated 21 April 2003 that:

"formal closure will be delayed until after their Greek Easter, around May 4th."

4.13.2 On 19 May 2003 Mr Fryett forwarded Mr Baines an email from Mr King which stated:

"we cannot confirm any [employers liability] cover whatsoever, even on a "hold covered" basis, until we have the written confirmation that we are legally able to perform such a function."

4.13.3 Mr Fryett emailed Mr Baines on 26 May 2003 and advised him that:

"We are waiting on the Certificate from Greek Ministry to formalise the legalisation of captioned. Until we have same, we cannot commit to what the company is able to do on the [employers' liability]."

4.13.4 On 11 June 2003 Mr King sent, inter alia, Mr Baines an email stating:

"...it is imperative that we do not "jump the gun" in setting up and issuing documents for Employers Liability Insurance until we are authorised to do so by the Greek Ministry of Development.

We need to be aware that any transgression of E.U. regulations at this time would very probably jeopardise our authorisation by the Greek Ministry and that would be disaster."

4.13.5 The Second IYS Contract, as referred to in detail below, identifies the insurer as CIC Greece but included the following rider:

"Subject to confirmation of full E.U. licensing by the Hellenic Ministry of Development."

4.13.6 On 2 July 2003 another representative of CIC advised Mr Baines that:

"we still are not authorized to release Certificates of Insurance or Policies since our authorization from the Greek authorities has not been released yet".

4.13.7 On 3 July 2003 Mr King sent, inter alia, Mr Baines an email stating:

"For the time being, we are only in a position to issue material damage insurance through our offshore operations, with no Employers Liability being allowed until we receive our final clearance from Greece."

4.13.8 On 3 August 2003 Mr King sent both Mr Fryett and Mr Baines an email to remind them that until the *"full licence"* was received they must be aware that they are acting on behalf of an offshore company and

“[t]his means that each risk has to be presented to underwriters for their acceptance or declinature on a daily basis. It is totally against E.U. regulations for a U.K. based agent to accept risks on behalf of an offshore insurer and to advise on a weekly basis, as you appear to be doing. You must cease and desist from this practice forthwith and return to the legally accepted formula.”

4.13.9 On 18 September 2003 Mr King sent Mr Baines an email which stated:

“we cannot officially write any business in the U.K. as a licensed E.U. carrier until we have confirmation from the Hellenic Ministry of Development that they have properly advised and agreed with the FSA for us to passport into their territory. Until that time, we have to operate as an overseas company and adhere to the rules and regulations as such.”

4.14 Furthermore, a third party also involved in the insurance industry warned Mr Baines in an email dated 5 May 2003 that:

“for your info if you intend to use CIC I should think again:

1) If they backdate cover before the granting of their Licence believe GISC and the FSA will take a dim view. ...

3)...I believe that you are acting illegally.”

4.15 Despite the conflicting messages which he was receiving, Mr Baines failed to make any, or any adequate, inquiries about the status of the incorporation and authorisation of CIC Greece or the assets of CIC Greece and continued to write insurance business on its behalf. As the sole director of an insurance underwriting agent acting on behalf of an insurance company offering or purporting to offer policies of insurance to consumers, it was incumbent upon Mr Baines to carry out sufficient and adequate due diligence to satisfy himself that:

4.15.1 CIC Greece did actually exist and have proper authorisation in order to carry out insurance business in the United Kingdom;

4.15.2 CIC Greece had sufficient assets in terms of quality, liquidity and value to honour the financial commitments which it was purporting to undertake; and

4.15.3 the representations which he received were true and that there were reasonable grounds to support them.

4.16 There is no evidence that Mr Baines took any, or any adequate, steps to do so. Mr Baines could easily have verified the veracity of the representations made to him by making inquiries with someone in authority at the Greek Ministry of Development or by checking the FSA Register to see if CIC Greece had been granted authorisation to passport into the United Kingdom. Self evidently, Mr Baines failed to do so. Had he conducted appropriate inquiries, it would have been obvious to him that CIC Greece never existed at any time. At the very least, he shut his eyes to the fact that it never existed and/or was not authorised.

4.17 Mr Baines's failure to conduct any, or any adequate, due diligence about CIC Greece had 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.

(6) The First IYS Underwriting Agreement (the "First IYS Contract")

4.18 There is a conflict between Mr Baines and CIC as to whether IYS was acting as underwriting agent on behalf of CIC Greece or CIC Costa Rica. Mr Baines's position is that IYS was writing insurance business on behalf of CIC Greece whereas CIC Costa Rica maintains that IYS should at all times have been acting as agent for CIC Costa Rica.

4.19 By an agreement dated 1 March 2003 and signed on behalf of CIC Costa Rica, CIC Costa Rica gave IYS its authority 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 permitted IYS, 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 IYS Contract imposed limits in respect of the cover which IYS 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, IYS was permitted to market and receive submissions, proposals and applications for registration on behalf of CIC. Further, IYS was permitted to settle uncontested indemnifiable claims up to £2,500 without prior reference to CIC Costa Rica. IYS 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.

4.20 With effect from April 2003 IYS proceeded to effect and carry out contracts of insurance in the United Kingdom on behalf of CIC Greece, alternatively Costa Rica. However, CIC Costa Rica was not authorised to effect and carry out contracts of insurance in the United Kingdom. Further, CIC Greece did not, at any stage, exist as a company and is not, and has never been, authorised to carry out any regulated activity in the United Kingdom. This constituted a breach of the general prohibition by CIC Greece, alternatively Costa Rica.

4.21 Mr Baines knew, or should have known, that CIC Greece, alternatively 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 Baines knew of the existence, terms and nature of the First IYS Contract as he was the signatory on behalf of IYS. Mr Baines took no steps to prevent IYS acting as an underwriting agent for CIC Greece, alternatively CIC Costa Rica, in the United Kingdom. On the contrary, he facilitated it. Further, Mr Baines, through IYS,

personally benefited from all business written by IYS in the United Kingdom pursuant to the First IYS Contract.

4.22 Accordingly, Mr Baines, through IYS, 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.

4.23 Mr Baines knew that by the terms of the First IYS Contract IYS was to write employers' 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. By procuring and/or facilitating the writing of employers' liability cover with CIC Greece, alternatively CIC Costa Rica, Mr Baines 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.

(6) The Second IYS Underwriting Agreement (the "Second IYS Contract")

4.24 By an agreement signed on behalf of CIC Costa Rica on 1 July 2003 and by Mr Richard Baines, on behalf of IYS on 6 August 2003, IYS was given an authority, 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 IYS Contract was expressed to supersede the First IYS Contract. By clause 2 of the Second IYS Contract, the authority to bind contracts of insurance was limited to Mr Baines and another employee of IYS. The classes of business which IYS 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.

4.25 Mr Baines knew that by the terms of the Second IYS Contract IYS was to write employers' liability business on behalf of CIC Greece in the United Kingdom. On any view CIC Greece was not and never became an authorised insurer for the purposes of section 1 of the 1969 Act. By facilitating the writing of employers' liability cover with CIC Greece, Mr Baines 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.

4.26 Through IYS, Mr Baines effected or purported to effect insurance business on behalf of CIC Greece pursuant to the Second IYS Contract. He failed to alert persons, who had been issued by IYS 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 Baines permitted IYS to continue to operate the Second IYS Contract as agent for a non-existent company and IYS accepted a 30% commission on all gross premium it wrote.

4.27 If (which is not the FSA's case) Mr Baines thought that CIC Greece was incorporated and licensed by the Greek Ministry of Development to transact general insurance

business with effect from the time when he entered into the Second IYS Contract, his belief must have been undermined by the receipt of the email dated 31 August 2003 from Mr Fryett (see paragraph 4.12.4 above). Thereafter he cannot have believed that CIC Greece existed as at the beginning of July 2003 much less that CIC Greece was in a position to authorise underwriting agents to underwrite insurance business on its behalf in the United Kingdom as at that date.

4.28 Accordingly, Mr Baines, through IYS, 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.

(7) Insurance business effected by IYS

4.29 IYS, principally through Mr Baines, 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. Mr Baines supplied regular bordereaux of business written by IYS on behalf of CIC Greece, alternatively CIC Costa Rica, including the following:

4.29.1 By an email dated 4 August 2003 Mr Baines of IYS supplied CIC 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 IYS 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 IYS was entitled to deduct 30% commission pursuant to the terms of the First and Second IYS Contracts. In his covering email Mr Baines stated that the total premium due to CIC was £281,887.12. It was obvious from the bordereaux that the premium being remitted by Mr Baines on behalf of IYS included premium in respect of employers' liability business.

4.29.2 By an email dated 21 August 2003 from Mr Baines of IYS to CIC, Mr Baines supplied CIC with bordereaux of paid claims. The paid bordereaux was dated 21 August 2003. 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 IYS'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 obviously included premium in respect of employers' liability business.

- 4.29.3 By a yet further email dated 25 September 2003, Mr Baines of IYS supplied CIC with a further bordereaux of paid claims. As above, the bordereaux set out the net amount due to '*CIC*'. It was obvious from the bordereaux that the net amount said to be due to '*CIC*' included premium in respect of employers' liability business.
- 4.30 Between 1 April 2003 and December 2003 IYS (principally through Mr Baines) wrote business on behalf of CIC Greece (alternatively CIC Costa Rica) which generated gross premium of approximately £1.1 million. Of this sum IYS was entitled to 30% commission.
- 4.31 Accordingly, Mr Baines knew that IYS was purporting to effect contracts of insurance in the United Kingdom on behalf of CIC Greece (alternatively on behalf of CIC Costa Rica). He knew, or should have known, that the carrying out of such activities by IYS 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 IYS in the United Kingdom. Further the contracts of insurance effected by IYS included employers' liability insurance. Neither CIC Greece nor CIC Costa Rica was ever an authorised insurer in respect of such business.
- 4.32 Mr Baines knew, or should have known, all of these facts. He could and should have taken steps to prevent such breaches by ensuring that IYS did not effect or purport to effect any contracts of insurance without first verifying that CIC Greece, alternatively CIC Costa Rica, existed and was authorised to carry out insurance business in the United Kingdom. He failed to take any steps to do so.
- 4.33 In failing to do so, Mr Baines's conduct fell far below the standards of honesty, integrity and reputation, and the standards of competence or capability, to be expected of a professional participating in the insurance industry.

(8) Tampering with documents

- 4.34 In circumstances where Mr Baines knew, or should have known, that CIC Greece was not authorised to carry out insurance business in the United Kingdom, on several occasions Mr Baines prepared and issued employers' liability insurance certificates in the name of CIC Greece to consumers. In doing so, Mr Baines copied and pasted on the certificates a CIC representative's signature without his knowledge or permission.
- 4.35 In June 2003 Mr Baines disclosed to Mr Fryett that he had issued the employers' liability insurance certificates and Mr Fryett advised him, in an email dated 4 June 2003 that:

"OK, but this on your PI policy.

Remember – CIC Insurance Co AVV not SA, the latter still not finalised.”

4.36 As explained in paragraph 1.7 above, pursuant to section 1 of 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. As such it was a criminal offence for these purported policyholders to have employers' liability insurance with CIC Greece rather than an authorised insurance company. Mr Baines's conduct posed a serious risk to these policyholders and exposed them to potential prosecution. 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.

4.37 Further, in June 2003 Mr Baines advised Mr Fryett of an error which had occurred whereby the proposal forms issued by IYS referred to the wrong entity as underwriter. The majority of the proposal forms referred to CIC Greece instead of CIC Costa Rica. In an attempt to cover up this issue, Mr Baines suggested a solution that would involve him taking a photocopy of the signatures of those clients who were insured with CIC Greece and pasting them onto a proposal form in the name of a third party insurance company which IYS was previously involved with which could then be produced to a third party insurance broker which IYS previously used.

4.38 Mr Baines has sought to justify to the FSA his behaviour on the basis that it was to preserve the fragile relationship with the insurance broker. Mr Baines's response indicates a lack of understanding of the significance and consequences of his suggestion to alter the proposal forms. 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.

(9) Misrepresentation to premium finance provider

4.39 IYS offered its customers the opportunity to pay their insurance premium in instalments. In order to do this IYS used a finance provider. Mr Baines in an email to Mr Fryett dated 13 September 2003 states:

“ we use Prompt Premium finance. Since April we have been stating that the Underwriters are CATLIN!!!!, when can I advise them of CIC.

We ought to get clean with them now.”

It appears from this email that Mr Baines had been misleading the finance provider as to the identity of the insurance company on whose behalf it was writing.

5. REPRESENTATIONS

5.1 Mr Baines made written representations in an email dated 1 August 2007. This section summarises the key aspects of those representations.

5.2 Mr Baines stated that he had not had dealings with CIC Costa Rica, and that he had been misled by Mr King's statements (as had others) about the position with CIC

Greece. Mr Baines considered that he should not be treated differently to Firm B and its proprietor (who became authorised and approved by the FSA in 2005) who had started underwriting soon after Mr Baines had done. Mr Baines noted that Firm B had been able to transfer coverage to an authorised insurer, and stated that he had also found a suitable carrier to protect the consumer. He, however, had not been able to effect the transfer because he had paid net premium to CIC, and when he requested its return this had not been allowed.

- 5.3 Mr Baines also considers that he should not be tarnished with the same brush as Mr Fryett, the Business Development Director of CIC Greece who received commission on Mr Baines' book of business. Mr Baines stated that Mr Fryett knew exactly what was going on and that Mr Baines' records show that he was in almost daily contact with Mr Fryett.
- 5.4 Mr Baines does not accept the allegations made against him.

6. CONCLUSIONS

- 6.1 Accordingly, Mr Baines is not a fit and proper person to perform any functions in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm and the FSA has decided to make a prohibition order against him.

7. DECISION MAKER

- 7.1 The decision which gave rise to the obligation to give this Final Notice was made by the Regulatory Decisions Committee on behalf of the FSA. This Final Notice is given to you and those persons to whom the Decision Notice was copied in accordance with section 390 of the Act.

8. IMPORTANT

Publicity

- 8.1 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 Final 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.
- 8.2 The FSA intends to publish this Final Notice and such information about the matter to which this Final Notice relates as it considers appropriate. A full press statement will be issued following the conclusion of matters involving a related investigation

FSA contacts

8.3 For more information concerning this matter generally, you should contact Adrian Berrill-Cox (direct line: 020 7066 1212/fax: 020 7066 9748) or Richard Topham (direct line: 020 7066 1180/fax: 020 7066 9748).

Jonathan Phelan

Head of Department
FSA Enforcement Division

APPENDIX

Relevant Guidance from the FSA Handbook

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 or 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.’