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## FINAL NOTICE

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To: **STEPHEN FRYETT**

Date: **20 November 2008**

**TAKE NOTICE: The Financial Services Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS (the “FSA”) has taken the following action:**

### **1. ACTION**

- 1.1. The FSA issued a Decision Notice on 7 November 2007 which notified you that, having had regard to your oral representations on 25 September 2007 in response to the Warning Notice dated 26 June 2007, and pursuant to section 56 of the Financial Services and Markets Act 2000 (the “Act”), the FSA has made an order (a “prohibition order”) prohibiting Mr Stephen Fryett (“Mr Fryett”) from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.
- 1.2. On 30 November 2007 you referred that Decision Notice to the Financial Services and Markets Tribunal (“The Tribunal”). In the Tribunal’s written decision of 19 November 2008 it dismissed your reference. The FSA now issues this final notice prohibiting you from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional firm.

### **2. REASONS FOR THE ACTION**

- 2.1. From about March 2003 until December 2003 Mr Fryett held himself out as, and represented himself to be, the Business Development Director of CIC Insurance Company SA (“CIC Greece”). He also acted as an introducer between underwriting agents in the United Kingdom and CIC Greece and 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). In these capacities he represented that CIC Greece had been successfully incorporated in Greece by the Hellenic Ministry of Development (the “Greek Authority”) and had been authorised by the Greek Authority to transact general insurance business in the United Kingdom. Further, he encouraged underwriting agents in the United Kingdom to effect contracts of insurance in the United Kingdom on behalf of CIC Greece and/or CIC Costa Rica in the knowledge that neither company was authorised to carry on the regulated activity of effecting or carrying out contracts of insurance in the United Kingdom.

- 2.2. 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.
- 2.3. 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.
- 2.4. 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 Insureyourshop.com Limited (“IYS”). Through their underwriting agents, CIC Costa Rica and/or CIC Greece effected or purported to effect approximately 1,700 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.
- 2.5. The activities or purported activities of CIC Greece and CIC Costa Rica constituted breaches of the general prohibition. Mr Fryett 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 Fryett 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 Fryett assisted and/or facilitated and/or encouraged 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 Fryett benefited personally from the unlawful activities of CIC Greece, alternatively CIC Costa Rica, in breach of the general prohibition. Under the terms of CIC’s agreements with two of its underwriting agents, Mr Fryett was entitled to 5% commission from all insurance premia paid to CIC Greece, alternatively CIC Costa Rica, by those underwriting agents, amounting to approximately £5,250 per month from IYS and approximately a further £42,000 from Firm B, another underwriting agent.

- 2.6. 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).
- 2.7. 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 CIC Costa Rica put such employers in breach of the 1969 Act and also exposed them to the risk of prosecution. Mr Fryett was aware of the general prohibition on carrying out insurance business in the UK without authorisation and of the need for employers' liability insurance to be written by an authorised insurer.
- 2.8. Mr Fryett 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. Further, Mr Fryett encouraged and facilitated IYS, through Mr Richard Baines ("Mr Baines"), the sole director and shareholder of IYS, to write employers' liability insurance on behalf of CIC Greece, alternatively CIC Costa Rica, in contravention of the 1969 Act.
- 2.9. Despite conflicting messages about the existence and/or authorisation status of CIC Greece, Mr Fryett failed to make adequate inquiries about the incorporation and authorisation of CIC Greece and whether both 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. Further, Mr Fryett held himself out as a director of CIC Greece and made a number of misleading representations to third parties that CIC Greece had been successfully incorporated in Greece and that it had been authorised by the Greek Authority to transact general insurance business in the United Kingdom. As the purported director of an insurance company offering or purporting to offer policies of insurance to consumers, and as the introducer between an insurance company and underwriting agents, it was incumbent upon Mr Fryett to carry out adequate due diligence to satisfy himself of these facts and matters and not to make misleading statements.
- 2.10. In October 2003, Mr Fryett was informed by a representative of the CIC company which was established to administer the business conducted by CIC Greece, about a number of concerns regarding possible regulatory breaches in the United Kingdom, as underwriting agents had commenced writing insurance business (including

employers' liability insurance) in the United Kingdom on behalf of CIC Greece in circumstances where it was unclear whether or not CIC Greece had been authorised or even incorporated. Mr Fryett dismissed these concerns and subsequently suggested that the insurance should be retrospectively transferred as a matter of "house keeping".

- 2.11. Mr Fryett's conduct demonstrated a complete lack of understanding and regard for compliance with regulatory standards and consequences for consumers who had entered into apparently lawful insurance contracts with a company that did not exist and was not authorised to carry out insurance business in the United Kingdom.
- 2.12. As illustrated above, Mr Fryett's conduct is below the level of honesty, integrity and reputation required of a participant in the insurance industry. It is also below the standard of competence and capability required of a participant in the insurance industry. Further, Mr Fryett's conduct has seriously undermined consumers' confidence in the insurance market and will continue to do so. It poses a serious risk to consumers and to the financial system in general.
- 2.13. In the circumstances, Mr Fryett 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 Mr Fryett.

### **3. RELEVANT STATUTORY PROVISIONS**

- 3.1. 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.'*

### **4. RELEVANT GUIDANCE**

- 4.1. 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 in the Appendix to this Notice.

## **5. FACTS AND MATTERS RELIED ON IN THE DECISION NOTICE**

### **(1) Mr Fryett**

- 5.1. From March 2003 until December 2003 Mr Fryett held himself out as, and represented himself to be, the Business Development Director of CIC Greece. He also acted as an introducer between underwriting agents in the United Kingdom and CIC Greece and CIC Costa Rica. In particular, Mr Fryett introduced IYS, through Mr Baines, to representatives of CIC Costa Rica in late 2002.
- 5.2. 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 began writing employers' liability risks with CIC Greece, alternatively CIC Costa Rica. IYS wrote a total gross premium of approximately £1.1 million (including employers' liability) on behalf of CIC. Mr Fryett received 5% commission from IYS on all premia it wrote on behalf of CIC Greece, alternatively CIC Costa Rica.
- 5.3. Mr Fryett was also involved in negotiations with two other underwriting agents acting for CIC Greece, alternatively CIC Costa Rica. During 2003 Mr Fryett received commission payments of approximately £42,000 from Firm B, one of these underwriting agents.

### **(2) CIC Costa Rica**

- 5.4. 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 Fryett about CIC Costa Rica**

- 5.5. Mr Fryett 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.
- 5.6. As the introducer between the underwriting agents and an insurance company offering or purporting to offer policies of insurance to consumers, it was incumbent upon Mr Fryett 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 Fryett took any, or any adequate, steps to do so. He encouraged the underwriting agents, in particular 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**

- 5.7. 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 Authority 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.
- 5.8. In January 2003, Mr Fryett attended a meeting in Greece about the establishment of a CIC insurance company in Greece. It was at this meeting that a board of directors was set up and Mr Fryett was appointed a “Business Development Director” of CIC.
- 5.9. By letters dated 27 June 2003 and 23 July 2003 CIC Costa Rica, through its Greek attorney, submitted an application to the Greek Authority 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 Authority informed CIC Costa Rica’s Greek attorney that the application had been rejected.
- 5.10. 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 rejected the application on behalf of CIC Greece.
- 5.11. 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 Fryett about CIC Greece**

- 5.12. During the course of 2003 Mr Fryett continuously received conflicting messages about the status of CIC Greece.
- 5.13. Mr Fryett was advised on a number of occasions that CIC Greece was incorporated and authorised to conduct insurance business in the United Kingdom, including the following:
- (1) Mr Fryett received 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 1<sup>st</sup> July 2003.*

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

5.14. However, in an email dated 8 July 2003 to Firm B, Mr Fryett indicated that he did not rely upon this legal opinion as confirmation of CIC’s ability to commence underwriting insurance in Greece.

5.15. On 31 August 2003 Mr Fryett received 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 1<sup>st</sup> 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.”*

5.16. On 26 September 2003 Mr King emailed Mr Baines, copying in Mr Fryett 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!”*

5.17. 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 28<sup>th</sup> 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.”*

- 5.18. 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 28<sup>th</sup> 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 1<sup>st</sup> 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...”*

- 5.19. However, Mr Fryett also received numerous instructions from Mr King that CIC Greece was not yet authorised to conduct insurance business in the United Kingdom and that the underwriting agents should not be writing any insurance business with CIC Greece or writing employers’ liability insurance with CIC Greece or CIC Costa Rica. The instructions to Mr Fryett included the following:

- 5.20. On 19 May 2003 Mr King sent Mr Fryett an email 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.”*

- 5.21. On 11 June 2003 Mr King sent, inter alia, Mr Fryett 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.”*

- 5.22. On 3 July 2003 Mr King sent, inter alia, Mr Fryett 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.”*

- 5.23. On 3 August 2003 Mr King sent both Mr Fryett and Mr Baines an email stating 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.”*

5.24. On 16 September 2003 Mr King sent Mr Fryett an email stating:

*“Thanks for the copy EL cert and exchanges between you and Bainesy.*

*We must remember that until we are fully authorised by the FSA, we cannot issue any EL certs in the name of CIC Insurance Company S.A.*

*We do now have the incorporation documents from Greece, but we are still awaiting the VAT number and confirmation that the Hellenic Ministry has issued the notices to the F.S.A. and other E.U. States.*

*Until then, we simply have to hold fire and comply with the rules and regulations governing overseas companies.”*

5.25. By an email dated 1 October 2003 Mr King advised Mr Fryett:

*“we need an urgent meeting with ..., in order to clarify the situation and ensure that nobody has inadvertently contravened any regulations in this regard...*

*...Any business offered by [Firm B] ... to CIC Insurance Company AVV, an overseas Insurance Company, must be submitted to CIC’s Amman, Jordan office for consideration and Underwriting. It would be illegal for [Firm B]... to “stamp” any risk on behalf of CIC Insurance Company AVV in the United Kingdom.*

*CIC Insurance Company AVV are prohibited from Underwriting any Employers Liability risks in the United Kingdom.*

*The contract between [Firm B] and CIC S.A. is “subject to full E.U. licensing”, which could technically mean that no business should be properly written until CIC S.A. has confirmation from the Hellenic Ministry of Development that the FSA has been informed of CIC S.A.’s intention to provide services in the U.K. under the freedom of services act.”*

5.26. Despite these conflicting messages, Mr Fryett failed to carry out any, or any adequate, due diligence to establish the status of the incorporation and authorisation of CIC Greece or the assets of CIC Greece. On the contrary he encouraged underwriting agents (and in particular IYS) to write insurance business in the United Kingdom (including employers’ liability business) on behalf of CIC Greece or CIC Costa Rica. As a purported director of CIC Greece, and as the introducer between underwriting agents and an insurance company offering or purporting to offer policies of insurance to consumers, it was incumbent upon Mr Fryett to undertake due diligence to satisfy himself that:

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

- (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
- (3) the representations which he received were true and that there were reasonable grounds to support them.

5.27. There is no evidence that Mr Fryett took any, or any adequate, steps to do so. Mr Fryett could easily have verified the veracity of the representations made to him by making inquiries with someone in authority at the Greek Authority or by checking the FSA Register to see if CIC Greece had been granted authorisation to passport into the United Kingdom. Self evidently, Mr Fryett 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.

5.28. Mr Fryett'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) Representations made by Mr Fryett about the status of CIC Greece**

5.29. On a number of occasions between March and December 2003 Mr Fryett represented to underwriting agents, including IYS, that CIC Greece was incorporated and authorised to conduct insurance business in the United Kingdom and that the underwriting agents could place insurance in the United Kingdom on behalf of CIC Greece. These representations included the following:

- (1) By an email dated 20 March 2003 from Mr Fryett to Mr Baines, Mr Fryett stated:

*"... 'go for it' on the basis that attachment of said risks after April 1<sup>st</sup> 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 [sic].*

*...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 [sic].*

*Worst case scenario – as with AGI, CIC can write this program 'offshore'....*

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

- (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.”*

- (3) Mr Fryett emailed Mr Baines on 18 August 2003 Mr Fryett noting:

*“we have been advised to ‘proceed with discretion’“*

- (4) At a meeting with an underwriting agent on 15 May 2003 attended, inter alia, by Mr Fryett and two other individuals on behalf of CIC Greece, Mr Fryett alternatively one of the other individuals (in the presence of Mr Fryett and with his implicit endorsement) represented:

*“Status CIC: Protocol nos x2 given by Greek authorities, Greek lawyer has informed then that they can start underwriting anywhere in EU.”*

- (5) At a further meeting with the underwriting agent on 1 October 2003 attended inter alia by Mr Fryett and another individual on behalf of CIC Greece Mr King alternatively the other individual representing CIC Greece (in the presence of Mr Fryett and with his implicit endorsement) represented as follows:

*“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.*

*That CIC was in fact able to write in the UK since early September...”*

- (6) On 6 November 2003 Mr Fryett sent Mr Baines a copy of the Report dated 1 November 2003 and another document (also dated 1 November 2003) about CIC Greece, as referred to in paragraphs 5.17 and 5.18 above).
- 5.30. The representations made by Mr Fryett as to the existence of CIC Greece and as to its authorisation to carry out insurance business in Greece or anywhere else were false. Given that CIC Greece never in fact existed as a legal entity, it is to be inferred that Mr Fryett knew, or should have known, that the representations made by him were false or alternatively he was reckless as to their truth or falsity. Alternatively, and at the very least, Mr Fryett failed to carry out any, or any adequate, due diligence to establish whether the representations which he was making were true and/or whether there were reasonable grounds to support them.
- 5.31. Mr Fryett could easily have verified the veracity of the representations made by him by speaking to someone in authority at the Greek Authority. He chose not to do so. Instead he made misleading 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 honesty, integrity and reputation and competence or capability to be expected of a professional participating in the insurance industry.

**(7) Mr Fryett's involvement with the insurance business effected by IYS**

- 5.32. There is a conflict between Mr Fryett and IYS as to whether IYS was acting as underwriting agent on behalf of CIC Greece or CIC Costa Rica. IYS's position is that IYS was writing insurance business on behalf of CIC Greece whereas Mr Fryett maintains that IYS was at all material times acting as agent for CIC Costa Rica.
- 5.33. Between 1 April 2003 and December 2003 IYS wrote business on behalf of CIC Greece (alternatively CIC Costa Rica) which generated gross premium of approximately £1.1 million pursuant to the terms of two underwriting agreements.

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

- 5.34. By an agreement dated 1 March 2003 and signed on behalf of CIC Costa Rica, CIC Costa Rica gave its authority to IYS to accept insurance business on its behalf with insureds domiciled or operating in the United Kingdom. This 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 permitted to accept. In respect of employers' liability business, the limit was £10 million for any one loss but unlimited in any one year.
- 5.35. With effect from April 2003, following instructions from Mr Fryett to "go for it", IYS proceeded to effect and carry out of contracts of insurance in the United Kingdom on

behalf of CIC Greece, alternatively CIC 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 CIC Costa Rica.

- 5.36. Mr Fryett knew, or should have known, that CIC Greece, alternatively CIC Costa, was not authorised to effect and carry out contracts of insurance in the United Kingdom. Further, on the basis of Mr Fryett's previous experience in the insurance industry and enquiries he undertook in 2003 about insurance companies "passporting" into the United Kingdom, 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 Fryett 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 encouraged and facilitated it.
- 5.37. Further, Mr Fryett personally benefited from all business written by IYS in the United Kingdom pursuant to the First IYS Contract as he was entitled to 5% commission on business it wrote on behalf of CIC Greece, or alternatively CIC Costa Rica, which amounted to approximately £5,250 per month from IYS.

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

- 5.38. By an agreement signed on behalf of CIC Costa Rica on 1 July 2003 and IYS on 6 August 2003, IYS was given an authority, subject to confirmation of full EU licensing by the Greek Authority, 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, this authority to bind contracts of insurance was limited to Mr Baines and another employee of IYS. The classes of business which IYS was permitted 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.
- 5.39. CIC Greece did not exist in July 2003 (or ever). In spite of this, Mr Fryett encouraged and facilitated IYS to effect or purport to effect insurance business on behalf of it. Even if (which is not the FSA's case) Mr Fryett thought that CIC Greece was incorporated and licensed by the Greek Authority to transact general insurance business with effect from 1 September 2003 (see paragraph 5.15 above), he must have realised that it could not have existed before that date much less that CIC Greece could have authorised underwriting agents to underwrite insurance business on its behalf in the United Kingdom. In spite of this he took no steps to remedy the position or to address the fact that business had been written on behalf of a company which did not exist.
- 5.40. Further, Mr Fryett personally benefited from all business written by IYS in the United Kingdom pursuant to the Second IYS Contract as he was entitled to 5% commission it

wrote on behalf of CIC Greece, alternatively CIC Costa Rica, which amounted to approximately £5,250 per month from IYS.

5.41. Mr Baines supplied Mr Fryett with regular bordereaux of business written by IYS on behalf of CIC Greece, alternatively CIC Costa Rica, including the following:

- (1) By an email dated 4 August 2003 Mr Baines of IYS supplied, inter alia, Mr Fryett 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.
- (2) By an email dated 21 August 2003 from Mr Baines of IYS to, inter alia, Mr Fryett 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.
- (3) By a yet further email dated 25 September 2003, Mr Baines of IYS supplied, inter alia, Mr Fryett 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.

5.42. Mr Fryett 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) and he encouraged IYS to do so. 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.

- 5.43. Accordingly, Mr Fryett 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.

#### Employers' liability insurance

- 5.44. Mr Fryett 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 he knew that CIC Costa Rica could never have been an authorised insurer for the purposes of section 1 of the 1969 Act in respect of employers' liability insurance.
- 5.45. Mr Fryett also knew that by the terms of the Second IYS Contract IYS was to write employer's liability business on behalf of CIC Greece in the United Kingdom. He knew or ought to have known that CIC Greece could never have been an authorised insurer for the purposes of section 1 of the 1969 Act in respect of employers' liability insurance.
- 5.46. As set out in paragraph 5.41, the bordereaux supplied to Mr Fryett by IYS demonstrated that the contracts of insurance effected by IYS included employers' liability insurance. Mr Fryett 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.
- 5.47. Mr Fryett encouraged IYS to write employers' liability business, alternatively he facilitated it or acquiesced in it, in the knowledge that IYS was writing such business with insurers who were not authorised for such purposes. In particular:

- (1) In June 2003 Mr Baines disclosed to Mr Fryett that he had issued 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."*

- (2) Mr Fryett sent Mr Baines an email dated 11 June 2003 which stated:

*"CONFIDENTIALLY an idea –*

*Given that you 'on side' with Mr Najia whom a Senior Co Official at this time, immediately you in the office email him the proposed EL Cert template and seek his agreement to you issuing them in the name of .....AVV for the scheduled risks agreed and 'stamped'.*

*Whilst I urge you to hold them [employers liability certificates] until we are 'legalised', you could discreetly let those go where you under pressure to do so."*

- (3) In June 2003, following an instruction from Mr King about the need to exclude employers' liability insurance at the time, Mr Fryett instructed Mr Baines to ignore what Mr King was saying about employers' liability as:

*"it can be formally acknowledged on Monday after we have the licence in hand."*

5.48. As explained in paragraph 2.7 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 criminal offence for these purported policyholders to have employers' liability insurance with CIC Greece (or CIC Costa Rica) rather than an authorised insurance company. By encouraging IYS to write employers' liability insurance with CIC Greece, alternatively CIC Costa Rica, (alternatively by facilitating or acquiescing in the practice) Mr Fryett 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.

**(8) Lack of regard for compliance with regulatory standards**

5.49. In October 2003 a representative of the CIC company which was established to administer the business conducted by CIC Greece raised with, inter alia, Mr Fryett his concerns about possible regulatory breaches in the United Kingdom as the underwriting agents had commenced writing insurance business, including employers' liability insurance, in the United Kingdom in circumstances where it was unclear whether or not CIC Greece had been properly incorporated and licensed.

5.50. In response Mr Fryett dismissed these concerns stating, in an email dated 5 October 2003:

*"Respectfully, you should not worry yourself by what pre-dates your employ. By 'digging', we will alienate both of these agencies irrespective of whether 'protocols' have been breached.*

*We will only have a problem if there a claim which disputed.*

*Let's not forget that we are a Greek Co and should not be in fear of the FSA."*

5.51. In a further email the following day, having been advised that it would be wrong to ignore these concerns, Mr Fryett stated:

*"I am in total agreement and realise that we cannot ride 'roughshod' over the law and regulation, but I ask that we 'tidy up' on the insureyourshop.com portfolio without causing distress to the principals.*



*There will be risks declared to Jordan including EL pursuant the opinion from our Greek Lawyer and it now apparent that this may be wrong!*

*It is for the Company to afford .....AVV a portfolio transfer to the Greek Co as of August 28<sup>th</sup> 2003 and the underwriting agreement reissued to confirm such 'housekeeping'."*

- 5.52. In suggesting that the insurance could be retrospectively transferred as a matter of "housekeeping", Mr Fryett's conduct demonstrated a lack of regard for compliance with regulatory standards. Further, the suggestion that such business could be transferred into a company which did not exist and was not authorised to carry out insurance business in the United Kingdom demonstrated a complete disregard for the interests of consumers who had paid for such policies on the basis that they would obtain valid cover. This is conduct which is far below the standards of honesty, integrity and reputation and competence or capability to be expected of a professional participating in the insurance industry.

## **6. REPRESENTATIONS**

- 6.1. Mr Fryett made oral representations on 25 September 2007. This section of this Notice summarises the key representations that he made.
- 6.2. Mr Fryett has over 30 years' experience in the insurance industry. Over that period he has worked hard to build his reputation, working with various Lloyd's broking firms. He eventually became an independent broker specialising in bloodstock insurance. In 1997 Mr Fryett went into partnership with another Lloyd's broker, who became insolvent in 1999. As a result Mr Fryett lost some goodwill and some clients. Between 1999 and 2001 Mr Fryett was looking into the opportunities for passporting insurance business across the EU with an experienced market person.
- 6.3. At the end of 2002 Mr Fryett was approached by Mr King (with whom he had not previously done business) about finding reinsurance. CIC Costa Rica (which had an international office in Jordan) was not permitted to write business in the EU. Mr King planned to take over a Greek insurer which had been in administration. However the Greek authorities determined that this was not permissible so a start-up company was needed. The source of the Greek opportunity was a Greek broker who had previously been a Lloyd's cover holder.
- 6.4. Mr Fryett considers that he was the most diligent individual in the process. He had agreed to become an officer of the Greek company once it was incorporated and licensed. Mr Fryett arranged for the person, with whom he had been working between 1999 and 2001, to become non-executive chairman. That person then brought in some other market professionals. Mr Fryett was not involved in the negotiations to set up CIC in Greece. Apart from the initial meeting in Greece in January 2003, Mr Fryett was not further involved in 2003 and he did not go back to Greece during that period.
- 6.5. Mr Fryett had discussed the delays in Greece with the proprietor of Firm B. One thing that came up was that there were problems with the capital for the Greek company. As a result Firm B made arrangements with CIC to assist in funding.

- 6.6. Mr Fryett began to have severe doubts about the credibility of Mr King and the CIC process in Greece in about June/July 2003. Mr Fryett was getting uncomfortable with the position, as were others, about the length of time being taken for the licensing process. Mr Fryett was getting little or no information or feedback about it. Because of his concerns Mr Fryett approached a law firm, who agreed to act for Mr Fryett's company. He decided to do this after the email stating that CIC had got "the green light", because Mr Fryett had seen nothing in writing to confirm the position. The opinion was to set out what was required before business could start. The law firm also agreed to provide advice on the passporting process for others involved, including CIC – though Mr Fryett instructed them. Mr Fryett believes that he acted as diligently as he could have done.
- 6.7. In relation to the matters referred to in paragraphs 5.49 – 5.52, Mr Fryett stated that he had welcomed this individual's involvement and professional approach. However, Mr Fryett wrote to him by email questioning the individual's priorities. Mr Fryett acknowledged that his email was not well worded. The individual had started writing a corporate governance manual. Mr Fryett now recognises that this was a good thing, but at the time he considered that the key problem of what was happening with the licence was not being addressed. Mr Fryett was getting frustrated. He was being asked lots of questions by Mr Baines, Firm B and others, even though Mr Fryett was not involved in the Greek application.
- 6.8. Mr Fryett went on a family holiday to Australia in December 2003, and the situation had blown up by the time he got back. He went to Greece in January 2004 (as a consultant) to find out why the application process had failed. He found that the €3m lent by Firm B had been frozen in Greece. No one else was doing anything. If Mr Fryett had not gone there and taken steps then the money probably would have been tied up for a long time. In his view the transfer of liabilities from Firm B to another insurer would not have happened if the money had not come back from Greece.
- 6.9. Mr Fryett considers that he did everything he could to make the position with the Greek company compliant but could not achieve this because those involved in the application process were inept. In Mr Fryett's view there was a lot of keenness to get something going in Greece but certain individuals were out of their depth.
- 6.10. Both Mr Baines and Firm B were told of the current position with CIC. Both had market experience – they had been GISC intermediaries. They were keen to do business with CIC. There was a shortage of capacity for certain business lines at that time. There were more market people aware of what was going on than mentioned in the investigation report, who were also keen to do business.
- 6.11. Mr Fryett had specifically arranged a line of cover for Mr Baines with an existing underwriter. Despite this Mr Baines wanted something autonomous and different. He was still determined to do what he did. Mr Baines was continually badgering Mr Fryett. Mr Fryett recalls conversations which ended by him saying that it was not his decision, that Mr Baines could not write the business for CIC, and reminding Mr Baines of the other facility he had arranged. There were a number of emails written late at night, some of which were (with hindsight) poorly worded. The remark about "it being on your PI" was flippant and relied on in isolation. Mr Fryett said that these

emails were not written to his usually high standards. Mr Fryett has never held himself out as an expert on employers liability insurance.

- 6.12. Mr Fryett's principle concern is to protect his reputation. He does not currently work in a regulatory environment and does not work with client money or directly with consumers (he never has done). He works with market professionals and business only. Therefore Mr Fryett disputes the FSA's assessment that he poses a risk to consumers or the market.
- 6.13. Mr Fryett stated that he was not guilty of encouraging Mr Baines to act unlawfully – and questioned the logic of doing so: why would he and at the same time specifically have arranged the line of cover for Mr Baines (the person with whom Mr Fryett arranged this cover would say the same if asked). Mr Fryett refuted the allegation and suggested that Mr Baines' and Mr King's recollections were very poor, at best.
- 6.14. Mr Fryett accepts that he became involved with people who he would have done better not to have done. In particular Mr Fryett commented that Mr King had made representations about the Greek company which proved to be false. He has been facing a difficult position over several years as a result. He has learned the key lesson – of being careful who one does business with. He does not consider that he is a risk to consumers or to the FSA's regulation. People who were damaged by the CIC events are still prepared to do business with him. They would not do so if they considered him to be a threat to consumers or the market.

## **7. FINANCIAL SERVICES AND MARKETS TRIBUNAL**

- 7.1. On 30 November 2007 Mr Fryett referred the FSA's 7 November 2007 Decision Notice to the Financial Services and Markets Tribunal.

## **8. CONCLUSIONS**

- 8.1. The FSA noted what Mr Fryett has said in his representations about his involvement with CIC Greece, and with Mr Baines and other brokers. However, the FSA considers that Mr Fryett knew of enough triggers, notwithstanding that others were keen to start writing CIC business, to indicate that he should seek to prevent this business being written.
- 8.2. Mr Fryett's oral representations did not address in detail the email exchanges relied on by the FSA in section 5. Although Mr Fryett did state that Mr Baines had been putting him under pressure, the FSA does not consider that this can properly explain or excuse the statements by Mr Fryett contained in the emails described in paragraph 5.29.
- 8.3. The FSA accepts that Mr Fryett did not, in his actions as described above, deliberately set out to defraud any person. However, the FSA considers that Mr Fryett's actions amount to a fundamental failure to comply with the regulatory issues concerned despite having recognised their existence. The FSA considers that this amounted to a conscious disregard for the regulatory issues, and that Mr Fryett was complicit in the commission of unlawful acts.

8.4. Accordingly, Mr Fryett 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.

## **9. DECISION MAKER**

9.1. The decision which gave rise to the obligation to give this notice was made by the Regulatory Decisions Committee

### **IMPORTANT**

9.2. This Decision Notice is given to you under section 57 and in accordance with section 388 of the Act. The following statutory rights are important.

#### **Third party rights**

9.3. A copy of this Notice is being given to CIC Costa Rica, IYS and Mr King as third parties identified in the reasons above and to whom in the opinion of the FSA the matter is prejudicial. These parties have similar rights of representation and access to material in relation to the matter which identifies them.

#### **Confidentiality and publicity**

9.4. Sections 391(4) and 391(6) Act provide that that the FSA must publish such information about the matter to which this Final Notice relates as it considers appropriate, provided such information is not, in the opinion of the FSA, unfair to you or prejudicial to the interests of consumers. Section 391(7) of the Act provides that the information should be published in a manner which the FSA considers to be appropriate.

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

#### **FSA contacts**

9.6. For more information concerning this matter generally, you should contact Adrian Berrill-Cox at the FSA (direct line: 020 7066 1212 / fax: 020 7066 1213) or Richard Topham (direct line: 020 7066 1180 / fax 020 7066 9748).

**Jonathan Phelan**  
**Head of Department**  
**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.’*