PROHIBITION ORDER – Fitness and propriety – Involvement of Applicant in unauthorised activities – Overseas enterprises purporting to effect EL insurance in UK without authorisation – Whether Applicant knowingly concerned in contravention of statutory requirements – Yes – Reference dismissed

FINANCIAL SERVICES AND MARKETS TRIBUNAL

STEPHEN FRYETT **Applicant**

- and -

FINANCIAL SERVICES AUTHORITY **The Authority**

Tribunal: SIR STEPHEN OLIVER QC
T C CARTER
C H SENIOR

Sitting in Public in London on 22 July and 30 September 2008

The Applicant in person

Aidan Christie QC, for the Authority

DECISION

1. By a Reference Notice of 30 November 2007, the Applicant, Mr Fryett, has referred to the Tribunal the matters contained in a Decision Notice of 7 November 2007. In that Decision Notice the Authority informed Mr Fryett of its decision to make an order under Section 56 of the Financial Services Market Act 2000 ("the Act") prohibiting him from performing any function in relation to any regulated activity carried out by any authorised person, exempt person or exempt professional person on the grounds that he was not a fit and proper person.

2. Mr Fryett was aggrieved by that decision. He says that it was wrong and disproportionate.

3. Mr Fryett has been involved in the insurance industry for a number of years. He is the owner and sole director of a company known as FEL Asset which, we are informed, acted as a consultant between accredited firms and insurance and re-insurance carriers globally until it ceased trading in or about 2005. He has never been an approved person for the purposes of the Act.

4. The FSA presented its case on the basis of documentary evidence. We were provided with a large volume of documentation. We start this decision by giving a broad overview of the matters with which this Reference is concerned.

Overview

5. The reference relates to the writing, or purported writing, of contracts of insurance in the UK during 2003 by companies that we will refer to as "CIC Greece" and "CIC Costa Rica". Neither of those companies have ever been authorised to carry on any regulated activity in the UK. It is not in dispute that CIC Greece was never actually established or licensed as an insurance company in its home state of Greece; it could not therefore have been validly passported into the UK. Neither CIC Greece or CIC Costa Rica was, or could ever have been, authorised to effect and carry out contracts of insurance in the UK or, more particularly, to effect and carry out contracts of employer's liability ("EL") insurance of the kind required by the Employer's Liability (Compulsory Insurance) Act 1969 ("the 1969 Act"). In writing or purporting to write contracts of insurance in the UK without authorisation, CIC Greece and CIC Costa Rica did so in breach of the "general prohibition" and in writing or purporting to write EL insurance they placed purported policy holders in breach of the 1969 Act. None of those factors was disputed by Mr Fryett.

6. The case for the Authority is that Mr Fryett was intimately involved in all of those activities. At all material times he had held himself out as a director of CIC Greece and had actively encouraged underwriting agents in the UK to enter into contracts of insurance in the UK on behalf of either or both of CIC Greece and CIC Costa Rica. Despite knowing that both those companies had entered or purported to enter into contracts of insurance in breach of the general prohibition, he had failed to take any steps to inform the Authority or in any other way to remedy the irregularities.

Despite the fact that he had been specifically informed of the irregularities by the compliance officer of CIC Greece and, in particular, that that company had purported to enter into contracts of insurance in the UK at a time when it could never have existed, he failed to take any steps to halt such practices or report them to the Authority.

7. The Authority pointed to the fact that Mr Fryett benefited personally from those activities. Between March and November 2003 he had received at least £80,000 (and possibly up to £100,000) by way of commission payments in relation to the writing (or purported writing) of insurance business in the UK by those two companies.

8. In the light of those circumstances the Authority claimed that Mr Fryett had failed to comply with the standards that were reasonably to be expected of someone in his position in the insurance market. In this respect he had made false representations to underwriting agents about the existence of CIC Greece and its authorisation to carry on insurance business. He had failed to take any adequate steps to satisfy himself that CIC Greece had been properly established and licensed there and was properly authorised to carry on business in the UK. Despite his role as an intermediary between agents in the UK and CIC Greece and CIC Costa Rica, he had failed to take any adequate steps to ensure that the company in question was properly authorised to write business in the UK. Overall, it is said by the Authority Mr Fryett had demonstrated a complete disregard for the importance of regulatory standards and the need to comply with them even when the serious breaches had been drawn to his attention.

9. The Authority formed the view that Mr Fryett was unfit to carry out any functions in relation to regulated activities and that his conduct suggested that he was likely to pose a serious risk to consumers and confidence in the financial system in the future. In this respect they took into account the fact that businesses trading without any, or any effective insurance cover, would find themselves personally exposed; moreover those who purchased EL cover with insurers who turned out to be not authorised would expose themselves to criminal prosecution.

Mr Fryett's Position

10. Mr Fryett attended the hearing. He was not represented but he gave evidence. It is always a matter of concern to the Tribunal when an unrepresented applicant is seeking to displace a decision of the Authority that stops or seriously inhibits him from earning his livelihood. This is a case that calls for, at the least, some *pro bono* assistance. We can say however that we have carefully scrutinised the documentary evidence relied on by the Authority and have taken nothing for granted.

11. Mr Fryett's case, in essence, was this. Throughout, he had been an intermediary. He had not been a decision maker. To the extent that he had participated he had proceeded on misleading information provided by, among others,

Greek lawyers. He had not been knowingly concerned in any regulatory breach. With that in mind we now turn to the law and to the facts as shown from the evidence.

The Legal and Regulatory Framework

12. Section 56 of the Act enables the Authority to make a "prohibition order" where it appears to them 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." A prohibition order may relate to "any regulated activity falling within a specified description of all regulated activities" and to "authorised persons generally or any person within a specified class of authorised person".

13. At the time when the Warning Notice was issued (26 June 2007), the relevant FSA Guidance relating to its enforcement powers was contained in the Enforcement Manual (ENF). ENF 8.8 deals with prohibition orders against individuals and is applicable to Mr Fryett. In so far as relevant it provides in ENF 8.8.1 –

> "The FSA will consider exercising its power to make a prohibition order against…. individuals where they have shown themselves to be unfit to carry out functions in relation to regulated activities."

14. ENF 8.8.2 provides:-

> "The FSA will consider the individual's fitness and propriety where, for example, it appears that:
>
> (i) the individual who has been involved in conducting regulated activities in breach of the general prohibition;
>
> …
>
> (iii) he appears likely to pose a serious risk to consumers or confidence in the financial system in the future.

15. ENF 8.8.2 A provides;

> "In cases where it is considering whether to exercise its power to make a prohibition order against individuals 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"

16. ENF 8.5.2 (1), (3) and (5) provides:

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

(i) 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 … honesty, integrity and reputation;

17. **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, an ability and willingness to comply with requirements placed on him 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;

…

(3) the relevance, materiality and length of time since the occurrence of any matter indicating unfitness;

…..

(5) the severity of the risk which the individual poses to consumers and to confidence in the financial system."

18. "The General Prohibition" founded in Section 19 of the Act and provides that "no person may carry on a regulated activity in the UK, or purport to do so, unless he is… an authorised person." Section 22 of the Act provides that an activity is a regulated activity if it is an activity of a specified kind, which is carried on by way of business.

19. The Financial Services and Marketing Act Regulated Activities Order 2001 (SI2001/544) sets out the activities, which have been specified for the purposes of the Act. Regulation 10 provides that (subject to the exceptions in Regulations 11 and 12) effecting and carrying out a contract of insurance as principal is a specified kind of activity.

20. *Re a Company (number 007816 of 1994)* [1994] 2 BCLC 685 concerned the contravention of Section 2 (1) of the Insurance Companies Act 1982. The case shows that the fact that an insurance contract is made outside the UK does not mean that there cannot be the carrying on of an insurance business within the UK. It also shows that certain activities conducted by brokers in the UK on behalf of offshore companies

(other than the acceptance of risk) amount to evidence that the offshore companies were carrying on business in the UK.

21. Contravention of the general prohibition is a criminal offence under Section 23 of the Act. Where a person is charged with such an offence, Section 23 (3) provides that "it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence in committing the offence".

22. ENF 8.8.2 (set out above) provides that the Authority will consider an individual's fitness and propriety where it appears that he has been involved in conducting regulated activities in breach of the general prohibition. There is no definition of the word "involved". We were referred to cases dealing with the words " knowingly concerned" in sections VAT (2) and 3 (a) to 2 (1) of the Act (derived from their statutory predecessors). These were *SIB v Pantell SA* (2) [1993] Ch 256 (CA), *SIB v Scandex Management A/S* [1998] 1 WLR 712 (CA) and, recently *FSA v Martin* [2005] 1 BCLC 95 and [2006] 2BCLC 193 (CA). In broad terms sections 380 (2) and 382 (1) permit the Authority to seek corrective or restitutionary orders against persons who have contravened relevant requirements and persons who have been "knowingly concerned" in such contraventions. Persons who are "knowingly concerned in the contravention are not themselves contraveners. However, actual involvement in the contravention must, as Steyn LJ pointed out in *Pantell SA*, be established. Liability arises from a person being knowingly concerned in the contravention, not merely being concerned in the carrying on of the relevant business. Since the contravention will sometimes be the carrying on of business without authorisation under the Act, this raises the question of what level of knowledge is required in relation to the contravention. We accept the test as to whether someone has been in contravention of a statutory requirement, such as the general prohibition, as being whether the person in question knew the elements of the scheme contravening that statutory provision and was concerned in the carrying on of the relevant business.

23. "Passport rights in the EEA" are covered by Parts I and Part II of Schedule 3 of the Act. An EEA firm, being a firm in a state within the EEA which has been authorised by its home state regulator to pursue the activity of direct insurance, qualifies for authorisation in the UK (by paragraph 12 of Part II) if (in circumstances where it is seeking to establish a branch in the UK in exercise of an EEA right (as defined)) it satisfies the establishment conditions in paragraph 13 of Part II: and, in circumstances where it is seeking to provide services in the UK in exercise of an EEA right, that it satisfies the "service conditions" (set out in paragraph 14 of Part II).

24. By paragraph 14 of Part II the service conditions require that the firm has given its home state regulator notice of its intention to provide services in the UK and that the FSA has received notice from the firm's home state regulator containing such information as may be prescribed. The firm's home state regulator must have informed it that the regulator's notice has been sent to the FSA and the FSA must have prepared for the Firm's supervision, and, by notice given within 2 months of receipt of the regulator's notice, must have notified the firm of any applicable

provisions. Those requirements relate to undertakings pursing an activity of direct insurance.

25. Paragraph 15 provides that, on qualifying for authorisation, a firm has, in respect of each permitted activity, being a regulated activity permission to carry it on by providing services in the UK.

26. Greek law imposes further requirements on Greek insurance companies seeking to provide services in another EU country. Written evidence of a Mrs C Lontou, of the legal department of the Insurance Enterprises and Actuarial Directorate of the Hellenic Republic Ministry of Development, shows that in relation to the granting of a licence returned with the free provision of services abroad, the insurance company must first operate in Greece for at least one year until it has completed its annual accounts.

27. The 1969 Act, relating to EL insurance, requires every employer carrying on any business in the UK to purchase and maintain insurance under an approved policy with an authorised insurer against liability for bodily injury or disease sustained by its employees. For this purpose an authorised insurer is defined to include an EEA firm of the kind mentioned in Schedule 3 to the Act which has permission under paragraph 15 of that Schedule to effect and carry out contracts of insurance of the kind required by the 1969 Act. The 1969 Act provides also that an employer who on any day is not insured in accordance with the 1969 Act when required to do so is guilty of an offence and is liable on summary conviction to a fine.

Background Facts

28. CIC Costa Rica was incorporated in 1998 and established in Costa Rica in 2002. Its directors included a Mr King and a Mr Whitney. It has never been authorised or permitted to carry on insurance business in or from Costa Rica and has never been authorised to carry on insurance business in the UK. In 2002 it was registered as a non-operating foreign company in Jordan. The certificate of registration stated that its objects were to conduct insurance and re-insurance business but it was expressly prohibited from carrying out any business or commercial activity inside Jordan. Its representative in Jordan was stated to be a Mr Afif Najia.

29. The circumstances relating to CIC Greece are not clear from the documentation provided by Mr King and others. The account of the matter provided in the witness statement of Mrs C Lontou is summarised in the following paragraphs

30. An application for an insurance licence in Greece has to be made at the same time as an application to establish an insurance company and one cannot occur without the other. Further, an insurance company can only be established and licensed if it is approved by the Minister for Development following a recommendation by the Insurance Committee.

31. On 27 June 2003 CIC Coasta Rica made an application, through Mrs. Lelovitou, a lawyer in the Greek Ministry for Development ("GMD") for approval of the establishment of a branch office in Greece. The request was rejected because under Greek law an offshore company cannot establish a branch office in Greece unless it is operating an insurance company in its own state and has obtained a licence from its home state to open a branch in Greece. CIC Costa Rica did not fulfil those requirements.

32. Following that rejection, on 1 September 2003 Mrs Lelovitou made a further application for the establishment of an insurance company to be known as CIC Insurance Company – General Insurance Company SA. The application was accompanied by articles of association and a business plan. The articles state that CIC Greece was formed on 28 August 2003 at the offices of Mrs Lelovitou in the presence of, among others, Messrs King, Whitney and Papaghikas. Mr Fryett was stated to be a member of its first board of directors. A business plan, disclosed by Mr Fryett and originally circulated in March 2003 to Mr Whitney, Mr Papaghikas and Mr Fryett, gave a summary outline for the new insurance company in Greece. The management team was said to include Mr Fryett as business development director, (Mr Fryett said in evidence, and we accept this, that his understanding had been that his name had been included "for the purposes of the application". The application by CIC Greece on 1 September 2003 was the first application for a licence to carry on insurance business. The application was heard by the Greek Insurance Committee on 19 December and was adjourned to a further hearing in January 2004 at which it was rejected.

33. Mr Fryett did not dispute the account summarised above. In evidence, however, he asserted that it had been his understanding that an attempt had been made to acquire an existing Greek insurance company known as Elliniki Pisti which had been placed in liquidation by the Greek authorities for violation of Greek law. The Authority say, and we accept this, that such a procedure would have been impossible under Greek law because an insurance company which had been put into liquidation cannot recommence carrying out insurance business.

34. It is clear from Mrs. Lelovitou's account that, whatever information was circulated during 2003 about the establishment of CIC Greece, in fact the alleged entity referred to as CIC Greece, was never established as a company in Greece and could never have been licensed to operate as an insurance company in Greece. It follows that it could never have been passported into the UK in order to write any insurance business in the UK.

35. Although we have taken the status of CIC Greece from Mrs Lontou's witness statement, we acknowledge that there may have been some confusion in the minds of various individuals about the status of CIC Greece during 2003. To add to the confusion is a message of 23 April 2003 in which Mr Papaghikas indicated to Mr King that CIC was on the priority list for the acquisition of Elliniki Pisti and this information had been forwarded to Mr. Fryett by Mr King on the following day.

36. On 8 July 2003 Mr Papaghikas sent Mr King a letter apparently signed by Mrs. Lelovitou and dated 7 July 2003 in which is stated her opinion that the GMD had agreed to CIC Insurance company issuing insurance coverage and supporting documents with effect from 1 July 2003.

37. On 28 August 2003 Mr King with Mr Whitney and Mr. Papaghikas apparently attended the offices of Mrs Lelovitou to establish CIC Insurance Company – General Insurances SA as a joint-stock insurance company. Following this on 1 November 2003, Mr King issued a Chairman's Report in which he stated that CIC Greece was successfully incorporated and licensed to transact general insurance business on 28 August 2003. An announcement accompanying the Report stated that CIC Greece had been incorporated by the Greek authorities on 28 August 2003 and had been granted authorisation by the GMB on 1 September to transact general insurance business throughout the EU. Those documents, which describe Mr Fryett as the business development director of CIC Greece, had been received by him on 6 November 2003.

38. Despite the alleged misunderstanding and misinformation referred to above, two things are evident to us. In the first place, CIC Greece was never established under Greek law and was never licensed to conduct insurance business in Greece or elsewhere. Secondly, there was a failure on the part of anyone connected with the proposed establishment of CIC Greece, including Mr Fryett who was held out as one of its directors, to carry out any investigation with the GMD or the FSA as to the actual status of the company and to satisfy themselves that the company was properly established and licensed to carry on insurance business.

39. Those circumstances, say the Authority, show Mr Fryett ignoring the regulatory requirements and hoping for the best. On any view that was, say the Authority, a highly irresponsible approach where CIC Greece was to be writing insurance throughout the EU and taking premiums from businesses and individuals who thought that they were purchasing valid insurance with an authorised insurer. Mr Fryett's response was that, as a broker or other intermediary in relation to CIC Greece, it had been no part of his business or responsibility to make such enquiries.

Agreements with Agents

40. The first agreement described as the CIC Costa Rica/IYS Slip Contract, was dated 1 March 2003. It was signed by Mr. Najia on behalf of CIC Costa Rica. IYS was an insurance agency set up by a Mr Baines. IYS concentrated on EL and public liability policies for small shops and take away businesses. CIC Costa Rica authorised IYS, with effect from 1 March 2003, to accept insurance business on its behalf with insureds domiciled or operating in the UK. The agreement authorised IYS to accept property damage, liability and business interruption insurance in respect of all classes of takeaway and restaurant business and retail shops subject to certain exclusions. It imposed limits in respect of the cover which IYS was authorised to accept. In respect of EL business the limit was £10 million for any one loss but unlimited in any one year. IYS was entitled to a commission of 30% on all premiums collected. Mr Fryett,

trading as Evergreen Management Consultants for FEL Asset, was to be recognised as the representative officer for CIC Costa Rica in the agreement and was to be paid a monthly consultancy fee by IYS unless otherwise agreed.

41. The second agreement, the Underwriting Agency Agreement between IYS and CIC Greece, was signed by Mr Najia of CIC Costa Rica on behalf of CIC Greece on 1 July 2003 subject to confirmation of full EU licensing by the Greek Authority. It was expressed to supersede the slip contract between CIC Costa Rica and IYS. The agreement authorised IYS to bind insurance contracts in the UK for the account of CIC Greece with effect from 1 July 2003. The classes of business which IYS was authorised to bind on behalf of CIC Greece included property damage and liability of business interruption. The maximum limit of liability for EL risks was £10 million for any one risk. The insurance intermediary under the contract was FEL Asset. IYS was entitled to a commission of 30% on gross premiums from which it was to pay FEL Asset a mutually agreed consultancy fee.

42. The third agency agreement was an underwriting agency agreement between Hogarth Underwriting Agencies ("Hogarth") and CIC Greece. This was signed by Mr Witney on behalf of CIC Greece, subject to confirmation of full EU licensing by the Greek authority, on 1 July 2003 and by a Mr Dewsall for Hogarth. It was in similar terms to the agency agreement between IYS and CIC Greece. Thus Hogarth, through Mr Dewsall, was authorised to bind insurance contracts in the UK for the account of CIC Greece for a period of 3 years. The classes of business that Mr Hogarth was authorised to bind included contractors, all risks insurance (as single contracts or as part of a commercial combined package which might include EL risks) for risks situated in the UK and Ireland. The maximum limit on liability was £10 million for any one risk. The estimated premium income was £50 million in any 12 month period. The named intermediary under the contract was FEL Asset. Hogarth was entitled to a commission of 7.5% of gross premium. This agreement was effectively terminated on 27 November 2003 when the Authority intervened by visiting the offices of Hogarth.

43. The fourth agreement was an underwriting agency agreement between Asset Underwriting and CIC Greece. This was dated 1 October 2003 and had similar terms to the underwriting agency agreements referred to above. It took effect from 1 September 2003. On 14 November 2003 Asset Underwriting gave notice of cancellation to all brokers on all commitments made pursuant to the authority. Later the same day Mr. Fryett, as business development director of CIC Greece, instructed that all risks bound by Asset Underwriting in the name of CIC Greece were deemed cancelled and he instructed Asset Underwriting to cease and desist from acting.

44. In addition to those four agency agreements, on 21 June 2003 Mr Fryett provided IYS with a Management Agreement purporting to be an agreement between CIC Greece and IYS. The agreement stated that CIC Greece was an EU licensed general insurer incorporated in Athens and authorised to transact all forms of general insurance business subject to local regulation. By the agreement, CIC Greece

purported to appoint IYS as it representative and manager in the management of insurance business, including EL business, with effect from 1 July 2003.

Business written between March and November 2003.

45. We start with business written by IYS. Prior to April 2003 it appears that IYS arranged cover, including EL, for its clients through Darwell Underwriting Limited which acted for an offshore insurer, Arab German Insurance Company. Darwell had an authority from Lloyds Underwriters. The Lloyds facility was needed for the acceptance of EL business. The slip contract between IYS and CIC Costa Rica provided for the business written through Darwell to be transferred to CIC Costa Rica with effect from 1 March 2003. In e-mails to the FSA of July and August 2005 Mr Baines of IYS stated that in April 2003 he had placed all his business with CIC (apparently meaning CIC Costa Rica) save for EL business which had been placed with Lloyds through a facility operated by Dulwich Insurance Services. He said that Mr Fryett had been responsible for arranging this "back up" facility with Dulwich. Mr Baines went on to say that with effect from 1 May 2003 all his business, including EL, was with CIC Greece. That conclusion is based on documentation produced by IYS.

46. The documentation starts with the IYS prospectus of 2003 which states that "this insurance is underwritten by CIC Insurance Company SA regulated by European Union general insurance Directives" and that cover includes EL cover up to £10 million. There is an IYS policy document also of 2003 which states that the insurance is underwritten by CIC Greece and that it includes EL. The specimen policy schedule and certificate of EL liability and a certificate of EL insurance bears an electronic signature of Mr Najia on behalf of CIC Greece and the period of insurance is 12 months from 20 May 2003. The bordereaux prepared by IYS for business written by IYS from March 2003 onwards, which was sent to Mr King and Mr Fryett, show that virtually all the business of IYS including EL was with CIC Greece.

47. Mr Baines of IYS reported to Mr King and to Mr Fryett on business written and claims paid. The relevant information was contained in the borderaux sent by e-mail and copied to Mr Fryett. Three of those borderaux contained the documentary evidence inspected by us. An e-mail of 4 August 2003 from Mr Baines to Mr King copied to Mr. Fryett supplied a bordereaux of claims paid and a bordereaux of risks written. Of the policies written from 1 April onwards (approximately 320), all but three bore the letters "CC". It was not in dispute that this referred to a CIC company. The premium included, in nearly all cases, premium for EL insurance. The total premium on the bordereaux was some £375,000 from which IYS deducted its 25% commission and the 5% commission of £18,808 payable to Mr Fryett's company SEL Asset. The payment made to CIC was £141,000.

48. An e-mail of 21 August 2003 to Mr King and copied to Mr Fryett provided further bordereaux of risks written by IYS and claims paid. The amounts paid to CIC was said to be some £90,000. An e-mail of 25 September 2003 to Mr King, copied to

Mr Fryett, records Mr Baines of IYS sending a further bordereaux of risks written and claims paid.

49. The gross premium produced by IYS in respect of risks contained in these three bordereaux was some £637,000 of which IYS received commission of around £159,000 and Mr Fryett through FEL Asset received commission of £32,000. We were referred to evidence in the form of an e-mail from Mr Baines to the Authority dated 2 August 2005 in which Mr Baines stated that further payments had been made to CIC Greece. In all, he says, IYS made five payments totalling some £510,000 to CIC Greece between 5 August and 27 November 2003 in respect of material damage premium for April 2003 and material damage and EL premium from May to September 2003. We did not understand this to be challenged by Mr Fryett.

50. The bordereaux of risks written by Hogarth, contains 124 risks with inception dates from 1 August 2003 up to 24 December 2003 of which 52 risks have inception dates in August 2003. The gross premium written by Hogarth in respect to those risks was £3,453,328, of which the net amount paid to ICI Greece was said to £3,043,597.

51. Mr Fryett in his written response accepted that both IYS and Hogarth had purported to write business on behalf of CIC Greece after July 2003. He states, for instance:

> "Neither of these two firms waited for the condition to be formally satisfied before writing business and have since claimed that they acted upon information directly sourced from Mr King subsequent confirmations he received from Mrs Lelovitou and Mr Papaghikas".

> "It is obvious that Messrs King and Whitley were misled by Mr Papaghikas and Mrs Lelovitou throughout 2003 and they should have the integrity to concede this fact. As a result of their ineptitude the "CIC" Underwriting Agents went early in advance of formal authorisation."

52. Mr Fryett goes on to accept that through FEL Asset he earned fees during 2003 on the business written by IYS and Hogarth for CIC Greece. As regards business written by IYS prior to July 2003 Mr Fryett says with effect from May 2003 he personally arranged for IYS a facility with Dulwich whereby IYS could place all of its EL business with Lloyds underwriters and that the remainder of IYS's business was placed with CIC Costa Rica. Mr Fryett did not identify evidence of any such arrangement with Dulwich and there is no evidence of any risks being placed through Dulwich. Mr Fryett's position, summarised in his response, appears to be that it was only when he visited Mr Baines with Mr Stevens on 24 September 2003 that he discovered that Mr Baines was not writing EL business with Dulwich. In this connection Mr Fryett pointed out that one week before the visit he had e-mailed Mr Baines instructing him not to issue any certificates until "we have sight of the consent notice from the Greek Ministry".

Compliance Investigation

53. "CIC Management" was established to provide management services to CIC Greece in the UK. A Mr Denis Stevens was recruited as chief financial officer of CIC Management and he was given the role of addressing compliance issues. On 5 October he sent a report to Mr King and Mr Fryett on the subject of compliance. This was critical of what Mr Stevens understood to be the compliance position within CIC Greece. Mr Stevens observed that CIC Greece had not been incorporated until 29 August 2003. IYS and Hogarth could not have undertaken risks in the name of CIC Greece before that date. He questioned whether, prior to the incorporation of CIC Greece, IYS and Hogarth had placed EL risks with CIC Costa Rica and noted that that would have been illegal. He sought clarification.

54. Mr Stephen's report went on to observe that although CIC Greece had been granted a licence to trade as CIC Greece on 1 September 2003, the Greek authority would have had to provide the FSA with a regulator notice stating that CIC Greece intended to carry on business within the UK under the single market directive. Mr Stevens expressed the view that CIC Greece could not do any business outside Greece until it had formal confirmation that permission to do so had been granted. He noted that oral assurances had been given by CIC Greece's contacts in Greece but there was an absence of any documentation relating to the status of CIC Greece. He stressed the need for an audit of business written to establish in which name business had been done prior to the licences being granted by CIC Greece on 1 September 2003.

55. On 6 October 2003 Mr Fryett responded to Mr Stevens as follows

> "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 is a claim which is disputed.
>
> Let's not forget that we are a Greek Co and should not be in fear of the FSA. I for one would happily have all business written electronically via Amman or Athens if it means that we do not spend so much time and costs on this grey area of whom we consider our peers."

Mr King advised Mr Fryett that he should not ignore the points made by Mr Stevens. Whereupon Mr Fryett wrote:

> "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 IYS portfolio without unduly causing distress to the principals. David King will recall that when the account was initially underwritten via Amman to the ACC company, I arranged a placement of the EL to Lloyds via Dulwich Insurance Services Ltd in Eltham. There will be risks declared to Jordan including EL pursuant to the opinion from our Greek lawyer and it is now apparent that his may be wrong ! It is for the Company to afford…. AVV a portfolio transferred to

the Greek company as of August 28 2003 and the underwriting agreement re-issued to confirm such "housekeeping"."

56. The clear implication from Mr Fryett's message following Mr Steven's letter (drawing attention to the purported placings of risks with CIC Costa Rica and CIC Greece by IYS and Hogarth) is, we think, that Mr Fryett was acknowledging that those things had happened.

57. On 16 November 2003 Mr Stevens sent a further e-mail to Mr King, Mr. Fryett and others stating that it was clear that "there had been some serious breaches of compliance which require addressing immediately". His e-mail observed that Hogarth had commenced writing UK business prior to the formal incorporation of CIC Greece despite the fact that Hogarth had not been formally informed that CIC had been duly licensed. It was observed that IYS had written UK EL business in CIC Costa Rica which was not allowed under UK law. He questioned how an agency agreement could have been issued with a date of 1 July 2003 when CIC Greece had not even been incorporated. His message pointed to numerous other irregularities. He recommended that there should be a board meeting of CIC Management Services the next day so that all Directors could discuss points he had made and that they should cease any underwriting by CIC immediately.

58. The Authority observed that those factors specified by Mr Stevens should have been obvious to Mr Fryett long before then. Till November 2003 Mr Fryett and others had, say the Authority, been content to disregard such issues completely, even when they were obvious, so that they could earn substantial amounts of commission from the unauthorised writing of insurance business.

Conclusions

59. The prohibition order at issue in the present Reference is based essentially on Mr Fryett's involvement in a breach of "general prohibition" which prohibits any person from carrying on a regulated activity (in this case of effecting or the carrying out of insurance contracts) without authorisation. The issue is whether Mr Fryett has not conducted himself in a way that is consistent with the standards which would be expected, specifically in relation to honesty and integrity and competence and capability.

60. To sustain the decision to issue the prohibition order the Authority need to establish that (a) there has been the effecting or carrying out of a contract of insurance, (b) in the UK, (c) by a person who is not an authorised person under the Act and (d) that Mr Fryett was involved in those activities. For those purposes (and for reasons we have already given) we must be satisfied that Mr Fryett knew the facts that made the conduct in question a contravention.

61. The fact that there has been a breach of the general prohibition is clear. It may have been unclear whether at any particular time which of CIC Costa Rica and CIC Greece was referred to in the e-mails or was purporting to write business in the UK;

but, either way, the unauthorised writing of business was a breach of the general prohibition.

62. We turn now to the documentary evidence relied on by the Authority and to that referred to by Mr Fryett. Our focus is on the e-mails, agreements, prospectuses etc. that were referred to us in the course of oral examination and either put to or used by Mr Fryett. The documentary evidence we now refer to relates to three issues. First, what role was ascribed to Mr Fryett, either by himself or by his associates? Second, how aware was he that CIC Costa Rica and CIC Greece (or both) were purporting to effect contracts of insurance in the UK through agents and thereby procuring breaches of the general prohibition? Third, what was the extent of Mr Fryett's involvement in the activities constituting the breaches of the general prohibition?

63. We refer first to the descriptions, given in the documentation and by Mr Fryett himself of his own status in relation to CIC Costa Rica and CIC Greece.

64. The CIC Costa Rica/IYS "Slip Contract" of 1 March 2003 which authorises IYS to write business within certain limits states that Mr Fryett is to be recognised as the representative officer of CIC Costa Rica. On 1 April Mr Fryett e-mails Mr Baines of IYS saying of himself – "I am your representative director as so stated in the CIC Contract …". Mr Fryett accepted that his role had been to go and get business for the CIC company.

65. Mr Fryett is described as "business development director" of the CIC company in an application to the GMD of January 2003. Then an e-mail from Mr Fryett to Mr Baines, which states that the CIC company "is now legalised and accepted purchaser with the Greek authority" and which recites that "I am your representative director", contains the direction – "Go for it on the basis of that attachment of said risks after April 1". Mr Fryett can only, we infer, have been concerned with risks written by IYS for one of the CIC companies. The e-mail continues with Mr Fryett saying – "Also remember that as of Jan 28, the undersigned was invited and accepted a directorship of CIC so I do have a little discretion provided it is not abused". The message ends with Mr Fryett signing as "Director" of CIC Costa Rica.

66. Mr Fryett asserted in examination that he had only been proposed as a director, not appointed. It seems to us that, whatever Mr Fryett's formal status was, in March/April 2003, he regarded himself as having the capacity to direct the affairs of CIC Costa Rica so far as writing UK business through UK agents was concerned. This conclusion is reinforced by the circumstance that Mr Baines sends the proposal document, relating to its agency for CIC Costa Rica, to Mr Fryett for approval. It is further reinforced by Mr Fryett's description of himself, in a message from Mr Fryett to an IT officer with another company, as "the appointed officer" of CIC Costa Rica. Then in October 2003 Mr Fryett acts on behalf of CIC Greece in instructing Asset Underwriting to "cease and desist" writing business for CIC Greece.

67. The conclusion from those descriptions of Mr Fryett's status points to his occupying, or purporting to occupy, from an early stage in 2003, an office with CIC Costa Rica or CIC Greece as a director with a high level of authority.

68. We turn now to examine the level of awareness on Mr Fryett's part of the fact that CIC Costa Rica and CIC Greece were writing business in the UK in breach of the general prohibition.

69. Mr Fryett accepted that he knew that a company that wanted to effect a contract of insurance in the UK needed proper authorisation. He knew throughout 2003 that CIC Costa Rica had not been authorised to effect and carry out contracts of insurance in the UK. We are satisfied from the clearest evidence that Mr Fryett knew that CIC Costa Rica was purporting to write business in the UK through IYS from April 2003. The "Slip Contract" of 1 March 2003 between CIC Costa Rica and IYS authorised this. The bordereaux supplied by IYS, relating to risks written in the period, showed a substantial premium income of some £375,000 as well as recording the commissions due to Mr Fryett's company. A message of 6 June from Mr Fryett to Mr Baines directs the latter to account on a daily basis to Mr Najia of CIC Costa Rica in Amman. A letter of 11 June tells Mr Baines to let EL risks and certificates go "directly" to Mr Najia.

70. We are satisfied that CIC Greece had not obtained passporting authorisation from the UK authorities to write business in the UK. We are satisfied from Mr Fryett's oral evidence, coupled with his reaction to the Stevens report of October, that Mr Fryett knew that there had been no such authorisation; in particular we conclude that Mr Fryett knew that CIC Greece, not being an authorised insurer, could not write EL business in the UK. The fact that IYS were sending the bordereaux relating to such business to Mr Fryett shows that he knew that the relevant CIC company was purporting to write that form of business in the UK. This feature is further reinforced by the evidence of a certificate of EL insurance commencing on 20 May 2003 written by IYS for CIC Greece which was sent to Mr Fryett. Further, in this connection, we draw attention to the evidence supplied in the bordereaux of risks written by Hogarth for CIC Greece. These show 124 risks with inception dates from 1 August.

71. That evidence satisfies us that CIC Greece was purporting to write business in the UK since at least 1 August 2003. CIC Greece was, without authority, writing all its business in the UK through IYS and Hogarth. Taking all the evidence referred to above, we conclude that business was being written in the UK during 2003 by IYS and Hogarth on behalf of CIC Costa Rica and CIC Greece in circumstances where there was no authorisation to have done so. We also conclude that this was known to Mr Fryett.

72. How involved was Mr Fryett in the unauthorised UK insurance activities of CIC Costa Rica and CIC Greece? He knew he was described as director, representative director and development director since the start of 2003; we refer to the occasions mentioned above. Mr Fryett was closely involved in the initiatives to set up the agency agreements with IYS, Hogarth and Asset Underwriting. In March

2003, for example, he e-mailed the message to Mr Baines telling him to "go for it" with effect from 1 April: see above. This indicates that Mr Fryett was encouraging Mr Baines to write business with CIC Greece. At that time he must have known that there was no Greek company. In this connection we note that the Elliniki Pisti company that Mr Fryett asserted to have been the Greek company had not been acquired and could not have been authorised, either then or at any future date, to do insurance business in the UK; this is because of its insolvent situation.

73. On 24 April 2003 an e-mail from Mr Fryett to Mr Baines shows Mr Fryett giving Mr Baines "the green light" to write business on behalf of Greece (in the knowledge that no Greek company had any such authority). The only thing Mr Fryett might have had knowledge of, as noted above, was that Mr Papaghikas had, the previous day, indicated to Mr King that CIC was on the priority list for the acquisition for Elliniki Pisti. But that information falls far short of providing Mr Fryett with knowledge that a Greek company had authority to accept such risks. In a May e-mail we read of Mr Fryett pointing out to Mr King that the Greek company had been very important to him and that he had worked almost exclusively for the benefit of the Greek enterprise since December 2002.

74. Then on 15 May a meeting had taken place between a CIC team, Messrs King, Whitney and Fryett and a representative of the UK agency, "Asset Underwriting". Mr Fryett asserted in his oral evidence that he had been there as a business development consultant; but his presence as part of the CIC team indicates that he had been there to further the CIC business interests and to induce Asset Underwriting to become an underwriting agent for CIC in the UK.

75. An e-mail of 4 June from Mr Baines to Mr Fryett says "I've no choice but to send an EL certificate for a March inception under CIC cover". A further e-mail of 11 June reveals Mr Fryett encouraging Mr Baines to get the agreement of Mr Najia of CIC Costa Rica to issue EL certificates. These further evidence Mr Fryett's knowledge and involvement in CIC's purported UK business amid 2003. On 21 June Mr Fryett appears from the contents of an e-mail to have been responsible for transmitting a management agreement to Mr Baines relating to the underwriting agency agreement between CIC Greece and IYS.

76. We find Mr Fryett in a June e-mail from him to Hogarth describing himself as a member of the Executive Board of CIC Greece. Mr Fryett accepted in the course of evidence that he knew by October/November that Hogarth was writing EL business for CIC Greece and paying the premiums to CIC Greece.

77. The three sets of bordereaux of risks sent to Mr King and Mr Fryett by Mr Baines show IYS purporting to write on behalf of CIC Greece with premiums that related to EL liabilities going to CIC Greece. We note that Mr Fryett took no steps to reverse that unauthorised activity. The only evidence of any intervention by Mr Fryett was an e-mail to Mr Baines of 17 September, relied on by Mr Fryett to emphasise his awareness of the need for compliance, in which Mr Baines is instructed not to issue any certificate ("until we have sight of the consent notice from the Greek

Ministry"). But that e-mail also shows that Mr Fryett knew there had been no consent by the Greek Ministry and that IYS had been writing business for CIC Greece. It appears also that Mr Fryett was giving the direction to Mr Baines in his (Mr Fryett's) capacity as a principal of CIC Greece.

78. Mr Fryett's response of 6 October to Mr Steven's report of the irregularities (sent to Messrs Fryett and King on 5 October) is, we think, consistent only with Mr Fryett's knowledge of what had already been going on, i.e. "what pre-dates your employ". There is no evidence of surprise or denial by Mr Fryett of the revelations in the Steven's report. Moreover, Mr Stevens was reporting to Mr Fryett not as an intermediary but as one of the principals.

79. To conclude, we think that the Authority have made out a case that Mr Fryett knew of the essential requirements that had to be satisfied to enable EL business to be lawfully written in the UK. He knew that the EEA insurer (such as CIC Greece) had to have been properly passported into the UK if it were to carry out such business lawfully. He knew that neither CIC Greece nor CIC Costa Rica had ever been authorised to effect or carry out contracts of insurance in the UK. We think that the Authority have established that Mr Fryett knew that CIC Greece was never established as an insurance company in Greece and that it could never therefore have taken advantage of passporting rights to write business in the UK. He ignored those circumstances. It had been open to Mr Fryett to vertify the position with the Greek Ministry of Development but he had taken no steps to do so. Instead, he introduced IYS and Hogarth to CIC Greece and the evidence shows he was actively involved in the activities of underwriting EL business in the UK.

80. It follows, we think that Mr Fryett was involved in breach of the general prohibition from April 2003 until such business was terminated at the end of that year.

81. Generally, we agree with the view taken by the Authority that Mr Fryett's approach to the regulatory system had been reckless. He appears to have proceeded on the basis that everything would turn out right in the end. He appears to have assumed that even if CIC Greece had not been authorised to write risks in the UK, this could by some means have been corrected if and when authorisation was ultimately obtained. This has called into question his integrity in dealing with consumers as well as his confidence and capability. He failed to appreciate that the requirements imposed by the Act were there for the protection of consumer. He concentrated on his own interests and ignored the consumer's interests. Moreover, even when he had been specifically alerted by Mr Stevens to conduct which had been unlawful, he failed to take any steps at all to notify the FSA or the policy holders and failed to take any steps to arrange for alternative insurance cover for unsuspecting policy holders.

82. The Authority have sought a prohibition order against Mr Fryett. This is because he is not an approved person. There is therefore no available sanction short of a prohibition order. Nonetheless a prohibition order does seem to us to be justified by the gravity of the offence, in particular its risk to policy holders. The conduct complained of was sustained for the best part of the year, and even when the full

seriousness of the issue was drawn to Mr Fryett's attention by Mr Stevens, it is significant that he took no steps to inform the FSA and took no steps to reverse transactions which had gone through. That feature further indicates how Mr Fryett's conduct represents a serious risk to the financial system and to consumers' confidence. Moreover the scale of the unauthorised writing of risks was considerable. It will be recalled that IYS wrote or purported to write about 1800 policies of insurance and Hogarth some 124 policies with a gross premium income of about £3.5 million.

83. Our conclusion is that on the basis of his conduct Mr Fryett does pose a serious risk to consumers and to confidence in the financial system. He has been involved in breaches of the general prohibition. He has failed to act in accordance with standards of honesty and integrity which were reasonably to be expected of someone in his position and he has failed to act in accordance with the standards of competence and capability that were reasonably expected of him.

84. For all those reasons we dismiss Mr Fryett's reference.

SIR STEPHEN OLIVER QC
CHAIRMAN

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