

Chapter 15

Cyprus

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INTERNATIONAL INSURANCE LAW & REGULATION

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I. INTRODUCTION

§ 15:1 Regulatory Bodies and Sources—Legal Framework

When Cyprus became an independent state in 1960, the English-based legal system which operated during the period of British rule was maintained. Section 29(1) of the Courts of Justice Law¹ provides that English Common Law and the principles of equity apply in Cyprus, provided that they do not conflict with the Constitution or with any laws passed since independence by the Cypriot Parliament.

Given the relatively small size of the jurisdiction and the corresponding amount of Cypriot case law, much reliance is placed on English legal digests and text books, although these are not binding. Cyprus has been a member of the European Union (EU) since 1 May 2004, and its legislation has been aligned with the *acquis communautaire*.

§ 15:2 Regulatory Bodies and Sources—Insurance Regulation

Insurance companies operating in Cyprus were originally registered in England under English insurance legislation. In 1969, a law was passed to allow the establishment of local insurance companies.

The insurance regulatory regime in Cyprus is governed by the Insurance Services and Other Related Issues Law¹ (the “2002–2011 Law”), which came into force on 1 January 2003.² The 2002 Law expressly³ abolished the Insurance Laws 1984–2001 and thoroughly revised the system of insurance administration in Cyprus. It may be supplemented from time to time by Regula-

[Section 15:1]

¹Courts of Justice Law, Law Number 14 of 1960.

[Section 15:2]

¹Insurance Services and Other Related Issues Law, Law Number 35(I) of 2002.

²Insurance Services and Other Related Issues Law, section 232.

³Insurance Services and Other Related Issues Law, section 230.

tions issued by the Cypriot Council of Ministers.⁴ Like all laws in Cyprus, the 2002 Law is written in Greek, and the original Greek version prevails over any English translation.

The 2002 Law has been amended by Law Number 50(I) of 2011. The 2002 Law and the amendment of Law Number 50(I) of 2011 will be referred to together as the “Insurances Services and Other Related Issues Law of 2002 to 2008”. One of the amendments is to implemented European Directive 2005/68/EC of the European Parliament and Council on reinsurance and amended Council Directives 73/239/EEC as well as Directives 98/78/EC and 2002/83/EC.

Specifically, objectives of the Reinsurance Directive, which is being implemented into Cypriot national law, are to establish a sound and prudent supervisory regime in the interests of policy holders; to allow reinsurers headquartered in the European Union (EU) to carry on business throughout the EU under the freedom of establishment and the freedom to provide crossborder services; to abolish collateral requirements within the EU or EU reinsurers; and to enable the negotiation and establishments of reciprocal treaties with other regulatory regimes.

The Directive provides a harmonized regulatory framework for reinsurance in the European Union. By establishing a reliable system of supervision of the cross-border reinsurance market, the Directive aims to strengthen the insurance markets. This Directive brings about such harmonization as is essential, necessary, and sufficient to achieve the mutual recognition of authorizations and prudential control systems, thereby making it possible to grant single authorization valid throughout the Community and to apply the principle of supervision by the home member state.

§ 15:3 Regulatory Bodies and Sources—Scope of Regulatory Framework

The 2002–2011 Law applies to all insurance businesses, including intermediary businesses,¹ which conduct:

1. Insurance business within Cyprus,² whether located within

⁴Insurance Services and Other Related Issues Law, section 229.

[Section 15:3]

¹Insurance Services and Other Related Issues Law, section 3(1)(e).

²Insurance Services and Other Related Issues Law, section 3(1)(b).

- Cyprus or not, including mutual insurance organizations and reinsurance companies;³
2. Insurance business outside Cyprus, where the company is registered in Cyprus;⁴ or
 3. Business in Cyprus as a broker, agent, mediator, or adviser.⁵

Also included are insurance businesses with their head offices in member states of the European Union or European Economic Area (EEA), or in Switzerland in the case of non-life insurance, seeking to provide services in Cyprus under the freedom to provide services or the freedom of establishment.⁶

However, the 2002–2011 Law does not apply where the Republic of Cyprus itself underwrites risks,⁷ or where businesses are engaged solely in “assistance” insurance, such as breakdown cover, where this is carried out locally and consists only of benefits in kind, and where the total annual income collected in respect of such assistance insurance does not exceed the CYP equivalent of €200,000.⁸

Additionally, the 2002–2011 Law does not apply to the provision of reinsurance cover carried out or fully guaranteed by Cyprus for reasons of substantial public interest, in the capacity of reinsurer of last resort, in particular where, because of a specific situation in a market, it is not feasible to obtain adequate commercial cover.⁹

Furthermore, the 2002–2011 Law does not apply to mutual insurance organizations whose articles of association contain provisions for calling up additional contributions or reducing their benefits, or where the amount of annual non-life contributions does not exceed the CYP equivalent of €5-million or whose life contributions does not exceed the CYP equivalent of €5-million for three consecutive years, unless this amount is exceeded for three consecutive years or where half the annual non-life contributions derive from its own members.¹⁰

³Insurance Services and Other Related Issues Law, section 3(1)(a).

⁴Insurance Services and Other Related Issues Law, section 3(1)(c).

⁵Insurance Services and Other Related Issues Law, section 3(1)(e).

⁶Insurance Services and Other Related Issues Law, section 3(1)(d). The distinction between life and non-life business is drawn by Appendixes 1 and 2 to the Law.

⁷Insurance Services and Other Related Issues Law, section 3(3)(a).

⁸Insurance Services and Other Related Issues Law, section 3(3)(b)(iii).

⁹2002–2011 Law, section 3(3)(d).

¹⁰Insurance Services and Other Related Issues Law, section 22(2).

§ 15:4 Regulatory Bodies and Sources—Regulatory Bodies

The administrative supervision of the application of the 2002–2011 Law is delegated to the Superintendent of Insurance, with the Minister of Finance retaining an appellate role.¹ The Superintendent and his assistants are public servants, appointed by the Cypriot Council of Ministers, and together they form the Insurance Companies Control Service.

The Superintendent grants licenses under the 2002–2011 Law and supervises those to whom such licenses have been granted, withdrawing such licenses where necessary. He also is expressly responsible for safeguarding the interests of policyholders and any other parties entitled to compensation under a contract of insurance.²

The Insurance Advisory Committee sits from time to time to propose measures for the improvement of the operation of the insurance market, the education of those within the insurance industry, and to formulate a Code of Conduct for insurance businesses.³ The Committee is composed of the Superintendent, his assistants, and four other individuals, appointed by the Minister, after consultation with the Insurance Association of Cyprus.

§ 15:5 Regulatory Bodies and Sources—Non-Governmental Bodies

The Insurance Association of Cyprus is the trade association for the Cypriot insurance industry. Member companies account for approximately 95 per cent of the insurance business in Cyprus. The Association aims to represent its members' interests before the government, regulators, parliament, and other political and trade bodies, and to promote the concept of insurance generally.

In 1925, the insurance companies then operating in Cyprus, which were principally agencies of British companies, formed three associations, i.e., the Fire Insurance Association, the Marine Insurance Association, and the Accident Insurance Association. With the continuous growth of life assurance busi-

[Section 15:4]

¹Insurance Services and Other Related Issues Law, section 4(1).

²Insurance Services and Other Related Issues Law, section 5(2).

³Constituted Pursuant to the Insurance Services and Other Related Issues Law, section 9(1).

ness, a fourth group was formed in 1976, which then led to creation of the Insurance Association of Cyprus, a company limited by guarantee. The Association is a full member of the *Comité Européen des Assurances* as well as of the International Union of Marine Insurance.

The Motor Insurers' Fund is registered as a company limited by guarantee and is composed of all the insurance companies which carry on motor insurance business in Cyprus. It was modeled on the English Motor Insurers' Bureau. Cyprus is a member of the "Green Card" system, through the Motor Insurers' Fund. The Fund is described in further detail below.

The Cyprus Hire Risks Pool is an association which pools the risks of insuring public service vehicles, taxis, and hire cars on behalf of all the Cypriot insurance companies underwriting such business. The Pool is examined in further detail below. The Insurance Institute of Cyprus is affiliated to the Chartered Insurance Institute of England and offers education and training in the field of insurance.

§ 15:6 Market Structure

Insurance and reinsurance undertakings incorporated in Cyprus, amount to 39 and 26 domestic business undertakings, respectively, which transact all or the greatest part of their business in Cyprus, 6 international business undertakings which transact all or the greatest part of the business outside Cyprus, and three foreign undertakings which are branches of non-EU insurance or reinsurance undertakings and which transact business in or outside Cyprus.

During 2010, the total gross premiums written by domestic business undertakings and by branches of non-EU undertakings transacting domestic business were €847,745.00. For life business only, the gross premiums were €368,977.00, and the respective gross premiums for non-life business were €478,768.00.

During 2010, the total gross premiums written by international business undertakings and branches of non-EU undertakings which transact international business from Cyprus were €164,600.00. As far as life business only, the gross premiums were €94,704.00 and the respective totals for non-life business premiums were €69,896.00.

II. PRINCIPLES OF INSURANCE LAW

§ 15:7 Meaning of Insurance

Whereas insurance is defined¹ simply as “the carrying on of insurance business”, neither the 2002–2011 Law nor any of its predecessors has ever contained a substantive conceptual definition.

Insurance business is said to mean the business of insurance, reinsurance, and mutual insurance in any of the classes in Appendixes 1 and 2 to the 2002–2011 Law.² It also is said to mean the effecting and execution by an insurance undertaking of contracts with respect to credit guarantee bonds, execution of contract bonds, administration bonds, release from prison guarantee bonds, custom clearance bonds, or guarantee contracts of a similar nature, as long as these are effected:

1. As part of an insurance undertaking’s business;
2. In exchange for the payment of a premium; and
3. Not merely as part of non-insurance business carried on by the party effecting them.

The effecting and execution of contracts for the payment of annual annuities on human life also is said by the 2002–2008 Law to constitute insurance business.

An insurance contract is specifically defined³ as a contract governed by the Contracts Law,⁴ effected between an insurance undertaking and one or more insured persons, irrespective of whether an insurance policy document is issued, with respect to the granting of insurance cover in one or more of the classes listed in Appendixes 1 and 2.

[Section 15:7]

¹Insurance Services and Other Related Issues Law, section 2.

²Insurance Services and Other Related Issues Law, section 2.

³Insurance Services and Other Related Issues Law, section 2.

⁴Contracts Law, Cap. 149.

§ 15:8 Elements of the Contract—Parties**Insurer**

An insurance undertaking or insurer means a Cypriot insurance company or any other undertaking which has as an objective the carrying on of insurance business.¹

The legal form adopted under the legislation in force in the country where it has its head offices is irrelevant. Lloyd's of London also is specifically included.

Insured

Any person who is capable of contracting may be insured under a contract of insurance. Thus, an infant may enter into a contract of insurance if it is for his benefit.

The insured is under a duty to disclose to the insurer, prior to the conclusion of the contract, all material facts within his knowledge which the insurer does not or is not deemed to know.

§ 15:9 Elements of the Contract—Insurable Interest

According to the English Common Law applicable in Cyprus, an insurable interest is a basic requirement of any contract of insurance, distinguishing it from a mere wager which would be invalid as a binding contract. An attempt to define insurable interest was made in *Lucena v. Graufurd*,¹ where Lawrence J. stated that an interest does not necessarily imply a right to the whole or part of a thing, nor necessarily and exclusively that which may be the subject of privation, but having some relation to or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment, or prejudice to the person insuring.²

Certain statutes contain their own definitions of insurable interest. For example, in the United Kingdom's Marine Insurance Act 1906, the relevant parts of which are applicable in Cyprus in the absence of any local legislation, every person who is interested in a marine adventure has an insurable interest.

Specifically, a person is interested in a marine adventure where he stands in any legal or equitable relation to the adventure or to

[Section 15:8]

¹Insurance Services and Other Related Issues Law, section 2.

[Section 15:9]

¹*Lucena v. Graufurd*, (1806) 2 B.O.S. & P.N.R. 269, H.L.

²*Lucena v. Graufurd* (1806) 2 B.O.S. & P.N.R. 269, H.L., at p. 302.

any insurable property at risk therein, in consequence of which he may benefit by the safety or due arrival of insurable property, or may be prejudiced by its loss, or by damage thereto, or by the detention thereof, or may incur liability in respect thereof.

In certain kinds of insurance, such as liability insurance and fidelity or solvency insurance, the very nature of the insurance implies the existence of an insurable interest, while other kinds of insurance, such as personal injury insurance, are in practice effected by the insured, for the most part, in respect of his own person or property. The question of insurable interest becomes important when the insured, for his own benefit, effects an insurance on the person or property of another.³

In the case of personal injury insurance, the policy may be effected by the insured against the loss which he may suffer by reason of an accident to a third person. In such a case, the existence of the insurable interest is questionable. As a general rule, although the insured must have some interest in the subject matter to entitle him to effect insurance in respect of it, it is not necessary that he should specify in the contract, or even disclose to the insurers, either the nature or the extent of his interest.⁴

Exceptionally, a specific description of the insurable interest is required. This occurs where there is an express condition to this effect, or the insurance is for prospective profits or against consequential loss, or the interest is material to the risk.⁵ The insurable interest must have a pecuniary value and must be a real interest. However, a right to future possession or a future interest also is insurable, but must exist at the time of the loss. Thus, in the case of fire insurance, the assured must show that, at the time of the loss, he had an insurable interest in the object destroyed.⁶

There is a debate whether there is a new approach to the meaning of insurable interest and whether it should be approached rather differently today, especially in the light of the decision of the Court of Appeal in *Feasey v. Sun Life Assurance Corporation of Canada*.⁷

³Ivamy, General Principles of Insurance Law (2nd ed.), at p. 21.

⁴Ivamy, General Principles of Insurance Law (2nd ed.), at p. 23; *MacKenzie v. Whitworth*, (1875) L.R. 10 Exch. 142.

⁵Ivamy, General Principles of Insurance Law (2nd ed.), at p. 24.

⁶*Sadlers' Co. v. Badcock*, (1743) 2 Atk. 554.

⁷Court of Appeal in *Feasey v. Sun Life Assurance Corporation of Canada*, [2003] E.W.C.A. Civ. 885, [2003] Lloyd's Rep. I.R. 637.

§ 15:10 Elements of the Contract—Formation of Insurance Contract

As in the case of any other contract, a contract of insurance requires an offer, acceptance, consideration, and an intention to create legal relations. There must be a clear agreement as to the distinctive features of the particular contract. The parties, therefore, must be ascertained, the insurers must have agreed to insure the particular matter insured, and the insured must have agreed to the particular insurance.

The parties must agree to all the terms and conditions of the contract. There are certain essential matters on which there must be accord, i.e., the amount of the premium, the nature of the risk, including the subject matter of the insurance, and the duration of the risk.¹

Although an offer to enter into an insurance contract may be made by either the prospective insured or the insurer, in practice it is normally made by the proposed insured, usually by completing a proposal form. The offer contained in the proposal form must be forwarded to the insurer to be considered as complete and communicated.

The insurer may accept the offer made, or he may accept it with qualifications, in which case the acceptance may amount to a counter-offer. As a general rule, the acceptance of an offer is not effective until communicated to the offeror, which also applies in the case of an insurance contract. The insurer may communicate the acceptance of a proposal made by the prospective insured by:

1. Formal acceptance;
2. Issuing of a policy; or
3. Acceptance of the premium.

§ 15:11 Elements of the Contract—Void and Voidable Contracts

A contract of insurance is void if it is illegal, which occurs where:

1. The insured does not possess the insurable interest required;
2. The contract has been entered into to achieve a purpose which is illegal or contrary to public policy; or

[Section 15:10]

¹Birds, *Modern Insurance Law* (7th ed., 2007), at p. 82.

3. The contract is vitiated by the unlawful use of the insured property.¹

In some cases, the validity of a contract of insurance may be affected by a mistake. For example, where there is no *consensus ad item* (meeting of minds), no contractual obligations will have been created.² The question as to what sort of mistake would render a contract void was considered in *Bell v. Lever Brothers*,³ where it was stated that only a fundamental common mistake affecting the subject matter of the contract would render a contract void. As far as insurance contracts are concerned, there are three categories of cases where a common mistake by the insurer and the insured will render the contract void, namely, where:

1. The insured property does not exist;
2. The person whose life has been insured has died; or
3. A compromise has been reached in relation to claims arising out of an insurance policy, or an assignment of a policy has taken place and such policy was void or inapplicable, whereas the parties had a different impression.⁴

A contract of insurance is voidable at the option of the insurer where the insured is guilty of fraud, non-disclosure, misrepresentation, or breach of a term of the contract which constitutes a warranty.

§ 15:12 Elements of the Contract—Premiums

In *Lewis v. Norwich Union Fire Insurance Co.*,¹ premium was defined as the consideration given by the insured in return for the insurer's undertaking to cover the risks insured against in the policy of insurance.² Insurance companies in Cyprus generally issue tables of premiums, showing the rate charged by them for each class of risk undertaken.

[Section 15:11]

¹Birds, Modern Insurance Law (7th ed., 2007), at p. 82.

²Charalambides, Legal Aspects of Insurance in Cyprus, at p. 4/27.

³*Bell v. Lever Brothers*, (1932) A.C. 161.

⁴Charalambides, Legal Aspects of Insurance in Cyprus, at p. 4/28.

[Section 15:12]

¹*Lewis v. Norwich Union Fire Insurance Co.* (1916) A.C. 509, at p. 519.

²Birds, Modern Insurance Law (7th ed., 2007), at p. 177.

Payment of the premium is not generally required for the insurer to be on risk³ although, particularly in life insurance, this may be required by a term of the policy. The insured is entitled to a return of premium where there has been a total failure of consideration. This arises where the policy is:

1. Never concluded;
2. Cancelled *ab initio*;
3. Void or voidable *ab initio*; or
4. Illegal.

§ 15:13 Elements of the Contract—Disclosure and Misrepresentation

A representation may establish or render a contract voidable at the option of the person to whom the representation was made if it was:

1. Substantially false;
2. Material to the risk; and
3. An operative inducement to the contract.¹

The basic principles of disclosure were stated in the leading case of *Carter v. Boehm*,² in which Lord Mansfield stated that:

Insurance is a contract of speculation. The special facts, on which the contingent chance is to be computed, lie most commonly in the knowledge of the insured only: the underwriter trusts to his representation, and proceeds on the confidence that he does not keep back any circumstance in his knowledge, to mislead the underwriter into a belief that the circumstance does not exist, and to induce him to estimate the risk as if it did not exist.

Thus, the insured has a duty to disclose to the insurer at the time of making or remaking the contract of insurance all the facts which are material to the risk. Furthermore, whether a fact is material is a matter of fact.³ A fact is material for the purposes of both non-disclosure and misrepresentation if it is one which would influence the judgment of a reasonable or prudent insurer

³*Interamerican Property & Casualty Insurance Co. v. Despina Ioannou*, (1996) 1 C.L.R. 1224.

[Section 15:13]

¹MacGillivray on Insurance Law (5th ed.), at p. 386.

²*Carter v. Boehm*, (1766) 3 Burr. 1905.

³*Zurich Insurance Co. v. Morisson*, (1942) 1 All E.R. 529.

in deciding whether or not to accept the risk or what premium to charge.⁴

Section 15(3)(b) of the Motor Vehicle (Third Party Insurance) Law⁵ defines material fact as a fact “. . . of such a nature as to influence the judgment of a prudent insurer in determining whether he will accept the risk and, if so, at what premium and on what conditions”.

For an insurer to obtain the benefit of section 15(3), he must prove that the policy in question was obtained by non-disclosure or misstatement, i.e., but for that non-disclosure or misstatement, the contract which was obtained would not have been obtained.⁶ The misrepresentation must be of a fact known, or which ought reasonably to have been known, by the insured at the time he answers the questions in the proposal form.⁷

The burden of proving that the proposer has made a misstatement in the proposal form lies on the insurance company.⁸ This obligation was adopted by the Nicosia District Court in *Commercial Union Insurance (Cyprus) Ltd. v. Costas Stavrides*.⁹

Although a contract may be voidable on the grounds of a positive misrepresentation with regard to a material fact, only certain categories of contracts are voidable on the grounds that a material fact was not disclosed. In an insurance contract, the parties have an overriding duty to disclose all the material facts,¹⁰ as a contract of insurance is one of *uberrima fides*.¹¹ For the purposes of the 2002 Law, non-disclosure may be defined as the intentional or unintentional failure of one party to the contract to disclose to the other party a fact which:

1. Is known to him;
2. The other party does not know; and

⁴Birds, Modern Insurance Law (7th ed., 2007), at p. 120.

⁵Motor Vehicle (Third Party Insurance) Law, Law Number 96(I) of 2000, as amended by Law Number 69(I) of 2007.

⁶Zurich Insurance Co. v. Morisson (1942) 1 All E.R. 529, at p. 533.

⁷Whitwell v. Autocar Fire and Accident Insurance Co. Ltd., (1927) Ll. L. Rep. 318, Ch. D.; Joel v. Law Union and Crown Insurance Co., (1908) 2 K.B. 863.

⁸Adams v. London Insurance Co. Ltd., (1932) 42 Ll. L. Rep. 56.

⁹Commercial Union Insurance (Cyprus) Ltd. v. Costas Stavrides (1981) J.S.C. 1-2, at p. 276.

¹⁰Michalakis Pavlou v. Egis Insurance Co. Ltd., Civil Appeal 11140 of 18 May 2004.

¹¹PanEuropean Insurance Co. v. Electric Leisure Cruises Ltd., Civil Appeal 9539 of 21 March 1998.

3. Which, if disclosed to the other party, would influence him not to enter into the contract or, if he had entered into the contract, would have done so on more favorable terms.¹²

§ 15:14 Elements of the Contract—Warranties and Conditions

A warranty is a term of the insurance contract, following a breach of which the insurer can repudiate the contract. Warranties must be strictly complied with. The basic characteristics of a warranty are that:

1. It must be a term of the contract;
2. It must be material to the risk; and
3. The person who gives a warranty must comply with it.

A breach releases the insurer from his responsibilities, even though no losses flowed from the breach or the breach was waived before any losses occurred. In *Klitos Mavrides v. Cannon Insurance Ltd.*,¹ it was stated that the proposal, by an express agreement, is made part of the insurance agreement and forms the basis of the contract. This means that the truth of the statements contained in the proposal is a condition precedent to the liability of the insurers. The answers contained in the proposal constitute a warranty, in that it is expressly agreed to be so, and a breach of warranty avoids the contract. It is even immaterial for what purpose the warranty was introduced.²

§ 15:15 Elements of the Contract—Cancellation

Many non-life insurance policies contain a condition entitling either party to cancel them on giving notice to the other party. However, a clause permitting immediate cancellation would be still valid.

Life insurance policies do not normally contain such cancellation clauses. However, they generally permit the insured to surrender the policy after a certain number of years so that the insured then receives a lump sum, the surrender value. Alternatively, they provide for the policy to become paid up, so that no more premiums are due, but the benefits accruing on death are reduced to the appropriate sum according to the amount of premiums paid.

¹²Charalambides, Legal Aspects of Insurance in Cyprus, at p. 4/32.

[Section 15:14]

¹*Klitos Mavrides v. Cannon Insurance Ltd.* (1983) 1 J.S.C. 36, at p. 39.

²*D. Hahn v. Hartley* (1786) I T.R. 343, at p. 345.

When an insurer alleges that it was induced to issue the policy by reason of fraud, misrepresentation, or non-disclosure on the part of the insured, it is entitled to apply to the court for an order that the policy be delivered up to be cancelled. The power of the court to declare the contract void, whether on the grounds of fraud, misrepresentation, or non-disclosure, and order cancellation of the policy, only exists where the contract is voidable *ab initio*¹ by reason of a defect existing when the contract was made. Similarly, where the insured alleges that he was induced to enter into the contract contained in the policy by similar conduct on the part of the insurer or its agents, he is entitled to apply to the court for an order rescinding the contract.²

§ 15:16 Elements of the Contract—Interpretation of Insurance Contracts

The following basic rules apply to the interpretation of insurance policies:

1. The intention of the parties must prevail;
2. The whole of the policy must be looked at;
3. The written words will be given more effect than the printed words;
4. The policy must be construed in accordance with the ordinary laws of grammar;
5. The ordinary meaning of the words will be adopted;
6. The meaning of a particular word may be limited by the context;
7. The words of the policy must be taken to mean what they say;
8. The words of the policy, if possible, must be construed liberally;
9. In case of ambiguity, the reasonable construction is to be preferred;

[Section 15:15]

¹*Dorothy Pittaras v. Cosmos (Cyprus) Insurance Co. Ltd.* (1998) 1 C.L.R. 193, at p. 200.

²Ivamy, General Principles of Insurance Law (2nd ed.), at pp. 198 and 199.

10. In case of ambiguity, the *contra proferentem* rule will apply;¹
11. Where the words are repugnant to each other, the court will exhaust every means to reconcile the inconsistencies;
12. An express term overrides any implied term with which it is inconsistent; and
13. Where a matter left uncertain in the policy later becomes ascertained, the ascertained part will be treated as if it had been inserted in the original policy.²

The words of the policy, if possible, must be construed liberally, so as to give effect to the intention of the parties. The words of the policy are not to be extended beyond their ordinary meaning to comprehend a case which is within their object and which the parties would probably have desired to include, if it had occurred to them, to give effect to an intention which is not expressed.³

III. SPECIAL TYPES OF INSURANCE

§ 15:17 Insurance Covered by the Insurance Law

The Insurance Law covers life insurance,¹ industrial insurance,² bond investment, and sinking funds.³

[Section 15:16]

¹*Paneuropean Insurance Co. v. Glyki*, Civil Appeal 9860 of 22 September 1998; *Saturn Building Co. Ltd. v. Interamerican Insurance Co. Ltd.*, Civil Appeal 10596 of 20 July 2001.

²Ivamy, General Principles of Insurance Law (2nd ed.), at p. 291.

³*Doxoulla Kyriacou v. Philiki Insurance Co. Ltd.*, Civil Appeal 10328 of 24 March 2000.

[Section 15:17]

¹“Life insurance business” means the issue of, or the undertaking of liability under, policies of insurance on human life or the granting of annuities on human life, but does not include industrial insurance.

²“Industrial insurance” means the business of effecting insurance on human life, premiums in respect of which are payable at intervals of not more than two months in each case to collectors sent by the insurer to each owner of a policy at his residence or place of work

³“Sinking fund” means the business of effecting contracts of insurance where one party to the contract assumes the obligation to pay, after the expiration of a certain period or during a specified period, a certain sum or sums of money to a specified person in return for the payment or the promise of payment from time to time of a certain sum of money by the other party to the contract.

§ 15:18 Motor Vehicle Insurance—In General

Motor vehicle insurance is the business of effecting insurance against damage to or arising out of or in connection with the use of a motor vehicle, including third-party risks. The Motor Vehicles (Third-Party Insurance) Law, Number 96(I) of 2000 (the “2000 Law”), as amended by Law Number 97(I) of 2003, Law Number 156(I) of 2003, Law Number 168(I) of 2006, Law Number 69(I) of 2007, and Law Number 92(I) 2010 replaced the Motor Vehicles (Third-Party Insurance) Law (Cap. 333).

It harmonized the obligatory insurance of motor vehicles with the EU position, modernized the legislation, and opened the way for the accession of Cyprus to the Multi-Guarantee Agreement.

§ 15:19 Motor Vehicle Insurance—The 2000 Law**The Motor Vehicles (Third-Party Insurance) Law**

The most important changes that were introduced by the 2000 Law were as follows:

1. Section 2 included new definitions of the terms “motor vehicle” and “usual place of parking of motor vehicles”. The terms “Multi-Guarantee Agreement”, “Consultation of the Offices”, “Agreement of Joint Type”, and “Agent for settling disputes” also were introduced and explained.
2. It is prohibited under section 3 for a person to use a motor vehicle, unless an insurance of a third party is being effected, in relation to its use from the above person, according to the provisions of the above law, and to allow any person to use a motor vehicle in relation to its use from another person, according to the provisions of the Law.
3. Section 3(2) created a new category of motor vehicle exempted from obligatory insurance, i.e., any motor vehicle which may be used by the Republic for the purposes of the Government or may be used for police purposes or may be used by any person or category of persons that the Government’s Cabinet rules should be excluded from the provisions of this.
4. Section 4 requires that every insurance cover shall be issued by an insurer. In section 4, a provision was added that the insurance must also provide cover outside Cyprus in any other member state to any person or persons or categories of persons using the motor vehicle, in the event that a death or personal injury occurs or damage to property, in case the liability arises from the use of a motor vehicle in a street of Cyprus. Any person means persons that are being trans-

ferred in pursuance of a contract of employment, members of the family of the insured, pedestrians, bicyclists, and other non-vehicle users of the streets.

5. In section 4(2), it is stated that that cover that is being required to be provided above does not need to include personal injury or death, including losses and interest of more than €30,000,000 for each claim, damage to the insured car, and damage to property including losses and interest of more than €1,000,000 for each claim.
6. In section 4(3), the exception relating to liability for death or bodily injury arising out of and in the course of the employment of a person by the insured only applies where the liability is covered by insurance under the Compulsory Employers Liability Insurance Law.¹
7. A new part was introduced, in sections 27–35, which relates to the Motor Insurers Fund. The sections state that members of the Fund comprise all the insurance companies who operate a department for motor vehicle liability in Cyprus, that there is a binding agreement between the Minister of Finance and the Fund, and that, according to the agreement, the Fund undertakes the obligation to pay, in certain cases and under certain circumstances, compensation to third parties including persons who were injured or died as a result of the liability of unknown drivers and who are not in a position to obtain compensation from any other source. The sections also provide for the subrogation rights of the Fund and the procedures for payment of compensation from the Fund, settlement in case of difference arising between a third party and the Fund, and submission of claims in relation to the liability of unknown drivers.

Policy

For the purposes of the 2000 Law, an insurance policy must be one which:

1. Is issued by an insurer;
2. Insures such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred in respect of the death of or bodily injury to any person caused by or arising out of the use of a motor vehicle on a road in Cyprus;
3. Insures such person or persons in respect of any liability

[Section 15:19]

¹Law Number 174 of 1989, amended by Law Number 79(I) of 2011.

arising by virtue of the provisions of the Law in respect of the payment of any expenses incurred for emergency treatment; or

4. Insures such person or persons in respect of any liability for any damage to property caused by or arising out of the use on the road of a motor vehicle covered by a policy.

The policy is not required to provide cover in respect of damage to:

1. Any property asset incurred during the loading or unloading of or transportation by, in or on a motor vehicle; or
2. Any property asset which belongs to or is in the possession or custody or under the control of the insured or any member of his household.

No person may use or cause or permit any other person to use a motor vehicle on a road unless there is in force in relation to the use of that motor vehicle by such person or such other person, as the case may be, such a policy in respect of third party risks as is provided for by law. Any person acting in contravention of this requirement is liable to imprisonment for up to one year or a fine of up to €1,708 or both. A person convicted of an offence will be disqualified² from holding or obtaining a driving license.

The insurance, to be valid, must be issued and delivered as an insurance certificate. The certificate will be considered as delivered when it has been personally received by the insured or his authorized representative, sent by post or sent by telefax or e-mail.

Insurer's Liability

Section 14 provides that, if a certificate of insurance has been issued in favor of a person, a judgment against him obtained in respect of any liability which is compulsorily insurable must be satisfied by the insurer, whether or not the latter has the right to avoid or cancel the policy. The obligation of the insurer includes payment to the person entitled to the benefit of the judgment of any sum payable in respect of the liability, costs, and interest.

The 2000 Law added two new provisions concerning this obligation, i.e., that insurers are obliged to satisfy court judgments which have been obtained against any person, even if he is not covered by insurance, except where liability is excluded, and that

²Nicosia Police and Djemal Ahmet, 3 R.S.C.C. 50; *Eleftheriou v. The Police*, (1992) 2 C.L.R. 300; *Elias Poullis v. The Police*, (2000) 2 C.L.R. 57.

a driver's liability will be covered, even in cases where he does not hold a license authorizing him to drive the motor vehicle.³

The insurer who becomes responsible for paying any amount under these provisions has the right to recover it from the insured. Where the insurer becomes liable to pay any amount relating to the liability of a person who is not covered by insurance, he is entitled to recover it from such a person or any other person who is covered by the insurance, according to the terms of which the liability would be covered if the insurance provided cover to any person, and who provoked or permitted the use of the motor vehicle which created the liability.

The term "exempted liability" in section 14(3) means the liability in relation to the death or bodily injury or damage to the property of any person who, at the time of the use which caused the liability, is being carried voluntarily in or on the motor vehicle and who knows or has reason to believe that the motor vehicle was stolen or was illegally possessed and taking into consideration that the person was not a person who knew or had any reason to believe that the motor vehicle was stolen or was illegally possessed only after the start of the journey and it would not be reasonable to expect such a person to disembark from the motor vehicle.

An insurer is not liable to pay any sum if:

1. The insurer was not given written notice of the proceedings, i.e., the date of the filing of the writ, against the insured before or within seven days of their commencement;
2. In the case of a judgment which concerns damage to property, the insurer was not given notice, by the person in whose favor the judgment was issued, within six months of the date of the creation of the claim in relation to which the judgment was issued of his intention to make a claim, or the insurer was not given written notice so as to have a reasonable time to inspect the relevant damage before it was repaired;
3. Execution of a judgment has been stayed pending an appeal;
4. The insured's policy was cancelled before the relevant event, by mutual consent or under a term in the policy, and the certificate of insurance was surrendered or the insured made a statutory declaration that it was lost or destroyed within 14 days of the cancellation or within the same period the

³A term of the insurance which purports to limit the cover in relation to the possession or otherwise of a driving license will be treated as void in relation to the driver's liability to third parties.

- insurer commenced proceedings in respect of the failure to surrender the certificate; or
5. The insurer, within three months of the commencement of the proceedings against the insured, obtains a declaration by the court that the policy was obtained by non-disclosure or misrepresentation of a material fact and has given notice of the action for a declaration and particulars of the non-disclosure or misrepresentation within seven days of its commencement.

If the insured goes bankrupt or enters into a composition or arrangement with his creditors or if a company goes into liquidation, administration, or receivership, the insured's liability in respect of compulsory insurance to the third person, notwithstanding anything contained in any law to the contrary, shall be transferred to and vest in the third party to whom the liability was so incurred.

§ 15:20 Motor Vehicle Insurance—Motor Insurers Fund

After Cap. 333 (as noted above, Cap. 333 has been abolished) came into force, many owners and drivers of vehicles did not have the required insurance cover and consequently some victims of road accidents received no compensation.

Section 55 of the Insurance Companies Law of 1967, which came into force in 1969, gave the Minister of Finance the power to establish a fund that would cover such cases. In 1969, the Motor Insurers Fund (MIF) was set up, modelled on the Motor Insurers Bureau in England, and was registered as a company limited by guarantee whose members were insurance companies which carried on motor insurance business in Cyprus.

On 22 April 1969, the Minister of Finance and the President of the MIF signed an agreement, known as the Principal Agreement, by virtue of which the MIF has undertaken to indemnify victims of road accidents, who otherwise would receive no compensation, in cases where there is an uninsured driver, an unknown driver or ineffective insurance, i.e., the policy was void or voidable.¹

On 18 July 1972, a Supplementary Agreement was signed, providing that the MIF could be called on to pay compensation in

[Section 15:20]

¹The Motor Insurers Fund has no obligation to compensate the victim, but has discretion to do so on an *ex gratia* basis if the victim has sustained permanent bodily injury or died and provided that it can be proved that the uninsured or unknown driver was liable for the accident.

the case of insolvency of the insurer. Before the signing of the Supplementary Agreement a Protocol was signed, providing for the payment to the MIF by its members of one per cent of the gross premiums received. This percentage was increased to three per cent and then reduced to two per cent.

Insurance companies have the right to impose terms excluding particular drivers from cover totally or allowing them to be included but only subject to certain conditions. Where the policy is void or voidable because the insured has violated any of the conditions of the policy, the MIF is obliged to pay compensation. To avoid the possibility that insurance companies would include many conditions in their contracts and so refer numerous cases to the MIF, an Internal Agreement was signed on 6 March 1969 between the MIF and its members. The Principal Agreement specifies the conditions precedent to the liability of the MIF, namely:

1. The applicant or his lawyer must give to the insurer or, if no effective policy exists, to the MIF a notice in writing sent by registered mail, within seven days from the start of court proceedings;
2. Where the claim concerns personal injuries and damage to property or only damage to property, the applicant or his lawyer must give, in addition to the notice specified above, a special notice immediately after the accident and before the vehicle is repaired;
3. A copy of the writ of summons or the statement of claim must be given to the insurer or the MIF; and
4. If a judgment is issued against an uninsured driver and the sum awarded by the judgment is paid by the MIF, the applicant must assign to the MIF any judgment obtained by him against the MIF.

§ 15:21 Fire Insurance

Fire insurance business means the issue of, or the undertaking of liability under, policies of insurance against loss or damage by or incidental to fire.

§ 15:22 Accident Insurance

Accident insurance business is the issue of, or the undertaking of liability under, policies of insurance on the happening of personal accidents, whether fatal or not, disease, or sickness.

§ 15:23 Marine, Aviation, and Transit Insurance

Marine, aviation, and transit insurance is the business of ef-

fecting and carrying out, other than incidentally to another class of insurance business, contracts of insurance relating to:

1. The vessels or aircraft or on the machinery, tackle, furniture, or equipment of vessels or aircraft;
2. The goods, merchandise, or property of any description whatever on board vessels or aircraft;
3. The freight of, or any other interest in or relating to, vessels or aircraft;
4. The damage arising out of or in connection with the use of vessels or aircraft, including third-party risks;
5. The risks incidental to the construction, repair or docking of vessels, including third-party risks;
6. The transit risks (whether by sea, inland water, land, or air, or partly one and partly another), including risks incidental to transit insured from the start of transit to the ultimate destination covered by the insurance, but excluding risks the insurance of which is motor-vehicle insurance business; and
7. Any other risks, the insurance of which is customarily undertaken in conjunction with or as incidental to any business referred to in the foregoing paragraphs of this definition.

There is no law in Cyprus concerning marine insurance, but the English Marine Insurance Act 1906 is applicable. In recent years, the Supreme Court of Cyprus, in its Admiralty jurisdiction, has dealt with a considerable number of marine insurance claims and has awarded large sums as damages.

§ 15:24 Marine, Aviation, and Transit Insurance— Employers' Liability Insurance

Employers' liability insurance is the issue of, or the undertaking of liability under, policies insuring employers against liability to pay compensation or damages to workmen in their employment, but does not include any business carried on as incidental to marine, aviation, and transit insurance. The compulsory employers' liability insurance business is regulated by the Compulsory Employers' Liability Insurance Law,¹ which was modelled on Cap. 333.

Under section 3 of the Compulsory Employers' Liability Insurance Law, employers' liability insurance is not compulsory if the

[Section 15:24]

¹Law Number 174 of 1989, amended by Law Number 79(I) of 2011.

employer is the Republic of Cyprus, the employer belongs to a category expressly exempted from compulsory employers' liability insurance by the Council of Ministers, or the nature of the employment is such as is prescribed by Part II of the First Schedule to the Social Insurance Law.²

Compulsory employers' liability insurance also covers Cypriot employees working outside Cyprus for any employer, not necessarily Cypriot companies or foreign or international companies registered in Cyprus.

Section 17 of the Compulsory Employers' Liability Insurance Law provides for the establishment of a fund similar to the MIF, the object of which will be to satisfy any claims with regard to:

1. Any risks which are not covered by insurance, whether wholly or partially;
2. A void policy; and
3. The insolvency of the insurance company.

Any condition in the insurance policy which seeks to impose a restriction on the cover of the insured person (i.e., the employer) in relation to the number, age, sex, physical or mental condition, nationality, level of education, training or capacity of employees, or the place, time, duration, means of protection, nature of the work or remuneration of the employees, or any discriminatory term towards the employees, will not be valid in terms of the employers' liability.³

§ 15:25 Miscellaneous Insurance

Miscellaneous insurance is the business of effecting contracts of insurance which is not principally or wholly related to any of the other classes of insurance business. Within the scope of miscellaneous insurance business fall private liability insurance, professional liability insurance, public liability insurance, pollution liability insurance, medical insurance, and travel insurance.

Medical and travel insurance are well known in Cyprus, but the other kinds of insurance are comparatively new to the Cypriot insurance industry and are not in common use.

§ 15:26 Miscellaneous Insurance—Social Insurance

Social insurance in Cyprus is regulated by the Social Insurance Laws of 1980–2009. There is a Social Insurance Scheme which is

²Social Insurance Laws, 1980–1995.

³Compulsory Employers' Liability Insurance Law, as amended, section 7(2).

exclusively operated by the state. The Scheme covers all employed and self-employed persons, except for foreign employees of international companies registered in Cyprus. Foreigners who are employed by Cypriot companies or individuals are covered by the Scheme.

The contribution payable in relation to an employee is 16.6 per cent of his insurable earnings, of which 6.3 per cent is paid by the employee, 6.3 per cent by the employer, and four per cent by the Social Insurance Fund.¹ In the case of a self-employed person, the contribution is 15.6 per cent of his insurable earnings, of which 11.6 per cent is paid by the self-employed person and four per cent by the Social Insurance Fund.² According to section 22 of the Social Insurance Laws 1980–2009, the benefits provided by the Social Insurance Scheme are:

1. Sickness benefit;
2. Unemployment benefit;
3. Old age pension;
4. Invalidity benefit;
5. Widow's benefit;
6. Orphan's benefit;
7. Matrimonial benefit;
8. Childbirth benefit;
9. Funeral benefit; and
10. Missing person's benefit.³

IV. REGULATION OF INSURANCE PROVISION

§ 15:27 Licensing Requirements of Insurance of Reinsurance Business for a Cypriot Insurance Company—In General

For a license required by a Cypriot insurance company to carry on insurance business or reinsurance undertaking¹ in Cyprus, the following conditions must be met:

[Section 15:26]

¹Social Insurance Laws 1980–2009, as amended, section 5.

²Social Insurance Laws 1980–2009, as amended, section 13.

³“Missing person” refers to persons who have been missing since the Turkish invasion of 1974 and for whom there is no positive information as to their whereabouts.

[Section 15:27]

“Reinsurance undertaking”, according to section 2 of the 2002–2011 Law, means the reinsurance undertaking that exercises business and has been licensed according to sections 19 and 23 of the Law.

1. The required fee must have been paid;
2. The company must have a paid share capital of at least CYP 400,000 where it conducts non-life business, CYP 600,000 for life business, and CYP 1-million for reinsurance;²
3. The company must have a minimum guarantee fund of the CYP equivalent of between €2,000,000 and €3,000,000 where it conducts non-life business, dependent on the matrix of business to be underwritten, and the CYP equivalent of €3,000,000 for life business €3,000,000, for reinsurance undertakings, and €1,000,000 for captive reinsurance undertakings;³
4. The company must have submitted a three-year scheme of operations;
5. The company must have provided a guarantee that it will conduct its business (a) in accordance with sound insurance principles, (b) in a manner which will safeguard policyholders' interests, and (c) in such a way so as not to come into conflict with moral issues or public order;
6. The company must have declared to the Superintendent the identity and amount of every natural or legal person who has direct or indirect qualifying holdings in the business, and the Superintendent must be satisfied that the owners of such holdings are fit and proper persons;⁴
7. The name of the company must comply with section 16 of the 2002 Law and the Companies Law, Cap 113;⁵
8. The company maintains its central administration and registered office in Cyprus;

²These requirements do not apply to mutual insurers.

³The 2002–2011 Law, section 2, states that a captive reinsurance means “a reinsurance undertaking owned either by a financial undertaking other than an insurance or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which this law applies, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking is a member”. The above amounts will be reviewed annually in order to take account of changes in the European index of consumer prices comprising all member states as published by Eurostat. The amounts are automatically adapted by increasing the base amount in euro by the percentage in that index over the period of 20 March 2002 and the review date and rounded up to multiple of €100,000.

⁴This condition does not apply to mutuals.

⁵According to section 16 of the 2002 Law, the name must include the words, or words to the effect of, insurance company, or reinsurance company, or

9. The managers of the company are fit and proper persons; and
10. The company must have arranged adequate reinsurance.⁶

Where the company wishes to conduct reinsurance or life business or offer accident and sickness cover for more than one year, the company must have appointed a qualified internal actuary who is a fit and proper person approved by the Superintendent.⁷ Where the company intends to offer insurance which is compulsory by law, it must undertake to join an insurers' fund recognized or prescribed by law, before taking on any such business. Life and non-life business must be managed separately, although a degree of overlap of the solvency margins may be allowed by the Superintendent.⁸

A Cypriot insurance company may apply to the Superintendent for permission to establish a branch or an agency in another member state of the European Union or European Economic Area, or Switzerland,⁹ under its freedom of establishment. The company must disclose the states in which it intends to undertake business, and submit a business plan. A general representative must have been appointed in the other states.¹⁰ Having considered the plan, administrative structure, financial situation, and qualifications of the managers and general representatives, the Superintendent has the right to refuse permission.¹¹

As far as the Superintendent in Cyprus is concerned, the agency or branch may start business in the other states following the notification of conditions, if any, by the supervisory authority of the other states to the Superintendent, or in any event within two months of the grant of permission by the Superintendent.¹²

It is prohibited for insurance companies to exercise within the Republic other businesses except of the insurance. In relation to

mutual organization, as the case may be. This may be in a language other than Greek, as long as this is the language under which the company was registered.

⁶According to section 2 of the 2002–2011 Law, “reinsurance” means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking. In the case of the association of underwriters known as Lloyd’s, reinsurance also means the activity consisting in accepting risks, ceded by any member of Lloyd’s, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd’s.

⁷Insurance Services and Other Related Issues Law, section 59.

⁸Insurance Services and Other Related Issues Law, section 24.

⁹Insurance Services and Other Related Issues Law, section 38.

¹⁰Insurance Services and Other Related Issues Law, section 58(3).

¹¹Insurance Services and Other Related Issues Law, section 33(2).

¹²Insurance Services and Other Related Issues Law, section 33(4).

Cypriot insurance companies the prohibition applies also for their businesses outside Cyprus.¹³ Additionally, reinsurance undertakings are to limit their objects to the business of reinsurance undertaking to carry on, for instance, activities, such as provision of statistical or actuarial advice, risk analysis, or research for its clients. It also may include a holding company and activities with respect to financial sector activities.¹⁴

Cypriot insurance companies also may conduct insurance business in other member states of the European Union or European Economic Area, using their freedom to provide services, once various documents have been submitted to the Superintendent and been forwarded by him to the supervisory authorities of the states concerned. The Superintendent may refuse to forward these if they are not in order.

Cypriot insurance business (undertaking) or reinsurance undertakings are able to transfer all or part of their portfolios of contracts, including those concluded either under the right of establishment or the freedom to provide services, to an accepting office within or out of Cyprus, if the competent authorities of the home member state of the accepting office certify that, after taking the transfer into account, the latter possesses the necessary solvency margin.¹⁵

§ 15:28 Licensing Requirements for Non-European Union or Non-European Economic Area Insurance Companies—In General

Section 3(1) of the 2002 Law states that:

. . . the provisions of this law govern . . . the carrying on of insurance business within the Republic by foreign insurance undertakings . . .

A foreign insurance undertaking is defined¹ as:

. . . an insurance undertaking which has its head office in a foreign country and carries on insurance business in the Republic with a license to carry on insurance business, granted under sections 25 or 29 of this law, as long as the prerequisites set in section 26 of this Law are satisfied . . .

Firms with their head offices in the EU or the EEA, or Switzer-

¹³The 2002–2011 Law, section 13(1).

¹⁴The 2002–2011 Law, section 13(2).

¹⁵The 2002–2011 Law, sections 113A and 113B.

[Section 15:28]

¹Insurance Services and Other Related Issues Law, section 2.

land for non-life business, as long as these businesses comply with sections 25 and 26 of the same law, are excluded from this definition. Section 19(1) of the 2002 Law, applicable to a foreign insurance company by virtue of section 25(3) of the same law, merely refers to a license being granted for either the General Business Class or the Life Class defined above, subject to various exceptions.

Foreign insurance companies seeking to undertake insurance business in Cyprus may do so either as a branch or as an agency registered under the Companies Law,² following the grant of a license by the Superintendent.³ For such a license to be issued, the following conditions⁴ need to have been fulfilled:

1. The required fee must have been paid;
2. The company must be licensed in its home state to carry on insurance business of the types listed in its application to the Superintendent;
3. A general representative must have been appointed;
4. The company must have a paid share capital of at least CYP 400,000 for non-life business, CYP 600,000 for life business, and CYP 1-million for reinsurance;⁵
5. The company must possess in Cyprus assets amounting to at least half the minimum guarantee fund of the CYP equivalent of €3,000,000 for non-life business, depending on the matrix of business to be underwritten, and the CYP equivalent of €3,000,000 for life business, and must have deposited at least one-quarter of this entire sum in Cyprus;
6. The company must have submitted a three-year scheme of operations;
7. The company must have made a declaration that it will maintain the requisite solvency margin, accounts, and technical reserves with respect to the business of its branch or agency; and
8. The company must have provided a guarantee that it will conduct its business (a) in accordance with sound insurance principles, (b) in a manner which will safeguard policyholders' interests, and (c) in such a way so as not to come into conflict with moral issues or public order.⁶

Where the company wishes to conduct reinsurance, life busi-

²Companies Law, Cap. 113.

³Insurance Services and Other Related Issues Law, section 25(1).

⁴Insurance Services and Other Related Issues Law, section 26.

⁵These requirements do not apply to mutual insurers.

⁶Insurance Services and Other Related Issues Law, section 26.

ness, or offer accident and sickness cover for more than one year, the company must have appointed a qualified internal actuary. Where the company intends to offer insurance which is compulsory by law, it must undertake to join an insurers' fund recognized or prescribed by law, prior to taking on any business. Where a company intends to undertake insurance business elsewhere in the EU or EEA as well as Cyprus, an application may be made for special treatment, whereby:

1. The solvency margin is calculated with regard to business across the whole of the EU and EEA; and
2. The guarantee fund may be localized and deposited in any member state of the EU or the EEA.

The business may choose, giving reasons, which supervisory authority within the EU or EEA will be competent to regulate the solvency of all the business. Where the business chooses that of the Superintendent in Cyprus, the guarantee fund referred to above must be possessed and deposited in Cyprus.⁷

Where the insurance company is to undertake life business and non-life business covering accidents or sickness for more than one year, an internal actuary must have been appointed, being a fit and proper person approved by the Superintendent.⁸

Those obligations outlined above with regard to technical reserves, solvency margins, guarantee funds, approved investments, statements and accounts, and advertising which apply to Cypriot insurance companies also apply to foreign insurance undertakings. Assets constituting the minimum solvency margin of an undertaking from outside the EU or EEA which carries on insurance business in Cyprus, except those assets which constitute the guaranteed fund which must be localized within Cyprus, may be localized in another member state of the EU or EEA.

Companies have four weeks from the end of each quarter of their financial year to submit to the Superintendent a register, in the prescribed form, containing details of the approved investments, accompanied by a statement, again in the prescribed form, estimating the technical reserves of the company, which must be signed off by the general representative and one member of its board.⁹

The statements of account, as well as those relating to the technical reserve and solvency margin, which must be deposited with the Superintendent within six months of the end of the

⁷Insurance Services and Other Related Issues Law, section 30.

⁸Insurance Services and Other Related Issues Law, section 59.

⁹Insurance Services and Other Related Issues Law, section 85(3).

financial year as described for Cypriot insurance companies above, must be signed by the general representative as well as the Chairman and two members of the board and the managing director.¹⁰

§ 15:29 Licensing Requirements for Non-European Union or Non-European Economic Area Insurance Companies—General Representative Requirements

A general representative,¹ apart from being a fit and proper person, must:

1. Have his usual place of residence in Cyprus, unless the Superintendent allows otherwise;
2. Be responsible for the execution of all the business of the branch or the agency;
3. Have adequate authority to commit the foreign insurance company as against third parties and represent it before the courts or administrative authorities;
4. Be the only general representative in Cyprus; and
5. Not be the auditor, partner, or employee of the auditor.²

A general representative may be a legal person but, if so, must have its head offices in Cyprus.³

§ 15:30 Licensing Requirements for Insurance Company from European Union or European Economic Area Country Other Than Cyprus—Establishing a Branch or Agency

A non-Cypriot insurance company, which has its head office within the EU or the EEA and which constitutes one of the legal entities prescribed in article 8(1)(a) of First Directive 73/239/EEC, as amended, or article 8 of First Directive 79/267/EEC, as amended, and which wishes to undertake insurance business in Cyprus by virtue of its freedom of establishment, may establish a branch or an agency in Cyprus, as long as a general representa-

¹⁰Insurance Services and Other Related Issues Law, section 99.

[Section 15:29]

¹Insurance Services and Other Related Issues Law, section 56(1).

²Insurance Services and Other Related Issues Law, section 26.

³Insurance Services and Other Related Issues Law, section 56(4).

tive in Cyprus has been appointed¹ and the Superintendent has received:

1. Notification of the company's intentions from the competent supervisory authority of the member state of origin;² and
2. A statement from the insurance company, stating that it will join a body or organization recognized or prescribed by law where it intends to offer compulsory insurance.³

The above requirements also apply to companies based in Switzerland in the case of non-life business.⁴

The Superintendent has two months from the registered receipt of the requisite documents to state the conditions, if any, under which the branch or agency may carry on its business in Cyprus, following which the branch or agency may commence business, whether or not the Superintendent has replied positively.⁵

The obligations of Cypriot insurance companies with regard to the advertising of insurance in Cyprus, outlined above, apply to undertakings of a member state of the European Union or European Economic Area.⁶

§ 15:31 Licensing Requirements for Insurance Company from European Union or European Economic Area Country Other Than Cyprus—Providing Insurance Services in Cyprus

Such an insurance company may offer insurance in Cyprus under its freedom to provide services, without establishing a branch or an agency in Cyprus, as long as:

1. The Superintendent has received from the competent supervisory authority of the member state of origin (a) notification of the company's intentions and (b) a statement that the insurance company concerned will join a body or or-

[Section 15:30]

¹Insurance Services and Other Related Issues Law, section 58(3).

²Insurance Services and Other Related Issues Law, section 32(2).

³Insurance Services and Other Related Issues Law, section 32(3).

⁴Insurance Services and Other Related Issues Law, section 37.

⁵Insurance Services and Other Related Issues Law, section 32(4).

⁶Insurance Services and Other Related Issues Law, sections 138–141.

- ganization recognized or prescribed by law where it intends to offer compulsory insurance;¹
2. A tax representative in Cyprus has been appointed;² and
 3. A special representative has been appointed where the company intends to underwrite certain types of motor insurance.³

The Superintendent will state in writing to the competent supervisory authority concerned:

1. The fact that the company has been registered in a specific registry;
2. The obligation, if any, of the insurance company concerned to appoint a tax representative; and
3. The terms, if any, under which the company may conduct insurance business in Cyprus.⁴

The Superintendent may require from the competent supervisory authority information about the particular methods of sale to be used by the company in Cyprus.⁵

Subject to the above requirements, the company may begin its insurance business in Cyprus under the freedom to provide services once it has received the relevant notification from the competent supervisory authority of its member state of origin.⁶

The obligations of Cypriot insurance companies with regard to the advertising of insurance in Cyprus, outlined above, apply to undertakings of a member state of the European Union or European Economic Area.⁷

§ 15:32 Establishing an Insurance Intermediary—In General

Insurance intermediation business is defined as the:

. . . activities of introducing, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance or of conclud-

[Section 15:31]

¹Insurance Services and Other Related Issues Law, section 35(1)(a).

²Insurance Services and Other Related Issues Law, section 35(1)(b).

³Insurance Services and Other Related Issues Law, section 35(1)(b).

⁴Insurance Services and Other Related Issues Law, section 35(2).

⁵Insurance Services and Other Related Issues Law, section 35(3).

⁶Insurance Services and Other Related Issues Law, section 35(4).

⁷Insurance Services and Other Related Issues Law, sections 138–141.

ing such contracts or of assisting in the administration and performance of such contracts, in particular in the event of a claim.¹

Insurance intermediation business can be pursued by insurance agents, brokers, mediators, advisors, and tied advisers, duly registered as such by the Insurance Companies Control Service of the Ministry of Finance.² Registration must be undertaken pursuant to section 170 of the 2002 Law. The precise functions of each type are set out in sections 165–168A inclusive of the 2002 Law, and the classification depends on factors such as whether they may bind the underwriter, collect premiums, advise and assist the insured, and settle claims, and whether they are tied to a particular underwriter.

Before the required registration of an intermediary, intermediary agreements need to have been concluded in writing between the intermediary and the underwriter,³ unless that intermediary is acting as a broker.⁴

All intermediary companies and individuals must, at the time of their registration and for as long as they are active in the provision of intermediation services, either:

1. Hold professional indemnity insurance covering work undertaken in any EU or EEA country for an amount in Cypriot Pounds equivalent to at least €1-million per claim and to a total of at least €1,500,000 *per annum* for all claims; or
2. Hold a professional negligence civil liability guarantee comparable to the above.⁵

These obligations will not apply, however, where either:

1. The above insurance cover or guarantee is already provided by an insurance company or other company on whose account the intermediary acts; or
2. The insurance company or other company on whose account the intermediary acts has assumed all liability for that intermediary's acts.

§ 15:33 Establishing an Insurance Intermediary—Cypriot Intermediary

The exclusive object of the Cypriot intermediary company must

[Section 15:32]

¹Insurance Services and Other Related Issues Law, section 2.

²Insurance Services and Other Related Issues Law, section 164(1).

³Insurance Services and Other Related Issues Law, section 169.

⁴Insurance Services and Other Related Issues Law, section 166.

⁵Insurance Services and Other Related Issues Law, section 171(1).

be to act as one of the four types of intermediary, to the exclusion of any other commercial activities. The Superintendent may exceptionally register a tied insurance adviser where the intermediary business is supplementary to its principal professional activity if:

1. The insurance is complementary to the goods or services provided in the context of its principal activity; and
2. The insurance company on whose account it will act has expressly assumed in writing liability for its acts or omissions.¹

At least two directors of the company as well as all the natural persons exercising insurance mediation services on behalf of the company must be registered in accordance with the provisions of the 2002 Law as individual agents, brokers, mediators, or advisers, as the case may be.² The indemnity requirements outlined above apply to natural persons acting as intermediaries within Cypriot-registered intermediary companies.³

Individuals must be fit and proper⁴ within the judgment of the Superintendent⁵ and capable of pursing intermediation business by reason of their having adequate general, commercial, and professional knowledge and skills, depending on the fields of insurance which they offer, and hold the qualifications set out in the relevant Regulations.⁶ An individual will need the insurance company on whose behalf he acts to have expressly assumed in writing the responsibility for his acts or omissions.⁷ Individual brokers must be a director or employee of a broking company to be registered.⁸ A person is not considered fit and proper where he:

1. Has been convicted of forgery, theft, fraud, embezzlement, usury, profiteering, blackmail, bribery, smuggling, extortion of money on false pretences, murder, manslaughter, rape,

[Section 15:33]

¹Insurance Services and Other Related Issues Law, section 173(1)(a).

²Insurance Services and Other Related Issues Law, section 173(1)(b)(i).

³Insurance Services and Other Related Issues Law, section 171(1), pursuant to section 172(1) of the same law.

⁴Insurance Services and Other Related Issues Law, sections 172(3) and 53(5)(b).

⁵Insurance Services and Other Related Issues Law, section 172(1).

⁶Insurance Services and Other Related Issues Law, section 172(2).

⁷Insurance Services and Other Related Issues Law, section 172(4).

⁸Insurance Services and Other Related Issues Law, section 172(5).

- offences of moral indecency, or other criminal offences similar to the above;
2. Has been declared bankrupt and has not been discharged; or
 3. Has previously held a qualifying managerial position in an insurance business or other similar financial sector business, the license for which has been withdrawn for serious violation of its obligations, unless he can prove that he or she did not concur or cooperate in the violation.⁹

Furthermore, the managers of the company as well as any person who, whether directly or indirectly, has a qualifying holding in the company must be:

1. Fit and proper as described above; and
2. Suitable for the prudent management of the company.¹⁰

A fee is payable with the application for registration of a Cypriot legal or natural person.¹¹ For individual agents, mediators, and advisers, the written consent to any projected registration is required from the party on whose account they wish to act.¹² Applications for the registration of natural persons as tied insurance advisers must be filed by the insurance company on whose account the natural person wishes to act, accompanied by a declaration by the insurance company that:

1. The conditions of section 172 of the 2002 Law have been fulfilled; and
2. The insurance company takes full responsibility for the acts or omissions of the individual.¹³

Applications for the registration of companies wishing to act as mediators or advisers must be accompanied by written consent to any projected registration from the party on whose account they wish to act.¹⁴ The Superintendent has three months in which to approve the application and register the legal or natural person.¹⁵

Once they have been registered, Cypriot intermediaries may take up and pursue intermediation in other member states of the EU or the EEA under the freedom to provide services or the

⁹Insurance Services and Other Related Issues Law, sections 172(3) and 53(5)(b).

¹⁰Insurance Services and Other Related Issues Law, section 173(1)(b)(ii).

¹¹Insurance Services and Other Related Issues Law, section 175(1).

¹²Insurance Services and Other Related Issues Law, section 175(3).

¹³Insurance Services and Other Related Issues Law, section 175(4).

¹⁴Insurance Services and Other Related Issues Law, section 175(5).

¹⁵Insurance Services and Other Related Issues Law, section 176(1).

freedom of establishment, provided that they have notified the Superintendent.¹⁶ Within one month from the receipt of the relevant notification, the Superintendent must forward that notification to the competent supervisory authority of the host member state, if such notification is required.¹⁷

§ 15:34 Establishing an Insurance Intermediary— Intermediary from European Union or European Economic Area Country Other Than Cyprus

The Insurance Companies Control Service of the Ministry of Finance must maintain a register of persons carrying out or pursuing intermediation businesses:

. . . operating subject to the freedom of establishment or the freedom to provide services regime concerning . . . legal persons with their place of registration or their central management in a member state of the European Union or of the European Economic Area, provided that this will serve information purposes only as regards the insured parties or other persons interested in the conclusion of insurance agreements.¹

Furthermore, the Superintendent² must register such entities in accordance with section 188 of the 2002 Law.³ Intermediaries registered in a member state of the EU other than Cyprus may take up and pursue intermediation business in Cyprus as long as:

1. They have registered themselves with the competent supervisory authority of their home member state, within the meaning of their domestic law equivalent of article 3 of Directive 2002/92/EC;
2. The Superintendent has been notified by that supervisory authority of the intermediary's intention to take up and pursue intermediation business in Cyprus as well as the way in which it will be conducted; and

¹⁶Insurance Services and Other Related Issues Law, section 187(1).

¹⁷Insurance Services and Other Related Issues Law, section 187(2).

[Section 15:34]

¹Insurance Services and Other Related Issues Law, section 170(1)(c).

²The public servant in charge of the Insurance Companies Control Service of the Ministry of Finance.

³Insurance Services and Other Related Issues Law, section 170(2).

3. One month has elapsed since the relevant notification of the Superintendent.⁴

The 2002 Law does not appear to envisage the Directive not having been incorporated into other member states' domestic law, which may be the case. It is unclear whether it is necessary for the terms of the Directive to have been incorporated into the law of the home member state for such an intermediary to be registered under section 188(1) of the 2002 Law. If such terms need to have been incorporated into domestic law, but have not been so incorporated, the only alternative would be to establish a company in Cyprus or a third state.

§ 15:35 Establishing an Insurance Intermediary— Intermediary from Outside the European Union or European Economic Area

Third-country intermediary companies may exercise intermediation business in Cyprus provided that they have been registered by the Superintendent.¹ All conditions which apply to Cypriot companies apply to those of third countries. In addition, a company must be authorized in its home state to carry out comparable business, and it must continually maintain a representative in Cyprus. The representative must:

1. Be registered in accordance with the provisions of the 2002 Law as an insurance agent, broker, advisor, or mediator, as the case may be;
2. Be authorized to act on account of the third-country company;
3. Direct the business of the branch; and
4. Be a person other than the approved auditor or partner or employee of the branch's approved auditing firm.

⁴Insurance Services and Other Related Issues Law 35(I) 2002, as amended, section 188(1).

[Section 15:35]

¹Insurance Services and Other Related Issues Law, section 174(1).

V. COMPETITION LAW

§ 15:36 In General

The most important piece of Cypriot competition legislation is the Protection of Competition Law.¹ The Competition Law was introduced as part of the general policy of the government to align Cypriot law with that of the EU. Indeed, the main provisions were transposed from articles 81 and 82 (formerly articles 85 and 86) of the Treaty of Rome.

Section 8 of the Competition Law provides for the creation of a Competition Committee, empowered to punish infringements by injunctions and fines. All agreements between undertakings which have as their object or effect the prevention, restriction, or distortion of competition within the common market are void *ab initio*, in particular those which:

1. Directly or indirectly fix purchase or selling prices or any other trading conditions;
2. Limit or control production, markets, technical development, or investment;
3. Share markets or sources of supply;
4. Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
5. Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or under commercial usage, have no connection with the subject of such contracts.²

However, such agreements may be considered valid and legally enforceable pursuant either to a Regulation or to a decision by the Competition Committee, provided that the following conditions are met, i.e., the agreement:

1. Contributes, while allowing consumers a fair share of the resulting benefit, to improving the production or distribution of goods or promoting technical or economic progress;
2. Does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these activities; and
3. Does not afford such undertakings the possibility of eliminat-

[Section 15:36]

¹Competition Law, Law Number 13 of 2008.

²Protection of Competition Law, section 3.

ing competition in respect of a substantial part of the products in question.³

Abuse of the dominant position of an undertaking is prohibited.⁴ Such abuse may consist of:

1. Directly or indirectly imposing unfair purchase or selling prices or other unfair trading conditions;
2. Limiting production, markets, or technical development to the prejudice of consumers;
3. Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; and
4. Making the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or under commercial usage, have no connection with the subject of such contracts.

Certain types of conduct do not fall within the provisions of the law, however, such as:

1. Agreements which refer to the payments and conditions of employment; and
2. Businesses whose task is to administer services of general financial interest or fiscal monopoly, to the extent that the application of the Law hinders, legally or factually, the fulfillment of the particular mission which has been assigned to them by the government.⁵

§ 15:37 In General—Pooling Arrangements

On 3 September 1990, the Cyprus Hire Risks Pool notified the Competition Committee of an agreement signed with 31 insurance companies who offer insurance cover in relation to taxis, buses, and hired motor vehicles. Companies which are members of the Pool share the risks in predetermined proportions.¹ The object of the Pool is to offer insurance cover for vehicles of public use which are considered to be of high risk and for which the insurance companies are not in a position to offer adequate cover.

The Cyprus Hire Risks Pool applied for a negative clearance or exemption from the provisions of the Protection of Competition Law. The Competition Committee decided that the Pool is an

³Protection of Competition Law, section 4.

⁴Protection of Competition Law, section 6.

⁵Protection of Competition Law, section 7.

[Section 15:37]

¹Decision Number 3 of 1991, *Official Gazette*, 7 June 1991.

agreement between undertakings which falls within the scope of section 4(1) of the Competition Law. It stated that such an agreement between undertakings might prevent, restrict, or distort competition, particularly as regards the direct or indirect fixing of any trading conditions.

The Committee also found that the exemptions stated in section 7 of the Law do not apply. In particular, there is no law providing for the establishment of the Pool. It decided that the mere fact that the premiums are fixed by the executive branch of government or the House of Representatives cannot be interpreted to mean that the establishment of the Pool is based on an agreement or act of the state or is grounded on any special legislative provision. However, the Committee examined the application of the Pool for an exemption, and decided that an exemption should be granted because the Pool:

1. Provides a fair share of the benefits to consumers and improves production and promotes economic progress;
2. Does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these activities, i.e., the improvement of production and the promotion of economic progress; and
3. Does not afford the undertakings concerned the possibility of eliminating competition in respect of the services in question.

VI. TAXATION

§ 15:38 Value-Added Tax

Insurance is exempt from value-added tax.

§ 15:39 Corporation Tax—In General

Companies, other than public corporate bodies, are liable to corporation tax in Cyprus at the rate of 10 per cent of chargeable income.¹ Public corporate bodies are subject to corporation tax at the rate of 25 per cent of chargeable income.²

§ 15:40 Corporation Tax—Corporation Tax for Non-Life Insurers

For insurance undertakings engaged in insurance business in

[Section 15:39]

¹Income Tax Law, Law Number 118(I) 2002, as amended by Law Number 116(I) 2011, section 25.

²Income Tax Law, as amended, section 25.

the General Business Class, the profits or benefits on which tax is payable are calculated by adding together all the gross premiums, interest, commissions, and other income and deducting any premiums returned to the insured and premiums paid on reinsurance. From the resulting figure, the reserve for unexpired risks at the end of the year of assessment is deducted, and the reserve similarly calculated for unexpired risks at the beginning of the year of assessment is added. Finally, expenses and any other deductions allowed are deducted.¹

Where the amount of loss which, if a profit or benefit would be taxable, is such that it cannot be wholly set off against the income of the insurance undertaking from other sources for the same year of assessment, it will, to the extent to which it is not set off, be carried forward and set off² against the income of the undertaking for subsequent years.³

§ 15:41 Corporation Tax—Corporation Tax for Life Insurers

For insurance undertakings engaged in insurance business in the Life Class, the profits or benefits on which tax is payable are calculated by adding together all gross premiums and net investment income and deducting any premiums paid on reinsurances, net claims, surrenders, and expenses. From the resulting figure, the reserve for liabilities in respect of the long-term business in Cyprus at the end of the year of assessment is deducted, and the reserve for liabilities at the start of the year of assessment year is added.¹

Where no tax is due, or the tax payable on the profits or benefits from long-term insurance business does not exceed 1.5 per cent of the gross premiums, excluding contributions to any approved pension or provident fund or any other fund which the insurance undertaking manages for the benefit of its members, the undertaking must pay the difference by way of income tax prepayment.² Income of the undertaking from other sources

[Section 15:40]

¹Income Tax Law, as amended, section 16(1).

²Income Tax Law, as amended, section 13.

³Income Tax Law, as amended, section 16(2).

[Section 15:41]

¹Income Tax Law, as amended, section 17(1).

²Income Tax Law, as amended, section 17(2).

includes income from the management of any pension, provident, or other fund.³

Where the amount of loss which, if a profit or benefit would be taxable, is such that it cannot be wholly set off against the income of the insurance undertaking from other sources for the same year of assessment, it will, to the extent to which it is not set off, be carried forward and set off⁴ against the income of the insurance undertaking for subsequent years.⁵

VII. CONCLUSION

§ 15:42 In general

The entry of Cyprus into the EU has meant that the regulation of the sector has become more sophisticated than ever. While this has increased costs in the short term, the consumer now enjoys far greater peace of mind.

Cyprus has become an ideal base for insurance interests based outside the EU, looking to tap into the opportunities offered by the largest trading bloc in the world. The Cypriot insurance regime constitutes a credible and effective framework, fully in line with EU standards. Furthermore, the high level of professional services inspires confidence, and the low-taxation environment supports these subjective views with clear objective benefits.

³Income Tax Law, as amended, section 17(3).

⁴Income Tax Law, as amended, section 13.

⁵Income Tax Law, as amended, section 17(4).