

Accessing the German insurance market - some remarks on the regulatory framework

Malta's insurance industry is growing fast, making the island a centre of excellence for the insurance industry at a European level. Indeed, Malta offers a unique mix of an EU-compliant regulatory framework coupled with an interesting tax regime and a highly

qualified and multi-lingual workforce. Relying on the European passporting regime, Malta's licensed insurers can write business throughout the whole Community and the EEA.

At the same time, non-unified domestic laws or peculiarities in the

application of European regulations still remain relevant. This holds also true for Germany. An insurer aiming at this attractive market will therefore have to consider certain regulatory issues.

As a rule, insurers doing business in Germany via an intermediary have to be licensed. European passporting means a big step forward in this regard for foreign insurers. In light of European law the regulatory powers of the German Supervisor (BaFin) are indeed limited vis-à-vis EU-insurers recognising the primary jurisdiction of the insurer's home country. Hence, a Maltese insurer is only obliged under German supervisory law to notify its German activities and to provide specified information and documentation. In this regard, the German Insurance Supervisory Act (VAG) stipulates for a detailed catalogue depending on whether the insurer sells its products via independent brokers or opens its own German branch.

Against this background, a Maltese insurer has to decide on its sales strategy prior to entering the German market. In practice, it can be difficult to distinguish whether business is written under Freedom of Services or Freedom of Establishment. This is namely the case where an

insurer uses brokers. What Freedom applies in such circumstances depends on the broker's integration in the underwriting process. As the notification obligations vary, the differentiation is however important to be regulatorily compliant.

An alternative to be considered may be to offer exclusively insurance online. In such case no notification is required. Indeed, there are already foreign insurers active in the German market, namely in car insurance. Where the products are more sophisticated, such approach is however a no-go. Selling a life insurance policy via the web seems indeed to be futile.

In the case of non-compliance with the abovementioned notification requirements, BaFin is entitled to prohibit insurance intermediaries to arrange insurance contracts. Furthermore, the directors responsible for the German business may face difficulties when opening an establishment in Germany. The reason is that under German supervisory law a foreign insurer has to name an individual heading its German operations (Hauptbevollmächtigter). This key officer has to undergo a fit-and-proper-test ensuring

namely its reliability. It is recognised that offences under insurance supervisory law indicate a lack of reliability. Hence, it is arguable that a director failing to comply with notification requirements cannot be nominated as a Hauptbevollmächtigter. From a commercial perspective, this causes major obstacles to developing German business as the person most experienced in the market can no longer head its respective operations. To ensure long-term success, it is therefore advisable to ensure compliance with the German regulatory framework.

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