Unrated and/or Unregulated Insurers

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It is not our practice to present unrated and/or unregulated insurer to our clients.

Our aim is always to present markets with a minimum 'A' financial rating.

The only circumstances where this scenario would potentially occur could when:

1. The risk presented has such major issues and/or other features that is would not have been possible to obtain terms from an 'A' rated insurer
2. Our client is not willing (or able) to pay the premium required by an 'A' rated insurer and the only alternative available is an un-rated and/or unregulated market.

However, in either of these circumstances it would always be our standard practice to specifically highlight to our client the financial standing (or lack of financial standing) for the market in question.

To put this in context, where we have been very concerned over an insurer's financial rating in the past, we have even required our client to sign a disclaimer confirming that they have instructed us to place their insurance covers with the insurer concerned in full knowledge of these issues and that this is against our professional advice.

As an insurance broker, we are not prepared to provide what we consider to be poor professional advice to our client's.

Have any Unrated and/or Unregulated Insurers actually caused issues for their policyholders?

Yes, on several occasions an unrated insurer has gone into liquidation leaving many policy holders without cover.

A few examples are Insurers such as Quinn, Lemma, ERIC and Balva, who have either withdrawn from the market, had their licences to transact business withdrawn or have gone into administration and/or liquidation.

Another example is the Gibraltar based motor insurer 'Service Insurance Company', who announced that they have ceased to enter into new contracts of insurance, as they could not comply with new solvency rules.

My brokers tell me that my claims would be paid in any case!

The Financial Services Compensation Scheme (FSCS) is the UK's compensation fund for customers of financial service companies authorised by the Financial Conduct Authority (FCA). If the company cannot pay claims for reasons such as liquidation or ceasing to trade, the FSCS will compensate on its behalf.

This doesn't necessarily mean you will receive your compensation quickly!

It could be a lengthy process - the insurer 'Independent Insurance Company' entered provisional liquidation in June 2001 and still to this day many claims have not yet been paid out.

Would you want to wait over 10 years for your claim to be paid?

What about my premium?

On occasion, companies have had no option but to immediately place their insurance covers with another insurer, even though their current cover is not yet due for renewal. Many of these companies have never recovered the additional premiums they paid.

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That's all in the past – surely it couldn't still happen?

In July this year, Gable Insurance (an un-rated insurer based from Liechtenstein) closed it books to new business.

The insurance press stated:

Liechtenstein-based commercial insurer Gable Holdings has ceased writing new business as it looks to implement a rescue plan to shore up its capital position.

The group said today it was working on a restructure that could see it transfer as much as its entire back book to third-party carriers to alleviate a capital shortfall of more than £100m ($132.9m).

The company is aiming to retain sufficient capital to operate as a "niche" insurer on a "significantly smaller scale".

The details of the restructuring plan come as the group announced a pre-tax loss of £24.3m in 2015.

That's in Liechtenstein – Gibraltar wouldn't let that happen!

The following are press excerpts that you need to read, if you are placed with a Gibraltar based insurer:

<u>An article written on the 5th September 2016:</u>

Did the Gibraltar regulator miss the warning signs?

The Gibraltar Financial Services Commission has once again fallen under scrutiny after Enterprise Insurance became the ***<u>third major insurer to collapse in the tax haven in recent years</u>****.*

<u>An article written on the 28th July 2016</u>

Enterprise liquidator tells policyholders to seek new cover due to claims uncertainty

The provisional liquidator of Gibraltar-based Enterprise Insurance Company has warned that it is ***<u>uncertain the business has enough assets to pay claims.</u>***

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The following is an article written on the 7th August 2016 – taken from the Irish Sunday Business Post

Central Bank officials had concerns over Gibraltar insurers in 2014

• Enterprise Insurance, which had 14,000 customers, collapsed into liquidation last month

BY EMMA KENNEDY

Concerns about Gibraltar-based insurers were on the radar of high-ranking Central Bank officials more than a year before the recent collapse of Enterprise Insurance.

Enterprise Insurance, an insurer regulated by the Gibraltar Financial Services Commission, collapsed into liquidation last month.

The company sold insurance to 14,000 customers here via Wexford-based Wrightway Underwriting, a subsidiary of insurance giant Zurich.

Its wind-up comes just over two years after the collapse of Setanta Insurance, which had 75,000 customers here and was regulated in Malta.

However, according to the just-published minutes of high-level Central Bank meetings, concerns about insurance firms regulated in Gibraltar were on the regulator's agenda as far back as November 2014.

At a meeting of the Central Bank commission in November 2014, Patricia Byron, a commission member and then chief executive of the Injuries Board, said she was aware of a potential new entrant to the market seeking authorisation via Gibraltar.

According to the Central Bank documents, Byron asked if in light of the Setanta case, the bank had any insights on the potential new entrant.

The minutes of the meeting show that the Central Bank's deputy governor Cyril Roux said that under European rules, a financial services company could be regulated in one jurisdiction but sell its products in another.

Less than three months later, in mid-February 2015, Enterprise announced it was entering the Irish market.

At a subsequent meeting in April 2015, the Central Bank commission considered a paper on the supervision of insurance companies who operate in Ireland on a freedom of services basis, according to the newly-published documents.

The minutes show that following an initial analysis of insurance provided on such a basis, the bank's primary concerns related to motor insurance sold by foreign-regulated firms to Irish-based consumers. According to the minutes, the Central Bank had in response to its concerns established regular contact with other regulators, and had also sought additional financial and statistical data on such firms.

In wake of the Enterprise collapse last month, it emerged that Central Bank officials had made contact with the regulator in Gibraltar earlier this year in a bid to ensure that firms operating here, but regulated there, understood the risks in the Irish market, specifically about insurance claims and their management.

"We asked the Gibraltar Financial Services Commission earlier in the year to review the Irish motor business of Gibraltar-based firms and offered our assistance in that regard, drawing their attention to our bodily injury thematic review and the increasing cost of claims in Ireland," a spokeswoman for the Central Bank said. "We followed that letter with a visit to the Gibraltar Financial Services Commission on July 7."

Last week, this newspaper reported that the Department of Finance also has concerns about foreign-regulated firms selling insurance to Irish-based consumers.

The Department of Finance is concerned about the adequacy of reserves held by some insurance companies regulated in other countries, but using so-called EU passporting rules to sell products here.

"Based on our experience with Setanta and Enterprise Insurance, the department has general concerns about such companies passporting into Ireland, and not pricing and reserving their products appropriately," a spokesman for the Department of Finance said.

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Are there any problems going forward?

The United Kingdom is aware of the reasons why firms choose to base themselves outside of this country and will apply any pressure possible to deal with these issues. (Clearly other countries are also concerned, as can be seen from the previous newspaper article from Eire.)

However, any measures imposed could clearly have a detrimental effect on the end customers who insure with these companies, if the measures mean that the companies have to cease trading due to their imposition.

In addition, will Brexit not affect these insurers, if the UK leaves the EU?

<u>An article written on the 12th September 2016 could highlight such an issue:</u>

Gibraltar insurers optimistic despite plan to close VAT loophole

A value-added-tax loophole that has been available for Gibraltar-based insurers doing business in the UK will be closed from next month.

HM Revenue and Customs will step in to ensure "fair competition" between Gibraltar and UK insurers from 1 October, over VAT incurred on repairs.

<u>**This will have a direct correlation to increased claims costs for these insurers, which will clearly impact on their bottomline.**</u>

<u>An article from the 26th July 2016</u>

Elite to set up office in Luxembourg to counter Brexit fears

Gibraltar-based Elite Insurance said it will set up a new regulated insurance company in Luxembourg to ensure that it would not miss out on passporting rights following Brexit.

In the case of a divorce from the EU, <u>***Gibraltar could potentially lose passporting rights to EU***</u>

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Summary:

From the above, we feel it is completely reasonable to summarise the facts as:

- It is not uncommon for unrated and/or unregulated insurers to go into liquidation
- Should this happen, you may well be forced to replace cover and pay your premium for a second time, with no opportunity to recover your costs
- The insurer concerned may not have the capital to pay your claims in these circumstances and even if there is recourse to the Financial Services Compensation Scheme, it has been evidenced that this still does not mean that your will recover your costs in any reasonable timeframe
- It is possible that you could be left with no cover for historic claims made against you for this period of insurance, which you are not made aware of under a later date.
- It cannot be best advice for any insurance broker to recommend that you insure with any unrated and/or unregulated insurer
- Any client who is made aware of these facts and still chooses to insure with an unrated and/or unregulated insurer, has to accept there is a degree of risk in any such decision