

## BROKERS, BREXIT AND RELOCATION

### SUMMARY OF COMMENTS RECEIVED FROM ADVISERS ON ESTABLISHMENT IN IRELAND, MALTA AND CYPRUS

Information provided in **May 2017** by:-

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Q1 - What headline rate of corporation tax would apply to an insurance broker in Ireland	
Ireland	12.5%
Malta	(nb for all the responses from Cyprus, Harneys have assumed that the enquiry relates to Cyprus-incorporated and domiciled companies)  The standard corporation rate is 35%; however through the set up of a Malta Holding Company, provided certain criteria are met, it is possible to qualify for a double taxation relief on distribution of dividends whereby the Malta effective tax rate is reduced down to 5%.
Cyprus	Corporate income tax applicable is set at a flat rate of 12.5 per cent in respect of companies which are tax resident and domiciled in Cyprus. Tax would apply only in respect of profits generated by the business in a similar way to the approach taken in the UK.

## Q2 - How onerous, lengthy and costly would be the process of applying for authorisation as an intermediary

### Ireland

It is a relatively straightforward process.

The Central Bank is the body responsible for the authorisation of retail intermediaries pursuant to Section 10 of the Investment Intermediaries Act 1995, Regulation 8 of the European Communities (Insurance Mediation) Regulations 2005 (IMR), Section 116 of the Consumer Credit Act 1995(as amended), (CCA) and Regulation 30 of the European Union (Consumer Mortgage Credit Agreements) Regulations 2016 (CMCAR).

The applicant must satisfy the Central Bank that it complies with the appropriate regulatory requirements.

#### Stage 1 and 2 - Acknowledgment and Key Information Check

The applicant submits an application form, i.e. the Central Bank's Application Form for Authorisation / Registration as a Retail Intermediary Firm plus supporting documents. These include a Business Plan, a Programme of Operations outlining the proposed regulated activities and non-retail intermediary services, organisational structure, governance and staffing arrangements, outsourcing and outsourcing overview, IT / website, compliance, internal documents relevant to its legal structure, current revenue tax clearance certificate, and documents evidencing compliance with the Minimum Competency Code 2011.

The principal areas assessed by the Central Bank in considering an application include organisation of the applicant, the business plan, financial information and solvency, professional indemnity insurance, compliance procedures, fitness and probity of directors and managers, and the intermediary's regulatory background. Applicants are responsible for ensuring that staff performing pre-approval controlled functions meet the Fitness and Probity Standards issued by the Central Bank both on the appointment and on an on-going basis. Applicants must look through the proposed direct shareholders in the applicant and each subsequent indirect shareholder to identify the intermediate and ultimate legal and beneficial shareholders including those who are in a position to control or influence the applicant.

Each firm must consider whether its business model requires authorisation pursuant to the IIA /IMR / CCA / CMCAR. Where an applicant proposes to operate under an IMR and / or CMCAR (authorisation from a branch set up outside the State) or on a cross border basis within the EEA, it should also submit the following, an IMR Freedom of Establishment Form, a IMR Freedom of Services Form, a CMCAR Freedom of Establishment Form and a CMCAR Freedom of Services Form.

#### Stage 3 - Submission of IQs and Garda Vetting Form

Where all key information has been provided, applicant will be provided with log-on details for the Central Bank's Online Reporting System to facilitate the submission of Individual Questionnaires (IQs). An IQ must be completed for each relevant individual who proposes to perform a pre-approval controlled

function, as required by the Central Bank. A Garda Vetting Form must be submitted (this is required where the applicant is a sole trader or a company with a single director).

#### Stage 4 and 5 - Notification of Assessment

Where all information has been provided, the application submission progresses to the assessment phase. The application material is reviewed against the relevant authorisation requirements to determine whether sufficient information has been provided to enable the bank to issue a "Notification of Assessment" letter.

The Central Bank may issue initial comments and the applicant is afforded the opportunity to respond. The service standard timeframe that the bank has committed for the assessment phase of the application process is 90 working days. This clock can be paused in the event that subsequent information is sought. The Central Bank will notify the applicant of its decision (Notification of Assessment). This letter will specify any specific conditions imposed on the authorisation once granted and will explain the reasons for these proposed conditions. The applicant can make representations in respect of the proposed conditions before the bank makes any decision on the application.

#### Stage 6 - Notification of Decision in respect of Application

The Central Bank will then notify the applicant by letter of its decision, i.e. authorisation has been granted, authorisation with specific conditions, proposed refusal of authorisation.

#### Timeline, cost

The entire process can take 3 months approximately. There is no fee for the application itself. The applicant may have its own advisor and legal fees. An acknowledgement of receipt of an application will issue within 3 days of receipt,

Within 10 days of receipt of the application, the Central Bank will either confirm that the application has sufficient information to proceed to the IQs and Garda Vetting or that the application has insufficient material to progress. Applicants who progress have 20 working days to submit all IQs and the Garda Vetting Form.

The Central Bank will proceed to the Assessment Phase once the above have been received, and the timeframe the Central Bank has committed for the assessment phase is 90 working days.

#### **Malta**

The process is not as onerous as setting up a carrier and the regulations are fairly straight forward and based on EU directives. We would estimate a fee of around €15,000 for set up of the intermediary, €5,000 for set up of a holding company and €30,000 for on going management excluding audit regulatory fees and regulatory fees etc.

## Cyprus

The Insurance and Reinsurance Services and Other Related Business Law 2016 (the Insurance Law) governs the provision of insurance, reinsurance and insurance intermediary services in Cyprus. In consequence it implements the requirements of Solvency II and the Insurance Mediation Directive (IMD) in Cyprus. The Insurance Law has not been updated yet to reflect the requirements of the upcoming Insurance Distribution Directive, though we expect the legislation to be amended in time for the implementation date in February 2018. The competent authority in Cyprus responsible for regulation under the Insurance Law is the Insurance Companies Control Service (the ICCS) which is a sub-division of the Ministry of Finance.

**Is authorisation onerous?** - As a first step it would be necessary to obtain approval to register the name of the company with the Cyprus Registrar of Companies (Registrar). This is because the name would need to include certain restricted words such as insurance agent (etc.) There is a set procedure between the Registrar and the ICCS for doing so. Once approved, in principle the company would apply for authorisation from the ICCS using designated forms. There are various categories of licence available, the principle ones would be: insurance advisor; insurance agent; insurance broker.

The most onerous aspect of the authorisation would be the establishment of a physical office in Cyprus and the appointment of senior officers resident in Cyprus who would manage the business. We would generally expect at least two such officers to be appointed / approved.

Much of the application would be conducted in the Greek language.

**Is authorisation lengthy?** - We would generally expect it to take between 2 to 3 months to put the application documents together. Once submitted the ICCS would aim to complete an initial review of documents within approximately one month and issue approval within that time in the event that it determines the application is complete.

**Is authorisation costly?** - A nominal fee of EUR100 would be payable to the ICCS with the application for an intermediary authorisation of a company. Professional indemnity insurance would be required for coverage throughout the EEA for coverage of approximately EUR1.2m per single claim and EUR1.9m for claims on a cumulative basis. In our experience PI insurance of this amount would cost approximately EUR10,000 per annum (Lloyd's of London). Capital adequacy requirements for insurance brokers would be 4 per cent of annual collected premiums subject to a minimum threshold of approx. EUR 19,000. Insurance agents are not subject to the capital adequacy requirement but must remain solvent at all times.

## Q3 - In terms of burdensomeness, how would you rate the process of maintaining authorisation on an annual basis, thereafter?

### Ireland

Assuming the intermediary maintains its legal and regulatory obligations on an annual basis, and complies with its requirement to hold professional indemnity insurance, there is no real impact / burden on the intermediary on an annual basis thereafter.

The Central Bank requires a proven track record in accordance with the original application before a newly authorised retail intermediary firm can expand

<p>its business line. Therefore, applicants should ensure that the Business Plan is as complete as possible to cover activities that are proposed to be undertaken in the first 12 months post authorisation.</p> <p>Retail intermediary firms should monitor and on a regular basis evaluate the adequacy and effectiveness of the policies and procedures, systems, internal control mechanisms and arrangements in place (ensuring they are kept up to date) and take appropriate measures to address any deficiencies.</p> <p>Procedures and policies should be kept up to date and be made available to the Central Bank for review, upon request.</p>
<p><b>Malta</b> Maintaining authorisation is the same as any other jurisdiction, abiding by the regulations and effecting day to day management from the jurisdiction.</p>
<p><b>Cyprus</b> The requirements above (Q2), as relevant, must be maintained on an on-going basis. Every three years renewal fees equivalent to the application fees noted above would be payable. As such maintenance is not, relatively speaking, onerous or burdensome.</p>
<p><b>Q4 - Are there any special or unusual rules in relation to authorisation as an intermediary?</b></p>
<p><b>Ireland</b> There are no specific unusual rules in relation to authorisation as an intermediary. An intermediary who is also involved in the sale of investment products is also required to be registered under the Investments Intermediaries Act 1995 as well as under the IMR. However, pure insurance intermediaries need only be registered under the IMR.</p>
<p><b>Malta</b> Not that we are aware of, again it is an EU member state and falls under the IMD.</p>
<p><b>Cyprus</b> Authorisation is straightforward and the ICCS is a helpful regulator. However the language requirement may cause a minor obstacle to authorisation, though Harneys Cyprus can assist in this regard.</p>

**Q5 - Has the regulator offered transitional arrangements for subsidiaries of UK brokers?**

**Ireland**

Not aware of anything, the Central Bank has its own requirements for authorisation.

**Malta**

A UK broker setting up a subsidiary in Malta at present would set up under the current rules as any other company. As far as we are aware nothing has changed at present.

**Cyprus**

No, the Cyprus government awaits clarity from the UK-EU negotiations at present.

**Q6 - Does the regulator have any approach on outsourcing?**

**Ireland**

You may "delegate but not abdicate". You must monitor and oversee and must be able to demonstrate that the intermediary is not delegating responsibility for the operation of key functions to a third party. Primary responsibility rests with the regulated entity who remains fully liable for activities that are outsourced.

When outsourcing of an important operational function is proposed, the Central Bank requires that outsourcing does not result in the delegation by senior management of its responsibility of that function, alter the relationship and obligations of the Retail Intermediary firm towards its clients under the legislation, undermine the conditions with which the Retail Intermediary Firm is to comply in order to be authorised and remain so, in accordance with the legislation, or materially impair the quality of the intermediary's internal controls. While the Central Bank does not generally require the applicant to submit copies of Service Level Agreements with outsourced service providers as part of the application process, this documentation must be made available to the Central Bank upon request, either during the application process or if and when the applicant is authorised.

**Malta**

As an EU jurisdiction, outsourcing is permitted with the proper policies in place.

**Cyprus**

We understand "outsourcing" may refer to two scenarios:

(a) Where the licensed Cyprus entity would maintain a permanent establishment (and staff) outside of Cyprus: Back and mid-office services may be

outsourced to other EEA member states or indeed outside of the EEA provided data protection rules are complied with. Front office services may not be outsourced without establishing a branch in another state (whether this be on the basis of an EEA-wide IMD passport or through the ICCS rules or policy governing and restricting establishment of branches in third countries). In addition management and control of the authorised intermediary must remain in Cyprus at all times.

- (b) Where the licensed Cyprus entity contracts with a third party based outside of Cyprus for the provision of services: As above re back and mid-office services. As regards front office services, this may in principle be possible however we would need to examine the contractual arrangements in greater detail to determine whether this would be acceptable under Cyprus legislation and ICCS policy. In practice it may be more robust to adopt the approach in (a) and have the ex-Cyprus staff 'dual hat' as appropriate.

**Q7 - Does the regulator make any requirement along the lines of the value of unencumbered own funds to be maintained?**

**Ireland**

No regulatory capital requirements imposed, save that a certificate of solvency may be required to be submitted.

**Cyprus**

Only in respect of insurance brokers as discussed above.