

## The Spanish Insurance Industry: a sector with possibilities

**The Insurance Industry in Spain has gone through major structural changes over the last years due to a new regulatory framework which have derived in a process of concentration and an increasing of the presence in Spain of multinational companies. New business opportunities and challenges have arisen since banking and insurance products are sold through the same channel (Bancassurance)**

The Spanish Insurance Industry belong to a sector which has a modern legislative framework and still offers enormous potential for growth which makes it one of the most attractive locations for those international financial intermediaries interested in expanding the insurance business in a European Union (EU) country.

The General Directorate for Insurance and Pension Funds (DGSFP or *Dirección General de Seguros y Fondos de Pensiones*) is the Spanish administrative body in charge of the supervision of Insurance and Reinsurance entities, Pension Funds Management Companies, Pension Funds and of its agents.

The Insurance Clearing Consortium (CCS or *Consortio de Compensación de Seguros*) is the Spanish body which compensates for losses and injuries acts arising from a series of natural events and from certain socio-political acts within the Spanish Insurance sector.

The Spanish Union of Insurance and Reassurance Institutions (UNESPA or *Unión Española de Entidades Aseguradoras*) represents around 300 Insurance Companies operating in Spain which represents more than 96% of the Spanish Insurance sector.

### **Insurance business and Insurance Mediation business**

Carrying out activities relating to the Insurance business in Spain requires the prior authorisation of the Ministry of Economy and Finance, followed by the corresponding entry into the corresponding official register. The authorisation is granted by areas and covers an entire area including cover for risks which are ancillary or complementary to it. The extension of the authorisation to other areas also requires official authorisation.

Taking up and pursuing the business of Insurance Mediation also requires the prior authorisation of the

General Directorate for Insurance and Pension Funds and the entry into the corresponding official register.

As the Insurance activity and the activity of Insurance mediation are harmonised activities at an EU level, the entities interesting in expanding its Insurance business in Spain may opt for the effective exercise of freedom of establishment or freedom to provide services in respect of the activities of Insurance agents and brokers.

### **Requirements for the authorisation of Insurance Entities**

#### **◆ Legal form**

- ✓ Public Limited Company
- ✓ Mutual Companies.
- ✓ Co-operative Companies
- ✓ Social Welfare Mutual Companies

#### **◆ Minimum share capital**

A minimum share capital is required at the time of incorporation of an Insurance Entity. Such minimum may vary depending on the legal form which is finally adopted.

#### **◆ Exclusive company purpose**

The company purpose of Insurance Entities must be exclusively the carrying out of insurance operations. For Insurance Entities which intend to operate in the area of Life Insurance, the company purpose must be exclusively that of the performance of operations included in that area and the cover of ancillary risks thereof.

The company purpose of Insurance Entities which intend to operate in any other area of Direct Insurance may not include the performance of operations within the Life Insurance area.

#### ◆ Other particular requirements

- ✓ Requirements for suitability, honesty and professional experience among the partners and directors of the business.
- ✓ Adequate technical provisions for all its activities. These must be properly calculated and accounted for and invested in eligible assets.
- ✓ Sufficient margin of solvency with respect to the totality of its activities.

### Setting up an Insurance Entity in Spain

#### ◆ Insurance Entities authorised in a EU Member State

Such entities may carry out their business in Spain by opening a branch or under the freedom of services.

The procedure consists of notification between the Regulators of both EU Member States (General Directorate for Insurance and Pension Funds on the part of Spain and the corresponding EU Home State Regulator of the Home Country of the Insurance Entity).

#### ◆ Entities authorised in third countries (non EU Member States)

Such entities require prior authorisation from the Ministry of Economy and Finance. They must meet certain requirements, such as (i) prior authorization by their EU Home State Regulator to carry out business in the Insurance sector, (ii) setting up a branch in Spain with a company purpose limited to the corresponding area that they are authorized for in their EU Home State and to maintain a guarantee scheme not lower than the minimum established in the Spanish legislation.

### Types of Spanish Insurance Intermediaries

If the Insurance activity is to be provided under Mediation, then Spanish legislation regulates different

types of Insurance Intermediaries. The Insurance Mediation must be carried on exclusively through one of the types of Insurance Intermediaries detailed below and who must be entered into the corresponding official register at the General Directorate for Insurance and Pension Funds prior to the commencement of the activity. The main requirements of the different Insurance Intermediaries subject to Spanish legislation are as follows:

#### ◆ Insurance Agents

Insurance Agents may be natural persons or corporations which has reached an agreement with one Insurance Entity (Exclusive Insurance Agent) or with various Insurance Entities (Insurance Tied Agent) in order to sell its or their insurance products.

Prior to commencing their activity, the Insurance Agents must complete their entry into the corresponding official register dedicated to Insurance Intermediaries.

With regard to Insurance Tied Agents, they must meet a number of additional requirements in order to be incorporated into the aforementioned register. Among others, those requirements are: (i) to demonstrate that they have passed a training course or an aptitude test set up by the General Directorate for Insurance and Pension Funds or (ii) to subscribe a professional indemnity insurance policy (except where the Insurance Entity on whose behalf the intermediary is acting or for which the intermediary is empowered to act assumes this liability).

#### ◆ Bancassurance Operators

The concept of the Bancassurance Operator makes it possible for insurers to take advantage of the channels for distribution and sales of the Banks and for Banks to include Insurance Entities within their organisational structure.

The Bancassurance Operators must be Banks and mercantile companies which are controlled by them, or in which they have holdings. By means of an Insurance Agency Agreement signed with one or various Insurance Entities, the Bancassurance Operators may use the distribution network of such Bank to act as an Insurance Intermediary. They are subject to the same legal requirements applicable to Insurance Agents, whether Exclusive Insurance

Agents or Tied Insurance Agents. A Bank may only make their distribution network available to one single Bancassurance Operator.

Other requirement for the Bancassurance Operators is that the governing body responsible for Insurance Mediation and at least one half of its members and any case the persons in charge of the technical management must evidence that they have passed a training course or an aptitude test, run by the General Directorate for Insurance and Pension Funds.

#### ◆ Insurance Brokers

The Insurance Brokers are natural persons or corporations which carry out the business of mediation on Private Insurance without having contractual arrangements which bind them to any Insurance Entity and may therefore offer independent advice to their clients.

Their distinctive feature in comparison with other Insurance Intermediaries is precisely that of offering independent and impartial advice. Therefore, their activity is incompatible with any which may limit their capacity to offer such objective and independent advice.

In order to be able to carry out their business, the Insurance Brokers must be entered into the corresponding official register of Insurance Brokers, once certain requirements are duly met, among others: (i) to demonstrate that they have passed a training course or an aptitude test set up by the General Directorate for Insurance and Pension Funds, (ii) to be commercially and professionally honest (iii) to have a professional indemnity insurance policy and (iv) to have sufficient financial solvency in the event that they are going to hold their client's funds.

### Types of foreign Insurance Intermediaries

For those foreign Insurance Entities interested in targeting the Spanish Insurance Industry by means of Insurance Mediation, then different alternatives may be chosen, with a distinction whether if they are registered in a EU Member State or not:

#### ◆ Insurance Intermediaries registered in a EU Member State

Always provided that the register of Insurance Intermediaries in the EU Home State is official under local regulations of such State, then the Insurance Intermediaries may commence their activity in Spain under their effective establishment in Spain or under the freedom of services. It is also a requirement the incorporation into the corresponding official register at the General Directorate for Insurance and Pension Funds is also required.

#### ◆ Insurance Intermediaries from third party countries (not EU Member States)

Insurance Intermediaries from third party countries must satisfy the same requirements as Spanish Intermediaries and become registered in the corresponding official register at the General Directorate for Insurance and Pension Funds.

### Taxation of Insurance Entities

#### ◆ Direct taxation of insurance entities

- ✓ Insurance Entities which are resident in Spain are subject to Corporation Tax which is a direct personal tax which is applicable to the earnings of companies and other legal entities.
- ✓ The tax rates for insurance entities are as follows:
  - 30 % for public limited liability companies.
  - 25 % for general Insurance Mutual Companies, Social Welfare Mutual Companies and labour accident and sickness Mutual Companies in the Social Security which meet the requirements set out in the regulations which apply to them.
  - 0% for Pension Funds regulated under the Consolidated Text of the Law Regulating Pension Plans and Funds
- ✓ The assessment basis for the tax is calculated with corrections by applying the provision of the Law on Corporation Tax to the book earnings determined according to the standards provided for in the Civil Code and other laws relating to determining the earnings and in such provisions issued as regulations to these laws.

- ✓ Insurance Entities may consider funding for technical provisions up to the minimum figure provided in the Regulations Organising and Regulating Private Insurance (ROSSP) as a tax deductible expense.

#### ◆ Indirect taxation of insurance entities and insurance intermediaries

Insurance Entities, just as all other entities, are subject to the tax obligations set forth in the regulations on Value Added Tax, given that they are taxable under this law.

Insurance operations are exempt (including welfare types), reinsurance and capitalisation, and also broking services, including winning clients, and for closing the contract between the parties involved in previous operations.

With regard to Transfer Tax and Stamp Duty (ITP and AJD) on setting up, insurance companies are subject to the company operations system, and this tax amounts to 1 % of the nominal value of the capital including share premium.

#### ◆ Taxation of the branch of an Insurance Entity

Foreign Insurance Entities have the option of offering their services in Spain by opening a branch. Since the branch is considered to constitute a permanent establishment for tax purposes, it will be subject to Non-Resident Income Tax.

Nevertheless, under the provisions of the regulations on Non-Resident Income Tax, permanent establishments are taxable under the provisions of Corporation Tax, except where specific exceptions are applicable.

In this respect, the payments which the branch makes to their parent company and other permanent establishments in foreign countries as interest (except to banks), canons, commissions for technical assistance services or for the use or transfer of goods and fees are not deductible. Furthermore, a reasonable part of the management and general administration expenses corresponding to the permanent establishment are deductible, subject to the fulfilment of certain requirements.

On the contrary, branches have to pay 1 % of the capital assigned by the holding company under the system of company operations under Transfer Tax and Stamp Duty (TP and AJD).

#### ◆ Taxation of an insurance entity under freedom of services

Foreign Insurance Entities which operate in Spain under freedom of services are taxable in the following manner:

- ✓ If they are resident in a country with which Spain has a Double Taxation Treaty in order to avoid international double taxation, as a general rule earnings obtained by insurance companies which arise from the performance of their business are not subject to tax in Spain.
- ✓ If they are not resident in a country with which Spain has a Treaty in order to avoid international double taxation, as a general rule earnings obtained by insurance companies which arise from the performance of their business will be subject to Non-Resident Income Tax at a rate of 24 %.

### General overview of the Spanish Insurance Industry

The current trend during the last few years in the Spanish Insurance Industry is the concentration of the market in line with the policy of mergers and acquisitions followed in recent times by many companies.

The presence of international Insurance Groups in Spain is increasing, being the majority of them from EU Member States.

As a result of the financial crisis, the Spanish Insurance Industry has suffered a decrease on its profitability.

Last year has been difficult for this sector due to lower sales and significant number of withdrawals from life policyholders.

The competition in this sector is quite high and such competition has derived in changes in the prices.

Being the Spanish Insurance Industry close linked to the Financial Industry, the situation which some Banks are facing have also affected the Bancassurance areas. The changing environment for the Saving Banks in Spain, most of them under merger operations, will also have an impact on this sector.

Notwithstanding the above, the Bancassurance channel continues being the most important channel in Spain for Insurance products..

### Useful Contacts:

DGSFP: [www.dgsfp.mineco.es](http://www.dgsfp.mineco.es)

UNESPA: [www.unespa.es](http://www.unespa.es)

Tax Authority (Agencia Tributaria):  
[www.agenciatributaria.es](http://www.agenciatributaria.es)

### Principal relevant legislation:

- ◆ Royal Legislative Decree 6/2004, of 29 October, Approving the consolidated text of the Law on the Organisation and Regulation of Private Insurance.
- ◆ Royal Legislative Decree 2486/1998, of 20 November, Approving the Regulations of the Law on the Organisation and Regulation of Private Insurance.
- ◆ Law 26/2006, of 17 July, on Private Insurance and Reinsurance Broking.
- ◆ Law 50/1980, of 8 October, on the Insurance Contract.
- ◆ Remote contracting of financial products.