



# GREEK LAW DIGEST

## The Ultimate Legal Guide to Investing in Greece

**Kelemenis & Co.**

INSURANCE



NOMIKI BIBLIOTHIKI



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## ■ INSURANCE



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# INSURANCE

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## **Give a brief overview of the private (re)insurance regulatory framework and identify any trends**

State supervision of the Greek private (re)insurance industry is mainly governed by Legislative Decree 400/1970 as amended from time to time in line with EU sector-specific legislation. The above decree governs all primary aspects of the (re)insurance undertakings' licensing, conduct of business, state supervision, solvency requirements and winding up proceedings. Insurance intermediaries' conduct of business is governed by Statute 1569/1986 supplemented by Presidential Decree 190/2006 (implementing the Insurance Mediation Directive 2002/92). Greece has further adopted the trend towards horizontal supervision of the financial sector. In this light, the Bank of Greece was appointed as the regulator of the private insurance sector by virtue of Statute 3867/2010 in substitution of the Private Insurance Supervisory Committee.

The Greek insurance market is already in the process of implementing procedures to meet the Solvency II requirements and a legislative committee has been formed for the transposition of Directive 2009/138. Other trends relate to the issue of secondary legislation by the Bank of Greece regarding insurers' internal audit procedures and intermediaries' code of ethics and certification requirements.

## **Is non-admitted (re)insurance permitted in Greece?**

A license is required for a (re)insurer to undertake primary or reinsurance risks situated in Greece. Said license is granted by the Greek regulator, if the (re)insurer is domiciled in Greece or in a non-EU/EEA country and grants the licensee the right to provide its services in all EU/EEA member states under the FOS/FOE regime. Insurers domiciled or established in other EU/EEA member states can undertake risks situated in Greece by virtue of the single license passport set by the so-called 3rd Non-Life and the Consolidated Life Assurance Directives. EU/EEA domiciled reinsurers can also passport in Greece under the single license set by the Reinsurance Directive (transposed by Statute 3746/2009).

## **What are the consequences of a non-admitted (re)insurer covering risks situated in Greece?**

The provision of (re)insurance cover by non-admitted (re)insurers is prohibited and entails penal and administrative sanctions. Any primary policy concluded with a non-admitted insurer is null and void, albeit the insurer cannot plead said nullity against any party concluding the policy in good faith.

## **What are the requirements for the license of an insurer in Greece?**

An insurer domiciled in Greece must be incorporated as a Société Anonyme or a Società Europea. Public entities can undertake insurance risks pursuant to the provisions of

Decree 400/1970 whereas non-life risks can also be undertaken by mutual insurance cooperatives. The insurer's scope of activities must be restricted to the provision of (re) insurance business, such as risk assessment, underwriting, risk management, solicitation of clients etc and its management and key shareholders must be sound and prudent. The majority of the undertaking's board of directors must be Greek or EU/EEA residents and the actual administration of the company must be conducted in Greece. The registered capital of a Greek insurance undertaking must be equal to the minimum guarantee fund.

#### **What are the requirements for the license of a reinsurer in Greece? Give a brief overview of the requirements for the establishment of a Greek reinsurance undertaking**

A reinsurer domiciled in Greece must be incorporated as a Société Anonyme or (with respect to non-life reinsurance risks) a mutual reinsurance cooperative. The reinsurer's scope of activities must be restricted to the provision of reinsurance business; however, if a reinsurer is incorporated as a Société Anonyme, it can also be a mixed financial holding company. The reinsurers' management and key shareholders must be sound and prudent.

Non-EU/EEA reinsurers must be licensed, established in Greece and abide by the capital and solvency requirements of Greek reinsurance undertakings.

The minimum guarantee fund of a reinsurance undertaking is equal to €3,000,000 or 1/3 of the solvency margin, whichever is higher.

#### **Describe the procedure for the grant of license regarding the conduct of (re)insurance business**

The license is granted per class of primary insurance for all or some of the risks of each class and grants the primary insurer the right to provide its services under the FOE or FOS regime within EU/EEA states and Switzerland (with respect to non-life risks pursuant to a bilateral agreement between the EU and Swiss Confederation). An insurer can also undertake reinsurance risks within the scope of its primary insurance license. Primary insurers already operating under a mixed license prior to the entry into force of Presidential Decree 118/1985 can undertake both life and non-life risks provided that they have established a separate administration of their life assurance business. With respect to reinsurance, the license can be granted for both life and non-life reinsurance risks (mixed license) or for one of the two. The licensee can passport in all EU/EEA member states under the FOS/FOE regime.

#### **What are the requirements for the provision of (re)insurance cover by non-Greek (re) insurance undertakings**

(Re)insurers already licensed in other EU/EEA member states can passport in Greece under the single EU license (chapter 7 and article 101 of Decree 400/1970). (Re)insurers domiciled in non-EU/EEA countries must be established in Greece. Non-EU/EEA primary insurers who undertake both life and non-life risks can be licensed to provide either non-life or life assurance coverage in Greece pursuant to article 20 of the above Decree via a branch or agency. If Non-EU/EEA primary insurers wish to cover both life and non-life risks in Greece, they must establish a Greek Life Assurance affiliate. Non-EU/EEA (re) insurers must abide by the capital, solvency and prudent management requirements of Greek (re)insurance undertakings.

### **Give a brief overview of the solvency requirements of (re)insurance undertakings in your country and the consequences of a (re)insurer failing to meet said requirements**

The (re)insurance undertaking must conduct its business in a fit and proper manner and comply with the regulatory obligations which have been set to safeguard its soundness. Said obligations are compliant to the provisions of the so-called EU Solvency I legislative framework. In particular, (re)insurance undertakings must form and maintain adequate technical reserves/provisions which must be prudently covered by investments. With respect to primary insurers, said investments must meet the statutory eligibility requirements, especially in terms of safety and profitability. Reinsurers, on the other hand, must abide by the prudent management requirement for investing in assets and securities. (Re)insurance undertakings must also maintain a solvency margin and a guarantee fund to meet their obligations towards the persons (re)insured. If the (re) insurance undertaking fails to meet the above solvency requirements, the regulator may impose administrative sanctions, such as requesting from the (re)insurer to submit a plan for its short-term funding and the re-organization of its business or a financial recovery plan, or freezing the company's assets or revoking its license and placing it under compulsory winding-up proceedings. Insurance groups are subject to supplementary supervision. Insurance undertakings which are part of a financial conglomerate are subject to the supplementary supervision pursuant to the provisions of Statute 3455/2006.

### **Give a brief overview of insurance insolvency winding-up proceedings**

The insurance undertaking is placed under compulsory winding-up proceedings, if its license has been revoked on the grounds of failing to abide by solvency requirements or if the regulator has frozen its assets. The proceedings have immediate effect within all EU/EEA members where the undertaking is established in accordance with the principles of unity and universality set out by the Directive 2001/17. The liquidator which is appointed by Court must notify all persons entitled of insurance money, which domicile in another EU/EEA member state, about the proceedings and how to notify their claims on time. Persons domiciled in Greece are invited to notify their claims and all pertaining evidence by an invitation published in newspapers. Said notification must take place within three months following the above publication. Claims arising from compulsory third party liability insurance are covered by the Auxiliary Fund. Claims arising from life assurance are handled by the Private Insurance Guarantee Fund established by Statute 3867/2010.

### **Are there any general good requirements regarding the conduct of insurance business in Greece by EU/EEA (re)insurers?**

EU/EEA insurers providing their services in Greece (via FOE or FOS) must abide by the provisions of Greek legislation which aim to protect the interests of the persons' insured/policyholders, including provisions regarding advertising and consumer protection. To this end, the regulator may request from said insurers to amend their advertisements and/or their business practice so that they abide by the above general good requirement. If, despite measures already adopted to this end by its home-country regulator, the EU/EEA (re)insurer's conduct of business continues to threaten the interests of the Greek public and the systemic stability of the market, the Greek regulator may prohibit it from providing its services in Greece or undertake other appropriate



administrative measures. Other indicative general good requirement imposed on EU/EEA insurers is the mandatory membership and contribution to the Private Life Insurance Guarantee Fund, if the EU/EEA life insurer offering its services in Greece is not already subject to a guarantee scheme in its home member state (article 6 of Statute 3867/2010).

### **What constitutes insurance mediation for the purposes of the law and regulation in Greece?**

Insurance mediation is defined by article 2 (3) and (4) of Decree 190/2006 as any activity whether of introducing, proposing or carrying out other work that is preparatory to the conclusion of contracts of (re)insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, particularly in the event of a claim. The above activities shall not fall within the scope of (re)insurance mediation if undertaken by an (re)insurance undertaking or an employee of an (re)insurance undertaking who is acting under the responsibility of said (re)insurance undertaking. The provision of information on an incidental basis shall not constitute insurance mediation if provided in the context of a professional activity other than that of assisting the customer in concluding or performing an insurance contract, of claims management and of loss adjusting of an insurance undertaking on a professional basis and of expert appraisal of claims.

### **Are there different types of insurance intermediaries?**

The various categories of (re)insurance intermediaries are:

- (Re)insurance broker who does not bear any commitment as to his choice of the (re)insurance undertaking.
- (Re)insurance agent who acts in the name and on behalf of one or more (re) insurance undertakings.
- (Re)insurance (formerly defined as sub-broker) who acts as a producing broker and does not have the right to represent a (re)insurance undertaking, broker or agent.
- (Re)insurance coordinator who undertakes insurance mediation on behalf of a (re) insurance undertaking via a group of (re)insurance consultants of his choice whom the coordinator trains and supervises.
- Tied intermediary who acts under the full responsibility of the insurance undertaking he represents.

### **What are the prerequisites for the undertaking of insurance mediation business in Greece?**

(Re)insurance mediators must be registered with the Professional Chamber of the prefecture where they have their seat. The application for their registration must be accompanied with the documents evidencing that the applicant has the qualifications required by law. Employees of (re)insurance undertakings can undertake to conduct (re) insurance mediation without having to be registered with the Professional Chamber, if their annual gross income deriving from the provision of (re)insurance mediation does not exceed the amount of €5,000.

A (re)insurance mediator can also provide its services via FOS/FOE to other member states following a notification to the regulator of his intent. EU/EEA (re)insurance mediators can passport in Greece under the single license set by the IMD Directive.

### Is there a minimum statutory/regulatory context of an insurance contract?

The insurance contract must specify (article 1 of Statute 2496/1997):

- The details of the contracting parties and the name of the person entitled to receive the insurance money (if a person other than the policyholder).
- The period for which insurance cover is granted
- The insured risks
- The insured sum
- Exceptions to cover
- The premium
- The applicable law
- The unit to which the policy is linked (with respect to unit-linked insurance policies, article 13c of Statute 400/1970)

The insurance contract is exclusively evidenced by a document signed by the insurer (the insurance policy). The insurance policy shall state the basic elements of the insurance contract as well as the date and place of its issue. If the insurance contract is governed by general or special terms and conditions, the policy must also state that said terms and conditions apply to the contract and a copy of the terms must be provided to the policyholder.

### Are there any statutory/regulatory requirements aiming at the protection of the policyholder during the conclusion of an insurance contract?

The insurer bears the following notification duties:

- To supply the policyholder with the information required under law prior the conclusion of the contract.
- To inform the policyholder in writing or by an easily legible notice appearing on the first page of the policy of:
  - a) any inconsistencies between the application for insurance and the policy.
  - b) the policyholder's rights to object if the policy is inconsistent with the application for insurance or the insurer failed to provide the policyholder with the information required under law or failed to communicate the insurance terms and conditions.
  - c) the policyholder's cooling off rights
- To provide the policyholder with separate printed specimens of the notice of objections and of exercising its cooling-off rights.

A draft bill has been issued by the Ministry of Employment with the purpose of enhancing consumer protection and transparency in relation to the provision of private insurance services, setting out MiFID-oriented rules regarding the promotion of life assurance products.

### Can the insurer revoke cover if the policyholder failed to disclose material information prior to the conclusion of the contract?

The insurer can revoke cover if the policyholder intentionally breached his disclosure duties. Negligent breach of said duties entitles the insurer to terminate the contract or request its variation within a period of one month following discovery of said breach. If



the insured event takes place before the termination or the variation of the contract, the insurance money shall be reduced in proportion to the difference between the premium paid and the premium that should have been paid if the breach of duty to disclose had not occurred.

### Can a third party file a direct action against the insurer?

A third party (i.e. a person other than the policyholder) can file a direct action if:

- (a) it is the person insured in a policy concluded on the account of that third party (article 9 of Statute 2496/1997);
- (b) it is a person injured and the insurer has undertaken to provide compulsory third party liability cover of the person liable to compensate the third party (article 26 of Statute 2496/1997). However, with the exception of motor third party liability claims (regulated by codified law 489/1976), this right of direct action is still not in effect, since practical issues must still be determined by means of a ministerial decision regulating which authorities shall be authorized to certify compliance with the requirements of compulsory insurance.

### Are there any statutory/regulatory requirements regarding the context of reinsurance policies

Reinsurance contracts are not regulated by law.

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