

A BRANCH OFFICE IN SPAIN

Over the last few years a large number of EU-based insurers have incorporated a branch office in Spain. This number continues growing not only for insurance companies but also for insurance intermediaries which, following the implementation of the Insurance Mediation Directive, now benefit from the 'single licence' system by way of the freedom of establishment route.

The 'single licence' system opened a range of opportunities for EU-based insurers and intermediaries wishing to have a presence in the Spanish insurance market. But why choose the branch option? Why not just operate on a freedom of services basis?

It is usual for insurance carriers and intermediaries to first explore opportunities in the Spanish market by operating on a freedom of services basis. However, if their business grows many of them subsequently set up a branch office in Spain. A branch office provides the insurer/intermediary with a permanent presence in Spain and, therefore, direct contact with current and prospective customers/policyholders and Spain's Regulator. This is an important advantage from a marketing point of view.

Part of the mother company

In addition, it should be noted that in terms of management, the branch is like a department of the foreign insurer/intermediary, but located in Spain. In fact, it shares the legal personality of the mother company in terms of its assets and structure. This is the reason why the branch does not have a Board of Directors or by-

laws other than those of the mother company.

Because of its lack of independency, the branch has the important and additional advantage of being subject to the decisions and control of the Board of Directors of the mother company. This is the main difference with a subsidiary, which would entail the full incorporation of a new (independent) Spanish company and therefore the need to comply with all the legal and capacity requirements in accordance with the Spanish Law, not only from the insurance (i.e. granting of a new licence) but also from a corporate point of view.

In this respect, while a subsidiary of an insurance company would have to be funded with, at least, the minimum capital required by law (around €3 million for most non-life insurance classes), there is no obligation to fund a branch with a minimum capital. Consequently, branches are normally funded, if at all, with considerably smaller capital of around €3,000 which is subject to a 1% Stamp Duty payable when the branch is funded. The incorporation of the Branch is deemed to be a foreign

investment, which must comply with the Foreign Investment Regulations by notifying the investment to the Directorate General of Trading and Transactions.

The 'General Rep'

With regard to the day-to-day business of the branch, a General Representative in Spain has to be appointed by the Board of Directors of the mother company. This 'General Rep' is normally a Spanish individual who is very experienced and well-positioned in the Spanish insurance market and whose role, duties and faculties are specified by the mother company and, of course, can be revoked or enlarged at any time. This is another example of how the management of the branch is controlled by the mother company.

The DGS

From a regulatory perspective, the operations of the branch remain at all times under the supervision of the Insurance Regulator of the home country (UK, Ireland, Germany, etc). Although the Spanish branch is not under a duty to register its products (policies, tariffs, etc.) with any

registry in Spain, the Spanish Supervisor (DGSFP) is entitled to demand submission of these documents at any time, in order to check whether they are compliant with Spanish law.

The branch incorporation process mainly involves regulatory and corporate issues. The regulatory process starts when the mother company informs its local regulator of the intention to open a branch in Spain. This notification is made through standard official forms prepared by the regulators. However, specific legal documents and information about the branch and the mother company, duly translated into Spanish, must be submitted together with the application. These documents include a business plan and a list of the insurance classes to be written. It is advisable to keep regular contact with the regulators to ensure all documents are in order.

The Deed of Incorporation

From a corporate point of view, it is necessary to prepare a Deed of Incorporation of the branch, which must contain all relevant information and documents required by Spanish law. These documents, most of which relate to the mother company, must be duly legalised and officially translated into Spanish. The Deed of Incorporation will be executed before a Notary Public in Spain and registered with the Spanish Companies House.

Once incorporated, the branch will be obliged to comply with certain regulatory, corporate and tax requirements for which it is advisable to seek proper legal advice. For instance, the branch will be obliged to deposit the accounts of the mother company with the Spanish Mercantile Registry. The Branch will also be subject to payment of Non Residents Income Tax (which applies to the revenues obtained by

companies not resident in Spain due to business activities carried out in Spain), registration by the Spanish Tax Authorities and the Labour Authorities (i.e. Spanish Social Security). The branch also has to comply with Customer Protection and Data Protection rules, etc.

In view of the above, it can be concluded that setting up a branch office in Spain can lead to substantial advantages from a marketing, management, financial and regulatory perspective. This is obviously the reason why many insurers and intermediaries interested in the Spanish market have decided to set up a branch in this country. As has happened over the last years, the number keeps on increasing.

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