

## **ANNEX II**

### **Certificate as to Margin of Solvency (FSMA 2000, s. 111(2) (a) and Schedule 12, Part I, paragraph 2)**

120. On 21 November 2007 the FSA, as regulator of PAC, certified that, taking the proposed transfer into account, PAC possesses the margin of solvency required by or under FSMA 2000. A copy of the certificate is attached at **Annex IV**.
121. The "margin of solvency" is defined in FSMA 2000, Schedule. 1 Part I, paragraph 2(5) as the excess of the value of the assets of PAC over the amount of its liabilities.

### **Certificate of Consent to transfers of business done in EEA States other than the UK (FSMA 2000, s. 111(2) (a) and Schedule 12, Part I, paragraphs 1(2) and 3)**

122. On the basis of information supplied by ELAS and PAC, the FSA is satisfied that the Scheme includes no such insurance business.

### **Certificate of Consent to transfers of long-term insurance business (other than reinsurance) in which an EEA State other than the UK is the member state of the commitment (FSMA 2000, s. 111(2)(a) and Schedule 12, Part I, paragraphs 1(3) and 4)**

123. The FSA is informed by ELAS, that the Scheme includes policies evidencing contracts of long-term insurance business in respect of which the policyholder had his habitual residence, or was situated (if not an individual), in Austria, Belgium, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Spain and Sweden when the contract was concluded.
124. Accordingly, on 6 August 2007 the FSA notified Austria, Belgium, Cyprus, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Latvia, Luxembourg, Malta, The Netherlands, Norway, Poland, Portugal, Spain and Sweden of the proposed Scheme.
125. Austria, Belgium, Cyprus, Czech Republic, Denmark, France, Germany, Ireland, Latvia, Luxembourg, Malta, Norway, Poland, and Sweden have given their consent to the Scheme. The Netherlands has responded to that notification and has not refused its consent to the Scheme.

126. The FSA makes the following observations regarding the response received from Norway:
- a) Based on information provided the Norwegian Regulator has indicated that they have no objection to the transfer.
  - b) The Norwegian Regulator also drew attention to their local legislation namely Chapter 308 of the Insurance Activity Act and a Regulation laid down by the Ministry of Finance of 22 May 1996 on Transfer of Insurance Policies. This legislation sets out certain requirements, including as to policy notification and pre-transfer advertising.
  - c) ELAS has informed the FSA, based on legal advice it has received from Norwegian Counsel, that the local Norwegian legislation does not apply. This is because ELAS has never provided services in Norway and the policies could therefore not have been taken out in Norway. Further, ELAS has informed the FSA that it has evidence to show that the Norwegian policyholders took out their policies in the UK. The FSA has no reason to doubt that the advice taken by ELAS in this regard is correct and accordingly that the local Norwegian legislation requirements do not need to be met. Accordingly, the FSA has treated the response received from Norway as a non-refusal of consent by Norway.
  - d) ELAS has nevertheless provided policyholders resident in Norway with a detailed information pack and published the notices in major UK newspapers, which are widely distributed and available throughout the EEA.
127. Greece and Italy have not responded, but the period of three months, beginning with the date of notification has elapsed.
128. The FSA makes the following observations regarding the responses received from Portugal and Spain:
- a) On 20 August 2007 Portugal stated they had no objection to the Scheme. However, if ELAS became aware of any policies having Portugal as the State of commitment then Portugal should be informed of the names and addresses of such policyholders, for in that case Portugal would only be able to give the aforementioned agreement in Article 14 of Directive 2002/83/EEC, after doing a personal consultation to all those policyholders. The details of 32 policyholders where the State of commitment is

Portugal, were given to Portuguese Regulator and the FSA has been informed by the Portuguese Regulator that consultation letters about the Scheme were sent to the relevant policyholders on 18 September 2007. Policyholders have a 60-day period to respond to Portugal which, the FSA understands to have expired on 20 November 2007. The FSA has not been informed of the outcome of the consultation. The FSA is following this up and hopes to have received a response before the date of the Final hearing

- b) The Spanish Regulator responded that it is "not appropriate to grant consent" because neither the transferee or transferor has the necessary authorisations under the rules of free provision of services or rights of establishment. Nevertheless, the Spanish regulator accepts that there are risks located in Spain, that it requires post-sanction notification to its policyholders and that the FSA should notify the Spanish regulator once the transfer has been authorised. On 6 November 2007, the FSA wrote to Spain to seek clarification as to whether they have given their agreement to the proposed Scheme. The FSA is following this up and hopes to have received a response before the date of the Final hearing.

- 129. On 21 November 2007 the FSA issued a certificate in respect of this notification, a copy of which is attached as **Annex IV**.

**Certificate of Consent to transfers of general insurance business (other than reinsurance) covering risks situated in an EEA State other than the UK (FSMA 2000, s. 111(2)(a) and Schedule 12, Part I, paragraphs 1(4) and 5)**

- 130. On the basis of information supplied by ELAS and PAC, the FSA is satisfied that the Scheme includes no such policies.