

UFFIĊĊJU TAT-TRIBUNAL GHAL  
SERVIZZI FINANZJARJI  
ĊENTRU MALTI TA' L-  
ARBITRAĠĠ  
33, TRIQ NOFSINHAR,  
VALLETTA VLT 11



OFFICE OF THE FINANCIAL  
SERVICES TRIBUNAL  
MALTA ARBITRATION CENTRE  
33, SOUTH STREET,  
VALLETTA VLT 11

**Dr Ian Stafrace LL.D. Chairman**

**Dr. Nicholas Valenzia LL.D Membru**

**Mr Robert Ducker B.Sc. (Hons) Financial Services (UMIST), ACIB**

**FST 02/17**

**Victoria Insurance Agency Limited  
(C23244)**

**vs**

**Malta Financial Services Authority**

**Illum 23 ta' Marzu 2022,**

**It- Tribunal,**

A large, stylized handwritten signature in blue ink, consisting of several loops and a long horizontal stroke.

Wara li ra l-appell interpost mis-socjeta Appellanti li fih qalet is-segwenti:

We write on behalf of Victoria Insurance Agency Ltd and refer to the decision taken on the 5<sup>th</sup> of May 2017 and signed by the Director General of the Malta Financial Services Authority whereby *inter alia* the appellant's enrolment from the Agents List was suspended in terms of Art 16 (b)(d)(f) and (g).

We are hereby submitting this appeal, *inter alia* in terms of Art 21(8) of Cap 330, on the following grounds:

1 Non-compliance with Art 21 (Fidelity Bonds)

The non-compliance is due to the negative response received by the appellant when seeking to obtain a fidelity bond in the form of a contract of insurance. The Authority argues that the said insurance did not satisfy the requirements of IIR 14. The appellant humbly and respectfully submits that there exists no valid reason for the Authority to refuse the insurance provided by the Appellant, and no reasons were handed to the Appellant justifying such refusal.

2 Non-compliance with Art 10(1)(a)(iv) (Own Funds)

The deposit was carried out by the appellant. The said appellant concedes that there were some amendments that had to be carried out to the documents submitted for the successful conclusion of the said process but nonetheless humbly and respectfully submits that this is the result of a technicality and not of a substantive nature. Furthermore, as shall be shown and demonstrated during the course of the said appeal, the said process was put on hold by the Authority itself as instructed by the Authority and therefore the appellant was in the impossibility of completing the process.

3 Non-compliance with Rule 6 of 2007 (Sound and Prudent Management)

The Authority states that it *found various deficiencies* in relation to the lack of adequate accounting and orderly records of its business, and adequate systems of control of its



business and records. Nonetheless, the reasons ought to be given by the Authority in a specific manner and explained and justified and the said non-compliance cannot rest solely on the auditor's letter to management. Furthermore, the Authority has, in its decision wrongly applied any of the provisions of the Act.

A) In so far as the 'Lack of Adequate Accounting and Orderly Records' appellant further submits that the amounts of € 52,297 and € 45,487 have now been adjusted accordingly and that reconciliations with Messrs. Citadel Insurance plc were carried out on a monthly basis during 2016. Furthermore, bank reconciliations were being carried out by the accountant's junior staff and are now being carried out by the accountant personally.

B) In so far as the 'Lack of adequate systems of control of its business and records', the appellant submits that the commission rates are 21.5% for Motor and 23% for non-motor. For certain motor fleets the commission is reduced, but there is no standard reduction, and it may be reduced to 15% or 17.5%. This depends on the performance of the fleet. The appellant submits that one cannot recue it by individual fleets in their accounts system since the system does not allow this. Appellant further submits that Suspense accounts are part of the system, and these amounts have been reduced drastically.

Furthermore, appellant submits that the liquidity problem was addressed this year with the change of premises and reduction in staff. The current overdraft stands at € 50,000.

Appellant submits that the Debtors have now been reduced to € 245,000 whereby debtors statements are circulated.

C) The appellant submits that, whilst appreciating the Authority's role as the Regulator, the Authority is judge and jury at the same time when deciding whether appellant spends most of his time acting as Managing Director or Compliance Officer. Appellant submits that there is no objective yardstick to calculate this. Appellant furthermore submits that in a small company it is natural and normal to have people cover various roles and assume several responsibilities.

D) In relation to the Supervision of TII's, appellant submits that whereas there is agreement with the Authority's position in relation to 'BOIIA', Appellant submits that information on receipts show breakdowns of premium, and manual certificates are allowed as long as they satisfy the regulatory requirements.



In the light of the above mentioned, Appellant respectfully submits that whilst respecting the points raised by the Authority, the license should not be suspended and hereby pleads to this honorable Tribunal to reverse the said decision and directives and consequently decide to remove the said suspension.

Wara li ra ir-risposta ta' l-Appell sottomessa mill-Awtorita li fih irrispondiet bis-segwenti:

**The Malta Financial Services Authority respectfully replies as follows:**

1. By means of this appeal, the appellant company, Victoria Insurance Agency Limited ("the appellant" or "VIA") is challenging the decision and directives issued by the Malta Financial Services Authority ("MFSA" or "the Authority") on the 5 May 2017 (see Annex A) (the "Decision").
2. VIA was enrolled in the Agents List on 26 February 1999 in terms of the Insurance Intermediaries Act (Cap. 487) ("IIA") to act as an insurance agent of Citadel Insurance plc.
3. On the 5 May 2017, the Authority decided to suspend with immediate effect the enrolment of VIA from the Agents List due to a number of breaches by the appellant of the provisions of, *inter alia*, the Insurance Intermediaries Act and the Insurance Intermediaries Rules as set out in the Authority's Decision. The Authority's decision to suspend VIA's enrolment from the Agents List was taken in terms of articles 16(b), 16(d), 16(f) and 16(g) of the IIA<sup>1</sup>. In addition to the foregoing, the Authority issued a number of directives addressed to VIA which it considered necessary in the circumstances.

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<sup>1</sup> "16. Without prejudice to anything contained in any other provision of this Act, the competent authority may at any time suspend registration or enrolment or strike off the name of a registered or enrolled person from the Agents Register, Managers Register or Brokers Register, or the Agents List, Managers List or Brokers List if -

...  
(b) it considers that the registered or enrolled person does not fulfil the requirements of, or has contravened, any of the provisions of this Act and any regulations made thereunder, or any insurance intermediaries rule, or has failed to satisfy or comply with any condition to which he or it, or the registration or the enrolment, is subject by virtue of or under this Act; or

...  
(d) the enrolled company is no longer managed in a sound and prudent manner to retain its name in the Agents List, Managers List or Brokers List; or

...  
(f) the enrolled person no longer possesses the required own funds as applicable; or

(g) the enrolled person fails to pay the annual continuance of registration or enrolment fee when due;"



4. With respect to the subject-matter of the appeal, while the appellant appears to be requesting the Tribunal to reverse the decision and directives issued by the Authority on the 5 May 2017, it is unclear on what grounds this request is being made. More specifically, in its appeal the appellant failed to indicate the question to be determined by the Tribunal in terms of article 21 (9) of the MFSA Act. According to the said provision, the questions for the determination of the Tribunal shall be whether, for the reasons adduced by the appellant (i) the Authority has, in its Decision wrongly applied any of the provisions of this Act or (ii) the Decision of the Authority constitutes an abuse of discretion or is manifestly unfair.
5. In its appeal, the appellant did not indicate how, in issuing the Decision, the Authority failed to act in good faith, nor did it claim that the Authority abused its discretion or wrongly applied any specific provision of the law. The appellant does not even seem to be contesting the findings of the Authority. By means of its appeal, the appellant is simply expressing its disagreement with the conclusions of the Authority without providing evidence of any form of abuse by the Authority in issuing the Decision. The Authority respectfully submits that while the appellant has every right to express its disagreement, an appeal from a decision of the Authority cannot be based on such disagreement alone. The law requires the appellant to provide clear proof that the Authority has, in its Decision, wrongly applied specific provisions of the law or that such decision constitutes an abuse of discretion or is manifestly unfair.
6. It should also be noted that, in its appeal, the appellant did not address all the breaches on the basis of which the MFSA's Decision was issued. Moreover, with respect to the breaches mentioned in the appeal, the appellant provided very brief explanations which only partially address the comments and concerns raised by the Authority in its Decision.
7. The Authority would like to point out that this is not the first time that VIA has acted in breach of the laws, regulations and rules applicable to it. The appellant actually has a history of non-compliance and failure to comply with provisions stipulated in the Insurance Intermediaries Rules and articles of the IIA. In fact, the non-compliance issues and shortcomings of VIA, which shall be discussed in further detail throughout the course of these proceedings, have been ongoing for a long while. These issues, which came to light during the Authority's compliance visit between the 3 and 5 February 2016, were repeatedly brought to the attention of VIA following the said visit. Thereafter, various communications between the Authority and VIA regarding these non-compliance issues also took place. The serious shortcomings of VIA were also highlighted by its auditor, Mazars Malta, and various recommendations were made to VIA by the said auditor to resolve these issues. This notwithstanding, VIA failed to rectify the breaches and shortcomings in question and this eventually led to the issuing of the MFSA Decision that is being contested by means of this appeal.





8. The Authority also wishes to bring to this Tribunal's attention the following facts:
- (i) When VIA was offered the opportunity by the Authority to submit its representations setting out the reasons why the Authority should not suspend its enrolment in the Agents List, VIA failed to submit such representations and instead, in its letter of the 6 March 2017 (see Annex B), the appellant explicitly stated, *inter alia*, that "After having gone through the various points mentioned in the said letter [MFSA's minded letter dated 20 February 2017], it is quite evident that our position is untenable and we quite agree with the Authority that there was a lot to be desired from our end", that VIA is "struggling to meet the necessary regulatory requirements", and that VIA "lacked the expertise in certain areas to run the business as Insurance Agents". Such statements attest to the dire state in which VIA found itself and further justify the Authority's actions as per its Decision;
  - (ii) not only did VIA act in breach of the provisions of, *inter alia*, the Insurance Intermediaries Act and various Insurance Intermediaries Rules, which ultimately led to the issuance of the MFSA's Decision dated 5 May 2017 – to date, VIA has also failed to comply with a number of directives issued by the Authority in its Decision, *inter alia*, it has failed to retain in its favour a professional indemnity insurance cover in conformity with Insurance Intermediaries Rule 12 of 2007, and it has failed to submit to the Authority its management accounts on a bi-monthly basis – this notwithstanding the fact that VIA is obliged by law to obey, comply with and otherwise give effect to any directives issued by the Authority (article 31A of the Insurance Business Act (Cap. 403)("IBA")) as made applicable in terms of article 54 of the IIA).
9. In view of the above, and as will be explained in detail in this reply and elaborated further in the course of these proceedings, the requests and claims of the appellant are completely unfounded. Therefore, the Authority respectfully submits that the requests of the appellant should be rejected by this Tribunal with all legal costs to be borne by the appellant.

#### **Submissions on the merits**

##### A. Non-compliance with article 21 of the IIA and Insurance Intermediaries Rule 14 of 2007 (Fidelity Bonds) ("IIR14")

10. Following receipt of the audited financial statements for the year ended 31 December 2015, submitted to the Authority on the 20 June 2016 and which were due on the 30 April 2016, the Authority on the 21 June 2016 requested VIA to effect and hold a fidelity bond of €96,946 in order to rectify the breach of article 21 of the



IIA and Article 4 of IIR14 which had been ongoing since 1 January 2016. On the 28 October 2016, VIA informed the Authority that the fidelity bond was to take the form of a contract of insurance and a copy thereof was provided to the Authority on the same date. However, as explained to VIA, the insurance contract provided to the Authority did not satisfy the requirements of IIR14 and therefore VIA was required to make alternative arrangements to effect and hold a fidelity bond which is in line with the provisions of the IIA and IIR14. Since no alternative arrangements were made by VIA to effect and hold a fidelity bond, on the 16 November 2016 the Authority informed VIA that it would consider taking regulatory action against it if the required fidelity bond was not affected by the 23 November 2016. Notwithstanding the Authority's warning, as at the date of the Authority's decision VIA had still not finalized the arrangement to effect the required fidelity bond and come in line with article 21 of the IIA and Article 4 of the IIR14.

11. In its appeal, the appellant claims "*that there exists no valid reason for the Authority to refuse the insurance provided by the Appellant, and no reasons were handed to the Appellant justifying such refusal*". The Authority fails to understand how the appellant can make such a statement when the Authority had clearly explained to VIA, by means of an email dated 4 November 2016 (see Annex C), the reason why the proposed insurance contract was unacceptable in terms of the relevant insurance legislation and rules. More specifically, in its email the Authority had explained to VIA that (i) the insurance contract that it had proposed was a fidelity guarantee insurance and not a fidelity bond as required in terms of the IIA and IIR14 and (ii) that a fidelity guarantee insurance is not one of the forms in which a fidelity bond may be effected and held in terms Article 5 (2) of IIR14.

B. Non-compliance with article 10(1)(a)(iv) of the IIA and Insurance Intermediaries Rule 1 of 2007 (Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List Carrying out Insurance Intermediaries Activities) ("IIR1")

12. As of June 2016, VIA had been registering a deficiency of €3,141 in own funds and has therefore been in breach of article 10(1)(a)(iv) of the IIA and Article 4 of IIR1 since that date. In order to rectify this breach, the Authority requested VIA to increase its authorized and issued share capital. On the 2 September 2016, VIA informed the Authority that the company's authorized and issued share capital would be increased by €4,000 via a cash injection. This proposed increase in the authorized and issued share capital of VIA was approved by the Authority on the 9 September 2016. However, notwithstanding the fact that VIA had informed the Authority that the increase in authorized and issued share capital would take place in the form of a fresh injection of cash, VIA later decided that the increase would take place by means of an allotment made other than for cash, being a capitalization



of shareholders' loan. That said, the increase in authorized and issued share capital had not been effected as at the date of the Authority's Decision.

13. In its appeal, the appellant itself acknowledges that the process of the increase in authorized and issued share capital could not be completed due to errors in the documentation submitted by VIA to the Registry of Companies. The MFSA is informed by the Registry of Companies that to date that the necessary amendments have still not been carried out and that consequently the increase in the authorized and issued share capital of VIA has not been effected. Therefore, due to the failure of VIA to resolve this "*technicality*", as the appellant calls it, and notwithstanding the assurance provided to the Authority in VIA's email dated 3 November 2016 that it would do so, the increase in the authorized and issued share capital of VIA never took place.
14. With respect to the appellant's claim that the process of the increase in authorized and issued share capital "*was put on hold by the Authority*", the Authority submits that this is a complete and utter fallacy. The Authority had granted its approval for the proposed increase in the authorized and issued share capital of the Company on the 9 September 2016. Apart from such approval, the Authority had no other involvement in the process of the increase in authorized and issued share capital of the Company, nor did it issue any instructions which resulted in the stalling of the said process. On the contrary, as admitted by the appellant itself, the whole process was stalled as a result of the appellant's failure to make the necessary amendments to the documentation submitted to the Registry of Companies.

C. Non-compliance with Insurance Intermediaries Rule 6 of 2007 (Criteria of Sound and Prudent Management) ("IIR6")

15. During the MFSA's compliance visit held between the 3 and 5 February 2016 at VIA's offices, the Authority found various deficiencies reflecting VIA's lack of adequate accounting and orderly records of its business and lack of adequate systems of control of its business and records in breach of its obligation to carry out its activities in a sound and prudent manner. These deficiencies were also reflected in the auditor's letter to VIA's management dated 17 June 2016 (see Annex D) ("*auditor's letter to management*") wherein the auditor of VIA had summarized the principal findings of the audit of VIA carried out by the said auditor for the year ended 31 December 2015. The salient issues which emerged from the Authority's compliance visit and the aforementioned letter are described in further detail in the Authority's Decision.
16. In its appeal, the appellant states that "*the reasons [for its conclusions] ought to be given by the Authority in a specific manner and explained and justified*". In this



respect, the Authority cannot but underline that in its minded letter (see Annex E) and Decision, the findings of the Authority were very amply and clearly delineated and that the detailed explanations provided by the Authority therein leave no room for confusion. Furthermore, for every deficiency which is in breach of IIR6 that is cited in the Decision, the Authority provided a solid justification which is substantiated by the facts and findings outlined in the said Decision.

17. With respect to the appellant's claim that the only evidence of VIA's non-compliance with IIR6 on which the Authority relied is the auditor's letter to management, the Authority submits that this allegation is untrue and unfounded. As stated in the Decision, the Authority's conclusions in relation to the non-compliance of VIA with the provisions of IIR6 are based on the findings of the Authority during the abovementioned compliance visit and the auditor's letter to management corroborates and confirms the Authority's findings.
18. As for the appellant's vague and unsubstantiated allegation that "*the Authority has, in its decision, wrongly applied any of the provisions of the Act*", the appellant cannot make such a statement without indicating which provision of the law the Authority has allegedly wrongly applied. Furthermore, the appellant's declaration is frivolous and without substance as VIA failed to demonstrate how the Authority has wrongly applied the provisions of the law and has failed to provide any evidence whatsoever to validate such a claim.

(i) Lack of adequate accounting and orderly records

19. In the Decision, the Authority expressed its concern that, as per the Independent Auditor's Report dated 17 June 2016 (see Annex F), the audit opinion of the financial statements of VIA as at 31 December 2015 was qualified. The qualified opinion was based on the fact that, included in VIA's other assets there was an amount of €52,297 in relation to which VIA's auditor, Mazars Malta, reported that no satisfactory audit procedures could be done to confirm this balance. VIA's auditor also reported that included in the company's liabilities was an amount of €45,487 for which third party confirmation of this balance, although sought, was unavailable.
20. In its appeal, the appellant does not contest the auditor's findings as noted in the basis for the qualified opinion set out in the Independent Auditor's Report dated 17 June 2016 and, with regard to the said findings, VIA claims that "*the amounts of €52,297 and €45,487 have now been adjusted accordingly*". First and foremost, the Authority respectfully submits that the Tribunal's assessment should be limited to those circumstances which existed at the time of the Decision. Secondly, contrary to what the appellant is claiming, the situation has only worsened with the passing



of time. In fact, while the auditor had issued a qualified opinion in relation to the financial statements of VIA for the year ending 31 December 2015, with regard to the financial statements of VIA for the year ending 31 December 2016 the auditor issued a disclaimer of opinion because it was unable to obtain sufficient appropriate audit evidence to provide a basis for an audit opinion on the said financial statements. The basis for the said disclaimer of opinion, which is clearly set out in the Independent Auditor's Report dated 12 October 2017 (see Annex G), states *inter alia* that the auditor was "unable to determine whether any adjustments might have been found necessary in respect of recorded or unrecorded accounts payable and accounts receivable, and the elements making up the balance sheet and the income statement."

21. In the Decision, the Authority also noted that, according to the auditor's letter to management, the reconciliation with VIA's only insurance principal, Citadel Insurance plc ("Citadel"), although provided, failed to include a confirmation from the principal of the reconciled balance. As at the date of the said letter, i.e. 17 June 2016, the reconciliation showed an amount of around €50,000 which could not be reconciled. With reference to the previous year's auditor's letter to VIA's management, the auditor had specifically recommended to VIA that the principal's balance should be reconciled monthly because it was undoubtedly the most important and substantial amount.
22. With respect to the auditor's recommendation mentioned in the foregoing paragraph, the appellant claims that the reconciliations with Citadel were carried out on a monthly basis during 2016. However, in the Independent Auditor's Report dated 12 October 2017 there is noted a significant discrepancy in relation to the Citadel balance. According to VIA's ledgers, the Citadel balance is a receivable balance amounting to €18,211 whereas, according to Citadel's statement, the amount payable to Citadel is €172,307. In this regard, the auditor further states in its Report that a "reconciliation provided by the directors of the company could not be satisfactorily tested". Therefore, the appellant's claim with respect to the monthly reconciliations with Citadel is in clear contradiction with the declaration made by the auditor in its Report. Also, the Authority submits that if such monthly reconciliations were truly being carried out by VIA, such a significant discrepancy in the Citadel balance ought not to have cropped up in the first place.

(ii) Lack of adequate systems of control of its business and records

23. One of the issues noted in the Decision in relation to VIA's systems of control was that the withdrawal of commission by VIA is not systematic and is not documented. This led to an audit adjustment of around €7,000 whereby income earned by the Company had to be reduced. In view of the foregoing adjustment, in the auditor's



letter to management, the auditor had recommended that going forward *“the calculation of commission income is based on the correct rates. This would ensure that the management accounts presented to the directors, the regulator and to the auditor are correct.”*

24. The appellant claims that variable commission rates are applicable in relation to the motor vehicle portfolio and that the different rates applicable cannot be recorded individually in the company’s accounts since the system used by VIA does not allow this. In this respect, the Authority submits that the appellant should have adequate systems of control in place which allow for the business of the company to be prudently managed and enable VIA to comply with its obligations at law, as required in terms of paragraph 7 of the Schedule to IIR6. Therefore, the system adopted by VIA should have been replaced or modified in order to cater *inter alia* for the varying commission rates applicable in relation to the motor vehicle portfolio.
25. Another issue noted in the Decision was the failure of the appellant to review on a regular basis the suspense accounts held on the trial balance of the Company. This shortcoming had already been brought to VIA’s attention during the compliance visit held by the Authority in 2010 but no action was taken to address this matter. Furthermore, in the auditor’s letter to management, the auditor recommended that suspense accounts are investigated and corrected continuously to avoid the creation of a large aged balance which could then be far too difficult to investigate. Notwithstanding these warnings, VIA failed to review its suspense accounts regularly and as a result the balance of the suspense accounts could not be tested by the auditor. Therefore, at the time of the Decision, the systems of control of VIA’s suspense accounts were found to be seriously lacking.
26. A third issue which is noted in the Decision is the lack of liquidity of VIA which is necessary to ensure the smooth running of the company’s business. From the interviews conducted with the directors of VIA during the 2016 compliance visit, the Authority found that VIA had prepared a cash flow forecast for three years (2016 to 2018) where the negative net balance escalates from one year to another. The Authority also discovered that VIA places undue reliance on the personal funds of the shareholders, as well as short and long terms sources of finance provided by the bank such as bank loans and a bank overdraft. With respect to VIA’s liquidity issues, in the auditor’s letter to management, the auditor advised VIA to carry out a detailed study of its cash flow needs so as to establish how to allocate its liquid resources to ensure that all repayments are met. However, notwithstanding the various verbal assurances given to the Authority, no concrete action was taken by VIA to rectify the matter.
27. In its appeal, the appellant claims that the abovementioned liquidity problems were addressed in the year 2017 (presumably subsequent to the MFSA’s Decision) with

the change of premises and reduction of staff. The appellant also claims that the bank overdraft currently stands at €50,000. That said, in its appeal VIA does not contest the findings of the Authority as at the date of the Decision regarding the liquidity situation of the company, nor does it provide any evidence to support its claim that the said liquidity issues have been resolved and that the overdraft stands at the amount stated. Therefore, the Authority reiterates that the liquidity shortage and VIA's deficiency in the management of its liquid resources clearly indicate that the appellant has inadequate systems of control of its business and records.

28. One other issue which the Authority mentioned in its Decision is the lack of adequate systems of control of VIA when it comes to debt collection. This is evidenced by the findings of the Authority as set out in the Decision. The Authority was particularly concerned by the significant amount of uncollected debts which, as at 30 June 2016, amounted to €365,080. This is clearly indicative of a weak credit control function and lack of time and resources allocated for debt collection. Furthermore, in the Decision, the Authority *inter alia* notes the poor practices of orderly records adopted by VIA as proven by VIA's failure to circulate the debtors' statements on a monthly/regular basis and keep documentation relating to clients, including debtors' statements, on file for record.
29. While the appellant claims that the amount of uncollected debts has now been reduced to €245,000, it does not deny or contradict the Authority's findings with respect to the company's debt collection practices. Furthermore, the appellant failed to provide proof to support his claim that the amount of uncollected debts has been so reduced. Therefore, the Authority reconfirms its conclusion as at the date of the Decision that the appellant's system of controls with respect to debt collections are inadequate as evidenced *inter alia* by the amount of uncollected debts, which at the time was €365,080, as well as its poor credit control and record keeping functions.
30. The last issue noted in the Decision is that the actual performance of the appellant cannot be monitored by the directors of VIA against budgeted performance as no budgets are prepared by VIA. The above highlighted issues are indicative that VIA is not carrying out its insurance intermediary activities in a sound and prudent manner as required in terms of IIR 6. It is important to note that this matter was not contested by the appellant in its appeal.

(iii) Lack of Compliance Culture

31. In the Decision, the Authority noted its concern regarding the repeated lack of compliance culture demonstrated by VIA. Mr. Tonio Montesin acts as the Managing Director and the Compliance Officer of VIA. From information provided and discussions held with Mr Montesin, it is evident that he is dedicating most of his time to his role as Managing Director and dedicating very limited time to carry





out his role and responsibilities as a Compliance Officer in an effective manner. As a result, the compliance function of VIA is not being carried out properly and the compliance culture of the company is suffering. In fact, the Authority discovered that no compliance reviews are being carried out and a compliance plan which sets out the planned activities of the compliance function has not been established either.

32. In its appeal, the appellant claims that the Authority is not entitled to make a judgment call regarding the time allotted by Mr Montesin to each of the two roles held by him. The appellant also stated that since VIA is small in size, it is natural to have people cover various roles and assume several responsibilities. First of all, the Authority wishes to clarify that the fact that Mr Montesin holds multiple roles was not being contested. Furthermore, it should be made clear that the Authority's assessment of the performance by Mr Montesin of the two roles held by him is not based on the allocation of working time between the two roles. In other words, the Authority was not concerned about the number of hours spent by Mr Montesin in carrying out each role but whether each role and the responsibilities relating thereto were properly being carried out. In fact, it turned out that Mr Montesin was not carrying out his functions and duties as Compliance Officer of VIA in an effective manner and this is evidenced by the absence of a compliance plan and compliance reviews as explained in the foregoing paragraph.

(iv) Failure to supervise the activities of its tied insurance intermediaries

33. From the compliance visit conducted by the Authority in February 2016, it clearly emerged that VIA does not monitor adequately the activities of the Tied Insurance Intermediaries ("TII") registered in the Company's TII Register. The following are examples where VIA was found to be deficient in this regard:
- (a) VIA has not established adequate controls to ensure that the TIIs operate the Business of Insurance Intermediaries Account ("BOIIA") in line with requirements of Insurance Intermediaries Rule 7 of 2007. The Company has never requested a copy of the BOIIA to check that the TIIs are depositing the premiums received within two days as required by the said Rule;
  - (b) The information on the receipts issued by the TIIs is incorrect and misleading. Receipts that are issued by the TIIs do not disclose the duty on documents and policy fee as also required by the said Rule;
  - (c) TIIs are still issuing manual certificates to clients which are recorded in an excel sheet administered by Mr. Tonio Montesin.
34. While the appellant confirms the Authority's conclusion set out in paragraph (a) above, it rebuts the contents of paragraphs (b) and (c) above. With respect to paragraph (b), the appellant claims that the information on receipts show breakdowns of premium. However, throughout the course of its supervision, the



Authority has come across a number of receipts issued by TIIs which prove that the appellant's claim is untrue (see Annex H). With reference to paragraph (c), the appellant states that manual certificates are allowed as long as they satisfy the regulatory requirement. While the Authority is not contesting the validity of manual certificates at law, it has serious concerns regarding the adoption of a manual system because it allows for the possibility of tampering of information or human error when the relevant data is inputted in an excel sheet and, as a result, the records of the company in relation to such certificates could be false or incorrect.

D. Other Breaches not being contested by the Appellant in its appeal:

(i) Breach of article 29 (1) of the IBA as made applicable to the IIA by article 54 of the IIA.

35. As part of the follow-up to the MFSA's compliance visit of February 2016, VIA was requested to submit to the Authority certain documentation by the 9th December 2016. The set time-frame was not complied with by VIA so the Authority sent a reminder to this effect to VIA on the 20 December 2016. By the date of the Decision the Authority had still not received any response from VIA nor any of the documentation that was requested in December 2016. This is in breach of article 29(1) of the IBA, as made applicable in terms of article 54 of the IIA. This breach is not contested/was not addressed in the appeal submitted by the appellant.

(ii) Breach of the Insurance Intermediaries (Fees) Regulations

36. On the 9 August 2016, VIA was invoiced by the MFSA with the annual supervisory fee for persons required to submit insurance intermediaries' statements for 2016 amounting to two thousand Euro (€2,000) in terms of the Insurance Intermediaries (Fees) Regulations. On the date of the Decision, the Authority had still not received payment of this fee from VIA. Actually this fee remains unpaid till this very day. This is in breach of the Insurance Intermediaries (Fees) Regulations. This breach is not contested/was not addressed in the appeal submitted by the appellant either.

**Conclusion**

37. Accordingly, and for all the reasons explained above, the Authority respectfully requests this Tribunal to reject the appellant's appeal and all its requests, with all legal costs to be borne by the appellant.

Ra id-dokumenti u l-provi sottomessi mill-partijiet;

Ra in-nota ta' sottomissjonijiet tas-socjeta appellanti u ra li l-Awtorita Appellata strahet fuq il-provi imressqa;

The image shows three handwritten signatures in blue ink. The first signature on the left is a stylized 'R'. The second signature in the middle is a more complex, scribbled signature. The third signature on the right is a stylized 'M'.

Ra li l-appell gie differit ghas-seduta tad- 9 ta' Marzu 2022 sabiex jigi deciz;

Ra id-digriet tieghu li permezz tieghu it-Tribunal issospenda il-prolazzjoni tas-sentenza u talab lill-Partijiet sabiex jinfurmaw lit-Tribunal:

1. *Jekk ir-registrazzjoni tas-socjeta Appellanti mill- Agents' List ghadiex sospiza s'allum;*
2. *Jekk dak li wassal lill-Awtorita sabiex tiehu id-decizjoni taghha li minnha sar l-appell odjern ghadux pendenti;*
3. *Fil-kaz li ir-registrazzjoni giet reintegrated, meta sar dan;*
4. *Jekk in vista ta tali informazzjoni il partijiet jixtuqux li jergghu jitrattaw l appell jew Jekk l appell jistax jigi deciz*

Ra ir-risposta tal-Partijiet fejn separatament ikkonfermaw illi:

1. Ir-registrazzjoni tas-socjeta Appellanti ghadha sospiza;
2. Dak li wassal lill-Awtorita sabiex tiehu id-decizjoni taghha gadu pendenti;
3. Li konsegwentement ir-registrazzjoni ma gietx reintegrata; u
4. Li l-partijiet ma talbux li jergghu jitrattaw l-appell

Ra' l-atti kollha tal-kaz;

Ra illi l-appell gie differit ghas-seduta tallum sabiex jigi deciz:

Kunsiderazzjonijiet tat-Tribunal:

1. Illi s-socjeta Appellanti kienet registrata fl- *Agents List* skond il- Kap. 487<sup>2</sup> tal-Ligijiet ta' Malta sa mis- 26 ta' Frar 1999.
2. Illi l-Awtorita hadet id-decizjoni taghha datata hamsa (5) ta' Mejju 2017<sup>3</sup> wara illi kienet harget *minded letter* fl- 20 ta' Frar 2017<sup>4</sup>, b' konsegwenza ta' liema ir-registrazzjoni ta' l-istess socjeta Appellanti fl- *Agents List* giet sospiza b' effett immedjat.
3. Illi s-socjeta Appellanti kienet irrispondiet ghall-*minded letter* permezz ta ittra tas- sitta (6) ta' Marzu 2017<sup>5</sup>.

<sup>2</sup> Illum Insurance Distribution Act (fi zmien id-decizjoni appellata Insurance Intermediaries Act).

<sup>3</sup> Doc A allegat mar-risposta ta' l-Awtorita

<sup>4</sup> Doc E allegat mar-risposta ta' l-Awtorita

<sup>5</sup> Doc B allegat mar-risposta ta' l-Awtorita

4. Illi l-istess Awtorita hadet tali azzjoni a bazi ta' l-Artikoli 16(b), 16(d), 16(f) u 16(g) tal-Kap. 487 tal-Ligijiet ta' Malta u dan minhabba numru ta' nuqqasijiet da parti tas-socjeta Appellanti, bi ksur, inter alia, ta' l-istess Kap. 487 u ta' l-Insurance Intermediaries Rules.
5. Illi s-sub-artikoli ta' l-artikolu 16 tal- Kap. 487 li ghalihom taghmel refernza l-Awtorita jipprovdu:

*16. Without prejudice to anything contained in any other provision of this Act, the competent authority may at any time suspend registration or enrolment or strike off the name of a registered or enrolled person from the Agents Register, Managers Register or Brokers Register, or the Agents List, Managers List or Brokers List if -*

...  
*(b) it considers that the registered or enrolled person does not fulfil the requirements of, or has contravened, any of the provisions of this Act and any regulations made thereunder, or any insurance intermediaries rule, or has failed to satisfy or comply with any condition to which he or it, or the registration or the enrolment, is subject by virtue of or under this Act; or*

...  
*(d) the enrolled company is no longer managed in a sound and prudent manner to retain its name in the Agents List, Managers List or Brokers List; or*

...  
*(f) the enrolled person no longer possesses the required own funds as applicable; or*  
*(g) the enrolled person fails to pay the annual continuance of registration or enrolment fee when due;”*

6. Illi meta tislet id-decizjoni ta' l-Awtorita, wiehed jista jaqsam tali decizjoni f' erba' punti, li se jigu trattati mit-Tribunal wiehed wiehed a bazi ta' dak sottomess mis-socjeta Appellanti fir-rikors ta' l-Appell taghha u provi imressqa.

**L- Ewwel Punt:**

**Non-compliance with article 21 of the IIA and Insurance Intermediaries Rule 14 of 2007 (Fidelity Bonds) (“IIR14”)**

7. Illi skond l-Artikolu 21 tal- Kap. 487 *Insurance Intermediary* huwa obligat illi ikollu *fidelity bond* skond l-*Insurance Intermediaries Rules*. Illi skond Rule 14 ta' l-istess *Insurance Intermediaries Rules*, il-*fidelity bond* kellha tkun tal-valur u tip stabbilit fl-istess Rule.
8. Illi skond l-Awtorita, is-socjeta Appellanti kienet, sa mill- ewwwel (1) ta' Jannar 2016 qed topera bi ksur ta' l-Artikolu 4 tar- Rule 14, u fl- erbatax (14) ta' Gunju 2016, l-Awtorita talbet lis-socjeta Appellanti sabiex ikollha *fidelity bond* fl-ammont ta' € 96,946.



9. Wara numru ta' skambji u proposti, jirrizulta illi dak finalment propost mis-socjeta Appellanti ma kienx jissodisfa ir-rekwiziti tar-Rule 14 u ta' dak mitlub mill-Awtorita, tant illi l-istess rekwizit kien ghadu pendenti sa meta ittiehdet id-decizjoni appellata <sup>6</sup>.
10. Illi s-socjeta Appellanti issostni illi hija provdjet "*contract of insurance*" u skond hi ma jezisti l-ebda raguni valida ghalfejn l-Awtorita m' accettatx tali "*contract of insurance*" u f' kull kaz, l-Awtorita naqset milli taghti raguni valida ghal tali rifjut.
11. L-Awtorita taghmel referenza ghall-email mibghuta minnha lis-socjeta Appellanti <sup>7</sup> fl- 4 ta' Novembru 2016 fejn l-istess Awtorita spjegat illi il- "*Fidelity Guarantee Insurance*" proposta mis-socjeta Appellanti ma kienetx "*Fidelity Bond*" hekk kif tipprovdi ir-Rule 14. Skond il-paragrafu 5(2) ta' l-istess Rule 14, hemm tlett metodi ta' kif wiehed jista jipprovdi il-*Fidelity Bond*, u dak propost mis-socjeta Appellanti ma kienet taqa taht l-ebda wahda minn dawn it-tlett kategoriji. Illi oltre dan issir referenza ghall-affidavit ta' Alfred Parnis fejn hemm rendikont shih, anke b' referenza ghall-skambju ta' emails u komunikazzjoni varja, fejn dan ir-rekwizit gie spjegat fid-dettal, inkluz il-komputazzjoni ta' l-istess.
12. Illi anke fil-*minded letter* tal- 20 ta' Frar 2017 l-istess Awtorita terga tispjega tali rekwizit. U ovvjament, hemm l-istes spjegazzjoni fid-decizjoni appellata.
13. Illi it-Tribunal ma jistax jifhem kif is-socjeta Appellanti tghid illi hija ma kienetx inghatat spjegazzjoni dwar ir-rekwizit tal- *Fidelity Bond*. Ir-rekwizit gie spjegat anke b' referenza ghal dak li tipprovdi ir-Rule 14, liema rekwiziti certament huma cari, specjalment ghal entita regolata bhal ma hija is-socjeta Appellanti. Kien car illi wara hafna proposti u weghdi mhux mizmuma, is-socjeta Appellanti kienet ben konsapevoli ta' dak li riedet tipprovdi sabiex tkompli topera bhala entita regolata u licenzjata.
14. Illi l-Awtorita ghamlet referenza ghal dak li jipprovdi il-paragrafu 5(2) tar- Rule 14 dwar il-forma li kellha tiehu tali "*bond*" u huwa pjuttost car kif l-hekk imsejjha *Fidelity Guarantee Insurance* ma kienetx tikkwalifika bhala "*bond*". Dan qieghed jinghad minnghajr ma it-Tribunal kellu il-beneficju li jara l-elementi ta' din l-*Fidelity Guarantee Insurance* stante li prova dwar dan qatt ma ingiebet. Izda, anke minn analizi pjuttost akkademika johrog car illi dak li tehtieg ir-Rule 14 hija garanzija jew *bond* u certament mhux polza ta' assigurazzjoni.

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<sup>6</sup> U ghadu hekk pendenti sallum

<sup>7</sup> Doc C allegat mar-risposta ta' l-Awtorita

  


15. Illi dan ir-rekwizit tant kien ukoll car illi kien wiehed mill-fatturi li wassal lis-socjeta Appellanti tibghat l-ittra taghha tas- 6 ta' Marzu 2017 <sup>8</sup> b' risposta ghall-*minded letter* u certament li kien ukoll fattur li wassal lill-istess socjeta Appellanti tikkonsidra il-posizzjoni regolatorja taghha tant illi kienet qed tikkunsidra li tnaqqas u tbiddel l-operat taghha minn Agent ghal *Tied Insurance Intermediary*.
16. Illi huwa car illi dak mitlub mill-Awtorita ma kienx element soggettiv, izda obbligu legali car. U ghaldaqstant l-Awtorita kienet korretta illi tibqa tinsisti illi s-socjeta Appellanti taghmel dak minnha mitlub skond ir-Rule 14.
17. Illi ghaldaqstant dan l-aggravju qieghed jigi michud.

**It-Tieni Punt:**

**Non-compliance with article 10(1)(a)(iv) of the IIA and Insurance Intermediaries Rule 1 of 2007 (Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List Carrying out Insurance Intermediaries Activities) ("IIR1")**

18. Illi s-socjeta Appellanti issostni illi dak mitlub minnha mill-Awtorita, u cioe li jizdied is-share capital bi € 3,141 kien gie attwat izda baqa mhux komplut minhabba teknikalita fis-sottomissjoni tad-dokumenti lir-Registratur tal-Kumpanniji.
19. Illi l-Awtorita tispjega illi hija kienet giet infurmata illi s-socjeta Appellanti kienet accettat li zzid is-share capital, izda dan baqa ma giex esegwit minhabba xi dokumentazzjoni zbaljata sottomessa lir-Registratur tal-Kumpanniji. Tispjega ukoll illi t-talba kienet li tali share capital jizdied billi jkun hemm "*cash injection*" izda minflok is-socjeta Appellanti kienet issottomettiet dokumentazzjoni mar-registratur tal-Kumpanniji fejn talbet li jkun hemm "*conversion of shareholders' loans*".
20. Illi it-Tribunal ftit ghandu xi jghid fuq dan l-aggravju. Wiehed ma jistax jifhem kif materja daqshekk semplici u relattivament mhux oneruza, baqghat pendenti ghall-xhur shah.
21. Certament li azzjoni daqshekk semplici li tinkludi id-depozitu ta' ftit izjed minn € 3,000 fil-kontijiet bankarji tas-socjeta Appellanti, risoluzzjoni ta' l-istess socjeta u sottomissjoni ta' Form H u *Memorandum and Articles of Association* rivedut, kellha

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<sup>8</sup> Doc B allegat mar-risposta ta' l-Awtorita





tiehu xhur sabieix tigi kompletata. Fl-ebda stadju ma inghata xi raguni speficika ghal dan in-nuqqas.

22. Illi ghaldaqstant dan l-aggravju qieghed jigi michud.

**It-Tielet Punt:**

*Non-compliance with Insurance Intermediaries Rule 6 of 2007 (Criteria of Sound and Prudent Management) ("IIR6")*

23. Illi hawn l-Awtorita taghmel referenza ghall-*compliance visit* li kienet ghamlet ghand is-socjeta Appellanti bejn it- 3 u l- 5 ta' Frar 2016. F' din il- *compliance visit* l-Awtorita sabet numru ta' nuqqasijiet. Illi l-Awtorita taghmel referenza ghall-ittra tas- 17 ta' Gunju 2016<sup>9</sup> mibghuta lis-socjeta Appellanti mill-Awdituri taghha.
24. Is-socjeta Appellanti, fir-rikors ta' l-appell taghha tghid illi l-Awtorita naqset li tispjega fid-dettal dawn in-nuqqasijiet, xi haga, skond l-istess socjeta Appellanti, li qatt ma saret.
25. Illi pero, meta wiehed janalizza kemm il-*minded letter* tal- 20 ta' Frar 2017 kif ukoll id-decizjoni appellata wiehed isib spjegazzjoni cara ta' dan kollu. Issir ukoll referenza ghall-ittra ta' l-Awdituri tas- 17 ta' Gunju 2016 kif ukoll ghall- *audited financial statements* tas-socjeta Appellanti<sup>10</sup> ghas-sena 31 Dicembru 2015, fejn ir-rapport ta' l-Awdituri kien wiehed ikkwalfikat.
26. Illi fl-appell interpost, is-socjeta Appellanti ma ikkontestax dak li kienu sabu l-Awdituri, izda sostniet biss illi id-deficenzi misjuba mill-Awdituri kienu gew "*adjusted accordingly*". Illi minkejja dan, skond il-*financial statements* ghas-sena 31 Dicembru 2016<sup>11</sup>, l-Awdituri spiccaw kellhom johrogu "*disclaimer of opinion*". Illi, a bazi ta' dawn il-konstatazzjonijiet, certament li l-Awtorita kient korretta fil-konkluzjoni taghha.
27. Illi dan il-punt jinkudi ukoll konstatazzjoni ta' l-Awtorita dwar kif is-socjeta Appellanti kellha nuqqasijiet fis-sistemi ta' kontroll li kienet tadopera. Fid-decizjoni taghha, l-Awtorita tispjega numru ta' avvenimenti jew cirkostanzi fejn dawn in-nuqqasijiet, li uhud minnhom kienu procedurali, kienu neqsin, jew jekk ezistenti, certament li ma kienux qed jilhqu l-iskop taghhom.

<sup>9</sup> Doc D allegat mar-risposta ta' l-Awtorita

<sup>10</sup> Doc F allegat mar-risposta ta' l-Awtorita

<sup>11</sup> Doc G allegat mar-risposta ta' l-Awtorita

28. Punt iehor, li certament f' kuntest ta' entita regolata, kellu importanza, kien il-fatt illi s-socjeta Appellanti kellha problemi ta' likwidita, kemm minhabba l-ispejjez li l-istess socjeta Appellanti kellha, kif ukoll minhabba nuqqasijiet fil-gbir tad-dejn. Illi s-socjeta Appellanti issostni, fl-appell taghha, illi in segwitu ta' dak li kienet sabet u ikkonstatat l-Awtorita, hija hadet mizuri ta' *cost control* sabiex ittejjeb il-likwidita taghha. Izda anke hawn huwa car illi l-Awtorita ibbazat id-decizjoni taghha fuq assjem ta' nuqqasijiet, li meheda flimkien, certament wasslu ghal cirkostanzi ta' serjeta li kellha necessarjament twassalha ghad-decizjoni li hadet.
29. L-Awtorita sabet ukoll nuqqasijiet fis-supervizjoni, da parti tas-socjeta Appellanti, fl-attivitajiet tad-*Tied Insurance Intermediaries* kif ukoll kultura in generali li kienet turi certu avversita ghall-*compliance*. Dan huwa kollu ben spjegat fid-decizjoni appellata izda is-socjeta Appellanti, fir-rikors ta' l-appell taghha targumenta illi l-Awtorita kienet wisq soggettiva fl-analizi taghha tenut kont tad-daqs tas-socjeta Appellanti u l-fatt li ma kien hemm l-ebda inibizzjoni li persuna tokkupa varji karigi fi hdan is-socjeta Appellanti. Illi anke hawn is-socjeta Appellanti ma hijiex korretta stante li l-valutazzjoni ta' l-Awtorita ma kienetx fuq il-fatt li persuna kienet qed tokkupa varji karigi, izda fuq il-fatt li l-konstatazzjoni ta' numru ta' nuqqasijiet kienu juru bic-car illi il-funzjoni ta' *compliance* kienet wahda nieqsa u deficienti u li certament ma kienetx ghall-altezza ta' dak mehtieg minn entita regolata. Illi anke hawn id-decizjoni ta' l-Awtorita kienet wahda korretta.
30. Illi ghaldaqstant dan l-aggravju qieghed jigi michud.

**Ir-Raba' Punt:**

**Other Breaches not being contested by the Appellant in its appeal:**

31. Illi fl-ahhar issir referenza ghall-nuqqasijiet ohra, konsistenti minn nuqqas ta' twegibiet da parti tas-socjeta Appellanti in segwitu ghall-*Compliance Visit* u n-nuqqas ta' hlas ta' € 2,000 rapprezentanti it-tariffa dovuta mis-socjeta Appellanti lill-Awtorita bhala *annual supervisory fee*.
32. Illi s-socjeta Appellanti ma tikkontestax dawn il-punti, li forsi, mehudin wahedhom, jistghu jidrhu bhala materji jew nuqqasijiet minuri. Izda ghat-Tribunal, dawn in-nuqqasijiet, mehudin fil-kuntest tan-nuqqasijiet ferm izjed serji sopra citati, jwasslu ghall-konkluzjoni li l-Awtorita, anke hawn, kienet korretta fid-decizjoni taghha.

**33. Illi ghaldaqstant dan l-aggravju qiegħed jigi michud.**

**Ili in vista tal-premess, it-Tribunal qiegħed jichad l-aggravvji kollha tas-socjeta Appellanti, u b' hekk jichad l-appell interpost mis-socjeta Appellanti.**

**Bl-ispejjez kollha kontra l-istess socjeta Appellanti.**

A handwritten signature in blue ink, consisting of several stylized, overlapping loops and lines, positioned on the right side of the page.