

## **Ruling - Status of an insurance company**

*November 2007*

In accordance with Article 11 of the Royal Decree of 23 August 2004 implementing Article 63, §§ 1 and 3, of the Law of 2 August 2002, the CBFA hereby publishes a summary of a request it received for a ruling, along with its decision on the matter, after having removed all names and all confidential information.

The request was for a ruling that the contractual offer of a financial guarantee, as described below, not be considered an activity that comes under the definition of an insurance company as laid down in Article 2 of the Law of 9 July 1975 on the supervision of insurance companies (the "supervision law")<sup>1</sup>. Were it to constitute such an activity, this would mean that the company providing the guarantee in question (a non-Belgian company which is not governed by the law of a State within the EEA) would have to obtain an authorization in Belgium.

An international industrial group ("the Manufacturer") had as its principal activity the manufacture and sale of civil engineering machines. The equipment in question was distributed via a company, owned by the Manufacturer, which was specifically responsible for the marketing and distribution of the machines ("the Distributor") through dealers established in various countries around the world, including in Belgium. These dealers frequently offered their clients, in a manner ancillary to the sale of new equipment made by the Manufacturer, "extended warranty agreements". These extended warranties were offered over and above the standard Manufacturer's guarantees and were the responsibility of the dealers. The dealers could, if they wished, take out an insurance contract with insurance companies to cover the financial risks incurred by providing these extended warranties.

The Manufacturer wished, notably in order to reduce the cost of taking out such insurance contracts, to modify this system by offering its dealers the option of obtaining coverage for the financial risk resulting from the extended guarantees from the Distributor itself. Where the case warrants it, dealers would be reimbursed by the Distributor for the cost of the repairs they carry out for their customers under the extended warranties in the event of a breakdown of a new machine as a result of a manufacturing defect.

Financial coverage by the Distributor would be optional for dealers, and would require the latter to pay a certain sum which, as the request for a ruling specified, would not be directly related to the premiums which the Distributor might pay under the terms of the insurance contracts it might itself enter into with insurance companies in order to cover its own commitments.

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<sup>1</sup> This request was submitted in accordance with Article 1, §1, 11°, of the Royal Decree of 23 August 2004.

The Management Committee of the CBFA has decided to issue the ruling requested.

In taking this decision, the Management Committee recognized that in order to define the notion of "insurance transaction" referred to in Article 2, § 1, of the supervision law, and which itself is part of the definition of the term "insurance company" referred to in the same Article, one could in this instance refer to the definition of "insurance contract" set out in Article 1, A, of the Law of 25 June 1992 on the non-marine insurance contract.

Furthermore, in light of the preparatory work for the aforesaid Law of 25 June 1992, which, in the commentary on Article 1 of the Law, describes autonomy as one of the essential characteristics of an insurance transaction<sup>2</sup>, the Management Committee considered that the service which the Distributor envisaged offering to its Belgian dealers did not constitute an insurance transaction, provided that it were offered as a service ancillary to the sale of new equipment by the Distributor to the dealers, and that the Distributor did not offer such a service independently of the sales transaction.

It should be noted that the request for a ruling also referred to a similar financial coverage offered by the Distributor for used equipment made by the Manufacturer and sold by Belgian dealers. The Management Committee has decided not to take a stance on this question at this stage, in accordance with Article 8, paragraph 2, of the Royal Decree of 23 August 2004, in light of the controversial nature of the question and the absence of uniform international positions on this matter.

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<sup>2</sup> Draft Law on non-marine insurance contracts, Exposé des motifs, *Doc. Parl.*, Ch. repr., sess. ord., 1990-1991, n° 1586/1, p. 11.