CHAPTER 403

INSURANCE BUSINESS ACT

To regulate the business of insurance.

1st October, 1998

ACT XVII of 1998, as amended by Acts XVII of 2002, XIII of 2004, XII of 2006 and XX of 2007; Legal Notice 426 of 2007; and Acts III and XVII of 2009, XIX of 2010, X of 2011, XX of 2013 ,XXXIII of 2015 ,XXVI of 2018, V of 2020 and Act XLVI of 2021 and XXXV of 2023 ,XXXII of 2024 and XIX of 2026.

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PART I

PRELIMINARY

Short title.

1. The short title of this Act is the Insurance Business Act.

Interpretation and scope.
Amended by: XVII. 2002.236; XII. 2006.76; XX. 2007.126; XVII. 2009.30; X. 2011.74; XXXIII. 2015.4; XXVI.2018.61; V.2020.41; XXXV.2023.44; XXXII.2024.35; XIX.2026.27.

2. (1) In this Act, unless the context otherwise requires -

"advertisement", in relation to the business of insurance, means any form or medium of marketing activity or communication disseminated to the public by means of all types of media, other than a prospectus, which promotes the purchase or procurement of a service or product and which is addressed by an authorised insurance undertaking to a client or potential client;

"approved actuary" and "actuary" have the meaning assigned to them by article 22(5);

"approved auditor" and "auditor" have the meaning assigned to them by article 21(10);

"authorisation", in relation to business of insurance, or to a matter connected therewith or ancillary thereto, means an authorisation or a deemed authorisation under this Act, and "authorised" shall be construed accordingly;

"authorised insurance undertaking" means an undertaking, which has received authorisation pursuant to article 7 to carry on direct general business and, or long term business, and includes an undertaking authorised to carry on direct and reinsurance business;

"authorised reinsurance undertaking" means an undertaking which has received authorisation pursuant to article 7 to carry on business restricted to reinsurance;

"body corporate" means any entity having a legal personality distinct from that of its members and also includes a foreign corporation;

"branch" means premises of an authorised insurance and reinsurance undertaking, other than its head office, from which the business of insurance is carried on;

"business of insurance" means the effecting and carrying out of contracts of insurance of such class or classes of long term business or class or classes or part classes of general business as respectively specified in the Second Schedule and Part I of the Third Schedule, and, without prejudice to anything contained in any other law, includes -

(*a*) the effecting and carrying out, by a person not carrying on business of banking, of -

(i) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried on by the person effecting them) in return for the payment of one or more premiums;

(ii) capital redemption contracts based on actuarial

calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

(iii) contracts to manage the investments of pension funds,

and, in relation to contracts to manage the investments of pension funds, the expression "a person not carrying on business of banking" includes "a person not carrying on investment services";

(*b*) any business carried on in connection with or ancillary to business of insurance;

(*c*) unless otherwise specified, business of reinsurance;

"captive insurance undertaking" means an authorised insurance undertaking, owned either by a financial undertaking, other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of article 2, or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

"captive reinsurance undertaking" means an authorised reinsurance undertaking, owned either by a financial undertaking, other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of article 2, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

"cell" has the same meaning as is assigned to it by the Companies Act; Cap. 386.

"cell company" has the same meaning as is assigned to it by the Companies Act; Cap. 386.

"close links" means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

"collection body" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"commitment" means a commitment represented by any one or more of the kinds of classes of long term business contained in the Second Schedule;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act; Cap. 330.

"conditions" includes obligations and restrictions;

"Conduct of Business Rules" means Rules relating to conduct of business issued by the competent authority under various articles of this Act and under any regulations made thereunder;

"contract of insurance" and "contract", in relation to business of insurance, mean an agreement in which an insurer agrees, for a consideration, to pay to or for the account of the insured a sum of money or other consideration, whether by way of indemnity against loss, damage or liability or otherwise, on the happening of a specified event with respect to which there is an element of uncertainty as to when or whether it will take place;

"control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

"controller", in relation to a body corporate, is a person who, alone or together with others, exercises the power to determine the financial and operating policies of the body corporate;

"country of the commitment" means any country where the policyholder has his habitual residence or, if the policyholder is a legal person, the country where the latter's establishment, to which the contract relates, is situated;

"country outside Malta" means and includes any country, territory or place outside Malta;

"data extractable format" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"director", in relation to an undertaking, includes an individual occupying the position of a director of the undertaking, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the undertaking as those carried out by a director and, in respect of a third country insurance undertaking or a third country reinsurance undertaking, includes a member of a local board, and the person designated as the representative of that undertaking for the purpose of article 11(1)(*b*)(i);

"document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended from time to time;

"EIOPA" means the European Insurance and Occupational Pensions Authority established in terms of article 1 of Regulation (EU) No 1094/2010;

"ESAP" means the European single access point in accordance with the ESAP Regulation;

"ESAP Regulation" means Regulation (EU) 2023/ 2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability, as may be amended from time to time, and shall include any implementing measures that have been, or may be issued thereunder;

"establishment" means the head office, or any branches of an authorised insurance undertaking or an authorised reinsurance undertaking;

"European insurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"European regulatory authority" means the supervisory authority or supervisory authorities as defined in Article 13 of the Solvency II Directive, designated by a Member State or EEA State, other than Malta, empowered by law or regulation to supervise insurance or reinsurance undertakings;

"European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"European right" means the entitle-ment of an authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or a European reinsurance undertaking to establish a branch, or provide services, in a Member State or an EEA State, other than that in which it has its head office -

(*a*) in accordance with the Treaty of Rome as applied in a Member State or an EEA State;

(*b*) subject to the requirements of the Solvency II Directive and subject to any regulations made under this Act, or Insurance Rules issued by the competent authority pursuant to this Act, implementing such requirements;

"European Systemic Risk Board" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board;

"financial undertaking" means any of the following entities:

(*a*) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of sub-paragraphs (1), (17) and (22) of paragraph (1) of Article 3 of Directive 2013/36/EU

respectively;

(*b*) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of Article 212(1)(f) of the Solvency II Directive;

(*c*) an investment firm or a financial institution within the meaning of point 1 of Article 4(1) of Directive 2014/65/EU; or

(*d*) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;

"financial year" shall be construed in accordance with article 19(4);

"functions" includes responsibilities, powers and duties;

"general business" has the meaning assigned to it by article 5(1);

"group" means a group of undertakings that:

(*a*) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; or

(*b*) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

(i) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

(ii) the establishment and dissolution of such relationships for the purposes of Title III of the Solvency II Directive are subject to prior approval by the group supervisor,

where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

"guarantee fund" means the body referred to in Article 10(1) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;

"holding company" has the same meaning as is assigned to the term "parent company" in the Companies Act; Cap. 386.

"inspector" means a person appointed as such by the competent authority under article 30(1);

"insurance agent" means a person enrolled as such under the Insurance Distribution Act; Cap. 487.

"Insurance Distribution Directive" means Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"insurance manager" means a person enrolled as such under the Insurance Distribution Act; Cap. 487.

"Insurance Rules" means rules in respect of the business of insurance issued by the competent authority under various articles of this Act and under any regulations made thereunder;

"insured" means the party to whom, or on whose account, or to whose beneficiaries, a sum of money or other consideration is payable under a contract of insurance on the happening of a specified event;

"insurer" means the party to a contract of insurance who agrees to pay a sum of money or other consideration on the happening of a specified event;

"Lloyd's" means the society and corporation incorporated by Lloyd's Act, 1871, of the United Kingdom;

"long term business" has the meaning assigned to it by article 5(1);

"machine-readable format" shall have the same meaning as assigned to in Article 2 of the ESAP Regulation;

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of the European Union and membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral or multilateral, including Memoranda of Understanding, to which Malta is a party;

"Member State" means a Member State of the European Communities;

"metadata" shall have the same meaning as assigned to it in Article 2 of the ESAP Regulation;

"Minister" means theMinister responsible for the regulation of Financial Services;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act; Cap. 373.

"motor vehicle" has the same meaning as assigned to it by article 2 of the Motor Vehicle Insurance (Third Party Risks) Ordinance; Cap. 104.

"motor vehicle liability insurance business" means the business of insurance in class 10 as specified in Part I of the Third Schedule;

"officer", in relation to an undertaking, includes a director, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"outsourcing" means an arrangement of any form between an authorised insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the authorised insurance or reinsurance undertaking itself, and "outsource" shall be construed accordingly;

"overseas regulatory authority" means an authority in a country or territory outside Malta, that is not a Member State or EEA State, which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;

Cap. 330.

"own funds" shall be construed in accordance with Insurance Rules made by the competent authority for the purposes of this Act;

"participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

"participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;

"personal data" shall have the same meaning as assigned to it in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

"policy", in relation to business of insurance, means and includes a policy or a similar document, by whatever name it may be called, evidencing a contract of insurance;

"policyholder" means the person who for the time being is the legal holder of the policy for securing the contract with the insurer;

"premium" means the consideration paid or payable by an insured under a contract of insurance;

"prescribed" means prescribed by regulations made under this Act;

"qualifying shareholding" means a direct or indirect holding in an undertaking which represents ten *per centum* or more of the share capital or of the voting rights, taking into account the voting

rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the undertaking in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point (6) of Section A of Annex 1 to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;

"reconstruction" has the same meaning as in the Companies Act; Cap. 386.

"regulated market" means either of the following:

(*a*) in the case of a market situated in Malta, a market authorised in terms of the Financial Markets Act; Cap. 345.

(*b*) in the case of a market situated in a Member State or an EEA State, other than Malta, a regulated market as defined in point (21) of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), as amended from time to time; or

(*c*) in the case of a market situated in a non-Member State or non-EEA State, a financial market which fulfils the following conditions:

(i) it is recognised by the competent authority and fulfils requirements comparable to those laid down Directive 2014/65/EU; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets in Malta;

"Regulation (EU) No 1094/2010" refers to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;

"reinsurance" means one of the following:

(*a*) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking; or

(*b*) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council;

"risk situated in Malta" means and includes -

(*a*) in the case where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, any risk related to property situated in Malta;

(*b*) in the case where the insurance relates to vehicles of any type, any risk related to any vehicles registered in Malta:

Provided that, where a motor vehicle is dispatched from a Member State or an EEA State into Malta, the risk is deemed to be situated in Malta, immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not been formally registered in Malta;

(*c*) in the case where the insurance relates to travel or holiday risks, whatever the class concerned, any risk related to travel or holiday if the policy covering the risk is of a duration of four months or less and the policy is taken out in Malta;

(*d*) in the case where the insurance relates to any risk of any kind, other than a risk specified in the foregoing paragraph (*a*), (*b*) or (*c*), any risk of any such kind if the policyholder has his habitual residence in Malta or, where the policyholder is a legal person if the establishment, to which the contract relates, is situated in Malta:

Provided that, for the purposes of this paragraph, Malta shall include an exclusive economic zone area and environment protection area as defined in the Exclusive Economic Zone Act;

Cap. 625.

"risk situated outside Malta" means a risk which is not a risk situated in Malta;

"subsidiary" has the same meaning as is assigned to the term "subsidiary undertaking" by the Companies Act;

Cap. 386.

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"technical provisions" shall be construed in accordance with

article 18E;

"third country insurance undertaking" means an undertaking, other than a European insurance undertaking, which would require authorisation as an authorised insurance undertaking pursuant to article 7 as if its head office were situated in Malta;

"third country reinsurance undertaking" means an undertaking, other than a European reinsurance undertaking, which would require authorisation as an authorised reinsurance undertaking in accordance with article 7 as if its head office were situated in Malta;

"undertaking" refers to an undertaking whose head office is in Malta or in a country outside Malta;

"undertaking whose head office is in Malta" means a limited liability company formed and registered in Malta in accordance with the Companies Act; Cap. 386.

"working days" shall not include Saturdays and the days referred to in the National Holidays and Other Public Holidays Act. Cap. 252.

(2) The objective of this Act is, in part, to transpose and implement the provisions of: Scope.

(*a*) the Solvency II Directive;

(*b*) the Omnibus II Directive: Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority);

(*c*) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009, relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, as amended from time to time; and

(*d*) any other European Union Directives and Regulations that may be issued and amended from time to time relating to the regulation of and the prudential requirements applicable to insurance and reinsurance undertakings,

and consequently this Act and any regulations and Insurance Rules issued thereunder shall be interpreted and applied accordingly.

(3) In this Act and in any regulations made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

PART II

SUPERVISION OF BUSINESS OF INSURANCE

Competent authority.
Amended by: XVII. 2002.237. Substituted by: XII. 2006.77; X. 2011.75. Amended by: XXXIII. 2015.5; XXVI.2018.62; XIX.2026.28.

3. (1) It shall be the duty of the competent authority to carry out the functions assigned to it by or under this Act and any regulations, Insurance Rules or Conduct of Business Rules made thereunder and to ensure that insurance and reinsurance undertakings carrying on the business of insurance in or from Malta comply with the provisions of this Act and of any regulations made thereunder, with any Insurance Rules and Conduct of Business Rules made and directives issued by the competent authority in virtue of this Act and of any regulations made thereunder and with the conditions specified in their respective authorisation.

(2) It shall also be the duty of the competent authority to carry out the functions and duties of the collection body in accordance with the ESAP Regulation, when it is designated as such under this Act or any regulations made thereunder.

Powers and duties of the competent authority.
Amended by: XVII. 2002.238; XII. 2006.78; X. 2011.76; XX. 2013.97. Substituted by: XXXIII. 2015.6. Amended by: XXVI.2018.63.

4. (1) When carrying out its functions under this Act, the competent authority shall, in particular, have regard to:

(*a*) the protection of insured persons, policy holders, beneficiaries and the general public;

(*b*) the protection of the reputation of Malta, taking into account Malta's international commitments; and

(*c*) the promotion of competition and choice.

(2) Without prejudice to the generality of the foregoing, the competent authority shall, in the exercise of its duties, take into account the convergence in respect of supervisory tools and supervisory practices in the application of this Act, and of the regulations and Insurance Rules made thereunder, pursuant to the Solvency II Directive.

(3) For the purpose of sub-article (2):

(*a*) the competent authority shall participate in the activities of EIOPA;

(*b*) the competent authority shall comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and, if not, shall state the reasons for not doing so; and

(*c*) national mandates conferred on the competent authority shall not inhibit the performance of its duties under this Act or as a member of EIOPA.

(4) The competent authority may make Insurance Rules and Conduct of Business Rules as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. The competent authority may amend or revoke such Insurance Rules and, Conduct of Business Rules, and any amendment or revocation thereof, shall be officially communicated to the persons concerned.

(5) The competent authority may make, amend or revoke, Insurance Rules and Conduct of Business Rules, as may be required for the purpose of implementing any guidelines, recommendations issued by EIOPA under Article 16 of Regulation (EU) No 1094/2010, for the implementation of the Solvency II Directive.

(6) Insurance Rules shall be binding on authorised insurance and reinsurance undertakings and others as may be specified therein. Conduct of Business Rules shall be binding on authorised insurance undertakings and others as may be specified therein.

PART III

AUTHORISATION FOR CARRYING ON BUSINESS OF INSURANCE

Classification of business of insurance and ancillary risks. *Amended by: XVII. 2002.239; XII. 2006.79; XXXIII. 2015.7, 77.*

5. (1) Subject to the provisions of sub-article (2), for the purposes of this Act, business of insurance is divided into long term business and general business; and -

"long term business" means business of insurance of any of the classes specified in the Second Schedule, and

"general business" means business of insurance of any of the classes specified in Part I of the Third Schedule.

(2) An authorised insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or group of classes as specified in the Third Schedule may also insure risks included in another class in the said Schedule without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

(*a*) they are connected with the principal risk;

(*b*) they concern the object which is covered against the principal risk; and

(*c*) they are covered by the contract insuring the principal risk.

(3) Notwithstanding the provisions of sub-article (2), the risks included in classes 14, 15 and 17 in Part I of the Third Schedule shall not be regarded as risks ancillary to other classes:

Provided that, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the conditions laid down in sub-article (2) and either of the following conditions are fulfilled:

(*a*) the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from the home or their habitual residence; or

(*b*) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

(4) For the purposes of this article, a contract of insurance is to be treated as falling within the Second Schedule, notwithstanding the fact that it contains related and subsidiary provisions within general business class 1 or 2 of Part I of the Third Schedule to the

Act, if its principal object is that of a contract falling within the Second Schedule to the Act and if such contract is effected or carried out by an undertaking authorised under article 7 to carry on long term business class 1.

(5) The competent authority may, by an Insurance Rules made for the purposes of this article, provide that general business contracts of insurance of a kind specified in the Insurance Rules, contain such conditions or include such requirements or arrangements as may be determined by such Insurance Rules.

Restriction on carrying on business of insurance. *Amended by: XVII. 2002.240; XII. 2006.80; XXXIII. 2015.8.*

6. (1) No person shall carry on, nor hold itself out as carrying on, in or from Malta business of insurance unless authorised by the competent authority.

(2) Sub-article (1) shall not apply to a European insurance undertaking and a European reinsurance undertaking establishing a branch or providing services in Malta in exercise of a European right.

(3) The Minister, acting on the advice of the competent authority, may make regulations under this article -

(*a*) declaring certain services and activities ancillary to or connected with business of insurance as not constituting business of insurance for any or all of the purposes of this Act;

(*b*) prescribing the persons who may carry out such services and activities and the persons to or for whom such services and activities may be rendered;

(*c*) providing for any matter incidental to or connected with the above, and for the better carrying out of the provisions of this sub-article.

(4) In the event of a doubt as to whether an activity constitutes business of insurance, or whether business of insurance is or is not being carried on in or from Malta, the matter shall be conclusively determined by the competent authority.

Authorisation by competent authority for carrying on business of insurance. *Amended by: XVII. 2002.241; XXXIII. 2015.9; XIX.2026.29.*

7. (1) The competent authority may authorise an undertaking to carry on under this Act -

(*a*) in the case of an undertaking whose head office is in Malta, in or from Malta or in or from a country outside Malta;

(*b*) in the case of a third country insurance undertaking or a third country reinsurance undertaking, in or from Malta,

such of the classes of business of insurance specified in the Second or Third Schedule, or such parts of those classes, as may be specified in the authorisation.

(2) An authorisation under this article may be restricted to business of reinsurance; and an undertaking may not carry on business of reinsurance by virtue of an authorisation under this article unless the authorisation expressly extends to such business.

(3) An authorisation issued under this article shall entitle an undertaking whose head office is in Malta to carry on business of insurance in a Member State or EEA State, in exercise of a European right, subject to a notification to the competent authority as determined in accordance with regulations made under article 64.

(4) Without prejudice to article 5, an authorisation under this article shall also be required if an undertaking, which holds an authorisation to carry on business of insurance or reinsurance in a class or classes of insurance, intends to extend its business to a class or to classes of business other than those classes for which it is already authorised.

(5) The competent authority shall have the power to require any undertaking to provide such information as it may deem necessary for the purpose of determining an application for authorisation.

(6) An authorisation under this article shall only be issued if the competent authority is satisfied, on the basis of the information required to be submitted under this Act and any information received by it, that the authorisation ought to be granted.

(7) An authorisation issued under this article may identify classes or part classes of general business by referring to the appropriate groups specified in Part II of the Third Schedule.

(8) Subject to the provisions of this Act, the competent authority may subject an authorisation issued or held under this article to such conditions as it may from time to time deem fit to impose.

(9) Subject to sub-article (10), the competent authority shall determine an application for authorisation under this article within six months of receiving a properly completed application form together with the requisite documentation required to be submitted under this Act; and if it refuses to issue the authorisation it shall inform the applicant in writing of the reasons for the refusal.

(10) Where the authorisation sought is one restricted to reinsurance, the period prescribed by sub-article (9) shall be of three months.

(11) The competent authority shall not consider the economic needs of the market as a criterion when examining an application for an authorisation.

(12) On the issue to an undertaking of an authorisation under this article, any previous authorisation of that undertaking under this article shall lapse.

(13) The competent authority shall notify EIOPA of every authorisation issued in terms of this article, including for the purpose of making it accessible on ESAP.

Authorisation requirements.
Amended by: XVII. 2002.242; XII. 2006.81; L.N. 426 of 2007. Substituted by: XXXIII. 2015.10.

8. (1) The competent authority shall not issue an authorisation under article 7 unless it is satisfied that -

(*a*) an application for authorisation is made in writing by an undertaking in such form and manner as the competent authority may from time to time determine;

(*b*) (i) in the case of an undertaking which intends to carry on business not restricted to reinsurance, the undertaking's objects are limited to business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;

(ii) in the case of an undertaking which intends to carry on business restricted to reinsurance, the undertaking's objects are limited to the business of reinsurance and related operations; this may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended from time to time;

(*c*) the undertaking has disclosed to the satisfaction of the competent authority such information as the competent authority has requested of it in relation to persons who will, upon the authorisation of the undertaking, have any proprietary, financial or other interest in, or in connection with, that undertaking;

(*d*) the undertaking has disclosed the identities of the shareholders, direct or indirect, whether natural or legal persons who will have qualifying holdings in that undertaking and the amounts of those holdings;

(*e*) all qualifying shareholders, directors, controllers and all persons who will effectively direct or manage the business of insurance are fit and proper persons to ensure the sound and prudent management of the undertaking;

(*f*) the undertaking has submitted to the satisfaction of the competent authority a scheme of operations which shall include the particulars or proof as may be determined by Insurance Rules made for the purpose of this article;

(*g*) the undertaking holds eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement in accordance with article 17;

(*h*) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, in accordance with article 15, going forward;

(*i*) the undertaking shows evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, in accordance with article 17, going forward;

(*j*) the undertaking shows evidence that it will be in a position to comply with the system of governance provided for in article 18I.

(2) Without prejudice to article 5, an undertaking seeking authorisation to extend its business of insurance to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to:

(*a*) submit a scheme of operations referred to in sub-article (1)(*f*);

(*b*) submit proof that it possesses eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement in accordance with articles 15 and 17 respectively.

(3) The competent authority shall not issue an authorisation under article 7, where close links exist between an undertaking applying for authorisation and any other natural or legal persons:

(*a*) if it considers that such close links prevent it from effectively exercising its supervisory functions; and

(*b*) if it considers that the laws, regulations or administrative provisions of a third country governing any one or more natural or legal persons with whom the undertaking has close links or difficulties involved in the enforcement of those measures, prevent it from effectively exercising its supervisory functions.

(4) For the purpose of ensuring compliance with the provisions of sub-article (3)(*a*), the competent authority shall require authorised insurance and reinsurance undertakings to provide it with the information necessary for it to monitor compliance with the conditions referred to in sub-article (3)(*a*) on a continuous basis.

Combination of long term business and general business. *Amended by: XVII. 2002.243; XII. 2006.82; XXXIII. 2015.11, 77.*

9. (1) Subject to sub-articles (2) and (3), the competent authority shall not, under article 7, authorise an undertaking with its head office in Malta to carry on both long term business and general business.

(2) Without prejudice to the provisions of sub-article (1) -

(*a*) an insurance undertaking authorised to carry on long term business may be granted an authorisation to carry on general business for the risks listed in classes 1 and 2 of Part I of the Third Schedule; or

(*b*) an insurance undertaking authorised solely to carry on

general business of insurance for the risks listed in classes 1 and 2 of Part I of the Third Schedule may be granted authorisation to carry on long term business; or

(*c*) an insurance undertaking authorised solely to carry on general business of insurance may be granted authorisation to carry on long term business restricted to reinsurance.

(3) Without prejudice to the provisions of sub-article (4), the provisions of this article shall not apply to an undertaking which holds an authorisation to carry on both long term business and general business under this Act as in force immediately before the coming into force of this Act.

(4) An undertaking authorised as aforesaid shall, in respect of long term business and general business, be managed separately in a manner as may be determined by Insurance Rules made for the purpose of this article.

(5) An authorised insurance undertaking carrying on long term business and seeking authorisation to extend its business to the risks listed in classes 1 or 2 of Part I of the Third Schedule shall submit proof to the satisfaction of the competent authority that it:

(*a*) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on long term business and the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on general business, in accordance with article 17; and

(*b*) undertakes to cover the minimum financial obligations as determined in accordance with Insurance Rules, going forward.

(6) An authorised insurance undertaking carrying on general business for the risks listed in classes 1 or 2 of Part 1 of the Third Schedule and seeking authorisation to extend its business to long term business shall submit proof to the competent authority that it:

(*a*) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on long term business and the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on general business, in accordance with article 17;

(*b*) undertakes to cover the minimum financial obligations as determined in accordance with Insurance Rules, going forward.

(7) For the avoidance of doubt, an undertaking whose business is restricted to reinsurance, may be granted an authorisation to carry on both general and long term business in all classes of business.

Applicants with head office in Malta.
Amended by: XVII. 2002.244; XIII. 2004.111; XII. 2006.83; XXXIII. 2015.12.

10. (1) The competent authority shall not issue an authorisation under article 7 to an undertaking whose head office is in Malta, nor shall the competent authority permit such undertaking to hold the authorisation issued thereunder, unless it is satisfied that the undertaking has fulfilled or complied with the requirements of article 8 and, where appropriate, of article 9.

(2) An undertaking authorised as aforesaid may, with the approval of the competent authority given in writing -

(*a*) open a branch in Malta;

(*b*) appoint:

(i) an insurance manager; or

(ii) an insurance agent; or

(iii) both an insurance manager and an insurance agent.

(3) Except with the written consent of the competent authority, no undertaking authorised as aforesaid shall carry on, nor hold itself out as carrying on business of insurance in or from a country outside Malta or open a branch, agency or office or set up or acquire any subsidiary in any country outside Malta.

Applicants with head office outside Malta.
Amended by: XVII. 2002.245; XII. 2006.84; XX. 2007.127. Substituted by: XXXIII. 2015.13. Amended by: XXVI.2018.64.

11. (1) The competent authority shall not issue an authorisation under article 7 to a third country insurance undertaking or third country reinsurance undertaking, nor shall the competent authority permit such undertaking to hold the authorisation issued thereunder, unless the undertaking -

(*a*) is permitted in the country where its head office is situated to carry on the business of insurance which forms the object of the application;

(*b*) has in Malta at all times:

(i) a general representative fulfilling the requirements of article 12; and

(ii) a branch;

(*c*) undertakes to set up at the place of management of the branch, accounts specific to the business of insurance which it carries on in Malta, and to maintain there all the records relating to the business carried on;

(*d*) undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in articles 15 and 17;

(*e*) submits a scheme of operations in accordance with article 8(1)(*f*); and

(*f*) fulfils the governance requirements referred to in article 18I.

(2) In relation to a branch of a third country insurance undertaking or third country reinsurance undertaking, the business of insurance shall be carried on under the management of a person fulfilling the following requirements of this sub-article:

(*a*) the person must be an individual resident in Malta or

an insurance manager who has been designated by the undertaking for the purpose of this article;

(*b*) the person must not be the approved auditor, or a partner or an employee of the approved auditor, of the undertaking;

(*c*) the person possesses the qualifications and fulfils or complies with the requirements determined by Insurance Rules made for the purpose of this article; and

(*d*) the person is fit and proper to ensure its sound and prudent management.

(3) A third country insurance or reinsurance undertaking shall be required to:

(*a*) establish adequate technical provisions to cover the insurance and reinsurance obligations arising from the business carried out by the branch in Malta, calculated in accordance with Insurance Rules; and

(*b*) value assets and liabilities and determine own funds in accordance with Insurance Rules.

(4) A third country insurance and reinsurance undertaking shall be required to maintain in Malta at all times an amount of eligible own funds consisting of the items determined in accordance with Insurance Rules and deposit a specified proportion of such own funds as may be prescribed under article 18G.

(5) (*a*) Branches of third country insurance undertakings shall not simultaneously pursue long term business and general business in Malta.

(*b*) For the avoidance of doubt, a branch of a third country reinsurance undertaking may be granted an authorisation to carry on both general and long term business, in all classes of business, restricted to reinsurance.

(6) For the purposes of this article, "branch" means a permanent presence in Malta of a third country insurance undertaking or third country reinsurance undertaking, which has received authorisation in Malta to carry on business of insurance in Malta.

(7) The provisions of this article shall be without prejudice to any agreements concluded by the European Community with one or more third countries in terms of Article 171 of the Solvency II Directive.

General representatives. *Amended by: XIII. 2004.112; XXXIII. 2015.14.*

12. (1) The requirements referred to in article 11(1)(*b*)(i) are those set out in the following provisions of this article:

(*a*) the representative must be a person resident in Malta who has been designated as the undertaking's representative for the purpose of this article;

(*b*) the representative must be authorised to act generally,

and to accept service of any document, on behalf of the undertaking;

(*c*) the representative must not be the approved auditor, or a partner or an employee of the approved auditor, of the undertaking;

(*d*) if the representative is not an individual, it must be a company whose head office is in Malta and must itself have an individual representative resident in Malta who is authorised to act generally, and to accept service of any document, on behalf of the company, in its capacity as representative of the company.

(2) Without prejudice to the provisions of sub-article (1), the general representative shall not be personally liable for the debts and obligations of the undertaking referred to in article 11.

13. *Deleted by XII. 2006.85.*

Insurance agents and managers.

PART IV

Substituted by: XXXIII. 2015.15.

CONDITIONS FOR CARRYING ON BUSINESS OF INSURANCE

Title I: Financial Requirements

14. (1) The own funds of an authorised insurance and reinsurance undertaking shall comprise the sum of basic own funds and ancillary own funds.

Own funds of authorised insurance and reinsurance undertakings.. *Amended by: XIII. 2004.113; XII. 2006.86; XX. 2007.128. Substituted by: XXXIII. 2015.15.*

(2) The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to the prior written approval of the competent authority.

(3) The competent authority shall issue Insurance Rules to determine the items making up the basic own funds and ancillary own funds, determine what constitutes surplus funds, provide for the classification of own funds into tiers and the eligibility of the own funds, and any other matter relating thereto.

15. (1) An authorised insurance and reinsurance undertaking shall hold eligible own funds covering the Solvency Capital Requirement.

Solvency Capital Requirement. *Amended by: XII. 2006.87. Substituted by: XXXIII. 2015.15.*

(2) The Solvency Capital Requirement shall be calculated either in accordance with the standard formula as set out in Insurance Rules or using a full or partial internal model as approved by the competent authority. The process for the approval of the use of an internal model shall be set out in Insurance Rules.

(3) Where it is inappropriate for an authorised insurance or reinsurance undertaking to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in the Insurance Rules since the risk profile of the undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the competent authority may, by means of a decision stating the reasons, require the undertaking concerned to use an internal model to calculate the Solvency

Capital Requirement, or the relevant risk modules thereof.

Non-Compliance with the Solvency Capital Requirement. *Amended by: XVII. 2002.246; XIII. 2004.114; XII. 2006.88. Substituted by: XXXIII. 2015.15.*

16. (1) An authorised insurance or reinsurance undertaking which fails to comply with article 15 shall immediately inform the competent authority as soon as it observes that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

(2) Within two months from the observation of non-compliance with the Solvency Capital Requirement, the authorised insurance or reinsurance undertaking shall submit a realistic recovery plan in accordance with Insurance Rules issued under article 18A for approval by the competent authority.

(3) The competent authority shall require the undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile of the undertaking to ensure compliance with the Solvency Capital Requirement.

(4) The competent authority may, if appropriate, extend that period by three months.

(5) The competent authority may issue Insurance Rules to determine the circumstances within which the period set out in sub-article (4) may be extended and the requirements to be complied with by the authorised insurance and reinsurance undertakings in such circumstances.

(6) In exceptional circumstances, where the competent authority is of the opinion that the financial situation of the authorised insurance or reinsurance undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking.

(7) Where the competent authority decides to restrict or prohibit the free disposal of the assets of that undertaking, it shall inform the European regulatory authorities of the host Member States or the overseas regulatory authorities of any measures it has taken. The competent authority may request those authorities concerned to take the same measures, and shall designate the assets to be covered by such measures.

Minimum Capital Requirement. *Amended by: XVII. 2002.247; XII. 2006.89. Substituted by: XXXIII. 2015.15.*

17. (1) An authorised insurance and reinsurance undertaking shall hold eligible basic own funds to cover the Minimum Capital Requirement.

(2) The Minimum Capital Requirement shall be calculated in accordance with Insurance Rules made for the purpose of this article, and shall be not less than the amounts (the absolute floor) as determined by the said Insurance Rules.

Non-Compliance with Minimum Capital Requirement. *Substituted by: XXXIII. 2015.15.*

18. (1) An authorised insurance or reinsurance undertaking which fails to comply with article 17 shall immediately inform the competent authority where it observes that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months.

(2) Within one month from the observation of non-compliance with the Minimum Capital Requirement, the undertaking concerned shall submit, for approval by the competent authority, a short-term realistic finance scheme, in accordance with Insurance Rules issued under article 18A, to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

(3) The competent authority may also restrict or prohibit the free disposal of the assets of the undertaking concerned.

(4) Where the competent authority decides to restrict or prohibit the free disposal of assets of the undertaking concerned, it shall inform the European regulatory authorities of the host Member State or the overseas regulatory authorities, of any measures it has taken. The competent authority may request those authorities concerned to take the same measures, and shall designate the assets to be covered by such measures.

Recovery plan and finance scheme. *Added by: XXXIII. 2015.15.*

18A. The particulars to be provided in the recovery plan and the finance scheme required to be submitted pursuant to articles 16 and 18 shall be determined by Insurance Rules.

Identification and notification procedures. *Added by: XXXIII. 2015.15.*

18B. An authorised insurance or reinsurance undertaking shall have procedures in place, including the use of early warning indicators, to identify deteriorating financial conditions and shall immediately notify the competent authority when such deterioration occurs.

Powers of the competent authority in deteriorating financial conditions. *Added by: XXXIII. 2015.15.*

18C. (1) Notwithstanding the provisions of articles 16 and 18 and without prejudice to any of the measures that may be taken by the competent authority pursuant to article 28, where the solvency position of the authorised insurance or reinsurance undertaking continues to deteriorate, the competent authority shall have the power to take all measures necessary to safeguard the interests of policyholders, in the case of contracts of insurance, or the obligations arising out of contracts of reinsurance.

(2) In considering the measures to be taken, the competent authority shall take into account the level and duration of the deterioration of the solvency position of the undertaking concerned.

Valuation of assets and liabilities. *Added by: XXXIII. 2015.15.*

18D. Authorised insurance and reinsurance undertakings shall value their assets and liabilities in accordance with Insurance Rules made for the purposes of this Act.

Technical provisions.

18E. (1) Authorised insurance and reinsurance undertakings shall establish and maintain technical provisions with respect to all

of their insurance and reinsurance obligations towards policyholders and insureds of insurance or reinsurance contracts.

(2) The value and calculation of technical provisions shall be determined in accordance with Insurance Rules made for the purposes of this article.

(3) Without prejudice to anything contained in any other provisions under the Act, the competent authority may, whenever it deems it necessary, require the authorised insurance or reinsurance undertaking concerned to demonstrate the appropriateness of the level of the undertaking's technical provisions, as well as, the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

(4) To the extent that the calculation of technical provisions of an authorised insurance or reinsurance undertaking does not comply with the Insurance Rules made for the purposes of this article, the competent authority may require the insurance or reinsurance undertaking concerned to increase the amount of technical provisions so that they correspond to the level determined by such Insurance Rules.

(5) Where an authorised insurance or reinsurance undertaking fails to comply with the provisions of this article, the competent authority may prohibit the free disposal of its assets after having communicated its intentions to the European regulatory authority of the host Member State or the overseas regulatory authority. The competent authority shall designate the assets to be covered by such measures.

Report on solvency and financial condition. *Added by: XXXIII. 2015.15. Amended by: XIX.2026.30.*

18F. (1) Without prejudice to the information which is to be submitted to the competent authority pursuant to article 32, an authorised insurance and reinsurance undertaking shall disclose publicly, including by making accessible on ESAP in accordance with sub-article (8), on an annual basis, a report on the undertaking's solvency and financial condition. The report shall contain the information determined by Insurance Rules made for the purposes of this article.

(2) The competent authority shall, upon a written request by an authorised insurance or reinsurance undertaking, permit an undertaking not to disclose information where:

(*a*) by disclosing such information, the competitors of the undertaking concerned would gain significant undue advantage;

(*b*) there are obligations to policyholders or other counterparty relationships binding the undertaking concerned to secrecy or confidentiality.

(3) Where non-disclosure of information is permitted by the competent authority, the authorised insurance or reinsurance undertaking concerned shall make a statement to this effect in its report on solvency and financial condition and shall state the reasons.

(4) The competent authority shall permit an authorised

insurance or reinsurance undertaking to make use of or refer to public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required to be submitted under sub-article (1) in both their nature and scope.

(5) Where the reason for any permitted non-disclosure obtained pursuant to sub-article (2) ceases to exist, the undertaking concerned shall inform the competent authority without undue delay and such undertaking shall comply with the obligations arising under sub-article (1).

(6) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with this article, an authorised insurance or reinsurance undertaking shall disclose appropriate information on the nature and effects of that major development. The circumstances considered as major developments and the disclosures to be made by the undertaking in such circumstances shall be determined by Insurance Rules.

(7) An authorised insurance and reinsurance undertaking may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with this article.

"(8) For the purpose of making the information referred to in sub-article (1) and regulation 40(1) of the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations accessible on ESAP, insurance or reinsurance undertakings shall, when making such information public, also submit it at the same time to the collection body: S.L. 403.17.

Provided that for the purposes of this sub-article, the collection body shall be the competent authority:

Provided further that such obligation shall apply with effect from 10 January 2030.

(9) The information referred to in sub-article (8) shall comply with the following requirements:

(*a*) it shall be submitted in a data extractable format or, where required by Union law or national law, in a machine-readable format; and

(*b*) it shall be accompanied by the following metadata:

(i) all the names of the insurance or reinsurance undertaking to which the information relates;

(ii) the legal entity identifier of the insurance or reinsurance undertaking, as specified in accordance

with point (b) of Article 7(4) of the ESAP Regulation;

(iii) the size of the insurance or reinsurance undertaking by category, as specified in accordance with point (d) of Article 7(4) of the ESAP Regulation;

(iv) the type of information, as classified in accordance with point (c) of Article 7(4) of the ESAP Regulation;

(v) an indication of whether the information contains personal data:

Provided that for the purposes of sub-paragraph (ii), companies shall obtain a legal entity identifier.

Custody of assets required to be maintained in Malta. *Added by: XXXIII. 2015.15. Amended by: XXVI.2018.65.*

18G. (1) The competent authority may, with respect to assets which an undertaking is required by or under this Act to maintain in Malta, impose an additional requirement that the whole or a specified proportion of such assets shall be deposited with and held in custody for the undertaking's account by a person as may be prescribed by regulations made for the purposes of this article unless that requirement is otherwise imposed by any other provision of this Act; and the competent authority shall at all times have the right to demand from such person any information it may require to ensure that the provisions of this article are being complied with.

(2) Any requirement by or under this Act that assets of any kind or amount are to be maintained in Malta shall be satisfied if such assets are maintained in such country outside Malta and in such form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

(3) Any provision by or under this Act requiring an undertaking to maintain in Malta assets of any kind or amount may be satisfied by the undertaking if the undertaking produces a security in a form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

(4) The assets required to be maintained in Malta by or under this Act shall not be transferred, withdrawn or in any way encumbered without the permission of the competent authority given in writing or until the undertaking has ceased to carry on the business it was authorised to carry on and proves to the satisfaction of the authority that it has no further liability. Such assets shall not be attachable by any court.

Substituted by: XXVI.2018.66.

Title II: Governance

Responsibility of the Board of Directors. *Added by: XXXIII. 2015.15. Amended by: XXVI.2018.67.*

18H. The Board of Directors of an authorised insurance or reinsurance undertaking shall be ultimately responsible for the compliance by the undertaking concerned with the Act, regulations, Insurance Rules and where applicable, Conduct of Business Rules issued thereunder, including any other obligations pursuant to the Solvency II Directive.

System of governance. *Added by: XXXIII. 2015.15.*

18I. (1) Authorised insurance and reinsurance undertakings shall be required to have in place an effective system of governance which provides for sound and prudent management of the business of the undertaking. The system of governance requirements shall be laid down in Insurance Rules.

(2) An authorised insurance and reinsurance undertaking shall:

(*a*) ensure that all persons who effectively run the undertaking or have other key functions, at all times, satisfy the fit and proper criteria;

(*b*) have in place an effective risk management system, including a risk management function;

(*c*) as part of its risk management system, conduct its own risk and solvency assessment;

(*d*) have in place an effective internal control system, which shall include a compliance function;

(*e*) provide for an effective internal audit function;

(*f*) provide for an effective actuarial function; and

(*g*) if it outsources any of its functions or any insurance or reinsurance activities, remain fully responsible for discharging all of its obligations under this Act.

(3) The systems and functions referred to in sub-article (2) shall be determined by Insurance Rules.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the authorised insurance or reinsurance undertaking.

PART V

ACCOUNTS, ACTUARIAL INVESTIGATIONS AND FINANCIAL STATEMENTS

Financial year of authorised undertakings. *Amended by: XXXIII. 2015.16.*

19. (1) Every undertaking whose head office is in Malta applying for authorisation under article 7 of this Act to carry on business of insurance in or from Malta shall notify in writing the competent authority of its financial year; and, failing such notice, the undertaking's financial year shall terminate on the thirty-first day of December of each year.

(2) No undertaking as aforesaid shall alter its financial year unless and until the competent authority has given its approval in writing on an application made to it in that behalf.

(3) Every third country insurance or reinsurance undertaking applying for authorisation under article 7 to carry on business of insurance in or from Malta, shall notify in writing the competent authority of its financial year; and where an authorised undertaking

as aforesaid alters its financial year it shall forthwith notify in writing the competent authority of such change.

(4) For the purposes of this Act, financial year -

(*a*) in relation to an authorised undertaking whose head office is in Malta, means an accounting period as is construed in accordance with articles 164 to 166 of the Companies Act;

Cap. 386.

(*b*) in relation to a third country insurance or reinsurance undertaking, means an accounting period as is construed in accordance with the provisions of the laws of the country where the head office of the undertaking is situated governing the accounting period of such undertakings.

Drawing up and publication of audited financial statement.
Amended by: XVII. 2002.248; XII. 2006.90; XX. 2007.129; XXXIII. 2015.17.

20. (1) Subject to the following sub-articles, every undertaking authorised under this Act shall, within the period stipulated by regulations made or Insurance Rules issued under article 32 or at any other time as may be authorised in writing by the competent authority -

(*a*) forward to the competent authority; and

(*b*) exhibit in a conspicuous position in each of its offices, agencies and branches in Malta and keep so exhibited throughout the following twelve months,

a copy of its audited financial statements drawn up -

(i) in the case of an undertaking whose head office is in Malta, in accordance with Insurance Rules made for the purposes of this article; and

(ii) in the case of a third country insurance or reinsurance undertaking, in accordance with the provisions of the laws of the country where the head office of the undertaking is situated governing the financial statements of such undertakings.

(1A) The undertaking shall provide a copy of its audited financial statements to any person applying for such copy:

Provided that the undertaking may charge such reasonable fees not exceeding the administrative costs incurred in producing such copy.

(2) In the case of an undertaking whose head office is in Malta, sub-article (1)(*b*) shall apply as respects the undertaking's offices, agencies and branches in a country outside Malta in the same manner and to the same extent as it applies to its offices, agencies and branches in Malta.

(3) The audited financial statements shall be drawn up and published in such manner and form as may be specified in Insurance Rules.

Appointment, duties and termination of appointment of auditors. *Amended by: XII. 2006.91; XXXIII.2015.18,77 XXVI.2018.68.*

21. (1) Every undertaking authorised under this Act shall every year appoint an approved auditor as auditor to the undertaking whose duty shall be to report on the financial statements of the undertaking examined by him and on financial statements prepared by the undertaking.

(2) If an authorised undertaking fails to appoint an auditor as required by sub-article (1), or at any time fails to fill any vacancy in the office of auditor, the competent authority shall have the power to appoint an auditor for that undertaking and shall fix the remuneration to be paid by that undertaking to such auditor.

(3) The auditor's report shall include a statement on compliance by the enrolled person with requirements specified by means of Insurance Rules made for the purposes of this article, which may also specify the information to be contained in such statement.

(4) Every auditor of an authorised undertaking shall have the right to demand such information or explanation as he deems necessary in the performance of his duties from any officer or employee of, or any person under an appointment from, that undertaking.

(5) An auditor shall immediately give notice in writing to the competent authority if -

(*a*) he resigns;

(*b*) he does not seek to be re-appointed; or

(*c*) he decides to qualify the audit report,

and, in the case of a resignation, the auditor shall specify the reasons for so doing.

(6) An authorised undertaking shall give notice in writing to the competent authority immediately it receives notice of a resolution intended to be put before the undertaking's annual general meeting to appoint as an auditor a person other than the retiring auditor or otherwise providing expressly that the retiring auditor shall not be reappointed.

(7) Where, for any reason whatever, the appointment of an auditor comes to an end, the authorised undertaking shall, not later than fourteen days from the termination of such appointment, give notice in writing to the competent authority stating reasons for such termination.

(8) The competent authority may require an authorised undertaking to change its appointed auditor where, in the competent authority's opinion, such auditor is considered unfit for this appointment, at any time during his term of office.

(9) Before requiring an authorised undertaking to change its appointed auditor in the circumstances mentioned in sub-article (8), the competent authority shall notify in writing its intention to the undertaking and the auditor concerned stating reasons for requiring such change and giving the auditor the opportunity to submit in writing within fourteen days from the date of serving of such notice reason why its appointment with the undertaking should not be

terminated.

(10) For the purposes of this Act, an approved auditor shall be a person who is qualified to be an auditor in accordance with the Companies Act, and holds the authorisation of the competent authority issued to him in accordance with regulations made for the purpose of this article.

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(11) Notwithstanding anything contained in the foregoing sub-articles, the competent authority may, in the case of a third country insurance or reinsurance undertaking authorised as aforesaid, approve such alternative arrangements as it thinks reasonable and which do not materially detract from the main objects of this article, and where such arrangements have been carried out, the provisions of this article shall not apply to the extent that they are replaced by such arrangements.

(12) Subject to the provisions of sub-article (10), in so far as the provisions of this article are inconsistent with the provisions of the Companies Act, the provisions of this article shall prevail, and the provisions of the said Act shall, to the extent of the inconsistency, not apply to authorised undertakings as aforesaid.

Cap. 386.

Appointment of actuary by an undertaking with long term business. *Amended by: III. 2009.25; XXXIII. 2015.19.*

22. (1) Every authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III as specified in the Second Schedule shall -

(*a*) within thirty days of beginning to carry on such business, appoint an approved actuary as actuary to the undertaking to perform the with-profits actuary function in respect of the said classes of its with-profits business, (if any);

(*b*) whenever the appointment comes to an end, within thirty days of such termination, make a new appointment.

(2) An undertaking making an appointment under sub-article (1) shall, within fourteen days, inform the competent authority in writing stating that fact, the date of such appointment and the name and qualifications of the person appointed; and if an appointment under that sub-article comes to an end, the undertaking shall, within fourteen days, inform the authority in writing stating that fact, the name of the person concerned and the reasons for such termination.

(3) If, on the expiry of any period specified in sub-article (1), the undertaking fails to make the required appointment, the undertaking shall not effect and carry out any new long term contracts of insurance in terms of the classes specified in sub-article (1) until the appointment is made.

(4) Notwithstanding the provisions of sub-article (2), the competent authority may, within fourteen days of receiving a notice of termination of an appointment of an approved actuary, request in writing the approved actuary concerned to give in writing the reasons for such termination; and the actuary shall, within fourteen days, give reasons in writing.

(5) For the purposes of this Act, an approved actuary is a person who -

(*a*) does not hold a role or perform a function on behalf of the undertaking which could give rise to a significant conflict of interest;

(*b*) is a Fellow of an Institute of Actuaries, or a Fellow of a Faculty of Actuaries, or holds actuarial qualifications of similar standing of an institute of repute recognised for such purposes by the competent authority and has the required skill and holds appropriate practical experience to perform his functions as an actuary; and

(*c*) holds the competent authority's approval to act as actuary to perform the with-profits actuary function as set out in article 23.

Periodic actuarial investigation of an undertaking with long term business. *Amended by: XVII. 2002.249; XII. 2006.92; XXXIII. 2015.20.*

23. (1) Every authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III as specified in the Second Schedule shall, at the close of its financial year, require the approved actuary to provide a report in respect of the period covered by the report affecting those classes of with-profits business of the undertaking.

(2) The information to be provided in the report shall be determined by Insurance Rules issued by the competent authority for the purposes of this article.

(3) The actuary's report shall be forwarded by the undertaking concerned to the competent authority, together with the audited financial statements of the undertaking required to be forwarded under article 20.

(4) Notwithstanding anything contained in any of the foregoing sub-articles, in the case of a third country insurance undertaking authorised to carry on long term with-profits business in terms of classes I and III as specified in the Second Schedule, the competent authority may approve such alternative arrangements as it thinks reasonable and which do not materially detract from the main objects of this article, and where such arrangements have been carried out, the provisions of this article shall not apply to the extent that they are replaced by such arrangements.

Obligations of auditors and actuaries to the competent authority. *Amended by: XVII. 2002.250. Substituted by: XXXIII. 2015.21.*

24. (1) An auditor or an actuary of an authorised insurance or reinsurance undertaking or of a branch in Malta of a third country insurance or reinsurance undertaking shall have the duty to report immediately to the competent authority any fact or decision concerning that undertaking of which he becomes aware of in his capacity as auditor or actuary of any such authorised insurance or reinsurance undertaking or of any such branch which relates to any matter which may be prescribed or is likely to bring about the following:

(*a*) a serious qualification, or refusal, of the auditor's report on the accounts of the undertaking or the branch; or

(*b*) a grave impairment of the undertaking's ability to

continue as a going concern; or

(*c*) a material breach of the provisions of this Act, regulations or any Insurance Rules which lay down the conditions governing authorisation or which specifically govern the carrying on of business of insurance by an authorised undertaking or branch; or

(*d*) non-compliance with the Solvency Capital Requirement; or

(*e*) non-compliance with the Minimum Capital Requirement.

(2) The auditor or actuary, as the case may be, shall likewise have a duty to report to the competent authority any facts or decisions of which he becomes aware of in the course of carrying out his duties which relate to or have a serious adverse effect upon the insured, the policyholder or any other interested person relating to the undertaking or the branch in Malta of a third country insurance or reinsurance undertaking of which he becomes aware of in his capacity as auditor or actuary to an undertaking having close links with an authorised insurance or reinsurance undertaking.

(3) Without prejudice to any provision contained in this Act, the competent authority may request the auditor or the actuary, as the case may be, to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (1) or (2) concerning the authorised insurance or reinsurance undertaking or branch in Malta of a third country insurance or reinsurance undertaking.

PART VI

POWERS OF INTERVENTION

Automatic revocation of an authorisation. *Amended by: XXXIII. 2015.22.*

25. An authorisation issued or held under this Act shall automatically be revoked if the authorised insurance or reinsurance undertaking -

(*a*) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or

(*b*) has ceased to operate as a result of a merger with another undertaking carrying on business of insurance or for any other reason whatsoever; or

(*c*) is a third country insurance or reinsurance undertaking, and the overseas regulatory authority in the country of registration, incorporation or constitution withdraws the authorisation from the undertaking.

Power of the competent authority to suspend or revoke an authorisation. *Amended by: XVII. 2002.251; XII. 2006.93; XXXIII.2015.23,77 XXVI.2018.69.*

26. Without prejudice to anything contained in any other provision of this Act, the competent authority may at any time suspend or revoke an authorisation issued or held under this Act if -

(*a*) any document or information accompanying an application for authorisation, or any information given in connection therewith, is false, incorrect or misleading in any material particular, or if the authorised insurance or reinsurance undertaking has concealed, or conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or to notify under this Act and any regulations, Insurance Rules or Conduct of Business Rules made thereunder; or

(*b*) the authorised insurance or reinsurance undertaking ceases to carry on the business for which the authorisation was issued for more than six months; or

(*c*) the authorised insurance or reinsurance undertaking suspends payment or is about to suspend payment; or

(*d*) it considers that the authorised insurance or reinsurance undertaking does not fulfil or comply with the requirements of, or has contravened, any of the provisions of this Act and any regulations made thereunder, or any Insurance Rules or any applicable Conduct of Business Rules, or, or has failed to satisfy or comply with any condition to which it or the authorisation held by it is subject by virtue of or under this Act; or

(*e*) it considers that any of the directors, the controllers and any other person who effectively directs the business the undertaking is authorised to carry on is no longer a fit and proper person to ensure its sound and prudent management; or

(*f*) it receives a written request so to do from the authorised insurance or reinsurance undertaking; or

(*g*) the authorised insurance or reinsurance undertaking does not commence to carry on business pursuant to the authorisation within twelve months of its issue; or

(*h*) the authorised insurance or reinsurance undertaking no longer possesses sufficient own funds as determined in article 14; or

(*i*) the authorised insurance or reinsurance undertaking does not comply with the Minimum Capital Requirement and the competent authority considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement;

(*j*) the authorised insurance or reinsurance undertaking is likely to become unable to meet its obligations or can

no longer be relied upon to fulfil or satisfy its obligations towards insureds, policyholders, creditors or other interested persons; or

(*k*) close links exist between the authorised insurance or reinsurance undertaking and another person, and the competent authority is prevented from exercising its supervisory functions effectively either by reason of those close links or by reason of any law, regulation or administrative provision of a country outside Malta governing that other person, or by reason of difficulty in their enforcement; or

(*ka*) the authorised insurance undertaking fails to comply with the conduct of business requirements in relation to the distribution of an insurance-based investment product or in relation to the distribution of any insurance product other than an insurance-based investment product, set out in Conduct of Business Rules; or

(*l*) any of the circumstances under which the competent authority would have been precluded from issuing an authorisation under this Act, materialises itself or where under this Act it would have been entitled to refuse to issue such authorisation.

Notification of suspension or revocation of an authorisation. *Amended by: XXXIII. 2015.24; V.2020.27; XIX.2026.31.*

27. (1) Subject to the following provisions of this article, where the competent authority intends to suspend or revoke an authorisation pursuant to article 26, it shall give the undertaking concerned notice in writing setting out the reasons for its intention to do so.

(2) Every notice given under sub-article (1) shall state that the undertaking concerned may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than thirty days), make representations in writing to the competent authority giving reasons why the authorisation should not be suspended or revoked and the competent authority shall consider any representations so made before arriving at a final decision.

(3) The competent authority shall notify in writing its final decision to the undertaking concerned.

(4) An authorisation issued to a third country insurance or reinsurance undertaking may only be revoked after consultation with the overseas regulatory authority of the country of registration, incorporation or constitution, unless the competent authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(5) In the case of a suspension or a revocation of an authorisation of an undertaking whose head office is in Malta, the competent authority shall:

(*a*) notify the European regulatory authorities accordingly in order to enable them to take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories;

(*b*) inform accordingly the overseas regulatory authority of any state in which the undertaking or its subsidiaries are carrying on the business of insurance.

(6) The competent authority shall notify EIOPA of any revocation of authorisation in terms of this Act, including for the purpose of making it accessible on ESAP.

Power of the competent authority to protect the public interest. *Amended by: XVII. 2002.252; XIII. 2004.115; XII. 2006.94; XXXIII. 2015.25; V.2020.43.*

28. (1) Without prejudice to the powers conferred to the competent authority under article 26, the competent authority, may, where it is satisfied that sufficient serious circumstances exist, proceed to take any one or more of the following measures:

(*a*) require the undertaking forthwith to take such steps as the competent authority may consider necessary to rectify or remedy the matter;

(*b*) appoint a person to advise the undertaking in the proper conduct of its business;

(*c*) restrict the free disposal of the assets of the authorised insurance undertaking, to safeguard the interests of the insured persons;

(*d*) appoint a person to take charge of the assets of the undertaking, or any portion of them, for the purposes of safeguarding the interests of insureds, policyholders and legitimate creditors of the undertaking;

(*e*) appoint a person to assume control of the business of the undertaking either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, including to take the necessary action for the undertaking to be dissolved and wound up, as the competent authority may direct;

(*f*) issue an order for the dissolution and winding up of the undertaking or, in the case of a third country insurance or reinsurance undertaking, for the winding up of its business in Malta;

(*g*) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the undertaking;

(*h*) fix the remuneration to be paid by the undertaking to any person appointed under this article;

(*i*) do such other act or require the doing of such other thing as it may deem appropriate in the circumstances,

and having proceeded in any one or more of the manners aforesaid, the competent authority may further proceed in any one or more of such manners, whether in addition thereto or in substitution therefor.

(2) Where a person is appointed by the competent authority -

(*a*) under sub-article (1)(*b*), it shall be the duty of the undertaking to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;

(*b*) under sub-article (1)(*d*), the undertaking shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the undertaking in respect of those assets, whether exercisable by the undertaking in general meetings, or by the directors, or by any other person, including the legal and judicial representation of the undertaking, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;

(*c*) under sub-article (1)(*e*), the undertaking shall submit its business to the control of such person and shall provide him with such facilities as he may require the undertaking to provide him to carry on that business or to carry out the functions assigned to him under the said paragraph; and all the powers, functions and duties of the undertaking, whether exercisable by the undertaking in general meeting, or by the directors, or by any other person, including for the purposes of the dissolution and winding up of the undertaking as well as the legal and judicial representation of the undertaking in all matters, shall be exercisable by and vest in him to the exclusion of any other person;

(*d*) under sub-article (1)(*g*) such person shall be the liquidator of the undertaking for all purposes of law to the exclusion of any other person:

Provided that the competent person shall not take any decision for the purpose of the dissolution and winding up of the undertaking, unless the competent authority issues a directive to that effect in terms of article 31A of the Act, and any such directive may contain such instructions, requirements and conditions as the competent authority may consider necessary, including with regard to the mode of winding up.

(2A) Without prejudice to the powers of the competent authority in terms of sub-article (1), the competent authority may also submit an application to the court for the dissolution and winding up by the court of an undertaking, where it appears to the competent authority that an undertaking should be dissolved and wound up by the court for the reason set out in article 214(2)(b)(iii) of the Companies Act, and where the court accedes to the application, the relevant provisions of the Companies Act in relation to the dissolution and winding up by the court and any other applicable provisions of any other law shall apply.

Cap. 386.

(3) In the case of a third country insurance or reinsurance undertaking, the branches and offices in Malta of that undertaking shall, if the competent authority so directs and to the extent it so directs, be deemed to constitute a separate undertaking.

Cap. 330

(4) The provisions of article 16(8) of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the

competent authority under this Act, and any regulations made thereunder or any Insurance Rules.

(5) The competent authority may require the undertaking concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

(6) Any measure adopted in terms of sub-article (1) shall remain in force notwithstanding that an undertaking ceases to hold an authorisation licence for whatever reason, unless the competent authority otherwise directs.

PART VII

SUPERVISION OF AUTHORISED INSURANCE AND REINSURANCE UNDERTAKINGS

Substituted by: XXIII. 2015.26.

Power of the competent authority to require information. *Amended by: XVII. 2002.253; XXIII. 2015.27; XXVI.2018.70.*

29. (1) Without prejudice to anything contained in any other provision of this Act which requires an authorised insurance or reinsurance undertaking to furnish to the competent authority any information or documentation, the competent authority may, by notice in writing,require any such undertaking or any person who is or was carrying out business of insurance, or who appears to be or have been carrying on business of insurance, or who appears to be in possession of any relevant information and, or documentation to do all or any of the following:

(*a*) to furnish to it, at such time and place and in such form as it may specify, such information and documentation as it may require including existing telephone and existing data traffic records, with respect to the business such undertaking is authorised to carry on; or with respect to any person with whom the undertaking has close links;

(*b*) to furnish to it any information or documentation aforesaid verified in such manner and in such language, as it may specify;

(*c*) to attend before it, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such business as aforesaid.

(2) The competent authority may take copies of any documents furnished or provided under this article or extracts from them.

(3) Where an authorised insurance or reinsurance undertaking required to provide information or documentation under this article does not have the relevant information or documentation, it shall disclose to the competent authority where, to the best of its knowledge, that information or documentation is, and the competent authority may require any person, including a person to which the undertaking has outsourced any activities or functions, whether indicated as aforesaid or not, who appears to it to be in

possession of that information or documen-tation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642 of the Criminal Code.

Cap. 9.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under sub-article (1)(*c*), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

(8) Without prejudice to the other provisions of this article, an authorised insurance or reinsurance undertaking may be required by the competent authority to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act.

Cap. 204

Power of the competent authority to examine the affairs of authorised undertakings and service providers. *Amended by: XII. 2006.95; XXXIII. 2015.28; XXVI. 2018.71.* Cap. 386.

30. (1) Without prejudice to the provisions of the Companies Act relating to the investigation of undertakings, the competent authority may, whenever it deems it necessary or expedient, appoint one or more inspectors to investigate and report on the affairs of an authorised insurance or reinsurance undertaking and to report thereon to it.

(2) An inspector appointed under sub-article (1) -

(*a*) shall have and may exercise all the powers conferred on the competent authority by article 29, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;

(*b*) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his examination shall make a final report to the said authority.

(3) The competent authority may forward to the authorised insurance or reinsurance undertaking concerned a copy of any report, or any part thereof, made by an inspector in respect of its affairs.

(4) Where the affairs of an authorised insurance or reinsurance undertaking are under examination, it shall be the duty of all officers and agents of the undertaking to produce to an inspector all books and documents of or relating to the undertaking and otherwise to give to an inspector all assistance in connection with the examination which they are reasonably able to give; and if an

officer or an agent of the undertaking refuses to produce any books or documents which it is his duty under this article to produce, or refuses to answer any question which is put to him by an inspector with respect to the affairs of the undertaking, an inspector shall refer the matter to the competent authority and the competent authority shall thereupon enquire into the case and take appropriate action as it deems necessary.

(5) An inspector shall also be given access to any accounts, returns or other information relating to an authorised insurance or reinsurance undertaking whose affairs are under examination which are in the possession or under the control of the competent authority.

(6) Where the information relating to an authorised insurance or reinsurance undertaking is in any language other than Maltese or English, the competent authority or any inspector appointed by it, may require that such information be submitted in either the English or Maltese language.

(7) (*a*) Where an authorised insurance or reinsurance undertaking outsources a function or activity, the competent authority shall have effective access to the business premises of the service provider and must be able to exercise those rights of access.

(*b*) Where the service provider is located in a Member State or EEA State, other than Malta, the competent authority shall inform the appropriate authority of the Member State or EEA State of the service provider prior to conducting an on-site inspection at the premises of the service provider. In the case of a non-supervised entity, the appropriate authority shall be the European regulatory authority concerned. The competent authority may delegate such on-site inspections to the European regulatory authority of the Member State or EEA State where the service provider is located.

(8) Where the competent authority has informed the European regulatory authority that it intends to carry out an on-site inspection in accordance with sub-article (7), or where it carries out an on-site inspection in accordance with the said sub-article, where the competent authority is unable in practice to exercise its right to carry out that on-site inspection, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(9) The competent authority shall have the power to order that all expenses of, and incidental to, an examination pursuant to this article or such part thereof as it may deem appropriate, shall be paid by the undertaking concerned; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

(10) In this article, any reference to officers or to agents shall include a reference to former as well as present officers or agents and the expression "agents", in relation to an authorised insurance or reinsurance undertaking, shall include persons registered or enrolled under the Insurance Distribution Act, or registered with an authority or body in the Member State or EEA State responsible for the supervision of intermediaries and ancillary insurance intermediaries acting for the undertaking, the bankers, the auditors and, in the case of an undertaking authorised to carry on long term business, the actuary of the undertaking and a person as may be prescribed by regulations made for the purposes of article 18G.

Cap. 487.

(11) The powers available to the competent authority pursuant to articles 29 to 31A with regard to authorised insurance and reinsurance undertakings shall also be available with regard to the outsourced activities of such undertakings.

(12) The provisions of sub-article (7) shall apply *mutatis mutandis* where the service provider is located in a country outside Malta, which is not a Member State or EEA State.

Right of entry to obtain information and documents. *Amended by: XXXIII. 2015.29; V.2020.44.*

31. (1) Without prejudice to the provisions of the Companies Act, relating to the entry and search of premises, any officer, employee or agent of the competent authority, on producing, if required, evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 29 or whose affairs are being investigated under article 30, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the examination, and of exercising any of the powers conferred by the said articles.

Cap. 386.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in sub-article (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing evidence of his authority, enter any premises referred to in sub-article (1) for the purpose of obtaining there any information or documents specified in the notice, being information or documents that could have been required under such notice as is referred to in sub-article (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order:

Provided that, where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.

Power to issue directives.
Added by: XII. 2006.96.
Amended by: XXXIII. 2015.30; V.2020.45.

31A. (1) Without prejudice to any of the powers conferred to it under this Act, the competent authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances, and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive or any further directive:

Provided that the competent authority may give any such directive even where an undertaking, for whatever reason, ceases to hold an authorisation granted in terms of this Act:

Provided further that any directive given in terms of this article shall, unless the competent authority otherwise directs, continue to apply even when an undertaking, for whatever reason, ceases to hold an authorisation granted in terms of this Act.

(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may –

(*a*) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(*b*) require that any officer of an undertaking having functions in relation to the holder of an authorisation be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed, or removed and replaced, by another person acceptable to the competent authority.

(3) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(4) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

Supervisory review process.
Added by: XXXIII. 2015.31.

31B. (1) The competent authority shall review and evaluate the strategies, processes and reporting procedures which are established by authorised undertakings to comply with this Act, regulations made and Insurance Rules issued thereunder. This review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

(2) The competent authority shall in particular review and evaluate compliance with the following:

(*a*) the system of governance, including the own-risk and solvency assessment, as set out in article 18I;

(*b*) the technical provisions as provided for in article 18E;

(*c*) the capital requirements as provided for in articles 15 and 17;

(*d*) the investment rules as set out in Insurance Rules issued in terms of this Act;

(*e*) the quality and quantity of own funds as determined by Insurance Rules issued pursuant to article 14; and

(*f*) where the authorised insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Insurance Rules issued pursuant to article 15.

(3) The competent authority shall assess the adequacy of the methods and practices of the authorised insurance or reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

(4) The competent authority shall assess the ability of the authorised undertakings to withstand those possible events or future changes in economic conditions.

(5) Where the competent authority identifies any weakness or deficiency as a consequence of the supervisory review process, it shall request the insurance or reinsurance undertaking concerned to remedy such weakness or deficiency within such period and in such manner as it may deem necessary or appropriate in the circumstances.

(6) The reviews, evaluations and assessments referred to sub-articles (1) to (4), shall be conducted regularly and the competent authority shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

(7) In the case of events or future changes in economic conditions that could have unfavourable effects on the overall financial standing of authorised insurance or reinsurance undertakings, in addition to the calculation of the Solvency Capital Requirement, the competent authority may require undertakings to carry out such tests as may be determined to assess the ability of the undertakings concerned to withstand such events or future changes in economic conditions that could have unfavourable effects on their overall financial stability.

Power to set a capital add-on. *Added by: XXXIII. 2015.31.*

31C. (1) Following the supervisory review process carried out in terms of article 31B, the competent authority may, in exceptional circumstances, set a capital add-on for an authorised insurance or reinsurance undertaking stating the reasons for its decision. Such power shall be exercised in the following cases:

(*a*) where it concludes that the risk profile of the authorised insurance or reinsurance undertaking deviates significantly from the assumptions underlying

the Solvency Capital Requirement, as calculated using the standard formula in accordance with article 15; and

(i) the requirement to use an internal model under article 15(3) is inappropriate or has been ineffective; or

(ii) while a partial or full internal model is being developed in accordance with article 15(3);

(*b*) where it concludes that the risk profile of the authorised insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(*c*) where it concludes that the system of governance of an authorised insurance or reinsurance undertaking deviates significantly from the standards laid down in article 18I and Insurance Rules issued thereunder, that those deviations prevent the undertaking from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;

(*d*) the authorised insurance or reinsurance undertaking applies the matching adjustment or the volatility adjustment referred to in Articles 77b and 77d of the Solvency II Directive, respectively, or the transitional measures referred to in Articles 308c and 308d of the said Directive and the competent authority concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures; or

(*e*) in any of those circumstances as may be additionally specified by the Solvency II Directive.

(2) In the circumstances set out:

(*a*) in paragraphs (*a*) and (*b*) of sub-article (1), the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3) of the Solvency II Directive;

(*b*) in paragraph (*c*) of sub-article (1), the capital add-on shall be proportionate to the material risk arising from the deficiencies which gave rise to the decision of the competent authority to set the add-on; and

(*c*) in paragraph (*d*) of sub-article (1), the capital add-on shall be proportionate to the material risk arising from the deviation referred to in that paragraph.

(3) In the cases set out in paragraphs (*b*) and (*c*) of sub-article

(1), the authorised insurance or reinsurance undertaking shall remedy the deficiencies that led to the imposition of the capital add-on without delay.

(4) The competent authority shall review the capital add-on, at least once a year and it shall approve the removal of such capital add-on when the undertaking has remedied the deficiencies which led to its imposition.

(5) The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement:

Provided that, the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with sub-article (1)(*c*), for the purposes of the calculation of the risk margin referred to in Article 77(5) of the Solvency II Directive.

Information to be provided for supervisory purposes. *Amended by: XII. 2006.97. Substituted by: XXXIII. 2015.32. Amended by: XXVI.2018.72.*

32. An authorised insurance and reinsurance undertaking shall submit to the competent authority the information which is necessary for the purposes of supervision, taking into account the objectives of supervision, as may be specified by means of regulations, Insurance Rules or Conduct of Business Rules which shall also specify the period within which this information is to be submitted.

Added by: XXXIII. 2015.33.

PART VIIA

GROUP SUPERVISION

Group supervision. *Added by: XXXIII. 2015.33.*

32A. The competent authority shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group in accordance with regulations or Insurance Rules issued for the purposes of this Part.

Group supervisor. *Added by: XXXIII. 2015.33.*

32B. (1) The group supervisor of insurance and reinsurance undertakings which are part of a group, shall be responsible for co-ordination and the exercise of group supervision.

(2) For the purposes of this Part, "group supervisor" means the supervisory authority responsible for group supervision, determined in accordance with Article 247 of the Solvency II Directive.

(3) Where the competent authority is the group supervisor, it shall, with regard to group supervision, carry out the following functions:

(*a*) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the carrying out of the supervisory tasks of authorities responsible for the supervision of an individual insurance or reinsurance undertaking in the group;

(*b*) supervisory review and assessment of the financial situation of the group;

(*c*) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245 of the Solvency II Directive;

(*d*) assessment of the system of governance of the group, as set out in Article 246 of the Solvency II Directive, and of whether the board of directors of the participating undertaking fulfils the requirements of fitness and properness set out in Articles 42 and 257 of the Solvency II Directive;

(*e*) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

(*f*) other tasks, measures and decisions assigned to the competent authority, as group supervisor, by the Solvency II Directive or deriving from the application of that Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 of Solvency II Directive and leading the process for permitting the application of the regime established in Articles 237 to 240 of the said Directive.

(4) In order to facilitate the exercise of group supervision tasks, set out in sub-article (3), a college of supervisors shall be established. It shall be chaired by the competent authority where it is the group supervisor. The membership, functioning and consultation processes of the college of supervisors shall be determined by regulations or Insurance Rules.

Co-operation and exchange of information with respect to group supervision.

32C. (1) Where the competent authority is the group supervisor, it shall cooperate closely with the other authorities responsible for the supervision of individual insurance or reinsurance undertakings in a group, in particular, in cases where an insurance or reinsurance undertaking within the group encounters financial difficulties.

(2) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall cooperate closely with other responsible authorities in the group and the group supervisor, in particular, in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(3) Where the competent authority is the group supervisor or is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall -

(*a*) provide other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group with such information so as to allow and facilitate the exercise of the supervisory tasks concerned under the Solvency II Directive;

(*b*) communicate all relevant information to such authorities without delay, as soon as it becomes available or exchange information on request; and

(*c*) call immediately for a meeting of all the authorities involved in the supervision of the group, at least where -

(i) it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;

(ii) it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used, in Title III, Chapter II, Section I, Subsection 4 of the Solvency II Directive; or

(iii) other exceptional circum-stances are occurring or have occurred.

(4) Where one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group has not communicated relevant information, or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the competent authority may refer the matter to EIOPA.

(5) Where the group supervisor fails to carry out the tasks referred to in paragraph (1) of Article 248 of the Solvency II Directive, or where the members of the college of supervisors do not cooperate to the extent required by that sub-article, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) Where the competent authority is the group supervisor, it shall provide the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and EIOPA with information regarding the group in accordance with Article 19, Article 51(1) and Article 254(2) of the Solvency II Directive, in particular regarding the legal structure and the governance and organisational structure of the group.

(7) Without prejudice to Article 248 of the Solvency II Directive, the competent authority shall, where a decision is of importance for the supervisory tasks of the other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, prior to taking any decision,

consult the said authorities in the college of supervisors with regard to the following:

(*a*) changes in the shareholding structure, organisational or management structure of an authorised insurance and reinsurance undertaking which is part of a group and which requires the approval or authorisation of the competent authority;

(*b*) the decision on the extension of the recovery period in accordance with Article 138(3) and (4) of the Solvency II Directive;

(*c*) major sanctions or exceptional measures taken by the competent authority, including the imposition of a capital add-on to the Solvency Capital Requirement under article 31C and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement as determined in Insurance Rules made for the purposes of Title I, Chapter VI, Section 4, Subsection 3 of the Solvency II Directive.

(8) For the purposes of paragraph (b) and (c) of sub-article (7) and where the competent authority is not the group supervisor, the group supervisor shall always be consulted.

(9) Where the competent authority is considering a decision based on information received from other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall consult such authorities concerned before taking that decision.

(10) Without prejudice to Article 248 of the Solvency II Directive, the competent authority may decide not to consult other authorities in cases of urgency or where such consultation may jeopardise the effectiveness of its decision. In such a case, the competent authority shall without delay, inform the other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group.

(11) Where the competent authority is the group supervisor and requires information from an undertaking for the purposes of Article 254(2) of the Solvency II Directive, which has already been given to another authority responsible for the supervision of an individual insurance or reinsurance undertaking in a group, the competent authority shall, whenever possible, contact that authority to obtain such information.

(12) Where a parent undertaking has its head office in Malta and the competent authority is not the group supervisor pursuant to Article 247 of the Solvency II Directive, the competent authority shall, upon request by the group supervisor, require the parent undertaking to provide any relevant information for the exercise of group supervision as set out in Article 248 of the Solvency II Directive, and the competent authority shall transmit such information to the group supervisor.

(13) Where the competent authority is the group supervisor, it

may ask the European regulatory authority of a parent undertaking which has its head office in another Member State, to request such undertaking to submit any information which would be relevant for the exercise of its co-ordination rights and duties as set out in Article 248 of the Solvency II Directive, and to transmit it directly to the competent authority.

(14) Information received for the purposes of this article shall be treated as confidential and protected by the duty of professional secrecy.

Verification of information. *Added by: XXXIII. 2015.33.*

32D. (1) Without prejudice to article 30, the competent authority may carry out in Malta, itself or through a person appointed for that purpose, on-site verification of information as referred to in Article 254 of the Solvency II Directive on the premises of any of the following:

(*a*) an insurance or reinsurance undertaking which is subject to group supervision;

(*b*) related undertakings of the undertaking referred to in paragraph (*a*);

(*c*) parent undertakings of the undertaking referred to in paragraph (*a*);

(*d*) related undertakings of a parent undertaking of the undertaking referred to in paragraph (*a*).

(2) Where the competent authority requires, in specific cases, to verify information concerning an undertaking, whether regulated or not, which forms part of a group and is situated in another Member State, the competent authority shall:

(*a*) request the European regulatory authority to enable the competent authority to carry out the on-site verification itself; or

(*b*) request the European regulatory authority to carry out such verification on its behalf, or to appoint an auditor or an expert to carry out such verification; or

(*c*) in cases where it does not carry out the on-site verification itself, request to participate in the carrying out of such verification.

(3) Where the competent authority receives, in specific cases, a request by a European regulatory authority to verify the information concerning an undertaking situated in Malta, whether regulated or not, which is part of a group, the competent authority shall act upon that request either by carrying out the on-site verification itself, by allowing an auditor or expert to carry it out, or by allowing the European regulatory authority which made the request to carry it out itself, and such authority may, where it does not carry out such verification itself, participate in the on-site verification.

(4) Where the competent authority has received a request pursuant to sub-article (3), it shall inform the group supervisor of the action taken pursuant to sub-article (3).

(5) Where the request to a European regulatory authority to have a verification carried out in accordance with sub-article (2) has not been acted upon within two weeks, the competent authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) For the purposes of sub-articles (2) and (3), in accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examinations where they are carried out jointly by the competent authority and any one or more European regulatory authorities.

32E. Deleted by *XXVI.2018.73*.

Parent undertakings outside the Union: verification of equivalence. *Added by: XXXIII. 2015.33.*

32F. Deleted by *XXVI.2018.73*.

Parent undertaking as a mixed-activity insurance holding company. *Added by: XXXIII. 2015.33.*

PART VIII

TRANSFER OF BUSINESS OF INSURANCE

Transfer of general business. *Amended by: XX. 2007.130; XXXIII. 2015.34.*

33. (1) Where it is proposed to carry out a scheme under which an authorised insurance undertaking ("the transferor"), is to transfer to another undertaking, whether authorised thereunder or not ("the transferee") all its rights and obligations under such general business policies, or general business policies of such descriptions, as may be specified in the scheme, and -

(*a*) where the transferor is an undertaking whose head office is in Malta, the performance by it of the obligations proposed to be transferred constitutes the carrying on of business of insurance in or from Malta or in or from a country outside Malta; or

(*b*) where the transferor is a third country insurance undertaking, the performance by it of the obligations proposed to be transferred constitutes business of insurance in or from Malta,

the transferor shall apply to the competent authority for its approval of the scheme.

(2) The competent authority shall not determine an application made under sub-article (1) unless it is satisfied that -

(*a*) a notice approved by it for the purpose has been published -

(i) in at least two local daily newspapers of which one is published in the Maltese language and the other in the English language; and the text of the notice shall be in Maltese in the Maltese daily and in English in the English daily;

(ii) where the transferor is an undertaking which carries on business from Malta or in or from a country outside Malta and, as regards any policy

included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta, in two daily newspapers in the country where the risk is situated;

(*b*) except in so far as the competent authority has otherwise directed, a copy of the notice has been sent by the transferor to every policyholder affected by the scheme and every other person who claims an interest in a policy included in the proposed transfer and has given notice of his claim to the transferor;

(*c*) copies of a statement setting out particulars of the transfer and approved for the purpose by the competent authority have been available for inspection -

(i) at each of the branches, agencies and offices of the transferor in Malta;

(ii) except in so far as the competent authority has otherwise directed, where the transferor is an undertaking which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta, at one or more places in the country where the risk is situated,

for a period of not less than thirty days beginning with a date to be determined by the competent authority.

(3) The notice referred to in sub-article (2) shall include a statement that written representations concerning the transfer may be sent to the competent authority within a period to be specified by the competent authority; and the competent authority shall not determine the application until after considering any representations made to it before the specified day.

(4) The competent authority shall not approve a transfer on an application made under sub-article (1) unless it is satisfied that -

(*a*) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on general business of the class or classes or part classes to be transferred under the scheme;

(ii) the transferee is, or immediately after the approval will be, authorised under Article 14 or Article 162 of the Solvency II Directive to carry on general business of the class or classes or part classes to be transferred under the scheme in a Member State or EEA State; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii) of this paragraph, the transferee has the authorisation required to

enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred, or will have it before the scheme takes effect; and

(*b*) (i) the transferee referred to in sub-paragraph (i) of paragraph (*a*) of this sub-article possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (*a*) of this sub-article possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement provided for in Article 100 of the Solvency II Directive; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred; and

(*c*) (i) if the transferee is an undertaking authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(ii) if the transferee is a European insurance undertaking, the transferee's financial resources are consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; or

(iii) if the transferee is a third country insurance undertaking, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; and

(*d*) if the transferor is an undertaking whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State -

(i) the European regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and

(ii) the European regulatory authority has either responded or the period of three months beginning with the consultation has elapsed;

(*e*) if the transferor is an undertaking which carries on

business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta -

(i) the European regulatory authority in the country where the risk is situated has been notified of the proposed transfer; and

(ii) the overseas regulatory authority where the risk is situated has been notified of the proposed transfer; and

(iii) either the European regulatory authority or the overseas regulatory authority has consented to the transfer or the European regulatory authority or the overseas regulatory authority has not refused its consent to the transfer within the period of three months beginning with the date of the notification.

(5) On determining an application made under sub-article (1), the competent authority shall -

(*a*) publish a notice of its decision in such manner as it may think fit; and

(*b*) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in sub-article (2),

and if it refuses the application it shall inform the transferor and the transferee in writing of the reasons for its refusal.

Effect of approval under article 33. *Amended by: XXXIII. 2015.35.*

34. (1) Subject to sub-article (2), a scheme giving effect to a transfer approved by the competent authority under article 33 shall be effectual in law -

(*a*) to transfer to the transferee all the transferor's rights and obligations under the policies included in the transfer scheme; and

(*b*) if the scheme so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(2) A transfer approved by the competent authority shall automatically be valid against policyholders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

(3) Except in so far as the competent authority may otherwise direct, a policyholder whose policy is included in such a scheme shall be given written notice of its carrying out by the transferee.

Transfer of long term business. *Amended by: XX. 2007.131; XXXIII. 2015.36.*

35. (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an authorised insurance undertaking under this Act ("the transferor"), is to be transferred to another undertaking whether authorised thereunder or not ("the transferee"), and -

(*a*) where the transferor is an undertaking whose head office is in Malta, the business proposed to be transferred is business carried on in or from Malta or in or from a country outside Malta;

(*b*) where the transferor is a third country insurance undertaking, the business proposed to be transferred is business carried on in or from Malta,

the transferor or the transferee shall, by application filed before the Financial Services Tribunal, request approval of the scheme. Approval by the Tribunal shall be in accordance with the provisions of this article.

(2) The Tribunal shall not determine an application filed before it under sub-article (1) unless -

(*a*) the application is accompanied by a report on the terms of the scheme by an independent actuary; and

(*b*) the Tribunal is satisfied that the requirements of sub-article (3) have been complied with.

(3) The requirements referred to in sub-article (2)(*b*) are -

(*a*) a notice stating that the application has been made and giving the addresses of the branches, agencies and offices at which, and the period for which, copies of the documents mentioned in paragraph (*d*) will be available as required by that paragraph has been published -

(i) in at least two local daily newspapers of which one is published in the Maltese language and the other in the English language; and the text of the notice shall be in Maltese in the Maltese daily and in English in the English daily;

(ii) where the transferor is an undertaking which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, in two daily newspapers in that country;

(*b*) except in so far as the Tribunal has otherwise directed, a statement -

(i) setting out the terms of the scheme, and

(ii) containing a summary of the report mentioned in sub-article (2)(*a*) sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term business policyholders of the undertakings concerned,

has been sent to each of those policyholders and every other person who claims an interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor;

(*c*) a copy of the application, of the report mentioned in sub-article (2)(*a*) and of any statement sent out under paragraph (*b*) of this sub-article has been served on the competent authority and that a period of not less than thirty days has elapsed since the date of service;

(*d*) copies of the application and of the report mentioned in sub-article (2)(*a*) have been open to inspection -

(i) at each of the branches, agencies and offices in Malta of the undertakings concerned;

(ii) where the transferor is -

(*aa*) an undertaking whose head office is in Malta which carries on business from Malta or in or from a country outside Malta, or

(*bb*) a third country insurance undertaking which carries on business from Malta,

and, as regards any policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, at such place in that country as the Tribunal has directed; for a period of not less than thirty days beginning with a date to be determined by the Tribunal; and that copies of the report have been made available for purchase from those offices and places during that period upon payment of such fee as may be fixed by the Tribunal; and

(*e*) the notice and the statement referred to in this sub-article shall state that written representations concerning the transfer may be sent to the Tribunal within a period determined by the Tribunal.

(4) On any application filed under sub-article (1):

(*a*) the competent authority may be heard by the Tribunal; and

(*b*) the competent authority and any policyholder who alleges that he would be adversely affected by the carrying out of the scheme and every other person who claims an interest in a policy included in the proposed transfer and has given notice of such interest to the transferor, shall be entitled to make written representations..

(5) Subject to sub-article (6), the Tribunal shall not approve a transfer on an application filed before it under sub-article (1) unless it is satisfied that -

(*a*) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on long term business of the class or

classes to be transferred under the scheme;

(ii) the transferee is, or immediately after the approval will be, authorised under Article 14 or Article 162 of the Solvency II Directive, to carry on long term business of the class or classes to be transferred under the scheme in a Member State or an EEA State; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii), the transferee has the authorisation required to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and

(*b*) (i) the transferee referred to in sub-paragraph (i) of paragraph (*a*) of this sub-article, produces evidence that after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (*a*) of this sub-article, produces evidence that after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement provided for in Article 100 of the Solvency II Directive; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii), the transferee possesses, or will possess before the scheme takes effect, the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred;

(iv) (*aa*) if the transferee is authorised under this Act, its financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(*bb*) if the transferee is a third country insurance undertaking, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred;

(*c*) if the transferor is an undertaking whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State -

(i) the European regulatory authority in that Member State or EEA State has been consulted

about the proposed transfer; and

(ii) the European regulatory authority has either responded or the period of three months beginning with the consultation has elapsed.

(6) Where the transferor is an undertaking which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, the Tribunal shall not approve the transfer unless the competent authority certifies -

(*a*) that the European regulatory authority in that country has been notified; or

(*b*) the overseas regulatory authority has been notified of the proposed transfer; and

(*c*) either that the European regulatory authority or the overseas regulatory authority has consented to the scheme or that any such authority has not refused its consent to the scheme within the period of three months beginning with the date of the notification.

(7) Where a scheme is approved by the Tribunal under this article the transferee shall, within ten days from the date on which the approval is made or such longer period as the Tribunal may allow, deposit two office copies of the approval with the competent authority.

Provisions supplementary to article 35. *Amended by: XXXIII. 2015.37.*

36. Where the Tribunal approves a scheme under article 35, the long term business referred to in the application may be transferred to the transferee without any further need of any document evidencing the consent of the policyholder and of every other person who claims an interest in a policy included in the proposed transfer and notwithstanding any opposition by the policyholder and every other person who claims an interest in a policy included in the proposed transfer. The Tribunal may make provision for such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out; and, where such be the case, for the continuation by or against the transferee of any legal proceedings pending by or against the transferor which relate to the scheme.

Transfer of business restricted to reinsurance. *Amended by: XVII. 2002.254. Deleted by: XII. 2009.98. Added by: XX. 2007.132. Amended by: XXXIII. 2015.38.*

37. Where an undertaking authorised under this Act carrying on business restricted to reinsurance ("the transferor") proposes to transfer all or part of its business, the competent authority shall not approve a transfer unless it is satisfied that:

(*a*) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on business of reinsurance;

(ii) the transferee is, or immediately after the approval will be, authorised under Article 14 or 162 of the Solvency II Directive, to carry on in a Member State or an EEA State, business of reinsurance to be transferred under the scheme;

or

(iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee has the authorisation required (if any) to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and

(*b*) (i) the transferee referred to in sub-paragraph (i) of paragraph (*a*) possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (*a*) possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 or 166 of the Solvency II Directive; or

(iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee satisfies the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred;

(*c*) (i) if the transferee is an undertaking authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by or under this Act;

(ii) if the transferee is a third country reinsurance undertaking, the transferee's financial resources are, consequential to the transfer, adequate to fulfil (if any) the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred.

Transfer of business of insurance to an authorised insurance or reinsurance undertaking. *Added by: XXXIII. 2015.39.*

37A. (1) Where it is proposed to carry out a transfer of business of insurance under which the whole or part of the general business or long term business of an insurance or reinsurance undertaking is to be transferred to an undertaking authorised under this Act ("the transferee") by an undertaking whose head office is in a country outside Malta, the transferee shall notify the competent authority of the particulars of the proposed transfer and no such transfer shall take place unless and until the competent authority has signified its consent in writing.

(2) Where the competent authority has required a recovery plan or a finance scheme in terms of article 16 or 18, it shall refrain from issuing a certificate of solvency for the purposes of this Part of this Act for as long as it considers that the rights of policyholders or the contractual obligations of the reinsurance undertaking are prejudiced.

PART IX

ACQUISITION AND DISPOSAL OF SHARES, WITHDRAWAL, DISSOLUTION AND WINDING UP

Changes in shareholding of an authorised undertaking.
Amended by: XVII. 2002.255; XIII. 2004.116; XII. 2006.99; XX. 2007.133; III. 2009.26. Substituted by: XVII. 2009.31. Amended by: XXXIII. 2015.40, 77.

38. (1) Notwithstanding anything contained in any other law, any person or persons acting in concert (hereinafter referred to in this Act as the "proposed acquirer"), who have taken a decision either to -

(*a*) acquire, directly or indirectly, a qualifying shareholding in an authorised insurance or reinsurance undertaking;

(*b*) increase, directly or indirectly, an existing shareholding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an authorised insurance or reinsurance undertaking; or

(*c*) further increase, directly or indirectly, such qualifying shareholding in an authorised insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed twenty per centum, thirty per centum or fifty per centum or so that the authorised insurance or reinsurance undertaking would become its subsidiary,

(hereinafter referred to as the "proposed acquisition"), shall notify the competent authority in writing of any such decision, indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by Insurance Rules require, including the form in which such notification shall be made and the criteria adopted by the competent authority in determining whether such person is a fit and proper person.

(2) Notwithstanding anything contained in any other law, any person who has taken a decision either to -

(*a*) dispose, directly or indirectly, of a qualifying shareholding in an authorised insurance or reinsurance undertaking;

(*b*) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding; or

(*c*) reduce, directly or indirectly, a qualifying shareholding so that the proportion of the voting rights or of the capital held would fall below twenty per centum, thirty per centum or fifty per centum or so that the authorised insurance or reinsurance undertaking would cease to be its subsidiary,

shall notify the competent authority in writing of any such decision indicating the size of the intended shareholding and providing any relevant information as and in the manner that the competent authority may by Insurance Rules require.

(3) Sub-articles (1) and (2) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated

market.

(4) Notwithstanding the provisions of sub-articles (1) and (2), it shall be the duty of an authorised insurance or reinsurance undertaking and of the directors thereof, to notify the competent authority forthwith upon becoming aware that any person intends to take any of the actions set out in these sub-articles.

(5) If any person or any authorised insurance or reinsurance undertaking takes or intends to take any action set out in sub-article (1) or (2) without notifying the competent authority or obtaining its approval in terms of article 38A, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

(*a*) restraining such person or authorised insurance or reinsurance undertaking from taking, or continuing with, such action;

(*b*) declaring such action to be void and of no effect;

(*c*) requiring such person or authorised insurance or reinsurance undertaking to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(*d*) restraining such person or authorised insurance or reinsurance undertaking from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(*e*) restraining such person or authorised insurance or reinsurance undertaking from taking any similar action or any other action within the categories set out in sub-articles (1) and (2).

(6) Without prejudice to any other provision of this Act, where the influence exercised by any person acquiring or proposing to acquire a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an authorised insurance or reinsurance undertaking, the competent authority may exercise any of its powers under this Act to put an end to such situation, including the power to issue directives as it may deem reasonable in the circumstances.

(7) In the case of a third country insurance or reinsurance undertaking authorised under this Act to carry on in or from Malta the business of insurance, the provisions of this article shall apply to the extent only of requiring such undertaking to give to the competent authority, not later than thirty days from such change or occurrence, as the case may be, the information therein referred to.

(8) The competent authority, may, by means of Insurance Rules issued under this Act, indicate the circumstances when persons are to be regarded as "acting in concert".

Assessment procedure.
Added by: XVII. 2009.32.
Amended by: XXXIII.2015.41,77 XXVI.2018.74.

38A. (1) The competent authority shall, promptly and in any event within two working days following receipt of the notification required under article 38(1), as well as following the possible subsequent receipt of the information referred to in sub-article (4), acknowledge receipt thereof in writing to the proposed acquirer.

(2) The competent authority shall have a maximum of sixty working days as from the date of the written acknowledgement of receipt of the notification required under article 38(1) and all documents required by the competent authority to be attached to such notification (hereinafter referred to in this Act as the "assessment period") to carry out an assessment on the basis of such information as may be determined by Insurance Rules issued for this purpose.

(3) The competent authority shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

(4) The competent authority may, during the assessment period, if necessary and no later than on the fiftieth working day of such period, request any further information that is necessary to complete the assessment. Such a request shall be made in writing and shall specify the additional information needed.

(5) During the period between the date of request for additional information by the competent authority and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption period shall not exceed twenty working days. Any further requests by the competent authority for completion or clarification of the information shall be at its discretion but shall not result in an interruption of such assessment period.

(6) The competent authority may extend the interruption period referred to in sub-article (5) up to thirty working days if the proposed acquirer is:

(*a*) situated or regulated in a non-Member State or non-EEA state; or

(*b*) a person not subject to supervision under:

(i) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast);

(ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;

(iii) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of laws, regulations and administrative provisions relating to

undertakings for collective investment in transferable securities (UCITS)(recast);

(iv) the Solvency II Directive.

(7) The competent authority shall, upon completion of the assessment referred to in sub-article (2) and not later than the date of the expiry of the assessment period, issue a notice:

(*a*) granting unconditional approval to the proposed acquisition;

(*b*) granting approval to the proposed acquisition subject to such conditions as the competent authority may deem appropriate; or

(*c*) refusing the proposed acquisition.

(8) In making the assessment referred to in sub-article (2), the competent authority shall neither impose any prior conditions in respect of the level of shareholding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(9) The competent authority may refuse the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in the Insurance Rules referred to in article 38(1) or if the information provided by the proposed acquirer is incomplete.

(10) If the competent authority decides to refuse the proposed acquisition, it shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing specifying the reasons for such decision. The competent authority may, whether at the request of such proposed acquirer or not, issue a public statement indicating such reasons.

(11) If the competent authority does not refuse the proposed acquisition in writing within the assessment period, such proposed acquisition shall be deemed to be approved.

(12) Without prejudice to any other measure which may be taken under this Act, where a qualifying shareholding in an authorised insurance or reinsurance undertaking is acquired notwithstanding the refusal of the competent authority, the exercise of the corresponding voting rights shall be suspended and any of the votes cast in contravention of this article shall be null and void.

(13) The competent authority may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

(14) Notwithstanding the provisions of sub-articles (1) to (6), where two or more proposals to acquire or increase qualifying shareholdings in the same authorised insurance or reinsurance undertaking have been notified to the competent authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Co-operation with European regulatory authorities or overseas regulatory authorities.
Added by: XXVII. 2009.33.
Amended by: XXXIII. 2015.42.

38B. (1) The competent authority shall work in full consultation with European regulatory authorities when carrying out the assessment referred to in article 38A if the proposed acquirer is one of the following:

(*a*) a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed;

(*b*) the parent undertaking of a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed; or

(*c*) a person controlling a credit institution, insurance undertaking, reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed.

(2) The competent authority shall, without undue delay, provide any information which is essential or relevant for the assessment referred to in article 38A to the European regulatory authority requesting such information. Upon request, the competent authority shall communicate to the European regulatory authority all relevant information and shall communicate on its own initiative all essential information. A decision by the competent authority in terms of article 38A shall indicate any views or reservations expressed by the European regulatory authority responsible for the proposed acquirer.

(3) The procedure set out in sub-articles (1) and (2) shall apply *mutatis mutandis* where the proposed acquirer is authorised or established in a third country.

Mergers, reconstructions, divisions and changes in share capital or voting rights.
Added by: XXVII. 2009.34.
Amended by: XXXIII. 2015.43.

38C. (1) Notwithstanding anything contained in any other law and without prejudice to article 38(1) and (2), the consent of the competent authority given in writing shall be required before an authorised undertaking may lawfully:

(*a*) merge with any other undertaking, whether authorised under this Act or not;

(*b*) undergo any reconstruction or division; or

(*c*) increase or reduce its nominal or issued share capital or effect any material change in voting rights.

(2) It shall be the duty of all directors and qualifying shareholders of an authorised undertaking to notify the competent authority forthwith in writing upon becoming aware that such undertaking intends to take any of the actions set out in sub-article (1).

(3) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever is the later, the competent authority

shall issue a notice -

(*a*) granting unconditional consent to the taking of the action;

(*b*) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or

(*c*) refusing consent to the taking of the action,

and if it refuses to grant consent it shall inform the person or the authorised undertaking concerned in writing of the reason for its refusal.

(4) If any person or any authorised undertaking takes or decides to take any action set out in sub-article (1) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order:

(*a*) restraining such person or authorised undertaking from taking or continuing with such action;

(*b*) declaring such action to be void and of no effect;

(*c*) requiring such person or authorised undertaking to take such steps as may be necessary to restore the position existing immediately before the action was taken;

(*d*) restraining such person or authorised undertaking from exercising any rights which such action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;

(*e*) restraining such person or authorised undertaking from taking any similar action or any other action within the categories set out in sub-article(1).

Undertakings ceasing to carry on business. *Amended by: XVII. 2002.256; XII. 2006.100; XXXIII. 2015.44, 77.*

39. (1) Subject to the following provisions of this article, if an authorised insurance undertaking intends to cease either wholly or partly to carry on the business it is authorised to carry on, such undertaking shall, not later than six months before the date on which it intends to cease to carry on such business, give notice thereof in writing to the competent authority and the authorised insurance undertaking shall comply with any provision of this Act that may be required of it in such circumstances.

(2) Where an authorised insurance undertaking gives notice to the competent authority under sub-article (1), the competent authority -

(*a*) shall require the undertaking to -

(i) give publicity to the matter, amongst its policyholders and in the press in the form and manner as may be determined by Insurance Rules made for the purpose of this article;

(ii) discharge all its liabilities to its policyholders

and creditors in a manner acceptable to the competent authority;

(iii) appoint a person which shall service or, as the case may be, run-off such business; and

(*b*) may require the undertaking to ascertain that its technical provisions meet the requirements of article 18E.

(3) The competent authority shall, not later than thirty days before the proposed date on which an authorised insurance undertaking as aforesaid intends to cease to carry on the business it is authorised to carry on, issue a permit to the authorised insurance undertaking concerned -

(*a*) authorising it to cease to carry on such business and to service or run-off that business, as from a specified date;

(*b*) specifying the conditions under which such service or run-off shall be carried out; and

(*c*) authorising a person to carry out such service or run-off.

Undertakings carrying out servicing or run-off of business of insurance. *Amended by: XXXIII. 2015.45.*

40. Every authorised insurance undertaking issued under article 39 with a permit authorising it to cease to carry on the business it is authorised to carry on shall not, as from the date specified in the permit ("the specified date"), effect and carry out any new contracts of insurance in the business mentioned in the permit but shall -

(*a*) in the case of long term business, service or cause the person named in the permit to service on its behalf;

(*b*) in the case of general business run-off or cause the person named in the permit to run-off on its behalf,

contracts of insurance effected and carried out by it before the specified date.

Reinsurance undertakings ceasing and carrying out servicing or run-off of business of insurance. *Added by: XXXIII. 2015.46.*

40A. The provisions of articles 39 and 40 shall apply *mutatis mutandis* to undertakings whose business is restricted to reinsurance.

Reorganisation, dissolution and winding up of authorised undertakings. *Amended by: XVII. 2002.257; XIII. 2004.117; XX. 2007.134; XXXIII. 2015.47; XXVI.2018.75.*

41. (1) Without prejudice to the provisions contained in article 42 and subject to the following provisions of this article -

(*a*) in the case of an authorised insurance undertaking whose head office is in Malta:

(i) where any reorganisation measures are adopted in relation to the undertaking, such measures shall be applied in accordance with regulations made for the purposes of this article;

(ii) such undertaking shall, dissolve and consequentially wind up under and in

accordance with regulations made under this article; and

(*b*) in the case of a branch in Malta of an authorised third country insurance undertaking:

(i) where any reorganisation measures are adopted in relation to the branch, such measures shall be applied in accordance with regulations made for the purposes of this article;

(ii) such branch shall dissolve and consequentially wind up under and in accordance with regulations made for the purposes of this article.

(2) Where it appears to the competent authority that an authorised insurance undertaking is, for any reason whatever, likely to dissolve and wind up, or has given notice of dissolving and winding up, or is being dissolved and wound up, the competent authority shall -

(*a*) in the case of an undertaking whose head office is in Malta, prohibit the free disposal of the assets of the undertaking whether such assets are situated in Malta or in country outside Malta; and

(*b*) in the case of an authorised third country insurance undertaking, prohibit the free disposal of the assets of the undertaking situated in Malta or in any other country if such assets relate to the undertaking's business in Malta,

if such prohibition has not been imposed on the insurance undertaking by virtue of or under any other provision of this Act.

(3) Notwithstanding the provisions of any other law, the assets of an authorised insurance undertaking which are prohibited under sub-article (2) or by virtue of or under any other provision of this Act to be freely disposed of shall be available only for meeting the liabilities of the undertaking attributable to its business of insurance:

Provided that debts and other liabilities arising out of contracts of insurance attributable to its business of insurance shall rank before any other claim against such assets.

(4) Where the value of the assets mentioned in sub-article (3) exceeds the amount of the liabilities mentioned in that sub-article the restriction imposed by that sub-article shall not apply to so much of those assets as represents the excess.

(5) In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall prevail, and the provisions of any other law shall, to the extent of the inconsistency, not apply to such undertakings.

(6) The Minister may, after consultation with the competent authority, make regulations in respect of the winding-up or re-organisation of authorised insurance undertakings whose head office is in Malta, including their branches, if any, and of branches of third country insurance undertakings, and different provisions

may be made for different cases or classes of cases, and account shall be taken of Malta's international commitments in this regard. Such regulations may provide for the implementation of detailed re-organisation measures and procedures, including the following matters: the publication and submission of information in such language or languages and in such newspapers or other publications as may be prescribed, the submission of information to creditors, and the manner and procedure thereof, the notification to creditors and the procedure for the submission of claims or representations, measures for the protection of the rights of creditors and other third parties, including set-off arrangements; consultation between the competent authority and any other regulatory, administrative or judicial authorities in Malta and outside Malta with competence over the winding-up or re-organisation of such undertakings or of branches thereof; the publication of decisions relating to such winding-up or re-organisation procedures; the establishment of rules governing the applicability of the proper or applicable law and other issues of conflict of laws.

(7) Where an authorised insurance or reinsurance undertaking takes a decision to dissolve and wind up, it shall immediately notify, in writing, the competent authority of such decision before taking any further action to that effect.

(8) (*a*) An authorised reinsurance undertaking with its head office in Malta shall dissolve and wind up in accordance with the provisions of the Companies Act.

Cap. 386.

(*b*) An authorised third country reinsurance undertaking shall dissolve and wind up in accordance with the laws of the country where the head office of such undertaking is situated governing the dissolution and winding up of such undertakings.

Dissolution and winding up of an authorised undertaking carrying on long term business. *Amended by: XXXIII. 2015.48.*

42. (1) An authorised undertaking whose head office is in Malta, carrying on long term business may not be dissolved and consequently wound up voluntarily without the consent of the competent authority.

(2) It shall be the duty of an authorised undertaking and the directors thereof, to notify the competent authority forthwith upon becoming aware of any measures to be taken in terms of sub-article (1).

(3) Without prejudice to the provisions contained in article 41, in the event of an undertaking as aforesaid being dissolved and wound up -

(*a*) the assets representing the technical provisions maintained by the undertaking in respect of its long term business shall be available only for meeting the liabilities of the undertaking attributable to that business;

(*b*) the other assets of the undertaking shall be available only for meeting the liabilities of the undertaking attributable to its other business.

(4) Where the value of the assets mentioned in either paragraph (*a*) or (*b*) of sub-article (3) exceeds the amount of the liabilities mentioned in either paragraph, the restriction imposed by that sub-article shall not apply to so much of those assets as represents the excess.

PART X

Substituted by: XXVI.2018.76.

OBLIGATIONS ON UNDERTAKINGS

Changes in documentation or information. *Amended by: XVII. 2002.258; XII. 2006.101; XVII. 2009.35; XXXIII.2015.49;77 XXVI.2018.77.*

43. (1) The holder of an authorisation issued under this Act to carry on the business of insurance and the holder of a permit issued thereunder to service or run-off that business shall notify in writing the competent authority of any material changes in the documentation or information provided or required to be provided by or under this Act and any regulations, Insurance Rules or Conduct of Business Rules made thereunder, as soon as the holder becomes aware of such changes.

(2) Without prejudice to article 38, an authorised insurance or reinsurance undertaking whose head office is in Malta shall -

(*a*) before making any addition or alteration to the memorandum or articles of association or other instrument constituting the undertaking, submit in writing to the competent authority particulars of the proposed addition or alteration for its prior consent; and no such addition or alteration shall be made or shall be registered, or shall take effect, whether it is registered or not, unless and until the competent authority has signified its consent in writing; and

(*b*) at least once a year, inform the competent authority of the names of the persons holding a qualifying shareholding in the undertaking and the percentage of such holding; and the competent authority may, by Insurance Rules made for the purposes of this article, determine the form, manner and content of the information to be forwarded to it and the date by which such information shall be forwarded shall also be established by that rule.

(3) Without prejudice to the foregoing provisions of this article, an authorised insurance or reinsurance undertaking shall notify the competent authority on a continuous basis, with any change or circumstances which may give rise to the existence of close links.

Statutory notice by an authorised undertaking in relation to long term policy. *Amended by: XIII. 2006. 102; XXXIII. 2015.50.*

44. (1) No insurance undertaking authorised under this Act to carry on long term business shall enter into a contract of insurance the effecting of which constitutes the carrying on of long term business, unless such undertaking either -

(*a*) has served on the other party to the contract by means as may be prescribed a statutory notice in relation to that contract; or

(*b*) does so at the time when the contract is entered into.

(2) Regulations under this article may be made with respect to any matter related to a statutory notice; and the regulations may exempt from any requirement contracts as may therein be prescribed.

(3) For the purposes of this article a statutory notice is a notice which -

(*a*) contains such matters (and no others) and is in such form as may be prescribed and complies with such requirements as may be prescribed for securing that the notice is easily intelligible; and

(*b*) has annexed to it a form of notice of cancellation of a description as may be prescribed for serving by means as may be prescribed a notice of cancellation on the authorised undertaking.

Linked long term policies. *Amended by: XXXIII. 2015.51.*

45. Regulations may be made, as respects the matters as may therein be prescribed, in relation to contracts of insurance the effecting of which constitutes the carrying on of long term business and which -

(*a*) are entered into by an insurance undertaking whose head office is in Malta authorised under this Act to carry on long term business; and

(*b*) are contracts under which the benefits payable to the policyholder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

Contracts of insurance not voidable by insurer notwithstanding a breach of this Act or of the Insurance Distribution Act. *Substituted by: XII. 2006.103. Amended by: XXXIII. 2015.77; XXVI.2018.78.* Cap. 487.

46. No contract of insurance shall be held void or voidable by an insurer by reason only that, at the time the contract is entered into, there is a breach of any provision of this Act or of the Insurance Distribution Act, (in this article referred to as "the Act") and of any regulations made under this Act or under the Act, or of any Insurance Rules or Conduct of Business Rules issued in virtue of this Act, or of any Insurance Distribution Rules or Conduct of Business Rules issued in virtue of the Act.

Contracts to be expressed in a specified language. *Amended by: XVII. 2002.259; XII. 2006.104; XXXIII.2015.52,77 XXVI.2018.79.*

47. (1) The competent authority may by Conduct of Business Rules made for the purposes of this article determine the language in which a contract of insurance relating to a risk which is a risk situated in Malta or to a commitment where Malta is the country of the commitment of a class or classes or part classes of business as may therein be specified is to be expressed.

(2) In the absence of any such Conduct of Business Rules, the contract shall be expressed in the English language.

(3) The provisions of this article shall not apply to an undertaking whose business in or from Malta is restricted to reinsurance.

Insurance advertisements. *Amended by: XVII. 2002.259; XII. 2006.105; XXXIII.2015.53,77 XXVI.2018.80.*

48. (1) No insurance undertaking authorised under this Act shall issue or cause to be issued any advertisement or carry out or cause to be carried any promotional activity related to the business of insurance which misleads, or directly or by implication is likely to mislead, or deceive any prospective policyholder, or the insurance sector in general, or the general public with respect to its assets or corporate structure or financial standing or authorisation or any other material respect:

Provided that, in the case of an undertaking whose head office is in Malta, the provisions of this sub-article shall also apply with respect to -

(*a*) an advertisement issued or caused to be issued; and

(*b*) a promotional activity as aforesaid carried out or caused to be carried out,

from Malta or in or from a country outside Malta.

(2) The competent authority may by Conduct of Business Rules made for the purposes of this article determine the form and content of insurance advertisements and make different provision in relation to insurance advertisements of different classes or part classes or descriptions; and the manner in which any promotional activity as aforesaid shall be carried out or caused to be carried out.

(3) The provisions of sub-article (2) shall not apply to an undertaking if its business is restricted to reinsurance.

(4) Where an undertaking issues or causes to be issued an advertisement or carries out or causes to be carried out any promotional activity which is in breach of or does not comply with any of the provisions of sub-article (1) or (2), the competent authority may issue an order directing the undertaking -

(*a*) to withdraw, wholly or partly, the advertisement or promotional activity; or

(*b*) to amend any particular of the advertisement or promotional activity; or

(*c*) to do such other thing as it deems appropriate in the circumstances.

(5) If an undertaking refuses or fails to comply with any order issued by the competent authority under sub-article (4) or refuses or fails to comply with such order within the time specified therein, without prejudice to any penalty which the undertaking may incur under this Act, the competent authority shall have the power to enforce, at the expense of the undertaking concerned, the order issued by it under that sub-article.

Provisions relating to Lloyd's. *Added by: XII. 2006.106. Amended by: XXXIII. 2015.54.*

48A. (1) For the purposes of this article, "syndicate" means a member or group of members of Lloyd's underwriting business of insurance at Lloyd's through the agency of a managing agent to which a particular syndicate number is assigned by or under the authority of the Council of Lloyd's.

(2) Where the members of Lloyd's carry on business of insurance in Malta, they shall carry on such business in exercise of

a European right.

(3) Lloyd's shall at all times have a representative in Malta who shall be resident in Malta and who shall be the representative in Malta of Lloyd's and of each of its members.

(4) The representative shall for the purposes of this Act be authorised to act generally as judicial representative of, and accept service of any document on behalf of, Lloyd's and of each of its members and to file any judicial acts in the registry of any court or similar authority in Malta on behalf of Lloyd's or any of its members. The general representative shall not be personally liable for the debts and obligations of Lloyd's or any of its members and accordingly no execution of any precautionary or executive warrant against Lloyd's or any of its members shall be made against Lloyd's general representative.

(5) It shall be sufficient in any judicial act (other than an application for the issue of any precautionary or executive warrant) filed by or against members of Lloyd's in connection with a policy underwritten by them to file the act in the name of the Lloyd's representative in Malta as representative of those members; provided the act commencing proceedings contains a statement that it is being filed in connection with a policy of insurance underwritten by members of Lloyd's and giving particulars of the number reference and date of the policy in respect of which the act is filed, the identifying number of each of the syndicates subscribing thereto and, where known, the names of the members of Lloyd's comprising those syndicates. This sub-article shall apply notwithstanding any provision to the contrary contained in the Code of Organization and Civil Procedure.

Cap. 12.

(6) The Lloyd's representative shall within forty-five days after the filing by him of the judicial act, or of its service on him, as the case may be, file a note in the records of the judicial act filed as aforesaid containing a list of the names of the members comprising the syndicates subscribing to the policy and any such note shall be deemed to be an integral part of the judgment or decree emanating from the court subsequent to the judicial act and such judgment or decree shall be binding on the members whose names are listed in the note in the same manner as it would so have bound them if they had been named as parties to the said judicial act:

Provided that, the Lloyd's representatives shall not be bound to file any such note following the filing of any judicial act where particulars of the names of the members of Lloyd's comprising those syndicates are already contained in the act or where any such note has already been filed in the records of the case.

(7) Any judicial act filed by or against Lloyd's or any of its members in connection with a policy underwritten by them shall be served upon the Lloyd's general representative in Malta at its registered address in Malta.

Appointment of intermediaries or ancillary insurance intermediaries.
Added by: XII. 2006.107. Substituted by: XXXIII. 2015.55. Amended by: XXVI.2018.81.
Cap. 487.

48B. Every authorised insurance or reinsurance undertaking shall utilise the services of insurance intermediaries, reinsurance intermediaries, tied insurance intermediaries and ancillary insurance intermediaries which are:

(*a*) enrolled under the Insurance Distribution Act; or

(*b*) registered under Article 3 of the Insurance Distribution Directive, or falling under Article 1(3) of the Insurance Distribution Directive where applicable; or

(*c*) registered or regulated to carry out such services in a non-Member State or non-EEA State in accordance with the provisions of the laws applicable in such State.

Policy conditions and scales of premiums.
Added by: XXXIII. 2015.56.

48C. (1) An authorised undertaking shall not be required to submit to the competent authority for its prior approval or systematically notify the competent authority of:

(*a*) general and special policy conditions, of scales of premiums, of the technical bases used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which the authorised undertaking intends to use in its dealings with policyholders or ceding or retro-ceding undertakings;

(*b*) premium rates or proposed increases of premium rates, other than as part of general price-control systems.

(2) Notwithstanding the provisions of sub-article (1), the competent authority may require:

(*a*) in respect of general business, the notification of the policy conditions, other documents and information referred to in sub-article (1) for the purpose of verifying compliance with the law applicable to contracts of insurance;

(*b*) in respect of long term business, the notification of the technical bases used in particular for calculating scales of premiums and technical provisions for the sole purpose of verifying compliance with any actuarial principles which may be established by this Act, regulations or Insurance Rules issued thereunder.

Application of certain articles of the Insurance Distribution Act to insurance and reinsurance undertakings.
Added by: XXVI.2018.82.

48D. An authorised insurance undertaking and an authorised reinsurance undertaking carrying out insurance distribution activities and reinsurance distribution activities in terms of the Insurance Distribution Act shall comply with the applicable provisions of the said Act and of any regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder.

PART XI

PROTECTION AND COMPENSATION FUND

Establishment of the Protection and Compensation Fund.
Amended by: XVII. 2002.260; XII. 2006.108; XXXIII. 2015.57.
Substituted by: XXXII.2024.36.

49. (1) There shall be established a fund, as may be prescribed, which shall be known as the "Protection and Compensation Fund":

(*a*) for the payment of any claims in respect of:

(i) risks and commitments against an insurance undertaking carrying on business of insurance in Malta, as may be prescribed under the Insurance Business (Protection and Compensation Fund) Regulations, remaining unpaid by reason of the insolvency of such undertaking, subject to such limitations, restrictions and exclusions as may be prescribed by the said regulations; and

(ii) risks related to motor vehicle liability insurance business against an insurance undertaking carrying on motor vehicle liability insurance business from Malta, as may be prescribed in accordance with the Insurance Business (Protection and Compensation Fund) Regulations, remaining unpaid by reason of the insolvency of such undertaking, subject to such limitations, restrictions and exclusions as may be prescribed by the said regulations; and

(*b*) for the payment of compensation to victims of road traffic accidents as may be prescribed subject to such limitations and restrictions as may be prescribed.

(2) Without prejudice to the provisions of this Act and of any regulations issued thereunder, the Protection and Compensation Fund shall be a body corporate having a distinct legal personality and shall be capable of entering into contracts, whether of borrowing or if otherwise incurring indebtedness for the purposes of its functions, acquiring, holding and disposing of any kind of property for the purposes of its functions; of suing or being sued, doing all such matters and entering into all such negotiations, transactions and agreements as are incidental or conducive to the exercise or performance of its functions. Without prejudice to the generality of the foregoing, the Protection and Compensation Fund shall for this purpose have the power to enter into such reasonable administrative, management or other arrangements as may be necessary to enable it to fulfil its objectives and functions under this Act and under the Insurance Business (Protection and Compensation Fund) Regulations, including to become a party to the agreement referred to in regulation 10A of the Insurance Business (General Provisions of Supervision) Regulations, and to delegate to any body or person any of its functions as the Management Committee appointed in accordance with the Insurance Business (Protection and Compensation Fund) Regulations deems necessary.

S.L. 403.24.

S.L. 403.25.

Contributions to the Protection and Compensation Fund.
Amended by: XII. 2006.109; XXXIII. 2015.58; XXXII.2024.37.

50. (1) The Protection and Compensation Fund shall comprise of different funds as may be prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, of all contributions made thereto in accordance with this Act and any regulations made thereunder, and of all other assets and revenues pertaining to it. The assets of every fund shall be kept separate and separately identifiable

from the assets of the other Funds, as may be prescribed in the said regulations.

(2) All insurance undertakings, as prescribed by the regulations, which carry on business of insurance in Malta shall contribute to the Protection and Compensation Fund in such amounts and to such limitations as shall be prescribed and different amounts and limitations may be prescribed with respect to different kinds of business of insurance or different classes or part classes thereof, or different kinds of insurance undertakings, or in view of other different circumstances.

(3) Insurance undertakings which carry on motor vehicle liability insurance business from Malta, as may prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, shall contribute to the Protection and Compensation Fund in such amounts and to such limitations, as may be prescribed by the Insurance Business (Protection and Compensation Fund) Regulations, and different amounts and limitations may so apply as may be prescribed in the said regulations.

Management of the Protection and Compensation Fund.
Amended by: XXXIII. 2015.59. XXXII.2024.38.

51. (1) The Protection and Compensation Fund shall be managed and otherwise dealt with in accordance with regulations made for the purposes of this Act:

Provided that such regulations shall ensure that:

(*a*) payments made into the Protection and Compensation Fund by undertakings to carry on long term business in Malta shall be utilised for compensation with respect to long term business, and shall be treated separately and utilised exclusively for compensation of claims relating to long term business;

(*b*) payments made into the Protection and Compensation Fund by undertakings to carry on general business in Malta shall be treated separately, and shall be utilised exclusively for compensation of claims relating to general business:

Provided that payments made into the Protection and Compensation Fund by undertakings carrying on motor vehicle liability insurance business in Malta, on or after the initiation date as defined herein, shall be treated separately from general business, and shall be utilised exclusively for compensation of claims relating to such motor vehicle liability insurance business carried on in Malta, on or after such date; and

(*c*) payments made into the Protection and Compensation Fund by undertakings carrying on motor vehicle liability insurance business from Malta shall also be treated separately and shall be utilised exclusively for compensation of claims relating motor vehicle liability insurance business carried on from Malta.

(2) For the purposes of this article, "initiation date" means:

(*a*) the date of the entry into force of the agreement referred

to in the first sub-paragraph of Article 10a(13) and the first sub-paragraph of Article 25a(13) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability, as amended from time to time; or

(*b*) the date of application of the Commission delegated act referred to in the fourth sub-paragraph of Article 10a(13) and the fourth sub-paragraph of Article 25a(13) of the said Directive mentioned in paragraph (a),

whichever is the earlier.

Prescription in respect of claims for payment out of the Protection and Compensation Fund.
Amended by: XXXIII. 2015.60; XXXII.2024.39.
Cap. 386.

52. No claim for payment of compensation shall be made out of the Protection and Compensation Fund unless such claim is made -

(*a*) with respect to a claim in accordance with article 49(a)(i), within two years from the date that the name of the undertaking is struck off the register established in the Companies Act or such undertaking is otherwise definitely wound up, in those circumstances only where compensation would be due from Fund A;

(*aa*) with respect to a claim in accordance with article 49(a)(ii), within the period and in the manner prescribed by the Insurance Business (Protection and Compensation Fund) Regulations;"; and

(*b*) with respect a claim in accordance with article 49(b), within two years from the date of occurrence of the accident relating to that claim:

Provided that for the purposes of this article, the words "Fund A" shall have the same meaning as assigned to them under the Insurance Business (Protection and Compensation Fund) Regulations.

Exemptions from income tax.
Substituted by: XVII. 2002.261.
Amended by: XXXII.2024.40.

53. All contributions made to the Protection and Compensation Fund and any income and assets belonging to the Protection and Compensation Fund shall be exempted from any liability for the payment of income tax under any law for the time being in force.

Power to issue regulations under this Part of the Act.
Amended by: XVII. 2002.262.
Substituted by: XII. 2006.110.

54. The Minister may, after consultation with the competent authority, make regulations to better implement the provisions of this Part, including the transposition of any requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure.

PART XII

GENERAL PROVISIONS

Co-operation in supervisory duties and sharing of information. *Substituted by: XVII. 2002.263; XXXIII. 2015.61. Amended by: XLVI.2021.62.*

55. (1) Notwithstanding the provisions of article 59, the competent authority shall co-operate and exchange information:

(*a*) with European regulatory authorities, and the European Commission for the purpose of facilitating the supervision of insurance and reinsurance within the European Union and the application of the Solvency II Directive;

(*b*) with overseas regulatory authorities for the purposes of the exercise of one or more of their regulatory functions;

(*c*) with authorities or bodies, or persons listed in sub-article (2).

(2) The competent authority shall co-operate and exchange information with:

(*a*) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;

(*b*) bodies involved in the liquidation and insolvency of insurance or reinsurance undertakings and in other similar procedures;

(*c*) the authorities responsible for overseeing the bodies involved in the liquidation and insolvency of insurance undertakings, reinsurance undertakings and other similar procedures;

(*d*) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;

(*e*) bodies which administer compulsory winding-up proceedings or guarantee funds, where that information is necessary for the performance of their duties;

(*f*) the authorities or bodies responsible for the detection and investigation of breaches of company law;

(*g*) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;

(*h*) actuaries appointed by insurance or reinsurance undertakings carrying out actuarial tasks in relation to those undertakings and the bodies responsible for overseeing such actuaries; and

(*i*) authorities responsible for supervising credit institutions and financial institutions as defined in Article 3 of Directive (EU) 2015/849 of the European Parliament and of the Council, for the purposes of ensuring compliance with the said Directive.

(3) For the purposes of the exchanges of information referred to in paragraphs (*c*), (*g*) and (*h*) of sub-article (2), the following conditions, as a minimum, shall be met by the recipient of such information:

(*a*) the information required must be for the purpose of carrying out the overseeing or supervision of the functions or activities of such authorities, bodies or persons;

(*b*) the information received by such authorities, bodies or persons shall be subject to the duty of professional secrecy;

(*c*) where the information in the possession of the competent authority originates from a European regulatory authority or an overseas regulatory authority, it shall not be disclosed without the express consent of the European regulatory authority or the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its consent.

(4) For the purposes of exchanges of information referred to in paragraph (*f*) of sub-article (2), the competent authority shall ensure that, as a minimum, the following conditions shall be met by the recipient of such information:

(*a*) the information exchanged shall be intended for the purpose of the detection and investigation of breaches of company law;

(*b*) the information received shall be subject to the duty of professional secrecy;

(*c*) where the information in the possession of the competent authority originates from a European regulatory authority or an overseas regulatory authority, it shall not be disclosed without the express agreement of the European regulatory authority or the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which the authority gave its agreement;

(*d*) such recipient shall provide the name and responsibilities of the persons to whom such information shall be sent:

Provided that, where the authorities or bodies perform their tasks of detection or investigation with the assistance of persons appointed for that purpose, in view of their specific competence, and such persons are not employed with such bodies or persons, such information may only be exchanged with such persons if the conditions set out in this sub-article are met.

(5) The competent authority shall communicate to the Commission and to other Member States or EEA States the names of the authorities, persons or bodies which may receive information in terms of this article.

(6) (*a*) Without prejudice to the provisions of this article and article 59, the competent authority may transmit information intended for the performance of their tasks to the following:

(i) the Central Bank of Malta, the central banks of the European System of Central Banks (including the European Central Bank) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;

(ii) where appropriate, other national public authorities responsible for overseeing payment systems; and

(iii) the European Systemic Risk Board, where that information is relevant to carrying out its tasks.

(*b*) In an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1094/2010, the competent authority shall communicate, without delay, information to the central banks of the European System of Central Banks (including the European Central Bank) where that information is relevant to their statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the European Systemic Risk Board, where such information is relevant to its tasks.

(*c*) Such authorities or bodies may also communicate to the competent authority such information as they may need for the purposes of article 59(4).

(7) Without prejudice to article 59, the competent authority may exchange information with other departments of Member States central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance and reinsurance undertakings and to inspectors acting on behalf of those departments provided that:

(*a*) such disclosures may be made only where necessary for reasons of prudential control;

(*b*) persons having access to such information shall be subject to professional secrecy.

(8) Without prejudice to the foregoing provision of this article, the competent authority may exercise the following powers at the request of, or for the purposes of, assisting a European regulatory

authority or an overseas regulatory authority:

(*a*) the power to impose, revoke or vary conditions on the grant of an authorisation pursuant to the provisions of article 7;

(*b*) the power to suspend or revoke an authorisation under article 26;

(*c*) the power to take any action under article 28, in lieu of or in addition to any suspension or revocation of an authorisation;

(*d*) the power to require information and documentation under article 29;

(*e*) the power to appoint inspectors under article 30;

(*f*) the power of entry to obtain information and documentation under article 31;

(*g*) the power to issue a directive under article 31A;

(*h*) the power to communicate to the European regulatory authority information in its possession, whether such information is the result of any of the above powers or otherwise; and

(*i*) the power to prohibit the free disposal of the undertaking's assets located in Malta in the circumstances referred to in Articles 137 to 139 and Article 144(2) of the Solvency II Directive; the undertaking's home Member State shall designate the assets to be covered by such measures.

(9) There shall be meetings between an authorised insurance or reinsurance undertaking, its approved auditors, and, in the case of an undertaking authorised to carry on long term business, its approved actuary and the competent authority on a bilateral or a multilateral basis as circumstances may warrant. Such meetings may be called by any of the parties, and shall in each case be chaired by the competent authority.

Co-operation with EIOPA. *Added by: XXXIII. 2015.62.*

55A. (1) The competent authority shall cooperate with EIOPA for the purposes of the Solvency II Directive in accordance with Regulation (EU) No 1094/2010.

(2) The competent authority shall provide EIOPA with all information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

Co-operation with third countries. *Added by: XXXIII. 2015.62.*

55B. (1) The competent authority may enter into co-operation agreements with overseas regulatory authorities or with such authorities or bodies as defined in article 55(2), in countries that are not Member States or EEA States only if the information disclosed is subject to the guarantees of professional secrecy at least equivalent to those required under articles 55 and 59. Such exchange of information must be intended for the performance of the supervisory task of such overseas regulatory authorities, authorities or bodies.

(2) Where the information to be disclosed by the competent authority to the authorities or bodies referred to in sub-article (1), had originated from a European regulatory authority, it may only be disclosed to an overseas regulatory authority with the express agreement of such European regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement.

Communication by auditors, etc., with the competent authority. *Amended by: XXXIII. 2015.63.*

56. (1) No duty (including the duty of professional secrecy) to which -

(*a*) an auditor or an actuary of an undertaking; or

(*b*) a person appointed to make a report under article 30(1),

may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request made by it, any information or opinion on a matter to which this article applies and which is relevant to any function of the competent authority under this Act.

(2) In relation to an auditor or an actuary of an authorised undertaking, this article applies to any matter falling within article 24.

(3) In relation to a person appointed to make a report under article 30(1), this article applies to any matter of which he becomes aware in his capacity as the person making the report which relates to the business or affairs of the undertaking in relation to which his report is made.

(4) If it appears to the competent authority that any accountants or class of accountants who are persons to whom sub-article (1) applies are not subject to satisfactory rules made or guidelines issued by a professional body specifying circumstances in which matters are to be communicated to the competent authority as mentioned in that sub-article, the competent authority may, after consultation with such bodies as appear to the competent authority to represent the interests of accountants and authorised undertakings, make rules for the purposes of this article, applying to those accountants and specifying such circumstances; and it shall be the duty of an accountant to whom the rules apply to communicate a matter to the competent authority in the circumstances specified by the rules.

The Financial Services Tribunal. *Amended by: XVII. 2002.264; XXXIII. 2015.64.* Cap. 330.

57. (1) For the purpose of this Act, the term "Financial Services Tribunal" means the tribunal referred to in article 21 of the Malta Financial Services Authority Act, and the term "Tribunal" shall be construed accordingly:

Cap. 330.

Provided that for the purpose of proceedings arising under this Act the members appointed under article 21(4) of the Malta Financial Services Authority Act, shall be substituted by persons to be appointed by the Minister under this Act and who, in his opinion, possess the necessary expertise and experience in the business of insurance; and the provisions of article 21(5) to (7) of

the said Act shall apply to the persons appointed pursuant to this proviso in the same manner and to the same extent as they apply to the members mentioned in article 21(2) of the said Act.

(2) The Financial Services Tribunal shall, in addition to the functions and powers assigned to it under article 58, have the function and power to decide applications for transfer of long term business filed before it under this Act.

(3) Upon determining an application for transfer of long term business, the Tribunal shall have the power to order the payment of costs and expenses by any party to the application.

Cap. 330.

(4) The provisions of article 21 of the Malta Financial Services Authority Act and of any regulations made thereunder shall, except in so far as any of them is incompatible with the provisions of this article or of article 35 or 58, apply to applications for transfer of long term business and appeals made to the Financial Services Tribunal under this Act:

Provided that regulations made under the said article 21 may distinguish between procedures made for the purposes of the provisions of this Act and procedures made for the purposes of the provisions of the Malta Financial Services Authority Act.

Cap. 330.

(5) The Minister may, for the purposes of this article, subject to article 35, make regulations governing the procedure for determining an application for transfer of long term business filed under that article, provided that in the absence of such regulations the Tribunal shall regulate its own procedure.

Appeals.
Amended by: XIII. 2004.118; XVII. 2009.36; X. 2011.77; XXXIII. 2015.65; XXVI.2018.83.

58. (1) Subject to the provisions of this article, an appeal shall lie to the Financial Services Tribunal with respect to -

(*a*) any failure to inform an applicant within the term provided in sub-article (9) or (10) of article 7;

(*b*) any refusal to issue an authorisation under articles 7 or 21;

(*c*) any condition imposed in an authorisation issued or held under articles 7 or 21;

(*d*) any suspension or revocation of an authorisation under article 26, or under any regulation made under this Act;

(*e*) any one or more measures taken under article 28;

(*f*) any directive given under article 31A;

(*g*) any refusal of an application for transfer of general business under article 33;

(*h*) any notice issued or any order made under articles 38, 38A and 38C;

(*i*) any administrative penalty imposed in respect of infringements as may be prescribed under article 67.

(1A) The Financial Services Tribunal shall have exclusive competence to hear appeals on the matters listed in sub-article (1).

(2) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article. Cap. 330.

Confidentiality. *Amended by: XVII. 2002.265; XII. 2006.111; XX. 2007.135; X. 2011.78; XXXIII. 2015.66, 77.*

59. (1) Information obtained by the competent authority or by its officers, employees or agents, including former officers, employees or agents, as well as by inspectors, auditors and experts acting on behalf of the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations made thereunder, or of any Insurance Rules, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy.

(2) Without prejudice to cases covered by criminal law, the persons referred to in sub-article (1) shall not disclose information obtained from an authorised insurance or reinsurance undertaking unless such disclosure of information be done in summary or aggregate form, so as not to enable the identity of such undertaking, to whom such information relates, to be ascertained:

Provided that, such persons may disclose confidential information in civil or commercial proceedings where an authorised insurance or reinsurance undertaking has been declared insolvent or is being compulsorily wound up, as long as such information does not concern third parties involved in attempts to rescue that undertaking.

(3) Nothing in this Act shall authorise the competent authority to enquire or cause an enquiry to be made in an authorised insurance or reinsurance undertaking into the affairs of any individual policyholder of the authorised insurance or reinsurance undertaking except for the purpose of ensuring compliance with any of the provisions of this or of any other Act.

(4) Where the competent authority receives confidential information from a European regulatory authority under this article and article 55 it may only use such confidential information in the course of its duties and for the following purposes:

(*a*) to check that the conditions governing the carrying on of business of insurance or reinsurance are met and to facilitate the monitoring of the carrying on of such business especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement and the system of governance;

(*b*) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(*c*) in appeals against decisions of the competent authority under article 58; and

(*d*) in judicial proceedings under the Solvency II Directive.

(5) When an officer or an employee of an authorised insurance or reinsurance undertaking has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.

Cap. 373.

(6) In this article, any reference to agents has the meaning assigned to it in article 30(10).

Communication of confidential information. *Amended by: XX. 2007.136; XXXIII. 2015.67; XXVI.2018.84.*

60. (1) Notwithstanding the provisions of the Professional Secrecy Act, article 257 of the Criminal Code shall not affect or prevent the exchange of information about policies, policyholders potential policyholders, insureds, claimants or other related parties -

Cap. 377.
Cap. 9.

(*a*) amongst insurance undertakings authorised to carry on the business of insurance ("insurers");

(*b*) amongst companies or persons registered or enrolled under the Insurance Distribution Act ("intermediaries");

Cap. 487.

(*c*) between insurers and intermediaries;

(*d*) between insurers, or intermediaries, or insurers and intermediaries, and the Commissioner of Police,

provided that such exchange is compatible with or reasonably required for the purpose of preventing, detecting or suppressing insurance fraud.

(2) Without prejudice to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), as amended from time to time, the collection, use, storage and transmission of information for the purposes of the exchanging of personal data referred to in sub-article (1) is deemed to be a necessary measure for the prevention, detection or suppression of insurance fraud.

Service of notices, etc. *Amended by: XII. 2006.112; XX. 2007.137; XXXIII. 2015.61.*

61. A notice or other document to be given or served under this Act or any regulations or Insurance Rules made thereunder shall be deemed to have been duly given or served on a person if -

(*a*) it has been delivered to him; or

(*b*) it has been left at the address furnished by him to the competent authority, or at his last known address; or

(*c*) it has been sent to him by post or by telefax at any of the aforesaid addresses; or

(*d*) in the case of a commercial partnership registered in Malta, it has been delivered, sent by post or by telefax, or left at the registered office, or the last known registered office, of that commercial partnership; or

(*e*) in the case of any other body of persons, whether corporate or unincorporate, it has been given or served in any of the manners aforesaid to or on an officer, secretary, or a clerk of that body or to any person designated by that body for that purpose as the case may be; or

(*f*) in the case of a third country insurance or reinsurance undertaking or Lloyd's, it has been given or served to the person designated under article 11(1)(*b*)(i) or article 48A(3), respectively;

and the expression "officer", in relation to a body of persons shall include an insurance agent, an insurance manager, or a person, other than an insurance agent or an insurance manager, authorised to act for that body of persons in the same manner and to the same extent as an insurance agent.

Continuance of undertakings carrying on business of insurance, or companies enrolled as insurance manager or insurance broker. *Amended by: XVII. 2002.266; XIII. 2004.119; XII. 2006.113; XXXIII. 2015.69.*

62. (1) Regulations may be made under this Act providing for -

(*a*) a body corporate, registered, incorporated or constituted in a country outside Malta, which is similar in nature to a company as known under the laws of Malta and which would, if it were such a company, qualify to be authorised under this Act as an undertaking carrying on business of insurance or a company enrolled to act as an insurance manager or insurance broker under the Insurance Distribution Act, to be continued as authorised under this Act or enrolled under the Insurance Distribution Act; and Cap. 487.

(*b*) an undertaking carrying on business of insurance authorised under this Act or a company enrolled to act as insurance manager or insurance broker under the Insurance Distribution Act to be continued as a body corporate registered, incorporated or constituted under the laws of a country outside Malta, in either case by complying with the regulations; Cap. 487.

and the Companies Act shall, in respect of such bodies, undertakings or companies, have effect accordingly. Cap. 386.

(2) Regulations under this article may provide that continuance as aforesaid may only take place if -

(*a*) it is within the power of such body, undertaking or company so to continue;

(*b*) the continuance is, in either case, approved in such manner as may be prescribed,

and the regulations may further provide that the continuance of an undertaking or company as stated in paragraph (*b*) of sub-article (1), as a body corporate under a foreign jurisdiction, shall not take place unless -

(i) such continuance (or similar process, including conversion) is permitted by the law of such foreign jurisdiction and is in accordance with

such provisions thereof as may bring about such continuance (or similar process); and

(ii) such continuance (or similar process) will operate the continuation of the corporate existence of the undertaking or company as, or its conversion into, a body corporate which will continue to retain or will succeed to all assets, rights, and liabilities of such undertaking or company.

(3) In this article, reference to the "company" shall include reference to a partnership *en commandite* or to a similar or equivalent body corporate the capital of which is divided into shares.

(4) The provisions of this article and of any regulations made thereunder shall prevail over anything to the contrary contained in the Companies Act, or regulations made thereunder, with respect to continuance of undertakings or companies.

Cap. 386.

Valuation regulations.

63. (*Deleted by Act XXXIII. 2015.70*).

Minister's power to make regulations. *Amended by: XVII. 2002.267; XIII. 2004.120; XII. 2006.114; XX. 2007.138; L.N. 426 of 2007; X. 2011.79; XX. 2013.98; XXXIII. 2015.71; XXVI. 2018.85.*

64. (1) The Minister may, after consultation with the competent authority, make regulations to give effect to the provisions of this Act and to amend or revoke any schedule thereto and may amend or revoke such regulations; and without prejudice to the generality of the foregoing, the Minister may, by such regulations, in particular, make provision in respect of any one or more of the following matters:

(*a*) any matter relating to or connected with the business of insurance or contracts of insurance;

(*b*) the requirements, duties or conditions to be observed by any undertaking authorised under this Act for the sound and prudent management of its activities;

(*c*) provide for and regulate the payment by any person, body or cell created by a cell company, as the case may be, of any fees, duties and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article;

(*d*) any matter relating to or connected with any provision contained in the Schedules;

(*e*) any matter that may or is to be prescribed under any provision of this Act;

(*f*) any matter incidental to or connected with any of the above;

(*g*) the penalties or other punishments to which persons contravening or failing to comply with any provision of any regulation made as aforesaid shall become liable, being penalties not exceeding one hundred and fifty thousand euro (€150,000), in respect of any offence and in respect of a continuing offence of a further penalty

and not exceeding two hundred and thirty euro (€230) for each day during which the offence continues.

(2) Except where any regulation made under this Act provides for a lesser penalty, any person acting in contravention of or failing to comply with or otherwise observe any such regulation shall be liable to a penalty of not less than two hundred and thirty euro (€230) and not exceeding one hundred and fifty thousand euro (€150,000), in respect of each offence and in the case of a continuing offence to a further penalty not exceeding two hundred and thirty euro (€230) for each day during which the offence continues.

(3) The Minister may, after consultation with the competent authority, make regulations for the supervision of insurance and reinsurance undertakings in a group ("group supervision"). Any such regulations may provide for cases of application, scope and levels of group supervision, provisions relating to the solvency of insurance groups, measures to facilitate group supervision including the appointment of the group supervisor, the verification of equivalence of supervision of a parent undertaking with its head office in a third country, which forms part of a group and for a parent undertaking of one or more insurance or reinsurance undertakings, which is a mixed-activity insurance holding company.

(4) The Minister may, after consultation with the competent authority, make regulations providing for the establishment of special purpose vehicles within the meaning of the Solvency II Directive, including the conditions under which the activities of such vehicles shall be carried on. Any such regulations may provide for exemptions from any provisions of this Act or of any other law, subject to such modifications, variations and conditions as may be specified therein, and in particular may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, the provisions of the regulations shall prevail, and the provisions of this Act or of any other law shall, to the extent of the inconsistency, not apply.

(5) The Minister may, after consulting the competent authority, make regulations exempting any person, activity or operation or any class or classes or part classes of business of insurance, from all or any of the provisions of this Act or of any regulations made thereunder, subject to such conditions or requirements including the requirement of other forms of authorisation and notification procedures as may be prescribed.

(6) The Minister may, after consultation with the competent authority, make regulations applicable to captive insurance undertakings and captive reinsurance undertakings, exempting from and modifying any of the provisions of this Act or of any regulations made thereunder.

(7) The Minister may, after consultation with the competent authority, make regulations to better implement the provisions of this Act, including the transposition of any requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure relevant for the purposes of this Act. Any such regulations made to transpose any

requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure may provide for exemptions from any provisions of this Act or of any other law, subject to such modifications, variations and conditions as may be specified therein, and in particular may provide that in so far as any of the provisions of the regulations are inconsistent with the provisions of this Act or of any other law, the provisions of the regulations shall prevail, and the provisions of this Act or of any other law shall, to the extent of the inconsistency, not apply.

(8) The Minister may, after consultation with the competent authority, make regulations determining the class or classes of long term business and the class or classes or part classes of general business that may be effected and carried out under this Act.

(9) Regulations made under this Act may make such exemptions, conditions or modifications as may be specified therein in respect of different cases, circumstances or purposes and may give the competent authority such power of adaptation of the regulations as may be specified therein.

(10) The exercise of any of the powers assigned under this article shall be subject to any obligations or restrictions arising from Malta's international commitments.

(11) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

Power to make regulations with respect to exclusive economic zone area or environment protection area. Cap. 625.

64A. Without prejudice to any provision of this Act granting the Minister the power to make regulations, the Minister may, subject to the provisions of the Exclusive Economic Zone Act, from time to time, make, amend, substitute or repeal regulations for the purpose of regulating, prescribing or otherwise providing for any matters regulated by or under this Act or by or under any subsidiary legislation made thereunder, in respect of an exclusive economic zone area or an environment protection area as defined in the Exclusive Economic Zone Act or any activities therein including, but not limited, to the applicability or otherwise of this Act and, or of any subsidiary legislation made thereunder.

Exemption under Duty on Documents and Transfers Act. *Amended by: XX. 2007.139.*

65. (*Deleted by Act XXXIII. 2015.72*).

Exclusion of liability. *Amended by: XII. 2006.115; XXXIII. 2015.73; XXVI.2018.86.*

66. *Deleted by Act V.2020.46.*

Offences and penalties.
Amended by: XII. 2006.116; XX. 2007.140; L.N. 426 of 2007; X. 2011.80; XXXIII.2015.74,77 XXVI.2018.87; V.2020.67.

67. (1) Any person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence or infringement as prescribed by regulations issued in terms of this article.

(2) Any person -

(*a*) who, for the purpose of obtaining the issue of an authorisation under this Act or pursuant to any of the provisions of this Act or any regulations, Insurance Rules or Conduct of Business Rules made thereunder, furnishes information or makes a statement or a declaration which he knows to be inaccurate, false or misleading in any material particular, or recklessly furnishes information or makes a statement or a declaration which is inaccurate, false or misleading in any material particular; or

(*b*) who is knowingly a party to, or procures or aids and abets, any contravention of any provision of this Act any regulations, Insurance Rules or Conduct of Business Rules made thereunder, or

(*c*) who intentionally obstructs a person exercising rights conferred by this Act any regulations, Insurance Rules or Conduct of Business Rules made thereunder, or

(*d*) who is knowingly a party to the carrying on of the business of insurance with a fraudulent intent or for a fraudulent purpose; or

(*e*) who being a director, a controller, an officer or an employee of an undertaking -

(i) fails to take all reasonable steps to secure compliance by the undertaking with any of the provisions of this Act or of any regulations, of any regulations, Insurance Rules or Conduct of Business Rules made thereunder, or any authorisation or permit issued thereunder; or

(ii) fails to take reasonable steps to ensure the correctness of the statements made or other information given under any of the provisions aforesaid; or

(iii) removes, destroys, conceals or fraudulently alters any book, document or other paper with intent to avoid detection of the commission of an offence under any of the provisions aforesaid,

shall be guilty of an offence.

(3) For the purposes of sub-article (2)(*f*), the expression "officer", in relation to an undertaking, shall include an insurance agent, an insurance manager, or a person, other than an insurance agent or an insurance manager, authorised to act for the undertaking in the same manner and to the same extent as an insurance agent.

(4) The Minister shall make regulations under this article

prescribing penalties for offences against this Act, and such regulations may -

(*a*) prescribe penalties which are enforceable by prosecution in the courts of Malta;

(*b*) prescribe different penalties for contraventions of different provisions of this Act;

(*c*) prescribe penalties calculated in accordance with the duration of the commission of the offence,

unless such penalties are otherwise imposed under article 64.

(5) The penalties prescribed by the regulations made under sub-article (4) -

(*a*) in the case of imprisonment, shall not provide for a sentence of imprisonment greater than four years;

(*b*) in the case of a fine imposed after a prosecution in the courts of Malta, shall not provide for a fine (*multa*) of less than two hundred and thirty euro (€230) or greater than four hundred and sixty-six thousand euro (€466,000); or

(*c*) may provide for both such fine and imprisonment.

(6) The Minister may by the regulations made under this article provide for administrative penalties in respect of infringements, as may be prescribed, which may be imposed and recovered by the competent authority without recourse to a court hearing; administrative penalties shall be due to the competent authority as a civil debt:

Provided that an administrative penalty may not be greater than a financial penalty of one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues:

Proceedings for an offence under this Act.
Amended by: XII. 2006.117.

68. (1) No proceedings for an offence under this Act and any regulations made thereunder other than an infringement to which article 67(6) applies shall be commenced without the sanction of the Attorney General.

(2) The provisions of this Act and any regulations made thereunder shall not affect any criminal proceedings that may be competent under any other law.

Savings.
Amended by: XII. 2006.118; XIX. 2010.50; X. 2011.81; XXXIII. 2015.77.

69. (1) Subject to sub-article (4), every licence issued or other action whatever taken or commenced under the Insurance Business Act* (in this article referred to as "the Act") shall continue in force and to be valid as if such licence were issued or other action were taken or commenced under this Act.

(2) Every company licensed under the Act to carry on business

*Repealed by this Act.

of insurance either as principal or as agent shall, not later than the appointed date, conform with the provisions of this Act or otherwise cease to carry on the business it was licensed to carry on, and shall until the appointed date or until it conforms with the provisions of this Act, whichever is the earlier, continue to be governed by the provisions of the Act. For the purpose of this article "appointed date" means a day being six months after the date of the coming into force of this Act.

(3) Where a company ceases to carry on business of insurance either as principal or as agent on grounds that such company did not, on the appointed date, conform with the provisions of this Act, that company shall be deemed to have given notice to the competent authority under article 39 on the appointed date to cease to carry on the business it was licensed to carry on, on the appointed date, and to have been issued with a permit by the competent authority under that article on the appointed date to cease to carry on such business on the appointed date and to service that business as from that date. The competent authority may impose such conditions with regard to the servicing of that business as it may deem proper.

(4) Every licence issued or renewed or other action whatever taken or commenced under the Act in so far as it applies to insurance brokers and insurance salesmen, shall continue in force and to be valid as if such licence were a certificate of enrolment issued or as if such other action were action taken or commenced under the Insurance Distribution Act. Cap. 487.

(5) For the purposes of this article "licence" includes an authority, permit, approval and appointment.

(6) Without prejudice to the provisions of article 12 of the Interpretation Act, all regulations, orders and other instruments which were kept in force by the Act and all regulations, orders and other instruments made under the Act, and any agreement and arrangement which were made in virtue of the Act, any regulation, order or other instrument shall, if and as in force immediately before the commencement of this article, be deemed to have been made under or in virtue of this Act and shall continue in force and may be amended, altered, repealed or otherwise dealt with accordingly. Cap. 249.

(7) All references in any enactment and in any instrument or other document to the Act, or any provision thereof, shall, in so far as applicable, be read and construed as a reference to this Act or to the corresponding provision thereof.

(8) Any reference in any licence, notice, decision or other act made or taken by the competent authority, to an insurance directive issued by the competent authority, and any reference in any law or regulation to an insurance directive shall be deemed to be a reference to Insurance Rules.

(9) The assets and the liabilities of the Security Fund established by the Act shall upon the coming into force of this Act be transferred to the Protection and Compensation Fund established by article 49 without the need of any formality other than this Act.

Amended by:
XVII. 2002.268;
XIII. 2004.121.

FIRST SCHEDULE

Deleted by XII. 2006.119.

Amended by:
XII. 2006.120;
XXXIII. 2015.75.

SECOND SCHEDULE

(Article 5)

LONG TERM BUSINESS

Classes of Long Term Business

Number	Class	Description
I	Life and annuity	Contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within Classes II and III of this Schedule.
II	Marriage and birth	Contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period of more than one year.
III	Linked long term	Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
IV	Permanent health	Contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that - (*a*) are expressed to be in effect for a period of not less than five years, or until the normal retirement age for the persons concerned, or without limit of time, and

		(*b*) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.
V	Tontines	Contracts of insurance providing for operations whereby associations of subscribers are to be set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased.
VI	Capital redemption	Contracts of insurance providing for capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken.
VII	Pension fund management	(*a*) Contracts to manage the investments of pension funds, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity; or (*b*) Contracts or the kind mentioned in paragraph (*a*) above that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.
VIII	Collective insurance	Contracts of a kind referred to in Article 2(3)(*b*)(v) of the Solvency II Directive.
IX	Social insurance	Contracts of a kind referred to in Article 2(3)(c) of the Solvency II Directive.

Amended by:
XXXIII. 2015.76.

THIRD SCHEDULE

(Articles 5 and 7)

GENERAL BUSINESS

PART I - CLASSES

Classification of risks according to classes of insurance

Number	Class
1	Accident (including industrial injury and occupational diseases) (*a*) fixed pecuniary benefits; (*b*) benefits in the nature of indemnity; (*c*) combination of the two; (*d*) injury to passengers.
2	Sickness (*a*) fixed pecuniary benefits; (*b*) benefits in the nature of indemnity; (*c*) combination of the two.
3	Land vehicles (other than railway rolling stock) All damage to or loss of: (*a*) land motor vehicles; (*b*) land vehicles other than motor vehicles.
4	Railway rolling stock All damage to or loss of railway rolling stock.
5	Aircraft All damage to or loss of aircraft.
6	Ships (sea, lake and river and canal vessels) All damage to or loss of: (*a*) river and canal vessels; (*b*) lake vessels; (*c*) sea vessels.
7	Goods in transit (including merchandise, baggage, and all other goods) All damage to or loss of goods in transit, or baggage, irrespective of the form of transport.
8	Fire and natural forces All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:

(*a*) fire;
(*b*) explosion
(*c*) storm;
(*d*) natural forces other than storm;
(*e*) nuclear energy;
(*f*) land subsidence.

9 Other damage to property

All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those falling within class 8.

10 Motor vehicle liability

All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).

11 Aircraft liability

All liability arising out of the use of aircraft (including carrier's liability).

12 Liability for ships (sea, lake and river and canal vessels)

All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).

13 General liability

All liability other than those falling within classes 10, 11 and 12.

14 Credit

(*a*) insolvency (general);
(*b*) export credit;
(*c*) instalment credit;
(*d*) mortgages;
(*e*) agricultural credit.

15 Suretyship

(*a*) suretyship (direct);
(*b*) suretyship (indirect).

16	Miscellaneous financial loss (*a*) employment risks; (*b*) insufficiency of income (general); (*c*) bad weather; (*d*) loss of benefits; (*e*) continuing general expenses; (*f*) unforeseen trading expenses; (*g*) loss of market value; (*h*) loss of rent or revenue; (*i*) indirect trading losses other than those specified above; (*j*) other financial loss (non-trading); (*k*) other financial loss (not specified in (*j*) above).
17	Legal expenses Legal expenses (including costs of litigation).
18	Assistance (*a*) assistance for persons who get into difficulties while travelling, while away from home or while away from their habitual residence; (*b*) assistance in other circumstances.

PART II - GROUPS OF CLASSES

The following names shall be given to authorisations which simultaneously cover the following classes:

Number	Description	Classes of Business
1	Accident and Health	Classes 1 and 2
2	Motor	Classes 1 (*d*), 3, 7 and 10
3	Marine and Transport	Classes 1 (*d*), 4, 6, 7 and 12
4	Aviation	Classes 1 (*d*), 5, 7 and 11
5	Fire and other Damage to Property	Classes 8 and 9
6	Liability	Classes 10, 11, 12 and 13
7	Credit and Suretyship	Classes 14 and 15
8	General	All classes

FOURTH SCHEDULE

(Article 13)

Amended by:
XVII. 2002.269;
XIII. 2004.122.

Deleted by: XII. 2006.121.