

SUBSIDIARY LEGISLATION 403.11

INSURANCE BUSINESS (CAPTIVE INSURANCE UNDERTAKINGS AND CAPTIVE REINSURANCE UNDERTAKINGS) REGULATIONS

3rd November, 2003

LEGAL NOTICE 334 of 2003, as amended by Legal Notices 288 of 2007 and 395 of 2015.

1. The title of these regulations is the Insurance Business (Captive Insurance Undertakings and Captive Reinsurance Undertakings) Regulations.

Citation.
Amended by:
L.N. 395 of 2015.

2. (1) In these regulations, unless the context otherwise requires -

Interpretation.
Amended by:
L.N. 288 of 2007;
L.N. 395 of 2015.
Cap. 403.

"the Act" means the Insurance Business Act;

"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 of the Act, 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 of the Act, 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;

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

Cap. 330.

"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 Article 4(1)(1) of Directive 2004/39/EC; or
- (d) a mixed financial holding company within the meaning

of Article 2(15) of Directive 2002/87/EC;

"Insurance Rules" has the same meaning as is assigned to it by article 2 of the Act.

(2) Words and expressions which are also used in the Act shall in these regulations have the same meanings as in the Act.

Power of the competent authority to issue Insurance Rules.
Amended by:
L.N. 288 of 2007.
Substituted by:
L.N. 395 of 2015.

3. For the better carrying out of the provisions of these regulations, the competent authority may issue Insurance Rules which may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purposes of these regulations.

Application of the Act to companies carrying on business of affiliated insurance.
Amended by:
L.N. 288 of 2007
L.N. 395 of 2015.

4. (1) The Act and any regulations and Insurance Rules made thereunder shall apply to a captive insurance undertaking and a captive reinsurance undertaking, in the same manner and to the same extent, unless specified otherwise, as they apply to an authorised insurance undertaking or an authorised reinsurance undertaking whose head office is in Malta, subject to the following provisions of this regulation.

(2) Article 7(9) of the Act shall apply as if for the period of six months prescribed therein there was substituted the period of three months.

(3) Article 10(2) of the Act shall apply only to the extent that a captive insurance undertaking or a captive reinsurance undertaking may, with the approval of the competent authority given in writing, appoint an insurance manager.

(4) Article 20(1)(b) of the Act shall not apply.

(5) Where it is proposed to carry out a transfer of business of insurance where either the transferor or the transferee are captive insurance undertakings or captive reinsurance undertakings, the provisions of Part VIII of the Act shall apply subject to the following provisions of this subregulation:

(a) article 33(2) of the Act shall apply as follows:

- (i) paragraph (a) thereof shall not apply;
- (ii) paragraph (b) thereof shall apply to the extent only of requiring that a notice approved for this purpose by the competent authority be 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; and
- (iii) paragraph (c) thereof shall apply;

(b) article 35(3) of the Act shall apply as follows:

- (i) paragraph (a) thereof shall not apply; and
- (ii) paragraph (d)(i) thereof shall not apply, unless otherwise determined by the Financial Services Tribunal.

- (6) Article 39(2)(a)(i) of the Act shall not apply.
- (7) Articles 44 and 47 of the Act shall not apply.
- (8) Article 48(2) of the Act shall not apply.
- (9) Article 48A of the Act shall not apply.
- (10) Part XI of the Act shall not apply to a captive insurance undertaking or a captive reinsurance undertaking.

5. Every company which, immediately before the coming into force of these regulations, was authorised to carry on business of affiliated insurance under article 7 of the Act, shall, from the date of the coming into force of these regulations, be subject to the provisions of these regulations.

Transitory
provision.