

SUBSIDIARY LEGISLATION 403.12

INSURANCE BUSINESS (CONTINUANCE OF COMPANIES CARRYING ON BUSINESS OF INSURANCE) REGULATIONS

3rd November, 2003

*LEGAL NOTICE 335 of 2003, as amended by Legal Notices 146 of 2009
and 396 of 2015.*

1. The title of these regulations is the Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations.

Citation.

2. In these regulations, unless the context otherwise requires -
"the Act" means the Insurance Business Act;

Definitions.
Amended by:
L.N. 146 of 2009;
L.N. 396 of 2015.
Cap. 403.

"approved country or jurisdiction" means such country or jurisdiction as may be established from time to time by guidelines issued by the Registrar of Companies pursuant to the Continuation of Companies Regulations;

S.L. 386.05

"authorised undertaking" means an authorised insurance undertaking or an authorised reinsurance undertaking carrying on business of insurance under the Act;

"business of insurance" shall include the activities of an insurance manager and the business of insurance broking carried on under the Insurance Distribution Act;

Cap. 487.

"company" means a company formed and registered under Part V of the Companies Act, and in respect of a company enrolled in the Managers List and Brokers List shall include reference to a "partnership *en commandite*" or to a similar or equivalent body corporate which has its capital divided into shares;

Cap. 386.

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

Cap. 330.

"Continuation Regulations" means the Continuation of Companies Regulations, made under article 425(4) of the Companies Act;

S.L. 386.05

Cap. 386.

"enrolled company" means a company enrolled in the Managers List or Brokers List under the Insurance Distribution Act;

Cap. 487.

"instrument of continuation" includes any document or certificate confirming that the company or undertaking has been registered as continuing in an approved country or jurisdiction other than Malta;

and words and expressions which are also used in the Act shall in these regulations have the same meanings as in the Act.

Continuance of
companies
carrying on
business of
insurance.
*Amended by:
L.N. 146 of 2009;
L.N. 396 of 2015.*

3. (1) An entity which is -

(a) a body corporate, registered, incorporated or constituted under the laws of an approved country or jurisdiction outside Malta, and carrying on business of insurance, 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 the Act or to be enrolled under the Insurance Distribution Act, may, subject to the specific approval of the competent authority, be continued as a company formed and registered under the Companies Act, and authorised under the Act or enrolled under the Insurance Distribution Act, as the case may be, to carry on business of insurance; and

Cap. 487.

Cap. 386.

(b) an authorised undertaking or enrolled company, carrying on business of insurance authorised under the Act or under the Insurance Distribution Act, as the case may be, may, subject to the specific approval of the competent authority, be continued as a body corporate registered, incorporated or constituted under the laws of a country outside Malta,

Cap. 487.

in either case by complying with these regulations and with the provisions of the Continuation Regulations:

Provided that, in the event of incompatibility or conflict, the provisions of these regulations shall prevail.

(2) Continuance as aforesaid may only take place if it is within the power of such body, authorised undertaking or enrolled company, carrying on business of insurance, so to continue and the continuance is approved -

(a) in the case of a body corporate formed, incorporated or registered under the laws of an approved country or jurisdiction outside Malta, desiring to continue as an authorised undertaking or enrolled company, carrying on business of insurance under the Act or the Insurance Distribution Act, as the case may be, in such manner, by such constituted body and with such majority as would be equivalent, under the laws of the country of its incorporation or registration and according to the instrument whereby it is constituted, of an extraordinary resolution under the laws of Malta; and

Cap. 487.

(b) in the case of an authorised undertaking or enrolled company desiring to continue under a foreign jurisdiction, by an extraordinary resolution of the shareholders of such undertaking or company.

(3) Where continuance as aforesaid entitles or requires the body corporate, authorised undertaking or enrolled company, carrying on business of insurance, as the case may be, to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the

courts in Malta may, on demand of either party, establish.

(4) The continuance of a body corporate registered, incorporated or constituted in a country outside Malta as an authorised undertaking or enrolled company, carrying on business of insurance in Malta shall be effected by an instrument of continuation containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles or equivalent deed of partnership as is required by the Companies Act, in order that a company may be authorised under the Act or enrolled under the Insurance Distribution Act, as the case may be, as an authorised undertaking or enrolled company, carrying on business of insurance, and showing on the face of it that the continuance has been approved as provided in sub-regulation (2).

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(5) The delivery of the instrument of continuation to the Registrar of Companies shall, for all purposes of the Companies Act, be equivalent to the delivery of the memorandum and articles of a company or to the deed of partnership, as the case may be, as if it were a company to be formed and registered under that Act and the Registrar of Companies shall treat it accordingly.

Cap. 386.

(6) Upon its registration as provided in sub-regulation (5), and its authorisation under the Act, or its enrolment under the Insurance Distribution Act, the body corporate shall cease to be a body corporate under its previous jurisdiction and shall continue its corporate existence under the laws of Malta, and retain all its assets, rights and liabilities as a company otherwise formed and registered under the Companies Act, and authorised under the Act or enrolled under the Insurance Distribution Act, as the case may be.

Cap. 487.

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(7) The continuance of an authorised undertaking or enrolled company, carrying on business of insurance, as a body corporate under a foreign jurisdiction shall not take place unless -

- (a) such continuance, or similar process, including conversion, is permitted by the law of such foreign jurisdiction and in accordance with such provisions thereof as may bring about such continuance, or similar process; and
- (b) such continuance, or similar process, will operate the continuation of the corporate existence of the authorised undertaking or the enrolled company, carrying on business of insurance 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.

(8) Notwithstanding the foregoing provisions of this regulation, an authorised undertaking or enrolled company, carrying on business of insurance, shall not cease to be a company subject to Maltese jurisdiction until the Registrar of Companies has received notice in writing of the continuance, or other process, made as aforesaid and unless and until, being satisfied that the requirements of this regulation have been complied with, he has registered such continuance and has, in consequence thereof and by

virtue of this regulation, struck the name of such undertaking or company off the register.
