SUBSIDIARY LEGISLATION 403.15

INSURANCE BUSINESS (REORGANISATION AND WINDING UP OF INSURANCE UNDERTAKINGS) REGULATIONS

1st May, 2004

LEGAL NOTICE 208 of 2004, as amended by Legal Notices 403 of 2015, 317 of 2024 and 282 of 2026.

Citation.

1. The title of these regulations is the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) Regulations.

PRELIMINARY

Interpretation. *Amended by: L.N. 403 of 2015; L.N. 282 of 2026.*

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

"the Act" means the Insurance Business Act; Cap. 403.

"administrator" means:

(*a*) in Malta, any person or body appointed by the relevant authorities for the purpose of administering reorganisation measures; or

(*b*) in another Member State or EEA State, any person or body appointed by the foreign administrative or judicial authorities or by the governing bodies of an insurance undertaking authorised in that Member State or EEA State for the purposes of administering reorganisation measures;

"branch" means any permanent presence of an insurance undertaking in the territory of a Member State or an EEA State other than the home Member State which carries on business of insurance;

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

"court" means the Civil Court, in its contentious jurisdiction in its role as the judicial authority competent for the purposes of the reorganisation measures or winding-up proceedings in terms of Title II of Part V and Part VI of the Companies Act; Cap. 386.

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

"ESAP" means 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 includes any implementing measures that have been, or may be issued thereunder;

"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 under Article 14 of the Solvency II Directive;

"foreign administrative or judicial authorities" means the administrative or judicial authorities competent for reorganisation measures or winding-up proceedings in accordance with the legislation or procedures of any Member State or EEA State, other than Malta;

"foreign authority" means the supervisory authorities of a Member State or an EEA State, other than Malta, within the meaning of Article 13(10) of the Solvency II Directive;

"home Member State" means the Member State or EEA State in which the head office of the insurance undertaking covering the commitment or risk is situated;

"host Member State" means the Member State or EEA State other than the home Member State in which an insurance undertaking has a branch;

"insurance claim" means -

(*a*) any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Articles 2(3)(b) and (c) of the Solvency II Directive in direct insurance business, including an amount set aside for those aforementioned persons, when some elements of the debt are not known; and

(*b*) the premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or any operation referred to in paragraph (*a*) in accordance with the law applicable to such a contract or operation before the commencement of the winding-up proceedings;;

"insurance creditor" means a person who has an insurance claim against a Maltese insurance undertaking;

"liquidator" means -

Cap. 386.

(*a*) in Malta, a liquidator appointed under the Companies Act or the Act, as applicable, to a Maltese insurance undertaking and includes the Official Receiver when acting in the capacity of liquidator; or

(*b*) in another Member State or EEA State, any person or body appointed by the foreign authorities, foreign

administrative or judicial authorities or by the governing bodies of an insurance undertaking authorised in that Member State or EEA State, for the purposes of administering winding up proceedings;

"Maltese insurance undertaking" means an undertaking whose head office is in Malta and is authorised under the Act to carry on business of insurance, but excludes an undertaking whose business is restricted to reinsurance;

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

"relevant authorities" means the authorities, as defined in Article 268(1)(a) of the Solvency II Directive, which are competent for the purposes of the reorganisation measures or the winding-up proceedings in Malta, including the court and the competent authority;

"reorganisation measures" means measures involving any intervention by the relevant authorities or by the foreign authorities, or foreign administrative or judicial authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

"winding-up proceedings" means the collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the insurance creditors, creditors, shareholders or members as appropriate, which necessarily involve any intervention by the relevant authorities or by foreign authorities or foreign administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or wound up by the court.

(2) Words and expressions used in these regulations which are also used in the Act, but which are not defined herein, shall have the same meaning as in the Act.

PART I

REORGANISATION MEASURES

Adoption of reorganisation measures in Malta. *Amended by: L.N. 403 of 2015.*

3. (1) Only the relevant authorities shall be entitled to decide on the reorganisation measures with respect to a Maltese insurance undertaking, including its branches.

(2) Reorganisation measures adopted in respect of a Maltese insurance undertaking, including its branches established in host Member States shall be governed by the Act or the Companies Act, as applicable, unless otherwise provided by regulations 19 to 28:

Cap. 386.

Provided that, reorganisation measures shall not preclude the dissolution and consequential winding up of the Maltese insurance undertaking concerned.

(3) The reorganisation measures adopted pursuant to sub-regulation (2) shall be fully effective in other Member States or EEA States without any further formalities, including against third parties in other Member States or EEA States, even if the legislation of those other Member States or EEA States does not provide for such reorganisation measures, or alternatively makes their implementation subject to conditions which are not fulfilled.

(4) The reorganisation measures adopted pursuant to sub-regulation (2) shall be effective in other Member States or EEA States once they become effective in Malta.

(5) Nothing in these regulations shall prejudice the powers of the competent authority in relation to reorganisation measures with respect to a Maltese insurance undertaking including its branches established in host Member States, where provided for in the Act.

Information to the competent authority. *Amended by: L.N. 403 of 2015.*

4. (1) Where the relevant authority is not the competent authority, the relevant authorities shall inform, as a matter of urgency the competent authority of their decision on any reorganisation measure, in order to obtain its views on the adoption of such measures and the practical effects which it may have, before the adoption of such measure and failing that immediately thereafter.

(2) Where the court is the relevant authority and makes a decision, order or appointment of -

(*a*) any compromise or arrangement in terms of article 327 of the Companies Act, or Cap. 386.

(*b*) a company recovery order and appoints a special controller in accordance with article 329B of te Companies Act, Cap. 386.

it shall immediately inform the competent authority, or cause the competent authority to be informed without delay, of the decision, order or appointment which has been made:

Provided that, where the reorganisation measure involves a company recovery order in terms of the Companies Act, the provisions of article 329B(3)(*d*) of the Companies Act shall apply Cap. 386.

(3) Where the competent authority is informed of a decision, order or appointment in accordance with this regulation, it shall, in turn without delay and by any means available, inform all foreign authorities of the decision to adopt reorganisation measures including the possible practical effects of such measures on -

(*a*) the business of the Maltese insurance undertaking; and

(*b*) the rights of policyholders under contracts of insurance effected and carried out by the Maltese insurance undertaking.

Publication. *Amended by: L.N. 403 of 2015; L.N. 282 of 2026.*

5. (1) The administrator or any other person appointed by the relevant authorities shall make public, including by making accessible on ESAP in accordance with regulation 37, any decision on a reorganisation measure by:

(*a*) publishing a notice of the decision 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 measure shall be, in Maltese in the Maltese daily, and in English in the English daily; and in any other manner as determined by the relevant authorities; and

(*b*) publishing an extract from the document establishing the reorganisation measure in the Official Journal of the European Union in the English and the Maltese language at the earliest opportunity.

(2) The publication made pursuant to sub-regulation (1) shall specify:

(*a*) the name of the relevant authorities;

(*b*) a summary of the terms of the decision, appointment or order, as the case may be;

(*c*) the name of the administrator or any other person involved in the reorganisation measures, if any; and

(*d*) the statutory provisions in accordance with which the decision, appointment or order has been made.

(3) The reorganisation measures shall apply regardless of the provisions concerning publication set out in sub-regulations (1) and (2) and shall be fully effective against creditors, unless the relevant authorities, the provisions of the Companies Act or the Act, as applicable, provide otherwise. Cap. 386.

(4) This regulation is without prejudice to any requirement to publish information imposed upon the administrator in accordance with the Companies Act. Cap. 386.

(5) Without prejudice to the provisions of the Companies Act, where the reorganisation measure affects exclusively the rights of shareholders, members or employees of a Maltese insurance undertaking considered in those capacities, sub-regulations (1) and (2) shall not apply; and in such a case, the relevant authorities shall determine the manner in which shareholders, members and employees affected by such reorganisation measures shall be informed. Cap. 386.

Information to known creditors. *Amended by: L.N. 403 of 2015.*

6. (1) Subject to sub-regulation (2), the administrator or any person appointed for this purpose by the relevant authorities shall, without delay, inform by written notice all known creditors individually, including creditors who have their habitual place of residence, domicile or head office outside of Malta, of the reorganisation measures which have commenced.

(2) The written notice referred to in sub-regulation (1) shall also include the following information:

(*a*) the reorganisation measures which have commenced in relation to a Maltese insurance undertaking;

(*b*) the date from which that decision, order or appointment relating to reorganisation measures of the

Maltese insurance undertaking has effect;

(*c*) if applicable, the date by which a creditor must lodge his claim in writing or submit any written observations concerning his claim;

(*d*) the matters which must be stated in a creditor's claim;

(*e*) whether creditors whose claims are preferential or secured in rem, need to lodge their claims;

(*f*) the details of the person to whom any such claim or any written observations on a claim must be lodged; and

(*g*) the consequence of any failure to lodge a claim or submit written observations by any specified time limit.

(3) In addition to the matters referred to in the subregulation (2), insurance creditors shall be notified of the following matters:

(*a*) the effect which the decision will have, or is likely to have on the kind of contract of insurance under, or in connection with which that creditor's insurance claim against the Maltese insurance undertaking is founded;

(*b*) the date from which any variation resulting from the order or decision to the risks covered by, or the sums recoverable under, that contract has effect; and

(*c*) the date on which the insurance contracts or operations will cease to produce effect and the rights and duties of insured persons with regard to the contract or operation.

(4) For the purposes of this regulation, a creditor is a "known" creditor, if the persons mentioned in sub-regulation 2(*f*) are aware of, or should reasonably be aware of -

(*a*) the identity of the creditor;

(*b*) a claim or potential claim of the creditor; and

(*c*) a recent address where the creditor is likely to receive a communication.

Right to lodge claims.
Amended by: L.N. 403 of 2015.

7. (1) Any creditor, including public authorities, of a Maltese insurance undertaking, having their habitual place of residence, domicile or head office outside of Malta, shall have the right to lodge claims or to submit written observations relating to claims.

(2) For the avoidance of doubt, the claims of all creditors having their habitual place of residence, domicile or head office outside of Malta shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual place of residence, domicile or head office in Malta.

(3) A creditor shall send copies of supporting documents, if any, and shall indicate -

(*a*) the nature of the claim;

(*b*) the date on which it arose;

(*c*) the amount of the claim;

(*d*) whether he alleges preference, security *in rem* or reservation of title in respect of the claim; and

(*e*) where appropriate, the assets that are covered by his security.

Submission of claims by creditors. *Amended by: L.N. 403 of 2015.*

8. (1) Subject to sub-regulation (3), the information in the notice referred to in regulation 6 shall be provided in the Maltese and, or English language, as appropriate, or any other language as agreed to with the relevant authorities.

(2) The notice referred to in sub-regulation (1) shall, in the case of the lodging of claims, be headed with the words "Invitation to lodge a claim: time limits to be observed", and in the case of submission of observations relating to claims, it shall be headed "Invitation to submit observations relating to a claim: time limits to be observed", and such heading shall be written in every official language of the European Union or any other language as agreed to with the relevant authorities.

(3) Where the known creditor is an insurance creditor, the information in the notice referred to in regulation 6 shall be provided in the domestic language of such creditor.

(4) A creditor who submits a claim or observations relating to such claim may do so in his domestic language, provided that the requirements of the following paragraphs are complied with:

(*a*) where a creditor submits a claim in his domestic language, the document must be headed with the words "Lodgement of claim" (in English);

(*b*) where a creditor submits observations on his claim (otherwise than in the document by which he submits his claim), the observations must be headed with the words "Submission of observations relating to claims" (in English).

(5) For the purposes of this regulation, "domestic language" in relation to a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is habitually resident or domiciled or, if the creditor is not an individual, the place in which the creditor's head office is located.

PART II

WINDING-UP PROCEEDINGS

Commencement of winding up proceedings in Malta. *Substituted by: L.N. 403 of 2015.*

9. (1) Without prejudice to article 28(1) of the Act, a decision concerning the dissolution and winding up of a Maltese insurance undertaking, including its branches in host Member States, shall only be taken by the relevant authorities in Malta:

Provided that, the decision to dissolve and wind-up a Maltese insurance undertaking, including its branches in host Member States, may be taken in the absence, or following the adoption of reorganisation measures.

(2) Where the relevant authority is not the competent authority,

the relevant authorities shall, upon receipt of an application for winding up proceedings, inform the competent authority regarding this request in order to obtain its views on the adoption of such measures and the practical effect which they may have.

(3) Where the court takes a decision concerning the dissolution and consequential winding up with respect to a Maltese insurance undertaking, including its branches established in any Member State or EEA State, which includes an order or appointment of -

Cap. 386.

(*a*) a winding up order under article 219 of the Companies Act; or

(*b*) the appointment of a provisional administrator under article 228 of the Companies Act;

Cap. 386.

it shall immediately inform the competent authority, or cause the competent authority to be informed without delay of the decision, order or appointment which has been made.

(4) Where an arrangement has been concluded pursuant to article 291 of the Companies Act, any person appointed by the Maltese insurance undertaking or creditors shall inform the competent authority of the arrangement which has been approved.

Cap. 386.

(5) Where a liquidator is appointed in a creditor's voluntary winding-up as mentioned in article 230 of the Companies Act, the liquidator shall inform the competent authority of his appointment.

Cap. 386.

(6) Without prejudice to article 42 of the Act, where in the case of a member's voluntary winding up, a liquidator is appointed in terms of article 270 of the Companies Act, the liquidator shall inform the competent authority of his appointment; and in addition, where the provisions of article 272 of the Companies Act apply, the liquidator shall inform the competent authority that he is of the opinion that the Maltese insurance undertaking will not be able to pay its debts within the period stated in the declaration of solvency.

Cap. 386.

(7) For the avoidance of doubt, where the competent authority issues an order for the dissolution and winding up in terms of article 28 of the Act, any disposition of the property of the company or any other act which would otherwise require the written approval of the competent authority in terms of the Act, made after the date of the said order, shall be void, unless the competent authority otherwise approves in writing.

(8) Where the competent authority is informed of a decision, order or appointment in accordance with sub-regulations (3) to (6), the competent authority shall in turn, without delay and by any means available inform the foreign authority in all Member States or EEA States -

(*a*) that a decision, order or appointment has been made, and

(*b*) the possible effects of a decision, order or appointment of that kind on -

(i) the business of the Maltese insurance undertaking, and

(ii) the rights of policyholders under contract of

insurance effected and carried out by the Maltese insurance undertaking.

(9) A decision concerning the dissolution and winding up of a Maltese insurance undertaking, including its branches in host Member States, adopted in accordance with the Companies Act or the Act, as applicable, shall be recognised in other Member States or EEA States without any further formalities, and shall be effective as soon as the decision is effective in Malta. Cap. 386.

(10) Nothing contained in these regulations shall prejudice the powers of the competent authority in relation to winding up proceedings with respect to a Maltese insurance undertaking, including its branches established in host Member States, where provided for in the Act.

Applicable law in the winding up of a Maltese insurance undertaking. *Amended by: L.N. 403 of 2015.*

10. (1) This regulation is subject to the provisions of regulations 19 to 28.

(2) Without prejudice to the provisions of articles 28, 41 and 42 of the Act, a Maltese insurance undertaking shall dissolve and consequentially wind up, under and in accordance with these regulations and the Companies Act as made applicable by these regulations. Cap. 386.

(3) Where a Maltese insurance undertaking is being wound up, matters set out in paragraphs (*a*) to (*m*) shall be determined in accordance with the applicable Maltese law. These matters are:

(*a*) the assets which form part of the estate of the Maltese insurance undertaking;

(*b*) the treatment of assets acquired by, or devolving to, the Maltese insurance undertaking after the making of a winding up order;

(*c*) the respective powers of the Maltese insurance undertaking and the liquidator;

(*d*) the conditions under which set-off may be invoked;

(*e*) the effects of the winding up proceedings on current contracts to which the Maltese insurance undertaking is a party;

(*f*) the effects of the winding up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending as provided for in regulation 28;

(*g*) the claims which are to be lodged against the estate of the Maltese insurance undertaking;

(*h*) the treatment of claims against the Maltese insurance undertaking arising after the commencement of the winding up proceedings;

(*i*) the rules governing -

(i) the lodging, verification and admission of claims,

(ii) the distribution of proceeds from the realisation of assets,

(iii) the ranking of claims,

(iv) the rights of creditors who have obtained partial satisfaction after the making of the winding up order by virtue of a right in rem or through set-off;

(*j*) the conditions for and the effects of completion of winding up proceedings, in particular by composition;

(*k*) the rights of creditors after the completion of the winding up proceedings;

(*l*) the person who is to bear the cost and expenses incurred in the winding up proceedings;

(*m*) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors:

Provided that, in so far as the provisions of this subregulation are inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and the provisions of any other law shall to the extent of the inconsistency, not apply to Maltese insurance undertakings.

Treatment of insurance claims. *Substituted by: L.N. 403 of 2015. Amended by: L.N. 317 of 2024.*

11. Notwithstanding the provisions of any other law, the assets of the Maltese insurance undertaking which are prohibited from being freely disposed of under article 41(2) of the Act, or by virtue of or under any other provision of the said Act, shall be available only for meeting the liabilities of the undertaking arising out of its business of insurance:

Provided that, insurance claims shall rank before any other claim against such assets:

Provided further that motor insurance claims in relation to claims underwritten under class 10 as specified in Part I of the Third Schedule to the Act, shall rank before any other insurance claim.

Subrogation to the Protection and Compensation Fund. *Amended by: L.N. 403 of 2015.* S.L. 403.13

12. *Repealed by Legal Notice 317 of 2024.*

Revocation of the authorisation. *Amended by: L.N. 403 of 2015.*

13. (1) Where winding-up proceedings have commenced in respect of a Maltese insurance undertaking, the authorisation of the Maltese insurance undertaking shall be automatically revoked in terms of article 25(*a*) of the Act, except to the extent necessary for the purposes of sub-regulation (3).

(2) Where any action has been taken in terms of sub-regulation (1), the provisions set out in article 27(5) of the Act shall apply.

(3) The revocation of authorisation pursuant to subregulation (1) shall not prevent the liquidator or any other person appointed by the relevant authorities from carrying on some of the Maltese insurance undertaking's activities in so far as that is necessary or appropriate for the purposes of winding up:

Provided that, such activities shall be carried on with the consent and under the supervision of the competent authority.

14. (1) Where -

Publication.
Amended by:
L.N. 403 of 2015.
L.N. 282 of 2026.

(*a*) an arrangement has been entered into between a Maltese insurance undertaking and its creditors in terms of article 291 of the Companies Act; Cap. 386.

(*b*) an order has been made appointing a provisional administrator in accordance with article 228 of the Companies Act; Cap. 386.

(*c*) a winding up order has been made by the court under Title II of Part V of the Companies Act; or Cap. 386.

(*d*) a liquidator has been appointed in terms of article 28(1) of the Act, or articles 230 or 270 of the Companies Act, Cap. 386.

the relevant authority, the liquidator or any person appointed for such purpose by the relevant authority shall publish, including by making accessible on ESAP in accordance with regulation 37,

(i) an extract from the decision or order to commence winding-up proceedings 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 proceedings shall be, in Maltese in the Maltese daily, and in English in the English daily; and in any other manner as determined by the relevant authority; and

(ii) an extract from the winding up decision in the Official Journal of the European Union in the English and the Maltese language at the earliest opportunity.

(2) The publication of an extract from the decision made pursuant to sub-regulation (1) shall specify -

(*a*) the name of the relevant authority;

(*b*) a summary of the terms of the decision, appointment or order, as the case may be;

(*c*) the statutory provisions in accordance with which dissolution and consequential winding-up has commenced;

(d) the name of the liquidator or any other person involved in the winding-up, if any.

(3) This regulation is without prejudice to any requirement imposed on the relevant authority under the provisions of Title II of Part V of the Companies Act. Cap. 386.

(4) For the purposes of this regulation "relevant authority" means and includes -

(*a*) in the case of an arrangement entered into between the Maltese insurance undertaking and the creditors, the

person appointed by either the Maltese insurance undertaking or creditors;

(*b*) in the case of a creditors' voluntary winding up, the liquidator;

(*c*) in the case of a members' voluntary winding up, the liquidator;

(*d*) in the case of a winding up order, the liquidator;

(*e*) in the case if an order appointing a provisional administrator, the provisional administrator; and

(*f*) a liquidator appointed in terms of article 28 of the Act.

Information to known creditors. *Amended by: L.N. 403 of 2015.*

15. (1) Subject to sub-regulation (2), the liquidator or any other person appointed for this purpose by the relevant authorities shall without delay inform by written notice all known creditors individually, including creditors who have their habitual place of residence, domicile or head office outside of Malta, of the commencement of winding-up proceedings.

(2) The written notice referred to in sub-regulation (1) shall also include the following information:

(*a*) that winding-up proceedings have commenced in relation to a Maltese insurance undertaking;

(*b*) the date from which that decision to wind up the Maltese insurance undertaking has effect;

(*c*) the date, if applicable, by which a creditor must lodge his claim in writing or submit written observations concerning his claim;

(*d*) the matters which must be stated in a creditor's claim;

(*e*) whether creditors whose claims are preferential or secured in rem, need to lodge their claims;

(*f*) the details of the person to whom any such claim or any observations on a claim must be submitted; and

(*g*) the consequence of any failure to lodge a claim or written observations by any specified time limit.

(3) In addition to the matters referred to in the subregulation (2), insurance creditors must be notified of the following matters:

(*a*) the effect which the decision will have, or is likely to have on the kind of contract of insurance under, or in connection with which that creditor's insurance claim against the Maltese insurance undertaking is founded;

(*b*) the date from which any variations resulting from the order or decision to the risks covered by, or the sums recoverable under, that contract has effect; and

(*c*) the date on which the insurance contracts or operations will cease to produce effect and the rights and duties of insured persons with regard to the contract or operation.

(4) For the purposes of this regulation, a creditor is a "known"

creditor if the persons mentioned in sub-regulation (2)(*f*) are aware of, or should reasonably be aware of -

(*a*) the identity of the creditor;

(*b*) the claim or potential claim of the creditor; and

(*c*) a recent address where the creditor is likely to receive a communication.

Right to lodge claims. *Amended by: L.N. 403 of 2015.*

16. (1) Any creditor, including public authorities, of a Maltese insurance undertaking, having their habitual place of residence, domicile or head office outside of Malta, shall have the right to lodge claims or to submit written observations relating to claims.

(2) For avoidance of doubt, the claims of all creditors having their habitual place of residence, domicile or head office outside of Malta shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual place of residence, domicile or head office in Malta.

(3) A creditor shall send copies of supporting documents, if any, and shall indicate -

(*a*) the nature of the claim;

(*b*) the date on which it arose;

(*c*) the amount of the claim; and

(*d*) whether he alleges preference, security *in rem* or reservation of title in respect of the claim; and

(*e*) where appropriate, the assets that are covered by his security.

Submission of claims by creditors. *Amended by: L.N. 403 of 2015.*

17. (1) Subject to sub-regulation (3), the information in the notice referred to in regulation 15 shall be provided in the Maltese and/or English language, as appropriate, or any other language as agreed to with the relevant authorities.

(2) The notice referred to in sub-regulation (1) shall, in the case of the lodging of claims, be headed with the words "Invitation to lodge a claim: time limits to be observed", and in the case of submission of observations relating to claims, it shall be headed "Invitation to submit observations relating to a claim: time limits to be observed" and such heading shall be written in every official language of the European Union, or any other language as agreed to with the relevant authorities.

(3) Where the known creditor is an insurance creditor, the information in the notice referred to in regulation 15 shall be provided for in the domestic language of such creditor.

(4) A creditor who submits a claim or observations relating to such claim may do so in his domestic language, provided that the requirements of the following paragraphs are complied with:

(*a*) where a creditor submits a claim in his domestic language, the document must be headed with the words "Lodgement of claim" (in English);

(*b*) where a creditor submits observations on his claim (otherwise than in the document by which he submits his claim), the observations must be headed with the words "Submission of observations relating to claims" (in English).

(5) For the purposes of this regulation, "domestic language" in relation to a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is habitually resident or domiciled or, if the creditor is not an individual, the language of the Member State or EEA State in which the creditor's head office is located.

Reports to creditors. *Amended by: L.N. 403 of 2015.*

18. (1) Once every twelve months beginning from the date when his appointment has effect, a liquidator or any other person appointed for this purpose by the relevant authorities shall send a written report setting out the position generally as regards the progress of the winding up to every known creditor.

(2) The requirement in subregulation (1) does not apply where a liquidator or any other person appointed by the relevant authorities is required by such authorities to send a report to creditors at intervals which are more frequent than those required by this regulation.

(3) This regulation is without prejudice to any requirement to send a report to creditors, imposed by the relevant authorities, on the liquidator or any other person appointed by the relevant authorities, which is supplementary to the requirements of this regulation.

(4) Upon a request received from a foreign authority, for information on developments in the winding up procedure, the competent authority shall provide such information.

Winding up of Maltese insurance undertakings. *Added by: L.N. 403 of 2015.*

18A. Where a Maltese insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Winding up of Maltese reinsurance undertakings. *Added by: L.N. 403 of 2015.*

18B. Where a Maltese reinsurance undertaking authorised under the Act is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

PART III

PROVISIONS COMMON TO REORGANISATION AND WINDING-UP PROCEEDINGS

Employment contracts and relationships. *Amended by: L.N. 403 of 2015.*

19. (1) Without prejudice to regulations 3 and 10, the effects of a reorganisation measure or of winding up proceedings on European employment contracts and European employment relationships are to be determined exclusively in accordance with

the laws of the Member State or EEA State applicable to the said contract or relationship.

(2) In this regulation, an employment contract is a European employment contract, and an employment relationship is a European employment relationship if it is subject to the law of a Member State or EEA State.

Contracts in connection with immovable property. *Substituted by: L.N. 403 of 2015.*

20. The effects of a reorganisation measure or of winding up proceedings on contracts conferring the right to make use of or acquire immovable property, shall be determined exclusively by the law of the Member State or EEA State where the immovable property is situated.

Registrable rights. *Amended by: L.N. 403 of 2015.*

21. The effects of a reorganisation measure or of winding up proceedings on the rights of the Maltese insurance undertaking with respect to -

(*a*) immovable property;

(*b*) a ship; or

(*c*) an aircraft, and

subject to registration in a public register, are to be determined exclusively by the law of the Member State or EEA State under the authority of which that register is kept.

Rights *in rem* of third parties. *Amended by: L.N. 403 of 2015.*

22. (1) The adoption of reorganisation measures or commencement of winding-up proceedings of a Maltese insurance undertaking shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, movable or immovable assets including both specific assets and collections of indefinite assets as a whole which change from time to time belonging to the insurance undertaking concerned which are situated within the territory of a Member State or an EEA State, other than Malta, at the time of the commencement of such measures or proceedings.

(2) The rights *in rem* referred to in subregulation (1) shall include at least -

(*a*) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or the income from those assets, in particular by virtue of a lien, or a mortgage;

(*b*) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(*c*) the right to demand the assets from, or to require restitution by, any person having possession or use of them contrary to the wishes of the party so entitled;

(*d*) a right to the beneficial use of assets.

(3) A right, recorded in a public register and enforceable against third parties, under which a right *in rem* within the meaning of sub-regulation (1) may be obtained, shall be considered to be a right *in rem*.

(4) Sub-regulation (1) shall not preclude actions for nullity,

voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(*m*).

Reservation of title.
Substituted by: L.N. 403 of 2015.

23. (1) The adoption of reorganisation measures or commencement of winding-up proceedings in relation to a Maltese insurance undertaking purchasing an asset, shall not affect the rights of a seller based on a reservation of title where at the time of the commencement of such measures or proceedings the asset is situated within the territory of a Member State or EEA State, other than in Malta.

(2) The adoption of reorganisation measures or commencement of winding-up proceedings against a Maltese insurance undertaking selling an asset, after the delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the commencement of such measures or proceedings the asset sold is situated within the territory of a Member State or EEA State, other than in Malta.

(3) Sub-regulations (1) and (2) shall not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(*m*).

Creditor's right to set off.
Substituted by: L.N. 403 of 2015.

24. (1) The adoption of reorganisation measures or commencement of winding up proceedings shall not affect the rights of insurance creditors to demand the set-off of their claims against the claims of the Maltese insurance undertaking.

(2) Sub-regulation (1) does not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(*m*).

Regulated markets.
Substituted by: L.N. 403 of 2015.

25. (1) Without prejudice to regulation 22, the effects of a reorganisation measure or of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be determined solely by the law applicable to that market.

(2) Sub-regulation (1) shall not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(*m*) which may be taken to set aside payments or transactions under the law applicable to that market.

Detrimental acts.
Amended by: L.N. 403 of 2015.

26. (1) Where reorganisation measures and winding up proceedings have been instituted, the rules relating to detrimental transactions shall not apply where a person who has benefited from a legal act detrimental to all creditors provides proof that:

(*a*) the said act is subject to the law of the Member State or EEA State, other than Malta; and

(*b*) the law of that Member State or EEA State does not allow any means of challenging that act in the specific case.

(2) For the purposes of this regulation "the rules relating to detrimental transactions" means the rules relating to the nullity,

voidability or unenforceability of legal acts detrimental to all creditors, as referred to in regulation 10(3)(*m*).

Protection of third party purchasers. *Substituted by: L.N. 403 of 2015.*

27. The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or commencement of winding-up proceedings, the Maltese insurance undertaking concerned disposes, for consideration, of any of the following -

(*a*) in relation to an immovable asset, the law of the Member State or EEA State where the immovable is situated;

(*b*) in relation to a ship or an aircraft subject to registration in a public register, the law of the Member State or EEA State under the authority of which the register is kept;

(*c*) in relation to transferable or other securities whose existence or transfer presupposes entry into a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State or EEA State, the law of the Member State or EEA State under the authority of which the register, account or system is kept.

Pending lawsuits.

28. The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the Maltese insurance undertaking has been divested shall be determined solely in accordance with the law of the Member State or EEA State in which the lawsuit is pending.

Registration. *Substituted by: L.N. 403 of 2015.*

29. (1) In order to secure the rights of interested third parties, an administrator or liquidator, the relevant authorities, or any person appointed by the relevant authorities may request that a reorganisation measure or the decision to commence winding-up proceedings be registered in any relevant public register kept in Malta and, or in other Member States or EEA States, and shall take all the necessary measures to ensure such registration.

(2) The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Co-insurance contracts. *Amended by: L.N. 403 of 2015.*

30. (1) In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under that undertaking's other insurance contracts without distinction as to the nationality of the insured and of the beneficiaries.

(2) For the purpose of this regulation "Community co-insurance" shall be construed in accordance with Article 190 of the Solvency II Directive.

Professional secrecy. *Substituted by: L.N. 403 of 2015.*

31. All persons required to receive or divulge information in connection with the procedures of communication laid down in regulations 4, 9, and 32 shall be bound by the duty of professional secrecy in the same manner as laid down in Article 64 to 69 of the

Solvency II Directive, with the exception of any judicial authorities to which existing national provisions apply.

Treatment of branches of third country insurance undertakings. *Amended by: L.N. 403 of 2015.*

32. (1) Where a third country insurance undertaking authorised under the Act has a branch established in Malta, both the relevant authorities and the competent authority, as applicable, shall have jurisdiction to decide on reorganisation measures and winding up proceedings in relation to such branch of the insurance undertaking.

(2) The relevant authorities and the competent authority shall endeavour to coordinate their actions with foreign administrative or judicial authorities and the foreign authority where the third country insurance undertaking has established branches in other Member States or EEA States.

(3) The administrators and liquidators involved shall likewise endeavour to coordinate their actions.

(4) The provisions contained in this regulation are without prejudice to the provisions of article 28(3) of the Act.

PART IV

REORGANISATION MEASURES AND WINDING UP PROCEEDINGS IN RESPECT OF EUROPEAN INSURANCE UNDERTAKINGS EFFECTIVE IN MALTA

Adoption of reorganisation measures and winding up proceedings of a European insurance undertaking. *Amended by: L.N. 403 of 2015.*

33. (1) The adoption of a reorganisation measure or commencement of winding-up proceedings of a European insurance undertaking has effect in Malta in relation to -

(*a*) a branch of a European insurance undertaking;

(*b*) any property or other assets of the European insurance undertaking;

(*c*) any debt or liability of such European insurance undertaking, as if it were commenced under the Companies Act.

Cap. 386.

(2) (*a*) Subject to sub-regulation (4), an administrator or liquidator appointed in accordance with the law of the home Member State, may exercise in Malta, in relation to a European insurance undertaking which is subject to a reorganisation measure or winding-up proceedings, any function which, pursuant to that measure or order, he is entitled to exercise within the home Member State in relation to that European insurance undertaking.

(*b*) Persons to assist or represent an administrator or liquidator referred to in paragraph (*a*), may be appointed in accordance with the law of the home Member State, in Malta, and specifically in order to help overcome any difficulties encountered by the creditors in Malta.

(3) The appointment of the administrator or liquidator of the home Member State shall be evidenced -

(*a*) by a certified copy of the order or decision by the foreign administrative or judicial authorities responsible for reorganisation or winding up in the home Member State by or under which the administrator or liquidator was appointed; or

(*b*) by any other certificate issued by the foreign administrative or judicial authorities which have jurisdiction in relation to a reorganisation measure or winding up proceedings,

and accompanied by a translation in the English language of that order, decision or certificate.

(4) In exercising the functions of the kind mentioned in subregulation (2), the administrator or the liquidator -

(*a*) shall not take any action which would constitute an unlawful use of force in Malta;

(*b*) shall not rule on any legal proceedings or disputes arising from a matter falling within Parts I, II and III of these regulations;

(*c*) notwithstanding the way in which functions may be exercised in the home Member State, shall act in accordance with the laws or rules as to procedure which are effective in Malta.

(5) For the purposes of subregulation (4)(*c*) "laws or rules as to procedure" means -

(*a*) requirements as to consultation with or notification of employees of a European insurance undertaking;

(*b*) laws and procedures relevant to the realisation of assets; or

(*c*) where the administrator or liquidator is bringing or defending legal proceedings in the name and on behalf of a European insurance undertaking, the relevant rules of court.

PART V

MISCELLANEOUS

Interpretation. *Re-numbered and amended by: L.N. 403 of 2015.*

34. (1) The purpose of these regulations is to implement Title IV of the Solvency II Directive, and shall be interpreted and applied accordingly.

(2) In the event that any of these regulations conflict with the provisions of the Directive, the latter shall prevail.

Transitory provisions. *Re-numbered by: L.N. 403 of 2015.*

35. These regulations shall only apply to reorganisation measures or winding up proceedings adopted immediately after the date of coming into force of these regulations.

Saving. *Added by: L.N. 403 of 2015.*

36. Nothing in the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) (Amendment) Regulations, 2015, shall be deemed to affect anything done, or omitted to be done prior to the coming into force of such

regulations.

Accessibility of information on the European single access point. *Added by: L.N. 282 of 2026.*

37. (1) For the purpose of making the information referred to in regulations 5(1) and 14(1) accessible on ESAP, the relevant authority, administrator or any other person appointed by the relevant authorities shall, when making public such information, also submit that information at the same time to the collection body:

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

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

(2) The information referred to in sub-regulation (1) shall comply with the following requirements:

(a) it shall be submitted in a data extractable format;

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

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

(ii) the legal entity identifier of the Maltese insurance undertaking, as specified in accordance with point (b) of Article 7(4) of the ESAP Regulation, where available;

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

(iv) an indication of whether the information contains personal data.