

SUBSIDIARY LEGISLATION 403.08**INSURANCE BUSINESS (LINKED LONG TERM CONTRACTS) REGULATIONS**

1st January, 2001

LEGAL NOTICE 104 of 2000, as amended by Legal Notices 353 of 2005 and 398 of 2015.

1. The title of these regulations is the Insurance Business (Linked Long Term Contracts) Regulations.

Citation.

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

Interpretation.

*Amended by:**L.N. 398 of 2015.*

"the Act" means the Insurance Business Act;

Cap. 403.

"authorised undertaking", in relation to linked long term contracts, means an undertaking whose head office is in Malta authorised to carry on long term business, including business of insurance class III specified in the Second Schedule to the Act, other than an authorised reinsurance undertaking or a captive insurance undertaking or a captive reinsurance undertaking;

"Directive 2009/65/EC" means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast);

"index linked benefits" means benefits:

- (a) provided for under any contract the effecting of which constitutes the carrying on of long term business; and
- (b) determined by reference to fluctuations in any index of the value of property (whether specified in the contract or not);

"linked fund" means a real or notional account to which an authorised undertaking appropriates linked assets for the purposes of their being permitted links, and which may be subdivided into units, the value of each of which is determined by the authorised undertaking by reference to the value of those linked assets;

"linked long term contract" means a contract of the kind described in paragraph 2, Roman number III, of the Second Schedule to the Act;

"long term contract" means a contract for long term business;

"property linked benefits" means benefits other than index linked benefits provided for under any contract the effecting of which constitutes the carrying on of long-term insurance business and determined by reference to the value of, or the income from, property of any description (whether specified in the contract or not);

Cap. 330.

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

"third country" means a country which is not a Member State or EEA State;

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

(2) These regulations shall apply only where the investment risk is borne by a policyholder who is a natural person.

Linked long term contracts.
Amended by:
L.N. 398 of 2015.

3. (1) Benefits payable under any contract to which this regulation applies shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, property of any description other than property of any of the descriptions specified in Part I of the Schedule which, where appropriate, comply with the provisions of paragraph 17 of the said Schedule.

(2) Benefits payable under any contract to which this regulation applies shall not be determined, whether directly or indirectly, either wholly or partly, by reference to fluctuations in any index of the value of property other than an index described in Part II of the Schedule.

(3) This regulation applies to long term contracts which are -

- (a) contracts entered into by authorised companies or have been entered into by any such company at any time on or after the 1st October, 1998 and are still in force;
- (b) 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); and
- (c) not contracts specified in subregulation (4) as being contracts to which this regulation does not apply.

(4) The contracts referred to in subregulation (3)(c) to which this regulation does not apply are -

- (a) contracts entered into before the coming into force of these regulations to the extent that they provide for benefits to be determined by reference to the value of, or the income from, property of any description or by reference to fluctuations in, or in an index of, property of any description, by reference to which benefits were permitted to be determined before the coming into force of these regulations;
- (b) subject to subregulation (5), contracts to manage the investments of pension funds that are not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

(5) Benefits payable under contracts referred to in subregulation (4)(b) shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of derivative instruments other than financial derivative instruments as specified in paragraph 12 of Part I of the Schedule.

Amended by:
L.N. 353 of 2005.
Substituted by:
L.N. 398 of 2015.

SCHEDULE
(Regulation 3)

PERMITTED LINKS

PART I

DESCRIPTIONS OF PROPERTY BY REFERENCE TO WHICH BENEFITS
MAY BE DETERMINED

1. Transferable securities and money market instruments admitted to or dealt in on a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC, of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.
2. Transferable securities and money market instruments dealt in on another regulated market in a Member State or EEA State, which operates regularly and is recognised and open to the public.
3. Transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the Malta Financial Services Authority.
4. Recently issued transferable securities, provided that:
 - (a) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the Malta Financial Services Authority; and
 - (b) the admission referred to in sub-paragraph (a) is secured within a year of issue.
5. Transferable securities not falling within paragraphs 1 to 4 of Part I of the Schedule provided that they are readily realisable in the short term.
6. Land and buildings (including any interest in land) provided that:
 - (a) it is considered by the authorised undertaking to be located in a territory with a properly functioning market, indicated by the following criteria:
 - (i) a lack of artificial barriers, including barriers to foreign ownership and repatriation of capital;
 - (ii) fair and accurate valuation;
 - (iii) suitably qualified and independent surveyors;
 - (iv) accurate financial information;
 - (v) enforceable contractual and other property rights;
 - (vi) clarity of taxation;
 - (vii) availability of reliable economic and property market data;
 - (viii) ethical transaction standards; and
 - (b) it is:

- (i) owned directly by the authorised undertaking; or
- (ii) held in a structure, or a series of structures, that do not pose a materially greater risk to the policyholders than a direct holding; and
- (iii) it is not geared in excess of 10% of the gross asset value of the linked fund.

7. Loans:

- (a) which are fully secured by hypothec or charge on land and buildings (or any interest in land) which:
 - (i) satisfy the criteria in paragraph 6 of this Part of the Schedule; and
 - (ii) in the case of a loan made to a person other than a body corporate, is not used wholly or mainly for domestic purposes, and
- (b) in relation to which the rate of interest and the due dates for the payment of interest and the repayment of principal can be fully ascertained from the terms of any agreement relating to the loan.

8. Units of UCITS authorised according to Directive 2009/65/EC or other collective investment undertakings within the meaning of Article 1(2)(a) and (b) of Directive 2009/65/EC, whether or not established in a Member State or EEA State, provided that:

- (a) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the Malta Financial Services Authority to be equivalent to that laid down in European Union law, and that cooperation between authorities is sufficiently ensured;
- (b) the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of Directive 2009/65/EC;
- (c) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and
- (d) no more than 10% of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings.

9. Deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or EEA State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the Malta Financial Services Authority as equivalent to those laid down in European Union law.

10. Money market instruments other than those dealt in on a regulated market, which fall under Article 2(1)(o) of Directive 2009/65/EC, if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided that they are:

- (a) issued or guaranteed by a central, regional or local authority or central

bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong;

- (b) issued by an undertaking any securities of which are dealt in on regulated markets referred to in paragraphs 1 to 3 of this Part of the Schedule;
- (c) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by European Union law, or by an establishment which is subject to and complies with prudential rules considered by the Malta Financial Services Authority to be at least as stringent as those laid down by European Union law; or
- (d) issued by other bodies belonging to the categories approved by the Malta Financial Services Authority provided that investments in such instruments are subject to investor protection equivalent to that laid down in sub-paragraphs (a), (b) or (c) and provided that the issuer is a company whose capital and reserves amount to at least EUR 10,000,000 and which presents and publishes its annual accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013, is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

11. Cash.

12. Financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in paragraphs 1 to 3 of this Part of the Schedule or financial derivative instruments dealt in over-the-counter (OTC) derivatives, provided that:

- (a) the underlying of the derivative consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies;
- (b) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the Malta Financial Services Authority; and
- (c) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative.

13. Units, by whatever name called, in a real or notional fund which is limited to the descriptions of property mentioned in the foregoing paragraphs of this Schedule, not being property falling within paragraphs 17(a) to (e) of Part III of the Schedule, and which under the contract is to be managed either:

- (a) wholly by the insurer; or
- (b) wholly or to any extent by another person being a person for whose acts and omissions in managing the scheme the insurer assumes responsibility towards the policyholder as if they were the acts or omissions of the insurer, and otherwise (if at all) by the insurer.

PART II

INDICES BY REFERENCE TO WHICH BENEFITS
MAY BE DETERMINED

14. An index which is:
- (a) calculated independently;
 - (b) published at least once a week;
 - (c) based on constituents, each of which is property falling within paragraphs 1 to 11 of Part I of the Schedule; and
 - (d) calculated on a basis which is made available to the public and which includes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents.
15. A national index of retail prices published by or under the authority of a government of a Member State or EEA State.
16. An index which is:
- (a) based on constituents, each of which is property falling within paragraphs 1 to 11 of Part I of the Schedule; and
 - (b) in respect of which a derivative contract is dealt in on a regulated market referred to in paragraphs 1 to 3 of Part I of the Schedule.

PART III

INTERPRETATION

17. Benefits payable under any contract to which regulation 3 of the regulations applies shall not be determined by reference to:
- (a) property of any of the descriptions specified in paragraph 5 and paragraph 8 of Part I of the Schedule other than units of UCITS authorised according to Directive 2009/65/EC, or paragraphs 9 or 10 of Part I of the Schedule, if the value of such property is determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, or fluctuations in the income from, property other than property of the descriptions in Part I of this Schedule; or
 - (b) property of the description specified in paragraph 5 of Part I of the Schedule in excess of 10 *per centum* of the aggregate property linked benefits under the contract; or
 - (c) property of the description specified in paragraph 8 of Part I of the Schedule other than units of UCITS authorised according to Directive 2009/65/EC, which in aggregate value exceeds 10 *per centum* of the property linked benefits, unless the contract; or
 - (d) property of the description specified in paragraph 8 of Part I of the Schedule where the contract under which the benefits are payable has been marketed in accordance with any legal restrictions which apply to the marketing of the corresponding collective investment undertaking; or
 - (e) property of any of the descriptions specified in Part I of this Schedule which has the effect of a derivative instrument other than financial derivative instruments specified in paragraph 12 of Part I of this Schedule.

18. In this Schedule:

- (a) "transferable securities" has the meaning assigned to it in article 2(1) of Directive 2009/65/EC;
 - (b) "money market instruments" has the meaning assigned to it in article 2(1) of Directive 2009/65/EC.
-