Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 16,770, 30 ta' Marzu, 1999
Taqsima B

L.N. 62 of 1999

INSURANCE BUSINESS ACT, 1998
(ACT NO. XVII OF 1998)

Insurance Business (Custodian of Assets) Regulations, 1999

IN exercise of the powers conferred by sections 18 and 64 of the Insurance Business Act, 1998, the Minister of Finance, after consultation with the Malta Financial Services Centre, has made the following regulations:-

1. These regulations may be cited as the Insurance Business (Custodian of Assets) Regulations, 1999. Citation.

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

"the Act" means the Insurance Business Act, 1998;

"assets", in relation to a custodian, shall be construed in accordance with the provisions of the Schedule to these regulations;

"Central Bank of Malta" or "Central Bank" means the bank established by section 3 of the Central Bank of Malta Act; Cap. 204.

"Centre" means the Malta Financial Services Centre established by section 3 of the Malta Financial Services Centre Act and appointed under section 3 of the Act to be the Competent Authority for the purposes of the Act; Cap. 330.

"custodian of assets" or "custodian", in relation to assets held or required to be held in custody for a company's account by virtue of any provision of the Act, shall be construed in accordance with the provisions of regulation 4 of these regulations and the Schedule thereto.

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

Custody of assets maintained in Malta.

3. (1) Where there is imposed on an authorised company by virtue of any provision of the Act a requirement that the whole or a specified proportion of the assets required to be maintained in Malta by the company under any provision of the Act shall be deposited with and held in custody for the company's account by a person as custodian of assets for the company, the company shall deposit such assets with a person prescribed by regulation 4 of these regulations as custodian of assets and that person shall hold such assets in custody for the company's account in accordance with any written arrangements made between the company, that person and the Centre.

(2) The arrangements referred to in paragraph (1) of this regulation shall be made in such form and manner as to satisfy the provisions of the Act relevant to such requirement, these regulations and any such directive which the Centre may, from time to time, either generally or specifically, issue in writing with respect to the purpose or security of those assets

(3) The Centre shall be party to those arrangements solely for the purpose of ensuring the enforceability of the provisions of those arrangements and the Act; and any expenses incurred by or under those arrangements shall be borne by the company concerned.

(4) Assets of an authorised company held in custody for the company's account by a person as custodian for the company shall be taken to be held by that person in compliance with a requirement imposed by virtue of any provision of the Act if, and only if, they are assets in whose case the company has made with that person and the Centre written arrangements in the form and manner specified in paragraph (2) of this regulation that they are to be held by that person in compliance with such a requirement or they are assets into which assets in whose case the company has made with that person and the Centre such written arrangements have, by any transaction or series of transactions, been transposed by that person on the instructions of the company and with the approval of the Centre given in writing.

(5) No assets held in custody for a company's account by a person as custodian for the company in compliance with a requirement imposed by virtue of any provision of the Act shall, so long as the requirement is in force, be released except with the approval of the Centre given in writing.

(6) If a hypothec or charge is created by a company at a time when there is in force a requirement imposed on the company by virtue of any provision of the Act, being a hypothec or charge conferring a security on any assets which are held in custody for the company's account by a person as custodian for the company in compliance with

the requirement, the hypothec or charge shall, to the extent that it confers such a security, be void against the liquidator and any creditor of the company.

(7) The provisions of this regulation shall not apply to a company if the business carried on by that company is restricted to reinsurance or affiliated insurance.

Custodians of assets.

4. For the purposes of section 18 of the Act any person listed in the Schedule to these regulations shall act as custodian of assets for an authorised company and hold in custody for the company's account assets of a description specified in the said Schedule and therein assigned to that person's custody.

Assets deemed to be deposited with and held in custody by custodians.

5. Where assets of an authorised company held in custody for the company's account by virtue of any provision of the Act by a person as custodian for the company are held by the Central Bank of Malta or any of its appointed agents, such assets shall be deemed to have been deposited with and held by the Central Bank if, and only if, the documents of title of such assets are unassailable in that the assets held in custody are not subject to any court injunction or encashment by the registered holder without the knowledge of the Central Bank on the basis of a duplicate certificate.

Transitory provisions.

6. (1) Any assets of a company whose head office is in a country outside Malta held by the company under paragraph (b) of subsection (1) of section 5 or subsection (1) of section 22 of the Insurance Business Act, 1981 ("the 1981 Act"), repealed by the Act, shall, on the appointed date or on the date of conforming with the provisions of the Act, whichever is earlier, be deemed to be assets or a proportion of assets which the company is required to maintain in Malta by virtue of any provision of the Act; and, with respect to those assets, it shall further be deemed that the Centre has imposed on the company under section 18 of the Act an additional requirement that the whole of such assets shall be deposited with and held in custody for the company's account by a person as custodian for the company.

(2) Until such time as the amount of assets required to be maintained in Malta under the provisions of the Act is prescribed or determined, the amount of assets held in custody for the company's account in accordance with paragraph (1) of this regulation shall continue to be calculated in accordance with the provisions of the 1981 Act relating to the maintenance of such assets as if such provisions were provisions prescribed under the Act; and such assets shall at all times be not less than the amount held by the company under the 1981 Act on the appointed date or on the date of conforming with the provisions of the Act, whichever is earlier.

(3) For the purpose of paragraph (1) of this regulation, any person who holds assets of a company as aforesaid shall, for so long as the provisions of the said paragraph remain in force on the company, continue to hold such assets and, with respect to such assets, such person shall be deemed to be custodian of such assets for the company for the purposes of this regulation notwithstanding the fact that such person may not be included in the list of custodians contained in the Schedule to these regulations.

(4) The provisions of this regulation shall remain in force on a company as aforesaid and on a person acting as custodian as aforesaid until such time as regulations governing the maintenance of assets in Malta are prescribed and the company, the person who shall act as custodian for the company under regulation 3 of these regulations and the Centre have, with respect to those assets, made arrangements as are envisaged in regulation 3 of these regulations, or the company has, with the approval of the Centre given in writing, applied those assets to satisfy any obligation to which it is subject by virtue of any provision of the Act, or the company has obtained from the Centre the release of those assets.

SCHEDULE

(Regulation 4)

CUSTODIANS OF ASSETS

The following persons shall act as custodians of assets for the purposes of section 18 of the Act and hold in custody for companies' account assets specified in this Schedule and assigned to their custody.

1. The Central Bank of Malta shall act as custodian of assets consisting of the following description -

(a) investments approved by the Centre listed or dealt in on a foreign stock exchange or regulated market acceptable to the Centre; and

(b) currency deposits acceptable to the Centre in a bank or credit institution of first class standing lawfully carrying on the business of banking in a country outside Malta.

Any document of title of such assets of a company shall be made in the name of the Central Bank of Malta for the account of the company and be deposited with and held by the Central Bank or any of its appointed agents as custodian for the company.

2. Any bank or credit institution of first class standing lawfully carrying on the business of banking in Malta shall act as custodian of assets consisting of currency deposits whether in the Maltese lira or any other convertible currency.

Any such deposits made by a company shall be in the name of the Malta Financial Services Centre for the account of the company.

3. For the purposes of this Schedule -

"bank" and "credit institution" have the same meanings as are assigned to them by section 2 of the Banking Act, 1994;

"convertible" has the same meaning as is assigned to it by section 2 of the Central Bank of Malta Act;

"deposit" has the same meaning as is assigned to it by section 2 of the Banking Act, 1994;

"regulated market" means a market which is characterised by –

(a) regular operation;

(b) the fact that regulations issued or approved by the competent authority of the state where the market is situated –

(i) define the conditions for the operation of and access to the market;

(ii) define the conditions to be satisfied by a financial instrument in order for it to be effectively dealt in on the market; and

(iii) require compliance with reporting and transparency requirements comparable to those set out in an international regulated market of good repute; and

(c) the fact that the financial instruments dealt in are of a quality comparable to those in an international regulated market of good repute.