L.N. 100 of 2000

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

Insurance Business (Penalties for Offences and Infringements) Regulations, 2000

IN exercise of the powers conferred by section 67 of the Insurance Business Act, 1998, the Minister of Finance, after consultation with the Malta Financial Services Centre, has made the following regulations:-

Citation and commencement.

1. (1) These regulations may be cited as the Insurance Business (Penalties for Offences and Infringements) Regulations, 2000.

(2) These regulations shall come into force on the 1st September, 2000.

Interpretation.

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

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

"administrative penalty" means a penalty which may be imposed and recoverable by the Centre without recourse to a court hearing;

"the 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.

"court penalty" means a penalty which is enforceable by prosecution in the courts of Malta;

"Financial Services Tribunal" shall be construed in accordance with section 57 of the Act;

"Insurance Directive" means an Insurance Directive as may be made by the Centre by virtue of subsection (3) of section 4 of the Act for the purposes of any provision of the Act or any rule or regulation made thereunder;

"Schedule" means a schedule to these regulations,

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

Classification of penalties.

3. (1) For the purposes of these regulations, penalties are divided into court penalties and administrative penalties, and -

"court penalties" which are enforceable by prosecution in the courts of Malta shall be construed in accordance with the provisions of the First Schedule; and

"administrative penalties" shall be construed in accordance with the provisions of the Second Schedule.

(2) With respect to a penalty of any level specified in the first column of the First Schedule which is a court penalty, the penalty shall be either the corresponding fine (*multa*) specified in the second column thereof or the corresponding period of imprisonment specified in the third column thereof or both such fine and imprisonment.

(3) With respect to an administrative penalty of any level specified in the first column of the Second Schedule, the penalty shall be the corresponding amount specified in the second column thereof and the corresponding amount for each day during which the infringement continues specified in the third column thereof.

Imposition of penalties.

4. (1) Any person found guilty of an offence for having contravened a provision of the Act mentioned in the first column of the Third Schedule, with a corresponding general description of the offence set out in the second column thereof, shall be liable to the corresponding penalty of the level specified in the third column of the said Schedule.

(2) For any failure by any person to comply with any provision of the Act mentioned in the first column of the Fourth Schedule, consisting in the corresponding act or omission described in the second column thereof, the Centre may by notice in writing impose by way of an administrative penalty on the person concerned the corresponding penalty specified in the third column of the said Schedule.

(3) Any description in the second column of the Third and Fourth Schedules of any offence and failure as respectively referred to in paragraphs (1) and (2) of this regulation shall not be relied on in interpreting the provision to which the offence or failure corresponds.

Appeal to the Financial Services Tribunal.

5. In accordance with the provisions of section 58 of the Act, any person, upon whom the Centre has imposed an administrative penalty in accordance with the provisions of paragraph (2) of regulation

4 of these regulations, may appeal in writing to the Financial Services Tribunal against the decision of the Centre.

Recovery of administrative penalties.

6. Where a notice imposing an administrative penalty is served on a person and -

(a) such person fails to appeal within such time as an appeal may be entered, and fails to pay the penalty so imposed; or

(b) appeals within such time to the Financial Services Tribunal and the appeal is withdrawn or the Tribunal confirms the penalty in the amount fixed by the Centre or in an amount reduced by it, and the penalty is not paid within fifteen days from the date of the withdrawal of the appeal or the date when the Tribunal confirms the penalty as aforesaid,

then, in every such case, the Centre shall be entitled to take civil action to recover the amount due to it.

FIRST SCHEDULE

(Regulation 3)

Penalities which are enforceable by prosecution in the courts of Malta

First Column	Second Column	Third Column
Level	Fine (*multa*)	Imprisonment
1	not less than Lm100 but not more than Lm5,000	not more than three months
2	not less than Lm1,000 but not more than Lm10,000	not less than one month but not more than six months
3	not less than Lm5,000 but not more than Lm50,000	not less than six months but not more than two years.

SECOND SCHEDULE

(Regulation 3)

Administrative penalties which may be imposed by the Centre without recourse to a court hearing

First Column	Second Column	Third Column
Level	Penalty	Daily penalty
1	not less than Lm50 but not more than Lm250	not less than Lm5 but not more than Lm15
2	not less than Lm100 but not more than Lm1,000	not less than Lm10 but not more than Lm30
3	not less than Lm1,000 but not more than Lm5,000	not less than Lm20 but not more than Lm50.

THIRD SCHEDULE

(Regulation 4)

Court Penalities

First Column Section	Second Column Offence	Third Column Penalty level
67(1) with reference to 6(1)	Carrying on business of insurance in or from Malta without authorisation	2
67(1) with reference to 6(2)	Carrying on business of insurance in or from a country outside Malta without authorisation	2
67(1) with reference to 6(4)	Providing contracts of long term business class III either solely and exclusively or as part of the business of insurance carried on in or from Malta without authorisation	1
67(1) with reference to 10(3)	Opening a branch or agency, or setting up or acquiring any subsidiary in a country outside Malta without the consent of the Centre	2
67(1) with reference to 11(1)(c)	Failure of company to maintain in Malta at all times assets of such kind and amount as may be prescribed or determined in accordance with regulations made for the purposes of the Act	2
67(1) with reference to 13(1)	Acting as an insurance agent or insurance manager without authorisation	1
67(1) with reference to 14(1)	Failure of company to maintain a margin of solvency or a margin of solvency of the required amount	2
67(1) with reference to 14(2)	Failure of company to maintain a margin of solvency or a Malta margin of solvency or a margin of solvency or a Malta margin of solvency of the required amount	2

First Column Section	Second Column Offence	Third Column Penalty level
67(1) with reference to 25	Carrying on business of insurance where authorisation is automatically revoked	2
67(1) with reference to 26	Carrying on business of insurance where authorisation is suspended or revoked	3
67(1) with reference to 29(1)	Failure of company to furnish the Centre with information or documentation as required; or with information or documentation verified in a manner as specified; or to attend before the Centre, or a person appointed by the Centre, to answer questions and provide information or documentation as required	1
67(1) with reference to 29(3)	Failure of company to disclose to the Centre where information or documentation as required not in the company's possession may be found; failure of person to provide the Centre with information or documentation in his possession	1
67(1) with reference to 30(4)	Failure of officer or agent of a company to produce to an inspector documents of, or relating to, the company; or to give an inspector all assistance in connection with an examination of the affairs of the company by the inspector	1
67(1) with reference to 31	Failure of person to assist the Centre to enter and search premises to obtain information and documentation	1
67(1) with reference to 33(1)	Transferring company's rights and obligations under general business policies, or general business policies of a description, without the approval of the Centre	2
67(1) with reference to 35(1)	Transferring company's long term business, in whole or in part, without the approval of the Financial Services Tribunal	2

First Column Section	Second Column Offence	Third Column Penalty level
67(1) with reference to 38(1)	Failure of person to obtain in writing the consent of the Centre to acquire, increase, reduce or divest itself of a qualifying shareholding in an authorised company	1
67(1) with reference to 38(4)	Failure of company and its directors to notify the Centre of a person's intention to acquire, increase, reduce or divest itself of a qualifying shareholding in the company	1
67(1) with reference to 38(6)	Failure of directors and qualifying shareholders of an authorised company to notify the Centre where the company intends to merge with another company, or to undergo reconstruction or division, or to increase or reduce its nominal or issued share capital, or to effect any material change in voting rights	1
67(1) with reference to 38(7)	Failure of person intending to take any of the actions provided by section 38(1), or of company intending to take any of the actions provided by section 38(5) accordingly; or to furnish the information required to be furnished as may be determined by an Insurance Directive made for the purposes of section 38	2
67(1) with reference to 41(2)	Failure of company to observe prohibition of free disposal of the company's assets, whether such assets are situated in Malta or elsewhere, in the case of a company whose head is in Malta, or, in the case of a company whose head office is in a country outside Malta, prohibition of free disposal of the company's assets situated in Malta or in any other country outside Malta if such assets relate to the company's business in Malta	2
67(1) with reference to 42(1)	Without authorisation dissolving and winding up voluntarily by a company whose head office is in Malta carrying on long term business	2

First Column Section	Second Column Offence	Third Column Penalty level
67(1) with reference to 59(2)	Disclosing of information relating to the affairs of a company or policyholder of a company other than in specified circumstances	1
67(1) with reference to 60(1)	Exchange of information about policies or policyholders among insurers, intermediaries and the police other than for the purposes of preventing, detecting or suppressing insurance fraud	1
67(2)(a)	Obtaining by deceit authorisation under the Act or any rules or regulations made thereunder	3
67(2)(b)	Knowingly being a party to, or procuring or aiding and abetting, any contravention of any provision of the Act or any rules or regulations made thereunder or any Insurance Directive	The penalty level applicable to the principal offence
67(2)(c)	Obstructing a person exercising rights conferred by the Act or any rules or regulations made thereunder	2
67(2)(e)	Failure of director, controller, officer or employee of a company to secure compliance by the company with any provision of the Act or any rules or regulations made thereunder, or any authorisation or permit issued thereunder, or any Insurance Directive; or to ensure the correctness of statements made or information given under any of those provisions; or removes, destroys, conceals or fraudulently alters any document with intent to avoid detection of the commission of an offence under any of those provisions.	2
Any other offence arising under any provision of the Act not specifically provided for in this Schedule.		1

FOURTH SCHEDULE

(Regulation 4)

In this Schedule "Administrative Penalties" are those made under and for the purpose of section 67(6) of the Act.

Administrative Penalties

First Column Section	Second Column Infringement	Third Column Penalty level
6(3)	Failure of Protection and Indemnity Club to comply with or to satisfy the requirements as may be determined by an Insurance Directive made for the purpose of section 6	2
7(6)	Failure of company to comply with any condition of authorisation	2
10(1)(b)	Failure of company to deposit in custody assets constituting the amount of the minimum guarantee fund with a person as may be prescribed by regulations made for the purposes of section 18	3
14(4)	Failure of company to submit or give effect to a plan acceptable to the Centre for the restoration of a sound financial position	2
15(1)	Failure of company to notify the Centre upon any of the margins of solvency falling below the prescribed amount, or to make good deficiency in any of the margins of solvency of the company	3
15(2)(a)	Failure of company to desist from assuming new risks when any of the company's margins of solvency is deficient	3
16(1)	Failure of company to maintain a guarantee fund or a guarantee fund of the required amount	3
16(4)	Transferring, withdrawing or encumbering company's assets required to be maintained in Malta either without permission of the	3

First Column Section	Second Column Infringement	Third Column Penalty level
	Centre or without proving to the Centre that the company has no further liability	
17(1)	Failure of company to establish and maintain annually adequate technical provisions in respect of the company's business in accordance with regulations made for the purpose of section 20	3
17(2)	Failure of company to hold at all times unencumbered assets equal to the value of the company's technical provisions	3
17(3)	Failure of company to ensure that the company's assets covering the technical provisions are diversified and adequately spread in accordance with regulations made for the purpose of section 63	2
17(4)	Failure of company to cover at all times the company's technical provisions by equivalent and matching assets, or to limit non-matching assets to a prescribed amount in accordance with regulations made for the purpose of section 63	2
17(7)	Failure of company to maintain an equalisation reserve in respect of general business classes prescribed by regulations made for the purpose of section 17 or to maintain such equalisation reserve in accordance with those regulations	3
18(1)	Failure of company to deposit in custody assets of a prescribed kind or amount with a person prescribed by regulations made for the purpose of section 18	3
19(2) or (3)	Failure of company to inform the Centre in writing of altering its financial year	1
20(1)	Failure of company to forward annually to the Centre a copy of the company's financial	2

First Column Section	Second Column Infringement	Third Column Penalty level
	statements; or to forward such statements within a specified period or a period as may be authorised by the Centre; or to forward a copy of such statements drawn up in accordance with regulations made for the purpose of section 20; or to publish such statements in two local daily newspapers; or to publish such statements in abridged form set out in accordance with those regulations; or to exhibit those statements within a specified period or in a manner provided by section 20	
21(1)	Failure of company to appoint approved auditor	2
21(5)	Failure of auditor to give notice to the Centre if he resigns, does not seek re-appointment or qualifies the audit report	1
21(6)	Failure of company to give notice to the Centre if it receives notice of a resolution to appoint as auditor a person other than the retiring auditor or not to re-appoint the retiring auditor	1
21(7)	Failure of company to notify the Centre in writing, or to notify the Centre in writing within a specified period, the reasons for terminating the appointment of the company's auditor	2
21(8)	Failure of company to change auditor if so required by the Centre	2
22(1)	Failure of company carrying on long term business to appoint an approved actuary	2
22(2)	Failure of company to inform the Centre in writing within a specified period, of the appointment of an actuary, or termination of appointment of an actuary, as actuary of the company	2

First Column Section	Second Column Infringement	Third Column Penalty level
22(4)	Failure of actuary to give reasons in writing to the Centre for the termination of his appointment as actuary of a company	1
23(1)	Failure of company carrying on long term business to cause at the close of the financial year an investigation to be made into the company's financial position by the company's actuary	3
23(1)	Failure of company carrying on long term business to cause an abstract of an actuary's report of any investigation to be made; or to make such abstract available to the company's policyholders; or to make such abstract in the form and content as may be determined by an Insurance Directive made for the purpose of section 23	2
23(5)	Failure of company to forward to the Centre a copy of any actuary's report, or to forward such report within a specified period	2
24	Failure of auditor or actuary to inform the Centre of any of the matters as provided by section 24	2
32(1)	Failure of company to forward annually to the Centre a statement in respect of the business carried on by the company; or to forward such statement in the form, content and manner as may be determined by an Insurance Directive made for the purpose of section 32	2
32(2)	Failure of company to verify the company's business statement in a manner as may be determined by an Insurance Directive made for the purpose of section 32	1
32(3)	Failure of company to forward to the Centre in a manner as the Centre may direct such business statement at such interval and for such period as it may also direct	2

First Column Section	Second Column Infringement	Third Column Penalty level
35(7)	Failure of company to deposit with the Centre two office copies of the Tribunal's approval of transfer of long term business, in whole or in part, or to deposit such copies within a specified period	1
39(1)	Failure of company to give notice, or to give notice in a specified period, to the Centre of the company's intention to cease to carry on, in whole or in part, the business it is authorised to carry on	1
40	Failure of company authorised to cease to carry on the business it was authorised to carry on, from desisting to effect and carry out new contracts of insurance in the business authorised to cease	2
40	Failure of company authorised to cease to carry on the business it was authorised to carry on, to service or run-off contracts of insurance effected and carried out before the specified date of cessation	2
43(1)	Failure of holder of authorisation to carry on business of insurance or holder of permit to service or run-off business of insurance to notify the Centre in writing of any material change in documentation provided, or required to be provided, by or under the Act	1
43(2)	Failure of company whose head office is in Malta to submit to the Centre in writing for the Centre's approval particulars of any proposed addition or alteration to the company's memorandum or articles of association or other instrument constituting the company	1
47(1)	Failure of company to issue contracts of insurance expressed in a language as may be determined by an Insurance Directive made for the purpose of section 47	1

First Column Section	Second Column Infringement	Third Column Penalty level
47(2)	Failure of company to issue contracts of insurance expressed in the English language if no other language is determined by the Centre or no Insurance Directive is made for the purpose of section 47	1
48(1)	Issuing of advertisements or undertaking of promotional activities which generally mislead or deceive policyholders and the public	1
67(2)(d)	Failure of person to satisfy any directive or order made or given under any provisions of the Act or any rules or regulations made thereunder; or any requirement of, or obligation determined by, any provision of any Insurance Directive made for the purpose of any section of the Act other than a section mentioned in this Schedule and the Third Schedule to the regulations	1
Fourth Schedule, Part I, paragraph 3.6	Failure of company acting as an insurance agent or insurance manager to have in its favour at all times a professional indemnity insurance satisfying the requirements of paragraph 3.6 of Part I of the Fourth Schedule	2
Fourth Schedule, Part III, paragraph 5	Failure of company acting as an insurance agent to either keep monies held in a fiduciary capacity in a separate account or to effect a fidelity bond in accordance with requirements as may be determined by an Insurance Directive made for the purpose of section 13	3
Any other infringement against any other provision of the Act or any rules or regulations made thereunder or any Insurance Directive not specifically provided for in this Schedule.		1