L.N. 208 of 2004

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) Regulations, 2004

IN exercise of the powers conferred by article 41(6) of the Insurance Business Act, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Citation and commencement.

1. (1) These regulations may be cited as the Insurance Business (Reorganisation and Winding Up) Regulations, 2004.

(2) These regulations shall come into force on the 1st May, 2004.

PRELIMINARY

Interpretation.

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

"the Act" means the Insurance Business Act;

"administrator" means a special controller or any person or body appointed in terms of the Companies Act for the purpose of administering reorganisation measures by the court or by the foreign administrative or judicial authorities, as the case may be;

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

"the Companies Act" means the Act promulaged by Act No. XXV of 1995 and as subsequently amended;

"the competent authority" means the Malta Financial Services Authority appointed under article 3 of the Act;

"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;

"EEA State" means a State, other than Malta, 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;

"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 a competent authority within the meaning of article 1(k) of Directive 92/49/EEC or article 1(n) of Directive 2002/83/EC of a Member State or anEEA State;

"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 1 of Directive 73/239/EEC or article 2 of Directive 2002/83/EC which has received authorisation under article 6 or article 4 respectively;

"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 State in which an insurance undertaking has a branch;

"insurance claims" 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 paragraphs (2) and (3) of article 1, of Directive 79/267/EEC in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not known; and

(b) the premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings;

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

"liquidator" means –

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

(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, as appropriate, of an insurance undertaking authorised in that Member State or EEA State, for the purposes of administering winding up proceedings

"Maltese insurance undertaking" means a company 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 Communities;

"reorganisation measures" means measures involving any intervention by the court under Part VI of the Companies Act or by the 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 realising the assets of an insurance undertaking and distributing the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the court or by foreign administrative or the 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 which are also used in the Act shall, in these regulations, have the same meanings as in the Act.

PART I – REORGANISATION MEASURES

Adoption of reorganisation measures in Malta.

3. (1) The court shall, upon receipt of an application made in terms of Part VI of the Companies Act, decide on the reorganisation measures with respect to a Maltese insurance undertaking, including its branches established in host Member States:

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

(2) Reorganisation measures adopted in respect of an insurance undertaking, including its branches in other Member States or EEA States, shall be governed by the Companies Act, as appropriate, unless otherwise provided by regulations 19 to 28.

(3) The reorganisation measures shall be fully effective in other Member States or EEA States in accordance with the Companies Act 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 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.

4. (1) The court shall, upon receipt of an application for any reorganisation measure, inform the competent authority regarding this request in order to obtain its views on the adoption of such measures and the practical effects which it may have:

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.

(2) Where the court makes a decision, order or appointment of -

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

(b) a company recovery order and appoints a special controller in accordance with article 329B,

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.

(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 the foreign authority 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 and carried out by the Maltese insurance undertaking.

Publication.

5. (1) Where reorganisation measures are subject to a right of redress, the administrator or any other person appointed by the court for this purpose shall make public any decision of the court by:

(a) publishing a notice of the decision in the Gazette and publishing such a 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

(b) publishing an extract from the document establishing the reorganisation measure in the Official Journal of the European Communities at the earliest opportunity.

(2) The foreign authority which has been informed of a decision on a reorganisation measure pursuant to regulation 4 of these regulations may require the publication of such a decision within its territory in the manner it considers appropriate.

(3) (a) The publication made pursuant to sub-regulations (1) and (2) of this regulation shall specify:

(i) the name of the court;

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

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

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

(b) The information set out in paragraph (a) of this sub-regulation shall be published in the English and Maltese languages.

(4) The reorganisation measures shall apply regardless of the provisions concerning publication set out in sub-regulations (1), (2) and (3) of this regulation and fully effective against creditors, unless the court provides otherwise.

(5) This regulation is without prejudice to any requirement to publish information imposed upon the administrator in accordance with Part VI of the Companies Act.

(6) (a) Where the reorganisation measure affects exclusively the rights of shareholders, members or employees of a Maltese insurance undertaking considered in those capacities, this regulation shall not apply unless the Companies Act provides otherwise.

(b) The court shall determine the manner in which shareholders, members and employees affected by such reorganisation measures shall be informed in accordance with the Companies Act.

Information to known creditors.

6. (1) Where the Companies Act provides that creditors are to be informed of their right to lodge a claim or submit observations concerning their claims, the administrator or any other person appointed for that purpose shall without delay inform in writing all known creditors, including creditors who have their normal place of residence, domicile or head office in another Member State, about the commencement of reorganisation measures.

(2) Where the court makes a decision, order or appointment of -

(a) any compromise or arrangement in terms of article 327, or

(b) a company recovery order and appoints a special controller in accordance with article 329B,

it shall require all known creditors of the Maltese insurance undertaking to be individually informed, in writing, that:

(i) reorganisation measures have commenced in relation to a Maltese insurance undertaking;

(ii) the date from which that decision, order or appointment relating to reorganisation measures of the Maltese insurance undertaking has effect;

(iii) if applicable, the date by which a creditor must submit his claim in writing;

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

(v) details of any category of debt in relation to which a claim is not required;(vi)the person to whom any such claim or any observations on a claim must be submitted; and

(vii) the consequence of any failure to submit a claim by any specified time limit.

(3) In addition to the matters referred to in the sub-regulation (2) of this regulation, insurance creditors shall be notified of the following matters –

(a) the effect which the decision will, 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; and

(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.

(4) For the purposes of this regulation, a creditor is a "known" creditor where the administrator is aware of, or should reasonably be aware of –

(a) his identity.

(b) his claim or potential claim, and

(c) a recent address where he is likely to receive a communication.

Right to lodge claims.

7. (1) The claims of all creditors of the Maltese insurance undertaking having their normal residence, domicile or head office in

another Member State or EEA State 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 normal place of residence, domicile or head office in Malta.

(2) 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) the assets that are covered by his security.

Submission of claims by creditors of member states.

8. (1) The information in the notice referred to in regulation 6 of these regulations shall be provided in the Maltese and English languages.

(2) Where a creditor is notified in accordance with sub-regulation (2) of regulation 6, the notification must 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, the notification must be headed “Invitation to submit observations relating to a claim: time limits to be observed” and such heading must be given in either –

(a) the official language, or one of the official languages, of the Member States in which that creditor is ordinarily resident; or

(b) every official language.

(3) Where the known creditor is a holder of an insurance claim, the information in the notice referred to in regulation 6 of these regulations shall be provided in the official language or one of the official languages of the Member State or EEA State in which the insurance creditor has his or her normal place of residence, domicile or head office.

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

(a) where 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 in a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is ordinarily resident or, if the creditor is not an individual, the place in which the creditor's head office is located.

PART II– WINDING-UP PROCEEDINGS

Adoption of winding up proceedings in Malta.

9. (1) The court shall, upon receipt of an application made in terms of the Companies Act, take 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:

Provided that, the reorganisation measures shall not preclude the commencement of winding up proceedings:

Provided further, the decision to dissolve and wind-up a Maltese insurance undertaking may be taken in the absence, or following the adoption of reorganisation measures.

(2) The court 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 effects which they may have.

(3) Where the court makes a decision, order or appointment of -

(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 ;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.

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

(6) Without prejudice of article 42 of the Act, where in the case of a member's voluntary winding up, a liquidator is appointed as mentioned in article 272 of the Companies Act, the liquidator must 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.

(7) A decision concerning the dissolution and winding up of a Maltese insurance undertaking including its branches in other Member States or EEA States shall be recognised in other Member States without any further formalities, and shall be effective as soon as the decision is effective in Malta.

(8) Where the competent authority is informed of a decision, order or appointment in accordance with sub-regulation (3), (4), (5) of this regulation, 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 effect 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 and carried out by the Maltese insurance undertaking.

(9) Nothing contained in these regulations shall prejudice the powers of the competent authority in relation to winding up proceedings with respect to 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.

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

(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 the Companies Act.

(3) Where a Maltese insurance undertaking is being wound up, matters determined in paragraph (a) to (m) of this sub-regulation are to be determined in accordance with the Companies Act. 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 on, 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 affected Maltese insurance undertaking is a party;

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

(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 making 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 opening of the winding up order by virtue of a right *in rem* or through set-off;

(j) the conditions for and the effects of closure of winding up proceedings, in particular by composition.

(k) the rights of creditors after the closure 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 voidness, violability or unenforceability of legal acts detrimental to all the creditors:

Provided that, in so far as the provisions of this sub-regulation are inconsistent with the provisions of the Act, the provisions of the Act shall prevail, and the provisions of the Companies Act shall to the extent of the inconsistency, not apply to Maltese insurance undertakings.

Treatment of insurance claims.

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

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

(2) The Maltese insurance undertaking shall be required to maintain a register showing the assets representing the technical provisions in accordance with the Act and the Insurance Business (Companies Assets and Liabilities) Regulations, 2000. The register shall be maintained at the head office of the insurance undertaking and shall contain up-to-date details of the assets representing the technical provisions.

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(3) Where the Maltese insurance undertaking is authorised to carry on both general business and long term business, it must keep at its head office separate registers for each type of business:

Provided that a Maltese insurance undertaking which is authorised to carry on long term business and general business restricted to classes 1 and 2 of Part 1 of the Third Schedule (accident and sickness) to the Act may keep a single register for the whole of their activities.

(4) The total value of the assets entered in the register valued in accordance with the Insurance Business (Assets and Liabilities) Regulations, 2000 shall at no time be less than the value of the technical provisions.

(5) Where an asset entered in the register is subject to a right *in rem* in favour of a creditor or a third party, with the result that part of the value of the assets is not available for the purposes of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in sub-regulation (4) of this regulation.

(6) Where an asset employed to cover technical provisions is subject to a right *in rem* in favour of a creditor or a third party, without meeting the conditions of sub-regulation (5) of this regulation, or where such an asset is subject to a reservation of title in favour of a creditor or of a third party or where a creditor has a right to demand the set-off of this claim against the claim of the insurance undertaking, the treatment of such assets in case of the winding up of the Maltese insurance undertaking shall be determined by the Act except where regulations 22, 23 and 24 apply to that asset.

(7) The composition of the assets entered in the register or registers, as the case may be in accordance with sub-regulations (2) to (6) of this regulation, at the time when winding up proceedings have commenced, must not thereafter be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the court .

(8) Notwithstanding sub-regulation (7) of this regulation, the liquidator shall add to the said assets the yield therefrom and the value of the pure premiums received in respect of the class of business concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

(9) If the product of the realisation of assets is less than their estimated value in the register, the liquidators shall be required to justify this to the court.

Subrogation to the Protection and Compensation Fund. L.N. 435 of 2003.

12. Where the rights of insurance creditors have been subrogated to Protection and Compensation Fund pursuant to the the Protection and Compensation Fund Regulations, 2003, claims by such Fund shall not benefit from the provisions of regulation 11.

Revocation of the authorisation.

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 paragraph (b) of article 25 of the Act, except to the extent necessary for the purposes of sub-regulation (2) of this regulation, if the authorisation has not been previously suspended or revoked.

(2) The revocation of authorisation pursuant to sub-regulation (1) of this regulation shall not prevent the liquidator or any other person entrusted by the court 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.

Publication.

14. Where -

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

(b) an order appointing an provisional administrator in accordance with article 228 of the Companies Act;

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

(d) a liquidator has been appointed in terms of article 230 of the Companies Act,

the relevant officer or any person appointed for that purpose by the court shall publish an extract from the decision or order to commence winding-up proceedings in the Gazette by means of :

(i) a notice published in the Gazette and 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;

(ii) an extract from the winding up decision published in the Official Journal of the European Communities.

(2) The foreign authority which has been informed of a decision to wind up the Maltese insurance undertaking pursuant to sub-regulation (8) of regulation 9 may ensure the publication of such decision within their territory in the manner they consider appropriate.

(3) The publication of an extract from the decision to commence winding up proceedings shall specify:

(a) the name of the court ;

(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.

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

(5) For the purposes of this regulation "relevant officer" means and includes-

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

(d) in the case if an order appointing a provisional administrator, the provisional administrator.

Information to known creditors.

15. (1) Subject to regulation (2) of this regulation, where the Companies Act provides that creditors are to be informed of their right to lodge a claim or submit observations concerning their claims, the liquidator or any other person appointed for this purpose by the court shall without delay individually inform in writing all known creditors, including creditors who have their normal place of residence, domicile or head office in another Member States, about the commencement of winding-up proceedings.

(2) Where -

(a) a winding-up order is made in terms of article 219 and a liquidator is appointed, or

(b) an order appointing the provisional administrator is made in terms of article 228, or

(c) a liquidator is appointed in terms of article 230 of the Companies Act, or

(d) a decision as a result of an arrangement agreed to between the company and the creditors, a person is appointed by such parties,

the persons specified in sub-regulation (1) of this regulation such persons are to notify all known creditors of the Maltese insurance undertaking in writing:

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

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

(iii) the date, if applicable, by which a creditor must submit his claim in writing;

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

(v) details of any category of debt in relation to which a claim is not required;

(vi) the person to whom any such claim or any observations on a claim must be submitted; and

(vii) the consequence of any failure to submit a claim by any specified time limit.

(3) In addition to the matters referred to in the sub-regulation (2) hereof, insurance creditors must be notified of the following matters –

(a) the effect which the decision will, 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; and

(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.

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

(a) his identity;

(b) his claim or potential claim; and

(c) a recent address where he is likely to receive a communication.

Right to lodge claims.

16. (1) The claims of all creditors having their normal residence, domicile or head office in another Member State or EEA State shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by insurance creditors who have their normal place of residence, domicile or head office in Malta.

(2) 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) the assets that are covered by his security.

Submission of claims by creditors of Member States or EEA States.

17. (1) The information in the notice referred to in regulation 15 of these regulations shall be provided in the Maltese and English languages.

(2) Where a creditor is notified in accordance with sub-regulation (2) of regulation 15, the notification must 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, the notification must be headed "Invitation to submit observations relating to a claim: time limits to be observed" and such heading must be given in either –

(a) the official language, or one of the official languages, of the Member States in which that creditor is ordinarily resident; or

(b) every official language.

(3) Where the known creditor is a holder of an insurance claim, the information in the notice referred to in regulation 15 of these regulations shall be provided in the official language or one of the official languages of the Member State or EEA State in which the insurance creditor has his or her normal place of residence, domicile or head office.

(4) A creditor who submits a claim or observations relating to his 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 an insurance 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 in a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is ordinarily resident or, if the insurance creditor is not an individual, in which the creditor's head office is located.

Reports to creditors.

18. (1) Once every twelve months beginning from the date when his appointment has effect, a liquidator appointed in terms of article 219 and article 230 of the Companies Act, the provisional administrator appointed in terms of article 228 or any other person appointed for this purpose by the court 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 sub-regulation (1) of this regulation does not apply where a liquidator or provisional administrator is required by order of the court 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 court on the liquidator or provisional administrator, which is supplementary to the requirements of this regulation.

PART III – PROVISIONS COMMON TO REORGANISATION AND WINDING-UP PROCEEDINGS

Employment contracts and relationships.

19. (1) The effects of a reorganisation measure or winding up proceedings on European employment contracts and employment relationships are to be determined in accordance with the laws of the home Member State to which that contract or relationship is subject.

(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 contracts.

20. The effects of a reorganisation measure or winding up proceedings on a contract conferring the right to make use of or acquire immovable property situated within the territory of the home Member State are to be determined in accordance with the law of that State.

Registrable rights.

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

(a) immovable property;

(b) a ship; or

(c) an aircraft

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

Third parties rights *in rem*.

22. (1) The commencement of reorganisation measures or 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 at the time of the opening of such measures or proceedings.

(2) The rights *in rem* referred to in sub-regulation (1) of this regulation shall in particular mean –

(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 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 guarantee;

(c) the right to demand the assets from, and,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 *in rem* 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) of this regulation may be obtained, is also to be treated as a right *in rem* for the purposes of this regulation.

(4) Sub-regulation (1) of this regulation does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in paragraph (m) of sub-regulation (3) of regulation 10 of these regulations.

Reservation of title agreement.

23. (1) The commencement of reorganisation measures or winding-up proceedings in relation to a Maltese insurance undertaking purchasing an asset shall not affect the seller's rights 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 another Member State or EEA State.

(2) The commencement of reorganisation measures or winding-up proceedings against a Maltese insurance undertaking selling an asset, after 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 opening of such measure or proceedings the asset sold is situated within the territory of a Member State or EEA State in which such measures or proceedings were commenced.

(3) Sub-regulations (1) and (2) of this regulation does not preclude actions for voidness, voidability or enforceability of legal acts detrimental to creditors referred to in paragraph (m) of sub-regulation (3) of regulation 10 of these regulations.

Creditor's rights to set off.

24. (1) The commencement of reorganisation measures or winding up proceedings shall not affect the rights of creditors to demand the set-off of their claims against the claims of the Maltese insurance undertaking where such a set-off is permitted by the law of the Member State or EEA State which is applicable to the claim of the Maltese insurance undertaking.

(2) Sub-regulation (1) of this regulation does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in paragraph (m) sub-regulation (3) or regulation 10 of these regulations.

Regulated markets.

25. (1) Without prejudice to regulation 22 of these regulations, the effects of a reorganisation measure or of winding-up proceedings on the rights and obligations of the parties to a regulated market operating in a Member State or EEA State must be determined in accordance with the law applicable to that market.

(2) Sub-regulation (1) of this regulation does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors referred to in paragraph (m) of sub-regulation (3) or regulation 10 of these regulations.

(3) For the purposes of this regulation, "regulated market" has the meaning assigned to it in regulation 48 of the Insurance Business (Companies and Assets and Liabilities) Regulations, 2000.

Detrimental acts.

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 that:

(a) the said act is subject to the law of the Member State or EEA State; and

(b) that law does not allow any means of challenging that act in the relevant case.

(2) For the purposes of this regulation "the rules relating to detrimental transactions" means any provisions of the Companies Act relating to the voidness, voidability or unenforceability of legal acts detrimental to all creditors, as referred to in paragraph (m) of sub-regulation (3) of this regulation.

Protection of third party purchasers.

27. (1) This regulation applies, where, by an act concluded after the commencement of a reorganisation measure or winding-up proceedings, the Maltese insurance undertaking concerned disposes for a consideration of -

(a) an immovable asset situated within the territory of a Member State or EEA State;

(b) a ship or an aircraft subject to registration in a public register kept under the authority of a Member State or EEA State;

(c) securities whose existence or transfer presupposes entry into a register or account laid down by the law of a Member State or EEA State or which are placed in a central deposit system governed by the law of a Member State or EEA State.

(2) The validity of that act shall be determined by the law of the Member State or EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

Pending lawsuits.

28. (1) 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.

29. In order to secure the rights of interested third parties, an administrator or liquidator may request that a reorganisation measure or the decision to open winding-up proceedings be registered in the registry of companies and any other public register by whatever name, in Malta or any other Member States or EEA State.

Co-insurance contracts.

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 2 of Directive 78/473/EEC, on the coordination of laws, regulations and administrative provisions relating to Community co-insurance.

Professional secrecy.

31. All persons required to receive or divulge information in connection with the procedures of communication laid down in articles 4,9, and 31 shall be bound by professional secrecy in the same manner as laid down in Article 16 of Directive 92/49/EEC and article 16 of Directive 2002/83/EEC.

Branches of third country insurance undertakings.

32. (1) Where an insurance undertaking has its head office outside a Member State or EEA State and has branches established in Malta, both the competent authority, as well as the court shall have jurisdiction to decide on reorganisation measures and winding up proceedings in relation to the branch of the insurance undertaking.

(2) The competent authority, the foreign authority, the foreign administrative or judicial authority, shall endeavour to coordinate their actions.

(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 subarticle (3) of article 28 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.

33. (1) The commencement of a reorganisation measure or 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.

(2) Subject to sub-regulation (4) of this regulation, the administrator, liquidator, or persons appointed to assist, or where appropriate, represent administrators and liquidators 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 in relation to a European insurance undertaking.

(3) The appointment of the administrator and 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 certified translation of that order, decision or certificate, as the case may be.

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

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

(b) may not rule on any dispute 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 paragraph (c) of sub-regulation (4) of this regulation "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.

European insurance undertakings with branches in Malta.

34. (1) From the date of coming into force of these regulations, a court in Malta, may not, in relation to a European insurance undertaking or any branch of a European insurance undertaking –

(a) make a winding up order pursuant to article 219 of the Companies Act;

(b) appoint a provisional administrator in terms of article 228 of the Companies Act;

(c) make a company recovery order in terms of article 329B of the Companies Act.

(2) Paragraph (a) of sub-regulation (1) of this regulation does not prevent:

(a) the court from making a winding up order after the relevant date in relation to a European insurance undertaking if-

(i) a provisional administrator was appointed in relation to the European insurance undertaking before the relevant date; and

(ii) that appointment continues in force until immediately before that winding up order is made;

(b) the winding up of a European insurance undertaking after the relevant date pursuant to a winding up order which was made, and has not been discharged, before that date.

(3) Paragraph (b) of sub-regulation (1) of this regulation does not prevent a provisional administrator of a European insurance undertaking appointed before the relevant date from acting in relation to such undertaking after that date.

(4) Paragraph (c) of sub-regulation (1) of this regulation does not prevent a special controller before the relevant date from acting after that date in a case in which the company recovery order under which he or his predecessor was appointed remains in force after that date.

(5) Any arrangement entered into between a company and its creditors in the course of being wound up, shall not have effect in relation to a European insurance undertaking if a decision, under article 219 of the Companies Act, with respect to the approval of that arrangement was taken after the relevant date.

*(*6) Nothing in these regulations shall affect any proceedings commenced in any court concerning the reorganisation or winding-up of a Maltese insurance undertaking where such proceedings were commenced before the 1st May, 2004.

(7) In this regulation, the expression "relevant date" means the 1st May 2004.

Proposed compromise or arrangement in relation to European insurance undertakings and their branches.

35. (1) A court may not make a relevant order under article 327 of the Companies Act in relation to a European insurance undertaking which is subject to reorganisation measures or winding-up proceedings as defined in article 2(c) and article 2(d) respectively in Directive 2001/17/EC or a branch of a European insurance undertaking which is subject to such a measure or proceedings unless the conditions set out in sub-regulation (2) are satisfied.

(2) These conditions are that –

(a) the person proposing a compromise or arrangement in terms of article 327 has given -

(i) the administrator or liquidator appointed in relation to European insurance undertaking in relation to which the proposal is made; and

(ii) the foreign administrative and judicial authorities,

reasonable notice of the details of that proposal; and

(b) no person notified in accordance with paragraph (a) has objected to the proposal.

(4) Nothing in this regulation invalidates a compromise or arrangement which was sanctioned by the court by an order made before the date of coming into force of these regulations.

(5) For the purposes of sub-regulation (2) hereof, a "relevant order" means an order sanctioning a compromise or arrangement granted in terms of article 327 of the Companies Act which -

(a) is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern and which affects the rights of persons other than the insurer or its contributories; or

(b) includes among it purposes a realisation of some or all of the assets of the European insurance undertaking to which the order relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.

PART V - MISCELLANEOUS

Interpretation.

36. (1) The purpose of these regulations is to implement the provisions of Directive 2001/17/EC of the European Parliament and of the Council of 19th March, 2001 on the reorganisation and winding-up of insurance undertakings, 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.

Transitional provisions.

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

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