L.N. 311 of 2004

INSURANCE BUSINESS ACT

(CAP. 403)

Insurance Business (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations, 2004

IN exercise of the powers conferred by articles 63 and 64 of the Insurance Business Act, the Prime Minister and the 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 (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations, 2004.

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

Interpretation.

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

"the Act" means the Insurance Business Act;

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

"the Regulations" means the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004; L.N. 310 of 2004.

"EEA insurance parent undertaking" means an insurance parent undertaking whose head office is in Malta or another EEA State;

"EEA insurer" means an insurer, other than a pure reinsurer or a non-directive insurer, whose head office is in an EEA State other than Malta and which has received authorisation under article 4 of Directive 2002/83/EC or article 6 of Directive 73/239/EEC from the foreign authority;

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

"financial year" means each period at the end of which the balance of the accounts of an insurer is struck or, if no such balance is struck, the calendar year;

"financial year in question" means the financial year which last ended before the date on which the accounts of an insurer are required to be submitted to the competent authority under article 20 of the Act;

"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 an EEA State;

"insurance group" means an insurance parent undertaking and its related undertakings that are:

(a) insurers;

(b) reinsurance undertakings; or

(c) insurance holding companies;

"Insurance Groups Directive" means the Directive, 98/78/EC, of the European Parliament and of the Council of the 27th October, 1998 on the supplementary supervision of insurance undertakings in an insurance group;

"insurance holding company" means an undertaking whose main business is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings;

"insurance parent undertaking" in relation to an insurance undertaking, is a parent undertaking of that insurance undertaking, which is either itself an insurance undertaking or an insurance holding company;

"insurer" means the party to a contract of insurance who agrees to pay a sum of money or other consideration on the happening of a specified event;

"insurer whose head office is in Malta" means a company authorised in terms of the Act, whose head office is in Malta and which is entitled to carry on business of insurance in an EEA State, other than Malta in exercise of a European right;

"mixed-activity insurance holding company" means a parent undertaking, other than an insurance undertaking, a non-member-country insurance undertaking, a reinsurance undertaking or an insurance holding company, which includes at least one insurance undertaking among its subsidiary undertakings;

"non-directive insurer" means -

(a) a mutual (carrying on long term business) -

(i) whose articles of association contain provisions for calling up additional contributions from members or reducing their benefits or claiming assistance from other persons who have undertaken to provide it; and

(ii) whose annual gross premium income (other than from contracts of reinsurance) has not exceeded 5 million Euro for each of the financial year in question and the two previous financial years;

(b) a mutual (carrying on general business) whose –

(i) articles of association contain provisions for calling up additional contributions from members or reducing their benefits;

(ii) business does not cover liability risks, other than ancillary risks, or credit or suretyship risks;

(iii) gross premium income (other than from contracts of reinsurance) for the financial year in question did not exceed 5 million Euro; and

(iv) members provided at least half of that gross premium income;

(c) an insurer whose business of insurance (other than reinsurance) is –

(i) restricted to the provision of assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence;

(ii) carried out exclusively on a local basis and consists only of benefits in kind; and

(iii) such that the gross premium income from the provision of assistance in the financial year in question did not exceed 200,000 Euro,

and whose business of insurance is limited to that described in the foregoing paragraphs (a) to (c);

"non-EEA insurer" means an insurer, other than a pure State reinsurer, whose head office is not in an EEA;

"notional required minimum margin" means:

(a) in the case of an insurer (other than a pure reinsurer) that has its head office in the zone of countries the amount of the required minimum margin, or equivalent, under the regulatory requirements of that country;

(b) in the case of a pure reinsurer that has its head office in the zone of countries, the amount that would be the required minimum margin, or equivalent, if the regulatory requirements of that state or territory within the zone of countries applicable to undertakings carrying on direct insurance business were applied to the pure reinsurer; and

(c) in all other cases, the amount of the required minimum margin that would apply if the insurer were an insurer with its head office in Malta (whether it is or not);

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"parent undertaking" has the same meaning as is assigned to it by article 2 of the Companies Act;

"parent undertaking solvency calculation" means the calculation required by Part XI of the Regulations;

"participation" means the holding of a participating interest or the holding, directly or indirectly, of 20% or more of the voting rights or capital;

"participating interest" shall have the meaning as is assigned to it by article 2 of the Companies Act;

"participating undertaking" means an undertaking which holds a participation in the undertaking in question;

"pure reinsurer" means an insurer whose business is restricted to business of reinsurance;

"related undertaking**"** means, in relation to an insurer -

(a) a subsidiary undertaking of the insurer; or

(b) a company of which the insurer is a subsidiary undertaking; or

(c) a subsidiary undertaking of a company of which the insurer is a subsidiary undertaking;

"reinsurance undertaking" means an undertaking, other than an insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member country insurance undertaking or other reinsurance undertakings;

"solvency deficit" means a deficit in the assets available to cover the undertaking's liabilities and represent its notional required minimum margin, if any;

"subsidiary undertaking" means an undertaking within the meaning of paragraph (c) of sub-article (2) of article 2 of the Companies Act;

"ultimate EEA insurance parent undertaking" means an EEA insurance parent undertaking that is not itself the subsidiary undertaking of another EEA insurance parent undertaking;

"ultimate insurance parent undertaking" means an insurance parent undertaking that is not itself the subsidiary undertaking of another insurance parent undertaking;

"zone of countries" means a zone of countries as may be determined by an Insurance Directive made by the competent authority by virtue of sub-article (3) of article 4 of the Act for the purposes of any provision of any regulation made under the Act,

and the words and expressions which are also used in the Act shall, in these regulations, have the same meanings as in the Act.

Applicability.

3. (1) Every insurer whose head office is in Malta which is a participating undertaking in at least one EEA insurer, reinsurance undertaking or non-EEA insurer, shall be subject to supplementary supervision in accordance with regulation 4 of these regulations.

(2) Every insurer whose head office is in Malta, the parent undertaking of which is an insurance holding company, a reinsurance undertaking or a non-EEA insurer, shall be subject to supplementary supervision in accordance with regulation 4 of these regulations.

(3) Every insurer whose head office is in Malta, the parent undertaking of which is a mixed-activity insurance holding company, shall be subject to supplementary supervision in accordance with regulation 4 of these regulations:

Provided that, the exercise of supplementary supervision shall in no way imply that the competent authority is required to play a supervisory role in relation to the non-EEA insurer, insurance holding company, mixed activity insurance holding company or reinsurance undertaking taken individually.

Supplementary supervision.

4. (1) The supplementary supervision shall take into account:

(a) related undertakings of an insurer whose head office is in Malta;

(b) participating undertakings in an insurer whose head office is in Malta; and

(c) related undertakings of a participating undertaking in an insurer whose head office is in Malta.

(2) Without prejudice to regulation 6 of these regulations, the competent authority may decide not to take into account in the supplementary supervision referred to in sub-regulation (1) of this regulation non-EEA insurers where there are legal impediments to the transfer of the necessary information.

(3) Every insurer whose head office is in Malta subject to supplementary supervision shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of such supplementary supervision.

(4) Undertakings that are subject to supplementary supervision and their related undertakings and participating undertakings shall exchange among themselves any information relevant for the purposes of such supplementary supervision.

(5) (a) The competent authority shall have access to any information which would be relevant for the purpose of supervision of an EEA insurer subject to supplementary supervision;

(b) The competent authority may address itself directly to the relevant undertakings referred to in sub-regulation (4) of this regulation, to obtain the necessary information only if such information has been requested from the insurer whose head office is in Malta and has not been supplied by such undertaking.

(6) The competent authority may carry out, in Malta, itself, or through an inspector appointed in terms of article 30 of the Act, on-the-spot verification of information referred to in sub-regulation (3) of this regulation at:

(a) the insurer whose head office is in Malta subject to supplementary supervision;

(b) subsidiary undertakings of that insurer;

(c) parent undertakings of that insurer; and

(d) subsidiary undertakings of a parent undertaking of that insurer.

(7) (a) Where the competent authority wishes to verify information concerning another undertaking in another EEA State, which is a related insurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary undertaking of a parent undertaking of the insurer whose head office is in Malta subject to supplementary supervision, the competent authority shall request the foreign authority of that other EEA State to have that verification carried out;

(b) The foreign authority may also request the competent authority to have such on-the-spot verification carried out on its behalf; or

(c) The competent authority may allow the foreign authorities making the request to carry out on-the-spot verification itself or by allowing an auditor or expert to carry it out.

General supervision and reporting tothe competentauthority.

5. (1) General supervision shall be carried out by the competent authority over transactions between:

(a) an insurer whose head office is in Malta; and

(i) a related undertaking of the insurer;

(ii) a participating undertaking in the insurer;

(iii) a related undertaking of a participating undertaking in the insurer;

(b) an insurer whose head office is in Malta and a natural person who holds a participation in:

(i) the insurer or any of its related undertakings;

(ii) a participating undertaking in the insurer;

(iii) a related undertaking of a participating undertaking in the insurer.

(2) An insurer whose head office is in Malta shall provide the competent authority with a declaration of the following information in respect of itself and, subject to the exceptions in sub-regulation (3) of this regulation, in respect of each member of the insurance group:

(a) the name, location of head office and principal activity;

(b) the relationship with each other member of the insurance group, including the amounts and descriptions of holdings of share capital and voting rights;

(c) loans between members of the insurance group;

(d) guarantees and off-balance sheet transactions between members of the insurance group;

(e) investments between members of the insurance group;

(f) reinsurance operations between members of the insurance group;

(g) agreements to share costs between members of the insurance group;

(h) whether the member of the group is a subsidiary undertaking of the ultimate insurance parent undertaking and, if different, of the ultimate EEA insurance parent undertaking;

(i) subject to sub-regulation (3) of this regulation, the ultimate insurance parent undertaking's proportional share of, or if the group member is a subsidiary undertaking of that parent the whole of, any solvency deficit;

(j) subject to sub-regulation (3) of this regulation, the ultimate EEA insurance parent undertaking's proportional share of, or if the group member is a subsidiary undertaking of that parent the whole of, any solvency deficit; and

(k) a statement that:

(i) the declaration has been properly prepared in accordance with this regulation, and

(ii) proper records have been maintained and adequate information obtained by the insurer for the purpose of the declaration required by this regulation.

(3) Paragraphs (i) and (j) of sub-regulation (2) of this regulation shall not apply with respect to a group member, other than the insurer with head office in Malta, where:

(a) the parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking, as the case may be, is positive;

(b) the group member is not a parent undertaking of the insurer whose head office is in Malta;

(c) the group member is not a participating undertaking in the insurer whose head office is in Malta;

(d) the group member is not a related undertaking of the insurer whose head office is in Malta;

(e) the group member's solvency deficit does not exceed 5% of the positive parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking, as the case may be; and

(f) the insurer whose head office is in Malta has complied with paragraphs (i) or (j) of sub-regulation (2) of this regulation, as the case may be, in relation to sufficient group members so that the sum of the solvency deficits in the remaining group members does not exceed 10% of the positive parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking, as the case may be.

(4) Subject to sub-regulations (6), (7), (8) and (9) of this regulation, the declaration required by sub-regulation (2) of this regulation shall also include:

(a) calculations ("the parent undertaking solvency calculations") in respect of each of the ultimate insurance parent undertaking and ultimate EEA insurance parent undertaking of the value of its surplus assets, determined in accordance with the requirements of Part IX of the Regulations (other than paragraphs (a) to (c) of sub-regulation (1) of regulation 62), less:

(i) any provision for related undertakings valued on the basis of regulation 67 of the Regulations, except to the extent already allowed for in the value of surplus assets, and

(ii) where the surplus assets are valued at nil, the amount of any deficit in the assets available to cover:

(aa) any liabilities not already provided for, and

(bb) the notional required minimum margin, if any, of the ultimate insurance parent undertaking or the ultimate EEA insurance parent undertaking, as the case may be; and

(b) if either of the parent undertaking solvency calculations is negative, a statement as to the reasons why such deficit or deficits has or have arisen and of any remedial action taken or planned.

(5) The information and calculations required under this regulation must be provided by not later than six months from the end of:

(a) the financial year in question; or

(b) the financial year of the ultimate EEA insurance parent undertaking; or

(c) the financial year of the ultimate insurance parent undertaking.

(6) If the foreign authority has agreed to be the supervisor responsible for exercising supplementary supervision of the EEA insurer under sub-article (2) of article 4 of the Insurance Groups Directive or, where no such agreement has been reached, but:

(a) the head office of the ultimate EEA insurance parent undertaking is situated in an EEA State, other than Malta, and that parent is itself an insurer, other than a pure reinsurer; or

(b) where that parent is not an insurer, another member of the insurance group is an insurer (other than a pure reinsurer) whose head office is situated in an EEA State other than Malta, and that member is:

(i) a parent undertaking of the insurer whose head office is in Malta, or

(ii) has a notional required minimum margin which exceeds the notional required minimum margin of the insurer,

then the insurer may provide the information and calculations required under paragraphs (i) and (j) of sub-regulation (2) of this regulation and the parent undertaking solvency calculation in relation to the ultimate EEA insurance parent undertaking prepared in accordance with the requirements of the EEA State of supplementary supervision or of the relevant head office for:

(aa) the valuation of assets and the determination of liabilities of insurers and insurance holding companies; and

(bb) the calculation of the required minimum solvency margin of insurers.

(7) If the head office of the ultimate insurance parent undertaking is situated in a country within the zone of countries other than an EEA State, then the insurer may provide:

(a) the parent undertaking solvency calculation, in accordance with the provisions of Part XI of the Regulations, in relation to the ultimate insurance parent undertaking prepared in accordance with accounting practice applicable for the purposes of the supervision of insurers in the state or territory of the head office:

(i) adapted as necessary to apply the general principles set out in paragraphs 1.B, 1.C, and 1.D of Annex I of the Insurance Groups Directive; and

(ii) using the deduction and aggregation method or the accounting consolidation-based method set out in Annex I of the Insurance Groups Directive; and

(b) the solvency deficits under paragraph (i) of sub-regulation (2) of this regulation prepared in accordance with the requirements:

(i) for the valuation of assets and the determination of liabilities of insurers and insurance holding companies, and

(ii) for the calculation of the required minimum solvency margin of insurers,

in the state or territory where the ultimate insurance parent undertaking's head office is situated.

(8) If the head office of the insurer's ultimate insurance parent undertaking is not situated in Malta or in a country within the zone of countries, then the insurance company may provide the parent undertaking solvency calculation in relation to the ultimate insurance parent undertaking prepared in accordance with the requirements of Part X of the Regulations (other than paragraphs (a) to (c) of sub-regulation (1) of regulation 62 of the Regulations).

(9) If the ultimate insurance parent undertaking or, as the case may be, the ultimate EEA insurance parent undertaking of the insurer is itself an insurer to which Part IX of the Regulations apply, then the insurer is not required to provide a parent undertaking solvency calculation in relation to that parent.

(10) The declarations required by sub-regulations (2) and (4) of this regulation:

(a) subject to paragraph (c), must be signed by, where there are more than two directors of the company, at least two of those directors and, where there are not more than two directors, all the directors; and

(b) subject to sub-regulation (11) of this regulation, must include a statement from the auditors of the insurer, or of a company under paragraph (c) of this sub-regulation that, in their opinion, it has been properly compiled in accordance with this regulation from information provided by members of the insurance group and from the company's own records; and

(c) may be provided on behalf of the insurer (the first insurer) by any other insurer to which this regulation applies and which is a member of the insurance group (the second insurer) where:

(i) it is signed by two directors of the second insurer; and

(ii) it contains a statement that it has been copied to the board of directors of the first insurer.

(11) The statement under paragraph (b) of sub-regulation (10) of this regulation is not required to include the parent undertaking solvency calculation or a calculation with respect to that parent under paragraphs (i) or (j) of sub-regulation (2) of this regulation:

(a) where the parent undertaking solvency calculation is provided in accordance with sub-regulation (6) of this regulation; and

(b) to the extent that a statement is provided from auditors qualified in the EEA State of supplementary supervision or of the relevant head office, that in their opinion the calculation complies with the requirements applicable in that State to the preparation of solvency calculations for insurance groups pursuant to the Insurance Groups Directive.

Availability of information and powers of intervention

6. (1) Where any information necessary for any of the calculations required by these regulations or Part XI of the Regulations, concerning a related undertaking with its registered office in an EEA State or a non-EEA State, is not available to the competent authority, for whatever reason, the book value of that undertaking in the participating undertaking shall be deducted from the elements eligible for the calculation provided for under regulation 51 of the Regulations. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the calculation.

(2) If, on the basis of any of the calculations provided for in Part IX of the Regulations, it results that the solvency of a subsidiary insurance undertaking of the insurance holding company, the reinsurance undertaking or the non-EEA insurer, is, or may be jeopardised, the competent authority shall take appropriate measures at the level of the insurer whose head office is in Malta.

Interpretation.

7. (1) The purpose of these regulations is to implement the provisions of Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998, and shall be interpreted and applied accordingly.

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