L.N. 126 of 2005

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Companies Accounts) (Amendment) Regulations, 2005

IN exercise of the powers conferred by articles 20 and 64 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) The title of these regulations is the Insurance Business (Companies Accounts) (Amendment) Regulations, 2005, and they shall be read and construed as one with the Insurance Business (Companies Accounts) Regulations, 2000, hereinafter referred to as "the principal regulations".

L.N. 103 of 2000.

(2) These regulations shall come into force on the 26th April, 2005, and have effect in respect of the financial years of companies which begin on or after the 1st January, 2005.

(3) The purpose of these regulations is to implement the provisions of Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, and of Directive 2003/51/EC of the European Parliament of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, and they shall be interpreted and applied accordingly.

Amends regulation 2 of the principal regulations.

2. Regulation 2 of the principal regulations shall be amended as follows:

(a) sub-regulation (1) thereof, shall be amended as follows:

(i) immediately after the definition of "the Act" there shall be added the following new definition:

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

(ii) the definition of "Centre" shall be deleted, and for the word "Centre" wherever it appears in the principal regulations, there shall be substituted the word "Authority";

(iii) for the word "section", wherever it appears, there shall be substituted the word "article";

(iv) immediately after the definition of "group" there shall be added the following new definition:

" "investment property" means land held to earn rent or for capital appreciation;";

(b) immediately after sub-regulation (2) thereof, there shall be added the following new sub-regulations:

"(3) For the purposes of these regulations, references to "derivatives" include commodity-based contracts that give either contracting party the right to settle in cash or some other financial instrument, except when such contracts –

(a) were entered into for the purpose of, and continue to meet, the company's expected purchase, sale or usage requirements;

(b) were designated for such purpose at their inception; and

(c) are expected to be settled by delivery of the commodity.

(4) (a) The expressions listed in paragraph (b) of this sub-regulation contained in paragraphs 41A to 41F and paragraphs 54A to 54D of the First Schedule to these regulations shall have the same meaning as is assigned to them by the International Accounting Standards as may be issued from time to time by the International Accounting Standards Board or any other Body succeeding it by whatever name it may be known.

(b) The expressions referred to in paragraph (a) of this sub-regulation are "available for sale financial asset", "business combination", "commodity-based contracts",

"derivative", "equity instrument", "exchange difference", "fair value hedge accounting system", "financial fixed asset", "financial instrument", "foreign entity", "hedge accounting", "hedge accounting system", "hedged items", "hedging instrument", "held for trading purposes", "held to maturity", "monetary item", "receivables", "reliable market" and "trading portfolio"."

3. Regulation 4 of the principal regulations shall be amended as follows: Amends regulation 4 of the principal regulations.

(a) for the words "of the First Schedule to these regulations:" there shall be substituted the words "of the First Schedule to these regulations."; and

(b) the proviso to this regulation shall be deleted.

4. In regulation 5 of the principal regulations, for the words "shall apply in accordance with the provisions of Title I of the Third Schedule to these regulations" there shall be substituted the words "shall apply in accordance with the provisions of Title I of the Second Schedule to these regulations". Amends regulation 5 of the principal regulations.

5. Regulation 7 of the principal regulations shall be amended as follows - Amends regulation 7 of the principal regulations.

(a) in paragraph (a) of sub-regulation (2) thereof, for the words "in accordance with the provisions of the Fourth Schedule to these regulations and" there shall be substituted the words "in accordance with the provisions of the Third Schedule to these regulations and";

(b) in paragraph (b) of sub-regulation (2) thereof, for the words "a company whose head office is in a country outside Malta" there shall be substituted the words "a company whose head office is not in a Member State or an EEA State" and for the words "detract materially from the provisions of the said Fourth Schedule" there shall be substituted the words "detract materially from the provisions of the said Third Schedule";

(c) in sub-regulation (4) thereof, for the words "a company whose head office is in a country outside Malta" there shall be substituted the words "a company whose head office is not in a Member State or an EEA State";

(d) in sub-regulations (5) and (6) thereof, for the words "the general information which is mentioned in Title II of the Fourth Schedule to these regulations" there shall be substituted the words "the general information which is mentioned in Title II of the Third Schedule to these regulations".

Substitutes regulation 8 of the principal regulations.

6. For regulation 8 of the principal regulations, there shall be substituted the following -

"Interpretation.

8. The purpose of these regulations is to implement the provisions of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 57(3)(g) of the Treaty on consolidated accounts, Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings, Directive 2001/65/EC of the European Parliament and of the Council of 27 September 2001 amending Directives 78/660/EEC, 83/349/EEC and 86/635/EEC as regards the valuation rules for the annual and consolidated accounts of certain types of companies as well as of banks and other financial institutions, and Directive 2003/51/EC of the European Parliament of the Council of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings and shall be interpreted and applied accordingly.".

Amends First Schedule to the principal regulations.

7. The First Schedule to the principal regulations shall be amended as follows –

(a) in sub-paragraphs (1) and (2) of paragraph 7 of Title I thereof, for the words "Provisions for other risks and charges" there shall be substituted the words "Provisions for other risks";

(b) for paragraph 11 thereof, there shall be substituted the following –

"11. The directors of a company shall, in determining how amounts are presented within items in the profit and loss account and balance sheet, have regard to the substance of the reported transaction or arrangement, in accordance with generally accepted accounting principles or practice.";

(c) (i) in the Balance Sheet Format set out immediately following paragraph 15 thereof, under the heading "LIABILITIES", in item E, for the words "*Provisions for other risks and charges (27)*" there shall be substituted the words "*Provisions for other risks (27)*";

(ii) in the "Notes on the balance sheet format", note (24) *Equalisation provison*, for the words "This item shall comprise the amount of any reserve maintained by the company under subsection (7) of section 17 of the Act.", there shall be substituted the words " This item shall comprise any amounts which, in accordance with Council Directive 87/343/EEC of 22 June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, are required to be set aside by a company to equalise fluctuations in loss ratio in future years or to provide for special risks."; and

(iii) in the "Notes on the balance sheet format", note (27) *Provisions for other risks and charges*, for the words "provisions for other risks and charges", wherever it appears, there shall be substituted the words "provisions for other risks";

(d) for indent (ii) of sub-paragraph (c) of paragraph 19 thereof, there shall be substituted the following:

"(ii) account shall be taken of all liabilities arising in the course of the accounting period concerned or of a previous one, even if such liabilities become apparent only between the date of the balance sheet and the date on which it is drawn up.";

(e) for paragraph 21 thereof, there shall be substituted the following-

"Valuation

21. (1) The amounts to be included in respect of assets of any description mentioned in paragraph 34 are determined either –

(a) in accordance with that paragraph and paragraph 36 (but subject to paragraphs 39 to 41); or

(b) in so far as applicable to an asset of that description, in accordance with paragraphs 41A to 41F.

(2) The amounts to be included in respect of assets of any description mentioned in paragraph 36 may be determined -

(a) in accordance with that paragraph (but subject to paragraphs 39 to 41); or

(b) in so far as applicable to an asset of that description, in accordance with paragraphs 41A to 41F.

(3) The amounts to be included in respect of assets which are not assets of a description mentioned in paragraph 34 or 35, but are assets of a description to which paragraphs 41A to 41F are applicable, may be determined in accordance with paragraphs 41A to 41F.

(4) Subject to sub-paragraphs (1) to (3) of this paragraph, the amounts to be included in respect of all items shown in a company's accounts are determined in accordance with paragraphs 21 to 32.";

(f) sub-paragraph (2) of paragraph 31 shall be deleted and sub-paragraph (1) of paragraph 31 shall be renumbered as paragraph 31;

(g) for paragraphs 32 and 33 thereof, there shall be substituted the following new paragraphs:

"32. Where any amount as referred to in paragraph 31 is treated as an asset –

(a) it shall be written-off by reasonable amounts each year;

(b) it shall be completely written-off before repayment of the debt; and

(c) if the current amount is not shown as a separate item in the company's balance sheet it shall be disclosed in the notes to the accounts.

CURRENT VALUE ACCOUNTING RULES

33. The same valuation method shall be applied to all investments included in any item in the balance sheet format which is denoted by an Arabic numeral.";

(h) in sub-paragraph (1) of paragraph 39, for the words "and paragraphs 23 to 27 and 31 of this Schedule" there shall be substituted the words "and paragraphs 23 to 27 and 31 and 32 of this Schedule";

(i) the following paragraphs shall be inserted immediately after paragraph 41 -

"VALUATION AT FAIR VALUE

Inclusion of financial instruments at fair value

41A. (1) Subject to sub-paragraphs (2) to (4) of this paragraph, financial instruments (including derivatives) may be included at fair value.

(2) Sub-paragraph (1) of this paragraph does not apply to financial instruments which constitute liabilities unless-

(a) they are held as part of a trading portfolio; or

(b) they are derivatives.

(3) Except where they fall to be included under Assets item D (*Assets held to cover linked liabilities*), sub-paragraph (1) of this paragraph does not apply to-

(a) financial instruments (other than derivatives) held to maturity;

(b) loans and receivables originated by the company and not held for trading purposes;

(c) interests in subsidiary companies, associated companies and joint ventures;

(d) equity instruments issued by the company;

(e) contracts for contingent consideration in a business combination;

(f) other financial instruments with such special characteristics that the instruments, according to generally accepted accounting principles or practice, should be accounted for differently from other financial instruments.

(4) If the fair value of a financial instrument cannot be determined reliably in accordance with paragraph 41B of this Schedule, sub-paragraph (1) of this paragraph does not apply to that financial instrument.

(5) For the purpose of this paragraph, "joint venture" has the same meaning as is assigned to it in paragraph 20 of the Fourth Schedule to the Companies Act.

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Determination of fair value

41B. (1) The fair value of a financial instrument is determined in accordance with this paragraph.

(2) If a reliable market can readily be identified for the financial instrument, its fair value is determined by reference to its market value.

(3) If a reliable market cannot readily be identified for the financial instrument but can be identified for its components or for a similar instrument, its fair value is determined by reference to the market value of its components or of the similar instrument.

(4) If neither sub-paragraph (2) nor (3) of this paragraph applies, the fair value of the financial instrument is a value resulting from generally accepted valuation models and techniques.

(5) Any valuation models and techniques used for the purposes of sub-paragraph (4) of this paragraph must ensure a reasonable approximation of the market value.

Inclusion of hedged items at fair value

41C. A company may include any assets and liabilities that qualify as hedged items under a fair value hedge accounting system, or identified portions of such assets or liabilities, at the amount required under that system.

Other assets that may be included at fair value

41D. (1) This paragraph applies to-

(a) investment property, and

(b) living animals and plants,

that, under International Accounting Standards, may be included in accounts at fair value.

(2) Such investment property and such living animals and plants may be included at fair value, provided that all such investment property or, as the case may be, all such living animals and plants are so included where their fair value can reliably be determined.

(3) For the purpose of this paragraph, "fair value" means fair value determined in accordance with relevant International Accounting Standards.

Accounting for changes in value

41E. (1) This paragraph applies where a financial instrument is valued in accordance with paragraph 41A or 41C or an asset is valued in accordance with paragraph 41D.

(2) Notwithstanding paragraph 19 of this Schedule, and subject to sub-paragraphs (3) and (4) of this paragraph, a change in the value of the financial instrument or of the investment property or of the living animal or plant must be included in the profit and loss account.

(3) Where –

(a) the financial instrument accounted for is a hedging instrument under a hedge accounting system that allows some or all of the change in value not to be shown in the profit and loss account; or

(b) the change in value relates to an exchange difference arising on a monetary item that forms part of a company's net investment in a foreign entity,

the amount of the change in value must be credited to or (as the case may be) debited from a separate reserve ("the fair value reserve").

(4) Where the instrument accounted for-

(a) is an available for sale financial asset, and

(b) is not a derivative,

the change in value may be credited to or (as the case may be) debited from the fair value reserve.

The fair value reserve

41F. (1) The fair value reserve must be adjusted to the extent that the amounts shown in it are no longer necessary for the purposes of sub-paragraph (3) or (4) of paragraph 41E.

(2) The treatment for taxation purposes of amounts credited or debited to the fair value reserve shall be disclosed in a note to the accounts.";

(j) for paragraph 50 thereof, there shall be substituted the following-

"The amount required to be set aside by the company to equalise fluctuations in loss ratios in future years or to provide for special risks shall be determined in accordance with Council Directive 87/343/EEC of 22 June 1987 amending, as regards credit insurance and suretyship insurance, First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance.";

(k) the following new sub-paragraph (v) shall be inserted immediately following sub-paragraph (u) of paragraph 54 –

"Reserves and dividends

(a) any amount set aside or proposed to be set aside to, or withdrawn or proposed to be withdrawn from, reserves,

(b) the aggregate amount of dividends paid in the financial year (other than those for which a liability existed at the immediately preceding balance sheet date),

(c) the aggregate amount of dividends that the company is liable to pay at the balance sheet date, and

(d) the aggregate amount of dividends that are proposed before the date of approval of the accounts, and not otherwise disclosed under indents (b) or (c) of sub-paragraph (v) of paragraph 54.";

(l) the following new paragraphs 54A to 54D shall be inserted after sub-paragraph (v) of paragraph 54 of this Schedule-

"Information about fair value of assets and liabilities

54A. (1) This paragraph applies where financial instruments have been valued in accordance with paragraph 41A or 41C.

(2) The items affected and the basis of valuation adopted in determining the amounts of the financial instruments shall be disclosed.

(3) The purchase price of the financial instruments shall be disclosed.

(4) There shall be stated-

(a) where the fair value of the instruments has been determined in accordance with sub paragraph (4) of paragraph 41B, the significant assumptions underlying the valuation models and techniques used;

(b) for each category of financial instrument, the fair value of the instruments in that category and the changes in value-

(i) included in the profit and loss account; or

(ii) credited to or (as the case may be) debited from the fair value reserve,

in respect of those instruments, and

(c) for each class of derivatives, the extent and nature of the instruments, including significant terms and conditions that may affect the amount, timing and certainty of future cash flows.

(5) Where any amount is transferred to or from the fair value reserve during the financial year, there must be stated in tabular form-

(a) amount of the reserve as at the date of the beginning of the financial year and as at the balance sheet date respectively;

(b) the amount transferred to or from the reserve during that year; and

(c) the source and application respectively of the amounts so transferred.

54B. Where the company has derivatives that it has not included at fair value, there must be stated for each class of such derivatives-

(1) the fair value of the derivatives in that class, if such a value can be determined in accordance with paragraph 41B; and

(2) the extent and nature of the derivatives.

54C. (1) Sub-paragraph (2) of this paragraph applies if-

(a) the company has financial fixed assets that could be included at fair value by virtue of paragraph 41A;

(b) the amount at which those assets are included under any item in the company's accounts is in excess of their fair value; and

(c) the company has not made provision for diminution in value of those assets in accordance with sub-paragraph (2) of paragraph 25 of this Schedule.

(2) There shall be stated-

(a) the amount at which either the individual assets or appropriate groupings of those individual assets are included in the company's accounts;

(b) the fair value of those assets or groupings; and

(c) the reasons for not making a provision for diminution in value of those assets, including the nature of the evidence that provides the basis for the belief that the amount at which they are stated in the accounts will be recovered.

Information where investment property and living animals and plants are included at fair value

54D. (1) This paragraph applies where the amounts to be included in a company's accounts in respect of investment property or living animals and plants have been determined in accordance with paragraph 41D.

(2) The balance sheet items affected and the basis of valuation adopted in determining the amounts of the assets in question in the case of each such item shall be disclosed in a note to the accounts.

(3) In the case of investment property, for each balance sheet item affected there shall be shown, either separately in the balance sheet or in a note to the accounts-

(a) the comparable amounts determined according to the historical cost accounting rules; or

(b) the differences between those amounts and the corresponding amounts actually shown in the balance sheet in respect of that item.

(4) In sub-paragraph (3) of this paragraph, references in relation to any item to the comparable amounts determined in accordance with that sub-paragraph are references to-

(a) the aggregate amount which would be required to be shown in respect of that item if the amounts to be included in respect of all the assets covered by that item were determined according to the historical cost accounting rules; and

(b) the aggregate amount of the cumulative provisions for depreciation or diminution in value which would be permitted or required in determining those amounts according to those rules."; and

(m) in indents (b) and (c) of sub-paragraph (1) of paragraph 59 for the words "provisions for liabilities and charges" there shall be substituted the words "provisions for other risks".

8. (a) The Second Schedule to the principal regulations shall be deleted.

Deletes the Second Schedule to the principal regulations and renumbers Third and Fourth Schedules.

(b) The Third and Fourth Schedule to the principal regulations shall be renumbered as the Second and Third Schedule respectively.

Amends the Second Schedule to the principal regulations as renumbered.

9. (a) In sub-paragraph (a) of paragraph 2 of Title I of the Second Schedule to the principal regulations, as renumbered, for the words, "First Schedule to the regulations modified as mentioned in Title II of the Third Schedule thereto;" there shall be substituted the words "First Schedule to the regulations modified as mentioned in Title II of the Second Schedule thereto;";

(b) In indent (i) of sub-paragraph (b) of paragraph 2 of Title I of the Second Schedule to the principal regulations, as renumbered, for the words "without prejudice to the provisions of the Schedule as modified by the Third Schedule to the regulations" there shall be substituted the words "without prejudice to the provisions of the Schedule as modified by the Second Schedule to the regulations";

(c) For indent (ii) of sub-paragraph (b) of paragraph 2 of Title I to the Second Schedule to the principal regulations, as renumbered, there shall be substituted the following-

"reference to the provisions of "Part I of the Second Schedule" were a reference to the provisions of the "First Schedule to the regulations as modified by Title II of the Second Schedule thereto"; and".

Amends the Third Schedule to the principal regulations as renumbered.

10. For indent (c) of sub-paragraph (1) of paragraph 1 of Title I of the Third Schedule to the principal regulations, as renumbered, there shall be substituted the following-

"(c) A statement indicating whether an unqualified, qualified or adverse audit opinion was expressed by the approved auditor to the members of the company, or whether the auditor was unable to express an audit opinion. It shall also be disclosed whether the report of the auditors included a reference to any matters to which the auditor drew attention by way of emphasis without qualifying the audit opinion.".

Amends the Third Schedule to the principal regulations as renumbered.

11. In sub-paragraph (2) of paragraph 1 of Title I of the Third Schedule to the principal regulations, as renumbered, for the words "whose head office is in a country outside Malta" there shall be substituted the words "whose head office is not in a Member State or an EEA State ".

12. In sub-paragraph (b) of paragraph 3 of Title II of the Third Schedule to the principal regulations, as renumbered, for the words "whose head office is in a country outside Malta, other than Lloyd's" there shall be substituted the words "whose head office is not in a Member State or an EEA State".

Amends the Third Schedule to the principal regulations as renumbered.

13. Sub-paragraph (c) of paragraph 3 to Title II of the Third Schedule to the principal regulations, as renumbered, shall be deleted.

Amends the Third Schedule to the principal regulations as renumbered.

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