L.N. 351 of 2005

INSURANCE BUSINESS ACT
(CAP. 403)

Insurance Business (Insurers' Assets and Liabilities) (Amendment) Regulations, 2005

IN exercise of the powers conferred by articles 11, 14, 16, 17,18, 63 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. The title of these regulations is the Insurance Business (Insurers' Assets and Liabilities) (Amendment) Regulations, 2005, and they shall be read and construed as one with the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004, hereinafter referred to as "the principal regulations" .

L.N. 310 of 2004.

Amends regulation 2 of the principal regulations.

2. Sub-regulation (1) of regulation 2 of the principal regulations shall be amended as follows:

(a) immediately after the definition "implicit items" there shall be inserted the following new definition:

" " insurance holding company" means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings, or non-EEA insurers, at least one of such subsidiary undertakings being an insurance undertaking, and which is not a mixed financial holding company in terms of regulation 2 of the Financial Conglomerates Regulations, 2004;"; and

L.N. 521 of 2004

(b) immediately after the definition "Registrar of Companies", there shall be inserted the following new definition:

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

Substitutes regulation 3 of the principal regulations.

3. For regulation 3 of the principal regulations, there shall be substituted the following:

"Implementation of Council Directives.

3. The purpose of these regulations is to implement the provisions of Directives 73/239/EEC, 88/357/EEC, 92/49/EEC, 2002/83/EC, 2002/12/EC, 2002/13/EC, 98/78/EC and 2002/87/EC, and they shall be interpreted and applied accordingly.".

Amends Regulation 6 of the principal regulations.

4. In sub-regulation (1) of regulation 6 of the principal regulations, for the words "mentioned in regulations 3 and 4 of these regulations" there shall be substituted the words "mentioned in regulation 4 of these regulations".

Amends regulation 10 of the principal regulations.

5. Regulation 10 of the principal regulations shall be amended as follows:

(a) sub-regulation (7) thereof shall be renumbered as sub-regulation (12); and

(b) immediately after sub-regulation (6) thereof, there shall be added the following new sub-regulations:

"(7) The margin of solvency shall also be reduced by the following items-

(a) participations which the insurer holds in-

(i) insurance undertakings,

(ii) reinsurance undertakings,

(iii) insurance holding companies,

(iv) credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of European Parliament and of the Council of the 20th March, 2000 relating to the taking up and pursuit of the business of credit institutions,

(v) investment firms and financial institutions within the meaning of Article 1(2) of Council Directive 93/22/EEC of the 10th May, 1993 on investment services in the securities field and of Article 2(4) and (7) of Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions;

(b) each of the following items which the insurer holds in respect of the entities defined in paragraph (a) of this sub-regulation in which it holds a participation -

(i) instruments referred to in paragraphs 4 and 5 of Title II of the First Schedule to Insurance Directive 1 of 1999 – Own Funds of Companies Carrying on Business of Insurance or Acting as Insurance Agents or Insurance Managers; and

(ii) subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC of European Parliament and of the Council of the 20th March, 2000 relating to the taking up and pursuit of the business of credit institutions.

(8) Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may, upon application by the insurer concerned, waive the provisions on deduction referred to under paragraphs (a) and (b) of sub-regulation (7) of this regulation.

(9) As an alternative to the deduction of the items referred to in paragraphs (a) and (b) of sub-regulation (7) of this regulation which an insurer holding an authorisation holds in credit institutions, investment firms and financial institutions, the insurer may, with the approval of the competent authority given in writing, apply *mutatis mutandis* Methods 1, 2, or 3 of the First Schedule to the Financial Conglomerates Regulations, 2004: L.N. 521 of 2004

Provided that, the approval shall be given by the competent authority in respect of Method 1 of the First Schedule to the Financial Conglomerates Regulations, 2004, if the competent authority is confident L.N. 521 of 2004 about the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over a period of time.

(10) For the calculation of the margin of solvency, insurance undertakings subject to supplementary supervision in accordance with the Insurance Business (Supplementary Supervision of Insurance L.N. 311 of 2004 Undertakings in an Insurance Group) Regulations, 2004 or to supplementary supervision in accordance with the Financial Conglomerates Regulations, 2004 need not deduct the items referred to L.N. 521 of 2004 in paragraphs (a) and (b) of sub-regulation (7) of this regulation which

are held in credit institutions, investment firms, financial institutions, insurers, reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

(11) For the purposes of the deduction of participations referred to in sub-regulations (7) to (10) of this regulation, "participation" shall have the same meaning as is assigned to it in regulation 2 of the Insurance Business (Supplementary Supervision of Insurance Undertakings in an Insurance Group) Regulations, 2004.".

L.N. 311 of 2004

Amends regulation 26 of the principal regulations.

6. In sub-regulation (6) of regulation 26 of the principal regulations, the words "or affiliated insurance" shall be deleted.

Amends regulation 41 of the principal regulations.

7. In sub-regulation (2) of regulation 41 of the principal regulations, for the words "sub-regulations (2) and (3) of this regulations" there shall be substituted the words "sub-regulation (2) of this regulation".

Amends regulation 49 of the principal regulations.

8. Sub-regulation (1) of regulation 49 of the principal regulations shall be amended as follows:

(a) for the definition "approved credit institution" there shall be substituted the following:

" " approved credit institution" means an institution licensed as such under the Banking Act and any other institution approved for such purposes by the competent authority;";

Cap. 371.

(b) the definition "insurance holding company" shall be deleted;

(c) in the definition "listed", in paragraph (b) for the words "on a regulated market" there shall be substituted the words " on a regulated market,";

(d) in the definition "long term business amount", for the words "Tenth Schedule" there shall be substituted the words "Ninth Schedule";

(e) for the definition "participating undertaking", there shall be substituted the following new definition:

" " participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation or an undertaking linked with

another undertaking by a relationship within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC of the 13th June, 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;";

(f) the definition "reinsurance undertaking" shall be deleted;

(g) for the definition "related undertaking", there shall be substituted the following new definition:

" "related undertaking" means either a subsidiary or another undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of the Seventh Council Directive 83/349/EEC of the 13th June, 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts;".

9. For sub-regulation (4) of regulation 50 of the principal regulations, there shall be substituted the following: Amends regulation 50 of the principal regulations.

" (4) Subject to subarticle (3) of article 17 of the Act, the competent authority may, in exceptional circumstances, on application made to it in writing for that purpose:

(a) permit any asset as is referred to in sub-regulation (3) of this regulation to be taken into account, or to be taken into account to a specified extent, and, if the asset is taken into account, or taken into account to a specified extent, the value of such asset shall be determined in accordance with specific valuation provisions issued in writing for such purposes by the competent authority; or

(b) temporarily and under a properly reasoned decision, permit any asset for which provision is made in this Part of these regulations for their valuation to be taken into account to an extent, other than that specified in Part II of the Ninth Schedule.".

10. In sub-regulation (5) of regulation 51 of the principal regulations, for the words "in subregulation (3)(a)", there shall be substituted the words "in subregulation (4)(a)". Amends regulation 51 of the principal regulations.

11. In paragraph (f) sub-regulation (5) of regulation 62 of the principal regulations, for the words "within regulation 51;", there shall be substituted the words "within regulations 51 and 52;". Amends regulation 62 of the principal regulations.

Amends regulation 68 of the principal regulations.

12. Immediately at the end of regulation 68 of the principal regulations, there shall be added the following proviso:

"Provided that, the amount of any reserve maintained under subarticle 7 of article 17 of the Act shall be determined in accordance with Part VIII of these regulations.".

Amends regulation 83 of the principal regulations.

13. Regulation 83 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "of ultimate insurance parent undertakings whose head office is in Malta", there shall be substituted the words "of ultimate insurance parent undertakings and whose head office is in Malta."; and

(b) in sub-regulation (5) thereof, for the words "in accordance with sub-regulation (4) of regulation 84 of these regulations", there shall be substituted the words " in accordance with sub-regulation (3) of regulation 84 of these regulations".

Amends regulation 85 of the principal regulations.

14. Immediately at the end of sub-regulation (3) of regulation 85 of the principal regulations, there shall be added the following proviso:

"Provided that, when an insurer becomes aware that it is unable to establish the required margin of solvency until the specified date, it shall, not later than three months prior to the specified date, in accordance with article 14 of the Act, submit for the approval of the competent authority to be given in writing, the measures which the insurer proposes to take for such purposes, and the competent authority may allow an insurer a further period not exceeding two years in which to comply with such requirement. The competent authority may in such circumstances, adopt measures to safeguard the interests of insureds, policyholders, creditors and other interested persons.".

Deletes regulation 86 of the principal regulations.

15. Regulation 86 of the principal regulations shall be deleted.

Amends the Third Schedule to the principal regulations.

16. In paragraph 3 of the Third Schedule to the principal regulation, for the words "pure reinsurer provisions and recoveries", there shall be substituted "pure reinsurer, claims, provisions and recoveries";

Amends the Fourth Schedule to the principal regulations.

17. In paragraph 1 of the Fourth Schedule to the principal regulations:

(a) sub-paragraph (a) thereof shall be deleted;

(b) sub-paragraph (b) thereof shall be renumbered as sub-paragraph (a) thereof; and

(c) sub-paragraph (c) thereof shall be renumbered as sub-paragraph (b) thereof .

Amends the Ninth Schedule to the principal regulations.

18. The Ninth Schedule to the principal regulations shall be amended as follows:

(a) for paragraph 4 of Part I thereof, there shall be substituted the following -

"4. The permitted counterparty exposure limit is –

(a) where the counterparty is an individual or an unincorporated body of persons, 5 per centum of the business amount;

(b) where the counterparty is a counterparty of the type mentioned in sub-paragraph (e) in the definition of counterparty, 10 per centum of the business amount;

(c) where the counterparty is a body corporate or group, each of:

(i) 30 per centum of the business amount;

(ii) 15 per centum of the business amount or such lower amount as the insurer may decide where the exposure arises other than by reason that debts are due or to become due as a result of short term deposits made with an approved credit institution;

(iii) 10 per centum of the business amount where the exposure is other than to bodies which are approved counterparties.";

(b) In paragraph 23 of Part I thereof:

(i) for the words "in indent (ii) of sub-paragraph (2) of paragraph 4 of this Part of this Schedule", there shall be substituted the words "in indent (ii) of sub-paragraph (c) of paragraph 4 of this Part of this Schedule"; and

(ii) in paragraphs (b) and (c) thereof, for the words "does not exceed 5% per centum of the business amount", there shall be substituted the words "does not exceed 10% per centum of the business amount"; and

(c) In paragraph 11 of Part II thereof:

(i) for the words "in accordance with regulation 55 of the regulations" there shall be substituted the words "in accordance with regulation 56 of the regulations"; and

(ii) in sub-paragraph (a) thereof, for the words "falling within regulation 56(1)(b) of the regulations" there shall be substituted the words "falling within regulation 57(1)(b) of the regulations".

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