L.N. 335 of 2003

INSURANCE BUSINESS ACT
(CAP. 403)

Insurance Business (Continuance of Companies Carrying on Business of Insurance) Regulations, 2003

IN exercise of the powers conferred by articles 62 and 64 of the Insurance Business Act, the Minister of Finance and Economic Affairs, 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 (Continuance of Companies Carrying on Business of Insurance) Regulations, 2003.

(2) These regulations shall come into force on the 3rd November, 2003.

Interpretation.

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

"the Act" means the Insurance Business Act;

"approved country or jurisdiction" means such country or jurisdiction as may be established from time to time by guidelines issued by the Registrar of Companies pursuant to the Continuation of Companies Regulations, 2002; L.N.344 of 2002

"authorised company" means a company authorised to carry on business of insurance, or to act as an insurance manager under the Act, or a company enrolled in the Brokers List under article 13 of the Insurance Brokers and Other Intermediaries Act, and "authorised" shall be attributed the same meaning; Cap. 404.

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

"business of insurance" shall include the activities of an insurance manager, and the business of insurance broking carried on by an enrolled company under the Insurance Brokers and Other Intermediaries Act;

"company" means a company formed and registered under Part V of the Companies Act, and in respect of an insurance manager and company enrolled in the Brokers List shall include reference to a "partnership *en commandite*" or to a similar or equivalent body corporate which has its capital divided into shares;

Cap.386.

"Continuation Regulations" means the Continuation of Companies Regulations, 2002, made under subarticle (4) of article 425 of the Companies Act;

L.N. 344 of 2002.

"instrument of continuation" includes any document or certificate confirming that a company has been registered as continuing in an approved country or jurisdiction other than Malta;

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

Continuance of companies carrying on business ofinsurance.

3. (1) An entity which is -

(a) a body corporate, registered, incorporated or constituted under the laws of an approved country or jurisdiction outside Malta, and carrying on business of insurance, which is similar in nature to a company as known under the laws of Malta and which would, if it were such a company, qualify to be authorised under the Act, or the Insurance Brokers and Other Intermediaries Act, may, subject to the specific approval of the Authority, be continued as a company formed and registered under the Companies Act, and authorised under the Act or the Insurance Brokers and Other Intermediaries Act, as the case may be, to carry on business of insurance; and

(b) an authorised company, carrying on business of insurance authorised under this Act or the Insurance Brokers and Other Intermediaries Act, may, subject to the specific approval of the Authority, be continued as a body corporate registered, incorporated or constituted under the laws of a country outside Malta,

in either case by complying with these regulations and with the provisions of the Continuation Regulations:

Provided that, in the event of incompatibility or conflict, the provisions of these regulations shall prevail.

(2) Continuance as aforesaid may only take place if it is within the power of such body or company carrying on business of insurance so to continue and the continuance is approved -

(a) in the case of a body corporate formed, incorporated or registered under the laws of an approved country or jurisdiction outside Malta, desiring to continue as a company carrying on business of insurance under the Act or the Insurance Brokers and Other Intermediaries Act, as the case may be, in such manner, by such constituted body and with such majority as would be equivalent, under the laws of the country of its incorporation or registration and according to the instrument whereby it is constituted, of an extraordinary resolution under the laws of Malta; and

(b) in the case of an authorised company desiring to continue under a foreign jurisdiction, by an extraordinary resolution of the shareholders of the company.

(3) Where continuance as aforesaid entitles or requires the body corporate or company carrying on business of insurance, as the case may be, to redeem the interest of dissenting persons whose approval is required, such interest may be redeemed on such terms as may be agreed or as the courts in Malta may, on demand of either party, establish.

(4) The continuance of a body corporate registered, incorporated or constituted in a country outside Malta as a company carrying on business of insurance in Malta shall be effected by an instrument of continuation containing, in addition to the declarations relating to the continuance, the equivalent of a memorandum and articles or equivalent deed of partnership as is required by the Companies Act, in order that a company may be authorised under the Act or the Insurance Brokers and Other Intermediaries Act, as the case may be, as a company carrying on business of insurance, and showing on the face of it that the continuance has been approved as provided in sub-regulation (2) of this regulation.

(5) The delivery of the instrument of continuation to the Registrar of Companies shall, for all purposes of the Companies Act, be equivalent to the delivery of the memorandum and articles of a company or to the deed of partnership, as the case may be, as if it were a company to be formed and registered under that Act and the Registrar of Companies shall treat it accordingly.

(6) Upon its registration as provided in sub-regulation (5) of this regulation, and its authorisation under the Act, or the Insurance Brokers and Other Intermediaries Act, the body corporate shall cease to be a body corporate under its previous jurisdiction and shall continue its corporate existence under the laws of Malta, and retain all its assets, rights and liabilities as a company otherwise formed and registered under the Companies Act, and authorised under the Act or the Insurance Brokers and Other Intermediaries Act, as the case may be.

(7) The continuance of a company carrying on business of insurance as a body corporate under a foreign jurisdiction shall not take place unless-

(a) such continuance, or similar process, including conversion, is permitted by the law of such foreign jurisdiction and in accordance with such provisions thereof as may bring about such continuance, or similar process; and

(b) such continuance, or similar process, will operate the continuation of the corporate existence of the company carrying on business of insurance as, or its conversion into, a body corporate which will continue to retain or will succeed to all assets, rights and liabilities of such company.

(8) Notwithstanding the foregoing provisions of this regulation, a company carrying on business of insurance shall not cease to be a company subject to Maltese jurisdiction until the Registrar of Companies has received notice in writing of the continuance, or other process, made as aforesaid and unless and until, being satisfied that the requirements of this regulation have been complied with, he has registered such continuance and has, in consequence thereof and by virtue of this regulation, struck the name of the company off the register.

Repeals.L.N. 99 of 2000.

4. The Insurance Business (Continuance of Companies Carrying on Business of Affiliated Insurance) Regulations, 2000 are hereby repealed.

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