L.N. 89 of 2004

INSURANCE BUSINESS ACT (CAP. 403)

European Passport Rights for Insurance Undertakings Regulations, 2004

IN exercise of the powers conferred by article 64 of the Insurance Business Act, the Minister of Finance and Economic Affairs, after consultation with the Malta Financial Services Authority, as the competent authority appointed for the purposes of the Act, has made the following regulations:-

PRELIMINARY

Citation and commencement.

1. (1) The title of these regulations is the European Passport Rights for Insurance Undertakings Regulations, 2004.

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

Interpretation.

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

"the Act" means the Insurance Business Act;

"Commission" means the Commission of the European Communities;

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

"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;

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

"European right" means the entitlement of an insurance undertaking to establish a branch, or provide services, in a Member State or an EEA State other than that in which it has its head office-

(a) in accordance with the Treaty as applied in a Member State or an EEA State; and

(b) subject to the requirements of the Single Market Directive and subject to any rules or regulations made under the Act, or insurance directives issued by the competent authority pursuant to the Act, implementing such requirements;

"foreign authority" means the body or bodies designated by a Member State or EEA State:

(a) to act as a supervisory authority in relation to the European insurance undertaking concerned in that Member State or EEA State within the meaning of the Directive; or

(b) to carry out the duties provided for in the Single Market Directive in relation to a Maltese insurance undertaking exercising or proposing to exercise a European right.

"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 where a Maltese insurance undertaking whose head office is in Malta, exercises or proposes to exercise European rights;

"insurance directive" means a directive in respect of the business of insurance issued by the competent authority in terms of article 4(3) of the Act;

"Maltese insurance undertaking" 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 a Member State or EEA State, other than Malta in exercise of a European right;

" Maltese rules" means rules-

(a) made in accordance with the Single Market Directive; and

(b) which are the responsibility of the competent authority (as to implementation, supervision and compliance) in accordance with the Single Market Directive and subject to the provisions of the Act and any rules, regulations and insurance directives made thereunder;

"Member State" means a Member State of the European Communities;

"Ordinance" means the Motor Vehicle Insurance (Third-Party Risks) Ordinance, or any enactment replacing that law, and any regulations made thereunder; Cap. 104.

"risk situated in a Member State or EEA State" means

(a) the Member State or EEA State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

(b) the Member State or EEA State of registration where the insurance relates to vehicles of any type;

(c) the Member State or EEA State where the policyholder took out the policy in the case of policies of a duration of four months or less, covering travel or holiday risks, whatever the class concerned; or

(d) the Member State or EEA where the policyholder has his habitual residence or, where the policyholder is a legal person, the Member State or EEA State where the establishment of the legal person, to which the contract relates, is situated;

" 'Single Market Directive' or 'Directives'", means the following Codified Life Assurance Directive and the First, Second and Third Non-Life Insurance Directives:

(a) "Codified Life Assurance Directive" means Directive 2002/83/EC of 5 November 2002 of the European Parliament and of the Council concerning life assurance;

(b) "First Non-Life Insurance Directive" means the Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance;

(c) "Second Non-Life Insurance Directive" means the Council Directive 88/357/EEC of 22 June 1988 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;

(d) "Third Non-Life Insurance Directive" means the Council Directive 92/49/EEC of 18 June 1992 on the co-ordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239EEC and 88/357/EEC;

"supervisory authority" means the foreign authority in a Member State or EEA State;

"Treaty" means Treaty of Rome signed in 1957, establishing the European Economic Community and as subsequently amended;

"Tribunal" means the Financial Services Tribunal referred to in article 57 of 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.

PART I – EXERCISE OF PASSPORT RIGHTS BY EUROPEAN INSURANCE UNDERTAKINGS

Exercise of passport rights by European insurance undertakings – establishment.

3. (1) A European insurance undertaking which is seeking to establish a branch in Malta in exercise of a European right shall satisfy the establishment conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 6 of the Act.

(2) The establishment conditions for the purposes of this regulation are that -

(a) the European insurance undertaking has given the supervisory authority in its home Member State a notice containing the requisite details in terms of article 32 of Directive 92/49/EEC and article 39 of Directive 2002/83/EC ;

(b) the competent authority has received from the supervisory authority of such European insurance undertaking a consent notice in accordance with paragraph (c) stating that it has given its consent to the insurance undertaking to establish a branch in Malta; and

(c) the consent notice shall include:-

(i) a scheme of operations setting out, inter alia, the class or classes of long term business or class or classes or part classes of general business the branch proposes to carry on and the structural organisation of the branch;

(ii) the address in Malta from where documents may be obtained and to which they may be delivered, and such address shall be the one to which all communications to the general representative are to be sent;

(iii) the name of the general representative who must possess sufficient powers to bind the insurance undertaking in relation to third parties and to represent it in relations with the competent authority and courts in Malta;

(iv) a certificate issued by the foreign authority where the head office is situated, attesting that such European insurance undertaking has, for its activities as a whole, the minimum solvency margin calculated in accordance with the applicable Directives;

(v) confirmation that such European insurance undertaking is authorised to carry on the business of insurance which it proposes to carry on in Malta;

(vi) information stated in the notice given by such European insurance undertaking in terms of paragraph (a) of sub-regulation (2) of this regulation; and

(vii) details of any insurance guarantee scheme, if applicable, which is intended to protect the branch's policyholders.

(3) The supervisory authority of the European insurance undertaking shall inform the competent authority of any change in the details of an insurance guarantee scheme referred to in sub-regulation (2) of this regulation.

(4) A branch of a European insurance undertaking shall not commence business unless:-

(a) it has been informed by the competent authority of any applicable provisions and that it may establish the branch; or

(b) the competent authority has, within two months of receiving the information referred to in sub-regulation (2), informed the foreign authority, if appropriate, of the conditions under which, in the interest of the general good, that business must be carried on in Malta.

(5) In the event of a change in any of the particulars communicated in accordance with indents (i), (ii), (iii) of paragraph (c) of sub-regulation (2) of this regulation, the European insurance undertaking shall give written notice of the change to the supervisory authority and to the competent authority at least one month before implementing the change.

(6) For the purpose of this regulation-

"applicable provisions" means the Maltese rules in accordance with which the European insurance undertaking is required to comply when carrying on the class or classes of long term business or class or classes or part classes of general business, identified in the consent notice, through a branch in Malta.

Exercise of passport rights by European insurance undertakings – services.

4. (1) A European insurance undertaking which is seeking to provide services in Malta in exercise of a European right shall satisfy the service conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 6 of the Act.

(2) The service conditions for the purposes of this regulation are that -

(a) the European insurance undertaking has given its supervisory authority a notice of intention to provide services in Malta with the requisite details in terms of article 35 of Directive 92/49 and article 40 of Directive 2002/83;

(b) the competent authority has received a notice of such intention from the supervisory authority of the European insurance undertaking;

(c) without prejudice to regulation 6 of these regulations, the insurance undertaking has obtained from the supervisory authority an authorisation for the risks it proposes to cover or for the commitments it proposes to undertake;

(d) the foreign authority has communicated the following documents and information to the competent authority-

(i) a certificate attesting that such insurance undertaking possesses, for its activities as a whole, the minimum solvency margin calculated in accordance with the applicable Directives;

(ii) the class or classes of long term business or class or classes or part classes of general business which the insurance undertaking is authorised to carry on;

(iii) the nature of the risks which the undertaking proposes to cover or the commitments which it proposes to undertake in Malta; and

(e) the supervisory authority has informed the European insurance undertaking that the notice from the supervisory authority has been sent to the competent authority.

(3) When the competent authority has received such a notice from the foreign authority and has been informed of the intention of the European insurance undertaking to provide services in Malta, it shall, where appropriate-

(a) prepare for the supervision of the European insurance undertaking; and

(b) notify the European insurance undertaking of the applicable provisions, if any.

(4) In the event of a change in the content of the information given in indents (ii) and (iii) of paragraph (d) of sub-regulation (2) of this regulation, the European insurance undertaking shall give written notice of that change to the competent authority and its supervisory authority before implementing such change.

(5) For the purposes of this regulation-

"applicable provisions" means the Maltese rules in accordance with which the European insurance undertaking is required to comply when providing services in Malta in the class or classes of long term business or class or classes or part classes of general business, identified in the notice provided by the supervisory authority of the European insurance undertaking.

European insurance undertaking covering Risks relating to Class 10.

5. Any European insurance undertaking carrying on business of insurance in Malta in exercise of a European right, covering risks relating to class 10 of Part 1 of the Third Schedule to the Act, not including

carrier's liability, shall be required to provide the competent authority with the information contained in an insurance directive for the purposes of these regulations.

Reporting to the competent authority.

6. (1) The competent authority may, for statistical purposes, require a European insurance undertaking which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta.

(2) In discharging its responsibilities under these regulations, the competent authority may require such European insurance undertaking to provide the same information as Maltese insurance undertakings would be required to provide for that purpose.

(3) The competent authority may require such European insurance undertaking carrying on business of insurance in Malta, to provide the information necessary for the monitoring of its compliance with the standards set by the competent authority to the extent permitted by the Single Market Directive.

Advertising.

7. A European insurance undertaking shall not be prohibited from advertising its services through any available means of communication in Malta provided that it complies with insurance directive 14 of 1999 made pursuant to article 48 of the Act, and any other directive adopted by the competent authority in the interest of the general good.

On-site Verifications.

8. (1) Where a European insurance undertaking carries on business of insurance in Malta through a branch in exercise of a European right, its supervisory authority may, after having first informed the competent authority, carry out itself or through an intermediary it appoints for that purpose, on-site verification of the information necessary to ensure the financial supervision of the undertaking. The competent authority may participate in that verification.

(2) The foreign authority may also request the competent authority to have such on-site verification carried out on its behalf.

(3) This regulation shall not affect the right of the competent authority, in discharging its responsibilities under the Directives, to carry out on-site verifications of branches established in Malta.

(4) Where the competent authority has reason to consider that the activities of a European insurance undertaking, carrying on business of insurance in exercise of a European right, might affect its financial soundness, it shall inform the foreign authority.

PART II – EXERCISE OF PASSPORT RIGHTS BY MALTESE INSURANCE UNDERTAKINGS

Exercise of passport rights by Maltese insurance undertakings – establishment.

9. (1) A Maltese insurance undertaking may exercise a European right to establish a branch if it satisfies the requirements set out in the following provisions of this regulation.

(2) Pursuant to subarticle (3) of article 10 of the Act, a Maltese insurance undertaking intending to establish a branch in exercise of a European right shall give the competent authority a notice of intention which shall contain-

(a) the Member State or EEA State within the territory of which the insurance undertaking proposes to establish a branch;

(b) a scheme of operations setting out, inter alia, the class or classes of long term business or class or classes or part classes of general business and the structural organisation of the branch;

(c) the address of the proposed branch from where documents may be obtained and to which they may be delivered, and such address shall be the one to which all communications to the general representative are to be sent;

(d) the name of the branch's general representative who must possess sufficient powers to bind the insurance undertaking in relation to third parties and to represent it in relations with the authorities and courts of the host member state;

(e) such other information as may be specified by means of an insurance directive.

(3) Without prejudice to sub-regulations (6),(7) and (8) of this regulation, the competent authority shall give a consent notice within the meaning of sub-regulation (4) of this regulation to the foreign authority within three months of receiving a complete notice of intention.

(4) The consent notice shall :-

(a) be given in accordance with the Single Market Directive;

(b) attest that the Maltese insurance undertaking has, for its activities as a whole, the minimum solvency margin calculated in accordance with the applicable Directives;

(c) confirm that the Maltese insurance undertaking is authorised to carry on the business of insurance which the branch proposes to carry on;

(d) contain the information stated in the notice of intention of the Maltese insurance undertaking;

(e) contain details of any insurance guarantee scheme which is intended to protect the branch's policyholders; and

(f) include such other information as may be established by means of an insurance directive.

(5) The foreign authority shall be informed by the competent authority of any change in the details of the insurance guarantee scheme referred to in sub-regulation (4) of this regulation.

(6) (a) Unless the competent authority has reason to doubt the adequacy of the administrative structure, the financial situation of the Maltese insurance undertaking or the good repute and professional qualification or experience of the directors or managers or the general representative, taking into account the business planned, it shall, within three months of receiving all the information referred in sub-regulation (2) of this regulation, communicate that information to the foreign authority of the branch and shall inform the undertaking concerned accordingly:

Provided that, in the event of any change in any of the particulars referred to in this sub-regulation, the competent authority shall inform the foreign authority accordingly.

(b) The competent authority shall also attest that the Maltese insurance undertaking has the minimum solvency margin calculated in accordance with articles 14 and 16 of the Act.

(c) Where the competent authority refuses to communicate the information referred to in sub-regulation (2) of this regulation to the foreign authority of the branch, it shall give the reasons for its refusal to the undertaking concerned within three months of receiving all the information in question. The refusal or failure to act in the period stipulated shall be subject to a right of appeal to the Tribunal and the provisions of article 58 of the Act shall apply *mutatis mutandis*.

(7) Before the branch of a Maltese insurance undertaking exercising a European right commences business, the foreign authority of the branch shall, within two months of receiving the information referred to in sub-regulation (6) of this regulation, inform the competent authority, if appropriate, of the applicable provisions under which that business must be carried on in the host Member State.

(8) On receiving a communication from the foreign authority of the branch, or if no communication is received from them, on the expiry of the period provided for in sub-regulation (7) of this regulation, the Maltese insurance undertaking may establish the branch and commence business.

(9) In the event of a change in any of the particulars communicated in accordance with paragraphs (b),(c) and (d) of sub-regulation (2) of this regulation, the Maltese insurance undertaking shall give written notice of the change to the competent authority and to the foreign authority of the branch at least one month before implementing the change.

(10) The prudential supervision of a Maltese insurance undertaking shall be the responsibility of the competent authority whether or not the insurance undertaking establishes a branch or provides services in another Member State or EEA State, without prejudice to those provisions of the Single Market Directive which give responsibility to the foreign authority.

(11) For the purposes of this regulation-

"applicable provisions" means the host state rules with which the Maltese insurance undertaking is required to comply when conducting business through the proposed branch in the host Member State concerned;

"host state rules" means rules-

(a) made in accordance with the Directives; and

(b) which are the responsibility of the foreign authority concerned (both as to the implementation and as to supervision of compliance) in accordance with the Directives;

(12) The competent authority shall inform the Commission of the number of cases and the circumstances in which there have been refusals in terms of sub-regulation (6) of this regulation.

Exercise of passport rights by Maltese insurance undertakings-services.

10. (1) A Maltese insurance undertaking which intends to provide services for the first time in one or more Member States or EEA States in exercise of a European right shall first provide a notice of intention to the competent authority indicating:

(a) the nature of the commitments it proposes to cover, or the risks which it proposes to undertake;

(b) the Member State or EEA State in which it intends to operate; and

(c) such other information as may be specified in an insurance directive

(2) The competent authority shall, within one month of receiving the notice of intention:

(a) give a consent notice to the foreign authority containing:

(i) a certificate attesting that the insurance undertaking has the minimum solvency margin calculated in accordance with articles 14 and 16 of the Act;

(ii) the class or classes of long term business or class or classes or part classes of general business which the insurance undertaking has been authorised to carry on;

(iii) the nature of the risks which the insurance undertaking proposes to undertake or commitments it proposes to cover in the host Member State of the provision; and

(iv) details of any insurance guarantee scheme, if applicable, intended to protect policyholders; or

(b) give written notice to the Maltese insurance undertaking of-

(i) its refusal to give a consent notice; and

(ii) its reasons for that refusal

Provided that, where the Maltese insurance undertaking is given notice under paragraph (b) of sub-regulation (2) of this regulation, such notice is subject to a right of appeal to the Tribunal and the provisions of article 58 of the Act shall apply *mutatis mutandis.*

(3) When the competent authority sends the information contained under paragraph (a) of sub-regulation (2) of this regulation, it shall give written notice to the Maltese insurance undertaking concerned. The Maltese insurance undertaking may, after having received such written notice, start to provide the services in question in the host Member State:

Provided that, where appropriate, the foreign authority shall, on receipt of the information from the competent authority, indicate to the Maltese insurance undertaking the conditions with which, in the interest of the general good, the provider of the services shall comply in the host Member State.

(4) In the event of a change in any of the particulars provided by the Maltese insurance undertaking in the notice of intention, the Maltese insurance undertaking shall give written notice of that change to the competent authority and the foreign authority before implementing such change.

PART III – EUROPEAN INSURANCE UNDERTAKINGS NOT COMPLYING WITH LEGAL PROVISIONS

Contravention by European insurance undertakings.

11. (1) Where the competent authority ascertahfis that a European insurance undertaking which has established a branch in Malta or provides services in Malta:

(a) has contravened or is likely to contravene the Maltese rules or any provision of the Act or any rules, regulations or insurance directives made thereunder;

(b) in purported compliance with any such provisions, has furnished it with false, inaccurate or misleading information; or

(c) has failed to comply with any condition, limitation, requirement, directive or order made or given under any of the provisions of the Act, or of any rules or regulations made thereunder or any insurance directives,

it shall, in writing, require the insurance undertaking concerned to remedy and rectify its position.

(2) If the European insurance undertaking concerned fails to take necessary steps to remedy and rectify its position, the competent authority shall inform the foreign authority of such failure. The foreign authority shall, at the earliest opportunity, take all appropriate measures to ensure that the European insurance undertaking concerned rectifies

its position. The nature of those measures shall be communicated to the competent authority.

(3) If, despite the actions taken by the foreign authority, or because those measures prove inadequate or are not available in Malta, the European insurance undertaking persists in violating the legal or regulatory provisions referred to in sub-regulation (1) of this regulation in force in Malta, the competent authority may, after informing the foreign authority, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, to prevent that European insurance undertaking from continuing to conclude new insurance contracts in Malta.

(4) Any measure adopted pursuant to this regulation shall be communicated to the European insurance undertaking concerned in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Tribunal and the provisions of article 58 of the Act shall apply *mutatis mutandis*.

(5) Notwithstanding the provisions of this regulation, the competent authority may, in exceptional circumstances, take any precautionary measures necessary to protect the interests of insureds, policyholders, creditors and other interested persons with whom insurance contracts are concluded. The competent authority shall inform the Commissioner and the foreign authority concerned of such measures at the earliest opportunity.

(6) If a European insurance undertaking which is in breach of any provisions of these regulations has an establishment or possesses property of any description in Malta, the competent authority may, in accordance with national law, impose an administrative penalty pursuant to article 67 of the Act.

(7) Where the competent authority is informed by the foreign authority of another Member State or EEA State of the withdrawal of the authorisation of a European insurance undertaking carrying on business of insurance in Malta in the exercise of a European right, it shall take appropriate measures to prevent the undertaking concerned from concluding new insurance contracts in Malta under either the right of establishment or the freedom to provide services. The competent authority shall, in conjunction with those authorities, take all necessary measures to safeguard the interests of insured persons, policyholders, creditors and other interested persons and shall restrict, in particular, the free disposal of assets of the undertaking in accordance with subarticle (2) of article 15 of the Act and may make or issue public statements or notices in relation to these measures.

(8) A prohibition under this regulation may be -

(a) absolute; or

(b) limited, that is, imposed for a specified event or until specified conditions are complied with,

and any period, event or conditions specified in the case of a limited prohibition may be varied by the competent authority and any such notice shall take effect on such date as is specified in the notice.

PART IV –APPLICABILITY PROVISIONS

Applicability provisions.

12. (1) A company whose head office is in Malta and which, on the date of the coming into force of these regulations was authorised in terms of article 7 of the Act to carry on business of insurance in the classes of business of insurance specified in the Second and Third Schedule to the Act or such parts of those classes, shall be deemed to be a Maltese insurance undertaking for the purposes of these regulations:

Provided that, such company conforms with all insurance directives, conditions, directives and guidelines issued by the competent authority for such purpose.

(2) Every authorisation issued to a company whose head office is in Malta after the coming into force of these regulations, shall indicate whether it qualifies for a European right in terms of these regulations.

PART V- INTERPRETATION

Interpretation.

13. (1) The purpose of these regulations is to implement the provisions of Council Directive 73/239/EEC, Council Directive 88/357/EEC, Council Directive 92/49/EEC and Directive 2002/83/EC of the European Parliament and of the Council, as amended and shall be interpreted and applied accordingly.

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