

L.N. 104 of 2000

**INSURANCE BUSINESS ACT
 (CAP. 403)**

**Insurance Business (Linked Long Term Contracts) Regulations,
 2000**

IN exercise of the powers conferred by section 45 and 64 of the Insurance Business Act, the Minister of Finance, after consultation with the Malta Financial Services Centre, has made the following regulations:—

1. (1) The title of these regulations is the Insurance Business (Linked Long Term Contracts) Regulations, 2000. Citation and commencement.

(2) These regulations shall come into force on the 1st January, 2001.

2. In these regulations, unless the context otherwise requires — Interpretation.

“the Act” means the Insurance Business Act;

“authorised company”, in relation to linked long term contracts, means a company whose head office is in Malta authorised to carry on long term business, including business of insurance class III specified in the Second Schedule to the Act, other than a company whose business is restricted to business of reinsurance or affiliated insurance;

“the Centre” means the Malta Financial Services Centre established by section 3 of the Malta Financial Services Centre Act and appointed under section 3 of the Act to be the Competent Authority for the purposes of the Act; Cap. 330.

“land” means land or building;

“linked long term contract” means a contract of the kind described in paragraph 2, Roman number III, of the Second Schedule to the Act;

“long term contract” means a contract for long term business;

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

3. (1) Benefits payable under any contract to which this regulation applies shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the Linked long term contracts.

value of, property of any description other than property of any of the descriptions specified in Part I of the Schedule to these regulations which, where appropriate, comply with the provisions of paragraph 17 of the said Schedule.

(2) Benefits payable under any contract to which this regulation applies shall not be determined, whether directly or indirectly, either wholly or partly, by reference to fluctuations in any index of the value of property other than an index described in Part II of the Schedule to these regulations.

(3) This regulation applies to long term contracts which are –

(a) contracts entered into by authorised companies or have been entered into by any such company at any time on or after the 1st October, 1998 and are still in force;

(b) contracts under which the benefits payable to the policyholder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified); and

(c) not contracts specified in paragraph (4) of this regulation as being contracts to which this regulation does not apply.

(4) The contracts referred to in sub-paragraph (c) of paragraph (3) of this regulation to which this regulation does not apply are –

(a) contracts entered into before the coming into force of these regulations to the extent that they provide for benefits to be determined by reference to the value of, or the income from, property of any description or by reference to fluctuations in, or in an index of, property of any description, by reference to which benefits were permitted to be determined before the coming into force of these regulations;

(b) subject to paragraph (5) of this regulation, contracts to manage the investments of pension funds that are not combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.

(5) Benefits payable under contracts referred to in sub-paragraph (b) of paragraph (4) of this regulation shall not be determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of derivative contracts other than permitted derivative contracts as defined in paragraph 15 of the Schedule to these regulations.

SCHEDULE

(Regulation 3)

PERMITTED LINKS

PART I

**DESCRIPTIONS OF PROPERTY BY REFERENCE TO WHICH BENEFITS
MAY BE DETERMINED**

1. Listed securities which are readily realisable, not being securities which are -
 - (a) approved securities;
 - (b) loans or deposits of the kinds mentioned in paragraphs 4 and 7 of this Schedule;
 - (c) units or other beneficial interests in a collective investment scheme; or
 - (d) derivative contracts.
2. Unlisted securities which are readily realisable, not being securities which are –
 - (a) approved securities;
 - (b) loans or deposits of the kinds mentioned in paragraphs 4 and 7 of this Schedule;
 - (c) units or other beneficial interests in a collective investment scheme; or
 - (d) derivative contracts.
3. Land (including any interest in land) which is situated in Malta or any other country approved for such purpose by the Centre.
4. Loans –
 - (a) which are fully secured by hypothec or charge on land (or any interest in land) which:
 - (i) is situated in Malta or any other country approved for such purpose under paragraph 3 of this Schedule, and
 - (ii) in the case of a loan made to a person other than a body corporate, is not used wholly or mainly for domestic purposes, and

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(b) in relation to which the rate of interest and the due dates for the payment of interest and the repayment of principal can be fully ascertained from the terms of any agreement relating to the loan.

5. Units or other beneficial interests in a collective investment scheme which satisfies the following conditions -

(a) the property of the scheme comprises property of the type described in paragraphs 1 to 10 of this Schedule; and

(b) the units are readily realisable at a price which represents the net value per unit of the assets and liabilities of the scheme; and

(c) the price at which the units may be bought and sold is published regularly.

6. Approved securities.

7. Loans to or deposits with an approved credit institution or an approved financial institution.

8. Income due, or to become due, in respect of property of any of the descriptions specified in the foregoing paragraphs of this Schedule.

9. Permitted derivative contracts.

10. Cash.

11. Units, by whatever name called, in a real or notional scheme which is limited to the descriptions of property mentioned in the foregoing paragraphs of this Schedule, not being property falling within sub-paragraphs (a) to (d) of paragraph 17 of this Schedule, and which under the contract is to be managed either -

(a) wholly by the insurer; or

(b) wholly or to any extent by another person being a person for whose acts and omissions in managing the scheme the insurer assumes responsibility towards the policyholder as if they were the acts or omissions of the insurer, and otherwise (if at all) by the insurer.

PART II

INDICES BY REFERENCE TO WHICH BENEFITS MAY BE DETERMINED

12. An approved index.

PART III

INTERPRETATION

13. Unless the context otherwise requires, words and expressions contained in this Schedule bear the same meaning as in Part IX of the Insurance Business (Companies Assets and Liabilities) Regulations, 2000.

14. For the purposes of this Schedule, “approved index” means either -

(a) an index which is:

(i) calculated independently,

(ii) published at least once a week,

(iii) based on constituents, each of which is property falling within paragraphs 1 to 8 or 10 of this Schedule, and

(iv) calculated on a basis which is made available to the public and which includes both the rules for including and excluding constituents and the rules for valuation which must use an arithmetic average of the value of the constituents; or

(b) a national index of retail prices published by or under the authority of a government of a state of a country falling within the zone of countries as may be determined by an Insurance Directive made by the Centre for the purposes of any provision of any regulation made under the Act; or

(c) an index which is:

(i) based on constituents, each of which is property falling within paragraphs 1 to 8 or 10 of this Schedule; and

(ii) in respect of which a derivative contract is listed.

15. (1) For the purposes of this Schedule, “permitted derivative contract” means a derivative contract which –

(a) is covered and:

(i) which is held in connection with property of the type described in sub-paragraph (2) of this paragraph for the purposes of reduction of investment risks or efficient portfolio management; or

(ii) which has the effect of a permitted derivative contract held in connection with such property for such purposes; and

(b) satisfies the conditions specified in paragraphs (6) to (8) of regulation 59 of the Insurance Business (Companies Assets and Liabilities) Regulations, 2000 except that for this purpose the references in the said regulation 59 to “an asset for the valuation of which provision is made in this Part of these regulations” shall be construed as a reference to permitted connected property.

(2) The property described in this paragraph is either -

(a) permitted connected property, not being a contract or asset having the effect of a derivative contract; or

(b) a permitted derivative contract or a contract or asset having the effect of a permitted derivative contract either of which when taken together with the permitted derivative contract mentioned first in sub-paragraph (1) of this paragraph has the effect that the company holds either permitted connected property or a permitted derivative contract in connection with such property.

(3) For the purposes of this paragraph -

(a) a derivative contract shall be deemed to be covered if it would not require a significant provision to be made in respect of it pursuant to regulation 65 of the Insurance Business (Companies Assets and Liabilities) Regulations, 2000 if it were a derivative contract to which Part IX of those regulations applied;

(b) “permitted connected property” means property of any of the descriptions in paragraphs 1 to 8 or 10 of this Schedule and which is not property falling within sub-paragraphs (a) to (d) of paragraph 17 of this Schedule.

16. In this Schedule, “readily realisable”, in respect of an investment, has the meaning set out in paragraph 2 of the Tenth Schedule to the Insurance Business (Companies Assets and Liabilities) Regulations, 2000.

17. Benefits payable under any contract to which regulation 3 of the regulations applies shall not be determined by reference to -

(a) property of any of the descriptions specified in paragraph 2, 5 or 7 of this Schedule if the value of such property is determined, either wholly or partly,

by reference to the value of, or the income from, or fluctuations in the value of, or fluctuations in the income from, property other than property of the descriptions in Part I of this Schedule; or

(b) property of the description specified in paragraph 2 of this Schedule in excess of 10 per centum of the aggregate property linked benefits under the contract; or

(c) property of the description specified in paragraph 5 of this Schedule which in aggregate value exceeds 10 per centum of the property linked benefits, unless the contract under which the benefits are payable has been marketed in accordance with any legal restrictions which apply to the marketing of the corresponding collective investment scheme; or

(d) property of any of the descriptions specified in Part I of this Schedule which has the effect of a derivative contract other than a permitted derivative contract.