L.N. 143 of 2007

INSURANCE INTERMEDIARIES ACT (CAP. 487)

Insurance Intermediaries (Penalties for Offences and Infringements) Regulations, 2007

IN exercise of the powers conferred by articles 3 and 53 of the Insurance Intermediaries Act, the Prime Minister and the 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 Intermediaries (Penalties for Offences and Infringements) Regulations, 2007.

(2) These regulations shall come into force on the 1st June, 2007.

Interpretation.

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

"the Act" means the Insurance Intermediaries Act; Cap. 487.

"administrative penalty" means a penalty which may be imposed and is recoverable by the Authority without recourse to a court hearing;

"the Authority" means the Malta Financial Services Authority established by article 3 of the Malta Financial Services Authority Act and appointed under article 3 of the Insurance Business Act to be the competent authority for the purposes of that Act and, by virtue of article 3(1) of the Act, for the purposes of the Act; Cap. 330.

"court penalty" means a penalty which is enforceable by prosecution in the courts of Malta;

"Financial Services Tribunal" shall be construed in accordance with article 50 of the Act;

"insurance intermediaries rule" has the same meaning as is assigned to it by article 2 of the Insurance Intermediaries Act; Cap. 487.

"Schedule" means a schedule to these regulations,

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

Classification of penalties.

3. (1) For the purposes of these regulations, penalties are divided into court penalties which are enforceable by prosecution in the courts of Malta and administrative penalties, and -

"court penalties" shall be construed in accordance with the provisions of the First Schedule, and

"administrative penalties" shall be construed in accordance with the provisions of the Second Schedule.

(2) With respect to a penalty of any level specified in the first column of the First Schedule which is a court penalty, the penalty shall be either the corresponding fine (*multa*) specified in the second column thereof or the corresponding period of imprisonment specified in the third column thereof.

(3) With respect to an administrative penalty of any level specified in the first column of the Second Schedule the penalty shall be the corresponding amount specified in the second column thereof and the corresponding amount for each day during which the infringement continues specified in the third column thereof.

Imposition of penalties.

4. (1) Any person found guilty of an offence for having contravened a provision of the Act mentioned in the first column of the Third Schedule, with a corresponding general description of the offence set out in the second column thereof, shall be liable to the corresponding penalty of the level specified in the third column of the said Schedule.

(2) For any failure by any person to comply with any provision of the Act mentioned in the first column of the Fourth Schedule, consisting in the corresponding act or omission described in the second column thereof, the Authority may by notice in writing impose by way of an administrative penalty on the person concerned the corresponding penalty specified in the third column of the said schedule.

(3) Any description in the second column of the Third and Fourth Schedules of any offence and failure as respectively referred to in subregulations (1) and (2) shall not be relied on in interpreting the provision to which the offence or failure corresponds.

Application of certain penalties prescribed by the Insurance Business (Penalties for Offences and Infringements) Regulations, 2000.

L.N. 100 of 2000.

5. The penalties specified in the Third Schedule to the Insurance Business (Penalties for Offences and Infringements) Regulations, prescribed by virtue of Insurance Business Act, with reference to articles 29, 30, 31A or 38 of the said Act shall apply with respect to a person found guilty of the offences against the said articles of the said Act as made applicable to him by virtue of articles 52(1)(b) and 54 of the Act.

Appeal to the Financial Services Tribunal.

6. In accordance with the provisions of article 50 of the Act any person upon whom the Authority has imposed an administrative penalty in accordance with the provisions of regulation 4(2) may appeal in writing to the Financial Services Tribunal against the decision of the Authority.

Recovery of administrative penalties.

7. (1) Where a notice imposing an administrative penalty is served on a person and -

(a) such person fails to appeal within such time as an appeal may be entered, and fails to pay the penalty so imposed; or

(b) appeals within such time to the Financial Services Tribunal and the appeal is withdrawn or the Tribunal confirms the penalty in the amount fixed by the Authority or in an amount reduced by it, and the penalty is not paid within fifteen days from the date of the withdrawal of the appeal or the date when the Tribunal confirms the penalty as aforesaid,

then, in every case, the Authority shall be entitled to take civil action to recover the amount due to it.

Repeals and Savings.

L.N. 101 of 2000.

8. (1) Saving the provisions of this regulation, the Insurance Intermediaries (Penalties for Offences and Infringements) Regulations, 2000 are hereby repealed without prejudice to anything done or omitted to be done thereunder.

Cap. 403.

L.N. 100 of 2000.

(2) Any person who on the date of coming into force of the Act was authorised to act as an insurance agent or insurance manager under the Insurance Business Act, shall, in respect of any outstanding penalties due to the Authority by such person under the Insurance Business (Penalties for Offences and Infringements) Regulations, 2000 up to that date, continue to be governed by such regulations.

FIRST SCHEDULE

(Regulation 3)

Penalties which are enforceable by prosecution in the courts of Malta

First Column Level	Second Column Fine (*multa*)	Third Column Imprisonment
1	not less than Lm100 but not more than Lm5,000	not more than three months
2	not less than Lm1,000 but not more than Lm10,000	not less than one month but not more than six months
3	not less than Lm5,000 but not more than Lm50,000	not less than six months but not more than two years.

SECOND SCHEDULE

(Regulation3)

Administrative penalties which may be imposed by the Authority without recourse to a court hearing

First Column Level	Second Column Penalty	Third Column Daily penalty
1	not less than Lm50 but not more than Lm250	not less than Lm5 but not more than Lm15
2	not less than Lm100 but not more than Lm1,000	not less than Lm10 but not more than Lm30
3	not less than Lm1,000 but not more than Lm40,000	not less than Lm20 but not more than Lm50.

THIRD SCHEDULE

(Regulation 4)

Court Penalties

First Column Article	Second Column Offence	Third Column Penalty level
52(1)(b) with reference to 6	Acting as an insurance intermediary and carrying on insurance intermediaries activities in or from Malta without registration or enrolment	2
52(1)(b) with reference to 11(4)	Carrying out insurance intermediaries activities, or setting up or acquiring a subsidiary in a country outside Malta without the written consent of the Authority	2
52(1)(b) with reference to 46(4)	Disclosing of information relating to the affairs of an enrolled person or a client of an enrolled person other than in specified circumstances	1
52(1)(e)	Failure to comply with any lawful order or requirement of the Authority	2
52(1)(f)	Failure to comply with any lawful order or requirement of any other person made under the Act or any regulations made thereunder	2
52(1)(g)	Altering, suppressing, concealing, destroying or refusing to produce any document which is lawfully required to be produced by any person under the Act or any regulations made thereunder	2
52(2)	Knowingly being a party to, or procuring or aiding and abetting, any contravention of any provision of the Act or any regulations made thereunder or any insurance intermediaries rules.	The penalty level applicable to the principal offence
Any other offence arising under any provision of the Act not specifically provided for in this Schedule		1

FOURTH SCHEDULE

(Regulation 4)

In this Schedule, "Administrative Penalties" are those made and for the purpose of article 3(2)(h) of the Act.

Administrative Penalties

First Column Article	Second Column Infringement	Third Column Penalty level
10(1)(v)	Failure of enrolled person to have in its favour at all times a professional indemnity insurance or other comparable guarantee satisfying the requirements of article 10(1)(v)	2
11(2)	Opening a branch or setting up or acquiring a subsidiary in Malta without making an application in that regard to the Authority	1
11(3)	Carrying out of insurance intermediaries activities from a branch in Malta under the management of a person other than a person who is a registered person under the Act	1
13(4)	Failure of person or company to comply with any condition of registration or enrolment	2
14(2)	Failure of displaying at the place of business in a part accessible to public certificate of registration or enrolment	1
17(4)	Failure of person having his name struck off the Agents Register, Managers Register or Brokers Register or company having its name struck off the Agents List, Managers List or Brokers List to surrender to the Authority certificate of registration or enrolment or any official copies thereof.	2
20(1)	Failure of enrolled person to keep in a separate account monies held in a fiduciary capacity in accordance with requirements as may be determined by an insurance intermediaries rule made for the purpose of article 20	3

First Column Article	Second Column Infringement	Third Column Penalty level
21	Failure of enrolled person to effect and hold a fidelity bond as respects its insurance intermediaries activities in accordance with requirements as may be determined by an insurance intermediaries rule made for the purpose of article 21	3
23	Failure of enrolled company to notify the Authority in writing, within a specified period, the name and the other particulars of the company's directors and employees who are registered in the Agents Register, Managers Register or Brokers Register; or to notify the Authority in writing, within a specified period, any changes occurring among such directors and employees.	1
24	Failure of enrolled company to forward annually to the Authority a copy of the company's financial statements or failure of enrolled person to forward annually to the Authority a copy of the income statements; or to forward such statements within a specified period or a period as may be authorised by the Authority; or to forward a copy of such statements drawn up in accordance with the provisions of article 24	2
25	Failure of enrolled persons to forward annually to the Authority a statement in respect of insurance intermediaries activities carried out by such person; or to forward such statement in the form, content and manner as may be determined by an insurance intermediaries rule made for the purpose of article 25	1
26	Failure of enrolled person to notify the Authority in writing of ceasing to carry out insurance intermediaries activities or to comply with any condition made by the Authority in the permit to cease the business	1
27(2) or (3)	Failure of enrolled company to inform the Authority in writing of altering its financial year	1
28(1)	Failure of enrolled company to appoint approved auditor	2

First Column Article	Second Column Infringement	Third Column Penalty level
28(5)	Failure of auditor to give notice in writing to the Authority if he resigns, does not seek re-appointment, qualifies the audit report or failure to specify reasons in the case of resignation	1
28(6)	Failure of enrolled company to give notice in writing to the Authority if it receives notice of a resolution to appoint as auditor a person other than the retiring auditor or not to re-appoint the retiring auditor	1
28(7)	Failure of enrolled company to notify the Authority in writing, or to notify the Authority in writing within a specified period, the reasons for terminating the appointment of the company's auditor	2
28(8)	Failure of enrolled company to change auditor if so required by the Authority	2
28(12) or (14)	Failure of auditor to inform the Authority of any of the matters, facts and decisions provided by article 28(12) or (14)	2
31(1)	Negotiating, arranging or procuring with an unauthorised company a contract of insurance relating to a risk situated in Malta or a commitment where Malta is the country of the commitment unless otherwise approved	1
32(3)	Failure of enrolled person to register with the Authority an underwriting agreement made or entered into by the person	1
32(4)	Accepting of business of insurance under an underwriting agreement by an enrolled person, unless such underwriting agreement is duly registered by the enrolled person with the Authority	1
33(1)	Acting as a tied insurance intermediary and carrying out tied insurance intermediaries activities without registration in any Tied Insurance Intermediaries Company Register of a company and enrolment in the Tied Insurance Intermediaries List	1

First Column	Second Column	Third Column
Article	Infringement	Penalty level
34(1)	Failure of authorised company appointing persons to act as tied insurance intermediaries and to carry out tied insurance intermediaries activities on its behalf without establishing and maintaining the Tied Insurance Intermediaries Company Register of the company; or to establish and maintain the Tied Insurance Intermediaries Company Register of the company in accordance with requirements as may be determined by an insurance intermediaries rule made for the purpose of article 34	2
36(2)	Failure of authorised company to enrol in the Tied Insurance Intermediaries List a person registered by the company as a tied insurance intermediary in the Tied Insurance Intermediaries Company Register of the company	1
36(3)	Failure of authorised company to furnish a person in whose name a certificate of enrolment is issued with that certificate or an official copy thereof	1
36(4)	Failure of person enrolled in the Tied Insurance Intermediaries List of displaying at the place of business in a part accessible to the public the certificate of enrolment or an official copy thereof	1
37 (2)	Failure of company enrolled in the Tied Insurance Intermediaries List carrying out tied insurance intermediaries activities from more than one place of business to carry out those activities from each place of business by a person who is a fit and proper person to carry out such activities	1
37(4)	Seeking appointment and registration in the Tied Insurance Intermediaries Company Register of more than one company authorised to carry on long term business in respect of any one class of long term business	1
37(5)	Seeking appointment and registration in the Tied Insurance Intermediaries Company Register Sub-agents Company Register of more than one company	1

	authorised to carry on general business in respect of any one class, or any one group of classes, of general business	

First Column Article	Second Column Infringement	Third Column Penalty level
37(8)	Failure of person or company to comply with any condition of enrolment	1
38(1)	Failure of the tied insurance intermediary to keep in a separate account monies held in a fiduciary capacity in accordance with requirements as may be determined by an insurance intermediaries rule made for the purpose of article 38	3
40(1)	Failure of authorised company striking the name of a person off the Tied Insurance Intermediaries Company Register of the company to notify the Authority in writing of that striking off or of the date of effect of that striking off	1
40(2)	Failure of authorised company to strike the name of a person off the Tied Insurance Intermediaries Company Register of the company on grounds of unfitness and improperness or because the person concerned has acted fraudulently, or dishonestly, or in such manner as to cease to be trustworthy	2
40(2)	Failure of authorised company to notify the Authority in writing the reasons for striking off that name when the company strikes the name of a person off the Tied Insurance Intermediaries Company Register of the company on specified grounds	1
40(4)(a)	Failure of authorised company to strike the name of a person off the Tied Insurance Intermediaries Company Register of the company if so required by the Authority	2
40(7)	Failure of authorised company to comply with a directive of the Authority to hasten the process as striking the name of a person off the Tied Insurance Intermediaries Company Register of the company if so required by the person concerned	2

40(8)	Failure of authorised company to surrender to the Authority the certificate of enrolment, or any official copies thereof, issued in the name of a person whose name has been struck off the Tied Insurance Intermediaries Company Register of the company	1

First Column Article	Second Column Infringement	Third Column Penalty level
41	Failure of a person to comply with any measure taken by the Authority for the purpose of article 41	2
43	Failure of a person acting as a tied insurance intermediary and carrying out tied insurance intermediaries activities on behalf of a European insurance undertaking without enrolment in the Tied Insurance Intermediaries List	1
44(1)	Failure of registered or enrolled person to notify the Authority in writing of any material change in documentation provided, or required to be provided, by or under any provision of the Act	1
44(2)(a)	Failure of enrolled company to submit in writing to the Authority for the Authority's approval particulars of any proposed addition or alteration to the company's memorandum or articles of association or other instrument constituting the company	1
44(2)(b)	Failure of the enrolled company to inform the Authority of the names of the persons holding a qualifying shareholding in the company and the percentage of such holding in the form, manner and content within such date as determined by an insurance intermediaries rule made for the purpose of article 44(2)(b)	1
47(3)	Failure of authorised companies to open for public inspection the Tied Insurance Intermediaries Company Register of the company; or to open the Register for inspection free of charge	1
48(1)	Failure of person to use the word "insurance" as part of his description or title or to make any such use on any letter paper, in any notice or advertisement, or in any other similar manner without the written	1

	permission of the Authority	
48(2)	Failure of enrolled company to add any explanatory particulars to the company's name as directed by the Authority	1

First Column	Second Column	Third Column
Article	Infringement	Penalty level
52(1)(d)	Failure of person to satisfy any requirement of, or obligation determined by, any provision of any insurance intermediaries rule made for the purpose of any article of the Act other than an article mentioned in this Schedule and the Third Schedule to the regulations.	1
Any other infringement against any other provisions of the Act or any regulations made thereunder or any insurance intermediaries rule not specifically provided for in this Schedule.		1

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