L.N. 289 of 2007

INSURANCE BUSINESS ACT (CAP.403)

European Passport Rights for Insurance Undertakings (Amendment) Regulations, 2007

IN exercise of the powers conferred by article 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. (1) The title of these regulations is the European Passport Rights for Insurance Undertakings (Amendment) Regulations, 2007 and they shall be read and construed as one with the European Passport Rights for Insurance Undertakings Regulations, 2004, hereinafter referred to as "the principal regulations".

L.N. 89 of 2004.

(2) These regulations shall come into force on the 15th October 2007.

Amends the title of the principal regulations.

2. Immediately after the words "for Insurance" in the title of the principal regulations, there shall be inserted the words "and Reinsurance".

Amends regulation 1 of the principal regulations.

3. Immediately after the words "for Insurance" in regulation 1 of the principal regulations, there shall be inserted the words "and Reinsurance".

Amends regulation 2 of the principal regulations.

4. Regulation 2 of the principal regulations shall be amended as follows:

(a) the present regulation shall be renumbered as sub-regulation (1) thereof; and

(b) in sub-regulation (1) thereof, as renumbered:

(i) immediately after the definition "the Act" there shall be added the following new definition:

" "branch" means any permanent presence of an undertaking in the territory of a Member State or EEA State, even if that presence does not take the form of a branch but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would;";

(ii) for the definition "competent authority", there shall be substituted the following:

" "competent 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 Act to be the competent authority for the purposes of the Act;";

Cap. 330.

(iii) in the definition "European insurance undertaking", for the words "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" there shall be substituted the words "pursuing the business 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 in accordance with article 4 or article 6 respectively";

(iv) immediately after the definition "European insurance undertaking", there shall be added the following new definition:

" "European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of article 2 of Directive 2005/68/EC which has received authorisation in accordance with article 3 of the Reinsurance Directive;";

(v) the definition "European right", shall be amended as follows:

(aa) immediately after the words "an insurance undertaking", there shall be added the words "or a reinsurance undertaking";

(bb) in paragraph (b) thereof, for the words "any rules or regulations made under the Act, or insurance directives", there shall be substituted the words "any regulations made under the Act, or insurance rules";

(vi) the definition "foreign authority" shall be amended as follows:

(aa) in paragraph (a) thereof, immediately after the words "European insurance undertaking", there shall be added the words "or the European reinsurance undertaking";

(bb) in paragraph (b) thereof, immediately after the words "Maltese insurance undertaking", there shall be added the words "or a Maltese reinsurance undertaking";

(vii) in the definition "home Member State", immediately after the words "the insurance undertaking", there shall be added the words "or the reinsurance undertaking";

(viii) in the definition "host Member State", immediately after the words "a Maltese insurance undertaking", there shall be added the words "or a Maltese reinsurance undertaking";

(ix) for the definition "insurance directive", there shall be substituted the following:

" "insurance rule" has the same meaning as is assigned to it by article 2 of the Act;"; Cap. 403.

(x) in the definition "Maltese insurance undertaking" for the words "other than Malta in exercise of a European right", there shall be substituted the words "in exercise of a European right but excludes an undertaking whose business is restricted to reinsurance";

(xi) immediately after the definition "Maltese insurance undertaking", there shall be added the following new definition:

" "Maltese reinsurance undertaking" means a company authorised in terms of the Act to carry on business restricted to reinsurance, whose head office is

in Malta and which is entitled to carry on business in a Member State or EEA State in exercise of a European right;";

(xii) in paragraph (b) of the definition "Maltese rules", for the words "and any rules, regulations and insurance directives", there shall be substituted the words "any regulations and insurance rules made thereunder;

(xiii) the definition "Single Market Directive" or "Directive" shall be amended as follows:

(aa) immediately after the words "First, Second and Third Non-Life Insurance Directives", there shall be added the words "and the Reinsurance Directive";

(bb) immediately after paragraph (d), there shall be added the following new paragraph (e):

"(e) "Reinsurance Directive" means Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC;"; and

(c) immediately after sub-regulation (1) thereof, as renumbered, there shall be added the following new sub-regulation (2):

"(2) These regulations shall apply to a European reinsurance undertaking or a Maltese reinsurance undertaking in the following manner:

(a) in the case of a European reinsurance undertaking, the Preliminary, Parts V and VII thereof shall apply; and

(b) in the case of a Maltese reinsurance undertaking, the Preliminary, Parts III, VI and VII thereof shall apply.".

Amends regulation 3 of the principal regulations.

5. For sub-paragraph (vii) of paragraph (c) of sub-regulations (2) of regulation 3 of the principal regulations, there shall be substituted the following:

"(vii) details of any insurance guarantee scheme, if applicable, which is intended to protect the branch's policyholders in a manner not being less favourable than that prescribed in Part III of the Protection and Compensation Fund Regulations.". L.N. 435 of 2003.

Amends regulation 7 of the principal regulations.

6. In regulation 7 of the principal regulations, for the words "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" there shall be substituted the words "provided that it complies with an insurance rule made pursuant to article 48 of the Act, and any other rule adopted by the competent authority".

Amends regulation 9 of the principal regulations.

7. Regulation 9 of the principal regulations shall be amended as follows:

(a) for paragraph (e) of sub-regulation (2) thereof, for the words "specified by means of an insurance directive" there shall be substituted the words "specified by means of an insurance rule"; and

(b) for paragraph (f) of sub-regulation (4) thereof, for the words "established by means of an insurance directive" there shall be substituted the words "established by means of an insurance rule".

Amends regulation 10 of the principal regulations.

8. For paragraph (c) of sub-regulation (1) of regulation (10) of the principal regulations, for the words "specified in an insurance directive" there shall be substituted the words "specified in an insurance rule".

Renumbering of Part III of the principal regulations.

9. Part III of the principal regulations shall be amended as follows:

(a) Part III entitled "Part III - EUROPEAN INSURANCE UNDERTAKINGS NOT COMPLYING WITH LEGAL PROVISIONS" shall be renumbered as "Part IV - EUROPEAN INSURANCE UNDERTAKINGS NOT COMPLYING WITH LEGAL PROVISIONS"; and

(b) regulation 11 thereof shall be renumbered as regulation 12.

Insertion of new Part in the principal regulations.

10. Immediately after regulation 10 of the principal regulations, there shall be inserted the following new Part:

"PART III - EXERCISE OF PASSPORT RIGHTS BY MALTESE REINSURANCE UNDERTAKINGS

Exercise of passport rights by Maltese insurance undertakings.

11. (1) No Maltese reinsurance undertaking authorised under the Act shall establish a branch or provide services in a Member State or EEA State in exercise of a European right without the written consent of the competent authority.

(2) The competent authority may require such Maltese reinsurance undertaking to provide it with any information it deems necessary in relation to the proposed activities.".

Amends regulation 12 as renumbered of the principal regulations.

11. Regulation 12, as renumbered, of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof:

(i) in paragraph (a) therein, the words "or any provisions of the Act or any rules, regulations or insurance directives made thereunder" shall be deleted;

(ii) in paragraph (c) therein, for the words "or of any rules or regulations made thereunder or any insurance directive" there shall be substituted the words "or of any regulations made thereunder or any insurance rules";

(b) in sub-regulation (3) thereof, the words "or because those measures prove inadequate or are not available in Malta," shall be deleted; and

(c) in sub-regulation (5) thereof, for the words "shall inform the Commissioner" there shall be substituted the words "shall inform the Commission".

Renumbering of Part IV of the principal regulations.

12. Part IV of the principal regulations shall be amended as follows:

(a) Part IV entitled "APPLICABILITY PROVISIONS" shall be renumbered as "Part VI - APPLICABILITY PROVISIONS"; and

(b) regulation 12 thereof shall be renumbered as regulation 15.

Insertion of new Part in the principal regulations.

13. Immediately after regulation 12, as renumbered, of the principal regulations, there shall be inserted the following new Part:

"PART V - EUROPEAN REINSURANCE UNDERTAKINGS CARRYING ON BUSINESS OF REINSURANCE IN MALTA

Exercise of passport rights by European reinsurance undertakings.

13. (1) Subject to sub-regulation (2) of this regulation, a European reinsurance undertaking authorised in accordance with article 3 of the Reinsurance Directive, shall be entitled to carry on business of reinsurance in Malta under the right of establishment or freedom to provide services in exercise of a European right.

(2) The entitlement to carry on business of reinsurance in Malta is to be treated as being on conditions or terms equivalent to those set out in the authorisation issued to a European reinsurance undertaking by its supervisory authority; and shall be restricted to the business of reinsurance which the European reinsurance undertaking is authorised to carry on by the supervisory authority of its home Member State.

Contravention by European reinsurance undertakings.

14. (1) Where the competent authority ascertains that a European reinsurance undertaking which has established a branch in Malta or provides services in Malta has contravened or is likely to contravene the Maltese rules, it shall, in writing, require the European reinsurance undertaking to remedy and rectify its position.

(2) If the European reinsurance 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 reinsurance 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, the European reinsurance undertaking persists in violating the Maltese rules 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 reinsurance undertaking from continuing to conclude new reinsurance contracts in Malta.

(4) Any measure adopted pursuant to this regulation shall be communicated to the European reinsurance 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*.".

Amends regulation 15 as renumbered of the principal regulations.

14. Sub-regulation (1) of regulation 15, as renumbered, of the principal regulations shall be amended as follows:

(a) immediately after the words "Maltese insurance undertaking", there shall be added the words "or a Maltese reinsurance undertaking"; and

(b) in the proviso thereof, for the words "with all insurance directives" there shall be substituted the words "with all insurance rules".

Renumbering of Part V of the principal regulations.

15. Part V of the principal regulations shall be amended as follows:

(a) Part V entitled "INTERPRETATION" shall be renumbered as "Part VII - I NTERPRETATION"; and

(b) regulation 13 thereof shall be renumbered as regulation 16.

Amends regulation 16 as renumbered of the principal regulations.

16. Regulation 16, as renumbered, of the principal regulations shall be amended as follows:

(a) subarticle (2) thereof shall be deleted;

(b) subarticle (1) thereof shall be renumbered as regulation 16; and

(c) for the words "Council Directive 92/49/EEC and Directive 2002/83/EC of the European Parliament and of the Council", there shall be substituted the words "Council Directive 92/49/EEC, Directive 2002/83/EC of the European Parliament and of the Council and Directive 2005/68/EC of the European Parliament and of the Council".

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