

L.N. 446 of 2012

**NOTARIAL PROFESSION AND NOTARIAL ARCHIVES ACT
(CAP. 55)**

Notaries (Compulsory Insurance) Regulations, 2012

IN exercise of the powers conferred by article 10A(3) of the Notarial Profession and Notarial Archives Act, the Minister for Fair Competition, Small Business and Consumers has made the following regulations:-

1. (1) The title of these regulations is the Notaries (Compulsory Insurance) Regulations, 2012. Citation and commencement.

(2) These regulations shall come into force on 1 January 2013.

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

"Act" means the Notarial Profession and Notarial Archives Act; Cap. 55.

"breach" means any negligent act, error, breach of confidentiality, omission, loss of documents, committed or happening during the exercise of the notary's functions under any law at any time in force in Malta, and for any preparatory, ancillary or consequential work done with respect to same, by the notary or by his employees, and includes any act which causes damages resulting from a criminal or fraudulent act by any of the notary's employees in the performance of their duties if they are in his employment, or in furtherance of the notary's functions if they are third parties engaged by him;

"claimant" means any person who suffers damages due to a breach;

"Court" means the Court of Revision of Notarial Acts;

"damages" means any damages incurred directly by a claimant due to a breach, and includes any consequential loss suffered by the claimant due to such breach;

"insurance provider" means an undertaking which has received its official authorisation for the taking-up of the business of general insurance in Malta and is authorised to write policies categorised under class 13 of the Third Schedule to the Insurance Business Act; Cap. 403.

"Minister" means the Minister responsible for notarial affairs;

"notarial act" means an *inter vivos* act, a will, an act of delivery of a secret will or any deed published in terms of articles 84A and 84B of the Act;

"Notarial Council" has the meaning assigned to it by the Act;

"notary" means a person, holding a warrant in accordance with the Act to practise such profession, but does not include a notary referred to in article 22 of the Act;

"notary's employees" means one or more persons in the employment of a notary and, or one or more third parties not in the employment of the notary but engaged by the notary in the exercise of the notary's functions;

"policy" means a Professional Indemnity Insurance Policy issued according to documented terms and conditions, provided by an insurance provider to a notary;

"policy year" means the minimum period of one year during which a notary is to be covered by a policy;

"run-off cover" has the meaning assigned to it in regulation 5.

Compulsory
insurance.

3. (1) Without prejudice to the other provisions of these regulations, with effect from 1 January 2013, every notary shall be at all times adequately covered by a policy in terms of article 10A of the Act for a minimum sum of two hundred and fifty thousand euro (€250,000) or such other sum as may be determined by the Minister from time to time (such limit is hereafter referred to as the "indemnity limit"), against any breach, committed by the notary and, or the notary's employees in a policy year. The indemnity limit shall be applicable to any one claim or to the aggregate of all claims made against the notary in any policy year.

For the purposes of this regulation, judicial and legal costs of whatever nature including those to defend a claim, and legal costs of whatever nature including, but not limited to, those relating to a compromise, shall be at the charge of the insurance provider and shall be deemed to be included in the indemnity limit:

Provided that nothing in this regulation shall preclude a notary from being insured for a higher sum than the indemnity limit, or for one or more "higher value transactions", under such terms and conditions agreed upon between the notary and the insurance provider:

Provided further that a policy shall not extend to any breach caused by a notary and, or the notary's employees, which is otherwise insured.

(2) The indemnity limit shall be exclusive of the sum that may be agreed upon as excess to be paid by the notary on each and every claim under the terms of the policy:

Provided that for one or more claims against the policy in any policy year, a notary shall not accept to pay an excess that exceeds, with regard to each such claim, one point five per centum (1.5%) of the indemnity limit established in the policy:

Provided further that an insurance provider shall not demand the payment of an excess as a condition to effect payment of damages to a claimant, nor shall the insurance provider be entitled to deduct such excess from any payment made to a claimant.

(3) (a) The notary shall disclose to the insurance provider his annual income from the exercise of his profession in the year immediately preceding the policy year. The insurance provider shall provide a policy based on such annual income:

Provided that where a notary is unable to disclose to the insurance provider his exact annual income for the year immediately preceding the policy year in view of the fact that such preceding year has not yet ended, a reasonable estimate shall suffice.

(b) Where the notary's annual income for the year immediately preceding the policy year does not exceed twenty-five thousand euro (€25,000) or such other sum as may be established by the Minister from time to time, the annual income for such preceding year shall be deemed to be twenty-five thousand euro (€25,000) or such other sum as may be established by the Minister from time to time.

4. The notary shall also be required to be adequately covered by a policy against any breach which may have been committed by the notary and, or the notary's employees at any time within the five years immediately prior to the beginning of the policy year: Other cover.

Provided that the policy need not extend to any fact, possibly being a breach, occurring prior to 1 January 2013 which the notary may have known or suspected to have happened, and which the notary is obliged to disclose to the insurance provider prior to the commencement of the policy.

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Run-off cover.

5. (1) A notary shall no longer be required to be covered in terms of regulation 3 in the instances mentioned in sub-regulation (4) of this regulation.

(2) Notwithstanding the provisions of sub-regulation (1), a notary shall be adequately covered by a run-off cover policy for a period of two years immediately following the lapse of the policy year in which he is covered in terms of regulation 3.

(3) For the purposes of this regulation, the provisions of regulation 3 shall *mutatis mutandis* apply.

(4) The instances referred to in sub-regulation (1) are the following:

(a) where the notary ceases from exercising his functions for any of the reasons mentioned in article 14(1) of the Act; or

(b) upon the issue of a decree in terms of regulation 9(3).

Transfer of policies.

6. Where a policy is transferred from one insurance provider to another, the new policy shall extend to indemnify the notary against any loss or claim made against the assured notary for a retroactive cover of five years in respect of any breach which may have occurred, or is alleged to have occurred, prior to the inception of the new policy:

Provided that such cover need not extend to any fact, possibly being a breach, occurring prior to 1 January 2013 which the notary may have known or suspected to have happened, and which the notary is obliged to disclose to the insurance provider prior to the commencement of the policy.

Avoidance of payment.

7. Where the insurance provider is entitled at any time to avoid payment under a policy by reason of non-disclosure or misinterpretation of facts by the notary when he completed his proposal form to the insurance provider, the insurance provider shall, instead of avoiding the policy, give full force and effect to the policy except to those parts of the policy which are related to the circumstances which ought to have been disclosed in the proposal form and were not and, or which ought to have been correctly interpreted by the notary and were not.

Information to the Notarial Council.

8. (1) Without prejudice to the provisions of article 94A(12)(a) and (18) of the Act and other relevant articles thereof, every notary shall provide on an annual basis to the Notarial Council,

through one of the review officers defined in article 94A(1) of the Act, a copy of the policy taken out in terms of the Act and these regulations for the sole purpose of ascertaining that the notary is validly and adequately covered in terms of the Act and these regulations.

(2) In the event of doubt as to whether a policy is valid and adequate in terms of the Act and these regulations in relation to a notary, the Notarial Council shall, within one month of receiving such copy, determine, after consultation with an insurance broker or an independent insurance provider, whether the policy is so valid and adequate and, if it is not, a reasoned decision shall be communicated forthwith by registered mail to the notary concerned.

(3) A notary to whom a reasoned decision has been communicated in terms of sub-regulation (2) shall address without delay any concern raised by the Notarial Council and shall also send by registered mail to the Council the necessary documentation to the satisfaction of the Council.

9. (1) Saving the provisions of regulation 5 regarding run off-cover, a notary shall be exempt from the obligation of being insured in terms of regulation 3 whenever the Court, following the notary's application to this effect, exempts him from such obligation. Exemptions.

(2) In his application to the Court, the notary shall:

(a) indicate the reason why and the calendar year or years during which he does not intend publishing any notarial act; and

(b) present a copy of his run-off cover policy valid for two years immediately following the end of the policy year in which he published his last notarial act:

Provided that the last requisite shall not apply where the notary did not publish any notarial act in the five years prior to his application.

(3) Without prejudice to the provisions of sub-regulation (2), the Court shall accede to the request of the notary, and issue the appropriate decree in the following cases:

(a) where the notary intends to absent himself from Malta for a period exceeding one year; or

(b) where the notary is suffering from ill-health or a protracted medical condition restricting him from publishing any notarial act; or

(c) where the notary has taken up full-time employment, and his contract of employment prevents him from publishing any notarial act; or

(d) where the notary does not intend publishing any notarial act for a period of time exceeding one year in cases of parenthood where such notary has the care of a child of less than four years of age; or

(e) where the notary shows any other situation which the Court considers reasonable after considering all the circumstances of the case.

(4) The grant of a decree by the Court in any of the cases mentioned in sub-regulation (3) shall not be interpreted as preventing a notary from publishing a notarial act at any time, so long as he first conforms to the provisions of the Act and these regulations with regard to insurance and also applies to the Court for the revocation of its decree with effect from the date when he is covered, or again covered, in terms of regulation 3.

(5) A notary who has been partially incapacitated in terms of the Act shall not, for the sole reason that he is partially incapacitated, be exempt from being covered in terms of the Act and these regulations.

