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Taqsimha B

L.N. 452 of 2013

INSURANCE BUSINESS ACT
(CAP. 403)

Reinsurance Special Purpose Vehicles Regulations, 2013

IN exercise of the powers conferred by article 64 of the Insurance Business Act, the Minister for Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

1. The title of these regulations is the Reinsurance Special Purpose Vehicles Regulations, 2013. Citation.

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Insurance Business Act; Cap. 403.

"aggregate maximum risk exposure" means the sum of the maximum payments, including expenses, that the authorised reinsurance special purpose vehicle may incur, excluding expenses that meet the following criteria:

(a) the authorised reinsurance special purpose vehicle has the right to require the ceding undertaking to pay the expense;

(b) the authorised reinsurance special purpose vehicle is not required to pay the expense unless and until an amount equal to the expense has been received from the ceding undertaking;

(c) the ceding undertaking does not include the expense as an amount recoverable from the authorised reinsurance special purpose vehicle;

"authorised reinsurance special purpose vehicle" means a reinsurance special purpose vehicle, which is authorised in accordance with these regulations;

"ceding undertaking" means an insurance or reinsurance undertaking, which has received an official authorisation in accordance with Article 6 of Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative

provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance, Article 4 of Directive 2002/83/EC of the European Parliament and of the Council of 5th November 2002 concerning life assurance or Article 3 of Directive 2005/68/EC of the European Parliament and of the Council of 16th November 2005 on reinsurance, that has transferred risk to a reinsurance special purpose vehicle, and includes an insurance or reinsurance undertaking authorised in a third country;

Cap. 330. "competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

Cap. 330. "Financial Services Tribunal" means the Tribunal established under article 21 of the Malta Financial Services Authority Act, and the term "Tribunal" shall be construed accordingly;

"group" shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as may be determined by an insurance rule;

Cap. 487. "insurance manager" means a person enrolled as such under article 13 of the Insurance Intermediaries Act;

"insurance rule" has the same meaning as is assigned to it by article 2 of the Act for the purpose of carrying into effect the provisions of these regulations;

"providers of debt or financing" means professional clients as defined in Annex II of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (the MiFID Directive);

"reinsurance special purpose vehicle" means an undertaking, other than an existing insurance undertaking or reinsurance undertaking, which assumes risks from a ceding undertaking and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment right of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such a vehicle;

"third country" means a country that is not a Member State or EEA State;

"triggering event", in relation to a reinsurance special purpose vehicle contract, means an event or condition, specified in the contract, that would oblige the reinsurance special purpose vehicle to make one or more payments to the ceding undertaking under the

contract.

(2) Words and expressions used in these regulations which are also used in the Act, but which are not defined herein, shall in these regulations have the same meaning as in the Act.

3. (1) An undertaking may carry on business as a reinsurance special purpose vehicle in or from Malta only in accordance with an authorisation granted by the competent authority in terms of these regulations.

Authorisation of a reinsurance special purpose vehicle.

(2) An authorised reinsurance special purpose vehicle shall only assume risks from a single ceding undertaking or from ceding undertakings belonging to the same group, and shall not engage in activities other than those permitted under these regulations.

(3) Where a reinsurance special purpose vehicle intends to enter into contractual arrangements relating to the transfer of risk, with a ceding undertaking, established in a country outside Malta, the competent authority shall consult the overseas regulatory authority concerned, before it takes a decision on authorisation.

(4) The authorisation of a reinsurance special purpose vehicle shall state the uses for which the special purpose vehicle is authorised, and any terms and conditions relating to that use.

(5) The competent authority shall decide on an application for an authorisation within six months of the date of its receipt; and if it refuses to issue the authorisation it shall inform the applicant in writing of the reasons for the refusal.

(6) Any person who is aggrieved by a decision of the competent authority to refuse to issue an authorisation under this regulation may appeal against the decision to the Financial Services Tribunal.

4. A reinsurance special purpose vehicle shall only be eligible for authorisation in terms of these regulations if all the following conditions are fulfilled:

Eligibility criteria for authorisation.

(a) the undertaking is a limited liability company formed or constituted in Malta;

(b) its objects are restricted to operating as a reinsurance special purpose vehicle;

(c) it assumes risks from a ceding undertaking through reinsurance contracts, or assumes insurance risks through

similar arrangements;

(d) the contractual arrangements relating to the transfer of risk from a ceding undertaking to the reinsurance special purpose vehicle, and the investment in assets by the reinsurance special purpose vehicle, satisfy the conditions of regulation 6;

(e) the persons who effectively direct or manage the reinsurance special purpose vehicle satisfy the requirements of regulation 7(2):

Provided that the reinsurance special purpose vehicle may, subject to the approval of the competent authority, appoint an insurance manager to manage its business;

(f) the undertaking has disclosed the identity of the shareholders or members having a qualifying shareholding in the reinsurance special purpose vehicle and such persons satisfy the fit and proper criteria as determined by an insurance rule issued under the Act on the prudential assessment of acquisitions and increase of holdings in authorised companies;

(g) it has an effective system of governance and meets the conditions of regulation 8;

(h) it is capable of meeting the requirements of regulation 9; and

(i) it satisfies the requirements of regulations 10 and 11.

Authorisation
requirements
and subsequent
approvals.

5. (1) The competent authority shall not issue an authorisation in terms of these regulations unless it is satisfied that -

(a) an application for authorisation is made in writing by the reinsurance special purpose vehicle, in the manner determined by an insurance rule;

(b) an application for authorisation under paragraph (a) is accompanied by -

(i) a scheme of operations which shall include the information required by an insurance rule;

(ii) a copy of the proposed contract between the reinsurance special purpose vehicle and the ceding undertaking, which shall include any triggering event and the maximum aggregate exposure limits of the reinsurance special purpose vehicle;

(iii) a copy of the memorandum and articles of association of the reinsurance special purpose vehicle;

(iv) details of any trustee holding the assets or shares of the reinsurance special purpose vehicle;

(v) details of any administrator or other functionary of a foundation holding shares in the reinsurance special purpose vehicle;

(vi) details of the identity of any qualifying shareholders, and of the directors, controllers and all persons who will effectively direct or manage the reinsurance special purpose vehicle, including all information needed to assess whether these persons are fit and proper as determined by an insurance rule issued under the Act on the criteria of fitness and properness.

(2) The authorisation of a reinsurance special purpose vehicle is only valid for the use for which it was established, and any reuse or change of use is subject to prior approval by the competent authority.

(3) Where an authorised reinsurance special purpose vehicle assumes additional or more than one risk under more than one risk transfer arrangement from a single ceding undertaking or from ceding undertakings belonging to the same group, it shall seek separate approval from the competent authority for every arrangement.

(4) In order to receive approval for any such arrangements as referred to in sub-regulation (3), the authorised reinsurance special purpose vehicle shall demonstrate to the competent authority:

(a) that it can maintain adequate bankruptcy remoteness protection for each arrangement at all times;

(b) that it can ensure that the link between the funding leg for a specific arrangement is sufficiently matched to the related risks assumed, and that such links are clearly defined and effectively legally ring-fenced so as to avoid potential contagion from one arrangement to another; and

(c) how it intends to maintain compliance with the fully-funded requirement under regulation 10 at the aggregate maximum risk exposure level and the individual risk exposure of each separate arrangement assumed in addition to the overall requirement at a total level.

(5) Where the authorised reinsurance special purpose vehicle

is not able to demonstrate compliance with sub-regulation (4), the competent authority shall not approve the proposed new arrangements.

(6) The competent authority shall have the power to require any undertaking to provide such information as it may deem necessary for the purposes of determining an application for authorisation or approval.

Mandatory
conditions for
all contractual
arrangements.

6. (1) An authorised reinsurance special purpose vehicle shall ensure that the mandatory conditions found in sub-regulations (2) to (4) are included in all contractual arrangements relating to the transfer of risk.

(2) The contractual arrangements relating to the transfer of risk from a ceding undertaking to an authorised reinsurance special purpose vehicle shall ensure that the authorised reinsurance special purpose vehicle is at all times fully funded, as set out in regulation 10.

(3) The contractual arrangements relating to the transfer of risk from a ceding undertaking to an authorised reinsurance special purpose vehicle and from the authorised reinsurance special purpose vehicle to the providers of debt or financing shall ensure that -

(a) the transfer of risk is effective in all circumstances;

(b) the extent of risk transfer is clearly defined and incontrovertible,

and the transfer of risk shall not be deemed to be effective in all circumstances where there are connected transactions which could undermine the effective transfer of risk.

(4) The contractual arrangements relating to the transfer of risk from a ceding undertaking to an authorised reinsurance special purpose vehicle and from the authorised reinsurance special purpose vehicle to the providers of debt or financing shall also ensure that:

(a) the claims of the providers of debt or financing mechanisms are at all times subordinated to the reinsurance obligations of the authorised reinsurance special purpose vehicle to the ceding undertaking;

(b) no payments are made to the providers of debt or financing, if following those payments the authorised reinsurance special purpose vehicle would no longer be fully funded;

(c) the providers of debt or financing to the authorised reinsurance special purpose vehicle have no rights of recourse to the assets of the ceding undertaking;

(d) the providers of debt or financing to the authorised reinsurance special purpose vehicle have no rights to apply for the winding-up of the authorised reinsurance special purpose vehicle.

(5) The mandatory conditions specified in this regulation shall apply and shall be given effect notwithstanding any provisions of any other law.

7. (1) An authorised reinsurance special purpose vehicle shall have in place an effective system of governance which provides for the sound and prudent management of the business.

Fit and proper requirements.

(2) All persons who effectively direct or manage an authorised reinsurance special purpose vehicle shall, at all times, fulfil the following requirements:

(a) their professional qualifications, knowledge and experience are adequate to enable the sound and prudent management of the activities of the reinsurance special purpose vehicle; and

(b) they are of good repute and integrity.

(3) An authorised reinsurance special purpose vehicle shall notify the competent authority if any of the persons referred to in sub-regulation (2) have ceased to be fit and proper because they no longer fulfil the requirements referred to in the said sub-regulation.

(4) An authorised reinsurance special purpose vehicle shall notify the competent authority of any changes in the identity of any qualifying shareholders and of the persons who effectively direct or manage it and shall provide the competent authority with all information needed to assess whether the persons proposed are fit and proper.

8. (1) An authorised reinsurance special purpose vehicle shall have a system of governance that is appropriate to the nature, scale and complexity of the risks that it assumes and the uses for which it is authorised in accordance with regulation 3, including:

System of governance requirements.

(a) sound administrative and accounting procedures, including the maintenance of adequate and orderly records of the activities and transactions undertaken by the authorised

reinsurance special purpose vehicle, adequate internal control mechanisms and an effective risk management system;

(b) written policies in relation to at least risk management, internal control, administrative and accounting procedures and, where relevant, outsourcing;

(c) internal controls to ensure that the mandatory contract conditions in regulation 6, the solvency requirements in regulation 10 and the prudent person principles in regulation 11 are fulfilled on an on-going basis;

(d) an effective risk-management system comprising processes and reporting procedures necessary to identify, measure, monitor, manage and report, on an on-going basis the risk to which the authorised reinsurance special purpose vehicle could be exposed.

(2) The written policies referred to in sub-regulation (1)(b) shall include policies relating to the areas referred to hereunder to the extent that these are relevant taking into account the uses of the authorised reinsurance special purposes vehicle:

(a) underwriting and reserving;

(b) asset-liability management;

(c) investment, in particular derivatives and similar commitments;

(d) liquidity and concentration risk management;

(e) operational risk management;

(f) reinsurance and other risk-mitigation techniques.

(3) An authorised reinsurance special purpose vehicle shall ensure that the policies referred to in sub-regulation (1)(b) are implemented effectively.

Supervisory
reporting.

9. (1) The competent authority may request such information from the authorised reinsurance special purpose vehicle as is necessary in order to supervise such vehicle.

(2) An authorised reinsurance special purpose vehicle shall report to the competent authority, within such period as may be determined by the competent authority, the following information:

(a) the value of its assets, distinguished by material class and a description of the basis, methods and assumptions used for their valuation;

(b) its aggregate maximum risk exposure of, and a description of the basis, methods and assumptions used for the determination of the aggregate maximum risk exposure;

(c) conflicts of interest between any of the authorised reinsurance special purpose vehicle, the ceding undertaking and the providers of debt or financing;

(d) significant transactions entered into by the authorised reinsurance special purpose vehicle during the last reporting period.

(3) An authorised reinsurance special purpose vehicle shall inform the competent authority of any material changes that could affect the compliance by such vehicles with the requirements set out in regulations 3 to 8 and 10.

10. (1) An authorised reinsurance special purpose vehicle shall be fully funded at all times and shall satisfy the following conditions in order to be considered fully funded:

Solvency
requirements.

(a) its assets are valued in accordance with generally accepted accounting principles and practice;

(b) it has at all times assets the value of which is equal to or exceeds the aggregate maximum risk exposure, and it is able to pay the amounts it is liable for as they fall due;

(c) the proceeds of the debt issuance or other financing mechanism are fully paid-up.

(2) The assessment by the competent authority as to whether an authorised reinsurance special purpose vehicle is fully funded shall be based on whether the conditions in sub-regulation (1)(b) and (c) have been satisfied, taking into account, where appropriate:

(a) the liquidity risk of the authorised reinsurance special purpose vehicle;

(b) the quantifiable risks of the authorised reinsurance special purpose vehicle;

(c) the arrangements for holding assets in the authorised reinsurance special purpose vehicle.

(3) An authorised reinsurance special purpose vehicle shall demonstrate to the competent authority in the report referred to in regulation 9 and on request by the competent authority that it satisfies the requirements in sub-regulation (1), having regard to the factors in sub-regulation (2).

(4) Payments relating to existing insurance and reinsurance contracts, that are expected to be received in the future by the authorised reinsurance special purpose vehicle from the ceding undertaking, may be included in the assets of the authorised reinsurance special purpose vehicle, provided that the following conditions are met:

(a) its future liabilities to the providers of debt or financing only arise subject to the receipt of the payments from the ceding undertaking;

(b) there is no scenario under which the own funds of the ceding undertaking would be negatively affected by the payment not being received by the authorised reinsurance special purpose vehicle;

(c) it continues to meet the conditions set out in sub-regulation (1) in the event that the payments from the ceding undertaking are not received;

(d) the payments do not relate to expenses that are excluded from the aggregate maximum risk exposure.

(5) For the purposes of sub-regulation (4), "existing insurance or reinsurance contract" means an insurance or reinsurance contract which has resulted in recognising insurance or reinsurance obligations.

(6) The authorised reinsurance special purpose vehicle shall immediately inform the competent authority:

(a) where it observes that the fully funded requirement is no longer complied with; or

(b) where there is a risk of non-compliance in the following three months.

(7) In the cases referred to in sub-regulation (6)(a) and (b), the authorised reinsurance special purpose vehicle concerned shall submit within one month of the observation of non-compliance or risk of non-compliance, for approval by the competent authority, a realistic financial scheme to restore compliance with the fully funded

requirement within such period as may be determined by the competent authority.

11. An authorised reinsurance special purpose vehicle shall invest its assets in accordance with the prudent person principle as follows:

Application of prudent person principle.

(a) with respect to the whole portfolio of assets, it shall only invest in assets and instruments whose risk it can properly identify, measure, monitor, manage, control and report;

(b) assets shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability;

(c) all assets shall be invested in a manner appropriate to the nature and duration of its liabilities. All assets shall be invested in the best interest of the ceding undertaking;

(d) the use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management;

(e) investments and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels;

(f) assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole; and

(g) investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose it to excessive risk concentration.

12. The funding requirement for a specific risk transfer arrangement shall not be subsequently re-allocated to satisfy the funding requirements of any other existing or new arrangement assumed by the authorised reinsurance special purpose vehicle, unless:

Funding requirement for risk transfer arrangements.

(a) the authorised reinsurance special vehicle has received prior authorisation from the competent authority for any changes to its intended use, where differing from that for which it is authorised; and

(b) the authorised reinsurance special purpose vehicle can adequately demonstrate that there is full legal certainty that the obligations of the first arrangement have been met, and no subsequent claims could be made against the funding in connection to the original arrangement.

Withdrawal of
authorisation.

13. (1) Without prejudice to article 26 of the Act, the competent authority may withdraw an authorisation granted to an authorised reinsurance special purpose vehicle in the following cases:

(a) when it does not make use of the authorisation within twelve months, expressly denounces its authorisation or ceases to pursue business for more than six months, unless the terms and conditions of the authorisation make provision for an authorisation to lapse in such cases;

(b) when it no longer fulfils the original conditions of its authorisation; or

(c) when it fails in its obligations under these regulations or any insurance rules issued thereunder, or any applicable provisions of the Act, or any regulations or insurance rules issued thereunder, to which it is subject.

(2) With specific reference to sub-regulation (1)(c), the competent authority shall withdraw an authorisation granted to an authorised reinsurance special purpose vehicle in the event that it does not comply with the fully-funded requirement and the competent authority considers that the financial scheme submitted is inadequate, or, it fails to comply with the approved scheme within three months from the observation of non-compliance with the fully funded requirement.

(3) Any decision to withdraw an authorisation shall state the full reasons and shall be communicated to the authorised reinsurance special purpose vehicle concerned. Any overseas regulatory authorities concerned shall also be notified of the decision without delay.

(4) For the purposes of sub-regulation (3), the provisions of article 27 of the Act shall apply *mutatis mutandis*.

(5) Any person who is aggrieved by a decision of the competent authority to withdraw an authorisation under this regulation may appeal against the decision to the Financial Services Tribunal.

14. Any person acting in contravention of, or failing to comply with or otherwise observe any of the provisions of these regulations, shall be liable to a penalty of an amount as determined by article 64(2) of the Act. Offences and penalties.

15. (1) The provisions of the Act, other than those provisions listed in sub-regulation (2), shall apply to an authorised reinsurance special purpose vehicle, in the same manner and to the same extent as they apply to a company authorised under the Act, as if a reference in the Act to a "company" were a reference to an "authorised reinsurance special purpose vehicle". Application of the Act.

(2) For the purposes of sub-regulation (1):

- (a) Part III of the Act shall not apply;
- (b) Part IV of the Act shall not apply;
- (c) Part V of the Act shall apply as follows:

(i) article 20 of the Act shall not apply and the following provision shall apply in substitution thereof:

"Every authorised reinsurance special purpose vehicle shall, not later than four months from the date of its financial year, or at any other time as may exceptionally be authorised in writing by the competent authority, forward to the competent authority a copy of its audited financial statements drawn up in accordance with the Companies Act.";

(ii) articles 22 and 23 of the Act shall not apply;

(iii) article 24 of the Act shall only apply in so far as the obligations of auditors are concerned;

(d) article 25 of Part VI of the Act shall not apply;

(e) article 32 of Part VII of the Act shall not apply;

(f) Part VIII of the Act shall not apply;

(g) Part IX of the Act shall apply as follows:

(i) subarticle (1) of article 39 of the Act shall apply as if an authorised reinsurance special purpose vehicle were required to give, not later than six months before the date on which it intends to cease its activities,

notice in writing of its intention to the competent authority, and the authorised reinsurance special purpose vehicle were required to comply with any directive issued to it by the competent authority; and subarticles (2) and (3) thereof, shall not apply;

(ii) article 41 shall apply as if an authorised reinsurance special purpose vehicle were required only to dissolve and consequently wind up under and in accordance with the Companies Act;

(iii) article 42 of the Act shall not apply;

(h) articles 44 to 48B of Part X of the Act shall not apply;

(i) Part XI of the Act shall not apply; and

(j) articles 60, 62, 63, and 69 of Part XII of the Act shall not apply.

Application of
the
Securitisation
Act.
Cap. 484.

16. (1) Without prejudice to sub-regulation (3), articles 5, 5A, 6, 7, 13, 16, 17, 21, 24 and 25 of the Securitisation Act shall apply to an authorised reinsurance special purpose vehicle.

(2) Subject to the provisions of this sub-regulation and of sub-regulation (3), the following provisions of the Securitisation Act shall apply to an authorised reinsurance special purpose vehicle in the manner hereunder:

(a) article 2 shall apply subject to the following:

(i) the definition of "originator or assignor" shall not apply and any reference to the term "originator" or "assignor" as used in the Securitisation Act shall be deemed to be a reference to the term "ceding undertaking" as defined in these regulations;

(ii) the definition of "risks" shall not apply and any reference to "risks" shall be construed in accordance with paragraph (c) of regulation 4;

(iii) the definition of "securitisation" shall not apply and any reference to "securitisation" shall be construed in accordance with the definition of "reinsurance special purpose vehicle" in regulation 2;

(iv) the definition of "securitisation asset" shall

not apply;

(v) the definition of "securitisation vehicle" shall not apply and any reference to the term "securitisation vehicle" as used in the Securitisation Act shall be deemed to be a reference to the term "reinsurance special purpose vehicle" as defined in these regulations;

(b) article 8 shall apply subject to the following:

(i) subarticle (1) thereof shall apply on condition that the any delegation to a third party is subject to approved approval by the competent authority;

(ii) subarticle 2 thereof shall not apply;

(c) article 10 shall apply subject to the following:

Paragraph (c) of sub-article (1) thereof shall apply without prejudice to any legitimate claim of the ceding undertaking under the applicable contractual agreements;

(d) articles 11 and 12 shall apply only in so far as any notice that may be required to be issued in accordance with sub-article (5) of article 13 is concerned;

(e) article 14 shall apply subject to the following:

Paragraph (c) of sub-article (2) thereof shall only apply in so far as it provides for the non-application of articles 1980 to 1984 of the Civil Code;

(f) article 22 shall apply subject to the following:

(i) sub-paragraph (ii) of paragraph (a) of sub-article (1) thereof shall apply without prejudice to paragraph (d) of sub-regulation 4 of regulation 6;

(ii) paragraph (b) of subarticle (1) thereof shall not apply;

(iii) subarticle (2) thereof shall not apply.

(3) Notwithstanding the foregoing, where any applicable provisions of the Securitisation Act, or any rules or regulations made thereunder, are inconsistent with the provisions of these regulations, these regulations shall prevail, and the provisions of the said Act, rules or regulations shall, to the extent of the inconsistency, not apply

to reinsurance special purpose vehicles.

Cooperation
with overseas
regulatory
authorities.

17. (1) The competent authority may share information and cooperate with any overseas regulatory authorities concerned, in relation to the supervision of authorised reinsurance special purpose vehicles.

(2) The competent authority may also exchange information on planned supervisory actions where it deems these actions to have a material and potentially adverse effect on the supervision of a ceding undertaking for which an overseas regulatory authority is responsible.

Power of the
competent
authority to
issue insurance
rules.

18. (1) The competent authority may issue insurance rules for the purposes of these regulations.

(2) Such insurance rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purposes of these regulations.

