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Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,509, 10 ta' Diċembru, 2015
Taqsima B

L.N. 401 of 2015

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Exemptions) Regulations, 2015

IN exercise of the powers conferred by articles 6(3)(a) and 64 of the Insurance Business Act, the Minister for Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Citation, scope and commencement.

1. (1) The title of these regulations is the Insurance Business (Exemptions) Regulations, 2015.

(2) The purpose of these regulations is to implement Articles 3, 4, 5, 7, 9(1) and (2), 10(1) and 11 of the Solvency II Directive.

(3) These regulations shall come into force on the 1st January 2016.

Interpretation. Cap. 403.

2. Any reference in these regulations to the Act is a reference to the Insurance Business Act, and the provisions of article 2 of the Act shall also apply to these regulations.

Applicability of the Act.

3. (1) Subject to sub-regulations (2) to (4) and pursuant to Article 4 of the Solvency II Directive, an insurance undertaking whose head office is in Malta which fulfils all of the following conditions:

(a) the annual gross written premium income of the undertaking does not exceed €5,000,000;

(b) the total of the undertaking's technical provisions, gross of the amounts recoverable from contracts of reinsurance and special purpose vehicles, as set out in article 18E of the Act, does not exceed €25,000,000;

(c) where the undertaking forms part of a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from contracts of reinsurance and special purpose vehicles does not exceed €25,000,000;

(d) the business of insurance carried on by the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of article 5(2)

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of the Act;

(e) the business of insurance carried on by the undertaking does not include reinsurance operations -

(i) exceeding €500,000 of its gross written premium or exceeding €2,500,000 of its technical provisions gross of the amounts recoverable from contracts of reinsurance and special purpose vehicles;

(ii) with more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from contracts of reinsurance and special purpose vehicles,

shall be exempt from the requirements of the Solvency II Directive.

(2) The provisions of the Act, regulations and Insurance Rules issued thereunder shall apply, subject to such modifications, variations and conditions as shall be specified by means of Insurance Rules issued for the purposes of this regulation, to an undertaking which falls under sub-regulation (1).

(3) Without prejudice to sub-regulation (1), the Act, regulations and Insurance Rules issued thereunder shall apply in their entirety to an insurance undertaking which fulfils the conditions specified under sub-regulation (1), from the fourth year, if any of the amounts set out in sub-regulation (1)(a), (b), (c) or (e) are exceeded in each of the three preceding consecutive years after 1 January 2016.

(4) Subject to sub-regulation (6), the Act, regulations and Insurance Rules issued thereunder shall apply in their entirety, to an insurance undertaking which, on or after 1 January 2016, seeks to be granted an authorisation to carry on business of insurance pursuant to article 7 of the Act, if any of the amounts set out in sub-regulation (1)(a), (b), (c) or (e) are expected to be exceeded within five years from the date on which the undertaking has obtained such an authorisation.

(5) Notwithstanding that an insurance undertaking fulfills all of the conditions set out in sub-regulation (1), if the undertaking exercises a European right pursuant to the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, the Act, regulations and Insurance Rules issued thereunder shall apply in their entirety to such an undertaking.

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(6) Where -

(a) an insurance undertaking is not exercising a European right pursuant to the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015; and

(b) none of the thresholds set out in sub-regulation (1):

(i) has been exceeded for three consecutive years; and

(ii) is expected to be exceeded during the following five years,

the provisions of the Act, regulations and Insurance Rules, as modified by Insurance Rules issued for the purposes of sub-regulation (2), shall apply.

Operations not considered business of insurance.

4. The operations falling within this regulation shall not be considered as business of insurance for the purposes of the Act and, accordingly, a person carrying out the following operations shall be exempted from the requirement to obtain an authorisation in terms of article 7 of the said Act:

(a) without prejudice to Article 2(3)(c) of the Solvency II Directive, insurance forming part of a statutory system of social security;

(b) operations relating to general business of insurance in relation to:

(i) capital redemption operations;

(ii) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis; or

(iii) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

(c) mutual undertakings which carry on general business of insurance and which have concluded with other mutual associations an agreement which provides for the full reinsurance of the insurance policies issued by them or under

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which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case, the accepting undertaking shall not be exempted in terms of these regulations and shall accordingly be subject to the requirements of the Solvency II Directive;

(d) in regard to long term business:

(i) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

(ii) operations carried out by organisations, other than undertakings referred to in Article 2 of the Solvency II Directive, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;

(iii) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

(e) the activity of reinsurance conducted or fully guaranteed by the Government of Malta when such government is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial insurance cover.

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