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

L.N. 403 of 2015

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) (Amendment) Regulations, 2015

IN exercise of the powers conferred by article 41(6) of the Insurance Business Act, the Minister for 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 Business (Reorganisation and Winding Up of Insurance Undertakings) (Amendment) Regulations, 2015 and these regulations shall be read and construed as one with the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) Regulations, hereinafter referred to as "the principal regulations". S.L. 403.15

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

Amends regulation 2 of the principal regulations.

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

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

(i) for the definition "administrator", there shall be substituted the following:

" "administrator" means:

(a) in Malta, any person or body appointed by the relevant authorities for the purpose of administering reorganisation measures; or

(b) in another Member State or EEA State, any person or body appointed by the foreign administrative or judicial authorities or by the governing bodies of an insurance undertaking authorised in that Member State or EEA State for the purposes of administering reorganisation measures;";

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(ii) in the definition "branch", for the words "or an EEA State other than the home State", there shall be substituted the words "or an EEA State, other than the home Member State,";

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

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

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(iv) in the definition "EEA State", for the words "means a State, other than Malta, which is", there shall be substituted the words "means a State, which is";

(v) in the definition "European insurance undertaking", for the words "within the meaning of article 1 of Directive 73/239/EEC or article 2 of Directive 2002/83/EC which has received authorisation under article 6 or article 4 respectively;", there shall be substituted the words "within the meaning of Article 2 of the Solvency II Directive, which has received authorisation under Article 14 of the Solvency II Directive;";

(vi) for the definition "foreign authority", there shall be substituted the following:

" "foreign authority" means the supervisory authorities of a Member State or an EEA State, other than Malta, within the meaning of Article 13(10) of the Solvency II Directive;";

(vii) in the definition "host Member State", for the words "other than the home State", there shall be substituted the words "other than the home Member State";

(viii) for the definition "insurance claims", there shall be substituted the following:

" "insurance claim" means:

(a) any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or any injured party having direct right of action against the insurance undertaking and which arises from

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an insurance contract or from any operation provided for in Articles 2(3)(b) and (c) of the Solvency II Directive in direct insurance business, including an amount set aside for those aforementioned persons, when some elements of the debt are not known; and

(b) the premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or any operation referred to in paragraph (a) in accordance with the law applicable to such a contract or operation before the commencement of the winding-up proceedings;";

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

" "liquidator" means -

(a) in Malta, a liquidator appointed under the Companies Act or the Act, as applicable, to a Maltese insurance undertaking and includes the Official Receiver when acting in the capacity of liquidator; or

(b) in another Member State or EEA State, any person or body appointed by the foreign authorities, foreign administrative or judicial authorities or by the governing bodies of an insurance undertaking authorised in that Member State or EEA State, for the purposes of administering winding up proceedings;";

(x) in the definition "Maltese insurance undertaking", for the words "means a company whose head office is in Malta", there shall be substituted the words "means an undertaking whose head office is in Malta";

(xi) in the definition "Member State", for the words "of the European Communities;", there shall be substituted the words "of the European Union;";

(xii) immediately after the definition "Member State", there shall be added the following new definition:

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" "relevant authorities" means the authorities, as defined in Article 268(1)(a) of the Solvency II Directive, which are competent for the purposes of the reorganisation measures or the winding-up proceedings in Malta, including the court and the competent authority;";

(xiii) in the definition "reorganisation measures", for the words "involving any intervention by the court under Part VI of the Companies Act or by the", there shall be substituted the words "involving any intervention by the relevant authorities or by the foreign authorities, or";

(xiv) for the definition "winding-up proceedings", there shall be substituted the following:

" "winding-up proceedings" means the collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the insurance creditors, creditors, shareholders or members as appropriate, which necessarily involve any intervention by the relevant authorities or by foreign authorities or foreign administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or wound up by the court."; and

(b) for sub-article (2) thereof, there shall be substituted the following:

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

Amends regulation 3 of the principal regulations.

3. Regulation 3 of the principal regulations shall be amended as follows:

(a) for sub-regulations (1) and (2) thereof, there shall be substituted the following:

"(1) Only the relevant authorities shall be entitled to decide on the reorganisation measures with respect to a Maltese insurance undertaking, including its branches.

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(2) Reorganisation measures adopted in respect of a Maltese insurance undertaking, including its branches established in host Member States shall be governed by the Act or the Companies Act, as applicable, unless otherwise provided by regulations 19 to 28:

Provided that, reorganisation measures shall not preclude the dissolution and consequential winding up of the Maltese insurance undertaking concerned.";

(b) in sub-regulation (3) thereof, for the words "reorganisation measures shall be fully effective in other Member States or EEA States in accordance with the Companies Act without any further formalities,", there shall be substituted the words "reorganisation measures adopted pursuant to sub-regulation (2) shall be fully effective in other Member States or EEA States without any further formalities,"; and

(c) in sub-regulation (4) thereof, for the words "reorganisation measures shall be effective in other Member States or EEA States", there shall be substituted the words "reorganisation measures adopted pursuant to sub-regulation (2) shall be effective in other Member States or EEA States".

Amends regulation 4 of the principal regulations.

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

(a) for sub-regulation (1) thereof, there shall be substituted the following:

"(1) Where the relevant authority is not the competent authority, the relevant authorities shall inform, as a matter of urgency the competent authority of their decision on any reorganisation measure, in order to obtain its views on the adoption of such measures and the practical effects which it may have, before the adoption of such measure and failing that immediately thereafter.";

(b) sub-regulation (2) thereof shall be amended as follows:

(i) for the words "Where the court makes a decision,", there shall be substituted the words "Where the court is the relevant authority and makes a decision,";

(ii) in paragraph (b) thereof, for the words "in accordance with article 329B,", there shall be substituted

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the words "in accordance with article 329B of the Companies Act,";

(iii) in the paragraph immediately following paragraph (b) thereof, for the words "which has been made.", there shall be substituted the words "which has been made:", and immediately thereafter there shall be added the following new proviso:

"Provided that, where the reorganisation measure involves a company recovery order in terms of the Companies Act, the provisions of article 329B(3)(d) of the Companies Act shall apply."; and

(c) sub-regulation (3) thereof shall be amended as follows:

(i) for the words "inform the foreign authority of the decision to adopt reorganisation measures", there shall be substituted the words "inform all foreign authorities of the decision to adopt reorganisation measures"; and

(ii) in paragraph (b) thereof, for the words "under contracts of insurance and carried out", there shall be substituted the words "under contracts of insurance effected and carried out".

Amends regulation 5 of the principal regulations.

5. Regulation 5 of the principal regulations shall be amended as follows:

(a) for sub-regulation (1) thereof, there shall be substituted the following:

"(1) The administrator or any other person appointed by the relevant authorities shall make public any decision on a reorganisation measure by:

(a) publishing a notice of the decision in at least two local daily newspapers, of which one is published in the Maltese language and the other in the English language, and the text of the measure shall be, in Maltese in the Maltese daily, and in English in the English daily; and in any other manner as determined by the relevant authorities; and

(b) publishing an extract from the

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document establishing the reorganisation measure in the Official Journal of the European Union in the English and the Maltese language at the earliest opportunity.";

(b) sub-regulation (2) thereof shall be deleted;

(c) sub-regulations (3), (4), (5) and (6) thereof shall be renumbered as sub-regulations (2), (3), (4), and (5) respectively;

(d) for sub-regulation (2) thereof, as renumbered, there shall be substituted the following:

"(2) The publication made pursuant to sub-regulation (1) shall specify:

(a) the name of the relevant authorities;

(b) a summary of the terms of the decision, appointment or order, as the case may be;

(c) the name of the administrator or any other person involved in the reorganisation measures, if any; and

(d) the statutory provisions in accordance with which the decision, appointment or order has been made.";

(e) in sub-regulation (3) thereof as renumbered, for the words "set out in sub-regulations (1), (2) and (3) and fully effective against creditors, unless the court provides otherwise.", there shall be substituted the words "set out in sub-regulations (1) and (2) and shall be fully effective against creditors, unless the relevant authorities, the provisions of the Companies Act or the Act, as applicable, provide otherwise.";

(f) in sub-regulation (4) thereof, as renumbered, for the words "publish information imposed upon the administrator in accordance with Part VI of the Companies Act.", there shall be substituted the words "publish information imposed upon the administrator in accordance with the Companies Act.";

(g) for sub-regulation (5) thereof, as renumbered, there shall be substituted the following:

"(5) Without prejudice to the provisions of the Companies Act, where the reorganisation measure affects

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exclusively the rights of shareholders, members or employees of a Maltese insurance undertaking considered in those capacities, sub-regulations (1) and (2) shall not apply; and in such a case, the relevant authorities shall determine the manner in which shareholders, members and employees affected by such reorganisation measures shall be informed.".

Amends regulation 6 of the principal regulations.

6. Regulation 6 of the principal regulations shall be amended as follows:

(a) for sub-regulations (1) and (2) thereof, there shall be substituted the following:

"(1) Subject to sub-regulation (2), the administrator or any person appointed for this purpose by the relevant authorities shall, without delay, inform by written notice all known creditors individually, including creditors who have their habitual place of residence, domicile or head office outside of Malta, of the reorganisation measures which have commenced.

(2) The written notice referred to in sub-regulation (1) shall also include the following information:

(a) the reorganisation measures which have commenced in relation to a Maltese insurance undertaking;

(b) the date from which that decision, order or appointment relating to reorganisation measures of the Maltese insurance undertaking has effect;

(c) if applicable, the date by which a creditor must lodge his claim in writing or submit any written observations concerning his claim;

(d) the matters which must be stated in a creditor’s claim;

(e) whether creditors whose claims are preferential or secured in rem, need to lodge their claims;

(f) the details of the person to whom any such claim or any written observations on a claim must be lodged; and

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(g) the consequence of any failure to lodge a claim or submit written observations by any specified time limit.";

(b) sub-regulation (3) thereof shall be amended as follows:

(i) in paragraph (a) thereof:

(aa) for the words "the effect which the decision will, or is likely to have", there shall be substituted the words "the effect which the decision will have, or is likely to have"; and

(bb) for the words "is founded; and", there shall be substituted the words "is founded;";

(ii) in paragraph (b) thereof, for the words "that contract has effect.", there shall be substituted the words "that contract has effect; and";

(iii) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

"(c) the date on which the insurance contracts or operations will cease to produce effect and the rights and duties of insured persons with regard to the contract or operation.";

(c) for sub-regulation (4) thereof, there shall be substituted the following:

"(4) For the purposes of this regulation, a creditor is a "known" creditor, if the persons mentioned in sub-regulation 2(f) are aware of, or should reasonably be aware of -

(a) the identity of the creditor;

(b) a claim or potential claim of the creditor, and

(c) a recent address where the creditor is likely to receive a communication.".

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

Amends regulation 7 of the principal regulations.

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(a) sub-regulations (1) and (2) thereof shall be renumbered as sub-regulations (2) and (3) respectively;

(b) immediately before sub-regulation (2) thereof, as renumbered, there shall be added the following new sub-regulation:

"(1) Any creditor, including public authorities, of a Maltese insurance undertaking, having their habitual place of residence, domicile or head office outside of Malta, shall have the right to lodge claims or to submit written observations relating to claims.";

(c) for sub-regulation (2) thereof, as renumbered, there shall be substituted the following:

"(2) For the avoidance of doubt, the claims of all creditors having their habitual place of residence, domicile or head office outside of Malta shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual place of residence, domicile or head office in Malta."; and

(d) for paragraph (e) of sub-regulation (3) thereof, as renumbered, there shall be substituted the following:

"(e) where appropriate, the assets that are covered by his security.".

Amends regulation 8 of the principal regulations.

8. Regulation 8 of the principal regulations shall be amended as follows:

(a) for the marginal note thereto, there shall be substituted the following: "Submission of claims by creditors.";

(b) for sub-regulations (1), (2) and (3) thereof, there shall be substituted the following:

"(1) Subject to sub-regulation (3), the information in the notice referred to in regulation 6 shall be provided in the Maltese and, or English language, as appropriate, or any other language as agreed to with the relevant authorities.

(2) The notice referred to in sub-regulation (1) shall, in the case of the lodging of claims, be headed with the words "Invitation to lodge a claim: time limits to be

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observed", and in the case of submission of observations relating to claims, it shall be headed "Invitation to submit observations relating to a claim: time limits to be observed", and such heading shall be written in every official language of the European Union or any other language as agreed to with the relevant authorities.

(3) Where the known creditor is an insurance creditor, the information in the notice referred to in regulation 6 shall be provided in the domestic language of such creditor.";

(c) sub-regulation (4) thereof shall be amended as follows:

(i) for the words "relating to his claim", there shall be substituted the words "relating to such claim";

(ii) in paragraph (a) thereof, for the words "where creditor submits a claim", there shall be substituted the words "where a creditor submits a claim"; and

(d) for sub-regulation (5) thereof, there shall be substituted the following:

"(5) For the purposes of this regulation, "domestic language" in relation to a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is habitually resident or domiciled or, if the creditor is not an individual, the place in which the creditor's head office is located.".

Substitutes regulation 9 of the principal regulations.

9. For regulation 9 of the principal regulations there shall be substituted the following:

"Commencement of winding up proceedings in Malta.

9. Without prejudice to article 28(1) of the Act, a decision concerning the dissolution and winding up of a Maltese insurance undertaking, including its branches in host Member States, shall only be taken by the relevant authorities in Malta:

Provided that, the decision to dissolve and wind-up a Maltese insurance undertaking, including its branches in host Member States, may be taken in the absence, or following the adoption of reorganisation measures.

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(2) Where the relevant authority is not the competent authority, the relevant authorities shall, upon receipt of an application for winding up proceedings, inform the competent authority regarding this request in order to obtain its views on the adoption of such measures and the practical effect which they may have.

(3) Where the court takes a decision concerning the dissolution and consequential winding up with respect to a Maltese insurance undertaking, including its branches established in any Member State or EEA State, which includes an order or appointment of -

(a) a winding up order under article 219 of the Companies Act; or Cap. 386.

(b) the appointment of a provisional administrator under article 228 of the Companies Act; Cap. 386.

it shall immediately inform the competent authority, or cause the competent authority to be informed without delay of the decision, order or appointment which has been made.

(4) Where an arrangement has been concluded pursuant to article 291 of the Companies Act, any person appointed by the Maltese insurance undertaking or creditors shall inform the competent authority of the arrangement which has been approved. Cap. 386.

(5) Where a liquidator is appointed in a creditor's voluntary winding-up as mentioned in article 230 of the Companies Act, the liquidator shall inform the competent authority of his appointment. Cap. 386.

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(6) Without prejudice to article 42 of the Act, where in the case of a member's voluntary winding up, a liquidator is appointed in terms of article 270 of the Companies Act, the liquidator shall inform the competent authority of his appointment; and in addition, where the provisions of article 272 of the Companies Act apply, the liquidator shall inform the competent authority that he is of the opinion that the Maltese insurance undertaking will not be able to pay its debts within the period stated in the declaration of solvency.

Cap. 386.

(7) For the avoidance of doubt, where the competent authority issues an order for the dissolution and winding up in terms of article 28 of the Act, any disposition of the property of the company or any other act which would otherwise require the written approval of the competent authority in terms of the Act, made after the date of the said order, shall be void, unless the competent authority otherwise approves in writing.

(8) Where the competent authority is informed of a decision, order or appointment in accordance with sub-regulations (3) to (6), the competent authority shall in turn, without delay and by any means available inform the foreign authority in all Member States or EEA States -

(a) that a decision, order or appointment has been made, and

(b) the possible effects of a decision, order or appointment of that kind on -

(i) the business of the Maltese insurance undertaking, and

(ii) the rights of policyholders under contract of insurance effected and carried out by the Maltese insurance undertaking.

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(9) A decision concerning the dissolution and winding up of a Maltese insurance undertaking, including its branches in host Member States, adopted in accordance with the Companies Act or the Act, as applicable, shall be recognised in other Member States or EEA States without any further formalities, and shall be effective as soon as the decision is effective in Malta.

Cap. 386.

(10) Nothing contained in these regulations shall prejudice the powers of the competent authority in relation to winding up proceedings with respect to a Maltese insurance undertaking, including its branches established in host Member States, where provided for in the Act.".

Amends regulation 10 of the principal regulations.

10. Regulation 10 of the principal regulations shall be amended as follows:

(a) in sub-regulation (2) thereof, for the words "in accordance with the Companies Act.", there shall be substituted the words "in accordance with these regulations and the Companies Act as made applicable by these regulations.";

(b) in sub-regulation (3) thereof:

(i) for the words "matters determined in paragraphs (a) to (m) are to be determined in accordance with the Companies Act.", there shall be substituted the words "matters set out in paragraphs (a) to (m) shall be determined in accordance with the applicable Maltese law.";

(ii) in paragraph (b) thereof, for the words "or devolving on,", there shall be substituted the words "or devolving to,";

(iii) in paragraph (e) thereof, for the words "which the affected Maltese insurance undertaking", there shall be substituted the words "which the Maltese insurance undertaking";

(iv) in paragraph (f) thereof, for the words "the effects of the winding up proceedings brought by individual creditors,", there shall be substituted the words "the effects of the winding up proceedings on proceedings

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brought by individual creditors,";

(v) in paragraph (h) thereof, for the words "arising after the making of the winding up proceedings;", there shall be substituted the words "arising after the commencement of the winding up proceedings;";

(vi) in sub-paragraph (iv) of paragraph (i) thereof, for the words "after the opening of the winding up order", there shall be substituted the words "after the making of the winding up order";

(vii) in paragraph (j) thereof, for the words "the effects of closure of winding up proceedings,", there shall be substituted the words "the effects of completion of winding up proceedings,";

(viii) in paragraph (k) thereof, for the words "after the closure of the winding up proceedings;", there shall be substituted the words "after the completion of the winding up proceedings;";

(ix) in paragraph (m) thereof, for the words "rules relating to the voidness, violability or unenforceability", there shall be substituted the words "rules relating to the nullity, voidability or unenforceability"; and

(x) in the proviso thereto, for the words "and the provisions of the Companies Act", there shall be substituted the words "and the provisions of any other law".

Amends regulation 11 of the principal regulations.

11. For regulation 11 of the principal regulations, there shall be substituted the following:

"11. Notwithstanding the provisions of any other law, the assets of the Maltese insurance undertaking which are prohibited from being freely disposed of under article 41(2) of the Act, or by virtue of or under any other provision of the said Act, shall be available only for meeting the liabilities of the undertaking arising out of its business of insurance:

Provided that, insurance claims shall rank before any other claim against such assets.".

Amends regulation 12 of the principal regulations.

12. In regulation 12 of the principal regulations, for the words "have been subrogated to Protection and Compensation Fund", there shall be substituted the words "have been subrogated to the Protection

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and Compensation Fund".

Amends regulation 13 of the principal regulations.

13. Regulation 13 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "in terms of article 25(b) of the Act, except to the extent necessary for the purposes of sub-regulation (2), if the authorisation has not been previously suspended or revoked.", there shall be substituted the words "in terms of article 25(a) of the Act, except to the extent necessary for the purposes of sub-regulation (3).";

(b) sub-regulation (2) thereof shall be renumbered as sub-regulation (3) and immediately after sub-regulation (1) thereof, there shall be added the following new sub-regulation:

"(2) Where any action has been taken in terms of sub-regulation (1), the provisions set out in article 27(5) of the Act shall apply."; and

(c) in sub-regulation (3) thereof, as renumbered, for the words "shall not prevent the liquidator or any other person entrusted by the court from carrying on some of the Maltese insurance undertaking's activities", there shall be substituted the words "shall not prevent the liquidator or any other person appointed by the relevant authorities from carrying on some of the Maltese insurance undertaking's activities".

Amends regulation 14 of the principal regulations.

14. Regulation 14 of the principal regulations shall be amended as follows:

(a) for sub-regulation (1) thereof, there shall be substituted the following:

"(1) Where -

(a) an arrangement has been entered into between a Maltese insurance undertaking and its creditors in terms of article 291 of the Companies Act;

(b) an order has been made appointing a provisional administrator in accordance with article 228 of the Companies Act;

(c) a winding up order has been made by the court under Title II of Part V of the Companies Act; or

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(d) a liquidator has been appointed in terms of article 28(1) of the Act, or articles 230 or 270 of the Companies Act,

the relevant authority, the liquidator or any person appointed for that purpose by the relevant authority shall publish:

(i) an extract from the decision or order to commence winding-up proceedings in at least two local daily newspapers, of which one is published in the Maltese language and the other in the English language, and the text of the proceedings shall be, in Maltese in the Maltese daily, and in English in the English daily; and in any other manner as determined by the relevant authority; and

(ii) an extract from the winding up decision in the Official Journal of the European Union in the English and the Maltese language at the earliest opportunity.";

(b) sub-regulation (2) thereof shall be deleted and sub-regulations (3), (4) and (5) shall be renumbered as sub-regulations (2), (3) and (4) respectively;

(c) in sub-regulation (2) thereof, as renumbered:

(i) for the words "the decision to commence winding up proceedings", there shall be substituted the words "the decision made pursuant to sub-regulation (1)";

(ii) in paragraph (a) thereof, for the words "the name of the court;", there shall be substituted the words "the name of the relevant authority;";

(d) in sub-regulation (3) thereof, as renumbered, for the words "on the relevant officer under the provisions", there shall be substituted the words "on the relevant authority under the provisions"; and

(e) in sub-regulation (4) thereof, as renumbered:

(i) for the words " "relevant officer" ", there shall be substituted the words " "relevant authority " ";

(ii) in paragraph (a) thereof, for the words "in the

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case of a arrangement", there shall be substituted the words "in the case of an arrangement";

(iii) paragraphs (c) and (d) thereof shall be renumbered as paragraphs (d) and (e) respectively;

(iv) immediately after paragraph (b) thereof, there shall be added the following new paragraph;

"(c) in the case of a members' voluntary winding up, the liquidator;";

(v) in paragraph (d) thereof, as renumbered, for the words "the liquidator; and", there shall be substituted the words "the liquidator;";

(vi) for paragraph (e) thereof, as renumbered, there shall be substituted the following:

"(e) in the case of an order appointing a provisional administrator, the provisional administrator; and";

(viii) immediately after paragraph (e) thereof, as renumbered, there shall be added the following new paragraph;

"(f) a liquidator appointed in terms of article 28 of the Act.".

Amends regulation 15 of the principal regulations.

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

(a) for sub-regulations (1) and (2) thereof, there shall be substituted the following:

"(1) Subject to sub-regulation (2), the liquidator or any other person appointed for this purpose by the relevant authorities shall without delay inform by written notice all known creditors individually, including creditors who have their habitual place of residence, domicile or head office outside of Malta, of the commencement of winding-up proceedings.

(2) The written notice referred to in sub-regulation (1) shall also include the following information:

(a) that winding-up proceedings have

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commenced in relation to a Maltese insurance undertaking;

(b) the date from which that decision to wind up the Maltese insurance undertaking has effect;

(c) the date, if applicable, by which a creditor must lodge his claim in writing or submit written observations concerning his claim;

(d) the matters which must be stated in a creditor's claim;

(e) whether creditors whose claims are preferential or secured in rem, need to lodge their claims;

(f) the details of the person to whom any such claim or any observations on a claim must be submitted; and

(g) the consequence of any failure to lodge a claim or written observations by any specified time limit.";

(b) in sub-regulation (3) thereof:

(i) in paragraph (a) thereof:

(aa) for the words "the decision will, or is likely to have", there shall be substituted the words "the decision will have, or is likely to have"; and

(bb) for the words "is founded; and", there shall be substituted the words "is founded;";

(ii) for paragraph (b) thereof, there shall be substituted the following:

"(b) the date from which any variations resulting from the order or decision to the risks covered by, or the sums recoverable under, that contract has effect; and";

(iii) immediately after paragraph (b) thereof, there shall be added the following new paragraph:

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"(c) the date on which the insurance contracts or operations will cease to produce effect and the rights and duties of insured persons with regard to the contract or operation.";

(c) for sub-regulation (4) thereof there shall be substituted the following:

"(4) For the purposes of this regulation, a creditor is a "known" creditor if the persons mentioned in sub-regulation (2)(f) are aware of, or should reasonably be aware of -

(a) the identity of the creditor;

(b) the claim or potential claim of the creditor; and

(c) a recent address where the creditor is likely to receive a communication.".

Amends regulation 16 of the principal regulations.

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

(a) sub-regulations (1) and (2) thereof shall be renumbered as sub-regulations (2) and (3) respectively;

(b) immediately before sub-regulation (2) thereof, as renumbered, there shall be added the following new sub-regulation:

"(1) Any creditor, including public authorities, of a Maltese insurance undertaking, having their habitual place of residence, domicile or head office outside of Malta, shall have the right to lodge claims or to submit written observations relating to claims.";

(c) for sub-regulation (2) thereof, as renumbered, there shall be substituted the following:

"(2) For avoidance of doubt, the claims of all creditors having their habitual place of residence, domicile or head office outside of Malta shall be treated in the same way and accorded the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual place of residence, domicile or head office in Malta."; and

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(d) for paragraph (e) of sub-regulation (3) thereof as renumbered, there shall be substituted the following:

"(e) where appropriate, the assets that are covered by his security.".

17. Regulation 17 of the principal regulations shall be amended as follows: Amends regulation 17 of the principal regulations.

(a) for the marginal note thereto, there shall be substituted the following:

"Submission of claims by creditors.";

(b) for sub-regulations (1), (2) and (3) thereof, there shall be substituted the following:

"(1) Subject to sub-regulation (3), the information in the notice referred to in regulation 15 shall be provided in the Maltese and/or English language, as appropriate, or any other language as agreed to with the relevant authorities.

(2) The notice referred to in sub-regulation (1) shall, in the case of the lodging of claims, be headed with the words "Invitation to lodge a claim: time limits to be observed", and in the case of submission of observations relating to claims, it shall be headed "Invitation to submit observations relating to a claim: time limits to be observed" and such heading shall be written in every official language of the European Union, or any other language as agreed to with the relevant authorities.

(3) Where the known creditor is an insurance creditor, the information in the notice referred to in regulation 15 shall be provided for in the domestic language of such creditor.";

(c) in sub-regulation (4) thereof:

(i) for the words "relating to his claim,", there shall be substituted the words "relating to such claim,";

(ii) in paragraph (b) thereof, for the words "where an insurance creditor submits", there shall be substituted the words "where a creditor submits"; and

(d) for sub-regulation (5) thereof, there shall be

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substituted the following:

"(5) For the purposes of this regulation, "domestic language" in relation to a creditor means the official language, or one of the official languages of the Member State or EEA State in which he is habitually resident or domiciled or, if the creditor is not an individual, the language of the Member State or EEA State in which the creditor's head office is located.".

Amends regulation 18 of the principal regulations.

18. Regulation 18 of the principal regulations shall be amended as follows:

(a) in sub-regulation (1) thereof, for the words "a liquidator appointed in terms of article 219 and article 230 of the Companies Act, the provisional administrator appointed in terms of article 228 or any other person appointed for this purpose by the court shall send", there shall be substituted the words "a liquidator or any other person appointed for this purpose by the relevant authorities shall send";

(b) in sub-regulation (2) thereof, for the words "where a liquidator or provisional administrator is required by order of the court", there shall be substituted the words "where a liquidator or any other person appointed by the relevant authorities is required by such authorities";

(c) in sub-regulation (3) thereof, for the words "imposed by the court on the liquidator or provisional administrator, which is supplementary", there shall be substituted the words "imposed by the relevant authorities, on the liquidator or any other person appointed by the relevant authorities, which is supplementary"; and

(d) immediately after sub-regulation (3) thereof, there shall be added the following new sub-regulation:

"(4) Upon a request received from a foreign authority, for information on developments in the winding up procedure, the competent authority shall provide such information.".

Adds new regulations to the principal regulations.

19. Immediately after regulation 18 of the principal

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regulations, there shall be added the following new regulations:

"Winding up of Maltese insurance undertakings.

18A. Where a Maltese insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Winding up of Maltese reinsurance undertakings.

18B. Where a Maltese reinsurance undertaking authorised under the Act is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.".

Amends regulation 19 of the principal regulations.

20. For sub-regulation (1) of regulation 19 of the principal regulations, there shall be substituted the following:

"(1) Without prejudice to regulations 3 and 10, the effects of a reorganisation measure or of winding up proceedings on European employment contracts and European employment relationships are to be determined exclusively in accordance with the laws of the Member State or EEA State applicable to the said contract or relationship.".

Substitutes regulation 20 of the principal regulations.

21. For regulation 20 of the principal regulations there shall be substituted the following:

"Contracts in connection with immovable property.

20. The effects of a reorganisation measure or of winding up proceedings on contracts conferring the right to make use of or acquire immovable property, shall be determined exclusively by the law of the Member State or EEA State where the immovable property is situated.".

Amends regulation 21 of the principal regulations.

22. Regulation 21 of the principal regulations shall be amended as follows:

(a) for the words "winding up proceedings on a right of the Maltese insurance undertaking", there shall be substituted the words "of winding up proceedings on the rights of the Maltese insurance undertaking";

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(b) in paragraph (c) thereof, for the words "an aircraft", there shall be substituted the words "an aircraft,"; and

(c) for the paragraph immediately following paragraph (c) thereof, there shall be substituted the following:

"subject to registration in a public register, are to be determined exclusively by the law of the Member State or EEA State under the authority of which that register is kept.".

Amends regulation 22 of the principal regulations.

23. Regulation 22 of the principal regulations shall be amended as follows:

(a) for the marginal note thereto, there shall be substituted the following:

"Rights *in rem* of third parties.";

(b) sub-regulation (1) thereof, shall be amended as follows:

(i) for the words "The commencement of reorganisation measures or winding-up proceedings", there shall be substituted the words "The adoption of reorganisation measures or commencement of winding-up proceedings";

(ii) for the words "within the territory of a Member State or an EEA State at the time of the opening of such measures or proceedings.", there shall be substituted the words "within the territory of a Member State or an EEA State, other than Malta, at the time of the commencement of such measures or proceedings.";

(c) in sub-regulation (2) thereof:

(i) for the words "shall in particular mean -", there shall be substituted the words "shall include at least -";

(ii) in paragraph (a) thereof, for the words "by virtue of a lien, or mortgage;", there shall be substituted the words "by virtue of a lien, or a mortgage;";

(iii) in paragraph (b) thereof, for the words "by way of guarantee;", there shall be substituted the words "by way of a guarantee;";

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(iv) in paragraph (c) thereof, for the words "demand the assets from, and, or to require restitution", there shall be substituted the words "demand the assets from, or to require restitution";

(v) for paragraph (d) thereof, there shall be substituted the following:

"(d) a right to the beneficial use of assets.";

(d) in sub-regulation (3) thereof, for the words "under which a right *in rem* within the meaning of subregulation (1) may be obtained, is also to be treated as a right in rem for the purposes of this regulation.", there shall be substituted the words "under which a right *in rem* within the meaning of sub-regulation (1) may be obtained, shall be considered to be a right *in rem*."; and

(e) for sub-regulation (4) thereof, there shall be substituted the following:

"(4) Sub-regulation (1) shall not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(m).".

Substitutes regulation 23 of the principal regulations.

24. For regulation 23 of the principal regulations there shall be substituted the following:

"Reservation of title.

23. (1) The adoption of reorganisation measures or commencement of winding-up proceedings in relation to a Maltese insurance undertaking purchasing an asset, shall not affect the rights of a seller based on a reservation of title where at the time of the commencement of such measures or proceedings the asset is situated within the territory of a Member State or EEA State, other than in Malta.

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(2) The adoption of reorganisation measures or commencement of winding-up proceedings against a Maltese insurance undertaking selling an asset, after the delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the commencement of such measures or proceedings the asset sold is situated within the territory of a Member State or EEA State, other than in Malta.

(3) Sub-regulations (1) and (2) shall not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(m).".

Substitutes regulation 24 of the principal regulations.

25. For regulation 24 of the principal regulations, there shall be substituted the following:

"Creditor's right to set off.

24. (1) The adoption of reorganisation measures or commencement of winding up proceedings shall not affect the rights of insurance creditors to demand the set-off of their claims against the claims of the Maltese insurance undertaking.

(2) Sub-regulation (1) does not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(m).".

Substitutes regulation 25 of the principal regulations.

26. For regulation 25 of the principal regulations, there shall be substituted the following:

"Regulated markets.

25. (1) Without prejudice to regulation 22, the effects of a reorganisation measure or of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be determined solely by the law applicable to that market.

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(2) Sub-regulation (1) shall not preclude actions for nullity, voidability or unenforceability of legal acts detrimental to all the creditors as referred to in regulation 10(3)(m) which may be taken to set aside payments or transactions under the law applicable to that market.".

Amends regulation 26 of the principal regulations.

27. Regulation 26 of the principal regulations shall be amended as follows:

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

(i) for the words "a legal act detrimental to all creditors provides that -", there shall be substituted the words "a legal act detrimental to all creditors provides proof that:";

(ii) in paragraph (a) thereof, for the words "the law of the Member State or EEA State; and", there shall be substituted the words "the law of the Member State or EEA State, other than Malta; and";

(iii) for paragraph (b) thereof, there shall be substituted the following:

"(b) the law of that Member State or EEA State does not allow any means of challenging that act in the specific case.";

(b) in sub-regulation (2) thereof, for the words "means any provisions of the Companies Act relating to the voidness, voidability or enforceability of legal acts", there shall be substituted the words "means the rules relating to the nullity, voidability or unenforceability of legal acts".

Substitutes regulation 27 of the principal regulations.

28. For regulation 27 of the principal regulations there shall be substituted the following:

"Protection of third party purchasers.

27. The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or commencement of winding-up proceedings, the Maltese insurance undertaking concerned disposes, for consideration, of any of the following-

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(a) in relation to an immovable asset, the law of the Member State or EEA State where the immovable is situated;

(b) in relation to a ship or an aircraft subject to registration in a public register, the law of the Member State or EEA State under the authority of which the register is kept;

(c) in relation to transferable or other securities whose existence or transfer presupposes entry into a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State or EEA State, the law of the Member State or EEA State under the authority of which the register, account or system is kept.".

Substitutes regulation 29 of the principal regulations.

29. For regulation 29 of the principal regulations there shall be substituted the following:

"Registration.

29. (1) In order to secure the rights of interested third parties, an administrator or liquidator, the relevant authorities, or any person appointed by the relevant authorities may request that a reorganisation measure or the decision to commence winding-up proceedings be registered in any relevant public register kept in Malta and, or in other Member States or EEA States, and shall take all the necessary measures to ensure such registration.

(2) The costs of registration shall be regarded as costs and expenses incurred in the proceedings.".

Amends regulation 30 of the principal regulations.

30. In sub-regulation (2) of regulation 30 of the principal regulations, for the words "shall be construed in accordance with article 2 of Directive 78/473/EEC, on the coordination of laws, regulations and administrative provisions relating to Community co-insurance.", there shall be substituted the words "shall be construed in accordance with Article 190 of the Solvency II Directive.".

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31. For regulation 31 of the principal regulations, there shall be substituted the following: Substitutes regulation 31 of the principal regulations.

"Professional secrecy.

31. All persons required to receive or divulge information in connection with the procedures of communication laid down in regulations 4, 9, and 32 shall be bound by the duty of professional secrecy in the same manner as laid down in Article 64 to 69 of the Solvency II Directive, with the exception of any judicial authorities to which existing national provisions apply.".

32. Regulation 32 of the principal regulations shall be amended as follows: Amends regulation 32 of the principal regulations.

(a) for the marginal note thereto, there shall be substituted the following:

"Treatment of branches of third country insurance undertakings."; and

(b) for sub-regulations (1) and (2) thereof, there shall be substituted the following:

"(1) Where a third country insurance undertaking authorised under the Act has a branch established in Malta, both the relevant authorities and the competent authority, as applicable, shall have jurisdiction to decide on reorganisation measures and winding up proceedings in relation to such branch of the insurance undertaking.

(2) The relevant authorities and the competent authority shall endeavour to coordinate their actions with foreign administrative or judicial authorities and the foreign authority where the third country insurance undertaking has established branches in other Member States or EEA States.".

33. Regulation 33 of the principal regulations shall be amended as follows: Amends regulation 33 of the principal regulations.

(a) in sub-regulation (1) thereof, for the words "The commencement of a reorganisation measure or winding-up proceedings", there shall be substituted the words "The adoption of a reorganisation measure or commencement of winding-up proceedings";

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(b) for sub-regulation (2) thereof, there shall be substituted the following:

"(2) (a) Subject to sub-regulation (4), an administrator or liquidator appointed in accordance with the law of the home Member State, may exercise in Malta, in relation to a European insurance undertaking which is subject to a reorganisation measure or winding-up proceedings, any function which, pursuant to that measure or order, he is entitled to exercise within the home Member State in relation to that European insurance undertaking.

(b) Persons to assist or represent an administrator or liquidator referred to in paragraph (a), may be appointed in accordance with the law of the home Member State, in Malta, and specifically in order to help overcome any difficulties encountered by the creditors in Malta.";

(c) sub-regulation (3) thereof shall be amended as follows:

(i) for the words "the administrator and liquidator of the home Member State", there shall be substituted the words "the administrator or liquidator of the home Member State";

(ii) in paragraph (b) thereof, for the words "reorganisation measure or winding up proceedings, and accompanied by a certified translation of that order, decision of certificate, as the case may be.", there shall be substituted the words "reorganisation measure or winding up proceedings,";

(iii) immediately after paragraph (b) thereof as amended, there shall be added the following paragraph:

"and accompanied by a translation in the English language of that order, decision or certificate.";

(d) in sub-regulation (4) thereof:

(i) in paragraph (a) thereof, for the words "may not take any action", there shall be substituted the words "shall not take any action"; and

(ii) in paragraph (b) thereof, for the words "may

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not rule on any dispute", there shall be substituted the words "shall not rule on any legal proceedings or disputes".

Deletes regulation 34 and 35 of the principal regulations and re-numbers regulations 36 and 37 of the principal regulations.

34. Regulations 34 and 35 of the principal regulations shall be deleted, and regulations 36 and 37 of the principal regulations shall be re-numbered as regulations 34 and 35 respectively.

Amends regulation 34 of the principal regulations.

35. In regulation 34 of the principal regulations, as renumbered, for the words "implement the provisions of Directive 2001/17/EC of the European Parliament and of the Council of 19th March, 2001 on the reorganisation and winding-up of insurance undertakings", there shall be substituted the words "implement Title IV of the Solvency II Directive".

Adds new regulation to the principal regulations.

36. Immediately after regulation 35 of the principal regulations, as renumbered, there shall be added the following new regulation:

"Savings. 36. Nothing in the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) (Amendment) Regulations, 2015, shall be deemed to affect anything done, or omitted to be done prior to the coming into force of such regulations.".

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