VERŻJONI ELETTRONIKA

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

L.N. 408 of 2015

INSURANCE BUSINESS ACT (CAP. 403)

Insurance Business (Maintenance of Assets) Regulations, 2015

IN exercise of the powers conferred by articles 18G and 64 of the Insurance Business Act, the Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

PART I

Preliminary

Citation, scope and commencement.

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

(2) The purpose of these regulations is in part to implement Articles 162(2)(e) and 167 of the Solvency II Directive and they shall be interpreted and applied accordingly.

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

Interpretation.

2. In these regulations, unless the context otherwise requires -

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

"the 1981 Act" means the Insurance Business Act, 1981, repealed by the Act; Cap. 290.

"authorisation" means an authorisation under article 7 of the Act to carry on business of insurance;

"authorised insurance undertaking" means an undertaking, which has received authorisation pursuant to article 7 of the Act to carry on business of direct general business and, or long term business and includes an undertaking authorised to carry on direct and reinsurance business;

"authorised reinsurance undertaking" means an undertaking which has received authorisation pursuant to article 7 of the Act to carry on business restricted to reinsurance;

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"central securities depository" has the same meaning as is assigned to it by article 2(1) of the Financial Markets Act; Cap. 345.

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

"custodian of assets" and "custodian" in relation to the assets held or required to be held in custody for an insurer's account by or under any provision of the Act, shall be construed in accordance with the provisions of regulation 8 and the Second Schedule;

"deposit" means the assets required to be maintained in Malta by an insurer in accordance with regulations 3 or 4;

"deposit back arrangement", in relation to any contract of reinsurance, means an arrangement whereby an amount is deposited by the reinsurer with the cedant;

"gross premiums", in relation to an insurer and a financial year:

(a) means premiums after deduction of discounts, refunds and rebates of premium but before deduction of premiums for reinsurance ceded and before deduction of commission payable; and

(b) includes premiums receivable by an insurer under reinsurance contracts accepted by the insurer,

and in each case, reference to premiums relates to premium income attributable to business of insurance carried on by the insurer in Malta;

"insurer" means a third country insurance undertaking and a third country reinsurance undertaking authorised under the Act, or the insurance undertaking which at the time of coming into force of these regulations had ceased to carry on business it was licensed to carry on under the 1981 Act or the Act;

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

"multilateral system" has the same meaning as is assigned to it in article 2(1) of the Financial Markets Act; Cap. 330.

"mathematical provisions" and "mathematical reserves" mean the provision made by an insurer carrying on long term business to cover liabilities (excluding liabilities which have fallen due and liabilities arising from deposit back arrangements) arising under or in connection with contracts for long term business;

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"regulated market" has the same meaning as is assigned to it by article 2(1) of the Financial Markets Act; Cap. 345.

"required amount" means the amount of assets maintained in accordance with regulations 3 or 4;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"Swiss general insurer" means an insurer -

(a) whose head office is in Switzerland,

(b) who is authorised by the supervisory authority in Switzerland as mentioned in article 7.1 of the agreement of 10 October 1989 between the European Economic Community and the Swiss Confederation on direct insurance other than life insurance approved on behalf of the European Economic Community by the Council Decision of 20 June 1999 (91/370/EEC), and

(c) who is authorised in Malta to carry on general business;

"third country insurance undertaking" means an undertaking, other than a European insurance undertaking, which would require authorisation as an authorised insurance undertaking pursuant to article 7 as if its head office were situated in Malta;

"third country reinsurance undertaking" means an undertaking, other than a European reinsurance undertaking, which would require authorisation as an authorised reinsurance undertaking in accordance with article 7 as if its head office were situated in Malta.

(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 assigned to them as in the Act.

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PART II

Maintenance of Assets in Malta

Maintenance of assets by third country insurance and reinsurance undertakings.

3. (1) Subject to sub-regulations (2) to (6), and subject to regulation 5, a third country insurance undertaking and a third country reinsurance undertaking which is authorised under the Act to carry on business of insurance, shall make and maintain a deposit in Malta of assets of an amount equal to at least one half of the absolute floor as prescribed in Article 129(1)(d) of the Solvency II Directive, in respect of the Minimum Capital Requirement, and deposits one fourth of that absolute floor as security; the whole or a specified proportion of such assets shall be deposited with and held in custody for the undertaking's account by a person in accordance with Parts III and IV of these regulations.

(2) Where -

(a) the third country insurance undertaking and third country reinsurance undertaking carry on business of insurance in Malta and one or more other Member States or EEA States; and

(b) the competent authority and the appropriate European regulatory authorities have agreed that this regulation should apply,

the third country insurance undertaking and third country reinsurance undertaking shall make and maintain the deposit with such person and in such Member State or EEA State as may be agreed between the competent authority and the other European regulatory authorities.

(3) For the purposes of sub-regulation (2), an application to make and maintain a deposit, shall be subject to the procedure laid down in regulations 15 and 16 of the Insurance Business (General Provisions of Supervision) Regulations, 2015.

(4) The provisions of this regulation shall not apply to a Swiss general insurer.

Amount of assets to be maintained in Malta in the case of insurer carrying out servicing or run-off of business of insurance.

4. (1) Without prejudice to sub-regulation (2), in the case of an insurer which at the time of coming into force of these regulations had ceased to carry on the business it was licensed to carry on under the 1981 Act or the Act and the insurer is only servicing or running-off that business, the amount of deposit which the insurer concerned is required to maintain in Malta shall be the amount of deposit which such insurer was required to maintain, pursuant to the Insurance Business (Companies Assets and

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Liabilities) Regulations, 2000,* the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004,** and, or the Insurance Business (Assets and Liabilities) Regulations, 2007,*** which amount is being determined in paragraph (2) of the First Schedule to these regulations or such higher amount as determined by the competent authority.

(2) In the case of an insurer which at the time of coming into force of these regulations was required to maintain a deposit in Malta of no less than one-half of the minimum guarantee fund pursuant to the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004** and, or the Insurance Business (Assets and Liabilities) Regulations, 2007***, and the insurer is only servicing or running-off that business, such insurer shall be required to maintain the same amount of deposit on the coming into force of these regulations.

Kind of assets to be maintained in Malta.

5. (1) Subject to sub-regulation (2), the assets to be used for the purposes of the deposits referred to in regulation 3, unless otherwise agreed with the European regulatory authorities, where applicable, and in regulation 4, shall be assets of the following kind and shall be treated to be assets of that kind only if they satisfy the conditions applicable to assets of that kind:

(a) an asset consisting of a deposit in a currency acceptable to the competent authority with a bank or credit institution lawfully carrying on the business of banking in Malta if the deposit is in the name of the Malta Financial Services Authority for the insurer's account or pledged by the insurer concerned in favour of the Malta Financial Services Authority and the document constituting the pledge is delivered to the competent authority; or

(b) an asset consisting of a holding of an instrument admitted to listing on a regulated market or a multilateral system, acceptable to the competent authority, from among assets that are eligible for collateral purposes in Eurosystem market operations, where such acceptable instrument holding is pledged in favour of the Malta Financial Services Authority and the document constituting the pledge is registered by the insurer concerned with a central securities depository, that provides the authentic definitive register of holdings of such instrument, and the said document is delivered to the competent authority.

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* revoked by the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004.

** revoked by the Insurance Business (Assets and Liabilities) Regulations, 2007.

***revoked by these regulations.

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(2) For the avoidance of doubt, those insurers referred to in regulation 4 shall continue to maintain the kind of assets which were required to be maintained prior to the coming into force of these regulations.

(3) For the purpose of sub-regulation (1) -

"bank" or "credit institution", have the same meaning as is assigned to them by article 2(1) of the Banking Act;

Cap. 371.

"deposit", in relation to any currency, has the same meaning as is assigned to it by article 2(1) of the Banking Act.

Cap. 371.

PART III

Custodian of Assets

Interpretation.

6. In this Part of these regulations:

"assets" in relation to a custodian of assets shall be construed in accordance with the provisions of regulation 5.

Custody of assets maintained in Malta.

7. (1) The deposit required to be maintained in accordance with the provisions of regulations 3 or 4 shall be maintained by the insurer in Malta and shall be deposited with and held in custody for the insurer's account by a person as custodian of assets for the insurer; and that insurer shall deposit such assets with a person as prescribed by regulation 8 and that person shall hold such assets in custody for the insurer's account subject to and in accordance with written arrangements made between the insurer, that person and the competent authority.

(2) The arrangements referred to in sub-regulation (1) shall be made in such form and manner so as to satisfy the provisions of the Act relevant to such requirement, these regulations and any such directive which the competent authority may, from time to time, either generally or specifically, issue in writing with respect to the purpose or security of those assets.

(3) The competent authority shall be a party to those arrangements solely for the purpose of ensuring the enforceability of the provisions of those arrangements and the Act; and any expenses incurred by or under those arrangements shall be borne by the insurer concerned.

(4) Assets of an insurer held in custody for the undertaking's account by a person as custodian for the insurer shall be taken to be held by that person in compliance with a requirement imposed by or

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under any provision of the Act if, and only if, they are assets in whose case the insurer has made with that person and the competent authority written arrangements in the form and manner specified in sub-regulation (2) that they are to be held by that person in compliance with such a requirement.

(5) No assets held in custody for an insurer's account by a person as custodian for the insurer in compliance with a requirement imposed by or under any provision of the Act shall, so long as the requirement is in force, be released except with the approval of the competent authority given in writing.

Persons acting as custodian of assets.

8. For the purposes of article 18G of the Act and of any of the provisions of these regulations, any person listed in the Second Schedule to these regulations shall act as custodian of assets for an insurer and hold in custody for the insurer's account, in the manner determined by these regulations, assets of a description specified and assigned to that person's custody in the Second Schedule.

PART IV

Deposit of Assets

Making an amount of deposit.

9. (1) Subject to sub-regulation (2), every deposit made, or required to be made, pursuant to regulations 3 or 4 shall be made with a custodian of assets in the manner set out in regulation 7 and shall be maintained by the insurer at all times during the continuance of the authorisation, run-off or servicing as the case may be, at a level equal to at least the appropriate required amount:

Provided that, where the deposit is an asset consisting of a holding of an instrument admitted to listing on a regulated market or a multilateral system, such asset shall be valued at ninety *per centum* of the last quoted market price or such other lesser percentage as the competent authority may determine, but not less than seventy-five *per centum* of the last quoted price.

(2) Where an asset constituting or forming part of any deposit made in accordance with sub-regulation (1) is an asset expressed in a currency other than euro, a further sum or increased amount of instruments equal to ten *per centum* of the value of that asset shall be aggregated with the amount of assets constituting the deposit to make good for any loss of value of that asset, in that other currency, which might arise out of exchange risk.

Increasing the amount of deposit.

10. (1) Subject to sub-regulation (2), where it appears to the competent authority that the amount of assets constituting any deposit made in accordance with regulation 9 is likely to fall, or falls, below

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the appropriate required amount, or on the written application of the insurer having regard to such circumstances, the competent authority shall direct in writing the insurer concerned to increase the amount of assets by a specified additional sum or holding amount to maintain the appropriate required amount and the custodian to receive and hold in custody the specified additional sum or holding amount and aggregate it with the amount of assets constituting the deposit.

(2) Any increase in the amount of deposit required to be made under sub-regulation (1) shall be made by the insurer as early as practicable but not later than fourteen days from the date of the competent authority's direction in that regard to the insurer.

Replacing assets of a kind with assets of any other kind.

11. (1) Subject to sub-regulation (3), where an insurer proposes to replace assets of a kind constituting or forming part of any deposit ("assets of the old kind") with assets of any other kind ("assets of the new kind"), the insurer shall make an application in writing to the competent authority in that regard giving the relevant details of the assets of the old kind and the assets of the new kind forming the object of the application and the competent authority shall determine the application within thirty days of receiving the details required to be given under this sub-regulation; and, if it refuses the application, the competent authority shall inform the insurer in writing of the reasons for the refusal.

(2) Where the competent authority approves of an application made under sub-regulation (1), the competent authority shall direct in writing the insurer to carry out the replacement of the assets of the old kind with the assets of the new kind in accordance with any conditions which it may deem fit to impose and the custodian to receive and hold in custody, under those conditions, the assets of the new kind and to release from custody, in accordance with sub-regulation (3), the assets of the old kind.

(3) Assets of any kind constituting or forming part of any deposit replaced or to be replaced with assets of any other kind shall not be released from custody unless and until the competent authority is satisfied that the assets replacing those assets have been received and held in custody in accordance with regulation 7 of these regulations.

Reducing the amount of assets.

12. (1) Subject to sub-regulations (3) and (4), where it appears to an insurer that the amount of assets constituting any deposit is higher than the appropriate required amount, the insurer may propose to reduce the amount of assets to an amount being an amount of not less than the appropriate required amount by making an application in writing to the competent authority in that regard giving

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the relevant details and specifying the sum proposed to be reduced and the competent authority shall determine the application within thirty days of receiving the details required to be given under this sub-regulation; and, if it refuses the application, the competent authority shall inform the insurer in writing of the reasons for the refusal.

(2) Where the competent authority approves of an application made under sub-regulation (1), the competent authority shall direct in writing the insurer to reduce the amount of assets constituting the deposit by the sum or holding amount specified by the insurer, or any other lower sum or holding amount as determined by the competent authority, and the custodian to release from custody an amount equal to the specified sum or holding amount, or the lower sum or holding amount, as the case may be.

(3) The competent authority shall not approve of an application made under sub-regulation (1) unless it is satisfied that the remaining amount of assets constituting the deposit after the release from custody of an amount equal to the specified sum or holding amount or any other lower sum or holding amount is adequate to maintain the appropriate required amount of deposit.

(4) Nothing in sub-regulations (2) and (3) shall relieve the insurer of the obligation imposed on him by regulation 9 to maintain at all times the deposit at least at the appropriate required amount.

Transfer, withdrawal and cessation of business.

13. (1) Where an insurer has ceased to carry on in Malta the business in respect of which the deposit was made, the insurer may apply in writing to the competent authority for those funds to be released to it.

(2) The competent authority shall, on receipt of an application under sub-regulation (1) accompanied by an appropriate declaration, determine the application having cognizance to the provisions of articles 18G(4), 28, 41 and 42 of the Act and direct the custodian in writing as it deems appropriate in the circumstances.

(3) In sub-regulation (2) an "appropriate declaration" means a written declaration by the applicant as is required by article 18G(4) of the Act or in consequence of a direction given in writing by the competent authority under article 28 of the Act -

(a) stating and proving by submission of documentary evidence acceptable to, or required by, the competent authority that to the best of his knowledge and belief the insurer has no further liability to discharge; and

(b) if the applicant is not the insurer -

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(i) declaring that the applicant is entitled to give a good discharge for the relevant funds; and

(ii) stating and proving by submission of documentary evidence acceptable to, or required by, the competent authority the circumstances in which the applicant is so entitled.

Effect of direction.

14. A direction given by the competent authority pursuant to this Part of these regulations shall be sufficient authority for a custodian of assets to comply with it.

Producing security in lieu of making a deposit.

15. (1) Notwithstanding anything contained in these regulations, subject to the following sub-regulations of this regulation, any insurer to whom regulation 3 or 4 applies may, in like manner, satisfy the requirements of that regulation by producing to the competent authority, in lieu of making a deposit with a custodian of assets under this Part of these regulations, a security on assets for an amount equal to at least the appropriate required amount and maintaining security on those assets for that amount at all times during the currency of the security.

(2) The content of every security produced under sub-regulation (1) shall have to be agreed in advance between the insurer, the issuer and the competent authority; and the security shall have to be reinstated by the depositor to secure the appropriate required amount each time the level of the amount is likely to fall, or falls, below the required amount.

(3) The provisions of regulations 10, 12, 13 and 14 shall apply *mutatis mutandis* in relation to a security as they apply in relation to a deposit.

(4) Where -

(a) an insurer makes a deposit with a custodian of assets in accordance with regulation 9 and, at a later date, elects to substitute that deposit with a security to be produced to the competent authority in accordance with sub-regulation (1); or

(b) an insurer produces to the competent authority a security in accordance with sub-regulation (1) and, at a later date, elects to substitute that security with a deposit to be made with a custodian of assets in accordance with regulation 9,

in every case, the insurer shall make an application in writing to the competent authority in that regard, giving the relevant details, and -

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(i) if the application is to substitute a deposit with a security, the competent authority shall direct in writing the insurer to carry out the substitution in accordance with sub-regulations (1) and (2) and, when the security is produced, the custodian to release from custody the deposit; and

(ii) if the application is to substitute a security with a deposit, the competent authority shall direct in writing the insurer to carry out the substitution in accordance with regulation 9, and when the deposit is made and held in custody, the issuer to terminate the security without prejudice to any claims which the competent authority may have, or may have had, against the security prior to its termination.

Interpretation of security.

16. For the purposes of regulation 15 -

"security" means -

(a) a contract of pledge as construed in Title XXI of the Civil Code; or Cap. 16.

(b) a guarantee provided by or an irrevocable letter of credit established with, a bank or credit institution:

(i) licensed to carry on the business of banking under the laws of Malta, or

(ii) lawfully permitted to carry on the business of banking in a country outside Malta acceptable to the competent authority provided that the bank or credit institution is of first class standing,

and "issuer" shall be construed accordingly.

PART V

Miscellaneous Provisions

Revocation and Saving.

17. (1) Without prejudice to regulation 4, and saving the provisions of the following sub-regulations of this regulation, the Insurance Business (Assets and Liabilities) Regulations, 2007 are hereby revoked without prejudice to anything done or omitted to be done thereunder prior to the coming into force of these regulations.

(2) (a) Every insurer (other than for a third country insurance undertaking or third country reinsurance undertaking) that,

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pursuant to Insurance Business (Companies Assets and Liabilities) Regulations, 2000,* the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004,** and, or the Insurance Business (Assets and Liabilities) Regulations, 2007,*** was required to maintain in Malta assets of such an amount and of the kind as determined by these regulations, and to whom this requirement no longer applies, may apply in writing to the competent authority for the release of these assets.

(b) Every third country insurance undertaking and third country reinsurance undertaking which carries on business of insurance in Malta and in one or more Member States or EEA States and which maintains deposits in Malta in respect of which an agreement has been entered into between the competent authority and another European regulatory authority or authorities to maintain the assets required under regulation 3(1) in the jurisdiction of the European regulatory authority, the third country insurance undertaking and third country reinsurance undertaking may apply in writing to the competent authority for the release of those deposits, to be deposited in the agreed upon jurisdiction.

(c) Subject to paragraph (d), the competent authority shall determine an application received under paragraphs (a) and (b) within two months of its receipt.

(d) The competent authority shall, in the case of an application submitted by a European insurance undertaking and European reinsurance undertaking and which at the time of coming into force of these regulations was authorised under the Act to carry on business of insurance, determine such an application only if the undertaking concerned elects to exercise a European right and satisfies the establishment or service conditions specified in the European Passport Rights for Insurance and Reinsurance Undertakings Regulations.

(3) Nothing in the Insurance Business (Maintenance of Assets) Regulations, 2015, shall be deemed to affect anything done, or omitted to be done prior to the coming into force of such regulations, including any arrangements entered into with a custodian referred to in the Fifth Schedule to the Insurance Business (Assets and Liabilities) Regulations, 2007, which arrangements shall remain in force.

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* revoked by the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004.

** revoked by the Insurance Business (Assets and Liabilities) Regulations, 2007.

***revoked by these regulations.

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FIRST SCHEDULE

(Regulation 4)

DEPOSITS TO BE MAINTAINED IN MALTA

1. The amount of deposit, which an insurance undertaking which at the time of the coming into force of these regulations had ceased to carry on the business it was licensed to carry on under the 1981 Act or the Act, and which is only servicing or running-off that business, is required to maintain in Malta, shall be determined in accordance with paragraphs (2) and (3) of this Schedule.

2. Pursuant to regulation 4(1):

(a) Where an insurance undertaking is servicing long term business of insurance, it shall maintain in Malta not less than 25% and not more than 75%, as the competent authority may, from time to time, either generally or specifically determine. This amount of deposits shall be calculated on:

(i) the gross premiums receivable by such undertaking in Malta in relation to the servicing of that long term business with respect to the immediately preceding financial year; or

(ii) the mathematical provisions in relation to the servicing of that long term business received by the undertaking in Malta as at the close of the immediately preceding financial year,

whichever is the greater amount.

(b) Where an insurance undertaking is administering the run-off of its general business of insurance, it shall maintain in Malta the amount of deposit which the insurance undertaking was required to maintain immediately before the coming into force of the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004.*

3. Pursuant to regulation 4(2), in the case of an insurer which at the time of coming into force of these regulations was required to maintain a deposit in Malta of no less than one-half of the minimum guarantee fund pursuant to the Insurance Business (Insurers' Assets and Liabilities) Regulations, 2004,* and, or the Insurance Business (Assets and Liabilities) Regulations, 2007,** and the insurer is only

* revoked by the Insurance Business (Assets and Liabilities) Regulations, 2007.

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servicing or running-off that business, such insurer shall be required to maintain the same amount of deposit on the coming into force of these regulations.

SECOND SCHEDULE

(Regulation 8)

PERSONS ACTING AS CUSTODIAN OF ASSETS

1. The persons listed in this Schedule shall act as custodian of assets for the purposes of article 18G of the Act and hold in custody for the insurer's account assets of a description specified and assigned to their exclusive custody in this Schedule.

2. A central securities depository providing clearing and settlement services in respect of instruments issued through such depository.

3. (1) Any bank or credit institution lawfully carrying on the business of banking in Malta shall act as custodian of assets consisting of currency deposits where such deposits are in a convertible currency acceptable to the competent authority.

(2) Any such deposits shall be made out in the name of the competent authority for the account of the insurer.

4. For the purposes of this Schedule -

"bank" and "credit institution" have the meaning given in regulation 5(3) of these regulations;

"deposit" has the meaning given in regulation 5(3) of these regulations.

** revoked by these regulations.

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