

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,559, 19 ta' April, 2016

Taqsimha B

L.N. 130 of 2016

**INSURANCE BUSINESS ACT
(CAP. 403)**

Reinsurance Special Purpose Vehicles Regulations, 2016

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

1. (1) The title of these regulations is the Reinsurance Special Purpose Vehicles Regulations, 2016. Citation and scope.

(2) The purpose of these regulations is to implement the relevant provisions of the EU Delegated Regulation and the EU Implementing Regulation, as hereinafter defined, and these regulations shall be interpreted and applied accordingly.

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

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

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

"ceding undertaking" means an insurance undertaking or reinsurance undertaking which has received authorisation in accordance with Article 14 of 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), that has transferred risk to a reinsurance special purpose vehicle, and includes an insurance or reinsurance undertaking authorised in a third country;

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

"EU Delegated Regulation" means Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), as amended from time to time;

"EU Implementing Regulation" means Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the cooperation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council, as amended from time to time;

"EU Regulations" means the EU Delegated Regulation and the EU Implementing Regulation, as herein defined, and words and expressions used in these regulations and also used in the EU Regulations shall have the same meaning as is given to them in the said EU Regulations unless otherwise defined herein;

Cap. 330. "Financial Services Tribunal" means the Tribunal established under article 21 of the Malta Financial Services Authority Act;

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

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

"MiFID II Directive" means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time and includes any implementing measures that have been or may be issued thereunder;

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

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

(2) Words and expressions used in these regulations which are

also used in the Act, but which are not defined herein or in the EU Regulations, shall in these regulations have the same meaning as in the Act.

3. (1) The Malta Financial Services Authority established by the Malta Financial Services Authority Act shall be the designated supervisory authority in Malta for the purposes of implementing the relevant provisions of the EU Regulations, and any reference in these regulations to the competent authority shall be deemed and construed accordingly.

Competent authority.
Cap. 330.

(2) The competent authority shall exercise all the functions, obligations and powers and shall satisfy all the requirements imposed on supervisory authorities by the EU Regulations.

(3) Without prejudice to the provisions of sub-regulation (1), the competent authority may, for the better implementation of the EU Regulations, exercise any of the powers assigned to it under the Act in relation to reinsurance special purpose vehicles.

4. The provisions of the EU Regulations relating to special purpose vehicles shall apply to all reinsurance special purpose vehicles whose head office is in Malta and such reinsurance special purpose vehicles shall comply with all the obligations and satisfy all the requirements imposed on them by the said EU Regulations.

Applicability of the EU Regulations to reinsurance special purpose vehicles.

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

Authorisation of a reinsurance special purpose vehicle.

(2) An authorised reinsurance special purpose vehicle shall not engage in activities other than those for which the reinsurance special purpose vehicle is authorised in terms of these regulations.

(3) Without prejudice to Article 9 of the EU Implementing Regulation, where a reinsurance special purpose vehicle intends to enter into contractual arrangements relating to the transfer of risk with a ceding undertaking established in a third country, the competent authority may consult the overseas regulatory authority concerned, before it takes a decision on authorisation.

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

(5) An authorised reinsurance special purpose vehicle may,

subject to the approval of the competent authority, appoint an insurance manager to manage its business.

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

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

Eligibility
criteria for
authorisation.

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

(a) the applicant is an undertaking whose head office is in Malta;

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

(c) its providers of debt or financing will be professional clients as defined in Annex II of the MiFID II Directive.

Requirements
for
authorisation.

7. The competent authority shall not issue an authorisation in terms of these regulations unless it is satisfied that the relevant provisions relating to authorisation, as set out in Chapter XV of the EU Delegated Regulation and in the EU Implementing Regulation, are being met.

Application for
authorisation.

8. (1) An application for authorisation shall be made in writing by the reinsurance special purpose vehicle in the manner determined by Insurance Rules and shall be accompanied by supporting documentation as set out in Insurance Rules.

(2) The authorisation of a reinsurance special purpose vehicle is only valid for the activities for which it was authorised, and any change in these activities shall be subject to prior approval by the competent authority.

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

9. (1) An authorised reinsurance special purpose vehicle shall be fully funded at all times in accordance with Article 326 of the EU Delegated Regulation. Solvency requirements.

(2) An authorised reinsurance special purpose vehicle shall invest all its assets in accordance with Article 327 of the EU Delegated Regulation.

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

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

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

(4) In the cases referred to in sub-regulation (3)(a) and (b), the authorised reinsurance special purpose vehicle concerned shall submit within one month of the observation of non-compliance or risk of non-compliance, for approval by the competent authority, a realistic financial scheme to restore compliance with the fully funded requirement within such period as may be determined by the competent authority.

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

(a) when it no longer fulfils the conditions under which the authorisation to establish a reinsurance special purpose vehicle was granted; or

(b) when it fails seriously in its obligations under the EU Regulations, these regulations or any Insurance Rules issued hereunder, or any applicable provisions of the Act, or any regulations or Insurance Rules issued thereunder, to which it is subject.

(2) Without prejudice to the generality of sub-regulation (1)(b), the competent authority shall consider the authorised reinsurance special purpose vehicle to have committed a serious failure where it does not comply with the requirement to remain fully funded and the competent authority considers that the authorised reinsurance special purpose vehicle cannot restore its compliance within a reasonable time-frame not exceeding three months from the observation of non-compliance with the fully funded requirement.

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

(4) For the purposes of sub-regulation (3), and in so far as concerns the withdrawal of authorisation, the provisions of article 27 of the Act shall apply *mutatis mutandis*:

Provided that, references to "revocation of an authorisation" in article 27 of the Act shall be construed as a reference to withdrawal of an authorisation.

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

Administrative penalties.

11. Where an authorised reinsurance special purpose vehicle contravenes or fails to comply with any provisions of the EU Regulations, these regulations or any Insurance Rules issued hereunder, or any applicable provisions of the Act, or any regulations or Insurance Rules issued thereunder, the competent authority may, by notice in writing and without recourse to a court hearing, impose on such undertaking an administrative penalty not exceeding one hundred and fifty thousand euro (€150,000) in respect of each infringement or failure to comply, as the case may be, and where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues:

Provided that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed one hundred and fifty thousand euro (€150,000).

Application of the Act.

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

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

(a) Part III of the Act shall not apply;

(b) Part IV of the Act shall not apply;

(c) Part V of the Act shall apply subject to the following:

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

Cap. 386. "Every authorised reinsurance special purpose vehicle shall, within the period stipulated in paragraph (4) of Article 325 of the EU Delegated Regulation forward to the competent authority, in addition to the information required in accordance with sub-article (2) of Article 325 of the said Regulation, a copy of its audited financial statements drawn up in accordance with the Companies Act.";

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

(iii) article 24 of the Act shall apply as follows:

(aa) sub-article (1) shall only apply in so far as the obligations of auditors are concerned;

(bb) paragraphs (a) and (b) of sub-article (1) shall apply;

(cc) paragraph (c) of sub-article (1) shall apply as if the material breach, of the provisions of the Act made applicable by these regulations, was , of the provisions of these regulations or of any Insurance Rules issued hereunder or of the provisions of the EU Regulations;

(dd) paragraph (d) shall not apply and the following provision shall apply in substitution thereof:

"non-compliance with the fully funded requirement under regulation 9";

(ee) paragraph (e) of sub-article (1) shall not apply;

(ff) sub-articles (2) and (3) shall only apply in so far as the obligations of auditors are

concerned;

- (d) article 25 of Part VI of the Act shall not apply;
- (e) Part VII shall apply subject to the following:
 - (i) article 31B shall not apply;
 - (ii) article 31C shall not apply;
- (f) Part VII A of the Act shall not apply;
- (g) Part VIII of the Act shall not apply;
- (h) Part IX of the Act shall apply subject to the following:
 - (i) sub-article (1) of article 39 of the Act shall apply as if an authorised reinsurance special purpose vehicle were required to give, not later than one month before the date on which it intends to cease its activities, notice in writing of its intention to the competent authority, and the authorised reinsurance special purpose vehicle were required to comply with any directive issued to it by the competent authority; and sub-articles (2) and (3) thereof shall not apply;
 - (ii) article 41 shall apply as if an authorised reinsurance special purpose vehicle were required only to dissolve and consequently wind up under and in accordance with the Companies Act;
 - (iii) article 42 of the Act shall not apply;
- (i) articles 44 to 48C of Part X of the Act shall not apply;
- (j) Part XI of the Act shall not apply; and
- (k) articles 60, 62 and 69 of Part XII of the Act shall not apply.

Cap. 386.

Application of
the
Securitisation
Act.
Cap. 484.

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

(2) Subject to the provisions of this sub-regulation and of sub-

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

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

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

(ii) the definition "risks" shall not apply and any reference to "risks" shall be construed in accordance with paragraph (a) of Article 318 of the EU Delegated Regulation;

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

(iv) the definition "securitisation asset" shall not apply;

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

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

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

(ii) sub-article 2 thereof shall not apply;

(c) article 10 shall apply subject to the condition that paragraph (c) of sub-article (1) thereof shall apply without prejudice to any legitimate claim of the ceding undertaking under the applicable contractual agreements;

(d) articles 11 and 12 shall apply only in so far as any notice that may be required to be issued in accordance with sub-

article (5) of article 13;

(e) article 14 shall apply subject to the condition that paragraph (c) of sub-article (2) thereof shall only apply in so far as it provides for the non-application of articles 1980 to 1984 of the Civil Code;

Cap. 16.

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

(i) sub-paragraph (ii) of paragraph (a) of sub-article (1) thereof shall apply without prejudice to Article 321 of the EU Delegated Regulation;

(ii) paragraph (b) of sub-article (1) thereof shall not apply;

(iii) sub-article (2) thereof shall not apply.

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

Cap. 484.

Cooperation with European regulatory authorities or overseas regulatory authorities.

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

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

Power of the competent authority to issue Insurance Rules.

15. (1) The competent authority may issue Insurance Rules for the better carrying out of the provisions of the EU Regulations or these regulations.

(2) Such Insurance Rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purposes of the operation and, or implementation of the EU Regulations or these regulations.

16. The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Financial Services Tribunal in terms of these regulations.

17. The Reinsurance Special Purpose Vehicles Regulations, 2013, are hereby revoked.

Appeals.

Cap. 330.

Revocation of
the Reinsurance
Special Purpose
Vehicles
Regulations,
2013.
L.N. 452 of
2013.

