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Suppliment tal-Gazzetta tal-Gvern ta' Malta Nru. 20,028, 20 ta' Lulju, 2018
Taqsima B

L.N. 238 of 2018

INSURANCE DISTRIBUTION ACT (CAP. 487)

European Passport Rights for Intermediaries Regulations, 2018

IN EXERCISE of the powers conferred by article 3 of the Insurance Distribution Act, the Minister responsible for the regulation of Financial Services, after consultation with the Malta Financial Services Authority, has made the following regulations:-

PRELIMINARY

Citation, scope and commencement.

1. (1) The title of these regulations is the European Passport Rights for Intermediaries Regulations, 2018.

(2) The purpose of these regulations is to implement Article 2 (in part), Chapter III and Article 11 of the Insurance Distribution Directive and shall be interpreted and applied accordingly.

(3) These regulations shall come into force on the 1st October 2018.

Interpretation.

Cap.487.

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

"the Act" means the Insurance Distribution Act;

"branch" means an agency or branch of a Maltese intermediary or a European intermediary which is located in the territory of a Member State or EEA State, other than the home Member State, and includes any permanent presence of such intermediary in the territory of such Member State or EEA State, even where that presence does not formally take the form of a branch but consists merely of an office managed by the own staff of such intermediary or by a person who is independent but has permanent authority to act for such intermediary in the same way as an agency would:

Provided that, without prejudice to the provisions of the Act and of Article 3 of the Insurance Distribution Directive, if such intermediary lawfully sets up such permanent presence in the form of a subsidiary or of another legally independent form, it shall not be considered to be a branch for the purposes of these regulations;

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"Commission" means the Commission of the European Community;

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

Cap. 330.

"Conduct of Business Rules" has the same meaning as is assigned to it by article 2 of the Act;

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended from time to time;

"European ancillary insurance intermediary" means any natural or legal person, other than a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the conditions within the meaning of Article 2 of the Insurance Distribution Directive are met, and which is registered under Article 3 of the Insurance Distribution Directive, having its head office or place of residence in a Member State or an EEA State, other than Malta;

"European insurance intermediary" means any natural or legal person, other than a European insurance undertaking or its employees, and other than a European ancillary insurance intermediary, who, for remuneration, takes up or pursues the activity of insurance distribution within the meaning of Article 2 of the Insurance Distribution Directive and which is registered under Article 3 of the Insurance Distribution Directive, having its head office or place of residence in a Member State or an EEA State, other than Malta;

"European intermediary" means a European insurance intermediary, a European reinsurance intermediary and a European ancillary insurance intermediary, which has been registered in a Member State or EEA State in accordance with Article 3 of the Insurance Distribution Directive;

"European regulatory authority" means the public body or bodies designated by a Member State or EEA State, other than

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Malta:

(a) to act as a supervisory authority in relation to the European intermediary concerned in that Member State or EEA State within the meaning of the Insurance Distribution Directive; or

(b) to carry out the duties provided for in the Insurance Distribution Directive in relation to a Maltese intermediary exercising or proposing to exercise a European right in that Member State or EEA State;

"European reinsurance intermediary" means any natural or legal person, other than a European reinsurance undertaking or its employees, who, for remuneration, takes up or pursues the activity of reinsurance distribution within the meaning of Article 2 of the Insurance Distribution Directive and which is registered under Article 3 of the Insurance Distribution Directive, having its head office or place of residence in a Member State or an EEA State, other than Malta;

"European right" means the entitlement of a Maltese intermediary and a European intermediary to establish a branch, or provide services, in a Member State or an EEA State other than that in which it has its head office or place of residence:

(a) in accordance with the Treaty as applied in a Member State or an EEA State; and

(b) subject to the requirements of the Insurance Distribution Directive and subject to any regulations made under the Act or any Insurance Distribution Rules or Conduct of Business Rules issued by the competent authority pursuant to the Act, implementing such requirements;

"home Member State" means:

(a) where the intermediary is a natural person, the Member State or EEA State in which his or her residence is situated;

(b) where the intermediary is a legal person, the Member State or EEA State in which its registered office is situated or, if under its national law it has no registered office, the Member State or EEA State in which its head office is situated;

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"host Member State" means the Member State or EEA State, other than Malta, in which a Maltese intermediary has a permanent presence or establishment or provides services, in exercise of a European right;

"insurance distribution" shall have the same meaning as is assigned to it by Article 2 of the Insurance Distribution Directive;

"Insurance Distribution Directive" means Directive (EU) 2016/97/EC of the European Parliament and of the Council of 20 January 2016 on insurance distribution, as amended from time to time;

"Insurance Distribution Rules" has the same meaning as is assigned to it by article 2 of the Act;

"Maltese ancillary insurance intermediary" means an ancillary insurance intermediary, registered and enrolled in terms of the Act, having its head office or place of residence in Malta, who is entitled to carry on the activity of insurance distribution on an ancillary basis in a Member State or EEA State, other than Malta, in exercise of a European right;

"Maltese insurance intermediary" means an insurance intermediary and a tied insurance intermediary, registered or enrolled in terms of the Act, as the case may be, having its head office or place of residence in Malta, who is entitled to carry on the activity of insurance distribution in a Member State or EEA State, other than Malta, in exercise of a European right;

"Maltese intermediary" means a Maltese insurance intermediary, a Maltese reinsurance intermediary and a Maltese ancillary insurance intermediary, which has been registered or enrolled in Malta in terms of the Act, as the case may be;

"Maltese reinsurance intermediary" means a reinsurance intermediary registered or enrolled in terms of the Act, as the case may be, having its head office or place of residence in Malta, who is entitled to carry on the activity of reinsurance distribution in a Member State or EEA State, other than Malta, in exercise of a European right;

"Maltese rules" means rules:

(a) made in accordance with the Insurance Distribution Directive; and

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(b) which are the responsibility of the competent authority (as to implementation, enforcement and compliance) and subject to the provisions of the Act and any regulations, Insurance Distribution Rules and Conduct of Business Rules made thereunder;

"Member State" means a Member State of the European Union;

"reinsurance distribution" shall have the same meaning as is assigned to it by Article 2 of the Insurance Distribution Directive;

"Treaty" means Treaty of Rome signed in 1957, establishing the European Economic Community and as subsequently amended;

"Tribunal" has the same meaning as is assigned to it by article 2 of the Act.

(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 in the Act.

PART I
EXERCISE OF PASSPORT RIGHTS BY EUROPEAN INTERMEDIARIES

Exercise of passport rights by European intermediaries - establishment.

3. (1) A European intermediary which is seeking to establish a branch in Malta in exercise of a European right shall satisfy the establishment conditions specified in sub-regulation (2) and shall be exempt from the Act in accordance with the provisions of articles 6, 33 and 43A of the said Act, as applicable.

(2) The establishment conditions for the purposes of this regulation are that:

(a) the European intermediary has given to its European regulatory authority a notice of intention to establish a branch in Malta, containing the requisite details in terms of Article 6 of the Insurance Distribution Directive;

(b) the competent authority has received from the European regulatory authority of such European intermediary a consent notice stating that it has given its consent to the intermediary to establish a branch in Malta;

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(c) the consent notice shall include:

(i) the name, address and, where applicable, the registration number of the European intermediary;

(ii) the category of intermediary and, where applicable, the name of any authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, represented;

(iii) the relevant classes of insurance, if applicable;

(iv) the address in Malta from where documents may be obtained and to which they may be delivered;

(v) the name of any person responsible for the management of the branch; and

(vi) such other information as may be specified by means of Insurance Distribution Rules;

(d) the European regulatory authority has informed the European intermediary, in writing, that the consent notice has been sent to the competent authority; and

(e) details of any insurance guarantee scheme, if applicable, which is intended to protect the branch's policyholders.

(3) The competent authority shall immediately acknowledge receipt of the notice received pursuant to sub-regulation (2).

(4) Before a European intermediary commences its distribution activities in Malta, the competent authority shall, within one month of receiving the information referred to in sub-regulation (2), inform the European regulatory authority concerned, through the means referred to in Article 11 of the Insurance Distribution Directive, of the applicable provisions under which, in the interest of the general good, the distribution activities shall be carried out in Malta.

(5) The European intermediary may establish the branch and commence distribution activities in Malta as from the date upon which it is informed by its European regulatory authority, of the applicable provisions, provided that it complies with the said applicable provisions, or, if no applicable provisions are notified to the European regulatory authority, on the expiry of the period referred to in sub-regulation (4).

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(6) In the event of a change in any of the particulars communicated in accordance with sub-regulation (2)(c), the competent authority shall be informed of such changes by the European regulatory authority concerned, as soon as is practicable and no later than one month from the date upon which such European regulatory authority is notified of the changes by the European intermediary.

(7) A European intermediary may, in exercise of a European right, only market in Malta insurance and reinsurance products of the European insurance or reinsurance undertaking which the European intermediary represents through a branch in Malta, if the European insurance undertaking or European reinsurance undertaking has exercised its European right in Malta in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, to carry on business of insurance in the class or classes of long term business or class or classes or part classes of general business through the establishment of a branch. S.L. 403.14.

(8) For the purpose of this regulation, "applicable provisions" means the Maltese rules with which, in the interest of the general good, the European intermediary is required to comply when carrying out distribution activities, as identified in the consent notice, through a branch in Malta.

Enforcement of certain obligations by the competent authority.

4. (1) The competent authority shall assume responsibility for ensuring that in carrying out distribution activities in Malta, the branch of a European intermediary complies with the obligations set out in the Conduct of Business Rules, as applicable, and with measures adopted pursuant thereto by the competent authority.

(2) The competent authority shall have the right to examine the arrangements of the branch of the European intermediary, and to request any changes which are necessary to enable it to enforce the obligations set out in Conduct of Business Rules, as applicable, and measures adopted pursuant thereto by the competent authority with respect to the services or distribution activities provided by the branch of the European intermediary in Malta.

Enhanced supervision of European intermediaries by the competent authority.

5. (1) Where the primary place of business of a European intermediary is located in Malta and Malta is not the home Member State, the competent authority may enter into an agreement with the European regulatory authority of the European intermediary concerned, in order for the competent authority to be able to exercise relevant functions in relation to such European intermediary as if it were the home Member State.

(2) The competent authority may exercise relevant functions in relation to the European intermediary concerned, in accordance with

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the agreement referred to in sub-regulation (1), as if the European intermediary was a person enrolled under the Act.

(3) An agreement made under sub-regulation (1):

(a) shall provide for the relevant functions which the competent authority may exercise in relation to the European intermediary concerned; and

(b) may provide for the relevant functions which may be exercised by the competent authority in collaboration with the European regulatory authority of the European intermediary concerned.

(4) Where an agreement is reached pursuant to sub-regulation (1), the competent authority shall notify, without delay, the European intermediary concerned and EIOPA.

(5) For the purpose of this regulation:

(a) "relevant functions" means any functions that may be exercised by the competent authority in relation to persons enrolled under the Act in relation to the requirements of regulations, Insurance Distribution Rules and Conduct of Business Rules issued under the Act, as applicable; and

(b) "primary place of business" means the location from where the main business of the European intermediary is managed.

On-site inspections by the European regulatory authority.

6. (1) Where a European intermediary carries out insurance distribution activities or reinsurance distribution activities through a branch in Malta, in exercise of a European right, its European regulatory authority may, after having first informed the competent authority, carry out itself or through a person it appoints for that purpose, on-site inspections in relation to the distribution activities carried out by the branch of the European intermediary. The competent authority may participate in that inspection.

(2) This regulation shall not affect the right of the competent authority, in discharging its responsibilities under the Insurance Distribution Directive, to carry out on-site inspections of branches established in Malta.

Exercise of passport rights by European intermediaries - services.

7. (1) A European intermediary which is seeking to provide services in Malta in exercise of a European right shall satisfy the service conditions specified in sub-regulation (2) and shall be exempt from the Act in accordance with the provisions of articles 6, 33 and

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43A of the said Act, as applicable.

(2) The service conditions for the purposes of this regulation are that:

(a) the European intermediary has given its European regulatory authority a notice of intention to provide services in Malta, containing the requisite details in terms of Article 4 of the Insurance Distribution Directive;

(b) the competent authority has received from the European regulatory authority of such European intermediary a consent notice stating that it has given its consent to the intermediary to provide services in Malta;

(c) the consent notice shall include:

(i) the name, address and, where applicable, the registration number of the European intermediary;

(ii) the category of intermediary and, where applicable the name of any authorised insurance undertaking authorised reinsurance undertaking, European insurance undertaking or European reinsurance undertaking, represented;

(iii) the relevant classes of insurance, if applicable; and

(iv) such other information as may be specified by means of Insurance Distribution Rules;

(d) the European regulatory authority has informed the European intermediary, in writing, that the notice of intention has been sent to the competent authority; and

(e) details of any insurance guarantee scheme, if applicable, which is intended to protect policyholders.

(3) The competent authority shall immediately acknowledge receipt of the notice received pursuant to sub-regulation (2).

(4) In terms of Article 4(2) of the Insurance Distribution Directive, the European intermediary concerned is notified by its European regulatory authority that the applicable provisions are available through the means referred to in Article 11 (3) and (4) of the Insurance Distribution Directive.

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(5) Upon receipt of the information referred to in sub-regulation (2) by the competent authority, the European intermediary may commence to carry out distribution activities in Malta, provided that such intermediary complies with the applicable provisions referred to in sub-regulation (4).

(6) In the event of a change in any of the particulars communicated in accordance with sub-regulation (2)(c), the competent authority shall be informed of such changes by the European regulatory authority concerned, as soon as is practicable and no later than one month from the date upon which such European regulatory authority is notified of the changes by the European intermediary.

(7) A European intermediary may, in exercise of a European right, only market in Malta insurance and reinsurance products of the European insurance or reinsurance undertaking which the European intermediary represents when providing services in Malta, if the European insurance undertaking or European reinsurance undertaking has exercised its European right in terms of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations to carry on business of insurance in the class or classes of long term business or class or classes or part classes of general business by way of freedom of establishment or freedom to provide services.

S.L. 403.14.

(8) For the purpose of this regulation, "applicable provisions" means the Maltese rules with which, in the interest of the general good, the European intermediary is required to comply when carrying out distribution activities, as identified in the consent notice, when providing services in Malta.

PART II
EXERCISE OF PASSPORT RIGHTS BY MALTESE INTERMEDIARIES

Exercise of passport rights by Maltese intermediaries - establishment.

8. (1) A Maltese intermediary may exercise a European right to establish a branch if it satisfies the requirements set out in the following provisions of this regulation.

(2) Pursuant to article 11(4) of the Act, a Maltese intermediary intending to establish a branch in exercise of a European right shall give the competent authority a notice of intention which shall contain:

(a) the Member State or EEA State within the territory of which the Maltese intermediary proposes to establish a branch;

(b) a scheme of operations setting out, *inter alia*, the distribution activities it intends to carry out and the structural

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organisation of the branch;

(c) the relevant classes of insurance, if applicable;

(d) the address of the proposed branch from where documents may be obtained and to which they may be delivered;

(e) the name of the branch's general representative who must possess sufficient powers to bind the Maltese intermediary in relation to third parties and to represent it in relations with the authorities and courts of the host Member State; and

(f) such other information as may be specified by means of Insurance Distribution Rules.

(3) Without prejudice to sub-regulations (5) and (8), the competent authority shall give a consent notice within the meaning of sub-regulation (4) to the European regulatory authority, within one month of receiving a complete notice of intention.

(4) The consent notice shall:

(a) be given in accordance with Chapter III of the Insurance Distribution Directive;

(b) confirm that the Maltese intermediary is enrolled to carry out the distribution activities which the branch proposes to carry out;

(c) contain the information stated in the notice of intention of the Maltese intermediary; and

(d) include such other information as may be specified by means of Insurance Distribution Rules.

(5) Unless the competent authority has reason to doubt the adequacy of the organisational structure or the financial situation of the Maltese intermediary, taking into account the distribution activities planned, it shall, within one month of receiving all the information referred to in sub-regulation (2), communicate that information to the European regulatory authority of the branch, and shall inform the Maltese intermediary concerned accordingly.

(6) The competent authority shall inform the Maltese intermediary of the applicable provisions, as communicated by the European regulatory authority of the host Member State through the means referred to in Article 11 of the Insurance Distribution Directive, under which, in the interest of the general good, the distribution

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activities shall be carried out in that Member State or EEA State.

(7) A Maltese intermediary may establish the branch and commence to carry out distribution activities in the host Member State:

(a) upon receiving the communication referred to in sub-regulation (6), provided that it complies with the said applicable provisions; or

(b) where no applicable provisions are communicated by the European regulatory authority of the host Member State through the means referred to in Article 11 of the Insurance Distribution Directive, within one month from the communication of the consent notice in terms of sub-regulation (3).

(8) Where the competent authority refuses to communicate the information referred to in sub-regulation (2) to the European regulatory authority of the host Member State, it shall give the reasons for its refusal to the Maltese intermediary concerned within one month of receiving all the information in question. The refusal or failure to act in the period stipulated shall be subject to a right of appeal to the Tribunal and the provisions of article 50 of the Act shall apply *mutatis mutandis*.

(9) In the event of a change in any of the particulars communicated in accordance with sub-regulation (2), the Maltese intermediary shall give written notice of the changes to the competent authority, at least one month before implementing the changes. The competent authority shall as soon as is practicable and not later than one month of such notification, inform the European regulatory authority of the host Member State, of such changes.

(10) For the purposes of this regulation, "applicable provisions" means the host Member State rules with which the Maltese intermediary is required to comply when carrying out distribution activities through the proposed branch in the host Member State concerned.

Enhanced supervision of Maltese intermediaries by a European regulatory authority.

9. (1) Where the primary place of business of a Maltese intermediary is located in a Member State or EEA State, other than Malta, the competent authority may enter into an agreement with the European regulatory authority of the host Member State, in order for the said European regulatory authority to be able to exercise relevant functions in relation to such Maltese intermediary as if it were the home Member State.

(2) The relevant functions in relation to the Maltese

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intermediary concerned, may be exercised by the European regulatory authority in accordance with the agreement referred to in sub-regulation (1), as if that European regulatory authority was the supervisory authority of the home Member State.

(3) For the purpose of this regulation:

(a) "relevant functions" means any functions that may be exercised by the European regulatory authority of the host Member State in relation to an intermediary for which that European regulatory authority is the home Member State supervisory authority, in relation to the requirements laid down in Chapters IV to VII of the Insurance Distribution Directive, as applicable; and

(b) "primary place of business" means the location from where the main business of the Maltese intermediary is managed.

On-site inspections by the competent authority.

10. Where a Maltese intermediary carries out insurance distribution or reinsurance distribution activities through a branch in a Member State or EEA State, other than Malta, in exercise of a European right, the competent authority may, after having first informed the European regulatory authority of the host Member State, carry out itself or through a person it appoints for that purpose, on-site inspections in relation to the distribution activities carried out by the branch of the Maltese intermediary.

Exercise of passport rights by Maltese intermediaries - services.

11. (1) A Maltese intermediary which intends to provide services for the first time in one or more Member States or EEA States in exercise of a European right shall first submit a notice of intention to the competent authority indicating:

(a) the Member State or EEA State in which it intends to operate;

(b) the relevant classes of insurance, if applicable; and

(c) such other information as may be specified in Insurance Distribution Rules.

(2) The competent authority shall, within one month of receiving the notice of intention, communicate a consent notice to the European regulatory authority of the host Member State, containing the information specified by the Maltese intermediary in accordance with sub-regulation (1).

(3) The competent authority shall inform the Maltese intermediary, in the written notice referred to in sub-regulation (4), of

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the applicable provisions, available through the means referred to in Article 11(3) and (4) of the Insurance Distribution Directive, under which, in the interest of general good, the distribution activities shall be carried out in the host Member State.

(4) Upon receipt of the consent notice by the European regulatory authority of the host Member State, the competent authority shall give written notice to the Maltese intermediary concerned and such intermediary may commence to carry out the relevant distribution activities in the host Member State, provided that it complies with the applicable provisions referred to in sub-regulation (3).

(5) Where the competent authority refuses to communicate the information referred to in sub-regulation (1), to the European regulatory authority of the provision of services, it shall, give the reasons for its refusal to the Maltese intermediary concerned within one month of receiving all the information in question. The refusal or failure to act in the period stipulated shall be subject to a right of appeal to the Tribunal and the provisions of article 50 of the Act shall apply *mutatis mutandis.*

(6) In the event of a change in any of the particulars communicated in accordance with sub-regulation (1), the Maltese intermediary shall give written notice of the changes to the competent authority, at least one month before implementing the changes. The competent authority shall as soon as is practicable and not later than one month from such notification, inform the European regulatory authority of such changes.

(7) For the purposes of this regulation, "applicable provisions" means the host Member State rules with which the Maltese intermediary is required to comply when carrying out distribution activities, as identified in the consent notice, when providing services in the host Member State.

PART III
EUROPEAN INTERMEDIARIES NOT COMPLYING WITH LEGAL PROVISIONS

Contravention by European intermediaries - establishment.

12. (1) Where the competent authority ascertains that a European intermediary which has established a branch in Malta has contravened any legal or regulatory provisions as set out in Conduct of Business Rules, the competent authority may take any appropriate measures as it deems fit.

(2) Where the competent authority has reason to consider that a European intermediary which is carrying out distribution activities

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through a branch in Malta, has contravened any obligation arising from the provisions of the Act or of any regulations, Insurance Distribution Rules or Conduct of Business Rules issued thereunder, transposing any obligation set out in the Insurance Distribution Directive, and where the competent authority does not have the responsibility in accordance with regulation 5, the competent authority shall refer its findings to the European regulatory authority of such European intermediary. The European regulatory authority shall, where applicable and at the earliest opportunity, take all appropriate measures to remedy the situation and ensure that the European intermediary concerned rectifies its position. The appropriate measures taken shall be communicated to the competent authority.

(3) Where, despite the measures taken by the European regulatory authority or because those measures prove inadequate or insufficient, the European intermediary persists in violating the legal or regulatory provisions referred to in sub-regulation (2) in force in Malta, and in acting in a manner that is clearly detrimental to the interests of insureds and policyholders, in Malta, on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority may, after informing the European regulatory authority concerned, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, to prevent that European intermediary concerned from continuing to carry out distribution activities in Malta and, or new distribution activities in Malta. In addition, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(4) Notwithstanding sub-regulations (2) and (3), the competent authority may take appropriate and non-discriminatory measures to prevent or penalise irregularities committed in Malta, in the cases where immediate action is strictly necessary to protect the interests of insureds and policyholders, in Malta, where equivalent measures of the European regulatory authority are inadequate or insufficient. In such cases, the competent authority may also prevent that European intermediary concerned from continuing to carry out distribution activities in Malta and, or new distribution activities in Malta.

(5) Any measures adopted by the competent authority pursuant to this regulation shall be communicated to the European intermediary concerned in writing, together with reasons justifying such measures. The competent authority shall inform the European regulatory authority concerned, EIOPA and the Commission of such measures, without undue delay.

(6) Where a European insurance intermediary which is in

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breach of any provisions of these regulations has an establishment or possesses property of any description in Malta, the competent authority may, in accordance with national law, impose an administrative penalty pursuant to article 52 of the Act.

(7) Where the competent authority is informed by the European regulatory authority of the removal from the register of the registration of a European intermediary carrying out activities of insurance distribution or reinsurance distribution in Malta, in exercise of a European right, it shall take appropriate measures to prevent the intermediary concerned from continuing to carry out insurance distribution or reinsurance distribution in Malta, under either the right of establishment or the freedom to provide services, and may make or issue public statements or notices in relation to these measures.

(8) A prohibition under this regulation may be:

(a) absolute; or

(b) limited, that is, imposed for a specified event or until specified conditions are complied with,

and any period, event or conditions specified in the case of a limited prohibition may be varied by the competent authority and any such notice shall take effect on such date as is specified in the notice.

Contravention by European intermediaries – services.

13. (1) Where the competent authority has reason to consider that a European intermediary which provides services in Malta has contravened any obligation arising from the provisions of the Act, or of any regulations, Insurance Distribution Rules or Conduct of Business Rules issued thereunder, transposing any obligation set out in the Insurance Distribution Directive, it shall communicate its considerations to the European regulatory authority concerned. The European regulatory authority shall, where applicable and at the earliest opportunity, take all appropriate measures to remedy the situation and ensure that the European intermediary concerned rectifies its position. The appropriate measures taken shall be communicated to the competent authority.

(2) Where, despite the measures taken by the European regulatory authority, or because those measures prove inadequate or insufficient, the European intermediary persists in violating the legal or regulatory provisions referred to in sub-regulation (1) in force in Malta, and in acting in a manner that is clearly detrimental to the interests of insureds and policyholders, in Malta, on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority may, after informing the European regulatory

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authority concerned, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, to prevent that European intermediary concerned from continuing to carry out distribution activities in Malta and, or new distribution activities in Malta. In addition, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) 1094/2010.

(3) Notwithstanding sub-regulations (1) and (2), the competent authority may take appropriate measures to prevent or penalise irregularities committed in Malta, in the cases where immediate action is necessary to protect the interests of insureds and policyholders. In such cases, the competent authority may prevent that European intermediary concerned from continuing to carry out distribution activities in Malta and, or new distribution activities in Malta.

(4) Any measures adopted by the competent authority pursuant to this regulation shall be communicated to the European intermediary concerned in writing, together with reasons justifying such measures. The competent authority shall inform the European regulatory authority concerned, EIOPA and the Commission of such measures, without undue delay.

Powers of the competent authority in relation to applicable provisions.

14. (1) The competent authority may take appropriate and non-discriminatory measures, in so far as strictly necessary, to prevent or penalise irregularities committed in Malta by a European intermediary, which are contrary to applicable provisions protecting the general good. In such situations, the competent authority may prevent that European intermediary from continuing to carry out distribution activities in Malta and, or new distribution activities in Malta.

(2) For the purposes of sub-regulation (1), "applicable provisions" means the Maltese rules with which, in the interest of the general good, the European intermediary is required to comply when carrying out distribution activities, as identified in the consent notice, through a branch in Malta or when providing services in Malta.

(3) The competent authority may take appropriate measures to prevent a European insurance intermediary or a European ancillary insurance intermediary from carrying out distribution activities within Malta, under the freedom to provide services or, where applicable, the freedom of establishment, where:

(a) the relevant activities are entirely or principally directed towards Malta with the sole purpose of avoiding the legal provisions which would be applicable if that European

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insurance intermediary or European ancillary insurance intermediary, had its residence or registered office in Malta; and

(b) where its activities seriously endanger the proper functioning of Maltese insurance and reinsurance markets with respect to the interests of insureds and policyholders.

(4) In the case referred to in sub-regulation (3), the competent authority may, after informing the European regulatory authority concerned, take in respect of that European insurance intermediary or European ancillary insurance intermediary, all the appropriate measures needed in order to protect the interests of insureds and policyholders, in Malta. In addition, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, and in such a case, EIOPA may act in the event of a disagreement between the competent authority and the European regulatory concerned.

PART IV
MALTESE INTERMEDIARIES NOT COMPLYING WITH LEGAL PROVISIONS

Contravention by Maltese insurance intermediaries – establishment.

15. (1) Where, pursuant to Article 8(2) of the Insurance Distribution Directive, a European regulatory authority of a host Member State communicates to the competent authority its findings relating to a branch of a Maltese intermediary carrying out distribution activities in the host Member State, which is considered by it to be in breach of any obligation set out in the Insurance Distribution Directive, the competent authority shall assess the information received and, where applicable and at the earliest opportunity, take appropriate measures to remedy the situation and ensure that the Maltese intermediary concerned rectifies its position. The competent authority shall inform that European regulatory authority of any such measures taken.

(2) Where the European regulatory authority of the host Member State, after informing the competent authority, takes appropriate measures, pursuant to Article 8(3) of the Insurance Distribution Directive, to prevent further irregularities, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No. 1094/2010.

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Contravention by Maltese insurance intermediaries – services.

16. (1) Where, pursuant to Article 5(1) of the Insurance Distribution Directive, a European regulatory authority of a host Member State communicates to the competent authority its findings relating to a Maltese intermediary providing services in the host Member State, which is considered to be in breach of any obligation set out in the Insurance Distribution Directive, the competent authority shall assess the information received and, where applicable and at the earliest opportunity, take appropriate measures to remedy the situation and ensure that the Maltese intermediary concerned rectifies its position. The competent authority shall inform that European regulatory authority of any such measures taken.

(2) Where the European regulatory authority of the host Member State, after informing the competent authority, takes appropriate measures, pursuant to Article 5(1) of the Insurance Distribution Directive, to prevent further irregularities, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

Powers of the competent authority to refer to EIOPA – in relation to applicable provisions.

17. In the case of a Maltese insurance intermediary and a Maltese ancillary insurance intermediary, where the competent authority is informed by the European regulatory authority of the host Member State where the branch of a Maltese intermediary is established, or where the Maltese intermediary is providing services, of the appropriate measures to be taken in relation to such intermediary, pursuant to Article 9 of the Insurance Distribution Directive, in order to protect the rights of consumers in that host Member State or EEA State, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, and in such a case, EIOPA may act in the event of a disagreement between the competent authority and the European regulatory concerned.

PART V
MISCELLANEOUS

Register.

18. (1) The Lists established and maintained by the competent authority in terms of articles 9, 36 and 43D of the Act shall indicate each Member State or EEA State in which the Maltese intermediary:

(a) has established a branch; or

(b) is providing services.

(2) The competent authority shall communicate the information referred to in sub-regulation (1) to EIOPA for the purpose of publication on EIOPA's single electronic register, in terms of Article

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3(4) of the Insurance Distribution Directive.

Exchange of information.

19. The competent authority shall cooperate and exchange information with European regulatory authorities of host Member States, for the purposes of supervision of the distribution activities of Maltese intermediaries and European intermediaries. In particular, where the competent authority strikes off the name of a Maltese intermediary which ceases to fulfil the requirements laid down in Article 10 of the Insurance Distribution Directive, from the relevant Register or List, it shall, where applicable, inform the host Member State accordingly.

Administrative Penalties, other administrative measures.

20. Where a person falling within the scope of these regulations, fails to comply with any provisions of the said regulations or of any Insurance Distribution Rules and, or Conduct of Business Rules issued thereunder, the competent authority may, by notice in writing and without recourse to any court hearing, impose on such person an administrative penalty or any administrative measure in accordance with the Insurance Distribution (Penalties and other Measures) Regulations, 2018.

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Rules.

21. (1) For the better carrying out of these regulations, the competent authority may, from time to time, issue Insurance Distribution Rules and, or Conduct of Business Rules.

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

Ippubblikat mid-Dipartiment tal-Informazzjoni (doi.gov.mt) — Valletta — ***Published by the Department of Information (doi.gov.mt) — Valletta***
Mitbugħ fl-Istamperija tal-Gvern fuq karta FSC — ***Printed at the Government Printing Press on FSC certified paper***

Prezz/*Price*
€0.90