

Insurance Rule 32 of 2014

Reinsurance Special Purpose Vehicles

Rule pursuant to regulations 5 and 18 of the Regulations

1. (1) This Insurance Rule on Reinsurance Special Purpose Vehicles (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act and regulations 5 and 18 of the Reinsurance Special Purpose Vehicles Regulations, 2013 (“the Regulations”).

(2) This Rule shall come into force on the 17th January 2014.

Application

2. This Rule applies to:

- a) an undertaking desirous of applying for authorisation to carry on, and on continuing basis an undertaking authorised to carry on, business as a reinsurance special purpose vehicle;
- b) an undertaking authorised to carry on business as a reinsurance special purpose vehicles desirous of applying for approval of additional risk transfer arrangements;

(the “RSPV”).

Scope

3. The scope of this Rule is to determine:

- a) the manner in which an undertaking shall make an application to the Authority to carry on business as a reinsurance special purpose vehicle;

- b) the manner in which an undertaking authorised to carry on business as a reinsurance special purpose vehicle shall make an application for approval of additional risk transfer arrangements entered into subsequent to the original authorisation, for which separate approval is required in accordance with sub-regulation 3 of regulation 5 of the Regulations;
- c) the definition of the term 'group', for the purposes of regulation 3(2) of the Regulations.

Definitions

4. For the Purposes of this Rule:

'RSPV Contract' means the contract entered into between the reinsurance special purpose vehicle and the ceding undertaking.

Manner of making an application for authorisation to carry on business of an RSPV.

- 5.** The manner in which an applicant shall apply to the Authority for authorisation in terms of regulation 5 of these Regulations to carry on the business as a RSPV, shall be by application as set out in Schedule 1 to this Rule.

Manner of making an application for approval of additional risk transfer arrangements.

- 6.** The manner in which an RSPV shall apply to the Authority for approval for an additional risk transfer arrangement entered into subsequent to the original authorisation for which separate approval is required in accordance with sub-regulation 3 of regulation 5 of the Regulations, shall be by application as set out in Schedule 2 to this Rule.

Schedule 1

Application for authorisation of a RSPV under the Regulations

Part I

A	Details of the RSPV
----------	----------------------------

A.1	Name of RSPV	Date of registration under the Companies Act, 1995 (<i>day/month/year</i>):-	
	Registration number:-	Address of registered office including Post Code:-	
	Telephone Number	Fax Number	E-Mail Address

A.2	Name of RSPV secretary
-----	------------------------

A.3	Name of approved Auditors	Address including Post Code	
	Telephone Number	Fax Number	E-Mail Address

A.4	Name of the RSPV's principal bankers	Address including Post Code	
	Telephone number	Fax number	E-Mail Address

A.5	Name of the RSPV's legal consultants		Address including Post Code
	Telephone Number	Fax Number	E-Mail Address

A.6	Date on which the RSPV's financial year will end:-
-----	--

A.7	Contact details of person/s who will accept receipt of any correspondence from the MFSA in respect of the application for authorisation.
-----	--

Note 1

All particulars required by the application form are in respect of a limited liability company formed and registered under the Companies Act, 1995. The head office of the company shall be situated in Malta.

Attach a copy of the draft Memorandum and articles of association of the RSPV which needs to be approved prior to registration. The objects in the Memorandum and Articles should be restricted to operating as a RSPV.

Where an applicant is a company in formation, details required by the application form which are not available at the time of submission are to be provided as soon as these are available.

B	Ownership Structure
----------	----------------------------

	Please list below all of the RSPV's shareholders, indicating whether they are Qualifying or Non-Qualifying, together with their respective holdings.

B.1	<i>Details of Individual Shareholders</i>				
	Name:-				
	Identity Card number / Passport Number				
	Address including Post Code				
	Proportion and form of voting rights/share capital held				
	Qualifying <input type="checkbox"/>	Non- Qualifying <input type="checkbox"/>	Ordinary <input type="checkbox"/>	Other <input type="checkbox"/>	%
B.2	<i>Details of Qualified Corporate Shareholders</i>				
	Name				
	Date of Incorporation				
	Registration Number				
	Registered Address				

Attach an ownership structure chart of the RSPV providing a transparent “look through” of all parties involved up to the ultimate beneficial owner. Please include the rationale for this structure below.

Note 2

A Personal Questionnaire should be submitted for each qualifying shareholder, director, controller, senior manager, company secretary, and compliance officer.

Where qualifying shareholders are individuals, a Personal Questionnaire as set out in the Appendix to Insurance Rule 15 of 2008 should be submitted by each individual.

Where qualifying shareholders are not individuals, the Questionnaire for Qualifying Shareholders other than Individuals set out in the Annex to Insurance Rule 29 of 2009 should be provided.

Where the applicant has or will have one or more qualifying shareholders, or if the applicant holds or will hold a qualifying shareholding in any one or more companies, a diagram of the group *family tree* should be attached.

C: Organisation of the RSPV and Governance Arrangements

C1. Names of persons who are proposed to be appointed directors, controllers or senior managers of the RSPV and their position:-

Where applicable, attach details of the insurance manager enrolled under the Insurance Intermediaries Act, to be appointed to manage the business of the RSPV.

C2. Name of person who is proposed to be appointed as compliance officer.

C3. *Applicant's Governance Arrangements*

C3.1 Attach details on how the RSPV will be in a position to comply with the system of governance requirements, referred to in regulation 8 of the Regulations.

C3.2 Attach details on how the day-to-day management of the RSPV will be carried out.

C3.3 Attach staff organisational structure chart, if applicable.

D: Details of Ceding Undertaking

D1. Name of ceding undertaking

D2. Address of ceding undertaking

Where applicable, for the purposes of sub-regulation (3) of regulation 3 of these Regulations, attach a confirmation that the ceding undertaking has

notified its home country supervisory authority of its intention to cede the risks to a reinsurance special purpose vehicle.

Where applicable, for the purposes of sub-regulation (2) of regulation 3 of the Regulations, attach a diagram of the ceding undertakings' group family tree.

D3. Details of Financial Strength of ceding undertaking

D3.1 Attach a copy of the latest available audited financial statements of, both the ceding undertaking and its parent undertaking, as well as any ultimate parent undertaking of the group to which the ceding undertaking belongs, if applicable.

D3.2 Attach a copy of the financial rating of the ceding undertaking, its parent undertaking, and the ultimate parent undertaking of the group to which the ceding undertaking belongs, if applicable.

E: Procedures and Controls

Detailed information is required in respect of the following key functions:-

E1. *Credit Risk*

- Provide details of the procedures in place to ensure that the RSPV monitors and reports to the Board of Directors counterparty credit risk and to exercise the contractual remedies available to the RSPV as set out in the various agreements.
- Provide details of the financial ratings of each counterparty to the RSPV;
- Provide details of the criteria for accepting/selecting these counterparties.

E2. *Administrative and Accounting Procedures, internal controls and risk management techniques*

- Provide details of the administrative and accounting procedures, internal controls and risk management techniques of the RSPV, which should take into account the nature, scale and complexity of its business.

- Provide details of the persons who are providing or will provide administration and accounting services to the RSPV.

E3. *Outsourcing*

Full details of any outsourcing arrangements should be attached, including:

- background information concerning the third party to whom functions will be outsourced;
- draft copies of all service level agreements;
- transaction flow charts for the activities involving outsourcing may be required, i.e. details of the interrelationships of the various entities, timings, etc);
- a description of the scope of activities to be outsourced;
- details of those persons in the undertaking who will be responsible for overseeing such delegations, including details of how the outsourced activities will be monitored and controlled including details of key performance indicators¹ used;
- details of termination of the agreement, rights and obligations of the outsourced service provider.²

¹ “Key performance indicators” means factors by reference to which the development, performance or position of the business of the company can be measured effectively.

² The information provided in relation to outsourcing proposals should be consistent with the requirements stated in Insurance Rule 6 of 2011 as well as specifications listed in the Note for Information on Outsourcing of operational functions by authorised Insurance and Reinsurance Undertakings issued by the MFSA.

F: Confirmations to be attached

- F1. The undertakings shall not use intra-group RSPVs (i.e. one where no element of finance is raised externally) to achieve a regulatory capital reduction at group level in the absence of any financing external to the group.
- F2. The undertaking making the application falls under the definition of a RSPV stipulated in regulation 2 of the Regulations.
- F3. The RSPV will assume risks from a ceding undertaking through a reinsurance contract or through similar arrangements.
- F4. Confirmation that the RSPV will not issue debt securities, unless the documents specifying the rights of the holders of the securities—
 - (i) make it clear that the RSPV is a legal entity separate from any third party involved in the establishment of the RSPV;
 - (ii) state the manner in which claims relating to such securities rank as between different security holders and limited in the event of insufficient funds; and
 - (iii) make it a condition of securities issued that the holders of the securities undertake not to initiate or participate in winding-up proceedings against it until those securities are discharged.
- F5. Confirmation that the RSPV shall contact the MFSA for approval prior to entering into any RSPV contracts not specified in this application form, or making any material changes to its current scheme of operations and application.

Part II

G: Proposed Scheme of Operations – Details/Documentation to be included

This section must be filled in for every RSPV contract, including additional risk transfer arrangements entered into subsequent to the original authorisation, for which separate approval is required in accordance with sub-regulation 3 of regulation 5 of the Regulations.

G1. Details of the RSPV contract including a description of how the contract will meet the requirements of Regulation 6. The description should include a copy of the proposed RSPV contract accompanied by or including satisfactory information about:

- a) The identities and regulatory status of the directors and management of the ceding undertaking under the RSPV contract;
- b) The identities and regulatory status of the persons (if any) who are or will be appointed to act as trustees of the assets of the RSPV;
- c) The identity of any foundation (if any) and the identity and regulatory status of its administrator, who owns the shares of the RSPV;
- d) Details of any relevant triggering events or mechanisms under the RSPV contract which are to include: the nature of trigger, (e.g. indemnity, modelled loss), and detail in relation to the nature, level and treatment of basis risk;
- e) The maximum aggregate exposure limits of the RSPV contract.

G2. An assessment made by the Directors of the RSPV, supported by an independent legal opinion as to whether the legal and governance structures of the RSPV are deemed to comply with the requirements of regulations 6, 10 and 11 of the Regulations, and would be expected to be legally enforceable in the event of a winding-up of the RSPV or any of its involved participants. The assessment should include the following:

- a) A statement as to how the RSPV is or will be fully funded, including relevant test runs (such as stress and scenario tests) to determine if the fully funded concept has been complied with as well as an overall risk management plan including details as to how the RSPV will continue to be fully funded during the term of the RSPV contract;
- b) Information on capital including size, growth, investor concentration, and the management share of the capital base;
- c) Details of the involved counterparties to the RSPV contract, including details of the roles of the RSPV and the ceding undertaking, as well as the roles and identities of other participants of the structure, for example (but not limited to) note holders, account managers and account servicing managers, administrators of foundations, trustees, asset managers, underwriters and sponsors to the transaction. This could also include an assessment of consolidation requirements of the RSPV into a group where relevant;
- d) Details of any assets or rights of the RSPV which are held or controlled by the ceding undertaking and which should be separately identified from the non-securitised assets and rights of the ceding undertaking;
- e) Information on quantifiable risks of the RSPV including details of the liquidity risk and liquidity strategy of the RSPV;
- f) Information on risk implications on the investment strategy of and the adherence to the prudent person principle as referred to in regulation 11 of the Regulations by the RSPV;
- g) Details on the risk transfer, including assessment of material residual risks (including basis risk);
- h) Details of any intended hedging instruments, such as interest rate swaps or currency contracts;

- i) Details of any off-balance sheet commitments to support the RSPV (including guarantees and /or any other form(s) of credit risk mitigation sold to or otherwise provided to the RSPV);
 - j) A description of any terms and conditions for payments under the RSPV contract;
 - k) Financial projections based on the calculation agents report, premium contributions, expenses and investment income/charges over the expected life of the RSPV;
 - l) An actuarial review of the underlying business;
- G3. Details from the ceding undertaking' original insurance policy which clarifies what risks assumed by the ceding undertaking will be transferred to the RSPV, including an assessment, with a description, of how the transfer of ceded risks and the retention of any residual risks will comply with the requirements of sub-regulation 3 of Regulation 6.
- G4. Copies of the proposed transaction documentation regarding the issue of and risk transfer to providers of debt or financing mechanisms to ensure compliance with regulation 6. This documentation should include:
- a) Prospectus/Offering Circular or Private Placement Memorandum;
 - b) Rating agency's pre-emission report on behalf of the RSPV;
 - c) Details relating to the potential use of financial guarantors on any of the 'tranches' of notes to be issued;
 - d) Details of the use of trusts or other arrangements for holding the RSPVs assets and collateral including Trustee Agreement (if any);
 - e) With regards to the debt or financing mechanisms, details should be given of the RSPV's liquidity strategy for the issued financial instruments, including structure of waterfall, types of positions, and note holder withdrawal rules;

- f) Information on risk implications of the RSPV's investment strategy;
- g) Copies of contracts and details of any intended hedging instruments, such as interest rate swaps or currency contracts;
- h) Other relevant transaction documentation governing parts of the reinsurance special purpose vehicle transaction, which may fall under the scope of "connected transaction" as understood by sub-regulation (3) to regulation 6 of the Regulations. This may (where applicable) include contracts with other participants to the transaction, as well as outsourcing and service contracts;
- i) A draft plan outlining the RSPV's supervisory reporting procedures, in order to comply with the requirements as set out in regulations 9 to 11 of the Regulations, and with regards to how material changes would be communicated to the Authority;
- j) Potential conflicts of interest that may arise in respect of the interactions among the various parties into which the RSPV will enter (including any such conflict concerning the applicant/cession) undertaking must be disclosed;
- k) Any other documentation deemed necessary to process the application.

Declarations

The particulars provided in this application and the documents produced with it are complete and true to the best of my knowledge, information and belief. I hereby authorise the Authority to contact any or all of the above-named or any other person considered by the Authority to be relevant, both at the date of application and at any time in the future unless and until I rescind this authority in writing. I also undertake to inform the Authority in writing of any material change relevant to this application.

Name and Signature _____

Position _____ Date _____

Schedule 2

Application for approval of additional risk transfer arrangements

An undertaking authorised as a reinsurance special purpose vehicle wishing to enter into additional risk transfer arrangements is ordinarily required to submit the following documents:

- a) formal notification to the MFSA of its intention to apply for the approval of the additional risk transfer arrangements;
- b) a final draft of the new RSPV contract;
- c) a final draft of the new or revised Prospectus/ Offering document/ Private placement Memorandum;
- d) a confirmation from the Directors or the Insurance Manager of the contents of sections A to F or a statement containing any changes thereto ;
- e) the new proposed scheme of operations with the details required by Section G completed in respect of the new RSPV contract;
- f) a description of how the RSPV intends to satisfy the requirements of Regulation 5(4) of the Regulations.

Declarations

The particulars provided in this application and the documents produced with it are complete and true to the best of my knowledge, information and belief. I hereby authorise the Authority to contact any or all of the above-named or any other person considered by the Authority to be relevant, both at the date of application and at any time in the future unless and until I rescind this authority in writing. I also undertake to inform the Authority in writing of any material change relevant to this application.

Name and Signature _____

Position _____ Date _____

Schedule 3

Definition of ‘Group’

Parent and subsidiary undertakings

1. For the purposes of Regulation 3(2) of the Regulations-

“group” shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation;

2. (1) For the purposes of this Rule, an undertaking is a parent undertaking in relation to another undertaking (“a subsidiary undertaking”) if –

- (a) it holds a majority of the voting rights in the undertaking; or
- (b) it is a member of the undertaking and has a right to appoint or remove a majority of its board of directors or persons entrusted with its administration; or
- (c) it has a right to exercise a dominant influence over the undertaking:
 - (i) by virtue of provisions contained in the undertaking’s memorandum or articles; or
 - (ii) by virtue of a control contract (as defined in paragraph (2) of article 13 of Insurance Rule 18 of 2007); or
- (d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking; or
- (e) it is a member of the undertaking, no other person is the undertaking’s parent by virtue of any of indents (a) to (c) of this subparagraph, and at all times since the beginning of the undertaking’s immediately preceding financial year, a majority of the undertaking’s board of

directors have been directors who were appointed solely as a result of the exercise of its voting rights; or

- (f) it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking, or it and the undertaking are managed on a unified basis; or
- (g) it has a participating interest in the undertaking which either entitles it to twenty per centum or more of the voting rights in the undertaking or comprises twenty per centum or more of the shares in the undertaking.

(2) For the purposes of sub-paragraph (1) of this paragraph, an undertaking shall be treated as a member of another undertaking if -

- (a) any of its subsidiary undertakings is a member of that other undertaking; or
- (b) any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(3) Subject to sub-paragraph (4) of this paragraph, a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.

(4) An undertaking (“A”) shall not be treated as a parent undertaking of an undertaking (“B”) by reason only that another undertaking which is A’s subsidiary undertaking by virtue of indent (g) of sub-paragraph (1) of this paragraph is a parent undertaking of B.

(5) For the purposes of this paragraph:

- (a) “participation” exists when an undertaking holds rights in the share capital of other undertakings which, by creating a durable link with those undertakings, are intended to contribute to the undertaking’s activities. The holding of twenty per centum of the capital or of the voting rights of another undertaking shall be presumed to constitute a participating interest, unless the contrary is shown; and

- (b) “subsidiary undertaking” shall mean a subsidiary undertaking within the meaning of “parent undertaking” and any undertaking over which, in the opinion of the Authority, a parent undertaking effectively exercises a dominant influence; all subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking; and
- (c) references to “undertakings” shall include references to a person, whether natural or legal, and in the case of a legal person shall mean a society, corporation or body (howsoever constituted), established or recognised under the laws of Malta or under the laws of a country outside Malta.