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I assent.

(L.S.)

**MARIE LOUISE
COLEIRO PRECA
President**

20th November, 2015

ACT No XXXIII of 2015

AN ACT to amend various financial services laws, to transpose Directive 2009/138/EC ("the Solvency II Directive"), and to provide for matters ancillary or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

Short title and
commencement.

1. (1) The short title of this Act is the Various Financial Services Laws (Amendment No 2) Act, 2015.

(2) The provisions of this Act, except Parts IV and V, shall come into force on such date as the Minister responsible for finance may, by notice in the Gazette, establish, and different dates may be so established for different provisions of this Act.

PART I

AMENDMENT OF THE INSURANCE BUSINESS ACT, CAP. 403

Amendment of
the Insurance
Business Act,
Cap. 403.

2. This Part amends and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as "the principal Act".

Renaming and
renumbering of
Parts of the
principal Act.

3. The "ARRANGEMENT OF ACT" of the principal Act shall be amended as follows:

(a) in "Part IV. Conditions for carrying on Business of Insurance", under the heading "Articles", for the figures "14-18", there shall be substituted the figures "14-18I";

(b) immediately after "Part IV. Conditions for carrying

on Business of Insurance", there shall be added the following new titles:

"Title I: Financial Requirements

Title II: Systems of Governance";

(c) in the new Titles I and II, under the heading "Articles", there shall be inserted the figures "14-18G", and "18H-18I" respectively;

(d) in "Part VII. Supervision of Authorised Companies", for the words "of Authorised Companies", there shall be substituted the words "of Authorised Insurance and Reinsurance Undertakings";

(e) immediately after "Part VII. Supervision of Authorised Insurance and Reinsurance Undertakings", there shall be added the following new Part:

"Part VIIA. Group Supervision";

(f) in the new "Part VIIA. Group Supervision", under the heading "Articles", there shall be inserted the figures "32A-32E"; and

(g) in "Part X. Conduct of Business of Insurance", under the heading "Articles", for the figures "43-48", there shall be substituted the figures "43-48C".

4. Article 2 of the principal Act shall be amended as follows:

Amendment of
article 2 of the
principal Act.

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

(i) the definition "advertisement" shall be amended as follows:

(aa) for the words "means any form of advertising, whether done verbally or in writing", there shall be substituted the words "means any form or medium of advertising";

(bb) for the words "by means of letters, circulars, prospectuses, catalogues", there shall be substituted the words "by means of letters, circulars, catalogues"; and

(cc) for the words "by the distribution of

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recordings or in any other manner, and references", there shall be substituted the words "by the distribution of recordings or in any other manner, the contents of which invite persons, or contain material calculated to induce persons to enter into contracts of insurance, and references";

(ii) immediately after the definition "authorisation" there shall be added the following new definition:

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

(iii) immediately after the new definition "authorised insurance undertaking" there shall be added the following new definition:

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

(iv) in the definition "body corporate", for the words "distinct from that of its members;", there shall be substituted the words "distinct from that of its members and also includes a foreign corporation;";

(v) in the definition "branch", for the words "means premises of the company, other than its head office", there shall be substituted the words "means premises of an authorised insurance and reinsurance undertaking, other than its head office";

(vi) for sub-paragraph (ii) of paragraph (a) of the definition "business of insurance", there shall be substituted the following new sub-paragraph:

"(ii) capital redemption contracts based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are

undertaken;"

(vii) immediately after the definition "business of insurance" there shall be added the following new definition:

" "captive insurance undertaking" means an authorised insurance undertaking, owned either by a financial undertaking, other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of article 2, or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;"

(viii) immediately after the new definition "captive insurance undertaking" there shall be added the following new definition:

" "captive reinsurance undertaking" means an authorised reinsurance undertaking, owned either by a financial undertaking, other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of article 2, or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;"

(ix) immediately after the definition "cell company" there shall be added the following new definition:

" "close links" means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;"

(x) the definition "company" shall be deleted;

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(xi) the definition "company whose head office is in Malta" shall be deleted;

(xii) the definition "company whose head office is in a country outside Malta" shall be deleted;

(xiii) for the definition "control", there shall be substituted the following new definition:

" "control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;"

(xiv) in the definition "controller", for the words "exercises control of the body corporate;", there shall be substituted the words "exercises the power to determine the financial and operating policies of the body corporate;"

(xv) for the definition "director", there shall be substituted the following new definition:

" "director", in relation to an undertaking, includes an individual occupying the position of a director of the undertaking, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the undertaking as those carried out by a director and, in respect of a third country insurance undertaking or a third country reinsurance undertaking, includes a member of a local board, and the person designated as the representative of that undertaking for the purpose of article 11(1)(b)(i);"

(xvi) immediately after the definition "director", there shall be added the following new definition:

" "document" or "documentation" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form;"

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

" "EIOPA" means the European Insurance and Occupational Pensions Authority established in terms of article 1 of Regulation (EU) No 1094/2010;"

(xviii) for the definition "establishment", there shall be substituted the following new definition:

" "establishment" means the head office, or any branches of an authorised insurance undertaking or an authorised reinsurance undertaking;"

(xix) for the definition "European insurance undertaking", there shall be substituted the following new definition:

" "European insurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;"

(xx) immediately after the new definition "European insurance undertaking", there shall be added the following new definition:

" "European regulatory authority" means the supervisory authority or supervisory authorities as defined in Article 13 of the Solvency II Directive, designated by a Member State or EEA State, other than Malta, empowered by law or regulation to supervise insurance or reinsurance undertakings;"

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(xxi) immediately after the new definition "European regulatory authority", there shall be added the following new definition:

" "European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with Article 14 of the Solvency II Directive;"

(xxii) immediately after the new definition "European reinsurance undertaking", there shall be added the following new definition:

" "European right" means the entitlement of an authorised insurance undertaking, authorised reinsurance undertaking, European insurance undertaking or a European reinsurance undertaking 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 -

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

(b) subject to the requirements of the Solvency II Directive and subject to any regulations made under this Act, or Insurance Rules issued by the competent authority pursuant to this Act, implementing such requirements;"

(xxiii) immediately after the new definition "European right", there shall be added the following new definition:

" "European Systemic Risk Board" means the European Systemic Risk Board established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a

European Systemic Risk Board;";

(xxiv) immediately after the new definition "European Systemic Risk Board", there shall be added the following new definition:

" "financial undertaking" means any of the following entities:

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of subparagraphs (1), (17) and (22) of paragraph (1) of Article 3 of Directive 2013/36/EU respectively;

(b) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of Article 212(1)(f) of the Solvency II Directive;

(c) an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2004/39/EC; or

(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC;";

(xxv) immediately after the definition "general business", there shall be added the following new definition:

" "group" means a group of undertakings that:

(a) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the

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European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC; or

(b) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

(i) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

(ii) the establishment and dissolution of such relationships for the purposes of Title III of the Solvency II Directive are subject to prior approval by the group supervisor,

where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;"

(xxvi) for the definition "guarantee fund", there shall be substituted the following:

" "guarantee fund" means the body referred to in Article 10(1) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability;"

(xxvii) in the Maltese text, for the definition "holding company" there shall be substituted the

following:

Kap. 386. " "kumpannija *holding*" għandha l-istess tifsira bħal dik mogħtija lill-kliem "*parent company*" fl-Att dwar il-Kumpanniji;"

(xxviii) for the definition "insurance rule", there shall be substituted the following:

" "Insurance Rules" means rules in respect of the business of insurance issued by the competent authority under various articles of this Act and under any regulations made thereunder;"

(xxix) for the definition "Lloyd's", there shall be substituted the following:

" "Lloyd's" means the society and corporation incorporated by Lloyd's Act, 1871, of the United Kingdom;"

(xxx) for the definition "Malta's international commitments", there shall be substituted the following:

" "Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of membership of the European Union and membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral or multilateral, including Memoranda of Understanding, to which Malta is a party;"

(xxxi) the definition " "margin of solvency" and "Malta margin of solvency" and "EEA margin of solvency" " shall be deleted;

(xxxii) immediately after the definition "money laundering", there shall be added the following new definition:

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Cap. 104. " "motor vehicle" has the same meaning as assigned to it by article 2 of the Motor Vehicle Insurance (Third Party Risks) Ordinance;"

(xxxiii) the definition "mutual association" shall be deleted;

(xxxiv) in the definition "officer", for the words "in relation to a company, includes a director, partner,", there shall be substituted the words "in relation to an undertaking, includes a director,";

(xxxv) immediately after the definition "officer", there shall be added the following new definition:

" "outsourcing" means an arrangement of any form between an authorised insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the authorised insurance or reinsurance undertaking itself, and "outsource" shall be construed accordingly;"

(xxxvi) for the definition "overseas regulatory authority", there shall be substituted the following:

Cap. 330. " "overseas regulatory authority" means an authority in a country or territory outside Malta, that is not a Member State or EEA State, which exercises any regulatory or supervisory function in relation to financial services corresponding to a function of the competent authority as defined in the Malta Financial Services Authority Act;"

(xxxvii) for the definition "own funds", there shall be substituted the following:

" "own funds" shall be construed in accordance with Insurance Rules made by the competent authority for the purposes of this Act;"

(xxxviii) immediately after the definition "own funds", as amended, there shall be added the following new definition:

" "participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;"

(xxxix) immediately after the new definition "participation", as amended, there shall be added the following new definition:

" "participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;"

(xl) for the definition "qualifying shareholding", there shall be substituted the following:

" "qualifying shareholding" means a direct or indirect holding in an undertaking which represents ten *per centum* or more of the share capital or of the voting rights, taking into account the voting rights as set out in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and amending Directive 2001/34/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, or which makes it possible to exercise a significant influence over the management of the undertaking in which that holding subsists, and "qualifying shareholder" shall be construed accordingly:

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Provided that, in determining whether the criteria for a qualifying shareholding are fulfilled, the competent authority shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and, or placing of financial instruments on a firm commitment basis in terms of point 6 of Section A of Annex 1 to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 96/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition;"

(xli) immediately after the definition "reconstruction", there shall be added the following new definition:

" "regulated market" means either of the following:

(a) in the case of a market situated in Malta, a market authorised in terms of the Financial Markets Act;

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(b) in the case of a market situated in a Member State or an EEA State, other than Malta, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/611/EEC and 96/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time; or

(c) in the case of a market situated in a non-Member State or non-EEA State, a financial market which fulfils the following conditions:

(i) it is recognised by the competent authority and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets in Malta;"

(xlii) immediately after the new definition "regulated market", there shall be added the following new definition:

" "Regulation (EU) No 1094/2010" refers to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC;"

(xlili) in the proviso to paragraph (b) of the definition "risk situated in Malta", for the words "Provided that, where a vehicle is dispatched from a Member State", there shall be substituted the words "Provided that, where a motor vehicle is dispatched from a Member State";

(xliv) immediately after the definition "subsidiary", there shall be added the following new definition:

" "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;"

(xlv) for the definition "technical provisions", there shall be substituted the following:

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" "technical provisions" shall be construed in accordance with article 18E;"

(xlv) immediately after the definition "technical provisions", there shall be added the following new definition:

" "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;"

(xlvii) immediately after the new definition "third country insurance undertaking", there shall be added the following new definition:

" "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;"

(xlviii) immediately after the new definition "third country reinsurance undertaking", there shall be added the following new definitions:

" "undertaking" refers to an undertaking whose head office is in Malta or in a country outside Malta;

"undertaking whose head office is in Malta" means a limited liability company formed and registered in Malta in accordance with the Companies Act;"

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(xlix) the definition "valuation regulations" shall be deleted;

(l) the definition "vehicle" shall be deleted; and

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

"(2) The objective of this Act is, in part, to transpose and implement the provisions of:

(a) the Solvency II Directive;

(b) the Omnibus II Directive: Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority);

(c) Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009, relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, as amended from time to time; and

(d) any other European Union Directives and Regulations that may be issued and amended from time to time relating to the regulation of and the prudential requirements applicable to insurance and reinsurance undertakings,

and consequently this Act and any regulations and Insurance Rules issued thereunder shall be interpreted and applied accordingly."

5. Article 3 of the principal Act shall be amended as follows:

Amendment of article 3 of the principal Act.

(a) for the words "under this Act and to ensure that persons authorised to carry on the business of insurance", there shall be substituted the words "under this Act and any regulations or Insurance Rules made thereunder and to ensure that insurance and reinsurance undertakings carrying on the business of insurance"; and

(b) for the words "with any insurance rule made by the competent authority", there shall be substituted the words "with any Insurance Rules made and directives issued by the competent authority".

6. For article 4 of the principal Act, there shall be substituted the following:

Substitution of article 4 of the principal Act.

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"Powers and duties of the competent authority.

4. (1) When carrying out its functions under this Act, the competent authority shall, in particular, have regard to:

(a) the protection of insured persons, policy holders, beneficiaries and the general public;

(b) the protection of the reputation of Malta, taking into account Malta's international commitments; and

(c) the promotion of competition and choice.

(2) The competent authority shall, in the exercise of its duties, take into account the convergence in respect of supervisory tools and supervisory practices in the application of this Act, and of the regulations and Insurance Rules made thereunder, pursuant to the Solvency II Directive.

(3) For the purpose of sub-article (2):

(a) the competent authority shall participate in the activities of EIOPA;

(b) the competent authority shall comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and, if not, shall state the reasons for not doing so; and

(c) national mandates conferred on the competent authority shall not inhibit the performance of its duties under this Act or as a member of EIOPA.

(4) The competent authority may make Insurance Rules as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. The competent authority may amend or revoke such Insurance Rules. Insurance Rules and any amendment or revocation thereof shall be officially communicated to the persons concerned.

(5) The competent authority may make Insurance Rules as may be required for the purpose of implementing the guidelines and recommendations issued by EIOPA under Article 16 of Regulation (EU) No 1094/2010, for the preparation, phasing-in, and implementation of the Solvency II Directive.

(6) Insurance Rules shall be binding on authorised insurance and reinsurance undertakings and others as may be specified therein."

7. Article 5 of the principal Act shall be amended as follows:

Amendment of
article 5 of the
principal Act.

(a) in the marginal note thereto, for the words "Classification of business of insurance.", there shall be substituted the words "Classification of business of insurance and ancillary risks.";

(b) in sub-article (1) thereof, for the words "Subject to the provisions of sub-articles (5) and (6).", there shall be substituted the words "Subject to the provisions of sub-article (2).";

(c) for sub-articles (2), (3) and (4) thereof, there shall be substituted the following:

"(2) An authorised insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or group of classes as specified in the Third Schedule may also insure risks included in another class in the said Schedule without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

(a) they are connected with the principal risk;

(b) they concern the object which is covered against the principal risk; and

(c) they are covered by the contract insuring the principal risk.

(3) Notwithstanding the provisions of sub-article (2), the risks included in classes 14, 15 and 17 in Part I of the Third Schedule shall not be regarded as risks ancillary to other classes:

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Provided that, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the conditions laid down in sub-article (2) and either of the following conditions are fulfilled:

(a) the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from the home or their habitual residence; or

(b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

(4) For the purposes of this article, a contract of insurance is to be treated as falling within the Second Schedule, notwithstanding the fact that it contains related and subsidiary provisions within general business class 1 or 2 of Part I of the Third Schedule to the Act, if its principal object is that of a contract falling within the Second Schedule to the Act and if such contract is effected or carried out by an undertaking authorised under article 7 to carry on long term business class 1.";

(d) sub-articles (5), (6) and (7) thereof shall be deleted;

(e) sub-article (8) thereof shall be renumbered as sub-article (5);

(f) in sub-article (5) thereof, as renumbered:

(i) in the Maltese text, for the words "permezz ta' regola dwar l-assigurazzjoni li ssir għall-finijiet ta' dan l-artikolu," there shall be substituted the words "permezz ta' Regoli dwar l-Assigurazzjoni li jsiru għall-finijiet ta' dan l-artikolu,"; and

(ii) for the words "in the rule contain such conditions or include such requirements or arrangements as may be determined by the rule.", there shall be substituted the words "in the Insurance Rules, contain such conditions or include such requirements or arrangements as may be determined by such Insurance Rules.".

Amendment of
article 6 of the
principal Act.

8. Article 6 of the principal Act shall be amended as follows:

(a) for sub-article (2) thereof, there shall be substituted

the following:

"(2) Sub-article (1) shall not apply to a European insurance undertaking and a European reinsurance undertaking establishing a branch or providing services in Malta in exercise of a European right.";

(b) sub-article (3) thereof shall be deleted; and

(c) sub-articles (4) and (5) thereof shall be renumbered as sub-articles (3) and (4) respectively.

9. Article 7 of the principal Act shall be amended as follows: Amendment of article 7 of the principal Act.

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

(i) for the words "may authorise a company", there shall be substituted the words "may authorise an undertaking";

(ii) in paragraph (a) thereof, for the words "in the case of a company", there shall be substituted the words "in the case of an undertaking";

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

"(b) in the case of a third country insurance undertaking or a third country reinsurance undertaking, in or from Malta,";

(b) in sub-article (2) thereof, for the words "and a company may not carry", there shall be substituted the words "and an undertaking may not carry";

(c) sub-articles (3), (4), (5), (6), (7), (8) and (9) thereof shall be renumbered as sub-articles (5), (6), (7), (8), (9), (10) and (12) respectively;

(d) immediately after sub-article (2) thereof, there shall be added the following new sub-articles:

"(3) An authorisation issued under this article shall entitle an undertaking whose head office is in Malta to carry on business of insurance in a Member State or EEA State, in exercise of a European right, subject to a notification to the competent authority as determined in accordance with regulations made under article 64.

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(4) Without prejudice to article 5, an authorisation under this article shall also be required if an undertaking, which holds an authorisation to carry on business of insurance or reinsurance in a class or classes of insurance, intends to extend its business to a class or to classes of business other than those classes for which it is already authorised.";

(e) in sub-article (5) thereof, as renumbered, for the words "any company to provide such information", there shall be substituted the words "any undertaking to provide such information";

(f) sub-article (9) thereof, as renumbered, shall be amended as follows:

(i) for the words "Subject to sub-article (8)", there shall be substituted the words "Subject to sub-article (10)"; and

(ii) for the words "within six months of receiving the information required", there shall be substituted the words "within six months of receiving a properly completed application form together with the requisite documentation required";

(g) in sub-article (10) thereof, as renumbered, for the words "by sub-article (7)", there shall be substituted the words "by sub-article (9)";

(h) immediately after sub-article (10) thereof, as renumbered, there shall be added the following new sub-article:

"(11) The competent authority shall not consider the economic needs of the market as a criterion when examining an application for an authorisation.";

(i) for sub-article (12) thereof, as renumbered, there shall be substituted the following:

"(12) On the issue to an undertaking of an authorisation under this article, any previous authorisation of that undertaking under this article shall lapse."; and

(j) immediately after sub-article (12) thereof, as renumbered, there shall be added the following new sub-article:

"(13) The competent authority shall notify EIOPA of every authorisation issued in terms of this article."

10. For article 8 of the principal Act, there shall be substituted the following:

Amendment of article 8 of the principal Act.

"Authorisation requirements.

8. (1) The competent authority shall not issue an authorisation under article 7 unless it is satisfied that -

(a) an application for authorisation is made in writing by an undertaking in such form and manner as the competent authority may from time to time determine;

(b) (i) in the case of an undertaking which intends to carry on business not restricted to reinsurance, the undertaking's objects are limited to business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;

(ii) in the case of an undertaking which intends to carry on business restricted to reinsurance, the undertaking's objects are limited to the business of reinsurance and related operations; this may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, as amended from time to time;

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(c) the undertaking has disclosed to the satisfaction of the competent authority such information as the competent authority has requested of it in relation to persons who will, upon the authorisation of the undertaking, have any proprietary, financial or other interest in, or in connection with, that undertaking;

(d) the undertaking has disclosed the identities of the shareholders, direct or indirect, whether natural or legal persons who will have qualifying holdings in that undertaking and the amounts of those holdings;

(e) all qualifying shareholders, directors, controllers and all persons who will effectively direct or manage the business of insurance are fit and proper persons to ensure the sound and prudent management of the undertaking;

(f) the undertaking has submitted to the satisfaction of the competent authority a scheme of operations which shall include the particulars or proof as may be determined by Insurance Rules made for the purpose of this article;

(g) the undertaking holds eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement in accordance with article 17;

(h) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, in accordance with article 15, going forward;

(i) the undertaking shows evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, in accordance with article 17, going forward;

(j) the undertaking shows evidence that it will be in a position to comply with the system of governance provided for in article 18I.

(2) Without prejudice to article 5, an undertaking seeking authorisation to extend its business of insurance to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to:

(a) submit a scheme of operations referred to in sub-article (1)(f);

(b) submit proof that it possesses eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement in accordance with articles 15 and 17 respectively.

(3) The competent authority shall not issue an authorisation under article 7, where close links exist between an undertaking applying for authorisation and any other natural or legal persons:

(a) if it considers that such close links prevent it from effectively exercising its supervisory functions; and

(b) if it considers that the laws, regulations or administrative provisions of a third country governing any one or more natural or legal persons with whom the undertaking has close links or difficulties involved in the enforcement of those measures, prevent it from effectively exercising its supervisory functions.

(4) For the purpose of ensuring compliance with the provisions of sub-article (3)(a), the competent authority shall require authorised insurance and reinsurance undertakings to provide it with the information necessary for it to monitor compliance with the conditions referred to in sub-article (3)(a) on a continuous basis."

11. Article 9 of the principal Act shall be amended as follows:

Amendment of article 9 of the principal Act.

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

"(1) Subject to sub-articles (2) and (3), the competent authority shall not, under article 7, authorise an undertaking with its head office in Malta to carry on both long term business and general business.";

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(b) sub-articles (2) and (3) thereof shall be renumbered as sub-articles (3) and (4) respectively;

(c) immediately after sub-article (1) thereof, there shall be inserted the following new sub-article (2):

"(2) Without prejudice to the provisions of sub-article (1) -

(a) an insurance undertaking authorised to carry on long term business may be granted an authorisation to carry on general business for the risks listed in classes 1 and 2 of Part I of the Third Schedule; or

(b) an insurance undertaking authorised solely to carry on general business of insurance for the risks listed in classes 1 and 2 of Part I of the Third Schedule may be granted authorisation to carry on long term business; or

(c) an insurance undertaking authorised solely to carry on general business of insurance may be granted authorisation to carry on long term business restricted to reinsurance.";

(d) for sub-article (3) thereof, as renumbered, there shall be substituted the following:

"(3) Without prejudice to the provisions of sub-article (4), the provisions of this article shall not apply to an undertaking which holds an authorisation to carry on both long term business and general business under this Act as in force immediately before the coming into force of this Act.";

(e) in sub-article (4) thereof, as renumbered, for the words "A company authorised", there shall be substituted the words "An undertaking authorised"; and

(f) immediately after sub-article (4) thereof, as renumbered, there shall be added the following new sub-articles:

"(5) An authorised insurance undertaking carrying on long term business and seeking authorisation to extend its business to the risks listed in classes 1 or 2 of Part I of the Third Schedule shall submit proof to the

satisfaction of the competent authority that it:

(a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on long term business and the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on general business, in accordance with article 17; and

(b) undertakes to cover the minimum financial obligations as determined in accordance with Insurance Rules, going forward.

(6) An authorised insurance undertaking carrying on general business for the risks listed in classes 1 or 2 of Part 1 of the Third Schedule and seeking authorisation to extend its business to long term business shall submit proof to the competent authority that it:

(a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on long term business and the absolute floor of the Minimum Capital Requirement for undertakings authorised to carry on general business, in accordance with article 17;

(b) undertakes to cover the minimum financial obligations as determined in accordance with Insurance Rules, going forward.

(7) For the avoidance of doubt, an undertaking whose business is restricted to reinsurance, may be granted an authorisation to carry on both general and long term business in all classes of business."

12. Article 10 of the principal Act shall be amended as follows:

Amendment of article 10 of the principal Act.

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

"(1) The competent authority shall not issue an authorisation under article 7 to an undertaking whose head office is in Malta, nor shall the competent authority permit such undertaking to hold the authorisation issued thereunder, unless it is satisfied that the undertaking has

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fulfilled or complied with the requirements of article 8 and, where appropriate, of article 9.";

(b) in sub-article (2) thereof, for the words "A company authorised", there shall be substituted the words "An undertaking authorised"; and

(c) for sub-article (3) thereof, there shall be substituted the following:

"(3) Except with the written consent of the competent authority, no undertaking authorised as aforesaid shall carry on, nor hold itself out as carrying on business of insurance in or from a country outside Malta or open a branch, agency or office or set up or acquire any subsidiary in any country outside Malta.".

Amendment of
article 11 of the
principal Act.

13. For article 11 of the principal Act, there shall be substituted the following:

"Applicants
with head
office outside
Malta.

11. (1) The competent authority shall not issue an authorisation under article 7 to a third country insurance undertaking or third country reinsurance undertaking, nor shall the competent authority permit such undertaking to hold the authorisation issued thereunder, unless the undertaking -

(a) is permitted in the country where its head office is situated to carry on the business of insurance which forms the object of the application;

(b) has in Malta at all times:

(i) a general representative fulfilling the requirements of article 12; and

(ii) a branch;

(c) undertakes to set up at the place of management of the branch, accounts specific to the business of insurance which it carries on in Malta, and to maintain there all the records relating to the business carried on;

(d) undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in articles 15 and 17;

(e) submits a scheme of operations in accordance with article 8(1)(f); and

(f) fulfils the governance requirements referred to in article 18I.

(2) In relation to a branch of a third country insurance undertaking or third country reinsurance undertaking, the business of insurance shall be carried on under the management of a person fulfilling the following requirements of this sub-article:

(a) the person must be an individual resident in Malta or an insurance manager who has been designated by the undertaking for the purpose of this article;

(b) the person must not be the approved auditor, or a partner or an employee of the approved auditor, of the undertaking;

(c) the person possesses the qualifications and fulfils or complies with the requirements determined by Insurance Rules made for the purpose of this article; and

(d) the person is fit and proper to ensure its sound and prudent management.

(3) A third country insurance or reinsurance undertaking shall be required to:

(a) establish adequate technical provisions to cover the insurance and reinsurance obligations arising from the business carried out by the branch in Malta, calculated in accordance with Insurance Rules; and

(b) value assets and liabilities and determine own funds in accordance with Insurance Rules.

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(4) A third country insurance and reinsurance undertaking shall be required to maintain in Malta at all times an amount of eligible own funds consisting of the items to be determined in accordance with regulations made for the purposes of this Act and deposit a specified proportion of such own funds as may be prescribed under article 18G.

(5) (a) Branches of third country insurance undertakings shall not simultaneously pursue long term business and general business in Malta.

(b) For the avoidance of doubt, a branch of a third country reinsurance undertaking may be granted an authorisation to carry on both general and long term business, in all classes of business, restricted to reinsurance.

(6) For the purposes of this article, "branch" means a permanent presence in Malta of a third country insurance undertaking or third country reinsurance undertaking, which has received authorisation in Malta to carry on business of insurance in Malta.

(7) The provisions of this article shall be without prejudice to any agreements concluded by the European Community with one or more third countries in terms of Article 171 of the Solvency II Directive."

Amendment of
article 12 of the
principal Act.

14. Article 12 of the principal Act shall be amended as follows:

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

(i) for the words "article 11(1)(d)(i)", there shall be substituted the words "article 11(1)(b)(i)";

(ii) in paragraph (a) thereof, for the words "designated as the company's representative", there shall be substituted the words "designated as the undertaking's representative";

(iii) in paragraph (b) thereof, for the words "on behalf of the company", there shall be substituted the words "on behalf of the undertaking"; and

(iv) in paragraph (c) thereof, for the words "of the

company", there shall be substituted the words "of the undertaking"; and

(b) in sub-article (2) thereof, for the words "obligations of the company", there shall be substituted the words "obligations of the undertaking".

15. For Part IV of the principal Act, there shall be substituted the following:

Substitution of
Part IV of the
principal Act.

"PART IV CONDITIONS FOR CARRYING ON BUSINESS OF INSURANCE

Title I: Financial Requirements

Own funds of
authorised
insurance and
reinsurance
undertakings.

14. (1) The own funds of an authorised insurance and reinsurance undertaking shall comprise the sum of basic own funds and ancillary own funds.

(2) The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to the prior written approval of the competent authority.

(3) The competent authority shall issue Insurance Rules to determine the items making up the basic own funds and ancillary own funds, determine what constitutes surplus funds, provide for the classification of own funds into tiers and the eligibility of the own funds, and any other matter relating thereto.

Solvency
Capital
Requirement.

15. (1) An authorised insurance and reinsurance undertaking shall hold eligible own funds covering the Solvency Capital Requirement.

(2) The Solvency Capital Requirement shall be calculated either in accordance with the standard formula as set out in Insurance Rules or using a full or partial internal model as approved by the competent authority. The process for the approval of the use of an internal model shall be set out in Insurance Rules.

(3) Where it is inappropriate for an authorised insurance or reinsurance undertaking to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in the Insurance Rules since the risk profile of the undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the competent authority may, by means of a decision stating the reasons, require the undertaking concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

Non-
Compliance
with the
Solvency
Capital
Requirement.

16. (1) An authorised insurance or reinsurance undertaking which fails to comply with article 15 shall immediately inform the competent authority as soon as it observes that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

(2) Within two months from the observation of non-compliance with the Solvency Capital Requirement, the authorised insurance or reinsurance undertaking shall submit a realistic recovery plan in accordance with Insurance Rules issued under article 18A for approval by the competent authority.

(3) The competent authority shall require the undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile of the undertaking to ensure compliance with the Solvency Capital Requirement.

(4) The competent authority may, if appropriate, extend that period by three months.

(5) The competent authority may issue Insurance Rules to determine the circumstances within which the period set out in sub-article (4) may be extended and the requirements to be complied with by the authorised insurance and reinsurance undertakings in such circumstances.

(6) In exceptional circumstances, where the competent authority is of the opinion that the financial situation of the authorised insurance or reinsurance undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking.

(7) Where the competent authority decides to restrict or prohibit the free disposal of the assets of that undertaking, it shall inform the European regulatory authorities of the host Member States or the overseas regulatory authorities of any measures it has taken. The competent authority may request those authorities concerned to take the same measures, and shall designate the assets to be covered by such measures.

Minimum
Capital
Requirement.

17. (1) An authorised insurance and reinsurance undertaking shall hold eligible basic own funds to cover the Minimum Capital Requirement.

(2) The Minimum Capital Requirement shall be calculated in accordance with Insurance Rules made for the purpose of this article, and shall be not less than the amounts (the absolute floor) as determined by the said Insurance Rules.

Non-
Compliance
with Minimum
Capital
Requirement.

18. (1) An authorised insurance or reinsurance undertaking which fails to comply with article 17 shall immediately inform the competent authority where it observes that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months.

(2) Within one month from the observation of non-compliance with the Minimum Capital Requirement, the undertaking concerned shall submit, for approval by the competent authority, a short-term realistic finance scheme, in accordance with Insurance Rules issued under article 18A, to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

(3) The competent authority may also restrict or prohibit the free disposal of the assets of the undertaking concerned.

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(4) Where the competent authority decides to restrict or prohibit the free disposal of assets of the undertaking concerned, it shall inform the European regulatory authorities of the host Member State or the overseas regulatory authorities, of any measures it has taken. The competent authority may request those authorities concerned to take the same measures, and shall designate the assets to be covered by such measures.

Recovery plan and finance scheme.

18A. The particulars to be provided in the recovery plan and the finance scheme required to be submitted pursuant to articles 16 and 18 shall be determined by Insurance Rules.

Identification and notification procedures.

18B. An authorised insurance or reinsurance undertaking shall have procedures in place, including the use of early warning indicators, to identify deteriorating financial conditions and shall immediately notify the competent authority when such deterioration occurs.

Powers of the competent authority in deteriorating financial conditions.

18C. (1) Notwithstanding the provisions of articles 16 and 18 and without prejudice to any of the measures that may be taken by the competent authority pursuant to article 28, where the solvency position of the authorised insurance or reinsurance undertaking continues to deteriorate, the competent authority shall have the power to take all measures necessary to safeguard the interests of policyholders, in the case of contracts of insurance, or the obligations arising out of contracts of reinsurance.

(2) In considering the measures to be taken, the competent authority shall take into account the level and duration of the deterioration of the solvency position of the undertaking concerned.

Valuation of assets and liabilities.

18D. Authorised insurance and reinsurance undertakings shall value their assets and liabilities in accordance with Insurance Rules made for the purposes of this Act.

Technical provisions.

18E. (1) Authorised insurance and reinsurance undertakings shall establish and maintain technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders and insureds of insurance or reinsurance contracts.

(2) The value and calculation of technical provisions shall be determined in accordance with Insurance Rules made for the purposes of this article.

(3) Without prejudice to anything contained in any other provisions under the Act, the competent authority may, whenever it deems it necessary, require the authorised insurance or reinsurance undertaking concerned to demonstrate the appropriateness of the level of the undertaking's technical provisions, as well as, the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

(4) To the extent that the calculation of technical provisions of an authorised insurance or reinsurance undertaking does not comply with the Insurance Rules made for the purposes of this article, the competent authority may require the insurance or reinsurance undertaking concerned to increase the amount of technical provisions so that they correspond to the level determined by such Insurance Rules.

(5) Where an authorised insurance or reinsurance undertaking fails to comply with the provisions of this article, the competent authority may prohibit the free disposal of its assets after having communicated its intentions to the European regulatory authority of the host Member State or the overseas regulatory authority. The competent authority shall designate the assets to be covered by such measures.

Report on
solvency and
financial
condition.

18F. (1) Without prejudice to the information which is to be submitted to the competent authority pursuant to article 32, an authorised insurance and reinsurance undertaking shall disclose publicly, on an annual basis, a report on the undertaking's solvency and financial condition. The report shall contain the information determined by Insurance Rules made for the purposes of this article.

(2) The competent authority shall, upon a written request by an authorised insurance or reinsurance undertaking, permit an undertaking not to disclose information where:

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(a) by disclosing such information, the competitors of the undertaking concerned would gain significant undue advantage;

(b) there are obligations to policyholders or other counterparty relationships binding the undertaking concerned to secrecy or confidentiality.

(3) Where non-disclosure of information is permitted by the competent authority, the authorised insurance or reinsurance undertaking concerned shall make a statement to this effect in its report on solvency and financial condition and shall state the reasons.

(4) The competent authority shall permit an authorised insurance or reinsurance undertaking to make use of or refer to public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required to be submitted under sub-article (1) in both their nature and scope.

(5) Where the reason for any permitted non-disclosure obtained pursuant to sub-article (2) ceases to exist, the undertaking concerned shall inform the competent authority without undue delay and such undertaking shall comply with the obligations arising under sub-article (1).

(6) In the event of any major development affecting significantly the relevance of the information disclosed in accordance with this article, an authorised insurance or reinsurance undertaking shall disclose appropriate information on the nature and effects of that major development. The circumstances considered as major developments and the disclosures to be made by the undertaking in such circumstances shall be determined by Insurance Rules.

(7) An authorised insurance and reinsurance undertaking may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with this article.

Custody of
assets required
to be
maintained in
Malta.

18G. (1) The competent authority may, with respect to assets which an undertaking is required by or under this Act to maintain in Malta, impose an additional requirement that 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 as may be prescribed by regulations made for the purposes of this article unless that requirement is otherwise imposed by any other provision of this Act; and the competent authority shall at all times have the right to demand from such person any information it may require to ensure that the provisions of this article are being complied with.

(2) Any requirement by or under this Act that assets of any kind or amount are to be maintained in Malta shall be satisfied if such assets are maintained in such country outside Malta and in such form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

(3) Any provision by or under this Act requiring an undertaking to maintain in Malta assets of any kind or amount may be satisfied by the undertaking if the undertaking produces a security in a form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

(4) The assets required to be maintained in Malta by or under this Act shall not be transferred, withdrawn or in any way encumbered without the permission of the competent authority given in writing or until the company has ceased to carry on the business it was authorised to carry on and proves to the satisfaction of the authority that it has no further liability. Such assets shall not be attachable by any court.

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Title II: Systems of Governance

Responsibility
of the Board of
Directors.

18H. The Board of Directors of an authorised insurance or reinsurance undertaking shall be ultimately responsible for the compliance by the undertaking concerned with the Act, regulations, and Insurance Rules issued thereunder, including any other obligations pursuant to the Solvency II Directive.

System of
governance.

18I. (1) Authorised insurance and reinsurance undertakings shall be required to have in place an effective system of governance which provides for sound and prudent management of the business of the undertaking. The system of governance requirements shall be laid down in Insurance Rules.

(2) An authorised insurance and reinsurance undertaking shall:

(a) ensure that all persons who effectively run the undertaking or have other key functions, at all times, satisfy the fit and proper criteria;

(b) have in place an effective risk management system, including a risk management function;

(c) as part of its risk management system, conduct its own risk and solvency assessment;

(d) have in place an effective internal control system, which shall include a compliance function;

(e) provide for an effective internal audit function;

(f) provide for an effective actuarial function; and

(g) if it outsources any of its functions or any insurance or reinsurance activities, remain fully responsible for discharging all of its obligations under this Act.

(3) The systems and functions referred to in sub-article (2) shall be determined by Insurance Rules.

(4) The system of governance shall be proportionate to the nature, scale and complexity of the operations of the authorised insurance or reinsurance undertaking."

16. Article 19 of the principal Act shall be amended as follows:

Amendment of article 19 of the principal Act.

(a) in the marginal note thereto, for the words "Financial year of authorised companies.", there shall be substituted the words "Financial year of authorised undertakings.";

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

"(1) Every undertaking whose head office is in Malta applying for authorisation under article 7 of this Act to carry on business of insurance in or from Malta shall notify in writing the competent authority of its financial year; and, failing such notice, the undertaking's financial year shall terminate on the thirty-first day of December of each year.";

(c) in sub-article (2) thereof, for the words "No company as aforesaid", there shall be substituted the words "No undertaking as aforesaid";

(d) in sub-article (3) thereof:

(i) for the words "Every company whose head office is in a country outside Malta", there shall be substituted the words "Every third country insurance or reinsurance undertaking"; and

(ii) for the words "an authorised company", there shall be substituted the words "an authorised undertaking";

(e) in sub-article (4) thereof:

(i) in paragraph (a) thereof, for the words "an authorised company", there shall be substituted the words "an authorised undertaking";

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

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"(b) in relation to a third country insurance or reinsurance undertaking, means an accounting period as is construed in accordance with the provisions of the laws of the country where the head office of the undertaking is situated governing the accounting period of such undertakings.".

Amendment of
article 20 of the
principal Act.

17. Article 20 of the principal Act shall be amended as follows:

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

(i) for the words "every company authorised under this Act shall, not later than six months from the closing of its financial year", there shall be substituted the words "every undertaking authorised under this Act shall, within the period stipulated by regulations made or Insurance Rules issued under article 32 or at any other time as may be authorised in writing by the competent authority, -";

(ii) in paragraph (a) thereof, for the words "competent authority;", there shall be substituted the words "competent authority; and";

(iii) paragraph (b) thereof shall be deleted;

(iv) paragraph (c) thereof shall be renumbered as paragraph (b); and

(v) for sub-paragraphs (i) and (ii) thereof, there shall be substituted the following:

"(i) in the case of an undertaking whose head office is in Malta, in accordance with Insurance Rules made for the purposes of this article; and

(ii) in the case of a third country insurance or reinsurance undertaking, in accordance with the provisions of the laws of the country where the head office of the undertaking is situated governing the financial statements of such undertakings.";

(b) in sub-article (1A) thereof:

(i) for the words "In each of the cases referred to in paragraphs (i) and (ii) in sub-article (1) the company shall provide", there shall be substituted the words "The

undertaking shall provide"; and

(ii) in the proviso thereof, for the words "Provided that the company", there shall be substituted the words "Provided that the undertaking";

(c) sub-article (2) thereof shall be deleted;

(d) sub-article (3) thereof shall be renumbered as sub-article (2);

(e) in sub-article (2) thereof, as renumbered, for the words "In the case of a company whose head office is in Malta, sub-article (1)(c) shall apply as respects the company's offices", there shall be substituted the words "In the case of an undertaking whose head office is in Malta, sub-article (1)(b) shall apply as respects the undertaking's offices"; and

(f) immediately after sub-article (2) thereof, as renumbered, there shall be added the following new sub-article:

"(3) The audited financial statements shall be drawn up and published in such manner and form as may be specified in Insurance Rules."

18. Article 21 of the principal Act shall be amended as follows: Amendment of article 21 of the principal Act.

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

"(1) Every undertaking authorised under this Act shall every year appoint an approved auditor as auditor to the undertaking whose duty shall be to report on the financial statements of the undertaking examined by him and on financial statements prepared by the undertaking.";

(b) in sub-article (2) thereof:

(i) for the words "If an authorised company fails", there shall be substituted the words "If an authorised undertaking fails"; and

(ii) for the words "for that company and shall fix the remuneration to be paid by that company", there shall be substituted the words "for that undertaking and shall fix the remuneration to be paid by that undertaking";

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(c) in sub-article (3) thereof:

(i) in the Maltese text, for the words "u ta' kull regola dwar l-assigurazzjoni", there shall be substituted the words "u ta' Regoli dwar l-Assigurazzjoni"; and

(ii) for the words "in respect of the company", there shall be substituted the words "in respect of the undertaking";

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

(i) for the words "auditor of an authorised company", there shall be substituted the words "auditor of an authorised undertaking"; and

(ii) for the words "under an appointment from, that company.", there shall be substituted the words "under an appointment from, that undertaking.";

(e) in sub-article (6) thereof:

(i) for the words "An authorised company", there shall be substituted the words "An authorised undertaking"; and

(ii) for the words "before the company's annual general meeting", there shall be substituted the words "before the undertaking's annual general meeting";

(f) in sub-article (7) thereof, for the words "the authorised company shall,", there shall be substituted the words "the authorised undertaking shall,";

(g) in sub-article (8) thereof, for the words "an authorised company to change", there shall be substituted the words "an authorised undertaking to change";

(h) in sub-article (9) thereof:

(i) for the words "an authorised company", there shall be substituted the words "an authorised undertaking";

(ii) for the words "to the company"; there shall be substituted the words "to the undertaking"; and

(iii) for the words "with the company", there shall

be substituted the words "with the undertaking";

(i) in sub-article (11) thereof, for the words "in the case of a company whose head office is in a country outside Malta", there shall be substituted the words "in the case of a third country insurance or reinsurance undertaking"; and

(j) in sub-article (12) thereof, for the words "apply to authorised companies", there shall be substituted the words "apply to authorised undertakings".

19. Article 22 of the principal Act shall be amended as follows:

Amendment of
article 22 of the
principal Act.

(a) in the marginal note thereto, for the words "Appointment of actuary by company with long term business.", there shall be substituted the words "Appointment of actuary by an undertaking with long term business.";

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

(i) for the words "Every company authorised under this Act to carry on long term business shall -", there shall be substituted the words "Every authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III as specified in the Second Schedule shall -"; and

(ii) in paragraph (a) thereof, for the words "to the company;", there shall be substituted the words "to the undertaking to perform the with-profits actuary function in respect of the said classes of its with-profits business, (if any).";

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

(i) for the words "A company", there shall be substituted the words "An undertaking"; and

(ii) for the words "the company shall,", there shall be substituted the words "the undertaking shall,";

(d) for sub-article (3) thereof, there shall be substituted the following:

"(3) If, on the expiry of any period specified in sub-article (1), the undertaking fails to make the required appointment, the undertaking shall not effect and carry

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out any new long term contracts of insurance in terms of the classes specified in sub-article (1) until the appointment is made."; and

(e) in sub-article (5) thereof:

(i) paragraphs (a) and (b) thereof shall be renumbered as paragraphs (b) and (c) respectively;

(ii) immediately before paragraph (b) thereof, as renumbered, there shall be added the following new paragraph:

"(a) does not hold a role or perform a function on behalf of the undertaking which could give rise to a significant conflict of interest";

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

"(b) is a Fellow of an Institute of Actuaries, or a Fellow of a Faculty of Actuaries, or holds actuarial qualifications of similar standing of an institute of repute recognised for such purposes by the competent authority and has the required skill and holds appropriate practical experience to perform his functions as an actuary; and";

(iv) for paragraph (c) thereof, as renumbered, there shall be substituted the following:

"(c) holds the competent authority's approval to act as actuary to perform the with-profits actuary function as set out in article 23.".

Amendment of
article 23 of the
principal Act.

20. Article 23 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "investigation of company", there shall be substituted the words "investigation of an undertaking";

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

"(1) Every authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III as specified in the Second Schedule shall,

at the close of its financial year, require the approved actuary to provide a report in respect of the period covered by the report affecting those classes of with-profits business of the undertaking.";

(c) sub-articles (2), (3), (4), (6) and (7) thereof, shall be deleted;

(d) immediately after sub-article (1) thereof, as amended, there shall be added the following new sub-article (2):

"(2) The information to be provided in the report shall be determined by Insurance Rules issued by the competent authority for the purposes of this article.";

(e) sub-articles (5) and (8) thereof, shall be renumbered as sub-articles (3) and (4), respectively;

(f) for sub-article (3) thereof, as renumbered, there shall be substituted the following:

"(3) The actuary's report shall be forwarded by the undertaking concerned to the competent authority, together with the audited financial statements of the undertaking required to be forwarded under article 20."; and

(g) in sub-article (4) thereof, as renumbered:

(i) for the words "a company whose head office is in a country outside Malta", there shall be substituted the words "a third country insurance undertaking"; and

(ii) for the words "authorised to carry on long term business, the competent authority may", there shall be substituted the words "authorised to carry on long term with-profits business in terms of classes I and III as specified in the Second Schedule, the competent authority may".

21. For article 24 of the principal Act, there shall be substituted the following:

Substitution of article 24 of the principal Act.

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"Obligations of auditors and actuaries to the competent authority.

24. (1) An auditor or an actuary of an authorised insurance or reinsurance undertaking or of a branch in Malta of a third country insurance or reinsurance undertaking shall have the duty to report immediately to the competent authority any fact or decision concerning that undertaking of which he becomes aware of in his capacity as auditor or actuary of any such authorised insurance or reinsurance undertaking or of any such branch which relates to any matter which may be prescribed or is likely to bring about the following:

(a) a serious qualification, or refusal, of the auditor's report on the accounts of the undertaking or the branch; or

(b) a grave impairment of the undertaking's ability to continue as a going concern; or

(c) a material breach of the provisions of this Act, regulations or any Insurance Rules which lay down the conditions governing authorisation or which specifically govern the carrying on of business of insurance by an authorised undertaking or branch; or

(d) non-compliance with the Solvency Capital Requirement; or

(e) non-compliance with the Minimum Capital Requirement.

(2) The auditor or actuary, as the case may be, shall likewise have a duty to report to the competent authority any facts or decisions of which he becomes aware of in the course of carrying out his duties which relate to or have a serious adverse effect upon the insured, the policyholder or any other interested person relating to the undertaking or the branch in Malta of a third country insurance or reinsurance undertaking of which he becomes aware of in his capacity as auditor or actuary to an undertaking having close links with an authorised insurance or reinsurance undertaking.

(3) Without prejudice to any provision contained in this Act, the competent authority may request the auditor or the actuary, as the case may be, to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (1) or (2) concerning the authorised insurance or reinsurance undertaking or branch in Malta of a third country insurance or reinsurance undertaking."

22. Article 25 of the principal Act shall be amended as follows: Amendment of article 25 of the principal Act.

(a) for the words "if the authorised company -", there shall be substituted the words "if the authorised insurance or reinsurance undertaking -";

(b) paragraph (a) thereof shall be deleted;

(c) paragraphs (b), (c) and (d) thereof shall be renumbered as paragraphs (a), (b) and (c), respectively;

(d) in paragraph (b) thereof, as renumbered, for the words "another company carrying on business", there shall be substituted the words "another undertaking carrying on business"; and

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

"(c) is a third country insurance or reinsurance undertaking, and the overseas regulatory authority in the country of registration, incorporation or constitution withdraws the authorisation from the undertaking."

23. Article 26 of the principal Act shall be amended as follows: Amendment of article 26 of the principal Act.

(a) in paragraph (a) thereof:

(i) for the words "or if the authorised company has concealed,", there shall be substituted the words "or if the authorised insurance or reinsurance undertaking has concealed,"; and

(ii) for the words "any regulations made thereunder or any insurance rule;", there shall be substituted the words "any regulations, or any Insurance Rules made

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thereunder;"

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

"(b) the authorised insurance or reinsurance undertaking ceases to carry on the business for which the authorisation was issued for more than six months; or";

(c) in paragraph (c) thereof, for the words "the authorised company", there shall be substituted the words "the authorised insurance or reinsurance undertaking";

(d) in paragraph (d) thereof, for the words "the authorised company does not fulfil", there shall be substituted the words "the authorised insurance or reinsurance undertaking does not fulfil";

(e) in paragraph (e) thereof, for the words "that any officer who effectively controls the business the company", there shall be substituted the words "that any of the directors, the controllers and any other person who effectively directs the business the undertaking";

(f) in paragraph (f) thereof, for the words "the authorised company", there shall be substituted the words "the authorised insurance or reinsurance undertaking";

(g) paragraphs (g), (h) and (i) thereof shall be renumbered as paragraphs (h), (j) and (k), respectively;

(h) immediately after paragraph (f) thereof, there shall be added the following new paragraph:

"(g) the authorised insurance or reinsurance undertaking does not commence to carry on business pursuant to the authorisation within twelve months of its issue; or";

(i) for paragraph (h) thereof, as renumbered, there shall be substituted the following:

"(h) the authorised insurance or reinsurance undertaking no longer possesses sufficient own funds as determined in article 14; or";

(j) immediately after paragraph (h) thereof, as

renumbered, there shall be added the following new paragraph:

"(i) the authorised insurance or reinsurance undertaking does not comply with the Minimum Capital Requirement and the competent authority considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement;"

(k) in paragraph (j) thereof, as renumbered, for the words "the authorised company", there shall be substituted the words "the authorised insurance or reinsurance undertaking";

(l) in paragraph (k) thereof, as renumbered:

(i) for the words "close links within the meaning of article 8, exist between the authorised company", there shall be substituted the words "close links exist between the authorised insurance or reinsurance undertaking"; and

(ii) for the words "in their enforcement.", there shall be substituted the words "in their enforcement; or"; and

(m) immediately after paragraph (k) thereof, as renumbered, there shall be added the following new paragraph:

"(l) any of the circumstances under which the competent authority would have been precluded from issuing an authorisation under this Act, materialises itself or where under this Act it would have been entitled to refuse to issue such authorisation."

24. Article 27 of the principal Act shall be amended as follows:

Amendment of
article 27 of the
principal Act.

(a) in sub-article (1) thereof, for the words "where the competent authority intends to suspend or revoke an authorisation it shall give the company concerned notice in writing", there shall be substituted the words "where the competent authority intends to suspend or revoke an authorisation pursuant to article 26, it shall give the undertaking concerned notice in writing";

(b) in sub-article (2) thereof:

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(i) for the words "shall state that the company concerned", there shall be substituted the words "shall state that the undertaking concerned"; and

(ii) for the words "not longer than fifteen days)", there shall be substituted the words "not longer than thirty days)";

(c) in sub-article (3) thereof, for the words "to the company concerned.", there shall be substituted the words "to the undertaking concerned.";

(d) in sub-article (4) thereof, for the words "issued to a company whose head office is in a country outside Malta", there shall be substituted the words "issued to a third country insurance or reinsurance undertaking";

(e) for sub-article (5) thereof, there shall be substituted the following:

"(5) In the case of a suspension or a revocation of an authorisation of an undertaking whose head office is in Malta, the competent authority shall:

(a) notify the European regulatory authorities accordingly in order to enable them to take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories;

(b) inform accordingly the overseas regulatory authority of any state in which the undertaking or its subsidiaries are carrying on the business of insurance."; and

(f) immediately after sub-article (5) thereof, as amended, there shall be added the following new sub-article:

"(6) The competent authority shall notify EIOPA of any revocation of authorisation in terms of articles 25 and 26.".

Amendment of
article 28 of the
principal Act.

25. Article 28 of the principal Act shall be amended as follows:

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

(i) in paragraph (a) thereof, for the words "require

the company", there shall be substituted the words "require the undertaking";

(ii) in paragraph (b) thereof, for the words "to advise the company", there shall be substituted the words "to advise the undertaking";

(iii) paragraphs (c), (d), (e), (f), (g), (h) and (i) thereof, shall be renumbered as paragraphs (d), (e), (f), (g), (h), (i) and (j) respectively;

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

"(c) restrict the free disposal of the assets of the authorised insurance undertaking, to safeguard the interests of the insured persons;"

(v) in paragraph (d) thereof, as renumbered:

(aa) for the words "the assets of the company", there shall be substituted the words "the assets of the undertaking"; and

(bb) for the words "policyholders, creditors and shareholders of the company", there shall be substituted the words "policyholders and legitimate creditors of the undertaking";

(vi) in paragraph (e) thereof, as renumbered, for the words "the business of the company", there shall be substituted the words "the business of the undertaking";

(vii) in paragraph (f) thereof, as renumbered, for the words "the company or, in the case of a company whose head office is in a country outside Malta", there shall be substituted the words "the undertaking or, in the case of a third country insurance or reinsurance undertaking";

(viii) in paragraph (g) thereof, as renumbered, for the words "the affairs of the company", there shall be substituted the words "the affairs of the undertaking";

(ix) in paragraph (h) thereof, as renumbered, for the words "paid by the company", there shall be substituted the words "paid by the undertaking";

(x) paragraph (i) thereof, as renumbered, shall be

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deleted; and

(xi) paragraph (j) thereof, as renumbered, shall be renumbered as paragraph (i);

(b) in sub-article (2) thereof:

(i) in paragraph (a) thereof, for the words "it shall be the duty of the company to act", there shall be substituted the words "it shall be the duty of the undertaking to act";

(ii) in paragraph (b) thereof:

(aa) for the words "under sub-article (1)(c), the company", there shall be substituted the words "under sub-article (1)(d), the undertaking";

(bb) for the words "of the company in respect of those assets, whether exercisable by the company in general meeting", there shall be substituted the words "of the undertaking in respect of those assets, whether exercisable by the undertaking in general meetings"; and

(cc) for the words "judicial representation of the company", there shall be substituted the words "judicial representation of the undertaking";

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

"(c) under sub-article (1)(e), the undertaking shall submit its business to the control of such person and shall provide him with such facilities as he may require the undertaking to provide him to carry on that business or to carry out the functions assigned to him under the said paragraph; and all the powers, functions and duties of the undertaking, whether exercisable by the undertaking in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the undertaking in all matters, shall be exercisable by and vest in him to the exclusion of any other person;"

(iv) in paragraph (d) thereof, for the words "under sub-article (1)(f) such person shall be the liquidator of the

company", there shall be substituted the words "under sub-article (1)(g) such person shall be the liquidator of the undertaking";

(c) for sub-article (3) thereof, there shall be substituted the following:

"(3) In the case of a third country insurance or reinsurance undertaking, the branches and offices in Malta of that undertaking shall, if the competent authority so directs and to the extent it so directs, be deemed to constitute a separate undertaking.";

(d) for sub-article (4) thereof, there shall be substituted the following:

Cap. 330 "(4) The provisions of article 16(8) of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the competent authority under this Act, and any regulations made thereunder or any Insurance Rules."; and

(e) in sub-article (5) thereof, for the words "may require the company concerned", there shall be substituted the words "may require the undertaking concerned".

26. In the heading of PART VII of the principal Act, for the words "SUPERVISION OF AUTHORISED COMPANIES", there shall be substituted the words "SUPERVISION OF AUTHORISED INSURANCE AND REINSURANCE UNDERTAKINGS".

Amendment of Part VII of the principal Act.

27. Article 29 of the principal Act shall be amended as follows:

Amendment of article 29 of the principal Act.

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

(i) for the words "an authorised company", there shall be substituted the words "an authorised insurance or reinsurance undertaking";

(ii) for the words "require any such company to -", there shall be substituted the words "require any such undertaking or any person who appears to be in possession of any relevant information and, or documentation to do all or any of the following:";

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

"(a) to furnish to it, at such time and place and in such form as it may specify, such information and documentation as it may require including existing telephone and existing data traffic records, with respect to the business such undertaking is authorised to carry on; or with respect to any person with whom the undertaking has close links;"

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

"(b) to furnish to it any information or documentation aforesaid verified in such manner and in such language, as it may specify;"

(v) in paragraph (c) thereof, for the words "attend before it", there shall be substituted the words "to attend before it";

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

(i) for the words "an authorised company", there shall be substituted the words "an authorised insurance or reinsurance undertaking"; and

(ii) for the words "may require any person, whether indicated", there shall be substituted the words "may require any person, including a person to which the undertaking has outsourced any activities or functions, whether indicated";

(c) immediately after sub-article (7) thereof, there shall be added the following new sub-article (8):

"(8) Without prejudice to the other provisions of this article, an authorised insurance or reinsurance undertaking may be required by the competent authority to submit to the Central Bank of Malta such information as the Bank may reasonably require for the discharge of its duties under the Central Bank of Malta Act."

28. Article 30 of the principal Act shall be amended as follows: Amendment of article 30 of the principal Act.

(a) in the marginal note thereto, for the words "examine the affairs of authorised companies.", there shall be substituted the words "examine the affairs of authorised undertakings and service providers.";

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

(i) for the words "the investigation of companies", there shall be substituted the words "the investigation of undertakings"; and

(ii) for the words "one or more inspectors to examine the affairs of an authorised company", there shall be substituted the words "one or more inspectors to investigate and report on the affairs of an authorised insurance or reinsurance undertaking";

(c) in paragraph (b) of sub-article (2) thereof, for the words "to the said Authority.", there shall be substituted the words "to the said authority.";

(d) in sub-article (3) thereof, for the words "may forward to the company concerned a copy of any report", there shall be substituted the words "may forward to the authorised insurance or reinsurance undertaking concerned a copy of any report, or any part thereof,";

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

"(4) Where the affairs of an authorised insurance or reinsurance undertaking are under examination, it shall be the duty of all officers and agents of the undertaking to produce to an inspector all books and documents of or relating to the undertaking and otherwise to give to an inspector all assistance in connection with the examination which they are reasonably able to give; and if an officer or an agent of the undertaking refuses to produce any books or documents which it is his duty under this article to produce, or refuses to answer any question which is put to him by an inspector with respect to the affairs of the undertaking, an inspector shall refer the matter to the competent authority and the competent authority shall thereupon enquire into the case and take appropriate action as it deems necessary.";

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(f) in sub-article (5) thereof, for the words "to an authorised company", there shall be substituted the words "to an authorised insurance or reinsurance undertaking";

(g) sub-articles (6) and (7) shall be renumbered as sub-articles (9) and (10) respectively;

(h) immediately after sub-article (5) thereof, there shall be added the following new sub-articles:

"(6) Where the information relating to an authorised insurance or reinsurance undertaking is in any language other than Maltese or English, the competent authority or any inspector appointed by it, may require that such information be submitted in either the English or Maltese language.

(7) (a) Where an authorised insurance or reinsurance undertaking outsources a function or activity, the competent authority shall have effective access to the business premises of the service provider and must be able to exercise those rights of access.

(b) Where the service provider is located in a Member State or EEA State, other than Malta, the competent authority shall inform the appropriate authority of the Member State or EEA State of the service provider prior to conducting an on-site inspection at the premises of the service provider. In the case of a non-supervised entity, the appropriate authority shall be the European regulatory authority concerned. The competent authority may delegate such on-site inspections to the European regulatory authority of the Member State or EEA State where the service provider is located.

(8) Where the competent authority has informed the European regulatory authority that it intends to carry out an on-site inspection in accordance with sub-article (7), or where it carries out an on-site inspection in accordance with the said sub-article, where the competent authority is unable in practice to exercise its right to carry out that on-site inspection, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.";

(i) in sub-article (9) thereof, as renumbered, for the

words "shall be paid by the company concerned", there shall be substituted the words "shall be paid by the undertaking concerned";

(j) for sub-article (10) thereof, as renumbered, there shall be substituted the following:

Cap. 487 "(10) In this article, any reference to officers or to agents shall include a reference to former as well as present officers or agents and the expression "agents", in relation to an authorised insurance or reinsurance undertaking, shall include an insurance intermediary, registered or enrolled under the Insurance Intermediaries Act, or registered with an authority or body in the Member State or EEA State responsible for the supervision of insurance intermediaries acting for the undertaking, the bankers, the auditors and, in the case of an undertaking authorised to carry on long term business, the actuary of the undertaking and a person as may be prescribed by regulations made for the purposes of article 18G."; and

(k) immediately after sub-article (10) thereof, as renumbered, there shall be added the following new sub-articles:

"(11) The powers available to the competent authority pursuant to articles 29 to 31A with regard to authorised insurance and reinsurance undertakings shall also be available with regard to the outsourced activities of such undertakings.

(12) The provisions of sub-article (7) shall apply *mutatis mutandis* where the service provider is located in a country outside Malta, which is not a Member State or EEA State."

29. Article 31 of the principal Act shall be amended as follows: Amendment of article 31 of the principal Act.

(a) in sub-article (2) thereof, for the words "on producing evidence of his authority," there shall be substituted the words "on producing, if required, evidence of his authority,"; and

(b) in the proviso to sub-article (3) thereof, for the

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words "Provided that where an entry", there shall be substituted the words "Provided that, where an entry".

Amendment of
article 31A of
the principal
Act.

30. Article 31A of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "within the time and in the manner stated in the directive.", there shall be substituted the words "within the time and in the manner stated in the directive or any further directive.";

(b) sub-articles (2) and (3) thereof shall be renumbered as sub-articles (3) and (4), respectively; and

(c) immediately after sub-article (1) thereof, there shall be added the following new sub-article:

"(2) Without prejudice to the generality of the foregoing provisions of this article, a directive under this article may –

(a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;

(b) require that any officer of an undertaking having functions in relation to the holder of an authorisation be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed, or removed and replaced, by another person acceptable to the competent authority;"

Addition of
articles 31B and
31C to the
principal Act.

31. Immediately after article 31A of the principal Act, there shall be added the following new articles:

"Supervisory
review
process.

31B.(1) The competent authority shall review and evaluate the strategies, processes and reporting procedures which are established by authorised undertakings to comply with this Act, regulations made and Insurance Rules issued thereunder. This review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

(2) The competent authority shall in particular review and evaluate compliance with the following:

(a) the system of governance, including the own-risk and solvency assessment, as set out in article 18I;

(b) the technical provisions as provided for in article 18E;

(c) the capital requirements as provided for in articles 15 and 17;

(d) the investment rules as set out in Insurance Rules issued in terms of this Act;

(e) the quality and quantity of own funds as determined by Insurance Rules issued pursuant to article 14; and

(f) where the authorised insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Insurance Rules issued pursuant to article 15.

(3) The competent authority shall assess the adequacy of the methods and practices of the authorised insurance or reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

(4) The competent authority shall assess the ability of the authorised undertakings to withstand those possible events or future changes in economic conditions.

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(5) Where the competent authority identifies any weakness or deficiency as a consequence of the supervisory review process, it shall request the insurance or reinsurance undertaking concerned to remedy such weakness or deficiency within such period and in such manner as it may deem necessary or appropriate in the circumstances.

(6) The reviews, evaluations and assessments referred to sub-articles (1) to (4), shall be conducted regularly and the competent authority shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

(7) In the case of events or future changes in economic conditions that could have unfavourable effects on the overall financial standing of authorised insurance or reinsurance undertakings, in addition to the calculation of the Solvency Capital Requirement, the competent authority may require undertakings to carry out such tests as may be determined to assess the ability of the undertakings concerned to withstand such events or future changes in economic conditions that could have unfavourable effects on their overall financial stability.

Power to set a capital add-on.

31C.(1) Following the supervisory review process carried out in terms of article 31B, the competent authority may, in exceptional circumstances, set a capital add-on for an authorised insurance or reinsurance undertaking stating the reasons for its decision. Such power shall be exercised in the following cases:

(a) where it concludes that the risk profile of the authorised insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with article 15; and

(i) the requirement to use an internal model under article 15(3) is inappropriate or has been ineffective; or

(ii) while a partial or full internal model is being developed in accordance with article 15(3);

(b) where it concludes that the risk profile of the authorised insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(c) where it concludes that the system of governance of an authorised insurance or reinsurance undertaking deviates significantly from the standards laid down in article 18I and Insurance Rules issued thereunder, that those deviations prevent the undertaking from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;

(d) the authorised insurance or reinsurance undertaking applies the matching adjustment or the volatility adjustment referred to in Articles 77b and 77d of the Solvency II Directive, respectively, or the transitional measures referred to in Articles 308c and 308d of the said Directive and the competent authority concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures; or

(e) in any of those circumstances as may be additionally specified by the Solvency II Directive.

(2) In the circumstances set out:

(a) in paragraphs (a) and (b) of sub-article (1), the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3) of the Solvency II Directive;

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(b) in paragraph (c) of sub-article (1), the capital add-on shall be proportionate to the material risk arising from the deficiencies which gave rise to the decision of the competent authority to set the add-on; and

(c) in paragraph (d) of sub-article (1), the capital add-on shall be proportionate to the material risk arising from the deviation referred to in that paragraph.

(3) In the cases set out in paragraphs (b) and (c) of sub-article (1), the authorised insurance or reinsurance undertaking shall remedy the deficiencies that led to the imposition of the capital add-on without delay.

(4) The competent authority shall review the capital add-on, at least once a year and it shall approve the removal of such capital add-on when the undertaking has remedied the deficiencies which led to its imposition.

(5) The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement:

Provided that, the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with sub-article (1)(c), for the purposes of the calculation of the risk margin referred to in Article 77(5) of the Solvency II Directive."

Amendment of article 32 of the principal Act.

32. For article 32 of the principal Act, there shall be substituted the following:

"Information to be provided for supervisory purposes.

32. An authorised insurance and reinsurance undertaking shall submit to the competent authority the information which is necessary for the purposes of supervision, taking into account the objectives of supervision, as may be specified by means of regulations or Insurance Rules which shall also specify the period within which this information is to be submitted."

Addition of new Part VIIA of the principal Act.

33. Immediately after Part VII of the principal Act, there shall be added the following new part:

"PART VIIA
GROUP SUPERVISION

Group
supervision.

32A. The competent authority shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group in accordance with regulations or Insurance Rules issued for the purposes of this Part.

Group
supervisor.

32B. (1) The group supervisor of insurance and reinsurance undertakings which are part of a group, shall be responsible for co-ordination and the exercise of group supervision.

(2) For the purposes of this Part, "group supervisor" means the supervisory authority responsible for group supervision, determined in accordance with Article 247 of the Solvency II Directive.

(3) Where the competent authority is the group supervisor, it shall, with regard to group supervision, carry out the following functions:

(a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the carrying out of the supervisory tasks of authorities responsible for the supervision of an individual insurance or reinsurance undertaking in the group;

(b) supervisory review and assessment of the financial situation of the group;

(c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245 of the Solvency II Directive;

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(d) assessment of the system of governance of the group, as set out in Article 246 of the Solvency II Directive, and of whether the board of directors of the participating undertaking fulfils the requirements of fitness and properness set out in Articles 42 and 257 of the Solvency II Directive;

(e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

(f) other tasks, measures and decisions assigned to the competent authority, as group supervisor, by the Solvency II Directive or deriving from the application of that Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 of Solvency II Directive and leading the process for permitting the application of the regime established in Articles 237 to 240 of the said Directive.

(4) In order to facilitate the exercise of group supervision tasks, set out in sub-article (3), a college of supervisors shall be established. It shall be chaired by the competent authority where it is the group supervisor. The membership, functioning and consultation processes of the college of supervisors shall be determined by regulations or Insurance Rules.

Co-operation
and exchange
of information
with respect to
group
supervision.

32C. (1) Where the competent authority is the group supervisor, it shall cooperate closely with the other authorities responsible for the supervision of individual insurance or reinsurance undertakings in a group, in particular, in cases where an insurance or reinsurance undertaking within the group encounters financial difficulties.

(2) Where the competent authority is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall cooperate closely with other responsible authorities in the group and the group supervisor, in particular, in cases where an insurance or reinsurance undertaking encounters financial difficulties.

(3) Where the competent authority is the group supervisor or is one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall -

(a) provide other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group with such information so as to allow and facilitate the exercise of the supervisory tasks concerned under the Solvency II Directive;

(b) communicate all relevant information to such authorities without delay, as soon as it becomes available or exchange information on request; and

(c) call immediately for a meeting of all the authorities involved in the supervision of the group, at least where -

(i) it becomes aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;

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(ii) it becomes aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used, in Title III, Chapter II, Section I, Subsection 4 of the Solvency II Directive; or

(iii) other exceptional circumstances are occurring or have occurred.

(4) Where one of the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group has not communicated relevant information, or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the competent authority may refer the matter to EIOPA.

(5) Where the group supervisor fails to carry out the tasks referred to in paragraph (1) of Article 248 of the Solvency II Directive, or where the members of the college of supervisors do not cooperate to the extent required by that sub-article, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) Where the competent authority is the group supervisor, it shall provide the authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group and EIOPA with information regarding the group in accordance with Article 19, Article 51(1) and Article 254(2) of the Solvency II Directive, in particular regarding the legal structure and the governance and organisational structure of the group.

(7) Without prejudice to Article 248 of the Solvency II Directive, the competent authority shall, where a decision is of importance for the supervisory tasks of the other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, prior to taking any decision, consult the said authorities in the college of supervisors with regard to the following:

(a) changes in the shareholding structure, organisational or management structure of an authorised insurance and reinsurance undertaking which is part of a group and which requires the approval or authorisation of the competent authority;

(b) the decision on the extension of the recovery period in accordance with Article 138(3) and (4) of the Solvency II Directive;

(c) major sanctions or exceptional measures taken by the competent authority, including the imposition of a capital add-on to the Solvency Capital Requirement under article 31C and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement as determined in Insurance Rules made for the purposes of Title I, Chapter VI, Section 4, Subsection 3 of the Solvency II Directive.

(8) For the purposes of paragraph (b) and (c) of sub-article (7) and where the competent authority is not the group supervisor, the group supervisor shall always be consulted.

(9) Where the competent authority is considering a decision based on information received from other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group, it shall consult such authorities concerned before taking that decision.

(10) Without prejudice to Article 248 of the Solvency II Directive, the competent authority may decide not to consult other authorities in cases of urgency or where such consultation may jeopardise the effectiveness of its decision. In such a case, the competent authority shall without delay, inform the other authorities responsible for the supervision of an individual insurance or reinsurance undertaking in a group.

(11) Where the competent authority is the group supervisor and requires information from an undertaking for the purposes of Article 254(2) of the Solvency II Directive, which has already been given to another authority responsible for the supervision of an individual insurance or reinsurance undertaking in a group, the competent authority shall, whenever possible, contact that authority to obtain such information.

(12) Where a parent undertaking has its head office in Malta and the competent authority is not the group supervisor pursuant to Article 247 of the Solvency II Directive, the competent authority shall, upon request by the group supervisor, require the parent undertaking to provide any relevant information for the exercise of group supervision as set out in Article 248 of the Solvency II Directive, and the competent authority shall transmit such information to the group supervisor.

(13) Where the competent authority is the group supervisor, it may ask the European regulatory authority of a parent undertaking which has its head office in another Member State, to request such undertaking to submit any information which would be relevant for the exercise of its co-ordination rights and duties as set out in Article 248 of the Solvency II Directive, and to transmit it directly to the competent authority.

(14) Information received for the purposes of this article shall be treated as confidential and protected by the duty of professional secrecy.

Verification of
information.

32D.(1) Without prejudice to article 30, the competent authority may carry out in Malta, itself or through a person appointed for that purpose, on-site verification of information as referred to in Article 254 of the Solvency II Directive on the premises of any of the following:

(a) an insurance or reinsurance undertaking which is subject to group supervision;

(b) related undertakings of the undertaking referred to in paragraph (a);

(c) parent undertakings of the undertaking referred to in paragraph (a);

(d) related undertakings of a parent undertaking of the undertaking referred to in paragraph (a).

(2) Where the competent authority requires, in specific cases, to verify information concerning an undertaking, whether regulated or not, which forms part of a group and is situated in another Member State, the competent authority shall:

(a) request the European regulatory authority to enable the competent authority to carry out the on-site verification itself; or

(b) request the European regulatory authority to carry out such verification on its behalf, or to appoint an auditor or an expert to carry out such verification; or

(c) in cases where it does not carry out the on-site verification itself, request to participate in the carrying out of such verification.

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(3) Where the competent authority receives, in specific cases, a request by a European regulatory authority to verify the information concerning an undertaking situated in Malta, whether regulated or not, which is part of a group, the competent authority shall act upon that request either by carrying out the on-site verification itself, by allowing an auditor or expert to carry it out, or by allowing the European regulatory authority which made the request to carry it out itself, and such authority may, where it does not carry out such verification itself, participate in the on-site verification.

(4) Where the competent authority has received a request pursuant to sub-article (3), it shall inform the group supervisor of the action taken pursuant to sub-article (3).

(5) Where the request to a European regulatory authority to have a verification carried out in accordance with sub-article (2) has not been acted upon within two weeks, the competent authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

(6) For the purposes of sub-articles (2) and (3), in accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examinations where they are carried out jointly by the competent authority and any one or more European regulatory authorities.

Parent undertakings outside the Union: verification of equivalence.

32E. The competent authority may adopt regulations or Insurance Rules for the purposes of verification of equivalence of supervision of parent undertakings with their head office in a third country, which form part of a group, as set out in Chapter IV of the Solvency II Directive.

Parent undertaking as a mixed-activity insurance holding company.

32F. The competent authority may adopt regulations or Insurance Rules where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company."

Amendment of article 33 of the principal Act.

34. Article 33 of the principal Act shall be amended as follows:

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

(i) for the words "under which a company authorised under this Act ("the transferor"), is to transfer to another company," there shall be substituted the words "under which an authorised insurance undertaking ("the transferor"), is to transfer to another undertaking,";

(ii) in sub-paragraph (a) thereof, for the words "the transferor is a company whose head office is in Malta," there shall be substituted the words "the transferor is an undertaking whose head office is in Malta,"; and

(iii) in sub-paragraph (b) thereof, for the words "the transferor is a company whose head office is in a country outside Malta," there shall be substituted the words "the transferor is a third country insurance undertaking,";

(b) in sub-article (2) thereof:

(i) in sub-paragraph (ii) of paragraph (a) thereof, for the words "where the transferor is a company which carries on business from Malta", there shall be substituted the words "where the transferor is an undertaking which carries on business from Malta"; and

(ii) in sub-paragraph (ii) of paragraph (c) thereof, for the words "where the transferor is a company which carries on business from Malta", there shall be substituted the words "except in so far as the competent authority has otherwise directed, where the transferor is an undertaking which carries on business from Malta";

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

(i) in sub-paragraph (ii) of paragraph (a) thereof, for the words "authorised under article 6 or article 23 of First Council Directive of 24 July 1973 on the co-ordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC) to carry on general business", there shall be substituted the words "authorised under Article 14 or Article 162 of the Solvency II Directive to carry on general business";

(ii) in sub-paragraph (iii) of paragraph (a) thereof, for the words "within sub-paragraphs (i) and (ii), the transferee has", there shall be substituted the words "within sub-paragraphs (i) and (ii) of this paragraph, the transferee

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has";

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

"(b) (i) the transferee referred to in sub-paragraph (i) of paragraph (a) of this sub-article possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (a) of this sub-article possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement provided for in Article 100 of the Solvency II Directive; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred; and";

(iv) in paragraph (c) thereof:

(aa) in sub-paragraph (i) thereof, for the words "if the transferee is a company authorised", there shall be substituted the words "if the transferee is an undertaking authorised";

(bb) sub-paragraph (ii) thereof shall be renumbered as sub-paragraph (iii), and immediately after sub-paragraph (i) thereof, there shall be added the following new sub-paragraph (ii):

"(ii) if the transferee is a European insurance undertaking, the transferee's financial resources are consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; or"; and

(cc) in sub-paragraph (iii) thereof, as renumbered, for the words "if the transferee is a company whose head office is in a country outside Malta," there shall be substituted the words "if the transferee is a third country insurance undertaking,";

(v) in paragraph (d) thereof:

(aa) for the words "the transferor is a company", there shall be substituted the words "the transferor is an undertaking";

(bb) in sub-paragraph (i) thereof, for the words "the overseas regulatory authority", there shall be substituted the words "the European regulatory authority"; and

(cc) in sub-paragraph (ii) thereof, for the words "the overseas regulatory authority", there shall be substituted the words "the European regulatory authority";

(vi) in paragraph (e) thereof:

(aa) for the words "if the transferor is a company", there shall be substituted the words "if the transferor is an undertaking";

(bb) in sub-paragraph (i) thereof, for the words "the overseas regulatory authority", there shall be substituted the words "the European regulatory authority";

(cc) sub-paragraph (ii) thereof shall be renumbered as sub-paragraph (iii), and immediately after sub-paragraph (i) thereof, there shall be added the following new sub-paragraph (ii):

"(ii) the overseas regulatory authority where the risk is situated has been notified of the proposed transfer; and"; and

(dd) in sub-paragraph (iii) thereof, as renumbered, for the words "either the overseas regulatory authority has consented to the transfer or the overseas regulatory authority has not

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refused", there shall be substituted the words "either the European regulatory authority or the overseas regulatory authority has consented to the transfer or the European regulatory authority or the overseas regulatory authority has not refused"; and

(d) in paragraph (a) of sub-article (5) thereof, for the words "of its decision in the Gazette and in such other manner", there shall be substituted the words "of its decision in such manner".

Amendment of
article 34 of the
principal Act.

35. Article 34 of the principal Act shall be amended as follows:

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

"(2) A transfer approved by the competent authority shall automatically be valid against policyholders, the insured persons and any other person having rights or obligations arising out of the contracts transferred."; and

(b) for sub-article (3) thereof, as renumbered, there shall be substituted the following:

"(3) Except in so far as the competent authority may otherwise direct, a policyholder whose policy is included in such a scheme shall be given written notice of its carrying out by the transferee.".

Amendment of
article 35 of the
principal Act.

36. Article 35 of the principal Act shall be amended as follows:

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

(i) for the words "carried on by a company authorised under this Act ("the transferor company"), is to be transferred to another company whether authorised thereunder or not ("the transferee company"),", there shall be substituted the words "carried on by an authorised insurance undertaking under this Act ("the transferor"), is to be transferred to another undertaking whether authorised thereunder or not ("the transferee"),";

(ii) in paragraph (a) thereof, for the words "where the transferor company is a company", there shall be substituted the words "where the transferor is an

undertaking";

(iii) in paragraph (b) thereof, for the words "the transferor company is a company whose head office is in a country outside Malta," there shall be substituted the words "the transferor is a third country insurance undertaking,"; and

(iv) in the paragraph immediately following paragraph (b), for the words "the transferor company or the transferee company shall," there shall be substituted the words "the transferor or the transferee shall," and in the Maltese text, for the words "titlob", there shall be substituted the words "jitlob";

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

(i) in sub-paragraph (ii) of paragraph (a) thereof, for the words "where the transferor company is a company which carries on business", there shall be substituted the words "where the transferor is an undertaking which carries on business";

(ii) in sub-paragraph (ii) of paragraph (b) thereof, for the words "policyholders of the companies concerned," there shall be substituted the words "policyholders of the undertakings concerned,";

(iii) in the paragraph immediately following sub-paragraph (ii) of paragraph (b), for the words "claim to the transferor company", there shall be substituted the words "claim to the transferor";

(iv) in paragraph (c) thereof, for the words "elapsed since the date of service; and", there shall be substituted the words "elapsed since the date of service";

(v) in paragraph (d) thereof:

(aa) in sub-paragraph (i) thereof, for the words "of the companies concerned," there shall be substituted the words "of the undertakings concerned,";

(bb) in sub-paragraph (ii) thereof, for the words "the transferor company", there shall be substituted the words "the transferor";

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(cc) in indent (aa) of sub-paragraph (ii) thereof, for the words "a company whose", there shall be substituted the words "an undertaking whose";

(dd) in indent (bb) of sub-paragraph (ii) thereof, for the words "a company whose head office is in a country outside Malta", there shall be substituted the words "a third country insurance undertaking";

(vi) in the paragraph immediately following indent (bb) of sub-paragraph (ii) of paragraph (d) thereof, for the words "such fee as may be fixed by the Tribunal.", there shall be substituted the words "such fee as may be fixed by the Tribunal; and"; and

(vii) immediately after the paragraph following indent (bb) of sub-paragraph (ii) of paragraph (d) thereof, there shall be inserted the following new paragraph (e):

"(e) the notice and the statement referred to in this sub-article shall state that written representations concerning the transfer may be sent to the Tribunal within a period determined by the Tribunal.";

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

"(4) On any application filed under sub-article (1):

(a) the competent authority may be heard by the Tribunal; and

(b) the competent authority and any policyholder who alleges that he would be adversely affected by the carrying out of the scheme and every other person who claims an interest in a policy included in the proposed transfer and has given notice of such interest to the transferor, shall be entitled to make written representations.";

(d) in sub-article (5) thereof:

(i) in sub-paragraph (i) of paragraph (a) thereof, for the words "the transferee company is,", there shall be

substituted the words "the transferee is," and in the Maltese text, for the words "tkun awtorizzata taht l-artikolu 7 biex tmexxi kummerċ fit-tul", there shall be substituted the words "ikun awtorizzat taht l-artikolu 7 biex imexxi kummerċ fit-tul";

(ii) in sub-paragraph (ii) of paragraph (a) thereof:

(aa) for the words "the transferee company is," there shall be substituted the words "the transferee is,";

(bb) for the words "authorised under article 4 or article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance," there shall be substituted the words "authorised under Article 14 or Article 162 of the Solvency II Directive,";

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

"(b) (i) the transferee referred to in sub-paragraph (i) of paragraph (a) of this sub-article, produces evidence that after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (a) of this sub-article, produces evidence that after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement provided for in Article 100 of the Solvency II Directive ; or

(iii) if the transferee does not fall within sub-paragraphs (i) and (ii), the transferee possesses, or will possess before the scheme takes effect, the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred;

(iv) (aa) if the transferee is authorised under this Act, its financial resources

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are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(bb) if the transferee is a third country insurance undertaking, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred;"

(iv) in paragraph (c) thereof:

(aa) for the words "if the transferor is a company", there shall be substituted the words "if the transferor is an undertaking";

(bb) in sub-paragraph (i) thereof, for the words "the overseas regulatory authority", there shall be substituted the words "the European regulatory authority";

(cc) in sub-paragraph (ii) thereof, for the words "the overseas regulatory authority", there shall be substituted the words "the European regulatory authority";

(e) in sub-article (6) thereof:

(i) for the words "the transferor company is a company", there shall be substituted the words "the transferor is an undertaking";

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

"(a) that the European regulatory authority in that country has been notified; or";

(iii) paragraph (b) thereof shall be renumbered as paragraph (c), and immediately after paragraph (a) thereof, there shall be added the following new paragraph (b):

"(b) the overseas regulatory authority has been notified of the proposed transfer; and"; and

(iv) in paragraph (c) thereof, as renumbered, for the words "the authority has consented to the scheme or that

the authority", there shall be substituted the words "the European regulatory authority or the overseas regulatory authority has consented to the scheme or that any such authority"; and

(f) in sub-article (7) thereof, for the words "the transferee company shall, within ten days from the date on which the approval is made or such longer period as the competent authority may allow," there shall be substituted the words "the transferee shall, within ten days from the date on which the approval is made or such longer period as the Tribunal may allow,"; and in the Maltese text, for the word "tiddepożita" there shall be substituted the word "jiddepożita".

37. In article 36 of the principal Act, for the words "against the transferee company of any legal proceedings pending by or against the transferor company which relate to the scheme.", there shall be substituted the words "against the transferee of any legal proceedings pending by or against the transferor which relate to the scheme.".

Amendment of
article 36 of the
principal Act.

38. Article 37 of the principal Act shall be amended as follows:

Amendment of
article 37 of the
principal Act.

(a) in the marginal note thereto, for the words "Exemption under this Part.", there shall be substituted the words "Transfer of business restricted to reinsurance.";

(b) sub-article (1) thereof shall be deleted;

(c) sub-article (2) thereof shall be renumbered as the whole article;

(d) in the said article, as renumbered:

(i) for the words "Where a company authorised", there shall be substituted the words "Where an undertaking authorised"; and

(ii) in sub-paragraph (ii) of paragraph (a) thereof, for the words "article 4 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EEC and 2002/83/EC," there shall be substituted the words "Article 14 or 162 of the Solvency II Directive,";

(iii) for sub-paragraphs (i) and (ii) of paragraph (b) thereof, there shall be substituted the following:

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"(i) the transferee referred to in sub-paragraph (i) of paragraph (a) possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement required to be maintained under this Act;

(ii) the transferee referred to in sub-paragraph (ii) of paragraph (a) possesses, after taking the proposed transfer into account, the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 or 166 of the Solvency II Directive; or"; and

(iv) in paragraph (c) thereof:

(aa) in sub-paragraph (i) thereof, for the words "the transferee is a company", there shall be substituted the words "the transferee is an undertaking"; and

(bb) in paragraph (ii) thereof, for the words "transferee is a company whose head office is in a country outside Malta,", there shall be substituted the words "transferee is a third country reinsurance undertaking,".

Addition of
article 37A to
the principal
Act.

39. Immediately after article 37 of the principal Act, there shall be added the following new article 37A:

"Transfer of
business of
insurance to an
authorised
insurance or
reinsurance
undertaking.

37A. (1) Where it is proposed to carry out a transfer of business of insurance under which the whole or part of the general business or long term business of an insurance or reinsurance undertaking is to be transferred to an undertaking authorised under this Act ("the transferee") by an undertaking whose head office is in a country outside Malta, the transferee shall notify the competent authority of the particulars of the proposed transfer and no such transfer shall take place unless and until the competent authority has signified its consent in writing.

(2) Where the competent authority has required a recovery plan or a finance scheme in terms of article 16 or 18, it shall refrain from issuing a certificate of solvency for the purposes of this Part of this Act for as long as it considers that the rights of policyholders or the contractual obligations of the reinsurance undertaking are prejudiced."

40. Article 38 of the principal Act shall be amended as follows:

Amendment of article 38 of the principal Act.

(a) in the marginal note thereto, for the words "Participation in an authorised company.", there shall be substituted the words "Changes in shareholding of an authorised undertaking.";

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

(i) in sub-paragraph (a) thereof, for the words "an authorised company;", there shall be substituted the words "an authorised insurance or reinsurance undertaking;"

(ii) in sub-paragraph (b) thereof, for the words "in an authorised company;", there shall be substituted the words "in an authorised insurance or reinsurance undertaking;"

(iii) in sub-paragraph (c) thereof:

(aa) for the words "in an authorised company", there shall be substituted the words "in an authorised insurance or reinsurance undertaking";

(bb) for the words "the authorised company would become its subsidiary,", there shall be substituted the words "the authorised insurance or reinsurance undertaking would become its subsidiary,";

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

(i) in paragraph (a) thereof, for the words "in an authorised company;", there shall be substituted the words "in an authorised insurance or reinsurance undertaking;"

(ii) in paragraph (c) thereof, for the words "the authorised company", there shall be substituted the words

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"the authorised insurance or reinsurance undertaking";

(d) in sub-article (3) thereof, the words "within the meaning of the Financial Markets Act or on an equivalent market in a non-Member State or non-EEA State" shall be deleted;

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

"(4) Notwithstanding the provisions of sub-articles (1) and (2), it shall be the duty of an authorised insurance or reinsurance undertaking and of the directors thereof, to notify the competent authority forthwith upon becoming aware that any person intends to take any of the actions set out in these sub-articles.";

(f) in sub-article (5) thereof:

(i) for the words "any authorised company takes or decides", there shall be substituted the words "any authorised insurance or reinsurance undertaking takes or intends";

(ii) in sub-paragraph (a) thereof, for the words "authorised company", there shall be substituted the words "authorised insurance or reinsurance undertaking";

(iii) in sub-paragraph (c) thereof, for the words "authorised company", there shall be substituted the words "authorised insurance or reinsurance undertaking";

(iv) in sub-paragraph (d) thereof, for the words "authorised company", there shall be substituted the words "authorised insurance or reinsurance undertaking";

(v) in sub-paragraph (e) thereof, for the words "authorised company", there shall be substituted the words "authorised insurance or reinsurance undertaking";

(g) in sub-article (6) thereof, for the words "an authorised company", there shall be substituted the words "an authorised insurance or reinsurance undertaking"; and

(h) in sub-article (7) thereof:

(i) for the words "a company whose head office is in a country outside Malta", there shall be substituted the

words "a third country insurance or reinsurance undertaking"; and

(ii) for the words "requiring such company", there shall be substituted the words "requiring such undertaking".

41. Article 38A of the principal Act shall be amended as follows:

Amendment of
article 38A of
the principal
Act.

(a) in sub-article (5) thereof, for the words "an interruption of such period.", there shall be substituted the words "an interruption of such assessment period.";

(b) in paragraph (b) of sub-article (6) thereof:

(i) sub-paragraphs (i), (ii), (iii), and (v) thereof, shall be deleted and sub-paragraphs (iv) and (vi) shall be renumbered as sub-paragraphs (i) and (ii) respectively;

(ii) for sub-paragraph (ii) thereof, as renumbered, there shall be substituted the following:

"(ii) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC;"

(iii) immediately after sub-paragraph (ii) thereof, as renumbered, there shall be added the following new sub-paragraphs (iii) and (iv):

"(iii) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)(recast);

(iv) the Solvency II Directive.";

(c) in the Maltese text of sub-article (9) thereof, for the words "stipulati fir-regola dwar l-assigurazzjoni msemmija", there shall be substituted the words "stipulati fir-Regoli dwar l-Assigurazzjoni msemmijin";

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(d) in sub-article (12) thereof, for the words "any other penalty which may be imposed under this Act, where a qualifying shareholding in an authorised company", there shall be substituted the words "any other measure which may be taken under this Act, where a qualifying shareholding in an authorised insurance or reinsurance undertaking"; and

(e) in sub-article (14) thereof, for the words "the same authorised company", there shall be substituted the words "the same authorised insurance or reinsurance undertaking".

Amendment of
article 38B of
the principal
Act.

42. Article 38B of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "Co-operation with overseas regulatory authorities", there shall be substituted the words "Co-operation with European regulatory authorities or overseas regulatory authorities";

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

(i) for the words "with overseas regulatory authorities", there shall be substituted the words "with European regulatory authorities";

(ii) for the words "the assessment referred to in article 38A(2)", there shall be substituted the words "the assessment referred to in article 38A";

(iii) in paragraph (a) thereof, for the words "a credit institution, assurance undertaking, insurance undertaking", there shall be substituted the words "a credit institution, insurance undertaking";

(iv) in paragraph (b) thereof, for the words "a credit institution, assurance undertaking, insurance undertaking", there shall be substituted the words "a credit institution, insurance undertaking";

(v) in paragraph (c) thereof, for the words "a credit institution, assurance undertaking, insurance undertaking", there shall be substituted the words "a credit institution, insurance undertaking";

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

(i) for the words "in article 38A(2) to the overseas regulatory authority", there shall be substituted the words

"in article 38A to the European regulatory authority";

(ii) for the words "communicate to the overseas regulatory authority", there shall be substituted the words "communicate to the European regulatory authority"; and

(iii) for the words "expressed by the overseas regulatory authority", there shall be substituted the words "expressed by the European regulatory authority"; and

(d) immediately after sub-article (2) thereof, there shall be added the following new sub-article:

"(3) The procedure set out in sub-articles (1) and (2) shall apply *mutatis mutandis* where the proposed acquirer is authorised or established in a third country."

43. Article 38C of the principal Act shall be amended as follows:

Amendment of
article 38C of
the principal
Act.

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

(i) for the words "an authorised company may", there shall be substituted the words "an authorised undertaking may";

(ii) in paragraph (a) thereof, for the words "any other company,", there shall be substituted the words "any other undertaking,";

(b) in sub-article (2) thereof:

(i) for the words "of an authorised company", there shall be substituted the words "of an authorised undertaking";

(ii) for the words "that such company", there shall be substituted the words "that such undertaking";

(c) in the paragraph immediately following paragraph (c) of sub-article (3) thereof, for the words "or the authorised company concerned", there shall be substituted the words "or the authorised undertaking concerned";

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

(i) for the words "or any authorised company", there shall be substituted the words "or any authorised

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undertaking";

(ii) in paragraph (a) thereof, for the words "or authorised company", there shall be substituted the words "or authorised undertaking";

(iii) in paragraph (c) thereof, for the words "or authorised company", there shall be substituted the words "or authorised undertaking";

(iv) in paragraph (d) thereof, for the words "or authorised company", there shall be substituted the words "or authorised undertaking"; and

(v) in paragraph (e) thereof, for the words "or authorised company", there shall be substituted the words "or authorised undertaking".

Amendment of
article 39 of the
principal Act.

44. Article 39 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "Companies ceasing", there shall be substituted the words "Undertakings ceasing";

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

(i) for the words "if an authorised company", there shall be substituted the words "if an authorised insurance undertaking";

(ii) for the words "such company shall,", there shall be substituted the words "such undertaking shall,";

(iii) for the words "and the company", there shall be substituted the words "and the authorised insurance undertaking";

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

(i) for the words "an authorised company", there shall be substituted the words "an authorised insurance undertaking";

(ii) in paragraph (a) thereof, for the words "the company", there shall be substituted the words "the undertaking";

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

"(b) may require the undertaking to ascertain that its technical provisions meet the requirements of article 18E."; and

(d) in sub-article (3) thereof:

(i) for the words "a company", there shall be substituted the words "an authorised insurance undertaking"; and

(ii) for the words "to the company" there shall be substituted the words "to the authorised insurance undertaking".

45. Article 40 of the principal Act shall be amended as follows: Amendment of article 40 of the principal Act.

(a) in the marginal note thereto, for the words "Companies carrying out", there shall be substituted the words "Undertakings carrying out"; and

(b) for the words "Every company issued", there shall be substituted the words "Every authorised insurance undertaking issued".

46. Immediately after article 40 of the principal Act, there shall be added the following new article 40A: Addition of new article 40A to the principal Act.

"Reinsurance undertakings ceasing and carrying out servicing or run-off of business of insurance. 40A. The provisions of articles 39 and 40 shall apply *mutatis mutandis* to undertakings whose business is restricted to reinsurance."

47. Article 41 of the principal Act shall be amended as follows: Amendment of article 41 of the principal Act.

(a) in the marginal note thereto, for the words "Dissolution and winding up of authorised companies", there shall be substituted the words "Reorganisation, dissolution and winding up of authorised undertakings";

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

(i) for the words "this article, any company authorised to carry on the business of insurance shall - ",

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there shall be substituted the words "this article - ";

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

"(a) in the case of an authorised insurance undertaking whose head office is in Malta:

(i) where any reorganisation measures are adopted in relation to the undertaking, such measures shall be applied in accordance with regulations made for the purposes of this article;

(ii) such undertaking shall, dissolve and consequentially wind up under and in accordance with regulations made under this article; and";

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

"(b) in the case of an authorised third country insurance undertaking, shall dissolve and wind up under and in accordance with the provisions of the laws of the country where the head office of such undertaking is situated governing the dissolution and winding up of such undertakings.";

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

(i) for the words "authorised company", there shall be substituted the words "authorised insurance undertaking";

(ii) in paragraph (a) thereof:

(aa) for the words "in the case of a company whose head office is in Malta", there shall be substituted the words "in the case of an undertaking whose head office is in Malta";

(bb) for the words "the assets of the company", there shall be substituted the words "the assets of the undertaking";

(iii) for paragraph (b) thereof, there shall be

substituted the following:

"(b) in the case of an authorised third country insurance undertaking, prohibit the free disposal of the assets of the undertaking situated in Malta or in any other country if such assets relate to the undertaking's business in Malta,";

(d) in the paragraph immediately after paragraph (b), for the words "imposed on the company", there shall be substituted the words "imposed on the insurance undertaking";

(e) in sub-article (3) thereof:

(i) for the words "a company which", there shall be substituted the words "an authorised insurance undertaking which";

(ii) for the words "of the company attributable", there shall be substituted the words "of the undertaking attributable";

(f) in sub-article (5) thereof, for the words "not apply to such companies.", there shall be substituted the words "not apply to such undertakings.";

(g) in sub-article (6) thereof:

(i) for the words "of companies whose head office is in Malta,", there shall be substituted the words "of authorised insurance undertakings whose head office is in Malta,";

(ii) for the words "of companies whose head office is outside of Malta", there shall be substituted the words "of third country insurance undertakings"; and

(iii) for the words "of such companies or of branches thereof;", there shall be substituted the words "of such undertakings or of branches thereof"; and

(h) immediately following sub-article (6) thereof, there shall be added the following new sub-articles (7) and (8):

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"(7) Where an authorised insurance or reinsurance undertaking takes a decision to dissolve and wind up, it shall immediately notify, in writing, the competent authority of such decision before taking any further action to that effect.

Cap. 386. (8) (a) An authorised reinsurance undertaking with its head office in Malta shall dissolve and wind up in accordance with the provisions of the Companies Act.

(b) An authorised third country reinsurance undertaking shall dissolve and wind up in accordance with the laws of the country where the head office of such undertaking is situated governing the dissolution and winding up of such undertakings."

Amendment of
article 42 of the
principal Act.

48. Article 42 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "authorised companies with long term business.", there shall be substituted the words "an authorised undertaking carrying on long term business.";

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

"(1) An authorised undertaking whose head office is in Malta, carrying on long term business may not be dissolved and consequently wound up voluntarily without the consent of the competent authority.";

(c) sub-articles (2) and (3) shall be renumbered as sub-articles (3) and (4) respectively;

(d) immediately after sub-article (1) thereof, as amended, there shall be added the following new sub-article (2):

"(2) It shall be the duty of an authorised undertaking and the directors thereof, to notify the competent authority forthwith upon becoming aware of any measures to be taken in terms of sub-article (1).";

(e) in sub-article (3) thereof, as renumbered:

(i) for the words "of a company as aforesaid", there shall be substituted the words "of an undertaking as

aforesaid";

(ii) in paragraph (a) thereof:

(aa) for the words "by the company", there shall be substituted the words "by the undertaking";

(bb) for the words "of the company attributable", there shall be substituted the words "of the undertaking attributable";

(iii) in paragraph (b) thereof:

(aa) for the words "of the company shall be available", there shall be substituted the words "of the undertaking shall be available";

(bb) for the words "of the company attributable", there shall be substituted the words "of the undertaking attributable"; and

(f) in sub-article (4) as renumbered, for the words "in either sub-article (2)(a) or (2)(b) exceeds the amount of the liabilities mentioned in either paragraph the restriction", there shall be substituted the words "in either paragraph (a) or (b) of sub-article (3) exceeds the amount of the liabilities mentioned in either paragraph, the restriction".

49. Article 43 of the principal Act shall be amended as follows:

Amendment of
article 43 of the
principal Act.

(a) in sub-article (1) thereof, for the words "in the documentation provided", there shall be substituted the words "in the documentation or information provided";

(b) in sub-article (2) thereof:

(i) for the words "a company whose head office is in Malta authorised under this Act", there shall be substituted the words "an authorised insurance or reinsurance undertaking whose head office is in Malta";

(ii) in paragraph (a) thereof, for the words "constituting the company,", there shall be substituted the words "constituting the undertaking,";

(iii) in paragraph (b) thereof:

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(aa) for the words "in the company", there shall be substituted the words "in the undertaking"; and

(bb) in the Maltese text, for the words "dik l-informazzjoni għandha wkoll tiġi stabbilita b'dik ir-regola.", there shall be substituted the words "dik l-informazzjoni għandha wkoll tiġi stabbilita b'dawk ir-Regoli."; and

(c) in sub-article (3) thereof:

(i) for the words "an authorised company", there shall be substituted the words "an authorised insurance or reinsurance undertaking"; and

(ii) for the words "the existence of close links within the meaning of article 8.", there shall be substituted the words "the existence of close links.".

Amendment of
article 44 of the
principal Act.

50. Article 44 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "notice by authorised companies", there shall be substituted the words "notice by an authorised undertaking";

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

(i) for the words "No company authorised", there shall be substituted the words "No insurance undertaking authorised";

(ii) for the words "unless such company either - ", there shall be substituted the words "unless such undertaking either - "; and

(c) in paragraph (b) of sub-article (3) thereof, for the words "on the authorised company.", there shall be substituted the words "on the authorised undertaking.".

Amendment of
article 45 of the
principal Act.

51. In paragraph (a) of article 45 of the principal Act, for the words "entered into by a company", there shall be substituted the words "entered into by an insurance undertaking".

Amendment of
article 47 of the
principal Act.

52. Article 47 of the principal Act shall be amended as follows:

(a) in the Maltese text of sub-article (2) thereof, for the

words "Fin-nuqqas ta' xi regola dwar l-assigurazzjoni bħal dik," there shall be substituted the words "Fin-nuqqas ta' xi Regoli dwar l-Assigurazzjoni bħal dawk,"; and

(b) in sub-article (3) thereof, for the words "shall not apply to a company", there shall be substituted the words "shall not apply to an undertaking".

53. Article 48 of the principal Act shall be amended as follows:

Amendment of
article 48 of the
principal Act.

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

(i) for the words "No company authorised", there shall be substituted the words "No insurance undertaking authorised"; and

(ii) for the words "cause to be issued in Malta any advertisement or carry out or cause to be carried in Malta any promotional activity", there shall be substituted the words "cause to be issued any advertisement or carry out or cause to be carried any promotional activity";

(b) in the proviso to sub-article (1) thereof, for the words "in the case of a company", there shall be substituted the words "in the case of an undertaking";

(c) in sub-article (3) thereof, for the words "apply to a company", there shall be substituted the words "apply to an undertaking";

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

(i) for the words "Where a company", there shall be substituted the words "Where an undertaking"; and

(ii) for the words "directing the company - ", there shall be substituted the words "directing the undertaking - "; and

(e) in sub-article (5) thereof:

(i) for the words "If a company", there shall be substituted the words "If an undertaking";

(ii) for the words "which the company", there shall be substituted the words "which the undertaking"; and

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(iii) for the words "the company concerned," there shall be substituted the words "the undertaking concerned,".

Amendment of
article 48A of
the principal
Act.

54. Article 48A of the principal Act shall be amended as follows:

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

"(1) For the purposes of this article, "syndicate" means a member or group of members of Lloyd's underwriting business of insurance at Lloyd's through the agency of a managing agent to which a particular syndicate number is assigned by or under the authority of the Council of Lloyd's.";

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

(c) immediately after sub-article (1) thereof, as amended, there shall be added the following new sub-article (2):

"(2) Where the members of Lloyd's carry on business of insurance in Malta, they shall carry on such business in exercise of a European right.";

(d) in sub-article (3) thereof, as renumbered, the words "The representative shall be designated by a letter addressed to the competent authority by the chairman of Lloyd's.", shall be deleted;

(e) in sub-article (4) thereof, as renumbered, immediately after the words "the debts and obligations of Lloyd's or any of its members", there shall be added the words "and accordingly no execution of any precautionary or executive warrant against Lloyd's or any of its members shall be made against Lloyd's general representative.";

(f) in sub-article (5) thereof, as renumbered, for the words "in Malta as representative of those members; provided the act contains a statement", there shall be substituted the words "in Malta as representative of those members; provided the act commencing proceedings contains a statement";

(g) in sub-article (6) thereof, as renumbered, for the words "if they has been named", there shall be substituted the words "if they had been named"; and

(h) immediately after sub-article (6) thereof, as renumbered, there shall be added the following new sub-article:

"(7) Any judicial act filed by or against Lloyd's or any of its members in connection with a policy underwritten by them shall be served upon the Lloyd's general representative in Malta at its registered address in Malta."

55. For article 48B of the principal Act, there shall be substituted the following:

Amendment of article 48B of the principal Act.

"Appointment of insurance intermediaries

48B. Every authorised insurance or reinsurance undertaking shall utilise the services of insurance intermediaries which are:

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(a) enrolled under the Insurance Intermediaries Act; or

(b) registered under Article 3 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, as amended from time to time; or

(c) registered or regulated to carry out such services in a non-Member State or non-EEA State in accordance with the provisions of the laws applicable in such State."

56. Immediately after article 48B of the principal Act, there shall be added the following new article 48C:

Addition of new article 48C to the principal Act.

"Policy conditions and scales of premiums.

48C. (1) An authorised undertaking shall not be required to submit to the competent authority for its prior approval or systematically notify the competent authority of:

(a) general and special policy conditions, of scales of premiums, of the technical bases used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which the authorised undertaking intends to use in its dealings with policyholders or ceding or retro-ceding undertakings;

(b) premium rates or proposed increases of premium rates, other than as part of general price-control systems.

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(2) Notwithstanding the provisions of sub-article (1), the competent authority may require:

(a) in respect of general business, the notification of the policy conditions, other documents and information referred to in sub-article (1) for the purpose of verifying compliance with the law applicable to contracts of insurance;

(b) in respect of long term business, the notification of the technical bases used in particular for calculating scales of premiums and technical provisions for the sole purpose of verifying compliance with any actuarial principles which may be established by this Act, regulations or Insurance Rules issued thereunder."

Amendment of article 49 of the principal Act.

57. In paragraph (a) of article 49 of the principal Act, for the words "against a company authorised to carry on business of insurance in Malta, remaining unpaid by reason of the insolvency of such company", there shall be substituted the words "against an insurance undertaking carrying on business of insurance in Malta, remaining unpaid by reason of the insolvency of such undertaking".

Amendment of article 50 of the principal Act.

58. Sub-article (2) of article 50 of the principal Act shall be amended as follows:

(a) for the words "All companies authorised under this Act to carry on business of insurance in Malta", there shall be substituted the words "All insurance undertakings, as prescribed by the regulations, which carry on business of insurance in Malta"; and

(b) for the words "kinds of authorised companies,", there shall be substituted the words "kinds of insurance undertakings,".

Amendment of article 51 of the principal Act.

59. Article 51 of the principal Act shall be amended as follows:

(a) in the first proviso thereof:

(i) for the words "by companies authorised to carry on long term business", there shall be substituted the words "by undertakings to carry on long term business";

(ii) for the words "by companies authorised to carry on general business", there shall be substituted the

words "by undertakings to carry on general business"; and

(b) in the second proviso thereof, for the words "in the insolvent company and holds twenty *per centum* or more of the issued shares of such company.", there shall be substituted the words "in the insolvent undertaking and holds twenty *per centum* or more of the issued shares of such undertaking".

60. In paragraph (a) of article 52 of the principal Act, for the words "the company is struck off the register or such company", there shall be substituted the words "the undertaking is struck off the register or such undertaking".

Amendment of article 52 of the principal Act.

61. For article 55 of the principal Act, there shall be substituted the following:

Substitution of article 55 of the principal Act.

"Co-operation in supervisory duties and sharing of information.

55. (1) Notwithstanding the provisions of article 59, the competent authority shall co-operate and exchange information:

(a) with European regulatory authorities, and the European Commission for the purpose of facilitating the supervision of insurance and reinsurance within the European Union and the application of the Solvency II Directive;

(b) with overseas regulatory authorities for the purposes of the exercise of one or more of their regulatory functions;

(c) with authorities or bodies, or persons listed in sub-article (2).

(2) The competent authority shall co-operate and exchange information with:

(a) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;

(b) bodies involved in the liquidation and insolvency of insurance or reinsurance undertakings and in other similar procedures;

(c) the authorities responsible for overseeing the bodies involved in the liquidation and insolvency of insurance undertakings, reinsurance undertakings and other similar procedures;

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(d) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;

(e) bodies which administer compulsory winding-up proceedings or guarantee funds, where that information is necessary for the performance of their duties;

(f) the authorities or bodies responsible for the detection and investigation of breaches of company law;

(g) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions; and

(h) actuaries appointed by insurance or reinsurance undertakings carrying out actuarial tasks in relation to those undertakings and the bodies responsible for overseeing such actuaries.

(3) For the purposes of the exchanges of information referred to in paragraphs (c), (g) and (h) of sub-article (2), the following conditions, as a minimum, shall be met by the recipient of such information:

(a) the information required must be for the purpose of carrying out the overseeing or supervision of the functions or activities of such authorities, bodies or persons;

(b) the information received by such authorities, bodies or persons shall be subject to the duty of professional secrecy;

(c) where the information in the possession of the competent authority originates from a European regulatory authority or an overseas regulatory authority, it shall not be disclosed without the express consent of the European regulatory authority or the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its consent.

(4) For the purposes of exchanges of information referred to in paragraph (f) of sub-article (2), the competent authority shall ensure that, as a minimum, the following conditions shall be met by the recipient of such information:

(a) the information exchanged shall be intended for the purpose of the detection and investigation of breaches of company law;

(b) the information received shall be subject to the duty of professional secrecy;

(c) where the information in the possession of the competent authority originates from a European regulatory authority or an overseas regulatory authority, it shall not be disclosed without the express agreement of the European regulatory authority or the overseas regulatory authority from which it originates and, where appropriate, solely for the purposes for which the authority gave its agreement;

(d) such recipient shall provide the name and responsibilities of the persons to whom such information shall be sent:

Provided that, where the authorities or bodies perform their tasks of detection or investigation with the assistance of persons appointed for that purpose, in view of their specific competence, and such persons are not employed with such bodies or persons, such information may only be exchanged with such persons if the conditions set out in this sub-article are met.

(5) The competent authority shall communicate to the Commission and to other Member States or EEA States the names of the authorities, persons or bodies which may receive information in terms of this article.

(6) (a) Without prejudice to the provisions of this article and article 59, the competent authority may transmit information intended for the performance of their tasks to the following:

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(i) the Central Bank of Malta, the central banks of the European System of Central Banks (including the European Central Bank) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;

(ii) where appropriate, other national public authorities responsible for overseeing payment systems; and

(iii) the European Systemic Risk Board, where that information is relevant to carrying out its tasks.

(b) In an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1094/2010, the competent authority shall communicate, without delay, information to the central banks of the European System of Central Banks (including the European Central Bank) where that information is relevant to their statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the European Systemic Risk Board, where such information is relevant to its tasks.

(c) Such authorities or bodies may also communicate to the competent authority such information as they may need for the purposes of article 59(4).

(7) Without prejudice to article 59, the competent authority may exchange information with other departments of Member States central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance and reinsurance undertakings and to inspectors acting on behalf of those departments provided that:

(a) such disclosures may be made only where necessary for reasons of prudential control;

(b) persons having access to such information shall be subject to professional secrecy.

(8) Without prejudice to the foregoing provision of this article, the competent authority may exercise the following powers at the request of, or for the purposes of, assisting a European regulatory authority or an overseas regulatory authority:

(a) the power to impose, revoke or vary conditions on the grant of an authorisation pursuant to the provisions of article 7;

(b) the power to suspend or revoke an authorisation under article 26;

(c) the power to take any action under article 28, in lieu of or in addition to any suspension or revocation of an authorisation;

(d) the power to require information and documentation under article 29;

(e) the power to appoint inspectors under article 30;

(f) the power of entry to obtain information and documentation under article 31;

(g) the power to issue a directive under article 31A;

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(h) the power to communicate to the European regulatory authority information in its possession, whether such information is the result of any of the above powers or otherwise; and

(i) the power to prohibit the free disposal of the undertaking's assets located in Malta in the circumstances referred to in Articles 137 to 139 and Article 144(2) of the Solvency II Directive; the undertaking's home Member State shall designate the assets to be covered by such measures.

(9) There shall be meetings between an authorised insurance or reinsurance undertaking, its approved auditors, and, in the case of an undertaking authorised to carry on long term business, its approved actuary and the competent authority on a bilateral or a multilateral basis as circumstances may warrant. Such meetings may be called by any of the parties, and shall in each case be chaired by the competent authority."

Addition of new articles 55A and 55B to the principal Act.

62. Immediately after article 55 of the principal Act, there shall be inserted the following new articles:

"Co-operation with EIOPA.

55A. (1) The competent authority shall cooperate with EIOPA for the purposes of the Solvency II Directive in accordance with Regulation (EU) No 1094/2010.

(2) The competent authority shall provide EIOPA with all information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

Co-operation with third countries.

55B. (1) The competent authority may enter into co-operation agreements with overseas regulatory authorities or with such authorities or bodies as defined in article 55(2), in countries that are not Member States or EEA States only if the information disclosed is subject to the guarantees of professional secrecy at least equivalent to those required under articles 55 and 59. Such exchange of information must be intended for the performance of the supervisory task of such overseas regulatory authorities, authorities or bodies.

(2) Where the information to be disclosed by the competent authority to the authorities or bodies referred to in sub-article (1), had originated from a European regulatory authority, it may only be disclosed to an overseas regulatory authority with the express agreement of such European regulatory authority which had transmitted it and, where appropriate, solely for the purposes for which that authority had given its agreement."

63. Article 56 of the principal Act shall be amended as follows: Amendment of article 56 of the principal Act.

(a) in paragraph (a) of sub-article (1) thereof, for the words "an actuary of a company;", there shall be substituted the words "an actuary of an undertaking;"

(b) in sub-article (2) thereof, for the words "an authorised company,", there shall be substituted the words "an authorised undertaking,"

(c) in sub-article (3) thereof, for the words "the company in relation to", there shall be substituted the words "the undertaking in relation to"; and

(d) in sub-article (4) thereof, for the words "and authorised companies, make rules", there shall be substituted the words "and authorised undertakings, make rules".

64. In the proviso to sub-article (4) of article 57 of the principal Act, for the words "made under sub-article (13) of the said article 21", there shall be substituted the words "made under the said article 21". Amendment of article 57 of the principal Act.

65. Article 58 of the principal Act shall be amended as follows: Amendment of article 58 of the principal Act.

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

(i) for the words "any person who is aggrieved by a decision of the competent authority", there shall be substituted the words "an appeal shall lie to the Financial Services Tribunal with respect to -";

(ii) paragraphs (a), (b), (c), (d), (e) and (f) thereof, shall be renumbered as paragraphs (b), (c), (d), (g), (h) and (i) respectively;

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

"(a) any failure to inform an applicant within the term provided in sub-article (9) or (10) of article 7;"

(iv) in paragraph (b) thereof, as renumbered, for the words "to refuse", there shall be substituted the words "any refusal to";

(v) in paragraph (c) thereof, as renumbered, for the words "to impose any condition", there shall be substituted the words "any condition imposed";

(vi) in paragraph (d) thereof, as renumbered, for the words "to suspend or revoke", there shall be substituted the words "any suspension or revocation of";

(vii) immediately after paragraph (d) thereof, as renumbered, there shall be added the following new paragraphs:

"(e) any one or more measures taken under article 28;

(f) any directive given under article 31A;"

(viii) in paragraph (g) thereof, as renumbered, for the words "to refuse" there shall be substituted the words "any refusal of";

(ix) in paragraph (h) thereof, as renumbered, for the words "to issue any notice or make any order", there shall be substituted the words "any notice issued or any order made";

(x) in paragraph (i) thereof, as renumbered, for the words "to impose an administrative penalty", there shall be substituted the words "any administrative penalty imposed";

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

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"(2) The provisions of article 21 of the Malta Financial Services Authority Act shall apply *mutatis mutandis* to appeals that may be brought before the Tribunal under this article."; and

(c) sub-article (3) thereof shall be deleted.

66. Article 59 of the principal Act shall be amended as follows: Amendment of article 59 of the principal Act.

(a) sub-article (1) thereof shall be deleted;

(b) sub-article (2) thereof shall be renumbered as sub-article (1);

(c) in sub-article (1) thereof, as renumbered:

(i) for the words "agents, as well as by inspectors, auditors and experts engaged by the competent authority", there shall be substituted the words "agents, including former officers, employees or agents, as well as by inspectors, auditors and experts acting on behalf of the competent authority";

(ii) for the words "by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:", there shall be substituted the words "by the duty of professional secrecy.";

(iii) paragraphs (a) to (i) thereof shall be deleted;

(d) sub-articles (3) to (6) thereof shall be deleted; and

(e) immediately after sub-article (1) thereof, as renumbered, there shall be added the following new sub-articles (2) to (6):

"(2) Without prejudice to cases covered by criminal law, the persons referred to in sub-article (1) shall not disclose information obtained from an authorised insurance or reinsurance undertaking unless such disclosure of information be done in summary or aggregate form, so as not to enable the identity of such undertaking, to whom such information relates, to be ascertained:

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Provided that, such persons may disclose confidential information in civil or commercial proceedings where an authorised insurance or reinsurance undertaking has been declared insolvent or is being compulsorily wound up, as long as such information does not concern third parties involved in attempts to rescue that undertaking.

(3) Nothing in this Act shall authorise the competent authority to enquire or cause an enquiry to be made in an authorised insurance or reinsurance undertaking into the affairs of any individual policyholder of the authorised insurance or reinsurance undertaking except for the purpose of ensuring compliance with any of the provisions of this or of any other Act.

(4) Where the competent authority receives confidential information from a European regulatory authority under this article and article 55 it may only use such confidential information in the course of its duties and for the following purposes:

(a) to check that the conditions governing the carrying on of business of insurance or reinsurance are met and to facilitate the monitoring of the carrying on of such business especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement and the system of governance;

(b) to impose penalties or adopt other administrative measures and to consider representations received in their regard;

(c) in appeals against decisions of the competent authority under article 58; and

(d) in judicial proceedings under the Solvency II Directive.

Cap. 373. (5) When an officer or an employee of an authorised insurance or reinsurance undertaking has reason to believe that a transaction or a proposed transaction could involve money laundering or the funding of terrorism, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.

(6) In this article, any reference to agents has the meaning assigned to it in article 30(10)."

67. Article 60 of the principal Act shall be amended as follows: Amendment of article 60 of the principal Act.

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

(i) for the words "or potential policyholders", there shall be substituted the words "potential policyholders, insureds, claimants or other related parties"; and

(ii) in paragraph (a) thereof, for the words "amongst companies", there shall be substituted the words "amongst insurance undertakings"; and

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

Cap. 440 "(2) Notwithstanding the provisions of the Data Protection Act, the collection, use, storage and transmission of information for the purposes of the exchanging of personal data referred to in sub-article (1) is deemed to be a necessary measure for the prevention, detection or suppression of insurance fraud."

68. Article 61 of the principal Act shall be amended as follows: Amendment of article 61 of the principal Act.

(a) for the words "or any regulations made", there shall be substituted the words "or any regulations or Insurance Rules made";

(b) in paragraph (e) thereof, for the words "an officer, or a clerk of that body or to or on the person designated by that

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body under article 11(1)(d)(i) or article 48A(2), as the case may be;" there shall be substituted the words "an officer, secretary, or a clerk of that body or to any person designated by that body for that purpose as the case may be; or"; and

(c) immediately after paragraph (e) thereof, there shall be added the following new paragraph (f):

"(f) in the case of a third country insurance or reinsurance undertaking or Lloyd's, it has been given or served to the person designated under article 11(1)(b)(i) or article 48A(3), respectively;"

Amendment of
article 62 of the
principal Act.

69. Article 62 of the principal Act shall be amended as follows:

(a) in the marginal note thereto, for the words "Continuance of companies carrying on business of insurance, insurance manager or insurance broker.", there shall be substituted the words "Continuance of undertakings carrying on business of insurance or companies enrolled as insurance manager or insurance broker.";

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

(i) in paragraph (a) thereof:

(aa) for the words "as a company carrying on business of insurance," there shall be substituted the words "as an undertaking carrying on business of insurance or a company enrolled to act as an insurance manager or insurance broker under the Insurance Intermediaries Act,";

(bb) for the words "a company carrying on business of insurance under the Companies Act and under this Act; and", there shall be substituted the words "authorised under this Act or enrolled under the Insurance Intermediaries Act; and";

(ii) in paragraph (b) thereof, for the words "a company carrying on business of insurance authorised under this Act", there shall be substituted the words "an undertaking carrying on business of insurance authorised under this Act or a company enrolled to act as insurance manager or insurance broker under the Insurance Intermediaries Act"; and

(iii) in the paragraph immediately following paragraph (b) thereof, for the words "such bodies corporate or companies carrying on business of insurance," there shall be substituted the words "such bodies, undertakings or companies,";

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

(i) in paragraph (a) thereof, for the words "such body or company", there shall be substituted the words "such body, undertaking or company";

(ii) in the paragraph immediately following paragraph (b) thereof:

(aa) for the words "continuance of a company carrying on business of insurance as a body corporate under a foreign jurisdiction shall", there shall be substituted the words "continuance of an undertaking or company as stated in paragraph (b) of sub-article (1), as a body corporate under a foreign jurisdiction, shall";

(bb) for sub-paragraph (ii) thereof, there shall be substituted the following:

"(ii) such continuance (or similar process) will operate the continuation of the corporate existence of the undertaking or company as, or its conversion into, a body corporate which will continue to retain or will succeed to all assets, rights, and liabilities of such undertaking or company.";

(d) sub-article (3) thereof, shall be substituted by the following:

"(3) In this article, reference to the "company" shall include reference to a partnership *en commandite* or to a similar or equivalent body corporate the capital of which is divided into shares."; and

(e) in sub-article (4) thereof, for the words "with respect to continuance of companies.", there shall be substituted the words "with respect to continuance of undertakings or companies.".

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Amendment of
article 63 of the
principal Act.

70. Article 63 of the principal Act shall be deleted.

Amendment of
article 64 of the
principal Act.

71. Article 64 of the principal Act shall be amended as follows:

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

(i) in paragraph (b) thereof, for the words "any company authorised", there shall be substituted the words "any undertaking authorised";

(ii) paragraphs (d) and (e) thereof shall be deleted;
and

(iii) paragraphs (f), (g), (h) and (i) thereof shall be renumbered as paragraphs (d), (e), (f) and (g) respectively;

(b) sub-article (3) thereof shall be deleted;

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

(d) for sub-article (3) thereof, as renumbered, there shall be substituted the following:

"(3) The Minister may, after consultation with the competent authority, make regulations providing for the determination and regulation of any matter which relates to finite reinsurance contracts or finite reinsurance activities, including the identification, measurement, monitoring, management, control and reporting of risks arising from such contracts or activities.";

(e) in sub-article (4) thereof, as renumbered, for the words "within the meaning of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC, as well as Directives 98/78/EC and 2002/83/EC", there shall be substituted the words "within the meaning of the Solvency II Directive";

(f) in sub-article (5) thereof, as renumbered, for the words "exempting any person or any class or classes", there shall be substituted the words "exempting any person, activity or operation or any class or classes";

(g) immediately after sub-article (5) thereof, as

renumbered, there shall be added the following new sub-article (6):

"(6) The Minister may, after consultation with the competent authority, make regulations applicable to captive insurance undertakings and captive reinsurance undertakings, exempting from and modifying any of the provisions of this Act or of any regulations made thereunder.";

(h) sub-article (8) thereof shall be deleted;

(i) immediately after sub-article (7) thereof, there shall be added the following new sub-article (8):

"(8) The Minister may, after consultation with the competent authority, make regulations determining the class or classes of long term business and the class or classes or part classes of general business that may be effected and carried out under this Act."; and

(j) in sub-article (9) thereof, for the words "Regulations made under this article may make", there shall be substituted the words "Regulations made under this Act may make".

72. Article 65 of the principal Act shall be deleted.

Amendment of article 65 of the principal Act.

73. Article 66 of the principal Act shall be amended as follows:

Amendment of article 66 of the principal Act.

(a) for the words "a function under this Act or any regulations", there shall be substituted the words "a function under this Act, regulations or Insurance Rules"; and

(b) for the words "of any functions under this Act or any regulations", there shall be substituted the words "of any functions under this Act or any regulations or Insurance Rules".

74. Article 67 of the principal Act shall be amended as follows:

Amendment of article 67 of the principal Act.

(a) in sub-article (2) thereof:

(i) in paragraph (a) thereof, for the words "for the purpose of obtaining the issue of an authorisation under this Act or any regulations made thereunder, furnishes", there shall be substituted the words "for the purpose of

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obtaining the issue of an authorisation under this Act or pursuant to any of the provisions of this Act or any regulations or Insurance Rules made thereunder, furnishes";

(ii) in paragraph (c) thereof, for the words "or any regulations made thereunder; or", there shall be substituted the words "or any regulations or Insurance Rules made thereunder; or";

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

(iv) immediately after paragraph (c) thereof, there shall be added the following new paragraph:

"(d) who is knowingly a party to the carrying on of the business of insurance with a fraudulent intent or for a fraudulent purpose; or";

(v) in paragraph (f) thereof, as renumbered:

(aa) for the words "or an employee of a company -", there shall be substituted the words "or an employee of an undertaking -";

(bb) for sub-paragraph (i) thereof, there shall be substituted the following sub-paragraph:

"(i) fails to take all reasonable steps to secure compliance by the undertaking with any of the provisions of this Act or of any regulations, or any Insurance Rules made thereunder, or any authorisation or permit issued thereunder; or";

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

(i) for the words "of sub-article (2)(e)", there shall be substituted the words "of sub-article (2)(f)";

(ii) for the words "to a company", there shall be substituted the words "to an undertaking";

(iii) for the words "for the company", there shall be substituted the words "for the undertaking";

(c) in sub-article (5) thereof:

(i) in paragraph (a) thereof, for the words "greater than two years;", there shall be substituted the words "greater than four years;"

(ii) in paragraph (b) thereof, for the words "shall not provide for a fine (*multa*) of less than two hundred and thirty euro (€230) or greater than one hundred and sixteen thousand euro (€116,000).", there shall be substituted the words "shall not provide for a fine (*multa*) of less than two hundred and thirty euro (€230) or greater than four hundred and sixty-six thousand euro (€466,000); or";

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

"(c) may provide for both such fine and imprisonment."

75. The Second Schedule to the principal Act shall be amended as follows:

Amendment of
the Second
Schedule to the
principal Act.

(a) paragraph (1) thereof shall be deleted;

(b) in paragraph (2) thereof, for the words "2. Classes of Long Term Business", there shall be substituted the words "Classes of Long Term Business";

(c) in Class I, "Life and annuity", under the heading "Description":

(i) for the words "Effecting and carrying out contracts", there shall be substituted the words "Contracts";

(ii) for the words "contracts within Class III of this Schedule", there shall be substituted the words "contracts within Classes II and III of this Schedule";

(d) in Class II, "Marriage and Birth", under the heading "Description":

(i) for the words "Effecting and carrying out contracts", there shall be substituted the words "Contracts";

(ii) for the words "for a period as may be specified by the insurance rule.", there shall be substituted the words

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"for a period of more than one year.";

(e) in Class III, "Linked long term", under the heading "Description", for the words "Effecting and carrying out contracts", there shall be substituted the word "Contracts";

(f) in Class IV, "Permanent Health", under the heading "Description":

(i) for the words "Effecting and carrying out contracts", there shall be substituted the word "Contracts";

(ii) in paragraph (a) thereof, for the words "for a period as may be specified by the insurance rule,", there shall be substituted the words "for a period of not less than five years,";

(g) for Class V "Tontines", under the heading "Description", for the words "Effecting and carrying out tontines" there shall be substituted the words "Contracts of insurance providing for operations whereby associations of subscribers are to be set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased.";

(h) for Class VI, "Capital redemption", under the heading "Description", for the words "Effecting and carrying out capital redemption contracts" there shall be substituted the words "Contracts of insurance providing for capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken.";

(i) in Class VII, "Pension fund management", under the heading "Description":

(i) the words "Effecting and carrying out -", shall be deleted;

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

"(a) Contracts to manage the investments of pension funds, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity; or"; and

(iii) in paragraph (b) thereof, for the words "contracts", there shall be substituted the word "Contracts";

(j) for Class VIII, "Collective insurance", under the heading "Description", for the words "Effecting and carrying out contracts of a kind as may be specified by the insurance rule" there shall be substituted the words "Contracts of a kind referred to in Article 2(3)(b)(v) of the Solvency II Directive."; and

(k) for Class IX, "Social insurance", under the heading "Description", for the words "Effecting and carrying out contracts of a kind as may be specified by the insurance rule" there shall be substituted the words "Contracts of a kind referred to in Article 2(3)(c) of the Solvency II Directive.".

76. The Third Schedule to the principal Act shall be amended as follows:

Amendment of
the Third
Schedule to the
principal Act.

(a) in Part I thereof:

(i) immediately preceding the table thereof, there shall be added the words "Classification of risks according to classes of insurance";

(ii) in Class 1, "Accident", in paragraph (c) thereof, for the words "combinations of the two;", there shall be substituted the words "combination of the two;;";

(iii) in Class 18, "Assistance", in paragraph (a) thereof, for the words "away from their permanent residence;", there shall be substituted the words "away from their habitual residence;"; and

(b) in Part II thereof:

(i) immediately preceding the table thereof, there shall be added the words "The following names shall be given to authorisations which simultaneously cover the following classes:"; and

(ii) for the heading "Composition", in the third column of the table thereof, there shall be substituted the words "Classes of Business".

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General amendment of the principal Act.

77. For the words "an insurance rule", "any insurance rule", "the insurance rule" and "such insurance rule", wherever they appear in the Act, there shall be substituted the words "Insurance Rules".

PART II
AMENDMENTS TO THE INSURANCE
INTERMEDIARIES ACT, CAP. 487

Amendment of the Insurance Intermediaries Act. Cap. 487.

78. This Part amends and shall be read and construed as one with the Insurance Intermediaries Act, hereinafter in this Part referred to as "the principal Act".

Amendment of article 2 of the principal Act.

79. Sub-article (1) of article 2 of the principal Act shall be amended as follows:

(a) for the definition "advertisement", there shall be substituted the following new definition:

" "advertisement", in relation to insurance intermediaries activities, means any form or medium of advertising, and without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or showcards, by means of letters, circulars, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings or in any other manner, and references to the issue of an advertisement shall be construed accordingly;"

(b) for the definition "authorised company", there shall be substituted the following new definition:

Cap. 403. " "authorised undertaking" means an authorised insurance undertaking or an authorised reinsurance undertaking which has received authorisation pursuant to article 7 of the Insurance Business Act or any person deemed authorised under the said Act, to carry on business of insurance and includes a company enrolled under this Act to act as an insurance agent of the undertaking, as well as a European insurance undertaking or a European reinsurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing services in Malta in exercise of a European right;"

(c) in the definition "body corporate", for the words

"distinct from that of its members;", there shall be substituted the words "distinct from that of its members and also includes a foreign corporation;"

(d) immediately after the definition "class", there shall be added the following new definition:

" "close links" means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;"

(e) for the definition "control", there shall be substituted the following new definition:

" "control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;"

(f) in the definition "controller", for the words "exercises control of the body corporate;", there shall be substituted the words "exercises the power to determine the financial and operating policies of the body corporate;"

(g) for the definition "European insurance undertaking", there shall be substituted the following:

" "European insurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;"

(h) immediately after the definition "European insurance undertaking", there shall be added the following new definition:

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" "European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with Article 14 of the Solvency II Directive;"

(i) for the definition "insurance intermediaries rule", there shall be substituted the following:

" "insurance intermediaries rule" means a rule in respect of insurance intermediaries activities issued by the competent authority under various articles of this Act and under any regulations issued thereunder;"

(j) immediately after the definition "own funds", there shall be added the following new definition:

" "participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;"

(k) immediately after the definition "registered", there shall be added the following new definition:

" "regulated market" means either of the following:

- (a) in the case of a market situated in Malta, a market authorised in terms of the Financial Markets Act;
- (b) in the case of a market situated in a Member State or an EEA State, other than Malta, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/611/EEC and 96/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time; or
- (c) in the case of a market situated in a non-Member State or non-EEA State, a financial market which fulfils the following conditions:

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(i) it is recognised by the competent authority and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets in Malta;"

(l) immediately after the definition "Schedule", there shall be added the following new definition:

" "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;"

(m) immediately after the new definition "Solvency II Directive", there shall be added the following new definition:

Cap. 403. " "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 of the Insurance Business Act, as if its head office were situated in Malta;"

(n) immediately after the new definition "third country insurance undertaking", there shall be added the following new definition:

Cap. 403. " "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 of the Insurance Business Act, as if its head office were situated in Malta;"

(o) in the definition "tied insurance intermediaries activities", for the words "under the responsibility of an authorised company", there shall be substituted the words

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"under the responsibility of an authorised undertaking";

(p) for the definition "Tied Insurance Intermediaries Company Register", there shall be substituted the following:

" "Tied Insurance Intermediaries Company Register" in relation to an authorised undertaking means the Tied Insurance Intermediaries Company Register established and maintained by an authorised undertaking under article 34(1);".

Amendment of
article 4 of the
principal Act.

80. Article 4 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof, immediately after the words "revoke such insurance intermediaries rules.", there shall be added the words " revoke such insurance intermediaries rules and any amendment or revocation thereof shall be officially communicated to the persons concerned.";

(b) for sub-article (3) thereof, there shall be substituted the following:

"(3) Insurance intermediaries rules shall be binding on insurance intermediaries and others as may be specified therein."; and

(c) in paragraph (d) of sub-article (4) thereof, for the words "between insurance intermediaries and insurance companies", there shall be substituted the words "between insurance intermediaries and authorised insurance undertakings".

Amendment of
article 10 of the
principal Act.

81. Article 10 of the principal Act shall be amended as follows:

(a) sub-article (3) thereof shall be deleted; and

(b) sub-article (4) thereof shall be renumbered as sub-article (3).

Amendment of
article 31 of the
principal Act.

82. Article 31 of the principal Act shall be amended as follows:

(a) in sub-article (1) thereof, for the words "shall be taken out with an authorised company.", there shall be substituted the words "shall be taken out with an authorised undertaking.";

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

(c) sub-article (3) thereof shall be renumbered as sub-article (2); and

(d) in sub-article (2) thereof, as renumbered:

(i) for the words "Save as otherwise provided in sub-article (2), the provisions of this article shall not apply to - ", there shall be substituted the words "The provisions of this article shall not apply to - " ; and

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

"(b) large risks as defined in Article 13 of the Solvency II Directive."

83. Article 32 of the principal Act shall be amended as follows: Amendment of article 32 of the principal Act.

(a) in sub-article (1) thereof, for the words "with any authorised company.", there shall be substituted the words "with any authorised undertaking.";

(b) in sub-article (7) thereof:

(i) for the words "an agreement between an authorised company and a person enrolled in the Brokers List", there shall be substituted the words "an agreement between an authorised undertaking and a person enrolled in the Brokers List"; and

(ii) for the words "on behalf of the authorised company;", there shall be substituted the words "on behalf of the authorised undertaking;".

84. Article 34 of the principal Act shall be amended as follows: Amendment of article 34 of the principal Act.

(a) in sub-article (1) thereof, for the words "every authorised company desirous of appointing", there shall be substituted the words "every authorised undertaking desirous of appointing"; and

(b) in sub-article (2) thereof, for the words "every authorised company shall determine", there shall be substituted the words "every authorised undertaking shall determine".

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Amendment of
article 35 of the
principal Act.

85. In sub-article (1) of article 35 of the principal Act, for the words "registered by an authorised company in the Tied Insurance Intermediaries Company Register of the company if the company is satisfied", there shall be substituted the words "registered by an authorised undertaking in the Tied Insurance Intermediaries Company Register of such undertaking if it is satisfied".

Amendment of
article 36 of the
principal Act.

86. Article 36 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof:

(i) for the words "the duty of an authorised company", there shall be substituted the words "the duty of an authorised undertaking"; and

(ii) for the words "Tied Insurance Intermediaries Company Register of the company under article 37.", there shall be substituted the words "Tied Insurance Intermediaries Company Register established and maintained by it under article 37."; and

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

(i) for the words "an authorised company shall furnish", there shall be substituted the words "an authorised undertaking shall furnish"; and

(ii) for the words "issued to the company by the competent authority.", there shall be substituted the words "issued to the authorised undertaking by the competent authority."

Amendment of
article 37 of the
principal Act.

87. Article 37 of the principal Act shall be amended as follows:

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

(i) for the words "every authorised company desirous of appointing a person", there shall be substituted the words "every authorised undertaking desirous of appointing a person";

(ii) for the words "Tied Insurance Intermediaries Company Register of the company", there shall be substituted the words "Tied Insurance Intermediaries Company Register of the authorised undertaking";

(iii) in the first proviso to sub-article (1) thereof:

(aa) for the words "a company is prohibited from appointing and registering in the Tied Insurance Intermediaries Company Register of the company", there shall be substituted the words "an undertaking is prohibited from appointing and registering in its Tied Insurance Intermediaries Company Register"; and

(bb) in paragraph (c) thereof, for the words "a company authorised under the Insurance Business Act", there shall be substituted the words "an undertaking authorised under the Insurance Business Act";

(iv) in the second proviso to sub-article (1) thereof, for the words "a company is prohibited from", there shall be substituted the words "an undertaking is prohibited from";

(b) in sub-article (2) thereof, for the words "Where an authorised company appoints and registers in the Tied Insurance Intermediaries Company Register of the company", there shall be substituted the words "Where an authorised undertaking appoints and registers in its Tied Insurance Intermediaries Company Register"; and

(c) in sub-article (3) thereof:

(i) for the words "Tied Insurance Intermediaries Company Register of an authorised company", there shall be substituted the words "Tied Insurance Intermediaries Company Register of an authorised undertaking"; and

(ii) for the words "on behalf of that company.", there shall be substituted the words "on behalf of such undertaking.".

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

(i) for the words "more than one company authorised to carry on long term business,", there shall be substituted the words "more than one undertaking, authorised to carry on long term business,";

(ii) for the words "carried on by the companies concerned", there shall be substituted the words "carried on

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by the undertakings concerned"; and

(iii) for the words "Tied Insurance Intermediaries Company Register of one of the companies concerned.", there shall be substituted the words "Tied Insurance Intermediaries Company Register of one of the undertakings concerned.";

(e) in sub-article (5) thereof:

(i) for the words "more than one company authorised to", there shall be substituted the words "more than one undertaking authorised to";

(ii) for the words "carried on by the companies concerned", there shall be substituted the words "carried on by the undertakings concerned"; and

(iii) for the words "Tied Insurance Intermediaries Company Register of one of the companies concerned.", there shall be substituted the words "Tied Insurance Intermediaries Company Register of one of the undertakings concerned.";

(f) for sub-article (6) thereof, there shall be substituted the following:

"(6) No person who is an employee of an authorised undertaking shall, solely by virtue of his employment by the undertaking, require registration in the Tied Insurance Intermediaries Company Register of the undertaking under this article."; and

(g) in sub-article (9) thereof:

(i) for the words "An authorised company shall", there shall be substituted the words "An authorised undertaking shall"; and

(ii) for the words "issued by the company", there shall be substituted the words "issued by the undertaking".

Amendment of
article 38 of the
principal Act.

88. Sub-article (3) of article 38 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "paid to the company", there shall be substituted the words "paid to the authorised undertaking"; and

(b) in paragraph (b) thereof, for the words "paid by the authorised company", there shall be substituted the words "paid by the authorised undertaking".

89. Article 39 of the principal Act shall be amended as follows:

Amendment of article 39 of the principal Act.

(a) in paragraph (a) thereof, for the words "any authorised company may strike off the Tied Insurance Intermediaries Company Register of the company", there shall be substituted the words "any authorised undertaking may strike off its Tied Insurance Intermediaries Company Register"; and

(b) in paragraph (b) thereof, for the words "Tied Insurance Intermediaries Company Register of an authorised company may make an application in writing to the company concerned requesting the company", there shall be substituted the words "Tied Insurance Intermediaries Company Register of an authorised undertaking may make an application in writing to the undertaking concerned requesting it".

90. Article 40 of the principal Act shall be amended as follows:

Amendment of article 40 of the principal Act.

(a) in sub-article (1) thereof, for the words "Where an authorised company elects to strike the name of a person off the Tied Insurance Intermediaries Company Register of the company, the company shall forthwith notify", there shall be substituted the words "Where an authorised undertaking elects to strike the name of a person off its Tied Insurance Intermediaries Company Register, such undertaking shall forthwith notify";

(b) in sub-article (2) thereof:

(i) for the words "Where an authorised company strikes the name of a person off the Tied Insurance Intermediaries Company Register of the company", there shall be substituted the words "Where an authorised undertaking strikes the name of a person off its Tied Insurance Intermediaries Company Register"; and

(ii) for the words "the company shall also notify in writing", there shall be substituted the words "the undertaking shall also notify in writing";

(c) in sub-article (3) thereof:

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(i) for the words "notification from an authorised company that the company has elected to strike the name of a person off the Tied Insurance Intermediaries Company Register of the company," there shall be substituted the words "notification from an authorised undertaking that such undertaking has elected to strike the name of a person off its Tied Insurance Intermediaries Company Register,"; and

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

"(a) if the striking of such name off the register is on grounds other than those specified in sub-article (2), as early as reasonably practicable, confirm in writing to the authorised undertaking that the name of such person, in so far as it relates to that undertaking, shall be struck off the Tied Insurance Intermediaries List as from the date specified in the undertaking's notification;"

(d) for paragraph (a) of sub-article (4) thereof, there shall be substituted the following:

"(a) if the name of that person is registered in the Tied Insurance Intermediaries Company Register of any other authorised undertaking, the competent authority shall also forthwith notify in writing that other undertaking and direct it to strike forthwith the name of that person off the Tied Insurance Intermediaries Company Register of that undertaking and give the undertaking the reasons for its direction;"

(e) in sub-article (6) thereof, for the words "Where an authorised company receives in writing an application from a person registered in the Tied Insurance Intermediaries Company Register of the company requesting the company to strike the name of that person off the said register, the company shall without undue delay strike the name of that person off the said register", there shall be substituted the words "Where an authorised undertaking receives in writing an application from a person registered in the Tied Insurance Intermediaries Company Register of the undertaking requesting such undertaking to strike the name of that person off the said register, the undertaking shall without undue delay strike the name of that person off the said register";

(f) for sub-article (7) thereof, there shall be substituted the following:

"(7) Where, on an application made to an authorised undertaking under sub-article (6), the undertaking refuses, or unduly prolongs the process, to strike the name of a person off its Tied Insurance Intermediaries Company Register, the person concerned may refer the matter to the competent authority and the competent authority shall issue in writing to the undertaking concerned those directives it deems necessary to oblige the undertaking to hasten the process to strike the name of that person off its register."; and

(g) for sub-article (8) thereof, there shall be substituted the following:

"(8) On notification by the competent authority to an authorised undertaking that the name of a person registered in the Tied Insurance Intermediaries Company Register of the undertaking has been struck off the Tied Insurance Intermediaries List, the undertaking concerned shall forthwith surrender to the competent authority the certificate of enrolment relating to that person, and any official copies thereof."

91. In the proviso to sub-article (1) of article 41 of the principal Act, for the words "shall inform the company concerned", there shall be substituted the words "shall inform the undertaking concerned".

Amendment of article 41 of the principal Act.

92. In sub-article (1) of article 43 of the principal Act, for the words " "authorised company" ", there shall be substituted the words " "authorised undertaking" ".

Amendment of article 43 of the principal Act.

93. In sub-article (2) of article 44A of the principal Act, the words "within the meaning of the Financial Markets Act or on an equivalent market in a non-Member State or non-EEA State" shall be deleted.

Amendment of article 44A of the principal Act.

94. In sub-article (3) of article 45 of the principal Act, for the words "meetings held between an authorised company, an insurance intermediary, an approved auditor and the competent authority", there shall be substituted the words "meetings held between an authorised undertaking, an insurance intermediary, an approved auditor and the competent authority".

Amendment of article 45 of the principal Act.

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Amendment of
article 47 of the
principal Act.

95. Sub-article (3) of article 47 of the principal Act shall be deleted.

Amendment of
article 48 of the
principal Act.

96. Article 48 of the principal Act shall be amended as follows:

(a) for paragraph (d) of sub-article (1) thereof, there shall be substituted the following:

Cap. 403. "(d) an insurance and reinsurance undertaking authorised under the Insurance Business Act;" and

(b) in sub-article (2) thereof:

(i) for the words "Any foreign company enrolled or authorised", there shall be substituted the words "Any foreign company enrolled or any third country insurance undertaking or third country reinsurance undertaking authorised"; and

(ii) for the words "such company shall add", there shall be substituted the words "such foreign company, third country insurance undertaking or third country reinsurance undertaking shall add".

Amendment of
article 49 of the
principal Act.

97. Article 49 of the principal Act shall be amended as follows:

(a) for the words "under this Act and any regulations made thereunder", there shall be substituted the words "under this Act and any regulations or any insurance intermediaries rule made thereunder"; and

(b) in paragraph (e) thereof, for the words "on a director, an officer, a clerk", there shall be substituted the words "on a director, an officer, secretary, a clerk".

Amendment of
article 50 of the
principal Act.

98. Article 50 of the principal Act shall be amended as follows:

(a) in sub-article (2) thereof:

(i) for the words "any person who, or any company which, is aggrieved by a decision of the competent authority -", there shall be substituted the words "an appeal shall lie to the Financial Services Tribunal with respect to -";

(ii) in paragraph (a) thereof, for the words "to refuse to register or to enrol", there shall be substituted the words "any refusal to register or to enrol";

(iii) in paragraph (b) thereof, for the words "to impose any condition", there shall be substituted the words "any condition imposed";

(iv) in paragraph (c) thereof, for the words "to suspend or strike the name of a person off", there shall be substituted the words "any suspension or striking off of the name of a person from";

(v) in paragraph (d) thereof, for the words "to refuse to restore the name", there shall be substituted the words "any refusal to restore the name";

(vi) paragraphs (e), (f), (g), (h) and (i) shall be renumbered as (f), (g), (h), (i) and (k), respectively;

(vii) immediately after paragraph (d) thereof, there shall be added the following new paragraph (e):

"(e) any one or more measures taken under article 19;";

(viii) in paragraph (f) thereof, as renumbered, for the words "to refuse to register", there shall be substituted the words "any refusal to register";

(ix) in paragraph (g) thereof, as renumbered, for the words "to strike the name of a person off", there shall be substituted the words "any striking off of the name of a person from";

(x) for paragraph (h) thereof, as renumbered, there shall be substituted the following:

"(h) any requirement on an authorised undertaking to strike the name of a person off the Tied Insurance Intermediaries Company Register under article 41;";

(xi) in paragraph (i) thereof, as renumbered, for the words "to issue any notice or make any order", there shall be substituted the words "any notice issued or any order made";

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(xii) immediately after paragraph (i) thereof, as renumbered, there shall be added the following new paragraph (j):

"(j) any directive given under article
Cap. 403. 31A of the Insurance Business Act, made
applicable by article 54 of this Act;" and

(xiii) in paragraph (k) thereof, as renumbered, for the words "to impose an administrative penalty", there shall be substituted the words "any administrative penalty imposed"; and

(b) sub-articles (3) and (4) thereof shall be deleted.

Amendment of
article 52 of the
principal Act.

99. Sub-article (1) of article 52 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "enrolment under this Act or any regulations made thereunder", there shall be substituted the words "enrolment under this Act or any regulations or any insurance intermediaries rule made thereunder,";

(b) paragraphs (d), (e), (f), (g) and (h) shall be renumbered as (e), (f), (g), (h) and (i), respectively;

(c) immediately after paragraph (c) thereof, there shall be added the following new paragraph (d):

"(d) who is knowingly a party to the carrying out of insurance intermediaries activities with a fraudulent intent or for a fraudulent purpose; or"; and

(d) in paragraph (i) thereof, as renumbered, for the words "or any regulations made thereunder", there shall be substituted the words "or any regulations or any insurance intermediaries rule made thereunder,".

Amendment of
article 53 of the
principal Act.

100. Sub-article (1) of article 53 of the principal Act shall be amended as follows:

(a) in paragraph (a) thereof, for the words "imprisonment greater than two years;", there shall be substituted the words "imprisonment greater than four years;"; and

(b) in paragraph (b) thereof, for the words "or greater

than one hundred and sixteen thousand euro (€116,000);", there shall be substituted the words "or greater than four hundred and sixty-six thousand euro (€466,000);".

101. Article 54 of the principal Act shall be amended as follows:

Amendment of article 54 of the principal Act.

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

(i) in sub-paragraph (ii) of paragraph (a) thereof, for the words "to "authorised company" ", there shall be substituted the words "to "authorised insurance or reinsurance undertaking" "; and

(ii) in sub-paragraph (ii) of paragraph (b) thereof, for the words "to "an authorised company" ", there shall be substituted the words "to "an authorised insurance undertaking" "; and

(b) in sub-article (2) thereof, for the words "and references to "insurance rules" ", there shall be substituted the words "and references to "Insurance Rules" ".

102. The Third Column of the Schedule to the principal Act, shall be amended as follows:

Amendment of the Schedule to the principal Act.

(a) in paragraph (2) thereof:

(i) for the words "appointed by a company authorised under the Insurance Business Act", there shall be substituted the words "appointed by an undertaking authorised under the Insurance Business Act"; and

(ii) for the words "on behalf of the company", there shall be substituted the words "on behalf of the undertaking";

(b) in paragraph (4) thereof:

(i) for the words "on behalf of one or more authorised companies", there shall be substituted the words "on behalf of one or more authorised undertakings"; and

(ii) for the words "the full responsibility of those authorised companies", there shall be substituted the words "the full responsibility of those authorised undertakings".

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PART III

AMENDMENT TO THE COMPANIES ACT, CAP. 386

Amendment to
the Companies
Act.
Cap. 386.

103. This Part amends and shall be read and construed as one with the Companies Act, hereinafter in this Part referred to as "the principal Act".

Amendment of
article 84A of
the principal
Act.

104. In paragraph (a) of sub-article (2) of article 84A of the principal Act, for the words "and shall include the business of affiliated insurance as prescribed by regulations issued thereunder," there shall be substituted the words "and shall include the business carried on by a captive insurance undertaking and captive reinsurance undertaking in terms of the said Act,".

PART IV

AMENDMENT TO THE INCOME TAX ACT, CAP. 123

Amendment to
the Income Tax
Act.
Cap. 123.

105. (1) This Part of this Act amends the Income Tax Act and it shall be read and construed as one with the Income Tax Act, hereinafter in this Part referred to as "the principal Act".

(2) The provisions of this Part shall come into force on 1 January 2016.

Amendment of
article 51 of the
principal Act.

106. Article 51 of the principal Act shall be amended as follows:

(a) sub-article (2) thereof shall be re-numbered as paragraph (a) of the said sub-article; and

(b) immediately after paragraph (a), as re-numbered, of sub-article (2) thereof there shall be added the following new paragraph:

"(b) The benefits of EU Council Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (as amended) shall not be granted to any arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the said EU Council Directive 2011/96/EU, are not genuine having regard to all relevant facts and circumstances.

For the purpose of this paragraph –

(i) an arrangement may comprise more than one

step or part;

(ii) without prejudice to any remaining genuine steps or parts of any particular arrangement, an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality; and

(iii) where a single step or part in an arrangement or a series of arrangements is, by itself and without regard to the remainder of the arrangement or series of arrangements, not genuine, the provisions of this paragraph shall apply only to such step or part that is not genuine, without prejudice to the remainder of the arrangement or series of arrangements that are genuine.

The provisions of this paragraph –

(i) implement EU Council Directive 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States; and

(ii) shall not preclude the application of any other provision in the Income Tax Acts or any rules issued thereunder concerning the prevention of tax evasion, tax fraud or abuse."

PART V

AMENDMENT TO THE INCOME TAX MANAGEMENT ACT, CAP. 372

107. This Part of this Act amends the Income Tax Management Act and it shall be read and construed as one with the Income Tax Management Act, hereinafter in this Part referred to as "the principal Act".

Amendment to the Income Tax Management Act.
Cap. 372.

108. Immediately after sub-article (4) of article 10A of the principal Act there shall be added the following new sub-article:

Amendment of article 10A of the principal Act.

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"Rules for the collection and maintenance of information.

(5) The Minister may make rules for the collection and maintenance of information, even where arrangements between Malta and other relevant jurisdictions, or their tax authorities, for the purposes of exchange of information for tax purposes, are not in force:

Provided that the person that is obliged to collect and maintain such information according to such rules shall not be obliged to provide such information to the Commissioner before an arrangement between Malta and the other relevant jurisdiction, or its tax authorities, for the purposes of exchange of information for tax purposes, enters into force."

Passed by the House of Representatives at Sitting No 312 of the 26th October, 2015.

ANĠLU FARRUGIA
Speaker

RAYMOND SCICLUNA
Clerk of the House of Representatives

