

Insurance Rule 1 of 2007

Own Funds of Companies Carrying on Business of Insurance

Rule pursuant to article 2 of the Act

1. (1) This Insurance Rule on the own funds of companies carrying on business of insurance (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 2 of the Act.

(2) This Rule shall come into force on the 15th October 2007.

Application

2. This Rule applies to a company desirous of applying for authorisation to carry on and, on continuing basis, a company authorised to carry on, business of insurance (the “company concerned”).

Scope

3. The scope of this Rule is to determine the amounts and components of the own funds of companies concerned.

Construing of the own funds of companies carrying on business of insurance

4. The own funds of a company concerned, whether in Maltese currency or in other currencies acceptable to the Authority and unencumbered at all times, shall amount to and be construed in accordance with the provisions set out in the following articles of this Rule.

Own funds of companies carrying on business of insurance

5. (1) Where a company concerned is a company whose application for business constitutes the carrying on of business of insurance, or business of reinsurance, or combined business of insurance and business of reinsurance, or business of affiliated insurance, the own funds of the company shall amount to the value of not less than the value

specified in the second column of Title I of the Schedule to this Rule relating to the kind of business which the company applies to carry on, specified in the first column of that Title, subject, where applicable, to any restriction set out in the third column of that Title.

(2) Notwithstanding the value of any amount specified in Title I of the Schedule to this Rule, the Authority may require such other higher amount as it may deem appropriate for the kind of business or combined business the company applies to carry on, or is carrying on.

(3) The components which make up the own funds of the company as determined in paragraphs (1) and (2) of this article, are, in each case, the components determined in Title II of the Schedule to this Rule.

(4) The value of the own funds specified in Title I of the Second Schedule to this Rule shall be reviewed in accordance with the provisions of article 17a of Directive 73/239/EEC, article 30 of Directive 2002/83/EC and article 41 of Directive 2005/68/EC.

Repeals and Savings

6. (1) Saving the provisions of paragraph (2) of this article, Insurance Rule 1 of 2007 - Own Funds of Companies Carrying on Business of Insurance, which came into force on the 1st January 2007, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, in so far as authorised companies are concerned, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under this Rule.

SCHEDULE

(Article 5 of the Rule)

Own Funds of Companies Carrying on Business of Insurance

Title I - Value of the Own Funds

First Column Business	Second Column Value	Third Column Restriction
1. Affiliated insurance		
(a) general business	(i) 3,700,000 Euro; or (ii) 2,500,000 Euro	where the business of affiliated insurance is restricted to classes 1 to 9, 16 to 18.
(b) long term business	3,700,000 Euro	
(c) business of reinsurance	1,200,000 Euro	where the business of affiliated insurance is restricted to business of reinsurance.
(d) Combined		
(i) general business and reinsurance	(i) 3,400,000 Euro;	where: 1) the reinsurance premiums collected exceed 10% of the insurer's total premium; or 2) the reinsurance premiums collected exceed 50,000,000 Euro; or

3) the technical provisions resulting from its reinsurance acceptances **exceed** 10% of its total technical provisions.

(ii) 3, 700,000 Euro; or where the business of affiliated insurance is **not** restricted to classes 1 to 9, 16 to 18 and:

1) the reinsurance premiums collected **do not exceed** 10% of the insurer's total premium; or

2) the reinsurance premiums collected **do not exceed** 50,000,000 Euro; or

3) the technical provisions resulting from its reinsurance acceptances **do not exceed** 10% of its total technical provisions.

(iii) 2,500,000 Euro where the business of affiliated insurance is restricted to classes 1 to 9, 16 to 18 and:

1) the reinsurance premiums collected **do not exceed** 10% of the insurer's total premium; or

2) the reinsurance premiums collected **do not exceed** 50,000,000 Euro; or

3) the technical provisions

resulting from its reinsurance acceptances **do not exceed** 10% of its total technical provisions.

- (ii) long term business and reinsurance 3,700,000 Euro
2. Long term business 3,700,000 Euro
3. General business (i) 3,700,000 Euro; or (ii) 2,500,000 Euro where the business of insurance is restricted to classes 1 to 9, 16 to 18.
4. Business of reinsurance 3,400,000 Euro where the business of insurance is restricted to reinsurance
5. Combined
- (a) long term business direct and reinsurance; or 3,700,000 Euro
- (b) general business direct and reinsurance; or (i) 3,400,000 Euro where:
- 1) the reinsurance premiums collected **exceed** 10% of the insurer's total premium; or
 - 2) the reinsurance premiums collected **exceed** 50,000,000 Euro; or
 - 3) the technical provisions resulting from its reinsurance acceptances **exceed** 10% of its total technical provisions.

(ii) 3,700,000 Euro; or

where the business of insurance is **not** restricted to classes 1 to 9, 16 to 18 and:

- 1) the reinsurance premiums collected **do not exceed** 10% of the insurer's total premium; or
- 2) the reinsurance premiums collected **do not exceed** 50,000,000 Euro; or
- 3) the technical provisions resulting from its reinsurance acceptances **do not exceed** 10% of its total technical provisions.

(iii) 2,500,000 Euro

where the business of insurance is restricted to classes 1 to 9, 16 to 18 and:

- 1) the reinsurance premiums collected **do not exceed** 10% of the insurer's total premium; or
- 2) the reinsurance premiums collected **do not exceed** 50,000,000 Euro; or
- 3) the technical provisions resulting from its reinsurance acceptances **do not exceed** 10% of its total technical provisions.

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| (c) long term business and general business direct | 6,200,000 Euro | where the business of insurance is restricted to classes 1 to 9, 16 to 18; |
| (d) long term business and general business direct | 7,400,000 Euro | where the business of insurance is not restricted to classes 1 to 9, 16 to 18 and: |
| (e) long term business and general business direct and reinsurance | (i) 7,100,000 Euro; | where: <ul style="list-style-type: none"> 1) the reinsurance premiums collected in respect of general business exceed 10% of the insurer's total general business premium; or 2) the reinsurance premiums collected in respect of general business exceed 50,000,000 Euro; or 3) the technical provisions resulting from its reinsurance acceptances in respect of general business exceed 10% of its total technical provisions in respect of general business. |
| | (ii) 7,400,000 Euro; or | where the business of insurance is not restricted to classes 1 to 9, 16 to 18 and: <ul style="list-style-type: none"> 1) the reinsurance premiums collected in respect of general business do not exceed 10% of the insurer's total general business |

premium; or

- 2) the reinsurance premiums collected in respect of general business **do not exceed** 50,000,000 Euro; or
- 3) the technical provisions resulting from its reinsurance acceptances in respect of general business **do not exceed** 10% of its total technical provisions in respect of general business.

(iii) 6,200,000 Euro

where, in the case of general business, the business of insurance is restricted to classes 1 to 9, 16 to 18 and:

- 1) the reinsurance premiums collected in respect of general business **do not exceed** 10% of the insurer's total general business premium; or
- 2) the reinsurance premiums collected in respect of general business **do not exceed** 50,000,000 Euro; or
- 3) the technical provisions resulting from its reinsurance acceptances in respect of general business **do not exceed** 10% of its total

provisions in respect of
general business.

Title II - Components Making Up The Own Funds

1. The initial paid up share capital of a company concerned shall be equal to not less than fifty per centum of the value of the own funds of the company in respect of the business the company applies to carry on, or is carrying on, as determined in Title I of this Schedule or any other higher amount as may be required by the Authority.

2. Reserves other than reserves corresponding to the technical provisions and, where applicable, the equalisation reserve.

3. Profit or loss brought forward after deduction of dividends to be paid.

4. Cumulative preferential share capital and subordinated loan capital up to fifty per centum of the value of the own funds of the company concerned no more than twenty-five per centum of which shall consist of subordinated loans with a fixed maturity, or fixed term preferential share capital, and provided the following minimum criteria are met -

(a) in the event of the bankruptcy or liquidation of the company, binding agreements must exist under which the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled;

(b) subordinated loan capital must fulfil the following additional conditions -

(i) only fully paid-up funds may be taken into account;

(ii) for loans with a fixed maturity, the original maturity must be at least five years. Not later than one year before the repayment date the company must submit to the Authority for its approval a plan showing how the value of the own funds of the company will be kept at, or brought up to, the required level at maturity, unless the extent to which the loan may rank as component of the own funds is gradually reduced during at least the last five years before the repayment date. The Authority may authorise the early repayment of such loans provided application is made in writing by the issuing company

and its value of the own funds and the available margin of solvency will not fall below the required level of own funds or margin of solvency;

(iii) loans the maturity of which is not fixed must be repayable only subject to five years' notice unless the loans are no longer considered a component of the own funds of the company, or unless the prior consent of the Authority is specifically required for early repayment. In the latter event the company must notify the Authority in writing at least six months before the date of the proposed repayment, specifying the actual and required values of the own funds both before and after that repayment. The Authority shall authorise repayment only if the company's value of the own funds and the available margin of solvency will not fall below the required level of own funds or margin of solvency;

(iv) the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the company, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the Authority has confirmed in writing that it has no objection to the amendment proposed.

5. Securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in paragraph 4 of this Schedule, up to fifty per centum of the value of the own funds of the company concerned for the total of such securities and the subordinated loan capital referred to in that paragraph provided they fulfil the following:

(a) they may not be repaid on the initiative of the bearer or without the prior consent of the Authority;

(b) the contract of issue must enable the company to defer the payment of interest on the loan;

(c) the lender's claims on the company must rank entirely after those of all non-subordinated creditors;

(d) the documents governing the issue of the securities must provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the company to continue its business;

(e) only fully paid-up amounts may be taken into account.

6. Capital contribution provided the following minimum criteria are met-

(a) the memorandum or articles of association of the company concerned permit it to accept from time to time capital contributions;

(b) it is covered by a binding agreement;

(c) it is fully paid in, made in the nature of an unconditional transfer of funds, it is unfettered and irrevocable, it does not give rise to a credit in favour of the contributor and is free from any servicing costs or charges;

(d) it is classified as an undistributable reserve in the balance sheet of the company concerned:

Provided that, where the capital contribution or part thereof, is not used to cover the required level of own funds or margin of solvency, the company concerned may, with the prior consent of the Authority, distribute the capital contribution or part thereof back to the contributor.

7. In this Schedule the “required margin of solvency” means the margin of solvency which a company is required to maintain in accordance with article 14 of the Act and the regulations made for the purpose of this article.