

Insurance Rule 23 of 2009

Exercise of Passport Rights by European Insurance Undertakings - Services

Rule pursuant to article 4 of the Act

1. (1) This Insurance Rule on the exercise of passport rights by European insurance undertakings seeking to provide services in Malta (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act and regulations 4 and 5 of Part I of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2004 (“the Regulations”).

(2) This Rule shall come into force on the 1st July 2009.

Application

2. This Rule applies to -

(a) a European insurance undertaking which is seeking to provide services in Malta in exercise of a European right;

(b) a European insurance undertaking which has received authorisation under article 4 of Directive 2002/83/EC and article 6 of Directive 73/239/EEC to carry on both long term business and general business and seeks to extend its services in Malta from general business to long term business (or vice versa);

(c) a European insurance undertaking which is seeking to provide services in Malta in lieu of, or in addition to, establishing a branch in Malta in exercise of a European right;

(d) a European insurance undertaking which provides services in Malta in exercise of a European right, and seeks to effect changes to the details of those services,

(the “European insurance undertaking”).

Scope

3. The scope of this Rule is to determine-

(a) pursuant to regulation 4(2)(d) of the Regulations, the particulars to be included in the notice forwarded by the supervisory authority of the European insurance undertaking to the Authority;

(b) pursuant to regulation 4(4) of the Regulations, the manner in which a European insurance undertaking providing services in Malta is to effect changes to the details of those services;

(c) pursuant to regulation 5 of the Regulations, the information to be provided by a European insurance undertaking, covering risks relating to class 10 of Part I of the Third Schedule to the Act, not including carrier's liability.

European Insurance Undertaking seeking to provide services in Malta

4. A European insurance undertaking which is seeking to provide services in Malta in exercise of a European right must satisfy the service conditions. The service conditions are those specified in article 5 of this Rule.

Service conditions

5. The service conditions are that:

(1) The Authority has received a notice from the supervisory authority of the European insurance undertaking of the undertaking's intention to provide services in Malta.

(2) The notice communicated by the foreign authority includes –

(a) a certificate issued by the supervisory authority of the European insurance undertaking, attesting that the European insurance undertaking has the minimum margin of solvency calculated in accordance with the solvency provisions contained in the First Non-Life Directive 73/239/EEC as amended by the Third Non-Life Directive 92/49/EEC or the Codified Life Assurance Directive 2002/83/EC;

(b) the types and nature of risks or commitments which the European insurance undertaking proposes to cover or the

commitments which it proposes to undertake in exercise of the freedom to provide services;

(c) the class or classes of long term business or class or classes or part classes of general business which the European insurance undertaking is authorised to carry on and into which these risks or commitments fall;

(d) name and address of the head office of the European insurance undertaking;

(e) name and address of the establishment/s, situated in a Member State or an EEA State, from which it is planned to provide services, [if not the same as (d)];

(f) where the European insurance undertaking proposes to carry on business of insurance in Malta covering risks relating to class 17 of Part I of the Third Schedule to the Act, it is to specify the arrangement chosen from those described in article 3(2) of Directive 87/344/EEC of 22 June 1987;

(g) where the European insurance undertaking proposes to carry on business of insurance in Malta covering risks relating to class 18 of Part I of the Third Schedule to the Act, information relating to the resources available to the European insurance undertaking to successfully carry out assistance operations.

European insurance undertaking covering risks relating to class 10

6. (1) Pursuant to regulation 5 of the Regulations, a European insurance undertaking seeking to carry on business of insurance in Malta in exercise of a European right covering risks relating to class 10 of Part I of the Third Schedule to the Act, not including carrier's liability, is required to provide the Authority with the information specified in paragraph 2 of this article.

(2) The information required to be provided by the European insurance undertaking is the following:

(a) the name and address of the representative who, pursuant to article 6 of Council Directive 90/618/EEC -:

(i) must be resident or established in Malta and be capable of dealing with cases in the Maltese and English language;

(ii) shall collect all necessary information and take necessary measures in relation to claims;

(iii) shall possess sufficient powers to represent the European insurance undertaking in relation to persons suffering damage or injury who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of Malta in relation to these claims;

(iv) may also be required to represent the European insurance undertaking, before the Authority with regard to checking the existence and validity of motor vehicle liability insurance policies; and

(v) shall **not** take up the business of direct insurance on behalf of the European insurance undertaking.

(b) a copy of the motor policy of insurance to be issued by the European insurance undertaking;

(c) a declaration stating that the policy complies with the specific requirements in respect of such policies, contained in the Motor Vehicle Insurance (Third Party Risks) Ordinance (Cap.104), and that the European insurance undertaking undertakes to comply with the provisions of any law relating to any such insurance which may from time to time be in force;

(d) A declaration that it has:

(i) signed the Malta Green Card Bureau Agreement;

(ii) signed the Motor Insurers' Bureau Domestic Agreement;

(iii) given an undertaking to the Protection and Compensation Fund Management Committee that it undertakes to compensate victims of road traffic accidents in the circumstances specified in Part IV of the Protection and Compensation Fund Regulations, 2003.

(3) If the European insurance undertaking fails to appoint the representative referred to in sub-paragraph (a) of paragraph (2) of this article, the Authority may give its approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC of the

European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC to assume the function of the representative.

The notification procedure

7. If the Authority receives a notice from a foreign authority or is informed of a European insurance undertaking's intention to provide services in Malta, the Authority will acknowledge receipt immediately after the notice is received. The Authority will notify the European insurance undertaking and the foreign authority of the applicable provisions, if any.

8. A European insurance undertaking that has satisfied the service conditions provided in article 5 of this Rule may commence providing services in Malta on the certified date on which it is informed by the foreign authority that the notice from the foreign authority has been sent to the Authority.

Applicable provisions

9. In the interest of the general good, a European insurance undertaking providing services in Malta, shall be required to comply with Maltese rules ("applicable provisions") as specified in article 11.

10. If the Authority has doubts as to the precise conditions under which the activity of the European insurance undertaking is to be pursued, it may ask the foreign authority to forward any relevant information concerning the specific resources which the undertaking proposes to use in marketing its services in Malta.

11. The applicable provisions are:

(a) the requirement to provide information to policyholders before concluding a contract of insurance or during the term of the contract in accordance with the Guidelines for European Insurance Undertakings Carrying on Business of Insurance in Malta under the Freedom of Services – Information for Policyholders set out in the Appendix attached to this Rule;

(b) pursuant to regulation 7 of the Regulations, a European insurance undertaking may advertise its services in Malta through any available means of communication in Malta provided that it

complies with the provisions of Insurance Rule 14 of 2008 – Insurance Advertisement and Other Promotional Activities, in so far as they apply;

(c) pursuant to the Fiscal Representatives (Financial Services Undertaking Exercising a European Right) Regulations, 2004, the requirement to appoint a fiscal representative who will be responsible for the payment of all tax, duty and other similar fiscal charges which may be levied in Malta in respect of the business carried on in Malta under the provisions of freedom to provide services by the European insurance undertaking which appointed the representative.

Changes to details of services

12. A European insurance undertaking which seeks to effect any changes in the services' details is required to satisfy the provisions as set out in the First Schedule to this Rule.

Language

13. The particulars and information with regards to the services provided in Malta by the European insurance undertaking required to be submitted by this Rule shall be provided to the Authority in the English language.

Repeals and Savings

14. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 23 of 2005 – Exercise of Passport Rights by European Insurance Undertakings- Services, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, 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.

FIRST SCHEDULE

1.0 Preliminary

1.1 A European insurance undertaking which has exercised a European right and provides services in Malta, is required to satisfy the following provisions prior to effecting any changes in the information submitted pursuant to article 6 of this Rule and to details of services relating to the:

(a) class or classes of long term business or class or classes or part classes of general business which the European insurance undertaking is authorised to carry on; or

(b) nature of the risks which the European insurance undertaking proposes to cover or the commitments which it proposes to undertake in Malta; or

(c) name of the representative in Malta, in the case of a European insurance undertaking covering motor vehicle third party risks, not including carrier's liability.

2.0 Manner of making changes to the details of services

2.1 The European insurance undertaking is required to give notice to its foreign authority stating the details of the proposed change. Where the foreign authority does not object to the proposed changes, it shall communicate the information to the Authority as soon as possible and in any event not later than one month after it has received the information from the European insurance undertaking.

2.2 The Authority shall, if necessary, serve a notice on the foreign authority and inform the European insurance undertaking of any consequential changes in the applicable provisions as determined in article 10 of this Rule.

2.3 The Authority will immediately acknowledge receipt of the notice received pursuant to paragraph 2.1 above.

2.4 The proposed change in the details of services may be effected by the European insurance undertaking as soon as the foreign authority notifies the undertaking that the proposed change has been notified to the Authority in the manner as set out in the paragraph 2.1 of this Schedule.

3.0 Extension of services' activity relating to composite insurance undertakings

3.1 Where a European insurance undertaking which has received authorisation to carry on both long term business and general business and seeks to extend its business in Malta from general business to long term business (or vice versa), the procedure as set out in article 5 of this Rule shall apply.

4.0 Changes to the details of services relating to the representative

4.1 Where the proposed change in the details of services concerns an appointment of a new representative, the name and address of the new representative referred to in sub-paragraph (a) of paragraph (2) of article 6 of this Rule shall be submitted.

Appendix

Guidelines

**Provisions for European Insurance Undertakings
Carrying on Business of Insurance in Malta**

Information for policyholders

Application

1. These Guidelines apply, on a continuing basis to a European Insurance Undertaking (“the undertaking”) which in accordance with Article 35 of the Third Non-Life Directive or Article 42 of the Codified Life Assurance Directive, as the case may be, has been authorised by the supervisory authority of its home member state to carry on business in Malta under the provisions to provide services and the Malta Financial Services Authority (“the MFSA”) has received the information required by the said Article 35 or Article 42.

2. These Guidelines shall not apply to a European Insurance Undertaking which proposes to enter or has entered into contracts relating to large risks as defined in Article 5(d) of the First Non-Life Insurance Directive 73/239/EEC of 24 July 1973 (as amended by Article 5 of the Second Non-Life Insurance Directive 88/357/EEC of the 22 June 1988).

Information for Policyholders

3. (1) The information which an undertaking is to communicate to a policyholder, including a potential policyholder, and the manner in which that information is to be furnished -

(a) as respects long term business:

(i) before concluding the contract, is the information set out in paragraph 4 and 5 of these Guidelines;

(ii) during the term of the contract, is the information set out in paragraph 6 of these Guidelines;

(b) as respects general business, before concluding the contract, is the information set out in paragraph 7 of these Guidelines.

(2) Any information required to be furnished under these Guidelines shall be furnished in Maltese or English as it suits the person to whom the information is furnished, or in both languages or in a language agreed to by the parties.

Long term business: Before concluding a contract

4. (1) This paragraph applies to a contract entered into by an undertaking if -

(a) the effecting of the contract constitutes:

(i) the carrying on in Malta of long term business which is not business of reinsurance; or

(ii) the provision in Malta of long term business contracts;
and

(b) the commitment covered by the contract is a commitment where Malta is the country of the commitment.

(2) Before entering into a contract to which this paragraph applies, the undertaking shall furnish the other party to the contract in writing with the information required by -

(a) sub-paragraphs (3) and (4) of this paragraph in the case of long term contracts of insurance, other than linked long term contracts of insurance; or

(b) sub-paragraphs (3)(h), 3(l) and (4) of this paragraph and paragraph 5 of these Guidelines, in the case of linked long term contract of insurance.

(3) The information required by this sub-paragraph is -

(a) a definition of each benefit and option;

Note: There should be ample explanation on the object and purpose of a policy so that each policy may be thoroughly understood.

(b) the term of the contract and the means by which it may be terminated;

(c) the method of paying premiums and the duration of the payments;

(d) the method of calculating bonuses and the distribution of bonuses;

Note: There should be sufficient explanation as to the different types of bonuses (*i.e. Reversionary or Terminal*) which an undertaking includes in a quotation and the difference between such bonuses.

The expression “method of calculating bonus” should not be interpreted to refer to the actuarial techniques in determining the bonus rates but to the manner in which bonuses are calculated *i.e.* whether on a daily or an annual basis, whether expressed as a percentage of premium or the sum assured plus accruing bonuses, or as a percentage of accruing reversionary bonuses only;

(e) an indication of surrender and paid-up values and the extent to which such values are guaranteed;

Note: There should be illustration of surrender values for specific years *i.e.* 1, 2, 3, 4, 5, 10, 15, 20, 25, etc.

Where no surrender value accumulates before the payment of 2 or 3 or more full year’s premium, that information should also be disclosed;

(f) the premiums for each benefit, whether a main or supplementary benefit and, where applicable, the amount and purpose of any charge or fee in addition to or included in the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(g) information whether in the home member state there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the undertaking;

(h) information relating to the requirement under article 35 of Directive 2002/83/EEC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance providing for the period within which a policyholder may cancel the life assurance contract;

(i) information furnished to a policyholder shall not contain a statement relating to past performance unless:-

(i) the basis on which such performance is measured is clearly furnished and the presentation is fair;

(ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance;

(iii) the past performance is relevant to the undertaking or the policies offered by the undertaking;

(iv) the source of information is stated;

(j) general information on the tax arrangements applicable to the type of policy. It should be made clear that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future;

(k) the arrangements for handling policyholders' complaints concerning contracts of insurance by the undertaking;

(l) whether the parties to the contract are entitled to choose the law applicable to the contract and:-

(i) if so, the law which the undertaking proposes to choose; and

(ii) if not, the law which will be so applicable.

(4) The information required by this sub-paragraph is -

(a) the name and legal form of the undertaking;

(b) the country where the undertaking's head office is situated; and,

(c) the address of the undertaking's head office and the name and address of the branch.

Supplementary information to be provided in relation to Linked Long Term Contracts of Insurance

5. (1) This paragraph applies to a contract entered into by an undertaking if the contract of insurance relates to class III of the Second Schedule to the Act.

(2) An undertaking providing services in Malta under the freedom to provide services to carry on linked long term contracts of insurance shall provide a Product Information document, or other document which shall include the detailed terms and conditions of the linked long term contract of insurance. The following minimum details are to be included in such document:

(a) a brief glossary to explain the meaning of a linked long term contract of insurance and other terms used in the document, such as fund, unit, bid/offer price, switching, notional allocation (it should be clear that the policyholder will be entitled to a *notional* allocation of units in the underlying funds or other instruments, rather than actual *ownership*, since such units would be owned by the undertaking) etc;

(b) a brief description of the nature of each underlying fund or asset linked to the contract. Where one or more collective investment schemes are linked to the policy, a clear reference to the name of such scheme/s shall be included together with brief details of the investment objective of such scheme/s and a statement indicating that the choice of scheme/s to which the policy is linked should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are available upon request;

(c) definition of the units to which the benefits are linked;

(d) without prejudice to the information to be provided under paragraph 4(3)(f) above, all charges, including, where applicable, switching charges. In this regard, note should be taken of the following:

(i) maintenance costs/charges should be reasonable and their indexation which may be different from the indexation rate for premiums, capped (i.e. the maximum

rate by which such charges may be increased by the undertaking, should be specified in the policy terms and conditions);

(ii) annual percentage management charges may be levied by the undertaking provided the total charges (inclusive of any initial charges on purchase of units, maintenance charges etc), are reasonable. Moreover, the regular management charge should be calculated to ensure that no double charging (of fees levied by third party fund managers), occurs;

(iii) reference to any optional indexation of premiums at a specified rate;

(iv) reference to the frequency of reporting, free of charge to policyholders which shall be at least annually, or if so requested by policyholders, at least every six months.

(3) Any projected values relating to linked long term contracts of insurance provided to potential policyholders, shall be net of all applicable charges, including exit fees and annual charges and shall contain, where applicable, and in a prominent manner:

(a) a clear description of the basis of the projections and a clear linkage to risk warnings;

(b) a warning that the projected values may not materialise, are merely indicative, and that market conditions may be such as to result in returns which are by far inferior to the lowest projected values;

(c) a statement that the projected growth rates of return are for illustration purposes only and a warning that projected growth rates are not minimum or maximum values but have only been selected to portray different scenarios for illustration purposes only;

(d) a warning that the surrender value or maturity value will depend on the market values of the underlying assets;

(e) a warning that a fixed annual rate of return is being assumed for the projected growth rates and that such a fixed return does not reflect the returns of the underlying assets which may fluctuate in value.

Long term business: During the term of a contract

6. (1) This paragraph applies where an undertaking has entered into a contract where the commitment covered by the contract is a commitment where Malta is the country of commitment.

(2) If during the term of the contract there is –

(a) any change in the information mentioned in indents (a) to (f) of sub-paragraph (3) of paragraph 4 and paragraph 5 of these Guidelines; and

(b) an amendment to the law applicable to the contract,

the undertaking shall inform the other party to the contract of the effect of the change.

(3) If the contract provides for the payment of bonuses, the undertaking shall, at least once in every calendar year, inform the other party to the contract in writing of the amount of any bonus-

(a) which has become payable under the contract, and

(b) of which that party has not been previously informed under this paragraph.

(4) There is a sufficient compliance with sub-paragraph (3) of this paragraph if the undertaking furnishes the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that paragraph, or if the undertaking informs that party of -

(a) the total value of the benefits (including bonuses) which have accrued under the contract; and

(b) the rates of bonus which have been declared since that party was previously informed under this paragraph.

(5) In this article “bonus” does not include a bonus the amount of which is specified in the contract.

General business: Before concluding a contract

7. (1) This paragraph applies to a contract to be entered into by an undertaking if the risk covered by the contract is a risk situated in Malta.

(2) Before entering into a contract to which this paragraph applies, the undertaking shall, if the other party (or one of the other parties) to the contract is an individual, inform that party -

(a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, of the law which the undertaking proposes to choose; and

(ii) if not, of the law which will be so applicable;

(b) whether in the home Member State of the undertaking concerned there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the undertaking;

(c) the arrangements for handling policyholders' complaints concerning contracts of insurance by the undertaking;

(d) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(e) the date of inception of the policy.

(3) Any relevant document issued by an undertaking in relation to a contract to which this paragraph applies shall state the name and address of the undertaking.

(4) In this article "relevant document", in relation to a contract to which this article applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

Proof of furnishing the required information

8. (1) Any disclosure required to be made by these Guidelines shall be communicated to the potential policyholder or policyholder -

(a) on paper or in some other durable medium that is accessible to such person; and

(b) in a clear and accurate manner, comprehensible to such person.

(2) For the purposes of sub-paragraph (1) of this paragraph, “durable medium” means any instrument which enables the potential policyholder or policyholder to store information addressed personally to such person in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in this sub-paragraph.

(3) Notwithstanding the provisions of paragraph (1)(a) of this paragraph, the undertaking shall verbally provide the information required by these Guidelines:

(a) whenever the potential policyholder or policyholder asks for the information; or

(b) whenever immediate cover is needed:

Provided that, in either case, the undertaking shall, immediately after the contract of insurance is entered into, comply with sub-paragraph (1) of this article.

(4) No information given under this Rule shall be sufficient if the information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

(5) The burden of proof that any information required to be furnished under these Guidelines has been furnished in accordance with the requirements of these Guidelines rests on the undertaking.