

PART A

**AUTHORISATION FOR CARRYING ON BUSINESS OF
INSURANCE**

Chapter 1: The Application Process

1.1 Introduction

1.1.1 The application for authorisation to carry on business of insurance shall be considered in the light of the scheme of operations to be submitted to the competent authority pursuant to article 8 of the Act and the fulfilment of the conditions laid down for authorisation. This Chapter determines the particulars or proof to be included in schemes of operations required to be submitted under the Act relating to the kind of business of insurance which applicants are desirous to carry on and the manner in which applicants shall apply to the competent authority to carry on business of insurance in or from Malta.

1.2. Application and Authorisation Process

1.2.1 The following undertakings are required to submit a scheme of operations:

(a) an undertaking desirous of applying for authorisation to carry on and, on continuing basis, an undertaking authorised to carry on, business of insurance;

(b) an undertaking authorised to carry on business of insurance desirous of applying for inclusion, in the authorisation, of new classes of business of insurance;

(c) an undertaking desirous of applying for authorisation to carry on business of insurance as a protected cell company;

(d) an undertaking desirous of applying for authorisation to carry on business of insurance as an incorporated cell company;

(e) an undertaking authorised under the Act desirous of applying for authorisation to convert into a protected cell company or transform into an incorporated cell company or an incorporated cell;

(f) a protected cell company authorised under the Act desirous of applying for the approval of a protected cell;

(g) a protected cell company authorised under the Act, having no protected cells desirous of applying for approval of a transformation into an incorporated cell company;

(h) a protected cell company authorised under the Act, having one or more protected cells desirous of applying for approval of a division into an incorporated cell company and one or more incorporated cells;

(i) an incorporated cell company authorised under the Act, but having no incorporated cells, that desires to apply for approval for a transformation into a protected cell company;

(j) an undertaking desirous of applying for authorisation as an incorporated cell in an incorporated cell company authorised under the Act;

(k) an incorporated cell company or an incorporated cell for approval for a transformation into a non-cellular company,

(the “applicant”).

The Authorisation Process for authorised insurance and reinsurance undertakings

1.2.2 A request for the authorisation of an applicant should be made by submitting a duly completed Application Form in the form set out in the Schedules to this Chapter, as applicable, supported by the documents requested in the respective applications. The competent authority may require any additional documents as deemed necessary.

1.2.3 Chapters 1 and 2 in Part A of these Insurance Rules should be read carefully before an Application Form for authorisation is submitted. It is recommended that due consideration is given to the applicable legal and regulatory requirements. Applicants may wish to arrange to meet representatives of the competent authority in advance of submitting a formal application for authorisation, to describe the background to its application and the way in which it intends to carry on business of insurance. Although guidance will be given on the applicable regulatory requirements and on the completion of the Application documents, responsibility for

the formulation of the proposal and the completion of an Application will remain with the Applicant.

- 1.2.4 When submitting an application, the application pack should be as comprehensive as possible. An application is deemed to have been officially submitted once a full application pack (i.e. Application Form and all relevant supporting documentation) together with the relevant application fee is submitted to the competent authority. In the instance where application documents are submitted in a piecemeal fashion or are incomplete, the processing of an application will not start and will be delayed until receipt of all the relevant documents and fees concerned. The application forms and related documentation should not be amended in any way. All questions in the application form should be answered and any questions which are not relevant to the application at hand should be marked 'Not Applicable' and not deleted.
- 1.2.5 Following submission, the Application and supporting documentation will be reviewed and comments provided to the Applicant directly or to the Applicant's professional advisors. The competent authority may ask for more information and may make such further enquiries as it considers necessary. The competent authority will only accept comments on issues arising from its review of the application documents, either directly from the Applicant or the professional advisors thereof or from any other person if the latter is so authorised by the Applicant upon evidence of the said authorisation. The 'fit and proper' checks begin at this stage.
- 1.2.6 The competent authority will analyse the submissions and, on the basis of this, make a decision regarding the application for authorisation.
- 1.2.7 Following notification of the competent authority's decision regarding the application for authorisation, the Applicant will be required to finalise any outstanding matters, such as (in the case of a new undertaking) its incorporation and capitalisation.
- 1.2.8 The Applicant may also be required to satisfy a number of post-authorisation matters prior to formal commencement of business.
- 1.2.9 Any scheme of operations required to be submitted by an applicant shall -

(a) in the case of an applicant which is an undertaking whose head office is in Malta include the particulars or proof concerning matters set out in Section 1.3 of this Chapter of the Insurance Rules;

(b) in the case of an applicant which is a third country insurance undertaking or a third country reinsurance undertaking, include:

(i) the particulars or proof concerning matters set out in Section 1.3 of this Chapter of the Insurance Rules, in so far as they are applicable to the proposed branch; and

(ii) a statement from the overseas regulatory authority in the country in which the applicant has its head office showing the classes of business of insurance which the applicant is authorised to carry on in that country and declaring that the undertaking meets the solvency requirements in accordance with the law of that country governing business of insurance.

1.2.10 In the case of an applicant which, at the time of submitting the application, already holds an authorisation to carry on business of insurance in a class or classes of insurance, the particulars of proof required by Section 1.3 of this Chapter are only in respect of the new class or classes of business for which new authorisation is sought.

1.3. Particulars or proof to be included in a scheme of operations

1.3.1 Any scheme of operations required to be submitted by an undertaking applying for authorisation to carry on business of insurance shall include the particulars or proof contained in the following paragraphs on the preparation of a scheme of operations by an undertaking applying for authorisation to carry on business of insurance.

General content of a scheme of operations

1.3.2 A scheme of operations must:

(a) describe clearly the applicant's business strategy, including underwriting, general pricing and market penetration strategies;

(b) include financial projections with appropriate scenarios, including realistic, optimistic and pessimistic scenarios;

(c) as at the end of each financial year which falls within the period to which the scheme of operations relates, describe the assumptions which underlie those forecasts, the reasons for adopting those assumptions and the accounting policies on which the projections are based;

(d) be accompanied by a report of an approved auditor or the undertaking's auditor, as the case may be, on the adequacy of the undertaking's business plan and that it has been properly prepared on the basis of the assumptions stated. In the case of an undertaking which is managed by an insurance manager, the said report may be drawn up by the undertaking's manager;

(e) in the case of long term with-profits business in terms of class I and III as specified in the Second Schedule to the Act be accompanied also by a report of the undertaking's actuary, appointed for the purposes of article 22 of the Act, on the adequacy of the undertaking's policy of reserving; and

(f) in each case, the scheme of operations shall be signed by a person who holds a warrant of a certified public accountant under the Accountancy Profession Act (Cap.281), or is a Fellow of an Institute of Actuaries or a Fellow of a Faculty of Actuaries, or in each case, holds professional qualifications of similar standing of an institute of repute recognised by the competent authority.

Detailed scheme of operations

1.3.3 A scheme of operations should include information detailed under the following headings:

Background to the applicant and business planning

1.3.3.1 The scheme of operations should include the following:

(a) a description of the applicant;

- (b) a description of the:
 - (i) nature of the risks or commitments which the undertaking proposes to cover;
 - (ii) the classes of business to be underwritten including whether the business is direct business, or both direct business and reinsurance, or restricted to reinsurance only; and
 - (iii) proposed insurance products to be underwritten by the undertaking;
- (c) a description, in narrative and tabular format, of the past history of the book of business;
- (d) if the applicant is a member of a group of undertakings/companies:
 - (i) a description of the group, the significant activities of the group and the undertaking's place within it, including a corporate structure chart ("family tree") with applicable shareholdings, showing the position of the undertaking within the group;
 - (ii) details on whether the applicant is a subsidiary of an insurance holding company or a mixed activity holding company; and
 - (iii) whether the group of which the applicant will form part is subject to supervision as an insurance group and if so the existing arrangements for supervision as insurance group, or whether the applicant will now become subject to group supervision; and
- (e) whether there had been a formal or informal request for an authorisation by the applicants' shareholders or members with qualifying holdings, to establish an insurance or reinsurance undertaking in another Member State or third country, that had been rejected or withdrawn, together with the reasons as to the rejection or withdrawal of the submitted application.

Business Strategy

- 1.3.3.2 A documented applicant's business strategy, including a documented group strategy (if the undertaking forms part of a group).
- 1.3.3.3 If the applicant intends to carry on business outside of Malta, the countries in which business will be written and whether this will be on a freedom of services or establishment basis. Where an establishment in other Member States is proposed, the application must include details relevant to the branch as set out in the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, (L.N. 399 of 2015) and in Chapter 10 on Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking of the Insurance Rules. Where the applicant has clearly indicated its intention to operate exclusively or almost exclusively in one or more Member State or EEA State, other than Malta, on a freedom of services basis, it shall provide the competent authority with the reasons supporting such a strategy.
- 1.3.3.4 If the applicant intends to write business in a country or countries outside the EU, provide an overview of how the applicant can underwrite that business in such country or countries as an authorised undertaking with head office in Malta.
- 1.3.3.5 A detailed description of the main factors influencing the success of the proposed business model and how the undertaking intends to control the success and/or failure of its business model.
- 1.3.3.6 Detail in relation to the areas of competitive advantage which will keep the undertaking viable and sustainable.

Sources of business

- 1.3.3.7 A description of the proposed sources of business of insurance (e.g. insurance intermediaries, direct selling, branch offices, website etc.) and the approximate percentage expected from each source, as well as customers to be targeted.
- 1.3.3.8 Where the source of business includes intermediaries:

(a) details on the authority which the undertaking intends to assign to the intermediaries e.g. underwriting authority, claims handling and/or settling authority, premium collection, authority to appoint introducers/representatives, etc;

(b) description of the controls/monitoring to be applied by the applicant in relation to the activity of the intermediaries;

(c) draft copy of arrangement/agreement governing the appointment of the intermediaries (Please refer to paragraph 1.3.3.40 below).

1.3.3.9 Where the source of business includes the use of a website, details of the purpose of website, that is, whether for advertising purposes only or whether to carry on business of insurance.

1.3.3.10 Details on the *modus operandi* of the business which should include an explanation regarding the manner in which transactions will be effected in practice (from initiation till end) specifying what will be done, by whom and from where.

Organisation of the Applicant and Governance Arrangements

1.3.3.11 A corporate structure chart and a description of the proposed apportionment of significant responsibilities between the applicant's management team. The structure chart should set out the management structure, responsibilities and reporting lines.

1.3.3.12 In general the quality, skills and experience of the management required in an insurance or reinsurance undertaking will depend on, among other things, the type and volume of business it expects to undertake. The applicant needs to demonstrate that adequate staff with relevant experience are available at all levels and that mind and management is in Malta.

1.3.3.13 The competent authority will consider the collective suitability of the board. The competent authority would usually expect that the board is composed of:

(a) persons who as a group, have the required diversity of knowledge, judgement and experience to properly complete their tasks and to fulfil the criteria concerning market knowledge, business strategy and business model, system of governance, financial and actuarial analysis and the regulatory framework and requirements;

(b) a number of non-executive directors (including independent non-executives). The exact composition and balance on a board will depend on the circumstances and business of each undertaking. Undertakings should ensure a balance such that no individuals or small groups of individuals can dominate the board's decision-making.

1.3.3.14 A summary of the arrangements by which systems and controls will be established and maintained in the organisation, including an explanation of how these will be overseen. The business plan should set out the capacity of the applicant's systems and controls to monitor and control all significant aspects of the applicant's operations, and should include (but not be restricted to):

(a) details of the manual and automated controls over key functions, processes and procedures, including details of segregation of duties, acceptance controls and levels and monitoring of risk aggregation;

(b) details of internal committees (e.g. audit committee), their proposed members, terms of reference and frequency of meetings;

(c) details of persons (including their level of experience knowledge and competency) responsible for the key functions, as well as the functions which the undertaking considers to be critical or important functions. Substance over form should be applied when determining whether or not a role is a key function;

(d) details of the Board member responsible for the oversight of the insurance or reinsurance distribution activities of the undertaking¹;

(e) details of the person within the management structure responsible for the distribution of insurance or reinsurance products, including their level of experience,

¹ Applicable as from 1st October 2018.

knowledge and ability requirements as contained in Chapter 6 in Part B of the Insurance Distribution Rules issued under the Insurance Distribution Act (Cap. 487)²;

(f) the identification of the Board member to oversee the risk management system on its behalf;

(g) staffing levels in each area for the first three years of the applicant's operations broken down on a yearly basis;

(h) details of proposed staff training;

(i) details of monitoring and reporting mechanisms developed within the internal control system which provide the Board of Directors with the relevant information to take appropriate decisions; and

(j) outline of the role of internal audit, including:

(i) whether internal audit will be outsourced;

(ii) scope of the internal audits;

(iii) expected frequency of internal audits;

(iv) manner in which independence of the audit function from operational activities will be ensured.

1.3.3.15 An outline of reports and management information that will be provided regularly to the person responsible for the apportionment and oversight function and to the board and executive management.

Risk Management

1.3.3.16 The applicant is provide the following information:

(a) a description of the Risk Management System (RMS) comprising of:

² Applicable as from 1st October 2018.

(i) strategy, including general risk appetite;

(ii) processes and procedures which enable the applicant to identify, measure, monitor, manage and report risks on a continuous basis;

(b) a list of quantifiable and non-quantifiable material risks that could affect the success of the business. Where the applicant is expected to carry on cross border business, associated risks are to be identified separately. For material risks, the applicant is to note the risk owners, severity and frequency and any risk mitigation controls to be applied;

(c) the risk appetite and tolerance limits for each risk category.

1.3.3.17 The applicant is to identify the undertaking's key dependencies.

1.3.3.18 The applicant is to identify the pressure points that can potentially cause severe deterioration to the undertaking's financial position and solvency position.

1.3.3.19 If the undertaking forms part of a group, the undertaking is to provide a description of the complexity, interdependency and interconnectedness that exists between all the group entities.

1.3.3.20 Documented business continuity plan covering the areas where the undertaking considers itself to be vulnerable, including details of when such plan is intended to be reviewed, updated and tested.

Underwriting and Claims

Underwriting:

1.3.3.21 The applicant is to:

(a) provide a description of the:

- (i) underwriting activities of the applicant including who will be undertaking such activities, reporting lines, authority levels/limits and how such limits are monitored;
 - (ii) underwriting guidelines and criteria;
 - (iii) role and objectives of the applicant's underwriting function;
 - (iv) data and processes that will be employed by the underwriting function to achieve those objectives;
 - (v) internal controls over the underwriting process;
- (b) submit draft copy of policy wordings;
 - (c) provide details of who will be responsible for the issuance of policies.

Claims

1.3.3.22 The applicant is to submit details of the claims function including:

- (a) the reporting lines;
- (b) the key reports to be prepared and the frequency of reporting;
- (c) authority levels/limits and the manner in which such limits are monitored.

Financial projections and resources

1.3.3.23 Financial projections covering the items listed below, for each of the first three financial years following authorisation:

- (a) a forecast profit and loss account, broken down into a technical account and a non-technical account based on International Financial Reporting Standards. The profit and loss account should include, as a minimum, the following:

- (i) estimates of premiums (gross and net of reinsurance) analysed by class of insurance, showing direct business and reinsurance accepted separately, and broken down by geographical territory;
 - (ii) investment return;
 - (iii) estimates of claims (gross and net of reinsurance) analysed by class of insurance, and broken down by geographical territory;
 - (iv) a breakdown of forecast expenses;
 - (v) commissions (both payable and received);
 - (vi) other charges and income;
 - (vii) taxation;
 - (viii) dividends;
- (b) a forecast balance sheet based both on International Financial Reporting Standards and on Solvency II valuation methods, as provided for in Sections 5.2 to 5.4 of Chapter 5 in Part B of these Insurance Rules;
- (c) estimates of the Solvency Capital Requirement, as provided for in Section 5.5. of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in point (b), as well as the calculation method used to derive those estimates and the reasons backing the assumptions made in determining the level of capital to cover the inherent risks after the application of risk mitigation controls under a realistic scenario;
- (d) estimates of the Minimum Capital Requirement, as provided for in Section 5.6. of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in point (b), as well as the calculation method used to derive those estimates, under a realistic scenario;

(e) details (amount and type) of the proposed financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement, including the basic own funds item constituting the absolute floor of the Minimum Capital Requirement. The undertaking shall also ensure that its source of capital meets or exceeds its Minimum Capital Requirement and Solvency Capital Requirement both in quality and quantity and provide a realistic contingency plan of how it can raise additional capital if the need arises;

(f) the information requested under paragraphs (b) to (e) should be submitted using EIOPA Quantitative Reporting Templates found in Annex I of the Commission Regulation on Templates for the submission of information to supervisory authorities and should be submitted in XBRL Format, which shall include, as applicable:

- (i) S.02.01.01 – Balance Sheet
- (ii) S.23.01.01 – Own Funds
- (iii) S.25.01.01 – SCR
- (iv) S.26.01.01 – Market Risk Module
- (v) S.26.02.01 – Counterparty Default Risk Module
- (vi) S.26.03.01 – (Life business only) - Underwriting Risk
- (vii) S.26.04.01 – (Health business only) – Underwriting Risk
- (viii) S.26.05.01 – (Non-Life business only) – Underwriting Risk
- (ix) S.26.06.01 – Operational Risk Module
- (x) S.27.01.01 – Non-Life Catastrophic Risk Sub-Module
- (xi) S.28.01.01 – MCR (Non-Composite)

1.3.3.24 For undertakings established as protected cell companies, applications for the approval of new cells should include the three-year projections for the new cells separately. For the remaining part of the company (i.e. the core and cells), companies are required to submit the Solvency II results in the following excel format so as to assess the overall solvency position of the undertaking:

| | SCR | EOF | Restricted OF | nSCR | AMCR (core only) | Solvency II Ratio |
|-------------|------------|------------|----------------------|-------------|-------------------------|--------------------------|
| Core | | | | | | |

| | | | | | | |
|---------------|--|--|--|--|--|--|
| Cell 1 | | | | | | |
| Cell 2 | | | | | | |
| Cell 3 | | | | | | |
| ... | | | | | | |

1.3.3.25 Any other documentation that support the Solvency II results, if any.

Information related specifically to long term business

1.3.3.26 A forecast statement, approved by the actuarial function holder, or if the actuarial function has not yet been set up, by a qualified actuary, showing the following information, broken down by geographical territory for each of the first three financial years following authorisation:

- (a) the number of contracts or treaties expected to be issued;
- (b) the total new business premium, both gross and net of reinsurance ceded;
- (c) the total sums assured or amounts of annuity per annum;
- (d) the technical bases used to calculate the forecast and estimates and the factors used to determine the level of the Solvency Capital Requirement;
- (e) the method of distributing profits between policyholders and shareholders.

1.3.3.27 The forecast balance sheet should include an estimate of the required technical provisions, showing also the mathematical provisions divided into the major contract groups.

Additional information

1.3.3.28 Details of any future capital expenditure (e.g. for purchase of fixed assets).

1.3.3.29 Estimates of the costs of setting up the administrative services and organisation for securing business; and the financial resources intended to meet those costs, and, if

the risks to be covered are classified as general business class 18, the resources at the disposal of the undertaking for the provision of the assistance promised.

1.3.3.30 Estimates relating to expenses of management (other than costs of installation) and in particular to current general expenses and commissions.

1.3.3.31 Documentation which the competent authority will require for its prior approval in relation to the application for the following:

(a) own fund items not on the list referred to in Article 69 of the EU Commission Delegated Regulation;

(b) ancillary own funds.

1.3.3.32 For own funds which require an agreement, the competent authority also requires drafts of such agreements.

1.3.3.33 In general, the competent authority will need to be satisfied that the applicant has enough financial resources to support the business described in the application and to cover the required Solvency Capital Requirement and Minimum Capital Requirement needed throughout the three years after authorisation is granted and thereafter.

Investment strategy

1.3.3.34 A description of the applicant's proposed investment strategy, including details of the diversification, currency and types of investments which are expected to represent the insurance or reinsurance funds and the arrangements for the maintenance of adequate liquidity.

1.3.3.35 The investment strategy shall follow the prudent person principle found Section 5.7 of Chapter 5 in Part B of these Insurance Rules. In this respect, the undertaking shall provide the following details:

(a) the procedure for appropriately valuing and verifying the investments;

- (b) the procedure to monitor the performance of the investments;
- (c) the key risk indicators that are intended to be developed in line with the investment risk management policy and business strategy;
- (d) how it will be taking into account the risks associated with the investment without relying only on the risk being adequately captured by the capital requirements;
- (e) the targets for the returns it seeks from its investments taking into account the need to obtain a sustainable yield on the asset portfolios to meet reasonable policyholders' expectations;
- (f) any conflict of interest that arises regarding investments, irrespective of whether they arise in the undertaking or in the entity which manages the asset portfolio;
- (g) the independent valuation and performance measurement methods that have been developed by the undertaking and how it will review the appropriateness of the external credit institutions including how and the extent to which credit assessments are used;
- (h) safeguards that will be put in place against excessive risk taking by the investment function;
- (i) if parts of the undertaking's investments will be of a non-routine nature, the undertaking is requested to describe:
 - (i) the assessment that will be carried out to ensure that it is able to perform and manage such investments; and
 - (ii) the risks specifically related to this investment and the impact of the investment on the undertaking's risk profile;
- (vi) if the undertaking will be investing in derivatives, the undertaking is requested to demonstrate how the quality, security, liquidity and/or profitability of the

portfolio will be improved without significant impairment of any of these features where derivatives are used to facilitate efficient portfolio management; and

(k) if the undertaking will be investing in securitised instruments, the undertaking is requested to explain how it ensures that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.

IT Systems

1.3.3.36 Information on the IT systems to be used, details as to whether the undertaking will be using off-the-shelf or bespoke IT systems, whether all IT Systems are capable of communicating with each other.

1.3.3.37 Details of the IT service provider/s and back-up IT service provider/s.

1.3.3.38 Details on where the server on which data is stored will be located.

Outsourcing and agreements with third parties

1.3.3.39 A description of any material outsourcing or sub-contracting arrangements, in particular any outsourcing of critical and important functions, including but not limited to:

(a) background information concerning the third party to whom functions will be outsourced including whether the service provider is a regulated entity, whether it forms part of the same group of companies of the undertaking;

(b) a description of the fit and proper procedures in assessing persons employed by the service provider or sub service provider to perform an outsourced key function;

(c) details of functions which will be outsourced, including an explanation as to why the outsourcing arrangement is not considered to materially impair the quality of the system of governance of the undertaking concerned and unduly increasing the operational risk;

(d) the identification of the person within the undertaking with overall responsibility for the outsourced key function and the assessment carried out to ensure why he/she is fit and proper and that he/she possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider;

(e) details of how the outsourced function will be monitored and controlled including details of key performance indicators to be used;

(f) describe the business contingency plans, including exit strategies for outsourced critical or important functions or activities;

(g) drafts of any agreements with intermediaires (brokers and agents), clearly explaining any commission arrangements.

1.3.3.40 All outsourcing, service level or sub-contracting agreements should be subject to a formal and comprehensive written agreement covering at least the responsibilities of both parties and a qualitative description of the services. Drafts of any outsourcing, service level or sub-contracting agreements with persons who will manage any significant part of the business of the applicant are to be submitted to the competent authority for prior approval. The written agreement is to provide for all the requirements found in Article 274 of the EU Commission Delegated Regulation.

Reinsurance or Retrocession

1.3.3.41 A full explanation of the proposed reinsurance (or retrocession) strategy and the arrangements proposed to be put in place at authorisation. It may be appropriate for this to be represented graphically, especially for more complex programmes, and should include the following:

(a) details of the applicant's maximum retention per risk or event after all reinsurance (or retrocession) ceded, by principal category of business undertaken;

(b) details of the principal reinsurers (or retrocessionaires), including name, address and country of incorporation;

(c) the description relating the reinsurance back to the original business being carried on by the applicant as described in the business plan;

(d) where a significant proportion of the programme is to be ceded to a single reinsurance undertaking (or retrocessionaires) or group, additional information should be given as to why this is considered to be appropriate, including details of the security provided and the financial adequacy;

(e) any statistics or risk profiles showing the maximum catastrophe exposure for the applicant and the net retained exposure;

1.3.3.42 Provide copies or drafts of reinsurance treaty cover notes covering business to be written by the applicant.

1.4 Scheme of operations of a branch of a third country insurance undertaking or third country reinsurance undertaking

1.4.1 Pursuant to article 11(1)(e) of the Act, a branch of a third country insurance or reinsurance undertaking shall submit a scheme of operations which shall set out the following:

(a) the nature of the risks or commitments which the branch proposes to cover;

(b) the guiding principles as to reinsurance;

(c) estimates of the future branch Solvency Capital Requirement, as provided for in Section 5.5 of Chapter 5 in Part B of these Insurance Rules on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(d) estimates of the future branch Minimum Capital Requirement, as provided for Section 5.6 of Chapter 5 in Part B of these Insurance Rules on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

(e) the state of the eligible own funds and eligible basic own funds with respect to the branch Solvency Capital Requirement and branch Minimum Capital Requirement, as provided for in Sections 5.5 and 5.6 of Chapter 5 in Part B of these Insurance Rules;

(f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under class 18 in the Second Schedule to the Act, the resources available for the provision of the assistance;

(g) information on the structure of the system of governance;

(h) an analysis of the differences between the solvency rules of the third country in which the third country insurance undertaking or third country reinsurance undertaking has its head office and the rules of the Solvency II Directive, including an explanation on the reasons that justify such differences;

1.4.2 In addition to the requirements set out in paragraph 1.4.1, the scheme of operations shall include the following, for the first three financial years:

(a) a forecast balance sheet;

(b) estimates of the financial resources intended to cover branch technical provisions, the branch Minimum Capital Requirement and the branch Solvency Capital Requirement;

(c) for general business:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

(d) for long term business, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

- 1.4.3 In regard to long term business, the competent authority may require the systematic notification of the technical bases used for calculating scales of premiums and technical provisions, by the applicant.
- 1.4.4 The scheme of operations of a branch of a third country insurance undertaking or third country reinsurance undertaking shall follow the same principles as set out in Section 1.3 of this Chapter as are required for an insurance or reinsurance undertaking seeking authorisation under the Act.
- 1.4.5 Third country undertakings shall also be guided by [Guidelines on the supervision of branches of third-country insurance undertakings issued by EIOPA](#).

1.5 Prior consultation of the authorities of other Member States or EEA States

- 1.5.1 The competent authority shall consult any European regulatory authorities concerned prior to granting an authorisation to:
- (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State or EEA State;
 - (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State or EEA State;
 - (c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State or EEA State.
- 1.5.2 The competent authority shall consult the competent authorities in a Member State or EEA State responsible for the supervision of credit institutions or investment firms prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:
- (a) a subsidiary of a credit institution or investment firm authorised in the Union;

(b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Union; or

(c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Union.

1.5.3 The competent authority and the authorities indicated in paragraphs 1.5.1 and 1.5.2 shall in particular consult each other when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of another entity of the same group.

1.5.4 The competent authority shall inform the authorities indicated in paragraphs 1.5.1 and 1.5.2 on the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions which is of relevance to the other competent authorities concerned for the granting of an authorisation by such authorities as well as for the ongoing assessment of compliance with operating conditions.

1.6 Manner of making application for authorisation to carry on business of insurance

1.6 The manner in which an undertaking shall apply to the competent authority for authorisation to carry on the business of insurance shall be the following:

(a) by application as set out in the First Schedule to this Chapter:

(i) in the case of an undertaking whose head office is in Malta; or

(ii) in the case of an incorporated cell company having no incorporated cells to transform itself into a non-cellular company; or

(iii) in the case of an incorporated cell to transform itself into a non-cellular company;

(b) by application as set out in the Second Schedule to this Chapter in the case of an undertaking whose head office is in a country outside Malta;

(c) by application as set out in the Third Schedule to this Chapter:

(i) in the case of an undertaking for authorisation to carry on business of insurance as a protected cell company;

(ii) in the case of a non-cellular company to convert into a protected cell company;

(iii) in the case of an incorporated cell company having no incorporated cells to be transformed into a protected cell company;

(d) by application as set out in the Fourth Schedule to this Chapter for the creation of one or more protected cells;

(e) by application as set out in the Fifth Schedule to this Chapter:

(i) in the case of an undertaking for authorisation to carry on business of insurance as an incorporated cell company;

(ii) in the case of a non-cellular company to transform into an incorporated cell company;

(iii) in the case of a protected cell company having no protected cells to be transformed into an incorporated cell company;

(iv) in the case of a protected cell company having one or more cells seeking to be divided into an incorporated company and one or more cells. In this case, each cell shall apply for authorisation by an application as set out in the Sixth Schedule.

(f) by application as set out in the Sixth Schedule to this Chapter:

(i) for the creation of one or more incorporated cells of an incorporated cell company;

(ii) for the transformation of a non-cellular company into an incorporated cell.