

Chapter 4: Authorisation to Act as Approved Auditor

4.1 Introduction

4.1.1 This Chapter on the authorisation to act as approved auditor and the arrangements governing the audit of insurance undertakings accounts is made by the competent authority pursuant to article 4 of the Act for the purposes of subarticle (11) of article 21 thereof and article 4 of the Insurance Intermediaries Act, 2006 for the purposes of subarticle (11) of article 28 of the Insurance Intermediaries Act and regulations 3, 4, and 7 of the Insurance Business (Approved Auditor) Regulations, 2001, hereinafter referred to in this Chapter as the “Regulations” issued under the said Act.

4.1.2 This Chapter applies to:

(a) an individual person who holds a warrant to act as auditor issued under the Accountancy Profession Act (Cap. 281) desirous of applying for an authorisation and, on continuing basis, who holds an authorisation, to act as approved auditor;

(b) an audit firm duly registered under the said Act desirous of applying for an authorisation and, on continuing basis, who holds an authorisation, to act as approved auditor.

4.1.3 The scope of this Chapter is to determine –

(a) pursuant to regulation 3 of the Regulations –

(i) the particulars of individual persons who are authorised to act as approved auditor that are to be entered in the Approved Auditors Register; and

(ii) the particulars of audit firms authorised to act as approved auditor that are to be entered in the Approved Auditors List;

(b) pursuant to regulation 4 of the Regulations, the qualifications of individual persons who hold a warrant to act as auditor under the Accountancy Profession Act,

and the requirements of audit firms duly registered under the said Act, to make an application for the issue of an authorisation to act as approved auditor; the form and manner in which such application shall be made; and the information required to be provided with the application by the applicants;

(c) pursuant to regulation 7 of the Regulations, the arrangements governing the audit of insurance undertakings accounts; and

(d) pursuant to subarticle (11) of article 21 of the Act and subarticle (11) of article 28 of the Insurance Intermediaries Act, 2006, in the case of a third country insurance undertaking, third country reinsurance undertaking or enrolled company whose head office is in a country outside Malta, such alternative arrangements to the provisions of that subarticle with respect to the appointment of an approved auditor by such undertaking or company.

4.1.4 In this Chapter, unless the context otherwise requires:

“insurance licence holder” means an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking or a captive reinsurance undertaking (“authorised undertaking”) which has received authorisation under article 7 of the Act to carry on business of insurance or a person enrolled in the Agents List, Managers List or Brokers List under the Insurance Intermediaries Act, 2006, unless otherwise specified.

“insurance undertakings accounts” means the accounts of undertakings authorised under the Act to carry on business of insurance, or of persons enrolled in the Agents List, Managers List or Brokers List under the Insurance Intermediaries Act, 2006 and carrying out insurance intermediaries activities.

4.2 Particulars of individuals or audit firms to be entered in the Approved Auditors Register or the Approved Auditors List

4.2.1 In relation to the registration of individuals or enrolment of an audit firm authorised to act as approved auditor, the other particulars to be entered in the Approved

Auditors Register and the Approved Auditors List as determined by this Chapter for the purpose of regulation 3 of the Regulations are –

(a) in relation to the registration of individuals, those set out in the First Schedule to this Chapter; and

(b) in relation to the enrolment of an audit firm, those set out in the Second Schedule to this Chapter.

4.3 Qualifications or requirements of applicants for an authorisation to act as approved auditor

4.3.1 The qualifications or requirements of applicants to act as approved auditor as determined by this Chapter for the purposes of regulation 4 of the Regulations are those respectively mentioned in paragraphs 4.3.2 and 4.3.3.

4.3.2 An applicant who is an individual who holds a warrant to act as auditor under the Accountancy Profession Act shall satisfy the competent authority as to the qualifications referred to in paragraph 4.3.1 only if –

(a) the applicant has suitable post-qualification experience in the insurance undertakings accounts and / or the audit of insurance undertakings accounts for not less than 3 years during the last 7 years or 5 years during the last 10 years; and

(b) the applicant has successfully concluded a course on the insurance undertakings accounts and / or the audit of insurance undertakings accounts organised by a local or foreign firm, body or institution recognised by the competent authority for the purposes of this article,

and, in every case, the competent authority is satisfied that the applicant has a sound knowledge of the provisions of the insurance legislation, regulations and rules for the time being in force particularly those provisions which require compliance by an insurance licence holder and certification by the appointed auditor of the insurance licence holder that the authorised undertaking or enrolled person has complied with those provisions.

4.3.3 An applicant which is an audit firm shall satisfy the competent authority as to the requirements referred to in paragraph 4.3.1 only if the applicant has at all times two or more partners or directors or not less than one partner or director and one employee, of the audit firm, who hold an authorisation to act as approved auditor issued under the Regulations.

4.3.4 The manner in which an applicant shall make an application to the competent authority for an authorisation to act as approved auditor as determined by this Chapter for the purposes of regulation 4 of the Regulations is –

(a) in the case of an individual, in the application as set out in the Third Schedule to this Chapter; and

(b) in the case of an audit firm, in the application as set out in the Fourth Schedule to this Chapter,

and, in every case, providing the information required therein.

4.4 Determination of an application for an authorisation to act as approved auditor

4.4.1 Subject to the provisions of the Act and the Regulations, the competent authority may, under regulation 5 of the Regulations, grant an applicant an authorisation to act as approved auditor only if the applicant satisfies the qualifications or requirements determined for such purpose by paragraphs 4.3.1 to 4.3.4.

4.5 Applications for an authorisation to be determined within a specified period

4.5.1 The competent authority shall determine an application for an authorisation to act as approved auditor under the Regulations in accordance with this Chapter within three months of receiving the information required to be provided under this Chapter; and if it refuses to issue the authorisation it shall inform the applicant in writing of the reasons for the refusal.

4.6 Arrangements governing the audit of insurance undertakings accounts

4.6.1 The arrangements governing the audit of insurance undertakings accounts as determined by this Chapter for the purposes of regulation 7 of the Regulations are those set out in the following paragraphs.

4.6.2 The audit of accounts of an authorised undertaking which has received authorisation under article 7 of the Act shall be carried out by an audit firm which –

(a) holds an authorisation to act as approved auditor;

(b) is the appointed auditor of that undertaking;

(c) has the professional skills and resources to carry out such auditing;

(d) (i) is a member of an international firm of accountants and auditors of repute acceptable to the competent authority provided that, the competent authority may require the audited financial statements of that undertaking to be issued over the names of both the audit firm and member;

(ii) is a correspondent of an international firm of accountants and auditors of repute acceptable to the competent authority provided that the audited financial statements of that undertaking are issued over the names of both the audit firm and correspondent; and for the purpose of this paragraph, “correspondent”, in relation to an international firm of accountants and auditors, includes any type of relationship between the audit firm and the international firm of accountants other than membership;

(e) has at all times in its favour, during the tenure of appointment, an indemnity insurance cover acceptable to the competent authority satisfying the conditions set out in paragraph 4.6.4 for an amount of not less than 1,165,000 Euro.

4.6.3 The audit of accounts of a person enrolled under article 13 of the Insurance Intermediaries Act, 2006 shall be carried out by an individual person or audit firm who -

(a) in every case, holds an authorisation to act as approved auditor;

(b) in every case, is the appointed auditor of the enrolled person;

(c) in the case of an individual, the individual satisfies the competent authority and the enrolled person that such person can, at all times, during the tenure of appointment, be substituted with any other individual who holds an authorisation to act as approved auditor to ensure that, in the event of his indisposition to carry out his duties as the appointed auditor of the enrolled person due to incapacity, sickness, holiday or any other absence, such other individual can, with the consent of the enrolled person, act as the appointed auditor of the enrolled person for the purpose of the Insurance Intermediaries Act, 2006, as the case may be, during the period of indisposition;

(d) the person has at all times in his favour, during the tenure of appointment, an indemnity insurance cover acceptable to the competent authority satisfying the conditions set out in paragraph 4.6.4 for an amount of not less than 582, 500 Euro.

4.6.4 Any indemnity insurance contract which a person who is the appointed auditor of an insurance licence holder is required to have in its favour pursuant to paragraphs 4.6.2 or 4.6.3 is acceptable to the competent authority only if -

(a) the indemnity insurance contract is a contract indemnifying the person against any liability it, or any person employed by it or otherwise acting for it, may incur as a result of any negligent act, error or omission in the conduct of its business as appointed auditor; and any excess clause in the contract shall be for a sum not exceeding 0.5 per centum of the limit of indemnity;

(b) the indemnity insurance contract is a contract held in addition to any other indemnity insurance contract which the person may have or be required to have in its favour with respect to any other activity which the person carries out or is required

to carry out pursuant to any other law other than the Accountancy Profession Act; and

(c) the amount of any indemnity insurance contract held or required to be held by the person by or under the Accountancy Profession Act may form part of the amount specified in paragraphs 4.6.2 or 4.6.3, as the case may be, but, in so far as any of the conditions as set out in this paragraph with respect to the indemnity insurance contract determined by this Chapter is inconsistent with the conditions as set out with respect to the indemnity insurance contract provided by or under the Accountancy Profession Act, the conditions as set out in this paragraph shall prevail, and the conditions as set out by or under the Accountancy Profession Act shall, to the extent of the inconsistency, not apply to the indemnity insurance contract determined by this Chapter.

4.7 Appointment of approved auditor by third country undertakings or enrolled companies whose head office is in a country outside Malta

4.7.1 With regard to the appointment of a person to act as approved auditor of a third country insurance undertaking, third country reinsurance undertaking or enrolled company whose head office is in a country outside Malta, the arrangements set out in paragraph 4.7.2, made pursuant to, and for the purpose of, subarticle (11) of article 21 of the Act and subarticle (11) of article 28 of the Insurance Intermediaries Act, shall prevail and the provisions of this Chapter in that respect shall, to the extent of any inconsistency, not apply to any such undertaking or company.

4.7.2 The arrangements referred to in paragraph 4.7.1 are that the overseas appointed auditor of the undertaking or enrolled company, is a person who is –

(a) an international firm of accountants and auditors of repute acceptable to the competent authority;

(b) approved or recognised for the purposes of the audit of insurance undertakings accounts by the overseas regulatory authority of the country of the head office of the undertaking or enrolled company.