

Chapter 12: Issuing and Registration of Underwriting Agreements

12.1 Introduction

12.1.1 This Chapter on the issuing and registration of underwriting agreements is made pursuant to, and for the purposes of, article 32 of the Act and shall determine:

- (a) the provisions to be included in and excluded from underwriting agreements;
- (b) the information and documentation which a person enrolled in the Brokers List is required to submit to the competent authority when applying for registration of an underwriting agreement;
- (c) the manner in which a person enrolled in the Brokers List is to apply for registration of an underwriting agreement.

12.2 Application

12.2.1 This Chapter applies, on a continuing basis, to a person enrolled in the Brokers List and carrying on business as insurance broker desirous of making or entering into an underwriting agreement with an authorised undertaking (the “enrolled person”).

12.3 Underwriting agreements

12.3.1 An underwriting agreement, in relation to business of insurance, is defined in article 32(7) of the Act as an agreement between an authorised undertaking and an enrolled person under which the enrolled person may, in accordance with the terms thereof, accept risks on behalf of the authorised undertaking.

12.4 Restrictions and limitations

12.4.1 Pursuant to article 32(1) and (7) of the Act, underwriting agreements –

- (a) are limited to general business classes; and
- (b) are made or entered into solely with authorised undertakings.

12.5 Provisions to be included in underwriting agreements

12.5.1 Every underwriting agreement shall include provision –

(a) for cancellation at any time of the underwriting agreement by the enrolled person or the authorised undertaking upon such notice in writing (being not less than thirty days) as may be specified in the underwriting agreement;

(b) that, in the event of cancellation of the underwriting agreement, the enrolled person shall return promptly to the authorised undertaking, or the undertaking's authorised insurance agent, or its appointed representative, all unused certificates of insurance and other documentation or material in its possession in connection with the underwriting agreement which might be used as evidence of the insurance and which bear the name of, or refer to, the authorised undertaking;

(c) for a forecast of the gross annual premium income estimated to accrue under the underwriting agreement;

(d) that, if the enrolled person becomes aware that the estimate of the gross annual premium income will be, or is likely to be, exceeded, the person shall immediately advise the authorised undertaking either directly or through the undertaking's authorised agent;

(e) either for its expiry on a date no more than one year from its commencement or for it to be subject to annual review;

(f) that no marine open cargo cover may be granted for a period greater than twelve months;

(g) that the enrolled person shall establish and maintain a proper accounting system recording premiums, claims paid and outstanding claims in respect of insurances effected under the underwriting agreement and shall submit detailed accounts of the same to the authorised undertaking on a regular basis either directly or through the undertaking authorised insurance agent;

(h) that the authorised undertaking, or its representative, shall have the right, without restrictions or limitations, to inspect and audit any records of the enrolled person related to the underwriting agreement at any time during reasonable business hours and shall have the right to make copies or extracts of any such records; and

(i) that the enrolled person shall notify the authorised undertaking either directly or through the undertaking's authorised insurance agent immediately upon becoming aware of any matter concerning any business accepted under the underwriting agreement which may, or does, give rise to litigation naming the authorised undertaking, or which may, or does, result in a complaint to a relevant body responsible for handling consumer complaints.

12.6 Provisions to be excluded from underwriting agreements

12.6.1 Every underwriting agreement shall exclude provisions –

(a) for any power to act generally or specifically and to accept service of document, on behalf of the authorised undertaking; and

(b) for any power of delegation of any authority granted to the enrolled person to any other person, firm or undertaking.

12.7 Underwriting agreements issued by insurance agents

12.7.1 Every enrolled insurance agent authorised to act on behalf of an authorised undertaking shall not issue any underwriting agreement to any enrolled person unless the power to issue underwriting agreements to enrolled persons is expressed in writing in the appointment of insurance agent issued by the authorised undertaking to the insurance agent.

12.8 Lloyd's

12.8.1 Every binding authority agreement issued by any member of Lloyd's shall be deemed to be an underwriting agreement for the purposes of this Chapter only if the binding authority agreement –

(a) is issued in accordance with the regulations of Lloyd's or any law applicable thereto; and

(b) fulfils or complies with the requirements of this Chapter.

12.8.2 In the event of any conflict between any requirement under paragraph 12.8.1 (a) and (b) of this Chapter, the matter shall be determined by the competent authority and the

competent authority's decision thereon shall be final and conclusive for all purposes of this Chapter.

12.9 Registration of underwriting agreements

- 12.9.1 Article 32(3) of the Act provides that every enrolled person shall register with the competent authority any underwriting agreement made or entered into under the Act in the form and manner as are determined by this Chapter.
- 12.9.2 Article 32(4) of the Act provides that no business of insurance shall be accepted under an underwriting agreement unless the underwriting agreement has first been duly registered with the competent authority.
- 12.9.3 The form and manner in which an underwriting agreement is to be registered with the competent authority are set out in paragraphs 12.9.4 and 12.9.5 of this Chapter.
- 12.9.4 Every enrolled person shall complete a registration document in respect of any underwriting agreement made or entered into by the person under the Act providing the information required thereby.
- 12.9.5 Every registration document is to be delivered to the competent authority for registration together with a copy of the underwriting agreement to which it relates. The relevant prescribed fee shall be paid on submission of the documents.
- 12.9.6 Pursuant to article 32(5) of the Act, the competent authority shall determine an application for registration of an underwriting agreement made to it under the said article within one month of receiving the information required to be provided in the registration document.
- 12.9.7 Where the application for registration is approved and the underwriting agreement registered, a certificate of registration evidencing registration of the underwriting agreement shall be issued by the competent authority and delivered to the enrolled person.
- 12.9.8 Where the application for registration is not approved and the underwriting agreement is not registered, a statement containing the reasons for the refusal of registration of the underwriting agreement shall be issued by the competent authority and delivered to the enrolled person.

12.9.9 An enrolled person shall, before making any addition or alteration to any underwriting agreement, submit to the competent authority particulars in writing of the proposed addition or alteration for its prior approval and no such addition or alteration shall be made unless the competent authority has signified its approval in writing.

12.9.10 For the purposes of this Chapter “registration document” means the document set out in the Schedule to this Chapter.

12.10 Application of the Insurance Business Act

12.10.1 Where an enrolled person makes or enters into an underwriting agreement with an authorised undertaking whose head office is in a country outside Malta, if the underwriting agreement is made or entered into directly with the authorised undertaking, notwithstanding that the undertaking has an authorised agent in Malta, for all intents and purposes of the Insurance Business Act (Cap. 403), the business accepted under the underwriting agreement is deemed to be business carried on by the undertaking in Malta.

12.10.2 Any underwriting agreement made or entered into by an authorised undertaking shall:

(a) in relation to an undertaking authorised under the Insurance Business Act (Cap. 403), be limited to the class or classes of insurance the undertaking is authorised to carry on in Malta;

(b) in relation to a European insurance undertaking, be limited to the class or classes of insurance in respect of which the competent authority has received notification from the home Member State of the undertaking concerned.