

# **FIDELITY BOND**

## **CHAPTER 9**

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## **9.1 Introduction**

- 9.1.1 This Chapter on fidelity bond lays down the Insurance Distribution Rules made pursuant to, and for the purposes of, article 21 of the Act, on fidelity bonds which persons enrolled in the Agents List, Managers List or Brokers List, carrying out insurance distribution activities, are required to effect and hold.
- 9.1.2 This Chapter determines the kind of protection which an enrolled person or an enrolled company shall give to its clients. In this respect, an enrolled person or an enrolled company is required to effect and hold a fidelity bond in the manner and circumstances, to the value and under the conditions determined by this Chapter as regards its insurance distribution activities, so that, where a client of an enrolled person or an enrolled company incurs loss or liability because of the enrolled person's or enrolled company's inability or failure to meet its financial obligations, the client is indemnified out of the proceeds of the fidelity bond held by the enrolled person or the enrolled company in respect of that loss or liability.

## **9.2 Application**

- 9.2.1 This Chapter applies to a person desirous of applying for enrolment and, on a continuing basis, a person enrolled in the Agents List, Managers List or Brokers List and carrying out insurance distribution activities, (the "enrolled person" or the "enrolled company"). In the case of a person enrolled in the Managers List, this Chapter applies only to:
- (a) an appointment with authority to enter into contracts of insurance and whose appointment is governed by an agreement which has the effect of an agency agreement;
  - (b) a person who accepts an appointment from a company enrolled in the Brokers List under article 13 of the Act.

## **9.3 Effecting of fidelity bond**

- 9.3.1 An enrolled person shall effect and hold a fidelity bond as respects its insurance distribution activities:
- (a) to the average amount of outstanding debts in respect of insurance intermediaries transactions (net of provisions for doubtful debts) during the year;
  - (b) less 25% of the sum of annual gross premiums receivable by the enrolled person and document duty charged on policies and endorsements thereon;

- 9.3.2 In relation to the year in which enrolment is granted to the enrolled person, the fidelity bond as respects insurance distribution activities shall be of an amount of not less than 11, 646.87 Euro.
- 9.3.3 Where the value of the unencumbered own funds of the enrolled person exceeds the amount of the required own funds in accordance with Chapter 4 in Part A of the Insurance Distribution Rules, ("the excess amount"), before the person effects and holds a fidelity bond for the required amount in accordance with paragraphs 9.3.1 and 9.3.2 of this Chapter, ("the required amount"), the person shall have regard to the excess amount and:
- (a) where the excess amount is more than the required amount, the enrolled person shall not effect and hold any fidelity bond;
  - (b) where the excess amount is less than the required amount, the enrolled person shall effect and hold a fidelity bond to the amount resulting from the difference between the required amount and the excess amount.
- 9.3.4 For the purpose of determining the amount of the fidelity bond, the words "annual gross premiums receivable" shall mean premiums receivable in the year after deduction of discounts, refunds and rebates of premium but before deduction of commission payable.
- 9.3.5 For the purpose of Section 9.3 of this Chapter, any reference to the word "year" shall, in the case of an enrolled individual, be read and construed as a reference to the calendar year and, in the case of an enrolled company be read and construed as a reference to the company's financial year.
- 9.3.6 Any fidelity bond required to be effected and held under Section 9.3 of this Chapter shall be effected and held in the manner specified in Section 9.4 of this Chapter.

#### **9.4 Purpose of fidelity bonds**

- 9.4.1 In conformity with article 21(2) of the Act, the fidelity bond referred to in Section 9.3 of this Chapter shall provide that in the event of an enrolled person's inability or failure to meet its financial obligations in relation to any sums of money received by it from, or on behalf of, its clients, a sum of money will become available to a person nominated or approved by the competent authority under Section 9.5 of this Chapter (the "approved person"), to be applied for the benefit of any client of the enrolled person who has incurred loss or liability because of the inability or failure of the enrolled person to meet such financial obligations.
- 9.4.2 Subject to the conditions set out in paragraph 9.4.3 of this Chapter, a fidelity bond may be effected and held in any of the following forms:

- (a) a contract of insurance;
- (b) a security in the form of:
  - (i) a guarantee provided by, or
  - (ii) an irrevocable letter of credit established with a bank or credit institution:
    - (aa) licensed to carry on business of banking under the laws of Malta; or
    - (bb) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the competent authority provided that the bank or credit institution is of first class standing; or
  - (iii) a guarantee provided by an entity within the same group of companies as the enrolled person or the enrolled company to the satisfaction of the competent authority.

9.4.3 The conditions referred to in paragraph 9.4.2 of this Chapter are:

- (a) the content of the fidelity bond is to be approved in advance by the competent authority; and
- (b) the fidelity bond is to be automatically reinstated by the enrolled person to the required amount as soon as any payment is made out of its proceeds.

## **9.5 Nominations of approved persons**

9.5.1 An enrolled person shall, before it effects and holds a fidelity bond, submit in writing to the competent authority for its approval the name of a person nominated to be the approved person of the enrolled person for the purpose of Section 9.4 of this Chapter. The approved person may be an individual or a body corporate.

9.5.2 Any person nominated by an enrolled person to be the approved person of the enrolled person shall not be approved by the competent authority unless the competent authority is satisfied that such person has the qualifications and satisfies the requirements mentioned in paragraphs 9.5.3 and 9.5.4 of this Chapter and is a fit and proper person to carry out the functions required of him under the Act and this Chapter.

9.5.3 Where the approved person is an individual, the competent authority shall require that such person:

- (a) holds a warrant to practice the legal, accountancy or similar profession; and,

- (b) completes the Personal Questionnaire set out in the Annex to Chapter 3 in Part A of the Insurance Distribution Rules.
- 9.5.4 Where the approved person is a body corporate, the competent authority shall require that such entity:
  - (a) proves to the satisfaction of the competent authority that the body corporate is a law firm, an accountancy firm or an audit firm; and,
  - (b) completes the Corporate Questionnaire set out in Annex to Chapter 3 in Part A of the Insurance Rules.
- 9.5.5 Where an enrolled person fails to nominate a person to be the approved person of the enrolled person, or, at any time, fails to fill any vacancy in the office of the approved person, the competent authority shall nominate a person to be the approved person.
- 9.5.6 An individual shall be disqualified from acting as an approved person if:
  - (a) at any time during the previous three years from the date of his nomination to act as an approved person, he has been an officer of the enrolled company or an employee of the enrolled person; or
  - (b) he is related by consanguinity or affinity in the direct line, or, up to the third degree, in the collateral line, to any officer of the enrolled company or to the enrolled individual.
- 9.5.7 A body corporate shall be disqualified from acting as an approved person if:
  - (a) at any time during the previous three years from the date of his nomination to act as an approved person, the body corporate has been appointed by the enrolled company; or,
  - (b) the body corporate is not fully independent from the licensed entity requesting approval for the fidelity bond.
- 9.5.8 The approved person shall keep all proper and usual accounts of all monies received by him out of the proceeds of the fidelity bond and of all disbursements made by him from any such monies.

## **9.6 Changes in the fidelity bond**

- 9.6.1 If the approved person receives a direct request from the enrolled person to cancel or effect any changes to the content of the fidelity bond, the approved person shall immediately submit in writing to the competent authority an explanation leading to the cancellation of the fidelity bond, or the particulars of the proposed changes; and

no such cancellation or changes shall be made without the competent authority's approval.

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