

Insurance Intermediaries Rule 1 of 2007

Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List Carrying out Insurance Intermediaries Activities

Rule pursuant to article 2 of the Act

1. (1) This Insurance Intermediaries Rule on the own funds of persons enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 2 of the Act.

(2) This Rule shall come into force on the 1st January 2007.

Application

2. This Rule applies to an individual or a company desirous of applying for enrolment and, on continuing basis, an individual or a company enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (“an enrolled individual” or “an enrolled company”).

Scope

3. The scope of this Rule is to determine the amounts and components of the own funds of enrolled individuals or enrolled companies.

Construing of the own funds of enrolled individuals or enrolled companies

4. The own funds of an enrolled individual or an enrolled company, whether in Euro or in other currencies acceptable to the Authority and unencumbered at all times, shall amount to and be construed pursuant to paragraphs (a) and (b) of subarticle (1) of article 10 of the Act in accordance with the provisions set out in the following articles of this Rule.

Own funds of enrolled individuals or enrolled companies

5. (1) Subject to paragraphs (2) and (4) of this article, where an enrolled individual or an enrolled company carries out insurance intermediaries activities as an insurance agent, insurance manager or insurance broker, the own funds shall amount to not less than the value specified in the second column of the Schedule to this Rule relating to the kind of activity for which an enrolled individual or an enrolled company applies to act, or is acting, specified in the first column of that Schedule, subject, where applicable, to any restriction set out in the third column of that Schedule; however, notwithstanding the value of any amount specified in that Schedule, the Authority may require such other higher amount as it may deem appropriate for the kind of activity for which an enrolled individual or an enrolled company applies to act, or is acting.

(2) For the purposes of determining the value of the own funds of an enrolled individual or an enrolled company in accordance with the Schedule to this Rule, the words “annual gross premiums receivable” shall mean premiums receivable during the financial year in question after deduction of discounts, refunds and rebates of premium but before deduction of commission payable;

Provided that during the year in which enrolment is granted, “annual gross premiums receivable” shall mean the average of the projected premiums receivable over the first three years of operation, after deduction of discounts, refunds and rebates of premium, but before deduction of commission payable; and

Provided further, that in the case of an enrolled company, where the financial year in question does not constitute a twelve month period, “annual gross premiums receivable” shall mean the annualised gross premiums receivable in that year.

(3) For the purpose of paragraph (2) of this article, reference to the term “financial year in question” means the last financial year to end before the date on which the latest audited financial statements of the enrolled company or the latest income statements of the enrolled individual are required to be submitted to the Authority under article 24 of the Act and the term “year” shall, in the case of an enrolled individual be read and construed as reference to the calendar year.

(4) Where a person applies to be enrolled or is enrolled in the Managers List, for so long as such person holds no appointment from an insurer or an insurance broker, as the case may be, the amount of own

funds shall amount to not less than the minimum amount of share capital as prescribed by the Companies Act, 1995.

Own funds of enrolled individuals

6. Subject to the conditions set out in article 7 of this Rule, the own funds of an enrolled individual shall be constituted and held in the form of a guarantee provided by, or an irrevocable letter of credit established with, a bank or credit institution –

(a) licensed to carry on business of banking under the laws of Malta; or

(b) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the Authority provided that the bank or credit institution is of first class standing.

7. The conditions referred to in article 6 of this Rule are –

(a) the guarantee or the letter of credit shall be in favour of the Authority;

(b) the content of the guarantee or letter of credit is to be approved in advance by the Authority; and

(c) where an enrolled individual intends to effect any changes to the content of the guarantee or the letter of credit, an enrolled individual shall immediately submit in writing to the Authority the particulars of the proposed changes; and no such changes shall be made without the Authority's approval.

Own funds of enrolled companies

8. (1) Where a company applies for enrolment in the Agents List, Managers List or Brokers List to carry out insurance intermediaries activities, the components making up the own funds of such enrolled company shall be made up of the paid up share capital of the company which, in each case, shall amount to not less than the value specified in the fourth column of the Schedule to this Rule relating to the kind of activity for which an enrolled company applies to act, or is acting, specified in the first column of that Schedule, subject, where applicable, to any restriction set out in the third column of that Schedule:

Provided that, notwithstanding the value of any amount specified in that Schedule, the Authority may require such other higher amount as it may deem appropriate for the kind of activity for which an enrolled company applies to act, or is acting.

(2) In addition to the paid up share capital referred to in paragraph (1), the components making up the own funds of an enrolled company may be made up of the following components:

- (a) retained earnings;
- (b) capital contributions provided the following minimum criteria are met-
 - (i) the memorandum or articles of association of the enrolled company permit it to accept from time to time capital contributions;
 - (ii) they are covered by a binding agreement;
 - (iii) they are fully paid in, made in the nature of an unconditional transfer of funds, they are unfettered and irrevocable, they do not give rise to a credit in favour of the contributor and are free from any servicing costs or charges;
 - (iv) they are classified as an undistributable reserve in the balance sheet of the enrolled company:

Provided that, where the capital contributions or part thereof, are not used to cover the required level of own funds, the enrolled company may, with the prior consent

of the Authority, distribute the capital contributions or part thereof back to the contributor;

(c) other reserves;

(d) a guarantee provided by, or an irrevocable letter of credit established with, a bank or credit institution –

(i) licensed to carry on business of banking under the laws of Malta; or

(ii) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the Authority, provided that the bank or credit institution is of first class standing;

Provided further that –

(i) the guarantee or the letter of credit shall be in favour of the Authority;

(ii) the content of the guarantee or letter of credit is to be approved in advance by the Authority; and

(iii) where an enrolled company intends to effect any changes to the content of the guarantee or the letter of credit, an enrolled company shall immediately submit in writing to the Authority the particulars of the proposed changes; and no such changes shall be made without the Authority's approval.

9. The own funds of an enrolled company shall be covered by admissible assets. In determining the value of assets covering the own funds of an enrolled company no account shall be taken of -

(a) any asset which is deemed to be an intangible asset by International Financial Reporting Standards;

(b) any asset in respect of which the expected future economic benefits will only be derived if the company earns sufficient future taxable profits, including any deferred tax asset;

(c) any resource which meets the definition of an asset in accordance with International Financial Reporting Standards, but which is not controlled by the company by virtue of legal ownership, including assets held under a finance lease and improvements to any item of property, plant and equipment to which no legal title is held;

(d) all prepayments and accrued income;

(e) any earnest or deposit given in respect of the execution of a promise of sale or a promise of transfer of movable or immovable property;

(f) any immovable property which serves, or is intended to serve, as a place of habitation;

(g) movable property which in the opinion of the Authority may not form part of the administrative services and organisation of the company for securing business;

(h) assets which are hypothecated, pledged or given as guarantee in any manner to third parties;

(i) any interest in any of the company's own shares either directly or through the ownership by the company of an interest in another person, company or business unit, unless previously approved in writing by the Authority;

(j) shares in companies enrolled in the Agents List, Managers List or Brokers List or authorised undertakings, other than securities admitted to listing on a regulated market or a multilateral system as defined in article 2(1) of the Financial Markets Act, and, for the purposes of this paragraph, "authorised undertaking" means an undertaking authorised under the Insurance Business Act, 1998 to carry on business of insurance;

(k) debts in respect of any insurance transaction which have been outstanding for more than twelve months from the date of invoice (net of provisions for doubtful debts);

(l) loans and advances which are not secured to the satisfaction of the Authority;

(m) credits resulting from cheques, drafts, notes or other bills of exchange returned unpaid;

(n) without prejudice to paragraph (o) of this article, the amount of loans in excess of twenty-five per centum of the total assets of an enrolled company as per the last audited financial statements of such company, less the amount of values of items specified in paragraphs (a) to (m) of this article;

(o) the amount of loans, investments in equities or other shares, or in debentures or bonds, to or of any one company, person or institution, in excess of ten per centum of the total assets of an enrolled company as per the last audited financial statements of such company, less the amount of values of items specified in paragraphs (a) to (m) of this article,

Provided that, if such investments are held in Malta Government Stocks, the ten per centum limit as mentioned in this paragraph shall not apply;

(p) without prejudice to paragraph (f) of this article, the amount of investments in property or properties, other than property which is used as part of the administrative services and organisation of the enrolled company for securing business, which in the aggregate is in excess of ten per centum of the total assets of an enrolled company as per the last audited financial statements of such company less the amount of values of items specified in paragraphs (a) to (m) of this article.

10. For the purposes of article 9 of this Rule, the term “International Financial Reporting Standards” refers to International Financial Reporting Standards as may be issued from time to time by the International Accounting Standards Board or any other body succeeding it, by whatever name it may be known and to any additions, amendments, modifications and substitutions of any such Standard.

Repeals and Savings

11. (1) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (2) of this article, Insurance Intermediaries Directive 1 of 1999 - Own Funds of Companies Enrolled in the Brokers List and Carrying on Business as Insurance Brokers, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, or under Insurance Directive 1 of 1999 – Own Funds of Companies Carrying on Business of Insurance or Acting as Insurance Agents or Insurance Managers, in so far as they apply to insurance agents and insurance managers, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.

SCHEDULE

(Articles 5 and 8 of the Rule)

Value of the Own Funds of Enrolled Persons and Share Capital of Enrolled Companies

First Column Activity	Second Column Value	Third Column Restriction	Fourth Column Minimum Paid up Share Capital
1. Insurance agent	58,250 Euro or 4% of the annual gross premiums receivable, whichever is the higher		58,250 Euro
2. Insurance manager	(a) 16,803 Euro (b) 16,803 Euro or 4% of the annual gross premiums receivable, whichever is the higher	where acting for, or on behalf of, a captive insurance undertaking or a captive reinsurance undertaking; or where it holds an appointment which: (i) excludes or does not include authority to enter into contracts of insurance on behalf of an undertaking; and/or (ii) includes authority to collect and hold	16,803 Euro 16,803 Euro

premiums on
behalf of an
undertaking.

- (c) 58,250 Euro or 4% of the annual gross premiums receivable, whichever is the higher
- (i) where acting for, or on behalf of, an insurer or reinsurer which is not a captive insurance undertaking or a captive reinsurance undertaking and which appointment includes the authority to enter into contracts of insurance on behalf of the undertaking; or
- (ii) where it holds an appointment from a company enrolled in the Brokers List.

3. Insurance broker 58,250 Euro or 4% of the annual gross premiums receivable, whichever is the higher 58,250 Euro