

Insurance Rule 18 of 2008

Close Links

Rule pursuant to article 8 of the Act

1. (1) This Insurance Rule on Close Links between a company and any other person (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 8 of the Act.

(2) This Rule shall come into force on the 1st February 2008.

Application

2. This Rule applies to a company desirous of applying for authorisation to carry on and, on continuing basis, a company authorised to carry on, business of insurance (“the company concerned”).

Scope

3. The scope of this Rule is to determine the circumstances where close links exist between the company concerned and any other person.

Close Links

4. (1) Where close links exist between the company concerned and any other person, the Authority shall -

(a) only issue an authorisation if it considers that such close links do not prevent it from effectively exercising its supervisory functions; and

(b) refuse to issue such authorisation if it considers that the laws, regulations or administrative provisions of any other country, other than Malta, governing any person with whom the company has close links, or their enforcement, prevent it from exercising its supervisory functions.

(2) The Authority may at any time suspend or revoke an authorisation issued under the Act if close links exist between the

company concerned and another person, and the Authority is prevented from exercising its supervisory functions effectively either by reason of these close links or by reason of any law, regulation or administrative provision of a country outside Malta governing that other person, or by reason of difficulties in their enforcement.

Determination of Close Links

5. For the purposes of article 8 of the Act, a company concerned is closely linked with -

(a) any person who is or, if he were an undertaking, would be the company's parent undertaking;

(b) an undertaking which is a subsidiary undertaking of the company;

(c) an undertaking which is or, if any person falling within paragraph (a) of this article were an undertaking, would be a fellow subsidiary undertaking; and

(d) any person in accordance with whose directions or instructions the directors of the company are accustomed to act,

and any reference to the company's close links with any person shall be construed accordingly.

Undertaking

6. In this Rule "undertaking" means -

(a) a body corporate or a partnership; or

(b) an unincorporated association carrying on a trade or business with or without a view to profit.

Parent and Subsidiary Undertakings

7. (1) For the purposes of this Rule, an undertaking is a parent undertaking in relation to another undertaking ("a subsidiary undertaking") if -

(a) it holds a majority of the voting rights in the undertaking;
or

(b) it is a member of the undertaking and has a right to appoint or remove a majority of the members of its board of directors or persons entrusted with its administration; or

(c) it has a right to exercise a dominant influence over the undertaking:

(i) by virtue of provisions contained in the undertaking's memorandum or articles; or

(ii) by virtue of a control contract (as defined in paragraph (2) of article 13 of this Rule); or

(d) it is a member of the undertaking and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in the undertaking; or

(e) it is a member of the undertaking, no other person is the undertaking's parent by virtue of any of sub-paragraphs (a) to (c) of this paragraph, and at all times since the beginning of the undertaking's immediately preceding financial year, a majority of the undertaking's board of directors have been directors who were appointed solely as a result of the exercise of its voting rights; or

(f) it has a participating interest in the undertaking and either actually exercises a dominant influence over the undertaking or it and the undertaking are managed on a unified basis; or

(g) it has a participating interest in the undertaking which either entitles it to twenty per centum or more of the voting rights in the undertaking or comprises twenty per centum or more of the shares in the undertaking.

(2) For the purposes of paragraph (1) of this article, an undertaking shall be treated as a member of another undertaking if -

(a) any of its subsidiary undertakings is a member of that other undertaking; or

(b) any shares in that other undertaking are held by a person acting on behalf of the undertaking or any of its subsidiary undertakings.

(3) Subject to paragraph (4) of this article, a parent undertaking shall be treated as the parent undertaking of undertakings in relation to which any of its subsidiary undertakings are, or are to be treated as, parent undertakings.

(4) An undertaking (“A”) shall not be treated as a parent undertaking of an undertaking (“B”) by reason only that another undertaking which is A’s subsidiary undertaking by virtue of sub-paragraph (g) of paragraph (1) of this article is a parent undertaking of B.

Fellow Subsidiary Undertakings

8. (1) Subject to paragraph (2) of this article, “fellow subsidiary undertakings” are, for the purpose of this Rule, undertakings which are subsidiary undertakings of the same parent undertaking but are not parent undertakings or subsidiary undertakings of each other.

(2) Two subsidiary undertakings of the same parent undertaking are not fellow subsidiary undertakings if either of them is a subsidiary undertaking by virtue only of sub-paragraph (g) of paragraph (1) of article 7 of this Rule.

Participating Interests

9. (1) For the purposes of this Rule, a “participating interest” is an interest held by an undertaking in the shares of another undertaking which it holds on a long term basis for the purpose of securing a contribution to its activities by the exercise of control or influence arising from or related to that interest.

(2) A holding of twenty per centum or more of the shares of an undertaking shall be presumed to be a participating interest unless the contrary is shown.

(3) The reference in paragraph (1) of this article to an interest in shares includes -

(a) an interest which is convertible into an interest in shares;
and

(b) an option to acquire shares of any such interest,

and an interest or option falls within sub-paragraph (a) or sub-paragraph (b) of this paragraph notwithstanding that the shares to which it relates are, until conversion or the exercise of the option, unissued.

(4) For the purpose of this article, an interest held on behalf of an undertaking shall be treated as held by it.

(5) For the purposes of this article -

(a) there shall be attributed to an undertaking any interests held by any of its subsidiary undertakings; and

(b) the reference in paragraph (1) of this article to the purpose of securing a contribution to the activities of an undertaking shall be taken to include the purpose of securing a contribution to the activities of any of its subsidiary undertakings and of the group as a whole.

10. References in this Rule to shares -

(a) in relation to an undertaking with share capital, are to allotted shares;

(b) in relation to an undertaking with no share capital, are to rights to shares in the capital of the undertaking;

(c) in relation to an undertaking without capital, are to interest:

(i) conferring any right to share in the profits or liability to contribute to the losses of the undertaking; or

(ii) giving rise to an obligation to contribute to the debts or expenses of the undertaking in the event of a winding up.

Voting rights in an undertaking

11. (1) References in this Rule to voting rights in an undertaking are references to the rights conferred on shareholders in respect of their shares or, in the case of an undertaking not having a share capital, on members, to vote at general meetings of the undertaking on all, or substantially all, matters.

(2) In relation to an undertaking which does not have general meetings at which matters are decided by the exercise of voting rights, the references to holding a majority of the voting rights in the undertaking shall be construed as references to having the right under the constitution of the undertaking to direct the overall policy of the undertaking or to alter the terms of its constitution.

(3) For the purposes of this Rule, the voting rights in an undertaking shall be taken to be reduced by any rights held by the undertaking itself.

Rights to appoint or remove a majority of the directors

12. (1) In sub-paragraph (b) of paragraph (1) of article 7 of this Rule, the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters.

(2) An undertaking shall be treated as having the right to appoint to a directorship if –

(a) a person's appointment to it follows necessarily from his appointment as director of the undertaking; or

(b) the directorship is held by the undertaking itself.

(3) A right to appoint or remove which is exercisable only with the consent or concurrence of another person shall not be taken into account unless no other person has a right to appoint, or as the case may be, remove in relation to that directorship.

Right to exercise dominant influence

13. (1) For the purposes of sub-paragraph (c) of paragraph (1) of article 7 of this Rule, an undertaking shall not be regarded as having the right to exercise a dominant influence over another undertaking unless it has a right to give directions with respect to the operating and financial policies of that other undertaking which its directors are obliged to comply with, whether or not they are for the benefit of that other undertaking.

(2) In sub-paragraph (c) of paragraph (1) of article 7 of this Rule, “control contract” means a contract in writing conferring such a right as is referred to in paragraph (1) of this article which -

(a) is of a kind authorised by the memorandum or articles of the undertaking in relation to which the right is exercisable; and

(b) is permitted by the law under which the undertaking is established.

(3) Nothing in this article affects the construction of the expression “actually exercises a dominant influence” in sub-paragraph (f) of paragraph (1) of article 7 of this Rule.

Rights not always exercisable

14. (1) Rights which are exercisable only in certain circumstances shall be taken into account for the purposes of this Rule only -

(a) when the circumstances have arisen, and for so long as they continue to exist; or

(b) when the circumstances are within the control of the person having the rights.

(2) Rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account for the purposes of this Rule.

Rights held by one person on behalf of another

15. (1) Rights held by a person in a fiduciary capacity shall be treated for the purposes of this Rule as not held by him.

(2) Rights held by a person as nominee for another shall be treated for those purposes as held by the other.

(3) Rights shall be regarded as held by a person as nominee for another if they are exercisable only on that other person’s instructions or with his consent or concurrence.

Rights attached to shares held by way of security

16. Rights attached to shares held by way of security shall be treated for the purposes of this Rule as held by the person providing the security -

(a) where, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable in accordance with instructions received; and

(b) where the shares are held in connection with the granting of loans as part of normal business activities and, apart from the right to exercise them for the purposes of preserving the value of the security, or of realising it, the rights are exercisable only in his interest.

Rights attributed to parent undertaking

17. (1) Rights shall be treated for the purposes of this Rule as held by a parent undertaking if they are held by any of its subsidiary undertakings.

(2) Nothing in articles 15 or 16 of this Rule shall be construed as requiring rights held by a parent undertaking to be treated as held by any of its subsidiary undertakings.

(3) For the purposes of article 16, rights shall be treated as being exercisable in accordance with the instructions, or in the interest of an undertaking if they are exercisable in accordance with the instructions of or, as the case may be, in the interest of any group undertaking.

Group undertakings

18. In this Rule, “group undertaking”, in relation to another undertaking, means an undertaking which is -

(a) a parent or subsidiary undertaking of that other undertaking; or

(b) a subsidiary undertaking of any parent undertaking of that other undertaking,

and any reference to a “group” shall be construed accordingly.

Undertakings which are not companies

19. Subject to any specific provision contained in this Rule, expressions used in this Rule which are appropriate to companies shall be construed, in relation to an undertaking which is not a company, as referring to the corresponding persons, officers, documents or organs, as the case may be, appropriate to undertakings of that description.

Repeals and Savings

20. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 18 of 2003 – Close Links, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under this Rule.