

## **Insurance Rule 21 of 2007**

### **Business of Affiliated Insurance**

#### **Rule pursuant to article 4 of the Act**

**1.** (1) This Insurance Rule on business of affiliated insurance (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act and regulation 3 of the Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations, 2003 (“the Regulations”).

(2) This Rule shall come into force on the 15<sup>th</sup> October 2007.

#### **Application**

**2.** This Rule applies to companies authorised in terms of the Act, whose head office is in Malta carrying on business of affiliated insurance (the “company”).

#### **Scope**

**3.** The scope of this Rule is to determine, pursuant to regulation 3 of the Regulations, undertakings the risks of which can be insured by the affiliated insurance company or affiliated reinsurance company.

#### **Determination of undertakings the risks of which can be insured by the affiliated insurance company or affiliated reinsurance company**

**4.** The undertakings the risks of which can be insured by:

(a) an affiliated insurance company, are those determined in accordance with the First Schedule to this Rule;

(b) an affiliated reinsurance company, are those determined in accordance with the Second Schedule to this Rule.

## **Repeals and Savings**

**5.** (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 21 of 2003 – Business of Affiliated Insurance, is hereby repealed.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.

## **FIRST SCHEDULE**

*(Article 4(a) of the Rule)*

### **Affiliated insurance companies**

**1.** (1) In the case of an affiliated insurance company, business of affiliated insurance is restricted to risks originating -

(a) with undertakings being members of a group of which it is itself an undertaking; or

(b) with an undertaking or undertakings not forming part of a group, having common membership, up to the ultimate beneficial owner level, with the company amounting to at least fifty one per centum of both the membership of such undertaking or undertakings and the company; or

(c) with a society, corporation, or body (howsoever constituted) established and recognised under the laws of Malta or under the laws of country outside Malta or individuals who hold fifty one per centum or more of the share capital issued by the company or of the voting rights attaching to such capital; or

(d) with members of an association or an organisation of a particular trade, industry or profession and the risks originating with the members are those restricted to the trade, industry or profession, for the purposes of which the association or organisation was established or registered.

(2) For the purposes of sub-paragraph (1) of paragraph 1 of this Rule-

(a) “group” shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation;

(b) “membership” shall mean a direct or indirect holding in the share capital issued by a company or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the company.

## **Parent and subsidiary undertakings**

2. (1) For the purposes of this Schedule, 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 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 Insurance Rule 18 of 2007); 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 indents (a) to (c) of this sub-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 sub-paragraph (1) of this paragraph, 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 sub-paragraph (4) of this paragraph, 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 indent (g) of sub-paragraph (1) of this paragraph is a parent undertaking of B.

(5) For the purposes of this paragraph:

(a) “participation” exists when an undertaking holds rights in the share capital of other undertakings which, by creating a durable link with those undertakings, are intended to contribute to the company’s activities. The holding of twenty per centum of the capital or of the voting rights of another undertaking shall be presumed to constitute a participating interest, unless the contrary is shown; and

(b) “subsidiary undertaking” shall mean a subsidiary undertaking within the meaning of “parent undertaking” and any undertaking over which, in the opinion of the Authority, a parent undertaking effectively exercises a dominant influence; all subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking; and

(c) references to “undertakings” shall include references to a person, whether natural or legal, and in the case of a legal person shall mean a society, corporation or body (howsoever constituted), established or recognised under the laws of Malta or under the laws of a country outside Malta.

## S E C O N D   S C H E D U L E

*(Article 4(b) of the Rule)*

### **Affiliated reinsurance company**

1. (1) In the case of an affiliated reinsurance company, business of affiliated insurance is restricted to provide reinsurance cover exclusively for the risk:

(a) of the undertaking or undertakings to which it belongs; or

(b) of an undertaking or undertakings of the group of which the affiliated reinsurance company is a member.

(2) For the purposes of sub-paragraph (1) of paragraph (1) of this Schedule:

(a) an “affiliated reinsurance company” is a company owned either by a financial undertaking, other than an insurer, an EEA insurer, a pure reinsurer, an EEA pure reinsurer or a group of insurance undertakings or reinsurance undertakings to which the Insurance Business (Supplementary Supervision of Insurance or Reinsurance Undertakings in an Insurance Group) Regulations, 2007 apply, or by a non-financial undertaking;

(b) an “insurer”, an “EEA insurer”, a “pure reinsurer”, an “EEA pure reinsurer”, a “financial undertaking” “insurance undertaking” or “reinsurance undertaking” shall have the same meaning as is assigned to them by the Insurance Business (Assets and Liabilities) Regulations, 2007.