

Insurance Rule 24 of 2009

Exercise of Passport Rights by Maltese Insurance Undertakings and Maltese Reinsurance Undertakings - Establishment

Rule pursuant to article 4 of the Act

1. (1) This Insurance Rule on the exercise of passport rights by Maltese insurance undertakings and Maltese reinsurance undertakings seeking to establish a branch in a Member State or an EEA State (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 4 of the Act and regulation 9 of Part II and regulation 11 of Part III of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2004 (“the Regulations”).

(2) This Rule shall come into force on the 1st July 2009.

Application

2. This Rule applies to -

(1) (a) a Maltese insurance undertaking which is seeking to establish a branch in a Member State or an EEA State in exercise of a European right;

(b) a Maltese insurance undertaking which has received authorisation to carry on both long term business and general business in terms of the Act and seeks to extend its business in a Member State or an EEA State from general business to include long term business (or vice versa);

(c) a Maltese insurance undertaking which is seeking to establish a branch in a Member State or an EEA State in lieu of, or in addition to, providing services in a Member State or an EEA State in exercise of a European right;

(d) a Maltese insurance undertaking which has established a branch in a Member State or EEA State in exercise of a European right, and seeks to effect changes in the branch’s details,

(the “Maltese insurance undertaking”).

(2) a Maltese reinsurance undertaking which is seeking to establish a branch in a Member State or an EEA State in exercise of a European right.

Scope

3. The scope of this Rule is to determine –

(a) pursuant to regulation 9(2) of the Regulations, the particulars to be included in the notice of intention to be provided to the Authority by the Maltese insurance undertaking intending to establish a branch;

(b) pursuant to regulation 9(9) of the Regulations, the manner in which a branch of a Maltese insurance undertaking is to effect changes in the branch’s details.

(c) pursuant to regulation 11 of the Regulations, the particulars to be provided to the Authority by the Maltese reinsurance undertaking.

Maltese Insurance Undertaking establishing a branch in a Member State or an EEA State

4. A Maltese insurance undertaking which is seeking to establish a branch in a Member State or an EEA state in exercise of a European right must submit to the Authority a notice of intention. The particulars to be included in such notice are those specified in article 5 of this Rule.

Particulars to be included in the notice of intention

5. The notice of intention shall include the information detailed under the following headings:

A1. General information

Details relating to the branch of the Maltese insurance undertaking shall include the following:

(a) the address of the branch in the Member State or EEA State from where documents may be obtained from the undertaking, to which they may be delivered and to which all communications to the general representative are to be sent;

(b) the business telephone and fax number/s in the Member State or EEA State of the branch, including any website or e-mail address.

A2. The general representative

Details relating to the general representative shall include:

(a) the name of the general representative;

(b) a copy of the appointment of the general representative who must possess sufficient powers to bind the insurance undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State or EEA State of the branch;

(c) a Personal Questionnaire (“PQ”) in the form set out in Insurance Rule 15 of 2008 is to be submitted, unless previously submitted to the Authority in connection with some other role. In such instances, the individual should submit a confirmation as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto.

A3. Scheme of operations

A scheme of operations, indicating in particular the type of operation envisaged, relating to the business of insurance to be carried on from the branch should set out, amongst other things, the following information:

(a) the class or classes of long term business or class or classes or part classes of general business the branch proposes to carry on;

(b) the nature of the risks or commitments the branch proposes to cover in the Member State or EEA State concerned;

(c) the guiding principles as to reinsurance of business to be carried on in the Member State or EEA State concerned, including details of the undertaking's maximum retention per risk or event after all reinsurance/retrocession ceded, by principal category of business undertaken;

(d) details of the principal reinsurers/retrocessionaires of the business to be carried by the branch in Member State or EEA State concerned, including name, address and country of incorporation;

(e) copies or drafts of:

(i) reinsurance treaty cover notes covering business to be written by the branch in the Member State or EEA State concerned;

(ii) any standard agreements which the branch intends to enter into with insurance brokers or agents in the Member State or EEA State concerned;

(iii) any agreements which the branch will enter into with persons (other than employees of the Maltese insurance undertaking) who will manage the insurance business to be carried on in the Member State or EEA State of the branch;

(f) estimates of forecast expenses, including an estimate of the costs of installing the administrative services and organisation for securing business and the financial resources intended to cover those costs, and, in relation to general business class 18, the resources available for providing the assistance;

(g) a description of the proposed sources of business of insurance (e.g. insurance brokers, agents, direct selling and tied insurance intermediaries) and the approximate percentage expected from each source;

(h) for each of the first three financial years following the establishment of the branch:

(i) estimates relating to expenses of management (other than costs of installation) and in particular to current general expenses and commissions;

(ii) estimates of premiums or contributions and of claims in respect of direct business and reinsurance acceptances (gross and net of reinsurance cessions);

(iii) estimates relating to the financial resources intended to cover underwriting liabilities;

(iv) a forecast statement of the undertaking's margin of solvency, identifying clearly the computation of the required margin of solvency;

(v) in respect of long term business, in addition to the above:

(aa) the number of contracts or treaties expected to be issued;

(bb) the total sums assured or the total amounts of annuity per annum;

(cc) the total premium income, both gross and net of reinsurance ceded;

(dd) detailed estimates, on both optimistic and pessimistic basis, of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

(ee) the technical bases that the actuary who will be appointed for the purposes of article 22 of the Act proposes to employ for each class of business to be carried on from the branch, including the bases needed for calculating premium rates and mathematical reserves;

(ff) a statement by the actuary so appointed, stating whether he considers that the premium rates which will be used in the Member State or EEA State of the branch are adequate;

(gg) a statement by the actuary so appointed, stating whether he agrees with the information provided under paragraphs (c), (h)(iii) and (h)(v)(dd) under heading A3 of article 5 above;

(hh) the technical bases that the actuary used to calculate the estimates referred to in paragraphs (h)(iii), (h)(v)(aa) to (h)(v)(dd) under heading A3 of article 5 above.

A4. Personnel and internal controls

(1) The structural organisation of the branch. A PQ should be submitted in respect of the proposed senior management who will be effectively managing the business of the branch and also in respect of the compliance officer and money laundering reporting officer (if applicable) of the branch, unless previously submitted to the Authority in connection with some other role. In such instances, the individuals should submit a confirmation as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto;

(2) A summary of the arrangements by which systems and controls will be established and maintained in the head office of the Maltese insurance undertaking to oversee and monitor the branch's operations, setting out (but not be restricted) to the details of the controls over underwriting, claims, and IT.

(3) The quality, skills and experience of the management required in the branch will depend on, among other things, the type and volume of business it expects to undertake. The Maltese insurance undertaking needs to demonstrate that adequate staff with relevant experience is available at all levels.

In general, the Authority will need to be satisfied that the administrative structure and financial situation of the Maltese insurance undertaking are adequate.

A5. Maltese insurance undertaking covering risks relating to class 17

Where the Maltese insurance undertaking proposes to carry on business of insurance in the Member State or EEA State covering risks relating to class 17 of Part I of the Third Schedule to the Act, it is to specify the arrangement chosen from those described in article 6 of Insurance Rule 19 of 2008 – Legal Expenses Insurance.

A6. Maltese insurance undertaking covering risks relating to class 10

Where the Maltese insurance undertaking proposes to carry on business of insurance in the Member State or EEA State covering risks relating to class 10 of Part I of the Third Schedule to the Act, it is required to provide the Authority with the details of the undertaking's membership or a certificate of application for membership of the national bureau and the national guarantee fund in the Member State or EEA State of the branch:

Provided that, where a Maltese insurance undertaking provides the Authority with a certificate of application for membership, the Authority shall obtain from the undertaking a commitment that it will not engage in business concerning this class as long as it has not forwarded the final membership declaration.

Extension of Activities

6. In the case of a Maltese insurance undertaking which has already established a branch in the EEA State or Member State concerned and wishes to extend its general business to include long term business (or vice versa), the particulars required by article 5 of this Rule are only in respect of the general business or long term business for which it intends to extend its activities.

Maltese reinsurance undertaking establishing a branch in a Member State or EEA State

7. In the case of a Maltese reinsurance undertaking which is seeking to establish a branch in a Member State or EEA State in exercise of a European right, the information which is to be provided to the Authority is the following:

- (a) the address of the branch, which shall also be that of the general representative;
- (b) details relating to the general representative;
 - (i) the name of the general representative;

(ii) copy of the appointment of the general representative who must possess sufficient powers to bind the Maltese reinsurance undertaking in relation to third parties and to represent it in relations with the authorities and courts of the Member State and EEA State of the branch;

(iii) a Personal Questionnaire (“PQ”) in the form set out in Insurance Rule 15 of 2008 is to be submitted, unless previously submitted to the Authority in connection with some other role. In such instances, the individual should submit a confirmation as to whether the information included in the PQ previously submitted is still current, and indicating any changes or up-dates thereto;

(c) the type of reinsurance activity, according to article 4(2) of the Reinsurance Directive 2005/58/EC into which the planned business falls.

The notification procedure

8. Unless the Authority has reason to doubt the adequacy of the administrative structure, the financial situation of the Maltese insurance undertaking or the good repute and professional qualification or experience of the senior management or the general representative, taking into account the business planned, it shall, within three months of receiving all the information referred in article 5 of this Rule, communicate that information to the foreign authority of the branch and shall inform the undertaking concerned accordingly.

Changes to branch’s details

9. (1) A Maltese insurance undertaking which seeks to effect any changes in the branch’s details relating to the

(a) scheme of operations and the structural organisation of the branch; or

(b) address of the branch in the Member State or EEA State concerned; or

(c) name of the branch's general representative,

shall give written notice to the Authority at least one month before implementing the change.

10. A Maltese reinsurance undertaking which seeks to effect any changes to the information submitted pursuant to article 7 of this Rule shall give notice to the Authority at least one month before implementing the change.

11. Where the Authority does not object to the proposed changes, it shall communicate the information to the foreign authority, as soon as possible, and in any event not later than one month after it has received the information from the Maltese insurance undertaking or Maltese reinsurance undertaking.

Repeals and Savings

12. (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 24 of 2005 – Exercise of Passport Rights by Maltese Insurance Undertakings - Establishment, 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.