

PART --

AMENDMENT OF THE INSURANCE BUSINESS ACT, CAP.403

Amendment of the Insurance Business Act, Cap. 403.

1. (1) This Part amends the Insurance Business Act and shall be read and construed as one with the Insurance Business Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance, may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Part.

Amendment of article 2 of the principal Act.

2. Article 2 of the principal Act shall be amended as follows:

(a) for the definition “insurance agent” there shall be substituted the following:

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“ “insurance agent” means a person enrolled as such under the Insurance Intermediaries Act;”;

(b) for the definition “insurance manager” there shall be substituted the following:

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“ “insurance manager” means a person enrolled as such under the Insurance Intermediaries Act;”;

(c) in the definition “Lloyd’s”, for the words “in the First Schedule” there shall be substituted the words “in article 48A”;

(d) for the definition of “margin of solvency” and “Malta margin of solvency” there shall be substituted the following:

“ “ margin of solvency”, “Malta margin of solvency” and “EEA margin of solvency” shall be construed in accordance with article 14;”.

Amendment of article 11 of the principal Act.

3. Article 11 of the principal Act shall be amended as follows:

(a) in subarticle (1) thereof:

(i) in indent (iii) of paragraph (d) therein, for the words “an authorised insurance agent”, there shall be substituted the words “an insurance agent”;

(ii) in indent (iv) of paragraph (d) therein, for the words “an authorised insurance agent”, there shall be substituted the words “an insurance agent”;

(b) in paragraph (a) of subarticle (2) thereof, for the words “an authorised insurance manager”, there shall be substituted the words “an insurance manager”.

Amendment of article 14 of the principal Act.

4. Article 14 of the principal Act shall be amended as follows:

(a) in subarticle (2) thereof:

(i) in paragraph (b) therein, for the words “a Malta margin of solvency,” there shall be substituted the words “a Malta margin of solvency, or”;

(ii) immediately after paragraph (b) thereof, there shall be added the following new paragraph (c):

“(c) an EEA margin of solvency,”;

(b) in subarticle (4) thereof:

(i) in paragraph (b) thereof, for the words “carried on by that company in Malta.” there shall be substituted the words “carried on by that company in Malta;”;

(ii) immediately after paragraph (b) thereof, there shall be added the following new paragraph (c):

“(c) the EEA margin of solvency is the margin of solvency of an authorised company computed by reference to the assets and liabilities of the business carried on by that company in all Member States and EEA States.”.

Amendment of article 20 of the principal Act.

5. Paragraph (b) of subarticle (1) of article 20 of the principal Act shall be amended as follows:

(a) for the words “in the English language;” there shall be substituted the words “in the English language.”;

(b) immediately after the words “in the English language.”, there shall be added the following words “This requirement shall not apply in the case of a company which carries on business restricted to risks situated outside Malta or commitments where Malta is not the country of commitment.”.

Amendment of article 33 of the principal Act.

6. Article 33 of the principal Act shall be amended as follows:

(a) for subarticle 4 thereof, there shall be substituted the following:

“(4) The competent authority shall not approve a transfer on an application made under subarticle (1) unless it is satisfied that -

(a) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on general business of the class or classes or part classes to be transferred under the scheme;

(ii) the transferee is, or immediately after the approval will be, authorised under article 6 or article 23 of First Council Directive of 24 July 1973 on the coordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC); or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee has the authorisation required to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred, or will have it before the scheme takes effect; and

(b) (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;

(ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under article 16a, 25 or 26 the First Council Directive of 24 July 1973 on the coordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC); or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred; and

(c) (i) if the transferee is a company authorised under this Act, the transferee’s financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(ii) if the transferee is a company whose head office is in a country outside Malta, the transferee’s financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; and

(d) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State –

(i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and

(ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed;

(e) if the transferor is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta -

(i) the overseas regulatory authority in the country where the risk is situated has been notified of the proposed transfer; and

(ii) either the overseas regulatory authority has consented to the transfer or the overseas regulatory authority has not refused its consent to the transfer within the period of three months beginning with the date of the notification.”.

(b) subarticle (6) thereof shall be deleted;

Amendment of  
article 35 of the  
principal Act.

7. For subarticle (5) of article 35 of the principal Act, there shall be substituted the following:

“(5) Subject to subarticle (6), the Tribunal shall not approve a transfer on an application filed before it under subarticle (1) unless it is satisfied that -

(a) (i) the transferee company is, or immediately after the approval will be, authorised under article 7 to carry on long term business of the class or classes to be transferred under the scheme;

(ii) the transferee company is, or immediately after the approval will be, authorised under article 4 or article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance to carry on long term business of the class or classes to be transferred under the scheme in a Member State or an EEA State; or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee has the authorisation required to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred or will have it before the

scheme takes effect; and

(b) the transferee company produces evidence that -

(i) (aa) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under this Act;

(bb) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under article 28, 55 or 56 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance; or

(cc) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred;

(ii) (aa) if the transferee company is authorised under this Act, its financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or

(bb) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred;

(c) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State –

(i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and

(ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed.”.

Amendment of  
article 37 of the  
principal Act.

8. Article 37 of the principal shall be substituted by the following :

“Exemption under  
this Part.

**37.** (1) Subject to subarticle (2), this Part of the Act shall not apply to business of reinsurance.

(2) Where a company authorised under this Act carrying on business restricted to reinsurance (“the transferor”) proposes to transfer all or part of its business, the competent authority shall not approve a transfer unless it is satisfied that:

(a) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on business of reinsurance;

(ii) the transferee is, or immediately after the approval will be, authorised under article 4 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EEC and 2002/83/EC to carry on in a Member State or an EEA State, business of reinsurance to be transferred under the scheme; or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee has the authorisation required (if any) to enable the business, or part, which is to be transferred to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and

(b) (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;

(ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under article 37 to 39 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EC and 2002/83/EC; or

(iii) if the transferee does not fall within indents (i) and (ii) of this paragraph, the transferee satisfies the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred.

(c) (i) if the transferee is a company

authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by or under this Act;

(ii) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil (if any) the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred.”.

Amendment of article 38 of the principal Act.

9. Subarticle (12) of article 38 of the principal Act shall be deleted.

Amendment of article 41 of the principal Act.

10. Article 41 of the principal Act shall be amended as follows:

(a) in subarticle (3) thereof, for the words “attributable to its business of insurance in Malta” there shall be substituted the words “attributable to its business of insurance”;

(b) in the proviso to subarticle (3) thereof, for the words “attributable to its business of insurance in Malta” there shall be substituted the words “attributable to its business of insurance”.

Amendment of article 59 of the principal Act.

11. In subarticle (2) of article 59 of the principal Act, for the words “employees or agents” there shall be substituted the words “employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority”.

Amendment of article 60 of the principal Act.

12. In subarticle (2) of article 60 of the principal Act, the word “authorised” shall be deleted.

Amendment of article 61 of the principal Act.

13. In article 61 of the principal Act, for the words “shall include an authorised insurance agent, an authorised insurance manager”, there shall be substituted the words “shall include an insurance agent, an insurance manager”.

Amendment of article 64 of the principal Act.

14. In paragraph (i) of subarticle (1) of article 64 of the principal Act, for the words “being penalties not exceeding five thousand liri” there shall be substituted the words “being penalties not exceeding forty thousand liri”.

Amendment of article 65 of the principal Act.

15. Article 65 of the principal Act shall be amended as follows:

(a) for the marginal note to article 65 thereto, there shall be substituted the words “Exemption under Duty on Documents and

Transfers Act.”.

(b) subarticle (1) thereof shall be deleted;

(c) subarticle (2) thereof shall be renumbered as article 65.

Amendment of  
article 67 of the  
principal Act.

16. Article 67 of the principal Act shall be amended as follows:

(a) in subarticle (3) thereof, for the words “shall include an authorised insurance agent, an authorised insurance manager”, there shall be substituted the words “shall include an insurance agent, an insurance manager”.

(b) subarticle (6) thereof shall be amended as follows:

(i) in the proviso to subarticle (6) thereof, for the words “during which the infringement continues;” there shall be substituted the words “during which the infringement continues;”;

(ii) immediately after the proviso to subarticle (6) thereof, there shall be added the following new proviso:

“Provided further that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed forty thousand liri.”.



PART --

AMENDMENT OF THE INSURANCE INTERMEDIARIES ACT, CAP.487

Amendment of the Insurance Intermediaries Act, Cap. 487.

1. (1) This Part amends the Insurance Intermediaries Act and shall be read and construed as one with the Insurance Intermediaries Act, hereinafter in this Part referred to as “the principal Act”.

(2) The provisions of this Part shall come into force on such date as the Minister responsible for finance, may by notice in the Gazette establish, and different dates may be so established for different provisions or different purposes of this Part.

Amendment of article 3 of the principal Act.

2. Paragraph (h) of subarticle (2) of article 3 of the principal Act shall be amended as follows:

(a) in the proviso to paragraph (h) thereof, for the words “during which the infringement continues;” there shall be substituted the words “during which the infringement continues;”;

(b) immediately after the proviso to paragraph (h) thereof, there shall be added the following new proviso:

“Provided further that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed forty thousand liri;”.

Amendment of article 11 of the principal Act.

3. In subarticle (4) of article 11 of the principal Act, for the words “may carry out insurance intermediaries activities or set up or acquire a subsidiary” there shall be substituted the words “may carry out insurance intermediaries activities, open a branch, office or other place of business, or set up or acquire a subsidiary”.

Amendment of article 12 of the principal Act.

4. In the proviso to paragraph (b) of subarticle (1) of article 12 of the principal Act, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

Amendment of article 15 of the principal Act.

5. For paragraph (a) of subarticle (1) of article 15 of the principal Act, there shall be substituted the following:

“ (a) the intermediary does not commence to carry on the insurance intermediaries activities pursuant to the enrolment within twelve months of it being granted, or within such other period as may be specified in the enrolment; or”.

Amendment of article 16 of the principal Act.

6. For paragraph (h) of article 16 of the principal Act there shall be substituted the following:

“(h) the registered person does not hold a directorship in, or is no longer employed with, the enrolled company; or”.

Amendment of article 26 of the principal Act.

7. Article 26 of the principal Act shall be amended as follows:

(a) the present provision shall be renumbered as subarticle (1) thereof; and

(b) immediately after subarticle (1) thereof, as renumbered, there shall be added the following new subarticle (2):

“(2) The application for ceasing shall be submitted to the competent authority not later than three months before the date on which the enrolled person intends to cease to carry on such activities.”.

Amendment of article 30 of the principal Act.

8. In article 30 of the principal Act, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

Amendment of article 37 of the principal Act.

9. In subarticle (6) of article 37 of the principal Act, for the words “in the Tied Insurance Company Register” there shall be substituted the words “in the Tied Insurance Intermediaries Company Register”.

Amendment of article 45 of the principal Act.

10. For paragraph (b) of subarticle (2) of article 45 of the principal Act there shall be substituted the following:

“(b) where so required within the terms of Malta’s international commitments or the obligations arising out of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, as amended from time to time, and includes any implementing measures that have been or may be used thereunder; or”.

Amendment of article 46 of the principal Act.

11. For subarticles (2) and (3) of article 46 of the principal Act there shall be substituted the following:

“(2) Information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations made thereunder, or of any insurance intermediaries rule, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected

by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases –

(a) where the information is disclosed with a view to the institution of, or otherwise for the purposes of, criminal proceedings or of any proceedings by the competent authority before any court under this Act;

(b) where the information is disclosed with a view to enabling or assisting the competent authority in the performance or discharge of any of its functions under this Act;

(c) where the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

(d) where a summary or collection of information is prepared or supplied in such a way as not to enable the identity of any person to whom the information relates to be ascertained;

(e) where the information is disclosed to an auditor where such disclosure would assist the auditor in the exercise of his functions under article 28;

(f) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in exercise of their respective functions in terms of law;

(g) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities where such disclosure is required or requested for the pursuance of serious regulatory concerns or the detection, prevention or prosecution of criminal offences;

(h) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an insurance intermediary provided such information does not concern third parties involved in attempts to rescue such insurance intermediary, and to such overseas bodies responsible for the liquidation and bankruptcy of a person holding an authorisation or an equivalent licence from an overseas regulatory authority.

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Amendment to  
the Schedule  
to the  
principal Act.

(3) Subject to the provisions of article 45, information obtained from an overseas regulatory authority may only be disclosed to another person, to another overseas regulatory authority or to any other third party with the prior approval of the authority which had provided the information.”.

12. The Third Column in the Schedule to the principal Act, shall be amended as follows:

(a) In paragraph 2, in the definition “Insurance Agent”, for the words “appointed by an authorised company”, there shall be substituted the words, “appointed by a company authorised under the Insurance Business Act and, or by, a European insurance undertaking”;

(b) in sub-paragraph (b) of paragraph 3, in the definition “Insurance Manager”, for the words “restricted to contracts of insurance relating to risks situated outside of Malta” there shall be substituted the words “restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment”.

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