

**OWN FUNDS OF PERSONS ENROLLED
IN THE AGENTS LIST, MANAGERS LIST
OR BROKERS LIST CARRYING OUT
INSURANCE DISTRIBUTION ACTIVITIES
AND REINSURANCE DISTRIBUTION
ACTIVITIES**

CHAPTER 4

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4.1 Introduction

- 4.1.1 This Chapter on the own funds of persons enrolled in the Agents List, Managers List or Brokers List and carrying out insurance distribution activities and, or reinsurance distribution activities is made by the competent authority pursuant to, and for the purposes of, articles 2, 10(1)(a)(iv) and 10(1)(b)(i) of the Act. This Chapter determines the amounts and components of the own funds of an enrolled individual or an enrolled company.

4.2 Application

- 4.2.1 This Chapter shall apply 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 distribution activities and, or reinsurance distribution activities ("an enrolled individual" or "an enrolled company").

4.3 Construing of the own funds of enrolled individuals or enrolled companies

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

4.4 Own funds of enrolled individuals or enrolled companies

- 4.4.1 Subject to paragraphs 4.4.2 and 4.4.4 of this Chapter, where an enrolled individual or an enrolled company carries out insurance distribution activities and, or reinsurance distribution 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 First Schedule to this Chapter 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 First Schedule, subject, where applicable, to any restriction set out in the third column of that First Schedule. However, notwithstanding the value of any amount specified in that First Schedule, the competent 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.

- 4.4.2 For the purposes of determining the value of the own funds of an enrolled individual or an enrolled company in accordance with the First Schedule to this Chapter, 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, and

Provided further, that annual gross premiums **shall not be deemed to be receivable** by the enrolled individual or enrolled company, where:

- (a) monies paid by the customer to the enrolled individual or enrolled company are treated as having been paid to the insurance undertaking,
- (b) monies paid by the insurance undertaking to the enrolled individual or enrolled company are treated as having been paid to the customer when the customer actually receives them, and,
- (c) the enrolled individual or the enrolled company notifies the competent authority that it intends to enter into a credit risk transfer agreement with an insurance undertaking, which satisfies the requirements of the Second Schedule of this Chapter, together with the information required in the said Schedule and a compiled Declaration as contained in the Third Schedule of this Chapter within five (5) working days after entering into such agreement. The competent authority shall acknowledge receipt of the said notification;

and, for the purposes of this proviso, “insurance undertaking” means an undertaking authorised under the Insurance Business Act to carry on business of insurance and includes an undertaking authorised under Directive 2009/138/EC to carry on business of insurance, and any other third country insurance undertaking which has obtained the necessary authorisations or permissions in the third country where its head office is situated and has also obtained the necessary permissions to operate in the European Union.

- 4.4.3 For the purpose of paragraph 4.4.2 of this Chapter, 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 competent 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.
- 4.4.4 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, reinsurer 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 (Cap. 386).

4.5 Own funds of enrolled individuals

- 4.5.1 Subject to the conditions set out in paragraph 4.5.2 of this Chapter, 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:

- (i) licensed to carry on business of banking under the laws of Malta; or
- (a) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the competent authority provided that the bank or credit institution is of first class standing.

- 4.5.2 The conditions referred to in paragraph 4.5.1 of this Chapter are:

- (a) the guarantee or the letter of credit shall be in favour of the competent authority;
- (b) the content of the guarantee or letter of credit is to be approved in advance by the competent 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 competent authority the particulars of the proposed changes; and no such changes shall be made without the competent authority's approval.

4.6 Own funds of enrolled companies

- 4.6.1 Where a company applies for enrolment in the Agents List, Managers List or Brokers List to carry out insurance distribution activities and, or reinsurance distribution 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 First Schedule to this Chapter relating to the kind of activity for which an enrolled company applies to act, or is acting, specified in the first column of that First Schedule, subject, where applicable, to any restriction set out in the third column of that First Schedule:

Provided that, notwithstanding the value of any amount specified in the First Schedule, the competent 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.

4.6.2 In addition to the paid up share capital referred to in paragraph 4.6.1 of this Chapter, 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 competent 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 competent authority, provided that the bank or credit institution is of first class standing;
- (e) a guarantee provided by an entity within the same group of companies as the enrolled company to the satisfaction of the competent authority.

Provided further that:

- (i) the guarantee or the letter of credit shall be in favour of the competent authority;
- (ii) the content of the guarantee or letter of credit is to be approved in advance by the competent 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 competent authority the particulars of the proposed changes; and no such changes shall be made without the competent authority's approval.

4.6.3 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 or GAPSME;
- (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 or GAPSME, 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) immovable property which serves, or is intended to serve, as a place of habitation;

- (g) movable property which in the opinion of the competent 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 competent 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 (Cap. 345), and, for the purposes of this paragraph, "authorised undertaking" means an undertaking authorised under the Insurance Business Act 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 competent authority;
- (m) credits resulting from cheques, drafts, notes or other bills of exchange returned unpaid;
- (n) without prejudice to sub-paragraph (o) of this paragraph, 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 sub-paragraphs (a) to (m) of this paragraph;
- (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 sub-paragraph (f) of this paragraph, 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 subparagraphs (a) to (m) of this paragraph.

4.6.4 For the purposes of paragraph 4.6.3 of this Chapter:

- (a) "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:
- (b) "GAPSME" refers to General Accounting Principles for Small and Medium-Sized Entities and shall be construed in accordance with the Accountancy Profession (General Accounting Principles for Small and Medium-Sized Entities) Regulations, 2015 (L.N. 289 of 2015) issued under the Accountancy Profession Act (Cap. 281).

4.7 Cell Share Capital

- 4.7.1 Where an enrolled company which is enrolled in the Managers List or Brokers List to carry out insurance distribution activities and, or reinsurance distribution activities is formed or constituted as a cell company, or an existing company converted into a cell company, the own funds of each cell of such cell company shall amount to not less than €19,510, and, for the purposes of this paragraph, "cell" and "cell company" shall have the same meaning as in the Companies Act (Cell Companies carrying on Business of Insurance) Regulations 2010.

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