

L.N. of 2015

**INSURANCE BUSINESS ACT  
(CAP. 403)**

**Insurance Business (General Provisions of Supervision)  
Regulations, 2015**

IN exercise of the powers conferred by article 64 of the Insurance Business Act, the Minister for Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

Title, scope and commencement.	<p><b>1.</b> (1) The title of these regulations is the Insurance Business (General Provisions of Supervision) Regulations, 2015.</p> <p>(2) The purpose of these regulations is to implement articles 28, 29, 30, 31, 33, 34(6), 36(3), 38(1), 41(5), 52(1), 71(1), 77f (1), 176 and 177(1) of the Solvency II Directive.</p> <p>(3) These regulations shall come into force on the [ ].</p>
Interpretation.  Cap. 403.	<p><b>2.</b> (1) In these regulations, unless the context otherwise requires:</p> <p>“the Act” means the Insurance Business Act;</p> <p>“authorised insurance undertaking” means an undertaking, which has received authorisation pursuant to article 7 to carry on direct general business and, or long term business, and includes an undertaking authorised to carry on direct and reinsurance business;</p> <p>“authorised reinsurance undertaking” means an undertaking which has received authorisation pursuant to article 7 to carry on business restricted to reinsurance;</p> <p>“EIOPA” means the European Insurance and Occupational Pensions Authority as established in terms of article 1 of Regulation (EU) No. 1094/2010;</p>

Cap. 360.

“EU Regulation” means the Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II);

“European insurance undertaking” means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing the activity of direct insurance within the meaning of Article 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;

“European regulatory authority” means the supervisory authority or supervisory authorities as defined in Article 13 of the Solvency II Directive, designated by a Member State or EEA State, other than Malta, empowered by law or regulation to supervise insurance or reinsurance undertakings;

“European reinsurance undertaking” means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with article 14 of the Solvency II Directive;

“parent undertaking” has the same meaning as that assigned to the words “parent company” in article 2 of the Companies Act.

“Solvency II Directive” means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

“third country” means a country which is not a Member State or EEA State;

(2) Words and expressions used in these regulations which are also used in the Act but which are not defined herein, shall have the same meaning assigned to them as in the Act.

<p>Main objective of supervision and supervisory convergence.</p>	<p><b>3.</b> (1) Without prejudice to article 4(1) of the Act, the competent authority shall, in the exercise of its general duties, duly consider the potential impact of its decisions on the stability of the financial system in the European Union, in particular, in emergency situations, based on the information available at the relevant time:</p> <p style="text-align: center;">Provided that, in times of exceptional movements in the financial markets, the competent authority shall take into account the potential pro-cyclical effects of its actions.</p> <p>(3) In exercising its functions and duties under the Act, the competent authority shall take into account a European Union dimension.</p>
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<p>General principles of supervision.</p>	<p><b>4.</b> (1) Without prejudice to article 3 of the Act, supervision by the competent authority shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the business of insurance and of the compliance by authorised insurance undertakings and authorised reinsurance undertakings with the Act, regulations and Insurance Rules issued thereunder, and any other delegated acts and any technical standards that have been or may be issued under the Solvency II Directive.</p> <p>(2) Supervision by the competent authority of authorised insurance undertakings and authorised reinsurance undertakings shall be carried out in a timely and proportionate manner and shall comprise an appropriate combination of off-site and on-site supervision.</p> <p>(3) The competent authority shall apply the requirements laid down in the Act, regulations and Insurance Rules issued thereunder in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of the authorised insurance undertaking and the authorised reinsurance undertaking concerned.</p>
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<p>Scope of supervision.</p>	<p><b>5.</b> (1) The competent authority shall be solely responsible for the financial supervision of an authorised insurance undertaking and an authorised reinsurance undertaking, including for their business carried on in a Member State or EEA State, other than Malta, either through a branch or under the freedom to provide services.</p> <p>(2) For the purposes of sub-regulation (1) “financial supervision” includes verification, with respect to the entire business of the authorised insurance undertaking and authorised</p>
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	<p>reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds.</p> <p>(3) Where the authorised insurance undertaking concerned is authorised to cover risks classified in class 18 of Part I of the Third Schedule to the Act, supervision shall extend to the monitoring of the technical resources which the authorised insurance undertaking has at its disposal for the purposes of carrying out the assistance operations it has undertaken to perform.</p> <p>(4) Where the competent authority receives information:</p> <p>(a) in the case of an authorised insurance undertaking, from the European regulatory authority of the Member State or EEA State, other than Malta, in which the risk is situated or the Member State or EEA State of the commitment; or</p> <p>(b) in the case of an authorised reinsurance undertaking, from the European regulatory authority of the host Member State,</p> <p>that such European regulatory authority considers that the activities of the authorised insurance undertaking or the authorised reinsurance undertaking might affect the undertaking's financial soundness, the competent authority shall determine whether that undertaking is complying with the prudential principles laid down in the Act, regulations and Insurance Rules issued thereunder.</p>
<p>Transparency and accountability.</p>	<p><b>6.</b> (1) The competent authority shall carry on its duties in a transparent and accountable manner taking into account the protection of confidential information.</p> <p>(2) The competent authority shall publish the following information, in accordance with any implementing technical standards adopted by the Commission:</p> <p>(a) the texts of laws, regulations, administrative rules and general guidance adopted in Malta in the field of insurance regulation;</p> <p>(b) the general criteria and methods, including the tools developed in accordance with article 31B(7) of the Act, used in the supervisory review process as set out in article 31B of the Act;</p>

	<p>(c) without prejudice to the confidentiality provisions of the Act, aggregate statistical data on key aspects of the application of the prudential framework in Malta;</p> <p>(d) the manner of exercise of the options provided for in the Solvency II Directive;</p> <p>(e) the objectives of its supervision and its main functions and activities.</p> <p>(2) The information published in accordance with sub-regulation (1) shall be sufficient to enable a comparison of the supervisory approaches adopted by the different European regulatory authorities, including the competent authority. The information shall be published following a common format and updated regularly. The information referred to in paragraphs (a) to (e) shall be accessible at a single electronic location.</p>
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<p>Supervision of branches established in another Member State or EEA State.</p>	<p><b>7.</b> (1) Where an authorised insurance undertaking or an authorised reinsurance undertaking carries on business of insurance in a Member State or EEA State, other than Malta, through a branch, the competent authority may, after having informed the European regulatory authority concerned, carry out itself or through an intermediary it appoints for that purpose, on-site verification of the information necessary to ensure the financial supervision of that undertaking.</p> <p>(2) Where the competent authority has informed the European regulatory authority that it intends to carry out an on-site verification in accordance with sub-regulation (1) and where the competent authority is prohibited from exercising its right to carry out that on-site verification, the competent authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No.1094/2010.</p>
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<p>Supervisory review process.</p>	<p><b>8.</b> When carrying out the supervisory review process referred to in article 31B of the Act, the competent authority shall have in place appropriate monitoring tools that enable it to identify deteriorating financial conditions in an authorised insurance undertaking or an authorised reinsurance undertaking and to monitor how that deterioration is remedied.</p>
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Supervision of outsourced functions and activities.	<p><b>9.</b> Without prejudice to article 18I of the Act, the competent authority shall ascertain that an authorised insurance undertaking and an authorised reinsurance undertaking which outsources a function or an insurance or reinsurance activity, takes the necessary steps to ensure that:</p> <p>(a) the service provider undertakes to cooperate with the competent authority in connection with the outsourced function or activity and provide effective access to its business premises in order for the competent authority to be able to exercise those rights of access; and</p> <p>(b) the authorised insurance undertaking and authorised reinsurance undertaking, its auditors and the competent authority have effective access to data related to the outsourced functions or activities.</p>
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Verification of system of governance by undertakings.	<p><b>10.</b> (1) The competent authority shall have appropriate means, methods and powers for verifying the system of governance of authorised insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.</p> <p>(2) The competent authority shall, if the circumstances so warrant, require that the system of governance of an authorised insurance undertaking or an authorised reinsurance undertaking be improved and strengthened to ensure compliance with the requirements set out in article 18I(2) and (3) of the Act.</p>
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Information to EIOPA.	<p><b>11.</b> (1) Without prejudice to Article 35 of Regulation (EU) No 1094/2010, the competent authority shall provide the following information to EIOPA on an annual basis:</p> <p>(a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the competent authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for:</p> <p>(i) authorised insurance and reinsurance undertakings;</p> <p>(ii) authorised insurance undertakings carrying on long-term business of insurance;</p> <p>(iii) authorised insurance undertakings carrying</p>
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on general business of insurance;

(iv) authorised insurance undertakings carrying on general business and long-term business of insurance;

(v) authorised reinsurance undertakings.

(b) for each of the disclosures set out in paragraph (a), the proportion of capital add-ons imposed under article 31C (1)(a), (b) and (c) of the Act, respectively;

(c) the number of authorised insurance and reinsurance undertakings benefiting from the limitation from regular supervisory reporting and the number of authorised insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in Insurance Rules issued pursuant to article 32 of the Act, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of authorised insurance and reinsurance undertakings;

(d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in regulation 40 of the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

(2) The competent authority shall, on an annual basis and until 1 January 2021, provide the following information to EIOPA on annual basis:

(a) the availability of long-term guarantees in insurance products in the Maltese market and the behaviour of authorised insurance and reinsurance undertakings as long-term investors;

(b) the number of authorised insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with Article 138(4) of the Solvency II Directive, the duration-based equity risk sub-

	<p>module and the transitional measures set out in regulations 15 and 16 of Insurance Business (Solvency II Transitional Provisions) Regulations, 2015;</p> <p>(c) the impact, at a national level, of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-module and the transitional measures set out in regulations 15 and 16 of Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, on the financial position of authorised insurance and reinsurance undertakings, anonymised in respect of each undertaking;</p> <p>(d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of authorised insurance and reinsurance undertakings and whether any of these measures provide undue capital relief;</p> <p>(e) its assessment of the effect of any extension of the recovery period in accordance with Article 138(4) of the Solvency II Directive on the efforts of authorised insurance and reinsurance undertakings to re-establish the required level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;</p> <p>(f) where authorised insurance and reinsurance undertakings apply the transitional measures set out in regulations 15 and 16 of Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, whether they comply with the phasing-in plans referred to in regulation 17 of the said regulation and the prospects of such undertakings reducing their dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and the competent authority, taking into account the Maltese regulatory environment.</p>
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<p>Information from the competent authority to the Commission and EIOPA.</p>	<p><b>12.</b> (1) The competent authority shall inform the Commission, EIOPA and the European regulatory authorities concerned of any authorisation issued by the competent authority pursuant to article 7 of the Act, to a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the law of a third country. The information shall also contain an indication of the</p>
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	<p>structure of the group concerned.</p> <p>(2) Where a third country insurance undertaking or a third country reinsurance undertaking acquires a holding in an authorised insurance undertaking or an authorised reinsurance undertaking which would result in that authorised undertaking to become a subsidiary of that third country undertaking, the competent authority shall inform the Commission, EIOPA and the European regulatory authorities concerned accordingly.</p>
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<p>Third-country treatment of Community insurance and reinsurance undertakings.</p>	<p><b>13.</b> The competent authority shall inform the Commission and EIOPA of any general difficulties encountered by an authorised insurance undertaking or an authorised reinsurance undertakings when establishing itself and operating in a third country or pursuing activities in a third country.</p>
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