

ANNEX I

(Paragraphs 9.7.1(a) and 9.16.1(a) of Chapter 9)

Information for policyholders

1.1 Pursuant to paragraphs 9.7.1 and 9.16.1 of this Chapter, this Annex applies to a European insurance undertaking, (“the undertaking”) which:

(a) in accordance with Article 145 and 147 of the Solvency II Directive has been authorised by the European regulatory authority of its home Member State to carry on business of insurance in Malta under the provisions relating to the right of establishment and/or the provision to provide services and the competent authority has received the information required by the Articles 145 or 148 of Solvency II Directive as applicable; and

(b) effects contracts which constitute a risk or commitment where the risk is situated in Malta or Malta is the country of commitment.

1.2 Annex I shall not apply to a European insurance undertaking:

(a) which proposes to enter or has entered into contracts relating to large risks;

(b) where its business of insurance is restricted to reinsurance;

(c) where the European insurance undertaking or European reinsurance undertaking is a captive insurance undertaking or a captive reinsurance undertaking.

Long term business: Before concluding a contract

1.3 A European insurance undertaking which carries on business in Malta under the provisions relating to the right of establishment and/or the provisions to provide services shall, before entering into a contract of insurance relating to long term business, when the effecting of the contract constitutes a commitment where Malta is the country of commitment, furnish the policyholder, including a potential policyholder, with, at least, the information provided for in paragraphs 1.4 to 1.6 of this Annex and in addition, the information provided for in paragraphs 1.8 and 1.9 of this Annex in the case of linked long term contract of insurance.

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1.4 The following information relating to the commitment is to be communicated to the policyholder:

(a) a definition of each benefit and each option;

Note: There should be ample explanation on the object and purpose of a policy so that each policy may be thoroughly understood.

(b) the term of the contract;

(c) the means of terminating the contract;

(d) the method of paying premiums and the duration of the payments;

(e) the method of calculating bonuses and the distribution of bonuses;

Note: There should be sufficient explanation as to the different types of bonuses (*i.e. Reversionary or Terminal*) which an undertaking includes in a quotation and the difference between such bonuses.

The expression “method of calculating bonus” should not be interpreted to refer to the actuarial techniques in determining the bonus rates but to the manner in which bonuses are calculated *i.e.* whether on a daily or an annual basis, whether expressed as a percentage of premium or the sum assured plus accruing bonuses, or as a percentage of accruing reversionary bonuses only;

(f) an indication of surrender and paid-up values and the extent to which such values are guaranteed;

Note: There should be illustration of surrender values for specific years *i.e.* 1, 2, 3, 4, 5, 10, 15, 20, 25, etc. Where no surrender value accumulates before the payment of 2 or 3 or more full year’s premium, that information should also be disclosed;

(g) the premiums for each benefit, whether a main or supplementary benefit, where appropriate;

(h) the amount and purpose of any charge or fee in addition to, or included in the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(i) information whether in the home Member State of the European insurance undertaking there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency, or, of the undertaking, or where the European insurance undertaking has established a branch in Malta, any limited compensation which may be available under the Protection and Compensation Fund, Regulations, 2003;

(j) information and arrangements for the application of the cooling off period related to the requirement under Article 186 of the Solvency II Directive providing for the period within which a policyholder may cancel the life assurance contract;

(k) information furnished to a policyholder shall not contain a statement relating to past performance unless:-

(i) the basis on which such performance is measured is clearly furnished and the presentation is fair;

(ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance;

(iii) the source of information is stated;

(l) general information on the tax arrangements applicable to the type of policy. It should be made clear that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future;

(m) the arrangements for handling complaints by the European insurance undertaking concerning contracts of insurance by policy holders, lives assured or beneficiaries under contracts, including, where appropriate the function of a complaints body, without prejudice to the right of the policyholders, lives assured or beneficiaries to take legal proceedings;

(n) whether the parties to the contract are entitled to choose the law applicable to the contract and:-

(i) if so, the law which the undertaking proposes to choose; and

(ii) if not, the law which will be so applicable.

1.5 In addition, specific information shall be supplied by a European insurance undertaking in order to provide a proper understanding of the risks underlying the contract which are assumed by the policyholder.

1.6 Where the European insurance undertaking carries on long term business it shall inform the policyholder of:

(a) the name and legal form of the undertaking issuing the policy;

(b) the Member State where the undertaking's head office is situated; and where applicable, the branch concluding the contract is situated; and

(c) the address of the undertaking's head office, and where appropriate, the address of the branch where the contract was concluded, or is likely to be concluded is situated;

(d) a concrete reference to the report on the solvency and financial condition pursuant to Article 51 of the Solvency II Directive, allowing the policyholder easy access to this information.

1.7 Where, in connection with an offer for or conclusion of a contract of long term business, the European insurance undertaking provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the European insurance undertaking shall provide the policyholder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The European insurance undertaking shall inform the policyholder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

Linked Long Term Contracts of Insurance

1.8 Where a contract of insurance is a linked long term contract of insurance, the European insurance undertaking which has established a branch in Malta and/or is providing services in Malta under the freedom to provide services, shall provide the policyholder with a Product Information Document, which shall include the detailed terms and conditions of the linked long term contracts of insurance. The following minimum details are to be included in such document:

(a) a brief glossary to explain the meaning of a linked long term contract of insurance and other terms used in the document, such as fund, unit, bid/offer price, switching, notional allocation (it should be clear that the policyholder will be entitled to a *notional* allocation of units in the underlying funds or other instruments, rather than actual *ownership*, since such units would be owned by the undertaking) etc;

(b) a brief description of the nature of each underlying fund or asset linked to the contract. Where one or more collective investment schemes are linked to the policy, a clear reference to the name of such scheme/s shall be included together with brief details of the investment objective of such scheme/s and a statement indicating that the choice of scheme/s to which the policy is linked should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are available upon request;

(c) definition of the units to which the benefits are linked;

(d) all charges, including where applicable, switching charges.

In this regard, note should be taken of the following:

(i) maintenance costs/charges should be reasonable and their indexation which may be different from the indexation rate for premiums, capped (i.e. the maximum rate by which such charges may be increased by the undertaking, should be specified in the policy terms and conditions);

(ii) annual percentage management charges which may be levied by the undertaking, provided the total charges (inclusive of any initial charges on purchase of units, maintenance charges etc), are reasonable. Moreover, the regular management charge should be calculated to ensure that no double charging (of fees levied by third party fund managers), occurs;

(iii) reference to any optional indexation of premiums at a specified rate;

(iv) reference to the frequency of reporting, free of charge, to policyholders which shall be at least annually, or if so requested by policyholders, at least every six months.

1.9 Any projected values relating to linked long term contracts of insurance shall be the net of all applicable charges, including exit fees and annual charges and shall contain, where applicable, and in a prominent manner:

(a) a clear description of the basis of the projections and a clear linkage to risk warnings;

(b) a warning that the projected values may not materialise, are merely indicative, and that market conditions may be such as to result in returns which are by far inferior to the lowest projected values;

(c) a statement that the projected growth rates of return are for illustration purposes only, and a warning that the projected growth rates are not minimum or maximum values but have only been selected to portray different scenarios for illustration purposes only;

(d) a warning that the surrender value or maturity value will depend on the market values of the underlying assets;

(e) a warning that a fixed annual rate of return is being assumed for the projected growth rates and that such a fixed return does not reflect the returns of the underlying assets which may fluctuate in value.

Long term business: During the term of a contract

1.10 Where a European insurance undertaking has entered into a contract where the commitment covered by the contract is a commitment where Malta is the country of commitment, the other party shall be kept informed during the term of the contract of any change in the following –

(a) the policy conditions, both general and special;

(b) the name of the European insurance undertaking, its legal form or the address of its head office, and where applicable the name of the branch which concluded the contract;

(c) the information mentioned in subparagraphs 1.4 (d) to (h) and (j) and paragraphs 1.8(b) and (c) in the event of a change in the policy conditions or amendment of the law applicable to the contract.

1.11 If the contract provides for the payment of bonuses, the European insurance undertaking shall, at least once in every calendar year, inform the other party to the contract, in writing of the amount of any bonus-

(a) which has become payable under the contract; and

(b) of which that party has not been previously informed under this paragraph.

1.12 There is sufficient compliance with paragraph 1.11, where a European insurance undertaking furnishes, on an annual basis and in writing, the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that paragraph, or if the undertaking informs that party of:

(a) the total value of the benefits (including bonuses) which have accrued under the contract; and

(b) the rates of bonus which have been declared since that party was previously informed under this paragraph.

Furthermore, where the undertaking has provided figures about the potential future development of the profit participation, such undertaking shall inform the policy holder of differences between the actual development and the initial data.

General business: Before concluding a contract

1.14 Paragraphs 1.15 to 1.20 apply to a contract, entered into by a European insurance undertaking which carries on business in Malta under the provisions relating to the right of establishment and/or the provisions to provide services in exercise of a European right, where the risk covered by the contract is a risk situated in Malta.

1.15 A European insurance undertaking which has established a branch in Malta shall, where the other party (or one of the other parties) to the contract is an individual, and before entering into a contract covering a risk situated in Malta, inform that party -

(a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, of the law which the undertaking proposes to choose; and

(ii) if not, of the law which will be so applicable;

(b) whether in the home Member State of the undertaking concerned there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the undertaking or where the European insurance undertaking carries on business in Malta under the provisions relating to the right of establishment, any limited compensation which may be available under the Protection and Compensation Regulations, 2003;

(c) the arrangements for handling policyholders' complaints concerning contracts of insurance by the undertaking, including where appropriate, the existence of a complaints body, without prejudice to the right of the policyholder to take legal proceedings;

(d) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(e) the date of inception of the policy.

1.16 Any relevant document issued by a European insurance undertaking in relation to a contract to which this Annex applies shall state the name and address of the undertaking and the name and address of the branch.

1.17 In this Annex, "*relevant document*" to the policyholder means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

Additional information in the case of a European insurance undertaking offering general business of insurance under the right of establishment or the freedom to provide services.

- 1.18 Where a contract of insurance relating to general business of insurance is offered by a European insurance undertaking under the right of establishment or the freedom to provide services in Malta, in exercise of a European right, the undertaking shall inform the policyholder, before the contract is concluded, of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated. Any documents issued to the policyholder shall convey the information referred to in this paragraph. These obligations shall not apply to large risks.
- 1.19 The contract of insurance or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, shall state the address of the head office or, where appropriate, of the branch of the European insurance undertaking granting cover.
- 1.20 Where the business of insurance which is carried on under the right of establishment or the freedom to provide services relates to class 10 as specified in Part I of the Third Schedule to the Act, other than carrier's liability, the name and address of the claims representative of the European insurance undertaking, who is appointed in Malta in terms of Article 21 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, shall be included in the documents referred to in paragraph 1.19.

Proof of furnishing the required information

- 1.21 Any disclosure required to be made by this Annex shall be communicated to the potential policyholder or policyholder -
- (a) on paper or in some other durable medium that is accessible to such person; and
 - (b) in a clear and accurate manner, comprehensible to such person.

- 1.22 For the purposes of paragraph 1.21, “durable medium” means any instrument which enables the potential policyholder or policyholder to store information addressed personally to such person in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in this subparagraph.
- 1.23 Notwithstanding the provisions of paragraph 1.21(a), the undertaking shall verbally provide the information required in this Chapter:
- (a) whenever the potential policyholder or policyholder asks for the information; or
 - (b) whenever immediate cover is needed,
- Provided that, in either case, the undertaking shall, immediately after the contract of insurance is entered into, comply with paragraph 1.21.
- 1.24 No information given shall be sufficient if the information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.
- 1.25 The burden of proof that any information required to be furnished in accordance with this Chapter has been furnished in accordance with the requirements contained therein rests on the European insurance undertaking.
- 1.26 Any information required to be furnished under Annex I shall be furnished in Maltese or English as it suits the person to whom the information is furnished, or in both languages or in a language agreed to by the parties.