

Chapter 10: Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking

10.1 Introduction

- 10.1.1 This Chapter applies to a Maltese insurance undertaking and a Maltese reinsurance undertaking seeking to establish a branch in a Member State or EEA State in exercise of a European right and a Maltese insurance undertaking seeking to provide services in a Member State or EEA State in exercise of a European right. This Chapter lays down the Insurance Rules to be complied with in terms of article 4 of the Act and regulations 8, 9, 13 and 17 of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015.
- 10.1.2 The Chapter lays down the particulars to be included in the notice of intention which a Maltese insurance undertaking and a Maltese reinsurance undertaking is required to submit to the competent authority in order to establish a branch in a Member State or EEA State in exercise of a European right.
- 10.1.3 The Chapter also lists the particulars which a Maltese insurance undertaking seeking to provide services in a Member State or EEA State in exercise of a European right is to indicate in the notice of intention to be submitted to the competent authority.
- 10.1.4 The Chapter also determines what changes the competent authority needs to be informed of by a Maltese insurance undertaking or a Maltese reinsurance undertaking and the procedure to be followed in order to effect such changes.

10.2 Right of Establishment of Maltese Insurance Undertakings and Maltese Reinsurance Undertakings

- 10.2.1 A Maltese insurance undertaking seeking to establish a branch in a Member State or an EEA State is required to fulfil the requirements listed in Section 10.3 of this Chapter in order to establish a branch in a Member State or EEA State, whilst a Maltese reinsurance undertaking is required to comply with the requirements in Section 10.4 of this Chapter in order to establish a branch in a Member State or EEA State, in exercise of a European right.
- 10.2.2 Sections 10.3, 10.5 and 10.6 apply to a Maltese insurance undertaking:

(a) seeking to establish a branch in a Member State or an EEA State in exercise of a European right;

(b) 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;

(c) 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.

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

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 competent authority a notice of intention. The notice of intention shall include the following information:

General information

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

(a) the address of the branch in the Member State or EEA State from which documents may be obtained, 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 website and e-mail address.

The general representative

10.3.2 Details relating to the general representative shall include:

(a) the name of the branch's general representative;

(b) a copy of the appointment of the general representative who must possess sufficient powers to bind the Maltese insurance undertaking in relation to third

parties and represent it in relations with the authorities and courts of the Member State or EEA State of the branch;

(c) a Personal Questionnaire in the form set out in Annex I to Chapter 2 in Part A of these Insurance Rules is to be submitted, unless previously submitted to the competent 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.

Scheme of operations

10.3.3 A scheme of operations, indicating at least the type of business envisaged, setting out amongst other things:

(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 structural organisation of the branch;

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

(d) 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;

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

(f) 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 intermediaries 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;

(g) estimates of forecast expenses, including an estimate of the costs of setting up the administrative services and the organisation for securing business and the financial resources intended to cover those costs, and, if the risks to be covered are classified in class 18 of Part I of the Third Schedule to the Act, the resources available for providing the assistance;

(h) 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;

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

(i) a forecast balance sheet;

(ii) estimates of the future Solvency Capital Requirement, as provided for in Section 5.5 of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in subparagraph (i), as well as the calculation method used to derive those estimates;

(iii) estimates of the future Minimum Capital Requirement, as provided for in Section 5.6 of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in subparagraph (i), as well as the calculation method used to derive those estimates;

(iv) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

(v) in relation to a Maltese insurance undertaking seeking to carry on general business and reinsurance in a Member State or an EEA State, in addition to the information referred to above:

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

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

(vi) in respect of a Maltese insurance undertaking seeking to carry on long term business in a Member State or an EEA State, a plan setting out the detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions which includes:

(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;

(j) any other additional information which the competent authority may deem necessary to request for the purposes of a Maltese insurance undertaking establishing a branch in a Member State or EEA State.

Personnel and internal controls

10.3.4 The structural organisation of the branch. A Personal Questionnaire in the form set out in Annex I to Chapter 2 of Part A of these Insurance Rules should be submitted in respect of the proposed senior management who will be effectively managing the business of the branch, the person responsible for the compliance function of the branch and the money laundering reporting officer (if applicable) of the branch, unless previously submitted to the competent authority in connection with some other role. In such instances, the individuals should submit a confirmation as to whether the information included in the Personal Questionnaire previously submitted is still current, and indicating any changes or up-dates thereto.

- 10.3.5 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.
- 10.3.6 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.
- 10.3.7 In general, the competent authority will need to be satisfied that the administrative structure of the branch of the Maltese insurance undertaking is adequate.

Maltese insurance undertaking covering risks relating to class 17

- 10.3.8 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 paragraph 11.2.6 of Chapter 11 in Part B of the Insurance Rules.

Maltese insurance undertaking covering risks relating to class 10

- 10.3.9 Where the Maltese insurance undertaking proposes to carry on general 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, other than carrier's liability, it is required to provide the competent authority with a declaration that it has become a member of the national bureau and the national guarantee fund in the Member State or EEA State of the branch.
- 10.3.10 Without prejudice to paragraph 10.3.9, where a Maltese insurance undertaking provides the competent authority with a certificate of application for membership, the competent 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

- 10.3.11 In the case of a Maltese insurance undertaking which has already established a branch in a Member State or EEA State and wishes to extend its general business to

include long term business (or vice versa), the particulars required by paragraphs 10.3.1 to 10.3.10 are to be provided, only in respect of the general business or long term business for which it intends to extend its activities.

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

10.4.1 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 competent 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 Members State and EEA State of the branch;
 - (iii) a Personal Questionnaire in the form set out in Annex 1 to Chapter 2 of Part A of these Insurance Rules is to be submitted, unless previously submitted to the competent authority in connection with some other role. In such instances, the individual should submit a confirmation as to whether the information included in the Personal Questionnaire previously submitted is still current, and indicating any changes or up-dates thereto;
- (c) the type of reinsurance activity, according to Article 15(5) of the Solvency II Directive into which the planned business falls.

10.5 The notification procedure

10.5.1 Unless the competent authority has reason to doubt the adequacy of the system of governance or the financial situation of the Maltese insurance undertaking or the fit and proper requirements in accordance with Article 42 of Solvency II Directive of the general representative, taking into account the business planned, the authority shall, within three months of receiving all the information referred in paragraphs

10.3.1 to 10.3.10, communicate that information to the European regulatory authority of the host Member State and shall inform the undertaking concerned accordingly.

10.6 Changes to branch's details

10.6.1 A Maltese insurance undertaking which seeks to effect any changes to branch's details relating to the:

(a) scheme of operations referred to in paragraph 10.3.3 of this Chapter; or

(b) address from where documents may be obtained, to which they may be delivered and to which all communications to the general representative are to be sent; or

(c) the branch's general representative,

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

10.6.2 A Maltese reinsurance undertaking which seeks to effect any changes to the information submitted pursuant to Section 10.4 of this Chapter shall give written notice of the change to the competent authority and to the European regulatory authority of the branch, at least one month before implementing the change.

10.7 Right to provide Services of Maltese Insurance Undertakings

10.7.1 A Maltese insurance undertaking seeking to provide services in a Member State or EEA State is required to comply with the requirements listed in Sections 10.8 to 10.11 of this Chapter.

10.7.2 Sections 10.8 to 10.11 apply to a Maltese insurance undertaking:

(a) which is seeking to provide services in a Member State or an EEA State in exercise of a European right;

(b) which is seeking to provide services in a Member State or an EEA State in lieu of, or in addition to, establishing a branch in a Member State or an EEA State in exercise of a European right;

(c) which provides services in a Member State or EEA State in exercise of a European right, and seeks to effect changes to the details of those services.

10.8 Maltese Insurance Undertaking seeking to provide services in a Member State or an EEA State

10.8.1 A Maltese insurance undertaking seeking to provide services in a Member State or EEA State in exercise of a European right shall submit to the competent authority a notice of intention, and the additional information specified in paragraph 10.8.3.

10.8.2 The notice of intention shall include:

- (a) the Member State or EEA State in which such undertaking intends to operate;
- (b) the nature of the commitments it proposes to cover, or the risks which it proposes to undertake in the Member State or EEA State concerned including information relating to the products that are to be underwritten;
- (c) class or classes of long term business or class or classes or part classes of general business, as respectively specified in the Second Schedule and Part I of the Third Schedule to the Act, which the Maltese insurance undertaking proposes to carry on;
- (d) where applicable, the name and address of the establishments situated in the Member State or EEA State from which it is planned to provide services;
- (e) 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 option chosen from those described in paragraph 11.2.6 of Chapter 11 in Part B of these Insurance Rules;
- (f) where the Maltese insurance undertaking proposes to carry on business of insurance in the Member State or EEA State covering risks relating to class 18 of Part I of the Third Schedule to the Act, information relating to the resources available to the Maltese insurance undertaking to successfully carry out assistance operations in the host Member State;

(g) 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, other than carrier's liability, it is required to provide the competent authority with:

(i) 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 provision of services:

Provided that, where a Maltese insurance undertaking provides the competent authority with a certificate of application for membership, the competent 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.

(ii) the name and address of the representative appointed in the Member State or EEA State of the provision of services, pursuant to Article 152 of the Solvency II Directive.

10.8.3 In addition to the particulars provided for in paragraph 10.8.2, the Maltese insurance undertaking is to submit the following information:

(a) estimate of premiums (gross and net of reinsurance) in respect of the activity to be carried out by the Maltese insurance undertaking in the Member State or EEA State;

(b) 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;

(c) a confirmation from the undertaking that it will continue to satisfy the Solvency Capital Requirement and the Minimum Capital Requirement, in accordance with articles 15 and 17 of the Act, respectively;

(d) a notification of any new or revised outsourcing arrangements as a result of this activity;

(e) details of any changes to the reinsurance arrangements, where applicable; and

(f) any other information which the competent authority may deem necessary to request for the purposes of the provision of services in a Member State or EEA State.

10.8.4 A Maltese insurance undertaking shall not be required to submit the information referred to in paragraph 10.8.3 where such information has already been submitted to the competent authority.

10.9 Extension of Activities

10.9.1 In the case of a Maltese insurance undertaking which is already providing services in the Member State or EEA State concerned and wishes to extend its general business to include long term business (or vice versa), the particulars required in paragraph 10.8.2 of this Chapter are only to be provided in respect of the general business or long term business for which it intends to extend its activities.

10.10 The notification procedure

10.1 Within one month of the date on which the competent authority receives the complete notice of intention, it shall give a consent notice to the European regulatory authority of the provision of services and inform the undertaking concerned.

10.11 Changes to details of services

10.11.1 A Maltese insurance undertaking which seeks to effect any changes in the details of services shall give written notice to the competent authority before implementing the change.

10.11.2 Where the competent authority does not object to the proposed changes indicated in the written notice, it shall communicate the information to the European regulatory authority, as soon as possible, but in any event no later than one month after it has received the information from the Maltese insurance undertaking.

10.11.3 The proposed change may be made as soon as the competent authority has informed the Maltese insurance undertaking that the proposed change has been notified to the European regulatory authority.

10.12 Information requirements

10.12.1 Where a Member State or EEA State other than Malta is the country of commitment or where the risk is situated in a Member State or EEA State other than Malta, and such risk or commitment is covered by a Maltese insurance undertaking or a branch of that undertaking situated in another Member State or EEA State, such undertaking shall be required to comply with the information requirements found in Article 183 of the Solvency II Directive (in case of general business of insurance) and Article 185 (in the case of long term business of insurance), and the applicable information requirements laid down in the Member State or EEA State of the commitment or the Member State or EEA State in which the risk is situated, implementing the said Articles.

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

10.13.1 Where a contract of insurance relating to general business of insurance is offered by a Maltese insurance undertaking under the right of establishment or the freedom to provide services in another Member State or EEA State, in exercise of a European right, such undertaking shall, before the contract is concluded, inform the policyholder that the head office of the insurance undertaking is in Malta, or, where appropriate, where the branch of the undertaking 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.

10.13.2 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 in Malta or, where appropriate, of the branch of the Maltese insurance undertaking granting cover.

10.13.3 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 Maltese insurance undertaking, who is appointed in the Member State or EEA State in which it has passported, 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 10.13.2.

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