

## **Chapter 9: Freedom of Establishment and Freedom to provide Services by a European Insurance Undertaking and a European Reinsurance Undertaking**

### **9.1. Introduction**

- 9.1.1 This Chapter applies to a European insurance undertaking and a European reinsurance undertaking seeking to establish a branch in Malta in exercise of a European right and a European insurance undertaking seeking to provide services in Malta 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 5, 6, 13 and 17 of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015.
- 9.1.2 The Chapter lays down the establishment conditions which a European insurance undertaking and a European reinsurance undertaking seeking to establish a branch in Malta in exercise of a European right is required to submit, as well as the service conditions which a European insurance undertaking seeking to provide services in exercise of a European right is required to submit.
- 9.1.3 The Chapter also identifies the specific information which undertakings carrying on business in specific classes are required to submit to the competent authority.
- 9.1.4 The Chapter also determines what changes the competent authority needs to be informed of and the procedure to be followed in order to effect such changes, as well as the applicable provisions which a European insurance undertaking is required to comply with.

### **9.2. Right of Establishment of European Insurance Undertakings and European Reinsurance Undertakings**

- 9.2.1 A European insurance undertaking seeking to establish a branch in Malta is required to comply with the requirements listed in Sections 9.2 to 9.4, 9.6 to 9.11, and Annex I of this Chapter.
- 9.2.2 Sections 9.2 to 9.4, and 9.6 to 9.11 and Annex I apply to a European insurance undertaking:
- (a) seeking to establish a branch in Malta in exercise of a European right;

(b) which is seeking to establish a branch in Malta in lieu of, or in addition to, providing services in Malta in exercise of a European right;

(c) which has established a branch in Malta in exercise of a European right, and seeks to effect changes in the branch's details.

### **9.3. European Insurance Undertaking establishing a branch in Malta**

#### ***Establishment Conditions***

9.3.1 For a European insurance undertaking seeking to establish a branch in Malta in exercise of a European right, the following establishment conditions apply:

(a) the competent authority has received a notice from the European regulatory authority of the European insurance undertaking that it has given its consent to the European insurance undertaking to establish a branch in Malta;

(b) the consent notice referred to in paragraph (a) shall include the following details:

(i) name and address of the head office of the European insurance undertaking;

(ii) name and address of the Maltese branch, including the business telephone, fax number/s in Malta and e-mail address;

(iii) details relating to the general representative, shall include:

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

(bb) a copy of the appointment of the general representative who must possess sufficient powers to bind the European insurance undertaking in relation to third parties and to represent it in relations with the competent authority and courts in Malta;

(cc) a Personal Questionnaire ("PQ") in the form set out in Annex I to Chapter 2 in Part B of these Insurance Rules is to be submitted, unless the general representative of the European insurance undertaking seeking to

establish a branch in Malta has been duly approved by the European regulatory authority;

(iv) the address in Malta from where documents may be obtained from the undertaking, which shall also be that of the general representative and to which they may be delivered;

(v) a scheme of operations indicating at least, the type of business envisaged, setting out, amongst other things:

(aa) the class or classes of long term business or class or classes or part classes of general business the branch proposes to carry on;

(bb) the structural organisation of the branch;

(cc) a PQ submitted in the form set out in Annex I to Chapter 2 in Part B of these Insurance Rules, to be completed by the senior management of the branch of the European insurance undertaking, unless the individuals concerned have been duly approved by the European regulatory authority;

(dd) a description of the nature of the risks or commitments which the undertaking proposes to cover;

(ee) the principles which the undertaking uses for guidance for reinsurance;

(ff) a breakdown of forecast costs and expenses of installing the administrative services and the organisation for securing business and the financial resources intended to cover these costs, and if the risks to be covered fall within class 18 of Part I of the Third Schedule to the Act, the resources available to the undertaking for providing the assistance;

(gg) for the first three financial years following the establishment of the branch, estimates relating to overheads other than cost of installation, in particular, general running expenses and commissions and estimates of premiums or contributions and of claims;

(vi) a confirmation that the European insurance undertaking is authorised to carry on the business of insurance in the home Member State which it proposes to carry on in Malta;

(vii) a certificate issued by the European regulatory authority where the head office of the European insurance undertaking of the branch is situated, attesting that the European insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129 of the Solvency II Directive, respectively;

(viii) details of any insurance guarantee scheme, if applicable, which is intended to provide to the satisfaction of the competent authority, that equivalent protection is available to policyholders of protected risks and protected commitments in a manner not being less favourable than that prescribed by Part III of the Protection and Compensation Fund Regulations, 2003 in the event of the insolvency of the European insurance undertaking;

For the purpose of this sub-paragraph, ‘protected risks’ and ‘protected commitments’ shall have the same meaning as is assigned to them in regulation 2 of the Protection and Compensation Fund Regulations, 2003;

(ix) where the European insurance undertaking proposes to carry on business of insurance in Malta 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 Article 200 of the Solvency II Directive.

#### **9.4. European insurance undertaking covering risks relating to class 10**

9.4.1 Pursuant to regulation 5 of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015 (“the Regulations”), a European insurance undertaking seeking to carry on business of insurance in Malta in exercise of a European right covering risks relating to class 10 of Part I of the Third Schedule to the Act, other than carrier’s liability, is required to provide the competent authority with the following information:

(a) a copy of the motor policy of insurance to be issued by the branch of the European insurance undertaking;

(b) a declaration stating that the policy complies with the specific requirements contained in 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;

(c) a declaration that it has:

(i) signed the Malta Green Card Bureau Agreement;

(ii) signed the Motor Insurers' Bureau Domestic Agreement;

(iii) given a written undertaking to the Protection and Compensation Fund Management Committee that it undertakes to compensate victims of road traffic accidents in the circumstances specified in Part IV of the Protection and Compensation Fund Regulations, 2003.

## **9.5. European reinsurance undertaking establishing a branch in Malta**

9.5.1 In the case of a European reinsurance undertaking which is seeking to establish a branch in Malta in exercise of a European right, the information which is to be provided by the European regulatory authority of the European reinsurance undertaking to the competent authority is the following:

(a) the name and address of the head office of the European reinsurance undertaking;

(b) the address of the branch, which shall also be that of the general representative;

(c) 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 European reinsurance undertaking in relation to third parties and to represent it in relations with the competent authority and courts in Malta;

(iii) a Personal Questionnaire in the form set out in Annex I to Chapter 2 in Part B of these Insurance Rules is to be submitted, unless the general representative of

the European reinsurance undertaking seeking to establish a branch in Malta has been duly approved by the European regulatory authority;

(d) the type of reinsurance activity, according to Article 15(5) of the Solvency II Directive into which the planned business falls;

(e) a certificate issued by the European regulatory authority where the head office of the European reinsurance undertaking of the branch is situated, attesting that the European reinsurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129 of the Solvency II Directive, respectively.

## **9.6. The notification procedure – applicable provisions**

9.6.1 When the competent authority receives a consent notice from the European regulatory authority of a European insurance undertaking, it will acknowledge receipt immediately after the notice is received. Within two months of the date on which the competent authority receives the consent notice, it will notify the European insurance undertaking and the European regulatory authority of such European insurance undertaking of the applicable provisions in Section 9.7 of this Chapter under which in the interest of the general good that business must be carried out in Malta.

9.6.2 The competent authority shall, if necessary, inform the European regulatory authority and the European insurance undertaking of any consequential changes in the applicable provisions as determined in Section 9.7 of this Chapter.

## **9.7. Applicable provisions**

9.7.1 In the interest of the general good, a European insurance undertaking carrying on business of insurance in Malta through a branch, shall comply with the following Maltese rules (“applicable provisions”):

(a) the requirement to provide information to policyholders before concluding a contract of insurance or during the term of the contract in accordance with Annex I to this Chapter;

(b) pursuant to regulation 6 of the Regulations, a European insurance undertaking may advertise its services in Malta through any available means of communication in

Malta provided that it complies with the rules governing the form and content of such advertising adopted in the interest of the general good found in Section 12.3 of Chapter 12 in Part B of these Insurance Rules, in so far as they apply;

(c) a European insurance undertaking carrying on long term business are required to comply with anti-money laundering legislation in force in Malta;

(d) the requirement to appoint a person responsible for the compliance function of the branch and a money laundering reporting officer. The latter officer is to be appointed only where a European insurance undertaking is seeking to carry on long term business in Malta.

## **9.8. Changes to branch's details**

9.8.1 A European insurance undertaking which seeks to effect any changes relating to:

(a) the scheme of operations referred to in paragraph 9.3.1(b)(v); or

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

(c) the general representative of the branch,

shall give written notice of that change to its European regulatory authority before implementing such change. Before such changes are implemented, the competent authority shall be informed of such changes by the European regulatory authority concerned.

9.8.2 The competent authority will immediately acknowledge receipt of the notice received pursuant to paragraph 9.8.1 above.

9.8.3 Where the change to the branch's structural organisation concerns an appointment of a senior manager, general representative, compliance officer and money laundering reporting officer of the branch in Malta, a PQ is to be completed by the individual concerned unless the individual has been duly approved by the European regulatory authority and the competent authority.

9.8.4 Where the change to the branch's structural organisation concerns a resignation of a senior manager, general representative or compliance officer and money laundering reporting officer of the branch in Malta, the competent authority should be notified of such resignation within 14 days of the resignation. The notification by the European insurance undertaking shall also state whether that person's resignation has any regulatory implications or whether there are any other matters which the undertaking may wish to bring to the attention of the competent authority in relation to that event.

9.8.5 Where a European insurance undertaking has received authorisation to carry on both long term business and general business and seeks to extend its business in Malta from general business to long term business (or vice-versa), the particulars required in Section 9.3 shall apply. The particulars are required only in respect of the general business or long term business for which the undertaking intends to extend its activities.

## **9.9 Statements**

9.9.1 For the purposes of regulation 7 of the Insurance Business (Fees) Regulations, 2014, a European insurance undertaking which has established a branch in Malta in exercise of European right shall during the month of June, submit to the competent authority a statement in respect of the gross premiums written attributable to the business of insurance carried on in Malta through the establishment of a branch during the last calendar year in the form and content specified in Forms 1 and/or 2 as applicable, as set out in Annex II to this Chapter.

## **9.10. Language**

9.10.1 The particulars and information with regards to the business of insurance carried on by the European insurance undertaking through a branch in Malta required to be submitted by this Chapter shall be provided in the English language.



## **9.11. Prior notification and prior approval**

9.11.1 A European insurance undertaking which has established a branch in Malta in exercise of a European right shall not be required to submit to the competent authority for its prior approval or systematically notify the competent authority of the general and special policy conditions, scales of premiums, or, in the case of long term business, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which such undertaking intends to use in its dealings with policyholders.

9.11.2 Notwithstanding the provisions of paragraph 9.11.1, the competent authority may:

(a) for the purposes of verifying compliance with Maltese law concerning contracts of insurance, require European insurance undertakings to inform it of its policy conditions and other relative conditions;

(b) for the purposes of the general price-control systems, require the European insurance undertakings to inform it of any proposed increases in premium rates.

## **9.12. Right to provide Services by a European Insurance Undertaking**

9.12.1 A European insurance undertaking seeking to provide services in Malta is required to comply with the requirements listed in Sections 9.13 to 9.20 and Annex I to this Chapter.

9.12.2 Sections 9.13 to 9.20 and Annex I apply to a European insurance undertaking:

(a) which is seeking to provide services in Malta in exercise of a European right;

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

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

### **9.13. European Insurance Undertaking seeking to provide services in Malta**

#### *Service conditions*

9.13.1 For a European insurance undertaking seeking to provide services in Malta in exercise of a European right, the following services conditions apply:

(a) the competent authority has received a notice from the European regulatory authority of the European insurance undertaking, of the undertaking's intention to provide services in Malta;

(b) the notice of intention shall include the following details:

(i) a certificate issued by the European regulatory authority of the European insurance undertaking, attesting that the European insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129 of Solvency II Directive, respectively;

(ii) the nature of risks or commitments which the European insurance undertaking proposes to cover or the commitments which it proposes to undertake in exercise of the freedom to provide services;

(iii) the class or classes of long term business or class or classes or part classes of general business which the European insurance undertaking is authorised to carry on and into which these risks or commitments fall;

(iv) name and address of the head office of the European insurance undertaking;

(v) name and address of the establishment/s, situated in a Member State or an EEA State, from which it is planned to provide services, where applicable [if not the same as (iv)];

(vi) where the European insurance undertaking proposes to carry on business of insurance in Malta 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 Article 200 of the Solvency II Directive;

(vii) where the European insurance undertaking proposes to carry on business of insurance in Malta covering risks relating to class 18 of Part I of the Third Schedule to the Act, information relating to the resources available to the European insurance undertaking to successfully carry out assistance operations.

**9.14. European insurance undertaking covering risks relating to class 10**

9.14.1 Pursuant to regulation 5 of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, a European insurance undertaking seeking to carry on business of insurance in Malta under the freedom to provide services, in exercise of a European right, covering risks relating to class 10 of Part I of the Third Schedule to the Act, other than carrier's liability, is required to provide the competent authority with the information specified under this Section 9.14.

9.14.2 The information required to be provided by the European insurance undertaking is the following:

(a) the name and address of the claims representative 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;

(b) a copy of the motor policy of insurance to be issued by the European insurance undertaking;

(c) a declaration stating that the policy complies with the specific requirements in respect of such policies contained in 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;

(d) a declaration that it has:

(i) signed the Malta Green Card Bureau Agreement;

(ii) signed the Motor Insurers' Bureau Domestic Agreement;

(iii) given a written undertaking to the Protection and Compensation Fund Management Committee that it undertakes to compensate victims of road traffic accidents in the circumstances specified in Part IV of the Protection and Compensation Fund Regulations, 2003.

9.14.3 A European insurance undertaking covering risks relating to class 10 of Part I of the Third Schedule to the Act, other than carrier's liability, shall ensure that persons pursuing claims arising out of events occurring in Malta are not placed in a less favourable situation as a result of the fact that the European insurance undertaking seeking is carrying on business of insurance in Malta by way of freedom of services rather than through an establishment situated in Malta.

9.14.4 For the purposes of paragraph 9.14.3, a European insurance undertaking seeking to carry on business of insurance in Malta under the freedom to provide services, in exercise of a European right, covering risks relating to class 10 of Part I of the Third Schedule to the Act, other than carrier's liability, is required to provide the competent authority with the name and address of the representative who:

(a) must be resident or established in Malta and be capable of dealing with cases in the Maltese and English language;

(b) shall collect all necessary information and take necessary measures in relation to claims;

(c) shall possess sufficient powers to represent the European insurance undertaking in relation to persons suffering damage or injury who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of Malta in relation to these claims;

(d) may also be required to represent the European insurance undertaking, before the competent authority with regard to checking the existence and validity of motor vehicle liability insurance policies; and

(e) shall **not** take up the business of direct insurance on behalf of the European insurance undertaking.

9.14.5 The appointment of the representative referred to in paragraph 9.14.4 shall not in itself constitute the opening of a branch.

9.14.6 Where the European insurance undertaking fails to appoint the representative referred to in paragraph 9.14.4, the competent authority may give its approval to the claims representative appointed in accordance with 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, to assume the function of the representative referred to in paragraph 9.14.4.

### **9.15. The notification procedure**

9.15.1 Where the competent authority receives a notice from a European regulatory authority, the competent authority will acknowledge receipt immediately after the notice is received. The competent authority will notify the European insurance undertaking and the European regulatory authority of the European insurance undertaking's applicable provisions, if any.

9.15.2 A European insurance undertaking that has satisfied the service conditions provided in Section 9.13 of this Chapter may commence providing services in Malta on the certified date on which it is informed by the European regulatory authority that a notice from the European regulatory authority has been sent to the competent authority.

9.15.3 Where the competent authority has doubts as to the precise conditions under which the activity of the European insurance undertaking is to be pursued, it may ask the European regulatory authority to submit any relevant information concerning the specific resources which the undertaking proposes to use in marketing its products in Malta.

### **9.16. Applicable provisions**

9.16.1 In the interest of the general good, a European insurance undertaking providing services in Malta, shall be required to comply with the following Maltese rules (“applicable provisions”):

(a) the requirement to provide information to policyholders before concluding a contract of insurance or during the term of the contract in accordance with Annex I;

(b) pursuant to regulation 6 of the Regulations, a European insurance undertaking may advertise its services in Malta through all available means of communication in Malta provided that it complies with Section 12.3 of Chapter 12 in Part B of these Insurance Rules, in so far as they apply.

9.16.2 The competent authority shall, if necessary, serve a notice on the European regulatory authority and inform the European insurance undertaking of any consequential changes in the applicable provisions.

### **9.17. Changes to details of services**

9.17.1 A European insurance undertaking which has exercised a European right and provides services in Malta, and seeks to effect any changes in the service's details indicated in Section 9.13 of this Chapter, shall be subject to the procedure provided for in Articles 147 and 148 of the Solvency II Directive.

9.17.2 The European insurance undertaking is required to give notice to its European regulatory authority stating the details of the proposed change. Where the European regulatory authority does not object to the proposed changes, it shall communicate the information to the competent authority as soon as possible and in any event not later than one month after it has received the information from the European insurance undertaking. The competent authority will immediately acknowledge receipt of the notice received.

9.17.3 The proposed change in the details of services may be effected by the European insurance undertaking as soon as the European regulatory authority notifies the undertaking that the proposed change has been notified to the competent authority.

9.17.4 Where a European insurance undertaking which has received authorisation in its home Member State to carry on both long term business and general business seeks to extend its business in Malta from general business to long term business (or vice versa), the particulars required in Section 9.13 of this Chapter shall apply. The particulars required are only in respect of the general business or long term business for which the undertaking intends to extend its activities.

**9.18. Changes to the details of services relating to the representative**

9.18.1 Where the proposed change in the details of services concerns an appointment of a new representative, the name and address of the new representative referred to in paragraph 9.14.4 shall be submitted.

**9.19. Language**

9.19.1 The particulars and information required to be submitted with regards to the services provided in Malta by the European insurance undertaking shall be provided to the competent authority in the English language.

**9.20. Prior notification and prior approval**

9.20.1 A European insurance undertaking which is providing services in Malta in exercise of a European right shall not be required to submit to the competent authority for its prior approval or systematically notify the competent authority of, the general and special policy conditions, scales of premium, or, in the case of long term business the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an insurance undertaking intends to use in his dealings with policyholders.

9.20.2 Notwithstanding the provisions of paragraph 9.20.1 the competent authority may:

(a) for the purposes of verifying compliance with Maltese law concerning contracts of insurance, require a European insurance undertaking to inform it of its policy conditions and other relative conditions;

(b) for the purposes of the general price-control systems, require the a European insurance undertaking to inform it of any proposed increases in premium rates.