

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

### **1. Introduction**

- 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.
- 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.
- 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.
- 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.

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

- 2.1 A European insurance undertaking seeking to establish a branch in Malta is required to comply with the requirements listed in Sections 2 to 4, 6 to 11, and Annex I of this Chapter.
- 2.2 Sections 2 to 4, and 6 to 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.

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

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

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 XX<sup>1</sup> 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 XX<sup>1</sup>, 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;

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<sup>1</sup> To eventually cross refer to relevant number of the Annex once the Rulebook is complete

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

(ab) estimates relating to overheads other than cost of installation, in particular, general running expenses and commissions;

(ac) 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.

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

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.

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

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 (“PQ”) in the form set out in Annex XX<sup>2</sup> 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.

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

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 7 of this

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<sup>2</sup> To eventually cross refer to relevant number of the Annex once the Rulebook is complete

Chapter under which in the interest of the general good that business must be carried out in Malta.

- 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 7 of this Chapter.

## **7. Applicable provisions**

- 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 and the provisions of Insurance Rule 14 of 2008 – Insurance Advertisement and Other Promotional Activities, 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.

## **8. Changes to branch’s details**

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

(a) the scheme of operations referred to in paragraph 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.

- 8.2 The competent authority will immediately acknowledge receipt of the notice received pursuant to paragraph 8.1 above.
- 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.
- 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.
- 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 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. Statements**

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.

## **10. Language**

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.

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

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.

11.2 Notwithstanding the provisions of paragraph 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.

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

12.1 A European insurance undertaking seeking to provide services in Malta is required to comply with the requirements listed in Sections 13 to 20 and Annex I to this Chapter.

12.2 Sections 13 to 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.

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

### ***Service conditions***

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.

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

14.1 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:

(a) the name and address of the representative who:

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

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

(iii) 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;

(iv) 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

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

(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.

- 14.2 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.
- 14.3 The appointment of the representative referred to in paragraph 14.1(a) shall not in itself constitute the opening of a branch.
- 14.4 Where the European insurance undertaking fails to appoint the representative referred to in paragraph 14.1(a), 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 14.1(a).

## **15. The notification procedure**

- 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.
- 15.2 A European insurance undertaking that has satisfied the service conditions provided in Section 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.
- 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.

## **16. Applicable provisions**

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 the provisions of the Chapter on Insurance Rule 14 of 2008 – Insurance Advertisement and Other Promotional Activities, in so far as they apply;

(c) pursuant to the Fiscal Representatives (Financial Services Undertaking Exercising a European Right) Regulations, 2004, the requirement to appoint a fiscal representative who will be responsible for the payment of all tax, duty and other similar fiscal charges which may be levied in Malta in respect of the business carried on in Malta under the provisions of freedom to provide services by the European insurance undertaking which appointed the representative.

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.

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

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 13 of this Chapter, shall be subject to the procedure provided for in Articles 147 and 148 of the Solvency II Directive.

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.

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.

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 and seeks to extend its business in Malta from general business to long term business (or vice versa), the particulars required in Section 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.

## **18. Changes to the details of services relating to the representative**

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 14.1(a) shall be submitted.

## **19. Language**

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.

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

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.

20.2 Notwithstanding the provisions of paragraph 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.

## ANNEX I

### Information for policyholders

- 1.1 Pursuant to paragraphs 7.1 and 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:

(a) at least the information provided for in paragraphs 1.4 to 1.6 of this Annex where the contract of insurance is a long term contract which is not a linked long term contract of insurance; or

(b) the information provided for in paragraphs 1.4(j), 1.4(n), 1.8 and 1.9 of this Annex, where the long term contract is a linked long term contract of insurance.

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;

(h) where appropriate, 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 (g) and (i) 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;

(d) annually, information on the state of bonuses.

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.

1.13 In this section, “bonus” does not include a bonus, the amount of which is specified in the contract.

**General business: Before concluding a contract**

1.14 This section applies 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.

1.18 Where the business of insurance which is carried on under by the European insurance undertaking which has established a branch in Malta 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 representative appointed in Malta shall also appear in the documents referred to in paragraph 14.1(a).

**Additional information in the case of general insurance business offered under the right of establishment and/or the freedom to provide services.**

1.19 Where a contract of insurance relating to general business is offered by a European insurance undertaking under the right of establishment or the freedom to provide services in a Member State or EEA State in exercise of a European right, the undertaking shall, before the contract is concluded, inform the policyholder 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.

- 1.20 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 undertaking granting cover.
- 1.21 Where the business of insurance which is carried on under the freedom of services relates to class 10 as specified in Part I of the Third Schedule to the Act, other than carrier's liability, the name of the representative referred to in paragraph 14.1(a) in which it has passported shall also appear in the documents referred to in paragraph 1.19.

#### **Proof of furnishing the required information**

- 1.22 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.
- 1.23 For the purposes of paragraph 1.22, "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 sub-paragraph.
- 1.24 Notwithstanding the provisions of paragraph 1.22(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 1.22.

- 1.25 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.
- 1.26 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.

**ANNEX II**

(Section 9)

**Form 1**

**General insurance business**

Name of undertaking:

Member State or EEA State:

Calendar year ended: 31 December \_\_

Currency in €

Groups of Classes							
Accident and sickness	Land vehicles, goods in transit and motor vehicle liability (carrier's liability only)	Motor vehicle liability (excluding carrier's liability)	Fire and other damage to property	Aviation, marine and transport	General liability	Credit and suretyship	Other classes

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1	2	3	4	5	6	7	8
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Gross premiums written in respect of risks situated in Malta in calendar year								
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(Section 9)

**Form 2**

**Long term insurance business**

Name of undertaking:

Member State or EEA State:

Calendar year ended: 31 December \_

Currency in €

Classes of Business								
I	II	III	IV	V	VI	VII	VIII	IX
Life and annuity	Marriage and birth	Linked long	Permanent health	Tontines	Capital redemption	Pension fund management	Collective insurance etc	Social insurance

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			term						
1	2	3	4	5	6	7	8	9	

Gross premiums written where Malta is the country of commitment in calendar year									
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