
CHAPTER 403
INSURANCE BUSINESS ACT

To regulate the business of insurance.

1st October, 1998

ACT XVII of 1998, as amended by Acts XVII of 2002, XIII of 2004, XII of 2006 and XX of 2007.

ARRANGEMENT OF ACT

	Articles
Part I. Preliminary	1-2
Part II. Supervision of Business of Insurance	3-4
Part III. Authorisation for carrying on Business of Insurance	5-13
Part IV. Conditions for carrying on Business of Insurance	14-18
Part V. Accounts, Actuarial Investigations and Financial Statements	19-24
Part VI. Powers of Intervention	25-28
Part VII. Supervision of Authorised Companies	29-32
Part VIII. Transfer of Business of Insurance	33-37
Part IX. Acquisition and Disposal of Shares, Withdrawal, Dissolution and Winding up	38-42
Part X. Conduct of Business of Insurance	43-48
Part XI. Protection and Compensation Fund	49-54
Part XII. General Provisions	55-69

SCHEDULES

First Schedule	Provisions relating to Lloyd's
Second Schedule	Classes of long term business
Third Schedule	Classes and groups of classes of general business
Fourth Schedule	Provisions relating to insurance agents and managers

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Insurance Business Act.

Interpretation and scope.

2. (1) In this Act, unless the context otherwise requires -

*Amended by:
XVII. 2002.236;
XII. 2006.76;
XX. 2007.126.*

"advertisement", in relation to business of insurance, means any form of advertising, whether done verbally or in writing, and, without prejudice to the generality of the foregoing, includes advertising in a publication, the display of notices, signs, labels or showcards, by means of letters, circulars, prospectuses, catalogues, price lists or other documents, by an exhibition of pictures or photographic or cinematographic films, by way of sound broadcasting or television, by the distribution of recordings or in any other manner, and references to the issue of an advertisement shall be construed accordingly;

"approved actuary" and "actuary" have the meaning assigned to them by article 22(5);

"approved auditor" and "auditor" have the meaning assigned to them by article 21(10);

"authorisation", in relation to business of insurance, or to a matter connected therewith or ancillary thereto, means an authorisation or a deemed authorisation under this Act, and "authorised" shall be construed accordingly;

"body corporate" means any entity having a legal personality distinct from that of its members;

"branch" means premises of the company, other than its head office, from which the business of insurance is carried on;

"business of insurance" means the effecting and carrying out of contracts of insurance of such 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, and, without prejudice to anything contained in any other law, includes -

(a) the effecting and carrying out, by a person not carrying on business of banking, of -

(i) contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried on by the person effecting them) in return for the payment of one or more premiums;

(ii) capital redemption contracts;

(iii) contracts to manage the investments of pension funds,

and, in relation to contracts to manage the investments of pension funds, the expression "a person not carrying on business of banking" includes "a person not carrying on investment services";

(b) any business carried on in connection with or ancillary to business of insurance;

(c) unless otherwise specified, business of reinsurance;

"cell" has the same meaning as is assigned to it by the Companies Act; Cap. 386.

"cell company" has the same meaning as is assigned to it by the Companies Act; Cap. 386.

"commitment" means a commitment represented by any one or more of the kinds of classes of long term business contained in the Second Schedule;

"company" includes a company whose head office is in Malta or in a country outside Malta;

"company whose head office is in Malta" means a limited liability company formed and registered in Malta in accordance with the Companies Act; Cap. 386.

"company whose head office is in a country outside Malta" means a company, other than a European insurance undertaking, registered, incorporated or constituted outside Malta under the laws of any country provided that such company has complied with the provisions of any law which may from time to time be in force in Malta relating thereto;

"competent authority" means the body established under article 3;

"conditions" includes obligations and restrictions;

"contract of insurance" and "contract", in relation to business of insurance, mean an agreement in which an insurer agrees, for a consideration, to pay to or for the account of the insured a sum of money or other consideration, whether by way of indemnity against loss, damage or liability or otherwise, on the happening of a specified event with respect to which there is an element of uncertainty as to when or whether it will take place;

"control", in relation to a body corporate, is the power to determine the financial and operating policies of the body corporate;

"controller", in relation to a body corporate, is a person who, alone or together with others, exercises control of the body corporate;

"country of the commitment" means any country where the policyholder has his habitual residence or, if the policyholder is a legal person, the country where the latter's establishment, to which the contract relates, is situated;

"country outside Malta" means and includes any country, territory or place outside Malta;

"director", in relation to a company, includes an individual occupying the position of a director of the company, by whatever name he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those

carried out by a director and, in respect of a company whose head office is in a country outside Malta, includes a member of a local board, an agent and the person designated as the representative of that company for the purpose of sub-paragraph (i) of paragraph (d) of article 11(1);

"EEA State" means a State which is a contracting party to the agreement on the European Economic Area signed at Oporto on 2 May, 1992 as amended by the Protocol signed at Brussels on the 17th March, 1993 and as amended from time to time;

"establishment" means the head office, agency, or branch of an undertaking and includes any permanent presence of an undertaking in Malta, even if that presence does not take the form of a branch or agency but consists merely of an office managed by the undertaking's own staff or by an independent person who has express or implied authority to act for the undertaking;

"European insurance undertaking" means an undertaking having its head office in a Member State or an EEA State other than Malta, pursuing the activity of direct insurance within the meaning of article 1 of First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of direct insurance other than life assurance or article 2 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, which has received authorisation under article 6 and article 4 of the said Directives respectively;

"financial year" shall be construed in accordance with article 19(4);

"functions" includes responsibilities, powers and duties;

"general business" has the meaning assigned to it by article 5(1);

"guarantee fund" shall be construed in accordance with article 16(1);

Cap. 386. "holding company" has the same meaning as is assigned to the term "parent company" in the Companies Act;

"inspector" means a person appointed as such by the competent authority under article 30(1);

Cap. 487. "insurance agent" means a person enrolled as such under the Insurance Intermediaries Act;

Cap. 487. "insurance manager" means a person enrolled as such under the Insurance Intermediaries Act;

"insurance rule" means a rule in respect of the business of insurance which shall be binding on authorised companies and others as may be specified therein, issued by the competent authority in virtue of article 4(3);

"insured" means the party to whom, or on whose account, or to whose beneficiaries, a sum of money or other consideration is payable under a contract of insurance on the happening of a specified event;

"insurer" means the party to a contract of insurance who agrees to pay a sum of money or other consideration on the happening of a specified event;

"investment services licence" has the same meaning as is assigned to it by the Investment Services Act;

Cap. 370.

"Lloyd's" has the meaning assigned to it in article 48A;

"long term business" has the meaning assigned to it by article 5(1);

"Malta's international commitments" means Malta's commitments, responsibilities and obligations arising out of its membership of, or accession to the European Union, or membership of, or affiliation to, or relationship with, any international, global or regional organisations or grouping of countries or out of any treaty, convention or other international agreement, however called, whether bilateral or multilateral, to which Malta is a party;

"margin of solvency" and "Malta margin of solvency" and "EEA margin of solvency" shall be construed in accordance with article 14;

"Member State" means a Member State of the European Communities;

"Minister" means the Minister responsible for finance;

"money laundering" has the same meaning as is assigned to it by the Prevention of Money Laundering Act;

Cap. 373.

"mutual association" shall be construed in accordance with article 6(3);

"officer", in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not;

"overseas regulatory authority" means an authority which in a country outside Malta exercises any function corresponding to -

- (a) a function of the Minister under this Act; or
- (b) a function of the competent authority thereunder;

"own funds" shall be construed in accordance with an insurance rule made by the competent authority for the purposes of this Act to determine the amount of, and the components which make up, the company's own funds;

"policy", in relation to business of insurance, means and includes a policy or a similar document, by whatever name it may be called, evidencing a contract of insurance;

"policyholder" means the person who for the time being is the legal holder of the policy for securing the contract with the insurer;

"premium" means the consideration paid or payable by an insured under a contract of insurance;

"prescribed" means prescribed by regulations made under this Act;

"qualifying shareholding" means a direct or indirect holding in a company which represents ten per centum or more of the share capital issued by such company or of the voting rights attaching to such share capital or which makes it possible to exercise a significant influence over the management of the company, and "qualifying shareholder" shall be construed accordingly;

Cap. 386.

"reconstruction" has the same meaning as in the Companies Act;

"reinsurance" means the activity consisting in accepting risks ceded by an insurance undertaking or by another reinsurance undertaking;

"risk situated in Malta" means and includes -

- (a) in the case where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy, any risk related to property situated in Malta;
- (b) in the case where the insurance relates to vehicles of any type, any risk related to any vehicles registered in Malta;
- (c) in the case where the insurance relates to travel or holiday risks, whatever the class concerned, any risk related to travel or holiday if the policy covering the risk is of a duration of four months or less and the policy is taken out in Malta;
- (d) in the case where the insurance relates to any risk of any kind, other than a risk specified in the foregoing paragraph (a), (b) or (c), any risk of any such kind if the policyholder has his habitual residence in Malta or, where the policyholder is a legal person if the establishment, to which the contract relates, is situated in Malta;

"risk situated outside Malta" means a risk which is not a risk situated in Malta;

Cap. 386.

"subsidiary" has the same meaning as is assigned to the term "subsidiary undertaking" by the Companies Act;

"technical provisions", in relation to business of insurance, shall be construed in accordance with article 17(1) to (5);

"valuation regulations" means regulations made under article 63;

Cap. 104.

"vehicle" has the same meaning as is assigned to motor vehicle by article 2 of the Motor Vehicle Insurance (Third Party Risks) Ordinance.

Scope.

(2) The objective of this Act is, in part, to implement the provisions of:

- (a) First Council Directive of 24 July 1973 on the coordination of laws, Regulations and administrative provisions relating to the taking-up and pursuit of direct insurance other than life assurance (73/239/EEC);

- (b) Second Council Directive of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (88/357/EEC);
- (c) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive);
- (d) Directive 2002/12/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 79/267/EEC as regards the solvency margin requirements for life assurance undertakings;
- (e) Directive 2002/13/EC of the European Parliament and of the Council of 5 March 2002 amending Council Directive 73/239/EEC as regards the solvency margin requirements for non-life insurance undertakings;
- (f) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance;
- (g)* Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles;
- (h) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC; and
- (i) any other Directive of the European Parliament and of the Council that may be issued from time to time relating to the regulation of and the prudential requirements applicable to insurance companies,

which shall be interpreted and applied accordingly.

(3) In this Act and in any regulations made thereunder, if there is any conflict between the English and the Maltese texts, the English text shall prevail.

*this paragraph is not yet in force

PART II**SUPERVISION OF BUSINESS OF INSURANCE**

Competent authority.
Amended by:
XVII. 2002.237.
Substituted by:
XII. 2006.77.

3. The Minister shall by Order in the Gazette appoint a body to be the competent authority for the purposes of this Act to carry out the functions of the competent authority under this Act and, in particular, to ensure compliance with the provisions of this Act..

Powers and duties of the competent authority.
Amended by:
XVII. 2002.238;
XII. 2006.78.

4. (1) It shall be the duty of the competent authority to carry out the functions assigned to it by or under this Act and to ensure that persons authorised to carry on the business of insurance in or from Malta comply with the provisions of this Act and of any regulations made thereunder, with any insurance rule made by the competent authority in virtue of this Act and of any regulations made thereunder and with the conditions specified in their respective authorisation.

(2) When considering whether to grant or refuse to grant an authorisation under this Act, the competent authority shall, in particular, have regard to:

- (a) the protection of insured persons, policy holders and the general public;
- (b) the protection of the reputation of Malta, taking into account Malta's international commitments; and
- (c) the promotion of competition and choice.

(3) The competent authority may make insurance rules as may be required for carrying into effect any of the provisions of this Act and of any regulations made thereunder. The competent authority may amend or revoke such insurance rules.

(4) Insurance rules and any amendment or revocation thereof shall be officially communicated to the persons concerned and be open to public inspection at the offices of the competent authority at all times during the normal working hours of the authority.

(5) Insurance rules imposing an obligation or requirement on the public shall be made by regulations in accordance with article 64.

PART III**AUTHORISATION FOR CARRYING ON BUSINESS OF INSURANCE**

Classification of business of insurance.
Amended by:
XVII. 2002.239;
XII. 2006.79.

5. (1) Subject to the provisions of subarticles (5) and (6), for the purposes of this Act, business of insurance is divided into long term business and general business; and -

"long term business" means business of insurance of any of the classes specified in the Second Schedule, and

"general business" means business of insurance of any of the classes specified in Part I of the Third Schedule.

(2) For the purposes of this Act, the effecting and carrying out of a contract of insurance whose principal object is within one class

of business of insurance, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of business of insurance of the first-mentioned class, and no other, if subarticle (3) or (4) applies to the contract.

(3) This subarticle applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the company is authorised under article 7 to carry on long term business class 1.

(4) This subarticle applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14, 15 or 17:

Provided that the risk included in class 17 shall be deemed to be an ancillary risk of class 18 if the conditions of subarticle (5) are satisfied and where the main risk relates solely to the assistance provided to persons in difficulty while travelling or away from their home or permanent residence, and the risk included in class 17 shall also be deemed an ancillary risk where it concerns disputes or risks arising out of or in connection with, the use of seagoing vessels and the conditions of the said subarticle are satisfied.

(5) The conditions referred to in subarticle (4) are the following:

- (a) that the risks to be insured are connected with the principal risk;
- (b) that these risks concern the object which is covered under the principal risk; and
- (c) that they are covered by the contract insuring the principal risk.

(6) The Minister may, after consultation with the competent authority, make regulations determining the class or classes of long term business and the class or classes or part classes of general business that may be effected and carried out under this Act.

(7) The competent authority may, by an insurance rule made for the purpose of this article, determine that long term business contracts of insurance as may be specified be of a kind as may be specified or be expressed to be in effect for a period as may be specified.

(8) The competent authority may, by an insurance rule made for the purposes of this article, provide that general business contracts of insurance of a kind specified in the rule contain such conditions or include such requirements or arrangements as may be determined by the rule.

Restriction on carrying on business of insurance.

*Amended by:
XVII. 2002.240;
XII. 2006.80.*

6. (1) No person shall carry on, nor hold itself out as carrying on, in or from Malta business of insurance unless authorised by the competent authority.

(2) Without prejudice to subarticle (1), no company whose head office is in Malta shall carry on, nor hold itself out as carrying on, business of insurance in or from a country outside Malta, unless authorised by the competent authority.

(3) Subarticles (1) and (2) shall not apply to:

- (a) a mutual association if such mutual association satisfies such requirements as may be set out in an insurance rule made for the purpose; or
- (b) a European insurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing services in Malta in exercise of a European right.

Cap. 370.

(4) The Minister, acting on the advice of the competent authority, may make regulations under this article -

- (a) declaring certain services and activities ancillary to or connected with business of insurance as not constituting business of insurance for any or all of the purposes of this Act;
- (b) prescribing the persons who may carry out such services and activities and the persons to or for whom such services and activities may be rendered;
- (c) providing for any matter incidental to or connected with the above, and for the better carrying out of the provisions of this subarticle.

(5) In the event of a doubt as to whether an activity constitutes business of insurance, or whether business of insurance is or is not being carried on in or from Malta, the matter shall be conclusively determined by the competent authority.

Authorisation by competent authority for carrying on business of insurance.
*Amended by:
XVII. 2002.241.*

7. (1) The competent authority may authorise a company to carry on under this Act -

- (a) in the case of a company whose head office is in Malta, in or from Malta or in or from a country outside Malta;
- (b) in the case of a company whose head office is in a country outside Malta, in or from Malta,

such of the classes of business of insurance specified in the Second or Third Schedule, or such parts of those classes, as may be specified in the authorisation.

(2) An authorisation under this article may be restricted to business of reinsurance; and a company may not carry on business of reinsurance by virtue of an authorisation under this article unless the authorisation expressly extends to such business.

(3) The competent authority shall have the power to require any company to provide such information as it may deem necessary

for the purpose of determining an application for authorisation.

(4) An authorisation under this article shall only be issued if the competent authority is satisfied, on the basis of the information required to be submitted under this Act and any information received by it, that the authorisation ought to be granted.

(5) An authorisation issued under this article may identify classes or part classes of general business by referring to the appropriate groups specified in Part II of the Third Schedule.

(6) Subject to the provisions of this Act, the competent authority may subject an authorisation issued or held under this article to such conditions as it may from time to time deem fit to impose.

(7) Subject to subarticle (8), the competent authority shall determine an application for authorisation under this article within six months of receiving the information required to be submitted under this Act; and if it refuses to issue the authorisation it shall inform the applicant in writing of the reasons for the refusal.

(8) Where the authorisation sought is one restricted to reinsurance, the period prescribed by subarticle (7) shall be of three months.

(9) On the issue to a company of an authorisation under this article, any previous authorisation of that company under this article shall lapse.

8. (1) The competent authority shall not issue an authorisation under article 7 unless it is satisfied that -

- (a) an application for authorisation is made in writing by a company in such form and manner as the competent authority may from time to time determine;
- (b)
 - (i) in so far as a company whose business is not restricted to reinsurance business, the company's objects are limited to business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;
 - (ii) in so far as a company carrying on business restricted to reinsurance, the company's objects are limited to the business of reinsurance and related operations, as may be specified by an insurance rule made for the purposes of this article;
- (c) the company has disclosed to the satisfaction of the competent authority such information as the competent authority has requested of it in relation to persons who will, upon the authorisation of the company, have any proprietary, financial or other interest in, or in connection with, that company;
- (d) all qualifying shareholders, controllers and all persons who will effectively direct the business of insurance

Authorisation
requirements.
Amended by:
XVII. 2002.242;
XII. 2006.81.

are fit and proper persons to ensure its sound and prudent management;

- (e) the company has submitted to the satisfaction of the competent authority a scheme of operations which shall include the particulars or proof as may be determined by an insurance rule made for the purpose of this article;
- (f) the company's own funds, whether in Maltese liri or in other currencies acceptable to the competent authority are, at all times, not less than such amount appropriate for the kind of business to be carried on, or being carried on, by the company, as may be determined by an insurance rule made for the purposes of this Act; and such own funds are unencumbered at all times.

(2) Where close links exist between a company applying for authorisation and any other person, the competent authority shall:

- (a) only issue an authorisation if it considers that such close links do not prevent it from effectively exercising its supervisory functions; and
- (b) refuse to issue such authorisation if it considers that the laws, regulations or administrative provisions of any country, other than Malta, governing any person with whom the company has close links, or their enforcement, prevent it from effectively exercising its supervisory functions.

(3) The competent authority may, from time to time, by means of an insurance rule issued under this Act define the circumstances in which close links are to be regarded as existing between a company and any other person.

Combination of long term business and general business.
Amended by:
XVII. 2002.243;
XII. 2006.82.

9. (1) Subject to subarticle (2), the competent authority shall not, under article 7, authorise a company to carry on both long term business and general business unless -

- (a) the long term business is restricted to reinsurance; or
- (b) the general business carried on by the company is restricted to classes 1 and 2 of Part I of the Third Schedule (accident and sickness) or to any class or part of a class of business within that group.

(2) Without prejudice to the provisions of subarticle (3), the provisions of this article shall not apply to a company which holds an authorisation to carry on both long term business and general business under this Act as in force immediately before the coming into force of subarticle (1) until such time as the Minister may by Order in the Gazette establish.

(3) A company authorised as aforesaid shall, in respect of long term business and general business, be managed separately in a manner as may be determined by an insurance rule made for the purpose of this article.

10. (1) The competent authority shall not issue an authorisation under article 7 to a company whose head office is in Malta, nor shall the competent authority permit such company to hold the authorisation issued thereunder, unless it is satisfied that -

- (a) the company has fulfilled or complied with the requirements of articles 8 and 14 and, where appropriate, of article 9; and
- (b) the company submits proof that it maintains the minimum guarantee fund in accordance with article 16.

(2) A company authorised as aforesaid may, with the approval of the competent authority given in writing -

- (a) open a branch in Malta;
- (b) appoint:
 - (i) an insurance manager; or
 - (ii) an insurance agent; or
 - (iii) both an insurance manager and an insurance agent.

(3) Except with the written consent of the competent authority, no company authorised as aforesaid may open a branch, agency or set up or acquire any subsidiary in any country outside Malta.

11. (1) The competent authority shall not issue an authorisation under article 7 to a company whose head office is in a country outside Malta, nor shall the competent authority permit such company to hold the authorisation issued thereunder, unless it is satisfied that -

- (a) the company has fulfilled or complied with the requirements of articles 8 and 14, and, where appropriate, of article 9;
- (b) the company is permitted in the country where its head office is situated to carry on the business of insurance which forms the object of the application;
- (c) the company maintains in Malta at all times assets of such kind and amount as may be prescribed by or determined in accordance with regulations made for the purposes of this Act; and, where the authorisation sought or held is one not restricted to reinsurance, the whole or a specified proportion of such assets as may be prescribed or determined is deposited with and held in custody for the company's account by a person as may be prescribed under article 18;
- (d) the company has in Malta at all times:
 - (i) a representative fulfilling the requirements of article 12; and
 - (ii) a branch as defined by subarticle (2); or
 - (iii) an insurance agent; or
 - (iv) both a branch and an insurance agent.

Applicants with head office in Malta.

Amended by:
XVII. 2002.244;
XIII. 2004.111;
XII. 2006.83.

Applicants with head office outside Malta.

Amended by:
XVII. 2002.245;
XII. 2006.84;
XX. 2007.127.

(2) In relation to a branch of a company whose head office is in a country outside Malta, the business of insurance shall be carried out from such branch by a person fulfilling the following requirements of this subarticle:

- (a) the person must be an individual resident in Malta or an insurance manager who has been designated by the company for the purpose of this article;
- (b) where the person is an individual -
 - (i) the person must not be the approved auditor, or a partner or an employee of the approved auditor, of the company;
 - (ii) the person possesses the qualifications and fulfils or complies with the requirements determined by an insurance rule made for the purpose of this article; and
 - (iii) the person is fit and proper to ensure its sound and prudent management.

General
representatives.
Amended by:
XIII. 2004.112.

12. (1) The requirements referred to in article 11(1)(d)(i) are those set out in the following provisions of this article:

- (a) the representative must be a person resident in Malta who has been designated as the company's representative for the purpose of this article;
- (b) the representative must be authorised to act generally, and to accept service of any document, on behalf of the company;
- (c) the representative must not be the approved auditor, or a partner or an employee of the approved auditor, of the company;
- (d) if the representative is not an individual, it must be a company whose head office is in Malta and must itself have an individual representative resident in Malta who is authorised to act generally, and to accept service of any document, on behalf of the company, in its capacity as representative of the company.

(2) Without prejudice to the provisions of subarticle (1), the general representative shall not be personally liable for the debts and obligations of the company referred to in article 11.

Insurance agents
and managers.

13. Deleted by XII. 2006.85.

PART IV

CONDITIONS FOR CARRYING ON BUSINESS OF INSURANCE

Margins of
solvency.
Amended by:
XIII. 2004.113;
XII. 2006.86;
XX. 2007.128.

14. (1) A company whose head office is in Malta authorised under this Act shall maintain at all times a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this article.

(2) A company whose head office is in a country outside Malta

authorised under this Act shall maintain at all times -

- (a) a margin of solvency, and
- (b) a Malta margin of solvency, or
- (c) an EEA margin of solvency,

of such amounts as may be prescribed by or determined in accordance with the regulations made for the purposes of this article.

(3) Without prejudice to article 15, a company authorised as aforesaid which fails to comply with subarticle (1) or (2) -

- (a) shall submit to the competent authority a plan for the restoration of a sound financial position; and
- (b) shall propose modifications to the plan (or the plan as previously modified) if the competent authority considers it inadequate; and
- (c) shall give effect to a plan acceptable to the competent authority.

(4) For the purposes of this Act -

- (a) the margin of solvency of an authorised company is the excess of the value of its assets, over the amount of its liabilities, that value and amount being determined in accordance with any applicable valuation regulations;
- (b) the Malta margin of solvency is the margin of solvency of an authorised company computed by reference to the assets and liabilities of the business carried on by that company in Malta;
- (c) the EEA margin of solvency is the margin of solvency of an authorised company computed by reference to the assets and liabilities of the business carried on by that company in all Member States and EEA States.

(5) In the case of an authorised company which carries on both long term business and general business, subarticles (1) and (2) shall have effect as if -

- (a) the requirements to maintain a margin of solvency, and
- (b) where the company carries on both kinds of business in or from Malta, the requirement to maintain a Malta margin of solvency,

were requirements to maintain separate margins in respect of the two kinds of business (and accordingly as if the reference in subarticle (4)(a) to assets and liabilities were a reference to assets and liabilities relating to the kind of business in question).

(6) In applying subarticle (4), the amount of the company's liabilities shall be taken to be increased by the amount of any reserve maintained under article 17(6).

Failure to maintain the minimum margin of solvency.
Amended by:
XII. 2006.87.

- 15.** (1) If -
- (a) the margin of solvency of an authorised company to which article 14(1) applies, or
 - (b) the margin of solvency or Malta margin of solvency of an authorised company to which subarticle (2) of that article applies,

falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of that article, the company shall notify the competent authority and make good, to the satisfaction of the authority, any such deficiency without delay, and in no case later than fifteen days from the day of such notification.

(2) For so long as the margin of solvency or the Malta margin of solvency of a company is less than that required to be maintained as aforesaid-

- (a) the company shall not assume any new risk of any kind whatever;
- (b) the Competent Authority may -
 - (i) in the case of a company whose head office is in Malta, restrict or prohibit the disposal of the company's assets;
 - (ii) in the case of a company whose head office is in a country outside Malta, restrict or prohibit the disposal of the company's assets in Malta,

and, in each case, take any other measure it deems necessary to safeguard the interests of the policyholders and creditors.

(3) Where a company is required by virtue of article 14(5) to maintain separate margins of solvency in respect of long term business and general business, subarticle (1) shall have effect as if any reference to the margin of solvency or the Malta margin of solvency of the company were a reference to the margin in respect of either of the two kinds of business.

Guarantee fund to be maintained by authorised companies.
Amended by:
XVII. 2002.246;
XIII. 2004.114;
XII. 2006.88.

16. (1) A company authorised under this Act shall maintain at all times a guarantee fund of an amount of assets equal to the greater of the minimum guarantee fund or the value of one-third of -

- (a) in the case of a company whose head office is in Malta, the margin of solvency required to be maintained by the company under article 14(1) thereunder;
- (b) in the case of a company whose head office is in a country outside Malta, the Malta margin of solvency required to be maintained by the company under article 14(2).

(2) The amount of the guarantee fund required to be maintained by this article shall be not less than an amount (the "minimum guarantee fund") as may be prescribed by or determined in

accordance with regulations made for the purposes of this article.

(3) In the case of a company which carries on both long term business and general business, subarticle (1) shall have effect as if the requirements to maintain a guarantee fund were requirements to maintain separate guarantee funds in respect of the two kinds of business (and accordingly as if the references in that subarticle to assets, margin of solvency and Malta margin of solvency were references to assets, margin of solvency and Malta margin of solvency relating to the kind of business in question).

(4) The assets required to be maintained in Malta by or under this Act shall not be transferred, withdrawn or in any way encumbered without the permission of the competent authority given in writing or until the company has ceased to carry on the business it was authorised to carry on and proves to the satisfaction of the authority that it has no further liability. Such assets shall not be attachable by any court.

17. (1) A company authorised under this Act shall every year establish and maintain adequate technical provisions, including mathematical provisions, in respect of the business it is authorised to carry on in an amount to be prescribed by or determined in accordance with regulations made for the purposes of article 20.

Technical provisions.
General business: equalisation reserve.
Amended by:
XVII. 2002.247;
XII. 2006.89.

(2) A company authorised as aforesaid shall at all times hold unencumbered assets equal to the value of its technical provisions and after making adequate provision for all its other liabilities.

(3) The assets covering the technical provisions shall take account of the business and the classes or part classes of business carried on by a company in such a way as to secure the safety, yield and marketability of its investments, which the company shall ensure are diversified and adequately spread in accordance with regulations made for the purposes of article 63.

(4) The technical provisions must at all times be covered by equivalent and matching assets provided that, with the approval of the competent authority given in writing, a company may hold non-matching assets to covering a sum not exceeding an amount as may be prescribed by or determined in accordance with regulations made for the purposes of article 63.

(5) For the purposes of this article, the expression "matching assets" means the representation of underwriting liabilities expressed in a particular currency by assets expressed or realisable in the same currency.

(6) Without prejudice to the foregoing subarticles (1) and subject to subarticle (7), every company authorised to carry on general business of a prescribed description shall maintain, in accordance with regulations made for the purposes of this article, a reserve, hereinafter referred to as equalisation reserve, in respect of its general business of that description.

(7) Subarticle (6) shall not apply to such company authorised as aforesaid as may be prescribed for the purposes of this subarticle.

(8) Regulations made for the purposes of this article may, with respect to an equalisation reserve, make provision -

- (a) as to the circumstances in which, and the times at which, amounts are to be placed to, or taken from, an equalisation reserve;
- (b) as to the determination of the amounts to be so placed or taken; and
- (c) as to such other matters incidental to the maintenance of an equalisation reserve as the Minister may, after consultation with the competent authority, consider expedient.

Custody of assets required to be maintained in Malta.

18. (1) The competent authority may, with respect to assets which a company, other than a company whose business is restricted to reinsurance, is required by or under this Act to maintain in Malta, impose an additional requirement that the whole or a specified proportion of such assets shall be deposited with and held in custody for the company's account by a person as may be prescribed by regulations made for the purposes of this article unless that requirement is otherwise imposed by any other provision of this Act; and the competent authority shall at all times have the right to demand from such person any information it may require to ensure that the provisions of this article are being complied with.

(2) Any requirement by or under this Act that assets of any kind or amount are to be maintained in Malta shall be satisfied if such assets are maintained in such country outside Malta and in such form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

(3) Any provision by or under this Act requiring a company to maintain in Malta assets of any kind or amount may be satisfied by the company if the company produces a security in a form and manner to the satisfaction of the competent authority subject to such regulations as may be prescribed for such purpose under this Act.

PART V

ACCOUNTS, ACTUARIAL INVESTIGATIONS AND FINANCIAL STATEMENTS

Financial year of authorised companies.

19. (1) Every company whose head office is in Malta authorised under this Act shall, not later than three months from the date of a company's authorisation, notify in writing the competent authority of its financial year; and, failing such notice, the company's financial year shall terminate on the thirty-first day of December of each year.

(2) No company as aforesaid shall alter its financial year unless and until the competent authority has given its approval in writing on an application made to it in that behalf.

(3) Every company whose head office is in a country outside

Malta applying for authorisation under article 7 to carry on business of insurance in or from Malta, shall notify in writing the competent authority of its financial year; and where an authorised company as aforesaid alters its financial year it shall forthwith notify in writing the competent authority of such change.

- (4) For the purposes of this Act, financial year -
- (a) in relation to an authorised company whose head office is in Malta, means an accounting period as is construed in accordance with articles 164 to 166 of the Companies Act;
 - (b) in relation to an authorised company whose head office is in a country outside Malta, means an accounting period as is construed in accordance with the provisions of the laws of the country where the head office of the company is situated governing the accounting period of such companies.

Cap. 386.

20. (1) Subject to the following subarticles, every company authorised under this Act shall, not later than six months from the closing of its financial year, or at any other time as may be authorised in writing by the competent authority -

- (a) forward to the competent authority;
- (b) publish in abridged form in at least two local daily newspapers of which one is published in the Maltese language and the other in the English language. This requirement shall not apply in the case of a company which carries on business restricted to risks situated outside Malta or commitments where Malta is not the country of commitment;
- (c) exhibit in a conspicuous position in each of its offices, agencies and branches in Malta and keep so exhibited throughout the following twelve months,

Drawing up and publication of audited financial statement.
Amended by:
XVII. 2002.248;
XII. 2006.90;
XX. 2007.129.

a copy of its audited financial statements drawn up -

- (i) in the case of a company whose head office is in Malta, in accordance with regulations made for the purposes of this article; and
- (ii) in the case of a company whose head office is in a country outside Malta, in accordance with the provisions of the laws of the country where the head office of the company is situated governing the financial statements of such companies.

(1A) In each of the cases referred to in paragraphs (i) and (ii) in subarticle (1) the company shall provide a copy of its audited financial statements to any person applying for such copy:

Provided that the company may charge such reasonable fees not exceeding the administrative costs incurred in producing such copy.

(2) The form and content of the statements required to be published under subarticle (1)(b) shall be such as shall be

prescribed by the regulations.

(3) In the case of a company whose head office is in Malta, subarticle (1)(c) shall apply as respects the company's offices, agencies and branches in a country outside Malta in the same manner and to the same extent as it applies to its offices, agencies and branches in Malta.

Appointment,
duties and
termination of
appointment of
auditors.
*Amended by:
XII. 2006.91.*

21. (1) Every company authorised under this Act shall every year appoint an approved auditor as auditor to the company whose duty shall be to report on the financial statements of the company examined by him and on financial statements prepared by the company.

(2) If an authorised company fails to appoint an auditor as required by subarticle (1), or at any time fails to fill any vacancy in the office of auditor, the competent authority shall have the power to appoint an auditor for that company and shall fix the remuneration to be paid by that company to such auditor.

(3) The auditor's report shall include a statement as to whether the various requirements of this Act and of any regulations made thereunder, and of any insurance rule in respect of the company have been complied with and observed and any provisions made for that purpose.

(4) Every auditor of an authorised company shall have the right to demand such information or explanation as he deems necessary in the performance of his duties from any officer or employee of, or any person under an appointment from, that company.

(5) An auditor shall immediately give notice in writing to the competent authority if -

- (a) he resigns;
- (b) he does not seek to be re-appointed; or
- (c) he decides to qualify the audit report,

and, in the case of a resignation, the auditor shall specify the reasons for so doing.

(6) An authorised company shall give notice in writing to the competent authority immediately it receives notice of a resolution intended to be put before the company's annual general meeting to appoint as an auditor a person other than the retiring auditor or otherwise providing expressly that the retiring auditor shall not be reappointed.

(7) Where, for any reason whatever, the appointment of an auditor comes to an end, the authorised company shall, not later than fourteen days from the termination of such appointment, give notice in writing to the competent authority stating reasons for such termination.

(8) The competent authority may require an authorised company to change its appointed auditor where, in the competent authority's opinion, such auditor is considered unfit for this appointment, at any time during his term of office.

(9) Before requiring an authorised company to change its appointed auditor in the circumstances mentioned in subarticle (8), the competent authority shall notify in writing its intention to the company and the auditor concerned stating reasons for requiring such change and giving the auditor the opportunity to submit in writing within fourteen days from the date of serving of such notice reason why its appointment with the company should not be terminated.

(10) For the purposes of this Act, an approved auditor shall be a person who is qualified to be an auditor in accordance with the Companies Act, and holds the authorisation of the competent authority issued to him in accordance with regulations made for the purpose of this article.

Cap. 386.

(11) Notwithstanding anything contained in the foregoing subarticles, the competent authority may, in the case of a company whose head office is in a country outside Malta authorised as aforesaid, approve such alternative arrangements as it thinks reasonable and which do not materially detract from the main objects of this article, and where such arrangements have been carried out, the provisions of this article shall not apply to the extent that they are replaced by such arrangements.

(12) Subject to the provisions of subarticle (10), in so far as the provisions of this article are inconsistent with the provisions of the Companies Act, the provisions of this article shall prevail, and the provisions of the said Act shall, to the extent of the inconsistency, not apply to authorised companies as aforesaid.

Cap. 386.

22. (1) Every company authorised under this Act to carry on long term business shall -

Appointment of
actuary by
company with long
term business.

- (a) within thirty days of beginning to carry on such business, appoint an approved actuary as actuary to the company;
- (b) whenever the appointment comes to an end, within thirty days of such termination, make a new appointment.

(2) A company making an appointment under subarticle (1) shall, within fourteen days, inform the competent authority in writing stating that fact, the date of such appointment and the name and qualifications of the person appointed; and if an appointment under that subarticle comes to an end, the company shall, within fourteen days, inform the authority in writing stating that fact, the name of the person concerned and the reasons for such termination.

(3) If, on the expiry of any period specified in subarticle (1), the company fails to make the required appointment, the company shall not effect and carry out any new long term contracts of insurance until the appointment is made.

(4) Notwithstanding the provisions of subarticle (2), the competent authority may, within fourteen days of receiving a notice of termination of an appointment of an approved actuary, request in writing the approved actuary concerned to give in writing the

reasons for such termination; and the actuary shall, within fourteen days, give reasons in writing.

(5) For the purposes of this Act, an approved actuary is a person who -

- (a) is a fellow of an institute of actuaries, or a fellow of a faculty of actuaries, or holds actuarial qualifications of similar standing of an institute of repute recognised for such purposes by the competent authority; and
- (b) holds the Authority's authorisation to act as actuary to a company authorised to carry on long term business.

Periodic actuarial investigation of company with long term business.
Amended by:
XVII. 2002.249;
XII. 2006.92.

23. (1) Every company authorised under this Act to carry on long term business -

- (a) shall, at the close of its financial year, cause an investigation to be made into its financial condition in respect of that business by the person who for the time being is its actuary under article 22(1); and
- (b) when such an investigation has been made, or when at any other time an investigation into the financial condition of the company in respect of its long term business has been made with a view to the distribution of profits, or the results of which are made public, shall cause an abstract of the actuary's report of the investigation to be made and such abstract to be available to the policyholders of the company for inspection at the offices of the company.

(2) An investigation to which subarticle (1)(b) relates shall include -

- (a) a valuation of the liabilities of the company attributable to its long term business; and
- (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the company in respect of that business and, where any rights of any long term business policyholders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.

(3) For the purposes of any investigation to which this article applies, the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

(4) The form and content of any abstract under this article shall be such as may be determined by an insurance rule made for the purposes of this article.

(5) Where an investigation is made, the actuary's report of the investigation shall be forwarded by the company concerned to the competent authority -

- (a) with regard to an investigation made at the close of the company's financial year, together with the audited

financial statements of the company required to be forwarded under article 20;

- (b) with regard to an investigation made at any other time, not later than thirty days from the close of the investigation.

(6) Notwithstanding the provisions of subarticle (1), the competent authority may in writing, at any time, direct a company authorised as aforesaid to cause to be forwarded to it a valuation of the company's liabilities outstanding at the date specified in the direction on account of its long term business, together with a statement prepared by the actuary of the company concerned, in the form and content as the competent authority may by the insurance rule determine.

(7) Subarticle (1)(b), subarticles (2) and (4), and subarticle (5)(b) shall not apply to a company if its business is restricted to reinsurance.

(8) Notwithstanding anything contained in any of the foregoing subarticles, in the case of a company whose head office is in a country outside Malta authorised to carry on long term business, the competent authority may approve such alternative arrangements as it thinks reasonable and which do not materially detract from the main objects of this article, and where such arrangements have been carried out, the provisions of this article shall not apply to the extent that they are replaced by such arrangements.

24. (1) If, in his capacity as an auditor or an actuary respectively of an authorised company, or due to a direct request by the competent authority made under this Act, an auditor or an actuary, as the case may be, becomes aware of any matter which relates to and may have a serious adverse effect upon the insured, the policyholder or any other interested person of the company, or of the branch in Malta of a company whose head office is in a country outside Malta, he shall immediately inform the competent authority through the company's management, or if circumstances so warrant, directly to the competent authority.

Obligations of auditors and actuaries to the competent authority.
Amended by:
XVII. 2002.250.

(2) For the purposes of subarticle (1), any matter which relates to and may have a serious adverse effect includes any matter which:

- (a) is likely to lead to a serious qualification, or refusal of, the auditor's report on the accounts of the company; or
- (b) gravely impairs the company's ability to continue as a going concern; or
- (c) may be prescribed by the Minister.

(3) An auditor or actuary, as the case may be, of an authorised company shall likewise have a duty to report to the competent authority any facts and decisions which relate to or have a serious adverse effect upon the insured, the policyholder or any other interested person, relating to the company, or of the branch in Malta of a company whose head office is outside Malta, of which he becomes aware in his capacity as auditor or actuary to a company having close links, within the meaning of article 8.

PART VI

POWERS OF INTERVENTION

Automatic
revocation of an
authorisation.

25. An authorisation issued or held under this Act shall automatically be revoked if the authorised company -

- (a) does not commence to carry on business pursuant to the authorisation within twelve months of its issue, or within such other period as may be specified in the authorisation; or
- (b) is declared bankrupt or goes into liquidation or makes a composition with its creditors or is otherwise dissolved; or
- (c) has ceased to operate as a result of a merger with another company carrying on business of insurance or for any other reason whatsoever; or
- (d) is a company whose head office is in a country outside Malta, and the overseas regulatory authority in the country of registration, incorporation or constitution withdraw the authorisation from the company.

Power of the
competent
authority to
suspend or revoke
an authorisation.

*Amended by:
XVII. 2002.251;
XII. 2006.93.*

26. Without prejudice to anything contained in any other provision of this Act, the competent authority may at any time suspend or revoke an authorisation issued or held under this Act if -

- (a) any document or information accompanying an application for authorisation, or any information given in connection therewith, is false, incorrect or misleading in any material particular, or if the authorised company has concealed, or conceals from, or fails to notify to the competent authority any document or information or change therein which it was its duty to reveal or to notify under this Act and any regulations made thereunder or any insurance rule; or
- (b) the authorised company ceases to carry on the business for which the authorisation was issued; or
- (c) the authorised company suspends payment or is about to suspend payment; or
- (d) it considers that the authorised company does not fulfil or comply with the requirements of, or has contravened, any of the provisions of this Act and any regulations made thereunder, or any insurance rule, or has failed to satisfy or comply with any condition to which it or the authorisation held by it is subject by virtue of or under this Act; or
- (e) it considers that any officer who effectively controls the business the company is authorised to carry on is no longer a fit and proper person to ensure its sound and prudent management; or
- (f) it receives a written request so to do from the authorised company; or

- (g) the authorised company no longer possesses the required own funds; or
- (h) the authorised company is likely to become unable to meet its obligations or can no longer be relied upon to fulfil or satisfy its obligations towards insureds, policyholders, creditors or other interested persons; or
- (i) close links within the meaning of article 8, exist between the authorised company and another person, and the competent authority is prevented from exercising its supervisory functions effectively either by reason of those close links or by reason of any law, regulation or administrative provision of a country outside Malta governing that other person, or by reason of difficulty in their enforcement.

27. (1) Subject to the following provisions of this article, where the competent authority intends to suspend or revoke an authorisation it shall give the company concerned notice in writing setting out the reasons for its intention to do so.

Notification of suspension or revocation of an authorisation.

(2) Every notice given under subarticle (1) shall state that the company concerned may, within such reasonable period after the service thereof as may be stated in the notice (being a period of not less than forty-eight hours and not longer than fifteen days), make representations in writing to the competent authority giving reasons why the authorisation should not be suspended or revoked and the competent authority shall consider any representations so made before arriving at a final decision.

(3) The competent authority shall notify in writing its final decision to the company concerned.

(4) An authorisation issued to a company whose head office is in a country outside Malta may only be revoked after consultation with the overseas regulatory authority of the country of registration, incorporation or constitution, unless the competent authority decides that the matter is urgent or that there are circumstances which make such prior consultation inappropriate.

(5) In the case of a suspension or a revocation of an authorisation of a company whose head office is in Malta, the competent authority shall inform the overseas regulatory authority of any state in which the company or its subsidiaries are carrying on the business of insurance.

28. (1) Without prejudice to the powers conferred to the competent authority under article 26, the competent authority, may, where it is satisfied that sufficient serious circumstances exist, proceed to take any one or more of the following measures:

Power of the competent authority to protect the public interest.
Amended by:
XVII. 2002.252;
XIII. 2004.115;
XII. 2006.94.

- (a) require the company forthwith to take such steps as the competent authority may consider necessary to rectify or remedy the matter;
- (b) appoint a person to advise the company in the proper conduct of its business;

- (c) appoint a person to take charge of the assets of the company, or any portion of them, for the purposes of safeguarding the interests of insureds, policyholders, creditors and shareholders of the company;
- (d) appoint a person to assume control of the business of the company either to carry on that business or to carry out such other function or functions in respect of such business, or part thereof, as the competent authority may direct;
- (e) issue an order for the dissolution and winding up of the company or, in the case of a company whose head office is in a country outside Malta, for the winding up of its business in Malta;
- (f) appoint a competent person to act as liquidator for the purpose of winding up the affairs of the company;
- (g) fix the remuneration to be paid by the company to any person appointed under this article;
- (h) require the company to submit a financial recovery plan as may be determined by an insurance rule made for the purposes of this article if it considers that the interest of insureds, policyholders, creditors or other interested persons are likely to be prejudiced owing to a deterioration in the financial position of the company;
- (i) do such other act or require the doing of such other thing as it may deem appropriate in the circumstances,

and having proceeded in any one or more of the manners aforesaid, the competent authority may further proceed in any one or more of such manners, whether in addition thereto or in substitution therefor.

- (2) Where a person is appointed by the competent authority -
 - (a) under subarticle (1)(b), it shall be the duty of the company to act in accordance with the advice given by such person unless and until the competent authority, on representation made to it, directs otherwise;
 - (b) under subarticle (1)(c), the company shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the company in respect of those assets, whether exercisable by the company in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the company, shall be exercisable by and vest in the person appointed under the said paragraph to the exclusion of any other person;
 - (c) under subarticle (1)(d), the company shall submit its business to the control of such person and shall provide him with such facilities as he may require the company to provide him to carry on that business or to

carry out the functions assigned to him under the said paragraph; and all the powers, functions and duties of the company, whether exercisable by the company in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the company in all matters, shall be exercisable by and vest in him to the exclusion of any other person;

(d) under subarticle (1)(f), such person shall be the liquidator of the company for all purposes of law to the exclusion of any other person.

(3) In the case of a company whose head office is in a country outside Malta, the branches and offices in Malta of that company shall, if the competent authority so directs and to the extent it so directs, be deemed to constitute a separate company.

(4) The competent authority may, where it feels is in the best interest of the public so to do, make or issue public statements or notices giving warnings or information about any of the following:

- (a) the suspension, revocation or restriction of an authorisation;
- (b) any action taken in terms of this article;
- (c) the carrying out of business of insurance in an unsatisfactory manner and the persons carrying out such business;
- (d) any other practice or matter which may be detrimental to the interest of insureds, policyholders, creditors or other interested persons;
- (e) the commission of an offence against this Act;
- (f) the imposition by the competent authority of an administrative penalty.

(5) The competent authority may require the company concerned to pay all the expenses of, and incidental to, the publication or issue of public statements or notices pursuant to this article or such part thereof as it may deem appropriate; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

PART VII

SUPERVISION OF AUTHORISED COMPANIES

29. (1) Without prejudice to anything contained in any other provision of this Act which requires an authorised company to furnish to the competent authority any information or documentation, the competent authority may, by notice in writing, require any such company to -

- (a) furnish to it, at such time and place and in such form as it may specify, such information and documentation as it may require with respect to the business such company is authorised to carry on; or with respect to any person with whom the company has close links

Power of the competent authority to require information.
Amended by:
XVII. 2002.253.

within the meaning of article 8;

- (b) furnish to it any information or documentation aforesaid verified in such manner as it may specify;
- (c) attend before it, or before a person appointed by it, at such time and place as it may specify, to answer questions and provide information and documentation with respect to any such business as aforesaid.

(2) The competent authority may take copies of any documents furnished or provided under this article or extracts from them.

(3) Where an authorised company required to provide information or documentation under this article does not have the relevant information or documentation, it shall disclose to the competent authority where, to the best of its knowledge, that information or documentation is, and the competent authority may require any person, whether indicated as aforesaid or not, who appears to it to be in possession of that information or documentation, to provide it.

(4) A statement made and documentation provided in pursuance of any requirement under this article may be used in evidence against the person making the statement or providing the documentation as well as against any person to whom they relate.

(5) The provisions of this article shall not apply to information or documentation which is privileged in accordance with the provisions of article 642 of the Criminal Code.

Cap. 9.

(6) The power to require the production of documentation under the provisions of this article shall be without prejudice to any lien or charge claimed by any person in relation to such documentation.

(7) Where the competent authority has appointed a person under subarticle (1)(c), such person shall, for the purposes of carrying out his functions under his appointment, have all the powers conferred on the competent authority by this article and a requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority.

Power of the competent authority to examine the affairs of authorised companies.
Amended by:
XII. 2006.95.
Cap. 386.

30. (1) Without prejudice to the provisions of the Companies Act relating to the investigation of companies, the competent authority may, whenever it deems it necessary or expedient, appoint one or more inspectors to examine the affairs of an authorised company and to report thereon to it.

(2) An inspector appointed under subarticle (1) -

- (a) shall have and may exercise all the powers conferred on the competent authority by article 29, and any requirement made by him shall be deemed to be and have the same force and effect as a requirement of the competent authority;
- (b) may, and if so directed by the competent authority shall, make interim reports and on the conclusion of his examination shall make a final report to the said Authority.

(3) The competent authority may forward to the company concerned a copy of any report made by an inspector in respect of its affairs.

(4) Where the affairs of an authorised company are under examination, it shall be the duty of all officers and agents of the company to produce to an inspector all books and documents of or relating to the company and otherwise to give to an inspector all assistance in connection with the examination which they are reasonably able to give; and if an officer or an agent of the company refuses to produce any books or documents which it is his duty under this article to produce, or refuses to answer any question which is put to him by an inspector with respect to the affairs of the company, an inspector shall refer the matter to the competent authority and the competent authority shall thereupon enquire into the case and take appropriate action as it deems necessary.

(5) An inspector shall also be given access to any accounts, returns or other information relating to an authorised company whose affairs are under examination which are in the possession or under the control of the competent authority.

(6) The competent authority shall have the power to order that all expenses of, and incidental to, an examination pursuant to this article or such part thereof as it may deem appropriate, shall be paid by the company concerned; and any sum so due shall be recoverable by the competent authority in the same manner as an administrative penalty imposed under this Act.

(7) In this article, any reference to officers or to agents shall include a reference to past as well as present officers or agents and the expression "agents", in relation to an authorised company, shall include an insurance agent, insurance manager or tied insurance intermediary, registered or enrolled under the Insurance Intermediaries Act, acting for the company, the bankers, the auditors and, in the case of a company authorised to carry on long term business, the actuary of the company, a person acting as an intermediary for the company and a person as may be prescribed by regulations made for the purposes of article 18.

Cap. 487.

31. (1) Without prejudice to the provisions of the Companies Act, relating to the entry and search of premises, any officer, employee or agent of the competent authority, on producing evidence of his authority, may enter premises occupied by a person on whom a notice has been served under article 29 or whose affairs are being investigated under article 30, for the purpose of obtaining there the information or documents required by that notice, or otherwise for the purpose of the examination, and of exercising any of the powers conferred by the said articles.

Right of entry to obtain information and documents.
Cap. 386.

(2) Where any officer, employee or agent of the competent authority has reasonable cause to believe that if such notice as is referred to in subarticle (1) were served it would not be complied with or that any documents to which it could relate would be removed, tampered with or destroyed, such person may, on producing evidence of his authority, enter any premises referred to in subarticle (1) for the purpose of obtaining there any information

or documents specified in the authority, being information or documents that could have been required under such notice as is referred to in subarticle (1).

(3) For the purposes of any action taken under the provisions of this article, the competent authority may request the assistance of the Commissioner of Police, who may for such purpose exercise such powers as are vested in him for the prevention of offences and the enforcement of law and order:

Provided that where an entry as is mentioned in this article involves premises that are occupied for the purpose of habitation, such entry shall be carried out in the presence of an officer of the Police of a rank not below that of inspector and shall moreover not take place between nine in the evening and five in the morning.

Power to issue directives.
Added by:
XII. 2006.96.

31A. (1) Without prejudice to any of the powers conferred to it under this Act, the competent authority may, whenever it deems it necessary, give, by notice in writing, such directives as it may deem appropriate in the circumstances, and any person to whom or to which the notice is given shall obey, comply with and otherwise give effect to any such directive within the time and in the manner stated in the directive.

(2) The power to give directives under this article shall include the power to vary, alter, add to or withdraw any directive, as well as the power to issue new or further directives.

(3) Where the competent authority is satisfied that the circumstances so warrant, it may at any time make public any directive it has given under any of the provisions of this article.

Business statements.
Amended by:
XII. 2006.97.

32. (1) Subject to the following subarticles, an authorised company which in any calendar year carries on business of insurance shall, in respect of the business of insurance so carried on by it, forward to the competent authority a statement relating to that business made out in the form, manner and content as the competent authority may by an insurance rule made for the purpose of this article determine; and the date by which such statement shall be forwarded shall also be established by that rule.

(2) The statement required to be furnished under this article shall be verified in the manner required by the insurance rule.

(3) The competent authority may at any time direct an authorised company to forward to it such statement at such interval and for such period as may be specified in the rule.

PART VIII

TRANSFER OF BUSINESS OF INSURANCE

Transfer of general business.
Amended by:
XX. 2007.130.

33. (1) Where it is proposed to carry out a scheme under which a company authorised under this Act ("the transferor"), is to transfer to another company, whether authorised thereunder or not ("the transferee") all its rights and obligations under such general business policies, or general business policies of such descriptions, as may be specified in the scheme, and -

- (a) where the transferor is a company whose head office is in Malta, the performance by it of the obligations proposed to be transferred constitutes the carrying on of business of insurance in or from Malta or in or from a country outside Malta; or
- (b) where the transferor is a company whose head office is in a country outside Malta, the performance by it of the obligations proposed to be transferred constitutes business of insurance in or from Malta,

the transferor shall apply to the competent authority for its approval of the scheme.

(2) The competent authority shall not determine an application made under subarticle (1) unless it is satisfied that -

- (a) a notice approved by it for the purpose has been published -
 - (i) in at least two local daily newspapers of which one is published in the Maltese language and the other in the English language; and the text of the notice shall be in Maltese in the Maltese daily and in English in the English daily;
 - (ii) where the transferor is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta, in two daily newspapers in the country where the risk is situated;
- (b) except in so far as the competent authority has otherwise directed, a copy of the notice has been sent by the transferor to every policyholder affected by the scheme and every other person who claims an interest in a policy included in the proposed transfer and has given notice of his claim to the transferor;
- (c) copies of a statement setting out particulars of the transfer and approved for the purpose by the competent authority have been available for inspection -
 - (i) at each of the branches, agencies and offices of the transferor in Malta;
 - (ii) where the transferor is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta, at one or more places in the country where the risk is situated,

for a period of not less than thirty days beginning with a date to be determined by the competent authority.

(3) The notice referred to in subarticle (2) shall include a statement that written representations concerning the transfer may be sent to the competent authority within a period to be specified by the competent authority; and the competent authority shall not determine the application until after considering any representations made to it before the specified day.

(4) The competent authority shall not approve a transfer on an application made under subarticle (1) unless it is satisfied that -

- (a)
 - (i) the transferee is, or immediately after the approval will be, authorised under article 7 to carry on general business of the class or classes or part classes to be transferred under the scheme;
 - (ii) the transferee is, or immediately after the approval will be, authorised under article 6 or article 23 of First Council Directive of 24 July 1973 on the co-ordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC) to carry on general business of the class or classes or part classes to be transferred under the scheme in a Member State or EEA State; or
 - (iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee has the authorisation required to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred, or will have it before the scheme takes effect; and
- (b)
 - (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;
 - (ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under Articles 16a, 25 or 26 of the First Council Directive of 24 July 1973 on the co-ordination of laws, Regulations, and administrative provisions relating to the taking up and pursuit of direct insurance other than life assurance (73/239/EEC); or
 - (iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred; and
- (c)
 - (i) if the transferee is a company authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil

- the other obligations required of it by, or under, this Act; or
- (ii) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred; and
- (d) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State -
- (i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and
 - (ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed;
- (e) if the transferor is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, the risk is a risk situated outside Malta -
- (i) the overseas regulatory authority in the country where the risk is situated has been notified of the proposed transfer; and
 - (ii) either the overseas regulatory authority has consented to the transfer or the overseas regulatory authority has not refused its consent to the transfer within the period of three months beginning with the date of the notification.
- (5) On determining an application made under subarticle (1), the competent authority shall -
- (a) publish a notice of its decision in the Gazette and in such other manner as it may think fit; and
 - (b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in subarticle (2),

and if it refuses the application it shall inform the transferor and the transferee in writing of the reasons for its refusal.

34. (1) Subject to subarticle (2), a scheme giving effect to a transfer approved by the competent authority under article 33 shall be effectual in law -

- (a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the transfer scheme; and
- (b) if the scheme so provides, to secure the continuation

Effect of approval under article 33.

by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,

notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

(2) Except in so far as the competent authority may otherwise direct, a policyholder whose policy is included in such a scheme shall not be bound by the scheme unless he has been given written notice of its carrying out by the transferee.

Transfer of long term business.
Amended by:
XX. 2007.131.

35. (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by a company authorised under this Act ("the transferor company"), is to be transferred to another company whether authorised thereunder or not ("the transferee company"), and -

- (a) where the transferor company is a company whose head office is in Malta, the business proposed to be transferred is business carried on in or from Malta or in or from a country outside Malta;
- (b) where the transferor company is a company whose head office is in a country outside Malta, the business proposed to be transferred is business carried on in or from Malta,

the transferor company or the transferee company shall, by application filed before the Financial Services Tribunal, request approval of the scheme. Approval by the Tribunal shall be in accordance with the provisions of this article.

(2) The Tribunal shall not determine an application filed before it under subarticle (1) unless -

- (a) the application is accompanied by a report on the terms of the scheme by an independent actuary; and
- (b) the Tribunal is satisfied that the requirements of subarticle (3) have been complied with.

(3) The requirements referred to in subarticle (2)(b) are -

- (a) a notice stating that the application has been made and giving the addresses of the branches, agencies and offices at which, and the period for which, copies of the documents mentioned in paragraph (d) will be available as required by that paragraph has been published -
 - (i) in at least two local daily newspapers of which one is published in the Maltese language and the other in the English language; and the text of the notice shall be in Maltese in the Maltese daily and in English in the English daily;
 - (ii) where the transferor company is a company which carries on business from Malta or in or from a country outside Malta and, as regards any

policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, in two daily newspapers in that country;

- (b) except in so far as the Tribunal has otherwise directed, a statement -
- (i) setting out the terms of the scheme, and
 - (ii) containing a summary of the report mentioned in subarticle (2)(a) sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term business policyholders of the companies concerned,

has been sent to each of those policyholders and every other person who claims an interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor company;

- (c) a copy of the application, of the report mentioned in subarticle (2)(a) and of any statement sent out under paragraph (b) of this subarticle has been served on the competent authority and that a period of not less than thirty days has elapsed since the date of service; and
- (d) copies of the application and of the report mentioned in subarticle (2)(a) have been open to inspection -
- (i) at each of the branches, agencies and offices in Malta of the companies concerned;
 - (ii) where the transferor company is -
 - (aa) a company whose head office is in Malta which carries on business from Malta or in or from a country outside Malta, or
 - (bb) a company whose head office is in a country outside Malta which carries on business from Malta,

and, as regards any policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, at such place in that country as the Tribunal has directed; for a period of not less than thirty days beginning with a date to be determined by the Tribunal; and that copies of the report have been made available for purchase from those offices and places during that period upon payment of such fee as may be fixed by the Tribunal.

- (4) On any application filed under subarticle (1) -
- (a) the competent authority; and
 - (b) any policyholder who alleges that he would be adversely affected by the carrying out of the scheme,

shall be entitled to make written representations.

- (5) Subject to subarticle (6), the Tribunal shall not approve a

transfer on an application filed before it under subarticle (1) unless it is satisfied that -

- (a)
 - (i) the transferee company is, or immediately after the approval will be, authorised under article 7 to carry on long term business of the class or classes to be transferred under the scheme;
 - (ii) the transferee company is, or immediately after the approval will be, authorised under article 4 or article 51 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance, to carry on long term business of the class or classes to be transferred under the scheme in a Member State or an EEA State; or
 - (iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee has the authorisation required to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and
- (b) the transferee company produces evidence that -
 - (i)
 - (aa) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under this Act;
 - (bb) after taking the transfer into account, it possesses the margin or margins of solvency required to be maintained under article 28, 55 or 56 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance; or
 - (cc) if the transferee does not fall within indents (aa) and (bb), the transferee possesses, or will possess before the scheme takes effect, the margin or margins of solvency required under the law applicable in the place to which the business is being transferred;
 - (ii)
 - (aa) if the transferee company is authorised under this Act, its financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, this Act; or
 - (bb) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by, or under, the law applicable in the place to which the business is being

transferred;

- (c) if the transferor is a company whose head office is in Malta, and the establishment from which the policies are to be transferred is situated in a Member State or EEA State -
- (i) the overseas regulatory authority in that Member State or EEA State has been consulted about the proposed transfer; and
 - (ii) the overseas regulatory authority has either responded or the period of three months beginning with the consultation has elapsed.

(6) Where the transferor company is a company which carries on business from Malta or in or from a country outside Malta and, as regards any policy included in the proposed transfer which evidences a contract of insurance, a country outside Malta is the country of the commitment, the Tribunal shall not approve the transfer unless the competent authority certifies -

- (a) that the overseas regulatory authority in that country has been notified; and
- (b) either that the authority has consented to the scheme or that the authority has not refused its consent to the scheme within the period of three months beginning with the date of the notification.

(7) Where a scheme is approved by the Tribunal under this article the transferee company shall, within ten days from the date on which the approval is made or such longer period as the competent authority may allow, deposit two office copies of the approval with the competent authority.

36. Where the Tribunal approves a scheme under article 35, the long term business referred to in the application may be transferred to the transferee without any further need of any document evidencing the consent of the policyholder and of every other person who claims an interest in a policy included in the proposed transfer and notwithstanding any opposition by the policyholder and every other person who claims an interest in a policy included in the proposed transfer. The Tribunal may make provision for such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out; and, where such be the case, for the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company which relate to the scheme.

Provisions supplementary to article 35.

37. (1) Subject to subarticle (2), this Part of the Act shall not apply to business of reinsurance.

Exemption under this Part.

Amended by:
XVII. 2002.254.

Deleted by:
XII. 2009.98.

Added by:
XX. 2007.132.

(2) Where a company authorised under this Act carrying on business restricted to reinsurance ("the transferor") proposes to transfer all or part of its business, the competent authority shall not approve a transfer unless it is satisfied that:

- (a) (i) the transferee is, or immediately after the approval will be, authorised under article 7 to

- carry on business of reinsurance;
- (ii) the transferee is, or immediately after the approval will be, authorised under article 4 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EEC and 2002/83/EC, to carry on in a Member State or an EEA State, business of reinsurance to be transferred under the scheme; or
 - (iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee has the authorisation required (if any) to enable the business, or part which is to be transferred, to be carried on in the place to which it is to be transferred or will have it before the scheme takes effect; and
- (b)
- (i) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under this Act;
 - (ii) the transferee possesses, after taking the proposed transfer into account, the margin or margins of solvency required to be maintained under articles 37 to 39 of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC and Directives 98/78/EC and 2002/83/EC; or
 - (iii) if the transferee does not fall within subparagraphs (i) and (ii), the transferee satisfies the solvency requirements required of it by, or under, the law applicable in the place to which the business is being transferred;
- (c)
- (i) if the transferee is a company authorised under this Act, the transferee's financial resources are, consequential to the transfer, adequate to fulfil the other obligations required of it by or under this Act;
 - (ii) if the transferee is a company whose head office is in a country outside Malta, the transferee's financial resources are, consequential to the transfer, adequate to fulfil (if any) the other obligations required of it by, or under, the law applicable in the place to which the business is being transferred.

PART IX

ACQUISITION AND DISPOSAL OF SHARES, WITHDRAWAL,

DISSOLUTION AND WINDING UP

38. (1) Notwithstanding anything contained in any other law, the consent of the competent authority given in writing shall be required before any person may lawfully -

Participation in an authorised company.
Amended by:
XVII. 2002.255;
XIII. 2004.116;
XII. 2006.99;
XX. 2007.133.

- (a) acquire, directly or indirectly, a qualifying shareholding in an authorised company;
- (b) increase, directly or indirectly, an existing holding which is not a qualifying shareholding so as to cause it to become a qualifying shareholding in an authorised company;
- (c) increase, directly or indirectly, a qualifying shareholding so as to cause it to equal or exceed, twenty per centum or thirty-three per centum or fifty per centum or to cause the authorised company to become that person's subsidiary;
- (d) reduce, directly or indirectly, a qualifying shareholding so as to cause it to fall below fifty per centum or thirty-three per centum or twenty per centum or to cause the authorised company to cease to be that person's subsidiary;
- (e) reduce, directly or indirectly, a qualifying shareholding so as to cause it to cease to be a qualifying shareholding;
- (f) divest itself, directly or indirectly, of a qualifying shareholding.

(2) If the person acquiring a qualifying shareholding is an insurance undertaking, reinsurance undertaking, a credit institution or an investment firm authorised in a Member State or an EEA State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the person acquiring such shareholding, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12a of Council Directive 73/239/EEC of 24 July 1973 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance and Article 12a of Council Directive 79/267/EEC of 5 March 1979 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance, as amended from time to time.

(3) Subarticle (1) shall apply whether or not any of the relevant shares are shares listed on any recognised investment exchange.

(4) It shall be the duty of an authorised company and of the directors thereof to notify the competent authority forthwith upon becoming aware that any person intends to take any of the actions set out in subarticle (1).

(5) Notwithstanding anything contained in any other law, the

consent of the competent authority given in writing shall be required before any authorised company may lawfully -

- (a) merge with any other company, whether authorised under this Act or not;
- (b) undergo any reconstruction or division;
- (c) increase or reduce its nominal or issued share capital or effect any material change in voting rights.

(6) It shall be the duty of all directors and qualifying shareholders of an authorised company to notify the competent authority forthwith upon becoming aware that the company intends to take any of the actions set out in subarticle (5).

(7) Any person intending to take any of the actions set out in subarticle (1) and any authorised company intending to take any of the actions set out in subarticle (5) shall notify the competent authority in writing and the competent authority may issue, for the purpose of this article, an insurance rule determining the form in which such notification shall take place and the information required to be furnished to the competent authority with such notification; and the competent authority upon a notification by a person intending to take any action set out in subarticle (1)(a) to (c), when, determining what action to take in accordance with this article, upon such notification, determine whether such person is a fit and proper person.

(8) Within three months of receipt of such notification or receipt of such information as the competent authority may lawfully require, whichever be the later, the competent authority shall issue a notice -

- (a) granting unconditional consent to the taking of the action; or
- (b) granting consent to the taking of the action subject to such conditions as the competent authority may deem appropriate; or
- (c) refusing consent to the taking of the action,

and if it refuses to grant consent it shall inform the person or the authorised company concerned in writing of the reason for its refusal.

(9) If any person or any authorised company takes or intends to take any action set out in subarticles (1) and (5) without obtaining the consent of the competent authority, then, without prejudice to any other penalty which may be imposed under this Act, the competent authority shall have the power to make an order -

- (a) restraining the person or company from taking, or continuing with, the action;
- (b) declaring the action to be void and of no effect;
- (c) requiring the person or company to take such steps as may be necessary to restore the position existing immediately before the action was taken;

- (d) restraining the person or company from exercising any rights which the action would, if lawful, have conferred upon them, including the right to receive any payment or to exercise any voting rights attaching to the shares acquired;
- (e) restraining the person or company from taking any similar action or any other action within the categories set out in subarticles (1) and (5).

(10) In the case of a company whose head office is in a country outside Malta authorised under this Act to carry on in or from Malta the business of insurance, the provisions of this article shall apply to the extent only of requiring the company to give to the competent authority, not later than thirty days from such change or occurrence, as the case may be, the information therein referred to.

(11) Without prejudice to any other provision of this Act, where the influence exercised by any person holding a qualifying shareholding is, or is likely to, operate against the sound and prudent management of an authorised company, the competent authority may exercise any of its powers under this Act, including the power to issue directives as it may deem reasonable in the circumstances.

39. (1) Subject to the following provisions of this article, if an authorised company intends to cease either wholly or partly to carry on the business it is authorised to carry on, such company shall, not later than six months before the date on which it intends to cease to carry on such business, give notice thereof in writing to the competent authority and the company shall comply with any provision of this Act that may be required of it in such circumstances.

Companies ceasing to carry on business.
Amended by:
XVII. 2002.256;
XII. 2006.100.

(2) Where an authorised company gives notice to the competent authority under subarticle (1), the competent authority -

- (a) shall require the company to -
 - (i) give publicity to the matter, amongst its policyholders and in the press in the form and manner as may be determined by an insurance rule made for the purpose of this article;
 - (ii) discharge all its liabilities to its policyholders and creditors in a manner acceptable to the competent authority;
 - (iii) appoint a person which shall service or, as the case may be, run-off such business; and
- (b) may require the company to -
 - (i) ascertain that its technical provisions are covered by equivalent and matching assets;
 - (ii) ascertain that such assets are of the categories determined by any applicable insurance rule.

(3) The competent authority shall, not later than thirty days before the proposed date on which a company as aforesaid intends to cease to carry on the business it is authorised to carry on, issue a

permit to the company concerned -

- (a) authorising it to cease to carry on such business and to service or run-off that business, as from a specified date;
- (b) specifying the conditions under which such service or run-off shall be carried out; and
- (c) authorising a person to carry out such service or run-off.

Companies carrying out servicing or run-off of business of insurance.

40. Every company issued under article 39 with a permit authorising it to cease to carry on the business it is authorised to carry on shall not, as from the date specified in the permit ("the specified date"), effect and carry out any new contracts of insurance in the business mentioned in the permit but shall -

- (a) in the case of long term business, service or cause the person named in the permit to service on its behalf;
- (b) in the case of general business run-off or cause the person named in the permit to run-off on its behalf,

contracts of insurance effected and carried out by it before the specified date.

Dissolution and winding up of authorised companies
Amended by:
XVII. 2002.257;
XIII. 2004.117;
XX. 2007.134.

41. (1) Without prejudice to the provisions contained in article 42 and subject to the following provisions of this article, any company authorised to carry on the business of insurance shall -

- (a) in the case of a company whose head office is in Malta, dissolve and consequentially wind up under and in accordance with regulations made under this article; and
- (b) in the case of a company whose head office is in a country outside Malta, dissolve and wind up under and in accordance with the provisions of the laws of the country where the head office of such company is situated governing the dissolution and winding up of such companies.

(2) Where it appears to the competent authority that an authorised company is, for any reason whatever, likely to dissolve and wind up, or has given notice of dissolving and winding up, or is being dissolved and wound up, the competent authority shall -

- (a) in the case of a company whose head office is in Malta, prohibit the free disposal of the assets of the company whether such assets are situated in Malta or in country outside Malta; and
- (b) in the case of a company whose head office is in a country outside Malta, prohibit the free disposal of the assets of the company situated in Malta or in any other country if such assets relate to the company's business in Malta,

if such prohibition has not been imposed on the company by virtue of or under any other provision of this Act.

(3) Notwithstanding the provisions of any other law, the assets of a company which are prohibited under subarticle (2) or by virtue of or under any other provision of this Act to be freely disposed of shall be available only for meeting the liabilities of the company attributable to its business of insurance:

Provided that debts and other liabilities arising out of contracts of insurance attributable to its business of insurance shall rank before any other claim against such assets.

(4) Where the value of the assets mentioned in subarticle (3) exceeds the amount of the liabilities mentioned in that subarticle the restriction imposed by that subarticle shall not apply to so much of those assets as represents the excess.

(5) In so far as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall prevail, and the provisions of any other law shall, to the extent of the inconsistency, not apply to such companies.

(6) The Minister may, after consultation with the competent authority, make regulations in respect of the winding-up or re-organisation of companies whose head office is in Malta, including their branches, if any, and of branches of companies whose head office is outside of Malta, and different provisions may be made for different cases or classes of cases, and account shall be taken of Malta's international commitments in this regard. Such regulations may provide for the implementation of detailed re-organisation measures and procedures, including the following matters: the publication and submission of information in such language or languages and in such newspapers or other publications as may be prescribed, the submission of information to creditors, and the manner and procedure thereof, the notification to creditors and the procedure for the submission of claims or representations, measures for the protection of the rights of creditors and other third parties, including set-off arrangements; consultation between the competent authority and any other regulatory, administrative or judicial authorities in Malta and outside Malta with competence over the winding-up or re-organisation of such companies or of branches thereof; the publication of decisions relating to such winding-up or re-organisation procedures; the establishment of rules governing the applicability of the proper or applicable law and other issues of conflict of laws.

42. (1) No company whose head office is in Malta authorised under this Act to carry on long term business shall be dissolved and consequentially wound up voluntarily.

Dissolution and winding up of authorised companies with long term business.

(2) Without prejudice to the provisions contained in article 41, in the event of a company as aforesaid being dissolved and wound up -

- (a) the assets representing the technical provisions maintained by the company in respect of its long term business shall be available only for meeting the liabilities of the company attributable to that business;
- (b) the other assets of the company shall be available only

for meeting the liabilities of the company attributable to its other business.

(3) Where the value of the assets mentioned in either subarticle (2)(a) or (2)(b) exceeds the amount of the liabilities mentioned in either paragraph the restriction imposed by that subarticle shall not apply to so much of those assets as represents the excess.

PART X

CONDUCT OF BUSINESS OF INSURANCE

Changes in documentation or information.
Amended by:
XVII. 2002.258;
XII. 2006.101.

43. (1) The holder of an authorisation issued under this Act to carry on the business of insurance and the holder of a permit issued thereunder to service or run-off that business shall notify in writing the competent authority of any material changes in the documentation provided or required to be provided by or under this Act and any regulations made thereunder, or any insurance rule, as soon as the holder becomes aware of such changes.

(2) Without prejudice to article 38, a company whose head office is in Malta authorised under this Act shall -

- (a) before making any addition or alteration to the memorandum or articles of association or other instrument constituting the company, submit in writing to the competent authority particulars of the proposed addition or alteration for its prior consent; and no such addition or alteration shall be made or shall be registered, or shall take effect, whether it is registered or not, unless and until the competent authority has signified its consent in writing; and
- (b) inform the competent authority of the names of the persons holding a qualifying shareholding in the company and the percentage of such holding; and the competent authority may, by an insurance rule made for the purposes of this article, determine the form, manner and content of the information to be forwarded to it and the date by which such information shall be forwarded shall also be established by that rule.

(3) Without prejudice to the foregoing provisions of this article, an authorised company shall notify the competent authority on a continuous basis, with any change or circumstances which may give rise to the existence of close links within the meaning of article 8.

Statutory notice by authorised companies in relation to long term policy.
Amended by:
XIII. 2006. 102

44. (1) No company authorised under this Act to carry on long term business shall enter into a contract of insurance the effecting of which constitutes the carrying on of long term business, unless such company either -

- (a) has served on the other party to the contract by means as may be prescribed a statutory notice in relation to that contract; or
- (b) does so at the time when the contract is entered into.

(2) Regulations under this article may be made with respect to any matter related to a statutory notice; and the regulations may exempt from any requirement contracts as may therein be prescribed.

(3) For the purposes of this article a statutory notice is a notice which -

- (a) contains such matters (and no others) and is in such form as may be prescribed and complies with such requirements as may be prescribed for securing that the notice is easily intelligible; and
- (b) has annexed to it a form of notice of cancellation of a description as may be prescribed for serving by means as may be prescribed a notice of cancellation on the authorised company.

45. Regulations may be made, as respects the matters as may therein be prescribed, in relation to contracts of insurance the effecting of which constitutes the carrying on of long term business and which -

Linked long term policies.

- (a) are entered into by a company whose head office is in Malta authorised under this Act to carry on long term business; and
- (b) are contracts under which the benefits payable to the policyholder are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contract) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).

46. No contract of insurance shall be held void or voidable by an insurer by reason only that, at the time the contract is entered into, there is a breach of any provision of this Act or of the Insurance Intermediaries Act, (in this article referred to as "the Act") and of any regulations made under this Act or under the Act or of any insurance rule issued in virtue of this Act or any insurance intermediaries rule issued in virtue of the Act.

Contracts of insurance not voidable by insurer notwithstanding a breach of this Act or of the Insurance Intermediaries Act.
Substituted by:
XII. 2006.103.
Cap. 487.

47. (1) The competent authority may by an insurance rule made for the purpose of this article determine the language in which a contract of insurance relating to a risk which is a risk situated in Malta or to a commitment where Malta is the country of the commitment of a class or classes or part classes of business as may therein be specified is to be expressed.

Contracts to be expressed in a specified language.
Amended by:
XVII. 2002.259;
XII. 2006.104.

(2) In the absence of any such insurance rule, the contract shall be expressed in the English language.

(3) The provisions of this article shall not apply to a company whose business in or from Malta is restricted to reinsurance.

Insurance advertisements.
Amended by:
XVII. 2002.259;
XII. 2006.105.

48. (1) No company authorised under this Act shall issue or cause to be issued in Malta any advertisement or carry out or cause to be carried in Malta any promotional activity related to the business of insurance which misleads, or directly or by implication is likely to mislead, or deceive any prospective policyholder, or the insurance sector in general, or the general public with respect to its assets or corporate structure or financial standing or authorisation or any other material respect:

Provided that, in the case of a company whose head office is in Malta, the provisions of this subarticle shall also apply with respect to -

- (a) an advertisement issued or caused to be issued; and
- (b) a promotional activity as aforesaid carried out or caused to be carried out,

from Malta or in or from a country outside Malta.

(2) The competent authority may by an insurance rule made for the purposes of this article determine the form and content of insurance advertisements and make different provision in relation to insurance advertisements of different classes or part classes or descriptions; and the manner in which any promotional activity as aforesaid shall be carried out or caused to be carried out.

(3) The provisions of subarticle (2) shall not apply to a company if its business is restricted to reinsurance.

(4) Where a company issues or causes to be issued an advertisement or carries out or causes to be carried out any promotional activity which is in breach of or does not comply with any of the provisions of subarticle (1) or (2), the competent authority may issue an order directing the company -

- (a) to withdraw, wholly or partly, the advertisement or promotional activity; or
- (b) to amend any particular of the advertisement or promotional activity; or
- (c) to do such other thing as it deems appropriate in the circumstances.

(5) If a company refuses or fails to comply with any order issued by the competent authority under subarticle (4) or refuses or fails to comply with such order within the time specified therein, without prejudice to any penalty which the company may incur under this Act, the competent authority shall have the power to enforce, at the expense of the company concerned, the order issued by it under that subarticle.

Provisions relating to Lloyd's.
Added by:
XII. 2006.106.

48A. (1) For the purposes of the article:

- (a) "Lloyd's" means the society and corporation incorporated by Lloyd's Act, 1871, of the United Kingdom, and regulated by or under Lloyd's Acts, 1871 to 1982, of the United Kingdom or any other law from time to time amending or re-enacting the same;

(b) "syndicate" means a member or group of members of Lloyd's underwriting business of insurance at Lloyd's through the agency of a managing agent to which a particular syndicate number is assigned by or under the authority of the Council of Lloyd's.

(2) Lloyd's shall at all times have a representative in Malta who shall be resident in Malta and who shall be the representative in Malta of Lloyd's and of each of its members. The representative shall be designated by a letter addressed to the competent authority by the chairman of Lloyd's.

(3) The representative shall for the purposes of this Act be authorised to act generally as judicial representative of, and accept service of any document on behalf of, Lloyd's and of each of its members and to file any judicial acts in the registry of any court or similar authority in Malta on behalf of Lloyd's or any of its members. The general representative shall not be personally liable for the debts and obligations of Lloyd's or any of its members.

(4) It shall be sufficient in any judicial act (other than an application for the issue of any precautionary or executive warrant) filed by or against members of Lloyd's in connection with a policy underwritten by them to file the act in the name of the Lloyd's representative in Malta as representative of those members; provided the act contains a statement that it is being filed in connection with a policy of insurance underwritten by members of Lloyd's and giving particulars of the number reference and date of the policy in respect of which the act is filed, the identifying number of each of the syndicates subscribing thereto and, where known, the names of the members of Lloyd's comprising those syndicates. This subarticle shall apply notwithstanding any provision to the contrary contained in the Code of Organisation and Civil Procedure. Cap. 12.

(5) The Lloyd's representative shall within forty-five days after the filing by him of the judicial act, or of its service on him, as the case may be, file a note in the records of the judicial act filed as aforesaid containing a list of the names of the members comprising the syndicates subscribing to the policy and any such note shall be deemed to be an integral part of the judgment or decree emanating from the court subsequent to the judicial act and such judgment or decree shall be binding on the members whose names are listed in the note in the same manner as it would so have bound them if they has been named as parties to the said judicial act:

Provided that, the Lloyd's representatives shall not be bound to file any such note following the filing of any judicial act where particulars of the names of the members of Lloyd's comprising those syndicates are already contained in the act or where any such note has already been filed in the records of the case.

"Appointment of insurance intermediaries.
Added by:
XII. 2006.107.
Cap. 487.

48B. (1) Every authorised company shall utilise the services of insurance intermediaries which are:

- (a) enrolled under the Insurance Intermediaries Act; or
- (b) registered with a supervisory authority of a European insurance undertaking in a Member State or an EEA State.

PART XI

PROTECTION AND COMPENSATION FUND

Establishment of the Protection and Compensation Fund.
Amended by:
XVII. 2002.260;
XII. 2006.108.

49. There shall be established a fund, with such legal personality or otherwise, as may be prescribed, to be known and in this Act referred to as the "Protection and Compensation Fund" -

- (a) for the payment of any claims in respect of risks and of commitments as may be prescribed against a company authorised to carry on business of insurance in Malta, remaining unpaid by reason of the insolvency of such company, subject to such limitations, restrictions and exclusions as may be prescribed; and
- (b) for the payment of compensation to victims of road traffic accidents as may be prescribed subject to such limitations and restrictions as may be prescribed.

Contributions to the Fund.
Amended by:
XII. 2006.109.

50. (1) The Fund shall consist of all contributions made to it under this Act and any regulations made thereunder, and of all other assets and revenues pertaining to it.

(2) All companies authorised under this Act to carry on business of insurance in Malta shall contribute to the Fund in such amounts and to such limitations as shall be prescribed and different amounts and limitations may be prescribed with respect to different kinds of business of insurance or different classes or part classes thereof, or different kinds of authorised companies, or in view of other different circumstances.

Management of the Fund.

51. The Protection and Compensation Fund shall be managed and otherwise dealt with in accordance with regulations made for the purposes of this Act:

Provided that such regulations shall ensure that payments made into the Fund by companies authorised to carry on long term business shall be utilised for compensation with respect to long term business and shall be treated separately and utilised exclusively for compensation with respect to long term business, and payments made into the Fund by companies authorised to carry on general business shall also be treated separately and shall be utilised exclusively for compensation with respect to general business:

Provided further that no payment shall be made from the Fund to any person who is a shareholder in the insolvent company and holds twenty per centum or more of the issued shares of such company.

- 52.** No claim for payment of compensation shall be made out of the Fund unless such claim is made -
- (a) as respects a claim under article 49(a), within two years from the date the name of the company is struck off the register or such company is otherwise definitely wound up;
 - (b) as respects a claim under paragraph (b) of that article, within two years from the date of occurrence of the accident relating to that claim.

Prescription in respect of claims for payment out of the Fund.

- 53.** All contributions made to the Protection and Compensation Fund and any income of any funds belonging to the Fund shall be exempted from any liability for the payment of income tax under any law for the time being in force.

Exemptions from income tax.
Substituted by:
XVII. 2002.261.

- 54.** The Minister may, after consultation with the competent authority, make regulations to better implement the provisions of this Part, including the transposition of any requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure.

Power to issue regulations under this Part of the Act.
Amended by:
XVII. 2002.262.
Substituted by:
XII. 2006.110.

PART XII

GENERAL PROVISIONS

- 55.** (1) The competent authority may exercise the following powers at the request of or for the purposes of assisting an overseas regulatory authority:
- (a) the power to impose, revoke or vary conditions on the grant of an authorisation pursuant to the provisions of article 7(6);
 - (b) the power to revoke or suspend an authorisation under article 26;
 - (c) the power to take any action under article 28, in lieu of or in addition to any suspension or revocation of an authorisation;
 - (d) the power to require information and documentation under article 29;
 - (e) the power to appoint inspectors under article 30;
 - (f) the power of entry to obtain information and documentation under article 31; and
 - (g) the power to communicate to the overseas regulatory authority information in its possession, whether such information is the result of any of the above powers or otherwise.
- (2) The competent authority shall exercise powers by virtue of this article:
- (a) where the assistance is requested by the overseas regulatory authority for the purposes of the exercise of one or more of its regulatory functions; or
 - (b) where so required within the terms of Malta's

Co-operation in supervisory duties and sharing of information.
Substituted by:
XVII. 2002.263.

international commitments; or

- (c) where so required within the terms of undertakings assumed in bilateral or multilateral agreements for the exchange of information and other forms of collaboration with overseas regulatory authorities including a request under a memorandum of understanding concluded with the competent authority.

(3) There shall be meetings between an authorised company, its approved auditors, and, in the case of a company authorised to carry on long term business, its approved actuary and the competent authority on a bilateral or a multilateral basis as circumstances may warrant. Such meetings may be called by any of the parties, and shall in each case be chaired by the competent authority.

Communication by auditors, etc., with the competent authority.

56. (1) No duty (including the duty of professional secrecy) to which -

- (a) an auditor or an actuary of a company; or
(b) a person appointed to make a report under article 30(1),

may be subject, shall be regarded as contravened by reason of his communicating in good faith to the competent authority, whether or not in response to a request made by it, any information or opinion on a matter to which this article applies and which is relevant to any function of the competent authority under this Act.

(2) In relation to an auditor or an actuary of an authorised company, this article applies to any matter falling within article 24.

(3) In relation to a person appointed to make a report under article 30(1), this article applies to any matter of which he becomes aware in his capacity as the person making the report which relates to the business or affairs of the company in relation to which his report is made.

(4) If it appears to the competent authority that any accountants or class of accountants who are persons to whom subarticle (1) applies are not subject to satisfactory rules made or guidelines issued by a professional body specifying circumstances in which matters are to be communicated to the competent authority as mentioned in that subarticle, the competent authority may, after consultation with such bodies as appear to the competent authority to represent the interests of accountants and authorised companies, make rules for the purposes of this article, applying to those accountants and specifying such circumstances; and it shall be the duty of an accountant to whom the rules apply to communicate a matter to the competent authority in the circumstances specified by the rules.

The Financial Services Tribunal.
Amended by:
XVII. 2002.264.
Cap. 330.

57. (1) For the purpose of this Act, the term "Financial Services Tribunal" means the tribunal referred to in article 21 of the Malta Financial Services Authority Act, and the term "Tribunal" shall be construed accordingly:

Provided that for the purpose of proceedings arising under this Act the members appointed under article 21(4) of the Malta Financial Services Authority Act, shall be substituted by persons to be appointed by the Minister under this Act and who, in his opinion, possess the necessary expertise and experience in the business of insurance; and the provisions of article 21(5) to (7) of the said Act shall apply to the persons appointed pursuant to this proviso in the same manner and to the same extent as they apply to the members mentioned in article 21(2) of the said Act. Cap. 330.

(2) The Financial Services Tribunal shall, in addition to the functions and powers assigned to it under article 58, have the function and power to decide applications for transfer of long term business filed before it under this Act.

(3) Upon determining an application for transfer of long term business, the Tribunal shall have the power to order the payment of costs and expenses by any party to the application.

(4) The provisions of article 21 of the Malta Financial Services Authority Act and of any regulations made thereunder shall, except in so far as any of them is incompatible with the provisions of this article or of article 35 or 58, apply to applications for transfer of long term business and appeals made to the Financial Services Tribunal under this Act: Cap. 330.

Provided that regulations made under subarticle (13) of the said article 21 may distinguish between procedures made for the purposes of the provisions of this Act and procedures made for the purposes of the provisions of the Malta Financial Services Authority Act. Cap. 330.

(5) The Minister may, for the purposes of this article, subject to article 35, make regulations governing the procedure for determining an application for transfer of long term business filed under that article, provided that in the absence of such regulations the Tribunal shall regulate its own procedure.

58. (1) Subject to the provisions of this article, any person who is aggrieved by a decision of the competent authority - Appeals.
Amended by:
XIII. 2004.118.

- (a) to refuse to issue an authorisation under articles 7, 13 or 21;
- (b) to impose any condition in an authorisation issued or held under articles 7, 13 or 21;
- (c) to suspend or revoke an authorisation under article 26, or under any regulation made under this Act;
- (d) to refuse an application for transfer of general business under article 33;
- (e) to issue any notice or make any order under article 38;
- (f) to impose an administrative penalty in respect of infringements as may be prescribed under article 67,

may appeal against the decision to the Financial Services Tribunal which shall have exclusive competence to hear appeals on the matters listed in this subarticle.

(2) An appeal under this article shall lie only on any of the following grounds -

- (a) that the competent authority has wrongly applied any of the provisions of this Act; or
- (b) that the decision of the competent authority constitutes an abuse of discretion or is manifestly unfair, provided that the discretion of the competent authority may not, so long as it has been exercised properly, be queried by the Tribunal.

(3) An appeal made under this article shall not suspend the operation of any decision from which the appeal is made:

Provided that, a decision to revoke an authorisation shall not become operative until the expiration of the period within which an appeal may be made under this article and, if an appeal is made within such period, the decision shall become operative on the date of the decision of the Tribunal dismissing the appeal or the date on which the appeal is abandoned.

Confidentiality.
Amended by:
XVII. 2002.265;
XII. 2006.111;
XX. 2007.135.

59. (1) Nothing in this Act shall authorise the competent authority to enquire or cause an enquiry to be made in an authorised company into the affairs of any individual policyholder of the authorised company except -

- (a) for the purpose of ensuring compliance with any of the provisions of this or of any other Act; or
- (b) where the policyholder's risk is large within the terms of the large risks regulations to be prescribed under article 64 and it believes that such a risk can be a threat to that company or to the insurance sector in general.

(2) Information obtained by the competent authority or by its officers, employees or agents, as well as by inspectors, auditors and experts engaged by the competent authority for the purposes of, or pursuant to, any of the provisions of this Act, or of any regulations made thereunder, or of any insurance rule, or in the discharge of any functions under any of the said provisions, shall be treated as confidential and protected by the duty of professional secrecy, and shall not be disclosed to any other person, except in the following cases:

- (a) where the information is disclosed with a view to the institution of, or otherwise for the purposes of, criminal proceedings or of any proceedings by the competent authority before any court under this Act;
- (b) where the information is disclosed with a view to enabling or assisting the competent authority in the performance or discharge of any of its functions under this Act;
- (c) where the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this article;

- (d) where a summary or collection of information is prepared or supplied in such a way as not to enable the identity of any person to whom the information relates to be ascertained;
- (e) where the information is disclosed to an auditor where such disclosure would assist the auditor in the exercise of his functions under articles 21 and 24;
- (f) where the information is disclosed to an actuary where such disclosure would assist the actuary in the exercise of his functions under article 23;
- (g) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in the exercise of their respective functions in terms of law; Cap. 345.
- (h) where the information is provided to such other local or overseas regulatory, judicial or enforcement authorities where such disclosure is required or requested for the pursuance of serious regulatory concerns or the detection, prevention or prosecution of criminal offences;
- (i) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an authorised company provided such information does not concern third parties involved in attempts to rescue such company, and to such overseas bodies responsible for the liquidation and bankruptcy of a person holding an authorisation or an equivalent licence from an overseas regulatory authority.

(3) Subject to the provisions of article 55, information obtained from an overseas regulatory authority may only be disclosed to another person, to another overseas regulatory authority or to any other third party with the prior approval of the authority which had provided the information.

(4) No person, including past and present officers or agents of an authorised company, shall disclose any information relating to the affairs of a company or of a policyholder of a company which he has acquired in the performance of his duties or the exercise of his functions under this Act except -

- (a) when authorised to do so under any of the provisions of this Act;
- (b) for the purpose of the performance of his duties or the exercise of his functions;
- (c) when lawfully required to do so by any court or under a provision of any law.

(5) In this article, any reference to officers or agents has the same meaning as is assigned to it in article 30(7).

Cap. 373. (6) When an officer or an employee of an authorised company has reason to believe that a transaction or a proposed transaction could involve money laundering, he shall act in accordance with regulations laid down under the Prevention of Money Laundering Act and any guidelines issued by the competent authority. Compliance with the provisions of this subarticle shall not constitute a breach of confidentiality.

Communication of confidential information.
Amended by:
XX. 2007.136.
Cap. 377.
Cap. 9.

60. (1) Notwithstanding the provisions of the Professional Secrecy Act, article 257 of the Criminal Code shall not affect or prevent the exchange of information about policies, policyholders or potential policyholders -

- (a) amongst companies authorised to carry on the business of insurance ("insurers");
- (b) amongst companies or persons registered or enrolled under the Insurance Intermediaries Act ("intermediaries");
- (c) between insurers and intermediaries;
- (d) between insurers, or intermediaries, or insurers and intermediaries, and the Commissioner of Police,

Cap. 487.

provided that such exchange is compatible with or reasonably required for the purpose of preventing, detecting or suppressing insurance fraud.

(2) For the purposes of this article, "insurers" includes the insurance agents and insurance managers of the insurers.

Service of notices, etc.
Amended by:
XII. 2006.112;
XX. 2007.137.

61. A notice or other document to be given or served under this Act or any regulations made thereunder shall be deemed to have been duly given or served on a person if -

- (a) it has been delivered to him; or
- (b) it has been left at the address furnished by him to the competent authority, or at his last known address; or
- (c) it has been sent to him by post or by telefax at any of the aforesaid addresses; or
- (d) in the case of a commercial partnership registered in Malta, it has been delivered, sent by post or by telefax, or left at the registered office, or the last known registered office, of that commercial partnership; or
- (e) in the case of any other body of persons, whether corporate or unincorporate, it has been given or served in any of the manners aforesaid to or on an officer, or a clerk of that body or to or on the person designated by that body under article 11(1)(d)(i) or article 48A(2), as the case may be;

and the expression "officer", in relation to a body of persons shall include an insurance agent, an insurance manager, or a person, other than an insurance agent or an insurance manager, authorised to act for that body of persons in the same manner and to the same extent as an insurance agent.

62. (1) Regulations may be made under this Act providing for -
- (a) a body corporate, registered, incorporated or constituted in a country outside Malta, which is similar in nature to a company as known under the laws of Malta and which would, if it were such a company, qualify to be authorised under this Act as a company carrying on business of insurance, to be continued as a company carrying on business of insurance under the Companies Act and under this Act; and
- (b) a company carrying on business of insurance authorised under this Act to be continued as a body corporate registered, incorporated or constituted under the laws of a country outside Malta, in either case by complying with the regulations;

Continuance of companies carrying on business of insurance, insurance manager or insurance broker.
 Amended by:
 XVII. 2002.266;
 XIII. 2004.119;
 XII. 2006.113.
 Cap. 386.

and the Companies Act shall, in respect of such bodies corporate or companies carrying on business of insurance, have effect accordingly. Cap. 386.

(2) Regulations under this article may provide that continuance as aforesaid may only take place if -

- (a) it is within the power of such body or company so to continue;
- (b) the continuance is, in either case, approved in such manner as may be prescribed,

and the regulations may further provide that the continuance of a company carrying on business of insurance as a body corporate under a foreign jurisdiction shall not take place unless -

- (i) such continuance (or similar process, including conversion) is permitted by the law of such foreign jurisdiction and is in accordance with such provisions thereof as may bring about such continuance (or similar process); and
- (ii) such continuance (or similar process) will operate the continuation of the corporate existence of the company as, or its conversion into, a body corporate which will continue to retain or will succeed to all assets, rights and liabilities of the company.
- (3) (a) The provisions of the foregoing subarticles shall also apply, *mutatis mutandis* to companies enrolled to act as insurance managers and companies enrolled to carry on the business of insurance broking under the Insurance Intermediaries Act, and accordingly references in this article to "authorised" and to "business of insurance" shall be deemed to include references to "enrolled" and "activities of companies enrolled as insurance managers and business of insurance broking", respectively.
- (b) In this subarticle reference to the "company" shall

Cap. 487.

include reference to a "partnership en commandite" or to a similar or equivalent body corporate the capital of which is divided into shares.

Cap. 386. (4) The provisions of this article and of any regulations made thereunder shall prevail over anything to the contrary contained in the Companies Act, or regulations made thereunder, with respect to continuance of companies.

Valuation regulations.

63. (1) Regulations may be made with respect to the determination of the value of assets and the amount of liabilities in any case in which the value or amount is required by any provision of this Act to be determined in accordance with valuation regulations.

(2) Without prejudice to the generality of subarticle (1), regulations under this article may provide that, for any specified purpose, assets or liabilities of any specified class or description shall be left out of account or shall be taken into account only to a specified extent.

(3) Regulations under this article may make different provision in relation to different cases or circumstances.

Minister's power to make regulations.
Amended by:
XVII. 2002.267;
XIII. 2004.120;
XII. 2006.114;
XX. 2007.138.

64. (1) The Minister may, after consultation with the competent authority, make regulations to give effect to the provisions of this Act and to amend or revoke any schedule thereto and may amend or revoke such regulations; and without prejudice to the generality of the foregoing, the Minister may, by such regulations, in particular, make provision in respect of any one or more of the following matters:

- (a) any matter relating to or connected with the business of insurance or contracts of insurance;
- (b) the requirements, duties or conditions to be observed by any company authorised under this Act for the sound and prudent management of its activities;
- (c) provide for and regulate the payment by any person, body or cell created by a cell company, as the case may be, of any fees, duties and such other charges payable to the competent authority in respect of any matter provided for, by or under this Act or any regulations made under this article;
- (d) the categories of assets required to be maintained under this Act;
- (e) the determination and regulation of large risks;
- (f) any matter relating to or connected with any provision contained in the Schedules;
- (g) any matter that may or is to be prescribed under any provision of this Act;
- (h) any matter incidental to or connected with any of the above;
- (i) the penalties or other punishments to which persons

contravening or failing to comply with any provision of any regulation made as aforesaid shall become liable, being penalties not exceeding forty thousand liri, in respect of any offence and in respect of a continuing offence of a further penalty not exceeding one hundred liri for each day during which the offence continues.

(2) Except where any regulation made under this Act provides for a lesser penalty, any person acting in contravention of or failing to comply with or otherwise observe any such regulation shall be liable to a penalty of not less than one hundred liri and not exceeding forty thousand liri, in respect of each offence and in the case of a continuing offence to a further penalty not exceeding one hundred liri for each day during which the offence continues.

(3) The Minister may, after consultation with the competent authority, make regulations for the transposition of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investments firms in a financial conglomerate, as may be applicable to insurance undertakings.

(4) The Minister may, after consultation with the competent authority, make regulations providing for the determination and regulation of any matter which relates to finite reinsurance activities, including mandatory conditions for inclusion in all finite reinsurance contracts, and prescribing the accounting, prudential and statistical information requirements providing for the establishment of technical provisions, the margin of solvency and the minimum guarantee fund requirements that a reinsurance undertaking shall maintain in respect of finite reinsurance activities.

(5) The Minister may, after consultation with the competent authority, make regulations providing for the establishment of special purpose vehicles within the meaning of Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC, as well as Directives 98/78/EC and 2002/83/EC, including the conditions under which the activities of such vehicles shall be carried on.

(6) The Minister may, after consulting the competent authority, make regulations exempting any person or any class or classes or part classes of business of insurance, from all or any of the provisions of this Act or of any regulations made thereunder, subject to such conditions or requirements including the requirement of other forms of authorisation and notification procedures as may be prescribed.

(7) The Minister may, after consultation with the competent authority, make regulations to better implement the provisions of this Act, including the transposition of any requirement or provision as may arise under a Directive, Regulation or Decision of the European Union or any other similar measure relevant for the

purposes of this Act.

(8) Regulations may be made under this article with regards to any matter related to a transfer of business of insurance; and the regulations may make such exemptions, conditions, modifications as may be specified therein in respect of different circumstances or purposes.

(9) Regulations made under this article may make such exemptions, conditions or modifications as may be specified therein in respect of different cases, circumstances or purposes and may give the competent authority such power of adaptation of the regulations as may be specified therein.

(10) The exercise of any of the powers assigned under this article shall be subject to any obligations or restrictions arising from Malta's international commitments.

(11) Regulations made under this Act and any amendment or revocation of such regulations, may be published in the English language only.

Exemption under
Duty on
Documents and
Transfers Act.
Amended by:
XX. 2007.139.
Cap. 364.

65. No duty shall be chargeable under the Duty on Documents and Transfers Act, or under any enactment replacing that law, on any contract of insurance relating to a risk situated outside Malta.

Exclusion of
liability.
Amended by:
XII. 2006.115.

66. The competent authority and any member, officer or employee of the competent authority, and any body established by this Act, and any member, officer or employee of that body, and any other person appointed to perform a function under this Act or any regulations made thereunder, shall not be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Act or any regulations aforesaid, unless the act or omission is shown to have been done or omitted to be done in bad faith.

Offences and
penalties.
Amended by:
XII. 2006.116;
XX. 2007.140.

67. (1) Any person who contravenes or fails to comply with any of the provisions of this Act shall be guilty of an offence.

(2) Any person -

- (a) who, for the purpose of obtaining the issue of an authorisation under this Act or any regulations made thereunder, furnishes information or makes a statement or a declaration which he knows to be inaccurate, false or misleading in any material particular, or recklessly furnishes information or makes a statement or a declaration which is inaccurate, false or misleading in any material particular; or
- (b) who is knowingly a party to, or procures or aids and abets, any contravention of any provision of this Act or any regulations made thereunder or any insurance rule; or
- (c) who intentionally obstructs a person exercising rights conferred by this Act or any regulations made

thereunder; or

- (d) who contravenes or fails to comply with any condition, limitation, requirement, directive or order made or given under any of the provisions of this Act or of any regulations made thereunder or any insurance rule; or
- (e) who being a director, a controller, an officer or an employee of a company -
 - (i) fails to take all reasonable steps to secure compliance by the company with any of the provisions of this Act or of any regulations made thereunder, or any authorisation or permit issued thereunder, or any insurance rule; or
 - (ii) fails to take reasonable steps to ensure the correctness of the statements made or other information given under any of the provisions aforesaid; or
 - (iii) removes, destroys, conceals or fraudulently alters any book, document or other paper with intent to avoid detection of the commission of an offence under any of the provisions aforesaid,

shall be guilty of an offence.

(3) For the purposes of subarticle (2)(e), the expression "officer", in relation to a company, shall include an insurance agent, an insurance manager, or a person, other than an insurance agent or an insurance manager, authorised to act for the company in the same manner and to the same extent as an insurance agent.

(4) The Minister shall make regulations under this article prescribing penalties for offences against this Act, and such regulations may -

- (a) prescribe penalties which are enforceable by prosecution in the courts of Malta;
- (b) prescribe different penalties for contraventions of different provisions of this Act;
- (c) prescribe penalties calculated in accordance with the duration of the commission of the offence,

unless such penalties are otherwise imposed under article 64.

(5) The penalties prescribed by the regulations made under subarticle (4) -

- (a) in the case of imprisonment, shall not provide for a sentence of imprisonment greater than two years;
- (b) in the case of a fine imposed after a prosecution in the courts of Malta, shall not provide for a fine (*multa*) of less than one hundred liri or greater than fifty thousand liri.

(6) The Minister may by the regulations made under this article provide for administrative penalties in respect of infringements, as may be prescribed, which may be imposed and recovered by the

competent authority without recourse to a court hearing; administrative penalties shall be due to the competent authority as a civil debt:

Provided that an administrative penalty may not be greater than a financial penalty of forty thousand liri in respect of any infringement and, in respect of a continuing infringement, a further penalty not exceeding fifty liri for each day during which the infringement continues:

Provided further that a penalty imposed under this article, whether in the form of a fixed amount, a daily penalty, or both, may, in no case, exceed forty thousand liri.

Proceedings for an offence under this Act.
Amended by:
XII. 2006.117.

68. (1) No proceedings for an offence under this Act and any regulations made thereunder other than an infringement to which article 67(6) applies shall be commenced without the sanction of the Attorney General.

(2) The provisions of this Act and any regulations made thereunder shall not affect any criminal proceedings that may be competent under any other law.

Savings.
Amended by:
XII. 2006.118.

69. (1) Subject to subarticle (4), every licence issued or other action whatever taken or commenced under the Insurance Business Act* (in this article referred to as "the Act") shall continue in force and to be valid as if such licence were issued or other action were taken or commenced under this Act.

(2) Every company licensed under the Act to carry on business of insurance either as principal or as agent shall, not later than the appointed date, conform with the provisions of this Act or otherwise cease to carry on the business it was licensed to carry on, and shall until the appointed date or until it conforms with the provisions of this Act, whichever is the earlier, continue to be governed by the provisions of the Act. For the purpose of this article "appointed date" means a day being six months after the date of the coming into force of this Act.

(3) Where a company ceases to carry on business of insurance either as principal or as agent on grounds that such company did not, on the appointed date, conform with the provisions of this Act, that company shall be deemed to have given notice to the competent authority under article 39 on the appointed date to cease to carry on the business it was licensed to carry on, on the appointed date, and to have been issued with a permit by the competent authority under that article on the appointed date to cease to carry on such business on the appointed date and to service that business as from that date. The competent authority may impose such conditions with regard to the servicing of that business as it may deem proper.

*Repealed by this Act.

(4) Every licence issued or renewed or other action whatever taken or commenced under the Act in so far as it applies to insurance brokers and insurance salesmen, shall continue in force and to be valid as if such licence were a certificate of enrolment issued or as if such other action were action taken or commenced under the Insurance Brokers and Other Intermediaries Act.

Cap. 404.

(5) For the purposes of this article "licence" includes an authority, permit, approval and appointment.

(6) Without prejudice to the provisions of article 12 of the Interpretation Act, all regulations, orders and other instruments which were kept in force by the Act and all regulations, orders and other instruments made under the Act, and any agreement and arrangement which were made in virtue of the Act, any regulation, order or other instrument shall, if and as in force immediately before the commencement of this article, be deemed to have been made under or in virtue of this Act and shall continue in force and may be amended, altered, repealed or otherwise dealt with accordingly.

Cap. 249.

(7) All references in any enactment and in any instrument or other document to the Act, or any provision thereof, shall, in so far as applicable, be read and construed as a reference to this Act or to the corresponding provision thereof.

(8) Any reference to an insurance directive issued by the competent authority in virtue of article 4(3) in any licence, notice, decision or other act made or taken by the competent authority and any reference in any law or regulation to an insurance directive shall be deemed to be a reference to an insurance rule.

(9) The assets and the liabilities of the Security Fund established by the Act shall upon the coming into force of this Act be transferred to the Protection and Compensation Fund established by article 49 without the need of any formality other than this Act.

(10) The provisions of this article shall not apply to insurance offshore companies registered under the Malta Financial Services Authority Act until such time as the Minister may by order in the Gazette establish.

Cap. 330.

Amended by:
XVII. 2002.268;
XIII. 2004.121.

FIRST SCHEDULE

Deleted by XII. 2006.119.

Amended by:
XII. 2006.120.

SECOND SCHEDULE

(Article 5)

LONG TERM BUSINESS

1. In this Schedule, "insurance rule" means the insurance rule made under and for the purposes of article 5.

2. Classes of Long Term Business

Number	Class	Description
I	Life and annuity	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life, but excluding (in each case) contracts within class III of this Schedule.
II	Marriage and birth	Effecting and carrying out contracts of insurance to provide a sum on marriage or on the birth of a child, being contracts expressed to be in effect for a period as may be specified by the insurance rule.
III	Linked long term	Effecting and carrying out contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by reference to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).
IV	Permanent health	Effecting and carrying out contracts of insurance providing specified benefits against risks of persons becoming incapacitated in consequence of sustaining injury as a result of an accident or of an accident of a specified class or of sickness or infirmity, being contracts that -

Number	Class	Description
		<p>(a) are expressed to be in effect for a period as may be specified by the insurance rule, or until the normal retirement age for the persons concerned, or without limit of time, and</p> <p>(b) either are not expressed to be terminable by the insurer, or are expressed to be so terminable only in special circumstances mentioned in the contract.</p>
V	Tontines	Effecting and carrying out tontines.
VI	Capital redemption	Effecting and carrying out capital redemption contracts.
VII	Pension fund management	<p>Effecting and carrying out -</p> <p>(a) contracts to manage the investments of pension funds, or</p> <p>(b) contracts of the kind mentioned in paragraph (a) above that are combined with contracts of insurance covering either conservation of capital or payment of a minimum interest.</p>
VIII	Collective insurance	Effecting and carrying out contracts of a kind as may be specified by the insurance rule.
IX	Social insurance	Effecting and carrying out contracts of a kind as may be specified by the insurance rule.

THIRD SCHEDULE
(Articles 5 and 7)
GENERAL BUSINESS
PART I - CLASSES

Number	Class
1	<p>Accident (including industrial injury and occupational diseases)</p> <p>(a) fixed pecuniary benefits;</p> <p>(b) benefits in the nature of indemnity;</p> <p>(c) combinations of the two;</p> <p>(d) injury to passengers.</p>
2	<p>Sickness</p> <p>(a) fixed pecuniary benefits;</p> <p>(b) benefits in the nature of indemnity;</p> <p>(c) combination of the two.</p>
3	<p>Land vehicles (other than railway rolling stock)</p> <p>All damage to or loss of:</p> <p>(a) land motor vehicles;</p> <p>(b) land vehicles other than motor vehicles.</p>
4	<p>Railway rolling stock</p> <p>All damage to or loss of railway rolling stock.</p>
5	<p>Aircraft</p> <p>All damage to or loss of aircraft.</p>
6	<p>Ships (sea, lake and river and canal vessels)</p> <p>All damage to or loss of:</p> <p>(a) river and canal vessels;</p> <p>(b) lake vessels;</p> <p>(c) sea vessels.</p>
7	<p>Goods in transit (including merchandise, baggage, and all other goods)</p> <p>All damage to or loss of goods in transit, or baggage, irrespective of the form of transport.</p>
8	<p>Fire and natural forces</p> <p>All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to:</p> <p>(a) fire;</p> <p>(b) explosion</p> <p>(c) storm;</p>

Number	Class
	<p>(d) natural forces other than storm; (e) nuclear energy; (f) land subsidence.</p>
9	<p>Other damage to property All damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those falling within class 8.</p>
10	<p>Motor vehicle liability All liability arising out of the use of motor vehicles operating on the land (including carrier's liability).</p>
11	<p>Aircraft liability All liability arising out of the use of aircraft (including carrier's liability).</p>
12	<p>Liability for ships (sea, lake and river and canal vessels) All liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability).</p>
13	<p>General liability All liability other than those falling within classes 10, 11 and 12.</p>
14	<p>Credit (a) insolvency (general); (b) export credit; (c) instalment credit; (d) mortgages; (e) agricultural credit.</p>
15	<p>Suretyship (a) suretyship (direct); (b) suretyship (indirect).</p>
16	<p>Miscellaneous financial loss (a) employment risks; (b) insufficiency of income (general); (c) bad weather; (d) loss of benefits; (e) continuing general expenses; (f) unforeseen trading expenses; (g) loss of market value; (h) loss of rent or revenue;</p>

Number	Class
	(i) indirect trading losses other than those specified above; (j) other financial loss (non-trading); (k) other financial loss (not specified in (j) above).
17	Legal expenses Legal expenses (including costs of litigation).
18	Assistance (a) assistance for persons who get into difficulties while travelling, while away from home or while away from their permanent residence; (b) assistance in other circumstances.

PART II - GROUPS OF CLASSES

Number	Description	Composition
1	Accident and Health	Classes 1 and 2
2	Motor	Classes 1 (d), 3, 7 and 10
3	Marine and Transport	Classes 1 (d), 4, 6, 7 and 12
4	Aviation	Classes 1 (d), 5, 7 and 11
5	Fire and other Damage to Property	Classes 8 and 9
6	Liability	Classes 10, 11, 12 and 13
7	Credit and Suretyship	Classes 14 and 15
8	General	All classes

Amended by:
XVII. 2002.269;
XIII. 2004.122.

FOURTH SCHEDULE

(Article 13)

Deleted by: XII. 2006.121.