

**L.N. 35 of 2005****INSURANCE BUSINESS ACT  
(CAP. 403)****INSURANCE BROKERS AND OTHER INTERMEDIARIES  
ACT  
(CAP. 404)****European Passport Rights for Insurance Intermediaries  
Regulations, 2005**

IN exercise of the powers conferred by article 64 of the Insurance Business Act and article 3 of the Insurance Brokers and Other Intermediaries Act, the Prime Minister and Minister of Finance, after consultation with the Malta Financial Services Authority, has made the following regulations:-

**PRELIMINARY**

**1.** (1) The title of these regulations is the European Passport Rights for Insurance Intermediaries Regulations, 2005. Citation and commencement.

(2) These regulations shall be deemed to have come into force on the 15th January, 2005.

**2.** (1) In these regulations, unless the context otherwise requires – Interpretation.

“the Commission” means the Commission of the European Community;

“the competent authority” means the Malta Financial Services Authority appointed under article 3 of the Insurance Business Act Cap. 403. and under article 3 of the Insurance Brokers and Other Intermediaries Act; Cap. 404.

“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;

“European insurance intermediary” means any natural or legal person who, for remuneration, takes up or pursues insurance mediation or reinsurance mediation, as the case may be, within the meaning of article 2 of the Insurance Mediation Directive and which is registered under article 3 of the Insurance Mediation Directive having its head office or place of residence in a Member State or an EEA State, other than Malta;

“European right” means the entitlement of an insurance intermediary to establish a branch, or provide services, in a Member State or an EEA State other than that in which it has its head office or place of residence:

(a) in accordance with the Treaty as applied in a Member State or an EEA State; and

(b) subject to the requirements of the Insurance Mediation Directive and subject to any rules or regulations made under the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act, or insurance directives or insurance intermediaries directives issued by the competent authority pursuant to the said Acts, implementing such requirements;

“foreign authority” means the body or bodies designated by a Member State or EEA State:

(a) to act as a supervisory authority in relation to the European insurance intermediary concerned in that Member State or EEA State within the meaning of the Insurance Mediation Directive; or

(b) to carry out the duties provided for in the Insurance Mediation Directive in relation to a Maltese insurance intermediary exercising or proposing to exercise a European right;

“home Member State” means

(a) where the intermediary is a natural person, the Member State in which his residence is situated and in which he carries on business;

(b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if

under its national law it has no registered office, the Member State in which its head office is situated;

“host Member State” means the Member State or EEA State in which an insurance or reinsurance intermediary has a branch or provides services;

“insurance directive” means a directive in respect of the business of insurance issued by the competent authority in terms of article 4(3) of the Insurance Business Act;

“insurance intermediaries directive” means a directive in respect of the insurance intermediaries activities issued by the competent authority in terms of article 4(2) of the Insurance Brokers and Other Intermediaries Act;

“insurance mediation” shall have the same meaning as is assigned by article 2 of the Insurance Mediation Directive.

“Insurance Mediation Directive” means Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

“Maltese insurance intermediary”, means an insurance intermediary authorised, registered or enrolled in terms of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act, as the case may be, entitled to carry on insurance mediation or reinsurance mediation in a Member State or EEA State, other than Malta in exercise of a European right;

“Maltese rules” means rules-

(a) made in accordance with the Insurance Mediation Directive; and

(b) which are the responsibility of the competent authority (as to implementation, supervision and compliance) in accordance with the Insurance Mediation Directive and subject to the provisions of the Insurance Business Act and Insurance Brokers and Other Intermediaries Act and any rules, regulations and insurance directives or insurance intermediaries directive made thereunder;

“Member State” means a member state of the European Community;

“supervisory authority” means the foreign authority in a Member State or EEA State;

“Treaty” means Treaty of Rome signed in 1957, establishing the European Economic Community and as subsequently amended;

“Tribunal” means the Financial Services Tribunal referred to in article 57 of the Insurance Business Act and in article 45 of the Insurance Brokers and Other Intermediaries Act.

(2) Words and expressions which are also used in the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act shall, in these regulations, have the same meanings as in the said Acts.

### **PART I - EXERCISE OF PASSPORT RIGHTS BY EUROPEAN INSURANCE INTERMEDIARIES**

Exercise of passport rights by European insurance intermediaries - establishment.

**3.** (1) A European insurance intermediary which is seeking to establish a branch in Malta in exercise of a European right shall satisfy the establishment conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 13 of the Insurance Business Act or articles 13 and 33 of the Insurance Brokers and Other Intermediaries Act, as the case may be.

(2) The establishment conditions for the purposes of this regulation are that -

(a) the European insurance intermediary has given the supervisory authority in its home Member State a notice of intention to establish a branch in Malta;

(b) the competent authority has received from the supervisory authority of such European insurance intermediary a consent notice stating that it has given its consent to the insurance intermediary to establish a branch in Malta;

(c) the consent notice shall include such information as may be established by means of an insurance directive or an insurance intermediaries directive;

(d) the supervisory authority has informed the European insurance intermediary that the consent notice has been sent to the competent authority;

(e) one month has elapsed beginning from the date on which the supervisory authority informed the European insurance intermediary that a consent notice has been sent to the competent authority; and

(f) details of any insurance guarantee scheme, if applicable, which is intended to protect the branch's policyholders.

(3) Where the competent authority has received such a notice from the foreign authority and has been informed of the intention of the European insurance intermediary to establish a branch in Malta, it shall, notify the insurance intermediary of the applicable provisions, if any.

(4) A European insurance intermediary may, in exercise of a European right, only market in Malta insurance products of the European insurance undertaking which the intermediary represents through a branch in Malta, if the European insurance undertaking has exercised its European right in Malta in terms of the European Passport Rights for Insurance Undertakings Regulations, 2004 to carry on business of insurance in the class or classes of long term business or class or classes or part classes of general business through the establishment of a branch.

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(5) For the purpose of this regulation, "applicable provisions" means the Maltese rules in accordance with which the European insurance intermediary is required to comply when carrying on insurance mediation or reinsurance mediation, identified in the consent notice, through a branch in Malta.

**4.** (1) A European insurance intermediary which is seeking to provide services in Malta in exercise of a European right shall satisfy the service conditions specified in sub-regulation (2) of this regulation and shall be exempt from the provisions of article 13 of the Insurance Business Act and articles 13 and 33 of the Insurance Brokers and Other Intermediaries Act.

Exercise of passport rights by European insurance intermediaries - services.

(2) The service conditions for the purposes of this regulation are that -

(a) the European insurance intermediary has given the supervisory authority in its home Member State a notice of intention to provide services in Malta;

(b) the competent authority has received from the supervisory authority of such European insurance intermediary a

notice of intention stating that it has given its consent to the insurance intermediary to provide services in Malta;

(c) the notice of intention shall include such information as may be established by means of an insurance directive or an insurance intermediaries directive;

(d) the supervisory authority has informed the European insurance intermediary that the notice of intention has been sent to the competent authority; and

(e) one month has elapsed beginning with the date on which the supervisory authority informed the insurance intermediary that a notice of intention has been sent to the competent authority.

(3) When the competent authority has received such a notice from the foreign authority and has been informed of the intention of the insurance intermediary to provide services in Malta, it shall, notify the insurance intermediary concerned of the applicable provisions, if any.

(4) A European insurance intermediary may, in exercise of a European right, only market in Malta insurance products of the European insurance undertaking which the intermediary represents when providing services in Malta, if the European insurance undertaking has exercised its European right in terms of the European Passport Rights for Insurance Undertakings Regulations, 2004 to carry on business of insurance in the class or classes of long term business or class or classes or part classes of general business by way of freedom of establishment or freedom to provide services.

L.N. 89 of 2004.

(5) For the purposes of this regulation, “applicable provisions” means the Maltese rules in accordance with which the European insurance intermediary is required to comply when providing services in Malta.

Reporting to the competent authority.

**5.** (1) The competent authority may, for statistical purposes, require an insurance intermediary which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta.

(2) In discharging its responsibilities under these regulations, the competent authority may require such insurance intermediary to provide the same information as Maltese insurance intermediaries would be required to provide for that purpose.

(3) The competent authority may require such insurance intermediary carrying on insurance mediation or reinsurance mediation in Malta, to provide the information necessary for the monitoring of its compliance with the standards set by the competent authority to the extent permitted by the Insurance Mediation Directive.

6. (1) Where a European insurance intermediary carries on insurance intermediaries activities in Malta pursuant to the Insurance Mediation Directive through a branch in exercise of a European right, its supervisory authority may, after having first informed the competent authority, carry out itself or through a person it appoints for that purpose, on-site verification of the information necessary to ensure the financial supervision of the European insurance intermediary. The competent authority may participate in that verification.

On-site verifications.

(2) The foreign authority may also request the competent authority to have such on-site verification carried out on its behalf.

(3) This regulation shall not affect the right of the competent authority, in discharging its responsibilities under the Insurance Mediation Directive, to carry out on-site verifications of branches established in Malta.

## **PART II - EXERCISE OF PASSPORT RIGHTS BY MALTESE INSURANCE INTERMEDIARIES**

7. (1) Without prejudice to the provisions contained in the Insurance Business Act and the Insurance Brokers and Other Intermediaries Act, a Maltese insurance intermediary may exercise a European right to establish a branch if it satisfies the requirements set out in the following provisions of this regulation.

Exercise of passport rights by Maltese insurance intermediaries - establishment.

(2) A Maltese insurance intermediary intending to establish a branch in exercise of a European right shall give the competent authority a notice of intention which shall contain -

(a) the Member State or EEA State within the territory of which the Maltese insurance intermediary proposes to establish a branch;

(b) a scheme of operations setting out, inter alia, the activities of insurance mediation or reinsurance mediation it intends to carry on and the structural organisation of the branch;

(c) the address of the proposed branch from where documents may be obtained and to which they may be delivered;

(d) the name of the branch's general representative who must possess sufficient powers to bind the Maltese insurance intermediary in relation to third parties and to represent it in relations with the authorities and courts of the host member state;

(e) such other information as may be specified by means of an insurance directive or an insurance intermediaries directive.

(3) Without prejudice to sub-regulations (5) and (7) of this regulation, if the Member State or EEA State in which the Maltese insurance intermediary intends to establish a branch has notified the Commission, in accordance with Article 6(2) of the Insurance Mediation Directive, of its wish to be informed of the intention of any Maltese insurance intermediary to establish a branch in its territory, the competent authority shall give a consent notice to the foreign authority within one month of receiving a complete notice of intention.

(4) The consent notice shall:–

(a) be given in accordance with the Insurance Mediation Directive;

(b) confirm that the Maltese insurance intermediary is authorised, registered or enrolled to carry on insurance mediation or reinsurance mediation which the branch proposes to carry on;

(c) contain the information stated in the notice of intention of the Maltese insurance intermediary; and

(d) include such other information as may be established by means of an insurance directive or insurance intermediaries directive.

(5) Unless the competent authority has reason to doubt the adequacy of the administrative structure, the financial situation of the Maltese insurance intermediary or the good repute and professional qualification or experience of the directors or managers, taking into account the business planned, it shall, within one month of receiving all the information referred in sub-regulation (2) of this regulation, communicate that information to the foreign authority of the branch and shall inform the insurance intermediary concerned accordingly:

Provided that, in the event of any change in any of the particulars referred to in this sub-regulation, the competent authority shall inform the foreign authority accordingly.

(6) A Maltese insurance intermediary shall not establish a branch in a Member State or EEA State until one month has elapsed beginning from the date when the insurance intermediary concerned received notice in accordance with sub-regulation (5), that the competent authority has given a consent notice:

Provided that, the Maltese insurance intermediary may commence business immediately after it provides the competent authority with a complete notice of intention in accordance with sub-regulation (2) of this regulation if the host Member State does not wish to be informed of the fact.

(7) Where the competent authority refuses to communicate the information referred to in sub-regulation (2) of this regulation to the foreign authority of the branch, it shall give the reasons for its refusal to the Maltese insurance intermediary concerned within one month of receiving all the information in question. The refusal or failure to act in the period stipulated shall be subject to a right of appeal to the Tribunal and the provisions of article 57 of the Insurance Business Act and article 45 of the Insurance Brokers and Other Intermediaries Act shall apply *mutatis mutandis*.

(8) The foreign authority of the branch of a Maltese insurance intermediary exercising a European right may inform the competent authority, if appropriate, of the applicable provisions under which that business must be carried on in the host Member State.

(9) In the event of a change in any of the particulars communicated in accordance with sub-regulation (2) of this regulation, the Maltese insurance intermediary shall give written notice of the change to the competent authority at least one month before implementing the change.

(10) Where the Member State or EEA State in which the Maltese insurance intermediary intends to establish a branch has notified the Commission in accordance with article 6(2) of the Insurance Mediation Directive that it does not wish to be informed of the intention of the insurance intermediary to establish a branch in its territory, sub-regulations (3) and (4) shall not apply.

(11) For the purposes of this regulation, “applicable provisions” means the host state rules with which the Maltese insurance intermediary is required to comply when conducting business through the proposed branch in the host Member State concerned.

**8.** (1) A Maltese insurance intermediary which intends to provide services for the first time in one or more Member States or EEA States in exercise of a European right shall first submit a notice of intention to the competent authority indicating:

(a) the nature of the services it intends to provide or undertake;

(b) the Member State or EEA State in which it intends to operate; and

(c) such other information as may be specified in an insurance directive or insurance intermediaries directive.

(2) If the Member State or EEA State in which the insurance intermediary intends to provide services has notified the Commission, in accordance with article 6(2) of the Insurance Mediation Directive, of its wish to be informed of the intention of any Maltese insurance intermediary to provide services in its territory -

(a) the competent authority shall within one month of receiving the notice of intention, send a copy of it to the foreign authority;

(b) the competent authority, when it sends the copy in accordance with paragraph (a), shall give written notice to the insurance intermediary that it has done so; and

(c) the insurance intermediary shall not provide the services to which its notice of intention relates until one month, beginning with the date on which it receives the notice under paragraph (b) has lapsed:

Provided that, where appropriate, the foreign authority may, on receipt of the notice of intention from the competent authority, indicate to the Maltese insurance intermediary the conditions with which, in the interest of the general good, the insurance intermediary concerned shall comply in the host Member State.

(3) In the event of a change in any of the particulars provided by the Maltese insurance intermediary in the notice of intention, the Maltese insurance intermediary shall give written notice of that change to the competent authority and the foreign authority at least one month before implementing such change.

(4) Where the competent authority refuses to communicate the information referred to in sub-regulation (2) of this regulation to the foreign authority of the provision of services, it shall, give the reasons for its refusal to the Maltese insurance intermediary concerned within one month of receiving all the information in question. The refusal or failure to act in the period stipulated shall be subject to a right of appeal to the Tribunal and the provisions of article 57 of the Insurance Business Act and article 45 of the Insurance Brokers and Other Intermediaries Act shall apply *mutatis mutandis*.

### **PART III - EUROPEAN INSURANCE INTERMEDIARIES NOT COMPLYING WITH LEGAL PROVISIONS**

**9.** (1) Where the competent authority ascertains that a European insurance intermediary which has established a branch in Malta or provides services in Malta has failed to comply with any of the provisions of these regulations, any applicable provisions or any insurance directive or insurance intermediaries directive issued pursuant to these regulations, it shall, in writing, require the insurance intermediary concerned to remedy and rectify its position.

Contravention by  
European  
insurance  
intermediaries.

(2) If the European insurance intermediary concerned fails to take necessary steps to remedy and rectify its position, the competent authority shall inform the foreign authority of such failure. The foreign authority shall, at the earliest opportunity, take all appropriate measures to ensure that the European insurance intermediary concerned rectifies its position. The nature of those measures shall be communicated to the competent authority.

(3) If, despite the actions taken by the foreign authority, or because those measures prove inadequate or are not available in Malta, the European insurance intermediary persists in violating the legal or regulatory provisions referred to in sub-regulation (1) of this regulation in force in Malta, the competent authority may, after informing the foreign authority, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, to prevent that European insurance intermediary concerned from continuing to carry on insurance intermediaries activities in Malta.

(4) Any measure adopted pursuant to this regulation shall be communicated to the European insurance intermediary concerned in writing, together with reasons justifying such measures and shall be subject to a right of appeal to the Tribunal and the provisions of article 57 of the Insurance Business Act and of 45 of the Insurance Brokers and Other Intermediaries Act shall apply *mutatis mutandis*.

(5) Notwithstanding the provisions of this regulation, the competent authority may, in exceptional circumstances, take any precautionary measures necessary to protect the interests of insureds,

policyholders, creditors and other interested persons. The competent authority shall inform the Commission and the foreign authority concerned of such measures at the earliest opportunity.

(6) Where a European insurance intermediary which is in breach of any provisions of these regulations has an establishment or possesses property of any description in Malta, the competent authority may, in accordance with national law, impose an administrative penalty pursuant to article 67 of the Insurance Business Act or article 47 of the Insurance Brokers and Other Intermediaries Act.

(7) Where the competent authority is informed by the foreign authority of another Member State or EEA State of the removal from the register of the registration of a European insurance intermediary carrying on insurance mediation activities in Malta in exercise of a European right, it shall take appropriate measures to prevent the intermediary concerned from continuing to carry on insurance mediation or reinsurance mediation in Malta under either the right of establishment or the freedom to provide services and may make or issue public statements or notices in relation to these measures.

(8) A prohibition under this regulation may be –

(a) absolute; or

(b) limited, that is, imposed for a specified event or until specified conditions are complied with,

and any period, event or conditions specified in the case of a limited prohibition may be varied by the competent authority and any such notice shall take effect on such date as is specified in the notice.

#### **PART IV – MISCELLANEOUS**

**10.** The competent authority shall establish and maintain a register indicating each Member State in which the Maltese insurance intermediary-

(a) has established a branch; or

(b) is providing services.

#### **PART V- INTERPRETATION**

Interpretation.

**11.** The purpose of these regulations is to implement in part the provisions of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation which shall be interpreted and applied accordingly.