# CHAPTER 487

## INSURANCE INTERMEDIARIES ACT

*To regulate the registration and enrolment of insurance intermediaries and insurance intermediaries activities.*

1st October, 2006

*ACT XII of 2006, as amended by Act XX of 2007; Legal Notice 427 of 2007; Acts XVII of 2009 and X of 2011; Legal Notice 451 of 2013; and Act XXXIII of 2015.*

Arrangement of Act


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SCHEDULE

Insurance Intermediaries and Insurance Intermediaries Activities

## PART I

## PRELIMINARY

Short title.

**1.** The short title of this Act is the Insurance Intermediaries Act.

Interpretation and scope.
*Amended by: X. 2011.91; XXXIII. 2015.79.*

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

"advertisement", in relation to insurance intermediaries activities, means any form or medium of advertising, 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, 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;

"Agents List" means the list of persons acting as insurance agents established and maintained under article 9;

"Agents Register" means the insurance agents register established and maintained under article 7;

"approved auditor" and "auditor" have the meaning assigned to them by article 28(10);

Cap. 403.

"authorised undertaking" means an authorised insurance undertaking or an authorised reinsurance undertaking which has received authorisation pursuant to article 7 of the Insurance Business Act or any person deemed authorised under the said Act, to carry on business of insurance and includes a company enrolled under this Act to act as an insurance agent of the undertaking, as well as a European insurance undertaking or a European reinsurance 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;

"binding authority agreement" means an agreement between a member of Lloyd's or a person acting on its behalf and a coverholder under which the coverholder may, in accordance with the terms thereof, accept risks or commitments on behalf of that member of Lloyd's;

"body corporate" means an entity having a legal personality distinct from that of its members and also includes a foreign corporation;

"branch" means premises of the company, other than its head office, from which insurance intermediaries activities are carried out;

"Brokers List" means the list of persons carrying on business as insurance brokers established and maintained under article 9;

"Brokers Register" means the insurance brokers register established and maintained under article 7;

Cap. 403.

"business of insurance" has the same meaning as is assigned to it by article 2(1) of the Insurance Business Act;

"business of insurance broking", in relation to a registered insurance broker or an enrolled insurance broker, means the activities listed in paragraph 1 of the Third Column of the Schedule;

"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.

"certificate of enrolment" -

(*a*) in relation to a person acting as an insurance agent, means a certificate issued by the competent authority under article 14 to the person evidencing enrolment of that person in the Agents List; and

(*b*) in relation to a person acting as an insurance manager, means a certificate issued by the competent authority under article 14 of this Act to the person evidencing enrolment of that person in the Managers List;

(*c*) in relation to a person carrying on business as insurance broker, means a certificate issued by the competent authority under article 14 to the person evidencing enrolment of that person in the Brokers List; and

(*d*) in relation to a person registered as a tied insurance intermediary in the Tied Insurance Intermediaries Company Register of any company, means a certificate issued by the competent authority under article 37 to the company enrolling that person evidencing enrolment of that person in the Tied Insurance Intermediaries List;

"certificate of registration" -

(*a*) in relation to an individual registered as an insurance agent, means a certificate issued by the competent authority under article 14 of this Act to that individual evidencing registration of that individual in the Agents Register;

(*b*) in relation to an individual registered as an insurance manager, means a certificate issued by the competent authority under article 14 to that individual evidencing registration of that individual in the Managers Register; and

(*c*) in relation to an individual registered as an insurance broker, means a certificate issued by the competent authority under article 14 to that individual evidencing registration of that individual in the Brokers Register;

"class" -

(*a*) in relation to long term business, means any of the classes specified in the Second Schedule to the Insurance Business Act; and Cap. 403.

(*b*) in relation to general business, means any of the classes specified in Part I of the Third Schedule to the Insurance Business Act;

Cap. 403.

"close links" means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

"commitment" and "country of the commitment" have the same meanings as are assigned to them by article 2(1) of the Insurance Business Act;

Cap. 403.

"company" includes a local company and a foreign company;

"competent authority" means the Malta Financial Services Authority established by the Malta Financial Services Authority Act;

Cap. 330.

"conditions" includes obligations and restrictions;

"contract of insurance" and "contract" have the same meanings as are assigned to them by article 2(1) of the Insurance Business Act;

Cap. 403.

"control" means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22 of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

"controller", in relation to a body corporate, is a person who, alone or together with others, exercises the power to determine the financial and operating policies of the body corporate;

"coverholder" means a person authorised under a binding authority agreement to accept or to issue documents related to contracts of insurance evidencing the acceptance of risks or commitments on behalf of a member of Lloyd's granting such authority pursuant to such agreement;

"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 foreign company, includes a member of a local board, an agent and the person designated as the representative of that company for the purpose of article 12(1)(*b*)(ii);

"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;

"enrolled" -

(*a*) in relation to a person acting as an insurance agent, means enrolled in the Agents List under article 13;

(*b*) in relation to a person acting as an insurance manager, means enrolled in the Managers List under article 13;

(*c*) in relation to a person carrying on business as insurance broker, means enrolled in the Brokers List under article 13; and

(*d*) in relation to a person registered as a tied insurance intermediary, means enrolled in the Tied Insurance Intermediaries List under article 37, and, in each case, "enrolment" shall be construed accordingly;

"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 2 of the Solvency II Directive, which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"European reinsurance undertaking" means an undertaking having its head office in a Member State or an EEA State, other than Malta, pursuing business restricted to reinsurance within the meaning of Article 2 of the Solvency II Directive which has received authorisation in accordance with Article 14 of the Solvency II Directive;

"financial year" shall be construed in accordance with article 27(4);

"foreign company" means a company or a partnership *en commandite* or similar or equivalent body corporate, the capital of which is divided into shares, registered, incorporated or constituted outside Malta under the laws of any country provided that such company or partnership *en commandite* has complied with the provisions of any law which may from time to time be in force in Malta relating thereto;

Provided that, unless otherwise specified, the term "foreign company" shall not include a European insurance intermediary registered under article 3 of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

"functions" includes responsibilities, powers and duties;

"group" and "group of classes", in relation to general business, means any group of classes or part classes specified in Part II of the Third Schedule to the Insurance Business Act; Cap. 403.

"insurance agent" means a person carrying out activities listed in paragraph (2) of the Third Column of the Schedule; and in relation to Lloyd's, means a person enrolled as such under article 13 appointed by or on behalf of a member of Lloyd's to be its coverholder in Malta in respect of business of insurance with authority to enter into contracts of insurance on behalf of that member under the terms of a binding authority agreement;

"insurance broker" means a person carrying on business of insurance broking;

"insurance manager" means a person carrying out activities listed

in paragraph (3) of the Third Column of the Schedule;

"insurance intermediary" means any natural or legal person who, takes up or pursues insurance intermediaries activities, and includes a person providing services ancillary to other business of insurance as may be prescribed;

"insurance intermediaries activities" means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim and includes the activities listed in paragraphs 1 to 4 of the Third Column of the Schedule and any other activities as may be prescribed;

"insurance intermediaries rule" means a rule in respect of insurance intermediaries activities issued by the competent authority under various articles of this Act and under any regulations issued thereunder;

"insurer" has the same meaning as assigned to it by article 2(1) of the Insurance Business Act;

Cap. 403.

"local company" means a limited liability company formed and registered under the Companies Act and includes, subject to subarticle (2), a partnership *en commandite*, the capital of which is divided into shares, formed and registered under the said Act;

Cap. 386.

"Malta's international commitments" has the same meaning as assigned to it by article 2(1) of the Insurance Business Act;

Cap. 403.

"Managers List" means the list of persons acting as insurance managers established and maintained under article 9;

"Managers Register" means the insurance managers register established and maintained under article 7;

"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.

"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;

"own funds" shall be construed in accordance with an insurance intermediaries rule made for the purpose of this Act to determine the amounts and components which make up the enrolled person's own funds;

"participation" means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

"prescribed" means prescribed by regulations 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;

"registered" -

(*a*) in relation to a person registered as an insurance agent under article 13, means registered in the Agents Register;

(*b*) in relation to a person registered as an insurance manager under article 13, means registered in the Managers Register;

(*c*) in relation to a person registered as an insurance broker under article 13, means registered in the Brokers Register; and

(*d*) in relation to a person registered as a tied insurance intermediary under article 37, means registered in the Tied Insurance Intermediaries Company Register of any one or more companies,

and, in each case, "registration" shall be construed accordingly;

"regulated market" means either of the following:

(*a*) in the case of a market situated in Malta, a market authorised in terms of the Financial Markets Act; Cap. 345

(*b*) in the case of a market situated in a Member State or an EEA State, other than Malta, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/611/EEC and 96/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, as amended from time to time; or

(*c*) in the case of a market situated in a non-Member State or non-EEA State, a financial market which fulfils the following conditions:

(i) it is recognised by the competent authority and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets in Malta;

"representative" shall be construed in accordance with article 12 of the Insurance Business Act; Cap. 403.

"risk situated in Malta" has the same meaning as is assigned to it by article 2(1) of the Insurance Business Act; Cap. 403.

"Schedule" means the Schedule to this Act;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and

Reinsurance (Solvency II) (recast), as amended from time to time, and includes any delegated acts and any technical standards that have been or may be issued thereunder;

"third country insurance undertaking" means an undertaking, other than a European insurance undertaking, which would require authorisation as an authorised insurance undertaking pursuant to article 7 of the Insurance Business Act, as if its head office were situated in Malta;

Cap. 403.

" "third country reinsurance undertaking" means an undertaking, other than a European reinsurance undertaking, which would require authorisation as an authorised reinsurance undertaking in accordance with article 7 of the Insurance Business Act, as if its head office were situated in Malta;

Cap. 403.

"tied insurance intermediary" means a person carrying on tied insurance intermediaries activities;

"tied insurance intermediaries activities", in relation to a person registered as a tied insurance intermediary, means activities listed in paragraph 4 of the Third Column of the Schedule and any person who carries on insurance intermediaries activities, in addition to his principal professional activity, shall also be considered as a tied insurance intermediary acting under the responsibility of an authorised undertaking for the products offered on its behalf if the insurance is complementary to the goods supplied or services provided in relation to his principal professional activity, whether or not the person collects premiums or amounts intended for the policyholder concerned;

"Tied Insurance Intermediaries List" means the list of tied insurance intermediaries established and maintained under article 36(1);

"Tied Insurance Intermediaries Company Register" in relation to an authorised undertaking means the Tied Insurance Intermediaries Company Register established and maintained by an authorised undertaking under article 34(1);

"Tribunal" means the Financial Services Tribunal referred to in article 21 of the Malta Financial Services Authority Act.

Cap. 330.

(2) The objective of this Act is, in part, to implement the provisions of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, and any other Directive of the European Parliament and of the Council that may be issued from time to time on the regulation of insurance intermediaries which shall be interpreted and applied accordingly.

(3) The provisions of this Act shall apply to a partnership en commandite or to a similar or equivalent body corporate subject to such modifications as the competent authority may, from time to time, make in any provision thereof, which modifications shall not materially detract from the main object of the provisions so modified.

(4) 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.

## PART II

## REGULATORY POWERS

Powers of the Minister.
*Amended by: XX. 2007.142; L.N. 427 of 2007; X. 2011.92.*

**3.** (1) The competent authority shall carry out its functions under this Act and, in particular, shall ensure compliance with the provisions of this Act.

(2) The Minister may, after consultation with the competent authority, make regulations as may be required for carrying into effect any of the provisions of this Act and without prejudice to the generality of the foregoing, the Minister may, by such regulations, in particular, make provisions in respect of any one or more of the following matters:

(*a*) the implementation of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

(*b*) 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;

(*c*) the amendment or revocation of the Schedule;

(*d*) 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 the Act, or any regulations made under this article;

(*e*) the registration or enrolment of persons, other than persons registered or enrolled by virtue of this Act, carrying out insurance intermediaries activities or providing services ancillary to business of insurance as may be prescribed;

(*f*) any matter relating to or connected with any provision contained in the Schedule;

(*g*) any matter that may or is to be prescribed under any provision of this Act;

(*h*) the 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 one hundred and fifty thousand euro (€150,000) for each infringement or failure to comply, as the case may be, and, where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply 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 one hundred and fifty thousand euro (€150,000);

(*i*) the penalties or other punishments to which persons contravening or failing to comply with any provision of any regulation made under this Act shall become liable, being penalties of not less than two hundred and thirty euro (€230) and not exceeding one hundred and fifty thousand euro (€150,000), in respect of any offence and in respect of a continuing offence of a further penalty not exceeding two hundred and thirty euro (€230) for each day during which the offence continues;

(*j*) any matter incidental to or connected with any of the above;

(*k*) any matter relating to the establishment, co-ordination, amalgamation and otherwise of compensation schemes.

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

(4) The Minister may also by regulations under this article, after consultation with the competent authority, extend and make applicable any of the provisions of this Act to any insurance intermediary activity as may be prescribed which in his opinion ought, in the public interest, to be regulated by such provisions.

(5) 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.

(6) In the event of a doubt as to whether an activity constitutes the carrying out of insurance intermediaries activities, or whether such insurance intermediaries activities are or are not being carried on in Malta, the matter shall be conclusively determined by the competent authority.

(7) 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.

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

Powers and duties of the competent authority. *Amended by: XXXIII. 2015.80.*

**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, companies or insurance intermediaries, registered or enrolled in accordance with this Act and regulations made thereunder comply with the provisions of this Act, any regulations

made thereunder, with insurance intermediaries rules made by the competent authority in virtue of this Act and of any regulations made thereunder and with the conditions specified in certificates of registration or enrolment.

(2) The competent authority may make insurance intermediaries 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 intermediaries rules and any amendment or revocation thereof shall be officially communicated to the persons concerned.

(3) Insurance intermediaries rules shall be binding on insurance intermediaries and others as may be specified therein.

(4) Insurance intermediaries rules made by the competent authority in virtue of this Act may provide for different regulatory requirements to be applicable to different categories of insurance intermediaries; and without prejudice to insurance intermediaries rules required to be made under this Act and to the generality of the foregoing, the competent authority may, by such insurance intermediaries rules, in particular -

(*a*) determine, in relation to insurance intermediaries, what constitutes fitness and properness;

(*b*) determine, in relation to insurance intermediaries, the criteria of sound and prudent management;

(*c*) determine the information which insurance intermediaries shall disclose to persons seeking or making use of insurance intermediary services;

(*d*) determine the codes of conduct which may regulate any aspect of dealings between insurance intermediaries and authorised insurance undertakings or between such intermediaries and persons seeking or making use of insurance intermediary services;

(*e*) determine, in relation to insurance intermediaries activities, the issuing of advertisements and the undertaking of any other promotional activities.

## PART III

## REGISTRATION OR ENROLMENT OF INSURANCE AGENTS, INSURANCE MANAGERS AND INSURANCE BROKERS

Application of this Part to specified insurance intermediaries.

**5.** This Part of the Act applies to persons acting as insurance agents, insurance managers and persons carrying on business as insurance brokers, hereinafter referred to as "the intermediary".

Registration or enrolment of insurance intermediaries.

**6.** (1) Subject to subarticle (3), no person shall act as an intermediary and carry on, or attempt to carry on, in or from Malta, insurance intermediaries activities unless such person is registered or enrolled under article 13.

(2) The competent authority shall not grant registration or enrolment under this article to a person nor shall the competent authority permit such person to be registered or enrolled thereunder or to remain so registered or enrolled, unless it is satisfied that such

person fulfils or complies with the requirements set out in this Part of the Act.

(3) This article shall not apply to a person, which is registered pursuant to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation in a Member State or EEA State, other than Malta.

Register of insurance intermediaries.

**7.** The competent authority shall establish and maintain registers of persons carrying on the insurance intermediaries activities of insurance agents, insurance managers and insurance brokers, in this Act separately referred to as the "Agents Register", the "Managers Register" or the "Brokers Register", containing such particulars as the competent authority may determine from time to time, by an insurance intermediaries rule made for the purposes of this article, of all persons which are entitled under this Act to be registered therein and to apply in the manner determined by that rule to be so registered.

Qualifications for registration.

**8.** (1) A person shall be entitled to be registered in the "Agents Register", the "Managers Register" or the "Brokers Register" if he satisfies the competent authority that -

(*a*) he is an individual;

(*b*) he is a fit and proper person to be so registered and to ensure the company's sound and prudent management;

(*c*) he possesses the qualifications and fulfils or complies with the requirements determined by an insurance intermediaries rule made for the purposes of this article.

(2) A person shall not be entitled to carry out insurance intermediaries activities by virtue of his registration under this article unless he is a director or an employee of a company enrolled under article 13.

List of persons carrying on insurance intermediaries activities.

**9.** The competent authority shall establish and maintain a list of persons carrying on insurance intermediaries activities of insurance agents, insurance managers and insurance brokers, in this Act separately referred to as the "Agents List", the "Managers List", or the "Brokers List", containing particulars of all persons which are entitled under this Act to be enrolled therein and which apply in the manner determined from time to time by the competent authority in an insurance intermediaries rule made for the purposes of this article.

General requirements for enrolment.
*Amended by: XX. 2007.143; L.N. 427 of 2007; XXXIII. 2015.81.*

**10.** (1) Subject to paragraph (*b*), the intermediary shall be entitled to be enrolled in the Agents List, Managers List or the Brokers List if, it satisfies the competent authority that:

(*a*) in the case of an applicant which is a company:

(i) the applicant's objects are limited to operations arising directly from insurance intermediaries activities listed in paragraphs (1), (2) and (3) of the Third Column of the Schedule, as applicable, and to matters or functions connected therewith or ancillary thereto, to the exclusion of all other

commercial business, other than business determined by an insurance intermediaries rule made for the purposes of this article;

(ii) the applicant discloses to the satisfaction of the competent authority such information as the competent authority has requested of it in relation to persons who will, upon its enrolment, have any proprietary, financial or other interest in, or in connection with, the applicant;

(iii) all qualifying shareholders, controllers, directors and all persons who will effectively manage the affairs or carry out the operations appropriate to the application are fit and proper persons to ensure its sound and prudent management;

(iv) the applicant's own funds, whether in euro 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 by it as may be determined by an insurance intermediaries rule made for the purposes under this Act and such own funds shall at all times be unencumbered;

(v) the applicant has at all times in its favour a policy of professional indemnity insurance or some other comparable guarantee, in each case acceptable to the competent authority, indemnifying it or any person employed by it or otherwise acting for it, to such amount, in such manner and in respect of such matters as the competent authority may from time to time determine;

(vi) the applicant submits to the satisfaction of the competent authority a scheme of operations appropriate to the application which shall include the particulars or proof as may be determined by an insurance intermediaries rule;

(*b*) in the case of an applicant who is an individual:

(i) subarticle (1)(*a*)(i) and (iii) shall not apply; and

(ii) he shall be entitled to be enrolled in the Agents List, Managers List or the Brokers List if he satisfies the competent authority that -

(*aa*) he is a fit and proper person to be so enrolled and to ensure that the business is carried on in a sound and prudent manner;

(*bb*) he possesses the qualifications and fulfils or complies with the requirements determined by the Act or an insurance intermediaries rule made for the purposes of this article;

(*cc*) his activities are limited to operations arising directly from insurance

intermediaries activities and matters and functions connected therewith or ancillary thereto, to the exclusion of all other commercial business other than business determined by an insurance intermediaries rule.

(2) Where close links exist between the intermediary and any other person, the competent authority shall:

(*a*) only grant enrolment if it considers that such close links do not prevent it from effectively exercising its supervisory functions; and

(*b*) refuse to grant enrolment if it considers that the laws, regulations or administrative provisions of any country, other than Malta, governing any person with whom the intermediary has close links, or their enforcement, prevent it from effectively exercising its supervisory functions.

(3) Where the application is for enrolment to carry on insurance intermediaries activities as an insurance agent or insurance manager, the applicant is required to produce proof to the satisfaction of the competent authority that such person holds an appointment in writing signed by a senior officer of an insurer or an insurance broker, as the case may be, for which the applicant desires to act designating the applicant to act in the name and on behalf of the company, or solely on behalf of the company, in the capacity specified in the appointment and in respect of matters and under the conditions specified in that appointment:

Provided that, where an application is for enrolment to act as an insurance manager, the appointment referred in this paragraph shall not constitute a prerequisite condition for granting enrolment in that behalf provided that the enrolled insurance manager shall not act for an insurer or an insurance broker, as the case may be, unless and until it produces proof to the satisfaction of the competent authority that it holds an appointment in writing from the company concerned to act on its behalf.

Specific qualifications for enrolment in the case of local companies. *Amended by: XX. 2007.144.*

**11.** (1) In the case of an applicant which is a local company, such company shall be entitled to be enrolled in the:

(*a*) Agents List if, in addition to the requirements of article 10, the competent authority is satisfied that any one or more of the company's directors are registered in the Agents Register;

(*b*) Managers List if, in addition to the requirements of article 10, the competent authority is satisfied that any one or more of the company's directors are registered in the Managers Register;

(*c*) Brokers List if, in addition to the requirements of article 10, the competent authority is satisfied that any one or more of the company's directors are registered in the Brokers Register,

and the insurance intermediaries activities are carried on under the

management of a registered person.

(2) Every person enrolled under article 13 shall make an application in writing to the competent authority before opening a branch or setting up or acquiring a subsidiary in Malta.

(3) The competent authority may permit a person enrolled as aforesaid to open a branch in Malta if it satisfied that the insurance intermediaries activities carried on by it from the branch are conducted by a registered person.

(4) No person enrolled under this Part of the Act may carry out insurance intermediaries activities, open a branch, office or other place of business, or set up or acquire a subsidiary in any country outside Malta, except with the written consent of the competent authority.

Specific requirements for enrolment in the case of foreign companies. *Amended by: XX. 2007.145.*

**12.** (1) In the case of an applicant which is a foreign company, such company shall be entitled to be enrolled in the Agents List, Managers List or Brokers List if, in addition to the requirements of article 10, the competent authority is satisfied that -

(*a*) the company is registered or permitted in the country where its head office is situated to carry on insurance intermediaries activities;

(*b*) the company has in Malta at all times -

(i) a branch; and

(ii) a representative:

Provided that, a company carrying on business as an insurance broker restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment may, either in lieu of or in addition to opening a branch in Malta, appoint an insurance manager enrolled under the Act to manage such business; and as long as the insurance manager holds such appointment, the business of insurance broking shall be under the management of a registered insurance broker.

(2) In relation to a branch of a foreign company carrying on insurance intermediaries activities as may be prescribed, the insurance intermediaries activities shall be carried out from such branch by an individual who satisfies the following requirements:

(*a*) in the case of a company carrying on insurance intermediaries activities -

(i) the individual is registered in the Agents Register, Managers Register or Brokers Register;

(ii) the individual is a director of the company or has authority to act for the company and the insurance intermediaries activities are carried on under his management;

(iii) the individual is not an approved auditor, or a

partner or an employee of an approved auditor of the company;

(*b*) in the case of a company carrying on other insurance intermediaries activities as may be prescribed, provisions as may be prescribed.

Grant of registration or enrolment by competent authority to insurance intermediaries.

**13.** (1) An application for registration or enrolment under this article shall be made in such form and manner as the competent authority may from time to time determine.

(2) The competent authority shall have the power to require an applicant to provide such information as it may deem necessary for the purpose of determining an application for registration or enrolment under this article.

(3) The competent authority may grant registration or enrolment under this article only if it is satisfied on the basis of the information required to be submitted under this Act and any information received by it, that registration or enrolment ought to be granted.

(4) Subject to the provisions of this Act, the competent authority may subject registration or enrolment made under this article to such conditions as it may from time to time deem fit to impose.

(5) The competent authority shall determine an application for registration or enrolment under this article within three months of receiving the information required to be submitted under this Act; and if it refuses to grant the registration or enrolment it shall inform the applicant in writing of the reasons for the refusal:

Provided that, in each case the competent authority may take such measures as it may deem necessary for the protection of the interest of the public.

Certificate of registration or enrolment of intermediaries.

**14.** (1) On granting registration or enrolment under article 13, the competent authority shall issue to the applicant concerned a certificate of registration or enrolment in the form and manner as it deems appropriate evidencing -

(*a*) in the case of an application for registration, registration of the applicant in the Agents Register, Managers Register, or Brokers Register, as the case may be;

(*b*) in the case of an application for enrolment, enrolment of the applicant in the Agents List, Managers List or Brokers List, as the case may be.

(2) A certificate of registration or enrolment granted under this article or an official copy thereof shall be prominently displayed by the intermediary concerned at his, or its place or places of business, in a part thereof to which the public has access.

(3) The competent authority may by means of an insurance intermediaries rule made for the purposes of this article, determine the details to be included in the certificate of registration or enrolment.

## PART IV

## POWERS OF INTERVENTION IN RELATION TO PERSONS ENROLLED UNDER PART III

Automatic striking off of registration or enrolment of intermediaries. *Amended by: XX. 2007.146.*

**15.** (1) An intermediary registered or enrolled under this Act shall automatically be struck off the register or list, if -

(*a*) the intermediary does not commence to carry on the insurance intermediaries activities pursuant to the enrolment within twelve months of it being granted, or within such other period as may be specified in the enrolment; or

(*b*) the intermediary is declared bankrupt or goes into liquidation or makes a composition with creditors of the intermediary or is otherwise dissolved; or

(*c*) the intermediary has ceased to operate as a result of a merger with another company carrying on insurance intermediaries activities or for any other reason whatsoever; or

(*d*) in the case of a foreign company enrolled in terms of article 13, the overseas regulatory authority in the country of registration or where the head office is situated withdraws the registration or permission to carry on such activities.

(2) Subarticle (1)(*a*) shall not apply to a person enrolled to act as an insurance manager.

Power of the competent authority to suspend or strike the name off the register or list. *Amended by: XX. 2007.147.*

**16.** Without prejudice to anything contained in any other provision of this Act, the competent authority may at any time suspend registration or enrolment or strike off the name of a registered or enrolled person from the Agents Register, Managers Register or Brokers Register, or the Agents List, Managers List or Brokers List if -

(*a*) any document or information accompanying an application for registration or enrolment, or any information given in connection therewith, is false, incorrect or misleading in any material particular, or the registered or enrolled person has concealed, or conceals from, or fails to notify to the competent authority any document or information or change therein which was the duty of the intermediary to reveal or to notify under this Act and any regulations made thereunder or any insurance intermediaries rule; or

(*b*) it considers that the registered or enrolled person does not fulfil the requirements of, or has contravened, any of the provisions of this Act and any regulations made thereunder, or any insurance intermediaries rule, or has failed to satisfy or comply with any condition to which he or it, or the registration or the enrolment, is subject by virtue of or under this Act; or

(*c*) it considers that the registered or enrolled person is

unfit to retain his or its name in the Agents Register, Managers Register, Brokers Register or the Agents List, Managers List or Brokers List; or

(*d*) the enrolled company is no longer managed in a sound and prudent manner to retain its name in the Agents List, Managers List or Brokers List; or

(*e*) it receives a written request so to do by the registered or enrolled person; or

(*f*) the enrolled person no longer possesses the required own funds as applicable; or

(*g*) the enrolled person fails to pay the annual continuance of registration or enrolment fee when due; or

(*h*) the registered person does not hold a directorship in, or is no longer employed with, the enrolled company; or

(*i*) the enrolled company ceases to have on its board of directors any one person who is a registered person; or

(*j*) it considers that, by reason of the manner in which the registered or enrolled person is carrying on insurance intermediaries activities, or for any other valid reason, the interest of the insurance industry or of the public is threatened; or

(*k*) the registered individual or the enrolled person has misappropriated or converted to his or to its own use or illegally withheld monies held, or required to be held, by him or by it in a fiduciary capacity; or

(*l*) the registered or enrolled person is convicted by any court of law of any criminal offence, unless it is an offence which, owing to its trivial nature or the circumstances under which it was committed, does not render it or him unfit to have his name in the Agents Register, Managers Register or Brokers Register or the Agents List, Managers List or Brokers List; or

(*m*) the registered or enrolled person is considered by the competent authority to have carried on insurance intermediaries activities in an unprofessional manner; or

(*n*) the competent authority is prevented from exercising its supervisory functions effectively because of the existence of close links as may be defined by means of an insurance intermediaries rule made under this Act.

Notification of intention of suspension or striking a name off the register or list.

**17.** (1) Subject to the following provisions of this article, where the competent authority intends to suspend a registration or enrolment or strike the name of a registered or enrolled person off the Agents Register, Managers Register or Brokers Register, or the Agents List, Managers List or Brokers List, it shall give the person concerned notice in writing setting out the reasons for its intention to do so.

(2) Every notice given under subarticle (1) shall state that the person 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 registration or enrolment should not be suspended or the name of the person struck off the Agents Register, Managers Register or Brokers Register, or the Agents List, Managers List or Brokers List, as applicable, 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 person concerned.

(4) On notification by the competent authority to a person that his or its name has been suspended or has been struck off the Agents Register, Managers Register or Brokers Register or the Agents List, Managers List or Brokers List, the intermediary shall forthwith surrender to the competent authority the certificate of registration or enrolment, and any official copies thereof; and in each case, the competent authority may take such other measure as it may deem necessary to safeguard the interests of insureds, policyholders, creditors or other interested persons.

(5) Where the competent authority has suspended the registration or enrolment or struck off the name of a person from the Agents Register, Managers Register or Brokers Register or the Agents List, Managers List or Brokers List on any of the grounds specified in article 16 of this Act, it may, if it so elects give publicity to such suspension or striking off in a manner it deems appropriate.

(6) The competent authority shall have power to order that all expenses, incurred by it in relation to such publicity, or such part thereof, as it deems appropriate, shall be paid by the person 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.

Restoration of a name struck off the register or list.

**18.** (1) Where the name of a person has been struck off the Agents Register, Managers Register or Brokers Register or the Agents List, Managers List or Brokers List, in pursuance of a decision under article 16, the name of that person shall not again be entered in the register or list unless -

(*a*) otherwise ordered by the Tribunal; or

(*b*) in the absence of such order, the competent authority, on an application made to it in that behalf, otherwise decides.

(2) The competent authority shall determine an application for restoration of a name of a person to the Agents Register, Managers Register, or Brokers Register or the name of an enrolled person to the Agents List, Managers List or Brokers List under this article within three months of receiving the information required to be submitted under this Act as if the application were an application made under article 13; and if it refuses to restore a name of an individual or of a company to the register or list, it shall inform the

applicant in writing of the reasons for the refusal.

(3) Subarticle (2) shall not apply where the restoration of a name of a person to the Agents Register, Managers Register, and Brokers Register or the Agents List, Managers List or Brokers List is made by an order of the Tribunal.

Power of the competent authority to protect the public interest.

**19.** (1) Without prejudice to the powers conferred to the competent authority under article 16, the competent authority may, where it is satisfied that sufficient serious circumstances exist, proceed to take one or more of the following measures:

(*a*) require the intermediary forthwith to take such steps as the competent authority may consider necessary to rectify or remedy the circumstances;

(*b*) appoint a person to advise the intermediary in the proper conduct of its business;

(*c*) appoint a person to take charge of the assets of the intermediary, or any portion of them, for the purposes of safeguarding the interests of insureds, policyholders, creditors or other interested persons and, in the case of a local company, shareholders of the company;

(*d*) appoint a person to assume control of the business of the intermediary, 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 enrolled company or, in the case of a foreign company, 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 enrolled company;

(*g*) fix the remuneration to be paid by the intermediary to any person appointed under this article;

(*h*) require the intermediary to submit a financial recovery plan 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 intermediary;

(*i*) require a registered or enrolled person to remove the word "insurance" as part of his or its description or title and not make use of such word on any letter paper, in any notice or advertisement, or in any another similar manner;

(*j*) 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 thereof.

(2) Where a person is appointed by the competent authority -

(*a*) under subarticle (1)(*b*), it shall be the duty of the intermediary to act in accordance with the advice given by such person unless and until the competent authority, on representations made to it, directs otherwise;

(*b*) under subarticle (1)(*c*), the intermediary shall deliver to such person all the assets of which he is placed in charge, and all the powers, functions and duties of the intermediary in respect of those assets, and in relation to a 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 intermediary, shall be exercisable by and vest in the person appointed under the said subarticle to the exclusion of any other person;

(*c*) under subarticle (1)(*d*), the intermediary shall submit the business to the control of such person and shall provide him with such facilities as he may require the intermediary to provide him to carry on that business or to carry out the functions assigned to him under the said subarticle; and all the powers, functions and duties of the intermediary, and in relation to a company whether exercisable by the intermediary in general meeting, or by the directors, or by any other person, including the legal and judicial representation of the intermediary 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 intermediary for all purposes of law to the exclusion of any other person.

(3) In the case of a foreign company, 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.

## PART V

## OBLIGATIONS OF PERSONS ENROLLED UNDER PART III

Monies held in a fiduciary capacity.

**20.** (1) Every person enrolled under article 13 shall keep monies held by him or it in a fiduciary capacity separate from his or its own monies and shall, in respect of those monies, maintain separate accounts in accordance with requirements determined by an insurance intermediaries rule made for the purposes of this article.

(2) No person shall have or obtain any recourse or right against monies standing to the credit of the account referred to in subarticle (1) in respect of a claim or right against an enrolled person until all proper claims arising out of insurance intermediaries activities against those monies have been satisfied, even in the event of bankruptcy of the individual or insolvency of the company, as the

case may be.

Fidelity bonds required of insurance intermediaries.

**21.** (1) Without prejudice to article 20, every person enrolled under article 13 shall effect a fidelity bond in a specified form, as respects the insurance intermediaries activities carried on by the intermediary concerned, in such circumstances, to such value, in such manner and under such conditions as may be determined by an insurance intermediaries rule made for the purposes of this article.

(2) The bond referred to in subarticle (1) shall provide that in the event of the inability or failure of the enrolled person to meet his or its financial obligations in relation to any sums of money received by him or it from, or on behalf of, his or its clients, a sum of money will become available to a person nominated or approved by the competent authority, to be applied for the benefit of any client of the enrolled person who has incurred loss or liability because of the inability or failure of the enrolled person to meet such financial obligations.

Exemptions applicable to insurance managers.

**22.** The provisions of articles 20 and 21 shall not apply to a person enrolled as an insurance manager for so long as such person holds no appointment from any insurer or an insurance broker for so acting.

Notification of persons registered in the register.

**23.** Every enrolled company shall, not later than the end of January of each year, notify in writing the competent authority in such manner as the competent authority may require, the name and the other particulars as it may also require, of every director and employee of the company who are registered in the Agents Register, Managers Register or Brokers Register; and during the following twelve months, the company shall give notice in writing to the competent authority of any change that may, from time to time, occur among such directors and employees and such notice shall be given within such period as may be specified by an insurance intermediaries rule.

Submission of audited financial statements and income statements.

**24.** (1) Every enrolled company shall, not later than four months from the date of closing of its financial year, or at any other time as may exceptionally be authorised in writing by the competent authority, forward to the competent authority a copy of its audited financial statements drawn up -

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(*a*) in the case of a local company, in accordance with the provisions of the Companies Act; and

(*b*) in the case of a foreign company, in accordance with the provisions of the laws of the country where the registered office or head office of the company is situated governing the financial statements of such companies.

(2) Every enrolled person who is an individual shall provide income statements drawn up in a manner as determined by an insurance intermediaries rule made for the purposes of this article and such statements shall be forwarded to the competent authority within such period as may be specified in the rule.

Submission of business of insurance intermediaries statements.

**25.** (1) Subject to the following subarticles, an enrolled person which in any calendar year carries on insurance intermediaries activities shall, in respect of the insurance intermediaries activities 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 intermediaries rule made for the purposes 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 submitted under this article shall be verified in the manner required by the insurance intermediaries rule.

(3) The competent authority may at any time direct an enrolled person to submit to it such statement at such interval and for such period as it may specify in such rule.

Enrolled persons ceasing to carry on insurance intermediaries activities.
*Amended by: XX. 2007.148.*

**26.** (1) An enrolled person shall not cease to carry on, in Malta, insurance intermediaries activities except with the permission of the competent authority given in writing on an application made to it in that behalf in such manner as it may require, and in compliance with such conditions as it may deem proper to impose.

(2) The application for ceasing shall be submitted to the competent authority not later than three months before the date on which the enrolled person intends to cease to carry on such activities.

## PART VI

## FINANCIAL YEAR AND AUDITORS

Financial year of insurance intermediaries.

**27.** (1) A company enrolled under article 13 which is a local company shall, not later than three months from the date of a company's enrolment, notify in writing the competent authority of the financial year and, failing such notice, the financial year of the enrolled company shall terminate on the thirty-first day of December of each year.

(2) No enrolled 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 foreign company applying for enrolment under article 13 shall, on application, notify in writing the competent authority of its financial year; and after enrolment under that article, where a foreign company alters its financial year, it shall forthwith inform in writing the competent authority of such change.

(4) For the purposes of this Act "financial year" -

(*a*) in relation to an enrolled company which is a local company, means an accounting period as is construed in accordance with articles 164 to 166 of the Companies Act; Cap. 386.

(*b*) in relation to an enrolled company which is a foreign company, means an accounting period as is construed

in accordance with the provisions of the laws of the country where the registered office or the head office of the company is situated governing the accounting period of such companies.

Appointment, duties and termination of appointment of auditors.

**28.** (1) Every company enrolled under article 13 shall each 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 the enrolled company fails to appoint an auditor as required by subarticle (1) or at any time fails to fill any vacancy in the office of an 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 intermediaries rule in respect of the enrolled company have been complied with and observed.

(4) Every auditor of an enrolled 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 situations mentioned in paragraphs (*a*) and (*b*), the auditor shall specify the reasons for so doing.

(6) An enrolled 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 enrolled 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 enrolled 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 enrolled company to change the 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, the reasons why his 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 to act as auditor issued to him under the Insurance Business Act.

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(11) Notwithstanding anything contained in the foregoing subarticles, the competent authority may, in the case of a foreign company, 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) If, in his capacity as auditor of an enrolled company or due to a direct request by the competent authority under this Act, an auditor becomes aware of any matter which relates to and may have a serious adverse effect upon the stability and soundness of the company or the integrity of the insurance intermediaries activities carried on in Malta, he shall immediately inform the competent authority through the intermediary's management or, if circumstances so warrant, directly to the competent authority.

(13) For the purposes of subarticle (12), any matter which relates to and may have a serious adverse effect is any matter that:

(*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 to continue carrying on the activities in respect of which it is enrolled; or

(*c*) may be prescribed by the Minister.

(14) An auditor of an enrolled 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 stability and soundness of the company or the integrity of the insurance intermediaries activities carried on in Malta, of which he becomes aware in his capacity as an auditor to an enrolled company having close links within the meaning of article 10.

Communication by auditors etc. with the competent authority.

**29.** No duty, including the duty of professional secrecy, to which -

(*a*) an auditor of a company enrolled under article 13 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 from it, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor and which is relevant to any functions of the competent authority under the provisions of this Act or

is required to be communicated by virtue of this Act;

(*b*) a person appointed to make a report under any provision of this Act 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, on any matter which relates to the business or affairs of an enrolled company in relation to which a report is made.

## PART VII

## PROVISIONS APPLICABLE TO INTERMEDIARIES CARRYING ON BUSINESS AS INSURANCE BROKERS

Appointment of insurance managers by enrolled insurance brokers. *Amended by: XX. 2007.149.*

**30.** A local company enrolled under article 13 and carrying on business as an insurance broker, restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment, may appoint an insurance manager enrolled under the Act to manage such business; and so long as the insurance manager holds such appointment, the business of insurance broking shall be under the management of a registered insurance broker.

Contracts of insurance relating to risks situated in Malta or to commitments where Malta is the country of the commitment. *Amended by: XXXIII. 2015.82.*

**31.** (1) Subject to the following subarticles, except with the approval of the Minister given generally by order in the Gazette, or with the approval of the competent authority given specifically in writing, a contract of insurance relating to a risk situated in Malta or to a commitment where Malta is the country of the commitment negotiated, arranged or procured by an insurance broker on behalf of an insured person or a person to be insured shall be taken out with an authorised undertaking.

(2) The provisions of this article shall not apply to -

(*a*) business of reinsurance;

(*b*) large risks as defined in Article 13 of the Solvency II Directive.

Underwriting agreements. *Amended by: XXXIII. 2015.83.*

**32.** (1) Subject to the following subarticles, any person enrolled in the Brokers List under article 13 may make or enter into any underwriting agreement with any authorised undertaking.

(2) No person enrolled as aforesaid shall make or enter into any underwriting agreement unless, with respect to that underwriting agreement, the person complies with or satisfies such requirements as the competent authority may by an insurance intermediaries rule made for the purpose of this article determine.

(3) Any person enrolled as aforesaid shall register with the competent authority any underwriting agreement made or entered into under this article in the form and manner as the competent authority may by an insurance intermediaries rule determine.

(4) No business of insurance shall be accepted under an underwriting agreement unless the underwriting agreement has been duly registered as aforesaid.

(5) The competent authority shall determine an application for registration of an underwriting agreement under this article within

one month of receiving the information required to be submitted under the insurance intermediaries rule; and if it refuses to register the agreement it shall inform the applicant in writing of the reasons for the refusal.

(6) Subject to the provisions of this Act, the competent authority may subject registration of any underwriting agreement made under this article to such conditions as it may from time to time deem fit to impose.

(7) For the purposes of this article "underwriting agreement", in relation to business of insurance, means an agreement between an authorised undertaking and a person enrolled in the Brokers List under article 13 under which the enrolled person may, in accordance with the terms thereof, accept risks on behalf of the authorised undertaking; and, in this context, any other arrangement, by whatever name it may be called, whose objects and purposes are similar to an underwriting agreement, for the purposes of this article, is deemed to be an underwriting agreement.

## PART VIII

## REGISTRATION AND ENROLMENT OF TIED INSURANCE INTERMEDIARIES

Restriction on persons for carrying out tied insurance intermediaries activities.

**33.** (1) Subject to subarticle (2), no person shall act as a tied insurance intermediary and carry out, or attempt to carry out in Malta tied insurance intermediaries activities unless such person is appointed, registered and enrolled in accordance with the provisions of this Act.

(2) This article shall not apply to a tied insurance intermediary, which is registered pursuant to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation in a Member State or an EEA State, other than Malta.

Tied Insurance Intermediaries Company Registers. *Amended by: XXXIII. 2015.84.*

**34.** (1) Subject to article 43, every authorised undertaking desirous of appointing a person to act on its behalf as a tied insurance intermediary shall establish and maintain a register of persons acting as tied insurance intermediaries, in this Act referred to as the "Tied Insurance Intermediaries Company Register", containing the particulars as the competent authority may, from time to time, by an insurance intermediaries rule made for the purposes of this article, determine, of all persons who are entitled under this Act to be registered therein.

(2) Subject to the provisions of subarticle (1), every authorised undertaking shall determine its own procedures for appointing and registering a person as a tied insurance intermediary in the Tied Insurance Intermediaries Company Register.

Qualifications for registration. *Amended by: XXXIII. 2015.85.*

**35.** (1) A person shall be entitled to be registered by an authorised undertaking in the Tied Insurance Intermediaries Company Register of such undertaking if it is satisfied that such person is fit and proper to carry out tied insurance intermediaries activities.

(2) A person shall not be entitled to carry out tied insurance

intermediaries activities, by virtue of his registration under article 37 unless and until he is enrolled by the competent authority in the Tied Insurance Intermediaries List under that article.

List of persons carrying out tied insurance intermediaries activities. *Amended by: XXXIII. 2015.86.*

**36.** (1) The competent authority shall establish and maintain a list of persons carrying out tied insurance intermediaries activities in this Act referred to as the "Tied Insurance Intermediaries List", containing such particulars as the competent authority may, determine from time to time by an insurance intermediaries rule made for the purposes of this article of all persons who are, or which are, entitled under this article to be enrolled therein.

(2) It shall be the duty of an authorised undertaking to enrol with the competent authority in the Tied Insurance Intermediaries List any person registered by it as a tied insurance intermediary in the Tied Insurance Intermediaries Company Register established and maintained by it under article 37.

(3) On obtaining from the competent authority a certificate of enrolment under article 37, an authorised undertaking shall furnish the person, in whose name the certificate of enrolment is made out, with the certificate or an official copy thereof, issued to the authorised undertaking by the competent authority.

(4) Where a person enrolled as aforesaid carries out tied insurance intermediaries activities from a place of business or from any other place accessible to the public, that person shall display in a prominent position in that place in a part thereof to which the public has access, the certificate of enrolment or an official copy thereof issued by the competent authority under this article.

Appointment, registration and enrolment of tied insurance intermediaries. *Amended by: XX. 2007.150; XXXIII. 2015.87.*

**37.** (1) Subject to the provisions of this Act, every authorised undertaking desirous of appointing a person to act on its behalf as a tied insurance intermediary shall, under this article, appoint and register in the Tied Insurance Intermediaries Company Register of the authorised undertaking and enrol with the competent authority in the Tied Insurance Intermediaries List, any one or more persons to act on its behalf as tied insurance intermediaries and to carry out tied insurance intermediaries activities in the class or classes of long term business or the group or groups of classes of general business specified in their respective appointments and, where a person is not an individual, such person must itself have an individual who satisfies the requirements of article 35(1):

Provided that, an undertaking is prohibited from appointing and registering in its Tied Insurance Intermediaries Company Register a person which is -

(*a*) a person registered in the Agents Register, Managers Register or Brokers Register under article 13;

(*b*) a person enrolled in the Agents List, Managers List or Brokers List under that article;

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(*c*) an undertaking authorised under the Insurance Business Act to carry on business of insurance:

Provided further that an undertaking is prohibited from appointing any person acting on its behalf as a tied insurance

intermediary to carry out any tied insurance intermediaries activities within any class or group of classes of business of insurance as the competent authority may, from time to time, by an insurance intermediaries rule made for the purposes of this article determine to be a class or group of classes of business within which no tied insurance intermediaries activities shall be carried out.

(2) Where an authorised undertaking appoints and registers in its Tied Insurance Intermediaries Company Register a person which is not an individual, and that person carries out tied insurance intermediaries activities from any one or more places of business, that person shall ascertain that tied insurance intermediaries activities so carried out by it from each such place of business are carried out only by an individual who satisfies the requirements of article 35(1).

(3) Subject to subarticles (4) and (5), any person, other than a person mentioned in the first proviso to subarticle (1), may seek and obtain under this article appointment and registration in a Tied Insurance Intermediaries Company Register of an authorised undertaking to carry out tied insurance intermediaries activities on behalf of such undertaking.

(4) Where a person desires to seek appointment and registration in the Tied Insurance Intermediaries Company Register of more than one undertaking, authorised to carry on long term business, and where any class of long term business carried on by the undertakings concerned is of the same kind, such person shall, in respect of that class of business, seek and obtain appointment and registration to carry out tied insurance intermediaries activities relating to that kind of class of business only in the Tied Insurance Intermediaries Company Register of one of the undertakings concerned.

(5) Where a person desires to seek appointment and registration in the Tied Insurance Intermediaries Company Register of more than one undertaking authorised to carry on general business, and where any class, or any group of classes, of general business carried on by the undertakings concerned is of the same kind, such person shall, in respect of that class, or that group of classes of business, seek and obtain appointment and registration to carry out tied insurance intermediaries activities relating to that class, or that group of classes of business only in the Tied Insurance Intermediaries Company Register of one of the undertakings concerned.

(6) No person who is an employee of an authorised undertaking shall, solely by virtue of his employment by the undertaking, require registration in the Tied Insurance Intermediaries Company Register of the undertaking under this article.

(7) (*a*) On granting an application for enrolment under this article, the competent authority shall issue to the applicant concerned a certificate of enrolment evidencing enrolment of the person registered in the Tied Insurance Intermediaries Company Register of the applicant in the Tied Insurance Intermediaries List.

(*b*) The competent authority may by means of an insurance intermediaries rule made for the purposes of this article, determine the details to be included in the certificate of enrolment.

(8) Subject to the provisions of this Act, the competent authority may subject enrolment made under this article to such conditions as it may from time to time deem fit to impose.

(9) An authorised undertaking shall at all times be responsible for any act or omission of its registered tied insurance intermediaries provided that such act or omission is an act or omission pertaining to a contract of insurance issued by the undertaking or offered on its behalf through the services of such tied insurance intermediaries. For the purposes of this subarticle any reference to registered tied insurance intermediaries shall include a reference to past as well as present registered tied insurance intermediaries.

Maintenance of separate accounts. *Amended by: XXXIII. 2015.88.*

**38.** (1) Without prejudice to subarticle (3), every tied insurance intermediary, shall, in respect of monies held by him or it in relation to a policy of insurance, keep such monies held by him or it separate from his or its own monies and shall, in respect of those monies maintain separate accounts in accordance with requirements determined by an insurance intermediaries rule made for the purposes of this article.

(2) No person shall have or obtain any recourse or right against monies standing to the credit of the account referred to in subarticle (1) in respect of a claim or right against a person acting as a tied insurance intermediary until all proper claims arising out of insurance intermediaries activities against those monies have been satisfied, even in the event of bankruptcy of the individual or insolvency of the company, as the case may be.

(3) Notwithstanding the provisions of subarticles (1) and (2):

(*a*) monies received by the tied insurance intermediary from a person in relation to a contract of insurance shall be treated as having been paid to the authorised undertaking issuing or offering the contract, and on whose behalf the tied insurance intermediary carries on tied insurance intermediaries activities; and

(*b*) monies paid by the authorised undertaking to the tied insurance intermediary, and intended for the policyholder, shall not be treated as having been paid to the policyholder until such monies are actually received by the policyholder concerned.

Striking name off Tied Insurance Intermediaries Company Register. *Amended by: XXXIII. 2015.89.*

**39.** Subject to the provisions of article 40 and to the terms and conditions of any relevant tied insurance intermediaries appointment at any time and for any reason whatsoever -

(*a*) any authorised undertaking may strike off its Tied Insurance Intermediaries Company Register the name of any person registered in the said register;

(*b*) any person registered in the Tied Insurance

Intermediaries Company Register of an authorised undertaking may make an application in writing to the undertaking concerned requesting it to strike his name off the said register.

Striking name off Tied Insurance Intermediaries Company Register or the Tied Insurance Intermediaries List.
*Amended by: XXXIII. 2015.90.*

**40.** (1) Where an authorised undertaking elects to strike the name of a person off its Tied Insurance Intermediaries Company Register, such undertaking shall forthwith notify in writing the person concerned and the competent authority specifying the date on which it elects to strike the name of that person off the register.

(2) Where an authorised undertaking strikes the name of a person off its Tied Insurance Intermediaries Company Register on grounds of unfitness and improperness or because the person concerned has acted fraudulently, or dishonestly, or in such manner as to cease to be trustworthy, the undertaking shall also notify in writing the competent authority the reasons for so doing.

(3) On receiving a notification from an authorised undertaking that such undertaking has elected to strike the name of a person off its Tied Insurance Intermediaries Company Register, the competent authority shall -

(*a*) if the striking of such name off the register is on grounds other than those specified in sub-article (2), as early as reasonably practicable, confirm in writing to the authorised undertaking that the name of such person, in so far as it relates to that undertaking, shall be struck off the Tied Insurance Intermediaries List as from the date specified in the undertaking's notification;

(*b*) if the striking of such name off the register is on grounds specified in subarticle (2), before striking the name of such person off the Tied Insurance Intermediaries List, forthwith, give the person concerned notice in writing setting out the reasons for so doing and the provisions of article 17(2) and (3) shall *mutatis mutandis* apply to a notice given under this article.

(4) Without prejudice to any action which the competent authority may deem appropriate under this Act or any other law, where the competent authority strikes the name of a person off the Tied Insurance Intermediaries List on the grounds specified in subarticle (2), the competent authority may give publicity to the striking of that name off the Tied Insurance Intermediaries List and -

(*a*) if the name of that person is registered in the Tied Insurance Intermediaries Company Register of any other authorised undertaking, the competent authority shall also forthwith notify in writing that other undertaking and direct it to strike forthwith the name of that person off the Tied Insurance Intermediaries Company Register of that undertaking and give the undertaking the reasons for its direction;

(*b*) if the competent authority elects to give publicity to

the striking of that name off the Tied Insurance Intermediaries List, the competent authority shall publish a notice giving publicity to that striking off in a manner it deems appropriate.

(5) The competent authority shall have power to order that all expenses incurred by the publication of a notice pursuant to this article, or such part thereof as it may deem appropriate, shall be paid by the person 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.

(6) Where an authorised undertaking receives in writing an application from a person registered in the Tied Insurance Intermediaries Company Register of the undertaking requesting such undertaking to strike the name of that person off the said register, the undertaking shall without undue delay strike the name of that person off the said register and notify in writing the person concerned and the competent authority specifying the date on which it elects to strike the name of that person off the register.

(7) Where, on an application made to an authorised undertaking under sub-article (6), the undertaking refuses, or unduly prolongs the process, to strike the name of a person off its Tied Insurance Intermediaries Company Register, the person concerned may refer the matter to the competent authority and the competent authority shall issue in writing to the undertaking concerned those directives it deems necessary to oblige the undertaking to hasten the process to strike the name of that person off its register.

(8) On notification by the competent authority to an authorised undertaking that the name of a person registered in the Tied Insurance Intermediaries Company Register of the undertaking has been struck off the Tied Insurance Intermediaries List, the undertaking concerned shall forthwith surrender to the competent authority the certificate of enrolment relating to that person, and any official copies thereof.

Protection of the public or other interest.
*Amended by: XXXIII. 2015.91.*

**41.** (1) Notwithstanding any provision of this Act, the competent authority may, at any time, on grounds of unfitness and improperness or of protection of the public interest -

(*a*) refuse to enrol a person in the Tied Insurance Intermediaries List;

(*b*) strike the name of a person off the Tied Insurance Intermediaries List:

Provided that, in each case, the competent authority shall inform the undertaking concerned in writing of the reasons for so doing.

(2) In each case the competent authority may take any other measure as it may deem necessary to safeguard the interests of insureds, policyholders, creditors or other interested persons.

**42.** (*Deleted by XXVII. 2009.38*).

Restoration of a name struck off the Tied Insurance Intermediaries List.

**43.** (1) Subject to subarticle (2), for the purposes of this Part of this Act, "authorised undertaking" shall not include European insurance undertakings.

Application of Part VIII of the Act and European insurance undertakings. *Amended by: XXXIII. 2015.92.*

(2) In the case of a European insurance undertaking seeking to appoint a person resident in Malta or having its registered office or head office in Malta to carry out tied insurance intermediaries activities, that undertaking shall enrol such person with the competent authority as may be determined by an insurance intermediaries rule made for the purposes of this article and the said rule shall contain the particulars, conditions and requirements for enrolment.

## PART IX

## GENERAL PROVISIONS

**44.** (1) Every person registered or enrolled under this Act, 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 intermediaries rule, as soon as the registered or enrolled person becomes aware of such changes.

Changes in documentation. *Amended by: XXVII. 2009.39.*

(2) Without prejudice to article 44A, a person enrolled as a local company 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 holdings; and the competent authority may, by an insurance intermediaries 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, a person enrolled under Part III, shall notify the competent authority on a continuous basis, with any change or circumstance which may give rise to the existence of close links within the meaning of article 10.

Participation in an enrolled company.
*Added by: XVII. 2009.40.*
*Amended by: XXXIII. 2015.93.*

**44A.** (1) Notwithstanding anything contained in any other law, the prior written consent of the competent authority shall be required before any person may lawfully:

(*a*) acquire, directly or indirectly, a qualifying shareholding in a company enrolled under article 13 (hereinafter referred to in this Act as the "enrolled 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 enrolled company;

(*c*) further increase, directly or indirectly, a qualifying shareholding so as to cause it to equal or exceed, twenty per centum or thirty per centum or fifty per centum or to cause the enrolled 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 per centum or twenty per centum or to cause the enrolled 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; or

(*f*) divest itself, directly or indirectly, of a qualifying shareholding.

(2) Subarticle (1) shall apply irrespective of whether or not any of the relevant shares are shares listed on any regulated market.

(3) It shall be the duty of an enrolled 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).

(4) Notwithstanding anything contained in any other law, the written consent of the competent authority shall be required before any enrolled company may lawfully -

(*a*) merge with any other company, whether enrolled under this Act or not;

(*b*) undergo any reconstruction or division; or

(*c*) increase or reduce its nominal or issued share capital or effect any material change in voting rights.

(5) It shall be the duty of all directors and qualifying shareholders of an enrolled company to notify the competent authority forthwith upon becoming aware that the company intends to take any of the actions set out in subarticle (4).

(6) For the purpose of this article, the competent authority may issue an insurance intermediaries rule determining the form in which notification in terms of subarticle (1) and subarticle (4) shall take place and the information required to be furnished with such notification; and the competent authority shall, upon a notification

by a person intending to take any action set out in subarticle (1)(*a*) to (*c*), determine whether such person is a fit and proper person before giving its consent.

(7) 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;

(*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 enrolled company concerned in writing of the reason for such refusal.

(8) If any person or any enrolled company takes or intends to take any action set out in subarticle (1) or (4) without the prior written consent of the competent authority, the competent authority shall, without prejudice to any other penalty which may be imposed under this Act, have the power to make an order:

(*a*) restraining the person or company from taking, or continuing with, such action;

(*b*) declaring such 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 such action was taken;

(*d*) restraining the person or company from exercising any rights which such 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 (4).

(9) In the case of a foreign company enrolled under this Act to carry out insurance intermediaries activities in or from Malta, the provisions of this article shall apply only to the extent of requiring such 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.

(10) 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 enrolled 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.

Co-operation in supervisory duties and sharing of information.
*Amended by: XX. 2007.151; XXXIII. 2015.94.*

**45.** (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 a registration or enrolment pursuant to the provisions of article 13(4);

(*b*) the power to suspend or strike off the name of a registered person from the Agents Register, Managers Register or Brokers Register or of an enrolled person from the Agents List, Managers List or Brokers List under article 16;

(*c*) the power to strike off the name of a tied insurance intermediary off the Tied Insurance Intermediaries List enrolled under article 41;

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(*d*) the power to take any action under articles 29, 30, 31 or 31A of the Insurance Business Act, as applicable in accordance with article 54 of this Act;

(*e*) 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 international commitments or the obligations arising out of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, as amended from time to time, and includes any implementing measures that have been or may be used thereunder; 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 held between an authorised undertaking, an insurance intermediary, an approved auditor 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.

Confidentiality.
*Amended by: XX. 2007.152; X. 2011.93.*

**46.** (1) Nothing in this Act shall authorise the competent authority to enquire or cause an enquiry to be made in relation to an enrolled person into the affairs of any individual client of the enrolled person except for the purpose of ensuring compliance with

any of the provisions of this Act or any other Act.

(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 intermediaries 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 article 28;

(*f*) where the information is provided to the Central Bank of Malta or to the Listing Authority under the Financial Markets Act in exercise of their respective functions in terms of law; Cap. 345.

(*g*) 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;

(*h*) where the information is disclosed in civil or commercial proceedings in relation to the bankruptcy or compulsory winding up of an insurance intermediary provided such information does not concern third parties involved in attempts to rescue such insurance intermediary, 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 45, 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 enrolled person, shall disclose any information relating to the affairs of an enrolled person or of a client of the enrolled person concerned 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, the expression "agents", in relation to an enrolled person, means and includes the bankers and the auditor of the enrolled person.

(6) When an officer or an employee of an enrolled company, or a person registered or enrolled, or an officer or an employee of such person, has reason to believe that an activity or proposed activity could involve money laundering, he shall act in compliance with the reporting and other obligations set out in the regulations made under article 12 of the Prevention of Money Laundering Act and any procedures and guidance issued thereunder, and such disclosure shall not constitute a breach of confidentiality.

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Access to the public of the registers and the lists.
*Amended by: XXXIII. 2015.95.*

**47.** (1) The Agents Register, Managers Register and Brokers Register and the Agents List, Managers List, Brokers List, and Tied Insurance Intermediaries List shall be accessible to the public, free of charge, at the offices of the competent authority at all times during the normal working hours of the competent authority.

(2) Any person may, upon payment of such fee as may be prescribed, obtain from the competent authority extracts from the Agents Register, Managers Register or Brokers Register and the Agents List, Managers List or Brokers List, and the Tied Insurance Intermediaries List and official copies of certificates of registration or enrolment.

Use of the word "insurance".
*Amended by: XX. 2007.153; XXXIII. 2015.96.*

**48.** (1) Subject to the following provisions of this article, save with the written permission of the competent authority, no person other than -

(*a*) a person registered in the Agents Register, Managers Register or Brokers Register under article 13; or

(*b*) a person enrolled in the Agents List, Managers List or Brokers List under that article; or

(*c*) a person enrolled in the Tied Insurance Intermediaries List under article 37; or

(*d*) an insurance and reinsurance undertaking authorised under the Insurance Business Act; or

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(*e*) a person who holds insurance qualifications of an

institute of repute recognised for such purpose by the competent authority; or

(*f*) an institute of repute which provides instruction in insurance business studies and is recognised as such by the competent authority; or

(*g*) a person prescribed by regulations under this Act,

shall use the word "insurance" as part of his or its description or title or make any such use on any letter paper, in any notice or advertisement, or in any other similar manner.

(2) Any foreign company enrolled or any third country insurance undertaking or third country reinsurance undertaking authorised as aforesaid may use the name used in its country of registration, incorporation or constitution save that, where there is a risk that the use of such name may be misleading, such foreign company, third country insurance undertaking or third country reinsurance undertaking shall add such explanatory particulars to its name as the competent authority shall direct.

(3) The competent authority may, by an insurance intermediaries rule made for the purpose of this article, determine the qualifications or experience for carrying on insurance intermediaries activities which are required of persons, other than persons referred to in the foregoing subarticles of this article, who, on application to the competent authority, may be permitted under this article to use the word "insurance" as part of their description or title.

(4) For the purposes of this article, the expression "insurance" includes reinsurance, assurance and reassurance and any of their derivatives or other words as may indicate or purport to indicate the carrying on of business of insurance or the carrying out of insurance intermediaries activities or the carrying on of such business or the carrying out of such activities in any language in the description or title under which a person is carrying on such business or carrying out such activities.

Service of notices, etc.
*Amended by: XXXIII. 2015.97.*

**49.** A notice or other document to be given or served under this Act and any regulations or any insurance intermediaries rule 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 at 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 a director, an

officer, secretary, a clerk or the representative of that body.

Appeals.
*Amended by: XVII. 2009.41; XXXIII. 2015.98.*
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**50.**(1)(*a*) For the purposes of any appeal made to the Tribunal under this Act, the provisions of the proviso to article 57(1) of the Insurance Business Act shall apply.

(*b*) For the purposes of any such appeal, the provisions of article 21 of the Malta Financial Services Authority Act shall also apply.

(2) Subject to the provisions of this article, an appeal shall lie to the Financial Services Tribunal with respect to -

(*a*) any refusal to register or to enrol an applicant under article 13 or 41 of this Act;

(*b*) any condition imposed on, or subsequent to, registration and enrolment under article 13 or 37;

(*c*) any suspension or striking off of the name of a person from the Agents Register, Managers Register or Brokers Register or the name of an enrolled person off the Agents List, Managers List or Brokers List under article 16;

(*d*) any refusal to restore the name of a person to the Agents Register, Managers Register or Brokers Register or the name of an enrolled person to the Agents List, Managers List or Brokers List under article 18(2);

(*e*) any one or more measures taken under article 19;

(*f*) any refusal to register an underwriting agreement under article 32;

(*g*) any striking off of the name of a person from the Tied Insurance Intermediaries List under article 40(3)(*b*);

(*h*) any requirement on an authorised undertaking to strike the name of a person off the Tied Insurance Intermediaries Company Register under article 41;

(*i*) any notice issued or any order made under article 44A;

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(*j*) any directive given under article 31A of the Insurance Business Act, made applicable by article 54 of this Act;

(*k*) any administrative penalty imposed in respect of infringements as may be prescribed under article 3,

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

Exclusion of liability.

**51.** The competent authority and any member, officer or employee of the competent authority, and any other person appointed to perform a function under this Act and 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 and any regulations aforesaid, unless the

act or omission is shown to have been done or omitted to be done, as the case may be, in bad faith.

Offences.
*Amended by: XVII. 2009.42; XXXIII. 2015.99.*

**52.** (1) Any person -

(*a*) who for the purpose of obtaining the registration or enrolment under this Act or any regulations or any insurance intermediaries rule made thereunder, furnishes information or makes a statement or a declaration which the person 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 contravenes or fails to comply with any of the provisions of this Act or of article 29, 30 or 31A of the Insurance Business Act, as applicable in accordance with article 54 of this Act; Cap. 403.

(*c*) who contravenes or fails to comply with any regulations made under this Act, other than regulations in relation to which administrative penalties have been prescribed under article 3(2)(*h*);

(*d*) who is knowingly a party to the carrying out of insurance intermediaries activities with a fraudulent intent or for a fraudulent purpose; or

(*e*) who contravenes or fails to comply with any insurance intermediaries rule or registration or enrolment condition;

(*f*) who fails to comply with any lawful order or requirement of the competent authority;

(*g*) who fails to comply with any lawful order or requirement of any other person made under this Act and any regulations made thereunder;

(*h*) who without any reasonable excuse alters, suppresses, conceals, destroys or refuses to produce any document which is lawfully required to be produced by any person under this Act and any regulations made thereunder; or

(*i*) who intentionally obstructs a person exercising rights conferred by this Act or any regulations or any insurance intermediaries rule made thereunder,

shall be guilty of an offence.

(2) Any person who is knowingly a party to, or procures or aids and abets the commission of any offence under subarticle (1) shall be guilty of an offence and shall be liable to the same penalties as the principal offender.

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

(*a*) penalties which are enforceable by prosecution in the courts of Malta;

(*b*) different penalties for contraventions of different provisions of this Act;

(*c*) penalties calculated in accordance with the duration of the commission of the offence,

unless such penalties are otherwise imposed under article 3.

Penalties. *Amended by: L.N. 427 of 2007; X. 2011.94; XXXIII. 2015.100.*

**53.** (1) The penalties prescribed by regulations made under 52 -

(*a*) in the case of imprisonment, shall not provide for a sentence of imprisonment greater than four 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 two hundred thirty euro (€230) or greater than four hundred and sixty-six thousand euro (€466,000);

(*c*) in the case of a continuing offence, shall not provide for a fine (*multa*) of less than one hundred and sixteen euro (€116) or greater than two hundred thirty euro (€230) for each day during which the offence continues.

(2) No proceedings for an offence under this Act or any regulations made thereunder other than an infringement to which article 3(2)(*h*) applies, shall be commenced without the consent of the Attorney General.

(3) The provisions of this Act shall not affect any criminal proceedings that may be competent under any other law.

Application of certain articles of the Insurance Business Act to insurance intermediaries. *Amended by: XVII. 2009.43; XXXIII. 2015.101.* Cap. 403.

**54.** (1) Subject to the provisions of subarticle (2) -

(*a*) the provisions of articles 29 to 31A of the Insurance Business Act (hereinafter in this article referred to as "the Act") shall apply to an enrolled person, as if reference in such provisions -

(i) to "authorisation" were a reference to "enrolment in the Agents List, Managers List or Brokers List";

(ii) to "authorised insurance or reinsurance undertaking" were a reference to an "enrolled person";

(iii) to "business of insurance" were a reference to "insurance intermediaries activities";

(*b*) articles 29 to 31A of the Act shall apply to a person enrolled in the Tied Insurance Intermediaries List as if reference in such provisions -

(i) to "authorisation" were a reference to "enrolment in the Tied Insurance Intermediaries List";

(ii) to "an authorised insurance undertaking" were a reference to "a tied insurance intermediary";

(iii) to "business of insurance" were a reference to "tied insurance intermediaries activities".

(2) Subarticle (1) shall apply to an enrolled person as if

reference in the relevant provisions of the Act to "the competent authority" were a reference to "the competent authority" under this Act, and references to "Insurance Rules" were references to "insurance intermediaries rules".

Savings. Cap. 404.

**55.** (1) Every licence issued or other action whatever taken or commenced under the Insurance Business Act, in so far as insurance agents and insurance managers are concerned, or under the Insurance Brokers and Other Intermediaries Act*, shall continue in force and to be valid as if such licence were issued or as if such other action were taken or commenced under this Act.

Cap. 403.

(2) Any person or company licensed under the Insurance Business Act to act as an insurance agent or as an insurance manager within the meaning of that Act or licensed under the Insurance Brokers and Other Intermediaries Act* to act as an insurance broker or insurance sub-agent within the meaning of that latter Act shall, not later than the appointed date, conform with the provisions of this Act or otherwise cease to act as an insurance intermediary, and shall until the appointed date or until it conforms with the provisions of this Act, whichever is earlier, continue to be governed by the provisions of the Insurance Business Act or the Insurance Brokers and Other Intermediaries Act†, as the case may be. For the purpose of this subarticle "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 act as an insurance agent, insurance manager or insurance broker on the grounds that such company did not, on the appointed date, conform with the provisions of this Act, that company shall be deemed to have made an application to the competent authority under article 26 on the appointed date to cease to carry on insurance intermediaries activities on that date and to have been given permission by the competent authority under that article on the appointed date to cease to carry on such business on that date and to run-off that business as from that date. The competent authority may impose such conditions with regard to the run-off of that business as it may deem proper.

(4) Where a person concerned ceases to act as a registered insurance broker on the grounds that such person did not, on the appointed date, conform with the provisions of this Act -

(*a*) that person shall be deemed to have made a request to the competent authority under article 16(*e*) on the appointed date requesting the competent authority to strike his name off the said register on that date;

(*b*) the competent authority shall be deemed to have struck the name of that person off the Brokers Register on that date, and, also on that date, notified that person that his name has been struck off the Brokers Register; and the person, following the appointed date, shall forthwith surrender to the competent authority the

*Repealed by this Act.
†Repealed by this Act.

certificate of registration, and any official copies thereof.

(5) Where a person ceases to act as an insurance sub-agent on the grounds that such person did not, on the appointed date, conform with the provisions of this Act -

(*a*) that person shall be deemed to have made an application to the authorised company, in whose Tied Insurance Intermediaries Company Register of the company his name is registered, under article 39(*b*), on the appointed date, requesting the company to strike his name off the said register on that date;

(*b*) the authorised company concerned shall be deemed to have struck the name of that person off the Tied Insurance Intermediaries Register of the company on that date, and, also on that date, notified that person and the competent authority accordingly, under article 40(6);

(*c*) the competent authority shall be deemed to have struck the name of that person off the Tied Insurance Intermediaries List on that date, and, also on that date, notified the company concerned accordingly, under article 40(3)(*a*); and the authorised company concerned shall forthwith, following the appointed date, surrender to the competent authority the certificate of enrolment relating to that person and any official copies thereof.

(6) Without prejudice to the provisions of article 12 of the Interpretation Act - Cap. 249.

(*a*) all regulations, insurance directives, insurance intermediaries directives, orders and other instruments which were kept into force by, or made under, the Insurance Business Act, in so far as insurance agents and insurance managers are concerned, and the Insurance Brokers and Other Intermediaries Act*; and Cap. 403.

(*b*) any agreements and arrangements which were made in virtue of the Insurance Business Act, in so far as insurance agents and insurance managers are concerned, and the Insurance Brokers and Other Intermediaries Act*, or made in virtue of any regulation, insurance directive, insurance intermediaries directive, order and other instrument, Cap. 403.

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.

(7) All references in any enactment and in any instrument or other document issued pursuant to the Insurance Business Act, in so far as insurance agents and insurance managers are concerned, Cap. 403.

*Repealed by this Act.

or to the Insurance Brokers and Other Intermediaries Act*, or to 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 intermediaries directive issued by the competent authority in virtue of article 4(3) of the Insurance Brokers and Other Intermediaries Act* in any licence, notice, decision or other act made or taken by the competent authority before the coming into force of the provisions of this Act, and any reference in any law to an insurance intermediaries directive shall be deemed to be a reference to an insurance intermediaries rule.

(9) For the purpose of this article, "licence" includes authority or authorisation, permit, approval, registration, enrolment and appointment, and the word "licensed" shall be construed accordingly.

*Amended by:*
*XX. 2007.154;*
*L.N. 451 of 2013;*
*XXXIII. 2015.102.*

SCHEDULE
(Article 2)

INSURANCE INTERMEDIARIES AND INSURANCE INTERMEDIARIES ACTIVITIES

For the purposes of paragraph 1 of the Third Column of this Schedule, "risk" means and includes a risk situated in Malta or a risk situated outside Malta; and "risk situated outside Malta", in relation to a contract of insurance, has the same meaning as is assigned to it by subarticle (1) of article 2 of the Insurance Business Act.

| First Column | Second Column | Third Column |
|---|---|---|
| Independent Insurance Intermediaries | Dependent Insurance Intermediaries | Insurance Intermediaries Activities |
| Insurance Broker | | 1. Professional activities of persons listed in the First Column of this Schedule who, acting with complete freedom as to their choice of lawful insurers, bring together, with a view to the insurance or reinsurance of risks or commitments, persons seeking insurance or reinsurance and insurers or reinsurers, carry out work preparatory to the conclusion of contracts of insurance or reinsurance and, where appropriate, assist in the administration and performance of such contracts, in particular in the event of a claim; |
| | Insurance Agent | 2. Professional activities of persons listed in the Second Column of this Schedule who are appointed by an undertaking authorised under the Insurance Business Act and, or by a European insurance undertaking to be its agent in respect of business of insurance with authority to enter into contracts of insurance on behalf of the undertaking under the terms of the appointment; |
| | Insurance Manager | 3. Professional activities of persons listed in the Second Column of this Schedule which consist of accepting an appointment from:<br>(*a*) an insurer or reinsurer to manage any part of its business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records of such insurer or reinsurer and in this context, “management” includes authority to enter into contracts of insurance on behalf of the insurer or reinsurer under the terms of the appointment; |

| First Column | Second Column | Third Column |
|---|---|---|
| Independent Insurance Intermediaries | Dependent Insurance Intermediaries | Insurance Intermediaries Activities |
| | | (*b*) an insurance broker enrolled under this Act, restricted to contracts of insurance relating to risks situated outside of Malta or commitments where Malta is not the country of commitment, to manage any part of its business, or to exercise managerial functions therein, or to be responsible for maintaining accounts or other records for the broker; and<br>(*c*) a reinsurance special purpose vehicle authorised in accordance with any regulations that may be made under the Insurance Business Act (Cap. 403), to manage any part of its business, or to exercise managerial functions in relation thereto. |
| | Tied Insurance Intermediary | 4. Activities of persons listed in the Second Column of this Schedule who, carry on insurance intermediaries activities for or on behalf of one or more authorised undertakings in the case of insurance products which are not in competition, acting under the full responsibility of those authorised undertakings for the products which concern them respectively and who may collect premiums or amounts intended for the policyholder, provided that no insurance commitments towards or on the part of the public are given as part of these activities. |