

Appendix

Guidelines

**Provisions for European Insurance Undertakings
Carrying on Business of Insurance in Malta**

Information for policyholders

Application

1. These Guidelines apply, on a continuing basis to a European Insurance Undertaking (“the undertaking”) which in accordance with Article 32 of the Third Non-Life Directive or Article 40 of the Codified Life Assurance Directive, as the case may be, has been authorised by the supervisory authority of its home member state to carry on business of insurance in Malta under the provisions relating to the right of establishment and the Malta Financial Services Authority (“the MFSA”) has received the information required by the said Article 32 or Article 40.

2. These Guidelines shall not apply to a European Insurance Undertaking which proposes to enter or has entered into contracts relating to large risks as defined in Article 5(d) of the First Non-Life Insurance Directive 73/239/EEC of 24 July 1973 (as amended by Article 5 of the Second Non-Life Insurance Directive 88/357/EEC of the 22 June 1988).

Information for Policyholders

3. (1) The information which an undertaking is to communicate to a policyholder, including a potential policyholder, and the manner in which that information is to be furnished -

(a) as respects long term business:

(i) before concluding the contract, is the information set out in paragraphs 4 and 5 of these Guidelines;

(ii) during the term of the contract, is the information set out in paragraph 6 of these Guidelines;

(b) as respects general business, before concluding the contract, is the information set out in paragraph 7 of these Guidelines.

(2) Any information required to be furnished under these Guidelines shall be furnished in Maltese or English as it suits the person to whom the information is furnished, or in both languages or in a language agreed to by the parties.

Long term business: Before concluding a contract

4. (1) This paragraph applies to a contract entered into by an undertaking if -

(a) the effecting of the contract constitutes:

(i) the carrying on in Malta of long term business which is not business of reinsurance; or

(ii) the provision in Malta of long term business contracts; and

(b) the commitment covered by the contract is a commitment where Malta is the country of the commitment.

(2) Before entering into a contract to which this paragraph applies, the undertaking shall furnish the other party to the contract with the information required by -

(a) sub-paragraphs (3) and (4) of this paragraph in the case of long term contracts of insurance, other than linked long term contracts; or

(b) sub-paragraphs (3)(h), 3(l) and (4) of this paragraph and paragraph 5 of these Guidelines, in the case of linked long term contracts of insurance.

(3) The information required by this sub-paragraph is -

(a) a definition of each benefit and option;

Note: There should be ample explanation on the object and purpose of a policy so that each policy may be thoroughly understood.

(b) the term of the contract and the means by which it may be terminated;

(c) the method of paying premiums and the duration of the payments;

(d) the method of calculating bonuses and the distribution of bonuses;

Note: There should be sufficient explanation as to the different types of bonuses (*i.e. Reversionary or Terminal*) which an undertaking includes in a quotation and the difference between such bonuses.

The expression “method of calculating bonus” should not be interpreted to refer to the actuarial techniques in determining the bonus rates but to the manner in which bonuses are calculated *i.e.* whether on a daily or an annual basis, whether expressed as a percentage of premium or the sum assured plus accruing bonuses, or as a percentage of accruing reversionary bonuses only;

(e) an indication of surrender and paid-up values and the extent to which such values are guaranteed;

Note: There should be illustration of surrender values for specific years *i.e.* 1, 2, 3, 4, 5, 10, 15, 20, 25, etc.

Where no surrender value accumulates before the payment of 2 or 3 or more full year’s premium, that information should also be disclosed;

(f) the premiums for each benefit, whether a main or supplementary benefit and, where applicable, the amount and purpose of any charge or fee in addition to or included in the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(g) information whether in the home member state there exists an insurance guarantee scheme which protects the

policyholder in the event of the insolvency of the undertaking or any limited compensation which may be available under the Protection and Compensation Fund, Regulations, 2003;

(h) information relating to the requirement under article 35 of Directive 2002/83/EEC of the European Parliament and of the Council of the 5 November 2002 concerning life assurance providing for the period within which a policyholder may cancel the life assurance contract;

(i) information furnished to a policyholder shall not contain a statement relating to past performance unless:-

(i) the basis on which such performance is measured is clearly furnished and the presentation is fair;

(ii) it is accompanied by a warning that past performance is not necessarily a guide to future performance;

(iii) the past performance is relevant to the undertaking or the policies offered by the undertaking;

(iv) the source of information is stated;

(j) general information on the tax arrangements applicable to the type of policy. It should be made clear that the information relates to any appropriate current legislation as at the date of submission of that information and that such tax arrangements may change in the future;

(k) the arrangements for handling policyholders' complaints concerning contracts of insurance by the undertaking;

(l) whether the parties to the contract are entitled to choose the law applicable to the contract and:-

(i) if so, the law which the undertaking proposes to choose; and

(ii) if not, the law which will be so applicable.

- (4) The information required by this sub-paragraph is -
- (a) the name and legal form of the undertaking;
 - (b) the country where the undertaking's head office is situated; and
 - (c) the address of the undertaking's head office and the name and address of the branch.

Supplementary information to be provided in relation to Linked Long Term Contracts of Insurance

5. (1) This paragraph applies to a contract entered into by an undertaking if the contract of insurance relates to class III of the Second Schedule to the Act.

(2) An undertaking seeking to establish a branch in Malta to carry on linked long term contracts of insurance shall provide a Product Information document, or other document which shall include the detailed terms and conditions of the linked long term contracts of insurance. The following minimum details are to be included in such document:

(a) a brief glossary to explain the meaning of a linked long term contract of insurance and other terms used in the document, such as fund, unit, bid/offer price, switching, notional allocation (it should be clear that the policyholder will be entitled to a *notional* allocation of units in the underlying funds or other instruments, rather than actual *ownership*, since such units would be owned by the undertaking) etc;

(b) a brief description of the nature of each underlying fund or asset linked to the contract. Where one or more collective investment schemes are linked to the policy, a clear reference to the name of such scheme/s shall be included together with brief details of the investment objective of such scheme/s and a statement indicating that the choice of scheme/s to which the policy is linked should be based on the full details included in the prospectus/scheme particulars of the scheme, copies of which are available upon request;

(c) definition of the units to which the benefits are linked;

(d) without prejudice to the information to be provided under paragraph 4(3)(f) above, all charges, including where applicable, switching charges. In this regard, note should be taken of the following:

(i) maintenance costs/charges should be reasonable and their indexation which may be different from the indexation rate for premiums, capped (i.e. the maximum rate by which such charges may be increased by the undertaking, should be specified in the policy terms and conditions);

(ii) annual percentage management charges may be levied by the undertaking provided the total charges (inclusive of any initial charges on purchase of units, maintenance charges etc), are reasonable. Moreover, the regular management charge should be calculated to ensure that no double charging (of fees levied by third party fund managers), occurs;

(iii) reference to any optional indexation of premiums at a specified rate;

(iv) reference to the frequency of reporting, free of charge, to policyholders which shall be at least annually, or if so requested by policyholders, at least every six months.

(3) Any projected values relating to linked long term contracts of insurance provided to potential policyholders, shall be net of all applicable charges, including exit fees and annual charges and shall contain, where applicable, and in a prominent manner:

(a) a clear description of the basis of the projections and a clear linkage to risk warnings;

(b) a warning that the projected values may not materialise, are merely indicative, and that market

conditions may be such as to result in returns which are by far inferior to the lowest projected values;

(c) a statement that the projected growth rates of return are for illustration purposes only and a warning that the projected growth rates are not minimum or maximum values but have only been selected to portray different scenarios for illustration purposes only;

(d) a warning that the surrender value or maturity value will depend on the market values of the underlying assets;

(e) a warning that a fixed annual rate of return is being assumed for the projected growth rates and that such a fixed return does not reflect the returns of the underlying assets which may fluctuate in value.

Long term business: During the term of a contract

6. (1) This paragraph applies where an undertaking has entered into a contract where the commitment covered by the contract is a commitment where Malta is the country of commitment.

(2) If during the term of the contract there is –

(a) any change in the information mentioned in indents (a) to (f) of sub-paragraph (3) of paragraph 4 and paragraph 5 of these Guidelines; and

(b) an amendment to the law applicable to the contract,

the undertaking shall inform the other party to the contract in writing of the effect of the change.

(3) If the contract provides for the payment of bonuses, the undertaking shall, at least once in every calendar year, inform the other party to the contract in writing of the amount of any bonus-

(a) which has become payable under the contract; and

(b) of which that party has not been previously informed under this paragraph.

(4) There is a sufficient compliance with sub-paragraph (3) of this paragraph if the undertaking furnishes the other party to the contract with such information as will enable him to determine the amount of any such bonus as is mentioned in that paragraph, or if the undertaking informs that party of -

(a) the total value of the benefits (including bonuses) which have accrued under the contract; and

(b) the rates of bonus which have been declared since that party was previously informed under this paragraph.

(5) In this article “bonus” does not include a bonus the amount of which is specified in the contract.

General business: Before concluding a contract

7. (1) This paragraph applies to a contract to be entered into by an undertaking if the risk covered by the contract is a risk situated in Malta.

(2) Before entering into a contract to which this paragraph applies, the undertaking shall, if the other party (or one of the other parties) to the contract is an individual, inform that party -

(a) as to whether the parties to the contract are entitled to choose the law applicable to the contract and -

(i) if so, of the law which the undertaking proposes to choose; and

(ii) if not, of the law which will be so applicable;

(b) whether in the home Member State of the undertaking concerned there exists an insurance guarantee scheme which protects the policyholder in the event of the insolvency of the undertaking or any limited compensation which may be available under the Protection and Compensation Regulations, 2003;

(c) the arrangements for handling policyholders' complaints concerning contracts of insurance by the undertaking;

(d) the amount and purpose of any charge or fee in addition to the premium. The amount of document duty, if any, payable in terms of the Duty on Document and Transfers Act (Cap.364) is to be disclosed separately;

(e) the date of inception of the policy.

(3) Any relevant document issued by an undertaking in relation to a contract to which this paragraph applies shall state the name and address of the undertaking and the name and address of the branch.

(4) In this article "relevant document", in relation to a contract to which this article applies, means any proposal, policy or other document which, or statements contained in which, will or may bind the other party to the contract.

Proof of furnishing the required information

8. (1) Any disclosure required to be made by these Guidelines shall be communicated to the potential policyholder or policyholder -

(a) on paper or in some other durable medium that is accessible to such person; and

(b) in a clear and accurate manner, comprehensible to such person.

(2) For the purposes of sub-paragraph (1) of this paragraph, "durable medium" means any instrument which enables the potential policyholder or policyholder to store information addressed personally to such person in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored. In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in this sub-paragraph.

(3) Notwithstanding the provisions of sub-paragraph (1)(a) of this paragraph, the undertaking shall verbally provide the information required by these Guidelines:

(a) whenever the potential policyholder or policyholder asks for the information; or

(b) whenever immediate cover is needed:

Provided that, in either case, the undertaking shall, immediately after the contract of insurance is entered into, comply with sub-paragraph (1) of this paragraph.

(4) No information given under this Rule shall be sufficient if the information given is accompanied by any oral or written statement which somehow negatives, qualifies or otherwise reduces its impact.

(5) The burden of proof that any information required to be furnished under these Guidelines has been furnished in accordance with the requirements of these Guidelines rests on the undertaking.