

Insurance Intermediaries Rule 14 of 2007

Fidelity Bonds

Rule pursuant to article 21 of the Act

1. (1) This Insurance Intermediaries Rule on fidelity bonds which persons enrolled in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities are required to effect and hold (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 21 of the Act.

(2) This Rule shall come into force on the 1st January 2007.

Application

2. This Rule applies to a person desirous of applying for enrolment and, on continuing basis, a person enrolled, in the Agents List, Managers List or Brokers List and carrying out insurance intermediaries activities (the “enrolled person”). In the case of persons enrolled in the Managers List, this Rule applies only to a person holding an appointment with authority to enter into contracts of insurance and whose appointment is governed by an agreement which has the effect of an agency agreement and to a person who accepts an appointment from a company enrolled in the Brokers List under article 13 of the Act.

Scope

3. The scope of this Rule is to determine the kind of protection which enrolled persons should give to their clients. In this respect, enrolled persons are required to effect and hold a fidelity bond in the manner and circumstances, to the value and under the conditions determined by this Rule as regards their insurance intermediaries activities so that, if a client of an enrolled person incurs loss or liability because of the inability or failure of the person to meet its financial obligations, the client is indemnified out of the proceeds of the fidelity bond held by the enrolled person in respect of that loss or liability.

Effecting of fidelity bonds

4. (1) An enrolled person shall effect and hold a fidelity bond as respects its insurance intermediaries activities to the amount of outstanding debts in respect of insurance intermediaries transactions (net of provisions for doubtful debts) at the end of the preceding year, less 25% of the sum of annual gross premiums receivable by the enrolled person and document duty charged on policies and endorsements thereon.

(2) In relation to the year in which enrolment is granted to the enrolled person, the fidelity bond as respects insurance intermediaries activities shall be of an amount of not less than 11, 646.87 Euro.

(3) Where the value of the unencumbered own funds of the enrolled person exceeds the amount of the required own funds in accordance with Insurance Intermediaries Rule 1 of 2007, (“the excess amount”), before the person effects and holds a fidelity bond for the required amount in accordance with paragraphs (1) and (2) of this article, (“the required amount”), the person shall have regard to the excess amount and -

(a) where the excess amount is more than the required amount, the enrolled person shall not effect and hold any fidelity bond;

(b) where the excess amount is less than the required amount, the enrolled person shall effect and hold a fidelity bond to the amount resulting from the difference between the required amount and the excess amount.

(4) For the purpose of determining the amount of the fidelity bond, the words “annual gross premiums receivable” shall mean premiums receivable in the preceding year after deduction of discounts, refunds and rebates of premium but before deduction of commission payable.

(5) For the purpose of this article, any reference to the word “year” shall, in the case of an enrolled individual, be read and construed as a reference to the calendar year and, in the case of an enrolled company be read and construed as a reference to the company’s financial year.

(6) Any fidelity bond required to be effected and held under this article shall be effected and held in the manner specified in article 5 of this Rule.

Purpose of fidelity bonds

5. (1) In conformity with subarticle (2) of article 21 of the Act, the fidelity bond referred to in article 4 of this Rule shall provide that in the event of an enrolled person's inability or failure to meet its financial obligations in relation to any sums of money received by it from, or on behalf of, its clients, a sum of money will become available to a person nominated or approved by the Authority under article 6 of this Rule (the "approved person"), 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.

(2) Subject to the conditions set out in paragraph (3) of this article, a fidelity bond may be effected and held in any of the following forms -

- (a) a contract of insurance;
- (b) a security in the form of:
 - (i) a guarantee provided by, or
 - (ii) an irrevocable letter of credit established with

a bank or credit institution:-

(aa) licensed to carry on business of banking under the laws of Malta; or

(bb) lawfully permitted to carry on business of banking in a country outside Malta acceptable to the Authority provided that the bank or credit institution is of first class standing.

(3) The conditions referred to in paragraph (2) of this article are -

- (a) the content of the fidelity bond is to be approved in advance by the Authority; and

(b) the fidelity bond is to be automatically reinstated by the enrolled person to the required amount as soon as any payment is made out of its proceeds.

Nominations of approved persons

6. (1) An enrolled person shall, before it effects and holds a fidelity bond, submit in writing to the Authority for its approval the name of a person nominated to be the approved person of the enrolled person for the purpose of article 5 of this Rule.

(2) Any person nominated by an enrolled person to be the approved person of the enrolled person shall not be approved by the Authority unless the Authority is satisfied that such person has the qualifications mentioned in paragraph (4) of this article and is a fit and proper person to carry out the functions required of him under the Act and this Rule. The Authority shall require the approved person to complete the Personal Questionnaire attached to Insurance Intermediaries Rule 21 of 2007.

(3) Where an enrolled person fails to nominate a person to be the approved person of the enrolled person, or, at any time, fails to fill any vacancy in the office of the approved person, the Authority shall nominate a person to be the approved person.

(4) The qualifications referred to in paragraph (2) of this article are that the approved person is a person who holds a warrant to practice the legal, accountancy or similar profession.

(5) A person shall be disqualified from acting as an approved person if :

(a) at any time during the previous three years from the date of his nomination to act as an approved person, he has been an officer of the enrolled company or an employee of the enrolled person; or

(b) he is related by consanguinity or affinity in the direct line, or, up to the third degree, in the collateral line, to any officer of the enrolled company or to the enrolled individual;

(6) The approved person may be an individual or a body corporate.

(7) The approved person shall keep all proper and usual accounts of all monies received by him out of the proceeds of the fidelity bond and of all disbursements made by him from any such monies.

Changes in the fidelity bond

7. If the approved person receives a direct request from the enrolled person to cancel or effect any changes to the content of the fidelity bond, the approved person shall immediately submit in writing to the Authority an explanation leading to the cancellation of the fidelity bond, or the particulars of the proposed changes; and no such cancellation or changes shall be made without the Authority's approval.

Repeals and Savings

8. (1) Without prejudice to article 4(2) of the Preliminary provisions, and saving the provisions of paragraph (2) of this article, Insurance Intermediaries Directive 14 of 1999 – Fidelity Bonds, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, or under Insurance Directive 11 of 1999 – Monies Held in a Fiduciary Capacity shall continue to be valid and in force, as if such action, directive, instruction, guideline or order were taken or commenced under this Rule.