

REPUBLIC



OF CYPRUS

**ORDERS OF THE SUPERINTENDENT OF
INSURANCE**

Restrictions concerning assets to
which policy benefits are linked

1 November 2021

(Up-dating Orders June 2017)

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1 Introduction

The Superintendent of Insurance (“the Superintendent”), in exercise of the powers conferred on him under section 140 of the Law on Insurance and Reinsurance Services and Other Related Issues of 2016 (“the Law”), as amended, hereby determines that the following Orders should be applied by insurance undertakings.

2 Application

These Orders apply to insurance undertakings offering unit-linked insurance contracts and to assets or reference values to which the policy benefits may be linked, from now on, known as permitted links, and where the investment risk is borne by a *linked policyholder* who is a natural person.

These Orders apply from 1/11/2021.

3 General

An insurance undertaking must:

1. Ensure that the values of its permitted links are determined fairly and accurately, and that the assets held are capable of being realized in time for it to meet its obligations to *linked policyholders*.
2. Ensure that there is no material risk that the aggregate value of any of its *linked funds* will become negative. In particular, the global exposure of any *linked fund* to the risk of loss from derivatives, or similar assets, must not exceed the net asset value of the *linked fund*.
3. Notify its *linked policyholders* of the risk profile and investment strategy for the *linked fund* at inception and before making any material changes. Notifications to policyholders should be in compliance with the requirements of the PRIIPS Directive, Regulation (EU) 1286/2014.
4. Ensure when selecting permitted links that there is no reasonably foreseeable risk of a conflict of interest with its *linked policyholders*. If a conflict does arise,

the insurance undertaking must take reasonable steps to ensure that the interests of the *linked policyholders* are safeguarded.

5. Ensure that *linked funds* are appropriately diversified in line with the stated investment strategy, and in particular limit the total exposure to a single *counterparty* to 20% of the gross asset value of each *linked fund*. This restriction does not apply to *approved securities*.
6. Ensure that, subject to the defined investment strategy of each associated fund, the insurance undertaking shall take into account risks related to and the potential long-term impact of investment decisions on Environmental, Social and Governance (ESG) factors.
7. Ensure that it does not invest assets in a non-cooperative jurisdiction for tax purposes identified in the applicable Council's conclusions on the list of non-cooperative jurisdictions for tax purposes, nor in a high-risk third country with strategic deficiencies identified by the applicable Commission Delegated Regulation adopted on the basis of Article 9 of the Directive (EU) 2015/849, as amended.
8. Associated funds shall be defined as either "Passive funds", or as "Actively managed funds". Passive funds shall have the intention to track the performance of a defined, independently published, broad asset market index or indices. Actively managed funds shall not have this intention.
9. Ensure that where an insurance undertaking outsources to an external investment manager, or invests in any form of collective investment fund, the associated fund must receive an equitable share of any incentives provided by the investment manager or collective investment fund.
10. Consider the economic effect of its permitted links ahead of their legal form.
11. Notify the Superintendent in writing as soon as it becomes aware of any failure to meet the requirements of these Orders.

4 Permitted Links

The assets that are linked to unit linked policies as described above shall not include any categories of assets other than the following:

1. *Listed securities* which:

- a) are *readily realisable*, other than *securities* which are:
 - i) *approved securities*;
 - ii) loans or deposits of the kinds mentioned in paragraphs 4 and 7 below;
 - iii) units or other beneficial interests in a *collective investment fund*; or
 - iv) *derivative contracts*; and

- b) to the extent that these comprise shares (which include equity stocks) in a parent undertaking of the insurance undertaking, satisfy all of the following conditions:
 - i) all transactions relating to the shares are subject to the provisions of the Market Abuse Law of 2016 [L102(I)/2016];
 - ii) all transactions relating to the shares are disclosed to the Superintendent within 24 hours of their taking place, and a statement is submitted to the Superintendent at the end of each quarter of insurance undertaking's financial year, showing all such transactions taking place during that quarter;
 - iii) the shares are not held for the purpose of short term investment; which term should be construed as investment undertaken wholly or principally with the intention to make short term profits;
 - iv) the shares either do not carry voting rights or the insurance undertaking has provided a written undertaking to the Superintendent that it will not exercise such voting rights;
 - v) the shares do not in aggregate exceed the lower of:
 - 5% of the gross asset value of the *linked fund* , or 10% of the gross asset value of the *linked fund* if all such shares in such parent undertakings have been granted, and not withdrawn at the *relevant date*, a listing in respect of them on the Cyprus stock exchange and the market capitalisation of those parent undertakings taken in aggregate exceeds, at the *relevant date*, 10% of the market capitalisation of all companies that have been granted, and not

withdrawn at the *relevant date*, a listing in respect of them on the Cyprus stock exchange, where market capitalisation for this purpose shall be determined by reference to the market value of issued and fully paid shares only; and

- 5% of the issued share capital of such parent undertakings in aggregate when taken together with all *linked funds*; and

2. *Unlisted securities* which:

- a) are *readily realisable*, other than *securities* which are:
 - i) *approved securities*;
 - ii) loans or deposits of the kinds mentioned in paragraphs 4 and 7 below;
 - iii) units or other beneficial interests in a *collective investment fund*; or
 - iv) *derivative contracts*; and

- b) have a value which is not determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, or fluctuations in the income from, assets other than assets of the descriptions in paragraphs 1 to 11; and

- c) in aggregate have a value that does not exceed 10% of the gross asset value of the *linked fund*; and

- d) to the extent that these comprise shares (which includes equity stocks) in a parent undertaking of the insurance undertaking, satisfy all of the following conditions:
 - i) all transactions relating to the shares are subject to the provisions of the Market Abuse Law of 2016 [L102(I)/2016];
 - ii) all transactions relating to the shares are disclosed to the Superintendent within 24 hours of their taking place, and a statement is submitted to the Superintendent at the end of each quarter of the insurance undertaking's financial year, showing all such transactions taking place during that quarter;
 - iii) the shares are not held for the purpose of short term investment; which term should be construed as investment undertaken wholly or principally with the intention to make short term profits;

- iv) the shares either do not carry voting rights or the insurance undertaking has provided a written undertaking to the Superintendent that it will not exercise such voting rights;
- v) the shares do not in aggregate exceed the lower of:
 - 5% of the gross asset value of the *linked fund*; and
 - 5% of the issued share capital of such parent undertakings in aggregate when taken together with all *linked funds*; and

3. Land, and interest in land (and any buildings situated on it), which meets all of the following criteria:

- a) It is considered by the insurance undertaking to be located in a territory with a properly functioning market, indicated by the following criteria:
 - 1) a lack of artificial barriers, including barriers to foreign ownership and repatriation of capital;
 - 2) fair and accurate valuation;
 - 3) suitably qualified and independent surveyors;
 - 4) accurate financial information;
 - 5) enforceable contractual and other property rights;
 - 6) clarity of taxation;
 - 7) availability of reliable economic and property market data;
 - 8) ethical transaction standards.
- b) It is owned directly by the insurance undertaking, or held in a structure, or a series of structures, that do not pose a materially greater risk to policyholders than a direct holding, and
- c) the value of which is not in excess of 10% of the gross asset value of the *linked fund* for any one piece of land, or a number of pieces of land close enough to each other to be considered effectively as one investment.

4. Loans but only to the extent that such loans were contracted before 1 June 2017, which are:

- a) fully secured by mortgage or charge on land which meets the criteria of 3 above; and
- b) such that the rate of interest and the due dates for the payment of interest and the repayment of principal can be fully ascertained from the terms of any agreement relating to the loan.

5. Units or beneficial interests in:

- a) *collective investment funds* falling within the *UCITS Directive*; and
- b) any similar *collective investment funds* which satisfy all the following conditions:
 - i) the assets of the fund comprise assets of any of the descriptions in paragraphs 1 to 11;
 - ii) the units of the fund are *readily realisable* at a price which represents the net value per unit of the assets and liabilities of the fund;
 - iii) the price at which the units of the fund may be bought and sold is published regularly; and
 - iv) the value of whom does not exceed 10% of the gross asset value of the *linked fund* for any one *collective investment fund*, or 30% of the gross asset value of the *linked fund* in aggregate.

The insurance undertaking should ensure that it is able to identify and quantify all charges made by the investment manager of the collective investment fund in order to be able to advise policyholders of all charges incurred on their policies.

6. Approved securities.

7. Loans or deposits:

- a) with an *approved credit institution* or an *approved financial institution* or an *approved investment firm*; and
- b) which have a value which is not determined, either wholly or partly, by reference to the value of, or the income from, or fluctuations in the value of, or fluctuations in the income from, assets other than assets of the descriptions in paragraphs 1 to 11; and
- c) the aggregate value of which does not exceed 20% of the gross asset value of the *linked fund* for any one *counterparty*.

8. Loans to the policyholders of, and secured by, the relevant contracts, but only to the extent that such loans relate to contracts written before 1 April 2002.

9. Income due, or to become due, in respect of assets of any of the descriptions in paragraphs 1 to 8.

10. Permitted derivative contracts.

11. Cash.

12. Units, by whatever name called, in a real or notional fund (not being a *collective investment fund* of the kind mentioned in paragraph 5, irrespective of whether it meets the conditions of that paragraph) which is limited to the descriptions of assets and the relevant limits set, in paragraphs 1 to 11 and which is managed either:

- a) wholly by the insurance undertaking; or
- b) wholly, or to any extent, by another party for whose acts and omissions in managing the fund the insurance undertaking assumes responsibility towards the policyholder as if they were acts or omissions of the insurance undertaking.

5 Valuation

The assets shall be valued according to the valuation principles prescribed by the Law.

6 Definitions

All words shown in the previous sections in *italics* are defined as follows. Whenever terms are used that are defined in the law they apply in the same way in these Orders.

“approved counterparty” means an *approved credit institution* or an *approved investment firm*

“approved credit institution” means a credit institution recognised or authorised under the law of the Republic of Cyprus or a Member State or the United Kingdom to carry on any of the activities set out in Annex 1 to the CRD.

“approved financial institution” means any of the following: the Central Bank of Cyprus, the central bank of a Member State, the European Central Bank, the Bank of England, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund, the Inter-American Development Bank, the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Investment Bank, the European Union, the European Atomic Energy Community

“approved investment firm” means an investment firm as defined in the European Parliament and the Council Directive on markets in financial instruments (No. 2004/39/EC). It shall also be taken to include investment firms approved under the section of the European Union (Withdrawal) Act 2018 which incorporated the Directive into UK Law as at the date of Brexit, it shall continue to apply to investment firms approved under this Act or any regulations issued under this Act, or replacing it, whilst these continue to be substantially in line with the Directive.

“approved securities” means *securities* issued or guaranteed by, or the repayment of the principal of which or the interest on which is guaranteed by, the government, or any public or local authority or nationalized industry or undertaking in the Republic of

Cyprus, any other EEA state, the United States of America, Canada, Japan, the United Kingdom or Australia

“*cash*” means only cash in hand, i.e. notes and coins

“*collective investment fund*” means any arrangements with respect to assets of any description, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the assets or any part of them or otherwise) to participate in, or receive profits or income arising from, the acquisition, holding, management or disposal of the assets, or sums paid out of such profits or income. The arrangements must be such that the persons who are to participate (“the participants”) do not have day-to-day control over the management of the assets, whether or not they have the right to be consulted or give directions. The arrangements must also have either or both of the following characteristics:

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; and
- (b) the assets are managed by or on behalf of the operator of the fund

“*counterparty*” means a third party in which the insurance undertaking has made investments or against which it has rights, whether in pursuance of a contract entered into by the insurance undertaking or otherwise, and where the counterparty is a company it shall be regarded as including all group undertakings of that company

“*derivative contract*” means any one of the following:

- (a) a contract the purpose or pretended purpose of which is to secure a gain or avoid a loss by reference to fluctuations in the value or price of assets of any description or in an index or other factor designated for the purposes of that contract; or
- (b) a contract for the sale of assets of any description under which delivery is to be made at a future date and at a price agreed upon when the contract is made; or
- (c) a contract giving its purchaser the option to acquire or dispose of assets of any description at a price agreed upon when the contract is made

“*CRD*” is the Directive of the European Parliament and the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (No 2013/36/EU) and amending Directive 2002/87/EC

and repealing Directives 2006/48/EC and 2006/49/EC. It shall also be taken to include the European Union (Withdrawal) Act 2018 which incorporated these Directives into United Kingdom Law as at the date of Brexit, and shall continue to apply to this Act or any regulations issued under the Act or replacing it, whilst these continue to be substantially in line with these EU Directives.

“*credit institution*” is defined in Article 4(1)(1) of Regulation of the European Parliament and the Council on prudential requirements for credit institutions and investment firms (Regulation (EU) No 575/2013) and amending Regulation (EU) No 648/2012.

“*linked fund*” means a real or notional account to which an insurance undertaking appropriates assets for the purposes of their being permitted assets, and which may be subdivided into units, the value of each of which is determined by the insurance undertaking by reference to the value of these assets

“*linked policyholder*” means the person who for the time being is the legal holder of the policy, including any person to whom, under the policy, a sum is due, a periodic payment is payable or any other benefit is to be provided or to whom such a sum, payment or benefit is contingently due, payable or to be provided

“*listed*” in relation to an investment means that there has been granted, and not withdrawn, a listing in respect of that investment on the Cyprus stock exchange, or any other regulated market

“*permitted derivative contract*” means a *derivative contract* which has the following characteristics:

- (a) the assets of the *linked fund* are sufficient to match any obligation arising from the *derivative contract* to which the *linked fund* is or may become committed; and
- (b) is effected or issued on or under the rules of a regulated market or off-market with an *approved counterparty*.

“*readily realisable*” in relation to an investment means an investment for which it is reasonable to assume that, had negotiations for the assignment or transfer of the investment commenced not more than 7 working days before the *relevant date*, the investment could have been assigned or transferred on the *relevant date* to a third party that is not a group undertaking of either the issuer of the investment or the insurance undertaking for an amount not less than, in the case of a *listed* investment

95% of the market value, and in the case of an *unlisted* investment 95% of the value at which it could otherwise have been assigned or transferred to the same third party had the time restriction above not applied

“relevant date” in relation to the valuation of any asset for any purpose means that date at which the asset falls to be valued for that purpose

“securities” includes shares (which includes equity stocks), bonds, notes, debentures and debenture stocks, money-market bills, certificates of deposit or similar instruments

“UCITS Directive” means Directive 2014/91/EU. It shall also be taken to include the section of the European Union (Withdrawal) Act 2018 which incorporated the UCITS Directive in United Kingdom Law as at the date of Brexit, and shall continue to apply to this Act or any regulations issued under the Act, or replacing it, whilst these continue to be substantially in line with the UCITS Directive.

“unlisted” in relation to an investment means an investment that is not *listed*.