L.N. 435 of 2003

INSURANCE BUSINESS ACT (CAP.403)

Protection and Compensation Fund Regulations, 2003

IN exercise of the powers conferred by article 51 of the Insurance Business Act, the Minister of Finance and Economic Affairs, after consultation with the Malta Financial Services Authority, has made the following regulations:-

PART I - PRELIMINARY

Citation and commencement.

1. (1) The title of these regulations is the Protection and Compensation Fund Regulations, 2003.

(2) These regulations shall come into force on the 1st January, 2004 other than paragraph (c) of regulation 22 of these regulations which shall come into force on the 1st May, 2004.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

Cap.403.

"the Act" means the Insurance Business Act;

"the Authority" means the competent authority appointed under article 3 of the Act;

"business of motor insurance" means business of insurance of group 2 as specified in Part II of the Third Schedule to the Act or any class or part class thereof;

"Financial Services Tribunal" means the Tribunal referred to in article 57 of the Act.

"the Fund" means the Protection and Compensation Fund established by article 49 of the Act;

"gross premiums", in relation to an insurer and a calendar year, means premiums after deduction of discounts, refunds and rebates of premium and premiums receivable by the company under reinsurance contracts accepted by the company but before

deduction of premiums for reinsurance ceded and before deduction of commission payable by the company:

Provided that, in the case of an insurer which is a company whose head office is in a country outside Malta, or a company whose head office is in Malta and carries on business of insurance in a country outside Malta, the gross premium income relates to premium income attributable to business of insurance carried on by the insurer in Malta;

"insolvent insurer" shall be construed in accordance with sub-regulation (1) of regulation 16 of these regulations;

"insurer", in relation to the Fund, means a company authorised under the Act to carry on in Malta long term business or general business or a company which on the date of coming into force of these regulations is authorised thereunder to carry on both long term business and general business whether or not such business is, in each case, combined with business of reinsurance but excludes a company whose business is restricted to reinsurance;

"insurer concerned" has the meaning assigned to it by regulation 24 of these regulations;

"the Management Committee" and "the Committee" mean the Protection and Compensation Fund Management Committee established by regulation 5 of these regulations;

"protected commitment" shall be construed in accordance with indent (ii) of paragraph (a) of sub-regulation (3) of regulation 3 of these regulations;

"protected liability" shall be construed in accordance with paragraph (b) of sub-regulation (3) of regulation 3 of these regulations;

"protected risk" shall be construed in accordance with indent (i) of paragraph (a) of sub-regulation (3) of regulation 3 of these regulations,

and the words and expressions which are also used in the Act shall have the same meanings as in the Act.

(2) These regulations shall not apply to an authorised company which carries on solely and exclusively business of reinsurance.

PART II - THE PROTECTION AND COMPENSATION FUND

Purposes of the Fund.

3. (1) The purposes of the Fund as established by article 49 of the Act are -

(a) to make payment of any claims in respect of risks situated in Malta and of commitments where Malta is the country of the commitment in the amounts prescribed by these regulations against an insurer, remaining unpaid by reason of the insolvency of such insurer;

(b) to make payment of compensation to victims of road traffic accidents in circumstances prescribed by these regulations.

(2) For the purposes of sub-regulation (1) of this regulation -

(a) Part III of these regulations makes provision with respect to payment of claims in the event of an insolvent insurer; and

(b) Part IV of these regulations makes provision with respect to compensation to victims of road traffic accidents.

(3) There is hereby prescribed -

(a) in relation to Part III of these regulations:

(i) in respect of risks situated in Malta, any class of business of insurance specified in Part I of the Third Schedule to the Act as a protected risk, other than the following classes or part classes:-

1 where the insured is not an individual, 4, 5, 6, 7, 11, 12, 14 and 15;

(ii) in respect of commitments where Malta is the country of the commitment, any class of business of insurance specified in the Second Schedule to the Act as a protected commitment, other than the following classes: -

III, V, VI and VIII

subject, in each case, to such limitations and restrictions prescribed by that Part;

(b) in relation to Part IV of these regulations, any civil liability to any person which is required to be covered by a policy of insurance under compulsory insurance legislation as a protected liability, subject to such limitations and restrictions prescribed by that Part.

Legal status and representation of the Fund.

4. (1) The Fund shall be a body corporate having a distinct legal personality and shall be capable, subject to the provisions of the Act and of these regulations, of entering into contracts of borrowing or otherwise incurring indebtedness for the purposes of its functions, of acquiring, holding and disposing of any kind of property for the purposes of its functions, of suing or being sued, and of doing all such things and entering into all such transactions as are incidental or conducive to the exercise or performance of its functions:

Provided that, with respect to any one insolvent insurer, the amount borrowed should not exceed thirty per centum of the total amount of payments to be made by the Fund under Part III of the regulations to all qualifying persons of the insolvent insurer.

(2) The legal and judicial representation of the Fund shall vest in the chairperson of the Management Committee:

Provided that, the Management Committee may appoint any one or more of its members or of the officers or agents of the Fund to appear in the name and on behalf of the Fund in any legal or judicial proceedings and in any act, contract, instrument or other document whatsoever; and where Part III or Part IV of these regulations is in operation, in respect of any powers and duties of the Fund exercisable by any body or person as provided in sub-regulation (2) of regulation 6 of these regulations, the legal representation of the Fund shall also vest in such body or person or in the legal representative thereof.

Protection and Compensation Fund Management Committee.

5. (1) There shall be a management committee to be known as the Protection and Compensation Fund Management Committee which shall consist of a chairperson and six members to be appointed by the Authority and which shall include among its members -

(a) an officer, not below the grade of manager, performing duties with the Authority possessing the necessary expertise and experience in business of insurance;

(b) three persons nominated by an association or other body representing insurers and recognised for such purpose by the Authority, or of insurance agents acting on behalf of such insurers, of whom, at least:-

(i) one person who represents insurers whose head office is in Malta; and

(ii) one person who represents insurers whose head office is in a country outside Malta, or of insurance agents acting on behalf of such insurers;

(c) a person who, because of his experience, qualifications or activities is considered as being able to state and represent the point of view of consumers;

(d) an independent person who, in the opinion of the Authority, possesses the necessary expertise and experience in financial services:

Provided that, the nomination of persons as is envisaged in paragraph (b) shall be such as to include at all times a representative of insurers carrying on long term business and a representative of insurers carrying on general business:

Provided further, that such members of the Management Committee shall serve the Fund in their own personal capacity and shall not represent or receive directives or instructions from the person or entity nominating them. All members of the Committee shall work in the best interest of the Fund and shall pursue and promote its purposes.

(2) Whenever, for any reason whatsoever, the association or other body representing insurers referred to in paragraph (b) of sub-regulation (1) of this regulation fails to nominate, within the time given to it for such purpose by the Authority the persons, or any of the persons, which it is required to nominate under that sub-regulation, the Authority shall appoint the persons, or the remaining persons, having regard to the nomination provisions of sub-regulation (1) of this regulation.

(3) A person nominated by an association or other body representing insurers shall not be eligible for appointment if he has a financial or other interest as is likely to affect prejudicially the discharge by him of his functions under these regulations.

(4) Every member of the Committee shall hold office, including the office of chairperson, for such period and upon such terms and conditions as may be determined by the Authority and indicated in the letter of appointment, such term of office being not less that one year and not more than three years. Every member of the Committee, including the chairperson, shall be eligible for re-appointment.

(5) A member of the Committee may be relieved of office by the Authority on the grounds of inability to perform the functions of his office, whether due to infirmity of mind or of body, or to any other cause, or of misbehaviour; and for the purposes of this sub-regulation, repeated and unjustified non-attendance of the meetings of the Management Committee may be deemed to amount to misbehaviour.

(6) A member of the Committee may resign from office by letter addressed to the Authority.

(7) The Authority shall fill any vacancy occurring in the Committee for any reason whatsoever as early as the vacancy occurs; and in so doing, the Authority shall have regard to the nomination provisions of sub-regulation (1) of this regulation.

(8) Notice of the names of the members of the Committee and of any resignation, dismissal and new appointment shall be published in the Gazette.

(9) The Committee may act notwithstanding any vacancy among its members but shall conduct business only if at least four members are present.

(10) Whenever at any meeting of the Committee the chairperson is absent, the members present for that meeting shall elect from among themselves a person to act as chairperson and to conduct the proceedings of that meeting.

(11) Decisions of the Committee shall be taken by a majority of votes of the members present. The chairperson shall have an original vote and, in the event of an equality of votes, a second or casting vote.

(12) Subject to the provisions of the Act and of these regulations, the Committee shall have power to regulate its own proceedings and may also establish such procedures or make such rules as it may deem appropriate for the better fulfilment of its purposes.

(13) Subject to sub-regulation (14) of this regulation, the Committee shall pay to the chairperson and each member of the Committee such remuneration as it may determine.

(14) Any determination of the Committee with respect to the remuneration to be paid to the chairperson and to any member of the Committee shall be subject to the approval of the Authority.

(15) The Authority shall appoint one of its officers to serve as secretary to the Management Committee. Such person shall be responsible to make the necessary preparations for the meetings of the Committee and to keep the minutes thereof.

Administration of the Fund.

6. (1) The Fund shall be administered by and be under the general control of the Management Committee.

(2) Subject to the provisions of sub-regulation (1) hereof, the Management Committee shall have the power to appoint officers or agents of the Fund and to grant them such powers or authority as it may deem appropriate. In consultation with the Authority, the Committee may, for the better fulfilment of its purposes, cause any part of its business to be conducted on its behalf by such body or person and under such arrangements or agreements as it may deem appropriate.

(3) The Management Committee shall not enter into an agreement or arrangement as is envisaged in sub-regulation (2) of this regulation in respect of the purpose set out in paragraph (b) of sub-regulation (1) of regulation 3 of these regulations, unless there is in force and in a manner satisfactory to the Committee, an agreement among insurers carrying on business of motor insurance, binding on all parties thereto and requiring them to act as insurers concerned; and where any such agreement between insurers ceases to be operative, or to be satisfactory to the Committee, any agreement or arrangement entered into by the Committee under this regulation shall cease to have effect upon notice in writing by the Committee to such person as may lawfully receive notices on behalf of the body with which the arrangement or agreement was made.

(4) Where an arrangement or agreement as is envisaged in sub-regulation (3) of this regulation has been entered into by the Committee, and for so long as such arrangement or agreement is in operation, Part III of these regulations shall have effect if the arrangement or agreement relates to the purpose set out in paragraph (a) of sub-regulation (1) of regulation 3 of these regulations and Part IV of these regulations shall have effect if the arrangement or agreement relates to the purpose set out in paragraph (b) of sub-regulation (1) of the said regulation.

(5) The Authority may issue an insurance directive to determine such incidental, supplementary and consequential provisions as appear necessary for the performance of the Management Committee's functions and conduct of its business under any provisions of these regulations.

Contributions to the Fund.

7. (1) The contributions to the Fund to be made by insurers pursuant to article 50 of the Act are those prescribed by this regulation.

(2) Subject to the provisions of the following sub-regulations of this regulation, the Committee shall every calendar year -

(a) for the purpose of the Fund under paragraph (a) of sub-regulation (1) of regulation 3 of these regulations:

(i) in so far as that purpose relates solely to general business, require every insurer carrying on in Malta general business, whether or not such business constitutes, in whole or in part, business of a protected risk, to pay a contribution to the Fund to be utilised exclusively for the payment of claims relating to protected risks situated in Malta;

(ii) in so far as that purpose relates solely to long term business, require every insurer carrying on in Malta long term business, whether or not such business constitutes, in whole or in part, business of a protected commitment, to pay a contribution to the Fund to be utilised exclusively for the payment of claims relating to protected commitments where Malta is the country of the commitment;

(b) for the purpose of the Fund under paragraph (b) of sub-regulation (1) of regulation 3 of these regulations, require every insurer carrying on business of motor insurance in Malta, to pay, in addition to the contribution required to be made under paragraph (a) of this sub-regulation, a further contribution to the Fund, of such amount, and at such time or times, as the Committee may determine, taking into account the sums required, or expected to be required, for this purpose of the Fund, to be utilised exclusively for the payment of compensation relating to protected liabilities.

(3) The obligation to pay contributions under indent (ii) of paragraph (a) of sub-regulation (2) of this regulation shall also apply to an insurer, other than an insolvent insurer which was licensed under the Insurance Business Act, 1981, repealed by the Act, or is authorised under the Act to carry on business of long term insurance, whether or not such business constitutes, in whole or in part, business of a protected commitment and which ceased to carry on that business and is carrying out servicing of that business, or which ceases to carry on that business and shall carry out servicing of that business. The obligation to pay contributions shall continue until the company proves to the satisfaction of the Authority that it has no further liability arising from such business.

(4) Without prejudice to sub-regulation (3) of this regulation, where an insurer holds an authority on the date of coming into force of these regulations to carry on in Malta both long term business and general business, separate treatment shall be given to contributions paid by the insurer into the Fund under this regulation -

(a) in respect of long term business, to be utilised exclusively for the payment of claims relating to protected commitments where Malta is the country of the commitment;

(b) in respect of general business, to be utilised exclusively for the payment of claims relating to protected risks situated in Malta.

(5) Subject to the provisions of regulation 9 of these regulations, the amount every insurer shall be required to contribute under paragraph (a) of sub-regulation (2) of this regulation shall be:

(a) if the contribution is made under indent (i) thereof, 0.125 per centum of, and calculated by reference to, the gross premium income by the insurer for the year ending last before the beginning of that calendar year in respect of general business;

(b) if the contribution is made under indent (ii) thereof, 0.125 per centum of, and calculated by reference to, the gross premium income by the insurer for the year ending last before the beginning of that calendar year in respect of long term business effected after 30 June 1986:

Provided that, the gross premium income shall exclude premiums which relate to the following classes of business of insurance:

(i) in respect of risks situated in Malta classes 4, 5, 6, 7, 11, 12, 14 and 15 in Part I of the Third Schedule to the Act;

(ii) in respect of commitments where Malta is the country of the commitment classes III, V, VI and VIII in the Second Schedule to the Act.

(6) A sum not exceeding 5 per centum of the total amount of contributions payable to the Fund under sub-regulation (2) of this regulation as may be determined by the Management Committee shall be at the disposal of the Committee to meet ordinary expenses incurred by the administration of the Fund, other than extraordinary expenses

incurred in relation to the purposes specified in paragraph (a) of sub-regulation (1) of regulation 3 of these regulations.

(7) Expenses incurred by the Fund pursuant to, or in consequence of, paragraph (a) of sub-regulation (1) of regulation 3 of these regulations shall be paid out :

(a) in relation to protected risks situated in Malta, from the contributions made in respect of general business; and

(b) in relation to protected commitments where Malta is the country of the commitment, from the contributions made in respect of long term business.

(8) The contributions payable by every insurer under sub-regulation (2) of this regulation shall be due on the first day of July of each calendar year but may be paid on any working day during that month.

(9) Any contribution payable under this regulation remaining unpaid by any insurer for any reason whatever, other than by reason of the insolvency of the insurer, shall be recoverable by the Fund from the insurer in the same manner as an administrative penalty is recoverable by the Authority under the regulations made for the purposes of subarticle (6) of article 67 of the Act, and, in any such recovery, any reference to "the Authority" made in those regulations shall be deemed to be a reference to "the Fund".

Statements of gross premium income.

8. (1) Every insurer shall, when satisfying its obligations under regulation 7 of these regulations, furnish the Fund with a statement of the gross premium income of the company liable to the contribution -

(a) in respect of general business, under paragraph (a) of sub-regulation (5) of regulation 7 of these regulations;

(b) in respect of long term business, under paragraph (b) of the said sub-regulation (5).

(2) Where an insurer is required under this regulation to furnish to the Fund a statement in respect of gross premium income of more than one kind of business mentioned in paragraphs (a) and (b) of sub-regulation (1) of this regulation, the insurer shall furnish a separate statement in respect of gross premium income of each kind of business.

(3) Any person who causes or permits to be included in a statement furnished to the Fund under this regulation any information

which he knows to be false in a material particular or recklessly causes or permits to be so included any information which is false in a material particular, shall be guilty of an offence and liable, on conviction, to a fine (multa) of not less than five hundred Maltese liri but not exceeding one thousand Maltese liri.

(4) Any insurer which makes default in complying with sub-regulation (1) or (2) of this regulation shall be guilty of an infringement and liable, to an administrative penalty of not less than five hundred Maltese liri but not exceeding one thousand Maltese liri and in the case of a continuing infringement to a further penalty not exceeding fifty Maltese liri for each day during which the infringement continues.

(5) Any administrative penalty imposed by the Authority under sub-regulation (4) of this regulation shall be recoverable by the Fund in the same manner and to the same extent as an administrative penalty is recoverable by the Authority under regulations made for the purposes of subarticle (6) of article 67 of the Act; and, in any recovery, any reference to the "Authority" made in those regulations shall be deemed to be a reference to "the Fund".

When funds appear to be reasonably adequate.

9. (1) Subject to sub-regulation (2) of this regulation, whenever the funds held by the Management Committee in respect of the purpose of paragraph (a) of sub-regulation (1) of regulation 3 of these regulations amount to one million Maltese liri in respect of general business and one million Maltese liri in respect of long term business, the Management Committee shall, inform the Authority in writing of this fact.

(2) Notwithstanding that the funds held by the Committee in respect of each kind of business are not equal to the amount determined in sub-regulation (1) of this regulation, if at any time it appears to the Committee that the funds held by it are reasonably adequate for it to exercise its functions with respect to the purpose mentioned in sub-regulation (1) of this regulation, the Committee shall draw up a report on the adequacy of such funds stating the reasons for its consideration and shall submit that report to the Authority.

(3) Whenever the Authority receives information or a report as is envisaged in sub-regulations (1) and (2) of this regulation, the Authority shall, after consultation with the Management Committee and the auditor of the Fund, direct the Committee in writing -

(a) to continue to exercise its functions and powers under regulation 7 of these regulations with respect to contributions to the funds made under sub-regulation (6) of this regulation and to require the contributions payable thereunder to continue to be paid:

(i) according to the percentage specified in the said regulation; or

(ii) according to a percentage lower than the percentage specified in the said regulation as the Authority shall specify in the directive, or

(b) to suspend exercising its functions and powers under the said regulation with respect to contributions to such funds in respect of such business for a period of one or more years as the Authority shall specify in the directive.

(4) Whenever, and for so long as, payment of the contributions under sub-regulation (5) of regulation 7 of these regulations is suspended, every insurer, other than an insolvent insurer, to which that directive applies shall pay to the Fund a contribution of three hundred Maltese liri and such contribution shall be paid in the month of January of each year and be at the disposal of the Management Committee to meet ordinary expenses incurred by the administration of the Fund as in envisaged in sub-regulation (6) of regulation 7 of these regulations.

For the purpose of this sub-regulation, "insurer" shall include an insurer which was licensed under the Insurance Business Act, 1981, repealed by the Act, or is authorised under the Act to carry on business of long term insurance, whether or not such business constitutes, in whole or in part, business of a protected commitment and which ceased to carry on that business and is carrying out servicing of that business, or which ceases to carry on that business and shall carry out servicing of that business.

(5) Whenever payment of contributions under sub-regulation (5) of regulation 7 of these regulations is suspended, every insurer authorised under the Act to carry on business of insurance in Malta, on or after the date of enforcement of such suspension, shall pay to the Fund the contribution established by sub-regulation (5) of regulation 7 thereof for a period to be determined by the Management Committee in consultation with the Authority.

(6) If, for so long as the directive issued by the Authority under sub-regulation (3) of this regulation is in operation, whenever it appears to the Management Committee that the circumstances which led to the issuing of the directive have changed substantially or materially so that the funds held by the Fund are inadequate for the Committee to exercise its functions for the purpose of paragraph (a) of sub-regulation (1) of regulation 3 of these regulations, the Committee shall, without delay, inform the Authority of such change and of the new circumstances,

and, on receiving that information, the Authority shall forthwith modify or revoke its directive with respect to contributions to those funds.

When contributions are still to be made.

10. (1) Notwithstanding any provisions of these regulations, if the Management Committee is required to make any payment or to incur any other expenditure under any provision of Part III or Part IV of these regulations at a time when the funds available to it for expenditure under that provision, together with any other funds which are available to it from other sources, including funds borrowed in terms of sub-regulation (1) of regulation 4 of these regulations and which might be applied to such expenditure, fall short of what is prescribed or required, the Committee may then, in such a case, request every insurer to make good the shortfall by such amount and within such time as it may determine, subject to the provisions of sub-regulations (2) and (3) of regulation 7 of these regulations.

(2) The Management Committee shall notify the Authority where an insurer fails to comply with the obligations imposed on it under sub-regulation (1) of this regulation and the Authority shall take all measures appropriate including the imposition of an administrative penalty of the amount determined in sub-regulation (4) of regulation 8 of these regulations, to ensure that the insurer meets such obligations.

Report by the Management Committee.

11. (1) The Management Committee shall every calendar year, and not later than three months after the end of its financial year, submit to the Authority a report on the activities of the Fund during such year.

(2) A copy of the audited balance sheet and profit and loss account for the said year, as well as a copy of the auditor's report, shall be attached to the report of the Committee.

(3) A copy of the report of the Management Committee together with all documents attached to it shall be distributed among insurers contributing to the Fund.

Financial year of the Fund.

12. The financial year of the Fund shall be an accounting period of twelve months ending on the thirty-first day of December of each year.

Accounts of the Fund.

13. (1) The Management Committee shall cause proper books of account to be kept with respect to -

(a) all sums of money received and disbursed by the Fund and the matters in respect of which the receipt and disbursements take place;

(b) the assets and liabilities of the Fund.

(2) Subject to the provisions of article 50 of the Act and without prejudice to any separate treatment to be given under those provisions, separate accounts shall also be kept in respect of each separate purpose of the Fund; and all income derived in respect of any of such purposes shall be utilised exclusively for disbursements relating to such purpose:

Provided that, notwithstanding the provisions of sub-regulation (6) of regulation 7 and sub-regulation (4) of regulation 9 of these regulations, nothing in this sub-regulation shall prevent the payment of sums belonging to the Fund to meet administrative, legal, judicial or other costs common to two or more purposes, subject to such costs being properly apportioned between such purposes.

(3) The books of account shall be kept at the offices of the Fund or at such other place or places as the Management Committee thinks fit.

(4) The provisions of article 181 of the Companies Act shall, in so far as they are not incompatible, apply to the balance sheet and profit and loss account of the Fund by the substitution for references to "company" and "directors" in those provisions of references to "the Fund" and "members of the Management Committee" respectively. Cap.386.

14. (1) Once at least in every financial year, the accounts of the Fund shall be examined and the correctness of every balance sheet and profit and loss account shall be certified by an auditor appointed by the Committee. Examination of accounts.

(2) The profit and loss account shall be annexed to the balance sheet, and the auditor's report shall be attached thereto. A copy of the profit and loss account, balance sheet and auditor's report shall be submitted to the Authority within two months from the end of the financial year.

(3) A copy of every balance sheet and profit and loss account, together with a copy of the auditor's report, shall be published within three months from the end of the financial year in two local daily newspapers, of which one is published in the Maltese language and the other in the English language, and shall, together with the report on the activities of the Fund for that year made under sub-regulation (1) of regulation 11 of these regulations, be made available to the public on request.

Appeals.

15. An insurer on whom an administrative penalty has been imposed under any provisions of these regulations, may within a period of thirty days beginning from the date of service of a notice imposing such penalty, appeal to the Financial Services Tribunal in accordance with the provisions of article 58 of the Act.

PART III - PAYMENT OF CLAIMS IN THE EVENT OF INSOLVENT INSURERS

Claims in the event of insolvency.

16. (1) Whenever an insurer is unable to meet its obligations, the Committee may, in respect of the said obligations arising from a claim under a policy of insurance covering a protected risk situated in Malta or a protected commitment where Malta is the country of the commitment, make payments out of the Fund, under and in accordance with the provisions of this Part, to a qualifying person.

(2) Payment shall also be made out of the Fund under this Part if the insolvent insurer, is at the time that it is unable to meet its obligations, servicing or running-off the business of insurance it was licensed to carry on under the Act.

(3) No payment shall be made out of the Fund under this Part unless the Committee is satisfied that the name of the insolvent insurer is struck off the register or the insolvent insurer is definitely wound up.

(4) For the purposes of these regulations, a person is a qualifying person in relation to an insolvent insurer if -

(a) he is an insured of the insolvent insurer eligible for protection under this regulation; or

(b) he is a person other than the policyholder to whom payment in respect of any sums falling due under the policy could have been made in accordance with the policy; or

(c) he is a person to whom the insolvent insurer is liable to pay any sum or other consideration in respect of the insured's legal liability to such person under the policy of insurance.

When payments can be made.

17. In the case of long term business protected commitments, payment shall be made to every qualifying person; and in the case of general business protected risks, payment shall be made to every qualifying person who is an individual and to every non-corporate body or association of persons if all such persons are individuals.

Quantum of payment.

18. In respect of a protected liability which is a liability required to be covered by compulsory insurance legislation as defined in Part IV of these regulations, payment under this Part in respect of protected liabilities aforesaid incurred by the insured of an insolvent insurer shall cover the whole of such liabilities; in respect of all other protected liabilities, payment under this Part in respect of -

(a) long term business protected commitments shall be limited to seventy-five per centum of the actuarial valuation of the contract of insurance at the time the company concerned ceased to carry on such business (adjusted for any premiums paid till date of payment) remaining unpaid or ten thousand Maltese liri whichever is the less;

(b) general business protected risks shall be limited to seventy-five per centum of the liabilities incurred remaining unpaid in any one case or ten thousand Maltese liri whichever is the less:

Provided that, in each case, the total amount of payments to be made by the Fund under this Part with respect to any one insolvent insurer shall not exceed one million Maltese liri.

When payment must not be made.

19. (1) In no case shall any payment be made under this Part -

(a) where the claim is in respect of unearned premiums;

(b) where the claim is by or in respect of a person who is a shareholder of the insolvent insurer and holds twenty per centum or more of the issued shares of such insolvent insurer.

(2) Where the Management Committee is of the opinion, that an applicant is not entitled to compensation in whole or in part, the Committee shall give notice in writing of that opinion to such applicant and the reasons therefor.

Compensation paid to be deducted from compensation payable.

20. In considering compensation to any applicant for payment under this Part, the Committee shall take into account any other amount of compensation paid to the applicant in respect of the same liability under the Act or any other law and in calculating the amount in respect of which the insolvent insurer is unable to meet its liabilities, deduct from the insolvent insurer's liability any such amount of other compensation paid.

Assignment and subrogation of rights.

21. No payment shall be made under this Part unless and until the applicant for payment has assigned to the Fund any right to any payment to which he may be entitled in respect of the same liability;

and, where such liability is covered by reinsurance, the Fund shall, in addition, be entitled to pursue any reinsurance recoveries as if it were the insolvent insurer.

Exclusion under this Part.

22. This Part of these regulations shall not apply -

(a) to an insolvent insurer who is a member of a Recognised Insurance Body, where the Recognised Insurance Body has given to the Authority a written undertaking or any form of guarantee acceptable to the Authority to meet all claims against any member thereof, in a manner not being less favourable than that prescribed by this Part in the event any member thereof, becomes an insolvent insurer; or

(b) to an insolvent insurer who carries on solely and exclusively business of insurance restricted to any one class or part class and such class or part class is, under these regulations, neither a protected risk nor a protected commitment; or

(c) to a branch of a European insurance undertaking carrying on business of insurance pursuant to regulations relating to European passport rights for insurance undertakings as may be made in terms of article 64 of the Act, and which provides to the satisfaction of the Authority that equivalent protection is available to policyholders of protected risks and protected commitments in a manner not being less favourable than that prescribed by this Part, in the event of the insolvency of the European insurance undertaking.

PART IV - COMPENSATION TO VICTIMS OF ROAD TRAFFIC ACCIDENTS

Interpretation.

23. (1) In this Part of these regulations, unless the context otherwise requires -

"the Bureau" means the association or other body established by insurers carrying on business of motor insurance with which the Management Committee has made arrangements or an agreement as provided in sub-regulation (2) of regulation 6 of these regulations;

"civil liability" means any liability which may be incurred in respect of the death of, or bodily injury to, any person or in respect of any loss of, or damage to, any property of any person which is required to be covered by a policy of insurance under compulsory insurance legislation;

"company" has the same meaning as is assigned to it by the Act, but does not include any Recognised Insurance Body, or a member thereof;

"compulsory insurance legislation" means the Motor Vehicle Insurance (Third-Party Risks) Ordinance, or any enactment replacing that law, and any regulations made thereunder; Cap. 104.

"debtor" means a person responsible for the accident which gave rise to civil liability.

"insurance" means insurance against civil liability effected by or under a policy of insurance, a cover note, correspondence or any other means, whether or not a certificate of insurance as required by compulsory insurance legislation has been issued or delivered;

"judgement" means a judgement of a court of competent jurisdiction in Malta or in any European state, which has become res judicata;

(2) To the extent of any powers and duties arising from any arrangements or agreement entered into by the Management Committee and the Bureau under regulation 6 of these regulations, the expression "the Fund" in this Part shall include the Bureau.

Insurer concerned.

24. (1) Subject and without prejudice to the other provisions of this regulation, "insurer concerned" means the insurer who at the time of the accident which gave rise to a civil liability was providing insurance against such liability in respect of the vehicle arising out of the use of which the liability of the debtor was incurred.

(2) An insurer is the insurer concerned notwithstanding that -

(a) the insurance was arranged after the accident giving rise to a civil liability but purported to be effective at the time of such accident; or

(b) the insurance was obtained by fraud, misrepresentation, non-disclosure of material facts or mistake; or

(c) some term, description, limitation, exception or condition (whether expressed or implied) of the insurance or of the proposal form on which it is based expressly or by implication excludes the

insurer's liability whether generally or in the particular circumstances which gave rise to the liability of the debtor; or

(d) the debtor was in unauthorised possession of the vehicle arising out of the use of which the liability of the debtor was incurred; or

(e) the vehicle out of the use of which the civil liability of the debtor arose was, at the time when the liability was incurred -

(i) being used for a purpose not authorised under the terms of the insurance; or

(ii) being used by a person not authorised to drive the vehicle under the terms of the insurance, or

Provided that, an insurer shall not be considered as the insurer concerned in the circumstances referred to in indent (ii) of paragraph (e) of this sub-regulation, if the death, bodily injury or damage to property is sustained by a person who voluntarily entered the vehicle which caused such death, bodily injury or damage to property when the insurer concerned can prove that such person knew it was uninsured.

(f) the driver of the vehicle out of the use of which the civil liability of the debtor was incurred was, at the time when the liability was incurred, disqualified from holding or obtaining a licence to drive the vehicle or had his licence suspended or had never validly held such licence.

(3) An insurer is not the insurer concerned -

(a) when the insurance was cancelled before the date on which the civil liability was incurred by agreement between the parties to the insurance and with the prior written permission of the Commissioner of Police; or

(b) when the civil liability was incurred after the cancellation of the insurance under a power of cancellation contained in such insurance and after notice of such cancellation was given to the Commissioner of Police in accordance with compulsory insurance legislation; or

(c) when the insurance has ceased to be operative before the date on which the civil liability was incurred by reason of a

transfer of interest in the vehicle which the insurance purports to cover; or

(d) when the civil liability was incurred after a decision of a court of competent jurisdiction which has become res judicata has declared the insurance void or unforceable; or

(e) when the civil liability was incurred after the date on which the insurance has, by its term, lapsed.

(4) For the purposes of these regulations, an insurer of a motor trade road risk insurance covering unspecified vehicles shall, in respect of such vehicles and irrespective of the basis of the insurance, be the insurer concerned -

(a) in respect of vehicles not the property of the insured, if the vehicle in respect of which the claim arises was in the custody or control of the insured or was only removed from such custody or control without the authority of the insured; and

(b) in respect of vehicles which are the property of the insured, at all times, except that such insurer shall not be the insurer concerned in respect of any vehicle specifically excluded from the cover of the insurance by reference to its registration mark and number, or specifically insured in the name of the motor trader with another insurer; and

where an insurer concerned under a motor trade risk insurance as aforesaid and an insurer concerned under a specified vehicle insurance are both involved in circumstances in which neither insurance is liable under its insurance, each of them shall be liable jointly and severally for any amount due by way of damages and costs in respect of any civil liability, such amount being due in the internal relations between such insurers as to one half each.

(5) Where a person entering Malta is insured, or holds a policy purporting to provide insurance, against civil liability and such insurance was lawfully issued in or from a country outside Malta by an insurer, or a subsidiary or associated company of an insurer, the company issuing the insurance shall be the insurer concerned in the event of the person insured becoming a debtor.

(6) For the purposes of this regulation a “motor trade road risk insurance” means a policy of insurance provided to a person engaged in the purchase, sale, repair, upkeep, servicing or maintenance of motor vehicles which indemnifies him in respect of liabilities to third parties

arising out of the use of vehicles owned by him or in his custody or control whilst being used on the road.

Payment of claims out of the Fund.

25. (1) If a judgement in respect of any civil liability which is required to be covered by a policy of insurance under compulsory insurance legislation is obtained against any person or persons and either at the time of the accident giving rise to such liability there is not in force a policy of insurance as required by the said legislation or such policy is ineffective for any reason other than the inability of the insurer to make payment, and any such liability is not satisfied in full within twenty-eight days from the date upon which the person or persons in whose favour such judgement was given became entitled to enforce it, then, if there is no insurer concerned, the Fund shall, subject to the provisions of these regulations, make payments to the person or persons in whose favour such judgement was given, out of its funds set aside for utilisation for the payment of compensation relating to protected liabilities:

Provided that, no payments shall be made under this regulation where the judgement relates to a vehicle the use of which is covered by a security (or in lieu of such security by a deposit) in accordance with compulsory insurance legislation unless there is also in force, in respect of such vehicle, a policy of insurance purporting to cover such use of the vehicle.

(2) No payment shall be made under this regulation unless the following conditions concur-

(a) notice of the proceedings in which the judgement is given has been given in writing by registered post or by a judicial letter, within seven days after the commencement of such proceedings by the plaintiff in such proceedings:

(i) to the insurer, in any case in which there was in force at the time of the accident a policy of insurance purporting to cover the use of the vehicle, and such fact was known to the said plaintiff; or

(ii) to the Bureau in any other case;

(b) the plaintiff has complied with all the requirements of the Fund in relation to any matter which could affect the payment of compensation by the Fund under these regulations;

(c) the judgement or judgements and all rights thereunder have been ceded to the Fund;

(d) the plaintiff in any of the aforesaid proceedings had given credit to the Fund for any amount paid to him by or on behalf of the defendant in such proceedings in respect of any civil liability arising out of the event in respect of which compensation may be payable by the Fund.

(3) In the case of payments relating to damage to property caused by an uninsured vehicle, the Fund shall apply an excess of two hundred Maltese liri with respect to each and every payment.

Other cases of compensation.

26. (1) Payment of compensation in respect of death or bodily injury to any person, caused by or arising out of the use of a motor vehicle, other than payment of compensation falling within the provision of regulation 25 of these regulations, may be made out of funds set aside by the Fund for the payment of compensation relating to protected liabilities, if the following conditions concur -

(a) the applicant for payment is unable to trace any person responsible for the death or bodily injury;

(b) the death or bodily injury was caused in such circumstances that on the balance of probabilities the unidentified person would be liable to pay damages to the applicant in respect of such death or bodily injury;

(c) the liability of the unidentified person to pay damages to the applicant is one which is required to be covered by insurance or security under compulsory insurance legislation, it being assumed for this purpose, in the absence of evidence to the contrary, that the vehicle was being used in circumstances in which the user was required by the said legislation to be insured or secured against third party risks;

(d) the death or bodily injury was not caused by the use of the vehicle by the unidentified person as a weapon, that is to say in a deliberate attempt to run down the deceased or injured person; and

(e) the application for compensation is made in writing within two years from the date of the event giving rise to the death or bodily injury.

(2) Where an application for compensation is made under this regulation, the payment that may be made by the Fund as aforesaid shall not exceed eighty per centum of the amount which a court in Malta applying Maltese law would assess as damages which the applicant

would have been entitled to recover from the unidentified person in respect of that death or bodily injury, if proceedings to enforce a claim for damages in respect thereof had been successfully brought by the applicant against the unidentified person or twenty-thousand Maltese liri, whichever amount is the less. The amount so payable shall be assessed by the Fund and in particular it shall:

(a) have the power to require any applicant to provide such information as it may deem necessary for the purposes of determining an application for granting compensation; and

(b) on the basis of information provided at its request by the applicant, to give him a reasoned reply regarding the payment of any compensation.

(3) No payment under this regulation shall be made unless -

(a) the applicant has given all such assistance, including information required under sub-regulation (2) of this regulation as may reasonably be required by or on behalf of the Fund to enable any investigation to be carried out; and

(b) the applicant has assigned to the Fund any right to any payment in respect of the death or injury to which his application relates.

(4) The Fund shall determine an application for compensation under this regulation within six months of receiving the information required to be submitted under this regulation and if it refuses to effect compensation, it shall inform the applicant in writing of the reasons for its refusal.

Compensation in cases arising from the use of vehicles stolen or obtained by violence.

27. (1) In the case of an accident arising from the use of a stolen vehicle or a vehicle obtained by violence, and giving rise to civil liability, compensation by the Fund to the injured party shall be made in the circumstances referred to in subarticle (3) of article 12 of the Motor Vehicles Insurance (Third-Party Risks) Ordinance (in this regulation referred to as "the Ordinance"):

Provided that, if the civil liability relates to damages to property, the Fund shall apply an excess of one hundred Maltese liri with respect to each and every payment.

(2) For the purposes of sub-regulation (1) of this regulation, "injured party" has the same meaning as is assigned to it in article 2 of the Ordinance."

Cases where no compensation may be paid.

28. No payment for compensation in respect of civil liability may be made under these regulations where -

(a) the civil liability resulted from the use of a motor vehicle which at the time of the event giving rise to such liability was owned by or in the possession of the Government, unless there was in force in respect of such vehicle a policy of insurance purporting to cover such use of the vehicle; and for the purposes of this paragraph, a vehicle which has been unlawfully removed from the possession of the person for the time being legally entitled to possession shall be deemed to have remained in the possession of such person while it is so removed; or

(b) at the time of the accident the person -

(i) being the owner of or being a person using the vehicle, was using, or causing or permitting the vehicle to be used, without there being in force in relation to such use a policy of insurance or such security as would comply with the compulsory insurance legislation, knowing or having reason to believe that no such policy or security was in force; or

(ii) was allowing himself to be carried in a vehicle knowing or having reason to believe that the vehicle had been taken without the consent of the owner or other lawful authority, unless he believed or had reason to believe that he had lawful authority to be carried or would have had the owner's consent if the owner had known of the fact and the circumstances of his carriage, or unless he had learned of the circumstances of the taking of the vehicle after the journey had commenced and he could not reasonably be expected to alight from the vehicle; or

(iii) who sustained the death, bodily injury or damage to property, voluntarily entered the vehicle which caused such death, bodily injury or damage when the Fund can prove that such person knew it was uninsured;

(c) pursuant to the Insurance Business Security Fund Regulations 1986, repealed by these regulations, the death or injury

in respect of which compensation would otherwise be payable occurred before the 1st of July, 1986.

Requirement by the Fund to provide notice.

29. Where the Fund is of the opinion that an applicant is not entitled to compensation in whole or in part, under this Part of these regulations, the Fund shall give notice in writing to such applicant of the opinion and the reasons therefor.

Power of the Authority to issue insurance directive and guidelines.

30. (1) The Authority may issue insurance directives and guidelines to insurers for the purposes of these regulations.

(2) Such insurance directives and guidelines may contain such incidental, supplementary and consequential provisions as appear to the Authority to be expedient for the purposes of these regulations.

PART V - SUPPLEMENTARY

Repeals and savings.

31. (1) Saving the provisions of the following sub-regulations of this regulation, the Insurance Business Security Fund Regulations, 1986 (hereinafter in these regulations referred to as "the 1986 Regulations"), are hereby repealed.

L.N. 28 of 1986.

(2) Notwithstanding any other provision of these regulations, the Security Fund Committee appointed by the Minister under regulation 6 of the 1986 Regulations shall continue in office as if the Security Fund Committee were appointed by the Authority under regulation 5 of these regulations, and the Bureau with which the Security Fund Committee had made an agreement under sub-regulation (2) of regulation 6 of the 1986 Regulations shall also continue in office as if the Management Committee had made the agreement with the Bureau under sub-regulation (2) of regulation 6 of these regulations until -

(a) in the case of the Security Fund Committee, the Authority shall, pursuant to regulation 5 of these regulations, appoint the Management Committee; and

(b) in the case of the Bureau, the Management Committee shall, pursuant to sub-regulation (2) of regulation 6 of these regulations, make arrangement or agreement as is envisaged therein with such body or person as it may deem appropriate.

(3) Where, immediately after the date of coming into force of these regulations -

(a) a company licensed under the Insurance Business Act, 1981, repealed by the Act, to carry on in Malta the business of insurance as principal, was, immediately before that date, in a state of insolvency in accordance with the 1986 Regulations, and the Security Fund Committee or the Management Committee, as the case may be, was or is required, in respect of such of the obligations as may arise from a policy of insurance issued in Malta by that company, to make payments out of the Protection and Compensation Fund, the Security Fund Committee or the Management Committee shall -

(i) in its consideration of the obligations, be governed by Part II of the 1986 Regulations; and

(ii) in its consideration of the contributions, be governed by regulation 7 of Part I of the 1986 Regulations;

(b) a claim for compensation out of the Protection and Compensation Fund was, immediately before that date, made or was ought to be made, the Security Fund Committee or the Management Committee shall -

(i) in its consideration of the claim, be governed by Part III of the 1986 Regulations; and

(ii) in its consideration of the contributions, be governed by regulation 7, of Part I of the 1986 Regulations.

(4) All assets and liabilities of the Security Fund transferred to the Protection and Compensation Fund in virtue of the Act shall, as from the date of coming into force of these regulations, be kept separate from other assets and liabilities of the Protection and Compensation Fund and the administration of the assets and liabilities which are to be kept separate in virtue of those regulations shall continue to be governed by regulation 10 of the 1986 Regulations until all obligations of the Protection and Compensation Fund under the 1986 Regulations are discharged in full.

(5) Any assets of the Protection and Compensation Fund which are kept separate from the other assets of the Fund in virtue of this regulation remaining in hand after the discharge of all obligations under the 1986 Regulations shall be aggregated to the other assets of the Fund and be assets of the Fund and continue to be used under these regulations exclusively for the same purpose which they were used under the 1986 Regulations.

(6) For the purpose of this regulation, the "Security Fund" means the fund established by article 26 of the Insurance Business Act, 1981, repealed by the Act.