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Taqsima B

L.N. 318 of 2024

INSURANCE BUSINESS ACT
(CAP. 403)

Insurance Business (Protection and Compensation Fund) Regulations, 2024

IN EXERCISE of the powers conferred by article 54 of the Insurance Business Act, the Minister responsible for the regulation of financial services, after consultation with the Malta Financial Services Authority, has made the following regulations:-

PART I
PRELIMINARY

Citation and scope.

1. (1) The title of these regulations is the Insurance Business (Protection and Compensation Fund) Regulations, 2024.

(2) The scope of these regulations is to partially transpose the relevant provisions of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability, as amended by Directive (EU) 2021/2118 of the European Parliament and of the Council of 24 November 2021 amending Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, as may be amended from time to time, and includes any binding legal instruments, guidelines and any other measures that have been or may be issued thereunder.

Interpretation.

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

"Act" means the Insurance Business Act; Cap. 403.

"administrator" means:

(a) in Malta, any person or body appointed by the relevant authorities for the purpose of administering reorganisation measures; or

(b) in another Member State or EEA State, any person or body appointed by the foreign administrative or judicial authorities or by the governing bodies of an

insurance undertaking authorised in such Member State or EEA State for the purposes of administering reorganisation measures:

Provided that "relevant authorities" shall have the same meaning as assigned to it in the Insurance Business (Reorganisation and Winding up of Insurance Undertakings) Regulations;

S.L. 403.15.

"authorised reinsurance undertaking" shall have the same meaning as assigned to it in the Act;

"binding legal instruments" means any directly applicable measures, including but not limited to any implementing technical standards, regulatory technical standards or any similar measures issued under European Union legislation;

"business of motor insurance" means the 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;

"competent authority" shall have the same meaning as assigned to it in the Act;

"European compensation body" means a body set up or authorised by a Member State other than Malta, with the task of providing compensation to injured parties who are resident within its territory for damage to property or personal injuries caused by a vehicle, in terms of Articles 10a(1) and 25a(1) of the Motor Insurance Directive;

"European insurance undertaking" shall have the same meaning as assigned to it in the Act;

"European regulatory authority" shall have the same meaning as assigned to it in the Act;

"Financial Services Tribunal" shall have the same meaning as assigned to it in article 57 of the Act;

"from Malta" shall be construed as the carrying on of motor vehicle liability insurance business by an insurer in another Member State outside of Malta, and excludes any motor vehicle liability insurance business carried on exclusively in Malta;

"Fund A" means the fund which is composed of contributions made by insurers which carry on:

(a) long term business in Malta in any one (1) or more of the following classes specified in the Second Schedule to the Act: I, II, IV, VII and IX; and, or

(b) general business in Malta in any one (1) or more of the following classes or part classes specified in the Third Schedule to the Act: 1, where the insured is an individual, 2, 3, 8, 9, 13, 16, 17 and 18; and, or

(c) class 10 in terms of the Third Schedule to the Act, also referred to as motor vehicle liability insurance business which is carried on in Malta until the day preceding the initiation date;

"Fund B" means the fund which is composed of contributions made by insurers which carry on motor vehicle liability insurance business in Malta on, or after the initiation date as the case may be;

"Fund C" means the fund which is composed of contributions made by insurers which carry on motor vehicle liability insurance business from Malta on, or after the initiation date, as the case may be;

"Fund D" means the fund in relation to any civil liability in terms of Part V;

"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 insurer under reinsurance contracts accepted by the undertaking but before deduction of premiums for reinsurance ceded and before deduction of commission payable by the undertaking:

Provided that, in the case of an insurer which is an undertaking whose head office is in a country outside Malta, or an undertaking whose head office is in Malta and carries on business of insurance in a country outside Malta, excluding motor vehicle liability insurance business on, or after the initiation date, the gross premium income relates to premium income attributable to business of insurance carried on by the insurer in Malta:

Provided further that in the case of an insurer which is an undertaking whose head office is in Malta and which carries on motor vehicle liability insurance business in Malta and, or from Malta, after the initiation date, the gross premium

income relates to premium income attributable to motor vehicle liability insurance business carried on by the insurer in Malta and from Malta, after the initiation date;

S.L. 403.14.

"home Member State" shall have the same meaning as assigned to it in regulation 2(1) of the European Passport Rights for Insurance and Reinsurance Undertakings Regulations;

"initiation date" means the 10th July 2024, being the date of entry into force of the agreements referred to in the first paragraph of Article 10a (13) and the first paragraph of Article 25a (13) of the Motor Insurance Directive;

"injured party" and "party injured" means any person entitled to compensation in respect of any loss or injury caused by vehicles;

"insolvent insurer" shall, for the purposes of Part III, be construed in accordance with regulation 19(1), and for the purposes of Part IV shall mean an insurer or a European insurance undertaking subject to bankruptcy, winding up proceedings or any other equivalent proceedings;

"insurer" means:

(a) for the purposes of Fund A, in terms of Part III, an insurance undertaking authorised under the Act to carry on in Malta long term business or general business or an insurance undertaking which 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. An insurance undertaking whose business is restricted to reinsurance and an undertaking which only in so far as it carries on motor vehicle liability insurance business on or after the initiation date shall be excluded;

(b) for the purposes of Fund B, in terms of Part IV, an insurance undertaking authorised under the Act to carry on motor vehicle liability insurance business in Malta on or after the initiation date;

(c) for the purposes of Fund C, in terms of Part IV, an insurance undertaking authorised under the Act to carry on motor vehicle liability insurance business from Malta on or after the initiation date;

(d) for the purposes of Fund D in terms of Part V,

an insurance undertaking authorised under the Act to carry on motor vehicle liability insurance business in Malta:

Provided that for the purposes of Fund A, Fund B and Fund D, an insurer shall include a branch of a third country insurance undertaking authorised under article 11 of the Act;

"insurer concerned" shall have the meaning as assigned to it in regulation 40;

"liquidator" means:

(a) in Malta, a liquidator appointed under the Companies Act or the Act, as applicable, to an insurer and includes the official receiver when acting in the capacity of liquidator; or Cap. 386.

(b) in another Member State or EEA State, any person or body appointed by the foreign authorities, foreign administrative or judicial authorities or by the governing bodies of a European insurance undertaking authorised in that Member State or EEA State, for the purposes of administering winding-up proceedings;

"Management Committee" means the Protection and Compensation Fund Management Committee established by regulation 5;

"Motor Insurance Directive" means Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability, as amended from time to time, and includes any binding legal instruments, guidelines and any other measures that have been or may be issued thereunder;

"motor vehicle liability insurance business" means business of insurance of class 10 as specified in Part I of the Third Schedule to the Act;

"protected commitment" shall be construed in accordance with regulation 3(4)(a)(ii);

"protected liability" shall be construed in accordance with regulation 3(4)(d);

"protected risk" shall be construed in accordance with regulations 3(4)(a)(i) and 3(4) (b);

"the Protection and Compensation Fund" shall be interpreted and construed in terms of Part XI of the Act and shall comprise of Funds A, B, C and D as established by article 49 of the Act;

"Solvency II Directive" means Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), as amended from time to time, and includes any binding legal instruments, guidelines and any other measures that have been or may be issued thereunder;

"third country insurance undertaking" shall have the same meaning as assigned to it in the Act;

Cap. 104.

"vehicle" shall have the same meaning as assigned to "motor vehicle" in article 2 of the Motor Vehicles Insurance (Third Party Risks) Ordinance, and the term "vehicle" shall be construed accordingly;

"winding-up proceedings" means:

(a) for an insurer, the collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the insurance creditors, creditors, shareholders or members as appropriate, which necessarily involve any intervention by the relevant authorities or by foreign authorities or foreign administrative or judicial authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or wound up by the court;

(b) for a European insurance undertaking, the winding-up proceedings as defined in Article 268(1)(d) of the Solvency II Directive.

(2) The words and expressions which are used in the Act shall, unless defined otherwise in these regulations, have the same meanings as assigned to it in the Act.

(3) These regulations shall not apply to an authorised reinsurance undertaking.

PART II
THE PROTECTION AND COMPENSATION FUND

Establishment of the Protection and Compensation Fund.

3. (1) The Protection and Compensation Fund shall consist of different funds as may be prescribed by these regulations, and of all contributions made thereto and of all other assets and revenues pertaining to it. Without prejudice to the proviso to regulation 6(3), the assets of every fund shall be kept separate and separately identifiable from the assets of the other funds. The assets and liabilities of each fund shall be treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each of the other funds. The liabilities incurred in respect of each fund shall be paid out from the assets forming part of the patrimony of the said fund. No creditor shall seek, whether in any proceedings or by any other means whatsoever, to attempt to use any assets attributable to any one fund to satisfy the liability which is not attributable to such fund.

(2) The purposes of the Protection and Compensation Fund shall be:

(a) for the payment of any claims in respect of risks situated in Malta, excluding the payment of claims of motor vehicle liability insurance business made on or after the initiation date, 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) for the payment of any claims in respect of risks relating to motor vehicle liability insurance business, whether such business is carried on in Malta or from Malta, against an insurer, remaining unpaid by reason of insolvency of such insurer;

(c) for the payment of compensation to victims of road traffic accidents in circumstances prescribed by these regulations.

(3) For the purposes of sub-regulation (2):

(a) Parts III and IV make provision with respect to payment of claims in the event of an insolvent insurer; and

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

(4) There shall hereby be prescribed:

(a) in relation to Fund A in Part III:

(i) in respect of risks situated in Malta, the following classes or part classes specified in Part I of the Third Schedule to the Act as a protected risk, in classes or part classes 1 where the insured is an individual, in classes or part classes 2, 3, 8, 9, 10, 13, 16, 17 and 18, and shall exclude class 10 as from the initiation date;

(ii) in respect of commitments where Malta is the country of the commitment, classes I, II, IV, VII and IX specified in the Second Schedule to the Act as a protected commitment;

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

(b) in relation to Fund B in Part IV, in respect of risks situated in Malta, in class 10 as specified in Part I of the Third Schedule to the Act as a protected risk carried on by an insurer in Malta on or after the initiation date;

(c) in relation to Fund C in Part IV, in respect of risks situated outside Malta in class 10 as specified in Part I of the Third Schedule to the Act carried on by an insurer from Malta on or after the initiation date;

(d) in relation to Fund D in Part V, any civil liability to any person who 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 such Part.

Representation of the Protection and Compensation Fund.

4. (1) The Protection and Compensation Fund shall have the power to delegate to any body or person any of its functions as the Management Committee deems necessary.

(2) The Management Committee shall have in place sound and transparent governance practices.

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

Provided that, the Management Committee may appoint any one (1) or more of its members or of the officers or agents of the Protection and Compensation Fund to appear in the name and on behalf of the Protection and Compensation Fund in any legal or

judicial proceedings and in any act, contract, instrument or other document whatsoever. Where Part III, Part IV or Part V is in operation, in respect of any powers and duties of the Protection and Compensation Fund exercisable by any body or person as provided in regulation 6(4), the legal representation of the Protection and Compensation Fund may 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 seven (7) members to be appointed by the competent authority and which shall include among its members:

(a) an officer, performing duties with the competent authority possessing the necessary expertise and experience in business of insurance;

(b) three (3) persons nominated by an association or other body representing insurers and recognised for such purpose by the competent authority, of whom:

(i) one (1) person shall represent insurers whose head office is in Malta which carries on general business in Malta;

(ii) one (1) person shall represent insurers whose head office is in Malta and which carries on long term business in Malta; and

(iii) one (1) person shall represent insurers whose head office is in Malta and which carries on motor vehicle liability insurance business in Malta;

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

(d) an independent person who, in the opinion of the competent authority, possesses the necessary expertise and experience in financial services; and

(e) a person who represents insurers whose head office in Malta and which carries on motor vehicle liability insurance business from Malta:

Provided that such members of the Management Committee shall serve the Protection and Compensation 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 Management Committee shall work in the best interest of the Protection and Compensation Fund and shall pursue and promote its purposes.

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

(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 that is likely to affect the discharge by him of his functions under these regulations.

(4) Every member of the Management Committee shall hold office, including the office of chairperson, for such period and upon such terms and conditions as may be determined by the competent authority and indicated in the letter of appointment, such term of office being not less than one (1) year and not more than three (3) years. Every member of the Management Committee, including the chairperson, shall be eligible for re-appointment.

(5) A member of the Management Committee may be relieved from office by the competent 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. 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 Management Committee may resign from office by letter addressed to the competent authority.

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

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

(9) The Management Committee may act notwithstanding any vacancy among its members but shall conduct business only if at least four (4) members are present.

(10) Whenever at any meeting of the Management 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 such meeting.

(11) Decisions of the Management 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 Management Committee shall have the 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), the Management Committee shall pay to the chairperson and each member of the Management Committee such remuneration as it may determine.

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

(15) The competent authority shall appoint one (1) 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 Management Committee and to keep the minutes thereof.

Administration of the Protection and Compensation Fund.

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

(2) The Management Committee may invest contributions made by insurers in terms of regulations 17 and 27 in a prudent manner.

(3) It shall be the duty of the Management Committee to keep the assets of Fund A, Fund B, Fund C and Fund D separate and separately identifiable:

Provided that the Management Committee may cause or permit the assets of Fund A, Fund B or Fund C or a combination of the

same to be collectively invested or collectively managed provided that the assets in question remain separately identifiable.

(4) Subject to the provisions of sub-regulation (1), the Management Committee shall have the power to appoint officers or agents of the Protection and Compensation Fund and to grant them such powers or authority as it may deem appropriate. In consultation with the competent authority, the said Committee may, for the better fulfilment of its purposes, delegate 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.

(5) The Management Committee shall not enter into an arrangement or agreement as is envisaged in sub-regulation (4) in respect of the purpose set out in regulation 3(2)(c), unless there is in force and in a manner satisfactory to the Management Committee, an agreement among insurers carrying on business of motor insurance in Malta, 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 Management Committee, any agreement or arrangement entered into by the Management Committee under this regulation shall cease to have effect upon notice in writing by the Management Committee to such person as may lawfully receive such notices on behalf of the body with which the arrangement or agreement was made.

(6) Where an arrangement or agreement as is envisaged in sub-regulation (5) has been entered into by the Management Committee, and for so long as such arrangement or agreement is in operation, Part III shall have effect if the arrangement or agreement relates to the purpose set out in regulation 3(2)(a), Part IV shall have effect if the arrangement or agreement relates to the purpose set out in regulation 3(2)(b) on or after the initiation date, and Part V shall have effect if the arrangement or agreement relates to the purpose set out in regulation 3(2)(c).

(7) The competent authority may issue Insurance Rules 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.

Confidentiality and co-operation with the competent authority.

7. (1) Other than for the proper discharge of their duties or functions under the Act, these regulations or as may be otherwise provided in any other law, the Management Committee, including its members and any former members of the said Committee, shall treat any information acquired in the discharge of its duties as confidential,

and shall not, directly or indirectly, disclose such information to any other person, except with the consent of the person who had divulged the information:

Provided that information may be disclosed by the Management Committee for the purposes of any proceedings before any court or tribunal.

(2) Notwithstanding the provisions of sub-regulation (1), the Management Committee shall have the power to co-operate with, request from, and exchange information with the competent authority where that information is necessary for the performance of its duties.

Statements of gross premium income, criminal offences and administrative penalties.

8. (1) Every insurer shall, when satisfying its obligations under regulations 17 and 27, furnish the Protection and Compensation Fund with a statement of the gross premium income of the undertaking liable to the contribution:

(a) in respect of Fund A, for general business, in any one or more of the following classes or part classes as specified in Part I of the Third Schedule of the Act: classes or part classes 1, where the insured is an individual, classes or part classes 2, 3, 8, 9, 10, 13, 16, 17 and 18, under regulation 17(5)(a), and excluding motor vehicle liability insurance business carried out on or after the initiation date;

(b) in respect of Fund A, for long term business, in any one or more of the following classes as specified in the Second Schedule to the Act: classes I, II, IV, VII and IX, under regulation 17(5)(b);

(c) in respect of Fund B, for motor vehicle liability insurance business carried on in Malta on or after the initiation date, under regulation 27(5)(a);

(d) in respect of Fund C, for motor vehicle liability insurance business carried on from Malta on or after the initiation date, under regulation 27(5)(b).

(2) Where an insurer is required under this regulation to provide the Protection and Compensation Fund with a statement in respect of the gross premium income of more than one kind of business mentioned in sub-regulations (1)(a) and (b) the insurer shall provide 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 Protection and Compensation Fund in

accordance with this regulation, any information which he knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect shall, be guilty of an offence and liable, on conviction, to a fine (*multa*) of not less than one thousand and two hundred euro (€1,200) but not exceeding two thousand and four hundred euro (€2,400).

(4) Any insurer that infringes or fails to comply with sub-regulations (1) or (2) shall be liable to an administrative penalty not exceeding five thousand euro (€5,000) in respect of each infringement or failure to comply, as the case may be, and where such infringement or failure to comply continues, a further penalty not exceeding one hundred and sixteen euro (€116) for each day during which the infringement or failure to comply continues.

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

When funds appear to be reasonably adequate.

9. (1) The Management Committee shall review the adequacy of the contributions every three years, or whenever serious events or future changes in economic conditions that may have adverse effects on the overall financial standing of the insurers occur, or whenever requested by the competent authority. The said review of the adequacy of the contributions to Fund A, B and C, as stipulated in regulations 17 and 27, shall take into account *inter alia*:

(a) the contributions made to the respective Fund;

(b) the technical provisions of every insurer contributing to the respective Fund;

(c) the solvency ratio of every insurer contributing to the respective Fund;

(d) any long term inflation;

(e) an increase in the amount of insurers contributing to the respective Fund;

(f) the nature, type and mix of business carried on by the insurers contributing to the respective Fund, and

(g) any such other information which the Management Committee deems appropriate.

(2) The competent authority shall provide the Management Committee with all the information necessary for the Management Committee to conduct its review. Once the review is completed, the Management 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 competent authority:

Provided that where the Management Committee requires information from the competent authority which is not publicly available, such information shall be provided to the said Committee in an anonymised format.

(3) Whenever the competent authority receives information or a report as is provided for in sub-regulation (2), the competent authority shall, after consultation with the Management Committee and the auditor of the Protection and Compensation Fund, direct the Management Committee in writing:

(a) to continue to exercise its functions and powers under regulation 17 and 27 with respect to contributions to Funds A, B and C made in accordance with sub-regulation (6) and to require the contributions payable thereunder to continue to be paid:

(i) according to the percentage specified in the abovementioned regulations; or

(ii) according to a percentage that is higher or lower than the percentage specified in the abovementioned regulations as the competent authority shall specify in the directive, or

(b) to suspend exercising its functions and powers under regulations 17 and 27 with respect to contributions to such funds in respect of such business and to suspend the contributions payable thereunder, for a period of one or more years, as the competent authority shall specify in the directive:

Provided that where the competent authority directs the Management Committee in writing to increase the percentage of contributions stipulated in these regulations, the competent authority shall ensure that any additional contribution does not unduly prejudice the financial sustainability of the insurers contributing to the respective Fund.

(4) (a) Whenever, and for so long as, payment of the contributions under regulation 17 or 27 is suspended, every insurer, other than an insolvent insurer, to which that directive applies shall pay to the Protection and Compensation Fund a contribution of seven hundred euro (€700) 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 Protection and Compensation Fund as indicated in regulations 17(6) and 27(6).

(b) 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 on servicing of such business, or which ceases to carry on that business and shall carry on servicing of such business.

(5) Whenever payment of contributions under regulations 17 or 27 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 Fund A, B or C respectively, the contribution established by regulations 17(5) or 27(5) for a period to be determined by the Management Committee in consultation with the competent authority.

(6) If, for so long as the directive issued by the competent authority under sub-regulation (3) is in operation, whenever it appears to the Management Committee that the circumstances which led to the issuing of the said directive have changed substantially or materially so that the funds held by the Protection and Compensation Fund are inadequate for the Management Committee to exercise its functions for the purpose of regulation 3(2)(a) and (b), the Management Committee shall without delay, inform the competent authority of such change and of the new circumstances and, on receiving such information, the competent 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, Part IV or Part V at a time when the Protection and Compensation Fund makes available to it for expenditure under any such provision, together with any other funds which are available to it from other sources, including funds borrowed in terms of regulation 4(1) and which might be applied

to such expenditure, fall short of what is prescribed or required by these regulations, the Management 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 regulations 17(2), 17(3), 27(3), 27(5), 28 and 39.

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

Annual report by the Management Committee.

11. (1) The Management Committee shall every calendar year, and not later than five months after the end of its financial year, submit to the competent authority a report on the discharge of its functions, activities and operation of the Protection and Compensation Fund during such year. Such report shall include *inter alia*:

(a) a statement showing the payments in and payments out of the Protection and Compensation Fund during its immediate previous year; and

(b) annual financial statements prepared in accordance with International Accounting Standards on Auditing by approved auditors appointed for this purpose by the Management Committee.

(2) A copy of the report of the Management Committee together with all documents attached referred to in this regulation, shall upon request be made available to insurers contributing to the Protection and Compensation Fund.

Financial year of the Protection and Compensation Fund.

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

Accounts of the Protection and Compensation 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 Protection and Compensation Fund and the matters in respect of which the receipt and disbursements take place; and

(b) the assets and liabilities of the Protection and Compensation Fund.

(2) Subject to the provisions of article 50 of the Act and

without prejudice to any separate treatment to be given under the said provisions, separate accounts shall also be kept in respect of Funds A, B, C and D. For the purposes of Fund A, separate accounts shall be kept for contributions levied for general business and contributions levied for long term business. All contributions and any income derived in respect of any of Fund A, B, C and D respectively, as the case may be, shall be utilised exclusively for disbursements relating to each of the respective Fund:

Provided that, notwithstanding the provisions of regulations 17(6), 27(6) and 9(4), nothing in this sub-regulation shall prevent the payment of sums belonging to the Protection and Compensation Fund to meet administrative, legal, judicial or other costs common to two or more Funds, subject to such costs being properly apportioned between such Funds.

(3) The books of account shall be kept at the offices of the Protection and Compensation Fund or at such other place as the Management Committee deems fit.

Cap. 386.

(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 Protection and Compensation Fund by the substitution for references to "company" and "directors" in the said provisions with references to "the Protection and Compensation Fund" and "members of the Management Committee" respectively.

Examination of accounts.

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

(2) A copy of the audited financial statements or an extract thereof, together with a copy of the auditor's report, shall be published in a manner determined by the Management Committee within five (5) months from the end of the financial year and shall, together with the report on the activities of the Protection and Compensation Fund for such year made under regulation 11(1), 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 (30) days beginning from the date of service of a notice imposing such penalty, appeal to the Financial Services Tribunal and the provisions of article 58 of the Act shall apply *mutatis mutandis*.

PART III
CONTRIBUTIONS AND PAYMENT OF CLAIMS IN THE EVENT OF INSOLVENT INSURERS FOR FUND A

Interpretation.

16. For the purposes of this Part:

(a) unless specified otherwise, any reference in this Part to "general business" shall mean general business carried **on** in Malta in any one or more of the following classes or part classes of Part I of the Third Schedule to the Act: classes or part classes 1 where the insured is an individual, classes or part classes 2, 3, 8, 9, 10, 13, 16, 17 and 18, however, in respect of the said class or part class 10, also referred to as motor vehicle liability insurance business, such motor vehicle liability insurance business shall fall under "general business", for the purposes of this Part, only with respect to such motor vehicle liability insurance business carried on in Malta before the initiation date;

(b) unless specified otherwise, any reference in this Part to "long term business" shall mean long term business carried **on** in Malta in classes I, II, IV, VII and IX of the Second Schedule to the Act:

Provided that for the purposes of regulation 17(4) the terms "general business" and "long term business" shall have the same meaning as assigned to them in article 5(1) of the Act.

Contributions to Fund A.

17. (1) The contributions to Fund A 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, the Management Committee shall in every calendar year for the purpose of Fund A:

(a) in so far as that purpose relates solely to general business, require every insurer carrying on general business in Malta, whether or not such business constitutes, in whole or in part, business of a protected risk, to pay a contribution to Fund A to be utilised exclusively for the payment of claims relating to protected risks situated in Malta as defined in regulation 3(2)(a); and

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

3(2)(a) where Malta is the country of the commitment.

(3) The obligation to pay contributions under sub-regulation (2) 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 on servicing of such business, or which ceases to carry on that business and shall carry on servicing of such business. The obligation to pay contributions shall continue until the insurer proves to the satisfaction of the competent authority that it has no further liability arising from such business.

(4) Without prejudice to sub-regulation (3), where an insurer is authorised to carry on both long term business and general business in Malta, separate treatment shall be given to contributions paid by the insurer into Fund A 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, as construed in regulation 3(4)(a)(ii); and

(b) in respect of general business, to be utilised exclusively for the payment of claims relating to protected risks situated in Malta as construed in regulation 3(4)(a)(i).

(5) Subject to the provisions of regulations 8 and 9, the amount every insurer shall be required to contribute to Fund A, in accordance with sub-regulation (2) shall be:

(a) if the contribution is made in accordance with sub-regulation 2(a), zero point one two five *per centum* (0.125%) of, and calculated by reference to, the gross premium income by the insurer for the year ending last before the beginning of such calendar year in respect of general business relating to risks situated in Malta; and

(b) if the contribution is made in accordance with sub-regulation 2(b), zero point one two five *per centum* (0.125%) of, and calculated by reference to, the gross premium income by the insurer for the year ending last before the beginning of such calendar year in respect of long term business effected after 30 June 1986 relating to commitments where Malta is the country of commitment.

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

(7) Expenses incurred with respect to Fund A pursuant to, or in consequence of, regulation 3(2)(a) shall be paid out as follows:

(a) in relation to protected risks situated in Malta as defined in regulation 3(2)(a), from the contributions made in respect of general business; and

(b) in relation to protected commitments where Malta is the country of the commitment as defined in regulation 3(2)(a), from the contributions made in respect of long term business.

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

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

Contributions of branches of third country insurance undertakings.

18. Where a third country insurance undertaking establishes a branch in Malta in accordance with article 11 of the Act, and the said branch carries on general business and, or long term business in Malta, such branch shall contribute to Fund A in the same amounts and the same manner as stipulated in regulation 17.

Claims from Fund A in the event of insolvency.

19. (1) Whenever an insurer is unable to meet its obligations, the Management 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 Fund A, under and in accordance with the provisions of this Part, to a qualifying person.

(2) Payment shall also be made out of Fund A 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 Fund A under this Part unless the Management Committee is satisfied that the name of the insolvent insurer is struck off the register in terms of the provisions of the Companies Act, or that the insolvent insurer is definitely wound up.

Cap. 386.

(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;

(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 payment shall be made from Fund A.

20. In the case of long term business protected commitments, payment shall be made out of Fund A to every qualifying person, and in the case of general business protected risks in terms of regulation 3(2)(a), payment shall be made to every qualifying person who is an individual and, or to every non-corporate body or association of persons if all such persons are individuals.

Power to require further information.

21. (1) Where the Protection and Compensation Fund receives a claim on or after the initiation date from a qualifying person, in order to process the said claim, it may require further information from:

(a) the qualifying person;

(b) the insolvent insurer;

(c) the administrator or liquidator of the insolvent insurer; and, or

(d) any other party which may be privy to information relevant to the claim.

(2) Where an insolvent insurer or their respective administrator or liquidator compensates or denies liability, it shall inform the Protection and Compensation Fund, in a timely manner.

Quantum of payment made from Fund A. Cap. 104.

22. In respect of a protected liability which is a liability required to be covered by the Motor Vehicles Insurance (Third-Party Risks) Ordinance, 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 in terms of regulation 3(2)(a), shall be limited to seventy-five *per centum* (75%) of the actuarial valuation of the contract of insurance at the time the undertaking concerned ceased to carry on such business, adjusted for any premiums paid till date of payment, remaining unpaid, or twenty-three thousand and five hundred euro (€23,500), whichever is less;

(b) general business protected risks in terms of regulation 3(2)(a), shall be limited to seventy-five *per centum* (75%) of the liabilities incurred remaining unpaid in any one case or twenty-three thousand and five hundred euro (€23,500), whichever is less:

Provided that in each case, the total amount of payments to be made by Fund A under this Part with respect to any one insolvent insurer shall not exceed two million and three hundred and fifty thousand euro (€2,350,000).

When payment shall not be made.

23. (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 holds directly or indirectly twenty *per centum* (20%) or more of the issued shares of such insolvent insurer; and, or

(c) for claims in relation to motor vehicle insurance liability business carried on by an insurer in Malta on or after the initiation date.

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

Compensation paid to be deducted from compensation payable.

24. In considering compensation to any applicant for payment from Fund A under this Part, the Management 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.

25. No payment from Fund A shall be made under this Part unless and until the applicant for payment has assigned to the Protection and Compensation Fund any right to any payment to which he may be entitled to in respect of the same liability, and where such liability is covered by reinsurance, Fund A shall in addition, be entitled to pursue any reinsurance recoveries as if it were the insolvent insurer.

Exclusion under this Part.

26. This Part shall not apply:

(a) 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

(b) to a branch of a European insurance undertaking carrying on business of insurance in accordance with the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, and which provides to the satisfaction of the competent authority that equivalent protection is available to policyholders of protected risks in terms of regulation 3(2)(a) 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.

S.L. 403.14.

PART IV
CONTRIBUTIONS TO FUND B AND FUND C AND PAYMENT OF CLAIMS FROM FUND B AND FUND C IN THE EVENT OF INSOLVENT INSURERS CARRYING ON MOTOR VEHICLE LIABILITY INSURANCE BUSINESS ON OR AFTER THE INITIATION DATE

Contributions to Fund B and Fund C.

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

(2) Fund B and Fund C shall have sufficient funds available to compensate injured parties when compensation payments are due under this Part in situations where:

(a) the insurer is subject to winding-up proceedings or any other equivalent proceedings, on or after the initiation date; or

(b) the European insurance undertaking, is subject to bankruptcy proceedings, winding up proceedings or any other equivalent proceedings, on or after the initiation date:

Provided that for the avoidance of doubt, in no case shall

any claim against Fund B or Fund C be paid out, where any bankruptcy proceedings, winding up proceedings or any other equivalent proceedings of an insurer or of a European insurance undertaking, regardless of whether there was a declaration of insolvency or otherwise of such insurer or of such European insurance undertaking, were commenced before the initiation date.

(3) Subject to the provisions of the following sub-regulations, the Management Committee shall in every calendar year for the purpose of Fund B and Fund C, require:

(a) every insurer carrying on motor vehicle liability insurance business in Malta on and, or after the initiation date, to pay a contribution to Fund B, to be utilised exclusively for the payment of claims relating to motor vehicle liability insurance business carried on in Malta; and

(b) every insurer carrying on motor vehicle liability insurance business from Malta on and, or after the initiation date, to pay a contribution to Fund C, to be utilised exclusively for the payment of claims relating to motor vehicle liability insurance business carried on from Malta.

(4) Where an insurer is authorised to carry on motor vehicle liability insurance business both in Malta and from Malta, separate treatment shall be given to contributions paid by the insurer under this regulation with respect to motor vehicle liability insurance business:

(a) carried on in Malta, contributions shall be utilised exclusively for the payment from Fund B of claims relating to motor vehicle liability insurance business carried on in Malta; and

(b) carried on from Malta, contributions shall be utilised exclusively for the payment from Fund C of claims relating to motor vehicle liability insurance business carried on from Malta.

(5) Without prejudice to regulation 8, and subject to regulation 9, the amount every insurer shall in every calendar year be required to contribute under sub-regulation (3) shall be:

(a) where the contribution is made to Fund B, zero point five *per centum* (0.5%) of, and calculated by reference to, the gross premium income by the insurer, or where the insurer is not actively carrying on new motor vehicle liability insurance business or is subject to winding-up proceedings or any other equivalent proceedings, zero point one two five *per centum*

(0.125%) of, and calculated by reference to, the technical provisions of the insurer, for the year ending last before the beginning of such calendar year in respect of class 10 in Part I of the Third Schedule to the Act in respect of risks situated in Malta;

(b) where the contribution is made to Fund C, zero point five *per centum* (0.5%) of, and calculated by reference to the gross premium income by the insurer, or where the insurer is not actively carrying on new motor vehicle liability insurance business or is subject to winding-up proceedings or any other equivalent proceedings, zero point one two five *per centum* (0.125%) of and calculated by reference to the technical provisions of the insurer, for the year ending last before the beginning of such calendar year in respect of class 10 in Part I of the Third Schedule to the Act in respect of risks situated outside of Malta.

(6) A sum not exceeding 5 *per centum* (5%) from the total amounts of respective contributions payable to Fund B and Fund C under sub-regulation (3), as may be determined by the Management Committee, shall be at the disposal of the Management Committee to meet ordinary expenses incurred by the administration of the said Funds, other than extraordinary expenses incurred in relation to the purposes specified in regulation 3(2)(b).

(7) Expenses incurred by Fund B and Fund C respectively, pursuant to, or in consequence of, regulation 3(2)(b) shall be paid out:

(a) in respect of Fund B, in relation to risks situated in Malta, from the contributions made in respect of motor vehicle liability insurance business carried on in Malta; and

(b) in respect of Fund C, in relation to risks situated outside of Malta, from the contributions made in respect of motor vehicle liability insurance business carried on from Malta.

(8) The contributions payable by every insurer in accordance with sub-regulation (3) shall be due on the first (1) day of July of each calendar year but may be paid on any working day during that month:

Provided that the contribution due under sub-regulation 5(a), only to the extent of the first contribution payable in 2024 under these regulations, shall be fully due by the thirty first (31st) day of December of the year two thousand and twenty four (2024). No part thereof shall be refundable. Notwithstanding, when calculating the amount of the contribution due under sub-regulation 5(a), account shall be had of any amounts that may have already been paid by the insurer to the Protection and Compensation Fund under regulation 7(5) of the Protection and Compensation Fund Regulations, when assessing the contributions due under regulation 17(5) and regulation 27(5)(a) of these regulations: S.L. 403.13.

Provided further that for the purposes of the contribution due under sub-regulation 5(b), only to the extent of the first annual contribution payable in 2024 under these regulations, this shall be fully due by the thirty first (31st) day of December of the year two thousand and twenty four (2024). No part thereof shall be refundable.

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

Contributions of branches of third country insurance undertakings.

28. Where a third country insurance undertaking establishes a branch in Malta in accordance with article 11 of the Act, and the said branch carries on motor vehicle liability business in Malta, such branch shall contribute to Fund B in the same amounts and the same manner as stipulated in regulation 27.

Payment of claims from Fund B or Fund C.

29. (1) Where an insurer or a European insurance undertaking, as the case may be, which carries on motor vehicle liability insurance business is subject to or winding up proceedings or any other equivalent proceedings and where:

(a) the accident occurs in Malta and:

(i) the injured party resides in Malta, and the policyholder of the vehicle causing the injuries is insured by a European insurance undertaking, and the injured party is entitled to compensation, the injured party may present a claim for compensation, directly to the Protection and Compensation Fund, and the Management Committee shall

pay the claim out of Fund B; or

(ii) the injured party resides in Malta, and the policyholder of the vehicle causing the injuries is insured by an insurer, and the injured party is entitled to compensation, the injured party may present a claim for compensation, directly to the Protection and Compensation Fund, and the Management Committee shall pay the claim out of Fund B; or

(b) the accident occurs in a Member State other than Malta and:

(i) the injured party resides in Malta and the policyholder of the vehicle causing the injuries is insured by the European insurance undertaking authorised in the Member State in which the accident occurred, and the injured party is entitled to compensation, the injured party may present a claim for compensation, directly to the Protection and Compensation Fund, and the Management Committee shall pay the claim out of Fund C; or

(ii) the injured party resides in Malta and the policyholder of the vehicle causing the injuries is insured by an insurer, and the injured party is entitled to compensation, the injured party may present a claim for compensation, directly to the Protection and Compensation Fund, and the Management Committee shall pay the claim out of Fund B:

Provided that notwithstanding anything contained in this regulation, where an insurer which carries on motor vehicle liability insurance business in Malta is subject to winding up proceedings or any other equivalent proceedings after the initiation date, but the claim relates to a risk which is situated in Malta, which occurred before the initiation date, such injured party may make a claim to the Protection and Compensation Fund and the Management Committee shall pay the claim out of Fund A:

Provided further that notwithstanding anything contained in this regulation, where an insurer which carries on motor vehicle liability insurance business from Malta is subject to winding up proceedings or any other equivalent proceedings, after the initiation date, but the claim relates to a risk which is situated in a Member State outside Malta which occurred before the initiation date, such injured party may make a claim to the Protection and Compensation Fund and the Management Committee shall pay the claim out of Fund C.

(2) Without prejudice to any obligation under regulation 14 of the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) Regulations, whenever an order is made or a decision is taken by the Maltese Courts or the competent authority or any other competent body to commence winding-up proceedings or any other equivalent proceedings in respect of an insurer carrying on motor vehicle liability insurance business in Malta or from Malta, the competent authority shall ensure that such order or decision is made public. The Management Committee shall ensure that all the European compensation bodies are promptly informed about such order or decision: S.L. 403.15.

Provided that where the claim is in respect of damage resulting from motor vehicle liability accidents occurring outside Malta, the Management Committee shall ensure that the compensation bodies referred to in Article 24 of the Motor Insurance Directive, in all Member States are promptly informed about such order or decision.

Reimbursement to the European compensation body by Fund B or C.

30. (1) Where an insurer or a European insurance undertaking, as the case may be, which carries on motor vehicle liability insurance business is subject to bankruptcy proceedings, winding up proceedings or any other equivalent proceedings, and the Management Committee receives a claim from the European compensation body in accordance with Articles 10a(10) and 25a(10) of the Motor Insurance Directive, the Management Committee shall, where:

(a) the accident occurs in a Member State outside Malta and the injured party resides in such Member State, and the policyholder of the vehicle causing the injuries is insured by an insurer, fully reimburse the European compensation body the sum paid by way of compensation to the injured party out of:

(i) Fund B, where the policy was issued by an insurer which carries on motor vehicle liability insurance business in Malta; and, or

(ii) Fund C, where the policy was issued by an insurer carrying on motor vehicle liability insurance business from Malta;

(b) the accident occurs in Malta and the injured party resides in a Member State outside Malta, and the policyholder of the vehicle causing the injuries is insured by an insurer, fully reimburse the European compensation body of the sum paid by way of compensation to the injured party out of:

(i) Fund B, where the insurer carries on motor

vehicle liability insurance business in Malta; and, or

(ii) Fund C, where the insurer carries on motor vehicle liability insurance business from Malta.

(2) The Protection and Compensation Fund shall, after it has received a claim for reimbursement make payment to the European compensation body pursuant to sub-regulation (1) within a reasonable time not exceeding six (6) months, unless otherwise mutually agreed to in writing, which period shall start to run from the date it has received the claim for reimbursement.

Information.

31. (1) Where the Protection and Compensation Fund receives a claim from an injured party resident in Malta, and the policyholder of the vehicle causing the injuries is insured by the European insurance undertaking it shall inform:

(a) the European compensation body in the home Member State of the European insurance undertaking; and

(b) the European insurance undertaking subject to bankruptcy proceedings, winding up proceedings, or any other equivalent proceedings, or its administrator or liquidator respectively;

that a claim from an injured party has been received.

(2) Where the Protection and Compensation Fund receives a claim from an injured party resident in Malta, and the policyholder of the vehicle causing the injuries is insured by an insurer, the said Fund shall inform the insurer which is subject to winding up proceedings, or any other equivalent proceedings, its administrator or liquidator respectively, that a claim from an injured party has been received.

Compensation or denial of liability.

32. (1) With regards to a claim that has also been received by the Protection and Compensation Fund, an insurer subject to winding up proceedings or any other equivalent proceedings, or the administrator or the liquidator of the said insurer shall inform the Protection and Compensation Fund in a timely manner, where the said insurer, or their respective administrator or liquidator compensates or denies liability.

(2) With regards to a claim that has also been received by the Protection and Compensation Fund, an insurer subject to winding up proceedings or the administrator or the liquidator of the said insurer, or any other equivalent proceedings, the said insurer, the administrator or the liquidator of the said insurer shall inform the respective European compensation body in a timely manner where the said insurer

compensates or denies liability.

(3) With regards to a claim that has also been received by the Protection and Compensation Fund, a European insurance undertaking subject to bankruptcy proceedings, winding up proceedings or any other equivalent proceedings, the said European insurance undertaking, the administrator or the liquidator of the said undertaking shall inform the Protection and Compensation Fund where it compensates or denies liability of a claim.

Reasoned offer of compensation or reasoned reply.

33. (1) Where the Protection and Compensation Fund has received a claim from an injured party resident in Malta, it shall on the basis of information which it holds, including any other information provided by the injured party at the Protection and Compensation Fund's request, provide the injured party with a reasoned offer of compensation or a reasoned reply, as provided in sub-regulation (2), within three (3) months from the date that the injured party would have submitted the claim for compensation in accordance with regulation 29.

(2) Where the Protection and Compensation Fund has established that it is:

(a) liable to provide compensation pursuant to regulation 27(2) (a) or (b), that the claim is not contested, and the damages have been partially or fully quantified, the Protection and Compensation Fund shall make a reasoned offer of compensation; or

(b) not liable to provide compensation pursuant to regulation 27(2) (a) or (b), or where liability is denied or liability has not been clearly determined or the damages have not been fully quantified, the Protection and Compensation Fund shall provide a reasoned reply to the points made in the claim.

Compensation.

34. (1) Where the Protection and Compensation Fund has established that compensation is due and a reasoned offer of compensation is made in accordance with regulation 33(2)(a), the Protection and Compensation Fund, shall pay compensation to the injured party without undue delay, and in any event within three (3) months of the acceptance by the injured party of the reasoned offer of compensation made in accordance with the said regulation.

(2) Where the damage has only been partially quantified, the Protection and Compensation Fund, shall apply the requirements concerning the payment of the compensation set out in sub-regulation (1), in respect of such partially quantified damage, and from the moment of acceptance of the corresponding reasoned offer of

compensation.

(3) The Protection and Compensation Fund shall not make the payment of compensation under this regulation subject to any requirements apart from those established in these regulations. Furthermore, the Protection and Compensation Fund shall not make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable for the accident, is unable to, or refuses to pay.

Right of the Protection and Compensation Fund to claim reimbursement from a European compensation body.

35. Where the policyholder of the vehicle causing the injuries is insured by a European insurance undertaking which is subject to bankruptcy, winding up proceedings or any other equivalent proceedings, and the injured party is resident in Malta, and the Protection and Compensation Fund has compensated the injured party in accordance with regulation 34, the said Protection and Compensation Fund shall be entitled to claim full reimbursement of the sum paid by way of compensation, from the European compensation body in the home Member State of the said European insurance undertaking.

Subrogation in favour of the Protection and Compensation Fund.

36. (1) Where the Protection and Compensation Fund has provided compensation to an injured party resident in Malta and the policyholder of the vehicle causing the injuries is insured by a European insurance undertaking which is subject to bankruptcy, winding up proceedings or any other equivalent proceedings, the said Fund shall be subrogated in the rights of the injured party against the person who caused the accident or the said European insurance undertaking:

Provided that such subrogation shall not take place with respect to rights against the policyholder or other injured person who caused the accident in so far as the liability of the policyholder or of the injured person would be covered by the European insurance undertaking subject to bankruptcy, winding up proceedings or any other equivalent proceedings in accordance with applicable national law:

Provided further that, to the extent that the European compensation body shall reimburse the Protection and Compensation Fund in terms of Articles 10a(10) or 25a(10), as the case may be, of the Motor Insurance Directive, the right of subrogation shall be assigned to the European compensation body, for any such sum so reimbursed.

(2) Any subrogation made by a European compensation body in pursuance of Articles 10a(10) and 25a(10) of the Motor Insurance

Directive, shall be acknowledged and recognised by the Protection and Compensation Fund.

Cooperation and exchange of information.

37. (1) The Protection and Compensation Fund shall have the power to co-operate in due time with:

(a) European compensation bodies;

(b) interested parties, including insurers, European insurance undertakings subject to bankruptcy, winding up proceedings or any other equivalent proceedings, its administrator or liquidator;

(c) the European regulatory authority; and

(d) bodies set up or authorised under Article 24 of the Motor Insurance Directive;

at all stages during the proceedings referred to in this Part.

(2) Cooperation in accordance with sub-regulation (1) shall include requesting, receiving and providing information, including details of specific claims, where relevant.

PART V
CONTRIBUTION AND COMPENSATION TO VICTIMS OF ROAD TRAFFIC ACCIDENTS UNDER FUND D

Interpretation.

38. (1) In this Part, unless the context otherwise requires:

"applicant" means an injured party who applies for compensation;

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

"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 in accordance with compulsory insurance legislation;

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"compulsory insurance legislation" means the Motor Vehicles Insurance (Third-Party Risks) Ordinance, or any other legislation substituting such law, and any regulations made thereunder;

"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 competent court having jurisdiction in Malta or in any Member 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 in accordance with regulation 6, "Protection and Compensation Fund" in this Part shall include the Bureau.

Contribution to Fund D.

39. An insurer carrying on a motor vehicle insurance liability business in Malta shall pay a contribution to Fund D, of such amount and at such time, as the Management Committee may determine, taking into account the sums required, or expected to be required, for the purpose of the said Fund. The contribution shall be utilised exclusively for the payment of compensation relating to protected liabilities to make payment of compensation to victims of road traffic accidents in circumstances prescribed by these regulations.

Insurer concerned.

40. (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 issued after the accident giving rise to a civil liability but purported to be effective at the time of such accident;

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

(c) a condition, description, limitation, exception or some other term, 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;

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

(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:

Provided that an insurer shall not be considered as the insurer concerned in the circumstances referred to in sub-paragraph (ii), 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 proves that such person knew it was uninsured; or

(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 when:

(a) the insurance was cancelled before the date on which the civil liability was incurred by agreement between the insurer and the policy holder and with the prior written permission of the Commissioner of Police;

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

(c) 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;

(d) the civil liability was incurred after a decision from a court having jurisdiction which has become *res judicata* and

declared the insurance void and, or unenforceable; or

(e) the civil liability was incurred after the date on which the insurance has 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, insofar as 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 at all times the property of the insured except 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:

Provided that 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 third country national 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, "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 Protection and Compensation Fund.

41. (1) In cases where:

(a) a judgement in respect of any civil liability which is required to be covered by a policy of insurance under compulsory insurance legislation is given against any person

and;

(b) 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 compulsory insurance legislation or such policy of insurance is ineffective for any reason other than the inability of the insurer to make payment; and, or

(c) any such liability is not satisfied in full within twenty-eight (28) days from the date the judgement may be enforced,

in such cases, if there is no insurer concerned, the Protection and Compensation Fund shall, subject to the provisions of these regulations, make payments to the person 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 instead 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) Payment shall not be made in accordance with this regulation unless the following conditions are satisfied:

(a) where the plaintiff has given notice of the proceedings in which the judgement is given by registered post or by means of a judicial letter, within seven (7) days after the commencement of 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 Protection and Compensation Fund in relation to any matter which may affect the payment of compensation by the Protection and Compensation Fund in accordance with these regulations;

(c) the judgement and all rights thereunder have been ceded to the Protection and Compensation Fund; and

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

(3) In the case of payments relating to damage to property caused by an uninsured vehicle, the Protection and Compensation Fund shall apply an excess of five hundred euro (€500) with respect to each and every payment.

Other cases of compensation.

42. (1) Without prejudice to any other practice which is more favourable to the injured party, payment of compensation in respect of civil liability to any person, caused by or arising out of the use of a motor vehicle, other than payment of compensation falling within the provisions of regulation 41, may be made out of funds set aside by the Protection and Compensation Fund for the payment of compensation relating to protected liabilities, if the following conditions are satisfied:

(a) the applicant for payment is unable to trace any person responsible for the civil liability;

(b) the civil liability 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 civil liability;

(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 civil liability 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 (2) years from the date of the occurrence of the accident giving rise to the civil liability.

(2) Where an application for compensation is made in accordance with this regulation, the payment that may be made by the Protection and Compensation Fund as referred to in sub-regulation (1)

shall be of such amount as 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 such civil liability, if proceedings to enforce a claim for damages in respect thereof had been successfully brought by the applicant against the unidentified person. The Protection and Compensation Fund shall only be liable to pay up to such limits of liability as may be prescribed by these regulations, under compulsory insurance legislation. The Protection and Compensation Fund when assessing an application for compensation 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, give him a reasoned reply regarding the payment of any compensation.

(3) Payment in accordance with this regulation shall not be made unless:

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

(b) the applicant has assigned to the Protection and Compensation Fund any right to any payment in respect of the civil liability to which his application relates.

(4) Payments relating to damage to property shall only be made where the Protection and Compensation Fund has paid compensation for significant personal injuries to any party injured as a result of the same accident in which damage to property was caused by the use of a vehicle by an unidentified person. In such cases, the Protection and Compensation Fund shall apply an excess of five hundred euro (€500) to be borne by the injured party suffering such damage to property.

(5) For the purposes of determining the conditions in which personal injuries are to be considered significant, there shall be taken into account, *inter alia*, whether the injury required hospital care.

(6) The Protection and Compensation Fund shall determine an application for compensation in accordance with this regulation within

three (3) 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. Cap. 104.

43. In the case of an accident arising from the use of a stolen vehicle or a vehicle obtained by violence and which gives rise to civil liability, compensation by the Protection and Compensation Fund to the injured party shall be made in the circumstances referred to in article 12(3) of the Motor Vehicles Insurance (Third-Party Risks) Ordinance:

Provided that if the civil liability relates to damages to property, the Protection and Compensation Fund shall apply an excess of two hundred and fifty euro (€250) with respect to each and every payment.

Cases where no compensation may be paid.

44. Payment for compensation in respect of civil liability may not be made in accordance with these regulations where:

(a) 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;

(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 Protection and Compensation Fund can prove that such person knew it was uninsured;

S.L. 403.13.

(b) pursuant to the Insurance Business Security Fund Regulations 1986, repealed by the Protection and Compensation

Fund Regulations, the death or injury in respect of which compensation would otherwise be payable occurred before the 1st of July, 1986.

Requirement by the Protection and Compensation Fund to provide notice.

45. Where the Protection and Compensation Fund is of the opinion that an applicant is not entitled to compensation, in whole or in part, in accordance with this Part, it shall communicate in writing the reasons for its decision to the said applicant.

Power of the competent authority to issue Insurance Rules.

46. (1) The competent authority may issue Insurance Rules to insurers for the purposes of these regulations.

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

PART VI
MISCELLANEOUS

Savings.

47. (1) Notwithstanding any other provision of these regulations:

(a) the Protection and Compensation Fund Management Committee appointed by the competent authority in regulation 5 of the Protection and Compensation Fund Regulations, shall continue in office as if the Protection and Compensation Fund Management Committee were appointed by the competent authority under regulation 5 of these regulations; S.L. 403.13.

(b) the agreement entered into with the Bureau by the Management Committee under regulation 6(2) of the Protection and Compensation Fund Regulations, shall also continue for all intents and purposes of the law, as if the Management Committee appointed in accordance with these regulations had entered into the said agreement with the Bureau in terms of regulation 6(4); S.L. 403.13.

(c) all assets and liabilities of the Security Fund, transferred to the Protection and Compensation Fund by virtue of the Act, which as from the date of coming into force of the Protection and Compensation Fund Regulations have been kept separate from other assets and liabilities of the Protection and Compensation Fund, shall continue to remain separate in the Protection and Compensation Fund established under these regulations, and the administration of the assets and liabilities which were kept separate in virtue of Protection and Compensation Fund Regulations shall continue to be governed by regulation 10 of the Insurance Business Security Fund S.L. 403.13.

Regulations 1986 until all obligations of the Security Fund under the 1986 Regulations are discharged in full;

(d) once the obligations of the Security Fund which were kept separate under the Protection and Compensation Fund established under the Protection and Compensation Fund Regulations and these regulations, have been discharged in full, any remaining assets in the Security Fund established under the 1986 Regulations shall be aggregated to Fund D and continue to be used under these regulations exclusively for the same purpose which they were used under the Insurance Business Security Fund Regulations 1986;

S.L. 403.13.

(e) the assets of the Protection and Compensation Fund established under the Protection and Compensation Fund Regulations shall be aggregated to the assets of, and shall form part of Fund A and, or Fund D established under these regulations, as may be determined by the Management Committee.

S.L. 403.13.

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

Repeal and saving. S.L. 403.13.

48. The Protection and Compensation Fund Regulations are hereby repealed, without prejudice to anything done or omitted to be done thereunder. Nothing in these regulations shall be deemed to affect the liability in respect of any contribution or other payments or obligations due or arising under the Protection and Compensation Fund Regulations, prior to the coming into force of these regulations.

Language.

49. These regulations are being published in the English language only in accordance with article 64(11) of the Act.

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