

Provisions applicable to specific classes of general business of insurance

1. Introduction

1.1 This Chapter lays down detailed conditions and requirements specific to classes 17 and 18 of Part I of the Third Schedule of the Act, as well as Community co-insurance operations which, by reason of their nature or their size, call for the participation of several insurers for coverage. These requirements do not apply to authorised reinsurance undertakings carrying on such business.

2. Legal Expenses

2.1 Insurance undertakings applying for authorisation to carry on legal expenses insurance and authorised insurance undertakings carrying on legal expenses insurance are required to comply with Section 2 of this Chapter. The scope of these requirements is to preclude conflicts of interest arising in particular when an authorised insurance undertaking is covering a person in respect of legal expenses, or is covering a person in respect of legal expenses and other classes of general business of insurance.

2.2 The requirements listed in this Chapter shall apply to legal expenses insurance falling within general business class 17 in Part I to the Third Schedule to the Act whereby an authorised insurance undertaking provides insurance cover, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

(a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;

(b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

2.3 The requirements indicated in this Section shall not apply to any of the following:

(a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels; or

(b) an authorised insurance undertaking providing civil liability cover for the purpose of defending or representing the insured in any inquiry or proceedings which at the same time is done in the undertaking's own interest under such cover; or

(c) to an assistance insurance undertaking (authorised to carry on class 18 of Part I to the Third Schedule to the Act):

(i) where the activity of legal expenses insurance forms part of a contract of which the principal object is the provision of assistance for persons who fall into difficulties while travelling, while away from home or while away from their habitual residence;

(ii) where the activity of legal expenses insurance is pursued in another Member State or EEA State, other than that in which the insured person is habitually resident.

2.4 For the purposes of subparagraph (c), the contract shall clearly state that the cover in question is limited to the circumstances referred to in that paragraph and is ancillary to that assistance.

Requirement of separate policy or section

2.4 Legal expenses cover shall be the subject of either:

a) a contract separate from that drawn up for the other classes of insurance; or

b) where that cover is provided under a policy relating to one or more other classes of general business of insurance, a separate section of the policy relating to that cover only specifying the nature of the legal expenses cover and the amount of the relevant premium.

Arrangements for avoiding conflicts of interest

2.5 An authorised insurance undertaking carrying on legal expenses insurance shall adopt at least one of the following arrangements:

(a) an authorised insurance undertaking shall ensure that no member of staff who is concerned with the management of claims under legal expenses insurance contracts, or with legal advice in respect of such claims, carries on at the same time any similar activity –

(i) in relation to another class of general insurance business carried on by the undertaking; or

(ii) in any other undertaking having financial, commercial or administrative links with the first undertaking, which carries on one or more other classes of general business;

(b) an authorised insurance undertaking shall entrust the management of claims under legal expenses insurance contracts to an undertaking having separate legal personality which shall be mentioned in the separate section as referred to in paragraphs 2.4.

Provided that, where the undertaking having separate legal personality has links to another authorised insurance undertaking which carries on one or more other classes of general business, specified in Part 1 of the Third Schedule to the Act, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims, or with providing legal advice connected with such management of claims or with legal advice connected with such management, shall not carry on the same or similar activity in that other insurance undertaking at the same time;

(c) the insurance undertaking shall, in the policy, provide the insured the right to entrust the defence of his interests, from the moment that he has the right to claim from the insurance undertaking under the policy, to a lawyer of his choice or, to the extent that the law of the relevant forum so permits, to any other appropriately qualified person.

Free choice of lawyer

2.6 For the purposes of this section, “lawyer” means a person who has obtained the academic degree for Doctors of Laws in accordance with the provisions of the Statute of the University of Malta, or any person entitled to pursue his professional activities under one or more denominations laid down in Council Directive 77/249/EEC of 22

March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

2.7 Any legal expenses insurance contract shall expressly recognise that:

(a) where recourse is had to a lawyer to defend, represent or serve the interests of the insured in any inquiry or proceedings, that insured shall be free to choose such lawyer;

(b) the insured shall also be free to choose a lawyer to serve his interests whenever a conflict of interest arises.

2.8 Paragraph 2.7 shall not apply to legal expenses insurance if **all** the following conditions are fulfilled:

(a) the insurance cover is limited to risks arising from the use of a road vehicle in Malta;

(b) the insurance is connected with a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

(c) neither the legal expenses insurance undertaking nor the assistance insurance undertaking carries on any class of liability insurance; and

(d) there are arrangements for securing that, where the parties to a dispute are insured in respect of legal expenses by the same insurance undertaking, legal advice and representation are provided for each of them by completely independent lawyers.

2.9 Notwithstanding that the conditions of paragraph 2.7 are satisfied, this shall not affect the application of paragraph 2.8.

Arbitration

2.10 Without prejudice to any right of appeal any dispute between an authorised insurance undertaking and the insured arising out of a legal expenses insurance contract may be referred to arbitration or other procedures offering comparable guarantees of

objectivity. The insurance contract shall mention the right of the insured to have recourse to arbitration.

Notification to insured of his rights

2.11 Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the authorised insurance undertaking and insured under a legal expenses insurance contract, the undertaking shall give written notice to the insured informing him of:

(a) the right to choose a lawyer of his choice;

(b) the possibility of having recourse to the procedures referred to in paragraph 2.10.

2.12 Where the management of claims is entrusted to a separate undertaking as mentioned in paragraph 2.7, the duty of the authorised insurance undertaking is to make arrangements to secure that such notice is given by that undertaking.

3. Assistance

Assistance activities

3.1 An authorised insurance undertaking carrying on assistance activity falling within the class 18, Part 1 of the Third Schedule to the Act shall be required to comply with the requirements of Section 3 of this Chapter. These requirements do not apply to an authorised reinsurance undertaking.

3.2 Under the assistance contract, the insurance undertaking provides cover against the prior payment of a premium to provide immediate help to the beneficiary under the assistance contract, where the beneficiary finds himself in difficulties following an unforeseeable event, according to the circumstances and within the conditions set out by the contract.

3.3 Such help may consist in the provision of benefits in cash or in kind. The provision of benefits in kind may also include the use of staff and equipment of the provider of the assistance.

- 3.4 The assistance activity shall not cover servicing, maintenance, after-sales services or the mere indication or provision of help as an intermediary.
- 3.5 The assistance activity shall not be considered as assistance activities falling within the scope of class 18 of Part I of the Third Schedule to the Act, if all the following conditions are met:
- (a) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in Malta; and
 - (b) the liability for assistance is limited to the following operations:
 - (i) an on-the-spot breakdown service, for which the undertaking providing cover uses, in most circumstances, its own staff and equipment; and
 - (ii) the transport of the vehicle to the nearest and most appropriate location of repair where the repair may be carried out, as well as possibly accompanying, usually by the same means of assistance, the driver and passengers, to the nearest location from where they will be able to continue their journey by other means; and
 - (iii) the transport of the vehicle, possibly accompanied by the driver and the passengers, to their home, their point of departure or their original destination within Malta; and
 - (c) the assistance is not carried out by an authorised insurance undertaking.
- 3.6 For the purposes of paragraphs 3.5 (b)(i) and (ii), the condition that the accident or breakdown shall have occurred in Malta shall not be applicable where the undertaking is an organisation of which the beneficiary is a member, and where the breakdown service or transport of the vehicle is effected, based on the simple presentation of the membership card, without payment of an additional premium, by a similar organisation in the country concerned on the basis of a reciprocal agreement.

4. Community co-insurance operations

4.1 Where an authorised insurance undertaking enters into Community co-insurance operations with:

- (a) an authorised insurance undertaking and/or
- (b) an insurance undertaking authorised under Article 14 of the Solvency II Directive,

it shall comply with this Section if it satisfies that the criteria listed in paragraph 4.2.

4.2 Section 4 shall apply to Community co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part I of the Third Schedule to the Act and which fulfil the following conditions:

- (a) the risk is a large risk;
- (b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;
- (c) the risk is situated within the Union;
- (d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
- (e) at least one of the co-insurers participates in the contract through a head office or branch established in a Member State or EEA State other than that of the leading insurance undertaking;
- (f) the leading insurance undertaking fully assumes the leader's role in Community co-insurance practice and in particular determines the terms and conditions of insurance and ratings.

4.3 Where an authorised insurance undertaking is the leading insurance undertaking, it shall comply with Articles 147 to 152 of the Solvency II Directive.

- 4.4 Community co-insurance operations which do not fulfil the requirements in paragraph 4.2 shall remain subject to the Act, regulations and Insurance Rules issued thereunder.

Technical Provisions

- 4.5 The amount of technical provisions to be maintained by an authorised insurance undertaking shall be determined in accordance with the Chapter on Solvency II – Pillar 1 Requirements.
- 4.6 Where an authorised insurance undertaking is the leading insurance undertaking, the technical provisions shall be at least equal to that determined in accordance with the Chapter on Solvency II – Pillar 1 Requirements.

Statistical Data

- 4.7 Where an authorised insurance undertaking participates in co-insurance operations within Member States or EEA States, it shall keep statistical data showing the extent of the Community co-insurance operations in which it participated and the Member States concerned.

Exchange of information between supervisory authorities

- 4.8 The competent authority shall cooperate closely with European regulatory authorities and shall provide each other with all the information necessary in accordance with articles 55, 55A and 59 of the Act.

Treatment of Community co-insurance contracts in winding-up proceedings

- 4.9 In the event of an authorised insurance undertaking being wound up, liabilities arising from participation in the Community co-insurance contracts shall be met in accordance with regulation 30 of the Insurance Business (Reorganisation and Winding Up of Insurance Undertakings) Regulations, 2004.