

Chapter 11: Provisions applicable to specific classes of general business of insurance

11.1 Introduction

11.1.1 Sections 11.2 to 11.4 of this Chapter lay down detailed conditions and requirements specific to classes 17 and 18 of Part I of the Third Schedule to 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 in Sections 11.2 to 11.4 do not apply to authorised reinsurance undertakings carrying on such business. This Chapter lays down the Insurance Rules to be complied with in terms of articles 4 and 5 of the Act.

11.1.2 Section 11.5 applies to an undertaking controlled by the Government of Malta carrying on the business of export credit insurance in class 14 of Part I of the Third Schedule to the Act and any company or institution controlled by, or operating for the account or with the support of, or representing the government or controlled by and/or acting under the authority of the government providing such insurance cover, when destined for countries outside the Union and financed by buyer credit or supplier credit or paid on cash terms. Section 11.5 transposes Council Decision of 10 December 1982 on the rules applicable, in the fields of export guarantees and finance for export, to certain subcontracts with parties in other Member States of the European Communities or on non-member countries, Council Directive 84/568/EEC and Council Directive 98/29/EC.

11.2. Legal Expenses

11.2.1 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 11.2 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.

11.2.2 The requirements listed in this Chapter shall apply to legal expenses insurance falling within general business class 17 of 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.

11.2.3 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.

11.2.4 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

11.2.5 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

11.2.6 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 11.2.5:

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

11.2.7 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.

11.2.8 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.

11.2.9 Paragraph 11.2.8 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.

11.2.10 Notwithstanding that the conditions of paragraph 11.2.8 are satisfied, this shall not affect the application of paragraph 11.2.9.

Arbitration

11.2.11 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

11.2.12 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 11.2.11.

11.2.13 Where the management of claims is entrusted to a separate undertaking as mentioned in paragraph 11.2.8, the duty of the authorised insurance undertaking is to make arrangements to secure that such notice is given by that undertaking.

11.3. Assistance

Assistance activities

- 11.3.1 An authorised insurance undertaking carrying on assistance activity falling within the class 18 of Part 1 of the Third Schedule to the Act shall be required to comply with the requirements of Section 11.3 of this Chapter. These requirements do not apply to an authorised reinsurance undertaking.
- 11.3.2 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.
- 11.3.3 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.
- 11.3.4 The assistance activity shall not cover servicing, maintenance, after-sales services or the mere indication or provision of help as an intermediary.
- 11.3.5 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.

11.3.6 For the purposes of paragraphs 11.3.5 (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.

11.4 Community co-insurance operations

11.4.1 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 Section 11.4 if it satisfies the criteria listed in paragraph 11.4.2.

11.4.2 Section 11.4 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; and

(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.

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

11.4.4 Community co-insurance operations which do not fulfil the requirements in paragraph 11.4.2 shall remain subject to the Act, regulations and Insurance Rules issued thereunder.

Technical Provisions

11.4.5 The amount of technical provisions to be maintained by an authorised insurance undertaking shall be determined in accordance with Chapter 5 in Part B of these Insurance Rules.

11.4.6 Where an authorised insurance undertaking is the leading insurance undertaking, the technical provisions shall be at least equal to that determined in accordance with Chapter 5 in Part B of these Insurance Rules.

Statistical Data

- 11.4.7 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

- 11.4.8 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

- 11.4.9 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.

11.5 Export Credit Insurance

- 11.5.1 An undertaking controlled by the Government of Malta carrying on the business of export credit insurance in class 14 of Part I of the Third Schedule to the Act and any company or institution controlled by, or operating for the account or with the support of, or representing the government or controlled by and/or acting under the authority of the government providing such insurance cover, when destined for countries outside the Community and financed by buyer credit or supplier credit or paid on cash terms ('the insurer') shall comply with the provisions set out in Section 11.5. For the purposes of this Section, the following definitions shall apply:

“buyer credit transaction” means a loan agreement between one or more financial institutions and one or more borrowers or buyers financing a commercial contract providing for the export of goods and/or the provision of services from Malta, whereby the lending financial institutions undertake to pay the suppliers on

cash terms on behalf of the borrowers or buyers, while the borrowers or buyers will reimburse the lending financial institutions on credit terms;

“claim waiting period” means that period of time which shall be calculated in accordance with paragraphs 11.5.30 and 11.5.31 at the end of which the policyholder shall be entitled to indemnification from the insurer;

“debtor” means, in the insured transaction in each case, the buyer or borrower (public or private as the case may be) in a buyer credit transaction or his guarantor, if any, or the buyer (public or private as the case may be) in a supplier credit transaction or his guarantor, if any;

“global credit arrangement” means any understanding, agreement or other arrangement of whatever form, whereby the intention to guarantee supplier or financial credits or to open financial credits up to a specified or ascertainable ceiling and in respect of a connected series of transactions, is made known to a third country or to exporters or to financial institutions;

“long term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of more than five years;

“medium term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of two to five years;

“short term cover” means a transaction involving a total risk period (that is repayment period including manufacturing period) of less than two years;

“subcontract” means a contract concluded by an undertaking, being the principal contractor with another undertaking, being the subcontractor under which it is agreed that, in the performance of a contract made between the principal contractor and a third party buyer, the subcontractor will deliver goods or perform services which the principal contractor must incorporate or use in supplying the goods or services which the third party buyer has ordered from him;

“supplier credit transaction” or “contract” means a contract providing for export of goods and/or provision of services originating in Malta between one or more

suppliers and one or more buyers whereby the buyer(s) undertakes to pay the supplier(s) on cash terms or on credit terms;

“third country” means a State other than Malta and which is not a Member State or an EEA State;

“Treaty” means the Treaty establishing the European Community;

“total outstanding exposure” means the exposure of the transaction to risk determined on the basis of the amounts for medium and long-term business within the limits of the percentage of cover established by Section 11.5;

“undertaking controlled by the government” means those undertakings controlled by the Government of Malta or operating for the account or with the support of or representing the Government of Malta, and, for the purpose of Section 11.5 of this Chapter, this shall include any government department or agency;

“undertakings established in Malta or in any Member State or EEA State” means companies or firms constituted under laws of Malta or of any Member State or EEA State, including cooperative societies, and other legal persons governed by public or private law, save for those which are non-profit making, having their registered office, central administration or principal place of business in Malta or in any Member State or EEA State.

Provisions applicable to export credit insurance

11.5.2 The provisions -

(a) determining the terms, conditions, notification of obligations and procedures relating to export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto; and

(b) containing the rules applicable in the fields of export guarantees and finance for export to certain sub-contracts with parties in other Member States or on non-member countries of insurers if deciding to grant jointly, with another insurer or insurers, guarantees relating to a contract involving one or more subcontracts in one or more Member States or EEA States,

are those determined in paragraphs 11.5.4 to 11.5.82.

- 11.5.3 The provisions concerning the reciprocal obligations of export credit insurance organisations of the Member States acting on behalf of the State or with its support, in the case of joint guarantees for a contract involving one or more Member States or EEA State are those determined in paragraphs 11.5.83 to 11.5.85.

Provisions for Export Credit Insurance for Transactions with Medium and Long Term Cover

- 11.5.4 The provisions laid down in paragraphs 11.5.4 to 11.5.82 shall apply to:

(a) export credit insurance cover granted by one insurer or by one or more insurers together with one or more insurers established in a Member State or EEA State for transactions related to the export of goods or the provision of services from Malta with a medium or long term cover.

(b) export credit insurance covering all risks mentioned in paragraphs 11.5.10 to 11.5.13 and paragraphs 11.5.26 to 11.5.29. However, the insurer shall be entitled to limit the export insurance cover to particular risks only.

(c) the principles applicable to public debtors when the obligations of a private debtor are wholly and unconditionally guaranteed by an entity which is considered public, in accordance with the definition of public debtor in paragraph 11.5.8.

- 11.5.5 Paragraphs 11.5.4 to 11.5.82 shall not apply to –

(a) export credit insurance for transactions with short term cover;

(b) *bonds*, advance payment *bonds*, performance and retention bonds;

(c) risks relating to construction equipment and material used in Malta for the performance of the commercial contract.

Characteristics of supplier credit

11.5.6 (a) The provisions regulating supplier credit transactions in paragraphs 11.5.4 to 11.5.82 shall apply to export credit insurance covering supplier credit transactions where cover is given to undertakings established in Malta or in any Member State or EEA State.

(b) In the case that a commercial contract is financed by a buyer credit transaction or any other financing arrangement, the cover given by an export credit insurance contract to the supplier for the risks underlying the commercial contract shall be regulated by the provisions relating to export credit insurance contracts covering supplier credits.

Characteristics of buyer credit

11.5.7 (a) The provisions regulating buyer credit transactions in paragraphs 11.5.4 to 11.5.82 shall apply to export credit insurance contracts covering financial institutions irrespective of the place of establishment or registration of the financial institution provided that under the buyer credit transaction, the borrower/buyer is unconditionally obliged to repay the lending financial institution, irrespective of the performance of the commercial contract financed by the financial institution.

(b) The provisions regulating buyer credit transactions shall also apply to export credit insurance contracts covering financial institutions in respect of which negotiable instruments are held by financial institutions and payable by a borrower/buyer pursuant to an arrangement for the financing of a commercial contract.

Status of the debtor

11.5.8 The debtor can be a public or a private debtor, and for the purposes of Section 11.5:

(a) “private debtor” shall be any debtor which is not a public debtor;

(b) “public debtor” shall be any entity which, in whatever form, represents the public authority itself and which cannot, either judicially or administratively be declared insolvent being it a ministry, the central bank or any other public entity

such as a government department or any other governmental, national, regional or local authority or institution and any organisation which is administered or created by any such authority; and any debtor which is not public, according to the aforementioned criteria, shall be, in principle, considered as private.

11.5.9 An insurer shall in assessing whether the debtor is a public or a private debtor take into account:

(a) the legal status of the debtor;

(b) the real effectiveness of any legal action against the debtor;

(c) the debtor's sources of finance and revenue; this shall take account of the fact that a public debtor may also discharge his debts by using sources which are not related to central government funds, for example through revenues raised by local taxation, or by providing public services,

(d) the degree of influence and control over the debtor that can be exercised by the government of the country where the goods are being supplied or wherein the service is being provided by the creditor (exporter or bank).

Covered risk

11.5.10 An export credit insurance contract shall cover the risk of loss arising from manufacturing and the risk arising from credit risk.

11.5.11 The loss arising from manufacturing risk materialises when the performance of the contractual obligations of the policyholder are, or the manufacture of the goods ordered is, suspended for a period of six consecutive months:

Provided that, such suspension is caused directly and exclusively by the occurrence of one or more of the causes mentioned in paragraphs 11.5.26 to 11.5.29.

11.5.12 The loss arising from credit risk materialises when the policyholder is unable to obtain payment of any amount due to it under the contract or loan agreement, as the case may be, after the lapse of a period of three months from the date on which such payments are due:

Provided that, such non-payment is caused directly and exclusively by the occurrence of one or more of the causes mentioned in paragraphs 11.5.26 to 11.5.29.

11.5.13 Where the risk related to a buyer credit is guaranteed unconditionally, the insurer shall follow the principles and procedures laid down in paragraphs 11.5.45 to 11.5.50 and paragraph 11.5.75.

Extent of cover

11.5.14 The cover for manufacturing risk shall include, within the limit of the contract amount, the costs incurred by the policyholder either in performing its contractual obligations or in manufacturing the goods subject to the contract, provided that such costs are properly attributable to the performance of the contract.

11.5.15 Cover for the manufacturing risk shall not include –

(a) the costs incurred by the policyholder in respect of goods and/or services already covered by the credit risk cover;

(b) amounts paid by the policyholder following the calling upon of a bond issued in respect of the covered contract;

(c) amounts paid by the policyholder to the debtor by way of damages and penalties.

11.5.16 The cover for credit risk shall include the principal amount and interest owed by the buyer under the contract and by the borrower under a loan agreement, including interest accruing after the due date (post-maturity interest).

11.5.17 The cover for credit risk shall not include amounts paid by the policyholder to the debtor by way of damages and penalties.

Percentage of cover

- 11.5.18 The insurer shall expressly lay down the percentage cover and the basis for determining the maximum amount of indemnity for which it may be held liable under the export credit insurance policy.
- 11.5.19 If an insurer gives a cover percentage higher than 95 per centum it shall follow the principles and procedures laid down in paragraphs 11.5.45 to 11.5.50 and paragraph 11.5.75.
- 11.5.20 Without prejudice to paragraph 11.5.19, the policyholder shall retain for its own account any uninsured percentage. The insurer may, however, decide to allow the policyholder to partially or wholly exclude such uninsured percentage.

Cover for transactions in foreign currency

- 11.5.21 If the buyer credit or supplier credit transaction provides for payment or financing in one or more foreign currencies, an insurer may provide cover in any such currency.

Inclusion of subcontracts

- 11.5.22 Those subcontracts granted by the policyholder to parties in Malta and /or in one or more Member States or EEA States shall be automatically included in the export credit insurance cover entered by the policyholder with the insurer in accordance with paragraph 11.5.61.

Effective date of cover

- 11.5.23 In the case of a buyer credit transaction, cover shall take effect on the date of entry into force of the loan agreement.
- 11.5.24 In the case of a supplier credit transaction –

(a) cover of the manufacturing risk shall take effect on the date of entry into force of the commercial contract;

(b) cover of the credit risk shall take effect on the date on which full completion of the contractual obligations of the policyholder entitles the supplier to payment:

Provided that, in the cases mentioned in paragraphs 11.5.23 and 11.5.24, the cover shall not take effect if the policyholder fails to observe the precedent conditions stipulated in the export credit insurance policy or in the loan agreement or contract, as the case may be.

11.5.25 In the case that, under the terms of the contract, the policyholder is entitled to payments corresponding to the goods or services delivered or dispatched, the cover of credit risk shall take effect on the date of each partial delivery or partial dispatch.

Causes of loss and liability of the insurer

11.5.26 The insurer shall be liable to indemnify the policyholder if the loss suffered by the policyholder is directly and exclusively attributable to one or more of the following causes of loss:

- (a) de jure or de facto insolvency of the private debtor and of its guarantor (if any);
- (b) default of the debtor and of its guarantor (if any);
- (c) arbitrary repudiation or refusal of a supplier credit transaction by the buyer to interrupt or cancel the commercial contract and/or the refusal to accept goods and/or services without being entitled to do so;
- (d) any decision or measure of the government of a country, other than the country of the insurer, or the country of the policyholder, including measures and decisions of public authorities which are deemed to constitute government interventions, which prevents performance of the loan agreement or the commercial contract respectively;
- (e) general moratorium decreed by the government of the country of the debtor or that of a third country through which payment in respect of the loan agreement or the commercial contract is to be effected;

(f) political events, economic difficulties, legislative or administrative measures which occur or are taken in a country other than that of the insurer which prevent or delay the transfer of funds paid in respect of a loan or contract;

(g) legal provisions adopted in the debtor's country declaring payments made by the debtor in the currency used in such country to be valid discharge of the debt notwithstanding that, as a result of fluctuations in exchange rates, such payments, when converted into the currency of the commercial contract or of the loan agreement, do not cover the amount of the debt at the date of transfer of the funds;

(h) any decision or measure of the government of a country of the insurer or of the policyholder, including measures or decisions of the European Community relating to trade between a Member State or EEA State and third countries, such as a ban on exports, in so far as the effects of such measure or decision are not otherwise covered by the government concerned;

(i) cases of force majeure occurring in any country other than the insurer's country, unless otherwise insured.

11.5.27 The causes of loss mentioned in indents (a) to (c) in paragraph 11.5.26 shall be considered commercial risks for private debtors.

11.5.28 The causes of loss mentioned in indents (d) to (i) in paragraph 11.5.26 shall be considered political risks for private debtors and those mentioned in indents (b) to (i) shall be considered political risks for public debtors.

11.5.29 The insurer shall be entitled to decline liability for any loss that is directly or indirectly attributable to the following:

(a) any action or omission by the policyholder or by any person acting on behalf of the policyholder;

(b) any provisions included in the contract or loan agreement or in any document forming part of or in any other way associated to such contract or loan agreement or any document including any document relating to the guarantee or security arrangements involved restricting the rights of the policyholder;

(c) any additional agreement entered between the policyholder and the debtor following the conclusion of the commercial contract or the loan agreement which has the effect of preventing or delaying payment of the debt;

(d) in the case of a supplier credit transaction, any failure of a subcontractor or co-contractor or other suppliers to perform their obligations, unless such failure is a consequence of a political event as described in indents (d) to (i) of paragraph 11.5.26.

Claim waiting period

11.5.30 The claim waiting period shall correspond to the time set for the covered risk to materialise in accordance with paragraphs 11.5.11 and 11.5.12.

11.5.31 No claim-waiting period shall apply in the case of :

(a) a private debtor, when non-payment is due to the debtor's de jure or de facto insolvency;

(b) any bilateral intergovernmental debt restructuring agreement.

Indemnification

11.5.32 The policyholder shall be entitled to indemnification from the insurer at the end of the claim waiting period as defined in paragraphs 11.5.30 to 11.5.31, provided that, the claim is legally valid and the policyholder has managed the risk with due diligence.

11.5.33 Following such indemnification, the insurer shall be entitled to be subrogated in the policyholder's rights under the loan agreement or commercial contract, as the case may be.

Calculation of the claim

11.5.34 Without prejudice to paragraphs 11.5.42 to 11.5.44, the insurer shall, in calculating the payment of the claim not pay to the policyholder an amount exceeding the actual amount of its total loss, and/or exceeding the amount which the policyholder was

actually entitled to receive from the borrower under the loan agreement or from the buyer under the commercial contract, respectively.

Payment of the claim

11.5.35 The insurer shall pay the claim without delay and not later than one month from the end of the claim waiting period, provided that it is promptly notified of the occurrence of the claim and it has received all necessary information, documentation and evidence in order to establish the validity of the claim in good time.

11.5.36 In the case of manufacturing risks, the claim shall be paid either within one month from the end of the claim waiting period or, where applicable, within one month of the date of receipt of an expert's report or within one month from the date of an agreement by the policyholder and the insurer as to the amount of the claim, whichever is later.

11.5.37 If the indemnification applied for by the policyholder relates to rights which are subject to a dispute, the insurer may defer payment until the dispute is settled in favour of the policyholder.

Secured obligations

11.5.38 The policyholder shall be under the obligation to ensure the validity and enforceability of any guarantee or other security securing the obligations which the debtor owes to the policyholder and shall enforce any such guarantee or other security.

11.5.39 The export credit insurance policy shall stipulate the measures which a policyholder should take to secure the validity, enforceability and to enforce the guarantee or security.

Bilateral intergovernmental debt restructuring agreement

11.5.40 If the covered loan agreement or commercial contract is subject to a bilateral intergovernmental debt restructuring agreement, the policyholder shall follow the conditions of the restructuring agreement in respect of both the insured and uninsured portions of that loan agreement or commercial contract, respectively. The

policyholder shall give any necessary assistance to the insured for the performance of the restructuring agreement.

11.5.41 If the insured amount is included in a bilateral intergovernmental debt restructuring agreement, the insurer may waive the one month period provided for in paragraph 11.5.35 to 11.5.37, once the bilateral agreement is effective.

Additional costs

11.5.42 Any additional costs incurred by the policyholder in any actions undertaken to minimise or avoid loss shall be covered proportionally to the percentage of cover under the export credit insurance policy, provided that such costs are approved by the insurer.

11.5.43 Additional costs include costs of court action and other legal expenses to minimise or avoid losses but exclude costs of establishing the validity of a claim.

11.5.44 If such additional costs also relate to amounts not covered by the insurer, they shall be attributed proportionally to the insured and uninsured amounts or maturities.

General principles for setting the premium

11.5.45 The premium charged for export credit insurance shall:

- (a) correspond to the risk (country, sovereign, public and/or private risk) covered;
- (b) adequately reflect the extent of the cover granted;
- (c) be adequate to cover long-term operating costs and losses.

11.5.46 In establishing the extent of the cover, the insurer shall take into account any condition affecting the quality of the cover including *inter alia* the percentage cover and the other conditions affecting the cover.

11.5.47 In establishing the premium the insurer shall take into consideration:

- (a) the country risk;

- (b) the creditworthiness of the debtor;
- (c) the total risk period; and
- (d) the repayment and interest profile.

11.5.48 The premium shall be calculated on the chargeable amount and shall be based, as far as possible, on the minimum premium benchmarks.

11.5.49 The minimum premium benchmarks mentioned in paragraph 11.5.48 shall be expressed in percentages of a reference value as if the premium were collected in full at the date of the insurance or guarantee.

11.5.50 The reference value shall reflect –

- (a) for credit risk, the principal amount of the loan or the financed or re-financed portion of the commercial contract; and

- (b) for manufacturing risk, the total contract value less any down-payment effected:

Provided that, in the case of manufacturing risk, the chargeable amount may be reduced to the expected maximum loss.

Payment of premium

11.5.51 The total premium amount shall be due on the date of the conclusion of the export credit insurance policy or when the contract or the loan agreement, as the case may be, becomes fully effective.

11.5.52 The insurer may allow the policyholder to pay the premium by instalments or by adding a spread to the interest rate, provided that, this corresponds, in net present value terms, to the premium amount referred to in paragraph 11.5.51.

Country risk assessment

11.5.53 The level of premium charged for each country or each country category by the insurer shall be based on the appropriate country risk assessment.

Country cover policy

11.5.54 The insurer shall determine its country cover policy on its assessment of the risk by country, its total outstanding exposure (as defined in the Glossary) for each country as determined on the basis of the amounts for medium and long-term business, and the composition of its country risk portfolio.

11.5.55 The insurer shall be entitled to cease or limit insuring business for a particular country.

Country risk

11.5.56 The insurer shall not set any restrictions on its cover policy for countries which in terms of its country risk assessment classify as low risk countries.

11.5.57 For countries, other than those which classify as low risk countries, the insurer may increase the applicable premium and set restrictions and risk limits, in cumulative or alternative manner which may consist of the following:

- (a) the total outstanding exposure, as defined in the Glossary, for that country;
- (b) the total value of offers of cover;
- (c) the value of new contracts to be covered;
- (d) the maximum amount covered per transaction:

Provided that, there shall be no other limitations imposed on the cover policy for a particular country below that country's established risk limits.

11.5.58 The insurer may exceptionally, for reasons of bilateral policy or national interest or where sufficient freely convertible foreign exchange is available for the transaction

in question, offer cover for specific transactions for a country or a particular group of countries for which country or group of countries it normally does not offer cover.

11.5.59 The insurer may apply certain cover conditions to a particular country irrespective of its country risk assessment which may include:

- (a) extension of the claim waiting period;
- (b) restrictions of the cover for certain sectors of activity or certain types of projects;
- (c) requirement of guarantee from or payment by the government of the relevant country or from any government department, agency, authority, organisation or institution such as, without prejudice to the foregoing, the Ministry of Finance or the central bank of the relevant country;
- (d) requirement of an irrevocable letter of credit or bank guarantee;
- (e) a reduction in the cover percentage.

Subcontracting

11.5.60 Subcontracts exclusively with parties in Malta and/or with one or more Member States or EEA States shall be automatically included in the cover which may be granted by the insurer to the principal contractor where the amount of such subcontracts is equal to or less than:

- (a) 40% for contracts of a value less than 7, 500, 000 Euro;
- (b) 3,000,000 Euro for contracts of a value between 7, 500, 000 Euro and 10, 000, 000 Euro;
- (c) 30% for contracts of a value over 10, 000,000Euro.

11.5.61 In the event that the insurer shall not, for underwriting reasons, have provided cover for the entire transaction, such insurer shall not be precluded from entering into

reinsurance or coinsurance arrangements with a view towards covering the entire transaction.

11.5.62 In the case that the transaction involves subcontracting both in Malta and/or in Member State or EEA State and in third countries, the subcontracting in Malta and/or in a Member State or EEA State shall be included automatically in so far as the total subcontracting, in Malta and/or in Member State or EEA State and third countries, does not exceed the percentages and limits established under paragraph 11.5.60.

11.5.63 Cover shall be granted to the principal contractor, under the same conditions, whether he has recourse to national subcontracting or to subcontracting in other Member States or EEA States.

11.5.64 For the purpose of automatic inclusion in terms of paragraph 11.5.60:

(a) the subcontractor must not be a party to the contract concluded between the principal contractor and the third party buyer and it is the principal contractor who shall have the sole responsibility to the buyer for performance of the contract and bears all the risks which may be guaranteed in relation to the latter;

(b) supplies from the subcontractor must cover goods and services, other than raw materials or semi-finished goods, and/ or services which, from the technical and economic point of view, constitute for the third party buyer essential ancillaries to the performance of the contract by the principal contractor.

11.5.65 Insurers shall notify other insurers and any other institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, of any insurance contract entered by them granting cover for the following :

(a) a contract of a value exceeding Euro 500,000 in value involving a credit for a period of more than three years of which subcontracting in third countries exceeds 30% of the value of such contract; and

(b) a contract with subcontracting in both Malta and/or in Member State or EEA State and in third countries the total value of which exceeds 30% of the value of the contract:

Provided that, this notification procedure shall not apply to subcontracts relating to export transactions concluded on the basis of credits involving any form of financial support from the Government of Malta or from the government of any Member State or EEA State.

Basis of calculation

11.5.66 In calculating the percentages referred to in paragraphs 11.5.60 to 11.5.65, the following rules shall be followed:

(a) transport and insurance costs are to be included in the total amount of the contract on which the percentages and amounts are calculated;

(b) financing costs shall be totally excluded from the amount of the contract, whether itemised or not;

(c) the non-repatriable portion of incidental local expenditure on supplies is not normally deducted from the amount of the contract, it being understood, however, that if this portion exceeds 15% of the amount of the contract less the costs of financing, the excess will be deducted.

Consultation on status of debtor

11.5.67 In case of competing offers from exporters or banks established in Malta or in any Member State or EEA State, an insurer shall, upon a request made to it by any other insurer involved, respond promptly on the status of the debtor (i.e. whether private or public as defined in paragraph 11.5.8) in the particular transaction in which the insurers are involved.

11.5.68 In case the insurers do not agree on the status of the debtor within ten (10) working days from the request for information, the insurers involved shall make the information available to and consult other insurers in an attempt to reach a conclusion on the debtor's status.

- 11.5.69 If the involved insurers and the other insurers do not reach an agreement on the status of the debtor within ten (10) working days from the initiation of the consultation procedure mentioned in paragraph 11.5.68, the insurers involved shall bring the matter with the relevant information to the attention of any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, insurers are under the obligation to so notify.
- 11.5.70 A report on any requests made by other insurers on the status of debtors and on the outcome of the consultation procedure outlined in this paragraph shall be delivered to the Authority by the insurers to whom the request for information was made in terms of paragraph 11.5.67, every six (6) months.

Annual Notification

- 11.5.71 At the end of each year, but by not later than the 30th April of the following year, insurers shall, notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, with a report on their activity over the previous year on a retrospective basis.
- 11.5.72 The report shall include the following information on all debtor countries and shall contain for each of these countries:
- (a) the total amount of cover the insurer has offered;
 - (b) the total outstanding exposure, as defined in the Glossary;
 - (c) the premium earned;
 - (d) the amount of recoveries made;
 - (e) the amount of claims paid.

11.5.73 Insurers shall also deliver a copy of the report mentioned in paragraph 11.5.71 to the competent authority.

11.5.74 At the beginning of each year, but by not later than the 31st January, insurers shall report to other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, on the cover policies envisaged or to be applied by the notifying insurer in the following year, including the type and level of ceilings, country cover as well as the conditions the notifying insurer intends to routinely impose on cover, as envisaged or applicable for the year to come.

Ex-ante notification for information

11.5.75 Without prejudice to paragraphs 11.5.77 and 11.5.78, if at any time an insurer intends modifying in any way its cover policy as reported in the report submitted in terms of paragraph 11.5.71, or intends derogating from the provisions of paragraphs 11.5.4 to 11.5.82 by granting more favourable conditions for a particular transaction or a set of transactions or for a certain sector or sectors or for a certain country or countries or in general or to charge a lower premium than that set out in its annual notification or more favourable conditions or a lower premium than that with which the insurer is notified by other insurers, the insurer shall not put into effect its decision before notifying its intention to the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, at least seven (7) working days before such decision becomes effective.

11.5.76 If an insurer intends covering transactions with debtors in countries, for which it normally does not offer cover it shall, at least seven (7) working days before its decision becomes effective, notify other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, of its intention stating the premium rate it intends to charge.

Ex-post notification for information

Notification of derogation

11.5.77 If an insurer derogates from the provisions of paragraphs 11.5.4 to 11.5.82 by granting less favourable conditions for a particular transaction or a set of transactions or for a certain sector or sectors or for a certain country or countries or for its overall system it shall, at the latest by the 31st January of the year following the year of implementation of such decision, to derogate from the provisions of the above mentioned paragraphs, notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Notification of adjustments and modifications

11.5.78 If an insurer decides to adjust one or more elements of its country cover policy set out in its annual notification, it shall promptly notify the other insurers and any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Notification of application of similar conditions

11.5.79 An insurer which, after having received notification from another insurer (the notifying insurer), of the notifying insurer's intention to grant more favourable conditions and/or to charge a lower premium than that set out in the notifying insurer's report pursuant to paragraph 11.5.75, decides to give the same conditions as the notifying insurer shall promptly notify the other insurers and any institution, body or organisation, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, accordingly.

Collaboration

11.5.80 Insurers shall promptly give detailed replies to any request from other insurers or from any institution, body or organisation which, in accordance with Malta's international commitments concerning export credit insurance for transactions with medium and long-term cover and any other international commitments related thereto, are entitled to make such requests for clarifications of information on the insurer's activity.

Use of an electronic mail system

11.5.81 All notifications shall normally be made via an electronic mail system, or, if necessary, by other appropriate means of instance written communication.

Notification to the competent authority

11.5.82 Insurers shall notify in writing the competent authority of any communications exchanged with other insurers and with any institution, body or organisation in terms of paragraphs 11.5.75 to 11.5.80.

Provisions for joint guarantees for export credit contracts

11.5.83 In regulating their relationship and for the determination of their reciprocal obligations insurers who decide to grant, together with another insurer or other insurers operating in other Member States or EEA States, insurance cover for transactions involving one or more subcontractors in one or more Member States or EEA States, shall comply with the provisions of the Specimen Agreement as contained in the Annex to this Chapter.

11.5.84 This shall be without prejudice to the right of the insurers to adopt additional provisions which are not in conflict with and which do not affect the scope and application of the provisions contained in the Specimen Agreement.

11.5.85 The Specimen Agreement shall also be adopted by such insurers which in view of the compatibility of their underwriting systems, opt to cover a single buyer credit for the whole of the contract.