

## **Insurance Rule 19 of 2008**

### **Legal Expenses Insurance**

#### **Rule pursuant to article 5 of the Act**

**1.** (1) This Insurance Rule on Legal Expenses Insurance (“this Rule”) is made by the Authority pursuant to, and for the purposes of, article 5 of the Act.

(2) This Rule shall come into force on the 1<sup>st</sup> February 2008.

#### **Application**

**2.** (1) This Rule applies to a company desirous of applying for authorisation to carry on and, on continuing basis, a company authorised to carry on legal expenses insurance (the insurer) as referred to in class 17, Part I of the Third Schedule to the Act.

(2) This Rule does not apply to a company if its business of insurance is restricted to reinsurance.

#### **Scope**

**3.** (1) The scope of this Rule is to determine the requirements for insurers carrying on legal expenses insurance as referred to in class 17, Part I of the Third Schedule to the Act and preclude possible conflicts of interest arising, in particular, when an insurer is covering another person or is covering a person in respect of both legal expenses and any other classes of general business of insurance, other than legal expenses contracts of insurance-

(a) concerning disputes or risks arising out of, or in connection with, the use of sea-going vessels;

(b) provided by an assistance insurer, where that cover is granted under 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 permanent residence and where the costs are incurred outside the State in which the insured has his or her habitual residence. In such a case the policy must clearly state that the cover in question is limited to the circumstances referred to in this sub-paragraph and is ancillary to that assistance.

(2) This Rule shall not apply to anything done by the insurer 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 insurer's own interest under such cover.

## **Definitions**

4. In this Rule unless, the context otherwise requires -

“legal expenses insurance” means the effecting and carrying out of contracts of insurance against risks of loss to the persons insured attributable to their incurring legal expenses (including costs of litigation) falling within general business class 17 of Part I of the Third Schedule to the Act, and in particular it shall consist in:

(a) securing compensation for the loss, damage or injury suffered by the insured 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 him; and

“legal expenses insurance contract” and “legal expenses cover” shall be construed accordingly.

“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 holds professional qualifications of similar standing of a foreign institution, recognised by the Authority for the purpose of this Rule.

## **Requirement of separate policy or section**

5. Legal expenses cover shall be the subject of either –

(a) a policy relating to that cover only; 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:

Provided that, where legal expenses cover is included in a separate section of the policy, that section shall specify the nature of the legal expenses.

## **Arrangements for avoiding conflicts of interest**

6. An insurer carrying on legal expenses insurance shall adopt at least one of the following arrangements:

(a) the insurer 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 insurer; or

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

(b) the insurer 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 policy or section as referred to in article 5. If that undertaking has financial, commercial or administrative links with another insurer which carries on one or more other classes of general business, members of the staff of the undertaking who are concerned with the processing of claims, or with providing legal advice connected with such processing, shall

not pursue the same or similar activity in that other insurer at the same time;

(c) the insurer shall, in the policy, afford the insured the right to entrust the defence of his interests, from the moment that he has the right to claim from the insurer 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.

### **Freedom to choose a lawyer**

7. Any legal expenses insurance contract shall expressly recognise that:

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

(b) the insured shall also be free to choose a lawyer (or other person having such qualifications as may be necessary) to serve his interests whenever a conflict of interest arises.

### **Exception to article 7**

8. Article 7 shall not apply if all the following conditions are fulfilled:

(a) the legal expenses cover is limited to risks arising from the use of a road vehicle in Malta and is connected with a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

(b) neither the legal expenses insurer nor the assistance insurer carries on any class of liability business of insurance; and

(c) there are arrangements for securing that, where the parties to a dispute are insured in respect of legal expenses by

the same insurer, legal advice and representation are provided for each of them by completely independent lawyers.

### **Arbitration**

**9.** (1) Any dispute between the insurer and the insured arising out of a legal expenses insurance contract may be referred to arbitration.

(2) The policy must mention the right of the insured to have recourse to arbitration.

### **Notification to insured of his rights**

**10.** (1) Where a conflict of interest arises or there is disagreement over the settlement of a dispute between the insurer and insured under a legal expenses insurance contract, the insurer shall give written notice to the insured informing him of:

(a) the right referred to in article 7 of this Rule;

(b) the possibility of having recourse to arbitration in accordance with article 9 of this Rule.

(2) Where the management of claims is entrusted to a separate undertaking as mentioned in sub-paragraph (b) of paragraph (1) of article 6 of this Rule, the duty of the insurer is to make arrangements to secure that such notice is given by that undertaking.

### **Repeals and Savings**

**11.** (1) Saving the provisions of paragraph (2) of this article, Insurance Directive 19 of 2003 – Legal Expenses Insurance, is hereby repealed.

(2) Every action, directive, instruction, guideline or order whatsoever taken or commenced thereunder, shall continue to be valid and in force, as if such action, directive, instruction, guideline or order whatsoever were taken or commenced under this Rule.