

## **Consultation Procedure**

### **Proposals for Legal Notices / Ministerial Regulations and for new laws and amendments to existing laws**

#### *Explanatory Note*

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

# **Note for Consultation**

## **(Protection and Compensation Fund Regulations)**

### **1. Purpose**

- 1.1 The MFSA is proposing to amend the Protection and Compensation Fund Regulations (LN 435 of 2003) (“the Regulations”), primarily to align them with the requirements of Directive 2005/14/EC of the European Parliament and of the Council of 11 May 2005 amending Council Directives 72/166/EEC, 84/5/EEC, 88/357/EEC and 90/232/EEC and Directive 2000/26/EC of the European Parliament and of the Council relating to insurance against civil liability in respect of the use of motor vehicles (the “Fifth Motor Directive”). In this respect, we are attaching draft amendments to the Regulations in order to seek consultation prior to implementation. Comments are to be provided to the MFSA in writing by not later than **13<sup>th</sup> May 2008**. Kindly note that the following amendments to the Regulations will be brought into force on the same date as the amendments to the Motor Vehicles Insurance (Third-Party Risks) Ordinance (Cap. 104) and/or regulations issued under the said Ordinance transposing the Fifth Motor Directive.

### **2. The salient amendments to the Protection and Compensation Fund Regulations**

#### **2.1 Part III – Payment of Claims in the Event of Insolvent Insurers**

##### **2.1.1 Regulation 22**

It is proposed to remove paragraph (a) of regulation 22 of the Regulations which makes reference to a written undertaking given to the MFSA by an insolvent insurer who is a member of a Recognised Insurance Body. This is a consequential amendment to the changes made to article 54(b)(i) of the Insurance Business Act introduced by Act No. XII of 2006 entitled “*An Act to regulate the registration and enrolment of insurance intermediaries and insurance intermediaries activities*” which removed the above mentioned requirement. Following Malta’s membership to the European Union, Lloyd’s is no longer considered a Recognised Insurance Body but is a European insurance undertaking which has passported its activities into Malta. As regards Part III of the Regulations, Lloyd’s contributes to the Fund in respect of contracts of insurance issued to a Maltese policyholder by an establishment in Malta which, for purposes of Lloyd’s, would be contracts written by a Lloyd’s coverholder under a binding authority and business placed under underwriting agreements held by enrolled insurance brokers.

#### **2.2 Part IV – Compensation to Victims of Road Traffic Accidents**

##### **2.2.1 Regulation 23**

It is proposed to amend the definition of “company” in this regulation to remove the reference to a Recognised Insurance Body and any member thereof.

### 2.2.2 Regulation 26

Regulation 26, which provides compensation by the Protection and Compensation Fund (“the Fund”) in hit and run situations, is being amended to include compensation also, in the event of damage to property in specified circumstances. The Second Council Directive of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles (“Directive 84/5/EEC”) permitted Member States to exclude compensation in the event of damage to property in hit and run situations. In fact, this is the current position under the Regulations. However, the Fifth Motor Directive has included a proviso to article 1(6) of Directive 84/5/EEC so that where the body with the task of providing compensation has paid compensation for significant personal injuries to any victim of the same accident in which damage to property was caused by an unidentified vehicle, Member States may not exclude the payment of compensation for damage to property on the basis that the vehicle is not identified.

Furthermore, the Fifth Motor Directive allows the imposition of an excess of not more than €500 in such circumstances. It also attempts to establish conditions in which personal injuries are to be considered significant. For instance, it provides that Member States may take into account, *inter alia*, whether the injury has required hospital care. Therefore, it is proposed that where the Fund provides compensation in situations where damage to property also ensues from an accident by the use of a vehicle by an unidentified person, the Fund shall apply an excess of € 250.

2.2.3 Another amendment proposed to regulation 26 relates to the amount of compensation which is to be made by the Fund. Article 2 of the Fifth Motor Directive, which amends article 1(4) of Directive 84/5/EEC, provides that compensation to be made by a body with the task of providing compensation (the Fund), should be at least up to the limits of the insurance obligation for damage to property or personal injuries caused by an unidentified vehicle or an uninsured vehicle. The limits provided in the Directive are the following:

- (a) in the case of personal injury, a minimum amount of cover of EUR 1,000,000 per victim or EUR 5,000,000 per claim, whatever the number of victims;
- (b) in the case of damage to property EUR 1,000,000 per claim, whatever the number of victims.

On the other hand, regulation 26 which provides for compensation in hit and run situations, lays down that payment made by the Fund shall not exceed 80% of the amount which a court in Malta applying Maltese law would assess as damages which the applicant would have been entitled to recover from the unidentified person in respect of that death or bodily injury, if proceedings to enforce a claim for damages in respect thereof has been successfully brought by the applicant against the unidentified person or €46,587.47 (Lm 20,000), whichever amount is the less. It is clear that regulation 26 is not in line with article 2 of the Fifth Motor Directive.

Therefore, it is proposed that sub-regulation (2) of the aforementioned regulation be amended by removing the limitation of 80% and by removing the capping of the maximum amount of €46,587.47 (Lm 20,000) which the Fund is liable to pay in terms of Regulation 26.

2.2.4 Under the current Regulations in terms of regulation 26(2), the Fund is to determine an application for compensation within six months of receiving the information required to be submitted under regulation 26. It is proposed to shorten the period within which an application for compensation is to be determined to three months as this revised time frame reflects the time frames established under the Motor Vehicles Insurance (Third-Party Risks) Ordinance (Cap. 104).

#### 2.2.5 Regulation 28

Article 1(3)(b) of the Fifth Motor Directive, which amends Directive 72/166/EEC, provides that vehicles *exempt from compulsory insurance are treated in the same way as vehicles for which the insurance obligation provided for in Article 3(1) of Directive 72/166/EEC has not been satisfied*. Moreover, the compensation body of the Member State in which the accident has taken place shall then have a claim against the guarantee fund provided for in article 1(4) of Directive 84/5/EEC in the Member State where the vehicle is normally based. The compensation body in terms of regulation 3 of the regulations issued under the Motor Vehicles Insurance (Third-Party Risks Ordinance) (Cap.104) (L.N. 94 of 2004) is the Motor Insurers Bureau (“MIB”). The guarantee fund provided for in Article 1(4) of Directive 84/5/EEC is the Protection and Compensation Fund referred to in Part IV of the Regulations.

Pursuant to article 3(4) of the Motor Vehicles Insurance (Third-Party Risks Ordinance) (Cap.104), the requirement to be insured against third-party risks does not apply to any motor vehicle owned by the Government of Malta when such vehicle is used and employed exclusively in the services of the Government of Malta. Therefore, for the purposes of article 1(3)(b) of the Fifth Motor Directive, such vehicles are considered as “exempt vehicles”. By virtue of the amendments introduced by the said Directive, a compensation body of the Member State in which the accident has taken place should have recourse to the Fund. However, in terms of regulation 28 of the Regulations, no payment for compensation in respect of civil liability may be made where the civil liability resulted from the use of a motor vehicle which at the time of the event giving rise to such liability was owned by or in possession of the Government. Therefore, under the current provisions, the Fund is exempted from providing compensation to the compensation body (“MIB”). Consequently, to align regulation 28 with the Fifth Motor Directive, it is proposed to remove paragraph (a) of the said Regulations.

**15<sup>th</sup> April, 2008**