

16 April 2025

Circular on the Publication of the Amendments to the Insurance Business Act, Insurance Business (Protection and Compensation Fund) Regulations, 2024, Insurance Business (Winding up of an Insurance Undertaking) (Amendment) Regulations, 2024 and Chapter 1 of the Insurance Rules

1.0 Introduction

Following the numerous discussions held between the Malta Financial Services Authority, the insurance industry and the insurance associations, the MFSA held an informal consultation to propose the Amendments to the Insurance Business Act, Insurance Business (Protection and Compensation Fund) Regulations, 2024, and Insurance Business (Winding up of an insurance undertaking) (Amendment) Regulations, 2024.

2.0 Background

On 2 December 2021, 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, hereinafter referred to as the “Amending Directive”, was published in the EU’s Official Journal.

The Amending Directive created a new obligation on Member States to set up or authorise a body to provide compensation for injured parties residing within their territory for damage to property or personal injuries caused by a vehicle insured by an insurance undertaking, both whether authorised in Malta or in any other EU Member State. In this respect, the Amending Directive has created an obligation on such body, to provide initial compensation to injured parties residing within its territory, and insofar as the insurance undertaking is authorised by a Member State outside Malta, such body consequently has the right to request reimbursement from the body set up or authorised for the same purpose in the home Member State of the insolvent insurance undertaking which issued the policy of the vehicle of the liable party.

The Amending Directive also states that where a Member State has an existing compensation arrangement, the Member State should be able to allow it to continue to operate. These requirements needed to be transposed by 23 December 2023.

In Malta, a body to provide compensation for claimants of an insolvent insurance undertaking, where the injured party resides in Malta and the insurance undertaking is licensed in Malta, already exists. This body is called the Protection and Compensation Fund, hereinafter referred to as the “PCF”, and is constituted under Part IX of the Insurance Business Act, hereinafter referred to as the “Act”, and the Protection and Compensation Fund Regulations (S.L. 403.13), hereinafter referred to as “PCF Regulations”. The purpose of the current PCF is split in two parts. Part III deals with the payment of claims in the event of an insolvent insurer, whilst Part IV deals with the compensation to victims of road traffic accidents.

It is to be noted that the current Part III of the PCF covers only claims of risks situated in Malta. In line with the PCF Regulations, insurers carrying on business of insurance in Malta are required to pay a contribution to be utilised for the payment of claims relating to a protected risk, should an insurer become insolvent. The PCF covers a number of classes falling under general insurance and a number of classes under long term insurance. A protected risk is a risk which falls under one of the classes identified above and which has been underwritten in Malta. These risks include motor business risks underwritten in Malta. The current PCF Regulations require a contribution of 0.125% of gross written premium which excludes unprotected risks. Unprotected risks are those risks situated outside of Malta.

Thus, in line with the above, the current PCF is limited to collect contributions from insurance undertakings with head office in Malta, underwriting motor insurance business in Malta. Due to the new obligation imposed by the Amending Directive, the PCF now needs to be amended and extended to cover third party motor insurance risks underwritten by insurers with head office in Malta, covering motor insurance risks situated in a Member State outside of Malta. As a result, the Insurance Business Act, and the PCF Regulations have been amended to ensure that insurance undertakings which have a head office in Malta and which underwrite third party motor insurance business in a Member State outside of Malta are also covered by the PCF. Such entities will now be required to contribute to the said PCF.

3.0 Amendments to the Insurance Business Act, Insurance Business (Protection and Compensation Fund) Regulations, 2024, and Insurance Business (Winding up of an insurance undertaking) (Amendment) Regulations, 2024 and Chapter 1 to the Insurance Rules

The purpose of this circular is to inform the market that the Amendments to the Insurance Business Act, Insurance Business (Protection and Compensation Fund) Regulations, 2024, and Insurance Business (Winding up of an insurance undertaking) (Amendment) Regulations, 2024 were published on the Government Gazette on 26th November 2024, through Legal Notices 317 and 318 of 2024.

By means of these Regulations, the Protection and Compensation Fund has been extended to cover claims made from 23 December 2023 onwards in relation to motor vehicle liability insurance business, including cases where such business is situated in another Member State, and the claims remain unpaid by reason of the insolvency of the insurer.

Accordingly, any undertaking that intends to carry out motor vehicle liability insurance business in another Member State (other than Malta) will now be required to contribute to the Protection and Compensation Fund.

In this context, the MFS A proposed amendments to Chapter 1 of the Insurance Rules. These proposed changes include an amendment to paragraph 1.11.9 of Chapter 1 of the Insurance Rules, which will now require that undertakings carrying out motor vehicle liability insurance business in a Member State other than Malta contribute to the Fund. The Consultation Document elapsed on 26 March 2025 and the amendments to Chapter 1 of the Insurance Rules will be published on 17 April 2025.

3.0 Applicability

The Amendments to the Insurance Business Act, Insurance Business (Protection and Compensation Fund) Regulations, 2024, and Insurance Business (Winding up of an insurance undertaking) (Amendment) Regulations, 2024 came into force on 10 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 Directive 2009/103/EC (as amended by Directive (EU) 2021/2118). The amendments to Chapter 1 of the Insurance Rules will be published on 17 April 2025.

4.0 Contacts

Any queries or requests for clarifications in respect of the above should be sent by email on ipsu@mfsa.mt.