

Annex II: The criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee

Introduction

1. Annex II of FIR01 on how to stipulate the minimum monetary amount of the professional indemnity insurance ("the PII") or other comparable guarantee is being issued in accordance with the first proviso to Article 5(1B) of the Financial Institutions Act ("the Act") which provides that the method of calculation of the PII or other comparable guarantee may be laid out in a Financial Institutions Rule, and pursuant to the second proviso to Article 5(1B) of the Act, which provides that information required by the Malta Financial Services Authority ("the Authority") in order to calculate the PII or other comparable guarantee may also be laid out in such Rule.

Scope & Application

2. According to Article 5(1B) of the Act, "A natural person or a company who applies for a licence or a registration as applicable in terms of this article, to provide payment initiation services and, or account information services, shall as a condition for the granting of its licence or registration, as applicable, also be required to hold a professional indemnity insurance covering the territories in which it offers services, or some other comparable guarantee against liability." The required minimum monetary amount of the mentioned PII or other comparable guarantee against liability is laid down in this Annex which provides the criteria adopted by the Authority in stipulating such amount. Additionally, a formula is established for the calculation of the minimum monetary amount to enable undertakings to calculate the minimum monetary amount of the PII or comparable guarantee before they apply for authorisation or registration.
3. Article 13(1) of the Act determines that the Authority may take the following steps in order to ensure compliance with Article 5(1B) of the Act:
 - a. require the financial institution to provide any information needed to monitor compliance specifying the purpose of the request, as appropriate, and the time limit by which the information is to be provided;
 - b. carry out on-site inspections at the financial institution, at any agent or branch thereof providing services under the responsibility of the financial institution, or at any entity to which activities are outsourced;
 - c. restrict, suspend or withdraw any licence or registration; and

- d. issue non-binding recommendations and guidelines, Rules within the meaning of this article and binding administrative provisions in terms of this Act and any regulations or Rules issued thereunder.
4. The scope of the Annex is to adopt the provisions prescribed in the EBA Guidelines on the criteria on how to stipulate the minimum monetary amount of the professional indemnity insurance or other comparable guarantee (the "Guidelines"). The Guidelines were issued by the EBA on the 7th of July 2017 and specify criteria and indicators on how to stipulate the minimum monetary amount of the professional indemnity insurance (PII) or other comparable guarantee to be held by undertakings that apply for:
- a. authorisation to provide payment services under paragraph 2(g) of the Second Schedule to the Act (payment initiation services, PIS) in accordance with Article 5(1B) of the Act;
 - b. registration to provide payment services under point 2(h) of the Second Schedule to the Act (account information services, AIS) in accordance with Article 5(1B) of the Act;
 - c. authorisation to provide both payment services under paragraphs 2(g) and (h) of the Second Schedule to the Act.
5. The Annex refers to providers of payment initiation services and account information services as defined in Article 2 of the Act.

Definitions

6. Unless otherwise specified, terms used and defined in the Act shall have the same meaning in this Annex. In addition, for the purpose of this Annex, the following definitions shall apply:

Undertaking means a person that applies for authorisation to act as an account information service provider or a payment initiations service provider

Account Information Service Provider shall have the meaning assigned to in the Act.

Payment Initiation Service Provider shall have the meaning assigned to in the Act.

Professional Indemnity Insurance and Comparable Guarantee

7. Providers that apply for authorisation or registration are required to hold either the PII, or a comparable guarantee. Such PII or comparable guarantee shall be considered, by the Authority, as mutually exclusive.
8. The Authority shall ensure that the PII or comparable guarantee held by undertakings, for the purpose of Article 5(1B) of the Act, covers the undertaking's liabilities, including:
 - a. in the case of undertakings that apply for authorisation to provide PIS, the liabilities specified in Articles 73, 89, 90 and 92 of PSD2, as transposed in the Directives of the Central Bank;
 - b. in the case of undertakings that apply for registration to provide AIS, liabilities vis-à-vis the account servicing payment service providers (ASPSP) or the payment service user resulting from non-authorised or fraudulent access to or non-authorised or fraudulent use of payment account information;
 - c. in the case of undertakings that apply for authorisation to provide PIS and AIS, the liabilities referred to in both point (a) and (b) above.
9. The minimum monetary amount of the PII or comparable guarantee shall cover all costs and expenses incurred by payment service users and ASPSPs, which may request undertakings involved to refund losses resulting from one or more of the liabilities listed in Article 5(1B) of the Act.
10. The minimum monetary amount of the PII or comparable guarantee shall allow undertakings to effectively meet their liabilities in relation to their activities. The PII or comparable guarantee shall not produce any excess, deductible or any threshold that could prejudice repayments resulting from the requests for refunds of payments service users and ASPSPs, and shall be valid when the liability occurs.
11. The minimum monetary amount of the PII or comparable guarantee shall cover the territories in which undertakings offer services, regardless of the countries where their users are established, or the place wherein the undertaking provides its services.

Criteria and Indicators

12. When stipulating the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, the following criteria and their indicators shall be taken into consideration:
- a. the risk profile criterion:
 - i. value of requests for refunds, for the liabilities referred to in Article 5(1B) of the Act, received by the undertaking;
 - ii. number of initiated payment transactions by an undertaking that provides PIS;
 - iii. number of payment accounts accessed by an undertaking that provides AIS;
 - b. the type of activity criterion:
 - i. whether the undertaking provides exclusively PIS or AIS, or both;
 - ii. whether the undertaking provides other payment services as referred to in the Second Schedule to the Act;
 - iii. whether the undertaking is engaged in business other than payment services;
 - c. the size of activity criterion:
 - i. for undertakings that provide PIS, the value of the transactions initiated;
 - ii. for undertakings that provide AIS, the number of clients that make use of the AIS;
 - d. the comparable guarantee criterion:
 - i. specific characteristics of the comparable guarantee;
 - ii. triggers for the implementation of the comparable guarantee.

Formula

13. To calculate the minimum monetary amount of the PII or comparable guarantee to be held by undertakings, the following formula shall be applied:

$$\begin{array}{l}
 \text{Minimum} \\
 \text{monetary amount} \\
 \text{of PII or} \\
 \text{comparable} \\
 \text{guarantee}
 \end{array}
 =
 \begin{array}{l}
 \text{Amount reflective of} \\
 \text{risk profile criterion}
 \end{array}
 +
 \begin{array}{l}
 \text{Amount reflective of} \\
 \text{type of activity} \\
 \text{criterion}
 \end{array}
 +
 \begin{array}{l}
 \text{Amount reflective of} \\
 \text{size of activity} \\
 \text{criterion}
 \end{array}$$

Calculation of Risk Profile Criterion

Value of requests for refunds received:

14. When calculating the value of the indicator 'requests for refunds received', undertakings shall use the aggregated value of all requests for refunds made by the payment service users and by ASPSPs, in the previous 12 calendar months, for losses resulting from one or more of the liabilities referred to in Article 5(1B) of the Act.
15. In the instance that no requests for refunds are made to the undertaking in the previous 12 months, the value for this indicator in the formula shall be set to 0.
16. Where an undertaking has not offered services at any time in the previous 12 months, the aggregated value of all requests for refunds forecasted by the undertaking for the purpose of its application for authorisation or registration shall be used.
17. Where the undertaking involved does not provide any forecasts relating to requests for refunds, or if the amount resulting from the application of the forecasted total value of requests of refunds is lower than EUR 50,000, the value for the indicator in the formula shall be set to 50 000.

Number of initiated payment transactions by undertakings that provide PIS:

18. The value of the indicator 'number of initiated payment transactions' shall be calculated as the sum of the following elements, where N shall represent the number of payment transactions initiated by the undertaking in the previous 12 months:
 - a. 40% of the slice of N up to and including 10 000 initiated payments;

plus
 - b. 25% of the slice of N above 10 000 initiated payments up to and including 100 000 initiated payments;

plus
 - c. 10% of the slice of N above 100 000 initiated payments up to and including 1 million initiated payments;

plus

- d. 5% of the slice of N above 1 million initiated payments up to and including 10 million initiated payments;

plus

- e. 0.025% of the slice of N above 10 million initiated payments.

19. Where an undertaking has not offered services at any time in the previous 12 months, the number of initiated payment transactions forecasted by the undertaking, for the purpose of its application for authorisation, shall be used.

20. If the undertaking does not provide any forecast relating to the number of initiated payment transactions, or if the amount resulting from the application of the forecasted number of initiated payment transactions is lower than 50 000, the value of this indicator of the formula shall be set to 50 000.

Calculation of Type of Activity Criterion

21. The value of this indicator of the formula shall be set to 0 for those undertakings that apply to be authorised to provide PIS only.

22. The value for this indicator of the formula shall be set to 0 for those undertakings that apply to be registered to provide AIS only.

23. Where an undertaking applies for authorisation to provide PIS and AIS, the minimum monetary amount shall be calculated separately, and the resultant amounts added to get the minimum monetary amount covering both services. The PII, or comparable guarantee agreements, shall cover the provision of both PIS and AIS, and shall reflect the different liabilities, referred to in Article 5(1B) of the Act.

24. Where an undertaking provides any other payment service as referred to in paragraphs 2(a)-(f) of the Second Schedule to the Act in parallel with either PIS or AIS or both, the minimum monetary amount of the PII or comparable guarantee shall be calculated for providing PIS or AIS, or both and without prejudice to the requirements relating to the calculation of the initial capital according to paragraph 31(3) of FIR/01, and/or the undertaking's own funds according to Article 5A of the Act.

25. Where an undertaking is also engaged in business other than providing payment services as referred to in the Second Schedule to the Act (non-payment services activities), in addition to the

values required for the type of activity the undertaking aims to provide, the value of 50 000 shall be added.

26. Where an undertaking is engaged in other non-payment services or activities, and can prove that its engagement does not have an impact on the provision of PIS or AIS, either because it holds a guarantee that covers its liabilities arising from the other, non-payment services or activities, or because the Authority has requested the establishment of a separate entity for the payment service business, in accordance with Article 5(6) of the Act, the value shall be set to 0 in the formula.

Calculation of the Size of Activity Criterion

27. The amount reflective of the size of activity criterion for an undertaking that provides PIS shall be calculated as the sum of the following elements, where N shall represent the total value of all transactions initiated by the undertaking in the previous 12 months:

- a. 40% of the slice of N up to and including EUR 500 000;

plus

- b. 25% of the slice of N above EUR 50 000 up to and including EUR 1 million;

plus

- c. 10% of the slice of N above EUR 500 000 up to and including EUR 5 million;

plus

- d. 5% of the slice of N above EUR 5 million up to and including EUR 10 million;

plus

- e. 0.025% of the slice of N above EUR 10 million.

28. The amount reflective of the size of activity criterion for an undertaking that provides AIS shall be calculated as the sum of the following elements, where N shall represent the number of users of the AIS (clients), where each client is considered separately, that made use of the AIS in the previous 12 months:

- a. 40% of the slice of N up to and including 100 clients;

plus

b. 25% of the slice of N above 100 clients up to and including 10 000 clients;

plus

c. 10% of the slice of N above 10 000 clients up to and including 100 000 clients;

plus

d. 5% of the slice of N above 100 000 clients up to and including 1 million clients;

plus

e. 0.025% of the slice of N above 1 million clients.

29. In situations where undertakings have not offered services in the previous 12 months, undertakings shall use the value of all transactions initiated in the case of an undertaking that provides PIS, or a number of clients where the undertaking provides AIS, forecasted by the same undertaking for the purpose of authorisation or registration.

30. In the case that an undertaking does not provide any forecasts relating to the value of all transactions initiated in the case of an undertaking providing PIS, or any forecast relating to the number of clients in the case of an undertaking providing AIS, or if the amount resulting from the application of the forecasted value of all transactions initiated in the case where the undertaking provides PIS, or the number of clients in the case where the undertaking provides AIS, is lower than 50 000, the value of these indicators of the formula shall be set to 50 000.