Annex I

Malta

Improving financial security in the context of the Environmental Liability Directive
No 07.0203/2018/789239/SER/ENV.E.4
May 2020
Final

Prepared by:
Valerie Fogleman, Stevens & Bolton LLP, Cardiff University School of Law and Politics
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1. INTRODUCTION

Financial security for preventing and remediating environmental damage in the form of stand-alone environmental insurance policies is not available from insurers that are based in, or have branches in, Malta.

Environmental extensions to general liability policies are available to a limited extent. They do not provide cover for remediating pollution or other types of environmental damage.

Environmental extensions to property policies are not available.

Stand-alone environmental insurance policies offered by multinational insurers to large companies with sites and/or operations in other States as well as Malta are available by passporting.

Malta transposed the ELD by the Prevention and Remediying of Environmental Damage Regulations (SL 549.97)\(^1\) which, like all Maltese legislation, is published in Maltese and English. SL 549.97 was enacted under the then Environmental Protection Act, 2001 (Cap. 435, as amended), and the Development Planning Act, 1992 (Cap. 356, as amended). It entered into force on 29 April 2008.

SL 549.97 has been amended\(^2\). As from 2016, the enabling legislation is the Environment Protection Act (Cap. 549),\(^3\) which superseded the Environmental Protection Act and the Development Planning Act. Before the ELD was transposed, Malta did not have a specific regime for remediating contaminated land.

Malta has not imposed mandatory financial security for preventing and remediating environmental damage under the ELD. Article 54(2)(w) of the Environmental Protection Act provides that the Minister responsible for the environment may make regulations that may:

- provide for the making of any deposit or the giving of any guarantee to ensure the performance of any obligation by any person as imposed as a condition of any permit, authorisation or licence under this Act.

Article 54(2)(w) has, however, general application; it does not refer specifically to SL 549.97.

The legislation that implements the Industrial Emissions Directive (2010/75/EU) in Malta grants discretion to the competent authority to require the holder of an integrated pollution prevention and control (IPPC) permit to submit financial security to comply with the obligations in the permit as well as liabilities arising from activities subject to the permit. The legislation does not refer specifically to ELD liabilities.

Further, the Environmental Impact Assessment Regulations (Subsidiary Legislation 549.46, Legal Notice 412 of 2017, as amended)\(^4\) authorise the Environment and Resources Authority


\(^2\) Prevention and Remediying of Environmental Damage Regulations (Subsidiary Legislation 549.97; Legal Notice 280 of 2018; Regulations); http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11562&l=1

\(^3\) Environmental Protection Act (Cap. 549); http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12446&l=1

(ERA) to recommend to the relevant permitting authority that it should require an applicant for development consent to have financial security for the development.

2. **Environmental insurance market**

In 2017, the Environmental Implementation Review report for Malta suggested that Malta should, among other things, ensure ‘an effective system of financial security for environmental liabilities (so that operators not only have insurance cover available to them but actually take it up)’.

The 2019 Environmental Implementation Review report for Malta stated that Malta should ‘improve financial security’.

The situation had not changed when this report was published. No insurers based in, or with branches in, Malta offered stand-alone environmental insurance policies. The availability of such policies would require reinsurers to alter their reinsurance treaties to provide cover for remediating environmental damage or to provide facultative cover for it.

Environmental extensions to general liability policies were available but they provide cover only for third-party claims from a sudden and accidental pollution incident. They do not provide cover for remediating pollution or any ELD liabilities. Demand is poor.

Stand-alone environmental insurance policies are available only from foreign insurance companies and multinational insurers by passporting.

2.1. **Commercial insurers**

2.1.1. **Number of insurers**

Insurers based in, or with branches in, Malta do not offer stand-alone environmental policies for ELD or other environmental liabilities to operators with sites only in Malta.

In this respect, the Maltese insurance market is small. The Malta Insurance Association has 15 full members. Three of its members underwrite health or life insurance only.

All the major multinational insurers provide policies for ELD and other environmental liabilities in Malta. Such policies, however, tend to be issued as part of global programmes for operators with sites and/or operations outside, as well as in, Malta.

2.1.2. **New insurers entering the market since 2009**

No new insurers have entered the environmental insurance market in Malta since 2009.

2.1.3. **Existing insurers that introduced environmental insurance policies since 2009**

Some multinational insurers added cover for ELD liabilities to their environmental insurance policies after the ELD was transposed into national law across the EU, including into Maltese law on 29 April 2008. The reason for the additional cover was not, however, to provide cover

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7 Malta Insurance Association, Members; https://maltainsurance.org/about-us/members/
to operators that had sites only in Malta; it was to facilitate cover for ELD liabilities to multinational companies with sites and/or operations in Member States across the EU.

2.2. **Re/insurance pools**
Malta does not have a re/insurance pool for environmental liabilities.

2.2.1. **Date of establishment**
Not applicable

2.2.2. **Descriptions of policies issued**
Not applicable

2.3. **Mutuals**
No mutuals offer insurance policies for ELD or other environmental liabilities in Malta.

2.3.1. **Date of establishment**
Not applicable

2.3.2. **Descriptions of policies issued**
Not applicable

2.4. **Other**
Malta is a major location for captives\(^8\) although no information was available as to whether these include any captives specifically for environmental liabilities.
There are no underwriting agencies or other types of providers of environmental insurance policies in Malta.

3. **Voluntary insurance policies for ELD and other environmental liabilities**

3.1. **Environmental insurance policies**
Stand-alone environmental insurance policies from insurers based in, or with branches in, Malta are not available.

3.2. **Cover for ELD preventive costs**
Not applicable

3.3. **Cover for ELD primary, complementary and compensatory costs**
Not applicable

3.4. **Cover for non-ELD liabilities**
Not applicable

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3.5. **Nature of policies (liability only or liability and on-site remediation)**
Not applicable

3.6. **Description of policies**

3.6.1. **Format**
Not applicable for stand-alone environmental insurance policies for businesses with sites and/or operations only in Malta because such policies are not available unless issued by a foreign or multinational insurer by passporting.

Environmental insurance policies offered by multinational insurance companies for risks in Malta as part of a global programme have a menu-type format. That is, the policies set out insuring agreements for the various risks such as the remediation of environmental damage; claims for bodily injury, property damage or economic loss; business interruption; etc. The insured may then select the insuring agreements it requires.

3.6.2. **Claims made or occurrence based**

Environmental insurance policies offered by multinational insurers as part of a global programme are offered on a claims made basis. That is, the environmental damage and the claim must occur during the policy period. The insured must report the claim to insurers within the policy period or, if included in the policy, an extended reporting period.

3.6.3. **Policies for operators**
Not applicable

3.6.4. **Policies for contractors and others**
Not applicable

3.7. **Model terms and conditions**
There are no model terms and conditions for environmental insurance policies, endorsements to other policies, or any other financial security instruments for ELD or other environmental liabilities in Malta.

3.7.1. **Organisation issuing model terms and conditions**
Not applicable

3.7.2. **Description of model terms and conditions**
Not applicable

3.7.3. **Relationship between policies with model terms and conditions and environmental insurance policies**
Not applicable

3.8. **Date of general availability of environmental insurance policies**
Stand-alone environmental insurance policies from national insurers in Malta are not available.
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Stand-alone environmental insurance policies from multinational insurers for global programmes, including provide cover for ELD liabilities, for sites and/or operations in various States including sites in Malta have been available since about 2007.

3.9. Environmental assessments and audits
Multinational insurers do not require operators that wish to purchase an environmental insurance policy to carry out an environmental assessment or audit of sites to be covered by the policy before the policy is placed unless the inherent risk of a site is considered to be high. If the prospective insured already has information on the environmental condition of site(s) to be insured, this information is provided to the insurer. The insurer then considers the information as part of the underwriting process.

3.10. Average premium
Not applicable

3.11. Average policy limit
Not applicable

3.12. Average deductible or self-insured retention
Not applicable

3.13. Average policy period
Not applicable

3.14. Sizes of typical insured businesses
Not applicable

3.15. Industrial and commercial sectors that typically purchase policies
Not applicable

3.16. Industrial and commercial sectors with limited or no accessibility to policies
Not applicable

3.17. Coverage litigation
Not applicable

3.18. Cover for ELD liabilities in general liability policies
Extensions to general liability policies that provide cover for third-party claims for bodily injury and property damage from sudden and accidental off-site pollution are available. Extensions that provide cover for liabilities under the ELD or other liabilities to remediate pollution are not available (see section 2 above).

3.19. Cover for ELD liabilities in property policies
Environmental extensions to property policies are not available.
4. **OTHER VOLUNTARY FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS**

4.1. **Type(s)**
Voluntary financial security instruments such as bank guarantees and bonds are not generally available for liabilities under the ELD or other environmental legislation. There is no demand for them because they are geared towards mandatory financial security requirements for known responsibilities such as closure and post-closure of a landfill, not voluntary financial security for accidental ELD incidents.

4.2. **Availability**
Not applicable

5. **MANDATORY FINANCIAL SECURITY FOR ELD LIABILITIES (ARTICLE 14(1))**

Malta has not imposed mandatory financial security for ELD liabilities.

5.1. **Competent authority(ies)**
Not applicable

5.2. **Legislative provisions**
Not applicable

5.2.1. **Name(s) of legislation**

5.2.2. **Stand-alone requirement or hybrid**

5.2.3. **Consideration of mandatory financial security legislation (if not enacted)**

5.2.4. **Reasons for decision not to enact mandatory financial security legislation**

5.2.5. **Revisions to legislation**

5.2.6. **ELD liabilities covered by mandatory financial security**

5.2.7. **Description of mandatory financial security provisions**

5.2.8. **Exception for low risk sites**

5.2.9. **Exception for ISO 14001 certification or EMAS registration**

5.2.10. **Other exceptions**

5.3. **Environmental licence conditions**

No environmental licences or permits in Malta require the holder to have mandatory financial security for ELD liabilities. The competent authority has discretion to require holders of some permits to submit financial security but this is not specifically for ELD liabilities (see sections 11.1 and 11.2 below).

5.3.1. **Stand-alone requirement or hybrid**
Not applicable
5.3.2. Revisions to licensing requirements
Not applicable

5.3.3. ELD liabilities covered by mandatory financial security
Not applicable

5.3.4. Description of mandatory financial security conditions
Not applicable

5.4. Date of introduction
Not applicable

5.5. Effective date
Not applicable

5.6. Key reasons for introduction
Not applicable

5.7. Withdrawal of mandatory financial security
Not applicable

5.8. Guidance
Not applicable

5.9. Operators subject to mandatory financial security
Not applicable

5.10. Amounts and limits of mandatory financial security
Not applicable

5.11. Growth of mandatory financial security
Not applicable

6. REGULATORY OVERSIGHT OF FINANCIAL SECURITY INSTRUMENTS AND MECHANISMS

There is no regulatory oversight of financial security instruments and mechanisms for ex ante ELD liabilities because mandatory financial security for such liabilities does not exist.

6.1. Review of financial security instruments or mechanisms
Not applicable

6.2. Financial security instruments and mechanisms accepted
Not applicable

6.2.1. Templates
Not applicable
6.2.2. **Requirements for environmental insurance policies**
Not applicable

6.2.3. **Form of mandatory environmental insurance policy**
Not applicable

6.3. **Financial security instruments and mechanisms not acceptable**
Not applicable

6.4. **Time of review**
Not applicable

6.5. **Regulatory costs of review**
Not applicable

6.6. **Requirements for operator to review**
Not applicable

7. **ENFORCEMENT OF FINANCIAL SECURITY REQUIREMENTS**
Not applicable

8. **EX POST ENVIRONMENTAL DAMAGE MANDATORY FINANCIAL SECURITY (ARTICLE 8(2))**

Regulation 9(2) of SL 549.97 states that:

the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under these regulations.

Regulation 9(2) is largely a copy out of article 8(2) of the ELD, which provides in pertinent part ‘the competent authority shall recover, inter alia, via security over property or other appropriate guarantees from the operator who has caused the damage or the imminent threat of damage, the costs it has incurred in relation to the preventive or remedial actions taken under this Directive’.

That is, an operator that has caused an imminent threat of, or actual, environmental damage is only required to submit mandatory financial security for the costs of preventing or remediating it if the authority incurs such costs itself. The operator is not required to submit mandatory financial security if the operator carries out preventive or remediation actions.

8.1. **Date legislation or policy for mandatory financial security introduced**
Regulation 9(2) entered into force on 29 April 2008 with the other provisions of SL 549.97.

8.2. **Effective date for ex post mandatory financial security**
See section 8.1 above.
8.3. Financial security instruments and mechanisms accepted
As indicated in section 8 above, regulation 9(2) is largely a copy out of article 8(2) of the ELD and simply refers to ‘security over property or other appropriate guarantees’.

8.4. Financial security instruments and mechanisms not acceptable
There is no legislation or guidance to state any financial security instruments or mechanisms that are not acceptable.

9. PROVIDERS OF MANDATORY FINANCIAL SECURITY INSTRUMENTS

9.1. Insurers
Not applicable

9.2. Banks and other financial institutions
Not applicable

9.3. Sureties
Not applicable

9.4. Providers outside Member State
Not applicable

10. MEASURES TAKEN BY MEMBER STATE TO DEVELOP FINANCIAL SECURITY MARKETS
No information was provided on any measures taken by Malta to develop financial security markets including an environmental insurance market.

11. EU ENVIRONMENTAL LEGISLATION WITH MANDATORY FINANCIAL SECURITY PROVISIONS

11.1. Landfill Directive

11.1.1. Competent authority(ies)
The competent authority for the Landfill Directive (1999/31/EC), which is implemented in Malta by the Waste Management (Landfill) Regulations,9 is ERA. The regulations are in addition to the Waste Regulations (Subsidiary Legislation 549.63, Legal Notice 184 of 2011, as amended; SL 549.63) (see section 11.1.2 below).10

ERA is an autonomous body in the Ministry for Sustainable Development, the Environment and Climate Change. Prior to the establishment of ERA in 2016, the competent authority was the Malta Environment and Planning Authority (MEPA), with environmental protection being the responsibility of the Environment Directorate in MEPA.


11.1.2. **Financial security provisions**

Regulation 9(i) of the Waste Management (Landfill) Regulations states that, without prejudice to SL 549.63, a landfill operating permit must contain ‘financial security by the applicant, or any other equivalent provision under regulation 10(1)(d)’.

Regulation 10(1)(d) of the Waste Management (Landfill) Regulations requires an applicant to provide ‘adequate provisions, by way of financial security or any other equivalent’ before disposal operations commence to ensure compliance with the obligations of the permit including closure and post closure (aftercare) measures. Regulation 12 states that the costs of establishing and operating the landfill, including ‘the cost of the financial security or its equivalent’ and the estimated closure and aftercare costs are covered by the price charged by the operator for the disposal of waste at the site.

Regulation 15(3) of SL 549.63 states that a competent authority may request a bank guarantee to ensure that the operator complies with conditions in a permit.

Regulation 22 of SL 549.63 states that the competent authority may issue a permit subject, among other things, to ‘the provision of a suitable financial assurance to be made within a stipulated period by the applicant in favour of the competent authority’.

11.1.3. **Financial security instruments and mechanisms accepted**

ERA accepts bank guarantees to meet the requirements for operating a landfill in Malta.

11.1.4. **Templates**

There are no templates for acceptable financial security instruments.

11.1.5. **Financial security instruments and mechanisms not acceptable**

There is no list of financial security instruments or mechanisms that are not acceptable.

11.2. **Extractive Waste Directive**

11.2.1. **Competent authority(ies)**

The competent authority for the Extractive Waste Directive (2006/21/EC), which is implemented in Malta by the Waste Management (Management of waste from Extractive Industries and Backfilling) Regulations (Subsidiary Legislation 549.50, Legal Notice 22 of 2009, as amended; SL 549.50), is ERA.

Malta did not have any facilities subject to the Extractive Waste Directive (2006/21/EC) when this report was published.

11.2.2. **Financial security provisions**

Regulation 9(3) of SL 549.50 states that an applicant for a permit must make ‘adequate arrangements by way of a financial guarantee or equivalent, as required under regulation’.


Regulation 14(1) directs the competent authority, before operations that involve the accumulation or deposit of extractive waste in a waste facility commence, to require ‘a financial guarantee (such as in the form of a financial deposit, including industry-sponsored mutual guarantee funds) or the equivalent, in accordance with procedures to be decided by the competent authority’. The financial deposit must be adequate to discharge all obligations under the permit including post-closure provisions and ensure that funds are available to rehabilitate the land affected by the waste facility as described in the waste management plan and the permit. The calculation of the guarantee is made on the basis of the likely environmental impact of the waste facility taking into account its category (that is, A, B or C).

11.2.3. **Financial security instruments and mechanisms accepted**
ERA accepts bank guarantees to meet the requirements for operating an extractive waste facility in Malta.

11.2.4. **Templates**
There are no templates for acceptable financial security instruments.

11.2.5. **Financial security instruments not acceptable**
There is no list of financial security instruments that are not acceptable.

11.3. **Carbon Capture and Storage Directive**

11.3.1. **Status of implementation**
There were no carbon storage facilities in Malta when this report was published.

11.3.2. **Competent authority(ies)**
Not applicable

11.3.3. **Financial security provisions**
Not applicable

11.3.4. **Financial security instruments and mechanisms accepted**
Not applicable

11.3.5. **Templates**
Not applicable

11.3.6. **Financial security instruments and mechanisms not acceptable**
Not applicable
12. **EU Recommendation on Hydraulic Fracturing**

12.1. **Status**
No hydraulic fracturing (fracking) was being carried out in Malta when this report was published. Malta does not have commercially viable hydrocarbon reserves subject to unconventional production such as fracking.¹³

12.2. **Competent authority(ies)**
Not applicable

12.3. **Financial security provisions**
Not applicable

12.4. **Financial security instruments and mechanisms accepted**
Not applicable

12.5. **Templates**
Not applicable

12.6. **Financial security instruments and mechanisms not acceptable**
Not applicable


13.1. **Industrial Emissions Directive**

13.1.1. **Competent authority(ies)**
The competent authority for the Industrial Emissions Directive, which is implemented in Malta by the Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (Subsidiary Legislation 549.77, Legal Notice 10 of 2013, as amended; SL 549.77),¹⁴ is ERA.

13.1.2. **Financial security provisions**
Regulation 25 of SL 549.77 states that:

> The competent authority may also require the provision by the operator of a suitable financial guarantee to be made in favour of the competent authority to secure the obligations under the permit or registration, before the permit or registration is issued. The financial guarantee may also be tied to specific requirements in the permit.

In addition, regulation 6(b) of SL 549.77 states that the competent authority shall take into account the applicant’s ‘financial capacity to comply with all obligations and liabilities that will

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or may arise from the proposed activity under these regulations, or his ability to offer such financial security as the competent authority may require’.

In accordance with the Regulations 25 and 5(b) of SL 549.77, ERA requires businesses that are subject to it, that is, that have an IPPC permit, to submit one or more bank guarantees to ERA to comply with the businesses’ obligations and liabilities under the permits.

ERA thus requires the holder of an IPPC permit to submit one or more bank guarantees to ERA as financial security for the holder’s obligations under the permit. If the obligations must be carried out by the permit holder during the pendency of the permit (for example, pre-operational conditions, commissioning and/or improvements), ERA releases some or all of the bank guarantees, as appropriate, for those obligations when it is satisfied that the operator has carried them out. If the obligations continue throughout the pendency of the permit, the permit holder must maintain the bank guarantee(s) for them throughout the lifetime of the permit. If there are any variations to the permit or if it is renewed, ERA may require amendments to the bank guarantee(s). The permit holder must renew the bank guarantee(s) annually.

If the permit holder fails to comply with any obligations or if the environmental integrity of operations subject to the permit are threatened, ERA may use funds held in the bank guarantee to take necessary actions. In such a case, the operator must replenish the funds subject to the bank guarantee.

13.1.3. **Financial security instruments and mechanisms accepted**

ERA accepts bank guarantees to meet the requirements for mandatory financial security under SL 549.77.

13.1.4. **Templates**

ERA does not have any templates for bank guarantees or any other financial security instrument.

13.1.5. **Financial security instruments and mechanisms not acceptable**

ERA does not specify any financial security instruments or mechanisms as not being acceptable.

13.2. **Seveso III Directive**

13.2.1. **Competent authority(ies)**

The competent authorities for the Seveso III Directive (2012/18/EU), which is implemented in Malta by the Control of Major Accident Hazards (COMAH) Regulations (Subsidiary Legislation 424.19, Legal Notice 179 of 2015), are the Occupational Health and Safety Authority, ERA and the Civil Protection Department, acting jointly or severally as necessary.

13.2.2. **Financial security provisions**

Subsidiary Legislation 424.19 does not contain any financial security provisions.

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13.2.3. **Financial security instruments and mechanisms accepted**

Not applicable

13.2.4. **Templates**

Not applicable

13.2.5. **Financial security instruments and mechanisms not acceptable**

Not applicable

13.3. **Other legislation**

Regulation 32 of the Environmental Impact Assessment Regulations states that ERA may recommend to the relevant permitting authority that the authority includes, among other things, ‘the imposition of financial guarantees in favour of the [ERA]’ and ‘insurance against damage to the environment’ in a consent for development.

Developers rarely purchase environmental insurance policies in response to the requirement. Instead they prefer to have a bank guarantee due to the lower cost.

14. **Mandatory financial security for offshore oil and gas operations**

14.1. **Competent authority(ies)**

The competent authority for offshore oil and gas operations in Malta is the Continental Shelf Department.16

The licensing authority for the Offshore Safety (Oil and Gas) Regulations (see section 5.3 above and sections 14.3 and 14.4 below) is ‘the public body, authority or officer that grants a licence pursuant to the Petroleum (Production) Act and the Continental Shelf Act’.

The competent authority for the Offshore Safety (Oil and Gas) Regulations is the Offshore Safety (Oil and Gas) Board. The Board’s functions include overseeing compliance by operators and owners with the regulations.

14.2. **Status of offshore oil and gas operations**

There is no commercial production of offshore (or onshore) oil and gas in Malta; there are exploration activities for oil and gas in offshore Malta.

Since 2010, the Maltese Government has entered into various agreements to explore for offshore oil and gas. This has largely been driven by the presence of proven reserves in geological strata on the nearby Italian, Tunisian and Libyan continental shelves.17

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16 See Continental Shelf Department; [https://continentalshelf.gov.mt/en/Pages/The-Department.aspx](https://continentalshelf.gov.mt/en/Pages/The-Department.aspx)

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In June 2019, the Maltese Government awarded a further exploration licence for blocks between Malta and Sicily.  

14.3. Requirements for financial security

The Petroleum (Production) Regulations (Subsidiary Legislation 156.01, Legal Notice 320 of 2001, as amended; SL 156.01) require an applicant for an exploration licence or a production licence to provide, among other things, information concerning its financial viability.

Regulation 4(2) of SL 156.01 directs the licensing authority, when assessing an applicant’s technical and financial capability for a licence for offshore oil and gas operations to take into due account, among other things, ‘the applicant’s financial capabilities, including any financial security, to cover liabilities potentially deriving from the offshore oil and gas operations in question including liability for potential economic damages where such liability is provided for by law’. Regulation 4(2) does not specify the form of ‘financial security’ that is required.

Regulation 5(1) states that the licensing authority must not grant a licence unless it is satisfied by ‘evidence submitted by the applicant that the applicant has made or will make adequate provision to cover liabilities potentially deriving from [its] offshore oil and gas operations’.

Regulation 5(2) states that ‘Applicants shall provide, in an appropriate manner, evidence of technical and financial capacity and any other relevant information relating to the area covered by the licence and the particular stage of offshore oil and gas operations’.

Regulation 5(3) directs the licensing authority to ensure that an applicant for an exploration licence ‘has sufficient financial resources for the immediate launch and uninterrupted continuation of all measures necessary for effective emergency response and subsequent remediation’.

Regulation 5(4) states that the licensing authority ‘shall facilitate the deployment of sustainable financial instruments and other arrangements to assist applicants for licences in demonstrating their financial capacity pursuant to sub-regulation (2)’.

Regulation 5(5) directs the licensing authority ‘to require the licensee to maintain sufficient capacity to meet its financial obligations resulting from liabilities for offshore oil and gas operations’.

In summary, Regulation 5 of SL 156.01 directs the licensing authority to require an applicant for a licence for offshore oil and gas operations to be financially viable to carry out obligations under the licence and any liabilities, including liability for ‘remediation’ if an accident occurs. It does not specify the type of financial security, if any, that is required.

14.4. Requirement for financial security for ELD liabilities

Regulation 15 of SL 156.02 provides as follows:

Without prejudice to the existing scope of liability relating to the prevention and remediation of environmental damage pursuant to Directive 2004/35/EC, the Licensing Authority shall ensure that the licensee is financially liable for the prevention and

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18 See ‘Malta awards oil exploration licence to Edison International’, Energy-pedia news (22 July 2019); https://www.energy-pedia.com/news/malta/malta-awards-oil-exploration-licence-to-edison-international-177189

remediation of environmental damage as defined in that Directive, caused by offshore oil and gas operations carried out by, or on behalf of, the licensee or the operator.

Regulation 15 very closely tracks article 7 of the Offshore Safety Directive (2013/30/EU). It does not indicate the type of evidence that the licensee must submit to the licensing authority to show that it is ‘financially liable’ for environmental damage under the ELD.

15. **FAILURE OF FINANCIAL SECURITY**

15.1. **Inadequate level of financial security instrument or mechanism to pay claims**
There are no reported incidents/cases in Malta where the operator did not have adequate funding to prevent or remediate contamination.

15.2. **Insolvency of operator leading to failure of financial security instrument or mechanism**
No information was provided of any operators that failed to comply with activities subject to a financial security instrument because they became insolvent.

15.3. **Other**
No information of any other failures of voluntary or mandatory financial security were provided.

16. **FUNDS**

16.1. **Name(s)**
Article 32 of the Environmental Protection Act provides for the establishment of an Environment Fund.

16.2. **Extension of existing fund to cover remedial costs under the ELD**
No existing fund was extended to provide cover for remedial costs under the ELD.

16.3. **Purpose**
Article 32(3) of the Environmental Protection Act states that the Environment Fund has the following purposes, subject to the decision of the Minister in consultation with ERA:

- to finance projects, programmes and schemes related to, and costs intended to achieve and manage, the aims and objectives of the Environmental Protection Act;
- studies and works need for the purpose of the projects, programmes and schemes; and
- ‘to remedy any harm caused to the environment’.

Article 32(3) further provides that ERA may charge any services that it renders in respect of the above to the Environment Fund.

There is therefore the potential that the Environment Fund may be used to prevent or remediate environmental damage if the operator who is responsible for the imminent threat of, or actual, environmental damage cannot be found or does not have the financial viability necessary to pay such costs.

Regulation 37 of SL 549.63 provides for a Waste Management Fund to be used, at the competent authority’s discretion ‘for matters related to waste management including but not
limited to incentives, campaigns, plans, surveys, audits and investigations and as the Minister in consultation with the Authority may prescribe’.

Schedule 11 of SL 549.63 provides that the Fund is funded, in part, by ‘any funds arising out of forfeiture of financial guarantees under the Waste Management (Packaging and Packaging Waste) Regulations,\(^{20}\) the Waste Management (Electrical and Electronic Equipment) Regulations,\(^{21}\) and the Waste Management (Waste Batteries and Accumulators) Regulations’.\(^{22}\)

16.4. **Type**

The Environment Fund provides funding only to ERA to remedy environmental damage, as well as its other functions.

16.5. **Source(s) of funding**

Article 32(4) of the Environmental Protection Act provides for the following sources of funding for the Environment Fund: sums appropriated by Parliament, donations or grants by individuals or institutions, sums received for the purpose of being placed in the fund, and any other sums or monies provided under the Environmental Protection Act or other laws or regulations.

16.6. **Number and amount of claims**

There had not been any claims against the Environment Fund or the Waste Management Fund for the costs of preventing or remediating environmental damage when this report was published.


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