

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON INSURANCE

RULES TO BE ISSUED

UNDER

THE INSURANCE BUSINESS ACT

[MFSA REF: 11-2015]

16th November 2015

Closing Date: 7th December 2015

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 from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

1. Purpose

- 1.1 Further to the consultation document issued by the MFSA on the 30th October 2015 relating to three draft Chapters on Systems of Governance, Solvency II - Pillar I requirements and Financial Statements and Supervisory Reporting Requirements, forming part of Insurance Rules to be issued under the proposed amended Insurance Business Act (“IBA”) (Cap.403), as part of the transposition exercise of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), (the “Solvency II Directive”), the MFSA is issuing for consultation another set of draft Chapters which will also form part of a single Rulebook containing all the Insurance Rules to be issued under the amended IBA.
- 1.2 The IBA and regulations made thereunder provide the framework of Maltese insurance legislation and are supplemented by provisions which are to be found in these Insurance Rules. The purpose of this consultation is to align the current insurance rules with the provisions of the Solvency II Directive. Since the Solvency II Directive is a recast Directive, which consolidates various EU Insurance Directives, most of the provisions found in the current Insurance Rules have already been transposed in Maltese insurance legislation. Consequently, parts or all, of some of the current insurance rules issued under the current IBA were retained, aligned and updated as part of the transposition exercise of the Solvency II Directive. These updated rules will be transposed in the different Chapters of the proposed new single Insurance Rulebook to be issued under the amended IBA.
- 1.3 This consultation document includes:
 - (a) a set of proposed amended draft Chapters which already form part of the current Insurance Rules; and
 - (b) a list of the current Insurance Rules which will not include substantive changes, other than to align the provisions with the terminology of the Solvency II Directive.
- 1.4 Any comments and feedback are to be addressed to the Insurance and Pensions Supervision Unit by email on ipsu@mfsa.com.mt. Interested parties are kindly asked to submit any comments in writing by not later than **Monday 7th December 2015**.

2. Insurance Rules – draft Chapters transposing current Insurance Rules

2.1 Freedom of Establishment and Freedom to provide Services by a European Insurance Undertaking and a European Reinsurance Undertaking

2.1.1 The purpose of this Chapter on Freedom of Establishment and Freedom to provide Services by a European Insurance Undertaking and a European Reinsurance Undertaking is to incorporate, the current Insurance Rule 22 of 2007 - Exercise of Passport Rights by European Insurance Undertakings and European Reinsurance Undertakings – Establishment and Insurance Rule 23 of 2007 - Exercise of Passport Rights by European Insurance Undertakings - Services, and align them with Chapter VIII of Title I of the Solvency II Directive. Moreover, the provisions of this Chapter are being amended to ensure consistency with the provisions of the proposed draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, issued for consultation by the MFSA on the 18th September 2015.

2.1.2 This Chapter applies to a European insurance undertaking and a European reinsurance undertaking seeking to establish a branch in Malta in exercise of a European right and a European insurance undertaking seeking to provide services in Malta in exercise of a European right. It lays down the establishment conditions which a European insurance undertaking and a European reinsurance undertaking seeking to establish a branch in Malta in exercise of a European right is required to submit, as well as the service conditions which a European insurance undertaking seeking to provide services in exercise of a European right is required to comply with. Furthermore, this Chapter identifies the specific information which undertakings carrying on business in specific classes are required to submit to the MFSA, and also determines what changes the MFSA needs to be informed of and the procedure to be followed in order to effect such changes. Finally, it also includes the applicable provisions which a European insurance undertaking is required to comply with.

2.2 Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking

2.2.1 The purpose of this Chapter on Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking is to incorporate the current Insurance Rule 24 of 2007 - Exercise of Passport Rights by Maltese Insurance Undertakings and Maltese Reinsurance Undertakings and Insurance Rule 25 of 2007 - Exercise of Passport Rights by Maltese Insurance Undertakings - Services, as well as to transpose several

provisions of the Solvency Directive and align them with Chapter VIII of Title I of the Solvency II Directive. Moreover, the provisions of this Chapter are also being amended to ensure consistency with the provisions of the proposed draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, referred to in paragraph 2.1.1 of this consultation document.

- 2.2.2 This Chapter applies to a Maltese insurance undertaking and a Maltese reinsurance undertaking seeking to establish a branch in a Member State or EEA State in exercise of a European right and a Maltese insurance undertaking seeking to provide services in a Member State or EEA State in exercise of a European right. It lays down the particulars to be included in the notice of intention which a Maltese insurance undertaking and a Maltese reinsurance undertaking are required to provide to the MFSA in order to establish a branch in a Member State or EEA State in exercise of a European right. Moreover, this Chapter lists the particulars which a Maltese insurance undertaking seeking to provide services in a Member State or EEA State in exercise of a European right is to indicate in the notice of intention to be provided to the MFSA, and also determines what changes the MFSA needs to be informed of by a Maltese insurance undertaking or a Maltese reinsurance undertaking and the procedure to be followed in order to effect such changes.

2.3 *Seperate management of Long Term Business and General Business*

- 2.3.1 The purpose of this Chapter on Seperate management of Long Term Business and General Business is to align the current Insurance Rule 7 of 2007 - Separate Management of Long Term Business and General Business with the provisions of Articles 73 and 74 of the Solvency II Directive and article 9 of the IBA.

2.4 *Provisions applicable to specific classes of general business of insurance*

- 2.4.1 The purpose of this Chapter on provisions applicable to specific classes of general business of insurance is to merge the current Insurance Rule 19 of 2007 - Legal Expenses Insurance and Insurance Rule 20 of 2007 - Assistance Insurance, transposing Section 3 and 4 of Chapter II of Title II, as well as Section 2 of Chapter II of Title II of the Solvency II Directive, in one chapter relating to legal expenses insurance, assistance and community co-insurance operations.
- 2.4.2 This Chapter lays down detailed conditions and requirements specific to classes 17 and 18 of Part I of the Third Schedule of the Act, as well as Community co-insurance operations which, by reason of their nature or their size, call for the participation of several insurers for coverage. It is pertinent to point out that article 6

of Insurance Rule 20 has not been reproduced in this Chapter since it does not feature in the Solvency II Directive.

3.0 Insurance Rules – description of amendments carried out to current rules

3.1 The MFSA proposes not to carry out substantive amendments to the Insurance Rules listed hereunder, other than to align them with the terminology used in the Solvency II Directive:

- (a) Insurance Rule 17 of 2007 - Authorisation to act as approved auditor;
- (b) Insurance Rule 26 of 2007 - Export Credit Insurance
- (c) Insurance Rule 29 of 2007 - Prudential assessment of acquisitions and increase of holding in authorised companies

In so far as Insurance Rule 17 of 2007 is concerned, this Insurance Rule is being amended to reflect the amendments carried out to the current regulations by means of the proposed Insurance Business (Approved Auditor) (Amendment) Regulations, 2015, where the term “partnership of auditors” and “partnership” is being substituted with the term “audit firm” to align the Insurance Rules with the terminology used in the Accountancy Profession Act (Cap. 281). As stated in the consultation paper of the 18th September 2015, it is being proposed to remove articles 9 (circumstances leading to suspension or revocation of an authorisation) and 10 (the manner leading to suspension or revocation of an authorisation) from the current insurance rule and insert these articles in the Insurance Business (Approved Auditor) (Amendment) Regulations, 2015.

4. Rules on Information to Policyholder, Insurance Advertisement and Other Promotional Activities, Insurance Companies carrying on Business of Insurance through the Internet Complaints-Handling by Authorised Companies

4.1 As stated in the consultation paper issued on the 30th November 2015, in so far as Insurance Rule 3 of 2007 - Information to Policyholders, Insurance Rule 14 of 2007 - Insurance Advertisement and Other Promotional Activities, Insurance Rule 28 of 2007 - Insurance Companies carrying on Business of Insurance through the Internet and Insurance Rule 30 of 2007 - Complaints-Handling by Authorised Companies are

concerned, the MFSA has already consulted on various aspects addressed in these four insurance rules, in the first phase of the consultation process on the Conduct of Business RuleBook. Once the Consultation process in relation to these Rules is finalised and the Conduct of Business RuleBook is issued, these Insurance Rules will be carved out and incorporated in the Conduct of Business RuleBook. In the interim, these four Insurance Rules will be included in one Chapter of the new single Insurance Rulebook. In this respect we are only attaching for consultation the proposed amendments to Insurance Rule 3 of 2007, as no substantive amendments have been carried out to the other three insurance rules, other than aligning them with the terminology of the Solvency II Directive. In so far as Insurance Rule 3 of 2007 is concerned, the provisions of this Insurance Rule have been amended to align them with Articles 183 to 186 of the Solvency II Directive.

Communications Unit
Malta Financial Services Authority
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