

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON INSURANCE

RULES TO BE ISSUED

UNDER

THE INSURANCE BUSINESS ACT

[MFSA REF: 09-2015]

30 October 2015

Closing Date: 27 November 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 documents issued by the MFSA on the 18th September 2015 and 18th October 2015 relating to a number of proposed regulations 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 three Chapters which will form part of a single Rulebook containing all the Insurance Rules to be issued under the amended IBA.
- 1.2 The objective of the IBA is to transpose various provisions of the Solvency II Directive. The IBA and regulations made thereunder provide the framework of Maltese insurance legislation and is supplemented by provisions which are to be found in these Insurance Rules. Therefore, the purpose of these Insurance Rules is to transpose some of the provisions of the Solvency II Directive, which have not been included in the IBA and regulations. Other Chapters will be issued shortly. The proposed three Chapters are the following:
- (a) System of Governance;
 - (b) Valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules – (Solvency II-Pillar 1 requirements); and
 - (c) Financial Statements and Supervisory Reporting Requirements.
- 1.3 The Solvency II Directive is a framework Directive under the Lamfalussy process which has been supplemented with delegated acts issued by the European Commission in the form of an EU Regulation entitled the [Commission Delegated Regulation \(EU\) 2015/35 of 10 October 2014](#), Implementing or Regulatory Technical Standards issued in the form of EU Regulations and Guidelines by EIOPA according to Regulation (EU) No. 1094/2012 of the European Parliament and of the Council of the 24 November 2010, establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority).

- 1.4 The MFSA would like to point out that while EU Directives require transposition in the legal framework of the Member State, EU Commission Regulations have direct effect and from the date they come into force are considered to form part of the legal framework of a Member State. Therefore, although the EU Regulations referred to above do not require transposition, undertakings carrying on business of insurance are nonetheless required to comply with the Articles contained therein. For ease of reference, the MFSA is minded to make reference to the relevant Chapters of the EU Regulations issued under the Solvency II Directive when transposing specific topics in the Insurance Rules. The omission of specific reference to any of the Articles of the EU Regulations in any part of these Insurance Rules should not be interpreted to mean that an authorised undertaking need not comply with the said Articles of the EU Regulations. It is important that reference be made directly to the Articles of the said EU Regulations. In so far as the EIOPA Guidelines are concerned, these will be included by means of Annexes to the Insurance Rules.
- 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 Friday **27th November 2015**.

2. Insurance Rules

2.1 Systems of Governance

Article 18I of the IBA transposes some of the provisions found in Sections 1 and 2 of Chapter IV of Title I of the Solvency II Directive. This article provides that authorised insurance and reinsurance undertakings are to have in place an effective system of governance, which provides for sound and prudent management of the business of the undertaking. This article further states that the systems and functions referred to in this article shall be determined by Insurance Rules. This Chapter covers general governance requirements, as well as rules on the the risk management function, the compliance function, the internal audit function and the actuarial function. It also includes rules on the own risk and solvency assessment (“ORSA”) to be carried out by an authorised undertaking and on outsourcing. This Chapter transposes the remaining articles found in Section 2 of Chapter IV of Title I of the Solvency II Directive as well as the EIOPA Guidelines on System of Governance and on the Own Risk and Solvency Assessment. It is proposed to include these Guidelines in an Annex to the Insurance Rules.

2.2 *Rules relating to the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules – (Solvency II-Pillar 1 requirements)*

This Chapter lays down the Insurance Rules to be issued under articles 14, 15, 16, 17, 18A, 18D and 18E of the IBA relating to the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules (Solvency II – Pillar 1 Requirements). This Chapter transposes most of the provisions found in Chapters VI and VIII of Title I of the Solvency II Directive.

An authorised undertaking is to value its assets and liabilities in accordance with Insurance Rules provided for in this Chapter. This Chapter also lays down Insurance Rules for the calculation of the technical provisions, the determination, classification and eligibility of own funds and the differentiation between basic own funds and ancillary own funds classifying them in different tiers. It also contains specific provisions on the calculation of the Solvency Capital Requirement and the Minimum Capital Requirement. The Solvency Capital Requirement shall be calculated either in accordance with the standard formula or using a full or partial internal model as approved by the MFSa. This Chapter lays down the rules for the approval of the use of an internal model. In so far as the Minimum Capital Requirement is concerned, this Chapter lays down the amounts (the absolute floor) to be maintained by authorised undertakings and the frequency of its calculation.

This Chapter provides that an authorised undertaking is required to invest its assets according to the prudent person principle outlining the principles to be followed. It also lays down the provisions in the case of non-compliance with the technical provisions, the Solvency Capital Requirement and the Minimum Capital Requirement and the particulars to be provided in the recovery plan and the finance scheme in the case if non-compliance.

A third country insurance undertaking and a third country reinsurance undertaking authorised under article 7 of the Act shall be required to comply with Insurance Rules laid down in section 9 of this Chapter.

This Chapter will include an Annex transposing the following EIOPA Guidelines:

1. Guidelines on recognition and valuation of assets and liabilities other than technical provisions;
2. Guidelines on contract boundaries;
3. Guidelines on valuation of technical provisions;

4. Guidelines on the implementation of the long-term guarantee measures;
5. Guidelines on ancillary own funds;
6. Guidelines on treatment of related undertakings, including participations;
7. Guidelines on classification of own funds relating to Articles 93 to 95 of the Solvency II Directive;
8. Guidelines on ring-fenced funds;
9. Guidelines on the loss-absorbing capacity of technical provisions and deferred taxes;
10. Guidelines on basis risk;
11. Guidelines on look-through approach;
12. Guidelines on the treatment of market and counterparty risk exposures in the standard formula;
13. Guidelines on undertaking-specific parameters;
14. Guidelines on health catastrophe risk sub-module;
15. Guidelines on application of outwards reinsurance arrangements to the non-life underwriting risk sub-module;
16. Guidelines on the use of internal models;
17. Guidelines on the application of life underwriting risk module;
18. Guidelines on the Extension of the Recovery Period in exceptional adverse situations.

The MFSA would like to point out that it will be taking full account of the Guidelines referred to above in its ongoing supervision of the new Solvency II regulatory framework. Undertakings are expected to comply with all the Guidelines referred to above in accordance with the principle set out in the Solvency II Directive. These Guidelines have been hyperlinked in the draft Chapter for ease of reference.

2.3 *Financial Statements and Supervisory Reporting Requirements*

This Chapter lays down the Insurance Rules to be complied with in terms of articles 4, 18F, 20 and 32 of the Act, which transpose articles 35, 51, 53(4), 54(1) and 55 of the Solvency II Directive. This Chapter contains rules on the drawing up, submission and publication of the audited financial statements of authorised undertakings. Section 5 of

this Chapter lays down the information to be submitted by an authorised undertaking pursuant to article 32 of the Act, which is necessary for the purposes of supervision by the competent authority. Sections 6 to 8 provides for the public disclosure by an authorised undertaking, on an annual basis, of a report on the solvency and financial condition and the information to be included in the said report. This Chapter also transposes the EIOPA Guidelines on reporting and public disclosure which will be included in an Annex to the Insurance Rules.

3. Other Insurance Rules

The MFSA is minded to issue a glossary to the Insurance Rulebook and align the current insurance rules with the provisions of the Solvency II Directive. Therefore, it is the intention of the MFSA to retain and update, parts or all, of the following insurance rules:

Insurance Rule 2 of 2007 - Criteria of Fitness and Properness;

Insurance Rule 3 of 2007 - Information to Policyholder;**

Insurance Rule 6 of 2007 - Schemes of Operations Relating to Business of Insurance;

Insurance Rule 7 of 2007 - Separate Management of Long Term Business and General Business;

Insurance Rule 13 of 2007 - Publicity Given to Notices to Cease to Carry on Business of Insurance;

Insurance Rule 14 of 2007 - Insurance Advertisement and Other Promotional Activities;**

Insurance Rule 15 of 2007 - Appointments and Changes of Director, Controller or Senior Manager;

Insurance Rule 16 of 2007 - Zone of Countries (applicable only to third country insurance and reinsurance undertakings);

Insurance Rule 17 of 2007 - Authorisation to act as approved auditor;

Insurance Rule 19 of 2007 - Legal Expenses Insurance;

Insurance Rule 20 of 2007 - Assistance Insurance;

Insurance Rule 22 of 2007 - Exercise of Passport Rights by European Insurance Undertakings and European Reinsurance Undertakings – Establishment;

Insurance Rule 23 of 2007 - Exercise of Passport Rights by European Insurance Undertakings – Services;

Insurance Rule 24 of 2007 - Exercise of Passport Rights by Maltese Insurance Undertakings and Maltese Reinsurance Undertakings;

Insurance Rule 25 of 2007 - Exercise of Passport Rights by Maltese Insurance Undertakings – Services;

Insurance Rule 26 of 2007 - Export Credit Insurance;

Insurance Rule 28 of 2007 - Insurance Companies carrying on Business of Insurance through the Internet;**

Insurance Rule 29 of 2007 - Prudential assessment of acquisitions and increase of holding in authorised companies;

Insurance Rule 30 of 2007 - Complaints-Handling by Authorised Companies;**

Insurance Rule 32 of 2007 - Reinsurance Special Purpose Vehicles;

Insurance Rule 33 of 2007 - Phasing-in measures for Solvency II Implementation.

These Rules will be transposed in the different Chapters in the Insurance Rulebook which will be issued for consultation shortly. The Insurance Rules which do not feature in this list will not be reproduced in the new single Insurance RuleBook.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 09-2015
30th October 2015

** IR3, IR14, IR28, IR30: 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.