

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Note for Information

Outsourcing of operational functions by authorised Insurance and Reinsurance Undertakings

On the 18 January 2012, the Malta Financial Services Authority (MFSA) published a [guidance paper](#) on the System of Governance requirements under the Solvency II regime. An important element of the system of governance is the monitoring and control of any outsourcing of a critical or important/key operational activity. This was addressed in section 13 of the said guidance paper and it is therefore recommended that the guidance paper be reviewed in conjunction with this Note for Information.

[Article 49 of the Solvency II Directive](#) outlines the obligations of insurance and reinsurance undertakings when critical or important operational functions are outsourced. Such outsourcing arrangements also include the granting of underwriting or claims settlement authority to an Insurance Intermediary through an agency agreement or an Underwriting Authority Agreement or a Claims Handling Agreement. Any such outsourcing must be supported by a written agreement between the insurance or reinsurance undertaking and the service provider. This agreement should be authorised by the administrative, management or supervisory body. This is the Board of Directors in a one tier system, as is the case in Malta.

This Note for Information outlines the foreseen requirements in relation to the written agreements supporting such outsourcing arrangements and is intended to assist undertakings to align any such agreements with the requirements as part of the preparations for Solvency II.

Any outsourcing agreement which relates to a critical or important/key operational activity must be notified to and approved by the MFSA prior to the outsourcing.

The written agreement should in particular clearly state the following requirements:

1. the respective rights and duties and responsibilities of the insurance or reinsurance undertaking and the service provider involved;
2. the service provider's commitment to comply with all applicable laws, regulatory requirements and guidelines as well as policies approved by the insurance or reinsurance undertaking and to cooperate with the MFSA with regard to the outsourced function or activity;

3. the service provider's obligation to disclose any development which may have a material impact on its ability to carry out the outsourced functions and activities effectively and in compliance with applicable laws and regulatory requirements;
4. that the service provider can only terminate the contract with a notice period and that the notice period is sufficiently long to enable the insurance or reinsurance undertaking to find an alternative solution;
5. that the insurance or reinsurance undertaking is able to terminate the outsourcing arrangement, where necessary, without detriment to the continuity and quality of its provision of services to policyholders;
6. that the insurance or reinsurance undertaking reserves the right to be informed about the outsourced functions and activities and their performance by the services provider as well as a right to issue general guidelines and individual instructions at the address of the service provider, as to what has to be taken into account when performing the outsourced functions or activities;
7. that the service provider is subject to confidentiality obligations and shall protect any confidential information relating to the insurance or reinsurance undertaking and its policyholders, beneficiaries, employees, contracting parties and all other persons;
8. that the insurance or reinsurance undertaking, its external auditor and the MFSA have effective access to all information relating to the outsourced functions and activities including carrying out on-site inspections at the business premises of the service provider;
9. that, where appropriate and necessary for the purposes of supervision, the MFSA may address questions directly to the service provider to which the service provider shall reply;
10. the terms and conditions, where applicable, on which the service provider may sub-outsource any of the outsourced functions and activities;
11. that the service provider's duties and responsibilities under its agreement with the insurance or reinsurance undertaking shall remain unaffected by any sub-outsourcing taking place according to point 10. The MFSA may require a copy of the sub-outsourcing agreement and / or information about the sub-outsourced activities.

The Insurance / Reinsurance undertaking will also be required to notify the MFSA of the name of the individual within the Third Party Service Provider who is responsible for the outsourced activity. *This may be shown in the agreement on an addendum/annex to facilitate any changes that may occur during the term of the agreement.*

Where the appointed service provider is a legal entity within the same group, a written outsourcing agreement is still required but may take the form of a service level agreement.

It should be noted that although drafting of the Level 2 Implementing Measures and Level 3 Guidelines and Recommendations together with Technical Standards on the System of Governance are at an advanced stage, they are still being developed by EIOPA at the time of publication of this Note for Information and therefore changes may be effected.

For any queries or feedback, you may contact the Malta Financial Services Authority – Insurance and Pensions Supervision Unit on e-mail ipsu@mfsa.com.mt .

Links:

“Guidance Paper – The System of Governance”

http://www.mfsa.com.mt/Files/Announcements/Circulars/Insurance%20and%20Pensions/Solvency%20II/18_01_2012%20Guidance_paper_to_market_fv.pdf

“Guidance Paper on Risk Management”.

http://www.mfsa.com.mt/Files/Announcements/Circulars/Insurance%20and%20Pensions/Solvency%20II/Guidance%20Paper%20To%20Market_Risk%20Management%20August%202012.pdf

“Article 49 –Solvency II Directive”

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:335:FULL:EN:PDF>

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