

## Annex II – Audit Committee

### Audit Committee

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This document includes information regarding the audit committee

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#### General requirements

*(Paragraph 6.11.1 of Chapter 6)*

- 1.1 Subject to paragraphs 1.5 to 1.7, an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking, whose head office is in Malta (“an authorised undertaking”), shall establish an audit committee which meets the criteria set out in paragraph 1.2 and which is responsible for performing the functions set out in paragraph 1.4.
- 1.2 The audit committee shall be established in accordance with the following criteria:
  - (a) the audit committee shall be a committee of the Board of Directors composed entirely of non-executive directors and shall have at least three members;
  - (b) at least one member of the audit committee shall have competence in accounting and/or auditing;
  - (c) the members of the audit committee as a whole shall possess the necessary competence, knowledge and experience in the business of insurance carried on by the authorised undertaking concerned;
  - (d) a majority of the members of the audit committee shall be independent of the authorised undertaking; and
  - (e) the chairman of the audit committee shall be:

- (i) independent of the authorised undertaking; and
  - (ii) appointed by:
    - (aa) the members of the audit committee; or
    - (bb) the Board of Directors.
- 1.3 In determining whether a member or Chairman of the audit committee may be regarded as independent of the authorised undertaking, as provided in paragraphs 1.2 (d) and (e), the Board of Directors of the authorised undertaking, in its assessment of independence, shall be guided by the definition of “independent director” in the [MFSA Corporate Governance Code](#) published on the 5th of August 2022.
- 1.4 Without prejudice to the responsibility of the Board of Directors, the audit committee shall, *inter alia*, perform the following functions:
  - (a) inform the Board of Directors of the authorised undertaking of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process;
  - (b) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;
  - (c) monitor the effectiveness of the authorised undertaking’s internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of such undertaking, without breaching its independence;
  - (d) monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the Accountancy Board established by article 6 of the Accountancy Profession Act (Cap. 281), pursuant to Article 26(6) of Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, (“Statutory Audit Regulation”);
  - (e) review the additional report prepared by the approved auditor submitted to the audit committee in terms of Article 11 of the Statutory Audit Regulation;
  - (f) review and monitor the independence of the approved auditor in accordance with Articles 22, 22a, 22b, 24a and 24b of Directive 2006/43/EC of the European

Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC ("Statutory Audit Directive") and Article 6 of the Statutory Audit Regulation, and in particular the suitability of the provision of non-audit services to the authorised undertaking in accordance with Article 5 of the said Regulation;

(g) be responsible for the procedure for the selection of the approved auditor and recommends the approved auditor to be appointed in accordance with Article 16 of the Statutory Audit Regulation.

- 1.5 Notwithstanding paragraphs 1.1 and 1.2, in the case of an authorised undertaking which is considered to be a "*small and medium-sized enterprise*" within the meaning of Article 2(1)(f) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, the functions assigned to the audit committee may be performed by the Board of Directors as a whole, provided that where the Chairman of the Board of Directors is an executive member, such person shall not act as Chairman whilst such Board is performing the functions of the audit committee. In such a case, such Board of Directors shall include, as a minimum, an independent non-executive director and a non-executive director. One of the independent<sup>1</sup> non-executive directors is to be the Chairman of the Board of Directors when such Board acts as the audit committee. Where the authorised undertaking is a captive insurance undertaking or a captive reinsurance undertaking, as defined in the Insurance Business Act and the Board is performing the functions of the audit committee, the Chairman of the audit committee may also be a non-executive director.
- 1.6 Notwithstanding paragraphs 1.1 and 1.2, the requirement to establish an audit committee shall not apply to an authorised undertaking which is a subsidiary undertaking within the meaning of Article 2(10) of Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, if it is the subsidiary undertaking of:

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<sup>1</sup> As defined in the MFSA Corporate Governance Code published on the 5<sup>th</sup> of August 2022.

(a) a parent undertaking whose head office is in a Member State or EEA State, and such parent undertaking complies at group level with the requirements set out in Article 39 of the Statutory Audit Directive and Articles 11(1), 11(2) and 16(5) of the Statutory Audit Regulation; or

(b) a parent undertaking whose head office is in a third country, and such parent undertaking is subject to equivalent obligations, at group level, to those set out in the Articles referred to in sub-paragraph (a) of this paragraph.

- 1.7 Where an authorised undertaking is listed on a regulated market, it shall comply with requirements of the audit committee found in the Listing Rules issued under the Financial Markets Act (Cap. 345).

#### *Appointment of approved auditors*

- 1.8 In so far as the requirements relating to the audit committee are concerned, an authorised undertaking shall also refer to and comply with the relevant provisions of the Statutory Audit Regulation, in particular with Title III (Articles 16 to 19) of the said Regulation, relating to the appointment of approved auditor .
- 1.9 The transitional provisions set out in Article 41 of the Statutory Audit Regulation shall apply in relation to Articles 16(3) and 17 of the said Regulation, as applicable.