

# KNOWLEDGE AND ABILITY

## CHAPTER 6

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# REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	12 July 2018	Issued
2.00	31 July 2018	Refer to <a href="#">Circular with regards to the Member of the Board of Directors and the person within the Management Structure of the Undertaking responsible for the Distribution Activities of an Insurance Undertaking</a>
3.00	28 February 2024	Refer to <a href="#">Circular on the Amendments to Insurance Rules and Insurance Distribution Rules</a>

## 6.1 Introduction

- 6.1.1 This Chapter on knowledge and ability is made pursuant to, and for the purposes of, articles 4, 8(1)(c), 10(1)(iiiA), 10(1)(b)(ii)(bb), 35(1)(b), 43C(1)(b) and 43M(1) of the Act.
- 6.1.2 Part A indicates the criteria which a person desirous of applying for registration in the Agents Register, the Managers Register or Brokers Register, a tied insurance intermediary and an ancillary insurance intermediary are required to satisfy for the purposes of registration and enrolment, as applicable.
- 6.1.3 Part B lists the knowledge and ability requirements, which are required to be fulfilled by the persons indicated in paragraph 6.5.1 of this Chapter. Such persons are required to possess appropriate knowledge and ability depending on the products to be distributed and the proposed role or activity to be carried out in order to complete their tasks and perform their duties adequately. Part B also lists the knowledge and ability requirements in relation to general business, long term business and insurance-based investment products. The said Part B also requires that the internal policies and appropriate internal procedures are updated to ensure compliance with the requirements laid down in this Chapter, as specified in Section 6.12 of this Chapter.
- 6.1.4 This Chapter does not apply to a captive insurance undertaking and a captive reinsurance undertaking as defined under article 2(1) of the Insurance Business Act (Cap. 403)

## PART A- Criteria for Registration and Enrolment

### 6.2 Application

- 6.2.1 Part A of this Chapter applies to:
- (a) a person desirous of applying for registration in the Agents Register, the Managers Register or Brokers Register;
  - (b) a tied insurance intermediary to be appointed by an authorised undertaking to act on its behalf, and where the tied insurance intermediary is not an individual, the individual identified in terms of article 37 of the Act;
  - (c) an ancillary insurance intermediary to be appointed by an authorised undertaking or an enrolled insurance broker, to act on its behalf, and where the ancillary insurance intermediary is not an individual, the individual identified in terms of article 43E of the Act.

### **6.3 Intermediaries: Persons registered in the Agents Register, the Managers Register or the Brokers Register**

6.3.1 Prior to the registration of a person identified in paragraph 6.2.1(a), the competent authority shall be satisfied that such person:

- (a) is a fellow or associate of the Chartered Insurance Institute of the United Kingdom or holds an insurance qualification of a similar standing of an institute of repute recognised for such purpose by the competent authority and has adequate practical experience in insurance distribution activities and, or reinsurance distribution activities, as the case may be; or
- (b) has carried out, locally or overseas, insurance distribution activities and, or reinsurance distribution activities for a period of not less than seven years during the last ten years; or
- (c) holds a qualification recognised by the competent authority for the purposes of this paragraph and has carried out insurance distribution activities and, or reinsurance distribution activities for a period of not less than five years during the last seven years; or
- (d) has been employed in a managerial capacity by a company carrying out insurance distribution activities and, or reinsurance distribution activities, or by an undertaking carrying on business of insurance for a period of not less than five years during the last ten years; or
- (e) holds a qualification recognised by the competent authority for the purposes of this paragraph and has been employed in a managerial capacity by a company carrying out insurance distribution activities and, or reinsurance distribution activities, or by an undertaking carrying on business of insurance for a period of not less than three years during the last seven years; or
- (f) has knowledge and practical experience of insurance or reinsurance business for a period of not less than seven years during the last ten years.

6.3.2 Where a person desirous of applying for registration in the Agents Register, the Managers Register or Brokers Register falls under any of the sub-paragraphs (b) to (f) of paragraph 6.3.1 of this Chapter, and the person has carried out insurance distribution activities and, or reinsurance distribution activities, for a period longer than the period specified in the said sub-paragraph, if such person has carried out insurance distribution activities and, or reinsurance distribution activities for a period of not less than one continuous year immediately before the date on which the application has been

submitted, that applicant shall be deemed to satisfy the qualifications (requirements) specified in the sub-paragraph to which the application relates.

- 6.3.3 A person shall not be entitled to be registered in the Agents Register, Managers Register or the Brokers Register unless the applicant is a fit and proper person within the meaning of Chapter 3 in Part A of the Insurance Distribution Rules, and has the knowledge and ability requirements referred to in Part B of this Chapter.
- 6.3.4 Where an insurance manager holds an appointment from a company enrolled in the Brokers List, the individual who effectively manages any part of the business of the insurance manager shall be registered in the Brokers Register under article 13 of the Act.

#### **Criteria for persons who effectively manage the affairs of intermediaries**

- 6.3.5 In addition to the criteria referred to in paragraph 6.3.1 of this Chapter, the individual who effectively manages the affairs of an insurance agent, insurance manager or insurance broker shall be entitled to be registered in the Agents Register, Managers Register or the Brokers Register if the individual is a person who is a resident in Malta

#### **Activity in a managerial capacity**

- 6.3.6 A person is regarded as having pursued an activity in a managerial capacity within the meaning of paragraph 6.3.1 of this Chapter where the person's duties in an undertaking carrying on business of insurance or in an intermediary carrying out insurance distribution activities and, or reinsurance distribution activities have involved the management of persons who effectively carried on the business of insurance or the insurance distribution activities and, or reinsurance distribution activities, or the supervision of their work.
- 6.3.7 The activities and duties referred to in paragraph 6.3.6 of this Chapter must have entailed responsibility in respect of the acquisition, administration and performance of contracts of insurance or reinsurance, as applicable.
- 6.3.8 For the purposes of section 6.3 of this Chapter, "insurance distribution activities" means activities carried out by an insurance agent, insurance manager or insurance broker enrolled under the Act.

#### **6.4 Tied Insurance Intermediaries and Ancillary Insurance Intermediaries**

- 6.4.1 Prior to the enrolment of a person identified under paragraph 6.2.1(b) or (c) of this Chapter the competent authority shall be satisfied that such a person has successfully completed a course in accordance with the Annex to Chapter 2 in Part A of the Insurance Distribution Rules:

(a) for tied insurance intermediaries organised accordingly by:

- (i) a local or foreign institution;
- (ii) an authorised insurance undertaking; or
- (iii) an insurance agent, unless otherwise mandated by an authorised insurance undertaking;

(b) for ancillary insurance intermediaries organised accordingly by:

- (i) a local or foreign institution;
- (ii) an authorised insurance undertaking;
- (iii) an insurance agent, unless otherwise mandated by an authorised insurance undertaking; or

(c) an enrolled insurance broker.

6.4.2 An authorised undertaking seeking to enrol a tied insurance intermediary shall, together with the application for enrolment in the Tied Insurance Intermediaries List, be required to provide documentary evidence to the competent authority that such tied insurance intermediary has successfully completed the course referred to in paragraph 6.4.1(a) of this Chapter.

6.4.3 An application for a person to be enrolled in the Tied Insurance Intermediaries List in additional or different classes of general or long term business, as the case may be, is to be accompanied by documentary evidence showing that the person has received training in the classes of business of insurance in respect of which the application is being made.

6.4.4 The requirements of paragraph 6.4.1 of this Chapter shall apply to the individual satisfying the qualifications of Chapter 2 in Part A of the Insurance Distribution Rules.

6.4.5 An authorised undertaking or an enrolled insurance broker seeking to enrol an ancillary insurance intermediary shall, together with the application for enrolment in the Ancillary Insurance Intermediaries List, be required to provide documentary evidence to the competent authority that such ancillary insurance intermediary has successfully completed the course referred to in paragraph 6.4.1(b) of this Chapter.



## PART B – Knowledge and Ability Requirements

### 6.5 Application

#### 6.5.1 Part B of this Chapter applies to:

- (a) a person/s within the management structure of an authorised insurance undertaking carrying out insurance distribution activities or an authorised reinsurance undertaking carrying out reinsurance distribution activities who is designated to be responsible for the distribution in respect of insurance and reinsurance products, and those persons managing the insurance distribution activities and, or reinsurance distribution activities to be carried out;
- (b) a person/s desirous of applying for registration in the Agents Register, Managers Register or Brokers Register in order to be responsible for the carrying out of insurance distribution activities and, or reinsurance distribution activities, as specified in article 11(1) of the Act;

(the “relevant person”)

- (c) all relevant employees:

- (i) directly involved in the carrying out of distribution in respect of insurance or reinsurance products of an authorised insurance undertaking carrying out insurance distribution activities or of an authorised reinsurance undertaking carrying out reinsurance distribution activities;
- (ii) directly involved in the carrying out of the insurance distribution activities and, or reinsurance distribution activities of a person enrolled in the Agents List, Managers List or Brokers List;

(the “relevant employee”);

- (d) a tied insurance intermediary desirous of applying for registration in the Tied Insurance Intermediary Company Register of any authorised undertaking to act on its behalf, and where the tied insurance intermediary is not an individual, the individual identified in terms of article 37 of the Act;
- (e) an ancillary insurance intermediary desirous of applying for registration in the Ancillary Insurance Intermediary Company Register of any authorised undertaking, or of an enrolled insurance broker, to act on its behalf, and where the ancillary

insurance intermediary is not an individual, the individual identified in terms of article 43E of the Act.

- 6.5.2 Part B of this Chapter shall apply to relevant persons and relevant employees involved in the sales and the underwriting process. Part B shall not apply to relevant persons and relevant employees who are involved solely in the processing of claims.

## **6.6 General Requirements for carrying out insurance distribution activities and reinsurance distribution activities**

- 6.6.1 A relevant person, a relevant employee, a tied insurance intermediary and an ancillary insurance intermediary shall possess the knowledge and ability requirements necessary in order to complete his tasks and perform his duties adequately.
- 6.6.2 An authorised insurance undertaking or an authorised reinsurance undertaking shall, prior to the notification of a person within the management structure of an authorised insurance undertaking carrying out insurance distribution activities or an authorised reinsurance undertaking carrying out reinsurance distribution activities, who is designated to be responsible for the distribution in respect of insurance and reinsurance products, who is referred to in paragraph 6.5.1(a) of this Chapter, forward to the competent authority all the documentary evidence necessary, including the submission of a Personal Questionnaire as set out in Annex I to Chapter 2 of the Insurance Rules issued under the Insurance Business Act (Cap. 403), in order for the competent authority to ensure that such relevant person possesses the requisite knowledge and ability requirements.
- 6.6.3 A person enrolled under article 13 of the Act, shall prior to the appointment of the relevant person specified in paragraph 6.5.1 (b) of this Chapter, forward to the competent authority all the information necessary including the submission of a Personal Questionnaire as set out in the Annex to Chapter 3 in Part A of the Insurance Distribution Rules, in order for the competent authority to ensure that such relevant person possesses the requisite knowledge and ability requirements.
- 6.6.4 A relevant person shall be responsible for the compliance by the relevant employees with the knowledge and ability requirements laid down in this Chapter.
- 6.6.5 Before a relevant employee commences to carry out insurance distribution activities and, or reinsurance distribution activities, a relevant person shall assess the knowledge and ability requirements indicated in Sections 6.8, 6.9 and 6.10 of this Chapter and identify which requirements such relevant employee ought to possess in order to complete its tasks and perform its duties adequately.

- 6.6.6 The knowledge and ability requirements applicable to the relevant employee shall be assessed taking into account the nature of the products distributed and the role or activity the relevant employee carries out.
- 6.6.7 A relevant person shall ensure that the relevant employee who carries out insurance and, or reinsurance distribution activities shall:
- (a) be of good repute;
  - (b) have a clean criminal record;
  - (c) have not been previously declared bankrupt, unless such employee has been rehabilitated.

## **6.7 Knowledge and Ability Requirement**

- 6.7.1 For the purposes of this Chapter, “knowledge” refers to theoretical knowledge in the widest sense, whilst “ability” consists of skills and competence with respect to the capacity of the person’s particular role. Only a combination of both knowledge and ability will enable the relevant person and the relevant employee to understand and comprehend the demands and needs of a client.
- 6.7.2 A relevant person and a relevant employee shall demonstrate compliance with the following knowledge and ability criteria:
- (a) Legal Aspects;
  - (b) The Insurance Sector: market, market participants and products;
  - (c) Ethics and Professional Conduct;
  - (d) Assessment of client needs;
  - (e) Information disclosure;
  - (f) Financial competency.
- 6.7.3 The knowledge and ability requirements indicated in Sections 6.8, 6.9 and 6.10 of this Chapter which a relevant person and a relevant employee is required to fulfil vary depending on whether such person is carrying out the oversight of the insurance distribution activities and, or reinsurance distribution activities, or is carrying out insurance distribution activities and, or reinsurance distribution activities in classes of

general business, in the class or classes of long term business, or both, or in relation to insurance based investment products.

## **6.8 Knowledge and Ability Requirement of Relevant Persons and Relevant Employees carrying on General Business**

### **Legal Aspects**

#### **Applicable laws**

- 6.8.1 A relevant person and a relevant employee shall possess the minimum necessary knowledge of the applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law and relevant social and employment law. As a minimum, this shall include the following:
- (a) knowledge and ability to comply with any applicable EU Regulations, EU Directives, EU Decisions, EU recommendations and opinions and any other Implementing Technical Standards or Regulatory Technical Standards affecting the insurance distribution activities and, or reinsurance distribution activities which the relevant person and the relevant employee carry out including but not limited to;
    - (i) any delegated acts issued in accordance with the Insurance Distribution Directive, in relation to product oversight and governance requirements, conflicts of interest, and information to customers; and
    - (ii) any Implementing Technical Standards issued pursuant to the Insurance Distribution Directive regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of information;
  - (b) knowledge and ability to comply with the Insurance Distribution Act (Cap.487), regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder;
  - (c) knowledge and ability to comply with any other applicable legislation, regulations and rules affecting the insurance distribution activities and, or reinsurance distribution activities which the relevant person and the relevant employee carry out, including but not limited to knowledge of the limited compensation under the Protection and Compensation Fund, the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07), and the main aspects of the General Data Protection Regulation (Regulation (EU) 2016/679);

- (d) knowledge and ability to deliver specific information with regards to the contract in accordance with the disclosure requirements of the Conduct of Business Rules;
- (e) knowledge of the function of the Office of the Arbiter of Financial Services;
- (f) the applicable duty payable on contracts of insurance as set out in the Duty on Documents and Transfers Act (Cap. 364), as applicable.

### **Claims Handling**

6.8.2 A relevant person and a relevant employee shall possess the minimum necessary knowledge of claims handling. As a minimum, this shall include knowledge of the following:

- (a) the necessary procedures and documentation required to pursue a claim and how to advise a client of such procedures;
- (b) how to explain to the client the requirements and, or obligations on both the client and the insurance undertaking throughout the claims settlement process;
- (c) the main exclusions where a claim cannot be entertained and where applicable, how to recognise and establish the extent to which the claim falls (or does not fall) within the scope of an insurance policy, including any subrogation rights or co-insurance arrangements and explain why (or why not) to a client;
- (d) explaining the circumstances when other parties are involved in the claims process and their role and responsibility (lawyers, loss assessors, loss adjusters, appraisers, surveyors and other experts);
- (e) the amount of excess applicable.

### **The Insurance Sector: knowledge on the insurance market, market participants and products**

#### **Insurance Market**

6.8.3 A relevant person and a relevant employee shall possess the minimum necessary knowledge of the insurance market. As a minimum this shall include the following:

- (a) knowledge of the general principles of insurance;

- (b) knowledge of their role and respective duties and their responsibilities towards the client as appropriate and the ability to explain the structure of the insurance market and how it operates.

### **Knowledge on products**

6.8.4 A relevant person and a relevant employee shall possess the minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies. As a minimum, this shall include the following:

- (a) knowledge on insurance cover, its characteristics, including the risks insured, and the types of insurance products;
- (b) the ability to place the product effectively in the market and differentiate it from the other products, and knowledge of the target market, where applicable;
- (c) knowledge on the insured sum;
- (d) knowledge on the limits of indemnity and benefits;
- (f) knowledge on any applicable direct and indirect fees;
- (g) knowledge on the optional extensions of cover and ancillary risks;
- (h) where applicable, knowledge on the geographical scope;
- (i) knowledge on the details of the policy period;
- (j) knowledge of the excluded risks;
- (k) knowledge on the Insurance Product Information Document (IPID);
- (l) knowledge on the relevant documentation to be submitted in relation to the policy at underwriting stage.

### **Ethics and professional conduct**

#### **Business ethics standards**

6.8.5 A relevant person and a relevant employee shall possess the minimum necessary knowledge of business ethics standards. As a minimum, this shall include the following:

- (a) knowledge of the Conduct of Business Rules;
- (b) knowledge on how to protect the client and all parties to a transaction against fraud, misrepresentation or unethical practices;
- (c) the ability to consider the best interests of the client in relevant circumstances connected with concluding and executing the contract of insurance;
- (d) the ability to behave at all times in a responsible manner (e.g. fair, non-aggressive and non-misleading behaviour);
- (e) the ability to manage conflicts of interest that might arise in the carrying out of insurance distribution activities and, or reinsurance distribution activities.

### **Complaints handling**

6.8.6 A relevant person and a relevant employee shall possess the minimum necessary knowledge of complaints handling. As a minimum, this knowledge shall include:

- (a) complaints handling procedures including duties such as that to inform the client of the arrangements for handling complaints concerning contracts including, the possibility of referring the matter to the Office of the Arbiter for Financial Services, without prejudice to the right of the client to take legal proceedings;
- (b) relevant provisions of the Conduct of Business Rules.

### **Assessing client needs**

6.8.7 A relevant person and a relevant employee shall possess the minimum necessary knowledge of assessing client needs. As a minimum, this shall include the following:

- (a) knowledge on how to fit an insurance product with the demands and needs of an individual client, and the ability to ask the appropriate questions to the client so as to better understand and identify the client's profile;
- (b) where applicable, the ability to compare selected insurance products, conditions, premiums and risks and is able to select the best insurance products and conditions which are suited to the client profile;
- (c) the ability to update advice when necessary and to comply with new legislation or any relevant changes in the personal situation of the client;

- (d) the ability to exercise appropriate judgement in deciding whether to sell a product to a client.

### **Information Disclosure**

- 6.8.8 A relevant person and a relevant employee shall possess the minimum necessary knowledge in relation to information disclosure. As a minimum, this shall include the following:
- (a) knowledge and ability to communicate effectively the general and particular terms and conditions of the contract (including insurance cover and exclusions, claims procedures, payment delays, withdrawal rights, cancellation, personal situation modifications, etc);
  - (b) knowledge and ability to communicate effectively to the intended audience and to use clear and comprehensible language, avoiding jargon and technical terms where necessary;
  - (c) knowledge and ability to answer simple and complicated questions from actual or potential clients;
  - (d) relevant provisions in relation to the disclosure requirements of the Conduct of Business Rules.

### **Financial competency**

- 6.8.9 A relevant person and a relevant employee shall possess the minimum necessary financial competency. This shall include the appropriate skills and knowledge to demonstrate a level of financial knowledge which is relevant to the role being performed by the relevant person and the relevant employee.

## **6.9 Knowledge and Ability Requirement of Relevant Persons and Relevant Employees carrying on long term business**

### **Legal Aspects**

#### **Applicable laws**

- 6.9.1 A relevant person and a relevant employee shall possess knowledge on the applicable laws governing the distribution of insurance products, such as consumer protection law and Anti-Money Laundering law. As a minimum, this shall include the following:



- (a) knowledge and ability to comply with any applicable EU Regulations, EU Directives, EU Decisions, EU recommendations and opinions and any other Implementing Technical Standards or Regulatory Technical Standards affecting the insurance distribution activities and, or reinsurance distribution activities in which the relevant person and a relevant employee carry out, including but not limited to:
  - (i) any delegated acts, issued in accordance with the Insurance Distribution Directive, in relation to product oversight and governance requirement, conflicts of interest, and information to customers; and
  - (ii) any Implementing Technical Standards issued pursuant to the Insurance Distribution Directive regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of information;
- (b) knowledge and ability to comply with the Insurance Distribution Act (Cap. 487), regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder;
- (c) knowledge and ability to comply with any other applicable legislation, regulations and rules affecting the insurance distribution activities and, or the reinsurance distribution activities the relevant person and the relevant employee carry out, including but not limited to knowledge of the limited compensation under the Protection and Compensation Fund according to the area the relevant person and the relevant employee carry out, the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07), and the Malta Financial Services Authority Act (Cap. 330), the main aspects of the General Data Protection Regulation (Regulation (EU) 2016/679), and the Prevention of Money Laundering Act (Cap. 373) and any regulations or rules issued thereunder and FIAU Implementing Procedures;
- (d) knowledge and ability to deliver specific information with regards to the contract in accordance with the disclosure requirements of the Conduct of Business Rules;
- (e) knowledge of the function of the Office of the Arbiter of Financial Services;
- (f) the applicable duty payable on contracts of insurance as set out in the Duty on Documents and Transfers Act (Cap. 364), and information on the tax regime or the other relevant rules affecting the contract;
- (g) knowledge of claims handling and complaints handling procedures and the relevant Conduct of Business Rules;

- (h) knowledge of the relevant social and employment law (including the organisation and benefits guaranteed by the pension system in Malta).

### **The Insurance Sector: knowledge on the insurance market, market participants and products**

#### **Insurance and other relevant financial services market**

- 6.9.2 A relevant person and a relevant employee shall possess the minimum necessary knowledge of the insurance and other relevant financial services market. As a minimum, this shall include the following:
- (a) knowledge of the general principles of insurance;
  - (b) knowledge of their role and respective duties and their responsibilities towards the client as appropriate, and the ability to explain the structure of the insurance market and how it operates.

#### **Knowledge on products**

- 6.9.3 A relevant person and a relevant employee shall possess the minimum necessary knowledge of policies, including terms, conditions, the guaranteed benefits and where applicable, ancillary risks. As a minimum, this shall include the following:
- (a) information on different types of life policies, their characteristics and risks, available and how the benefits are payable and the types of insurance products, including information on the documents and the required and medical tests which are to be undertaken before issuing a policy;
  - (b) the ability to place the product effectively in the market and differentiate it from the other products and knowledge of the target market, where applicable;
  - (c) knowledge on the sum assured;
  - (d) knowledge on any applicable direct and indirect fees;
  - (e) knowledge on the optional extension of cover and ancillary risks;
  - (f) knowledge on the details of the policy period;
  - (g) a good understanding of contractual guarantees and exclusions and the limitations of the policies distributed;

- (h) knowledge of surrender and paid-up values and the extent to which such values are guaranteed.
- (i) general information on the tax arrangements applicable to the type of policy.

## **Ethics and professional conduct**

### **Business ethics standards**

- 6.9.4 A relevant person and a relevant employee shall possess the minimum necessary knowledge of business ethics standards. As a minimum, this shall include the following:
- (a) knowledge on the Conduct of Business Rules;
  - (b) knowledge on how to protect the client and all parties to a transaction against fraud, misrepresentation or unethical practices;
  - (c) the ability to consider the best interests of the client in relevant circumstances connected with concluding and executing the contract of insurance;
  - (d) the ability to behave at all times in a responsible manner (e.g. fair, non-aggressive and non-misleading behaviour).

### **Conflicts of interest management**

- 6.9.5 A relevant person and a relevant employee shall possess knowledge on conflicts of interest management. As a minimum, this shall include the following:
- (a) knowledge on the relevant provisions of the Conduct of Business Rules in particular knowledge of the provisions of Chapter 3 on conflicts of interest, together with the applicable provisions in relation to disclosures of conflicts of interest contained in Chapter 1 on disclosures, of the said Conduct of Business Rules;
  - (b) the ability to identify potential conflicts of interest which could arise and which might harm the interests of its clients;
  - (c) the ability to describe how any conflicts of interest that might arise will be managed.

### **Complaints handling**

6.9.6 A relevant person and a relevant employee shall possess the minimum necessary knowledge of complaints handling. As a minimum, this shall include knowledge of the following:

- (a) complaints handling procedures including duties such as that to inform the client of the arrangements for handling complaints concerning contracts including, the possibility of referring the matter to the Office of the Arbiter for Financial Services, without prejudice to the right of the client to take legal proceedings;
- (b) the relevant provisions of the Conduct of Business Rules.

### **Assessing the client needs**

6.9.7 A relevant person and a relevant employee shall possess the minimum necessary knowledge of assessing client needs. As a minimum, this shall include the following:

- (a) knowledge on how to fit a long term insurance product with the demands and needs of an individual client and the ability to ask the appropriate questions to the client so as to better understand and identify the client's profile and financial capacity and the client's long-term objectives, in due time;
- (b) the ability to provide adequate guidance to consumers regarding the beneficiary clause;
- (c) the ability to update advice when necessary and to comply with new legislation or relevant changes in the personal situation of the client;
- (d) the ability to exercise appropriate judgement in deciding whether to sell a product to a client.

### **Information Disclosure**

6.9.8 A relevant person and a relevant employee shall possess the minimum necessary knowledge in relation to information disclosure. As a minimum, this shall include the following:

- (a) knowledge and ability to communicate effectively the general and particular terms and conditions of the contract (including contractual guarantees and limitation of guarantees/exclusions, claims procedures, payment delays, withdrawal rights, potential impact of payment default, termination procedures, personal situation modifications, surrender or transfer delays, etc);

- (b) knowledge and ability to communicate effectively to the intended audience and to use clear and comprehensible language, avoiding jargon and technical terms where necessary;
- (c) knowledge and ability to answer simple and complicated questions from actual or potential clients;
- (d) relevant provisions in relation to the disclosure requirements of the Conduct of Business Rules.

### **Financial competency**

- 6.9.9 A relevant person and a relevant employee shall possess the minimum necessary financial competency. This shall include the appropriate skills and knowledge to demonstrate a level of financial knowledge which is relevant to the role being performed by the relevant person and the relevant employee.

## **6.10 Knowledge and Ability Requirement of Relevant Persons and Relevant Employees selling Insurance-based investment products ("IBIPs")**

### **Legal Aspects**

#### **Applicable laws**

- 6.10.1 A relevant person and a relevant employee shall possess the minimum necessary knowledge of applicable laws governing the distribution of insurance products such as client protection law and relevant tax law. As a minimum, this shall include the following:
- (a) knowledge and ability to comply with any applicable EU Regulations, EU Directives, EU Decisions, EU recommendations and opinions and any other Implementing Technical Standards or Regulatory Technical Standards affecting the insurance distribution activities and, or reinsurance distribution activities in which the relevant person and the relevant employee carry out, including but not limited to;
    - (i) any delegated acts issued in accordance with the Insurance Distribution Directive, in relation to product oversight and governance requirement, conflicts of interest, information to customers, and the assessment of suitability and appropriateness and reporting to clients; and
    - (ii) any Implementing Technical Standards issued pursuant to the Insurance Distribution Directive regarding a standardised presentation format of the

insurance product information document specifying the details of the presentation of information;

- (b) knowledge and ability to comply with the Insurance Distribution Act (Cap.487), regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder;
- (c) knowledge and ability to comply with any other applicable legislation, regulations and rules affecting the insurance distribution activities and, or reinsurance distribution activities which the relevant person and the relevant employee carry out, including but not limited to the Distance Selling (Retail Financial Services) Regulations (S.L. 330.07), the main aspects of the General Data Protection Regulation (Regulation EU 2016/679) and the Prevention of Money Laundering Act (Cap. 373) and any regulations or rules issued thereunder and FIAU Implementing Procedures;
- (d) knowledge and ability to comply with Conduct of Business Rules regarding the disclosure and selling of insurance products which apply throughout the duration of the contract to both product manufacturers and distributors for instance where relevant, subscription of the underlying instruments and portfolio management.
- (e) knowledge of the function of the Office of the Arbiter of Financial Services;
- (f) the applicable duty payable on contracts of insurance as set out in the Duty on Documents and Transfers Act (Cap. 364), as applicable, and information on the tax regime or the other relevant rules affecting the contract;
- (g) knowledge of the relevant social and employment law (including the organisation and benefits guaranteed by the pension system in Malta);
- (h) when providing advice on an insurance-based investment product, knowledge with regard to the criteria of the sustainability preferences as set out in Article 2(4) of Commission Delegated Regulation (EU) 2017/2359, and ability to explain to customers the different aspects in a language that is clear, succinct, comprehensible and not misleading;
- (i) when providing advice on an insurance-based investment product, knowledge and ability on the criteria of the sustainability preferences, which shall be more detailed when offering IBIPs that promote environmental or social characteristics or that have a sustainable investment objective.

## **The Insurance Sector: knowledge on the insurance market, market participants and products**

### **Insurance market**

6.10.2 A relevant person and a relevant employee shall possess the minimum necessary knowledge of the insurance market and of the savings products market. As a minimum, this shall include the following:

- (a) knowledge of the general principles of insurance;
- (b) knowledge of the key characteristics, risks and features, costs and charges, whether investment or transaction costs (including those related to provision of advice) of savings and investment products. This should also include one-off and recurring costs, surrender and transfer out fees and information concerning the nature, amount and the basis of calculation in respect of remuneration payable;
- (c) knowledge of their role and respective duties and their responsibilities towards the client as appropriate;
- (d) basic knowledge of valuation principles for savings and investment products;
- (e) an understanding of the different investment asset classes;
- (f) knowledge on the concept of the volatility of investment returns and describe how this volatility may vary over the different investment asset classes;
- (g) knowledge of the difference between past performance and future performance scenarios, as well as the limitations of such scenarios;
- (h) knowledge of the main advantages and disadvantages of collective investment over individual direct investment.

### **Knowledge on products**

6.10.3 A relevant person and a relevant employee shall possess the minimum necessary knowledge on insurance-based investment products, including, terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits and the minimum necessary knowledge of policies covering long term business risks and other savings products. As a minimum, this shall include the following:

- (a) knowledge of the applicable conduct of business requirements in relation to the distribution of insurance-based investment products, as laid down in the Conduct of Business Rules, as well as knowledge of the general terms and conditions of IBIPs and different products available in the market, their characteristics and risks, the types of insurance products and their underlying financial instruments;
- (b) the ability to understand and identify the risks and rewards of a particular strategy or product and is able to communicate it effectively;
- (c) the ability to compare and contrast the main features, benefits, charges, limitations and risks for a client of the different types of IBIPs (e.g. with-profits, unit-linked), including IBIPs characterised by higher levels of complexity;
- (d) the ability to place the product effectively in the market and differentiate it from the other products and knowledge of the target market;
- (e) an understanding of the determination of whether an IBIP may be considered to be complex or non-complex;
- (f) knowledge on how the premium payable by a client under an IBIP is calculated;
- (g) a good understanding of contractual guarantees and exclusions and the limitations of the policies distributed;
- (h) knowledge of surrender and paid-up values and the extent to which such values are guaranteed;
- (i) general information on the tax arrangements applicable to the type of policy.

### **Investment options**

- 6.10.4 A relevant person and a relevant employee shall possess the minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders. As a minimum, this shall include knowledge of the main advantages and disadvantages and consequences of different investment options for holders of IBIPs.



## **Ethics and professional conduct**

### **Business Ethics standards**

- 6.10.5 A relevant person and a relevant employee shall possess the minimum necessary knowledge of business ethics standards. As a minimum, this shall include the following:
- (a) knowledge on ethical issues arising in relation to conduct of business as per the provisions of the Conduct of Business Rules;
  - (b) knowledge on how to protect the client and all parties to a transaction against fraud, misrepresentation or unethical practices;
  - (c) the ability to consider the best interests of the client in relevant circumstances connected with concluding and executing the contract of insurance;
  - (d) the ability to behave at all times in a responsible manner (e.g. fair, non-aggressive and non-misleading behaviour).

### **Conflicts of interest management**

- 6.10.6 A relevant person and a relevant employee shall possess knowledge on conflicts of interest management. As a minimum, this shall include the following:
- (a) knowledge on the relevant provisions of the Conduct of Business Rules in particular knowledge of the provisions of Chapter 3 on conflicts of interest, together with the applicable provisions in relation to disclosures of conflicts of interest contained in Chapter 1 on disclosures, of the Conduct of Business Rules;
  - (b) the ability to identify potential conflicts of interest which could arise and which might harm the interests of its clients;
  - (c) knowledge on how any conflicts of interest that might arise will be managed.

### **Complaints handling**

- 6.10.7 A relevant person and a relevant employee shall possess the minimum necessary knowledge of complaints handling. As a minimum, this shall include knowledge of the following:
- (a) complaints handling procedures including duties such as that to inform the client of the arrangements for handling complaints concerning contracts including the

possibility of referring the matter to the Office of the Arbiter for Financial Services, without prejudice to the right of the client to take legal proceedings;

- (b) the relevant provisions of the Conduct of Business Rules.

### **Assessing the client needs requirement**

6.10.8 A relevant person and a relevant employee shall possess the minimum necessary knowledge of assessing clients needs. As a minimum, this shall include the following:

- (a) an understanding of the implications of specifying the clients' demands and needs, prior to the conclusion of the contract, in order to be able to:
  - (i) analyse the different investment needs clients may have at different life stages and the attitude of clients towards investment risk; and
  - (ii) explain financial planning and its benefits for clients;
- (b) knowledge on how to fit an insurance-based investment product with the demands and needs of an individual client and the ability to ask the appropriate questions to the client so as to better understand and identify the client's profile and financial capacity and the client's long-term objectives, in due time;
- (c) an understanding of the difference between the assessment of appropriateness and suitability as set out in the Conduct of Business Rules, when such assessment would apply in practice and how to carry out an assessment of appropriateness and, or suitability, as applicable, for example the type of questions which should be asked to the client when conducting such assessment;
- (d) knowledge and ability to explain risks and rewards of a particular strategy or product to the client;
- (e) the ability to provide adequate guidance to consumers regarding the beneficiary clause;
- (f) the ability to compare selected insurance products, conditions, premiums and risks and is able to select the best insurance products and conditions which are suited to the client profile;
- (g) the ability to update advice when necessary and to comply with new legislation or any relevant changes in the personal situation of the client;

- (h) the ability to exercise appropriate judgement in deciding whether to sell a product to a client.

### **Information Disclosure**

6.10.9 A relevant person and a relevant employee shall possess the minimum necessary knowledge in relation to information disclosure. As a minimum, this shall include the following:

- (a) knowledge and ability to communicate effectively the general and particular terms and conditions of the contract (including contractual guarantees and limitation of guarantees/exclusions, claims procedures, payment delays, withdrawal rights, potential impact of payment default, termination procedures, personal situation modifications, surrender or transfer delays, etc);
- (b) knowledge and ability to communicate effectively to the intended audience and to use clear and comprehensible language, avoiding jargon and technical terms where necessary;
- (c) knowledge and ability to answer simple and complicated questions from actual or potential clients;
- (d) relevant provisions in relation to the disclosure requirements of the Conduct of Business Rules.

### **Financial competency**

6.10.10A relevant person and a relevant employee shall possess the minimum necessary financial competency and the minimum necessary knowledge of financial risks borne by policyholders. As a minimum, this shall include knowledge of the following:

- (a) an appropriate level of financial knowledge relevant to the underlying investments;
- (b) the main generic types of savings and investment needs a client may have at different life stages;
- (c) the concept of financial planning and assess the benefits it can provide to clients in terms of meeting their financial plans and objectives.

## **6.11 Assessment of Knowledge and Ability of Tied Insurance Intermediaries and Ancillary Insurance Intermediaries**

### **Tied Insurance Intermediaries**

- 6.11.1 An authorised insurance undertaking and an insurance agent enrolled under the Act (unless otherwise mandated by the authorised insurance undertaking) desirous of appointing a person to act on its behalf as a tied insurance intermediary shall ensure that such tied insurance intermediary carrying out tied insurance intermediaries activities fulfils, as a minimum, the knowledge and ability requirements referred to in Sections 6.8 to 6.10 of this Chapter, taking into account the nature of the products sold and the role or the activity the tied insurance intermediary carries out.

### **Ancillary Insurance Intermediaries**

- 6.11.2 An authorised insurance undertaking, an insurance agent (unless otherwise mandated by the authorised insurance undertaking) and an insurance broker enrolled under the Act desirous of appointing a person to act on his behalf as an ancillary insurance intermediary shall, as a minimum, ensure that such ancillary insurance intermediary knows the terms and conditions of the policies it distributes and knows how a policyholder is to make a claim and file a complaint.

## **6.12 Internal policies and appropriate internal procedures**

- 6.12.1 An authorised insurance undertaking, an authorised reinsurance undertaking, and a person enrolled under article 13 of the Act, carrying out insurance distribution activities and, or reinsurance distribution activities, shall:
- (a) approve, implement and regularly review, at least on an annual basis, their internal policies and procedures so as to take into account the knowledge and ability requirements provided for in this Chapter and the provisions provided for in Chapter 7 in Part B of the Insurance Distribution Rules;
  - (b) identify a function to ensure the proper implementation of the endorsed policies and procedures, so that relevant persons and relevant employees, possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately in accordance with the requirements of this Chapter, and update their knowledge and ability requirements through Continuous Professional Training in accordance with Chapter 7 in Part B of the Insurance Distribution Rules; and,
  - (c) provide to the competent authority, upon request, the name of the person responsible for the function identified in terms of paragraph (b).

### **Record-keeping requirement**

6.12.2 An authorised insurance undertaking, an authorised reinsurance undertaking and a person enrolled under article 13 of the Act, shall:

(a) complete on behalf of relevant persons and relevant employees:

- (i) a report on knowledge and ability indicating the assessment which relevant persons have carried out in accordance with paragraph 6.6.5 of this Chapter, as well as any qualifications and training undertaken; and,
- (ii) a report on continuous professional training, indicating the activities undertaken on an annual basis in order to satisfy the requirements of Section 7.6 of Chapter 7 of Part B of the Insurance Distribution Rules;

(b) establish, maintain and keep up to date:

- (i) the knowledge and ability report; and
- (ii) the CPD report,

and retain its records for a period of at least five (5) years;

(c) provide the competent authority, upon request, with information contained in:

- (i) the knowledge and ability report, and;
- (ii) the continuous professional training report,

relating to a relevant person and a relevant employee, together with any supporting documentation.

6.12.3 An authorised insurance undertaking and an insurance agent (unless otherwise mandated by the authorised insurance undertaking) shall comply with the requirements laid down in paragraph 6.12.2 of this Chapter, in relation to tied insurance intermediaries appointed to act on its behalf and registered in its Tied Insurance Intermediary Company Register.

6.12.4 An authorised insurance undertaking, an insurance agent (unless otherwise mandated by the authorised insurance undertaking) and an enrolled insurance broker shall comply with the requirements laid down in paragraph 6.12.2(a)(i), b(i) and (c)(i) of this Chapter

in relation to ancillary insurance intermediaries appointed to act on their behalf and registered in their Ancillary Insurance Intermediary Company Register.

### **6.13 Transitional Period**

- 6.13.1 An insurance intermediary enrolled under article 13 of the Act, and a tied insurance intermediary enrolled under article 37 of the Act, shall comply with the requirements of this Chapter, by 23<sup>rd</sup> February 2019.

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