

Consultation on Insurance Rules on the Encouragement of Long-Term Shareholder Engagement

Ref: 06-2019

Date: 17 April 2019

Closing Date: 3 May 2019

NOTE: The documents circulated by the MFS 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.

1. Purpose

On the 20th May 2017, Directive (EU) 2017/828 of the European Parliament and of the Council of the 17 May 2017 (“the New EU Shareholders Rights Directive”), which amends Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, was published in the Official Journal of the European Union. The said Directive came into force on the 10th June 2017. This New EU Shareholders Rights Directive aims to encourage transparent and active engagement by shareholders of listed companies by revising the current Shareholders' Rights Directive 2007/36/EC. The amended Directive establishes specific requirements in order to encourage shareholder long-term engagement and increase transparency. Member States are required to transpose the New EU Shareholders Rights Directive by the 10th June 2019.

Any comments and feedback are to be addressed to the Insurance and Pensions Supervision by email on ipsu@mfsa.com.mt. Interested parties are kindly asked to submit any comments in writing by not later than **Friday 3rd May 2019**.

2. Scope

The New EU Shareholders Rights Directive introduces a new definition of “institutional investor” which is defined as “(i) an undertaking carrying out activities of life assurance within the meaning of points (a), (b) and (c) of Article 2(3) of Directive 2009/138/EC of the European Parliament and of the Council, and of reinsurance as defined in point (7) of Article 13 of that Directive provided that those activities cover life-insurance obligations, and which is not excluded pursuant to that Directive.” The said Directive also introduces a new Chapter 1b entitled “Transparency of Institutional Investors, Asset Managers and Proxy Advisors” applicable to institutional investors, to the extent that they invest directly or through an asset manager, in shares traded on a regulated market. Therefore, authorised undertakings carrying on long term business of insurance, under the Insurance Business Act (Cap.403), fall within the scope of the said Directive and are now captured by some of the requirements of the New EU Shareholders Rights Directive, when acting as “institutional investors” in listed companies, as defined in the said Directive.

The MFSA is proposing to transpose the requirements applicable to authorised undertakings, found in Articles 3(g) and 3(h) of the New EU Shareholders Rights Directive in a proposed new Annex III to Chapter 6 in Part B of the Insurance Rules, on System of Governance.

3. Engagement Policies

In terms of Article 3(g) of the New EU Shareholders Rights Directive, authorised undertakings falling within the definition of “institutional investors” are required to be more transparent as regards their approach to shareholder engagement. Under the proposed amendments, authorised undertakings carrying on long term business will be required to develop and publicly disclose a policy on shareholder engagement or to explain why they have chosen not to do so.

The policy on shareholder engagement should describe how such undertakings integrate shareholder engagement in their investment strategy, which different engagement activities they choose to carry out and how they do so. The engagement policy should also include policies to manage actual or potential conflicts of interests. It is being proposed that authorised undertakings publicly disclose, annually, how they have implemented any engagement policy, along with certain detailed information. They will be required to explain the most significant shareholder votes that they have participated in, and how they use proxy advisors. They must also disclose how they have cast votes at general meetings. Undertakings will have an option not to disclose insignificant votes.

4. Investment strategy of an authorised undertaking and arrangements with asset Managers

In terms of the proposed paragraph 1.11, which transposes the requirements of Article 3(h), authorised undertakings will be required to publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium to long-term performance of their assets. The Annex also contains requirements that where an asset manager invests on behalf of an authorised undertaking, the institutional investor is to publicly disclose the information found paragraph 1.12 regarding its arrangement with the asset manager.

In line with the New EU Shareholders Rights Directive, the MFSA proposes to create a requirement that this information be available free of charge on the authorised undertaking's website. It should be updated on an annual basis unless there is no material change.

5. Reporting

The information required to be disclosed under the proposed Annex III to Chapter 6 of the Insurance Rules, may be included in the report on solvency and financial condition ("SFCR") of the authorised undertaking.