

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**FEEDBACK STATEMENT
ISSUED FURTHER TO
INDUSTRY RESPONSES TO
MFSA CONSULTATION DOCUMENT
ON AMENDMENTS TO THE
INSURANCE RULES ISSUED UNDER
THE INSURANCE BUSINESS ACT**

MFSA REF: [09/2016]

21ST NOVEMBER 2016

1. Background

- 1.1 On the [1st April 2016](#), the MFSA issued for consultation amendments to *Chapter 5 on Valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules*, of Part B of the Insurance Rules issued under the Insurance Business Act (Cap. 403). The proposed amendments in the said Consultation included an additional new paragraph 5.7.12 and a new Annex to Chapter 5 which established the proposed minimum parameters within which authorised undertakings will be permitted to grant intra-group loans to other entities which form part of the same group. The proposed new Annex addressed two main issues originating from the Solvency II Directive (Directive 2009/38/EC), the *encumbrance* of the capital of insurance undertakings and the proper management and the diversification of the assets of the insurance undertakings (*prudent person principle*). The MFSA received a considerable amount of feedback from the insurance market on the proposed amendments.
- 1.2 On the [9th September 2016](#), the MFSA issued for final consultation the proposed amendments to the draft new Annex on intercompany loans, in order to address the concerns raised by the insurance market. The deadline for the submission of comments was the 30th September 2016.
- 1.3 Further to the said Consultation Documents, the MFSA is issuing the amendments to Chapter 5 on *Valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules*, in Part B of the Insurance Rules and the new Annex to the said Chapter 5, together with a Feedback Statement on the comments received in relation to the proposed amendments relating to intra-group loans, as contained in the last consultation. An outline of the main comments received and the MFSA's position in relation thereto is provided below.

2. Main Comments received on the proposed amendments to Insurance Rules in relation to Intra-Group Loans and the MFSA's position

2.1 Minimum Parameters on Intra-Group Loans

Industry comment: Some industry respondents were of the view that the proposed provisions relating to intra-group loans impose restrictive conditions and that the MFSA should no longer request prior approval of such loans as this is not contemplated in the Solvency II Directive.

MFSA's Position: The MFSA would like to clarify that the proposed provisions are not prohibiting the use of intra-group loans, but rather aim to lay down the minimum parameters within which authorised undertakings will be permitted to grant intra-group loans. In this manner the MFSA will ensure that intra-group loans are not creating encumbrances on the basic own-fund items of the undertaking, in terms of the Commission Delegated Regulation (EU) 2015/35, and that the undertaking is applying the prudent person principle in terms of the Solvency II Directive.

2.2 The two year time-frame from the date of authorisation

Industry comment: Some industry respondents considered that the prohibition which does not permit an authorised undertaking to grant an intra-group loan within the first two years from the date of its authorisation in terms of the Insurance Business Act, is restrictive, since in their view it fails to consider the risks and the specific circumstances of an individual undertaking.

MFSA's Position: The MFSA noted the concerns raised and has amended paragraph 1.8 of the Annex, which now provides that the MFSA does not expect an authorised insurance undertaking to grant intra-group loans in its initial stages of its operations unless it is able to satisfy the MFSA that the loaned funds are not required to sustain the operations of the authorised insurance undertaking on an ongoing basis.

2.3 Paragraph 1.7(c) of the Annex

Industry comment: Pursuant to paragraph 1.7 of the Annex, where counterparties of authorised insurance and reinsurance undertakings do not have an investment grade rating, such undertakings are to meet a number of financial tests. One of the tests was that the counterparty shall maintain an interest cover of at least 3 times. An industry respondent pointed out that there may be instances whereby an undertaking grants a loan to the insurance holding company and the latter may not always be in a position to maintain an interest cover of at least 3 times in terms of paragraph 1.7(c) of the said Annex.

MFSA's Position: Following the issue raised by the market, the MFSA removed the proposed sub-paragraph (c) of paragraph 1.7 relating to the requirement to maintain an interest cover of at least 3 times.

2.4 The meaning of “double gearing” and “current ratio”

Industry comment: Clarification was sought as to the meaning of the term “double gearing”, as found in paragraph 1.2 of the Annex and of the term “current ratio” in paragraph 1.7(d) of the said Annex.

MFSA's Position: The term “Double gearing” refers to the use of the same capital by different entities within the group. By way of example, the granting of a loan by an authorised insurance undertaking to another undertaking, which loan will then be used to capitalise another licensable/licenced entity, is not permitted.

The term “current ratio” means the ratio of the current assets to current liabilities.

2.5 The definitions of the terms “group” and “captives”

Industry comment: An industry respondent requested clarification as to the definition of the term “group” in relation to the requirements contained in the proposed Annex relating to intra-group loans. Clarification was also sought as to the definition of “captives”.

MFSA’s Position: The term “group” is to be construed as defined in article 2 of the Insurance Business Act (Cap. 403). In so far as the definition of “captives” is concerned, the terms “captive insurance undertaking” and “captive reinsurance undertaking” are also defined in article 2 of the Insurance Business Act, which reflect the definitions found in Article 13 of the Solvency II Directive.

2.6 Date of application of the new intra-group loan requirements

Industry comment: An industry respondent was of the view that the proposed provisions on intra-group loans could have an impact on effective intra-group loans which are already in place.

MFSA’s Position: As stated in paragraph 1.6 of the Annex, the requirements relating to intra-group loans, as contained in the new Annex, shall apply to intra-group loan agreements entered into, on or after, **1st January 2017**.

Contacts

Any queries or requests for clarifications in respect of the above should be addressed by email on ipsu@mfsa.com.mt.

Communications Unit

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