

**MFSA**

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MALTA FINANCIAL SERVICES AUTHORITY

**CONSULTATION ON REGULATIONS  
TO BE ISSUED UNDER  
THE INSURANCE BUSINESS ACT**

**FEEDBACK STATEMENT ISSUED  
FURTHER TO INDUSTRY RESPONSES  
TO MFSA CONSULTATION DOCUMENT**

**MFSA REF: [07 - 2015]**

**AND**

**MFSA REF: [08 - 2015]**

**DECEMBER 2015**

## 1.0 Introduction

On the 18<sup>th</sup> September 2015, the MFSA issued a consultation document on a number of proposed regulations to be issued under the Insurance Business Act (Cap.403) (“IBA”), (Cap.403) as amended by Act No. XXXIII of 2015 published in the Government Gazette, No.19,503, on the 20<sup>th</sup> November 2015 to transpose the Solvency II Directive. On the 13<sup>th</sup> October 2015 the MFSA issued another consultation document on the proposed Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015, to be issued under the said Act.

As part of the transposition exercise of the Solvency II Directive, the purpose of the consultation was to amend the subsidiary legislation issued under the IBA to align it with the requirements as well as the terminology of the Solvency II Directive and to issue a number of new regulations transposing specific provisions of the said Directive.

Further to the consultation documents, the MFSA is issuing a feedback statement on the comments received in relation to the proposed regulations. An outline of the main comments received and the MFSA’s position in relation thereto is provided below.

## 2.0 Main Comments received on the proposed regulations to be issued under the IBA and the MFSA’s position

### 2.1 *Draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015*

#### 2.1.1 Definition of “branch”

**Industry comment:** A respondent pointed out that the definition of “branch” used in the Draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015 is different from the definition of “branch” found in the amended IBA. For the purposes of consistency in the terminology across all primary and secondary legislation that transpose provisions of Solvency II, it is being suggested that the definition of “branch” found in the amended IBA is amended to reflect as the definition found in regulation 2 of these regulations.

**MFSA’s Position:** The MFSA would like to clarify that the term “branch” in the amended IBA and the draft regulations addresses different scenarios. The term “branch” in the IBA only refers to branches of insurance or reinsurance undertaking authorised under article 7 of the said Act. Therefore, this definition captures branches of undertakings whose head office is in Malta, third country insurance undertakings and third country reinsurance undertakings authorised to carry on business through a branch in Malta. It is not intended to include branches of passporting undertakings carrying on business in Malta by way of freedom of establishment. The regime for European insurance or reinsurance undertakings seeking to establish a branch in Malta or provide services in Malta is only addressed in the Draft

European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015, and Insurance Rules issued thereunder. These regulations contain a specific definition of “branch” intended for undertakings that are seeking to establish a branch in Malta by way of freedom of establishment.

### *2.1.2 Regulation 6 – Reporting to the competent authority*

**Industry Comment:** Regulation 6 of the draft regulations, which reproduces regulation 6 of the current European Passport Rights for Insurance and Reinsurance Undertakings Regulations (S.L. 403.14), allows the MFSA to request the submission of data by the European insurance undertaking with a branch in Malta about its activities, on an equivalent basis to Maltese insurance undertakings. It was maintained that it is the home Member State that should have the sole responsibility for the financial supervision of insurance undertakings whose head office is in their territory, *including* their branches located in other Member States. It was pointed out that the ability of a host Member State to obtain statistical data about a branch of a European insurance undertaking established therein is provided for in Article 159 of the Solvency II Directive. Therefore, it was suggested that regulation 6 of the draft regulations should be removed as it is inconsistent with the principles and provisions of the Solvency II Directive.

**MFSA’s Position:** Following the representations from the market, the MFSA concurs with the argument raised by the insurance industry and has therefore removed regulation 6 from the said regulations.

### *2.1.3 Regulation 8 - On-site verifications*

**Industry Comment:** A respondent compared the provisions of regulation 8(2) of the Draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015 and regulation 7(2) of the draft Insurance Business (General Provisions of Supervision) Regulations 2015, dealing with on-site verifications of branches of insurance or reinsurance undertakings authorised to carry on business of insurance in other Member States. It is being suggested that the word “unable” in regulation 8(2) is replaced with the word “prohibited” found in regulation 7(2) of the draft Insurance Business (General Provisions of Supervision) Regulations 2015, since it was argued that if the MFSA is “unable” to participate, rather than being “prohibited”, would not trigger off the right to request the assistance of EIOPA.

**MFSA’s Position:** The MFSA would like to point out that regulation 8(2) (now renumbered as regulation 7(2) ) of the Draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, and regulation 7(2) of the draft Insurance Business (General Provisions of Supervision) Regulations, 2015, both transpose the third sub-paragraph of Article 33 of the Solvency II Directive, as amended by Article 2(6) of Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority (the “Omnibus II Directive”).

These two regulations, whilst both transposing the third sub-paragraph of Article 33 of the Solvency II Directive, address different situations. Regulation 8(2) (now renumbered as regulation 7(2) ) of the Draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015, is addressing a situation where a European insurance or reinsurance undertaking carries on business of insurance in Malta through a branch in exercise of a European right. While regulation 7(2) of the draft Insurance Business (General Provisions of Supervision) Regulations 2015, provides for a situation where a Maltese insurance undertaking or reinsurance undertaking carries on business of insurance in a Member State or EEA State, other than Malta, through a branch. Moreover, in terms of the said Article 33 of the Solvency II Directive, whether it's the supervisory authority of the home Member State which is prohibited from exercising its right to carry out on-site verifications in the host Member State, or whether it is the supervisory authority of the host Member State that is unable in practice to exercise its right to participate in such on-site verifications, in both instances the supervisory authority concerned may refer the matter to EIOPA. Hence, the MFSA is of the view that regulation 8 (now renumbered as regulation 7) of the proposed Regulations does not necessitate any amendments.

## **2.2 Draft Insurance Business (General Provisions of Supervision) Regulations, 2015.**

### **2.2.1 Regulation 1 - Reference to Article 77f of the Solvency II Directive**

**Industry Comment:** A respondent commented that regulation 1 of these regulations should be amended to remove the reference to Article 77f of the Solvency II Directive which, in the respondent's view, does not feature within the Solvency II Directive.

**MFSA's Position:** The MFSA would like to highlight that Article 77f has been introduced in the Solvency II Directive by means of Article 2(23) of the Omnibus II Directive (the Directive referred to in paragraph 2.1.3 of this Feedback Statement).

### **2.2.2 Definition of "European regulatory authority"**

**Industry Comment:** The definition of "European regulatory authority" found in regulation 2(1) of these regulations refers to an insurance supervisor in a Member State, other than Malta, whereas the draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015 uses the term "supervisory authority" to describe such supervisors and such term has the same definition as used in Article 13(10) of the Solvency II Directive. For the purposes of consistency, it was suggested that the term and definition of "European regulatory authority" is removed from these proposed regulations and replaced with the term and definition of "supervisory authority" that is used in the draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015.

**MFSA's Position:** After due consideration, it was decided that for the purposes of consistency

the term and definition of “European regulatory authority” found in the IBA and in these proposed regulations, will be transposed in the draft European Passport Rights for Insurance and Reinsurance Undertakings Regulations 2015. This approach is consistent with the terminology used in the European Passport Rights for Investment Firms Regulations (L.N. 325 of 2007) and the European Passport Rights for Credit Institutions Regulations (L.N. 129 of 2015).

### ***2.3 Draft Insurance Business (Long Term Business Contract Statutory Notice) (Amendment) Regulations, 2015***

***Industry Comment:*** A respondent maintained that the requirement to provide a Statutory Notice in the language of the policyholder’s country of commitment is burdensome and costly, particularly in the case of insurance undertakings having an international portfolio of policyholders. Clarification was also sought as to whether the statutory notice is to be produced in the language of the policyholder’s country of residence, even if all the documentation process takes place in Malta. Moreover, it was enquired whether the MFSA is minded to amend the formatting relating to the statutory notice and at what stage the statutory notice is to be served on the party.

***MFSA’s Position:*** After due consideration of the comments received, the MFSA amended regulation 3(3) of these regulations so that in the case of a long term business contract where Malta is not the country of commitment, the statutory notice shall be made out in the language of the country of the commitment or in any other language agreed to by the parties. Therefore, the MFSA introduced the possibility that the statutory notice to be served by the insurer can also be served in any other language agreed to by the parties. Furthermore, it is not the intention of the MFSA to amend the formatting of the statutory notice. Finally, as stated in terms of regulation 3, the insurer is to serve upon the other party a statutory notice in relation to a contract of insurance at the time when the contract is entered into.

### ***2.4 Draft Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015***

#### ***2.4.1 Extension of time-period***

***Industry Comment:*** A respondent requested clarification as to the time-frame of the extension referred to in regulations 9(6) (b) and (c). In accordance with regulation 9(6)(a), an undertaking which has informed the MFSA as soon as it was observed that the group Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months, is to take the necessary measures within six months from the observation of non-compliance with the Solvency Capital Requirement, to achieve the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

***MFSA's Position:*** The MFSA has amended regulation 9(6)(b) to clarify that it is the time-period of six-months referred to in regulation 9(6)(a) which may be extended by three months, by the competent authority acting as group supervisor. The same comments apply to regulation 9(6)(c).

#### 2.4.2 Valuation

***Industry Comment:*** A respondent requested clarification as to which Insurance Rules are being referred to in regulation 16 of these regulations relating to valuation of assets and liabilities.

***MFSA's Position:*** The MFSA would like to clarify that the Insurance Rules to be issued under article 18D of the Act relating to the valuation of the assets and liabilities are those draft Insurance Rules which were issued for Consultation on the 30<sup>th</sup> October 2015 entitled the Valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules (Solvency II – Pillar 1 Requirements).

### 3. Coming into force and publication of legislation

The MFSA would like to inform the market that Act XXXIII of 2015 relating to amendments to the Insurance Business Act and the regulations to be issued under the Insurance Business Act, as amended, are to come into force on the 1st January 2016. The Legal Notices to be issued under the Insurance Business Act, as amended, will be published shortly.

#### Contacts

Any queries are to be addressed by email on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt).

**Communications Unit**  
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