

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

**CONSULTATION ON INSURANCE
DISTRIBUTION RULES
ISSUED IN TERMS OF THE
INSURANCE DISTRIBUTION ACT**

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

MFSA REF: [03 - 2018]

AND

MFSA REF: [06 - 2018]

31 JULY 2018

1. Introduction

On the 16th March 2018 and on the 8th May 2018, the MFSA issued two Consultation Documents relating to Insurance Distribution Rules on Knowledge and Ability, Continuous Professional Development and Ancillary Insurance Intermediaries, as part of the transposition exercise of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), (the “*Insurance Distribution Directive*” or “*IDD*”). Moreover, on 12th July 2018, the MFSA published on its website the Insurance Distribution Rules issued under the Insurance Distribution Act (Cap.487), which will come into force on **1st October 2018**, together with a [Circular on the Publication of New Insurance Distribution Rules](#).

The purpose of the said Consultations was mainly to transpose Article 10 of the IDD and Annex I (Minimum Professional Knowledge and Competence Requirements) of the IDD, as well as to consult on a regime of ancillary insurance intermediaries as proposed by the MFSA.

Further to the said Consultation Documents, the MFSA is issuing a feedback statement on the comments received in relation to the consultations referred to above. 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 Chapter on Knowledge and Ability

2.1 Part A – Criteria For Approval / Registration and Enrolment

2.1.1 Industry comment: *A market participant queried whether the board member required to be identified and designated as the person responsible for the oversight of the insurance or reinsurance distribution activities of an insurance and reinsurance undertaking may be either an executive or a non-executive director, or any of the two.*

MFSA’s Position: The decision as to whether the member of the board of directors identified and designated as the person responsible for the oversight of the insurance or reinsurance distribution activities of the undertaking concerned is to be an executive or non-executive director lies with the undertaking concerned. However, in the MFSA’s opinion it is more appropriate for an executive director to be designated to carry out this oversight.

2.1.2 Industry Comment: *A market participant requested clarification on the source of the legal obligation requiring an undertaking to designate a member from the board of directors and a person within the management structure of an authorised insurance undertaking or an authorised reinsurance undertaking responsible for the distribution of insurance products.*

MFSA’s Position: In the Note for Consultation entitled *Consultation on Knowledge and Ability and Continuous Professional Development in terms of the Insurance Distribution Directive* dated 16th March 2018, the MFSA clarified that in order for authorised insurance undertakings and authorised reinsurance undertakings to satisfy the requirements of Article 10 of the IDD, the MFSA requires that such undertakings identify a member of the board of directors to be

designated as responsible for the oversight of the insurance or reinsurance distribution activities carried out by the undertaking concerned, as well as a person within the management structure of such undertaking to be responsible for the distribution in respect of insurance or reinsurance products.

2.1.3 Industry Comment: *It was noted that the term “oversight” in the Insurance Rules issued under the Insurance Business Act (Cap.403) is generally applied in the context of outsourcing and therefore, it was suggested to amend this requirement . Furthermore, another market participant claimed that the requirements contained in the Chapter on Knowledge and Ability are not to apply to a Member of the Board of Director. It was argued that the Board of Directors has the ultimate responsibility for the compliance, by the undertaking concerned. The first line of oversight of persons carrying out insurance distribution activities is the responsibility of persons managing those insurance distribution activities. The second line of oversight is the Compliance Function. The third and ultimate line of oversight is the Board of Directors.*

MFSA’s Position: The MFSA would like to clarify that the board of directors as a whole remains overall responsible for the undertaking’s insurance and reinsurance distribution activities. However, one of the members of the board is to be designated to oversee such activities as is currently the case, for example, with the risk management function. After due consideration, in so far as insurance and reinsurance undertakings are concerned, the MFSA has amended the Chapter on Knowledge and Ability so that Part B will now apply only to the persons within the management structure of such undertaking responsible for the distribution in respect of insurance or reinsurance products.

As a consequence, as stated in the Circular referred to above, minor amendments have been carried out to Chapters 1 and 2 of the Insurance Rules issued under the Insurance Business Act (Cap. 403) requiring undertakings to identify a member of the board of directors to be responsible for the oversight of the insurance or reinsurance distribution activities carried out by the undertaking concerned.

2.1.4 Industry Comment: *A respondent requested clarification with regards to which criteria are required to be satisfied by the persons identified in paragraphs 1.2.1(a) and (b) of the draft issued for consultation. The same respondent also recommended that the criteria referred to in Section 1.3 of the said Chapter is to make reference to the knowledge and ability requirements indicated in Part B of this Chapter, which Part also applies to persons identified in paragraphs 1.2.1(a) and (b) of the Chapter. Another recommendation was also made so that apart from the role and activity of the person concerned, the criteria which should also be taken into account are the nature, scale and complexity of the undertaking’s business.*

MFSA’s Position: The MFSA has amended Part A on the Criteria for Approval/Registration or Enrolment of the draft Chapter on Knowledge and Ability. Paragraphs 1.2.1(a) and (b) of the draft Chapter on Knowledge and Ability have been removed as well as Section 1.3 of Part A on the Criteria for Approval/Registration or Enrolment of the said draft Chapter.

Part A of the Chapter on Knowledge and Ability now applies to a person desirous of applying for registration in the Agents Register, the Managers Register or Brokers Register; a tied insurance intermediary to be appointed by an authorised undertaking as defined in the Insurance Distribution Act, 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; and 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.

Section 6.3 of Part A of the said Chapter reflects the requirements currently found in Insurance Intermediaries Rule 9 of 2007 on Qualifications of Individuals applying for Registration. Section 6.4 applies to tied insurance intermediaries and ancillary insurance intermediaries. Such persons are required to fulfil the qualifications indicated in Section 6.4 of the Chapter, which reflect the requirements currently found in Insurance Intermediaries Rule 17 of 2007.

The MFSA would like to clarify that Part B on Knowledge and Ability, as amended, which transposes Annex I to the IDD applies to all relevant persons and relevant employees identified in the new paragraph 6.5.1 of Chapter 6 in Part B of the Insurance Distribution Rules. Furthermore, a relevant person's knowledge and ability requirements, will depend on the products sold, the role such person performs and the activity such person carries out within the intermediary or the undertaking.

2.1.5 Industry Comment: *Some market participants enquired whether the persons listed in paragraph 1.2.1 of the draft issued for consultation who are already approved by the MFSA will need to re-apply to the MFSA for approval and whether new PQs and Competency Forms are to be submitted. Clarification was sought as to whether the requirements identified in the Chapter on Knowledge and Ability are only applicable to those persons newly applying for the respective roles. A market participant also queried whether there is a specific timeline by when the MFSA should be notified of such appointments.*

MFSA's Position: The MFSA would like to point out that with respect to the persons who are already approved by the MFSA, the MFSA will shortly be issuing a circular explaining the expectations of the MFSA in this regard.

2.1.6 Industry Comment: *Clarification is sought with regards to the difference between agents of local insurers and agents of foreign insurers in relation to compliance with the Chapters on Knowledge & Ability and Continuous Professional Development.*

MFSA's Position: The MFSA would like to clarify that where a tied insurance intermediary is appointed directly by an insurance agent, such insurance agent can assume responsibility for its Tied Insurance Intermediary, unless otherwise mandated by the authorised insurance undertaking (the principal). In this respect, the MFSA has amended Chapter 6 to clarify the matter.

2.1.7 Industry Comment: *A market participant noted that the requirements found in Section 1.4 of Part A of the draft issued for consultation which reflect the requirements currently found in IIR 9 of 2007 on Qualifications of Individuals applying for Registration coupled with the criteria set out in paragraph 1.4.1, may be considered to be rather high. A recommendation was put forward to the MFSA to reevaluate the criteria adopted so far by the MFSA.*

MFSA's Position: The MFSA does not deem it necessary to revise the criteria established in Section 1.4 of the draft issued for consultation (now Section 6.3 of Chapter 6) which reflect the requirements currently found in Insurance Intermediaries Rule 9 of 2007 on Qualifications of Individuals applying for Registration. The requirements established in Part B of the Chapter transpose the requirements of Article 10 of the IDD and Annex I of the IDD. Both requirements need to be fulfilled by a person desirous of applying for registration in the Agents Register, the Managers Register or Brokers Register.

2.1.8 Industry Comment: *A market respondent requested confirmation as to whether underwriters /staff in underwriting department (as employees) also need to satisfy the criteria indicated in Part A of the draft issued for consultation. Clarification was also sought as to what extent employees or outsourced claims handling activities need to be approved. Moreover if indeed regulatory approval is required for said underwriting staff, clarification was sought as at what stage the relevant documentation needs to be submitted to the MFSA for approval.*

MFSA's Position: The MFSA would like to clarify that in accordance with paragraph 1.2.1 of the draft issued for consultation (now paragraph 6.2.1 of Chapter 6), Part A does not apply to relevant employees and are thus not required to satisfy the criteria indicated in Part A of the said Chapter. The requirements which such relevant employees are required to fulfil are those found in Part B of the Chapter on Knowledge and Ability. Part B of the Chapter on Knowledge and Ability shall only apply to relevant persons and relevant employees involved in the sales and the underwriting process and therefore will not apply to relevant persons and relevant employees who are involved solely in the processing of claims.

2.1.9 Industry Comment: *A market participant sought clarification on whether the requirement presently contained in Insurance Intermediaries Rule 17 of 2007 for prospective Tied Insurance Intermediaries to possess as a minimum secondary school level of education will be retained under the new proposed rule.*

MFSA's Position: The MFSA would like to clarify that such requirement will be retained. The requirements of Insurance Intermediaries Rule 16 of 2007 are now found in paragraph 2.2.11 of Chapter 2 in Part A of the Insurance Distribution Rules.

2.1.10 Industry Comment: *A recommendation was put forward to amend paragraph 1.5.1 of the draft issued for consultation in order to allow insurance agents appointing tied insurance intermediaries or ancillary insurance intermediaries and insurance brokers appointing ancillary insurance intermediaries to provide training to such intermediaries.*

MFSA's Position: After due consideration, the MFSA has amended the Chapter to allow insurance agents (unless otherwise mandated by an authorised insurance undertaking) to provide the training course to Tied Insurance Intermediaries and Ancillary Insurance Intermediaries and insurance brokers to be able to provide the training course to Ancillary Insurance Intermediaries. The amended requirements are now found in Section 6.4 of Part B of the Insurance Distribution Rules.

2.1.11 Industry Comment: Clarification was sought by an industry participant whether the course which a person is required to complete in order to be enrolled as a tied insurance intermediary, which is recognised by the MFSA, would need to be revised in view of the new requirements in the Insurance Distribution Directive. Clarification was also sought as to whether the entire revised course would need to be submitted for a fresh recognition of the same.

MFSA's Position: In view of the proposed new Chapters on Knowledge and Ability and Continuous Professional Development, transposing Article 10 of the IDD, any market participant which offers the course which a person is required to complete in order to be enrolled as a tied insurance intermediary is required to revise such course to bring it in line with the new requirements and submit such course for a fresh approval. New courses for ancillary insurance intermediaries are also required to be submitted to the MFSA.

2.1.12 Industry Comment: A market participant queried how the criteria for approval will apply in the case of outsourced functions, where policies are distributed through a coverholder or broker and their employees in foreign EU territory.

MFSA's Position: The MFSA would like to clarify that foreign coverholders and brokers are not approved by the MFSA, as these are registered under the legislation in their respective jurisdictions. In such circumstances, the MFSA would approve the terms of business agreement. However, the intermediaries that can be appointed are those listed in the new article 44B of the Insurance Distribution Act, to be introduced by means of [Act No. XXVI of 2018](#) entitled Various Financial Services Laws (Amendment) Act, 2018.

2.1.13 Industry Comment: It appears that the consultation does not consider that the majority of re/insurance undertakings in Malta do not underwrite risks located in Malta and outsource their distribution activities such that there would be no "relevant employees" particularly where they are managed entities. Clarity was sought on how the requirements will be applied in such circumstances and whether they be extended to third party service providers. Confirmation was also sought on whether authorised insurance undertakings and authorised reinsurance undertakings will be required to have such relevant employees and whether certain requirements be captured by the general good provisions of the host countries in view that it relates to distribution activities in their markets and the knowledge required relates to that market rather than Malta.

MFSA's Position: Third party service providers carrying on insurance distribution activities and reinsurance distribution activities will be required to be registered as intermediaries in their jurisdiction and are caught with the obligations arising from the IDD in their jurisdiction.

In terms of article 10 of the IDD, it is the home member state that is to ensure that insurance and reinsurance undertakings and their employees carrying out insurance or reinsurance distribution activities possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.

In so far as general good provisions of host member states are concerned, insurance and reinsurance undertakings will also be required to comply with the general good requirements of such Member States, as applicable.

2.2 Part B – Knowledge and Ability

2.2.1 Industry Comment: *An industry respondent requested clarification as to what information is expected by the MFSA as evidence that such persons possess the requisite knowledge and ability requirements as required by Part B of the Chapter on Knowledge and Ability which requires “relevant persons” and “relevant employees” to possess appropriate knowledge and ability in order to complete their tasks and perform their duties appropriately.*

MFSA's Position: Part B of the draft Chapter on Knowledge and Ability transposes Annex I of the Insurance Distribution Directive and further explains the requirements of the said Annex. It is up to the relevant person to determine the appropriate knowledge and ability requirements for its relevant employees.

2.2.2 Industry Comment: *It was noted that according to current practice there may be more than one director or manager directly involved with distribution of insurance products, and the scope of their responsibilities may be varied.*

MFSA's Position: The MFSA is aware that there may be more than one person involved with distribution of insurance products. In order to cater for such situations, paragraph 6.5.1 of Part B of Chapter 6 of the Insurance Distribution Rules has now been amended to make reference to **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, as well as those persons managing the insurance distribution activities and, or reinsurance distribution activities. All such persons are required to comply with knowledge and ability requirements depending on the nature of the products sold, the role such person performs and the activity carried out.

2.2.3 Industry Comment: *Some industry participants noted in the Feedback statement issued by the MFSA on the 5th February, that “distributors” included those involved in the “administration and performance of contracts of insurance in particular in the event of a claim”. Confirmation was sought as to whether authorised undertakings are still required to consider persons involved solely in the processing of claims as “Relevant Employees” under the IDD.*

MFSA’s Position: Paragraph 1.6.2 of the draft issued for consultation (now paragraph 6.5.2 of Chapter 6), stated that relevant persons and relevant employees who are involved solely in the processing of claims are not required to comply with Part B of the Chapter on Knowledge and Ability and thus Annex I of the Insurance Distribution Directive. This is due to the fact that employees of an authorised insurance undertaking and authorised reinsurance undertaking engaged in claims handling activities are not to be considered as "persons directly involved in insurance distribution" within the meaning of the fifth subparagraph of Article 10(2) of the IDD.

2.2.4 Industry Comment: *An industry respondent commented that the extent and volume of documentation indicated in some of the requirements under the heading “Legal Aspects” found in Part B are too general and wide was asked what the expectations of the MFSA are in this regard.*

MFSA’s Position: Sections 1.9 to 1.11 of the Chapter that was issued for consultation (now Section 6.8 to 6.10) transpose and explain the requirements found in Annex I of the IDD. The knowledge and ability requirements identified and the level of knowledge depend on the nature of the products sold, the role such person performs and the activity carried out in the intermediary or the undertaking.

2.2.5 Industry Comment: *Clarification was sought with regards the MFSA’s expectations regarding the financial competence of a relevant person and a relevant employee expected under these paragraphs.*

MFSA’s Position: The requirement to possess the minimum necessary financial competency is found in Annex I of the IDD.

2.2.6 Industry Comment: *An industry respondent sought clarification as to whether the requirement regarding a standardised presentation format of the insurance product information document (“IPID”) specifying the details of the presentation of information required by the IDD will replace the requirement of the Key Information Document (KID), or whether the Key Information Document will be in addition to the Insurance Product Information Document.*

MFSA’s Position: The MFSA would like to clarify that the Key Information Document (KID) applies to packaged retail and insurance-based investment products (PRIIPs) as required in terms of Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs). The requirements of the IPID which are found in the IDD apply

to insurance products relating to general business. The requirements of the IPID will be transposed in the Conduct of Business Rules. The IPID does not replace the KID.

2.2.7 Industry Comment: *In view that the role or activity of a Tied Insurance Intermediary is limited and defined in the legislation, clarity is sought on how the knowledge and ability requirements may differ depending on the role or activity the Tied Insurance Intermediary carries out.*

MFSA's Position: The MFSA would like to clarify that the knowledge and ability requirements of a Tied Insurance Intermediary depend on whether such person distributes products relating to general business or long term business. The assessment of the knowledge and ability requirements will need to be carried out by the authorised insurance undertaking or the insurance agent (unless otherwise mandated by the authorised insurance undertaking) which has appointed such tied insurance intermediary.

2.2.8 Industry Comment: *An authorised insurance undertaking and an insurance agent desirous to appoint a Tied insurance intermediary to act on its behalf to ensure that such tied insurance intermediary satisfies the applicable knowledge and ability requirements. Clarification is sought as to whether the responsibility in relation to ascertaining the knowledge and ability requirements of Tied Insurance Intermediary is shared between an authorised insurance undertaking and an insurance agent in cases where the Tied Insurance Intermediary is appointed to act through an agent.*

MFSA's Position: The MFSA would like to clarify that where a tied insurance intermediary is appointed directly by an insurance agent enrolled under the Act, such insurance agent will be responsible to ensure compliance with the knowledge and ability requirements, unless otherwise mandated by the authorised insurance undertaking. In this respect, the MFSA has carried out amendments to Chapter 6 in Part B of the Insurance Distribution Rules to clarify the matter.

2.2.9 Industry Comment: *A market participant requested an amendment to allow authorised reinsurance undertakings to appoint Ancillary Insurance Intermediaries.*

MFSA's Position: The definition of an “ancillary insurance intermediary” in Article 2(1) of the IDD states that an ancillary insurance intermediary means a person “... who for remuneration, takes up or pursues the activity of **insurance distribution** on an ancillary basis...” Thus by definition, an ancillary insurance intermediary is not permitted to carry out reinsurance distribution as defined in the IDD. Therefore, an ancillary insurance intermediary can only be appointed by an authorised insurance undertaking. This is reflected also in the Schedule to the Insurance Distribution Act as published by [Act No. XXVI of 2018](#) entitled Various Financial Services Laws (Amendment) Act, 2018.

2.2.10 Industry Comment: *An industry respondent required clarification on the internal policies and appropriate internal procedures, specifically as to whether the record keeping*

requirement in paragraph 1.13.2 (a)(i) may be achieved through the completion of an internal Competency Form for the relevant persons and employees of the undertaking, whilst the requirement in paragraph 1.13.2 (a)(ii) as well as the requirement in paragraph 1.13.2(b) may be achieved through the upkeep of relevant training logs, attendance sheets and course certificates consolidated into one report per undertaking. Clarification is sought as to whether such forms and logs are tantamount to “reports”.

MFSA’s Position: The persons indicated in paragraph 1.6.1 of the draft Rules issued for consultation (now paragraph 6.5.1) are required to establish, maintain and keep up to date the knowledge and ability report. In accordance with paragraph 1.13.2 of the said Chapter (now paragraph 6.12.2), the report on knowledge and ability shall indicate the assessment which relevant persons have carried out in accordance with paragraph 1.7.4, as well as any qualifications and training undertaken. The manner in which the knowledge and ability report and the continuous professional development report is maintained is up to the relevant person, as long as the requirements in Section 1.13 of the draft issued for consultation (now Section 6.12) are fulfilled.

2.2.11 Industry Comment: *A market participant pointed out that the Continuous Professional Development requirement does not apply to Ancillary Insurance Intermediaries. A recommendation was put forward to the MFSA to consider including a separate sub-paragraph in relation to record-keeping requirements which an authorised re/insurance undertaking and a person enrolled under article 13 of the IDA is required to hold as per paragraph 1.13.2 in relation to ancillary insurance intermediaries.*

MFSA’s Position: The MFSA would like to clarify that continuous professional development requirement does not apply to ancillary insurance intermediaries. In terms of recital (28) of the IDD, ancillary insurance intermediaries should be required to know the terms and conditions of the policies they distribute and, where applicable, rules on handling claims and complaints. In this respect, the MFSA has amended the Chapter on Knowledge and Ability to clarify the matter. The Ancillary Insurance Intermediary shall only be subject to training as required by Chapter 11 in Part B of the Insurance Distribution Rules.

2.2.12 Industry Comment: *Some market respondents queried whether the MFSA intends to apply the transitional period found in Article 40 of the IDD applicable to enrolled insurance intermediaries to persons to authorised insurance undertakings and authorised reinsurance undertakings.*

MFSA’s Position: The MFSA has received clarification that since the transitional period is explicitly limited to intermediaries already registered under the IDD, Article 40 of the Insurance Distribution Directive cannot be extended to apply to insurance undertakings. Therefore the transitional period of the IDD is to apply only to insurance intermediaries.

3. Main comments received on the proposed Chapter on Continuous Professional Development

3.1.1 Industry Comment: *The Chapter on Continuous Professional Development (“CPD”) provides that CPD shall be divided in structured and unstructured training, specifically a minimum of 12 hours of structured CPD and 3 hours of unstructured CPD. Clarification is sought as to whether the annual 15 hour CPD may be undertaken entirely as structured CPD.*

MFSA’s Position: After some deliberation, the MFSA considers that CPD may consist of 15 hours of structured CPD. In this respect, the MFSA has amended the Chapter so that the CPD can take the form of structured CPD training or unstructured CPD training. However, as a minimum, such CPD training is to include twelve (12) hours of structured CPD training.

3.1.2 Industry Comment: *A number of market respondents argued that the four hour capping is relatively low, especially in the context of courses, conferences, seminars and committee meetings where these may spread over a day or more. A recommendation was put forward for such capping to be increased.*

MFSA’s Position: After due consideration, the MFSA has agreed to amend this requirement to allow a relevant person and a relevant employee the possibility to be awarded eight (8) hours of CPD per day, however, the maximum number of CPD hours which may qualify for any single topic will be capped at four (4) hours.

3.1.3 Industry Comment: *Clarification was sought as to whether that staff attending committee meetings (e.g. Underwriting committees, claims committees, risk committees or workshops / technical discussion meetings (e.g. with actuary, auditors) of the authorised insurance undertakings would constitute “organised technical discussion meetings” and “service on technical committees” for the purpose of CPD requirements.*

MFSA’s Position: The MFSA would like to clarify that when staff attend committee meetings such as underwriting committees, claims committees and risk committees these discussions would focus mainly on the operations of the specific undertaking. The aim behind continuous professional training is for a relevant person and a relevant employee to update its knowledge through CPD. Moreover, training may be qualified as structured CPD under the category of courses, conferences, seminars, workshops and organised technical discussions, where it addresses one or more subject matters indicated in Sections 1.9 to 1.11 of the draft issued for consultation (now Sections 6.8 to 6.10) and must be relevant, measurable and verifiable.

Similarly, in paragraph 7.5.6 of Chapter 7 in Part B of the Insurance Distribution Rules, training may be qualified as structured CPD under the category of service on technical committees and panels where, as a result of its work on such committee or panel there was a technical release or some other form of guidance was provided, and the employee is able to demonstrate that original work has been contributed to finalise the product. Such training would also need to be relevant, measurable and verifiable.

3.1.4 Industry Comment: *An authorised insurance undertaking and an insurance agent would appear to share equal responsibility to ensure that an enrolled Tied Insurance Intermediary undertakes a minimum of 15 hours of CPD annually. The draft Chapter requires that where the relevant person is a Tied Insurance Intermediary, the authorised insurance undertaking or the insurance agent on whose behalf such intermediary has been appointed shall carry out an assessment of the study activities which would be appropriate for the Tied Insurance Intermediary to undertake. Similarly, an authorised insurance undertaking or an insurance agent are to retain records in relation to CPD training activities of its Tied Insurance Intermediary.*

MFSA's Position: The MFSA would like to clarify that where a tied insurance intermediary is appointed directly by an insurance agent, such insurance agent can assume responsibility of such CPD training unless otherwise mandated by the authorised insurance undertaking or authorised reinsurance undertaking. In this respect, the MFSA has amended Chapter 7 in Part B of the Insurance Distribution Rules to clarify the matter.

3.1.5 Industry Comment: *A number of industry respondents requested clarification on the meaning of "in each twelve month period" for the calculation of the CPD hours. A market respondent noted that this should refer to a calendar year, since insurers would plan out compliance with their CPD responsibilities on a calendar year basis. Clarification was also sought as to CPD requirements for employees or officers employed mid-year.*

MFSA's Position: The MFSA is in agreement with the proposed suggestion of the market and has amended the Chapter so that a relevant person and a relevant employee shall undertake 15 hours of CPD training each calendar year. Moreover, if during the calendar year, the relevant person or relevant employee is not in employment or is in any way absent, for a period of time, from his workplace, for a justifiable reason approved by his employer, the number of hours of CPD training shall be calculated on a pro rata basis.

3.1.6 Industry Comment: *Confirmation is sought whether any hours in excess of 12 hours of structured CPD would count as unstructured CPD.*

MFSA's Position: Any hours of training undertaken will fall under the category of structured CPD where they fulfil the requirements established in paragraphs 1.5.4 to 1.5.15 of the draft Chapter issued for consultation (now paragraphs 7.5.4. to 7.5.16). In order for any activities to fall under the category of unstructured CPD, these have to fulfil the requirements of paragraphs 1.5.16 and 1.5.17 of the draft Chapter on CPD (now paragraphs 7.5.17. and 7.5.18) will fall under the category of unstructured CPD.

3.1.7 Industry Comment: *Clarity is sought on whether an employee or officer changing employment would be able to take with him/her any CPD gained with his previous insurer.*

MFSA's Position: The MFSA has introduced a new paragraph 7.4.4 of Chapter 7 in Part B of the Insurance Distribution Rules to clarify that where a person changes his workplace, the new employer may take into account the CPD training hours such employee has undertaken during the same calendar year at the new employee's former workplace.

3.1.8 Industry Comment: *A market respondent noted that relevant in house structured training qualifies as structured CPD. Clarification is sought that verification requirements of such training would be provided by the insurer providing such training.*

MFSA's Position: The MFSA would like to clarify that where training is organised by the authorised insurance or reinsurance undertaking, the requirement of verifiability may be fulfilled by means of a certification issued by the undertaking. Where the training is outsourced, the certification required is to be issued by the trainer providing the training. In this respect, the MFSA has amended paragraph 1.5.15 of the draft issued for consultation (now paragraph 7.5.15) and introduced a new requirement in paragraph 7.5.16 of Chapter 7 in Part B to the Insurance Distribution Rules to clarify the matter.

3.1.9 Industry Comment: *Where in-house training is provided, a recommendation was put forward to cater for the possibility that a person registered in the Agents Register, the Managers Register or Brokers Register or a relevant employee directly involved in the carrying out of the insurance distribution activities and reinsurance distribution activities of a person enrolled in the Agents List, Managers List or Brokers List, also attend in-house training organised by an authorised re/insurance undertaking.*

MFSA's Position: After due consideration, the MFSA amended the Chapter so that a relevant person and a relevant employee may attend in-house training by an authorised insurance undertaking, an authorised reinsurance undertaking or a person registered in the Agents Register or the Brokers Register. In this respect, reference is made to the paragraph 7.5.15 of Chapter 7 in Part B of the Insurance Distribution Rules.

3.1.10 Industry Comment: *Confirmation is sought whether this Chapter is only applicable to relevant persons and relevant employees who personally conduct sales and underwriting transactions with customers and whether it should apply to relevant persons and relevant employees who are involved in back office work relating to sales and underwriting eg accounts, secretarial etc.*

MFSA's Position: The Chapter on Continuous Professional Development only applies to those persons who are **directly involved** in the carrying out of distribution in respect of insurance or reinsurance products as stated in paragraph 7.2.1(d) of Chapter 7 in Part B of the Insurance Distribution Rules.

3.1.11 Industry Comment: *A number of market respondents asked whether the MFSA will be issuing a template of the written declaration on CPD to be submitted to the MFSA and whether*

the MFSA will be prescribing the format of the CPD record. Furthermore, it was asked whether it is the undertaking that is responsible to keep the CPD records or the relevant persons/relevant employees.

MFSA's Position: At this stage, the MFSA is not minded to issue a template for the declaration of the draft CPD Chapter. With regards to the format of the CPD record, reference is made to paragraph 1.6.3 of the draft Chapter on CPD, (now paragraph 7.6.3 of Chapter 7 in Part B of the Insurance Distribution Rules), which clearly identifies the requirements which should be included in the CPD records. Finally, the obligation to maintain records and supporting evidence of the continuous professional training and development fulfilled rests on the relevant person and the relevant employee.

3.1.12 Industry Comment: *In the case of a relevant person/relevant employee who is already a member of a professional body and such professional body requires the upkeep of CPD records, clarification was sought as to whether that CPD record satisfies the requirements of the MFSA (in order to avoid keeping multiple CPD records).*

MFSA's Position: A relevant person or employee who attains a qualification which requires such person or employee to undertake continuous professional training and such training is the same or more than that provided for in this Chapter, provided it fulfils the requirements of paragraph 1.5.4 of the draft Chapter issued for consultation (now paragraph 7.9.4), such person may use the training attended to fulfil the minimum fifteen (15) hours of CPD training. In such a case, two sets of CPD records would need to be maintained.

4. Main comments received on the proposed Chapter on Ancillary Insurance Intermediary

4.1.1 Industry Comment: *It was suggested that the definition of "authorised undertaking" in the Chapter on Ancillary Insurance Intermediary is amended to make reference to "a European insurance undertaking or a European reinsurance undertaking having its head office in a Member State or an EEA State establishing a branch or providing services in Malta in exercise of a European right."*

MFSA's Position: The definition of "authorised undertaking" reflects the provisions of article 43J(1) of the Insurance Distribution Act as published by [Act No. XXVI of 2018](#) entitled Various Financial Services Laws (Amendment) Act, 2018, which provides that for the purposes of Part VIIIA (Registration and Enrolment of Ancillary Insurance Intermediaries) "authorised undertaking" shall not include an authorised reinsurance undertaking, a reinsurance intermediary, a European insurance undertaking and a European reinsurance undertaking.

However, article 43J(2) of the said Act states that in the case of a European insurance undertaking or an insurance intermediary registered under Article 3 of the Insurance Distribution Directive in a Member State or EEA State other than Malta, seeking to appoint a person resident in Malta or having its registered office or head office in Malta to carry out ancillary insurance intermediaries activities, that undertaking or intermediary shall enrol such

person with the competent authority as may be determined by Insurance Distribution Rules made for the purposes of this article and the said Insurance Distribution Rules shall contain the particulars, conditions and requirements for enrolment. Such particulars can be found in Chapter 2 in Part A of the Insurance Distribution Rules.

4.1.2 Industry Comment: A market participant was of the view that the conditions of appointment of an Ancillary Insurance Intermediary as proposed by the MFSA are restrictive and should be amended.

MFSA's Position: The MFSA decided to retain the conditions of appointment of an Ancillary Insurance Intermediary as proposed for consultation so that a person enrolled in the Ancillary Insurance Intermediaries List and already appointed and registered in the Ancillary Insurance Intermediaries Company Register of an insurance broker, shall not seek appointment and registration in an Ancillary Insurance Intermediaries Company Register of an authorised undertaking. Where an ancillary insurance intermediary is already appointed by an authorised undertaking, such persons shall not seek appointment and registration in the Ancillary Insurance Intermediaries Company Register of an insurance broker.

5. Publication of Act No. XXVI of 2018 Act and Legal Notices

On the 10th July, [Act No. XXVI of 2018](#) entitled Various Financial Services Laws (Amendment) Act, 2018, which amends the Insurance Intermediaries Act (Cap. 487) and the Insurance Business Act (Cap 403) for the purposes of transposing the relevant provisions of the Insurance Distribution Directive, was published in the Government Gazette No. 20,023. Furthermore, the Legal Notices issued under the Act were published in the Government Gazette No. 20,028 on the 20th July 2018. The provisions transposing the IDD will come into force on the **1st October 2018**.

Contacts

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Communications Unit
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