

## **Note for Consultation**

### (Insurance Business Act and Insurance Intermediaries Act)

#### **1. Purpose**

- 1.1 The MFSA is currently reviewing the provisions of the Insurance Business Act (Cap.403) and the Insurance Intermediaries Act (Cap.487). It is proposed to effect minor amendments to both Acts which are mostly of a clarifying and corrective nature. In this respect, we are attaching draft amendments to the Insurance Business Act (Cap.403) and the Insurance Intermediaries Act (Cap.487) in order to seek consultation prior to implementation. Licence holders are kindly asked to submit any comments which they may have in relation to this draft legislation, in writing, by not later than **20<sup>th</sup> April 2007**. Kindly note the proposed amendments are drafted taking into account the amendments made to the Insurance Business Act by Insurance Intermediaries Act (“Act XII of 2006”), which by means of L.N. 180 of 2006 (Notice of coming into force), will come into force on the 1<sup>st</sup> May 2007.

#### **2. The salient amendments to the Insurance Business Act**

- 2.1. The definitions “insurance agent” and “insurance manager” are being amended to refer to a person *enrolled* under the Insurance Intermediaries Act. The term “enrolled” has been included to emphasise that these intermediaries have to be enrolled under the Insurance Intermediaries Act in order to be appointed by companies authorised under the Insurance Business Act.
- 2.2 The definition “Lloyd’s” is being amended to make reference to the new article 48A introduced by Act XII of 2006 which contained amendments to the Insurance Business Act.
- 2.3 The definition of “margin of solvency” and “Malta margin of solvency” is being amended to include a reference to “EEA margin of solvency”. A definition of “EEA margin of solvency” is to be included in article 14 (*Vide paragraph 2.5*).
- 2.4 In articles 11, 60, 61 and 67, the terms “an authorised insurance agent” and “an authorised insurance manager” are being amended to remove the references to the term “authorised” since in terms of the Insurance Business Act, “authorised” refers to an authorisation or a deemed authorisation under the said Act. Insurance agents and insurance managers are no longer ‘authorised’ under the Insurance Business Act but are ‘enrolled’ under the Insurance Intermediaries Act.
- 2.5 It is proposed to amend article 14 so that a company whose head office is in a country outside Malta which is authorised under the Insurance Business Act shall maintain at all times a “margin of solvency”, a Malta margin of solvency” or an “EEA margin of solvency”. The latter requirement reflects the provisions of article 26 of the First Council Directive of 24 July 1973 on the coordination of laws, Regulations, and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (73/239/EEC) (“Directive 73/239EEC”) and article 56 of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (“Codified Life Directive”). The

requirement to maintain an EEA margin of solvency shall apply to those companies whose head office is in a country outside Malta where such company is authorised in more than one Member State or EEA State.

- 2.6 In article 20, it is being proposed that the requirement for a company authorised under the Act to publish in an abridged form a copy of its audited financial statements in two local daily newspapers, shall not apply to companies carrying on business restricted to risks situated outside Malta or commitments where Malta is not the country of commitment.
- 2.7 Articles 33(4) and 35(5) are being amended to cater for situations where in the case of a transfer of portfolio, the transferee is situated and authorised outside Malta. The need to be authorised under the Insurance Business Act, the need to possess the margins of solvency and financial resources required by the Act, does not arise where the transferee is not located in Malta. If the transferee is authorised in the European Community the provisions of the Directive 73/239/EEC and the Codified Life Directive shall apply. If the transferee is authorised outside the European Community other requirements will apply. The MFSA is also introducing a new provision (*draft articles 33(4)(d) and draft article 35(5)(c) refer*) which transposes article 14(2) of the Codified Life Directive. Moreover, the existing article 33(6) is being transposed to the new article 33(4)(e). Article 37 is being amended to exclude the application of the provisions of Part VIII to companies carrying on business restricted to reinsurance, other than the provisions listed in the new article 37(2). This subarticle also transposes the requirements of article 18 of Directive 2006/62/EC of the European Parliament and of the Council of 16 November 2002 on reinsurance and amending Council Directive 73/239/EEC, 92/49/EC and Directives 98/78/EC and 2002/83/EC.
- 2.8 It is being proposed to delete subarticle (12) of article 38, since the definitions of “Member State” or “EEA State” have now been included in article 2 of the Insurance Business Act, by virtue of Act XII of 2006.
- 2.9 In the case of dissolution and winding up of authorised companies, it is being proposed to amend article 41(3) so that the assets of an authorised company shall be available for meeting the liabilities of the company attributable to its business of insurance not only in Malta but also in Member States or EEA States where business of insurance was carried on either under the right of establishment or freedom to provide services. As stated in Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings, claims by policyholders resident in a Member State other than the home Member State shall be treated in the same way as equivalent claims in the home Member State without any discrimination on the ground of nationality or residence.
- 2.10 The reference to the Exchange Control Act in article 65 is being removed since it no longer applies.
- 2.11 It is being proposed to amend article 67(6) to make it clear that in the case of administrative penalties, that is in the case of penalties without recourse to a court of law which may be imposed by the MFSA, the maximum penalty (fixed and daily) imposed may not exceed Lm40,000.

### **3. The salient amendments to the Insurance Intermediaries Act**

- 3.1 Amendments proposed to be carried out to the Insurance Business Act, are also being proposed to article 3(2)(h) of the Insurance Intermediaries Act to clarify that in the case of administrative penalties, the maximum penalty (fixed and daily) may not exceed Lm40,000.
- 3.2 It is proposed to amend article 11(4) to reflect the provisions of article 15 (3) of the Insurance Brokers and Other Intermediaries Act which was repealed by the Insurance Intermediaries Act.
- 3.3 In terms of articles 12 and 30, where an insurance manager is to be appointed by an insurance broker, the business of insurance broking is to be restricted to contracts of insurance relating to risks situated outside of Malta. The words “*or to commitments where Malta is not the country of commitment*” are being added to make it clear that this requirement applies also to contracts of long term business of insurance. The same comments apply to the amendments proposed to the definition of “insurance manager” contained in the Schedule to the Insurance Intermediaries Act.
- 3.4 Article 15(1)(a) is being amended so that the automatic striking off of enrolment of intermediaries will apply only if enrolled persons, and not registered persons, fail to commence to carry out insurance intermediaries activities within twelve months from enrolment. Article 15(1)(b) was also reproduced in article 16(h) and therefore, the old article 16(h) is being deleted and substituted by a new article 16(h). The new article 16(h) will provide that the MFSA may suspend or strike the name of an intermediary off the Register or List if the registered person does not hold a directorship in, or is no longer employed with, the enrolled company.
- 3.5 Where enrolled persons intend to cease to carry on insurance intermediaries activities, such persons will be required to submit an application for ceasing at least three months before the date on which the enrolled person intends to cease to carry on such activities. This reflects the requirements previously applicable to insurance agents and insurance managers under Part II of the Fourth Schedule of the Insurance Business Act, which was repealed by Act XII of 2006.
- 3.6 For the sake of consistency, it is proposed to amend article 46, relating to the confidentiality, to reflect the provisions of article 59 of the Insurance Business Act introduced by Act XII of 2006.
- 3.7 The activities of insurance agent found in the Schedule to the Act has been amended to make it clear that insurance agents are to be appointed by companies authorised under the Insurance Business Act or by European insurance undertakings.

**23<sup>rd</sup> March, 2007.**