

Consultation Procedure

Proposals for Legal Notices / Ministerial Regulations and for new laws and amendments to existing laws

Explanatory Note

The documents circulated by the MFSA 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 not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

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). The amendments primarily relate to the transposition of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (the “Acquisitions Directive”). The main aim of the Acquisitions Directive is to improve considerably the process of supervisory approvals for acquisitions of licensed entities, including authorised companies by increasing legal certainty, clarity and transparency. 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 **24th March 2009**.

2. The salient amendments to the Insurance Business Act

2.1. *Amendments relating to the Acquisitions Directive*

- 2.1.1 In order to transpose the pertinent provisions of the Acquisitions Directive in the Insurance Business Act, it is proposed to amend the definition of “qualifying shareholding” in article 2(1) and replace the current article 38 with three new articles, article 38, 38A and 38 B as explained hereunder. It is also being suggested to remove the current provisions found in article 38 relating to mergers, reconstructions etc and insert them in a new article 38C.
- 2.1.2 The Acquisitions Directive amends the definition of “qualifying shareholding”. Therefore, the MFSA is proposing to substitute the current definition found in the Insurance Business Act to transpose the amendments found in the said Directive and to provide a more faithful transposition of the term “qualifying holding” found in the sectoral EU Insurance Directives, that is Directive 92/49/EEC, Directive 2002/83/ EC and Directive 2005/68 /EC.
- 2.1.3 Under the current article 38, the proposed acquirer refers to “any person” intending to take any of the actions set out in article 38(1)(a) to (c). In terms of the proposed amendments, the proposed acquirer will now also refer to “persons acting in concert” (to be defined in an insurance rule). Therefore, the provisions of article 38 will be triggered off when any person or persons acting in concert acquire a qualifying shareholding or further increase a qualifying shareholder in an authorised company as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% (currently 33%) or 50% or so that the authorised company would

become its subsidiary. The provisions of article 38 shall also apply in the case of a disposal or a reduction of a qualifying shareholding. Such disposals and reductions of qualifying shareholdings will no longer require the MFSA's consent but will instead only have to be notified to the MFSA. In contrast, the process of a proposed acquisition for a qualifying shareholding requires the approval to be sought and granted before an acquisition can proceed.

The information to be submitted in relation to the proposed acquisition will reflect the list of information found in the *Guidelines for the prudential assessment of acquisitions and increase of holdings in the financial sector required by Directive 2007/44/EC* (the "Guidelines") issued by the 3L3 Committees of European Financial Supervisors (CEBS, CESR and CEIOPS). This information will be set out in an insurance rule to be issued for consultation shortly.

- 2.1.4 The new proposed article 38A sets out the period of time within which the MFSA is to carry out the assessment in relation to the proposed acquisition. In terms of the proposed amendments, the MFSA will have up to two working days following receipt of a notification to acknowledge receipt to the proposed acquirer. It will have 60 working days to make a decision following acknowledgment and may only interrupt this period, for a maximum of 20 days to request further information. This period may be interrupted no later than the 50th working day of the assessment period. The Acquisitions Directive provides for the possibility to extend the time periods for non-EEA acquirers.

In terms of the proposed amendments, the MFSA may, on completion of the assessment, decide to approve or refuse the proposed acquisition. This can only be done if there are reasonable grounds for doing so on the basis of the criteria set out in the Acquisitions Directive or if the information provided by the proposed acquirer is incomplete. If the MFSA decides to refuse an acquisition, it must inform the proposed acquirer in writing and provide its reasons, within two days of taking the decision, and not exceeding the assessment period. Where the MFSA does not refuse the proposed acquisition in writing within the assessment period, it shall be considered to be approved. For the sake of clarity, it is also being proposed to include a definition of "working days".

- 2.1.5 The Acquisitions Directive requires supervisory authorities in Member States to work in consultation with each other if the proposed acquirer is one of the persons listed in the draft article 38B.
- 2.1.6 The Acquisitions Directive also sets out five prudential criteria to appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition. Guidance on the five assessment is set out in the Guidelines referred to above. Therefore, it is suggested to transpose five assessment criteria, together with some additional guidance produced in the said Guidelines in the above mentioned insurance rule.

2.2 *Other amendments to the Insurance Business Act*

- 2.2.1 The definition of "investment services licence" is being deleted, since there was a reference to it in the previous article 6(4) of the Insurance Business Act which dealt with LLTCIs and which was deleted by Act No. XII of 2006. Therefore, since there is

no longer a reference to “investment services licence” in the Act, there is no need to retain the definition.

- 2.2.2 In terms of article 15 of Directive 92/49/EEC, article 15 of Directive 2002/83/EC and article 22 of Directive 2005/68/EC, the obligation to inform the competent authority of the names of the persons holding a qualifying shareholding in the company and the percentage of such holding is to take place “*at least once a year*”. Therefore, the MFSA is proposing to insert the latter text in article 43(2)(b) for a more faithful transposition of the corresponding EU articles.

3. The salient amendments to the Insurance Intermediaries Act

- 3.1 By virtue of article 54 of the Insurance Intermediaries Act (Cap. 487), certain articles of the Insurance Business Act apply to insurance intermediaries. One of these articles is article 38 of the Insurance Business Act, to which proposed amendments have been carried out in order to transpose the Acquisitions Directive. Since the Acquisitions Directive does not apply to insurance intermediaries, the MFSA is of the view that it would be appropriate to maintain the procedures and timeframes which currently apply in the present article 38 of the Insurance Business Act. Therefore, we are proposing to transpose the existing article 38 of the Insurance Business Act in the Insurance Intermediaries Act (*the proposed new article 44A refers*). The other proposed amendments simply relate to removing all references in the Insurance Intermediaries Act to article 38 of the Insurance Business Act.

2nd March, 2009.