

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 Rules and Insurance Intermediaries Rules)

1. Purpose

- 1.1 The MFSA is currently carrying out a review process of the Insurance Directives (“the Directives”), primarily, in view of the fact that under the Insurance Business Act (Cap.403) (“the Act”), the term “insurance directive” has been replaced with the term “insurance rule” to avoid confusion of terminology with EU Insurance Directives. As a consequence, the Insurance Directives will now be referred to as the Insurance Rules. Moreover, while in the process of amending the Directives, the MFSA is also proposing certain minor amendments as specified hereunder. In this respect, we are attaching other draft insurance rules in order to seek consultation prior to implementation. We are also attaching a new insurance intermediaries Rule which will apply to European insurance undertakings applying for enrolment of tied insurance intermediaries in the Tied Insurance Intermediaries List. Comments are to be provided to the MFSA in writing by not later than **3rd August 2007**.

2. Insurance Rules

2.1 Insurance Rule 4 of 2007 – Specified Effective Period with Respect to Certain Contracts of Long Term Business

- 2.1.1 This draft Insurance Rule will apply to a company authorised under the Insurance Business Act (Cap. 403) to carry on business of insurance, including companies carrying on business of affiliated insurance. Paragraph (b) of article 4 of the Rule which concerns contracts falling within class IV- Permanent Health is being amended to reflect the description of this contract of insurance contained in the Second Schedule to the Act.

2.2 Insurance Rule 5 of 2007 – Mutual Association

- 2.2.1 It is being proposed to amend article 2 of the Rule to clarify that this Rule will apply to mutual associations situated in a non-EEA State. An interpretation of a “non-EEA State” is being included in article 2(3).
- 2.2.2 Article 4 is being amended so that the requirement concerning the articles of association in relation to long term business may include provisions for “*claiming assistance from other persons who have undertaken to provide it*”. This amendment has been effected to reflect the provisions of article 3(6) of Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance.

2.2.3 In terms of the current article 5(3), a mutual association may submit an application for permit to carry on business of insurance under the Act through a person enrolled in the Brokers List under the Insurance Intermediaries Act (Cap.487). The MFSA is proposing to amend this article so that a mutual association will be permitted to carry on business of insurance also through a person enrolled in the Managers List.

2.3 Insurance Rule 8 of 2007 – Qualifications of Individuals Who Effectively Direct the Business or Manage the Affairs of Insurance Companies, or Branches thereof.

2.3.1 All references to insurance agents and insurance managers are being removed since the qualifications of insurance agents and insurance managers are now contained in Insurance Intermediaries Rule 9 of 2007 - Qualifications of Individuals Applying for Registration.

2.3.2 A new definition of “insurance intermediaries activities” is being included in a new article 4. For the purposes of this Rule, “insurance intermediaries activities” means insurance intermediaries activities carried out by an insurance agent, insurance manager or insurance broker enrolled under the Insurance Intermediaries Act (Cap.487).

2.3.3 The draft article 6 lists the evidence which demonstrates that an individual has the knowledge and ability of an individual as referred to in article 5(4)(c) of the Rule. In paragraphs (a), (b) and (c) of the current article 5, there is a reference to a person acting in an “independent capacity”. This term is being removed and, as a consequence, article 7 of the current Directive is being deleted.

2.3.4 It is being proposed to amend article 6(1)(c)(*previously article 5(1)(c)*) so that a person will be considered to satisfy the requirements of article 6 if he has pursued locally or overseas business of insurance or carried out insurance intermediaries activities for a period of not less not less than one year during the last three years in a managerial capacity, the individual is a fellow or associate of the Chartered Insurance Institute of the United Kingdom or holds an insurance qualification of a similar standing of an institute of repute recognised for such purpose by recognised by the Authority and proves that he has received tuition or undergone practical training in business of insurance or insurance intermediaries activities attested by references acceptable to the Authority as fully satisfying the requirements of sub-paragraph (c) of paragraph (4) of article 5 of this Rule.

2.4 Insurance Rule 14 of 2007 – Insurance Advertisement and Other Promotional Activities

2.4.1 The scope of the Rule is being amended to make it clear that Rule will apply to insurance advertisements and other promotional activities issued in Malta.

2.4.2 The requirement for domestic insurance companies marketing and selling linked long term contracts of insurance in Malta to hold a licence under the Investment Services Act, in addition to the authorisation under the Act also been removed since as from 1st January 2007, the regime of linked long term contract of insurance is

regulated solely under the Act. As a result, this draft Rule applies to all long term business of insurance, including linked long term contracts. Specific requirements relating to linked long term contracts of insurance are being introduced in this Rule (*articles 5(2)(b) and 8 thereof refer*).

- 2.4.3 The current article 5(9) is being amended to clarify that an advertisement should not make unfair, incorrect or unverifiable comparisons with competing companies or products.
- 2.4.4 It is proposed to amend the provisions relating to advertisements on broadcasting sponsorships, television and radio. Currently, it is sufficient for risk warnings on televisions to be presented in a clear and legible manner. The amendments propose that risk warnings during broadcast sponsorships, television and radio advertisements will be required to be read out and any warnings on television advertisements should also be visually presented in a clear and legible manner. An additional requirement is being added so that the relative risk warnings and authorisation statements should be clearly indicated on a caption at the very bottom of the visual which should take up not less than 20% of the whole screen. (*article 6(5)(b) refers*).
- 2.4.5 In instances where an advertisement is issued by an insurance agent or insurance manager (“the agent”), it is proposed to remove the requirement for the advert to contain the address of the insurer and the agent which issued such advert.

2.5 Insurance Rule 28 of 2007 – Insurance company carrying on business of insurance through the Internet

- 2.5.1 The MFSA is proposing to issue a new Rule applicable to authorised companies carrying on business of insurance through the Internet. The requirements contained in this Rule are modelled on article 9 of the draft contained in Insurance Intermediaries Rule 5 of 2006 - Insurance Intermediaries Advertisements and Other Promotional Activities issued for consultation on the 18th September 2006. The MFSA thought it appropriate to remove these provisions from the proposed Insurance Rules and Insurance Intermediaries Rules on advertising and issue a separate Rule on internet activities. This Rule will delineate the information which is to be included on an internet site operated by an insurer and the conditions which the insurer is required to comply with when operating such site.

3. Insurance Intermediaries Rules

3.1 Insurance Intermediaries Rule 23 of 2007 – European Insurance Undertakings applying for enrolment of persons in the Tied Insurance Intermediaries List

- 3.1.1 Article 43(2) of the Insurance Intermediaries Act (Cap.487) provides that European insurance undertakings seeking to enrol persons resident in Malta or having their registered office or head office in Malta in the Tied Insurance Intermediaries List shall enrol such person with the MFSA as may be determined by an insurance rule and the said rule shall contain the particulars, conditions and requirements for enrolment. The Second Schedule of Insurance Intermediaries Rule 17 of 2007 provides for an application to be completed by such undertakings. The MFSA is proposing to issue a new rule listing the particulars, conditions and requirements

which European insurance undertakings are required to comply with when enrolling such persons.

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