

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** On the 18th September 2006 and on the 6th July 2007, two separate notes for consultation were circulated to the Financial Services Consultation Council (“FSCC”), the Malta Insurance Association, the Association of Insurance Agents, the Association of Insurance Brokers, and all compliance officers of insurance licence holders in respect of Insurance Intermediaries Rules and Insurance Rules issued in terms of the Insurance Intermediaries Act (Cap.487) or the Insurance Business Act (Cap.403), as the case may be. These notes for consultation included consultation on Insurance Rule 8 on qualifications of individuals who effectively direct the business and manage the affairs of insurance companies or branches thereof, Insurance Rule 14 and Insurance Intermediaries Rule 5 on advertisements and other promotional activities.
- 1.2** The Authority received comments from a number of persons. An outline of the main comments received on the Insurance Rules and Insurance Intermediaries Rules mentioned hereunder and the MFSA’s position in relation thereto is provided in Section B. Even though Insurance Rule 8, Insurance Rule 14 and Insurance Intermediaries Rule 5 have already been issued for consultation, various amendments have been carried out to the proposed Rules, following consultation. Prior to finalising these Rules, the MFSA is re-issuing the three rules mentioned above for consultation. In this respect, we are attaching the draft rules in order to seek a brief consultation prior to implementation. Any further comments are to be provided to the MFSA in writing by not later than - **2nd June 2008.**

This Note does not include feedback received relating to spelling, grammatical and morphological errors. However, these are reflected in the draft Rules.

2. Section B

2.1 Insurance Rule 8 of 2008 – Qualifications of Individuals Who Are Responsible for the Effective Management of Insurance and Reinsurance Companies, or Branches Thereof.

- B.1.** *Comments received* - It was pointed out that the new requirement proposed in article 6(1)(c) of the Draft Rule issued for consultation on the 6th July 2007 (“the 2007 Draft Rule”), is not appropriate as the scope of article 4(4) of the Directive currently in force (*article 5(4) of the 2007 Draft Rule*) is to classify individuals as individuals having “academic” qualifications and individuals having “on the job experience”. The scope of article 5(1) of the Directive (*article 6(1) of the 2007 Draft Rule*) is to clarify, for the purpose of article

4(4)(c) thereof, the phrase “adequate general, commercial and professional knowledge and ability” in relation to an individuals. The proposed amendment would lead to a situation where an individual having only “academic” qualifications is compliant with article 5(4)(b) but not compliant with article 6(1)(c).

MFSA’s remarks – After consultation with the market, article 5(4) of the 2007 Draft Rule has been amended so that individuals responsible for the effective management of authorised companies should possess a combination of both educational attainment and practical experience. However, a person having practical experience in business of insurance or insurance intermediaries activities and no educational attainment can be considered as qualified if such experience falls within the criteria set out in article 6 of the proposed new Rule.

Following the comments received in relation to article 6 of the 2007 Draft Rule, the MFSA has removed the requirement relating to academic qualifications contained in article 6(1)(c) of the 2007 Draft Rule. Moreover, the periods of time which an individual is to satisfy in order to comply with the said article have been revised.

2.2 Insurance Rule 14 of 2008 – Insurance Advertisements and Other Promotional Activities

- B.2 Comments received - It was pointed out that article 5(2)(c) of the draft Insurance Rule 14 of 2007 issued for consultation on the 6th July 2007 (“the 2007 Draft Rule”), should have made reference to both articles 6 and 7 thereof and not only to article 7.

MFSA’s remarks – In the light of these comments, in article 5(2)(c) of the Draft Rule, for the words “in addition to the guidelines set in article 7 of this Rule,” there shall be substituted the words “in addition to the guidelines set in articles 6 and 7 of this Rule.”.

- B.3 Comments received - It was suggested that revised Rule should as far as possible reflect the new Investment Services Rules and Guidance Notes which implement MiFID. The guidelines on advertising in the Guidance Notes are considered to “best practice” principles. It was further stated that some of the requirements found in Insurance Rule 14 (for example, article 6(5)(a)(i) and article 8(2)(c) of the 2007 Draft Rule are far too rigid and depart from the principle enshrined in MiFID that advertising should be fair, clear and not misleading. Even though linked long term contracts of insurance (“LLTCI’s”) are now regulated under the insurance regime, however, one should not ignore the fact that albeit insurance products, LLTCI’s are very much related and linked to investment instruments. Hence, a more streamlined and standardised approach regarding advertising rules on insurance and investments, was requested.

MFSA's remarks - The MFSA does not concur with this argument. The main purpose of articles 6(5)(a)(i) and 8(2)(c) (*vide paragraph B.12 of this document*) is to provide policyholders and prospective policyholders with fair and clear information with regards to the risk associated with certain insurance policies.

The requirements of article 6(5)(a)(i) do not emanate from any EU Insurance Directive and apply to all classes of long term insurance and general insurance and not solely to LLTCIs. However, in order to make this provision less burdensome, we propose that the words “*when the main text appears in a minimum font size twelve, the font size of any warnings, where applicable, and lower than the font size of the main text*” be deleted.

- B.4 Comments received- Article 6(5)(b)(i) stipulates that broadcast sponsorships, television and radio advertisements, should include the authorisation statement. In some cases, a 25 seconds advert would have 15 seconds of it taken up reading out the authorisation and warning statements, with only 10 seconds left for advertising content. In addition with respect to LLTCIs, the risk warnings have to be mentioned as well and therefore the 'caveat /warnings' time will definitely increase. It was suggested that the MFSA either provides exemptions for radio adverts which are less than 45 seconds and TV adverts less than 60 seconds or otherwise to consider alternative abbreviated authorisation statements.

MFSA's remarks -The MFSA is proposing that companies use an abbreviated authorisation statement (“a company authorised and regulated by the Malta Financial Services Authority” instead of “a company authorised to carry on business of insurance regulated by the Malta Financial Services Authority”).

- B.5 Comments received - Article 6(5)(b)(ii) and Article 8 (2)(c) stipulate that it is not enough to have a clear visual of the risk warning for broadcast sponsorships and TV adverts but that this needs to be read out throughout the advert which means that TV adverts will need to be longer and thereby more expensive. Moreover, it was stated that having 20% of the screen to be taken by the risk warning, will make the adverts look unattractive. It was pointed out that such requirements do not normally exist in other insurance markets. Therefore, they are not in agreement with these proposals. Furthermore, it was queried whether this requirement applies also when an insurance company merely sponsors a programme and is mentioned during the said programme.

MFSA's remarks - This requirement is also found in paragraph 3[B.10] of Guidance Note 3 of the Guidance Notes to the Investment Services Rules for Investment Services Providers. Therefore, in order to maintain a more streamlined and standardised approach regarding advertising rules on insurance and investments products, it was decided to retain this requirement.

Where an insurance company merely sponsors a programme and this is mentioned during the said programme, the MFSA is of the view that the authorisation statement should be read out. However, there would be no need for the statement to be visualised on the screen.

- B.6. *Comments received* - Article 6(5)(c) stipulates that the advertisement is to include “*a clear indication as to where one can obtain a product information document*”. It was argued that it is not necessary to retain this requirement once the company that is advertising is required to clearly identify itself.

MFSA’s remarks - The MFSA is proposing to remove this requirement.

- B.7. *Comments received* - Article 6(6)(a-c) of the 2007 Draft Rule stipulated that an advertisement shall amongst others identify the company concerned which issued it; contain the address of the company concerned which issued it and state the kind of business the company concerned is authorised by the Authority to carry on if the company is an insurer. The MFSA was asked whether this information should be also communicated verbally for radio adverts and /or TV adverts.

Furthermore it was pointed out that the words “*if the company is an insurer*” in article 6(6)(c) of the (Draft) Rule are superfluous because in article 2(1) of the Rule, “*a company concerned*” means “*a company authorised to carry on the business of insurance*”.

MFSA’s remarks - The requirements contained in article 6(6)(a-c) already feature in the current Insurance Directive 14 of 1999 and do not constitute additional requirements under the new draft. The information listed in the said draft articles should also be communicated verbally. However, the MFSA is of the opinion that the requirement for the advert to contain the identity of the company concerned which issued it constitutes sufficient information to safeguard the interest of the policyholder or potential policyholder. Therefore, it is being proposed that the inclusion in the advert of the address of the company which issued it and the kind of business the company concerned is authorised to carry on by the MFSA, may be removed. This amendment also addresses the comment raised in the second paragraph since the MFSA is proposing to delete article 6(6)(c) of the Draft Rule.

- B.8. *Comments received* - It was pointed out that it is not clear whether the said article 6(10) makes reference only to an insurance agent or insurance manager carrying on business of insurance on behalf of a foreign insurance company and/or also on behalf of a local insurance company carrying on business of insurance directly and/or through an insurance agent or insurance manager. Therefore, it was suggested that, in article 6(10) of the Draft Rule, for the words “*Where a company concerned carries on business of insurance through an insurance agent or insurance manager (“the agent”),*” there shall be substituted the words “*Where a company concerned carries on business of*

insurance directly and/or through an insurance agent or insurance manager ("the agent").".

MFSA's remarks - The MFSA agrees with this suggestion and amended the Rule accordingly.

- B.9. Comments received - It was queried why the MFSA removed from article 6(11)(a) of the 2007 Draft Rule the requirement to contain, in an advertisement issued by an insurance agent or insurance manager, the address of both the insurer and the agent or manager which issued the advertisement. Furthermore it was pointed out that, in accordance with article 6(6)(b) of the 2007 Draft Rule, an advertisement issued by an insurer should contain the address of the insurer and an advertisement relating to the business of an insurer issued by an agent or manager of the insurer shall contain neither the address of the insurer nor the address of the agent or manager. At least, it should contain the address of the agent or manager issuing the advert. It was argued that firstly, in an advertisement, the consumer has a right to know the address of the person issuing the advertisement; secondly, the address of the person issuing the advertisement is part and parcel of the promotion and selling of a product and thirdly, if an advert issued by an insurer is to contain the address of the insurer so is that of an advert issued by an agent of an insurer. Therefore, the MFSA was asked to re-consider its decision and reintroduce these requirements.

MFSA's remarks - The requirement for the inclusion of the address of an insurance agent and insurance manager is not necessary. This article sets out the minimum requirements applicable to adverts. If the licence holder would like to add any additional information, he may do so. In order to be consistent with the amendments carried out to 6(6)(b) above (*vide paragraph B.7 of this Note*), the MFSA is of the opinion that the inclusion of the address of the insurance agent and manager issuing the advert is not necessary .

- B.10. Comments received - Article 8(1) of the draft Insurance Rule 14 of 2007 issued for consultation on the 6th July 2007 stipulated that where an insurance contract is a linked long term contract of insurance, an insurance company is to take into account matters of fact, opinion or forecast which have been omitted (or might properly have been included) in the advertisement as well as the content and form of the advertisement itself, the context in which it is issued, the general impression that it creates, and the likelihood of any person being misled by it. It was argued that this paragraph is very subjective and can be open to various interpretations.

MFSA's remarks - The MFSA concurs with the comment raised above and is therefore proposing to delete this paragraph.

- B.11 Comments received - Article 8(1) also stipulates that in the case of a linked long term contract of insurance, the insurance contract is to include a statement in the case where deductions for charges or expenses are made

disproportionately in the early years of the contract of insurance. The advertisement should also include a statement to the effect that if the policyholder withdraws from the contract of insurance in the early years a person may not get back the full amount invested.

It was suggested that since this statement relates to just one risk factor normally associated with long term contracts and LLTCIs, this is a detail which should be best explained in the Product Information Document. It was also pointed out that by stating that a unit-linked product is a long term contract of insurance and that the value of the investment may fall as well as rise we would be providing the prospective policyholder with sufficient disclosure on the risks involved when he/ she withdraws from the contract of insurance in early years. Therefore, it was proposed that the requirement to include such a statement be removed.

MFSA's remarks - The purpose of this paragraph is to protect the policyholder by informing him that if he withdraws from the contract of insurance in the early years, surrender values would apply and that such values may be less than the full amount invested. Therefore we are of the view that this requirement should be retained.

- B.12 Comments received - Article 8(2)(c) states that the usual risk warning for investment related products 'the value of investments may fall as well as rise' and authorisation text must be read out on broadcast sponsorships and TV adverts. Furthermore, apart from taking up not less than 20% of the whole screen, it should never exceed 4 lines and updated at intervals of not less than 4 seconds each. This implies that the risk warning and licensing statement will have to appear all throughout the advertisement. It was stated that a typical television advert has a duration of 30 seconds at an average cost of Lm10 per second. Hence, the MFSA was asked to review this paragraph

MFSA's comments – As stated in paragraph B.5 of this Note, this requirement is also found in paragraph 3[B.10] of Guidance Note 3 of the Guidance Notes to the Investment Services Rules for Investment Services Providers. Therefore, in order to maintain a more streamlined and standardised approach regarding advertising rules on insurance and investments products, it was decided to retain this requirement.

2.3 Insurance Intermediaries Rule 5 of 2008 – Insurance Advertisements and Other Promotional Activities

- B.13. Comments received - A general comment was put forward as to which provisions of the Rule apply to tied insurance intermediaries and their obligations when marketing overseas.

MFSA's remarks - Article 2 of the Draft Rule specifies that the Rule applies to tied insurance intermediaries. Furthermore, article 5(2)(b) lays down which

provisions apply to advertisements issued by a tied insurance intermediary. In so far as advertisements issued in countries outside Malta, article 9 has been amended to apply also to tied insurance intermediaries. In terms of the Insurance Intermediaries Act, (Cap.487), it is possible for tied insurance intermediaries enrolled in Malta to carry on such activities outside Malta.

- B.14. Comments received - It was pointed out that the MFSA had omitted from its drafts paragraphs (3) to (7) of article 5 of the Insurance Intermediaries Rule 5 of 1999.

MFSA's remarks - Since the requirements of Insurance Intermediaries Rule 5 of 2008 are without prejudice to the requirements of Insurance Rule 14 of 2008, the MFSA had removed these paragraphs from the Rule as these are also included in article 5 of Insurance Rule 14. For avoidance of doubt, the MFSA has decided to re-insert these provisions. However, the licensing statements previously found in article 5(4) of Insurance Intermediaries Directive 5 of 1999 has been amended and inserted under articles 6(6) and 7(5) of the new Draft Rule respectively.

- B.15. Comments received - In so far as image adverts are concerned, a clarification of the term “occasionally” in article 8 of the draft Rule was requested. Moreover, it was suggested that the word “occasionally” be revised since this term gives the impression that the right of tied insurance intermediaries to issue image advertisements is somewhat restricted.

MFSA's remarks - It is proposed to remove the word “occasionally” and revise the definition of “image advert” (article 8 of the draft rule refers).

- B.16. Comments received - A number of comments were received in relation to the new requirements for internet adverts.

MFSA's remarks - The MFSA thought it appropriate to remove these provisions from the proposed insurance intermediaries rule on advertising and issue a separate rule on internet activities, similar to the position adopted for insurance companies. The MFSA is proposing to issue a new intermediaries rule applicable to enrolled persons and tied insurance intermediaries carrying out insurance intermediaries activities through the Internet. It is proposed to model this draft Rule on Insurance Rule 28 of 2008 on Insurance Companies carrying on Business of Insurance through the Internet. The draft Rule on insurance intermediaries carrying out business of insurance through the internet is being attached.

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