

## **Chapter 8: Financial Statements and Supervisory Reporting Requirements**

### **8.1 Introduction**

8.1.1 This Chapter lays down the Insurance Rules to be complied with in terms of articles 4, 18F, 20 and 32 of the Act, relating to:

(a) the manner and form in which an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking (“an authorised undertaking”), shall submit and publish its audited financial statements;

(b) the information which is necessary for the purposes of supervision, which an authorised undertaking is required to submit to the competent authority and the period within which such information is to be submitted;

(c) a report on the solvency and financial condition (“SFCR”), which an authorised undertaking is to disclose publicly, on an annual basis.

### **8.2 Drawing up and Submission of Audited Financial Statements**

8.2.1 An authorised undertaking shall draw up its audited financial statements in accordance with the International Accounting Standards (IASs) and the International Financial Reporting Standards (IFRSs), as adopted by the European Union through Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 and the Commission Regulation (EC) No 1126/2008 of 3 November 2008, and any subsequent amendments thereto, as may be issued from time to time by the International Accounting Standards Board (IASB) and as adopted by the European Union. In addition, an authorised undertaking shall comply with any other requirements applicable under the Act and the Companies Act (Cap.386).

#### *Submission of Audited Financial Statements*

8.2.2 In accordance with article 20 of the Act, an authorised undertaking is required to submit audited financial statements to the competent authority. For this purpose, an authorised undertaking shall submit its audited financial statements by no later than:

(a) 20 weeks after the authorised undertaking’s financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017;

(b) 18 weeks after the authorised undertaking's financial year end in relation to its financial year ending on or after 1 January 2017 but before 1 January 2018;

(c) 16 weeks after the authorised undertaking's financial year end in relation to its financial year ending on or after 1 January 2018 but before 1 January 2019;

(d) 14 weeks after the authorised undertaking's financial year end in relation to its financial year ending on or after 1 January 2019 but before 1 January 2020;

(e) 14 weeks after the authorised undertaking's financial year end in relation to its financial year ending on or after 1 January 2020.

8.2.3 The audited financial statements shall, as a minimum, include the following:

(a) the Director's Report;

(b) the Statement of Directors' Responsibilities;

(c) the Report of the Auditors on Financial Statements;

(d) a complete set of financial statements, including notes thereto.

8.2.4 Where an authorised undertaking is listed on a regulated market authorised in Malta in terms of the Financial Markets Act (Cap. 345), the publication of the financial statements should include all other financial information required for publication under the Listing Rules issued in terms of the Financial Markets Act (Cap. 345).

#### Authorisations regarding late Submissions

8.2.5 In terms of article 20(1) of the Act, if for valid reasons an authorised undertaking is not able to carry out its obligations within the period established in accordance with paragraph 8.2.2, from the closing of its financial year, as applicable, it should apply to the competent authority for its consent to extend the period of submission.

8.2.6 When an authorised undertaking is applying for such an extension, it shall also provide all relevant details and the reasons for such an application and shall allow an appropriate time for the competent authority to consider such an application.

8.2.7 It is at the competent authority's discretion to approve such an application and, if and when an approval is given, it shall be given only in exceptional cases.

### **8.3 Exhibit of Audited Financial Statements**

8.3.1 Article 20(1)(b) of the Act requires an authorised undertaking to exhibit in a conspicuous position and keep so exhibited throughout the following year, a copy of its audited financial statements, in each of its offices, agencies and branches in Malta. In the case of an authorised undertaking whose head office is in Malta, this requirement shall also apply with respect to the undertaking's offices, agencies and branches in a country outside Malta, in the same manner and to the same extent as it applies to its offices, agencies and branches in Malta.

8.3.2 This exhibit should also be accompanied by a Note to the effect that the published audited financial statements are made available to any person interested in viewing it.

### **8.4 Publication of Audited Financial Statements**

8.4.1 In terms of article 20(3) of the Act, an authorised insurance undertaking shall publish and make available to the public a copy of its audited financial statements. Such information shall be deemed to be available to the public:

(a) where an authorised insurance undertaking owns and maintains a website related to its business, and such information is disclosed on that website;

(b) where an authorised insurance undertaking does not own and maintain a website but is an undertaking which has appointed an insurance manager enrolled under the Insurance Intermediaries Act (Cap.487) to manage its business, and where permitted by that manager, such information is disclosed on the website of that manager;

(c) where an authorised insurance undertaking does not own and maintain a website but is a member of an insurance association which does own and maintain a website, and where permitted by that insurance association, such information is disclosed on the website of that association.

- 8.4.2 Where an authorised undertaking discloses such information on a website in accordance with paragraphs 8.4.1(a), 8.4.1(b) or 8.4.1(c) that information shall remain available on that website for at least two years following its publication.
- 8.4.3 An authorised undertaking shall, notwithstanding that its audited financial statements have been made available on a website in accordance with paragraphs 8.4.1(a), 8.4.1(b) or 8.4.1(c), send to any person, who so requests within two years from publication, a printed copy of such information within 20 working days from that request, and may charge such reasonable fees not exceeding the administrative costs incurred in producing such copy.
- 8.4.4 Where an authorised undertaking is listed on a regulated market authorised in Malta in terms of the Financial Markets Act (Cap. 345), its audited financial statements shall also be published in accordance with the Listing Rules.
- 8.4.5 For the avoidance of doubt, in so far as an undertaking whose business is restricted to reinsurance, a captive insurance undertaking and a captive reinsurance undertaking, are concerned:
- (a) paragraphs 8.4.1 and 8.4.2 shall not apply; and
  - (b) paragraph 8.4.3 applies only in so far as such an undertaking shall be required to provide a copy of its audited financial statements to any person applying for such copy and the undertaking may charge such reasonable fees, for such copy.
- 8.4.6 Every authorised undertaking shall publish its audited financial statements no later than the time-frames specified in paragraph 8.2.2.

## **8.5 Contents of Approved Actuary's Report to be submitted to the competent authority**

- 8.5.1 In terms of article 23(1) of the Act, an approved actuary shall, in respect of each financial year of an authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III, as specified in the Second Schedule of the Act, draw up a report affecting those classes of with-profits business of the undertaking. The actuary's report shall be submitted by the undertaking concerned to

the competent authority together with its audited financial statements. The report should be proportionate to the nature of the with-profits business.

8.5.2 The report is to include the following:

(a) all significant relevant issues, including the way in which the authorised undertaking concerned has:

(i) exercised, or failed to exercise, any discretion that it has in carrying out its with-profits business; and

(ii) addressed any competing or conflicting rights, interests or expectations of its policyholders (or groups of policyholders) and, if applicable, shareholders (or groups of shareholders);

(b) aspects of the business relating to:

(i) bonus rates to be applied to policies at maturity or on the death of a policyholder, or when calculating the annual bonus;

(ii) investment policy in the light of product descriptions disclosed to customers;

(iii) surrender value methodology (including market value reductions);

(iv) new business plans and premium rates;

(v) allocation of expenses to with-profits business;

(vi) investment fees to be charged to with-profits business;

(c) the opinion of the approved actuary, based on the information and explanations provided to him by the authorised undertaking, that the discretion exercised by the undertaking in respect of the period covered by the report may be regarded as taking, or having taken, the interests of the policyholders of the authorised undertaking affected by classes I and III into account in a reasonable and proportionate manner.

## **8.6 Information to be provided for supervisory purposes**

8.6.1 An authorised undertaking shall submit to the competent authority, pursuant to article 32 of the Act, the information which is necessary for the purposes of supervision of the undertaking concerned, by the competent authority.

8.6.2 The information referred to in paragraph 8.6.1 shall:

(a) be submitted in the form of:

(i) annual and quarterly quantitative templates referred to in Article 304(1)(d) of the EU Commission Delegated Regulation and as provided in the EU Commission Implementing Regulation issued under Articles 35(10) of the Solvency II Directive ([Commission Implementing Regulation \(EU\) 2015/2450 of 2 December 2015 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council](#));

(ii) the narrative reports referred to in Articles 304(1)(a) to (c) of the EU Commission Delegated Regulation and in the EU Commission Implementing Regulation issued under Article 56 of the Solvency II Directive ([Commission Implementing Regulation \(EU\) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council](#));

(iii) the national specific templates found in Annex II and Annex III to this Chapter; and

be accompanied by a declaration as set out in Annex IV (other than for the narrative report referred to in Articles 304(1)(c) of the EU Commission Delegated Regulation (the ORSA) );

(b) include, at least, the information necessary to enable the competent authority, when performing the supervisory review process pursuant to article 31B of the Act to:

- (i) assess the system of governance applied by the authorised undertaking;
- (ii) assess the business pursued by the authorised undertaking;
- (iii) assess the valuation principles applied by the authorised undertaking for solvency purposes;
- (iv) assess the risks faced by the authorised undertaking;
- (v) assess the risk-management systems of the authorised undertaking; and
- (vi) assess the capital structure, capital needs and capital management of the authorised undertaking; and
- (vii) make any appropriate decisions resulting from the exercise of its supervisory rights and duties.

8.6.3 The information referred to in paragraph 8.6.2 shall be submitted by the authorised undertaking, at the following points in time:

- (i) at predefined periods;
- (ii) upon occurrence of predefined events; and
- (iii) during enquiries regarding the situation of an authorised undertaking;

8.6.4 The information referred to in paragraphs 8.6.2 and 8.6.3 shall comprise the following:

- (a) qualitative or quantitative elements, or any appropriate combination thereof;
- (b) historic, current or prospective elements, or any appropriate combination thereof; and
- (c) data from internal or external sources, or any appropriate combination thereof.

8.6.5 The information which an authorised undertaking submits to the competent authority in accordance with paragraphs 8.6.2 and 8.6.3 shall comply with the following principles:

(a) it must reflect the nature, scale and complexity of the business of the authorised undertaking concerned, and in particular the risks inherent in that business;

(b) it must be accessible, complete in all material respects, comparable and consistent over time; and

(c) it must be relevant, reliable and comprehensible.

8.6.6 An authorised undertaking shall have in place appropriate systems and structures to fulfil the requirements set out in paragraphs 8.6.1 to 8.6.5 as well as a written policy, approved by its Board of Directors, ensuring the ongoing appropriateness of the information submitted to the competent authority.

8.6.7 The information which an authorised undertaking is required to submit in accordance with paragraph 8.6.2, pursuant to Article 304 of the EU Commission Delegated Regulation, shall comprise the following:

(a) the SFCR, as well as any updated version of that report disclosed in accordance with Article 302 of the said Regulation;

(b) the regular supervisory report (“RSR”) comprising the information referred to in Articles 307 to 311 of the said Regulation. It shall also present any information referred to in Articles 293 to 297 of the said Regulation which the competent authority has permitted an authorised undertaking not to publicly disclose in their SFCR, in accordance with article 18F(2) of the Act. The RSR shall follow the same structure as the one set out in Annex XX of the said Regulation for the SFCR;

(c) the own-risk and solvency assessment supervisory report (“ORSA”) comprising the results of each regular own risk and solvency assessment performed by an authorised undertaking in accordance with paragraph 6.4.7(c) of Chapter 6 in Part B of these Insurance Rules, whenever an own-risk and solvency assessment is performed in accordance with paragraph 6.4.7(b) of the said Chapter;

(d) annual and quarterly quantitative templates specifying in greater detail and supplementing the information presented in the SFCR and in the RSR, taking into account possible limitations and exemptions granted by the competent authority in accordance with paragraphs 8.6.11 to 8.6.16.

8.6.8 The information referred to in paragraph 8.6.7 shall be submitted in accordance with the following time-frames:

(a) the SFCR within the periods set out in regulation 7(2) of the Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, and after the end of the transitional period set out in that regulation, no later than fourteen weeks after the undertaking's financial year end;

(b) the RSR within the periods set out in regulation 7(1) of the Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, and after the end of the transitional period set out in that regulation, no later than fourteen weeks after the undertaking's financial year;

(c) the ORSA supervisory report within two weeks after concluding the assessments within the periods specified in paragraph 15 of Part II of Annex I - Guidelines on System of Governance and on Own Risk and Solvency Assessment, to Chapter 6 in Part B of these Insurance Rules;

(d) the annual quantitative templates within the periods set out in regulation 7(1) of the Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, and after the end of the transitional period set out in that regulation, no later than fourteen weeks after the undertaking's financial year end;

(e) the quarterly quantitative templates within the periods set out in regulation 7(3) of the Insurance Business (Solvency II Transitional Provisions) Regulations, 2015, and after the end of the transitional period set out in that regulation, no later than five weeks related to any quarter ending.

Provided that in view of the Coronavirus/COVID–19 situation and in line with the [Recommendations on supervisory flexibility regarding the deadline of supervisory reporting and public disclosure – Coronavirus/COVID -19](#), the Authority has amended the time frames referred to above as set out in Annex VI to this Chapter for the period indicated in the said Annex.

- 8.6.9 The national specific templates referred to in paragraph 8.6.2(a)(iii), which are to be submitted on an annual and/or quarterly basis, are to be submitted to the competent authority within the periods specified in paragraphs 8.6.8(d) and 8.6.8(e) respectively.
- 8.6.10 An authorised undertaking is directed to refer to the [MFSA Circular entitled Solvency II Circular for Insurance and Reinsurance Undertakings dated 22<sup>nd</sup> October 2015](#), the [MFSA Circular entitled Solvency II Circular for Insurance and Reinsurance Undertakings dated 30<sup>th</sup> November 2015](#) and the [MFSA Circular entitled Solvency II Circular for Insurance and Reinsurance Undertakings dated 29<sup>th</sup> March 2018](#), as to further guidance on the form and time-frames relating to information to be submitted by an authorised undertaking in accordance with Section 8.6.

*Reporting Limitations and Exemptions*

- 8.6.11 Without prejudice to paragraphs 5.6.8 to 5.6.10 of Chapter 5 in Part B of these Insurance Rules, the competent authority may limit supervisory reporting to annual reporting (annual quantitative reporting templates) where the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking.
- 8.6.12 Without prejudice to Article 254(2) of the Solvency II Directive, where an authorised undertaking is part of a group, a limitation on regular supervisory reporting with a frequency shorter than one year, pursuant to paragraph 8.6.11, may be granted where the undertaking concerned can demonstrate to the satisfaction of the competent authority that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.
- 8.6.13 An authorised undertaking carrying on general or long term business, may only be granted a limitation to regular supervisory reporting by the competent authority pursuant to paragraph 8.6.11, if its business does not represent more than 20 % share of the business written by authorised undertakings, where the general business market share is based on gross written premiums and the long term business market share is based on gross technical provisions.
- 8.6.14 The competent authority may limit regular supervisory reporting or exempt an authorised undertaking from reporting on an item-by-item basis, where:

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the submission of that information is not necessary for the effective supervision of the undertaking;

(c) the exemption does not undermine the stability of the financial systems concerned in the Union; and

(d) the undertaking is able to provide the information on an ad-hoc basis.

8.6.15 Without prejudice to Article 254(2) of the Solvency II Directive, where an authorised undertaking is part of a group, an exemption from reporting on an item-by-item basis pursuant to paragraph 8.6.14, may be granted where the undertaking concerned can demonstrate to the satisfaction of the competent authority that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

8.6.16 An authorised undertaking carrying on general or long term business, may only be granted an exemption from reporting on an item-by-item basis, pursuant to paragraph 8.6.14, if its business does not represent more than 20% share of the business written by authorised undertakings, where the general business market share is based on gross written premiums and the long-term business market share is based on gross technical provisions.

8.6.17 Where an authorised undertaking is a protected cell company, the undertaking shall submit to the competent authority the information to be provided under:

(a) paragraphs 8.6.2(a)(i), in relation to each material cell and the remaining part separately; and

(b) paragraphs 8.6.2(a)(i) and (iii), in relation to the non-cellular section (core) and the cells, separately.

8.6.18 For the purposes of paragraphs 8.6.11 to 8.6.16, as part of the supervisory review process, the competent authority shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:

- (a) the volume of premiums, technical provisions and assets of the authorised undertaking;
- (b) the volatility of the claims and benefits covered by the authorised undertaking;
- (c) the market risks that the investments of the authorised undertaking give rise to;
- (d) the level of risk concentrations of the authorised undertaking;
- (e) the total number of classes of long-term and general business of insurance for which authorisation is granted;
- (f) possible effects of the management of the assets of the authorised undertaking on financial stability;
- (g) the systems and structures of the authorised undertaking to provide information for supervisory purposes and the written policy referred to in paragraph 8.6.6;
- (h) the appropriateness of the system of governance of the authorised undertaking;
- (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement of the authorised undertaking;
- (j) whether the undertaking is a captive insurance undertaking or a captive reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

*Determination of market shares for reporting*

- 8.6.19 The competent authority shall determine the market shares referred to in paragraphs 8.6.11 to 8.6.16 and Article 254(2) of the Solvency II Directive, in accordance with the methods to be used specified in the EIOPA Guidelines on methods for determining the market shares for reporting.
- 8.6.20 Where an authorised undertaking is no longer eligible for an exemption in accordance with paragraphs 8.6.11 to 8.6.16 and Article 254(2) of the Solvency II Directive, or the undertaking becomes ineligible due to a recalculation of market shares by the competent authority performed on an annual basis, the authority shall notify the

undertaking concerned that it is no longer exempt and shall provide such an undertaking a reasonable time-frame in which to start submitting the reporting.

## **8.7 Report on solvency and financial condition (“SFCR”)**

8.7.1 In terms of article 18F of the Act, an authorised undertaking shall disclose publicly, on an annual basis, an SFCR.

8.7.2 The information which an authorised undertaking discloses in the SFCR shall include the information required in paragraph 8.6.4 and shall comply with the principles set out in paragraph 8.6.5.

8.7.3 The SFCR of an authorised undertaking shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly:

- (a) a description of the business and the performance of the undertaking;
- (b) a description of the system of governance of the undertaking and an assessment of its adequacy for the risk profile of the undertaking;
- (c) a description of the risk exposure, risk concentration, risk mitigation and risk sensitivity separately for each category of risk of the undertaking;
- (d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for the valuation of those assets, technical provisions and other liabilities in financial statements of the undertaking; and
- (e) a description of the capital management of the undertaking, including at least the following:
  - (i) the structure, amount and quality of own funds, together with the information specified in paragraph 8.7.5;
  - (ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement, together with the information specified in paragraph 8.7.6;

(iii) where applicable, the option set out in paragraphs 5.5.42 to 5.5.45 of Chapter 5 in Part B of the Insurance Rules used for the calculation of the Solvency Capital Requirement;

(iv) information showing and explaining the main differences between the underlying assumptions of the standard formula and the underlying assumptions of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement for which the undertaking has received internal model approval in accordance with article 15(2) of the Act and Chapter 5 in Part B of these Insurance Rules;

(v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of the origin of that non-compliance and its consequences, as well as any remedial measures taken in respect of that non-compliance.

8.7.4 For the purposes of paragraph 8.7.3(d), where an authorised undertaking applies:

(a) a matching adjustment in accordance with paragraphs 5.3.13 to 5.3.19 of Chapter 5 in Part B of these Insurance Rules, the undertaking shall include in the description set out in that paragraph:

(i) a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied; and

(ii) a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position;

(b) a volatility adjustment in accordance with paragraphs 5.3.25 to 5.3.33 of Chapter 5 in Part B of these Insurance Rules, the undertaking shall include in the description set out in that paragraph:

(i) a statement on whether the volatility adjustment referred to in the said paragraphs is used by the undertaking; and

(ii) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

- 8.7.5 The description required by paragraph 8.7.3(e) (i) shall include the following:
- (a) an analysis of any significant changes as compared to the previous reporting period of the authorised undertaking;
  - (b) an explanation of any major differences in relation to the value of elements of own fund items in the financial statements of the authorised undertaking; and
  - (c) a brief description of the capital transferability of the own fund items of the authorised undertaking.
- 8.7.6 The disclosure required by paragraph 8.7.3(e)(ii) shall include the following amounts separately:
- (a) the amount of the Solvency Capital Requirement calculated by the authorised undertaking using the standard formula or, where the undertaking has received internal model approval in accordance with article 15(2) of the Act and Chapter 5 in Part B of these Insurance Rules, the amount of the Solvency Capital Requirement calculated using its internal model and in the case of a partial internal model, where applicable, the standard formula;
  - (b) the amount of any capital add-on imposed upon the authorised undertaking in accordance with article 31C of the Act, together with concise information on the justification given by the competent authority for its imposition; and
  - (c) the impact of any undertaking specific parameters which the authorised undertaking is required to use in calculating the standard formula in accordance with paragraph 5.5.53. of Chapter 5 in Part B of these Insurance Rules, together with concise information on the justification given by the competent authority for requiring the use of those undertaking specific parameters.
- 8.7.7 An authorised undertaking may, without prejudice to the information to be provided in the SFCR as determined in this Chapter, in the EU Commission Delegated Regulation and relevant Commission Implementing Regulations, when disclosing the amount of the total Solvency Capital Requirement under paragraph 8.7.3(e)(ii), opt not to disclose separately:

(a) the information referred to in paragraph 8.7.6(b) on any capital add-on imposed on the undertaking;

(b) the information referred to in paragraph 8.7.6 (c) on any undertaking specific parameters,

for a transitional period ending no later than 31 December 2020 as referred to in regulation 3 of the Insurance Business (Solvency II Transitional Provisions) Regulations, 2015.

8.7.8 The disclosure of the Solvency Capital Requirement required by paragraph 8.7.3(e)(ii) shall be accompanied, where applicable, by a statement indicating that the undertaking's final amount of the Solvency Capital Requirement is still subject to supervisory assessment.

8.7.9 A permission granted by the competent authority in accordance with article 18F(2) of the Act, permitting an authorised undertaking not to disclose information which is otherwise required to be disclosed by the undertaking in its solvency and financial condition report, may only be granted to disclosures under paragraph 8.7.3(a) to (d) and paragraph 8.7.4. Such permission shall not be granted to disclosure listed under paragraph 8.7.3(e).

## **8.8 Report on solvency and financial condition: updates and additional voluntary information**

8.8.1 In terms of article 18F(6) of the Act, in the event of any major development affecting significantly the relevance of the information disclosed in accordance with article 18F(1) to (4) of the Act and Section 8.7 of this Chapter, an authorised undertaking shall disclose publicly appropriate information on the nature and effects of that major development.

8.8.2 Without limiting the general application of paragraph 8.8.1, for the purposes of the said paragraph, the following shall be regarded as a major development:

(a) non-compliance with the Minimum Capital Requirement by the authorised undertaking is observed and either the competent authority considers that the undertaking will not be able to submit a realistic short-term finance scheme, or the competent authority does not receive such a finance scheme within one month of the

date of observation of non-compliance by the undertaking with the Minimum Capital Requirement, as required by article 18 of the Act;

(b) significant non-compliance with the Solvency Capital Requirement by the authorised undertaking is observed and the competent authority does not receive a realistic recovery plan within two months from the date when non-compliance with the Solvency Capital Requirement was first observed by the undertaking, as required by article 16 of the Act.

- 8.8.3 Where the circumstances described in paragraphs 8.8.2(a) and 8.8.2(b) arise, the authorised undertaking shall immediately publicly disclose the amount of non-compliance with the Minimum Capital Requirement or the Solvency Capital Requirement, as the case may be, together with an explanation of the origin and consequences of that non-compliance, and a description of any remedial measures taken.
- 8.8.4 Where non-compliance with the Minimum Capital Requirement has not been restored by an authorised undertaking within three months after the first observation of non-compliance by the undertaking, then the undertaking concerned shall publicly disclose at the end of that three-month period the non-compliance with the Minimum Capital Requirement, together with an explanation of the origin and consequences of that non-compliance, a description of any remedial actions taken and of any further remedial measures planned.
- 8.8.5 Where compliance with the Solvency Capital Requirement has not been restored by an authorised undertaking within six months after the first observation of non-compliance by the undertaking, then the undertaking concerned shall publicly disclose at the end of that six-month period the non-compliance with the Solvency Capital Requirement, together with an explanation of the origin and consequences of that non-compliance, a description of any remedial measures taken and of any further remedial measures planned.
- 8.8.6 Without prejudice to paragraphs 8.8.1 and 8.8.2 of this Chapter and in line with the Recommendations on supervisory flexibility regarding the deadline of supervisory reporting and public disclosure – Coronavirus/COVID -19, the COVID situation is considered as a “major development”.

## **8.9 Report on solvency and financial condition report: policy and approval**

8.9.1 An authorised undertaking shall have in place:

(a) appropriate systems and structures in place to fulfill the requirements laid down in article 18F (1) to (4) of the Act and Section 8.7 and paragraph 8.8.1 to 8.8.5 of this Chapter; and a written policy ensuring the ongoing appropriateness of any information disclosed:

(i) in accordance with the requirements referred to in paragraph 8.9.1(a); and

(ii) on a voluntary basis as further information or explanation related to the solvency and financial condition report, which is not already required to be disclosed in accordance with article 18F of the Act and Sections 8.7 and 8.8 of this Chapter.

8.9.2 An authorised undertaking shall ensure that its SFCR is:

(a) subject to the approval of its Board of Directors; and

(b) not publicly disclosed until the approval referred to in paragraph 8.9.2(a) is received.

## **8.10. Report on solvency and financial condition: external audit of the Solvency II regulatory returns**

8.10.1 In terms of Article 300 of the EU Commission Delegated Regulation, as soon as the solvency and financial condition report (“SFCR”) is disclosed publicly by an authorised undertaking within the time-frames specified in paragraph 8.6.8(a), the SFCR shall be submitted to the competent authority.

8.10.2 The specific templates of the SFCR specified in Annex V to this Chapter, submitted to the competent authority in terms of paragraph 8.10.1, by an authorised undertaking whose head office is in Malta, shall be accompanied by a report drawn up by the approved auditor of the undertaking, which includes a reasonable assurance opinion on:

(a) the information that an authorised undertaking shall disclose pursuant to Articles 296, 297 and 359(d) and (e) of the Commission Delegated Regulation; and

(b) the templates of the SFCR referred to in the said Annex V,

confirming that the said information and templates, which are being audited by the approved auditor, have been prepared in all material respects in accordance with this Chapter, the Commission Delegated Regulation and the Commission Implementing Regulation 2015/2452.

8.10.3 A copy of the auditor's management letter and the authorised undertaking's reply thereto on the information and templates specified in paragraph 8.10.2 shall be submitted to the competent authority by not later than 8 weeks following the due date of the submission of the SFCR. If for a particular year, the auditors do not raise any audit findings, the undertaking is still required to submit the said management letter stating that no deficiencies were identified.

## **8.11 Application at group level**

8.11.1 The requirements referred to in article 18F of the Act, and Sections 8.6 to 8.10 of this Chapter apply *mutatis mutandis* at the level of the group. This is established by Article 254(2) and 256 of the Solvency II Directive. Annex I, Annex IV and Annex V to this Chapter, where applicable, shall also apply *mutatis mutandis* at the level of the group.

## **8.12 Additional requirements and obligations**

8.12.1 In complying with the provisions of articles 18F, 20 and 32 of the Act and with this Chapter, an authorised undertaking shall also refer to and comply with the following:

(a) Chapters XII and Chapter XIII of Title I and Chapter V of Title II of the EU Commission Delegated Regulation;

(b) any regulatory or implementing technical standards to be issued by the European Commission under Article 35(10) of the Solvency II Directive ([Commission Implementing Regulation \(EU\) 2015/2450 of 2 December 2015 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council](#)) and Article 56 of the Solvency II Directive ([Commission Implementing Regulation \(EU\) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council](#));

(c) Annex I of this Chapter which adopts the following Guidelines issued by EIOPA on reporting and public disclosure, which relate to Articles 35, 51, 53, 54, 55, 254 (2) and 256 of the Solvency II Directive and Articles 290 to 298, 305 to 311, 359 and 365, and Annex XX of Commission Delegated Regulation 2015/35, which set out the information that should be provided to the supervisory authorities in the RSR, in the quantitative supervisory reporting, pre-defined events, and the information that should be publicly disclosed in the SFCR; and

(d) [Guidelines on the supervision of branches of third-country insurance undertakings, which relate to Articles 162 to 171 of the Solvency II Directive, issued by EIOPA;](#)

(e) [Guidelines on reporting for financial stability purposes, which relate to Articles 35 and 254 of the Solvency II Directive.](#)