

THE APPLICATION PROCESS
CHAPTER 1

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REVISIONS LOG

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1.00	12 th June 2020	Refer to Circular dated 12 th June 2020 entitled <i>"Circular on the Amendments in relation to Chapter 1 and Chapter 2 of the Insurance Business Rules issued under the Insurance Business Act (Cap. 403 of the Laws of Malta)"</i>

1.1 Introduction

1.1.1 The application for authorisation to carry on business of insurance shall be considered in the light of the scheme of operations to be submitted to the competent authority pursuant to article 8 of the Act and the fulfilment of the conditions laid down for authorisation. This Chapter determines the particulars or proof to be included in schemes of operations required to be submitted under the Act as set out in the specific schedules to this Chapter, relating to the kind of business of insurance which applicants are desirous to carry on and the manner in which applicants shall apply to the competent authority to carry on business of insurance in or from Malta.

1.2 Applicability

1.2.1 This Chapter applies to:

- (a) an undertaking desirous of applying for authorisation to carry on and, on continuing basis, an undertaking authorised to carry on, business of insurance;
- (b) an undertaking authorised to carry on business of insurance seeking authorisation to extend its business of insurance to other classes or to extend an authorisation covering only some of the risks pertaining to one class;
- (c) an undertaking desirous of applying for authorisation to carry on business of insurance as a protected cell company;
- (d) an undertaking desirous of applying for authorisation to carry on business of insurance as an incorporated cell company;
- (e) an undertaking authorised under the Act desirous of applying for authorisation to convert into a protected cell company or transform into an incorporated cell company or an incorporated cell;
- (f) a protected cell company authorised under the Act desirous of applying for the approval of a protected cell;
- (g) a protected cell company authorised under the Act, having no protected cells desirous of applying for approval of a transformation into an incorporated cell company;
- (h) a protected cell company authorised under the Act, having one or more protected cells desirous of applying for approval of a division into an incorporated cell company and one or more incorporated cells;
- (i) an incorporated cell company authorised under the Act, but having no incorporated cells, that desires to apply for approval for a transformation into a protected cell company;

- (j) an undertaking desirous of applying for authorisation as an incorporated cell in an incorporated cell company authorised under the Act;
- (k) an incorporated cell company or an incorporated cell for approval for a transformation into a non-cellular company,
(the “applicant”).

1.3 Manner of making application for authorisation to carry on business of insurance

1.3.1 The manner in which an undertaking shall apply to the competent authority for authorisation to carry on the business of insurance shall be the following:

(a) by application as set out in the First Schedule to this Chapter:

- (i) in the case of an undertaking whose head office is in Malta; or
- (ii) in the case of an incorporated cell company having no incorporated cells to transform itself into a non-cellular company; or
- (iii) in the case of an incorporated cell to transform itself into a non-cellular company;
- (iv) in the case of an undertaking for authorisation to carry on business of insurance as a protected cell company;
- (v) in the case of a non-cellular company to convert into a protected cell company;
- (vi) in the case of an incorporated cell company having no incorporated cells to be transformed into a protected cell company;
- (vii) in the case of an undertaking for authorisation to carry on business of insurance as an incorporated cell company;
- (viii) in the case of a non-cellular company to transform into an incorporated cell company;
- (ix) in the case of a protected cell company having no protected cells to be transformed into an incorporated cell company;
- (x) in the case of a protected cell company having one or more cells seeking to be divided into an incorporated company and one or more cells.

(b) by application as set out in the Second Schedule to this Chapter:

- (i) for the creation of one or more protected cells of a protected cell company;
- (ii) for the creation of one or more incorporated cells of an incorporated cell

company;

(iii) for the transformation of a non-cellular company into an incorporated cell.

(c) by application as set out in the Third Schedule to this Chapter for the inclusion, in the authorisation, of new classes of business of insurance.

(d) by application as set out in the Fourth Schedule to this Chapter in the case of an undertaking whose head office is in a country outside Malta.

1.4 The Authorisation Process for authorised insurance and reinsurance undertakings

1.4.1 A request for the authorisation of an applicant should be made by submitting a duly completed Application Form in the form set out in the Schedules to this Chapter, as applicable, supported by the documents requested in the respective applications. The competent authority may require any additional documents as deemed necessary.

1.4.2 Chapters 1 and 2 in Part A of these Insurance Rules should be read carefully before an Application Form for authorisation is submitted. It is recommended that due consideration is given to the applicable legal and regulatory requirements. Applicants may wish to arrange to meet representatives of the competent authority in advance of submitting a formal application for authorisation, to describe the background to its application and the way in which it intends to carry on business of insurance. Although guidance will be given on the applicable regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of an Application will remain with the applicant.

1.4.3 When submitting an application, the application pack¹ should be as comprehensive as possible. An application is deemed to have been officially submitted once a full application pack together with the relevant application fee is submitted to the competent authority. For clarification purposes, a full application pack consists of the following:

- (a) the respective application in the Schedule to this Chapter;
- (b) the documentation in the respective Schedule to this Chapter;
- (c) where the applicant proposes individuals indicated in Section 2.5 of Chapter 2 of the Insurance Rules, a Personal Questionnaire as set out in Annex I of Chapter 2 of the Insurance Rules shall be compiled and submitted for each individual;
- (d) where the qualifying shareholders of the applicant are not individuals, the immediate and ultimate qualifying corporate owners are required to compile and submit a Corporate Questionnaire as set out in the Annex to Chapter 3 of the Insurance Rules;

¹ The application form, scheme of operations, declaration and checklist contained in the Schedules to this Chapter is to be sent in an electronic format to the MFSA and in the same format as downloaded (.docx). The aforementioned declaration with original signatures is also to be sent to the MFSA in hard copy.

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- (e) where the applicant will be outsourcing a key function, the applicant is required to submit an Assessment Form as set out in Annex II of Chapter 2 of the Insurance Rules.
- 1.4.4 In the instance where application documents are submitted in a piecemeal fashion or are incomplete, the processing of an application will not start and will be delayed until receipt of all the relevant documents and fees concerned. The application forms and related documentation should not be amended in any way. All questions in the application form should be answered and any questions which are not relevant to the application at hand should be left blank.
- 1.4.5 Following submission, the application pack will be reviewed and comments will be provided to the applicant directly and to the applicant's professional advisors (if applicable). The competent authority may ask for more information and may make further enquiries as it considers necessary. The competent authority will only accept comments on issues arising from its review of the application documents, either directly from the applicant or the professional advisors thereof or from any other person if the latter is so authorised by the applicant upon evidence of the said authorisation. The 'fit and proper' checks begin at this stage.
- 1.4.6 The competent authority will analyse the submissions and, on the basis of this, make a decision regarding the application for authorisation.
- 1.4.7 Following notification of the competent authority's decision regarding the application for authorisation, the applicant will be required to finalise any outstanding matters, such as (in the case of a new undertaking) its incorporation and capitalisation.
- 1.4.8 The applicant may also be required to satisfy a number of post-authorisation matters prior to formal commencement of business.
- 1.4.9 Any scheme of operations required to be submitted by an applicant shall –
- (a) in the case of an applicant which is an undertaking whose head office is in Malta include the particulars or proof concerning matters set out in Section 1.5 of this Chapter of the Insurance Rules and as set out in the First or Second Schedule as applicable;
 - (b) in the case of an applicant which is a third country insurance undertaking or a third country reinsurance undertaking, include:
 - (i) the particulars or proof concerning matters set out in Section 1.5 of this Chapter of the Insurance Rules, in so far as they are applicable to the proposed branch and as set out in the Fourth Schedule to this Chapter; and
 - (ii) a statement from the overseas regulatory authority in the country in which the applicant has its head office showing the classes of business of insurance which the applicant is authorised to carry on in that

country and declaring that the undertaking meets the solvency requirements in accordance with the law of that country governing business of insurance.

- 1.4.10 In the case of an applicant which, at the time of submitting the application, already holds an authorisation to carry on business of insurance in a class or classes of insurance, the particulars of proof required by Section 1.5 of this Chapter are only in respect of the new class or classes of business for which new authorisation is sought, as set out in the Third Schedule to this Chapter.

1.5 Particulars or proof included in a scheme of operations

- 1.5.1 Any scheme of operations required to be submitted by an undertaking applying for authorisation to carry on business of insurance shall include the following particulars or proof:

General content of a scheme of operations

- 1.5.2 The scheme of operations set out in the Schedules to the Chapter shall:
- (a) describe clearly the applicant's business strategy, including underwriting, general pricing and market penetration strategies;
 - (b) include financial projections with appropriate scenarios, including realistic, optimistic and pessimistic scenarios;
 - (c) as at the end of each financial year which falls within the period to which the scheme of operations relates, describe the assumptions which underlie those forecasts, the reasons for adopting those assumptions and the accounting policies on which the projections are based;
 - (d) be accompanied by a report of an approved auditor or the undertaking's auditor, as the case may be, on the adequacy of the undertaking's scheme of operations, and that it has been properly prepared on the basis of the assumptions stated. This report can also be signed by a person who holds a warrant of a certified public accountant under the Accountancy Profession Act (Cap.281), or is a Fellow of an Institute of Actuaries or a Fellow of a Faculty of Actuaries, or in each case, holds professional qualifications of similar standing of an institute of repute recognised by the competent authority. In the case of an undertaking which is managed by an insurance manager, the said report may be drawn up by the undertaking's manager;
 - (e) in the case of long term with-profits business in terms of class I and III as specified in the Second Schedule to the Act, be accompanied also by a report of the undertaking's actuary, appointed for the purposes of article 22 of the Act, on the adequacy of the undertaking's policy of reserving.

Detailed scheme of operations

1.5.3 A scheme of operations includes the information detailed under the following headings:

Background to the applicant, business planning and shareholding structure

1.5.3.1 The scheme of operations includes the following:

- (a) a description of the applicant;
- (b) a description of the:
 - (i) nature of the risks or commitments which the undertaking proposes to cover;
 - (ii) the classes of business to be underwritten including whether the business is direct business, or both direct business and reinsurance, or restricted to reinsurance only; and
 - (iii) proposed insurance products to be underwritten by the undertaking;
- (c) a description, in narrative and tabular format, of the past history of the book of business;
- (d) the rationale for setting up business in Malta;
- (e) if the applicant is a member of a group of undertakings/companies:
 - (i) a description of the group, the significant activities of the group and the undertaking's place within it, including a corporate structure chart ("family tree") with applicable shareholdings, showing the position of the undertaking within the group;
 - (ii) details on whether the applicant is a subsidiary of an insurance holding company or a mixed activity holding company; and
 - (iii) whether the group of which the applicant will form part is subject to supervision as an insurance group and if so the existing arrangements for supervision as insurance group, or whether the applicant will now become subject to group supervision; and
- (f) whether there had been a formal or informal request for an authorisation by the applicants' shareholders or members with qualifying holdings, to establish an insurance or reinsurance undertaking in another Member State or third country, that had been rejected or withdrawn, together with the reasons as to the rejection or withdrawal of the submitted application;
- (g) a statement of wealth which contains details on the net worth and information on where that net worth came from may be required to be

submitted by qualifying individual shareholders and qualifying ultimate beneficial owners at the competent authority's discretion. The statement is to be verified by a qualified accountant or auditor in his/her professional capacity;

- (h) full information on all the beneficial owners when any one of the qualifying shareholders is a trust, including information on the trustee, settlor, protector, any named beneficiaries and any other person exercising control, as per article 2(1) of the Trust and Trustees Act.

Business Strategy

- 1.5.3.2 A documented applicant's business strategy, including a documented group strategy (if the undertaking forms part of a group).
- 1.5.3.3 If the applicant intends to carry on business outside of Malta, the countries in which business will be written and whether this will be on a freedom of services or establishment basis. Where an establishment in other Member States is proposed, the application must include details relevant to the branch as set out in the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, (L.N. 399 of 2015) and in Chapter 10 on Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking of the Insurance Rules. Where the applicant proposes to carry on business outside of Malta by way of freedom of services, in other Member States, the application shall comply with the requirements indicated in the European Passport Rights for Insurance and Reinsurance Undertakings Regulations, 2015, (L.N. 399 of 2015) and compile the information indicated in Chapter 10 on Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking of the Insurance Rules.
- 1.5.3.4 Where the applicant has clearly indicated its intention to operate exclusively or almost exclusively in one or more Member State or EEA State, other than Malta, on a freedom of services basis, it shall provide the competent authority with the reasons supporting such a strategy. An explanation of how the specific market knowledge in relation to the jurisdiction/s has/have been attained is also to be provided.
- 1.5.3.5 If the applicant intends to write business in a country or countries outside the EU, provide an overview of how the applicant can underwrite that business in such country or countries as an authorised undertaking with head office in Malta.
- 1.5.3.6 A detailed description of the main factors influencing the success of the proposed business model and how the undertaking intends to control the success and/or failure of its business model.
- 1.5.3.7 Detail in relation to the areas of competitive advantage which will keep the undertaking viable and sustainable.

Sources of business and distribution arrangements

- 1.5.3.8 A description of the proposed sources of business of insurance (e.g. insurance intermediaries, direct selling, branch offices, website etc.) and the approximate percentage of gross written premium expected from each source.
- 1.5.3.9 Where the source of business includes intermediaries, the following details are required:
- (a) a description of the procedure which will be used to approve intermediaries, including the due diligence checks carried out on such intermediaries, as well as the procedure used to ensure that on-going due diligence on the said intermediaries will be carried out;
 - (b) details on the authority which the undertaking intends to assign to the intermediaries e.g. underwriting authority, claims handling and/or settling authority, premium collection, authority to appoint introducers/representatives, etc;
 - (c) description of the controls/monitoring to be applied by the applicant in relation to the activity of the intermediaries;
 - (d) details in relation to the inducements that will be granted to the intermediaries, the basis of the commission, and whether there will be any targets and commission levels. When setting up commissions, applicants are recommended not to base such commission solely or to a large extent on sales generated but take into account other factors such as regulatory compliance, complaints record etc....
 - (e) draft copy of arrangement/agreement governing the appointment of the intermediaries (Please refer to paragraph 1.5.3.48 below).
- 1.5.3.10 Where the source of business includes the use of a website, details of the purpose of website, that is, whether for advertising purposes only or whether to carry on business of insurance.
- 1.5.3.11 Details on the *distribution arrangements* of the business which includes:
- (a) an explanation regarding the manner in which transactions will be affected in practice (from initiation till end) specifying what will be done, by whom and from where;
 - (b) the identified target market including its characteristics;
 - (c) whether the applicant intends to enter into a co-manufacturing agreement with other undertakings or intermediaries;
 - (d) the submission of the Insurance Product Information Document (IPID) in line with Article 20 of Directive (EU) 2016/97 and Commission Implementing Regulation (EU) 2017/1469 which lays down a standardised presentation format

for the IPID in relation to non-life insurance contracts or the submission of a Key Information Document (KID) in respect of packaged retail and insurance-based investment products in line with the Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014;

- (e) submission of the Product Oversight and Governance policy which is in line with the Commission Delegated Regulation (EU) 2017/2358, supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors;
- (f) the manner in which the undertaking will ensure that all the necessary disclosures at point of sales (including any particular conflict of interest) are being communicated;
- (g) the manner in which complaints shall be made and who will be responsible to handle them from within the undertaking. It is to be noted that in terms of the Conduct of Business Rulebook, this person should not be involved in claims handling (or oversight thereof) of the applicant;
- (h) details of the questions that will be used to carry out the demands and needs test;
- (i) in the case of long-term business, details of the questions that will be used for the purpose of the suitability test and appropriateness test.

Organisation of the Applicant and Governance Arrangements

- 1.5.3.12 A corporate structure chart and a description of the proposed apportionment of significant responsibilities between the applicant's management team. The structure chart should set out the management structure, responsibilities and reporting lines.
- 1.5.3.13 In general the quality, skills and experience of the management required in an insurance or reinsurance undertaking will depend on, among other things, the type and volume of business it expects to undertake. The applicant needs to demonstrate that adequate staff with relevant experience are available at all levels and that mind and management is in Malta.
- 1.5.3.14 The competent authority will consider the collective suitability of the board. The competent authority would usually expect that the board is composed of:
 - (a) persons who as a group, have the required diversity of knowledge, judgement and experience to properly complete their tasks and to fulfil the criteria concerning market knowledge, business strategy and business model, system of governance, financial and actuarial analysis and the regulatory framework and requirements;
 - (b) a number of non-executive directors (including independent non-executives). The exact composition and balance on a board will depend on the circumstances and business of each undertaking. Undertakings should ensure

a balance such that no individuals or small groups of individuals can dominate the board's decision-making.

- 1.5.3.15 A summary of the arrangements by which systems and controls will be established and maintained in the organisation, including an explanation of how these will be overseen. The business plan sets out the capacity of the applicant's systems and controls to monitor and control all significant aspects of the applicant's operations, and include (but not be restricted to):
- (a) details of the manual and automated controls over key functions, processes and procedures, including details of segregation of duties, acceptance controls and levels and monitoring of risk aggregation;
 - (b) details of internal committees (e.g. audit committee), their proposed members, terms of reference and frequency of meetings;
 - (c) details of persons (including their level of experience knowledge and competency) responsible for the key functions, as well as the functions which the undertaking considers to be critical or important functions. Substance over form should be applied when determining whether or not a role is a key function;
 - (d) details of the Board member responsible for the oversight of the insurance or reinsurance distribution activities of the undertaking;
 - (e) details of the person within the management structure responsible for the distribution of insurance or reinsurance products, including their level of experience, knowledge and ability requirements as contained in Chapter 6 in Part B of the Insurance Distribution Rules issued under the Insurance Distribution Act (Cap. 487);
 - (f) the identification of the Board member to oversee the risk management system on its behalf;
 - (g) staffing levels in each area for the first three years of the applicant's operations broken down on a yearly basis;
 - (h) details of proposed staff training;
 - (i) details of monitoring and reporting mechanisms developed within the internal control system which provide the Board of Directors with the relevant information to take appropriate decisions; and
 - (j) outline of the role of internal audit, including:
 - (i) whether internal audit will be outsourced;
 - (ii) scope of the internal audits;
 - (iii) expected frequency of internal audits;
 - (iv) manner in which independence of the audit function from operational activities will be ensured.

1.5.3.16 An outline of reports and management information that will be provided regularly to the person responsible for an oversight function and to the board and executive management.

Risk Management

1.5.3.17 The applicant is provide:

- a) a description of the Risk Management System (RMS) comprising of:
 - (i) strategy, including general risk appetite clearly indicating the business that falls outside the risk appetite;
 - (ii) processes and procedures which enable the applicant to identify, measure, monitor, manage and report risks on a continuous basis;
- b) the risk appetite and tolerance limits for each risk category;
- c) a risk register which as a minimum contains a list of all quantifiable and non-quantifiable risks that could affect the success of the business, the risk owners, severity and frequency, gross and inherent risks, the perceived anti-money laundering risks in relation to the proposed business model and how these are being mitigated, any risk mitigation controls to be applied and effectiveness of controls to be implemented. Where the applicant is expected to carry on cross border business, associated risks are to be identified separately.

1.5.3.18 The applicant is to identify the undertaking's key dependencies.

1.5.3.19 The applicant is to identify the pressure points that can potentially cause severe deterioration to the undertaking's financial position and solvency position.

1.5.3.20 If the undertaking forms part of a group, the undertaking is to provide a description of the complexity, interdependency and interconnectedness that exists between all the group entities.

1.5.3.21 The applicant is to identify any conflict of interest that may exist or can potentially exist, and how such conflicts will be mitigated and managed.

1.5.3.22 The applicant is to identify, as a minimum, the following risk categorisations and is to provide the following minimum information:

Risk Categorisations	Minimum information to be provided
a) Underwriting and reserving risk management	(i) types and characteristics of the insurance business which the applicant is willing to accept; (ii) an explanation of how premium income will be sufficient to cover expected claims and expenses; (iii) identification of the risks arising from the applicant's insurance obligations;

	<p>(iv) an explanation as to how the applicant takes into account the constraints related to investments when designing a new insurance product and the premium calculation;</p> <p>(v) an explanation as to how the applicant takes into account reinsurance or other risk mitigation techniques when designing a new insurance product and the premium calculation.</p>
b) Operational Risks	<p>(i) a description of the activities and the internal processes to be established by the applicant to manage operational risks, including the IT systems supporting them;</p> <p>(ii) the applicant is to provide a description of the process for the collection and monitoring of operational risk events.</p>
c) Reinsurance and other risk-mitigations techniques	<p>(i) an explanation of the applicant's conclusion as to why the reinsurance arrangements which are to be implemented are appropriate to the its risk profile;</p> <p>(ii) the applicant is to explain how will be assessing and monitoring the credit-worthiness and diversifications of reinsurance counter-parties;</p> <p>(iii) the applicant is to explain how it will be dealing with timing mismatch between claims payments and reinsurance recoverable.</p>
d) Strategic and reputational risk	the applicant is to explain the process of how it will be managing and reporting exposures to reputational and strategic risks.
e) Asset-liability management	a description of how the applicant will be identifying and assessing mismatches between assets and liabilities
f) Investment risk management	<p>(i) the applicant is to explain how it will be achieving security, quality, liquidity and profitability with regards to investments;</p> <p>(ii) how the applicant will be valuing and verifying the investment assets;</p> <p>(iii) how the applicant will be monitoring the performance of the investments;</p> <p>(iv) how the applicant will be selecting assets in the best interest of policyholders and insureds.</p>
g) Liquidity risk management	<p>(i) how the applicant will be determining and monitoring the level of mismatch between the cash inflows and cash outflows of both assets and liabilities;</p> <p>(ii) how the applicant will be assessing and monitoring the total liquidity needs in the short and medium term and how it will be ensuring that it will be maintaining appropriate liquidity buffer to guard against a liquidity shortfall.</p>

Business continuity plan

- 1.5.3.23 Documented business continuity plan, including the steps which will be taken by the undertaking to ensure that such undertaking keeps the operations functioning during and after an event which may affect adversely the undertaking. The applicant is to include details of when such plan is intended to be reviewed, updated and tested.

Underwriting and claimsUnderwriting:

- 1.5.3.24 The applicant is to:
- (a) provide a description of the:
 - (i) underwriting activities of the applicant including who will be undertaking such activities, reporting lines, authority levels/limits and how such limits are monitored;
 - (ii) underwriting guidelines and criteria;
 - (iii) role and objectives of the applicant's underwriting function;
 - (iv) data and processes that will be employed by the underwriting function to achieve those objectives;
 - (v) internal controls over the underwriting process;
 - (b) provide details of who will be responsible for the issuance of policies.

The MFSA reserves the right to request a copy of the policy wording at any point in time.

Claims

- 1.5.3.25 The applicant is to submit details of the claims function including:
- (a) the reporting lines;
 - (b) the internal controls that shall be in place over the claims process;
 - (c) the key reports to be prepared and the frequency of reporting;
 - (d) authority levels/limits and the manner in which such limits are monitored.

Financial crime analysis

- 1.5.3.26 The information contained in the financial crime compliance section is to be

provided specifically in case of long-term business.

- 1.5.3.27 Detailed structure of the compliance and financial crime function in line with the proposed volume and value of business being proposed;
- 1.5.3.28 A description in relation to the customer onboarding process, ongoing screening and how findings will be recorded;
- 1.5.3.29 Details of the customer acceptance policy, clearly detailing the type of customers identified by applicant which are likely to pose higher risk of financial crime;
- 1.5.3.30 Details on the Business Risk Assessment and the Customer Risk Assessment in relation to Anti Money Laundering – combating the financing of terrorism.
- 1.5.3.31 Details of the procedures clearly setting out steps to be followed when an employee knows or suspects, or there are grounds to suspect that a person or transaction is connected to any financial crime activity.
- 1.5.3.32 The type of payment screening that will be carried out to ensure that the premiums or other income are coming from legitimate sources.

Financial projections and resources

- 1.5.3.33 Financial projections for realistic, optimistic and pessimistic scenarios covering the items listed below, for each of the first three financial years following authorisation:
 - (a) a forecast profit and loss account, broken down into a technical account and a non-technical account based on International Financial Reporting Standards. The profit and loss account should include, as a minimum, the following:
 - (i) estimates of premiums (gross and net of reinsurance) analysed by class of insurance, showing direct business and reinsurance accepted separately, and broken down by geographical territory;
 - (ii) investment return;
 - (iii) estimates of claims (gross and net of reinsurance) analysed by class of insurance, and broken down by geographical territory;
 - (iv) a breakdown of forecast expenses;
 - (v) commissions (both payable and received);
 - (vi) other charges and income;
 - (vii) taxation;
 - (viii) dividends;

- (b) details on the stress testing applied for the pessimistic scenario;
- (c) a forecast balance sheet based both on International Financial Reporting Standards and on Solvency II valuation methods, as provided for in Sections 5.2 to 5.4 of Chapter 5 in Part B of these Insurance Rules;
- (d) estimates of the Solvency Capital Requirement, as provided for in Section 5.5. of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in point (b), as well as the calculation method used to derive those estimates and the reasons backing the assumptions made in determining the level of capital to cover the inherent risks after the application of risk mitigation controls under a realistic scenario;
- (e) estimates of the Minimum Capital Requirement, as provided for in Section 5.6. of Chapter 5 in Part B of these Insurance Rules, on the basis of the forecast balance sheet referred to in point (b), as well as the calculation method used to derive those estimates, under a realistic scenario;
- (f) details (amount and type) of the proposed financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement, including the basic own funds item constituting the absolute floor of the Minimum Capital Requirement. The undertaking shall also ensure that its source of capital meets or exceeds its Minimum Capital Requirement and Solvency Capital Requirement both in quality and quantity and provide a realistic contingency plan of how it can raise additional capital if the need arises;
- (g) the information requested under paragraphs (b) to (e) should be submitted using EIOPA Quantitative Reporting Templates found in Annex I of the Commission Regulation on Templates for the submission of information to supervisory authorities and should be submitted in XBRL Format, which shall include, as applicable:
 - i. S.02.01.01 – Balance Sheet
 - ii. S.23.01.01 – Own Funds
 - iii. S.25.01.01 – SCR
 - iv. S.26.01.01 – Market Risk Module
 - v. S.26.02.01 – Counterparty Default Risk Module
 - vi. S.26.03.01 – (Life business only) - Underwriting Risk
 - vii. S.26.04.01 – (Health business only) – Underwriting Risk
 - viii. S.26.05.01 – (Non-Life business only) – Underwriting Risk
 - ix. S.26.06.01 – Operational Risk Module
 - x. S.27.01.01 – Non-Life Catastrophic Risk Sub-Module
 - xi. S.28.01.01 – MCR (Non-Composite)

1.5.3.34 For undertakings established as protected cell companies, applications for the approval of new cells should include the three-year projections for the new cells separately. For the remaining part of the company (i.e. the core and cells), companies are required to submit the Solvency II results in the following excel format so as to assess the overall solvency position of the undertaking:

	SCR	EOF	Restricted OF	nSCR	AMCR (core only)	Solvency II Ratio
Core						
Cell 1						
Cell 2						
Cell 3						
...						

1.5.3.35 Any other documentation that support the Solvency II results, if any.

Information related specifically to long term business

- 1.5.3.36 A forecast statement, approved by the actuarial function holder, or if the actuarial function has not yet been set up, by a qualified actuary, showing the following information, broken down by geographical territory for each of the first three financial years following authorisation:
- the number of contracts or treaties expected to be issued;
 - the total new business premium, both gross and net of reinsurance ceded;
 - the total sums assured or amounts of annuity per annum;
 - the technical bases used to calculate the forecast and estimates and the factors used to determine the level of the Solvency Capital Requirement;
 - the method of distributing profits between policyholders and shareholders.
- 1.5.3.37 The forecast balance sheet should include an estimate of the required technical provisions, showing also the mathematical provisions divided into the major contract groups.

Additional information

- 1.5.3.38 Details of any future capital expenditure (e.g. for purchase of fixed assets).
- 1.5.3.39 Estimates of the costs of setting up the administrative services and organisation for securing business; and the financial resources intended to meet those costs, and, if the risks to be covered are classified as general business class 18, the resources at the disposal of the undertaking for the provision of the assistance promised.
- 1.5.3.40 Estimates relating to expenses of management (other than costs of installation) and in particular to current general expenses and commissions.
- 1.5.3.41 Documentation which the competent authority will require for its prior approval in relation to the application for the following:
- own fund items not on the list referred to in Article 69 of the EU Commission

Delegated Regulation;

b) ancillary own funds.

1.5.3.42 For own funds which require an agreement, the competent authority also requires drafts of such agreements.

1.5.3.43 In general, the competent authority will need to be satisfied that the applicant has enough financial resources to support the business described in the application and to cover the required Solvency Capital Requirement and Minimum Capital Requirement needed throughout the three years after authorisation is granted and thereafter.

Investment strategy

1.5.3.44 A description of the applicant's proposed investment strategy, including details of the diversification, currency and types of investments which are expected to represent the insurance or reinsurance funds and the arrangements for the maintenance of adequate liquidity.

1.5.3.45 The investment strategy shall follow the prudent person principle found Section 5.7 of Chapter 5 in Part B of these Insurance Rules. In this respect, the undertaking shall provide the following details:

(a) the procedure for appropriately valuing and verifying the investments;

(b) the procedure to monitor the performance of the investments;

(c) the key risk indicators that are intended to be developed in line with the investment risk management policy and business strategy;

(d) how it will be taking into account the risks associated with the investment without relying only on the risk being adequately captured by the capital requirements;

(e) the targets for the returns it seeks from its investments taking into account the need to obtain a sustainable yield on the asset portfolios to meet reasonable policyholders' expectations;

(f) any conflict of interest that arises regarding investments, irrespective of whether they arise in the undertaking or in the entity which manages the asset portfolio;

(g) the independent valuation and performance measurement methods that have been developed by the undertaking and how it will review the appropriateness of the external credit institutions including how and the extent to which credit assessments are used;

(h) safeguards that will be put in place against excessive risk taking by the investment function;

- (i) if parts of the undertaking's investments will be of a non-routine nature, the undertaking is requested to describe:
 - (i) the assessment that will be carried out to ensure that it is able to perform and manage such investments; and
 - (ii) the risks specifically related to this investment and the impact of the investment on the undertaking's risk profile;
- (j) if the undertaking will be investing in derivatives, the undertaking is requested to demonstrate how the quality, security, liquidity and/or profitability of the portfolio will be improved without significant impairment of any of these features where derivatives are used to facilitate efficient portfolio management; and
- (k) if the undertaking will be investing in securitised instruments, the undertaking is requested to explain how it ensures that its interests and the interests of the originator or sponsor concerning the securitised assets are well understood and aligned.

IT Systems

1.5.3.46 The applicant is to provide as a minimum the following information on the IT system that will be utilised:

Dependency on the IT system	<ul style="list-style-type: none"> (i) the applicant is to explain to what extent its operations will rely on IT infrastructure to conduct business of insurance; (ii) the applicant is to explain to what extent will the end users, customers and third parties be affected if the IT system the applicant is using becomes unavailable; (iii) the applicant is to provide information on the channels via which customers will be able to purchase products offered by the applicant and the alternative channels available to the customers, in case of a downtime of IT infrastructure.
Complexity of the IT system	<ul style="list-style-type: none"> (i) the applicant is to state whether the IT system is considered as sophisticated or complex in terms of IT and information asset; (ii) whether the IT system is based on any innovative technology such as Distributed Ledger Technology; (iii) whether the IT system will be developed in house or bought off the shelf. Where IT systems are developed in-house, the applicant is to provide further detail regarding the segregation of production

	environment from development, testing and other non-production environment.
Nature of operations	<ul style="list-style-type: none"> (i) the applicant is to provide the expected total number and value of transactions per year via the IT system; (ii) a description of the (payment) transaction process involved in terms of IT systems and services; (iii) whether the IT system requires further back-office intervention; (iv) details on the back up and restoration policy; (v) where the backed-up data and servers stored; (vi) whether any services will be outsourced to third party service providers. Where this is the case, the applicant is to provide further detail including: name of service provider, the deployment model, whether the outsourcing arrangement concerns a critical or important operation function, identification and assessment of all the relevant risks of the outsourcing arrangement, what type of due diligence was conducted, whether the agreement provides for access, audit and inspection, and the exit strategy from the agreement.
ICT Risk and security management	<ul style="list-style-type: none"> (i) applicants are required to assess whether the internal audit function possess sufficient knowledge, skills and expertise in ICT and security risks to provide independent assurance of their effectiveness to the management; (ii) a description of the mechanisms that will be put in place in order to keep confidentiality, integrity and availability of data, systems and networks safe from unauthorised access or use of an information asset is to be provided; (iii) the procedures that will be introduced to detect anomalous activities which may impact the applicant's information security; (iv) whether the applicant has established business continuity plans and business impact assessment analysing the exposure to server business disruptions and assessing their potential impact on the applicant.

Outsourcing and agreements with third parties

- 1.5.3.47 A description of any material outsourcing or sub-contracting arrangements, in particular any outsourcing of critical and important functions, including but not limited to:
- (a) background information concerning the third party to whom functions will be outsourced including whether the service provider is a regulated entity, whether it forms part of the same group of companies of the undertaking;
 - (b) a description of the fit and proper procedures in assessing persons employed by the service provider or sub service provider to perform an outsourced key function;
 - (c) details of functions which will be outsourced, including an explanation as to why the outsourcing arrangement is not considered to materially impair the quality of the system of governance of the undertaking concerned and unduly increasing the operational risk;
 - (d) the identification of the person within the undertaking with overall responsibility for the outsourced key function and the assessment carried out to ensure why he/she is fit and proper and that he/she possesses sufficient knowledge and experience regarding the outsourced key function to be able to challenge the performance and results of the service provider;
 - (e) details of how the outsourced function will be monitored and controlled including details of key performance indicators to be used;
 - (f) describe the business contingency plans, including exit strategies for outsourced critical or important functions or activities;
 - (g) drafts of any agreements with intermediaries (brokers and agents), clearly explaining any commission arrangements;
- 1.5.3.48 All outsourcing, service level or sub-contracting agreements should be subject to a formal and comprehensive written agreement covering at least the responsibilities of both parties and a qualitative description of the services. Drafts of any outsourcing, service level or sub-contracting agreements with persons who will manage any significant part of the business of the applicant are to be submitted to the competent authority for prior approval. The written agreement is to provide for all the requirements found in Article 274 of the EU Commission Delegated Regulation.

Reinsurance or Retrocession

- 1.5.3.49 A full explanation of the proposed reinsurance (or retrocession) strategy and the arrangements proposed to be put in place at authorisation. It may be appropriate for this to be represented graphically, especially for more complex programmes, and should include the following:

- (a) details of the applicant's maximum retention per risk or event after all reinsurance (or retrocession) ceded, by principal category of business undertaken;
- (b) details of the principal reinsurers (or retrocessionaires), including name, address, country of incorporation and current rating by the rating agencies;
- (c) where a significant proportion of the programme is to be ceded to a single reinsurance undertaking (or retrocessionaires) or group, additional information should be given as to why this is considered to be appropriate, including details of the security provided and the financial adequacy;
- (d) any statistics or risk profiles showing the maximum catastrophe exposure for the applicant and the net retained exposure.

1.5.3.50 A confirmation provided by the applicant that what has been stated will be included in the agreement.

The MFSA reserves the right to request a copy of the reinsurance agreement at any point in time.

1.6 Scheme of operations of a branch of a third country insurance undertaking or third country reinsurance undertaking

1.6.1 Pursuant to article 11(1)(e) of the Act, a branch of a third country insurance or reinsurance undertaking shall submit a scheme of operations as set out in the Fourth Schedule to this Chapter which sets out the following:

- (a) the nature of the risks or commitments which the branch proposes to cover;
- (b) the guiding principles as to reinsurance;
- (c) estimates of the future branch Solvency Capital Requirement, as provided for in Section 5.5 of Chapter 5 in Part B of these Insurance Rules on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (d) estimates of the future branch Minimum Capital Requirement, as provided for Section 5.6 of Chapter 5 in Part B of these Insurance Rules on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
- (e) the state of the eligible own funds and eligible basic own funds with respect to the branch Solvency Capital Requirement and branch Minimum Capital Requirement, as provided for in Sections 5.5 and 5.6 of Chapter 5 in Part B of these Insurance Rules;
- (f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under class 18 in the Second Schedule to the Act, the resources available for the provision of the assistance;

- (g) information on the structure of the system of governance;
 - (h) an analysis of the differences between the solvency rules of the third country in which the third country insurance undertaking or third country reinsurance undertaking has its head office and the rules of the Solvency II Directive, including an explanation on the reasons that justify such differences;
- 1.6.2 In addition to the requirements set out in paragraph 1.6.1, the scheme of operations shall include the following, for the first three financial years:
- (a) a forecast balance sheet;
 - (b) estimates of the financial resources intended to cover branch technical provisions, the branch Minimum Capital Requirement and the branch Solvency Capital Requirement;
 - (c) for general business:
 - (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
 - (ii) estimates of premiums or contributions and claims;
 - (d) for long term business, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.
- 1.6.3 In regard to long term business, the competent authority may require the systematic notification of the technical bases used for calculating scales of premiums and technical provisions, by the applicant.
- 1.6.4 The scheme of operations of a branch of a third country insurance undertaking or third country reinsurance undertaking shall follow the same principles as set out in Section 1.3 of this Chapter as are required for an insurance or reinsurance undertaking seeking authorisation under the Act.
- 1.6.5 Third country undertakings shall also be guided by [Guidelines on the supervision of branches of third-country insurance undertakings issued by EIOPA](#).

1.7 Prior consultation of the authorities of other Member States or EEA States

- 1.7.1 The competent authority shall consult any European regulatory authorities concerned prior to granting an authorisation to:
- (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State or EEA State;
 - (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State or EEA State;

- (c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State or EEA State.
- 1.7.2 The competent authority shall consult the competent authorities in a Member State or EEA State responsible for the supervision of credit institutions or investment firms prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:
- (a) a subsidiary of a credit institution or investment firm authorised in the Union;
 - (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Union; or
 - (c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Union.
- 1.7.3 The competent authority and the authorities indicated in paragraphs 1.7.1 and 1.7.2 shall in particular consult each other when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of another entity of the same group.
- 1.7.4 The competent authority shall inform the authorities indicated in paragraphs 1.7.1 and 1.7.2 on the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions which is of relevance to the other competent authorities concerned for the granting of an authorisation by such authorities as well as for the ongoing assessment of compliance with operating conditions.

1.8 Appointment of a Compliance Officer

1.8.1 Section 1.8 applies to:

- (a) every undertaking desirous of applying for authorisation to carry on and, on continuing basis, an undertaking authorised to carry on business of insurance; or
- (b) every undertaking of a company whose head office is in a country outside Malta carrying on business of insurance in Malta; or
- (c) every company formed or constituted as a protected cell company;
- (d) every company formed and constituted in Malta as an incorporated cell company or incorporated cell,

("the Company") is required to identify one individual who will be responsible for ensuring the company's adherence to the provisions of the Act, the Regulations, the Insurance Distribution Rules and the Conduct of Business Rules ("Insurance

Distribution Legislation”), which may from time to time be in force in Malta relating thereto.

- 1.8.2 The Company shall before appointing a compliance officer, and after having conducted its due diligence checks, inform the competent authority in writing of the proposed appointment. The proposed individual is required to submit a Personal Questionnaire as set out in the Annex to Chapter 2 of Part A in the Insurance Rules, for the competent authority’s assessment.
- 1.8.3 Where the competent authority favourably concludes its assessment, the competent authority shall then write to the proposed person informing such person of the responsibilities attached to the role. A copy of this communication is also sent to the Company so that it is fully aware of the responsibilities of the compliance officer.
- 1.8.4 The responsibilities of Compliance Officers are also included under the Guidelines for Compliance Officers and Money Laundering Reporting Officers on the website under this Chapter.

1.9 Appointment of a Money Laundering Reporting Officer

1.9.1 Section 1.9 applies to:

- (a) every undertaking desirous of applying for authorisation to carry on and, on continuing basis, an undertaking authorised to carry on long term business of insurance, other than business of reinsurance; or
- (b) every branch of an undertaking whose head office is in a country outside Malta carrying on long term business of insurance, other than business of reinsurance; or
- (c) every undertaking desirous of applying for authorisation to carry on long term business of insurance, other than business of reinsurance, as a captive insurance undertaking and, on continuing basis, an undertaking authorised to carry on such business; or
- (d) every company formed or constituted as a protected cell company authorised to carry on long term business of insurance, other than business of reinsurance;
- (e) every company formed or constituted as an incorporated cell company authorised to carry on long term business of insurance, other than business of reinsurance, or an incorporated cell authorised to carry on such business,

(“the Company”).

1.9.2 The Company shall be aware of its responsibilities under the anti-money laundering legislation in Malta, mainly the Prevention of Money Laundering Act, (Cap. 373), the Regulations made thereunder and the Implementing Procedures issued by the Financial Intelligence Analysis Unit. Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations (S.L.373.01), requires a Company to appoint a money laundering reporting officer.

- 1.9.3 The Company shall before appointing a money laundering reporting officer, and after having conducted its own due diligence checks, inform the competent authority in writing of the proposed appointment. The proposed individual is required to submit a Personal Questionnaire as set out in the Annex to Chapter 2 of Part A in the Insurance Rules, for the competent authority's assessment.
- 1.9.4 When the competent authority favourably concludes its assessment, the competent authority shall then write to the proposed person informing such person of the responsibilities attached to the role. A copy of this communication is also sent to the company so that it is fully aware of the responsibilities of the Money Laundering Reporting Officer..
- 1.9.5 The person assuming the role may or may not act as a compliance officer. The responsibilities of Money Laundering Reporting Officers are also included under the Guidelines for Compliance Officers and Money Laundering Reporting Officers on the website under this Chapter.

1.10 Notes and Documentation

- 1.10.1 All particulars required in the First, Second and Third Schedules to the Chapter are in respect of a limited liability undertaking formed and registered under the Companies Act, 1995. The head office of the undertaking shall be situated in Malta.
- 1.10.2 Documentation submitted shall have to be either in the Maltese language or the English language.
- 1.10.3 Where the applicant has or will have one or more qualifying shareholders, or if the applicant holds or will hold a qualifying shareholding in any one or more companies, a diagram of the group family tree should be attached.

Note: The family tree should give details up to the ultimate beneficial owner/s, showing percentage size of holdings in each entity unless (a) the entity has one ultimate beneficial owner with a holding of over 50% of the voting rights or (b) no less than fifty ultimate beneficial owners can between them account for over 50% of the voting rights. In either case (a) or (b) it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more.

- 1.10.4 Where an applicant proposes to carry on –
- a) general business, the applicant may also propose to carry on simultaneously reinsurance of long term business;
 - b) long term business, the applicant may also propose to carry on simultaneously general business classes 1 and 2;
 - c) business restricted to reinsurance, the applicant may also propose to carry on simultaneously general reinsurance business and long term reinsurance business.
- 1.10.5 As from 21 December 2012, the unisex rule contained in Article 5(1) of Directive

2004/113/EC must be applied without any possible exception in relation to the calculation of individuals' premiums and benefits in contracts of insurance entered into after the said date. The applicant is to be guided by the European Commission Guidelines on the application of Council Directive 2004/113/EC to insurance, in the light of the judgment of the Court of Justice of the European Union in Case C-236/09 (TestAchats).

- 1.10.6 Where the applicant proposes to carry on business of insurance of group 2 specified in Part II of Third Schedule to the Act in relation to vehicles registered in Malta it is to produce:
- a) a declaration stating that the policy complies with the specific requirements, in respect of such policies, contained in the Motor Vehicle Insurance (Third Party Risks) Ordinance (Cap. 104), and that the undertaking undertakes to comply with the provisions of any law relating to any such insurance which may from time to time be in force;
 - b) an irrevocable undertaking to sign:
 - (i) the Malta Green Card Bureau Agreement whose object, in relation to Third Party Road Risks, is that the Bureau is to remain a member of the Uniform Agreement between Bureaux established by a European instrument on Road Transport and to act as Paying Bureau and Handling Bureau in accordance with the terms of the Uniform Agreement;
 - (ii) the **Motor Insurers' Bureau Domestic Agreement** whose object is to require members of the Protection and Compensation Fund to act as insurers concerned;
 - c) a written undertaking to the Protection and Compensation Fund Management Committee to contribute for the compensation of victims of road traffic accidents in the circumstances specified in Part IV of the Protection and Compensation Fund Regulations, 2003.
- 1.10.7 Where the applicant proposes to carry on business of insurance of group 2 specified in Part II of Third Schedule to the Act in relation to vehicles registered in any other jurisdiction, the applicant should also provide a declaration stating that the policy complies with the specific requirements of the applicable legislation and that the undertaking undertakes to comply with the provisions of any law relating to such jurisdiction.
- 1.10.8 Where the applicant proposes to carry on class 10 of Part I of the Third Schedule to the Act, other than carrier's liability, it is to communicate the name and address of the claims representative appointed in each Member State and EEA State other than Malta.
- 1.10.9 A written undertaking to the Protection and Compensation Fund Management Committee to pay a contribution to be utilised exclusively for the payment of claims remaining unpaid by reason of the insolvency of a undertaking relating to protected risks situated in Malta or protected commitments where Malta is the country of the commitment.

- 1.10.10 Paragraph 1.10.6 shall not apply where an applicant proposes to carry on solely and exclusively business of reinsurance or business as a captive insurance undertaking or a captive reinsurance undertaking where the insurance relates to vehicles not registered in Malta.
- 1.10.11 Paragraph 1.10.9 shall not apply where an applicant proposes to carry on solely and exclusively business of reinsurance or business as a captive insurance undertaking or a captive reinsurance undertaking.

For more information regarding the agreements mentioned in paragraph 7, kindly contact the Director-General of the Malta Insurance Association. Tel: 21232640, 21240609; Fax: 21248388.

- 1.10.12 The competent authority cannot guarantee to authorise an applicant by a specific date, but it will try to take into account any identified timings when assessing the application.
- 1.10.13 The list of documentation that needs to be provided to the competent authority is set out in the Checklist as contained in each Schedule to the Chapter.
- 1.10.14 During the analysis of the application, the competent authority reserves the right to require submission of any other documentation which it deems necessary.

