

12 June 2020

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)

1. Introduction

Chapter 1 of the Insurance Rules provides for the requirements which applicants intending to apply for an authorisation to establish:

- an insurance undertaking; or
- a reinsurance undertaking; or
- a cell of a protected cell company; or
- a branch of a third country insurance undertaking or reinsurance undertaking in Malta; or

intending to apply for an extension of authorisation, are required to follow and comply with. Following a number of regulatory developments, in the past years, the MFSA is informing the market that a number of amendments to Chapter 1 have been carried out.

Furthermore, the Schedules pertaining to this Chapter have been restructured, and instead of having six Schedules, the Chapter will now have four Schedules. The documents contained in each Schedule have also been rebranded with the new MFSA corporate image. In addition, in order to ensure that all the requirements contained in Chapter 1 are duly addressed by applicants and thus enable the MFSA to process applications in a more efficient manner, the requirements contained in Chapter 1 relating to the scheme of operations have been templated.

Chapter 2 of the Insurance Rules on the Fit and Proper Criteria, Notification and Assessment is also being amended. Previously, Chapter 2 made reference to the Competency Form, which was a form which could be downloaded from Annex III in the said Chapter. Following the amendments to the Personal Questionnaire, the contents of the Competency Form has been integrated in the Personal Questionnaire and the Entity's Assessment. As a result, any reference to the Competency Form is being removed from Chapter 2.

2. The Amendments of Chapter 1: The Application Process

The following provides a high-level review of the amendments carried out to Chapter 1:

2.1 Manner of making an application

Section 1.6 to Chapter 1 entitled "Manner of making an application for authorisation to carry on business of insurance" has been moved to the introductory part of the Chapter immediately after the section on 'Applicability'. This will improve the flow of the document and will clearly identify the Schedule which an applicant is required to compile, depending on the type of application. This is now marked as Section 1.3.

2.2 Report on the adequacy of the scheme of operations

Currently applicants are requested to provide a report drawn up by an approved auditor or where the undertaking is managed, the insurance manager, on the adequacy of the undertaking's business plan and that the business

plan has been properly prepared on the basis of the assumptions stated. In addition, currently the scheme of operations also needs to be signed by either an accountant or an actuary. It is to be noted that these two requirements have now been amalgamated into one. Therefore, the MFSA is now requesting for one report. The said report on the adequacy of the scheme of operations and the basis of its assumptions can be signed by either an auditor, an accountant, an actuary or an insurance manager.

2.3 Shareholding structures

In relation to the shareholding structure the MFSA may require qualifying individual shareholders to submit a Statement of Wealth. The Statement shall contain detail on the net worth of the individual and information as to the source of that wealth. This document is to be verified by a qualified accountant or auditor in his/her professional capacity.

Furthermore, where a qualifying shareholder is a set up in the form of trust, the MFSA is now requesting full information on the trustee, settlor, protector, any named beneficiaries and any other person exercising control.

2.4 Sources of Business

The section entitled "Sources of business" will be extended to include "distribution arrangements" to capture the requirements contained in the Conduct of Business Rulebook, as a result of the transposition of the Insurance Distribution Directive. Applicants will now be required to provide the following information:

- (a) details of the target market;
- (b) details in relation to inducements that will be granted to intermediaries. The MFSA would like to note that when setting up such commission, it is recommended that this is not based solely or to a large extent on sales generated but take into account other factors such as regulatory compliance, complaints records etc...;
- (c) submission of Insurance Product Information Document ("IPID");
- (d) submission of Product Oversight and Governance policy;
- (e) details of how the applicant is ensuring that the necessary disclosures are being met;
- (f) details on the manner in which complaints will be handled;
- (g) questions that will be used to carry out the demands and needs test or the suitability test and appropriateness test, as applicable.

Another new requirement included in Chapter 1 is that the applicant is to submit details relating to the procedure that will be used to approve appointed distributors and what on-going due diligence will be carried out.

2.5 Risk Management

The Risk Management section has also been amplified. Applicants are now required to include details of the business that falls outside the risk appetite of the applicant. Furthermore, the application will also contain specific questions in relation to:

- (a) Underwriting and reserving risk;
- (b) Operational risk;

- (c) Reinsurance and other risk-mitigation techniques;
- (d) Strategic and reputational risk;
- (e) Asset-liability management;
- (f) Investment risk management;
- (g) Liquidity risk management.

Furthermore, in view of the fact that the MFSA does not approve policy wordings, the requirement for applicants to submit policy wordings has been removed. Nevertheless, the MFSA would like to note that it reserves the right to request these documents if deemed necessary.

2.6 Financial Crime Analysis

A new section in relation to Financial Crime Analysis has been included in order to specify the requirements which an applicant is required to provide to the MFSA when submitting an application. This requirement applies to all subject persons in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations.

2.7 IT Systems

Further detailed requirements were also included in relation to IT Systems. Applicants are required to include more details on the dependency and complexity of systems; on data protection and data security; and whether the applicant will be relying on cloud infrastructure.

2.8 Reinsurance Agreements

The MFSA is aware that an applicant might not always have available draft reinsurance agreements. In this respect, rather than submitting a copy of the draft reinsurance agreement, the applicant will be required to confirm in the scheme of operations, the anticipated reinsurance arrangements that will be put in place. Nevertheless, the MFSA reserves the right to request a copy of the reinsurance agreement at any point in time.

2.9 Compliance Officer and MLRO

The manner in which a Compliance Officer and an MLRO are appointed have now been included under Sections 1.8 and 1.9 respectively in Chapter 1. The guidelines which such persons are required to comply with can now be found under "Guidelines for Compliance Officers and Money Laundering Reporting Officers" under the same Chapter. This information was previously included in the Schedules. Similarly, some "notes and documentation" which were included in the application form, have been inserted in the Chapter itself.

3. Submission of the scheme of operations

The information found in Chapter 1 in relation to the contents of the scheme of operations has now also been templated. Therefore, applicants are now requested to submit their plans in a structured format by completing the scheme of operations found underneath each Schedule, as applicable. The MFSA expects to receive fully completed forms, nevertheless, if any of the requirements does not apply to an applicant, then such requirement may be left blank.

4. The reorganisation and rebranding of the Schedules

The MFSA would like to note that the Schedules have been restructured in the following manner:

- a) The First, Second and Fourth Schedule are composed of:
 - i. the application form;
 - ii. the scheme of operations;
 - iii. the declaration; and
 - iv. the checklist.
- b) The Third Schedule is composed of:
 - i. the scheme of operations;
 - ii. the declaration; and
 - iii. the checklist.

The detail as to who needs to complete which schedule can be found in paragraph 1.3 of the revised Chapter 1.

All the documents contained in each of the above-mentioned schedules have been rebranded with the MFSA's new corporate image.

May we also point out that Annex II – The Assessment Form contained under Chapter 2 and Annex – Questionnaire for Qualifying Shareholders other than Individuals contained under Chapter 3 have been rebranded as well.

5. Checklists

The MFSA noted that in a number of cases, application documents were being submitted in a piecemeal fashion or incomplete. Where the application pack is not fully submitted, the processing of an application will not start and will be delayed until receipt of all the relevant documents and fees concerned. In this respect, the MFSA has included a checklist to every Schedule which applicants should use to ensure that the application pack submitted to the MFSA, is submitted in a complete manner.

6. Submission of the application pack

Applicants are encouraged to submit the application pack in soft copy only (auinsurancepensions@mfsa.mt) and in the format downloaded (.docx). This applies to all the documents contained in the respective schedule under which an application is being submitted, with the exception of the declaration. It is to be noted that the declaration is to be submitted both in soft copy and in hard copy containing all the original signatures to the MFSA.

Furthermore, it would help if the documents are numbered and named as per each applicable checklist.

7. Amendments to Chapter 2 – Fit and Proper Criteria, Notification and Assessment

Chapter 2 made reference to the Competency Form. Since, the details contained in this form are being captured in other forms, this Chapter is being amended so that the reference to the Competency Form is removed.

8. Effective Date

The amendments communicated above shall be effective immediately. The MFSA will not be accepting application packs which are not in the format presented in the Schedules, any submissions which are not in line with these new formats, will be sent back to the applicant.

9. Conclusion

The aim of this exercise is twofold. First to ensure that the MFSA is transparent and as clear as possible in the requirements and secondly to facilitate the provision of information by applicants which will in turn enable the MFSA to carry out its assessment in a holistic and timely manner.

Applicants, Insurance Managers, and other promoters assisting applicants with their submissions are encouraged to familiarise themselves with the new process and the templates.

This process reengineering can be considered as a pilot project forming part of wider initiative that the MFSA is embarking on which will see a similar adoption across the other sectors in the coming months.

Any queries or requests for clarifications in respect of the above should be sent by email on auinsurancepensions@mfsa.mt.