

14 October 2020

Circular on the amendments to the Annexes to Chapter 16 of the Insurance Distribution Rules and in the Annexes to Chapter 9 of the Insurance Rules

1.0 Introduction

Pursuant to the requirement in Article 11(5) of Directive (EU) 2016/97 (hereinafter referred to as the "IDD"), EIOPA issued a report entitled *Insurance Distribution Directive – Report Analysing National General Good Rules*, on 30th July 2019. In the report, EIOPA analysed the national general good rules of every Member State in the context of proper functioning of the Insurance Distribution Directive IDD and the internal market. EIOPA stated that professional and organisational requirements are considered a home State competence under Article 10 of the IDD, however, some Member States chose to impose the requirements on entities operating in their jurisdiction under Freedom of Services or Freedom of Establishment in addition to domestic entities.

General good rules are provisions that form part of the host Member State's legal system. The general good provisions introduce additional requirements which address specificities of the respective markets. These provisions are required to be observed by undertakings authorised in their Member State which provide cross-border activities in another Member State. General good provisions often seek to achieve specific benefits such as protecting consumers or preventing regulatory arbitrage.

In terms of the general good provisions, Malta had required European insurance and reinsurance distributors operating in Malta via Freedom of Establishment to transfer customer's monies via segregated customer accounts as set out in Article 10(6)(c) of the IDD.

2.0 Removal of reference made to Chapter 8 in Annex 1 of Chapter 16 of the Insurance Distribution Rules

Article 10(6)(c) of the IDD is transposed in Chapter 8 of the Insurance Distribution Rules and contains provisions requiring domestically registered insurance intermediaries to maintain a separate account for insurance intermediaries' transactions. Chapter 8 of the Insurance Distribution Rules is currently identified as one of the general good provisions which a European insurance and reinsurance undertaking is required to comply with if it would like to operate in Malta on a freedom of establishment basis, in line with Chapter 16 of the Insurance Distribution Rules - Freedom of Establishment and Freedom to provide Services by a European Intermediary.

In order to better reflect the IDD requirements relating to the imposition of general good requirements and which reserve the matters relating to professional and organisational requirements

under Article 10 of the IDD to the home member state, the MFS

A will be removing the general good requirement of Chapter 8 of the Insurance Distribution Rules from Chapter 16 of the Insurance Distribution Rules. Therefore, the content of Chapter 8 will no longer apply to European insurance intermediaries establishing a branch in Malta in terms of Chapter 16 on the Freedom of Establishment and Freedom to Provide Services by a European Intermediary issued under the Insurance Distribution Rules.

3.0 Amendments to the references found in the Annexes to Chapter 16 of the Insurance Distribution Rules and in the Annexes to Chapter 9 of the Insurance Rules

Following the amendments carried out to the Conduct of Business Rulebook, which involved a renumbering exercise, and in view of the fact that Annexes 1 and 2 of Chapter 16 of the Insurance Distribution Rules and Annexes 1 and Annex 2 of Chapter 9 of the Insurance Rules contain cross references to the Conduct of Business Rulebook, the Annexes are also amended to be brought in line with the Conduct of Business Rulebook, as renumbered.

4.0 Contacts

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