

## **MFSA's expectations in accordance with EIOPA's Recommendations for the insurance sector in light of the United Kingdom's withdrawal from the European Union**

### **1. General Scope**

Further to EIOPA's Recommendations for the insurance sector in light of the United Kingdom withdrawing from the European Union, EIOPA-BoS-19/040 dated 19 February 2019 to promote consistent supervisory practices in matters related to the consequences of the United Kingdom's ("UK") withdrawal from the European Union ("EU"), the Malta Financial Services Authority ("MFSA") is issuing this communication. This communication is addressed to all insurance undertakings and intermediaries established in Gibraltar which, following the UK's withdrawal from the EU will lose their right to conduct business by way of freedom of establishment and freedom to provide services in Malta, as well as to distributors established in Gibraltar, with no registration, in view that these will no longer be allowed to carry out distribution activities in Malta.

By way of this communication, the MFSA is setting out its expectations and commitments to ensure service continuity and regularity in the performance of insurance activities as well as to prevent insurance activity without authorisation after the UK's withdrawal from the EU, with the primary objective of minimizing detriment to policyholders and beneficiaries.

### **2. The MFSA expectations**

#### **2.1 Service continuity**

The MFSA expects that all affected insurance undertakings and intermediaries established in Gibraltar take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development and implementation of realistic contingency plans to prevent insurance activity without authorisation. Insurance undertakings and intermediaries established in Gibraltar that have not yet finalised their contingency plans are expected to contact the MFSA without further delay, by not later than the 13th September 2019.

As a consequence of the UK's withdrawal from the European Union, undertakings established in Gibraltar will no longer be allowed to conclude new insurance contracts or establish, renew, extend, increase or resume insurance cover under the existing insurance contracts in Malta, unless they are authorised for such insurance activities by the MFSA.

Insurance undertakings established in Gibraltar which would like to continue servicing cross-border business in Malta, following the UK's withdrawal from the EU, are expected to seek authorisation from the MFSA to carry out such cross-border business through the establishment of a branch in accordance with Article 11 of the Insurance Business Act (CAP 403) (the "Act"). Any insurance undertaking established in Gibraltar that intends to apply for such authorisation is urgently required to notify the MFSA of such intention, in view of the fact that any applications received from insurance undertakings established in Gibraltar, at this point in time are unlikely to be processed by the MFSA, before the proposed withdrawal date.

Where insurance undertakings established in Gibraltar do not seek authorisation from the MFSA, or do not obtain authorisation before the UK's withdrawal from the EU, such undertakings will be permitted to carry out an orderly run-off of the business which became unauthorised. The MFSA expects an insurance undertaking established in Gibraltar, which decides to carry out an orderly run-off to formally inform the MFSA in a timely manner, but not later than the 13th September 2019, and provide the MFSA with the following information:

- the date as from when the undertaking will be carrying out the run-off;
- the classes of business of insurance, and the details of the nature of the risks or commitments to be transferred;
- the volume of gross and net technical provisions;
- an indication of the remaining term run-off or servicing of the business;
- confirmation as to whether such undertaking will be carrying out the run-off or servicing of the business or whether it will be appointing an entity to do so. In case of the latter, such undertaking is expected to:
  - a) provide the MFSA with the name and details of the entity that will be appointed to carry out the run-off or servicing of the business; and
  - b) enter into a run-off or servicing agreement with the entity appointed to carry out such run-off or servicing.

The insurance undertaking established in Gibraltar is also expected to submit to the MFSA a Run-Off/Service Form on an annual basis. The MFSA will provide the Run Off or Servicing Form which such undertaking is required to complete.

The MFSA expects that an insurance undertaking established in Gibraltar with run-off business makes every effort to ensure the finalisation of their contingency plans in respect to the termination of contracts or portfolio transfers, before the UK's withdrawal from the EU.

## 2.2 Lapse of authorisation

Where an insurance undertaking established in Gibraltar has obtained authorisation from the MFSA to carry out cross-border business through the establishment of a branch in Malta, and such undertaking has not made use of such authorisation within 12 months, or ceases to pursue business in Malta for more than six months, the MFSA may withdraw the authorisation of such insurance undertaking established in Gibraltar.

## 2.3 Insurance Distribution Activities by intermediaries and entities established in Gibraltar

Intermediaries and entities established in Gibraltar providing distribution activities in Malta, which intend to continue or commence distribution activities after the UK's withdrawal from the EU in Malta, are expected to be established and registered in line with the relevant provisions of the Insurance Distribution Act. The MFSA also expects that intermediaries which are legal entities, seeking registration in Malta, to demonstrate an appropriate level of corporate substance, proportionate to the nature, scale and complexity of their business.

Where intermediaries and entities established in Gibraltar providing distribution activities in Malta do not obtain authorisation from the MFSA before the UK's withdrawal from the EU, such intermediaries are required to inform the MFSA of a realistic contingency plan, without further delay, by not later than the 13th September 2019.

## 2.4 Communication to policyholders and beneficiaries

In the best interests of the policyholders, the MFSA expects current insurance undertakings established in Gibraltar, with cross-border business in Malta immediately disclose to their policyholders and beneficiaries, unless they have already done so, the information as indicated in the EIOPA Opinion on disclosure of information to customers about the impact of the withdrawal of the United Kingdom from the European Union (EIOPA-BoS-18/119) of the 28 June 2018, in relation to insurance contracts concluded before the UK's withdrawal from the EU (including contracts that would already be terminated on the withdrawal date, but for which open claims exist or may be reported thereafter) in particular:

- a. the impact and consequences of the UK's withdrawal from the EU may have on the rights and obligations regarding their insurance contracts, on the continuity of their contracts and on the provision of the undertakings' insurance services;
- b. the relevant contingency measures taken or planned by the said undertakings. Where no such measures have been taken by the undertakings, the said policyholders and beneficiaries are to be informed of the reasons for such decision.

Furthermore, the said undertakings shall provide the information outlined above to their respective distribution channels and intermediaries so as to enable them to inform their policyholders and beneficiaries accordingly. For the avoidance of doubt, intermediaries and entities established in Gibraltar, providing distribution activities in Malta shall also have the duty to provide the above information at point of sale, even if the ultimate responsibility remains with the insurance undertakings.

Insurance intermediaries established in Gibraltar, who following the UK's withdrawal from the EU will lose their right to conduct business in Malta, are also required to disclose to their policyholders and beneficiaries appropriate information with respect their plans in the case that the UK withdraws from the EU. This information would include, *inter alia*, any new contact details.

### **3. Portfolio transfers**

The MFSA will be allowing the finalisation of a portfolio transfer from an insurance undertaking established in Gibraltar to an insurance undertaking authorised by the MFSA, provided that it was initiated before the UK's withdrawal from the European Union. The MFSA deems a portfolio transfer to be initiated where the GRA has notified the MFSA about the initiation of such portfolio transfer before the UK's withdrawal from the EU.

### **4. Financial Services Register of the MFSA**

Upon the UK's withdrawal from the EU, the MFSA will immediately remove the insurance undertakings established in Gibraltar, from the Financial Services Register of the MFSA, which provides a list of insurance undertakings that have passported to Malta under freedom of establishment and freedom of services.

### **5. MFSA contact point**

Affected insurance undertakings and intermediaries established in Gibraltar may contact [ipsu@mfsa.mt](mailto:ipsu@mfsa.mt) for further information or clarifications related to this document.