

Consultation Document on the amendments to Chapter 4 of Part A of the Insurance Distribution Rules

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NOTE: The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly, these proposals are not binding and are subject to changes and revisions following representations received from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

1.0 Introduction

1.1 The MFSA is proposing to amend Chapter 4 of Part A of the Insurance Distribution Rules on Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List carrying out Insurance Distribution Activities and Reinsurance Distribution Activities. The amendments being proposed to Chapter 4 will be twofold. Primarily the amendments will focus on the concept of credit risk transfer, where an insurance undertaking may enter into an agreement with an insurance intermediary and the said undertaking assumes all the credit risk emanating from premia payment, in line with Article 10(6)(a) of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution.

1.2 Where an insurance intermediary enters into a credit risk transfer agreement, the credit risk is automatically eliminated, thus rendering the requirement for the maintenance of the 4% of the annual gross premium receivable irrelevant. The amendments to the said Chapter will also necessitate other amendments to the First Schedule of Chapter 10 of the Insurance Distribution Rules.

1.3 The MFSA is also proposing new amendments to Chapter 4, on the own fund requirements of a cell of a cell company which is enrolled in the Managers List or Brokers List.

1.4 The purpose of this Consultation Document is to highlight the changes proposed to be carried out to Chapter 4 and Chapter 10 of the Insurance Distribution Rules.

2.0 Amendments to Chapter 4 of the Insurance Distribution Rules

2.1 Credit Risk Transfer Agreement

2.1.1 The MFSA is proposing to amend the current paragraph 4.4.2 to Chapter 4 of the Insurance Distribution Rules. The current paragraph 4.4.2 defines “annual gross premiums receivable”. It is being proposed to amend the current paragraph 4.4.2 of Chapter 4 by adding a new proviso. This new proviso will clarify instances where annual gross premiums shall not be deemed to be receivable. The new proviso will state that annual gross premiums shall not be deemed to be receivable by the enrolled individual or the enrolled company where:

- (a) monies paid by the customer to the enrolled individual or enrolled company are treated as having been paid to the insurance undertaking,

(b) monies paid by the insurance undertaking to the enrolled individual or enrolled company are treated as having been paid to the customer when the customer actually receives them, and,

(c) the enrolled individual or the enrolled company notifies the competent authority that it intends to enter into a credit risk transfer agreement with an insurance undertaking, which satisfies the requirements of the Second Schedule of this Chapter, together with the information required in the said Schedule within ten (10) working days before entering into such agreement. The enrolled individual or the enrolled company shall not enter into such agreement before its notification is acknowledged by the competent authority.

2.1.2 Therefore the MFSA is proposing that for annual gross premiums to be deemed as not received, an insurance undertaking and an insurance intermediary would need to enter into an agreement. The details to be included in the said agreement are stipulated in paragraph 5 of the Second Schedule to Chapter 4 of the Insurance Distribution Rules. It is to be noted that the information indicated in the said Schedule may be included in the Terms of Business Agreement entered into between the insurance undertaking and the insurance intermediary. The MFSA is proposing that the enrolled individual or the enrolled company will be required to notify the MFSA at least 10 working days prior to entering into said agreement.

2.1.3 Furthermore, the MFSA is also proposing the following new requirements where the intermediary opting to enter into a credit transfer agreement with an insurance undertaking is an insurance broker. An insurance broker is deemed to be an independent intermediary which acts on behalf of the client, and as such, entering into such an agreement may potentially impair the insurance broker's independence. In this respect, the MFSA is proposing that where the enrolled insurance broker wishes to enter into such an agreement, it shall, together with a copy of the written agreement, also provide the Authority with a declaration from its the compliance officer:

(a) confirming that the insurance broker has procedures in place to mitigate any real or perceived conflicts of interest which the new arrangements may give rise to vis-à-vis the broker's duty to act in the best interest of the client. The said procedures should include the measures in place in order to prevent the insurance broker from potentially recommending policies issued by the insurer with which the broker has a credit transfer agreement over policies issued by other insurers with whom no such agreement is in place; and

(b) stating that the current spread of business with the insurance undertakings with whom business is placed is evenly spread out and will be maintained on an ongoing basis.

2.1.4 The insurance intermediary will be able to commence operating with the credit risk transfer agreement once an acknowledgement is received from the competent authority.

2.2 Cell Share Capital

2.2.1 The MFSA is also proposing to include a new Section 4.7 on Cell Share Capital to Chapter 4 of the Insurance Distribution Rules. The proposed new paragraph 4.7.1 to Chapter 4 will stipulate new own funds requirements on an enrolled company which is enrolled in the Managers List or Brokers List and which is formed or constituted as a cell company. The new paragraph will state that the own funds of each cell of such cell company will amount to not less than €58,250. For the avoidance of doubt, the paragraph will also include a definition of "Cell" and "Cell Company" in line with the [Companies Act \(Cell Companies Carrying on Business of Insurance\) Regulations](#).

3.0 Amendments to Chapter 10 of the Insurance Distribution Rules

3.1 In line with the amendments in relation to the credit risk transfer agreement, the MFSA is also proposing to amend Forms 10A and 10B on the First Schedule to Chapter 10 of the Insurance Distribution Rules on Information to be provided to the competent authority for Supervisory Purposes. The First Schedule contains the Business of Insurance Intermediaries Statements which intermediaries are required to compile. The amendments will capture the credit risk transfer in the forms found in the First Schedule to Chapter 10, so as to provide a clear picture of the business of the insurance intermediary.

4.0 Amendments to the Conduct of Business Rulebook

4.1 The MFSA is also proposing to amend Chapter 1 of the Conduct of Business Rulebook to include new requirements on insurance brokers which are interested in entering into a credit risk transfer agreement. The new requirements are aimed at addressing the concern that that an insurance broker may potentially prefer to recommend products mainly (if not exclusively) of insurance undertakings with which the intermediary has a credit transfer agreement, even if such products were less favourable to the customer or did not address the customer's demands and needs sufficiently.

4.2 In this respect, the MFSA is proposing to require insurance brokers wishing to enter into a credit transfer agreement to:

(a) to disclose the fact that it has entered into a credit risk transfer agreement with an insurance undertaking and the implications of such an agreement, to its potential policyholders, prior to the conclusion of the insurance contract. This implies that the policyholder would be made fully aware of this relationship and can take an informed decision when purchasing an insurance contract; and

(b) to establish, maintain and keep up to date adequate procedures to mitigate any real or perceived conflicts of interest which such arrangements may give rise to vis-à-vis the broker's duty to act in the best interest of the client.

5.0 The Way Forward

5.1 Any comments and feedback in relation to the Consultation are to be addressed to the Insurance and Pensions Supervision Unit and submitted via email on ips_legal@mfsa.mt, by not later than 24th May 2021.