

20 July 2021

Circular on the amendments to Chapter 4 and Chapter 10 of the Insurance Distribution Rules and the Conduct of Business Rulebook

1.0 Introduction

On 23 April 2021, the MFSA issued a [Consultation Document on Chapter 4 of the Insurance Distribution Rules](#) (MFSA Ref: 03-2021) highlighting the proposed amendments to:

- a) 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;
- b) Chapter 10 of Part B of the Insurance Distribution Rules on Information to be provided to the competent authority for Supervisory Purposes;
- c) Chapter 1 of the Conduct of Business Rulebook.

The Consultation closed on 24 May 2021 and feedback was received from the market. In this respect, a [Feedback Statement](#) is being published by the MFSA highlighting the comments submitted by the insurance industry and the replies of the MFSA.

The amendments to Chapter 4 of the Insurance Distribution Rules and the Conduct of Business will come in force on the 20 July 2021. The amendments to the First Schedule to Chapter 10 of the Insurance Distribution Rules will come into force for financial years ending 31 July 2021 onwards.

2.0 Amendments to Chapter 4 of Part A of the Insurance Distribution Rules

2.1 Credit Risk Transfer Agreement

The MFSA proposed amendments to Chapter 4 of the Insurance Distribution Rules to introduce the concept of a Credit Risk Transfer Agreement, whereby an insurance undertaking may enter into an agreement with an insurance intermediary and the former assumes all the credit risk emanating from premia payment in accordance 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 (the IDD). 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.

In this respect, the MFSA is introducing a new proviso to paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules with the aim of clarifying the instances where annual gross premiums shall not be deemed to be receivable by the enrolled individual or the enrolled company. Annual gross premiums will be deemed as not received, where an insurance undertaking, as defined in Chapter 4 of the Insurance Distribution Rules and an insurance intermediary enter into a Credit Risk Transfer Agreement. The enrolled individual or company is also required to notify the MFSA at least 10 working days prior to entering the said agreement. The requirements which are to be included in the said agreement are identified in the Second Schedule to Chapter 4 of the Insurance Distribution Rules.

Where the insurance intermediary opting to enter into a Credit Risk Transfer Agreement is an insurance broker, the MFSA requires such a broker to provide the Authority with a declaration from its 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 Risk 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.

These declarations will need to be submitted together with the Credit Risk Transfer Agreement to the competent authority. The insurance intermediary will be able to commence operating with the Credit Risk Transfer Agreement once an acknowledgement is received from the competent authority.

Insurers and enrolled persons which have already entered into a Terms of Business Agreement are required to amend the said Agreement in line with the requirements identified in the Second Schedule to Chapter 4 within six (6) months from the day the amendments to Chapter 4 come into force or on termination of the said Terms of Business Agreement, whichever comes first.

2.2 Cell Share Capital

The MFSA is also including a new Section 4.7 entitled Cell Share Capital to Chapter 4 of the Insurance Distribution Rules. This Section will stipulate that the own funds of each cell of such cell company will amount to not less than €19,510. Enrolled companies which are enrolled in the Managers List or Brokers List which are formed or constituted as a cell company will be required to comply with this requirement within six (6) months of the coming into force of the amendments to Chapter 4 of the Insurance Distribution Rules.

2.3 Amendments to Chapter 10 of the Insurance Distribution Rules

The MFSA will also be amending the First Schedule to Chapter 10 of the Insurance Distribution Rules on information to be provided to the competent authority for Supervisory Purposes, which contains the Business of Insurance Intermediaries Statements which insurance intermediaries are required to compile. The amendments will capture the Credit Risk Transfer in the forms found in the First Schedule to Chapter 10 and will provide a clear picture of the business of the insurance intermediary.

2.4 Amendments to the Conduct of Business Rulebook

The MFSA is also amending Chapter 1 of the Conduct of Business Rulebook to include a new requirement on insurance brokers which are interested in entering into a Credit Risk Transfer Agreement. The new requirement will address concerns that an insurance broker may potentially prefer to recommend products of insurance undertakings with which the intermediary has a Credit Risk Transfer agreement, even if such products were less favourable to the customer or did not address the customer's demands and needs sufficiently. The relevant requirements are being introduced in the Rulebook by means of a new Rule R.1.5.19, whereby it has also been clarified that for the purposes of this Rule, a 'credit transfer agreement' is the agreement as referred in the context of the Second Schedule to Chapter 4 of Part A of the Insurance Distribution Rules.

3.0 Contacts

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