

Consultation Document on the Amendments to:

- Chapter 2 in Part A of the Insurance Rules
- Chapter 8 in Part B of the Insurance Rules
- Chapter 7 and Chapter 8 in Part B of the Insurance Distribution Rules

Ref: 05-2021

Issue Date: 19 November 2021

Closing Date: 14 December 2021

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 a number of amendments to Chapter 2 in Part A of the Insurance Rules, Chapter 8 in Part B of the Insurance Rules, and Chapter 7 and Chapter 8 in Part B of the Insurance Distribution Rules, to address issues that were identified during regulatory work carried out.

1.2 The purpose of this Consultation Document is to highlight the changes proposed to be carried out to the above-mentioned Chapters.

1.3 The documents circulated by the MFSA for the purposes of Consultation are in draft format and consist of the following documents:

- Chapter 2 of the Insurance Rules
- Chapter 8 of the Insurance Rules
- Chapter 7 of the Insurance Distribution Rules
- Chapter 8 of the Insurance Distribution Rules

2.0 Amendments to Chapter 2 of the Insurance Rules

2.1 The MFSA is proposing to introduce a new paragraph – 2.1.4 – to Chapter 2 of the Insurance Rules, to include two definitions. The first proposed definition will define “*persons who effectively run the undertaking*”. These persons are members of the Board of Directors, as well as members of the senior executive team which may include but are not limited to Chief Officers, Senior Executives, Head and President. It is to be noted that these persons are persons employed by the undertaking who are responsible for high-level decision making and implementing the strategies devised and the policies approved by the Board of Directors. The MFSA is also proposing to introduce a new definition of “*key function holder*” in the new paragraph 2.1.4. The said definition will clarify who a key function holder is.

2.2 Paragraph 2.5 – which presently includes positions that require approval from the MFSA through the submission of a Personal Questionnaire – will also be amended to include the new persons identified as “*persons who effectively run the undertaking*”.

2.3 Currently the MFSA already conducts interviews with proposed appointees whenever it deems fit in order to ascertain a person’s competences. The MFSA is now proposing to introduce a new paragraph – 2.7 – to Chapter 2 of the Insurance Rules to include this requirement in the legislation and thus provide the competent

authority with the power to require that the proposed appointee may be subjected to an interview conducted by competent authority to ascertain the person's competences.

2.4 The MFSA is also proposing to amend paragraph 2.8 of Chapter 2 of the Insurance Rules to include "*persons who effectively run the undertaking*". It is also being proposed to clarify when an authorised undertaking is required to give notice in writing to the competent authority. In this respect, it is being proposed that an authorised undertaking will inform the competent authority where any person resigns from any position that had required approval from the MFSA.

2.5 It is also being proposed that a new sub-paragraph (c) is added to paragraph 2.8.1 which will require the authorised undertaking to include in the notice provided to the competent authority, detailed information as to how the authorised undertaking will ensure that the roles and responsibilities of the said person will continue to be carried out in an effective manner, and keep the competent authority updated with the replacement or recruitment process on a regular basis.

2.6 The MFSA is also proposing to amend Section 2.10 of the Chapter which includes individuals responsible for a branch of an authorised undertaking. It is being proposed to include a new paragraph – 2.10.5 – which will include the requirement that an authorised undertaking shall be required to give notice in writing to the competent authority where any person resigns from the role of an individual fulfilling the requirements of article 11(2) of the Act, of the undertaking.

2.7 Section 2.11 on the Notification of Key function holders is also being amended to include a new paragraph, 2.11.2. This new paragraph will introduce a new requirement for undertakings to give notice in writing to the competent authority when a key function holder resigns. Where the key function is outsourced, the authorised undertaking is required to inform the competent authority when an individual appointed to oversee the outsourced key function from within the undertaking resigns, or – where a group of persons or a committee is responsible for the key function – the person leading the committee resigns. This new paragraph will also clarify the requirements to be included in the notice to the competent authority.

2.8 Finally, paragraph 2.11.2 – which has now been renumbered to paragraph 2.11.3 – will also be amended. An authorised undertaking will be required to notify the competent authority of the identity, together with the information required in paragraph 2.11.2 of Chapter 2, of the new key function holder immediately, but by no later than ninety (90) days from the day when the key function holder resigned.

3.0 Amendments to Chapter 8 of the Insurance Rules

3.1 Chapter 8 of the Insurance Rules, on supervisory reporting and disclosure, requires authorised undertakings to disclose information which is necessary for the purposes of supervision. Paragraph 8.6.8 of the said Chapter indicates that the annual quantitative templates are to be submitted no later than fourteen (14) weeks after the undertaking's financial year end and that the quarterly quantitative templates are to be submitted no later than five (5) weeks related to any quarter ending.

3.2 Following the COVID-19 outbreak, the MFSA amended Chapter 8 and introduced a new Annex VI to offer operational relief and to support business continuity of insurance and reinsurance undertakings in order to implement the EIOPA-issued Recommendations on supervisory flexibility regarding the deadline of supervisory reporting and public disclosure due to COVID-19 with the aim of fostering convergence and consistent supervisory approaches across Member States when providing flexibility for supervisory reporting and public disclosure of insurance and reinsurance undertakings.

3.3 In light of the fact that the period stipulated by EIOPA for compliance with the reporting and public disclosure requirements has lapsed, the said requirements are no longer necessary. In this respect, it is being proposed to remove Annex IV and delete the proviso to paragraph of paragraph 8.6.8 of Chapter 8.

4.0 Amendments to Chapter 7 of the Insurance Distribution Rules

4.1 Currently Chapter 7 of the Insurance Distribution Rules states that training conducted via web-based learning requires a relevant person or a relevant employee to complete an assessment successfully and to retain proof for future reference, in order for such training to fulfil the requirements of structured CPD training. The MFSA is of the view that where continue professional development training is not web-based, an assessment should still be required as this will ensure that the relevant person and the relevant employee would have obtained a good understanding of the training delivered.

4.2 In this respect, the MFSA is proposing to amend paragraph 7.5.4 of Chapter 7 of the Insurance Distribution Rules which indicates the three criteria which need to be fulfilled to ensure that continuous professional training is categorised as structured CPD training. The MFSA is proposing to amend point (c) of paragraph 7.5.4 on Verifiability to clarify that in the case of courses, seminars and in-house training, attendance should be verified by means of an assessment which is carried out during

the activity or upon its completion. In the proposed amendments, the MFSA is also proposing to amend paragraph 7.5.5 to clarify what constitutes a conference.

4.3 A new paragraph 7.5.6 will also be included to clarify that courses and seminars which are not web-based and which address one or more subject matters indicated in Sections 6.8 to 6.10 of Chapter 6 shall qualify as structured CPD training, provided that the activity has a means of assessment which the relevant person or the relevant employee is required to carry out during the activity or upon its completion.

4.4 Furthermore, the MFSA is also proposing to add a new paragraph 7.5.7 to clarify that where a relevant person or a relevant employee attends a course or seminar which is not a web-based learning activity and which does not fulfil the requirements in paragraph 7.5.6 of this Chapter, such activity may qualify as unstructured CPD training.

4.5 Paragraph 7.4.2 of Chapter 7 states that one hour of training will constitute one-hour CPD training. For clarification purposes, it is to be noted that the time spent to carry out the assessment will not be included as part of the one-hour CPD training. Furthermore, the relevant person or the relevant employee must have completed the assessment successfully and retain proof of such for future reference. It is to be noted that the mark obtained in such assessment should also be included in the training log and the records which a relevant person is required to maintain in line with paragraph 7.6.3 of Chapter 7. The MFSA is also proposing that the pass mark for assessments which qualify as structured CPD training be set at a 70% mark, in order to ensure that the market obtains higher levels of knowledge.

5.0 Amendments to Chapter 8 of the Insurance Distribution Rules

5.1 The MFSA is also proposing to amend paragraph 8.2.5 of Chapter 8 of the Insurance Distribution Rules, which indicates the information that every enrolled person opening a Business of Insurance Intermediaries Account with an approved bank is to provide to the same bank, to bring it in line with the bank mandates currently being issued.

5.2 In this respect, it is being proposed to add a proviso following paragraph 8.25 (c) of the aforementioned paragraph to state the following: *“Provided that the bank shall retain the right to a lien, charge, encumbrance, right of set-off, combination, compensation or retention or other security interest over monies standing to the credit of the Business of Insurance Intermediaries Account by way of security for the repayment of any overdraft account; and”*.

6.0 The Way Forward

6.1 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 **14 December 2021**.