

Feedback Statement on the Proposed Amendments to the Insurance Rules and Insurance Distribution Rules

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1.0 Introduction

On 19 November 2021, the MFSA issued a [Consultation Document on the 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](#). The purpose of this Consultation Document was to highlight the changes proposed to be carried out to the abovementioned chapters.

The Consultation Document mainly focused on the amendments to Chapter 2 of the Insurance Rules, which proposed the inclusion of new definitions and other new requirements. The Consultation Document also proposed the removal of Annex IV to Chapter 8 of the Insurance Rules. The MFSA would like to note that no feedback was received from the market in relation to the proposals of the amendments related to Chapter 8 of the Insurance Rules. Additionally, the MFSA also proposed amendments to Chapter 7 of the Insurance Distribution Rules to include a new requirement for relevant persons and relevant employees to sit for an assessment when attending courses and in-house training. Finally, the MFSA also proposed to amend Chapter 8 of the Insurance Distribution Rules.

Further to the said Consultation Document, the MFSA is issuing a Feedback Statement on the comments received from the insurance market in relation to this Consultation. An outline of the main comments received and the MFSA's position in relation thereto is provided below.

2.0 Main Comments Received on the Proposed Amendments to Chapter 2 in Part A of the Insurance Rules

2.1 The proposed introduction of the definition of "persons who effectively run the undertaking"

2.1.1 Industry Comment: Market participants required clarification on whether the definition of "persons who effectively run the undertaking" will also capture ultimate beneficial owners.

MFSA's Position: The MFSA would like to clarify that the definition "persons who effectively run the undertaking" does not capture ultimate beneficial owners. Where the ultimate beneficial owner is a qualifying shareholder, such a person would be required to submit a Personal Questionnaire in line with the requirements of paragraph 2.5.1 of Chapter 2 of the Insurance Rules.

2.1.2 Industry Comment: A market participant required clarification on whether the definition of "persons who effectively run the undertaking" will also include persons acting under a secondment arrangement.

MFSA's Position: Where a person is acting under a secondment agreement and such person is also responsible for high-level decision making, and implementing the strategies devised and the policies approved by the Board of Directors, as specified in the proposed new definition, such individual will also be required to submit a Personal Questionnaire.

2.1.3 Industry Comment: Market participants also commented on the terms “Actuary” and “Chief Actuary” and required clearer definitions.

MFSA’s Position: Primarily, the MFSA would like to note that the terms “Actuary” and “Chief Actuary” are not terminologies which are found in the Insurance Business Act, regulations and Insurance Rules issued thereunder. In this respect, the MFSA would like to clarify that there exists the requirement for the appointment of an approved actuary in line with Article 22 of the Insurance Business Act and the individual responsible to carry out the actuarial function – which is one of the four key functions identified in Directive 2009/138/EC (the Solvency II Directive). This implies that the role of the approved actuary and the actuarial function are two distinct roles. An approved actuary – which emanates from Article 22 of the Insurance Business Act – is a person who does not hold a role or perform a function on behalf of the undertaking which could give rise to a significant conflict of interest.

2.1.4 Industry Comment: An industry participant also proposed that the MFSA should consider the inclusion of a Chief Executive Officer in the said definition.

MFSA’s Position: The MFSA would like to clarify that paragraph 2.5.1(b) of Chapter 2 of the Insurance Rules already contains a requirement that a Chief Executive Officer needs to submit a Personal Questionnaire.

2.1.5 Industry Comment: Market participants also requested the MFSA to further elaborate as to which positions may fall under the definition of a senior executive.

MFSA’s Position: The MFSA is of the view that the definition of “persons who effectively run the undertaking” is quite clear, and that this includes members of the Board of Directors and members of the senior executive team. The list provided is non-exhaustive and captures persons employed by the undertaking who are responsible for high-level decision making, and for implementing the strategies devised and the policies approved by the Board of Directors. When deciding whether a Personal Questionnaire needs to be submitted, an applicant should not focus on the title or designation of the individual *per se* but on the roles and responsibilities of the respective individual.

2.2 Requirement for the submission of a Personal Questionnaire for persons who effectively run the undertaking

2.2.1 Industry Comment: A market participant queried whether the MFSA will adopt a standard procedure of interviewing all proposed persons who effectively run the undertaking and whether this will have implications on the turnaround timeframe for the processing of proposed appointment.

MFSA’s Position: The MFSA has always reserved the right to interview proposed appointees to roles which require to submit a Personal Questionnaire and will continue to do so. The reason for including such a requirement is to provide clarity. The MFSA may decide to interview a person on a case-by-case basis, as is the current practice. The MFSA remains committed to ensure that timeframes for the processing of proposed appointments are respected.

2.3 Notification of resignation of Key Function Holder

2.3.1 Industry Comment: Market participants sought clarification on the proposed requirement for an undertaking to notify the competent authority immediately but by no later than ninety (90) days from the day following which the key function holder resigns. Suggestions to remove any reference to a fixed time limit were made and also submissions noting that there might be the possibility that the undertaking may not manage to find a suitable candidate within the prescribed timeframe or that the recruitment may take longer than the stipulated 90 days. Market participants asked whether, if this happens, the MFSA would consider an extension of the "interim individual/committee" appointed being notified to the regulator.

MFSA's Position: The MFSA has taken note of the concerns raised by the market and will be revising this proposal by extending the proposed notification period of ninety (90) days to (180) days from the day following which the key function holder resigns for the undertaking to notify the competent authority with the name of the individual who will be carrying out the function. Notwithstanding this, it is to be noted that the undertaking is required to periodically provide updates to the MFSA with regards to progress being made in relation to the recruitment process and is also expected to maintain adequate records and evidence to be able to demonstrate that the undertaking is actively pursuing recruitment to find a replacement for the vacated key function position. The undertaking is also reminded that it is their responsibility to ensure that adequate contingency plans – including succession plans – are in place. The said plans should ensure that where a position becomes vacant, the respective roles and responsibilities of the said person continue to be carried out in an effective manner.

3.0 Main Comments Received on the Proposed Amendments to Chapter 7 in Part B of the Insurance Distribution Rules

3.1 Industry Comment: A market participant proposed the inclusion of a definition of the required assessment to streamline the process of fulfilling the requirements of structured Continuous Professional Development (CPD) training required by a relevant person or a relevant employee.

MFSA's Position: The MFSA analysed the concerns raised by the market and will be including a definition of the term "assessment". In this respect, the MFSA will be defining the said term as "a formal test that a relevant person or a relevant employee is required to take to confirm that adequate level of knowledge has been obtained during the training attended". The aim behind such an assessment is to ensure that the person who attended the training has grasped the knowledge provided in the training, and not to impose an additional burden on such person. The assessment may take different forms as long as it is proportionate to the content and duration of the training. For the purpose of clarification, the MFSA would also like to point out that courses and in-house training provided to the relevant employee and to the relevant person, as defined in Chapter 7, should be followed up by an assessment, irrespective of whether such training has been conducted online or in

person. The MFSA would also like to take the opportunity to clarify that an assessment is not required to be undertaken following participation in conferences and seminars.

3.2 Industry Comment: *A market participant enquired whether the form of assessment would consist of an open question, multiple-choice questions, or a set of short questions. The same market player requested clarification from the MFSA as to whether the duration of the assessment is also open.*

MFSA's Position: The MFSA would like to clarify that the methodology of how an assessment should be carried out falls on the person providing the training. The assessment may take the form of an open question, multiple-choice questions, or a set of short questions. The duration of the assessment is also not defined and is up to the person providing the training. The aim behind such an assessment is to ensure that the person who attended the training has adequately grasped the content of the training provided.

3.3 Industry Comment: *Clarification was sought from a market player as to whether a take-home assessment is acceptable. This especially in view of the fact that, after a two-hour training seminar, participants would need to spend an additional thirty minutes to one hour to take the assessment.*

MFSA's Position: The MFSA would like to reiterate that the methodology of how an assessment should be carried out falls on the person providing the training. The MFSA would like to clarify that the assessment should be proportionate to the content and duration of the training, and cover the material provided during the training. The MFSA does not oppose a take-home assessment as satisfying the proposed requirement. However, in such a case, the assessment is to be carried out shortly after the training is completed.

3.4 Industry Comment: *A market participant inquired whether the MFSA would reconsider its position with respect to the assessment forming part of the CPD hours.*

MFSA's Position: The MFSA would like to reiterate its position as stated in the Consultation Document, that the assessment cannot form part of the CPD training hours.

3.5 Industry Comment: *A market participant sought clarification as to whether participants who fail to obtain the 70% pass mark can take the assessment again. The same market participant also viewed the scenario where the candidate who has failed the assessment does not wish to carry out another assessment. In this respect, it was asked whether a certificate confirming unstructured hours can be issued.*

MFSA's Position: Participants who fail to obtain the 70% pass mark can once again take the assessment. That said, should a participant fail to obtain the 70% pass mark a second time, such participant would be required to pursue the training again and to take another assessment. Where the candidate who has failed does not wish to take the assessment once again, a certificate confirming unstructured hours may be issued.

3.6 Industry Comment: *The industry has also requested clarification as to the position that will be adopted in situations where candidates follow a relevant seminar, delivered by a presenter, which does not provide an assessment.*

MFSA's Position: The MFSA would like to clarify that such a scenario does not qualify as a course but would be tantamount to a conference or a seminar. Where such a scenario falls under the category of an event coordinated by an organisation wherein one or more subject matters indicated in Sections 6.8 to 6.10 of Chapter 6 of Part B of the Insurance Distribution Rules are discussed and debated, an assessment would not be required, but participants can still qualify such training as structured CPD training.

3.7 Industry Comment: *Clarification was also sought from the market as to whether delivering training, consisting of a presentation, online (on any online platform) – as opposed to such a presentation being classroom-based – would be considered as web-based. As a follow-up question, the market also requested clarification as to whether an assessment is required if delivering a presentation online is considered as web-based.*

MFSA's Position: The MFSA would like to clarify that currently paragraphs 7.5.8 and 7.5.9 of Chapter 7 of the Insurance Distribution Rules already require web-based learning activities to necessitate the successful completion of an assessment for training to be able to qualify as structured CPD training. This was also clarified in paragraph 4.1 of the Consultation Document, which states that training conducted via web-based learning requires a relevant person or a relevant employee to successfully complete an assessment and to retain proof for future reference. It is to be noted that in order to ascertain whether training requires an assessment or not depends on whether the training is a course or a conference. Once that is determined, irrespective of the medium of delivery, one can ascertain whether an assessment is necessary. A course will require an assessment, however, a seminar or a conference will not.

3.8 Industry Comment: *While welcoming the proposed strengthening of the CPD framework, a market participant opined that such a proposed amendment may be quite onerous for a number of SMEs. In this respect, the said market participant made reference to in-house training, which was described as beneficial to address gaps in the knowledge but demanding on their management team as preparation therefore has to be carried out outside office hours. Market participants also argued that such a proposal will pose difficulty in practice and will not add value to CPD.*

MFSA's Position: The MFSA agrees with the view that in-house training is more beneficial to address gaps in knowledge and to have CPD training based on the learning needs of the staff of the undertaking, in line with the requirements of Sections 6.8 to 6.10 of Chapter 6 of the Insurance Distribution Rules. The MFSA maintains that what is important is that the person who attends the said training obtains a good understanding of the material delivered. With respect to the market's concern on the demanding nature of such assessments, the MFSA would like to clarify that assessments can take a number of forms, such as multiple-choice questions which can be easily created by the undertaking itself. Ultimately, the assessment should be proportionate to the content and the duration of the training. The aim of introducing the assessment requirement is not to discourage participation

in less formal set ups but to ensure that a proper understanding is acquired of the knowledge obtained during the training session.

3.9 Industry Comment: *Market participants also sought clarification as to what constitutes courses, seminars and conferences.*

MFSA's Position: A conference or a seminar is an event coordinated by an organisation wherein one or more subject matters indicated in Sections 6.8 to 6.10 of Chapter 6 of Part B of the Insurance Distribution Rules are discussed and debated. Such events would usually not include an assessment. Contrarily, the MFSA views courses as being equivalent to detailed and more focused training and more akin to academic instruction, whether obtained in house or not. A course would include more detailed material, which is why an assessment is important. Further to the comments received from the market, the MFSA would like to clarify that a conference and a seminar would not necessitate an assessment whereas a course would require an assessment.

3.10 Industry Comment: *A market participant raised comments in relation to courses and seminars organised by authorities, agencies or professional bodies recognised by the MFSA. In this respect, clarification was sought as to whether such courses and seminars will qualify as unstructured CPD training if the MFSA remains of the view that an assessment needs to be conducted for training to be verifiable.*

MFSA's Position: A conference or a seminar would usually be conducted by an institution and would usually include a panel of knowledgeable persons who discuss particular topics and would usually not include an assessment, while a course is a more focused training, akin to academic instruction, whether obtained in house or not. The MFSA sees value in attending such conferences and seminars. Attendance to such a conference or seminar can still qualify as CPD training as knowledge will be obtained. Additionally, for the purpose of clarification, attendance to such courses and seminars will qualify as unstructured CPD training.

3.11 Industry Comment: *A market participant commented that since the MFSA has decided to include assessments as a requirement of CPD training, consideration should also be made for the assessment, preparation and correction of the said assessments. Such work also needs to be taken into account and reflected in the Insurance Distribution Rules.*

MFSA's Position: The MFSA remains of the view that the assessment should not be a part of the training provided and should be carried out after the CPD training is given. The MFSA has taken note of the comments raised by the market participants with respect to assessment preparation and corrections, and the suggestion was taken on board. In this respect, paragraph 7.5.13 of the Insurance Distribution Rules was amended in line with the proposal.

3.12 Industry Comment: *Another market participant claimed that there is no proposed distinction in the level of assessment made between persons engaged in selling simple products, such as exempt Tied Insurance Intermediaries distributing travel insurance, and an individual person responsible for insurance distribution of complex products in an undertaking. The said market participant also claimed*

that there is no means of objective verifiability with regard to any assessment undertaken. The level of assessment will vary between service providers and organisations themselves, which makes the results obtained from such assessment highly subjective and arbitrary, and defeats any purpose this assessment would have had in the first place.

MFSA's Position: The MFSA notes that CPD training applies to relevant persons and relevant employees. Paragraph 7.5.2 of Chapter 7 of the Insurance Distribution Rules states that, before choosing which study activities would be appropriate for a relevant person and a relevant employee to undertake, the relevant person shall make an assessment, taking into account the nature of the products which are to be sold, and the role and activity to be carried out by such relevant person or relevant employee. Therefore, it is up to the relevant person to make sure that the training chosen to be undertaken is the training which is most necessary for the relevant person or relevant employee. It is also to be noted that the responsibility to ensure that a Tied Insurance Intermediary attends CPD training rests on the undertaking or the insurance agent which has appointed or registered a Tied Insurance Intermediary, in line with paragraph 7.4.6 of Chapter 7 of the Insurance Distribution Rules. The purpose of the introduction of an assessment is to ensure that the market obtains and maintains higher levels of knowledge. The MFSA is of the view that leaving the methodology of the assessment at the undertaking's discretion would provide more benefits as to the level of knowledge obtained as well as keeping flexibility as regards the type and depth of training that is required. It should be in the best interest of the undertaking, and thereby the market, that its relevant employees and relevant persons maintain a good level of knowledge from the training undertaken.

3.13 Industry Comment: *A market participant argued that the proposed inclusion of assessments will considerably limit the availability of CPD training for insurance distributors. It was also argued that, through such a proposal, the administrative burden will be shifted onto insurance undertakings. Furthermore, the said market participant also argued that there are a number of relevant courses and seminars which do not involve such assessment, thus rendering the MFSA's proposal problematic.*

MFSA's Position: Prior to launching the proposed amendments for Consultation, the MFSA held a meeting with service providers which provide courses, seminars and training in order to understand better whether the introduction of an assessment would be burdensome on such service providers. Based on the feedback received during the said meeting, the introduction of an assessment was not seen as burdensome by such service providers. Furthermore, the MFSA is also aware of a number of undertakings which are already complying with this requirement. Service providers are encouraged to amend the training being offered and to commence including assessments.

3.14 Industry Comment: *A number of market participants referred to the CPD requirements of other professions and noted that the imposition of an assessment in insurance-related professions might not compare favourably. Reference was also made to other professional bodies and institutes which assign a number of CPD hours without requiring an assessment. The said participants argued that the MFSA's proposal may be seen as diminishing the value of seminars.*

MFSA's Position: The MFSA would like to clarify that an assessment is only required for the annual 12-hour structured training, which relevant persons and relevant employees are required to follow in

line with Chapter 7. The MFSA encourages the industry to follow training from other institutions. However, where such courses do not require an assessment, they would qualify as unstructured CPD. With respect to the assessment required, it is to be noted that the MFSA does not expect an extensive and onerous assessment. It would suffice to have a number of multiple-choice questions which will ensure that the person who has followed the training obtains a good understanding of the training provided. The MFSA reiterates that the assessment is to be proportionate to the content and the duration of the training provided.

3.15 Industry Comment: *One market participant referred to training provided for newly launched products. The said participant indicated that assessments that are held for newly launched products form part of the accreditation required prior to selling such products. It was also noted that annual assessments are also held to test the whole range of knowledge that Tied Insurance Intermediaries need to have. In this respect, it was argued that the intention is not to hold an assessment every time a training session is organised, but to keep upskilling Tied Insurance Intermediaries and informing them with the necessary information periodically.*

MFSA's Position: Training provided for newly launched products and annual assessments to test the whole range of knowledge of Tied Insurance Intermediaries, can qualify as structured CPD training. In such a case, the undertaking would need to ensure that training – which includes an assessment – makes up for 12 hours of unstructured CPD training. The MFSA would like to further clarify that, while relevant persons and relevant employees are required to follow 15 hours of CPD training annually, the requirement for an assessment is only required for the annual 12-hour structured training which relevant persons and relevant employees are required to follow.

3.16 Industry Comment: *A market participant queried whether web-based learning which is directly designated and cascading from the Group and which includes an assessment would be considered as structured CPD.*

MFSA's Position: The MFSA would like to clarify that where such training qualifies as a course, which is detailed and more focused training, and more akin to academic instruction and also includes an assessment, such training can qualify as structured CPD training.

3.17 Industry Comment: *Clarification was sought by a market participant as to whether the MFSA will be stipulating a minimum requirement for how many structured and unstructured CPD hours a relevant person needs to complete in the Rules. The same market participant also asked for clarification as to whether attending solely unstructured training would suffice.*

MFSA's Position: Paragraph 7.5.1 of Chapter 7 of the Insurance Distribution Rules clearly states that the maximum number of hours which can be classified as unstructured CPD is three hours. The rest of the remaining 12 hours would need to be qualified as structured CPD hours and fulfil the newly introduced requirements. Therefore, the Insurance Distribution Rules require a mix of structured and unstructured training. The MFSA would like to clarify that where a person attends a course which does not have an assessment linked to it, such a person may claim those hours attended as unstructured CPD hours, unless the training qualifies as a conference or a seminar. In the case of a conference or

a seminar, this does not necessitate an assessment and would still qualify as structured CPD. The MFSA would once again like to clarify that courses are equivalent to detailed and more focused training, and more akin to academic instruction, whether obtained in house or not.

3.18 Industry Comment: *A market participant requested clarification as to whether attending 12 hours of unstructured CPD training without assessment would suffice instead of attending 12 hours structured CPD training with an assessment.*

MFSA's Position: The MFSA would like to clarify that where a person attends a course which does not have an assessment linked to it, such a person may claim the hours attended as unstructured CPD hours. Courses are equivalent to detailed and more focused training, which is more akin to academic instruction, whether obtained in house or not. Where a person attends a conference or a seminar, this does not necessitate an assessment, and would still qualify as structured CPD. Finally, paragraph 7.5.1 of Chapter 7 clearly states that the maximum number of hours which can be classified as unstructured CPD is three hours. The rest of the remaining 12 hours would need to be qualified as structured CPD hours and fulfil the newly introduced requirements.

3.19 Industry Comment: *A market participant recommended that in order to include a degree of flexibility in the choice of relevant courses, the MFSA permits that up to six hours of the minimum total of 12 hours of structured CPD training may be undertaken through attendance of the courses and seminars which do not include an assessment.*

MFSA's Position: The MFSA is of the view that flexibility is to be afforded to the undertaking and the manner in which it would like to provide structured training to its relevant persons and relevant employees.

4.0 Main Comments Received on the Proposed Amendments to Chapter 8 in Part B of the Insurance Distribution Rules

4.1 Industry Comment: *A market participant noted that the proposed amendments to Chapter 8 of the Insurance Distribution Rules negates the protection which Article 20(2) of the Insurance Distribution Act provides to policyholders/claimants.*

MFSA's Position: The MFSA confirms the market participant's comments and the proposed proviso will not be included in Chapter 8 of the Insurance Distribution Rules.

5.0 Way Forward

A Circular informing market participants on the date of applicability of the amendments identified in the Consultation document will be issued together with this Feedback Statement.

6.0 Contacts

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