

05 August 2022

Circular on the Amendments to the Glossary of Terms, Chapter 5 of the Insurance Rules, and to the Insurance Business (Exemptions) Regulations

1.0 Introduction

On 19 October 2021, a [Notice regarding the adaptation in line with inflation of the amounts laid down in the Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\)](#), (hereinafter referred to as “the Notice”), was published on the Official Journal of the European Union pursuant to Article 300 of [Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance](#) (hereinafter referred to as “the Solvency II Directive”).

Article 300 of the Solvency II states that amounts expressed in euro in the Directive shall be revised every five years by increasing the base amount in euro by the percentage change in the harmonised indices of consumer prices of all Member States, as published by the Commission (Eurostat) starting from 31 December 2015 until the date of revision and rounded up to a multiple of EUR 100 000, as long as the percentage change is not below 5%. The first revision of the amounts should be performed considering the increase of the mentioned Index with reference to the period between 31 December 2015 and 31 December 2020.

In this respect, the Notice will be revising the following amounts:

- for the conditions for exclusion from scope due to size;
- as regards the definition of large risks; and
- as regards the absolute floor for the calculation of the Minimum Capital Requirement.

The Notice will amend Article 4(1), Article 13(27)(c) and Article 129(1) of the Solvency II Directive. In consequence to this, the MFSA will be amending the following:

- the Insurance Business (Exemptions) Regulations issued under the Insurance Business Act;
- the Glossary of Terms of the Insurance Rules; and
- Chapter 5 of the Insurance Rules issued under the Insurance Business Act.

On 21 April 2022, EIOPA also published the [Revised Guidelines on the Valuation of Technical Provisions](#) and the [Revised Guidelines on Contract Boundaries](#) (hereinafter referred to as the “EIOPA Guidelines” or “Guidelines”). These Guidelines will become applicable on 1 January 2023. The revision of these Guidelines introduces new Guidelines and amends current guidelines. In this respect, the MFSA will be amending Chapter 5 of the Insurance Rules to ensure the adoption of the said Guidelines.

2.0 Amendments in relation to the Notice regarding the adaptation in line with inflation of the amounts laid down in the Solvency II Directive

2.1 Amendments to the Insurance Business (Exemptions) Regulations issued under the Insurance Business Act

The Notice amends Article 4 of the Solvency II Directive on the conditions for exclusion from scope due to size. In order to align national legislation with the amendments introduced by the said Notice, the MFSA will be amending Article 3 of the Insurance Business (Exemptions) Regulation (S.L. 403.22). These amendments will come in force on 19 October 2022.

2.2 Amendments to the Glossary of Terms of the Insurance Rules

The Notice amends the definition of large risks which is found in Article 13(27) of the Solvency II Directive. The definition of large risks was transposed in the Glossary of Terms of the Insurance Rules. In light of the amendments indicated in the Notice, the MFSA will be amending the said definition to include the most recently amended amounts. These amendments will come in force on 19 October 2022.

2.3 Amendments to Chapter 5 issued under the Insurance Business Act of the Insurance Rules

The Notice also amends Article 129(1)(d) of the Solvency II Directive on the absolute floor for the calculation of the Minimum Capital Requirement. Article 129(1)(d) of the Solvency II Directive, was transposed in Chapter 5 of the Insurance Rules, more specifically paragraph 5.6.4. In this respect, the MFSA will be amending the said Chapter in line with the amendments of the said Notice. These amendments will come in force on 19 October 2022.

3.0 Amendments to Chapter 5 of the Insurance Rules to adopt the revised Guidelines on the Valuation of Technical Provisions and the revised Guidelines on Contract Boundaries

Following the publication of the [Revised Guidelines on the Valuation of Technical Provisions](#) and the [Revised Guidelines on Contract Boundaries](#), the MFSA will be amending Chapter 5 of the Insurance Rules.

The revised Guidelines on the Valuation of Technical Provisions which apply to both individual undertakings and *mutatis mutandis* at the level of the group are relevant for the valuation of best estimate, including the use of future management actions and expert judgment, the modelling of expenses and the valuation of options and guarantees by economic scenarios generators and modelling of policyholder behaviour. EIOPA also identified the need for clarification in the calculation of expected profits in future premiums. It is to be noted that the new Guidelines are to be read together with and without prejudice to the Solvency II Directive, the Delegated Regulation and the current EIOPA Guidelines on Technical Provisions.

The Revised Guidelines on Contract Boundaries which also introduce new Guidelines and amend current Guidelines are relevant for the determination of contract boundaries, in particular regarding the assessment of whether a cover or financial guarantee has a discernible effect on the economics of the contract and the identification of the contracts which can be unbundled. It is to be noted that

the new Guidelines are to be read together with and without prejudice to the Solvency II Directive, the Delegated Regulation and the current EIOPA Guidelines on Contract Boundaries.

In this respect, paragraph 5.11 of Chapter 5 of the Insurance Rules which includes a reference to the original guidelines on technical provisions and on contract boundaries will be amended to also include reference to the new Guidelines.

It is to be noted that, unless otherwise stated in the new Guidelines, the current guidelines remain unchanged and will continue to be applicable. These Guidelines will start to apply as from 1 January 2023.

4.0 Way Forward

The amendments carried out to Chapter 5 of the Insurance Rules and the Glossary of Terms of the Insurance Rules will be published together with this Circular. The amendments to paragraph 5.6.4 of Chapter 5 of the Insurance Rules and the Glossary of Terms of the Insurance Rules will commence to apply on the **19 October 2022**. The amendments to paragraph 5.11.1(c) of Chapter 5 of the Insurance Rules will commence to apply on the **1 January 2023**.

The Insurance Business (Exemptions) Regulations will be amended as soon as the Insurance Business (Exemptions) (Amendments) Regulations 2022 are published and will come into force on the **19 October 2022**.

It is to be noted that pursuant to the amendments carried out to paragraph 5.6.4 of Chapter 5 of the Insurance Rules, on the absolute floor for the calculation of the Minimum Capital Requirement, authorised insurance undertakings which are currently not meeting the Minimum Capital Requirement in line with the Notice are required to ensure that they take all the necessary actions to hold sufficient eligible basic own funds to cover the Minimum Capital Requirement by not later than the **19 October 2022**. The said undertakings are required to inform the MFSa by not later than the **19 September 2022** of the actions they will be taking to comply with the requirements.

Authorised insurance undertakings which are in line with the Notice are required to submit to the MFSa via the [LH Portal](#) selecting "Quantitative Reporting Templates" as a project using the following format for the file: LHCode_MMMYYYY_NR_LEI.zip a director's declaration by not later than **19 September 2022** stating that the undertaking is already complying with the requirements.

5.0 Contact

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