

Consultation on the Proposed Amendments to 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 the Insurance Distribution Rules in line with findings observed during regulatory work as well as other findings observed by the market whilst carrying out their operations.
- 1.2 These proposals are not binding and are subject to changes and revisions.
- 1.3 The documents circulated by the MFSA for the purpose of the Consultation are in draft form and consist of the following:
- the Consultation Document
 - a draft of Chapter 1 of the Insurance Distribution Rules
 - a draft of Chapter 2 of the Insurance Distribution Rules
 - proposed new draft of Annex to Chapter 2 of the Insurance Distribution Rules
 - a draft of Schedules 4 – 8 to Chapter 2 of the Insurance Distribution Rules
 - a draft of Chapter 4 of the Insurance Distribution Rules
 - a draft of First Schedule to Chapter 4 of the Insurance Distribution Rules
 - a draft of Second Schedule to Chapter 4 of the Insurance Distribution Rules
 - a proposed new draft of Third Schedule to Chapter 4 of the Insurance Distribution Rules
 - a draft of Chapter 8 of the Insurance Distribution Rules
 - a draft of Chapter 9 of the Insurance Distribution Rules
 - a draft of Chapter 10 of the Insurance Distribution Rules
- 1.4 The purpose of this Consultation is to highlight the changes proposed to be carried out. Interested parties are expected to thoroughly review the Consultation Document and the draft legislation and provide comments, requests for clarifications and suggestions in writing.

2.0 Chapter 1 of the Insurance Distribution Rules

2.1 Clarification amendments on the Professional Indemnity Requirements

- 2.1.1 Article 10 (1) (a) (v) of the Insurance Distribution Act states that an insurance intermediary shall be entitled to be enrolled in the Agents List, Managers List or Brokers List if the competent authority is satisfied that the applicant has at all times in its favour a policy of professional indemnity insurance. This requirement is in line with Article 10 (4) and (5) of Directive (EU) 2016/97 (the 'Insurance Distribution Directive'), which requires insurance and reinsurance intermediaries to hold professional indemnity insurance cover. The requirements that need to be satisfied by the professional indemnity insurance cover have been transposed in Section 1.9 of Chapter 1 of the Insurance Distribution Rules, which is currently entitled 'Professional Indemnity Insurance Guidelines'. Reference to the **Guidelines** set out in Section 1.9 of Chapter 1 of the Insurance Distribution Rules is also made in paragraph 1.9.13. The term 'guidelines' may imply that the provisions under Section 1.9 of Chapter 1 of the Insurance Distribution Rules

are not legal requirements which need to be satisfied by the enrolled person as defined under the same Section, and are simply guiding principles. The MFSA is thus proposing to amend the title to Section 1.9 of Chapter 1 of the Insurance Distribution Rules to read 'Professional Indemnity Insurance Cover' and to amend paragraph 1.9.13, to make reference to the professional indemnity 'requirements' as opposed to 'guidelines'. By means of these amendments, the MFSA aims at clarifying that the requirements under Section 1.9 of Chapter 1 of the Insurance Distribution Rules form part of the legal and regulatory environment and emphasising that the provisions on the professional indemnity insurance cover are legal requirements and not guiding principles.

2.2 Amendments relating to the loss of and damage to documents and records in relation to the Professional Indemnity Requirements

2.2.1 Paragraph 1.9.5 of Chapter 1 of the Insurance Distribution Rules states that a professional indemnity insurance policy shall indemnify an enrolled person against the claims listed thereunder. Currently, sub-paragraph (c) of this paragraph refers to the **loss of and damage to documents and records** that are the property of the enrolled person or which are in the person's care, custody or control or for which the person is responsible. The market raised its concern on the fact that it may be difficult for some insurance intermediaries to obtain a professional indemnity policy with unlimited cover. The market referred to the fact that certain professional indemnity insurance policies have a small sub-limit in relation to the loss of and damage to documents and records. In order to address the market's concerns, the MFSA is proposing to include a new limit of €100,000 when it comes to loss of and damage to documents and records.

2.3 Amendments relating to excess in relation to Professional Indemnity requirements

2.3.1 Paragraph 1.9.7 of Chapter 1 of the Insurance Distribution Rules currently states that, if the policy is subject to an **excess**, this shall be for a sum not exceeding 0.5% of the limit of indemnity and subject to a maximum of €23,300. The market raised its concern on the excess to which the professional indemnity insurance policy is subjected and stated that the stipulated amount is not sensible when considering insurance intermediaries with larger limits of indemnity than what is stipulated in the law as well as large multinational groups. The MFSA noted that such intermediaries were finding it difficult to find a minimum excess of a sum not exceeding 0.5% of the limit of indemnity and subject to a maximum of €23,300. In view of these concerns, the MFSA is proposing to amend paragraph 1.9.7 of Chapter 1 of the Insurance Distribution Rules to refer to a sum not exceeding 1% of the limit of indemnity and subject to a maximum of €50,000.

2.4 Amendments relating to the governing law in relation to Professional Indemnity requirements

2.4.1 Paragraph 1.9.10 of Chapter 1 of the Insurance Distribution Rules currently states that the professional indemnity insurance policy shall be governed by Maltese law. As more insurance intermediaries are offering services to EU/EEA policyholders and insurance intermediaries are purchasing professional indemnity policies from foreign service providers, this requirement has

become difficult to comply with. In view of this, the MFSA is proposing to amend the governing law stipulated in paragraph 1.9.10 of Chapter 1 of the Insurance Distribution Rules to state that the **governing law** of professional indemnity insurance policies is to be either European Union Law or United Kingdom law.

2.5 Applicability of the Proposed Amendments to Chapter 1 of the Insurance Distribution Rules

2.5.1 The MFSA is proposing that the amendments proposed in Section 2.1 of the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published. With respect to the amendments proposed in Sections 2.2 to 2.4 of this Consultation Document, the MFSA is proposing that these become applicable upon next renewal.

3.0 Chapter 2 of the Insurance Distribution Rules

3.1 Clarification amendments with respect to the pre-requisite qualifications when submitting an application for registration of individuals in the Agents Register, Managers Register or Brokers Register

3.1.1 Paragraph 2.2.11 of Chapter 2 of the Insurance Distribution Rules currently states that an authorised undertaking or an enrolled insurance broker, as applicable, shall not grant registration to any applicant in the Tied Insurance Intermediaries Company Register or Ancillary Insurance Intermediaries Company Register, unless it is satisfied that a number of requirements have been met. Paragraph 2.2.11 of Chapter 2 of the Insurance Distribution Rules as currently drafted does not clearly differentiate between the granting of registration to any person in the Tied Insurance Intermediaries Company Register by an authorised undertaking, and the granting of registration to any person in the Ancillary Insurance Intermediaries Company Register by an authorised undertaking or an enrolled broker.

3.1.2 For the purpose of clarity, the MFSA is proposing to amend **paragraph 2.2.11** of Chapter 2 of the Insurance Distribution Rules to state that an authorised undertaking shall neither grant registration to any person in the Tied Insurance Intermediaries Company Register nor shall an authorised undertaking or an enrolled broker grant registration to any person in the Ancillary Insurance Intermediaries Company Register, unless the requirements listed therein are satisfied. The reason behind this proposed amendment is to clarify that the authorised undertaking, which consists of the authorised insurance undertaking and the enrolled insurance agent, shall not grant registration to any person in the Tied Insurance Intermediary Company Register, and that the insurance company, the insurance agent, and the insurance broker can grant registration to any person in the Ancillary Insurance Intermediary Company Register.

3.1.3 As indicated in the previous paragraph, paragraph 2.2.11 of Chapter 2 of the Insurance Distribution Rules currently states that an authorised undertaking or an enrolled insurance broker, as applicable, shall not grant registration to any **applicant** in the Tied Insurance Intermediaries Company Register or Ancillary Insurance Intermediaries Company Register,

unless it is satisfied that the applicant has met a number of requirements. The use of the term “applicant” in paragraph 2.2.11 (a) and (b) implies that it is the insurance company that is submitting the application of the tied insurance intermediary or ancillary insurance intermediary to the MFSA, in order for it to be enrolled in the Tied Insurance Intermediaries Company Register or Ancillary Insurance Intermediaries Company Register. To address this, and for the purpose of clarity, the MFSA is proposing to replace the term ‘applicant’ with the term ‘person’ in paragraph 2.2.11 (a) and (b). This in view of the fact that, in the case of a tied insurance intermediary and an ancillary insurance intermediary, whilst it is the insurance company, insurance agent or insurance broker, as applicable, which submits the application to the MFSA on behalf of the tied insurance intermediary or ancillary insurance intermediary to be enrolled in the Tied Insurance Intermediary List or Ancillary Insurance Intermediary List, these entities are not actually the applicants.

3.2 Introduction of specific requirements on the Tied Insurance Intermediaries and the Ancillary Insurance Intermediaries pre-enrolment course

3.2.1 Paragraph 2.2.11 of Chapter 2 of the Insurance Distribution Rules currently states that, where the applicant is an individual, the applicant is required, *inter alia*, to have successfully completed a course for tied insurance intermediaries or a course for ancillary insurance intermediaries, as applicable, in accordance with paragraph 6.4.1 of Chapter 6 of the Insurance Distribution Rules. Following the introduction of Chapter 6 and 7 of the Insurance Distribution Rules, the MFSA has asked for the submission of the approved pre-enrolment courses. The MFSA has then reviewed the outline of the market’s currently approved tied insurance intermediary or ancillary insurance intermediary pre-enrolment course.

3.2.2 Following a review of all the submitted course outlines, the MFSA is proposing the **publication of its own pre-enrolment course outline as an Annex to Chapter 2 of the Insurance Distribution Rules**. In light of the newly proposed Annex, the MFSA is also proposing to amend paragraph 2.2.11 of the Chapter 2 of the Insurance Distribution Rules to refer to the newly proposed Annex to the same Chapter. The aim behind the proposed publication of the MFSA’s own pre-enrolment course outline is to lay down the minimum requirements that need to be included in the pre-enrolment course and to ensure that irrespective of who is providing the training, the same minimum requirements are included in the pre-enrolment course. The Annex has been attached to the Consultation Document for any comments, clarifications and suggestions.

3.3 Amendments to remove the bank reference requirement

3.3.1 Schedules 4 to 8 to Chapter 2 of the Insurance Distribution Rules, which contain the application forms for enrolment in the Tied Insurance Intermediaries List or the Ancillary Insurance Intermediaries List, state that the applicant must confirm that each of the individuals who is to carry out the tied or ancillary insurance intermediaries’ activities is a fit and proper person. Schedules 4 to 8 to Chapter 2 of the Insurance Distribution Rules state that, in order to carry out an assessment on whether these individuals are fit and proper, in accordance with Chapter 3 of the Insurance Distribution Rules, the insurance undertaking should also require the applicant

concerned to provide it with a **bank reference**. Since such letter is no longer required to be submitted with Personal Questionnaires, the MFSA is proposing to remove the pre-requisite of the bank reference letter from Schedules 4 to 8 to Chapter 2 of the Insurance Distribution Rules, in order to ensure that the carrying out of the above-mentioned assessment in accordance with Chapter 3 of the Insurance Distribution Rules is not excessively burdensome on the applicant.

3.4 Applicability of the Proposed Amendments to Chapter 2 of the Insurance Distribution Rules

3.4.1 The MFSA is proposing that the amendments proposed in Section 3.1 of the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published. With respect to the newly proposed Annex to Chapter 2 of the Insurance Distribution Rules, the MFSA will review the comments received, and unless further consultation is required, it is being proposed that entities providing a pre-enrolment course, submit the course outline to the competent authority for approval within four months from the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published. The MFSA is also proposing that the newly proposed pre-enrolment course is applicable as from the beginning of January 2024.

4.0 Chapter 4 of the Insurance Distribution Rules

4.1 Amendments related to the credit risk transfer agreement – 10-working-day notification requirement

4.1.1 Paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules defines 'annual gross premiums receivable' for the purpose of determining the value of the own funds of an enrolled individual or an enrolled company in accordance with the First Schedule to Chapter 4 of the Insurance Distribution Rules. Moreover, the third proviso to paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules lays down a particular instance where the annual gross premiums shall not be deemed to be receivable by the enrolled individual or enrolled company.

4.1.2 In this respect, the third proviso to paragraph 4.4.2 states that annual gross premiums shall not be deemed to be receivable by the enrolled individual or enrolled company where 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 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.

4.1.3 The market raised its concern on the **10-working-day notification requirement** and stated that it is very difficult to notify the competent authority 10 working days before entering into a credit risk transfer agreement. Following internal discussions, and in view of the concerns raised by the market, the MFSA is proposing to remove the 10-working-day notification requirement, in order to ensure that the market is capable of notifying the competent authority prior to entering

into a credit risk transfer agreement. Through this amendment, the enrolled individual or the enrolled company will still be required to notify the competent authority that it intends to enter into a credit risk transfer agreement with an insurance undertaking. However, this may also be done on the same day that it enters into the said agreement. Furthermore, it is to be noted that the MFSA will still be providing an acknowledgement of receipt of the documentation. However, in light of the introduction of the new declaration requirement, the enrolled individual or the enrolled person is not required to wait for the MFSA's approval before entering into a credit risk transfer agreement.

4.2 Amendments related to the credit risk transfer agreement – New declaration requirement

4.2.1 In light of the amendments proposed in Section 4.1, the MFSA is proposing a new **Third Schedule to Chapter 4 of the Insurance Distribution Rules containing a Declaration Form to be submitted by an enrolled individual or enrolled company prior to entering into a credit risk transfer agreement with an insurance undertaking**. The newly proposed Third Schedule is aimed at accompanying the information to be submitted to the competent authority for supervisory purposes pursuant to sub-paragraph (c) of the third proviso of paragraph 4.4.2. By means of this amendment, the onus to prove compliance with the requirement is shifted on the compliance officer of the insurance intermediary. This proposed Declaration Form contains two parts and requires the compliance officer of an intermediary to compile and sign the said Form. The first part of the Declaration Form is required to be compiled and signed by the compliance officer of an insurance broker and the second part of the Declaration Form would need to be compiled and signed by the compliance officer of an enrolled insurance agent or enrolled insurance manager, as applicable. The reason for having separate parts of the Declaration Form is that the information requirements for different brokers and for agents and managers are different. It is also important to note that the MFSA reserves the right to review the credit risk transfer agreements which have been entered into to ensure that these comply with the legislation on a risk-based approach, and will contact the enrolled person or enrolled company should the need arise.

4.2.2 The MFSA is also proposing to amend **sub-paragraph (c) of the third proviso to paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules** to refer to the compiled Declaration as contained in the Third Schedule of the same Chapter. The said amendment will include reference to the attestation in line with the Third Schedule to the same Chapter that needs to be submitted by the compliance officer of the enrolled individual or the enrolled company to the competent authority in accordance with the Second Schedule to Chapter 4 of the Insurance Distribution Rules.

4.3 Removal of the requirement in sub-paragraph (c) of the third proviso of paragraph 4.4.2

4.3.1 Paragraph 5 of the Second Schedule to Chapter 4 of the Insurance Distribution Rules indicates the contents of the credit risk transfer agreement. **Sub-paragraph (c)** states that the agreement shall contain an obligation that the insurance undertaking is willing to take the credit risk of the enrolled person or the enrolled company. The requirement under sub-paragraph (c) appears to

be replicating the requirement indicated in the third proviso to paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules, which states:

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

(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.”

The MFSA is therefore proposing to remove the requirement in sub-paragraph (c) in view of the fact that this obligation is already catered for.

4.4 Amendment of the definition of “insurance undertaking” in relation to credit risk transfer

4.4.1 The **definition of ‘insurance undertaking’** under paragraph 4.4.2 of Chapter 4 of the Insurance Distribution Rules defines an insurance undertaking as an undertaking authorised under the Insurance Business Act or Directive 2009/138/EC (“Solvency II Directive”) to carry out the business of insurance. In view of the fact that most credit risk transfer agreements are entered into with insurance undertakings which are situated in the United Kingdom, the MFSA is suggesting that the applicability of such a definition should be extended also to apply to any other third country insurance undertaking which has the necessary permission in the relevant jurisdictions where it operates. The MFSA is also proposing to amend the definition of insurance undertaking under paragraph 2 of the Second Schedule to Chapter 4 of the Insurance Distribution Rules for the purpose of alignment with the proposed amended definition under Chapter 4 of the Insurance Distribution Rules. This amendment will ensure that UK insurers and insurance intermediaries which enter into credit risk transfers with UK insurers are captured.

4.5 Amendments to the capital requirements of insurance intermediaries to bring them in line with Insurance Distribution Directive requirements

4.5.1 Article 10 of the Insurance Distribution Directive states that Member States shall take all necessary measures to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured. Commission Delegated Regulation (EU) 2019/1935 amended Article 10 (6) (b) of the Insurance Distribution Directive to read that the requirement for the intermediary to have financial capacity shall amount, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of €19,510. The **First Schedule to Chapter 4 of the Insurance Distribution Rules** on the value of the own funds of enrolled persons and share capital of enrolled companies currently states that such value or minimum paid up share capital with respect to insurance managers acting for and on behalf of a captive insurance undertaking or a captive reinsurance undertaking; or which excludes or does not include the authority to enter into contracts of insurance on behalf of an undertaking and/or includes the authority to collect and hold premiums should be that of €16,803.

4.5.2 The manner in which the First Schedule to Chapter 4 of the Insurance Distribution Rules is currently drafted is not aligned with Article 10 (6) (b) of the Insurance Distribution Directive. In order to align the requirements of the First Schedule of Chapter 4, with Article 10 (6) (b) of the Insurance Distribution Directive, the MFSA is proposing to amend the First Schedule to Chapter 4 of the Insurance Distribution Rules to read that the value of the own funds of enrolled persons and the minimum paid up share capital of the insurance managers indicated further above, should be €19,510, respectively. It is to be noted that the minimum amount is revised every few years, and following the said revision, the MFSA is required to amend the law to bring it in line with the said requirement.

4.6 Further amendments to the capital requirements

4.6.1 The First Schedule to Chapter 4 of the Insurance Distribution Rules also states that the value of the own funds of enrolled persons and share capital of enrolled companies shall be €58,250 or 4% of the annual gross premiums receivable, whichever is the higher. The MFSA has been informed that the **4% of written premium solvency requirement** might prove to be disproportionate for insurance intermediaries which place very high written premiums. In view of this concern and also research conducted on the application of this requirement in other jurisdictions, the MFSA is proposing to amend the First Schedule of Chapter 4 of the Insurance Distribution Rules to read that the value of own funds of enrolled persons and share capital of enrolled companies shall be €58,250 or 4% of the annual gross premium receivable up to a maximum of €1,000,000, whichever is the higher. This proposed capping allows the 4% requirement in the First Schedule not to be too burdensome on the larger insurance intermediaries as it is being capped at a maximum of €1,000,000.

4.7 Applicability of the Proposed Amendments Chapter 4 of the Insurance Distribution Rules

4.7.1 The MFSA is proposing that the amendments proposed in Chapter 4 of the Insurance Distribution Rules in the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published.

5.0 Chapter 8 of the Insurance Distribution Rules

5.1 Amendments to the monies to be paid to the undertaking from the intermediary within 2 business days

5.1.1 Currently, Chapter 8 of the Insurance Distribution Rules contains requirements stating that all insurance monies are to be paid into Business of Insurance Intermediaries Accounts. Paragraph 8.3.7 of the said Chapter currently states that every tied insurance intermediary or ancillary insurance intermediary shall without delay and, in any event, not later than the next **two business days** after the day the money is paid to or received by the enrolled person, pay or cause to be paid into a Tied Insurance Intermediaries Account or Ancillary Insurance Intermediaries Account. The market raised its concern by stating that compliance with the two-business-day

requirement has proven itself to be difficult. In this respect, the market proposed that all insurance monies that are to be paid into the Tied Insurance Intermediaries Account or Ancillary Insurance Intermediaries Account by not later than the next fifteen business days after the day the money is paid to or received by the insurance intermediary. Following internal discussions on the market's concerns and on research conducted, the MFSA is proposing to amend paragraph 8.3.7 of Chapter 8 of the Insurance Distribution Rules to read that all insurance monies are to be paid into the Tied Insurance Intermediaries Account or Ancillary Insurance Intermediaries Account by not later than the next fifteen business days.

5.2 Amendments in relation to motor vehicle licence fees

- 5.2.1 The market also raised its concern with respect to the payment of motor vehicle licence fees under Chapter 8 of the Insurance Distribution Rules. The manner in which Chapter 8 of the Insurance Distribution Rules is drafted states that **motor vehicle licence fees** shall only be deposited to the Tied Insurance Intermediary Account. The MFSA noted that, whenever a person wants to purchase a motor vehicle insurance, the person distributing the product is required to log in the portal of the Authority for Transport in Malta to pay the licence fee and provide the licence disc which the person affixes to the car windscreen. When the person pays via two separate cheques or via cash, the monies received by the said intermediary are not being placed in the Business of Insurance Intermediaries Account. Therefore, it appears that the manner in which Chapter 8 of the Insurance Distribution Rules is drafted does not reflect current practice and should be rectified. In view of this, the MFSA decided to put forward a number of amendments in relation to motor vehicle licence fees.
- 5.2.2 The MFSA is proposing the inclusion of a new proviso to state that motor vehicle licence fees received in relation to motor insurance business may be used by the intermediary to pay directly to the Authority for Transport in Malta. This would reflect the current practice and enable the market to be able to comply with the requirements under Chapter 8 of the Insurance Distribution Rules.

5.3 Applicability of the Proposed Amendments to Chapter 8 of the Insurance Distribution Rules

- 5.3.1 The MFSA is proposing that the amendments proposed in Chapter 8 of the Insurance Distribution Rules in the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published.

6.0 Chapter 9 of the Insurance Distribution Rules

6.1 Amendments to provisions on the fidelity bond

- 6.1.1 Paragraph 9.4.2 of Chapter 9 of the Insurance Distribution Rules lists the forms in which a fidelity bond may be effected and held, namely in the form of a contract of insurance or of a security. Chapter 9 of the Insurance Distribution Rules does not cater for the scenario where **a security for the fidelity bond is provided by an entity which is part of the group**. The MFSA is therefore

proposing to amend sub-paragraph 9.4.2 (b) by including a new indent (iii) to sub-paragraph 9.4.2 (b). This amendment is being proposed to allow for the possibility that where an enrolled person or an enrolled company is part of a group of companies, a guarantee may be provided by an entity within the same group of companies, as the enrolled person or the enrolled company, to the satisfaction of the competent authority as a form of fidelity bond.

6.1.2 The MFSA is also proposing to amend **Section 9.5 of the said Chapter on the nominations of approved persons** namely to distinguish between instances where the approved person is an individual and where the approved person is a body corporate. Currently, notwithstanding the fact that paragraph 9.5.6 states that an approved person may be an individual or a body corporate, the requirements laid down under Section 9.5 relate mainly to instances where the approved person is an individual, with the exception of a few provisions. In order to create a level playing field and cater for instances where an approved person can be a body corporate, the MFSA is proposing a number of amendments. One of the main amendments pertains to paragraph 9.5.2, which currently states that any person nominated by an enrolled person to be the approved person of the enrolled person shall not be approved by the competent authority unless the competent authority is satisfied that such person has the qualifications mentioned in paragraph 9.5.4 of this Chapter and is a fit and proper person to carry out the functions required of him under the Act and this Chapter. The competent authority shall require the approved person to complete the Personal Questionnaire set out in the Annex to Chapter 3 in Part A of the Insurance Distribution Rules. The MFSA is also proposing to divide this paragraph into two paragraphs, one catering for the requirements that need to be satisfied where the approved person is an individual, and one catering for the requirements that need to be satisfied where the approved person is a body corporate. The MFSA is also proposing to include a new paragraph specifically dealing with the disqualification of a body corporate from acting as an approved person. The aim behind this amendment is to ensure a level playing field between the requirements that need to be satisfied by individuals as approved persons and body corporates as approved persons.

6.2 Applicability of Chapter 9 of the Insurance Distribution Rules

6.2.1 The MFSA is proposing that the amendments proposed in Chapter 9 of the Insurance Distribution Rules in the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published.

7.0 Chapter 10 of the Insurance Distribution Rules

7.1 Amendments in relation to the auditor's management letter

7.1.1 Chapter 10 of the Insurance Distribution Rules contains information to be provided to the competent authority for supervisory purposes. Currently, the requirement for insurance undertakings to submit an **auditor's management letter** is not stipulated in Chapter 10 of the Insurance Distribution Rules, but is stipulated in the authorisation conditions letter which is attached to the licence certificate. With respect to insurance undertakings, this requirement

already exists in Chapter 8 of the Insurance Rules. In order to align the requirements of insurance undertakings and insurance intermediaries, the MFSA is proposing that reference to the said requirements is made in the Introductory Section of the Chapter, by including a new sub-paragraph (d) in paragraph 10.1.1 of Chapter 10 of the Insurance Distribution Rules. Furthermore, the MFSA is also proposing to introduce a new Section 10.4 entitled 'Auditor's Management Letter', which will lay down the requirements mentioned in the proposed sub-paragraph (d) of paragraph 10.1.1 of Chapter 10 of the Insurance Distribution Rules. In this respect, the MFSA is proposing to state that a copy of the auditor's management letter and the enrolled company's or enrolled individual's reply thereto shall be submitted to the competent authority by not later than 6 months from the closing of the enrolled company's or enrolled individual's financial year, as is currently the practice. Where for a particular year the auditors do not raise any audit findings, the enrolled company or enrolled individual is still required to submit the said management letter stating that no deficiencies were identified.

7.2 Applicability of Chapter 10 of the Insurance Distribution Rules

7.2.1 The MFSA is proposing that the amendments proposed in Chapter 10 of the Insurance Distribution Rules in the Consultation Document will become applicable on the day the Circular informing the market that the Insurance Distribution Rules have become applicable is published.

8.0 Way Forward

- 8.1 Any comments and feedback in relation to the Consultation Document and the attached draft legislations are to be addressed to the Insurance and Pensions Supervision and submitted in writing on ips_legal@mfsa.mt, by not later than **8 March 2023**. Following this, the MFSA will review the comments of the market and issue a Feedback Statement providing feedback to the market.
- 8.2 Following the publication of the Feedback Statement, the MFSA will also issue a Circular informing the market that the Insurance Distribution Rules have become applicable.