

THE APPLICATION PROCESS OF INSURANCE AGENTS, INSURANCE MANAGERS, AND INSURANCE BROKERS

CHAPTER 1

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REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	12 July 2018	Issued
2.00	23 April 2020	Refer to the Note for Information dated 23 April 2020 entitled " Note for Information regarding Application forms in terms of the Insurance Distribution Act "
3.00	7 May 2020	Refer to the Circular dated 7 May 2020 entitled " Circular on the Amendments on Application Forms in Terms of the Insurance Distribution Act (Cap. 487 of the Laws of Malta) "
4.00	13 May 2020	Refer to the Note for Information dated 13 May 2020 entitled " Note for Information on the Amendment to the Insurance Distribution Rules in Relation to Professional Indemnity Limits "
5.00	08 August 2022	Refer to the Circular dated 08 August 2022 entitled " Circular on adopting the Revised Guidelines on the Legal Entity Identifier (LEI) "
6.00	XXX	XXX

1.1 Introduction

1.1.1 This Chapter is made pursuant to, and for the purposes of, articles 7, 9, 10, 13, and 34 of the Act

1.1.2 Part A of the Chapter determines:

- (a) the manner in which an individual desirous of applying for registration in the Agents Register, Managers Register or Brokers Register shall make an application to the competent authority for registration in the Agents Register, Managers Register and Brokers Register and on a continuing basis, an individual registered in the Agents Register, Managers Register and Brokers Register;
- (b) the particulars or proof to be included in schemes of operations relating to the kind of insurance distribution activities and, or reinsurance distribution activities which a person desirous of applying for enrolment in the Agents List, Managers List or Brokers List is desirous to carry out;
- (c) the manner in which the person referred to in paragraph (b) shall make an application to the competent authority to act as an insurance agent or insurance manager or to carry on business as an insurance broker.

1.1.3 Part B of this Chapter determines the particulars of:

- (a) the individuals to be entered in the Agents Register, Managers Register and Brokers Register;
- (b) persons that are enrolled in the Agents List, Managers List or Brokers List, and carrying out insurance distribution activities and, or reinsurance distribution activities.

PART A: Application Process of Insurance Agents, Insurance Managers and Insurance Brokers

1.2 Manner for submitting an application for registration of individuals in the Agents Register, Managers Register or Brokers Register

1.2.1 An individual desirous of applying for registration in the Agents Register, Managers Register or Brokers Register, shall make an application to the competent authority for registration in the Agents Register, Managers Register or Brokers Register under article 13 of the Act, as determined in this Section, for the purposes of article 7 of the Act. The competent authority shall require such individual to:

- (a) complete an application form in the manner set out in the First Schedule to this Chapter or by applying through the [MFSA LH Portal](#)¹;
 - (b) complete and submit a Personal Questionnaire as set out in the Annex to Chapter 3 in Part A of the Insurance Distribution Rules;
 - (c) fulfil the requirements indicated in Section 6.3 of Chapter 6 in Part B of the Insurance Distribution Rules;
 - (d) forward all the information necessary for the competent authority to ensure that such individual possesses the requisite knowledge and ability in accordance with paragraph 6.6.1 of Chapter 6 in Part B of the Insurance Distribution Rules and complies with the requirements in accordance with paragraph 6.6.3 of Chapter 6 in Part B of the Insurance Distribution Rules.
- 1.2.2 The application referred to in paragraph 1.2.1(a) of this Chapter is to be countersigned by a senior official of the enrolled person in connection with which the application for registration is being submitted. Persons who are still in the process of applying for enrolment with the competent authority and in connection with which the application is being submitted are not required to countersign the application.
- 1.2.3 Following notification of the competent authority's decision regarding the application for authorisation, the enrolled person will be required to finalise any outstanding matters, such as its incorporation, and capitalisation. Where the enrolled person is also seeking to establish a branch in another Member State or intends to provide services in another Member State (crossborder business) the said enrolled person shall also be required to obtain a LEI Code in line with the [Guidelines on Legal Entity Identifier](#).
- 1.3. Scheme of Operations Relating to Enrolment in the Agents List, Managers List, or Brokers List and the Application for Enrolment**
- 1.3.1 Section 1.3 of this Chapter applies to:
- (a) a person desirous of applying for enrolment in the Agents List, Managers List or Brokers List to carry out insurance distribution activities and, or reinsurance distribution activities; or
 - (b) a person enrolled in the Agents List desirous of acting on behalf of another authorised undertaking or in relation to new classes of business of insurance; or
 - (c) a person enrolled in the Manager's List desirous of accepting an appointment from an insurer, a reinsurer or an insurance broker enrolled in the Brokers List.

¹ When applying online, refer to the [Note for Information entitled Application Forms in terms of the Insurance Distribution Act](#) issued by the MFSA on 23 April 2020.

("the applicant").

- 1.3.2 For the purposes of Section 1.3 of this Chapter the word "year" shall, where the applicant is an individual, be read and construed as reference to the calendar year, and where the applicant is a company, be read and construed as a reference to an enrolled company's financial year, unless the context otherwise requires.

1.4. Scheme of Operations

- 1.4.1 Article 10(1)(a)(vi) of the Act requires the applicant to submit to the competent authority a scheme of operations. Any scheme of operations required to be submitted by the applicant applying for enrolment relating to the kind of insurance distribution activities and, or reinsurance distribution activities the applicant desires to carry out, shall include the particulars or proof as determined in Section 1.5 of this Chapter.
- 1.4.2 Subject to paragraphs 1.5.2 and 1.5.3 of this Chapter, any scheme of operations required to be submitted by an applicant shall include the particulars or proof concerning matters set out in paragraph 1.5.1 of this Chapter, subject that:
- (a) where the applicant is a foreign company, the requirements of paragraph 1.5.1 of this Chapter shall apply solely in relation to the activities proposed to be carried out in or from Malta; and
 - (b) where the application is for the approval of a cell or a cell company enrolled in the Managers List or Brokers List, the requirements of paragraph 1.5.1 of this Chapter shall apply solely to the cell concerned, as the competent authority may deem appropriate in the given circumstances.
- 1.4.3 The scheme of operations shall be signed by a person who holds a warrant of a certified public accountant under the Accountancy Profession Act (Cap. 281) or holds professional qualifications of a similar standing of an institute of repute.

1.5 Particulars or proof to be included in the scheme of operations

- 1.5.1 As a minimum, the scheme of operations should include the following information:
- (a) *Background to the applicant and business planning:*
 - (i) a description of the applicant; and,
 - (ii) a description of the classes of business to be carried out.

(b) Sources of business:

- (i) a description of the proposed sources of business of insurance (e.g. other insurance intermediaries, direct selling, branch offices, website etc.) and the approximate percentage expected from each source, as well as clients to be targeted;
- (ii) where the source of business includes the use of a website, details of the purpose of the website, that is, whether for advertising purposes only or whether to carry out insurance distribution activities and, or reinsurance distribution activities;
- (iii) details on the modus operandi of the business which should include an explanation regarding the manner in which transactions will be effected in practice (from initiation till end) specifying what will be done, by whom and from where.

(c) Organisation of the applicant and governance arrangements (where the applicant is a company):

- (i) corporate structure chart and a description of the proposed apportionment of significant responsibilities between the applicant's management team. The structure chart should set out the management structure, responsibilities and reporting lines;
- (ii) in general the quality, skills and experience of the management required in an intermediary will depend on, among other things, the type and volume of distribution it expects to undertake. The applicant needs to demonstrate that adequate staff with relevant experience are available at all levels and that mind and management is in Malta.

(d) IT Systems:

- (i) information on the IT systems to be used including details of the IT service provider/s and back-up IT service provider/s;
- (ii) details on where the server on which data is stored will be located.

(e) Outsourcing and agreements with third parties:

- (i) description of any material outsourcing arrangements;
- (ii) details of how the outsourced activity will be monitored and controlled;
- (iii) description of the business contingency plans, including exit strategies for outsourced activities;

(iv) submission of any draft agreements.

(f) *Financial Projections:*

(i) a forecast income statement and, *as applicable:*

(aa) estimated premiums, both gross and net of commissions or brokerage, broken down between long term business and general business (where such be the case) and, in respect of each business, broken down by class;

(bb) estimated management fees, broken down by appointment;

(cc) the expected sources of business, including the percentage share of total business expected to be generated from each source; and

(dd) details of the nature and amounts of any income (other than brokerage, commissions or management fees) expected to be earned.

(ii) a forecast cash flow statement;

(iii) where the applicant is a company, a forecast balance sheet and a list of admissible assets that are expected to cover the own funds of the applicant company.

1.5.2 The financial projections referred to in paragraph 1.5.1(f) of this Chapter shall be set out on both a realistic and pessimistic basis and shall relate to:

(a) the period commencing on the date when the applicant intends to commence the kind of insurance distribution activities and, or reinsurance distribution activities proposed to be carried out up to the end of that particular year; and

(b) each of the three years following the period specified in paragraph (a).

1.5.3 Where, at the time of submitting this application, the applicant is already enrolled in the Agents List and Managers List, the scheme of operations required to be submitted by the applicant shall include such particulars or proof, or cover such period, as the competent authority may deem appropriate in the given set of circumstances.

1.6 Manner of submitting an application for enrolment in the Agents List, Managers List or Brokers List

- 1.6.1 In addition to the particulars or proof to be included in the scheme of operations referred to in Section 1.5 of this Chapter, the applicant is also required to submit an application form as detailed in paragraphs 1.6.2 and 1.6.3 of this Chapter.
- 1.6.2 An applicant shall submit an application to the competent authority for enrolment in the Agent List, Managers List or Brokers List under article 13 of the Act, as follows:
- (a) where the applicant is **an individual**, in the application set out in Parts I and V of the Second Schedule to this Chapter, and the applicable parts of the Third Schedule to this Chapter, or by accessing the [MFSA LH Portal](#)²;
 - (b) where the applicant is **a local company**, other than a cell company, in the application set out in Parts II and V of the Second Schedule to this Chapter, and the applicable parts of the Third Schedule to this Chapter, or by accessing the [MFSA LH Portal](#)³;
 - (c) where the applicant is **a local company to be formed or constituted as a cell company or to be converted into a cell company**, under regulation 6 of the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations, 2010 to act as an insurance manager or to carry on business of insurance broking, in the application set out in Parts II, IV and V of the Second Schedule to this Chapter, and the applicable parts of the Third Schedule to this Chapter, or by accessing the [MFSA LH Portal](#)³;
 - (d) where the applicant is **a cell company**, carrying out insurance distribution activities and, or reinsurance distribution activities applying for the creation of one or more cells, in the application set out in the Fourth Schedule to this Chapter, or by accessing the [MFSA LH Portal](#)³;
 - (e) where the applicant is **a foreign company**, in the application set out in Parts II, III and V of the Second Schedule to this Chapter, and the applicable parts of the Third Schedule to this Chapter or by accessing the [MFSA LH Portal](#)³

² When applying online, refer to the [Note for Information entitled Application Forms in terms of the Insurance Distribution Act](#) issued by the MFSA on 23 April 2020.

³ When applying online, refer to the [Note for Information entitled Application Forms in terms of the Insurance Distribution Act](#) issued by the MFSA on 23 April 2020.

1.6.3 Where the applicant is enrolled:

- (a) in the Agents List and the applicant proposes to act on behalf of any other authorised undertaking or in relation to new classes of business of insurance; or
- (b) in the Managers List and the applicant proposes to accept an appointment from an insurer or an insurance broker enrolled in the Brokers List,

the applicant shall be required to submit to the competent authority, the applicable Parts of the Third Schedule to this Chapter.

Additional requirements for an applicant who is an individual

1.6.4 Where the applicant is an individual, the applicant is also required to submit proof to the competent authority that such individual:

- (a) complies with the requirements found in Section 6.3 of Chapter 6 in Part B of the Insurance Distribution Rules;
- (b) possesses appropriate knowledge and ability in order to complete tasks and perform duties adequately for the purposes of articles 10(1)(a)(iiiA) and 10(1)(b)(ii)(bb) of the Act as determined by Chapter 6 in Part B of the Insurance Distribution Rules; and
- (c) complies with the requirements found in paragraph 6.6.3 of Chapter 6 in Part B of the Insurance Distribution Rules.

1.7 Appointment of a compliance officer

1.7.1 A person enrolled in the Agents List, Managers List or Brokers List to carry out insurance distribution activities and, or reinsurance distribution activities (the “**enrolled person**”) is required to adhere strictly to the provisions of the Act, the Regulations, the Insurance Distribution Rules and the Conduct of Business Rules (“Insurance Distribution Legislation”), which may from time to time be in force in Malta relating thereto.

1.7.2 Every person desirous of applying for enrolment, and on continuing basis, an enrolled person carrying out insurance distribution activities and, or reinsurance distribution activities is required to identify one individual who will be responsible for ensuring the enrolled person’s adherence to the Insurance Distribution Legislation.

1.7.3 Where the enrolled person is an individual, the enrolled person shall comply with this Section to the extent that they are applicable to such person.

- 1.7.4 The enrolled person shall before appointing a compliance officer, and after having conducted its own due diligence checks, inform the competent authority in writing of the proposed appointment. The proposed individual is required to submit a Personal Questionnaire as set out in the Annex to Chapter 3 of Part A in the Insurance Distribution Rules, for the competent authority's assessment.
- 1.7.5 When the competent authority favourably concludes its assessment, the competent authority shall then write to the proposed person informing such person of the responsibilities attached to the role and asking that person to confirm in writing the understanding of these responsibilities and the acceptance of the compliance role.
- 1.7.6 When the person accepts the role, such person is required to comply with the requirements indicated in Appendix I to this Chapter.

1.8 Appointment of a Money Laundering Reporting Officer

1.8.1 Section 1.8 applies to:

- (a) a person desirous of applying for enrolment in the Brokers List to carry out insurance distribution activities;
- (b) a person desirous of applying for enrolment in the Agents List to carry out insurance distribution activities, and who is authorised to enter into contracts of long term business of insurance, in accordance with the agency agreement entered into between the authorised insurance undertaking and the insurance agent;
- (c) a person desirous of applying for enrolment in the Managers List to carry out insurance distribution activities with:
 - (i) an appointment from a company enrolled in the Brokers List;
 - (ii) an appointment from a captive insurance undertaking carrying on long term business; or
 - (iii) authority to enter into contracts of long term business of insurance on behalf of the insurer; or
 - (iv) authority to exercise managerial functions in relation to an insurer carrying on long term contracts of insurance.

(the "enrolled person")

- 1.8.2 An enrolled person shall be aware of the responsibilities under anti-money laundering legislation in Malta, mainly the Prevention of Money Laundering Act (Cap. 373), the Regulations made thereunder and the Implementing Procedures issued by the Financial Intelligence Analysis Unit. Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2018, requires an enrolled person to appoint a money laundering reporting officer.
- 1.8.3 Where the enrolled person is an individual, the enrolled person shall comply with the provisions of this Section to the extent that they are applicable to such person.
- 1.8.4 The enrolled person shall before appointing a money laundering reporting officer, and after having conducted its own due diligence checks, inform the competent authority in writing of the proposed appointment. The proposed individual is required to submit a Personal Questionnaire as set out in the Annex to Chapter 3 of Part A in the Insurance Distribution Rules, for the competent authority's assessment.
- 1.8.5 When the competent authority favourably concludes its assessment, the competent authority shall then write to the proposed person informing such person of the responsibilities attached to the role and asking that person to confirm in writing the understanding of these responsibilities and the acceptance of such role.
- 1.8.6 The person assuming the role may or may not act as a compliance officer. Where the person accepts the role, such person is required to comply with the requirements indicated in Appendix II to this Chapter.

1.9 Professional Indemnity Insurance Cover

- 1.9.1 Article 10(1)(a)(v) of the Act requires a person desirous of applying for enrolment in the Agents List, Managers List or Brokers List to carry out insurance distribution activities and, or reinsurance distribution activities, and on a continuing basis, a person enrolled in the Agents List, Managers List or Brokers List (the "enrolled person") to have in its favour a policy of professional indemnity insurance acceptable to the competent authority, indemnifying the enrolled person, or any individual employed by such person, or otherwise acting for such person, to such amount, in such manner and in respect of such matters, as the competent authority may from time to time determine.
- 1.9.2 In terms of article 37(9) of the Act, an authorised undertaking shall at all times be responsible for any act or omission of its registered tied insurance intermediaries provided that such act or omission is an act or omission pertaining to a contract of insurance issued by the company or offered on its behalf through the services of such tied insurance intermediaries. In this subarticle, any reference to registered tied insurance intermediaries shall include a reference to past as well as present registered tied insurance intermediaries.

- 1.9.3 In terms of article 43E(11) of the Act, an authorised undertaking and an enrolled insurance broker shall at all times be responsible for any act or omission of its registered ancillary insurance intermediaries provided that such act or omission is an act or omission pertaining to a contract of insurance issued by the undertaking or broker, or offered on its behalf through the services of such ancillary insurance intermediaries. In this sub-article, any reference to registered ancillary insurance intermediaries shall include a reference to past as well as present registered ancillary insurance intermediaries.

Matters concerning Professional Indemnity Insurance

- 1.9.4 In the case of a person desirous of applying for enrolment or an enrolled person, cover is required on a claims made basis for legal liability in consequence of any negligent act, error or omission in the conduct of its insurance distribution activities and, or reinsurance distribution activities as an enrolled person or of any individual employed by such person or otherwise acting for such person, including:
- (a) in the case of companies enrolled in the Agents List, tied insurance intermediaries registered in the Tied Insurance Intermediaries Company Register of the company and ancillary insurance intermediaries registered in the Ancillary Insurance Intermediaries Company Register of the company, and
 - (b) in the case of companies enrolled in the Brokers List, ancillary insurance intermediaries registered in the Ancillary Insurance Intermediaries Company Register of the company.
- 1.9.5 Without prejudice to the generality of the foregoing provisions, the policy shall indemnify the enrolled person against claims arising from:
- (a) a dishonest, fraudulent act, error or omission of any person at any time employed by the enrolled person, or otherwise acting for such person;
 - (b) libel and slander;
 - (c) 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; including also documents and records stored on electronic media and liability and costs and expenses incurred in replacing, restoring or reconstructing the documents or records and consequential loss resulting from damage to the documents or records up to a limit of 100,000 Euro.
- 1.9.6 The required minimum limits of indemnity shall be not less than 1,300,500 Euro in respect of each and every claim and in the aggregate 2,000,000 Euro per year for all claims.

- 1.9.7 Where the policy is subject to an excess, this shall be for a sum not exceeding 1% of the limit of indemnity and subject to a maximum of €50,000.
- 1.9.8 The competent authority may, on application made to it in writing by the enrolled person demonstrating the inability to secure a policy of professional indemnity insurance satisfying the excess as determined in paragraph 1.9.7 of this Chapter ("the required excess"), permit that the person takes out a bank guarantee equal to the amount resulting from the difference between the amount of the excess requested by the insurer underwriting the policy and the required excess. The wording of the bank guarantee is to be approved in advance by the competent authority.
- 1.9.9 An enrolled company may, in lieu of taking out a bank guarantee as provided for in paragraph 1.9.8 above, increase the issued share capital by a cash consideration equal to the amount resulting from the difference between the amount of the excess requested by the insurer underwriting the policy and the required excess.
- 1.9.10 The policy shall be governed by EU or UK law. Where the enrolled company forms part of an international group of companies, the competent authority may accept that the professional indemnity insurance cover of the group be extended to provide cover to the enrolled company.
- 1.9.11 The policy shall cover the whole territory of the European Union.
- 1.9.12 In the case of a person enrolled in the **Agents List**, for the purposes of satisfying the obligations arising under articles 37(9) and 43E(11) of the Act and paragraph 1.9.4 of this Chapter, the insurance agent may, in lieu of including the tied insurance intermediaries registered in the Tied Insurance Intermediaries Company Register or the ancillary insurance intermediaries registered in the Ancillary Insurance Intermediaries Company Register of the company, under its professional indemnity insurance policy, submit to the competent authority an undertaking from its principal stating that the principal will undertake to meet any claims arising from any act or omission pertaining to a contract of insurance issued by it, or offered on its behalf, through the services of the tied insurance intermediaries or ancillary insurance intermediaries.

Documentation to be submitted to the competent authority

- 1.9.13 For the purposes of demonstrating to the satisfaction of the competent authority that the requirements of paragraphs 1.9.4 to 1.9.11 of this Chapter are being complied with, the enrolled person shall submit to the competent authority a copy of the policy or a copy of the cover note, or such other written evidence as the competent authority may require to establish compliance with the requirements set out in Section 1.9 of this Chapter.

Information to be forwarded to the competent authority

1.9.14 An enrolled person shall within seven days from the date it becomes aware of any of the circumstances specified in sub-paragraph (a) to (g) below, inform the competent authority in writing where:

- (a) during the term of a policy the enrolled person has notified insurers of an incident which may give rise to a claim under the policy;
- (b) during the term of a policy the insurer has avoided or cancelled the policy or has notified the intention of doing so;
- (c) the policy has not been renewed or has been cancelled and another policy satisfying the provisions of Section 1.9 of this Chapter has not been taken out from the date on which the previous policy lapsed or was cancelled;
- (d) during the term of the policy the terms or conditions of the policy are altered in any manner so that the policy no longer satisfies the requirements of Section 1.9 of this Chapter;
- (e) the insurer has intimated the intention to decline to indemnify the insured in respect of a claim under the policy;
- (f) the insurer has given notice that the policy will not be renewed or will not be renewed in a form which will enable the policy to satisfy the requirements of Section 1.9 of this Chapter;
- (g) during the term of the policy the risks covered by the policy, or the conditions or terms relating thereto, are altered in any manner.

Extension of the professional indemnity policy

1.9.15 The professional indemnity policy taken out by an enrolled person may with the written consent of the competent authority be extended to cover any licensable activity, service or business, subject that the requirements of paragraphs 1.9.4 to 1.9.11 of this Chapter are complied with.

1.9.16 The competent authority may require a person desirous of applying for enrolment, and on a continuing basis, an enrolled person to have a policy of professional indemnity of such higher amount, or in such manner and in respect of such matters as the competent authority may deem appropriate for the insurance distribution activities and, or reinsurance distribution activities intended to be carried out, or are being carried out, by the enrolled person.

PART B: Particulars of persons to be entered in the Agents List, Managers List or Brokers List

1.10 Particulars of individuals to be entered in the Agents Register, Managers Register or Brokers Register

1.10.1 In relation to the registration of individuals, the particulars to be entered in the Agents Register, Managers Register or Brokers Register for the purposes of article 7 of the Act are those set out in the Fifth Schedule to this Chapter.

1.11 Particulars of persons to be entered in the Agents List, Managers List or Brokers List

1.11.1 In relation to the enrolment of persons desirous of carrying out, or carrying out insurance distribution activities and, or reinsurance distribution activities, the particulars to be entered in the Agents List, Managers List or Brokers List as determined by this Chapter for the purpose of article 9 of the Act are:

- (a) where the intermediary is a local person, those set out in the Sixth Schedule to this Chapter;
- (b) where the intermediary is a foreign company, those set out in the Seventh Schedule to this Chapter.

Malta Financial Services Authority

Triq L-Imdina, Zone 1

Central Business District, Birkirkara, CBD 1010, Malta

communications@mfsa.mt

www.mfsa.mt