

# Consultation on the Proposed Amendments to the Insurance Rules and 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 Malta Financial Services Authority (hereinafter referred to as the “MFSA”) periodically reviews the Insurance Rules and the Insurance Distribution Rules to amend them in line with findings observed whilst conducting regulatory work as well as other findings from the market whilst carrying out their operations. In light of the MFSA’s most recent periodic review and the feedback received from the market, the MFSA is proposing to amend Chapters 4, 5, 8, 9, and 12 of the Insurance Rules and Chapters 1, 4, 6 and 7 of the Insurance Distribution Rules to address the issues at hand.

## 2.0 Amendments to Chapter 4 of the Insurance Rules

### *Amendments to the amounts of Professional Indemnity cover*

2.1 Article 11 of the Accountancy Profession Act (Chapter 281 of the Laws of Malta) states that every warrant holder or a holder of a practising certificate shall, for so long as they hold such a warrant or practising certificate, be covered by an indemnity insurance for such amount as may be prescribed in regulations made by the Minister under this Act. In line with this Article, paragraph 4.6.2 of Chapter 4 of the Insurance Rules on the authorisation to act as approved auditor states that an authorised undertaking which holds an authorisation to act as an approved auditor shall have, at all times in its favour during the tenure of appointment, an indemnity insurance cover. In particular, paragraph 4.6.2(e) further states that the indemnity cover shall be acceptable to the competent authority for an amount of not less than €1,165,000.

2.2 The current requirement is in line with professional indemnity cover applicable for insurance intermediaries, which requirement stems from Article 10 (4) and (5) of Directive (EU) 2016/97 (the ‘Insurance Distribution Directive’ and ‘the IDD’) which requires insurance and reinsurance intermediaries to hold professional indemnity insurance cover. On 3 July 2023, EIOPA published [changes to the minimum amount of professional indemnity insurance cover and financial capacity intermediaries](#) needed under the IDD. In view of this, the MFSA is proposing to amend the amounts of the professional indemnity insurance from €1,165,000 to €1,600,000, to align them with the revisions in professional indemnity cover as published by EIOPA.

### *Amendments to the excess clause in the indemnity insurance contract*

2.3 On 26 January 2023, the MFSA published a [Consultation Document on the proposed amendments to the Insurance Distribution Rules](#) wherein it was noted that paragraph 1.9.7 of Chapter 1 of the Insurance Distribution Rules at the time stated 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 MFSA stated that the market raised its concern on the excess to which the professional

indemnity insurance policy is subjected to. The market stated that the stipulated amount of excess was not sensible when one considers insurance intermediaries which have larger limits of indemnity than what is stipulated in the law. The MFSA also noted that such intermediaries identified a difficulty in order 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 proposed 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 Paragraph 4.6.4(a) of Chapter 4 of the Insurance Rules states that the indemnity insurance contract which the appointed auditor of an insurance licence holder is to hold, and which indemnifies the person against any liability, needs to contain an excess clause. The excess clause in the said contract presently refers to a sum not exceeding 0.5 per centum of the limit of indemnity.
- 2.5 The MFSA is proposing to amend paragraph 4.6.4(a) of Chapter 4 of the Insurance Rules to refer to a sum not exceeding 1 per centum of the limit of indemnity. The aim behind this proposed amendment is to bring this requirement in line with the requirements set in Chapter 1 of the Insurance Distribution Rules.

*Amendments for the issuance of a bank guarantee in the event of inability to secure a policy of professional indemnity insurance satisfying the excess*

- 2.6 Paragraph 1.9.8 of Chapter 1 of the Insurance Distribution Rules states that 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 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.
- 2.7 In order to align with the requirement in Chapter 1 of the Insurance Distribution Rules, the MFSA is proposing to introduce a new paragraph 4.6.5 to Chapter 4 of the Insurance Rules. This new requirement will provide for instances where the competent authority may allow an approved auditor to take out a bank guarantee to cover the amount of the excess requested by the insurer underwriting the policy and the required excess. In this respect, it is also being proposed to introduce a new requirement which requires an approved auditor to submit a request in writing to the competent authority. Notably, the wording of the bank guarantee will need to be approved in advance by the competent authority.

### 3.0 Amendments to Chapter 5 of the Insurance Rules

- 3.1 Currently where an authorised insurance undertaking intends to declare any dividends, it requires prior authorisation from the MFSA. This requirement is established in the licensing conditions provided to every insurance undertaking at the time of authorisation.
- 3.2 In order to clarify this requirement, the MFSA is proposing to introduce a new section in Chapter 5 of the Insurance Rules to require undertakings to obtain the prior authorisation of the competent authority before declaring and/or distributing any dividends.

### 4.0 Amendments to Chapter 8 of the Insurance Rules

#### Amendments to the submission of audited financial statements

- 4.1 Paragraph 8.2.2 of Chapter 8 of the Insurance Rules currently stipulates the deadlines that authorised undertakings are required to adhere to when submitting their audited financial statements to the competent authority. These deadlines only apply to solo undertakings and do not apply to undertakings which are subject to group supervision.
- 4.2 As a result, the MFSA is proposing to introduce a new paragraph 8.2.3 to Chapter 8 to cater for the instance where group supervision applies. In this respect, the MFSA is proposing to include a new requirement which states that where group supervision applies, an insurance holding company shall be required to submit audited financial statements to the competent authority, by no later than 20 weeks after the financial year end of the participating undertaking, in relation to its financial year ending on or after 1 January 2019 but before 1 January 2020.

#### Amendments to audited financial statements to be submitted

- 4.3 On 26 January 2023, the MFSA published a [Consultation Document on the proposed amendments to the Insurance Distribution Rules](#) wherein it was noted that the requirement for insurance undertakings to submit an auditor's management letter is stipulated in the authorisation conditions letter which is attached to the licence certificate. It was also noted that, with respect to insurance undertakings, this requirement already exists in Chapter 8 of the Insurance Rules. In this respect, a comment was raised by the market indicating that Chapter 8 of the Insurance Rules solely refers to the Auditor's Management Letter and does not contain a requirement requesting the Auditor's Management Letter of the Audit Financial Statements. This requirement was only included as a licensing condition for insurance undertakings.

4.4 In view of this, the MFSA proposing to amend paragraph 8.2.4 of Chapter 8 to the Insurance Rules to include a new requirement for insurance undertakings to submit the Auditor's Management Letter in the Audited Financial Statements.

## 5.0 Amendments to Chapter 12 of the Insurance Rules

5.1 Currently, Chapter 12 of the Insurance Rules includes a number of sections pertaining to the Conduct of Business Rules and one section on prudential rules. The intention of the MFSA was always that of reviewing Chapter 12 of the Insurance Rules and removing any conduct of business requirements. Furthermore, it is to be noted that the MFSA has received a number of enquiries from the insurance market, requesting clarifications as to whether reference should be made to Chapter 12 of the Insurance Rules or the Conduct of Business Rulebook. After thorough discussions with Conduct Supervision to verify that the various sections pertaining to conduct of business have been included in the Conduct of Business Rulebook, it is being proposed that any reference to conduct of business is removed from Chapter 12 of the Insurance Rules to avoid the duplication of information.

5.2 The MFSA is therefore proposing to retain the section that specifically deals with the prudential aspect, that is the manner in which publicity is to be given to notices to cease to carry on business of insurance, whilst proposing to remove the rest of the sections. By means of this amendment, it will be made clear that anything relating to conduct of business can be found in the Conduct of Business Rulebook and that anything relating to the prudential aspect is retained in the Chapter 12 of the Insurance Rules.

## 6.0 Amendments to Chapter 1 of the Insurance Distribution Rules

### *Amendments to the amounts of Professional Indemnity cover*

6.1 Article 10 (1) (a) (v) of the Insurance Distribution Act (Chapter 487 of the Laws of Malta) 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' or 'the IDD'), which requires insurance and reinsurance intermediaries to hold professional indemnity insurance cover.

6.2 On 3 July 2023, EIOPA published [changes to the minimum amount of professional indemnity insurance cover and financial capacity intermediaries need under IDD](#). In line with these published changes, the MFSA is proposing to amend the professional indemnity amounts that are currently stipulated under paragraph 1.9.6 of Chapter 1 to the Insurance Distribution Rules from €1,300,500 to €1,600,000 and €2,000,000 to €2,400,000.

## *Minor Amendments*

6.3 Furthermore, whilst conducting regulatory work, the MFSA noted a minor error in paragraph 1.6.4 of Chapter 1 of the Insurance Distribution Rules, which refers to Section 6.3 of Chapter 6 in Part B of the Insurance Distribution Rules. In view of the fact that Section 6.3 of Chapter 6 of the Insurance Distribution Rules falls under Part A and not Part B of the said Chapter, the MFSA is proposing a minor amendment to correct this.

## **7.0 Amendments to Chapter 4 of the Insurance Distribution Rules**

7.1 Paragraph 4.6.2 of Chapter 4 of the Insurance Distribution Rules currently states that the own funds of an enrolled company shall be constituted and held in the form of a guarantee, provided that an irrevocable letter of credit is established with a bank or credit institution. The MFSA is proposing to amend paragraph 4.6.2 of Chapter 4 of the Insurance Distribution Rules on the own funds of enrolled companies. In this respect, the MFSA is proposing that the components making up the own funds for insurance intermediaries can also be covered by a group guarantee. This would be in the form of a guarantee provided by an entity within the same group of companies as the enrolled company to the satisfaction of the competent authority.

7.2 Currently, Article 10(6)(b) of the Insurance Distribution Directive requires an intermediary to have financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of €19,510. On 3 July 2023, EIOPA published [changes to the minimum amount of professional indemnity insurance cover and financial capacity intermediaries need under IDD](#). One of these amendments relates to Article 10(6) of the Insurance Distribution Directive and includes an increase in the base financial capacity amount requirement from €19,510 to €23,480. In view of this, the MFSA is proposing to amend the First Schedule to Chapter 4 of the Insurance Distribution Rules and change the base financial capacity amount of €19,510 to €23,480.

## **8.0 Amendments to Chapter 6 of the Insurance Distribution Rules**

### *New knowledge and ability requirements related to sustainable finance*

8.1 Section 6.10 of Chapter 6 of the Insurance Distribution Rules deals with the knowledge and ability requirement of relevant persons and relevant employees selling insurance-based investment products ('IBIPs'). Paragraph 6.10.1 of this section states that a relevant person and a relevant employee shall possess the minimum necessary knowledge of applicable laws governing the distribution of insurance products such as client protection law and relevant tax law, after which the same paragraph lays down a number of minimum requirements that need to be satisfied by a relevant person and a relevant employee.

8.2 On 2 August 2022, EIOPA published an amendment to the [Commission Delegated Regulation \(EU\) 2017/2359 of 21 September 2017 supplementing Directive \(EU\) 2016/97 of the European Parliament and of the Council with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products](#). In view of this, the MFSA is proposing to include two new sub-paragraphs (h) and (i) to paragraph 6.10.1 on the knowledge regarding the criteria of the sustainability preferences and ability. The aim of the new paragraph 6.10.1(h) is to ensure that relevant persons and relevant employees who distribute insurance-based investment products are able to explain to customers the different aspects of a product in a language that is clear, succinct, comprehensible and not misleading - in line with the new requirements in line with the new requirements of the Commission Delegated Regulation. The new paragraph 6.10.1(i) of Chapter 6 will also require relevant persons and relevant employees to possess knowledge and ability on the criteria of the sustainability preferences, which shall be more detailed when offering IBIPs that promote environmental or social characteristics or that have a sustainable investment objective.

## 9.0 Amendments to Chapter 7 of the Insurance Distribution Rules

9.1 Chapter 7 of the Insurance Distribution Rules states that a relevant person and a relevant employee shall undertake as a minimum fifteen (15) hours of continuous professional development (CPD) training in each calendar year. This training can take the form of structured or unstructured CPD training. When Chapter 7 of the Insurance Distribution Rules was published, the said Rules included a requirement that an assessment was only required to be undertaken when the CPD training was conducted online. This requirement was included to ensure that basic knowledge was actually acquired from the online training that was conducted, due to the fact that attendees were attending online.

9.2 Following Covid-19, all CPD training started to be conducted solely via web-based platforms. At the time, the market queried whether all CPD trainings would require an assessment to be undertaken, since all training had now been shifted online. Following internal discussions on this matter, the MFSA replied that all the training required an assessment. Following this clarification, the MFSA endeavoured to amend Chapter 7 of the Insurance Distribution Rules. In this respect, in 2022 a Consultation Document and eventually a feedback statement were published and Chapter 6 and 7 of the Insurance Distribution Rules were amended. In the said Consultation Document, it was clarified that any training conducted via web-based learning requires a relevant person or a relevant employee to complete an assessment successfully and to retain proof for future reference, in order for such training to be a structured CPD training. The MFSA also proposed that where CPD training is not web-based and where the training falls under the category of a course, it will require assessment. In other words, where the training is a course, irrespective of the

medium of delivery, an assessment will be required. However, when the training consists of a seminar, an assessment is not required.

9.3 Following the establishment of these new amendments and the subsequent significant investment by a number of licence holders who provide inhouse training to their employees to adhere to the CPD training requirements and to create assessment when providing training, the insurance industry has advised the MFSA that a number of issues are still pending. The industry has indicated that a number of external service providers do not include assessments after a course is delivered. As a result, the industry is finding it difficult to identify courses which include an assessment at the end of the course, so as to test the knowledge acquired by the person who attended the said course.

9.4 As a result, and in an attempt to address the concerns of the market, the MFSA is proposing to amend the requirements under Chapter 7 of the Insurance Distribution Rules to remove the requirement to conduct an assessment where a course is undertaken with an external party. The MFSA is proposing that where the course is undertaken in-house, in light of the significant investment already made by the market, whether such training is undertaken online or physical, the requirement to undertake an assessment at the end of the course, will be retained. Therefore, courses which would be categorised as CPD Training and which are conducted by external parties will not need to include an assessment. In this respect, the MFSA is also proposing to amend paragraph 7.5.4(c) of Chapter 7 of the Insurance Distribution Rules on verifiability to remove the requirement that a course which is provided by external service providers, would require an assessment to be conducted. The MFSA is also proposing to amend paragraph 7.5.6 of the same chapter to clarify that in case of a course which is provided by external providers, a certificate of attendance or equivalent is sufficient.

## 10.0 Way Forward

10.1 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](mailto:ips_legal@mfsa.mt), by not later than **5 January 2024**. Following this, the MFSA will review the comments of the market and issue a Feedback Statement providing feedback to the market and a Circular informing the market that the amendments have become applicable.