

Consultation on the Proposed Amendments to the Insurance Rules and 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. Introduction

- 1.1 The MFSA is proposing to amend a number of Insurance Rules and 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 Rules
 - a draft of Annex II to Chapter 6 of the Insurance Rules
 - a draft of Chapter 8 of the Insurance Rules
 - a draft of Chapter 1 of the Insurance Distribution Rules
 - a draft of Chapter 2 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 proposed changes 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. Chapter 1 of the Insurance Rules

- 2.1 On 22 November 2024, the Insurance Business (Protection and Compensation Fund) Regulations, 2024 were issued. By means of these Regulations, the Protection and Compensation Fund has been extended to cover claims made from 23 December 2023 onwards in relation to risks of motor vehicle liability insurance business, even when business is situated in another Member State, and the claims remain unpaid by reason of insolvency of such insurer.
- 2.2 Therefore, any undertaking which intends to carry out motor vehicle liability insurance business in another Member State other than Malta, will be required to contribute to the Protection and Compensation Fund.
- 2.3 The MFSA is therefore proposing to amend paragraph 1.11.9 of Chapter 1 of the Insurance Rules to require undertakings which intend to carry out motor vehicle liability insurance business in another Member State to contribute to the Protection and Compensation Fund.

3. Annex II of Chapter 6 of the Insurance Rules

- 3.1 Chapter 6 of the Insurance Rules on systems of governance identifies the systems and structures which an insurance undertaking is required to have in place. Paragraph 1.2 of Annex II of Chapter 6 requires the chairman of the audit committee to be independent from the authorised undertaking, however, the interpretation of “independent” is challenged by market practitioners. As a result, the MFSA is proposing to include a footnote in the said paragraph to state that the term “independent” should be taken to refer to the definition of independent in the MFSA Corporate Governance Code, to clarify the MFSA’s expectations.
- 3.2 Paragraph 1.5 of the same Annex states that when an authorised undertaking is a small and medium sized enterprise as defined in Article 2 of Directive 2003/71/EC, the functions of the audit committee may be assigned to the Board of Directors. The said paragraph also clarifies that where the chairman of the Board of Directors is an executive member, the said person may not be the chairman of the audit committee. The MFSA is of the view that in such an instance, the Chairman of the audit committee is to be an independent non-executive director. As a result, the MFSA is proposing to amend the said paragraph to clarify that where the Board of Directors takes the role of the audit committee, the Chairman of the Committee has to be an independent non-executive director.
- 3.3 Finally, in the spirit of proportionality, the MFSA is also proposing that when the insurance undertaking is a captive insurance undertaking or a captive reinsurance undertaking as defined in the Insurance Business Act, and the functions of the audit committee are assigned to the Board of Directors, the Chairman of the said committee may also be a non-executive director.

4. Chapter 8 of the Insurance Rules

- 4.1 In the spirit of proportionality, the MFSA is proposing amendments to Chapter 8 of the Insurance Rules when the insurance undertaking is a captive insurance undertaking or a captive reinsurance undertaking as defined in the Insurance Business Act.
- 4.2 In this respect, the MFSA is proposing to include a new paragraph 8.10.4 stating that a captive undertaking as defined under the Insurance Business Act will not be required to audit the Solvency and Financial Condition Report. The MFSA is proposing that the MFSA will retain the right to request these captives to audit the Solvency and Financial Condition Report where necessary.

5. Chapters 1 and 2 of the Insurance Distribution Rules

- 5.1 On 29 September 2022, the European Court of Justice (‘ECJ’) delivered its ruling in the Case C-633/20 between the Federal Union of Consumer Organisations and Associations, Germany and TC Medical Air Ambulance Agency GmbH (referred to as the defendant’) concerning the definition of ‘insurance intermediary’ in the context of the Insurance Distribution Directive (‘IDD’).

The proceedings concerned the alleged unauthorised insurance mediation activity being carried out by TC Medical Air Ambulance Agency GmbH.

5.2 The key takeaways from the ECJ ruling is that:

- Selling membership to a group insurance policy in return for a payment will be deemed as insurance distribution activity, which will mean that the policyholder will be an "insurance distributor".
- Legal entities being deemed as "insurance distributors" will need to assess whether they can either apply for an exemption from authorisation (e.g. ancillary insurance intermediary exemption) or be enrolled as insurance intermediaries, thus complying with the full set of requirements in terms of fitness and properness of directors, training, knowledge and ability, conflicts of interests, and other applicable regulations.

5.3 Therefore, a person whose activity consists of offering its customers membership in a group insurance policy is considered to be carrying out insurance distribution activity under the Insurance Distribution Directive, would be subject to authorisation, where:

- the membership is offered on a voluntary basis;
- the membership entitles the customer to insurance benefits; and
- the activity is remunerated.

5.4 In this respect, IPS is proposing to amend Chapter 1 and Chapter 2 of the Insurance Distribution Rules to clarify that the applicant will be required to be registered and enrolled where it intends to conduct activities which consists in offering membership in a group insurance policy and where:

- (a) the membership is offered on a voluntary basis;
- (b) the membership entitles the customer provides insurance benefits; and
- (c) the individual will be remunerated for the activity carried out.

6. Chapter 8 of the Insurance Distribution Rules

6.1 Chapter 8 of the Insurance Distribution Rules contains requirements in relation to the insurance monies that are to be paid into the business of insurance intermediaries accounts. Paragraph 8.2.7 of the said Chapter currently states that every enrolled person 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 Business of Insurance Intermediaries Account and into no other account. The same is also stated in paragraph 8.3.7 with respect to the insurance monies that are to be paid into Tied Insurance Intermediaries Accounts or Ancillary Insurance Intermediaries Accounts.

6.2 In the Consultation Document issued on the 7th December 2023, the MFSA proposed that paragraph 8.3.7 related to the Tied Insurance Intermediaries Accounts or Ancillary Insurance Intermediaries Accounts be amended, so 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. This was well received by the market.

6.3 Following the said Consultation, the market raised concerns by stating that compliance with the two-business-day requirement in relation to agents, managers and brokers under paragraph 8.2.7 has proven itself to be difficult.

6.4 The MFSA is therefore proposing to amend paragraphs 8.2.7 of Chapter 8 of the Insurance Distribution Rules to read that all insurance monies are to be paid into the insurer by not later than the next five business days.

7. Chapter 9 of the Insurance Distribution Rules

7.1 Paragraph 9.9.1 of Chapter 9 of the Insurance Distribution Rules explains the manner in which a fidelity bond shall be held. The market has raised the issue that the Fidelity Bond Calculation may need to be updated to reflect market practice.

7.2 The current fidelity bond calculation is computed by comparing 25% of the premiums written with the debtors amount as at year end which is creating issues to wholesale brokers. If the 25% of premium written is greater than the debtors (plus the excess own funds of the intermediary) then a fidelity bond is not required.

7.3 Therefore if a broker writes a large amount of premium in December, then in all probability the 25% of premium written will be less than the debtors (plus the excess own funds of the intermediary) and a fidelity bond will be required.

7.4 In order to correct this anomaly the MFSA is proposing to amend paragraph 9.3.1 of Chapter 9 of the Insurance Distribution Rules so that the fidelity bond will need to be calculated taking into account the average amount of outstanding debts in respect of insurance intermediaries transactions during the preceding year.

8. Chapter 10 of the Insurance Distribution Rules

8.1 The Annex to Chapter 10 of the Insurance Distribution Rules on information to be provided to the competent authority for supervisory purposes contains the business of insurance intermediaries statements which intermediaries are required to submit.

8.2 In light of the amendments carried out to Chapter 9 of the Insurance Distribution Rules, the MFSA is proposing to amend Form 9 of the Annex to Chapter 10 of the Insurance Distribution Rules to align it with the amendments carried out in Chapter 9 of the Insurance Distribution Rules.

9. Way forward

- 9.1 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 **26 March 2025**. Following this, the MFSA will review the comments of the market and issue a Feedback Statement providing feedback to the market.
- 9.2 Following the publication of the Feedback Statement, the MFSA will also issue a Circular informing the market that the Insurance Rules and Insurance Distribution Rules have become applicable.