

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

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### **Circular on clarifications to the insurance industry following the introduction of new audit committee requirements**

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On the 18<sup>th</sup> July 2016, the MFSA issued a Feedback Statement (further to the Consultation Document of 31<sup>st</sup> May 2016) in relation to the proposed amendments relating to the new audit committee requirements as set out in Article 39 of the Statutory Audit Directive<sup>1</sup>, as amended by Directive 2014/56/EU of 16 April 2014, together with amendments to Chapter 6 on System of Governance, including a new *Annex II - Audit Committee*, in Part B of the Insurance Rules issued under the Insurance Business Act (Cap. 403). The requirement to set up an audit committee encourages good practices relating to systems of governance, thus ensuring that policyholders are appropriately protected.

On the 7<sup>th</sup> October 2016, the MFSA approached authorised undertakings requesting feedback, through the completion of the provided questionnaire, relating to what steps undertakings have taken or propose to take in order to comply with the requirements of the audit committee under the new Article 39 of the Statutory Audit Directive, as transposed in Annex II to Chapter 6 on System of Governance, in Part B of the Insurance Rules. The deadline for the submission of the questionnaire is Friday 4th November 2016.

In the interim, this Circular is being issued for the purposes of providing clarifications as to the interpretation of certain requirements contained in Annex II to Chapter 6, in particular paragraph 1.6 therein, which transposes Article 39(3)(a)<sup>2</sup> of the Statutory Audit Directive and provides for a derogation from the requirement to establish an audit committee pursuant to paragraphs 1.1 and 1.2 of the said Annex.

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<sup>1</sup> Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

<sup>2</sup> Article 39(3)(a): “3. By way of derogation from paragraph 1, Member States may decide that the following public-interest entities are not required to have an audit committee: (a) any public-interest entity which is a subsidiary undertaking within the meaning of point 10 of Article 2 of Directive 2013/34/EU if that entity fulfils the requirements set out in paragraphs 1, 2 and 5 of this Article, Article 11(1), Article 11(2) and Article 16(5) of Regulation (EU) No 537/2014 at group level;”

For the purposes of further clarification, paragraph 1.6 is being amended to provide more clarity and is to be interpreted as follows: an authorised undertaking which is a subsidiary undertaking is not required to establish an audit committee, if it is the subsidiary undertaking of:

(a) a parent undertaking whose head office is in a Member State or EEA State, and such parent undertaking complies at group level with the requirements set out in Article 39 of the Statutory Audit Directive and Articles 11(1), 11(2) and 16(5) of the Statutory Audit Regulation; or

(b) a parent undertaking whose head office is in a third country, and such parent undertaking is subject to equivalent obligations, at group level, to those set out in the Articles referred to sub-paragraph (a).

This means that, by way of derogation from Article 39(1) of the Statutory Audit Directive, if the parent undertaking of the authorised undertaking, (whether such parent undertaking has its head office in a Member State or EEA State or in a third country), satisfies the obligations contained in Article 39 of the Statutory Audit Directive and the relevant Articles of the Statutory Audit Regulation specified above, at group level, the authorised undertaking, may be exempt from the requirement to establish an audit committee in Malta.

For the avoidance of doubt, if an authorised undertaking is deemed to benefit from the derogation provided for in paragraph 1.6, such undertaking would not need to establish an audit committee in Malta, and thus certain requirements contained in Annex II to Chapter 6, in particular paragraph 1.4 therein, which contains the functions which an audit committee is required to perform, will not need to be complied with by the authorised undertaking.

In view of the above, the MFSA has carried out amendments to paragraph 1.6 in Annex II to Chapter 6 on System of Governance, in Part B of the Insurance Rules, which have been updated [on the MFSA website](#).

## **Contacts**

Any queries or requests for clarifications in respect of the above should be addressed by email on [ipsu@mfsa.com.mt](mailto:ipsu@mfsa.com.mt).

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