

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON AMENDMENTS TO THE INSURANCE RULES ISSUED UNDER THE INSURANCE BUSINESS ACT

[MFSA REF: 09-2016]

9th September 2016

Closing Date: 30th September 2016

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.

Note for Consultation

1. Purpose

- 1.1 On the [1st April 2016](#), the MFSA had issued for consultation amendments to *Chapter 5 on Valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules*, of Part B of the Insurance Rules issued under the Insurance Business Act. The proposed amendments in the said Consultation included an additional new paragraph 5.7.12 and a new Annex to Chapter 5 which established the proposed minimum parameters within which authorised undertakings will be permitted to grant intra-group loans to undertakings or companies within its group. The proposed new Annex addressed two main issues originating from the Solvency II Directive (Directive 2009/38/EC), the *encumbrance* of the capital of insurance undertakings and the proper management and the diversification of the assets of the insurance undertakings (*prudent person principle*).
- 1.2 The MFSA received a considerable amount of feedback from the insurance market on the introduction of prescriptive rules on inter-company loans made by insurance undertakings. In order to address the concerns raised by the insurance market, the MFSA is proposing amendments to the proposed new Annex that has already been issued for consultation. Therefore, further to the consultation document issued on the 1st April 2016, the MFSA is issuing for final consultation the proposed amendments to the new proposed Annex on intercompany loans, following feedback from the insurance market.
- 1.3 Any comments and feedback are to be addressed to the Insurance and Pensions Supervision Unit by email on ipsu@mfsa.com.mt. Interested parties are kindly asked to submit any comments in writing by not later than **30th September 2016**.

2. Review of proposed Rules on Intra-Group Loans

- 2.1 After due consideration of the comments received by the market following the Consultation on 1st April 2016, the MFSA is proposing the following changes to the new Annex to Chapter 5 of the Insurance Rules:
 - 2.1.1 The MFSA is proposing to remove the proposed limits up to which intra-group loans will be permitted when compared to the total assets of the insurance undertaking. Intra-group loans will thus continue to be regulated through the Prudent Person Principle. For the purposes of clarification, a new paragraph 1.5 has been inserted to emphasise that the provisions of the new Annex shall apply without prejudice to the

Prudent Person Principles as set out in section 5.7 of Chapter 5 of the Insurance Rules.

- 2.1.2 The proposed provision stating that intra-group loans were not to be permitted within the *first two years of authorisation* will be retained. However, the application of this requirement has now been restricted to apply only to an authorised insurance undertaking, as provided in paragraph 1.8 of the revised Annex. It is thus being proposed that authorised reinsurance undertakings, captive insurance undertakings and captive reinsurance undertakings will be exempted from this provision.
- 2.1.3 The specific conditions applicable to a captive insurance undertaking or a captive reinsurance undertaking, including the limits up to which intra-group loans are permitted, have been removed. However, the general requirements (paragraphs 1.1 to 1.6) of the revised Annex still apply to captive undertakings.
- 2.1.4 It is proposed that the provisions in the Annex dealing with *encumbrances* will be retained and are now found in paragraphs 1.2 and 1.3 of the revised Annex.
- 2.1.5 Paragraphs 1.10 and 1.11 of the previous draft Annex that had been issued for consultation, which required that the intra-group loan agreement entered into by a captive insurance undertaking or a captive reinsurance undertaking includes provisions as to the repayment of the loan, has been removed. However, it is proposed to include a new paragraph 1.4 in the revised Annex, providing the option that the *intra-group loan agreement* entered into by an authorised undertaking¹ may contain provisions which ensure the repayment of the loan, such as a guarantee by another group undertaking or a right of set-off.

3. Proposed way forward

- 3.1 It is to be noted that the proposed requirements relating to intra-group loans, as contained in the revised Annex, shall apply to intra-group loan agreements entered into on or after **1st January 2017**.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 09-2016
9th September 2016

¹ *An authorised undertaking* includes reference to an authorised insurance undertaking, an authorised reinsurance undertaking, a captive insurance undertaking and a captive reinsurance undertaking.