

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON REGULATIONS TO BE ISSUED UNDER THE INSURANCE BUSINESS ACT

[MFSA REF: 08-2015]

13 October 2015

Closing Date: 10 November 2015

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 Further to the consultation document issued by the MFSA on the 18th September 2015 relating to a number of proposed regulations to be issued under the proposed amended Insurance Business Act (Cap.403) as part of the transposition exercise of the Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), (the “Solvency II Directive”), the MFSA is issuing for consultation a new set of regulations entitled the Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015 (“these regulations”).
- 1.2 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 **Tuesday 10th November 2015**.

2. Insurance Business (Supervision of Insurance and Reinsurance Undertakings in a Group) Regulations, 2015

- 2.1 Group supervision under the Solvency II Directive represents a significant change from group supervision under the Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group. Supervisory authorities under the Solvency II Directive are required to supervise groups in a holistic manner to enable a clear picture of the risks present within the groups. This Directive also introduces an innovative supervisory model where a key role is assigned to a group supervisor, whilst recognising and maintaining an important role for the solo supervisor. It also provides for the establishment of a college of supervisors to take a coordinated approach to supervision.
- 2.2 As stated in the consultation paper on the proposed amendments to the Insurance Business Act issued by the MFSA on the 22 December 2014, the MFSA is proposing to add a new Part VIIA on Group Supervision (Articles 32A-32E of the proposed Act) dealing with measures to facilitate group supervision, which transposes some of the Articles listed in Title III of the Solvency II Directive. This new Part will contain the framework for insurance or reinsurance undertakings forming part of a group but the details will be set out in regulations to be issued under the Insurance Business Act. Hence, the MFSA is proposing to issue a new set of regulations, the purpose of which is to implement the remaining articles of Title III of the Solvency II Directive which have not been included in the Act.

2.3 These regulations will repeal the Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) Regulations, 2007 (L.N. 287 of 2007) which transpose Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group. This latter Directive has been repealed by the Solvency II Directive. It is being proposed to divide the new proposed regulations into six parts.

2.4 Part I provides for the cases of application, scope and levels of group supervision. Supervision at the level of the group applies as follows:

- (a) to insurance or reinsurance undertakings in the Union, which are participating undertakings in at least one insurance or reinsurance undertaking in the Union, or third-country insurance or reinsurance undertaking;
- (b) to insurance or reinsurance undertakings in the Union, where the parent undertaking is an insurance holding company or a mixed financial holding company in the Union;
- (c) to insurance or reinsurance undertakings in the Union, where the parent undertaking is an insurance holding company or a mixed financial holding company in a third country or is a third-country insurance or reinsurance undertaking;
- (d) to insurance or reinsurance undertakings in the Union, where the parent undertaking is a mixed-activity insurance holding company in the Union or third country.

2.5 Part II on the financial position of insurance groups includes various provisions relating to the solvency of insurance groups. Participating insurance or reinsurance undertakings, insurance holding companies or mixed financial holding companies are required to calculate a group SCR at least annually. They should ensure that all related undertakings and all risks within the group, necessary for forming a proper understanding of the group solvency, are included in the group solvency calculation. This Part also states that the calculation of the group solvency calculation should be carried out in accordance with technical principles by using either the accounting consolidation-based method, the deduction and aggregation method or a combination of both, in accordance with these regulations. Participating insurance or reinsurance undertakings or insurance holding companies shall apply the accounting consolidation-based method by default unless otherwise advised by the group supervisor or upon request by the participating insurance or reinsurance undertaking or insurance holding company within the group.

It also provides for the application for permission to the group supervisor to calculate the group SCR or the SCR of insurance or reinsurance undertakings in the group, using a group internal model as well as the process for setting a group capital add-on. This Part also lays down specific provisions on group risk concentration and intra-group transactions which will be subject to supervisory review by the group supervisor, as well as provisions on supervision of the system of governance at the level of the group.

- 2.6 Part III on measures to facilitate group supervision highlights the key role assigned to a group supervisor, appointed from among the supervisory authorities of the Member States in which undertakings of the group are established. Moreover, the supervisory authorities concerned, are involved in group supervision through a college of supervisors, which ensures close cooperation, exchange of information and consultation processes, and through which the supervisory authorities concerned can carry out their supervisory activities across the group, under harmonised criteria. This Part lays down the rights and duties of the group supervisor and of the other supervisory authorities in the college of supervisors.
- 2.7 Part IV contains provisions on third countries. The Solvency II Directive provides that where the ultimate parent undertaking of an insurance or reinsurance undertaking has its head office outside the Union, the supervisory authorities concerned are to verify whether the insurance undertaking or reinsurance is subject to supervision by a third country supervisory authority and determine whether the supervision carried out is equivalent to the supervision carried out at the level of the group in the Union. The Solvency II Directive ensures a harmonised approach to the determination and assessment of equivalence of third-country insurance and reinsurance supervision, whereby the European Commission can make a binding decision regarding the equivalence of third-country solvency regimes. However, where no such decision has been made, the assessment of equivalence is to be made by the group supervisor, after consulting the other supervisory authorities concerned.
- 2.8 Part V contains provisions on intra-group transactions and cooperation with third countries specific to mixed-activity insurance holding companies which are part of a group.
- 2.9 Part VI contains provisions providing for penalties in relation to insurance holding companies and mixed financial holding companies.

3. Other Regulations

The MFSA is minded to introduce Article 4 (Exclusion from scope due to size) of the Solvency II Directive in the Insurance Business (Exemptions) Regulations, 2015, which have already been issued for consultation on the 18th September 2015.

Communications Unit
Malta Financial Services Authority
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