

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON AMENDMENTS

TO THE INSURANCE RULES

ISSUED UNDER

THE INSURANCE BUSINESS ACT

[MFSA REF: 01-2016]

9th March 2016

Closing Date: 6th April 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 The Insurance Rules issued under the Insurance Business Act (Cap. 403) (“the Act”) were published on the 22nd December 2015 and came into force on the 1st January 2016. During the consultation process, the industry requested more detail on the content of the report which is to be submitted to the MFSA by the approved actuary under article 23(1) of the Insurance Business Act, as well as under Section 8.5 of Chapter 8 on Financial Statements and Supervisory Reporting Requirements, of the Insurance Rules.
- 1.2 In accordance with paragraph 2.3 of the feedback statement issued on 14th January 2016, the MFSA is issuing for consultation the draft provisions relating to the contents of the report to be produced by the approved actuary. Moreover, other minor amendments are being proposed to some Insurance Rules which are highlighted in this Consultation paper.
- 1.3 Any comments or 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 6th April 2016.

2. Report to be submitted by the Approved Actuary

In relation to the role and report of the approved actuary, the MFSA is proposing the following amendments to Chapter 6 and Chapter 8 of the Insurance Rules:

Chapter 6 on System of Governance

- 2.1.1 In Chapter 6 on System of Governance, the MFSA is proposing to insert a new Section 6.9 so as to clarify the role and duties of the approved actuary appointed in terms of article 22 of the Act by an authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III.

Chapter 8 on Financial Statements and Supervisory Reporting Requirements

- 2.1.2 Article 23(1) of the Insurance Business Act provides that an authorised insurance undertaking carrying on long term with-profits business in terms of classes I and III as specified in the Second Schedule shall, at the close of its financial year, require the approved actuary to provide a report in respect of the period covered by the report affecting those classes of with-profits business of the undertaking. Paragraph 8.5.1 of

Chapter 8 of the Insurance Rules provides that the approved actuary's report is required to be submitted by the undertaking concerned to the MFSA together with the submission of its audited financial statements within the time-frames established in paragraph 8.2.2 of Chapter 8. Therefore, this report is to be provided to the MFSA together with the audited financial statements of the authorised undertaking concerned submitted in relation to the financial year ending on or after 30 June 2016.

The MFSA proposes to amend Section 8.5 of Chapter 8 of the Insurance Rules so as to provide more detail as to the contents of the appointed actuary's report which is to be submitted to the competent authority in terms of article 23(1) of the Insurance Business Act. The said report should be proportionate to the nature of the with-profits business.

3. Other proposed amendments to the Insurance Rules

3.1 *Amendments to Chapter 8: Financial Statements and Supervisory Reporting Requirements*

- 3.1.1 Paragraph 41 of Annex I to Chapter 8 which transposes the EIOPA Guidelines on reporting and public disclosure requires an authorised undertaking to ensure that the regular supervisory report ("RSR") and the annual quantitative reporting templates are approved by the Board of Directors and that the quarterly quantitative templates are approved by the Board of Directors or by persons who effectively run the undertaking, prior to submission to the MFSA. As a consequence, it is being proposed to amend paragraph 8.6.2(a) of Chapter 8 of the Insurance Rules to insert the requirement that the information referred to in this paragraph is to be accompanied by a declaration which is to be submitted to the MFSA. This declaration will also be required for the annual and quarterly national specific templates, however not for the solvency and financial condition report ("SFCR") and own risk and solvency assessment supervisory report ("ORSA"). Therefore, the MFSA is proposing to add a new Annex IV to Chapter 8 of the Insurance Rules setting out the form and content of the declaration in relation to quarterly reporting or annual reporting, as applicable.
- 3.1.2 Paragraph 6.4.7(c) of Chapter 6 of the Insurance Rules provides that an authorised undertaking shall inform the competent authority of the results of each ORSA as part of the information reported under article 32 of the Act and paragraphs 8.6.1 to 8.6.6 and 8.6.11 to 8.6.18 of Chapter 8 of the Insurance Rules. Therefore, it is proposed to amend paragraphs 8.6.2, 8.6.7 and 8.6.8 of Chapter 8 of the Insurance Rules to make

specific reference to the own-risk and solvency assessment supervisory report (“ORSA”).

3.1.3 Paragraph 8.6.17 of Chapter 8 of the Insurance Rules is being amended to clarify that the reporting by an authorised undertaking set up as a protected cell company in relation to each material core or cell and the remaining part separately, is applicable only to the information to be provided under paragraph 8.6.2(a)(i).

3.1.4 Paragraph 8.7.3(e) of Chapter 8 of the Insurance Rules relating to the contents of the report on solvency and financial condition (SFCR), is being amended to include a reference to the option, set out in Article 304 of the Solvency II Directive, used for the calculation of the Solvency Capital Requirement in the description of the capital management of the undertaking. This option is referred to in paragraphs 5.5.42 to 5.5.45 of Chapter 5 of the Insurance Rules.

3.2 *Amendments to Chapter 9: Freedom of Establishment and Freedom to provide Services by a European Insurance Undertaking and a European Reinsurance Undertaking*

3.2.2 It is proposed to introduce a new paragraph 9.14.2(a) to require a European insurance undertaking to provide the MFSA with the name and address of the claims representative appointed in Malta in terms of Article 21 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, in accordance with Article 148(2)(a) of the Solvency II Directive.

3.2.3 In Annex I on Information for Policyholders, it is proposed to amend paragraph 1.3 to align it with the requirements contained in Section 12.2 of Chapter 12 and Article 185(3) of the Solvency II Directive, to clarify that the disclosure requirements found in paragraphs 1.4 to 1.6 of the Annex apply also to linked long term contracts of insurance.

3.3 *Amendments to Chapter 12: Conduct of Business Rules*

3.3.1 It is proposed that paragraphs 12.2.16 to 12.2.18 of Chapter 12 of the Insurance Rules relating to additional information in the case of general insurance business under the right of establishment or the freedom to provide services are transposed to Chapter 10 relating to freedom of establishment and freedom to provide services by a Maltese

insurance undertaking and a Maltese reinsurance undertaking, since the disclosure requirements found in Chapter 12 apply to contracts entered into by an insurance undertaking covering risks situated in Malta or commitments where Malta is the country of commitment.

3.4 *Amendments to Chapter 10: Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking*

- 3.4.1 Further to the explanations referred to in paragraph 3.3.1, the additional information to be submitted by a Maltese Insurance undertaking in the case of general insurance business under the freedom of establishment or the freedom to provide services will be transposed in a new Section 10.3 of Chapter 10 of the Insurance Rules instead of Chapter 12.
- 3.4.2 Where the commitment covered by a Maltese insurance undertaking is a commitment where Malta is not the country of commitment and where the risk covered by a Maltese insurance undertaking is situated in a Member State or EEA State other than Malta, such undertaking is required to comply with the information requirements found in Articles 183 and 185 of the Solvency II Directive and the applicable information requirements laid down in the Member State or EEA State of the commitment or the Member State or EEA State in which the risk is situated, implementing the said Articles.

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