

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION DOCUMENT

CONSULTATION ON ANCILLARY INSURANCE INTERMEDIARIES IN TERMS OF THE INSURANCE DISTRIBUTION DIRECTIVE

[MFSA REF: 06-2018]

8th May 2018

Closing Date: 8th June 2018

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 Following the Consultation Document issued by the MFSA on the 3rd July 2017, relating to the proposed amendments to the Insurance Intermediaries Act (Cap.487) (to be renamed Insurance Distribution Act) and the Insurance Business Act (Cap.403), and the Consultation Document issued by the MFSA on the 16th March 2018, relating to the proposed new Chapters of the Insurance Distribution Rules, the draft Chapter on Knowledge and Ability and the draft Chapter on Continuous Professional Development, as part of the transposition exercise of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), the MFSA is issuing for consultation a Chapter on Ancillary Insurance Intermediaries which sets out the regime on ancillary insurance intermediaries as proposed by the MFSA, which will form part of a Single Rulebook containing all the Insurance Distribution Rules to be issued under the Insurance Distribution Act (“IDA”).
- 1.2 The MFSA would like to point out that A BILL entitled *AN ACT to amend various financial services laws, to transpose Directive (EU) 2016/97 ("Insurance Distribution Directive"), and to provide for matters ancillary or incidental thereto* (Bill Number 38 of 2018) was published in the Government Gazette of Malta, No. 19,979 on the 17th April 2018.
- 1.3 Any comments and feedback in relation to the attached draft Insurance Distribution Rule are to be addressed to the Insurance and Pensions Supervision Unit and submitted in writing on idd@mfsa.com.mt, by not later than **Friday 8th June 2018**.

2. The proposed Chapter on Ancillary Insurance Intermediaries

- 2.1 This proposed Chapter lays down the Insurance Distribution Rules to be complied with by a person desirous to carry out insurance distribution activities on an ancillary basis and on a continuous basis, an ancillary insurance intermediary carrying out insurance distribution activities on an ancillary basis.
- 2.2 Prior to seeking appointment and registration in the Ancillary Insurance Intermediaries Company Register of an authorised undertaking or an insurance broker, an ancillary insurance intermediary is required to successfully complete an ancillary insurance intermediary course referred to in paragraph 1.5.1 of the Chapter on Knowledge and Ability, and fulfil the knowledge and ability requirements in accordance with Part B of the Chapter on Knowledge and Ability. The said Chapter provides that, as a minimum, such intermediary is required to know the terms and conditions of the policies it distributes and how a policyholder is to make a claim and file a complaint.
- 2.3 In terms of article 43E of the proposed Insurance Distribution Act, an ancillary insurance intermediary may be appointed and registered in the Ancillary Insurance Intermediaries Company Register of an authorised undertaking (authorised insurance undertaking or insurance agent) or an insurance broker as determined by means of Insurance Distribution Rules made for the purposes of the said article. Therefore, the appointment of an ancillary insurance intermediary is subject to the conditions set out in paragraphs 1.5.4 to 1.5.12 of the proposed Chapter.
- 2.4 Section 1.5 of the Chapter proposes that an ancillary insurance intermediary may be appointed and registered in the Ancillary Insurance Intermediaries Company Register of not more than two authorised undertakings carrying on general business, and not more than one authorised undertaking carrying on long term insurance business. The MFSA would like to point out that where an ancillary insurance intermediary is appointed and registered in the Ancillary Insurance Intermediaries Company Register of two authorised undertakings carrying on general business, where the appointment relates to any class, or any group of classes of general business of the same kind, if the insurance products to be distributed in terms of such class or group of classes relate to products which are in competition, the ancillary insurance intermediary is to, in respect of such insurance products, seek and obtain appointment and registration to carry out ancillary insurance intermediaries activities only in the Ancillary Insurance Intermediaries Company Register of one of the undertakings concerned.
- 2.5 An Appendix to this new proposed Chapter lists the class or classes of long term business and the class or group of classes of general business which are not subject to ancillary insurance intermediary activities.

- 2.6 The proposed Chapter provides that where an ancillary insurance intermediary is appointed and registered in the Ancillary Insurance Intermediaries Company Register of an insurance broker, such ancillary insurance intermediary may obtain appointment and registration in the Ancillary Insurance Intermediaries Company Register of one insurance broker in relation to general business and in respect of only one insurance product only. The said Chapter also clarifies that it is the insurance broker which has appointed such ancillary insurance intermediary that is to carry out a fair analysis of the market on the insurance product to be distributed by the ancillary insurance intermediary. It is to be emphasised that the fair analysis cannot at any point in time be conducted by the ancillary insurance intermediary.
- 2.7 The new Chapter also proposes that an ancillary insurance intermediary appointed and registered in the Ancillary Insurance Intermediaries Company Register and enrolled in the Ancillary Insurance Intermediaries List of an authorised undertaking or an insurance broker may be granted a computer link arrangement.
- 2.8 Finally, Section 1.7 of the draft Chapter proposes that an ancillary insurance intermediary who has been appointed and registered in the Ancillary Insurance Intermediaries Company Register of an authorised undertaking or an insurance broker shall be required to undertake a minimum of seven hours of training annually in order to update such intermediary's knowledge and ability requirements so as to be able to protect the interests of the clients.

3. Other Insurance Rules

- 3.1 The MFSA is carrying out amendments to the current insurance intermediaries rules primarily to bring them in line with the terminology of the Insurance Distribution Act. As such, no substantive amendments will be carried out and the intention of the MFSA is to retain and update, parts or all, of the following insurance intermediaries rules:

Insurance Intermediaries Rule 1 of 2007 – Own Funds of Persons Enrolled in the Agents List, Managers List or Brokers List Carrying out Insurance Intermediaries Activities;

Insurance Intermediaries Rule 2 of 2007 - Criteria of Fitness and Properness;

Insurance Intermediaries Rule 6 of 2007 – Criteria of Sound and Prudent Management;

Insurance Intermediaries Rule 8 of 2007 – Particulars of Individuals to be Entered in the Agents Register, Managers Register or Brokers Register;

Insurance Intermediaries Rule 9 of 2007 - Qualifications of Individuals Applying for Registration;

Insurance Intermediaries Rule 10 of 2007 - Particulars of Intermediaries to be entered in the Agents List, Managers List Brokers List or Tied Insurance Intermediaries List;

Insurance Intermediaries Rule 11 of 2007 - Commercial Business Which May be Carried out by Enrolled Persons;

Insurance Intermediaries Rule 12 of 2007 - Scheme of Operations Relating to Enrolment in the Agents List, Managers List or Brokers List and the Application for Enrolment;

Insurance Intermediaries Rule 13 of 2007 - Monies Held in a Fiduciary Capacity;

Insurance Intermediaries Rule 14 of 2007 - Fidelity Bonds;

Insurance Intermediaries Rule 15 of 2007 - Business of Insurance Intermediaries Statements;

Insurance Intermediaries Rule 16 of 2007 - Particulars of Persons to be Entered in the Tied Insurance Intermediaries Company Registers;

Insurance Intermediaries Rule 17 of 2007 - Application for Persons to be Entered in the Tied Insurance Intermediaries List;

Insurance Intermediaries Rule 18 of 2007 - Business of Insurance Not Subject to Tied Insurance Intermediaries Activities;

Insurance Intermediaries Rule 20 of 2007 - Issuing and Registration of Underwriting Agreements;

Insurance Intermediaries Rule 21 of 2007 - Personal Questionnaire to be submitted by specific individuals;

Insurance Intermediaries Rule 22 of 2007 - Computer Link Arrangements;

Insurance Intermediaries Rule 24 of 2009 – Introducers.

The above rules will be transposed in the different Chapters of the Insurance Distribution Rulebook. In so far as *Insurance Intermediaries Rule 3 of 2007 - Disclosure of Information for Clients*, *Insurance Intermediaries Rule 4 of 2007 - Code of Conduct for*

Insurance Intermediaries, Insurance Intermediaries Rule 5 of 2008 - Insurance Intermediaries Advertisement and Other Promotional Activities, Insurance Intermediaries Rule 7 of 2007 - Code of Insurance Selling Practice, Insurance Intermediaries Rule 19 of 2007 - Persons Qualified to Make Use of the word "Insurance", Insurance Intermediaries Rule 23 of 2007 - Carrying out Insurance Intermediaries Activities through the Internet and Insurance Intermediaries Rule 25 of 2007 - Complaints-Handling by Insurance Intermediaries are concerned, these Insurance Intermediaries Rules will be carved out from the Insurance Distribution Rulebook, since such Rules have already been incorporated in the Conduct of Business Rulebook.

Communications Unit
Malta Financial Services Authority
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