

# MFSA

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MALTA FINANCIAL SERVICES AUTHORITY

## CONSULTATION DOCUMENT

### CONSULTATION ON KNOWLEDGE AND ABILITY REQUIREMENTS AND CONTINUOUS PROFESSIONAL DEVELOPMENT IN TERMS OF THE INSURANCE DISTRIBUTION DIRECTIVE

[MFSA REF: 03-2018]

**16<sup>th</sup> March 2018**

**Closing Date: Friday 13<sup>th</sup> April 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 Further to the Consultation Document issued by the MFSA on the 3<sup>rd</sup> July 2017, relating to the proposed amendments to the Insurance Intermediaries Act (Cap.487) and the Insurance Business Act (Cap.403), for the purposes of transposing the Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), (the “*Insurance Distribution Directive*” or “*IDD*”), the MFSA is issuing for consultation two Chapters 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 purpose of these proposed new Chapters of the Insurance Distribution Rules is mainly to transpose Article 10 of the IDD and Annex I (Minimum Professional Knowledge and Competence Requirements) of the IDD. The proposed Chapters being issued for consultation are the following:
  - (a) the draft Chapter on Knowledge and Ability;
  - (b) the draft Chapter on Continuous Professional Development.
- 1.3 Insurance undertakings and insurance agents are expected to bring the contents of this Consultation paper to the attention of the tied insurance intermediaries acting on their behalf.
- 1.4 Any comments and feedback in relation to the attached draft Insurance Distribution Rules are to be addressed to the Insurance and Pensions Supervision Unit and submitted in writing on [idd@mfsa.com.mt](mailto:idd@mfsa.com.mt), by not later than **Friday 13<sup>th</sup> April 2018**.

## **2. The proposed Chapter on Knowledge and Ability**

- 2.1 In terms of Article 10 on professional and organisational requirements of Chapter IV of the IDD, insurance and reinsurance undertakings and persons registered or enrolled under the Act (Cap. 487), carrying out insurance and reinsurance distribution activities, as applicable, are required to possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately. Employees of insurance and reinsurance undertakings and of persons enrolled under the Act who are directly involved in insurance or reinsurance distribution are also required to possess appropriate knowledge and ability.
- 2.2 The scope of the IDD which is a recast Directive and which will repeal the Insurance Mediation Directive (Directive 2002/92/EC), now extends also to insurance undertakings and reinsurance undertakings directly selling insurance products. Therefore, in order for authorised insurance undertakings and authorised reinsurance undertakings to satisfy the requirements of Article 10 of the IDD, the MFSA requires that such undertakings identify a member of the Board of Directors to be responsible for the oversight of the insurance or reinsurance distribution activities carried out by the undertaking concerned, as well as a person within the management structure of such undertaking to be responsible for the distribution in respect of insurance or reinsurance products.
- 2.3 The Chapter on knowledge and ability is divided in two parts. Part A deals with the criteria for approval or registration and enrolment which apply to persons carrying out insurance distribution activities and reinsurance distribution activities, as specified therein. Part B of this Chapter will transpose the knowledge and ability requirements referred to in Article 10 and Annex I to the IDD.

### *Part A of the proposed Chapter*

- 2.4 Part A of the proposed Chapter applies to the persons listed in paragraph 1.2.1 thereof. Insurance and reinsurance undertakings are required to comply with the requirements indicated in Section 1.3. In so far as persons desirous to be registered in the Agents Register, the Managers Register and the Brokers Register in terms of Part III of the Act, these are required to fulfil the qualifications indicated in Section 1.4 of Part A of the said Chapter. This Section reflects the requirements currently found in Insurance Intermediaries Rule 9 of 2007 on Qualifications of Individuals applying for Registration.
- 2.5 A tied insurance intermediary proposed to be appointed by an authorised insurance undertaking or an insurance agent to act on its behalf shall be required to fulfil the qualifications indicated in Section 1.5 of the Chapter, which reflects the requirements currently found in Insurance Intermediaries Rule 17 of 2007.

- 2.6 Section 1.5 of Part A of the said Chapter also contains new requirements for an ancillary insurance intermediary. In terms of this Section a person proposed to be enrolled in the new Ancillary Insurance Distribution List by an authorised insurance undertaking, an insurance agent or an insurance broker will be required to complete a course recognised by the competent authority for ancillary insurance intermediaries, organised by a local or foreign institution or by an authorised insurance undertaking.

Part B of the proposed Chapter

- 2.7 Part B of this Chapter will transpose the knowledge and ability requirements referred to in Article 10 and Annex I to the IDD. The Chapter will apply to authorised insurance and reinsurance undertakings carrying out insurance distribution activities and reinsurance distribution activities and their employees who are directly involved in the carrying out of distribution activities, to persons desirous of applying for enrolment in the Agents List, the Managers List or Brokers List and their employees who are directly involved in the carrying out of insurance distribution activities and reinsurance distribution activities, as well as to tied insurance intermediaries and ancillary insurance intermediaries. In the case of tied insurance intermediaries and ancillary insurance intermediaries, which are not individuals, the requirements contained in this Part will apply to the individuals identified in terms of articles 37 and 43E, respectively.
- 2.8 The knowledge and ability requirements laid down in Part B of the proposed Chapter will apply to “relevant persons” and “relevant employees” as specified in paragraph 1.6.1 thereof, taking into account the nature of the products sold, the type of distributor, the role performed and the distribution activities being carried out. The MFSA would like to point out that the Chapter applies to relevant persons and relevant employees involved in the sales and the underwriting process. The Chapter will not apply to relevant persons and relevant employees who are involved solely in the processing of claims.
- 2.9 Prior to the designation of the relevant persons specified in paragraphs 1.6.1 (a) to (c), an authorised insurance undertaking or an authorised reinsurance undertaking and a person enrolled under article 13 of the Act, are required to forward to the competent authority all the information necessary in order for the competent authority to ensure that such relevant person possesses the requisite knowledge and ability requirements.
- 2.10 It is to be noted that, before a relevant employee commences to carry out insurance distribution activities or reinsurance distribution activities, a relevant person shall assesses the knowledge and ability requirements indicated in Sections 1.9, 1.10 and 1.11 of Part B of the proposed Chapter, and identify which requirements such relevant employee ought to possess in order to complete its tasks and perform its duties

adequately. A relevant person specified in paragraphs 1.6.1(b) and (c) of Part B of the proposed Chapter shall be responsible for the compliance by the relevant employees specified in paragraph 1.6.1 (d) with the knowledge and ability requirements laid down in this Chapter.

- 2.11 Sections 1.9, 1.10 and 1.11 of the proposed Chapter lay down minimum knowledge and ability requirements to be complied with by the relevant persons and relevant employees. The said Sections transpose the minimum professional knowledge and ability requirements identified in Annex I to the IDD. In order to retain the classification of minimum requirements as outlined in the said Annex I, the requirements laid down in the said Sections are proposed to be divided in three sections, that is, general business (Section 1.9), long term business (Section 1.10) and insurance based investment products (Section 1.11).
- 2.12 Sections 1.9, 1.10 and 1.11 of Part B of the Chapter are then further sub-divided in six main criteria; *Legal Aspects, The Insurance Market, Ethics and Professional Conduct, Assessment of client needs, Information Disclosure and Financial Competency*. The knowledge and ability requirements found in this Chapter will be complied with by the relevant person and the relevant employee depending on the nature of the products sold, the type of distributor, the role such persons perform and the distribution activities carried out.
- 2.13 Section 1.12 of Part B of the proposed Chapter contains provisions in relation to the assessment of knowledge and ability of tied insurance intermediaries and ancillary insurance intermediaries. An authorised insurance undertaking or an authorised agent desirous of appointing a tied insurance intermediary to act on its behalf is required to ensure that such tied insurance intermediary has the appropriate knowledge and ability requirements taking into account the nature of the products sold and the role or activity the tied insurance intermediary carries out. Moreover, an authorised insurance undertaking, an insurance agent and an insurance broker desirous of appointing an ancillary insurance intermediary to act on its behalf is required to ensure that such ancillary insurance intermediary knows the terms and conditions of the policies it distributes and knows how a policyholder is to make a claim and file a complaint.
- 2.14 Finally, Section 1.13 of Part B of the proposed Chapter, which transposes Article 10(8) of the IDD, requires an authorised insurance undertakings and an authorised reinsurance undertakings carrying on insurance distribution activities and reinsurance distribution activities, and persons enrolled under article 13 of the Act, to ensure that their internal policies and procedures are approved, implemented and regularly reviewed, so as to take into account the knowledge and ability requirements provided for in this Part of the Chapter.

- 2.15 The Section also contains record keeping requirements in order to ensure that an authorised insurance undertaking, an authorised reinsurance undertaking and a person enrolled under article 13 of the Act will be required to complete reports on knowledge and ability and on continuous professional training, as specified in paragraph 1.13.2.
- 2.16 Article 40 of the IDD requires intermediaries already registered under Directive 2002/92/EC to comply with the relevant provisions of national law implementing Article 10(1) of the Insurance Distribution Directive by 23 February 2019. Therefore, the MFSA intends to allow a transitional period, so that persons currently enrolled under the Insurance Intermediaries Act will be required to comply with the requirements of the proposed Chapter on Knowledge and Ability by the 23<sup>rd</sup> February 2019.

### **3. The proposed Chapter on Continuous Professional Training (“CPD”).**

- 3.1 The proposed Chapter on Continuous Professional Training transposes the continuous professional training or development requirements required in terms of Article 10(2) of the IDD, in particular to ensure that the professional competence of persons involved in distribution activities corresponds to the requirements concerning the products sold. The requirements of the proposed Chapter will apply to the persons specified in paragraph 1.2.1 thereof. The MFSA would like to point out that the Chapter applies to relevant persons and relevant employees involved in the sales and the underwriting process. The Chapter will not apply to relevant persons and relevant employees who are involved solely in the processing of claims.
- 3.2 Article 10(2) of the IDD requires compliance with continuing professional training and development requirements in order to maintain an adequate level of performance corresponding to the role performed and the relevant market. The IDD also requires a minimum of fifteen (15) hours of professional training per year taking into account the nature of the products sold, the type of distributor, the role performed and the activity being carried out. As specified in paragraph 1.4.1 of the proposed Chapter, the MFSA is minded to adopt the minimum requirement of fifteen (15) hours referred to above. Furthermore, the MFSA is also minded to increase the amount of CPD hours over the next three years.
- 3.3 The MFSA is proposing that Continuous Professional Development training may take the form of structured CPD and unstructured CPD, which shall be made up of twelve (12) hours of structured CPD and three (3) hours of unstructured CPD, respectively. It is to be noted that the criteria of relevance, measurability and verifiability are to be satisfied in order for CPD training to qualify as structured CPD.

- 3.4 The study activities identified in the proposed Chapter which may qualify as *structured CPD training* are courses, conferences, seminars, workshops, organised technical discussion meetings, service on technical committees or panels, web-based learning activities, lecture preparation and lecturing, and relevant insurance courses. On the other hand, the study activities which may qualify as *unstructured CPD training* are individual home study (such as the general viewing of videos, television programmes, audio recordings or any alternative form of learning which is not measurable or verifiable, but which is relevant to a relevant person or a relevant employee's technical, professional and interpersonal development), private reading relating to technical, professional, managerial and ethical issues in the subject matters indicated in Sections 1.9 to 1.11 of the proposed Chapter on Knowledge and Ability, service on technical committees or panels (which do not fulfil the requirements specified in paragraph 1.5.6 of the proposed Chapter) and web-based learning activities which do not fulfil the requirements in paragraph 1.5.8 of the proposed Chapter.
- 3.5 The MFSA would like to point out that the proposed Chapter contains certain general requirements which are to be complied with when a relevant person or a relevant employee undertake training towards the minimum fifteen hours of CPD training required under the proposed Chapter.
- 3.6 The Chapter also contains requirements as to the appropriate records which are required to be maintained with respect to CPD training. In particular, paragraph 1.6.4 of the proposed Chapter provides that once the relevant person specified in paragraph 1.2(a) to (c) ensures that it and its relevant employees fulfil the requirements in paragraph 1.6.1 and 1.6.3, it is required to forward to the competent authority, on an annual basis, a written declaration that the relevant person and its relevant employees have successfully completed the relevant professional training and development established in this proposed Chapter.

#### **4. The Way Forward**

- 4.1 As part of the transposition exercise of the IDD, amendments are being carried out to the current insurance intermediaries rules and new rules will be issued under the proposed Insurance Distribution Act. A Consultation with respect to other proposed Insurance Distribution Rules will be issued shortly.
- 4.2 In so far as the persons referred to in sub-paragraphs (a) and (b) of paragraph 1.6.1 of the proposed Chapter on knowledge and ability are concerned, the MFSA will require the identification and notification of the persons who are, or will be, performing the relevant role. In such a case, the MFSA will require the submission of a Personal Questionnaire (unless already submitted to the competent authority) and a Competency Form, which will be uploaded on the MFSA Website.

**Communications Unit**  
**Malta Financial Services Authority**  
**Date: 16<sup>th</sup> March 2018**  
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