

CONSULTATION PROCEDURE

CONSULTATION ON THE PROPOSED AMENDMENTS TO THE INSURANCE BUSINESS ACT AND INSURANCE INTERMEDIARIES ACT

[MFSA REF.: 11 /2014]

22nd December 2014

Closing Date: **23rd January 2015**

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Introduction

This Consultation Document highlights the main changes to be carried out to the Insurance Business Act (Cap.403) as a consequence of transposing the provisions of the Solvency II Directive. Following the transposition exercise, it is proposed to carry out amendments to the Insurance Intermediaries Act (Cap.487), in order to retain consistency between the two legislations.

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of the following proposals:

1. A draft Bill amending the Insurance Business Act;
2. A Consolidated draft version of the Insurance Business Act reflecting the changes being proposed; and
3. A Draft Bill amending the Insurance Intermediaries Act;

Accordingly, these proposals are not binding and are subject to changes and revisions. It is important that persons involved in the consultation bear these considerations in mind.

The proposed amendments to the Insurance Business Act (Cap.403) and the Insurance Intermediaries Act (Cap.487) are being issued for Consultation together with this Consultation document. Licence holders are kindly asked to submit any comments that they may have in relation to the attached draft legislations, in writing, by not later than **Friday 23rd January 2015**. These comments are to be sent in writing to the Insurance and Pensions Supervision Unit on ipsu@mfsa.com.mt.

Copies of this Consultation Document are available to download from the MFSA Website.

1. Purpose

The MFSA is currently reviewing the provisions of the Insurance Business Act (“IBA”) (Cap.403) and the Insurance Intermediaries Act (“IIA”) (Cap.487). Primarily, it is proposed to amend the IBA to align it with the requirements of 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 (recast) (the “Solvency II Directive”) and Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (the “Omnibus II Directive”).

The Solvency II Directive introduces a new regulatory framework for insurance and reinsurance undertakings, and its main objective is to provide for adequate protection of policy holders and beneficiaries. In fact the Solvency II Directive lays down a solvency regime which is expected to result in even better protection for policy holders. This includes rules relating to the valuation of assets and liabilities, technical provisions, own funds, the Solvency Capital Requirement, the Minimum Capital Requirement and investment rules. It also provides rules for an effective system of governance to ensure adequate management of insurance or reinsurance undertakings. Moreover, the Solvency II Directive includes a new Chapter on the supervision of insurance and reinsurance undertakings in a group, which enables supervisory authorities to form a more soundly based judgment on their financial situation.

The draft IBA also includes further amendments carried out to align the provisions of the IBA with provisions found in other financial services legislation. Following the amendments to the IBA, it is also being proposed to carry out consequential amendments to the IIA, in order to align some definitions and provisions with the proposed amendments to the IBA.

2. The Salient Amendments to the Insurance Business Act (Cap. 403)

2.1 *Article 2: The MFSA is proposing to amend or introduce definitions in the said article, some of which are highlighted below:*

Definitions of “*authorised insurance undertaking*” and “*authorised reinsurance undertaking*”: it is being proposed to include two separate new definitions to distinguish between undertakings carrying on direct or mixed insurance business (direct and reinsurance) and undertakings carrying out business restricted to reinsurance. This reflects the approach adopted in the Solvency II Directive.

Definition of “*business of insurance*”: it is being proposed to amend paragraph (a) of this definition to reflect the requirements found in Article 2(3)(b) of the Solvency II Directive.

Definition of “*close links*”: even though the concept of “close links” is already envisaged in the IBA, no interpretation of this term is currently included in the Act. Therefore, the MFSA is proposing to introduce the definition of “close links” in line with Article 13(17) of the Solvency II Directive. As a consequence, it is proposed to amend the current definition of “control” and add a new definition of “participation”, which terms are referred to in this new proposed definition.

Definition of “*document*” or “*documentation*”: it is being proposed to include a new definition of “document” or “documentation”, same as is found in article 2(1) of the Investment Services Act (Cap.370), to clarify the manner and form in which information may be required to be submitted to the MFSA.

Definition of “*establishment*”: it is being proposed to amend the current definition of “establishment” found in the IBA to bring it in line with the definition found in Article 13(12) of the Solvency II Directive.

Definition of “*European insurance undertaking*”: it is being proposed to amend the current definition to include a specific reference to Lloyd’s, since the term *insurance undertaking* does not reflect the fact that Lloyd’s underwriters which carry on business of insurance in Malta through freedom of establishment and freedom of services are not insurance undertakings.

Definition “*European regulatory authority*”: it is proposed to include a new definition of “European regulatory authority” to make reference to member state authorities, as defined in Article 13(10) of the Solvency II Directive, that is, European authorities empowered by law to supervise insurance or reinsurance undertakings. This is to be distinguished from the definitions of “competent authority” and “overseas regulatory authority”.

Definition of “*European reinsurance undertaking*”: it is proposed to introduce a new definition of “European reinsurance undertaking” for the purposes of the proposed amendments to article 6 of the IBA, to clarify that the restriction contained in the said article which states that persons shall not be permitted to carry on business of insurance

in Malta unless authorised by the MFSA, does not apply to European insurance undertakings as well as European reinsurance undertakings.

Definition of “*group*”: it is proposed to include a new definition of “group” in line with the definition found in Article 212(1)(c) of the Solvency II Directive, for the purposes of the new Chapter on Group Supervision to be introduced in the IBA.

Definition of “*Malta’s international commitments*”: it is proposed to amend the definition of “Malta’s international commitments” in line with the definition found in article 4(4) of the Malta Financial Services Authority Act (Cap. 330).

Definition of “*outsourcing*”: it is proposed to include a new definition of “outsourcing” in line with the definition found in Article 13(28) of the Solvency II Directive.

Definition of “*regulated market*”: it is proposed to include a new definition of regulated market in line with the definition found in Article 13(22) of the Solvency II Directive.

Definitions of “*third country insurance undertaking*” and “*third country reinsurance undertaking*”: it is being proposed to include two separate new definitions so as to distinguish between third country insurance or reinsurance undertakings with their head office outside the European Union and authorised insurance or reinsurance undertakings with their head office in Malta. These definitions replace the current definition of “company whose head office is in a country outside Malta”.

2.2 Article 7- Authorisation by the MFSA

It is proposed to include four new subarticles to transpose specific provisions of the Solvency II Directive. A new subarticle (3) is being added to clarify that the undertakings whose head office is in Malta, authorised under article 7, are entitled to carry on business of insurance in a Member State or EEA State subject to a notification to the MFSA. This subarticle transposes article 15(1) of the Solvency II Directive.

It is proposed to add a new subarticle (4) to provide further clarity that where an insurance undertaking intends to extend its business to a class or to classes of business other than those classes for which it is already authorised, it requires specific further authorisation from the MFSA. This transposes article 14(2)(b) of the Solvency II Directive.

It is also being proposed to include two other new subarticles, which require the MFSA that:

- (i) when examining an application for an authorisation, it is not to consider the economic needs of the market as a criterion;

- (ii) it is to notify EIOPA of every authorisation issued in terms of this article.

These transpose Articles 22 and 25a of the Solvency II Directive, respectively.

2.3 Article 8- Authorisation Requirements

It is proposed to amend article 8(1)(b)(ii) to clarify that, even though the objects of authorised reinsurance undertakings are to be limited to business of insurance and related operations, this requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC. An additional new paragraph in subarticle (1) is being added to transpose the requirement in Article 24(1) of the Solvency II Directive so that an undertaking is required to disclose the identities of the shareholders, direct or indirect, whether natural or legal persons who will have qualifying holdings in that undertaking and of the amounts of those holdings. This provision is currently catered for in Insurance Rule 6.

Furthermore, it is proposed to delete the current paragraph (f) and add four new paragraphs requiring an undertaking to provide evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital requirement and the Solvency Capital Requirement, and to comply with the system of governance.

Moreover, a new subarticle (2) is added and made applicable to an undertaking seeking authorisation to extend its business of insurance to other classes. In addition, subarticles (2) and (3) of article 8 of the current IBA have been renumbered as subarticles (3) and (4), respectively. These provisions transpose Article 19 of the Solvency II Directive, relating to close links.

2.4 Article 9- Combination of Long Term Business and General Business

The MFSA is proposing to amend article 9 of the IBA, which is applicable to undertakings with head office in Malta authorised to carry on both long term business and general business (“composites”), to bring it in line with Article 73(2) of the Solvency II Directive. Therefore article 9 of the IBA is being amended so that:

- (a) an insurance undertaking authorised to carry on long term business may be granted an authorisation to carry on general business for the risks listed in classes 1 and 2 of Part I of the Third Schedule; or

(b) an insurance undertaking authorised solely to carry on general business of insurance for the risks listed in classes 1 and 2 of Part I of the Third Schedule may be granted authorisation to carry on long term business.

As a consequence, it is proposed to include two new subparagraphs in article 9, so that undertakings carrying on business as stated in paragraphs (a) and (b) above will be required to comply with certain financial obligations, as stated in Article 18(3) and (4) of the Solvency II Directive.

2.5 Article 11- Applicants with head office outside Malta

Article 11, applicable to applicants with head office outside Malta, is being amended to reflect the provisions of Article 162 of the Solvency II Directive. The conditions of authorisation listed in Article 162 of the Solvency II Directive have been transposed in article 11(1) of the IBA. It is important to highlight that by virtue of the proposed amendments, third country insurance or reinsurance undertakings are to have in Malta at all times a general representative and a branch in Malta. The Solvency II Directive does not permit that third country undertakings operate via insurance agents enrolled under the IIA. For this reason, it is being proposed to include a definition of “branch” as found in Article 162(3) of the Solvency II Directive.

Moreover, this article lays down the technical provisions requirements, the Solvency Capital requirement and the Minimum Capital requirement which are to be maintained by such undertakings.

2.6 Articles 14-18G (Title I: Financial Requirements) and articles 18H & 18I (Title II: Systems of Governance)

In view of the fact that Part IV (Conditions for carrying on business of insurance) of the current IBA transpose Solvency I requirements, it is being proposed to replace the provisions contained therein, with the solvency requirements found under the Solvency II Directive. It is thus being proposed to divide Part IV of the Act into two: “Title I Financial Requirements” (new articles 14-18G) and “Title II: Systems of Governance” (new articles 18H and 18I).

Title I will lay down the financial requirements requirements to be complied with by authorised insurance or reinsurance undertakings. These include provisions relating to Own Funds, Solvency Capital Requirement and non-compliance with the Solvency Capital Requirement, Minimum Capital Requirement and non-compliance with the Minimum Capital Requirement, valuation of assets and liabilities and technical provisions. This Title will also include the particulars to be provided in the recovery plan and finance scheme to be submitted to the MFSA in case of non-compliance with the Solvency Capital Requirement and the Minimum Capital Requirement; the requirement for an authorised insurance or reinsurance undertaking to have procedures in place to

identify deteriorating financial conditions; and the requirement for an authorised insurance and reinsurance undertaking with its head office in Malta to disclose publicly, on an annual basis, a report on the undertaking's solvency and financial condition.

Under "Title II Systems of Governance", it is proposed to add a new article outlining the responsibility of the Board of Directors, together with another new article requiring authorised insurance and reinsurance undertakings to have in place an effective system of governance, which provides for sound and prudent management of the business of the undertaking. These new articles transpose the provisions found in Sections 1 and 2, Chapter IV of Title I of the Solvency II Directive.

2.7 Article 20- Drawing up and publication of audited financial statements

The MFSA is proposing to amend the current article 20 so that undertakings authorised under the IBA, shall be required to forward to the MFSA their audited financial statements within four months, instead of six months, from the closing of its financial year. It is also proposed to delete the requirement for publication in at least two local daily newspapers of such statements in an abridged form. However, a new subarticle is being added to provide, that the manner in which audited financial statements will be drawn up and published will be specified by means of an Insurance Rule to be issued under the IBA.

2.8 Articles 22 and 23- Appointment of Actuary by an undertaking carrying on Long Term Business

Article 48 of the Solvency II states that insurance and reinsurance undertakings, irrespective of whether they carry on general business or long term business, shall provide for an effective actuarial function. The current responsibilities of the approved actuary are covered under the role of the actuarial function under Solvency II. Since the Solvency II Directive is a maximum harmonisation Directive, it is being proposed to remove the legal requirement for every company authorised to carry on business of long term insurance under the IBA, to appoint an approved actuary. However, in the case of undertakings with head office in Malta carrying out long term with-profits business, the MFSA is proposing to retain the requirement to appoint an approved actuary.

2.9 Articles 25 and 26- Power of the MFSA to Suspend or Revoke an authorisation

It is proposed to transpose the current paragraph (a) of article 25, to a new paragraph (g) in article 26. Primarily, article 26 is being amended to reflect the provisions of Article 144 of the Solvency II Directive on withdrawal of authorisation. Under the current provisions of article 25 of the IBA, undertakings which do not commence to carry on business pursuant to the authorisation within twelve months of its issue, are

subject to an automatic revocation of the authorisation issued or held under the IBA. However, in line with Article 144 of the Solvency II Directive it is being proposed to remove this automatic revocation by shifting the current article 25(a) as a new paragraph (g) in article 26, so that when an authorised insurance or reinsurance undertaking does not commence business as aforesaid, the MFSA may, at any time, suspend or revoke an authorisation issued or held under the IBA.

In line with the Solvency II Directive, it is also proposed to add a new paragraph in article 26 whereby the MFSA may, at any time, suspend or revoke an authorisation if an authorised insurance or reinsurance undertaking fails to comply with the requirement of the Minimum Capital Requirement and the MFSA considers that the finance scheme submitted to it is manifestly inadequate; or if the undertaking concerned fails to comply with the approved scheme, within three months from the observation of non-compliance with the Minimum Capital Requirement.

2.10 Article 27- Notification of Suspension or Revocation of an authorisation

It is proposed to amend subarticle (2) of article 27 to increase the time-frame within which an undertaking may make representations to the MFSA, where the latter intends to suspend or revoke the authorisation. In terms of the proposed amendments and in line with other financial services legislation, such authorised insurance or reinsurance undertakings will have a period of not less than forty-eight hours and not more than 30 days from date of service, within which to make its representations, giving reasons why the authorisation should not be suspended or revoked.

2.11 Article 28- Power of the MFSA to Protect the Public Interest.

It is proposed to include a new paragraph (c), whereby in line with article 144(2) of the Solvency II Directive the MFSA may, where it is satisfied that sufficient serious circumstances exist, restrict the free disposal of the assets of the authorised insurance undertaking to safeguard the interests of the insured persons.

For consistency's sake, it is proposed to replace the current subarticle (4) which relates to the issuing of public statements or notices giving warnings or information about licence holders, with a new subarticle which renders applicable the provisions found in article 16(8) of the Malta Financial Services Authority Act (Cap.330), relating to any administrative or disciplinary sanction or measure, of whatever type, including reprimands or warnings, imposed or decided by the MFSA.

2.12 Article 30- Power of the MFSA to examine the affairs of authorised undertakings and Service Providers

In line with Article 38(2) of the Solvency II Directive, in order to ensure effective supervision of outsourced functions or activities, it is essential that the MFSA has access to all relevant data held by the outsourced service provider, regardless of whether the latter is a regulated or unregulated entity, as well as the right to conduct on-site inspections. It is thus being proposed to add a new subarticle (6) which provides that when an authorised insurance or reinsurance undertaking outsources a function or activity, to a service provider located in a Member State or EEA State other than Malta, the MFSA may conduct on-site inspections at the premises of the service provider or may delegate such on-site inspections to the European regulatory authority of the Member State or EEA State where such service provider is located.

It is also being proposed to insert a new subarticle (6) which provides that, where the information relating to an authorised insurance or reinsurance undertaking is in any language other than Maltese or English, the MFSA or any inspector appointed by it, may require that the information be submitted in either the English or Maltese language.

Moreover, it is proposed to add a new subarticle (11) through which Part VI (*Powers of Intervention*) and Part VII (*Supervision of Authorised Insurance or Reinsurance Undertakings*) of the IBA are rendered applicable also to the outsourced activities of such undertakings.

2.13 Article 31- Power of the MFSA to issue directives

Article 31A of the current IBA provides that the MFSA may, whenever it deems it necessary give, by notice in writing, such directives as it may deem appropriate in the circumstances. It is proposed to add a new subarticle (2), similar to provisions found in article 15(2) of the Investment Services Act (Cap.370), so that the MFSA may:

- (a) require anything to be done or be omitted to be done, or impose any prohibition, restriction or limitation, or any other requirement, including any requirement emanating from European Union legislation, and confer powers, with respect to any transaction or other act, or to any assets, or to any other thing whatsoever;
- (b) require that any officer of an undertaking having functions in relation to the holder of an authorisation be prohibited, temporarily or otherwise, suspended from carrying out activities licensable under the Act, or removed, or removed and replaced, by another person acceptable to the MFSA.

2.14 Article 31B- The Supervisory Review Process

It is proposed to add a new article 31B in the IBA, which transposes Article 36 of the Solvency II Directive, outlining the supervisory review process. This new article provides that the MFSA shall regularly review and evaluate the strategies, processes and reporting procedures which are established by authorised insurance or reinsurance undertakings, to ensure compliance with the IBA, regulations and Insurance Rules issued thereunder. Such review and evaluation will include the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks. The MFSA will, in particular, review and evaluate compliance with various requirements including technical provisions, capital requirements, investment rules, the quality and quantity of own funds and full or partial internal models, where such internal models are applicable.

The new proposed article will also provide that in the case of events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned, in addition to the calculation of the Solvency Capital Requirement, the MFSA, in line with Article 34(4) of the Solvency II Directive, may also require undertakings to carry out such tests, as may be determined, to assess the ability of the undertakings concerned to withstand such events or future changes.

2.15 Article 31C- Power of the MFSA to set a capital add-on

It is proposed to add a new article 31C which transposes Article 37 of the Solvency II Directive, dealing with capital add-on. Following the supervisory review process, the MFSA shall have the power to impose a capital add-on only under exceptional circumstances listed in the Solvency II Directive and this would need to be retained for as long as the circumstances under which it was imposed are not remedied.

2.16 Article 32- Information to be provided for supervisory purposes

It is proposed to replace the current article 32 relating to the submission of business statements, with a new article requiring authorised insurance or reinsurance undertakings to submit to the MFSA the information necessary for the purposes of supervision. The detail and the period within which such information is to be submitted will be provided in an Insurance Rule issued under this article, and will reflect the requirements found in Article 35 of the Solvency II Directive.

2.17 Article 32A-32E- Part VIIA Group Supervision

The MFSA is proposing to add a new Part VIIA on Group Supervision, 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

found in regulations or Insurance Rules to be issued under the IBA. Such measures shall enable the MFSA to form a more soundly based judgment on the financial situation of an insurance or reinsurance undertaking forming part of a group. The requirements found in this Part will ensure that insurance and reinsurance undertakings within a group, have sufficient own funds to cover their solvency capital requirements. The consolidated Solvency Capital Requirement for a group should also take into account the global diversification of risks that exist across all the insurance and reinsurance undertakings in the group, to adequately reflect the risk exposures of that group.

2.18 Article 36A- Transfer of portfolio to an authorised insurance or reinsurance undertaking

It is proposed to add a new article 36A relating to a transfer of portfolio by an undertaking situated in a country outside Malta to an insurance or reinsurance undertaking authorised under the IBA (“the transferee”). This new article provides that where a transfer of portfolio is to take place as aforesaid, the MFSA is to be notified of this transfer and such transfer shall only take place if the MFSA has signified its consent in writing.

2.19 Article 42- Dissolution and Winding up of an authorised undertaking with long term business

It is proposed to amend article 42 which currently prohibits an authorised undertaking whose head office is in Malta carrying on long-term business to winding up voluntarily. In terms of the proposed amendments such undertakings will now be permitted to wind up voluntarily with the consent of the MFSA. In this context, the undertaking and its directors will be required to notify the MFSA forthwith upon becoming aware of any measures to be taken to that effect.

2.20 Article 48A- Provisions relating to Lloyd’s

As already stated above, it is proposed to transpose the definition of Lloyd’s in article 2. The current article is being amended to clarify that Lloyd’s carries on business of insurance in Malta by way of a European Right (freedom of establishment and freedom of services).

Moreover, it is also being proposed to add a new subarticle (7) to clarify that any judicial act (other than an application for the issue of any precautionary or executive warrant), filed by or against Lloyd’s underwriters in connection with a policy underwritten by them, may be served upon the Lloyd’s general representative in Malta at its address in Malta, as listed in the register of the Registrar of Companies.

2.21 Article 48C- Policy conditions and scales of premium.

In line with Articles 21 and 181 of the Solvency II Directive, dealing with policy conditions and scales of premiums, the MFSA proposes to add a new article 48C to reflect these provisions. Primarily these provisions lay down that prior approval of policy conditions and scales of premiums is not necessary other than in the instances listed in the proposed subarticle (2) of the said article.

2.22 Article 55- Co-operation in supervisory duties and sharing of information

Article 55 of the current IBA, which deals with cooperation in supervisory duties and sharing of information, will be substantially amended mainly to transpose the following Articles of the Solvency II Directive: Article 65 (exchange of information between supervisory authorities of Member States), Article 68 (exchange of information with other authorities), Article 69 (disclosure of information to government administrations responsible for financial legislation) and Article 70 (transmission of information to central banks, monetary authorities, payment systems overseers and the European Systemic Risk Board).

2.23 Article 58- Appeals

It is proposed to add a new paragraph (a) in article 58(1) which will transpose Article 25 of the Solvency II Directive and will apply to cases whereby the MFSA has not dealt with an application for authorisation within the time-frames provided for in subarticles (9) and (10) of article 7 of the IBA.

In addition, it is also being proposed to include two additional grounds for appeal in the instance where the MFSA imposes one or more measures under article 28 or issues a directive under article 31A. This is in line with article 19 of the Investment Services Act (Cap.370)

2.24 Article 59- Confidentiality

It is proposed to amend article 59 on confidentiality to bring it in line with Article 64 (professional secrecy) and Article 67 (the use of confidential information) of the Solvency II Directive.

2.25 Article 60- Communication of confidential information

The MFSA proposes to add a new subarticle (2) to clarify that notwithstanding the provisions of the Data Protection Act (Cap.440), the collection, use, storage and transmission of information for the purposes of the exchange of personal data referred

to in subarticle (1) of the said article is deemed to be a necessary measure for the prevention, detection or suppression of insurance fraud. This amendment was also discussed with the Office of the Information and Data Protection Commissioner.

2.26 Article 61- Services of notices or other documents

It is proposed to add a new paragraph to clarify that a notice or other document which is to be given or served under the IBA, shall be deemed to have been duly given or served if, in the case of a third country insurance or reinsurance undertaking if it is given or served to the person designated under article 11 (1)(b)(i). Moreover, in the case of Lloyd's a notice or document is deemed to be served if it is duly given or served to the person referred to in article 48A(3) of the IBA.

2.27 Article 67- Offences and Penalties

In terms of the proposed amendments in article 67(2), any person who is knowingly a party to the carrying on of the business of insurance with a fraudulent intent or for a fraudulent purpose, shall be guilty of an offence. In addition, it is proposed to increase the time-frame for imprisonment and the amount of the fine to be imposed after a prosecution in the Courts of Malta. It is proposed to increase the term for imprisonment to four years and to increase such fine to 466,000 euro. This is in line with the provisions of the Investment Services Act (Cap.370).

3. **Insurance Undertakings falling outside the scope of Solvency II (Article 4 of the Solvency II Directive)**

Article 4 of the Solvency II Directive contains cumulative conditions to be satisfied by an insurance undertaking in order to be excluded from the scope of the Solvency II Directive. The MFSA is of the view that insurance undertakings falling outside the scope of Solvency II should be subject to some form of regulation and not be exempted from any form of authorisation. However, the MFSA is aware that the Solvency II regime would be too burdensome for small insurance undertakings. Following internal discussions the MFSA proposes to adopt a modified Solvency II regime, in line with the principle of proportionality, regulating insurance undertakings authorised or to be authorised under the IBA which fall within the scope of the said Article 4. This will be done by virtue of secondary legislation to be issued under the IBA.

4. **Amendments to the Insurance Intermediaries Act (Cap.487)**

The proposed amendments to the IIA are consequential to the amendments proposed to the IBA, and are deemed necessary to ensure consistency between the two legislations. It is proposed to amend or introduce definitions in article 2 of the IIA to reflect some of the proposed amendments of the IBA.

Furthermore, it is proposed to amend Part VIII (Registration and enrolment of Tied Insurance Intermediaries) of the IIA (articles 33-43), to reflect the proposed amendments to the IBA. Primarily, references to “authorised company” have been amended in line with the proposed amendments in article 2 of the IIA.

It is also being proposed to amend article 50 (Appeals), article 52 (Offences) and article 53 (Penalties) of the IIA, to bring these provisions in line with the proposed amendments to the IBA.

All the amendments being proposed to the current IIA are provided together with this Consultation Document.

5. The Way Forward

The MFSA is presently reviewing the current regulations issued under the IBA to bring them in line with the requirements of the Solvency II Directive. Furthermore, the MFSA is also reviewing the current Insurance Rules. The MFSA is minded to consolidate all Insurance Rules to be issued under the amended IBA in a single rulebook. The draft regulations as well as the Insurance Rules will be issued for Consultation during 2015.

**Communications Unit
Malta Financial Services Authority
MFSA Ref: 11-2014
22 December 2014**