

# MFSA

---

## MALTA FINANCIAL SERVICES AUTHORITY

### **Feedback Statement further to Industry Responses to MFSA Consultation document dated 15th October 2012 on the proposed Insurance Rule entitled “Complaints Handling by Authorised Companies”**

#### Section A - Background

- A1. Further to the note for consultation issued on the 15<sup>th</sup> October 2012, the MFSA is issuing a feedback statement on the comments received from a number of persons in relation to this insurance rule. An outline of the main comments received on Insurance Rule 30 of 2012 and the MFSA’s position in relation thereto is provided in Section B hereunder.

#### Section B –Main Comments received and the MFSA’s position

##### Insurance Rule 30 of 2012

- B.1. Comments received - It was questioned whether this insurance rule overlaps with governance guidance found in Directive 2009/138/EC (“the Solvency II Directive”) which requires policies/procedures to be produced for key areas of the insurance business for insurance companies, where it is deemed to be a key function.

MFSA’s remarks – We are of the view that there is no duplication in the Solvency II Directive since the Guidelines on complaints handling by insurance undertakings (“the Guidelines”) specifically make reference and take into account recital (16) and articles 41, 46, 183 and 185 of the Solvency II Directive. The Guidelines complement the Solvency II Directive and aim to set a minimum level of supervisory convergence for insurance companies.

- B.2. Comments received – It was argued that the reporting requirement to the MFSA three months after year end is not necessary and that the complaints process would be better regulated at onsite visits. It was also stated that increased reporting is disadvantageous to insurance companies where the process can be regulated in other ways and that the Guidelines did not contain any reporting requirements. The MFSA was asked to clarify whether the first reporting requirement will be March 2013 or 2014.

MFSA’s remarks – Guideline 4 of the Guidelines requires competent authorities to ensure that insurance undertakings provide information on complaints and complaints-handling to the competent national authorities or ombudsman. This data should cover the number of complaints received, differentiated according to their national criteria or own criteria, where relevant. This requirement has been transposed in article 12 of the insurance rule.

As part of its duties, the MFSA is required to collect data on complaints as it is required to report it to the European Insurance and Occupational Pension Authority (“EIOPA”) as from next year. In this regard, in the interim further developments took place and the MFSA was informed that all Member States will be asked to collect data, including data on complaints between January and March 2013 and submit the result by 31st March latest. Therefore, the MFSA amended the insurance rule so that insurance companies will be required to submit this information by the end of February in order for the MFSA to be in a position to submit this information to EIOPA within the stipulated time frame. Insurance companies will also be required to report complaints received by an insurance intermediary in relation to contracts of insurance or services provided by the insurance intermediary on behalf of the insurance company.

The first reporting requirement will apply as from 2013 in respect of complaints received in 2012.

B.3 *Comments received* – It was questioned whether this insurance rule applies to European insurance undertakings which carry on business in Malta under the freedom of establishment and the freedom to provide services. Moreover, clarification was sought as to whether the information on complaints to be reported to the MFSA should relate to:

- complaints where the complainant is resident in Malta, or if, the complainant is a legal person, where the complainant’s establishment is situated; or
- complaints relating to a policy contract that provides cover for a risk situated in Malta.

*MFSA’s remarks* – The insurance rule will apply to insurance companies authorised under the Insurance Business Act (Cap.403) with head office in Malta.

From a look at the definitions of “complaint” and “complainant”, there is no restriction in this respect and therefore, in terms of the definition of “complainant” any complaints received by an insurance company with head office in Malta in relation to a contract of insurance issued by the company concerned from the policyholder, insured person, beneficiary and injured third party (irrespective of the country of residence or where the risk is situated) is to be reported to the company.

B.4 *Comments received* – An insurance company is of the view that this Rule should apply only to complaints from private consumers and that if this is the case, the definition of “complainant” should be amended to refer to “a person who is an individual”.

*MFSA’s remarks* – The MFSA would like to clarify that the definition of “complaint” refers to a statement of dissatisfaction addressed to an insurance undertaking by a person relating to the insurance contract or service he/she has been provided with. The terms “person” does not specify that this is limited to individuals.

Reference is also made to paragraph 7(L) of the Schedule to Insurance Rule 27 of 2009 – Insurers’ Internal Controls which provides that an insurance company is to have in place internal controls on complaints but does not limit the complaints procedure to individuals. Moreover, we would like to point out that during on-site visits, the MFSA ensures that the complaints procedures of insurance companies apply to all policyholders, not only to individuals.

- B.5 Comments received - Although the title and article 1 of the Rule make it clear that the Rule applies to a company authorised to carry on business of insurance (the “company concerned”), the Rule should clarify the role – if any – of insurance agents. In view of the fact that insurance agents are authorised by insurance companies to underwrite and to settle claims on their behalf, it was questioned whether insurance agents are permitted to receive and handle complaints made by consumers whose policies are underwritten through the insurance agents. The role of insurance agents, whether having a role or not in complaints-handling should be clarified in the Rule.

MFSA’s remarks – Reference is made to paragraph 1(10) of the Schedule to Insurance Intermediaries Rule 4 of 2007 - Code of Conduct for Insurance Intermediaries, which provides that any member of the public who is not satisfied with the manner his complaint has been considered by an insurance intermediary should be directed to refer the matter to the Consumer Complaints Manager appointed by the MFSA by virtue of article 20 of the Malta Financial Services Authority Act. This implies that insurance agents can handle complaints of policies underwritten on behalf of an insurance company.

The MFSA would like to clarify that this insurance rule applies only to insurance companies authorised under the Insurance Business Act. Currently at EIOPA level, guidelines on complaints-handling by insurance intermediaries are being discussed so that in the near future a new different set of rules on complaints –handling will be issued applicable to insurance intermediaries. These guidelines on complaints-handling procedures by insurance intermediaries should clarify in what circumstances the insurance intermediary is to comply with the guidelines on complaints-handling by insurance intermediaries. These will eventually be transposed in the insurance intermediaries rules issued under the Insurance Intermediaries Act (Cap.487).

- B.6 Comments received – It was argued that article 10(d) of the insurance rule is to be interpreted to mean that MFSA’s Consumer Complaints Manager shall not investigate any consumer complaint unless and until the complainant has received from the company concerned a final written decision regarding his/her complaint in accordance with this article. As the requirements of the Rule are without prejudice to the guidelines issued by the MFSA’s Consumer Complaints Manager, the Consumer Complaints Manager is to ascertain that he would investigate a consumer complaint only if the complaint includes a copy of the final written decision of the company concerned.

MFSA’s remarks – As stated in the insurance rule, in terms of article 10(d), when providing a final decision that does not fully satisfy the complainant’s demand, the company is obliged to inform the complainant that if the complainant is not satisfied with the way the complaint was handled by the insurance company concerned, the complainant may refer the complaint to the Consumer Complaints Manager appointed

by the MFSA. This requirement is also found in Insurance Intermediaries Rule 3 of 2007 - Disclosure of Information for Clients and Insurance Intermediaries Rule 4 of 2007 - Code of Conduct for Insurance Intermediaries issued under the Insurance Intermediaries Act. This is also stated in the guidelines issued by the Consumer Complaints Unit (“CCU”) in *“A note of financial services providers for the propose implementation of section 20 of the MFSA Act (Cap.330)”*. Generally, this procedure is followed by the CCU. However, there could be instances where adherence to this procedure would result in additional burdens and unreasonable delays for the complainants. The Consumer Complaints Manager has discretion to decide whether to accept a formal complaint or not as stated in section 5 of the Guidelines referred to above issued by the CCU.

**Communications Unit**  
**Malta Financial Services Authority**  
**27<sup>th</sup> November, 2012**