

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CONSULTATION PROCEDURE

CONSULTATION

ON THE

PROPOSED TRANSPOSITION

OF

DIRECTIVE 2011/89/EU

[FICOD I]

[MFSA REF: 6/2013]

22nd March 2013

Closing Date: 12th April 2013

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Note

This Consultation document reports on the contents of the Financial Conglomerates Regulations, 2013 which are proposed to be issued in order to partly transpose Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate.

The documents circulated by the MFSA for the purposes 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 not only from licence holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

A. INTRODUCTION

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (hereinafter referred to as “FICOD”) was adopted in 2002. FICOD gave national financial supervisors powers and tools to monitor financial conglomerates and apply supplementary supervision thereto, in addition to specific sectorial supervision.

Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (hereinafter referred to as “FICOD I”) came into force on 9 December 2011. FICOD 1 revised the rules for the identification of conglomerates, introduced a transparency requirement for the legal and operational structures of groups, and brought asset management companies within the scope of supplementary supervision. The deadline for transposition by Member States of FICOD 1 into Maltese Law is 10 June 2013.

B. TRANSPOSITION OF FICOD I IN MALTESE LAW

The provisions incorporated in FICOD were transposed in Maltese law through the Financial Conglomerates Regulations 2002 (Legal Notice 521 of 2004). Due to the considerable amount of amendments brought about by FICOD I, the Authority is proposing to repeal the current Financial Conglomerates Regulations, 2002 and replace these with the Financial Conglomerates Regulations, 2013.

The remaining provisions of FICOD I amending Directives 98/78/EC, 2006/48/EC and 2009/138/EC will be transposed in the relative sectoral legislation and rules as applicable. In particular, Article 1 of FICOD I proposes amendments to Directive 98/78/EC which have been transposed into Maltese legislation by means of the Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) Regulations, 2007 and the Insurance Business (Assets and Liabilities) Regulations, 2007. As a consequence, the MFSA is proposing to amend these regulations to transpose the amendments found in Article 1 of FICOD 1.

These amendments are consequential to the amendments proposed to the Financial Conglomerates Regulations, 2013. Primarily, these regulations have been amended to define and include a mixed financial holding company and to ensure consistency between the aims of the Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) Regulations, 2007 and the Insurance Business (Assets and Liabilities) Regulations, 2007. The proposed revised Regulations are being circulated with this Consultation Document.

C. SALIENT FEATURES OF THE PROPOSED FINANCIAL CONGLOMERATES REGULATIONS, 2013.

Reported hereunder are the salient features of the proposed Financial Conglomerates Regulations, 2013:

- *Definition of a Conglomerate*

The proposed Regulations aim at defining a financial conglomerate as a group or subgroup defined in accordance with Directive 83/349/EEC on consolidated accounts which includes:

- (1) at least one regulated entity;
 - (2) at least one entity from the insurance sector and at least one from the banking sector or investment sector;
- which perform significant activities within the financial sector.

The regulated entity of a conglomerate must be either at the head of the group or subgroup; or one of the subsidiaries in that group or subgroup.

- *Functions of the Authority*

The proposed Financial Conglomerates Regulations, 2013 empower the Authority with three main functions namely:

- (1) identifying whether any regulated entities authorised in Malta form part of a conglomerate;
- (2) cooperating closely with other authorities when entities authorised in Malta form part of any group identified as a financial conglomerate under the Regulations;
- (3) acting as coordinator under the proposed Financial Conglomerates Regulations when the criteria prescribed in regulation 11 of the said Regulations are fulfilled.

- *Identification of a Conglomerate*

The identification of a financial conglomerate from among regulated entities authorised in Malta is one of the functions of the Authority prescribed in regulation 4. The Authority is afforded discretion in its calculations for identifying a financial conglomerate, in accordance with regulation 3(7).

- *Scope of Supplementary Supervision:*

In accordance with regulation 5, regulated entities which are part of a financial conglomerate are subject to supplementary supervision over and above sectoral supervision. In particular, regulation 5(2) provides that a regulated entity will be subject to supplementary supervision at the level of the financial conglomerate if:

- (1) it is at the head of a financial conglomerate;
- (2) its parent undertaking, which is a mixed financial holding company, has its head office in the European Union; or

- (3) it is linked with another financial sector entity by a relationship within the meaning of Article 12(1)¹ of Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts.

- *Capital adequacy*

Regulation 6 deals with capital adequacy and provides that regulated entities forming part of a financial conglomerate must maintain own funds at the level of the financial conglomerate at least equal to the capital adequacy requirements as calculated in accordance with the First Schedule to the Regulations. The Authority, when acting as coordinator, may decide to exclude an entity when calculating the supplementary capital adequacy requirements for reasons listed in regulation 6(10).

- *Risk Concentration*

Regulation 7 provides that regulated entities authorised in Malta or a mixed financial holding company with its head office in Malta are required to report to their coordinator as to any significant risk concentration at least once a year. Where the financial conglomerate has a regulated entity, as the head of the group the duty to report to the coordinator falls upon that regulated entity. Where the financial conglomerate is not headed by a regulated entity the report has to be sent by either the mixed financial holding company or by a regulated entity in the financial conglomerate identified by the coordinator.

- *Intra-group transactions*

Regulated entities authorised in Malta or a mixed financial holding company with its head office in Malta are required to report at least once a year to the coordinator all significant intra-group transactions of regulated entities within a financial conglomerate in accordance with the rules laid down in the Regulations, and in their Second Schedule.

- *Internal Controls and Risk Management*

Every regulated entity authorised in Malta forming part of a financial conglomerate, must have an adequate risk management process and internal control mechanisms, including sound administrative and accounting procedures. The risk management process includes sound governance and management, adequate capital adequacy policies, and adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation.

D. CONTACTS

¹ Article 12(1) provides as follows:

“1. Without prejudice to Articles 1 to 10, a Member State may require any undertaking governed by its national law to draw up consolidated accounts and a consolidated annual report if:

- (a) that undertaking and one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), are managed on a unified basis pursuant to a contract concluded with that undertaking or provisions in the memorandum or articles of association of those undertakings; or
- (b) the administrative, management or supervisory bodies of that undertaking and of one or more other undertakings with which it is not connected, as described in Article 1 (1) or (2), consist for the major part of the same persons in office during the financial year and until the consolidated accounts are drawn up.”

The Regulations listed hereunder are attached to this consultation document are being issued for consultation:

- [I] Financial Conglomerates Regulations, 2013;
- [II] Insurance Business (Assets and Liabilities) (Amendment) Regulations, 2013;
- [III] Insurance Business (Supplementary Supervision of Insurance and Reinsurance Undertakings in an Insurance Group) (Amendment) Regulations, 2013.

Interested parties are to send their comments or queries in writing by not later than **12th April 2013**.

Any comments and feedback are to be addressed to Dr Isabelle Agius – Regulatory Development Unit by e-mail on iagius@mfsa.com.mt or to Dr. Vanessa Bonnici – Legal and International Affairs Unit by e-mail on vbonnici@mfsa.com.mt

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

Communications Unit
Malta Financial Services Authority
MFSA Ref: 06-2013