

Consultation Procedure

Proposals for Insurance Rules

Explanatory 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 not only from licence-holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

Note for Consultation

(Insurance Rules)

1. Purpose

- 1.1 The MFSA is currently carrying out the final review process of the Insurance Directives (“the Directives”), primarily, in view of the fact that under the Insurance Business Act (Cap.403) (“the Act”), the term “insurance directive” has been replaced with the term “insurance rule” to avoid confusion of terminology with EU Insurance Directives. As a consequence, the Insurance Directives are now being referred to as the Insurance Rules. Moreover, while in the process of amending the Directives, the MFSA is also proposing certain amendments as specified hereunder. In this respect, we are attaching draft rules in order to seek consultation prior to implementation. Comments are to be provided to the MFSA in writing by not later than the **8th June 2009**.

2. The salient amendments to the Insurance Rules

2.1 Insurance Rule 22 of 2009 – Exercise of Passport Rights by European Insurance Undertakings and European Reinsurance Undertakings

- 2.1.1 It is being proposed to amend this draft rule to apply also to European reinsurance undertakings. This is being done because in terms of the *General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union* (“the Siena Protocol”) when a European reinsurance undertaking is seeking to establish a branch in Malta in exercise of a European right, specific information is to be provided by the competent authority of the home state to the competent authority of the host state.
- 2.1.2. The information to be provided to the MFSA in article 5 relating to the establishment conditions is being amended in order to be more faithful to the requirements found in the Siena Protocol.
- 2.1.4 A new article 8 is being added to specify the information requirements to be submitted by European reinsurance undertakings for the reasons stated in paragraph 2.1.1.
- 2.1.5 The First Schedule to the draft rule is being amended to align the provisions relating to changes to details in the consent notice with the Siena Protocol. In the Second Schedule of the said rule, the reference to article 11 is being amended to read article 12 due to a renumbering of articles in the said rule. References to the Maltese Lira currency are being amended to Euro.
- 2.1.6 The Appendix which lays down the Provisions for European Insurance Undertakings Carrying on Business of Insurance in Malta are being amended to reflect the provisions of Insurance Rule 3 of 2007 – Information to Policyholders.

2.2. Insurance Rule 23 of 2009 – Exercise of Passport Rights by European Insurance Undertakings - Services

- 2.2.1 Amendments are being proposed to article 5 relating to the services conditions. By virtue of the proposed amendments, the notice communicated by the foreign authority is also to include additional information where a European insurance undertaking intends to passport its services in class 17 or class 18 in Part I of the Third Schedule to the Act. Moreover, the requirement to include information relating to the fiscal representative in the notice communicated to the foreign authority is being removed since it is one of the general good provisions included under article 11 of the draft rule.
- 2.2.2 It is being proposed to add a new provision in article 6, so that if the European insurance undertaking fails to appoint a representative, the MFSA may give its approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC of the European Parliament and of the Council to assume the function of the representative referred to in paragraph (2)(a) of this article. This reflects the provisions of article 9 of Directive 2000/26/EC of the European Parliament and of the Council of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive), which amended article 12a(4) of Directive 88/357/EEC (Second Council Directive).
- 2.2.3 The First Schedule to the draft rule is being amended to bring the requirements in line with the Siena Protocol and the Appendix which lays down the Provisions for European Insurance Undertakings Carrying on Business of Insurance in Malta are being amended to reflect the provisions of Insurance Rule 3 of 2007 – Information to Policyholders.

2.3 Insurance Rule 24 of 2009 - Exercise of Passport Rights by Maltese Insurance Undertakings and Maltese Reinsurance Undertakings - Establishment

- 2.3.1 It is being proposed to amend this draft rule to apply also to Maltese reinsurance undertakings in view of the fact that, as stated above, in terms of the Siena Protocol when a Maltese reinsurance undertaking is seeking to establish a branch in a Member State or EEA State in exercise of a European right, specified information is to be provided by the MFSA to the competent authority of the host state. Other minor amendments have been carried out in order to align the rule with the requirements found in the Siena Protocol.
- 2.3.2 Article A6 of article 5 which relates to a Maltese insurance undertaking covering risks relating to class 10 of Part I of the Third Schedule to the Act, is being amended so that where the Maltese insurance undertaking provides the MFSA with a certificate of application for membership of the national bureau and the national guarantee fund in the Member State or EEA State of the branch. In such case, the undertaking shall provide the MFSA with a commitment that it will not engage in business concerning this class so long as it has not forwarded the final membership declaration.

2.4 Insurance Rule 25 of 2009 - Exercise of Passport Rights by Maltese Insurance Undertakings - Services

- 2.4.1 In so far as the notice of intention is concerned, where a Maltese insurance undertaking intends to passport its services in class 18 in Part I of the Third Schedule to the Act, in terms of the proposed amendments, it will be required to provide information relating to the resources available to the Maltese insurance undertaking to successfully carry out assistance operations.
- 2.4.2 Where a Maltese insurance undertaking proposes to carry on business of insurance in the Member State or EEA State covering risks relating to class 10 of Part I of the Third Schedule to the Act, it is proposed that the amendments mentioned in paragraph 2.3.2 of this note will also apply in the case of Maltese insurance undertakings carrying out business of insurance under the freedom of services regime in another Member State or EEA State.
- 2.4.3 It is proposed to amend article 8 relating to changes in the details of services to align the procedure with the Siena Protocol.

11th May, 2009