

## **Consultation Procedure**

### **Proposals for Insurance Rules and Insurance Intermediaries 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 and Insurance Intermediaries Rules)**

#### **1. Purpose**

- 1.1 The MFSA is currently carrying out a 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. We are also seeking consultation on a proposed amendment to Insurance Intermediaries Rule 7 of 2007. 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 **2<sup>nd</sup> March 2009**.

#### **2. The salient amendments to the Insurance Rules and Insurance Intermediaries Rules**

##### **2.1 Insurance Rule 7 of 2009 – Separate Management of Long Term Business and General Business**

- 2.1.1 It is being proposed to amend paragraph (e) of article 2 of the Draft Rule to clarify that this Rule shall not apply to companies authorised to carry on business restricted to reinsurance (*pure reinsurers*). Where such companies carry on both general business and long term business, the EU Reinsurance Directive (*Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directive 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC*) does not require that each activity is separately managed.

##### **2.2 Insurance Rule 17 of 2009 – Authorisation to Act as Approved Auditor**

- 2.2.1 From the outset, we would like to point out that MFSA is currently carrying out minor amendments of a non-substantial nature to the Insurance Business (Approved Auditor Regulations) (L.N 105 of 2000). One of the proposed amendments suggests the deletion of the current regulation 7 which provides for the availability for inspection and purchase of the approved auditors register and the approved auditors list and the consequent renumbering of the current regulation 8 as regulation 7. As a consequence, all references to regulation 8 of the Insurance Business (Approved Auditor) Regulations (L.N. 105 of 2000) in the draft Rule have been renumbered as regulation 7.
- 2.2.2 The draft Insurance Rule 17 of 2008 applies to persons licensed under the Act as well as persons licensed under the Insurance Intermediaries Act. It is being proposed to amend article 1 to include a reference to the Insurance Intermediaries Act (Cap.487).

Moreover, it is also being proposed to insert a new definition “insurance licence holder” to clarify the application of the Rule.

- 2.2.3 Apart from the reference to article 21(11) of the Insurance Business Act which deals with alternative arrangements that may be approved by the MFSA in the case of a company whose head office is in a country outside Malta, the reference to article 28(11) of the Insurance Intermediaries Act, 2006 is being added.
- 2.2.4 In so far as the qualifications or requirements of applicants for an authorisation to act as approved auditor are concerned, the MFSA proposes that the applicant shall be required to have suitable post-qualification experience in the insurance companies accounts and/or audit of insurance companies accounts for a period of not less than less than 3 years during the last 7 seven years or 5 years during the last 10 years and such person must have successfully concluded a course on insurance companies accounts organised by a local or foreign firm, body or institution recognised by the MFSA for the purposes of this article. Moreover, the MFSA will need to be satisfied that the applicant has a sound knowledge of the provisions of the insurance legislation.
- 2.2.5 It is proposed that where the audit of the accounts of insurance companies authorised under article 7 of the Act is carried out by a partnership of auditors which is a *member* of an international firm of accountants and auditors of repute acceptable to the MFSA, the MFSA may require the audited financial statements of the company to be issued over the names of both the partnership and member. Where the partnership of auditors is a *correspondent* of an international firm of accountants and auditors of repute acceptable to the MFSA, the audited financial statements of the company are to be issued over the names of both the partnership and correspondent.
- 2.2.6 The MFSA is proposing that the applicants applying for authorisation to act as approved auditor, submit the personal questionnaire attached to Insurance Rule 15 of 2008. Therefore, the application forms contained in the Third and Fourth Schedules to the draft rule have been amended to remove information that is already included in the in the Personal Questionnaire. The MFSA will also require evidence that the person in respect of who/which the application is being submitted has successfully completed a course on insurance companies accounts and/or the audit of insurance companies accounts organised by a local or foreign firm, body or institution recognised by the Authority. Moreover, as part of the application, the MFSA will also require a quotation for a policy of professional indemnity insurance.

### **2.3 Insurance Rule 20 of 2009 – Assistance Insurance**

- 2.3.1 This draft Rule transposes Council Directive of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (“Directive 84/641/EEC”).
- 2.3.2 Article 2 of the Rule is being amended to apply to any undertaking pursuing the assistance activity falling within the scope of class 18, Part I of the Third Schedule to the Act. The reason for this amendment is to exempt such undertakings from the

requirement of seeking authorisation under the Act if the activity is limited to the activities listed in article 5 thereof. This article has been drafted in order to provide a more accurate transposition of the relevant articles of Directive 84/641/EEC.

- 2.3.3 A new article 6 is being added. This article will provide that if an undertaking satisfies all three cumulative conditions listed in the new proposed article, the provisions of the draft rule will not apply to the said undertaking. This new article transposes article 3 of Directive 84/641/EEC.

## **2.4 Insurance Rule 27 of 2009 – Insurers’ Internal Controls**

- 2.4.1 Article 6 of the draft Rule will be amended to make it clear that the requirements of this Rule are also without prejudice to the Corporate Governance Guidelines for Public Interest Companies issued by the MFSA.
- 2.4.2 The definitions in the Schedule to the Rule are being amended to align them with the amended definitions found in Insurance Rule 15 of 2008, other than the definition of “senior manager”. The amended definition of “senior manager” does not include the compliance officer and the money laundering reporting officer since most of the obligations contained in this Rule are not pertinent to the roles carried out by the said officers.
- 2.4.3 Article 4 has been amended to align the requirements of the composition of the Board of Directors with the requirements of Insurance Rule 6 of 2007.
- 2.4.4 Paragraph F relating to the audit committee has been amended to harmonise the provisions of the Rule with article 41 of the of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual and consolidated accounts, amending Council Directives 78,660/EEC And 83/349/EEC and repealing Council Directive 84/253/EEC (*Statutory Audit Directive*), in so far as the composition and responsibilities of the Committee are concerned.

## **2.5 Insurance Intermediaries Rule 7 of 2007 - Code of Insurance Selling Practice**

- 2.5.1 The issue was raised as to whether the insurance principal should be made aware of the findings of the MFSA upon conclusion of a compliance visit carried out at the business premises of a tied insurance intermediary. In view of confidentiality rules, the MFSA is not in a position to submit a copy of the letter outlining the findings of a compliance visit conducted on a tied insurance intermediary to the insurer on whose behalf the tied insurance intermediary concerned acts.
- 2.5.2 The Authority is appreciative of the fact that pursuant to article 37(9) of the Insurance Intermediaries Act (Cap. 487) an insurance principal shall at all times be responsible for any act or omission of its registered tied insurance intermediaries. In the light of the foregoing, the MFSA considers that it is appropriate to make it mandatory for the tied insurance intermediary to forward a copy of the MFSA’s findings to the insurance principal relating to the activities which the tied insurance intermediary carries out on behalf of the insurance principal (*draft article 12 of the Rule refers*).

**January 30, 2009**