

# MFSA

---

MALTA FINANCIAL SERVICES AUTHORITY

---

## CONSULTATION DOCUMENT

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

[MFSA REF: 04-2017]

**3<sup>rd</sup> July 2017**

**Closing Date: 1<sup>st</sup> August 2017**

**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 from Licence Holders and other involved parties. It is important that persons involved in the consultation bear these considerations in mind.

## Note for Consultation

### 1. Purpose

1.1 Further to the [Circular relating to the transposition of the Insurance Distribution Directive](#), issued by the MFSA on 10<sup>th</sup> April 2017, this Consultation Document highlights the main changes proposed to be carried out to the Insurance Intermediaries Act (Cap. 487), primarily as a consequence of transposing Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast), (the “*Insurance Distribution Directive*” or “*IDD*”). It is also proposed to carry out consequential amendments to the Insurance Business Act (Cap. 403) so as to align the said Act with the proposed terminology and amendments to the Insurance Intermediaries Act, as well as to include references to the “*Conduct of Business Rules*”, where relevant. Moreover, together with the proposed amendments to the primary legislation, the MFSA is also issuing for Consultation the proposed Insurance Distribution (Exemption) Regulations, 2017, which transpose some of the provisions of the IDD.

1.2 The IDD is to be transposed into national law by the **23<sup>rd</sup> February 2018**. The proposed amendments to the Insurance Intermediaries Act and the Insurance Business Act, and the new Insurance Distribution (Exemption) Regulations, 2017, are being issued for Consultation together with this Consultation document. The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of the following proposals:

- (a) A Draft Bill amending the Insurance Intermediaries Act (Cap. 487);
- (b) A Consolidated Draft version of the Insurance Distribution Act reflecting the changes being proposed;
- (c) A Draft Bill amending the Insurance Business Act, (Cap. 403); and
- (d) Draft Insurance Distribution (Exemption) Regulations, 2017.

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.

1.3 Copies of this Consultation Document are available on the MFSA website. Insurance undertakings and insurance agents are expected to bring the contents of this Consultation paper to the attention of the tied insurance intermediaries acting on their behalf.

- 1.4 Any comments and feedback in relation to the attached draft legislations are to be addressed to the Insurance and Pensions Supervision Unit and submitted in writing on [idd@mfsa.com.mt](mailto:idd@mfsa.com.mt), by not later than **Tuesday 1<sup>st</sup> August 2017**.

## **2. Introduction**

- 2.1 On 2<sup>nd</sup> February 2016, the Insurance Distribution Directive (the “IDD”) was published in the Official Journal of the European Union and on 23<sup>rd</sup> February 2016, the said Directive entered into force. The IDD is a minimum harmonisation Directive which on the 23<sup>rd</sup> February 2018 will repeal Directive 2002/92/EC of the European Parliament and of the Council of 9<sup>th</sup> December 2002 on insurance mediation, (the “*Insurance Mediation Directive*” or “*IMD*”). The IDD introduces a new legal framework which will be transposed into the Insurance Intermediaries Act (Cap. 487), (the “*IIA*”), subsidiary legislation, Insurance Distribution Rules and Conduct of Business Rules issued thereunder.
- 2.2 The main objective of the IDD is to provide for an increased level of consumer protection. The IDD aims at ensuring a level playing field between all participants who are involved in the activities preparatory to, during and after the sales of insurance and reinsurance products, so that consumers benefit from the same level of protection, despite the differences between distribution channels. Therefore, unlike the Insurance Mediation Directive, which only regulated activities of insurance intermediaries, the scope of the IDD extends to insurance undertakings and reinsurance undertakings directly selling insurance products, as well as to online distribution (*e.g. price comparison websites*).
- 2.3 The IDD covers not only insurance undertakings or intermediaries, but also other market participants who sell insurance products on an ancillary basis (such as travel agents, car rental companies and motor vehicle dealers), unless they meet the conditions for exemption in terms of Article 1(3) of the IDD. Therefore, the IDD introduces a new category of intermediary which is referred to as the ancillary insurance intermediary.
- 2.4 The IDD contains a new Chapter III on freedom to provide services and freedom of establishment. It also provides new requirements on the knowledge and ability of insurance and reinsurance distributors and requires compliance with continuous professional training or development, in particular to ensure that the professional competence of persons involved in distribution activities corresponds to the requirements concerning the products sold.<sup>1</sup> It also contains a specific Chapter on administrative sanctions and other measures.

---

<sup>1</sup> vide article 10 of the IDD.

### 3. The Salient Amendments to the Insurance Intermediaries Act (Cap. 487), (the “IIA”)

#### 3.1 The Title of the Act

In view of the fact that all insurance distributors, including insurance and reinsurance undertakings directly selling insurance products, are captured by the IDD, it is proposed to amend the Title of the Insurance Intermediaries Act to read the “*Insurance Distribution Act*”, so that the said Act as amended, will now cover all persons carrying out insurance distribution activities and reinsurance distribution activities, including insurance and reinsurance undertakings.

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

Definition of “*advertisement*”: it is being proposed to amend the current definition of “advertisement” so as to align this term with the definition as proposed in the glossary of terms of the draft Conduct of Business Rulebook.

Definitions of “*ancillary insurance intermediaries activities*” and “*ancillary insurance intermediary*”: it is being proposed to introduce a new regime for the “*ancillary insurance intermediary*” under the IIA and therefore the MFSA proposes to introduce these two new definitions so as to transpose the definition of “*ancillary insurance intermediary*” found in point 4 of Article 2(1) of the IDD. The ancillary insurance intermediary is a new category of intermediary which, under the IDD, has been carved out from the definition of “*insurance intermediary*” and therefore, for the purposes of the said Directive, such category is not considered to be an insurance intermediary but a specific type of intermediary operating under specific conditions.

Definitions of “*Ancillary Insurance Intermediaries Company Register*” and “*Ancillary Insurance Intermediaries List*”: it is proposed to include these new definitions to cater for the new regime of ancillary insurance intermediaries in the IIA.

Definitions of “*authorised insurance undertaking*” and “*authorised reinsurance undertaking*”: It is proposed to include these two definitions (which are the same definitions found in the IBA) so as to transpose points 6 and 7 of Article 2(1) of the IDD, respectively, which make reference to the definitions of insurance undertaking and reinsurance undertaking in terms of the Solvency II Directive, and also because these terms are referred to in the current definition of “*authorised undertaking*” in the IIA.

Definitions of “*certificate of enrolment*”, “*enrolled*” and “*registered*”: it is being proposed to amend these current definitions so as to add a reference to the new category of intermediary introduced by the IDD, i.e. the ancillary insurance intermediary.

Definition of “*Conduct of Business Rules*”: it is proposed to include this new definition so that rules relating to conduct of business may be issued by the MFSA under the Insurance Intermediaries Act (Cap. 487), (“IIA”). In fact, references to “*Conduct of Business Rules*” are proposed to be included in various articles of the IIA, where relevant. These new “*Conduct of Business Rules*”, in particular relate to parts of the Draft Conduct of Business Rulebook, which will transpose the relevant provisions of the IDD relating to information requirements, conduct of business and requirements in relation to insurance-based investment products.

Definition of “*insurance-based investment product*”: it is proposed to add a new definition of “*insurance-based investment product*” transposing the definition found in point 17 of Article 2(1) of the IDD.

Definitions of “*insurance distribution activities*” and “*reinsurance distribution activities*”: It is proposed to introduce two new definitions “*insurance distribution activities*” and “*reinsurance distribution activities*” to transpose the definitions found in points 1 and 2 of Article 2(1) of the IDD, respectively. These two new definitions will replace the current definition of “*insurance intermediaries activities*” found in article 2 of the IIA. Therefore, any references to “*insurance intermediaries activities*” found in the provisions of the IIA will be substituted with a reference to the new terms of “*insurance distribution activities*” and “*reinsurance distribution activities*”, throughout the Act, as applicable.

Definition of “*Insurance Distribution Rules*”: It is being proposed to amend the current definition of “*insurance intermediaries rules*” and replace the said term with a reference to “Insurance Distribution Rules”, especially in view that pursuant to the IDD, it is being proposed that the IIA will now also apply to insurance and reinsurance distribution activities carried out by insurance and reinsurance undertakings, as applicable.

Definition of “*insurance intermediary*” and “*reinsurance intermediary*”: It is being proposed to amend the current definition of “*insurance intermediary*” and to introduce a new definition of “*reinsurance intermediary*”, so as to reflect the provisions of points 3 and 5 of Article 2(1) of the IDD, respectively.

Definition of “*remuneration*”: it is proposed to include a new definition of “*remuneration*” in line with the definition found in point 9 of Article 2(1) of the IDD.

Definition of “*tied insurance intermediaries activities*”: The term “*tied insurance intermediary*” was expressly defined under the IMD and this definition currently features in article 2 of the IIA. In terms of the current definition, a person carrying on tied insurance intermediaries activities, in addition to his principal professional activity, is currently considered to fall under the category of a “*tied insurance intermediary*”, as a specific category of insurance intermediaries.

Therefore, with a view to distinguish between a tied insurance intermediary and an ancillary insurance intermediary, it is being proposed to amend the current definition of “*tied insurance intermediaries activities*” so as to avoid any possible overlap between the two regimes.

### 3.3 Article 3(3): Powers of the Minister to make regulations on administrative penalties

It is being proposed to move the provisos to the current article 3(2)(h) of the IIA, relating to regulations on administrative penalties that may be issued under the IIA, to paragraph (a) of a new article 3(3). In addition, it is proposed to add a new paragraph (b) in the said article 3(3) so that, pursuant to regulations made under article 3(2)(h), the MFSA could impose administrative penalties and fines in line with the amounts foreseen by Article 33(2)(e) and (f) of the IDD.

### 3.4 Article 4: Powers and duties of the MFSA

It is proposed to amend the current article 4(1) so that in terms of the new paragraph (b), the MFSA is to ensure that authorised insurance undertakings and authorised reinsurance undertakings carrying out insurance and reinsurance distribution activities are to comply with the provisions of the IIA and of any regulations, Insurance Distribution Rules and Conduct of Business Rules made thereunder.

Moreover, it is proposed to add new sub-articles (2) and (7) to reflect the requirements of Articles 12(1) and 1(5) of the IDD, respectively, the MFSA is to carry out functions and duties for the purposes of the IDD and to monitor the market relating to insurance and reinsurance distribution activities, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, Malta.

### 3.5 Article 8: Qualifications for Registration

The MFSA is proposing to amend paragraph (c) of the current article 8(1). In order for an insurance agent, insurance manager and insurance broker to be registered in their respective registers, in terms of the IIA, these intermediaries are required to have appropriate knowledge and ability in order to complete tasks and perform duties

adequately, in relation to insurance distribution activities and reinsurance distribution activities for which they are to be registered. The requirements will be determined by Insurance Distribution Rules. This requirement is in line with the provisions found in Article 10(1) of the IDD.

### 3.6 Article 9: List of persons carrying on insurance and reinsurance distribution activities

It is being proposed to add three new sub-articles to transpose specific provisions of the IDD. A new sub-article (2) is being added to clarify that the Agents List, Managers List and Brokers List are to specify the names of the registered individuals within the management of the intermediary who are responsible for the insurance distribution activities or reinsurance distribution activities transposes the eighth subparagraph of Article 3(1) of the IDD. It is also proposed to add new sub-articles (3) and (4) which transpose the ninth subparagraph of Article 3(1) of the IDD and the first and second subparagraphs of Article 3(4) of the IDD.

### 3.7 Article 10: General requirements for enrolment

It is proposed to add two new sub-paragraphs and an indent in article 10 of the IIA (*vide article 10(1)(a)(iii), 10(1)(b)(ii)(dd)*) to be complied with for the purposes of enrolment in the Agents List, Managers List or the Brokers List. Therefore, an applicant which is a company will be required to disclose the identity of the shareholders, direct or indirect, whether natural or legal persons, who will have qualifying holdings in that intermediary and the amounts of those holdings, as well as the identity of persons who have close links with the applicant. Where the applicant is an individual such person will be required to disclose the identity of persons who have close links with such intermediary. In addition, it is proposed to amend sub-article (2) so as to include a reference to holdings. The said amendments transpose the requirements found in Article 3(6) of the IDD.

Moreover, it is proposed to add a new sub-paragraph (vi) in article 10(1)(a) and amend indent (bb) of article 10(1) (b)(ii), so that for the purposes of enrolment in the Agents List, Managers List or the Brokers List, an applicant is to have appropriate knowledge and ability in order to complete tasks and perform duties adequately, in relation to insurance and reinsurance distribution activities, as determined by Insurance Distribution Rules. This is in line with the provisions found in Article 10(1) of the IDD.

### 3.8 Article 14A: Professional and organisational requirements

In view of the new requirement of continuous professional training or development introduced by the IDD, it is proposed to add a new article 14A in the IIA, so that a person enrolled under article 13 of the IIA and its employees, carrying out insurance and

reinsurance distribution activities, will be required to comply with continuing professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform and the relative market. The details relating to the said requirement will be determined by means of Insurance Distribution Rules and, or Conduct of Business Rules. The new article 14A transposes the first subparagraph of Article 10(2) of the IDD.

### 3.9 Article 16: Power of the MFSA to suspend or strike the name off the Register or List

It is proposed to add new paragraphs (p), (q) and (r) in article 16, so as to introduce new grounds in terms of which the MFSA may suspend registration or enrolment or strike off the name of a registered or enrolled person. The new grounds relate to instances where the intermediary ceases to fulfil any of the requirements found in Article 10 of the IDD or fails to comply with conduct of business requirements found in Chapters V and VI of the IDD. This is for the purposes of transposing the provisions of Articles 33(1)(d), (e) and (f), 33(2)(c) and 33(3)(b) of the IDD. Moreover, another new ground is being introduced in the new paragraph (o) of article 16, in instances where an intermediary does not utilise the services of intermediaries which are listed in the new article 44B of the IIA.

### 3.10 Article 17: Notification of intention of suspension or striking a name off the Register or List

It is proposed to amend article 17(2) to increase the time-frame within which an intermediary may make representations to the MFSA, where the latter intends to suspend registration or enrolment or strike off the name of a registered or enrolled person. Therefore, in order to align this time-frame with the period found in article 27(2) of the IBA and with other financial services legislation, an intermediary will have a period of not less than forty-eight hours and not longer than 30 days from date of service, within which to make representations, giving reasons why the registration or enrolment should not be suspended or the name of the registered or enrolled person struck off.

### 3.11 Article 25: Information to be provided for supervisory purposes

It is proposed to amend the current article 32 relating to the submission of business of insurance intermediaries statements so that, besides such business statements, an intermediary would be required to submit to the MFSA any other information which is necessary for the purposes of supervision. The period within which to submit and the detail of any such information may be specified by means of Insurance Distribution Rules or Conduct of Business Rules made under the IIA.



### 3.12 Article 28: Appointment, duties and termination of appointment of auditors

For the purposes of consistency with the provisions of article 24(1)(c) and (3) of the IBA, it is proposed to:

(a) add a new sub-article 13(c) so that an auditor is to immediately inform the MFSA also in the case where the auditor becomes aware of any material breach of the provisions of the IIA, regulations or Insurance Distribution Rules which lay down the conditions governing registration or enrolment or which specifically govern the carrying out of insurance and reinsurance distribution activities by an enrolled company; and

(b) add a new sub-article (15), so that the MFSA may request the approved auditor to provide it with such information and documentation relating to any fact or decision as specified in sub-articles (12) or (14) of article 28, concerning the enrolled company.

### 3.13 Articles 33-43: Registration and Enrolment of Tied Insurance Intermediaries

The “tied insurance intermediary” was expressly referred to and defined under the IMD. However, this definition of tied insurance intermediary does not feature in the IDD, other than a mere reference in recital (17) of the said Directive. The MFSA is proposing to retain the regime of “*tied insurance intermediaries*”. In the IDD, tied insurance intermediaries are to be treated as insurance intermediaries, and consequently, without prejudice to the available IDD Member State options, a tied insurance intermediary will now be subject to the same requirements applicable to insurance intermediaries under the IDD. This will involve some amendments to the existing regime, including the changes outlined below.

#### 3.13.1 *Article 35: Qualifications for registration*

It is proposed to amend the current sub-article (1) so that one of the conditions for a person to obtain registration in the Tied Insurance Intermediaries Company Register of an authorised undertaking would be that such person possesses appropriate knowledge and ability in order to complete tasks and perform duties adequately, in relation to tied insurance distribution activities, as determined by means of Insurance Distribution Rules. This is in line with the requirements found in Article 10(1) of the IDD.

#### 3.13.2 *Article 35A: Professional and organisational requirements*

In view of the new requirement of continuous professional training or development introduced by the IDD, it is proposed to add a new article 35A in the IIA, so that a tied

insurance intermediary and, where applicable, the employees of such intermediary, carrying out tied insurance intermediaries activities, are required to comply with continuing professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they perform, as may be determined by Insurance Distribution Rules and, or Conduct of Business Rules. This new article transposes the first subparagraph of Article 10(2) of the IDD.

### 3.13.3 *Article 36(1): List of persons carrying out tied insurance intermediaries activities*

It is proposed to amend sub-article (1) to provide that the Tied Insurance Intermediaries List is to be updated on a regular basis, in line with the provision found in Article 3(3) of the IDD.

It is also being proposed to add a new sub-article (5) to clarify that the Tied Insurance Intermediaries List is to specify the names of the individual who carries out tied insurance intermediaries activities and who satisfies the requirements of article 35(1) of the IIA which relate to fitness and properness, as well as the proposed requirement of appropriate knowledge and ability. This new sub-article is in line with the eight subparagraph of Article 3(1) of the IDD.

### 3.13.4 *Article 37: Appointment, registration and enrolment of tied insurance intermediaries*

It is proposed to insert a new paragraph (c) in the proviso to sub-article (1), so as to specify that a person enrolled in the Ancillary Insurance Intermediaries List, is to be prohibited from being appointed and registered in the Tied Insurance Intermediaries Company Register of an authorised undertaking.

It is also proposed to include new sub-articles (2) and (3), whereby as a condition of enrolment of a tied insurance intermediary, in terms of Article 3(6) of the IDD, an authorised undertaking desirous of appointing, registering and enrolling a person to act on its behalf as a tied insurance intermediary is required to disclose to the MFSA the identity of the shareholders, direct or indirect, whether natural or legal persons, who will have qualifying holdings in the tied insurance intermediary and the amounts of those holdings, as well as the identity of persons who have close links with the tied insurance intermediary. The MFSA is to grant enrolment only if it is considered that such holdings or close links do not prevent it from effectively exercising its supervisory functions.

Moreover, for the purposes of clarity, it is proposed to add a new sub-article (9) so as to specify that the MFSA is to determine an application for enrolment of a tied insurance intermediary in the Tied Insurance Intermediaries List, within three months of the

submission of a properly completed application form together with the requisite documentation to be submitted under the IIA. This is in line with Article 3(5) of the Insurance Distribution Directive.

### 3.13.5 *Article 41: Protection of the public or other interest*

It is proposed to amend article 41 and include new paragraphs (b)(i) to (iii) (*in line with the provisions of Articles 33(1)(d), (e) and (f), 33(2)(c) and 33(3)(b) of the IDD*), so as to introduce new grounds in terms of which the MFSA may strike the name of a person off the Tied Insurance Intermediaries List. The new grounds relate to instances where a tied insurance intermediary ceases to fulfil any of the requirements found in Article 10 of the IDD or fails to comply with conduct of business requirements found in Chapters V and VI of the IDD.

### 3.14 Articles 43A-43J: Part VIIA Registration and Enrolment of Ancillary Insurance Intermediaries

The IDD introduces a new category of intermediary, the ancillary insurance intermediary. The MFSA is proposing to add a new Part VIIIA introducing the regime of the ancillary insurance intermediary. Article 3(1) of the IDD allows insurance undertakings and insurance intermediaries to register ancillary insurance intermediaries, under the supervision of the competent authority and the MFSA proposes to adopt this approach.

#### 3.14.1 *Appointment, Registration and Enrolment*

An authorised insurance undertaking and an insurance agent will be permitted to appoint and register an ancillary insurance intermediary in their Ancillary Insurance Intermediary Company Register, following a fit and proper test, and now also a knowledge and ability test<sup>2</sup> as may be determined by means of Insurance Distribution Rules, to be carried out by such undertaking or agent. In this respect, ancillary insurance intermediaries will be at least required to know the terms and conditions of the policies they distribute and, where applicable, rules on handling claims and complaints.<sup>3</sup>

The said ancillary insurance intermediary will then be enrolled with the MFSA in the Ancillary Insurance Intermediaries List, whereby in terms of Article 3(6) of the IDD, an authorised insurance undertaking or an insurance agent desirous of enrolling the ancillary insurance intermediary is required to disclose to the MFSA the relevant

---

<sup>2</sup> In terms of recital 32 of the IDD, concerning ancillary insurance intermediaries, at least the persons responsible for ancillary insurance intermediarie activities are to be considered among the relevant employees who are expected to possess an appropriate level of knowledge and competence.

<sup>3</sup> vide recital 28 of the IDD.

information relating to close links and qualifying holdings of the ancillary insurance intermediary.

It is being proposed to limit the number of appointments of an ancillary insurance intermediary. Therefore, the MFSA is proposing that any person desirous of seeking appointment and registration in an Ancillary Insurance Intermediaries Company Register of an authorised undertaking, to carry out ancillary insurance intermediaries activities:

(a) relating to *general business*, may obtain appointment and registration in the Ancillary Insurance Intermediaries Company Register of *not more than two* authorised undertakings carrying on general business;

(b) relating to *long term business*, may obtain appointment and registration only in the Ancillary Insurance Intermediaries Company Register of *one* authorised undertaking carrying on long term business.

Furthermore, in the cases contemplated in point (a), where a person desires to seek appointment and registration for and on behalf of more than one authorised undertaking carrying on general business, and where the appointment relates to any class, or any group of classes, of general business of the same kind, if the insurance products to be distributed in terms of such class or group of classes relate to products which are in competition, such person shall, in respect of such insurance products, seek and obtain appointment and registration to carry out ancillary insurance intermediaries activities only in the Ancillary Insurance Intermediaries Company Register of one of the undertakings concerned.

The draft proposals do not provide for the possible appointment of an ancillary insurance intermediary by an insurance broker or an insurance manager.

### 3.14.2 *Professional Indemnity or Comparable Guarantee*

Article 10(5) of the IDD requires an ancillary insurance intermediary to hold professional indemnity insurance or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out. In order to address this requirement, instead of an ancillary insurance intermediary taking into account such policy or comparable guarantee, it is being proposed that an authorised undertaking registering and enrolling an ancillary insurance intermediary would be held responsible for the acts or omissions of its appointed ancillary insurance intermediaries. This requirement has been included in the new article 43E(13) of the IIA.

### 3.14.3 *Consumer Protection Measures*

For the purposes of the new ancillary insurance intermediaries regime, it is proposed to introduce the requirements of point (a) of the second subparagraph of Article 10(6) of the IDD so that monies received by the ancillary insurance intermediary from a person, in relation to a contract of insurance, shall be treated as having been paid to the authorised insurance undertaking or insurance agent issuing or offering the contract, and on whose behalf the ancillary insurance intermediary is acting. Moreover, monies paid by such authorised insurance undertaking or insurance agent to the ancillary insurance intermediary, which are intended for the policyholder, are not to be treated as having been paid to the policyholder until such monies are actually received by the policyholder concerned.

The MFSA is also proposing to adopt the requirements of point (c) of the second subparagraph of Article 10(6) of the IDD. In view of the fact that an ancillary insurance intermediary is by definition required to carry out a principal professional activity other than insurance mediation, it is being proposed to introduce a requirement for an ancillary insurance intermediary to maintain an ancillary insurance intermediaries' account. In this way the monies collected and held by such intermediary in relation to a policy of insurance, will be kept separate from the monies of such intermediary.

### 3.15 Article 43K-43O: Part VIIB Provisions applicable to Authorised Insurance Undertakings and Authorised Reinsurance Undertakings carrying out Distribution Activities

Since the provisions of the IDD, as opposed to the IMD, also apply to the distribution activities and sales carried out by insurance and reinsurance undertakings and their employees, it is being proposed to add a new Part VIIB relating to provisions applicable to authorised insurance undertakings and authorised reinsurance undertakings carrying out insurance and reinsurance distribution activities.

#### 3.15.1 *Exemption from enrolment under this Act and an Insurance Distribution Register*

Pursuant to the second subparagraph of Article 3(1) of the IDD, it is proposed to include a new article 43L(1) so that an authorised insurance undertaking, an authorised reinsurance undertaking, and their employees, carrying out distribution activities, shall not be required to be enrolled under the IIA. However, notwithstanding that such undertakings are not required to be enrolled, the MFSA proposes to establish and maintain a register, to be referred to as the "Insurance Distribution Register", which will specify the names of the individuals within the management of the authorised insurance undertaking and authorised reinsurance undertaking, who are responsible for its

insurance distribution activities or reinsurance distribution activities. The requirement to maintain such register is found in the eight subparagraph of Article 3(1) of the IDD.

### 3.15.2 *Professional and Organisational requirements*

In line with the provisions of Article 10(1) and the first subparagraph of Article 10(2) of the IDD, dealing with professional and organisational requirements, it is being proposed to add a new article 43M whereby an authorised insurance undertaking, an authorised reinsurance undertaking, and their employees, carrying out distribution activities, will be required to possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately. Moreover, in view of the new requirement continuous professional training and development introduced by the IDD, it is proposed that the employees of an authorised insurance undertakings and an authorised reinsurance undertaking carrying out distribution activities, will be required to comply with continuing professional training and development requirements. The details of this new requirement will be included in Insurance Distribution Rules.

### 3.15.3 *Other Requirements*

The MFSA proposes to add a new article 43N, whereby the MFSA may require an authorised insurance undertaking and an authorised reinsurance undertaking to submit to it any information which is necessary for the purposes of supervision, as may be specified by means of regulations, Insurance Distribution Rules or Conduct of Business Rules.

It is also proposed to introduce a new article 43O, so that an authorised insurance undertaking and an authorised reinsurance undertaking carrying out distribution activities would also be required to comply with rules on conduct of business, including requirements relating to insurance-based investment products, as may be determined by means of Conduct of Business Rules.

### 3.16 Article 44: Changes in documentation

It is proposed to amend sub-article (3) of article 44 so that, in line with the second subparagraph of Article 3(6) of the IDD, a person enrolled under Part III of the Act, a tied insurance intermediary and an ancillary insurance intermediary, would be required to notify the MFSA, on a continuous basis and without undue delay, with any change in the information provided in relation to holdings and close links.

### 3.17 Article 44B: Appointment of intermediaries

Article 16 of the IDD requires undertakings and intermediaries to use the insurance and reinsurance distribution services only of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries, including those ancillary insurance intermediaries referred to in Article 1(3) of the IDD. Therefore, it is proposed to insert a new article 44B whereby an insurance agent enrolled under Part III of the IIA, appointing another intermediary, is required to utilise the services of intermediaries which are enrolled under this Act, or registered under Article 3 of the IDD or falling under Article 1(3) of the IDD.

### 3.18 Article 45: Co-operation in supervisory duties and sharing of information.

It is proposed to add a new paragraph (c) in article 45 of the IIA so that at the request of, or for the purposes of, assisting an overseas regulatory authority, the MFSA may exercise the power to impose, revoke or vary conditions on the grant of a registration or enrolment of a tied insurance intermediary and an ancillary insurance intermediary, apart from the persons enrolled under article 13 of the IIA. A new paragraph (e) is also being added so that the MFSA will also have the power to strike off the name of an ancillary insurance intermediary off the Ancillary Insurance Intermediaries List.

It is also proposed to amend article 45(2)(b) of the IIA to reflect the fact that the MFSA is to cooperate and exchange information on insurance and reinsurance intermediaries, ancillary insurance intermediaries and insurance and reinsurance undertakings, with overseas regulatory authorities, for the purpose of ensuring the proper application of the IDD, pursuant to Article 13 of the said Directive.

### 3.19 Articles 50: Appeals

It is proposed to amend article 50 on appeals so as to include two additional grounds for appeal in the instance where the MFSA strikes off the name of a person from the Ancillary Insurance Intermediaries List and in the case where the MFSA requires an authorised undertaking to strike the name of a person off its Ancillary Insurance Intermediaries Company Register.

### 3.20 Articles 53A: Publication of penalties and other measures

The MFSA is proposing to insert a new article 53A on publication of penalties and other measures, which are imposed for breaches of the provisions of this Act and of any regulations, Insurance Distribution Rules or Conduct of Business Rules issued

thereunder, implementing the Insurance Distribution Directive. This new article transposes Articles 32 and 36 of the IDD.

### 3.21 The Schedule to the IIA

It is proposed that the Title of the Schedule to the IIA is renamed to read “*Insurance and Reinsurance Distribution Activities*”, for the purposes of alignment with the terminology of the IDD.

In addition, it is proposed to insert a new paragraph 5 in the Schedule to the IIA, referring to the ancillary insurance intermediary and the activities carried out by such intermediary. This mirrors the provisions of point 4 of Article 2(1) of the IDD. In terms of the said paragraph, ancillary insurance intermediaries activities are described as the activities of persons who, for remuneration, take up or pursue insurance distribution activities on an ancillary basis, acting under the full responsibility of authorised undertakings, for the products which concern them, provided that all of the following conditions are met:

(a) the principal professional activity of the natural or legal persons is other than insurance distribution activities;

(b) the natural or legal persons only carry out insurance distribution activities in relation to certain insurance products that are complementary to a good or service; and

(c) the insurance products concerned do not cover long-term business of insurance or liability risks, unless that cover complements the good or service which the natural or legal persons provide as their principal professional activity.

## **4. Amendments to the Insurance Business Act (Cap. 403), (the “IBA”)**

4.1 Alongside the IDD transposition exercise, it is being proposed to carry out consequential amendments to the Insurance Business Act (Cap. 403) (“IBA”) so as to align the said Act with the proposed terminology and amendments to the IIA (which is now proposed to be entitled *the “Insurance Distribution Act”*), as well as to include references to the “*Conduct of Business Rules*”, where relevant. All the amendments being proposed to the current IBA are provided together with this Consultation Document.

4.2 It is being proposed to amend article 2(1) of the IBA, so as to align the current definition of “*advertisement*” with the definition as proposed in the glossary of terms of the draft Conduct Business Rulebook, as well as to insert new definitions of “*Conduct of Business*”



*Rules*” and “*Insurance Distribution Directive*” similarly to the definitions proposed in the amendments to the IIA.

- 4.3 It is proposed to include new paragraphs (l) and (m) in article 26 of the IBA, so as to introduce new grounds in terms of which the MFSA may suspend or revoke an authorisation issued or held under the IBA. The new grounds relate to the instances where an authorised insurance undertaking or an authorised reinsurance undertaking fail to comply with conduct of business requirements set out in Conduct of Business Rules transposing Chapters V and VI of the IDD.
- 4.4 For the purposes of clarity, it is proposed that Part X of the current IBA entitled “Conduct of Business of Insurance” is to be renamed as “Obligations on Undertakings”.
- 4.5 It is being proposed to amend article 48B relating to the appointment of insurance intermediaries, so as to include a reference to ancillary insurance intermediaries, as well as to substitute the reference made to the IMD with a reference to the new IDD.
- 4.6 Moreover, in view of the fact that the provisions of the IDD not only apply to intermediaries but also to distribution activities carried out by insurance and reinsurance undertakings, it is being proposed to insert a new article 48D relating to the applicable provisions of the Insurance Distribution Act, and of any regulations, Insurance Distribution Rules and Conduct of Business Rules issued thereunder, with which an authorised insurance undertaking and an authorised reinsurance undertaking carrying out insurance distribution activities and reinsurance distribution activities, as applicable, will be expected to comply.

## **5. The proposed Insurance Distribution (Exemption) Regulations, 2017**

- 5.1 It is being proposed to issue new Insurance Distribution (Exemption) Regulations, 2017, under the IIA and repeal the current Insurance Intermediaries (Exemption) Regulations, 2006, (S.L. 487.05). Under the IMD, the exemptions from the provisions of the IDD applied to all intermediaries. However, under the IDD limited exemptions are now made applicable only to market participants whose principal business is not selling insurance products, but who sell insurance products on an ancillary basis as part of package or as an add-on, i.e. ancillary insurance intermediaries. Regulation 3 of the proposed regulations, which transposes Article 1(3) of the IDD provides that an ancillary insurance intermediary may be exempted from the requirements set out in the IDD, if a set of

cumulative conditions are satisfied,<sup>4</sup> whereby the premium is not to exceed a certain amount and the risks covered are limited.

- 5.2 In addition, even where the ancillary insurance intermediary is exempt from the provisions of the IDD, in order to ensure an adequate degree of consumer protection, regulation 4 of the proposed regulations, which transposes Article 1(4) of the IDD, provides that an insurance undertaking or insurance intermediary which has appointed and registered an exempted ancillary insurance intermediary, shall require such ancillary insurance intermediary to fulfil certain basic requirements, prior to the conclusion of a contract of insurance, such as the communication of the identity of the ancillary insurance intermediary and the manner in which complaints may be lodged by the client, consideration of the demands and needs of the client, and also the production of the standard document introduced under the IDD in relation to the distribution of non-life insurance products, known as the insurance product information document (*IPID*). In view of the above, regulation 4(2) of the proposed regulations provides that the undertaking or insurance intermediary appointing an exempted ancillary insurance intermediary is to remain responsible for the acts or omissions of such ancillary insurance intermediary which is carrying out distribution activities on their behalf and acting under their responsibility.
- 5.3 Moreover, regulation 5 of the proposed regulations, transposes the list of the activities which are not to be considered to constitute insurance distribution and reinsurance distribution. This is in line with the provisions found in Article 2(2) of the IDD.

---

<sup>4</sup> The IDD “shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where **all** the following conditions are met:

- (a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers:
- (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
  - (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider;
- (b) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a pro rata annual basis;
- (c) by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.”

## **6. The Way Forward**

- 6.1 The transposition of the IDD will also necessitate amendments to the subsidiary legislation, i.e. regulations issued under the IIA. The transposition of the IDD will also necessitate amendments to the current insurance intermediaries rules and possibly the issuing of new rules under the amended IIA, in order to transpose the applicable provisions of the IDD which would not have been included in the primary and subsidiary legislation, as well as to align the said rules with the terminology and the requirements of the IDD. The draft regulations as well as the Insurance Distribution Rules will be issued for Consultation.
- 6.2 In addition, once the new Conduct of Business Rulebook is issued, Chapter 12 on Conduct of Business Rules of the Insurance Rules and insurance intermediaries rules containing conduct of business requirements will be carved out and incorporated in the said Conduct of Business Rulebook.

**Communications Unit**  
**Malta Financial Services Authority**  
**Date: 3<sup>rd</sup> July 2017**  
**MFSA Ref: 04-2017**