

Consultation on the Amendments to the Insurance Business Act and the Insurance Distribution Act

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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.

1.0 Introduction

- 1.1 The purpose of this Consultation Document is to highlight the changes proposed to be carried out to the Insurance Business Act and the Insurance Distribution Act in light of issues surrounding the exchange of confidential information.
- 1.2 The documents circulated by the MFSA for the purposes of this Consultation are in draft format and consist of the following:
- Consultation Document;
 - a consolidated draft version of the Insurance Business Act reflecting the changes proposed;
 - a consolidated draft version of the Insurance Distribution Act reflecting the changes proposed; and,
 - a draft Bill amending the Insurance Business Act and the Insurance Distribution Act.
- 1.3 The proposals are not binding and subject to changes or revisions.

2.0 Background

- 2.1 Insurance undertakings authorised under the Insurance Business Act (“authorised insurance undertakings”) and registered and/or enrolled persons or companies under the Insurance Distribution Act (“insurance intermediaries”) that form part of a group of companies and Maltese branches or subsidiaries of multinational groups are required to collect substantial amounts of client information and to analyse and report such information at group level. The said entities are under pressure to collect substantial amounts of client information and to report on it. Current legislation does not allow the said entities, their branches or subsidiaries in possession of client information to share such information with entities within the same group, unless such exchange of information is amongst insurers, amongst intermediaries, or between insurers and intermediaries.
- 2.2 The MFSA is therefore proposing a number of amendments to the Insurance Business Act (Chapter 403 of the Laws of Malta) and the Insurance Distribution Act (Chapter 487 of the Laws of Malta) as follows:
- a new proposed sub-article (3) to Article 60 of the Insurance Business Act;

- new proposed definitions under the Insurance Business Act in view of the terminology in the new sub-article (3) to Article 60 of the Insurance Business Act;
- a new proposed sub-article (8) to Article 46 of the Insurance Distribution Act; and,
- new proposed definitions under the Insurance Distribution Act in view of the terminology in the new sub-article (8) to Article 46 of the Insurance Distribution Act.

3.0 Amendments to the Insurance Business Act

- 3.1 **Article 60 (1) of the Insurance Business Act**, on the communication of confidential information, currently states that, notwithstanding the provisions of the Professional Secrecy Act, article 257 of the Criminal Code shall not affect or prevent the exchange of the confidential information listed therein amongst insurers, insurance intermediaries, between insurers and intermediaries, and between insurers and/or intermediaries and the Commissioner of Police. This article does not allow insurance undertakings and insurance intermediaries to exchange confidential client information, for example with those forming part of the same multinational group or group of companies.
- 3.2 The MFSA is proposing to introduce a new **sub-article (3) to article 60 of the Insurance Business Act** to allow authorised insurance undertakings to communicate any information which is in their possession and which is related to the affairs of policyholders, potential policyholders, insureds, claimants or connected persons, to other members of the group of companies of which that authorised insurance undertaking forms part and the undertaking's holding company or financial holding company or mixed financial holding company or mixed activity holding company whilst ensuring compliance with the provisions of the Professional Secrecy Act and of article 257 of the Criminal Code. Such exchange can only occur when necessary for the proper carrying out of their activities or for the fulfilment of their obligations, to other members of the group of companies, to any auditor or expert engaged to carry out a compliance assessment, or to an outsourcing service provider in whose favour activities have been outsourced, as the case may be.
- 3.3 The newly proposed article 60 (3) of the Insurance Business Act will also contain provisos which will require authorised insurance undertakings to make communication of client information subject to all proper controls and safeguards. In this respect, the said provisos will ensure that the group company member, the auditor or expert or the outsourcing service provider, as the case may be, is subject to equivalent **obligations of data protection**, confidentiality and care as required under Maltese law and any European Union law, including the GDPR. This requirement is without prejudice to any provision of the **Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01 of the Laws of Malta)**.
- 3.4 In view of the terminology that will be used in the newly proposed article 60 (3) of the Insurance Business Act, the MFSA also aims at introducing **a number of definitions in article 2 of the Insurance Business Act**. The aim behind these proposed definitions is to clarify whose

information can be shared in accordance with the newly proposed article 60 (3) of the Insurance Business Act. The definitions being proposed to article 2 (1) of the Insurance Business Act are those of “connected person”, “financial holding company”, “GDPR”, “mixed activity holding company”, and “mixed financial holding company”.

4.0 Amendments to the Insurance Distribution Act

- 4.1 **Article 46 of the Insurance Distribution Act**, which deals with confidentiality, currently states that nothing in the same Act shall authorise the competent authority to enquire or cause an enquiry to be made in relation to a person acting as an insurance agent, insurance manager, insurance broker, tied insurance intermediary, or ancillary insurance intermediary (“enrolled person”) into the affairs of any individual client of the enrolled person. This is subject to the exception of instances where authorisation can be granted for the purpose of ensuring compliance with any of the provisions of the Insurance Distribution Act or any other Act. Therefore, as aforementioned, this article does not allow enrolled persons forming part of multinational groups or groups of companies to exchange client information.
- 4.2 In order to ensure alignment between the provisions of the Insurance Business Act, the Insurance Distribution Act and the provisions of the Banking Act, with respect to the collection and exchange of confidential information, the MFSA is also proposing to amend article 46 of the Insurance Distribution Act in the same manner as indicated above. The MFSA is therefore proposing to introduce a new **sub-article (7) to article 46 of the Insurance Distribution Act** to allow insurance intermediaries to be able to share information on the identity of customers and account activity in different sectors. This amendment will allow enrolled insurance intermediaries forming part of a group of companies, as aforementioned, to communicate confidential information which is in their possession whilst ensuring compliance with the provisions of the Professional Secrecy Act and of article 257 of the Criminal Code. Such exchange will only be allowed when necessary for the proper carrying out of their activities or for the fulfilment of their obligations, to other members of the group of companies, to any auditor or expert engaged to carry out a compliance assessment, or to an outsourcing service provider in whose favour activities have been outsourced, as the case may be.
- 4.3 The newly proposed article 46 (7) of the Insurance Distribution Act will also require insurance intermediaries to be subject to all proper controls and safeguards. In this respect, insurance intermediaries are required to ensure that the group company member, the auditor or expert or the outsourcing service provider, as the case may be, is subject to equivalent **obligations of data protection**, confidentiality and care as required under Maltese law and any European Union law, including the GDPR, without prejudice to any provision of the **Prevention of Money Laundering and Funding of Terrorism Regulations (Subsidiary Legislation 373.01 of the Laws of Malta)**.
- 4.4 In view of the terminology that will be used in the newly proposed article 46 (7) of the Insurance Distribution Act, the MFSA also aims at introducing **a number of definitions in article 2 of the Insurance Distribution Act**. The aim behind these proposed definitions is to clarify whose information can be shared in accordance with the newly proposed article 46 (7) of the Insurance

Distribution Act. The definitions being proposed to article 2 (1) of the Insurance Distribution Act are those of “connected person”, “financial holding company”, “GDPR”, “holding company”, “insured”, “mixed activity holding company”, “mixed financial holding company”, “overseas regulatory authority”, and “policyholder”.

5.0 Way Forward

- 5.1 Any comments and feedback in relation to the Consultation Document and the attached draft legislations are to be addressed to the Insurance and Pensions Supervision function and submitted in writing on ips_legal@mfsa.mt, by not later than **30 March 2023**. The MFSA will then review the comments received and issue a Feedback Statement providing feedback to the market.
- 5.2 Following the publication of the Feedback Statement, the MFSA will also issue a Circular informing the market on the date when the amendments will come into force.