

Note for Information

Amendments to Insurance Rules

1. Purpose

On 16th February 2017, EIOPA published on its website a [Decision on the collaboration of the insurance supervisory authorities](#) (“*the Decision*”), in line with the requirements laid down in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), (“*the Solvency II Directive*”). This Decision strengthens and enhances the cooperation between the competent authorities from all the Member States of the European Union, especially in relation to cross-border activities, which is fundamental for the conduct of supervision and for achieving consistent supervisory practices.

The provisions relating to the said collaboration, as set out in the [Annex to the Decision](#), entered into force on **1st May 2017** and repealed the [General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union, 2008](#). This Decision reflects the joint decision of the competent authorities of the Member States to replace the said General Protocol with a new arrangement, whilst taking into account the relevant provisions of the Solvency II Directive.

Following this new Decision on the collaboration of the insurance supervisory authorities and the Annex to the said Decision, this Note for Information provides a description of the main amendments carried out to the relevant Chapters of the Insurance Rules issued under the Insurance Business Act (*Cap. 403*), primarily to align the provisions of the said Chapters with the provisions of the Decision.

Chapters 1, 9 and 10 of the Insurance Rules have been amended as explained in this Note for Information and have been uploaded on the MFSA website.

Any queries are to be addressed to the Insurance and Pensions Supervision Unit by email on ipsu@mfsa.com.mt.

2. Amendments to Insurance Rules

2.1 *Chapter 1 on the Application Process*

- 2.1.1 In section 1.3, relating to the particulars or proof to be included in a scheme of operations, a new paragraph 1.3.3.1(e) has been added to reflect the requirements of paragraph 2.5.1 of the Annex to the Decision. In this respect, new applicants will be required to disclose to the MFSA any formal or informal requests for an authorisation by the applicants' shareholders or members with qualifying holdings to establish an insurance or reinsurance undertaking in another Member State or third country, that had been rejected or withdrawn, and provide reasons for the rejection or withdrawal of the submitted application.
- 2.1.2 Paragraph 1.3.3.3 of the Chapter 1 has been amended so that where the applicant has clearly indicated its intention to operate exclusively or almost exclusively in one or more Member State or EEA State, other than Malta, on a freedom of services basis, it is to provide the MFSA with the reasons supporting such a strategy. This reflects the requirements of paragraph 2.6.1 of the Annex to the Decision.

2.2 *Chapter 9 on Freedom of Establishment and Freedom to provide Services by a European Insurance Undertaking and a European Reinsurance Undertaking*

Establishment Conditions

- 2.2.1 Section 9.3 which lays down the establishment conditions of a European insurance undertaking seeking to establish a branch in Malta in exercise of a European right, has been amended to reflect the requirements of Section 3.1.1 of the Annex to the Decision. The salient amendments are the following:
- (a) paragraph 9.3.1(b)(i) thereof, has been amended so that the consent notice is to include a reference to the legal entity identifier (LEI) of the European insurance undertaking;
 - (b) a new paragraph 9.3.1(b)(iii) has been added so that in the case of a European insurance undertaking which belongs to a cross-border group, the consent notice is to include the name of the group supervisor and the structure of the group, together with the last reported group solvency position;
 - (c) paragraph 9.3.1(b)(vi) (previously paragraph 9.3.1(b)(v)), which sets out the information to be submitted in the scheme of operations, is also to indicate the identification of the persons who effectively run the branch and the persons within the European insurance undertaking who are responsible for key functions for the branch, as well as any information regarding the planned distribution channels, relevant outsourcing contracts and partners that will be used by the branch in Malta.

- 2.2.2 In so far as section 9.7 is concerned, this has been amended so as to require the person responsible for the compliance function of the branch and the money laundering reporting officer of the branch to submit a Personal Questionnaire to the MFSA, unless such persons have been duly approved by the European regulatory authority.
- 2.2.3 Section 9.8.1 has been amended so that, where the European insurance undertaking seeks to effect any changes to the information listed in paragraph 9.8.1, it is required to notify such change to its European regulatory authority and also to the MFSA, at least one month before implementing such change.

Services Conditions

- 2.2.4 Section 9.13, which lays down the Service conditions of a European insurance undertaking seeking to provide services in Malta in exercise of a European right, has been amended to reflect the requirements of Section 3.2.1 of the Annex to the Decision. The salient amendments are the following:
- (a) paragraph 9.13.1(b)(iv) thereof has been amended so that the notice of intention of a European insurance undertaking is also to include the email address of the European insurance undertaking, if available, as well as a reference to its legal entity identifier (LEI);
 - (b) a new paragraph 9.13.1(b)(v) has been added so that where the European insurance undertaking has clearly indicated its intention to operate exclusively, or almost exclusively, in Malta, the notice of intention is to include the identification of the persons who effectively run the undertaking or are responsible for the key functions;
 - (c) a new paragraph 9.13.1(b)(vi) has been added and provides that where a European insurance undertaking belongs to a cross-border group, the notice of intention is to include the name of the group supervisor and the structure of the group, together with the last reported group solvency position;
 - (d) a new paragraph 9.13.1(b)(vii) has been inserted so that, the notice of intention is to contain any information regarding third parties or related parties involved in the underwriting activities in Malta;
 - (e) a new paragraph 9.13.1(b)(viii) has been added so that the notice of intention is also to include the identification of the person within the European insurance undertaking who will be responsible for handling of complaints in relation to the freedom of services activities in Malta.

2.3 Chapter 10 on Freedom of Establishment and Freedom to provide Services by a Maltese Insurance Undertaking and a Maltese Reinsurance Undertaking

Establishment Conditions

- 2.3.1 Section 10.3, which lists the information to be provided by a Maltese insurance undertaking seeking to establish a branch in a Member State or an EEA State, has been amended to align it with the requirements of Section 3.1.1 of the Annex to the Decision. The salient amendments are the following:
- (a) paragraph 10.3.3(b) has been amended so that a Maltese insurance undertaking is to indicate, in its scheme of operations, the identification of the persons who effectively run the branch and the persons within the Maltese insurance undertaking who are responsible for key functions for the branch;
 - (b) a new paragraph 10.3.3(d) has been added and requires a Maltese insurance undertaking seeking to establish a branch in a Member State or EEA State to include, in its scheme of operations, any information regarding the planned distribution channels, relevant outsourcing contracts and partners that will be used by the branch in the Member State or EEA State concerned.
- 2.3.2 The notification procedure found in section 10.5 of Chapter 10 has been amended to reflect the requirements found in Section 3.1.3 of the Annex to the Decision. Upon receipt of a notification from a Maltese insurance undertaking, the MFSA is to assess the completeness and accuracy of the information provided by the Maltese insurance undertaking, and where the MFSA considers such information to be incomplete or incorrect, the MFSA shall, without delay, inform the Maltese insurance undertaking, in writing, indicating where the information is incomplete or incorrect. Moreover, the MFSA is to communicate to the Maltese insurance undertaking the information received from the European regulatory authority of the host Member State about the conditions under which, in the interest of the general good, business of insurance is to be carried on within the territory of the host Member State, or inform the Maltese insurance undertaking that no conditions were communicated by the European regulatory authority as being imposed.
- 2.3.3 Section 10.6 of Chapter 10 has been amended so that where a Maltese insurance undertaking seeks to effect any changes to the information listed in paragraph 10.6.1, the Maltese insurance undertaking is required to notify such change to its European regulatory authority of the host Member State, as well as to the MFSA, at least one month before implementing such change.

Services Conditions

2.3.4 Section 10.8, which contains the information to be provided by a Maltese insurance undertaking which is seeking to provide services in a Member State or an EEA State, has been amended to align it with the requirements of Section 3.2.1 of the Annex to the Decision. The salient amendments are the following:

- (a) a new paragraph 10.8.2(e) has been inserted so that the notice of intention provided by the Maltese insurance undertaking is to contain any information regarding third parties or related parties involved in the underwriting activities in the Member State or EEA State concerned;
- (b) a new paragraph 10.8.2(f) has been inserted so that the notice of intention is to also include the identification of the person within the Maltese insurance undertaking who is responsible for handling of complaints in relation to the freedom of services activities.

Communications Unit
Malta Financial Services Authority
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