

**Circular relating to the Transposition of Directive (EU) 2016/97  
of the European Parliament and of the Council of 20 January 2016  
on insurance distribution (recast), “*the Insurance Distribution Directive*”**

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### **Background**

On 2<sup>nd</sup> February 2016, the Insurance Distribution Directive was published in the Official Journal of the European Union. This 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*.” Unlike the Insurance Mediation Directive, which only regulated the activities of insurance intermediaries, the scope of the Insurance Distribution Directive extends to insurance undertakings and reinsurance undertakings, specifically those employees carrying out insurance or reinsurance distribution, so that consumers benefit from the same level of protection despite the differences between distribution channels.

The Insurance Distribution Directive covers not only insurance undertakings or intermediaries, but also other market participants who sell insurance products on an ancillary basis, unless they meet the conditions for exemption. Therefore, the said Directive introduces a new category of intermediary referred to as the “*ancillary insurance intermediary*.”

### **Transposition into Maltese Law**

The MFSA is currently conducting internal discussions in relation to the implementation and transposition of the Insurance Distribution Directive. In addition, the MFSA is also undergoing preparatory work leading to the necessary infrastructural fine-tuning so as to address the online registration system contemplated under the Insurance Distribution Directive.

The Insurance Distribution Directive will be partially transposed by means of a Bill containing amendments to the current Insurance Intermediaries Act (Chapter 487 of the Laws of Malta), as well as amendments to the Insurance Business Act (Chapter 403 of the Laws of Malta), since the Insurance Distribution Directive also applies to insurance or reinsurance undertakings selling insurance products directly. The transposition of the Insurance Distribution Directive will also necessitate amendments to subsidiary legislation, i.e. regulations issued under the Insurance Intermediaries Act, as well as certain regulations issued under the Insurance Business Act. The MFSA is currently working on a regime for ancillary insurance intermediaries. As a consequence, the tied insurance intermediaries regime, which the MFSA intends to retain, may necessitate some changes.

The MFSA is in the process of preparing the draft Bill and the necessary amendments to the regulations, which will be then issued for Consultation to the market, explaining the proposed amendments to the said Acts and subsidiary legislation issued thereunder. In this respect, the MFSA will issue a Consultation Document in May 2017 and the insurance industry will be given a minimum period of 30 days to provide its feedback.

The transposition of the Insurance Distribution Directive will also necessitate amendments to the insurance intermediaries rules and possibly the issuing of new insurance intermediaries rules under the Insurance Intermediaries Act and certain Insurance Rules issued under the Insurance Business Act, in order to transpose the applicable provisions of the Insurance Distribution Directive which would not have been included in the primary and subsidiary legislation, as well as to align the said rules with the requirements of the Insurance Distribution Directive.

In so far as the conduct of business provisions contained in the Insurance Distribution Directive are concerned, in 2015 the MFSA commenced transposition of the draft Insurance Distribution Directive in the first three chapters of the Conduct of Business Rulebook which were issued for [Consultation](#) on the 6<sup>th</sup> May 2015. The Chapters address Disclosures, Product Governance and Conflicts of Interest. The remaining conduct of business provisions of the Insurance Distribution Directive were transposed in the other two chapters of the Conduct of Business Rulebook which were issued for [Consultation](#) on the 11<sup>th</sup> April 2016. These Chapters relate to Sales Processes and Execution of Clients' Orders. The MFSA has considered the feedback received by the industry to the above-mentioned consultations and will be issuing all chapters of the Rulebook for a final consultation procedure in May 2017. In the interim, the MFSA held industry training and a number of external meetings with various associations.

The MFSA would like to point out that the [delegated acts and implementing technical standards](#) to be issued under the Insurance Distribution Directive, submitted by EIOPA to the Commission in February 2017, are expected to be adopted by the Commission in Autumn 2017. Moreover EIOPA will be issuing further [Guidelines](#) by the 23<sup>rd</sup> August 2017. The foregoing will necessitate further amendments to be effected to the Conduct of Business Rulebook.

Insurance undertakings and insurance agents are expected to bring the contents of this Circular to the attention of the tied insurance intermediaries acting on their behalf.

### **Contacts**

Any queries or requests for clarifications in respect of the above should be sent by email on [idd@mfsa.com.mt](mailto:idd@mfsa.com.mt).

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