

Interpretative Note:

Insurance Intermediary Activities
under the Prevention of Money
Laundering and Funding
of Terrorism Regulations



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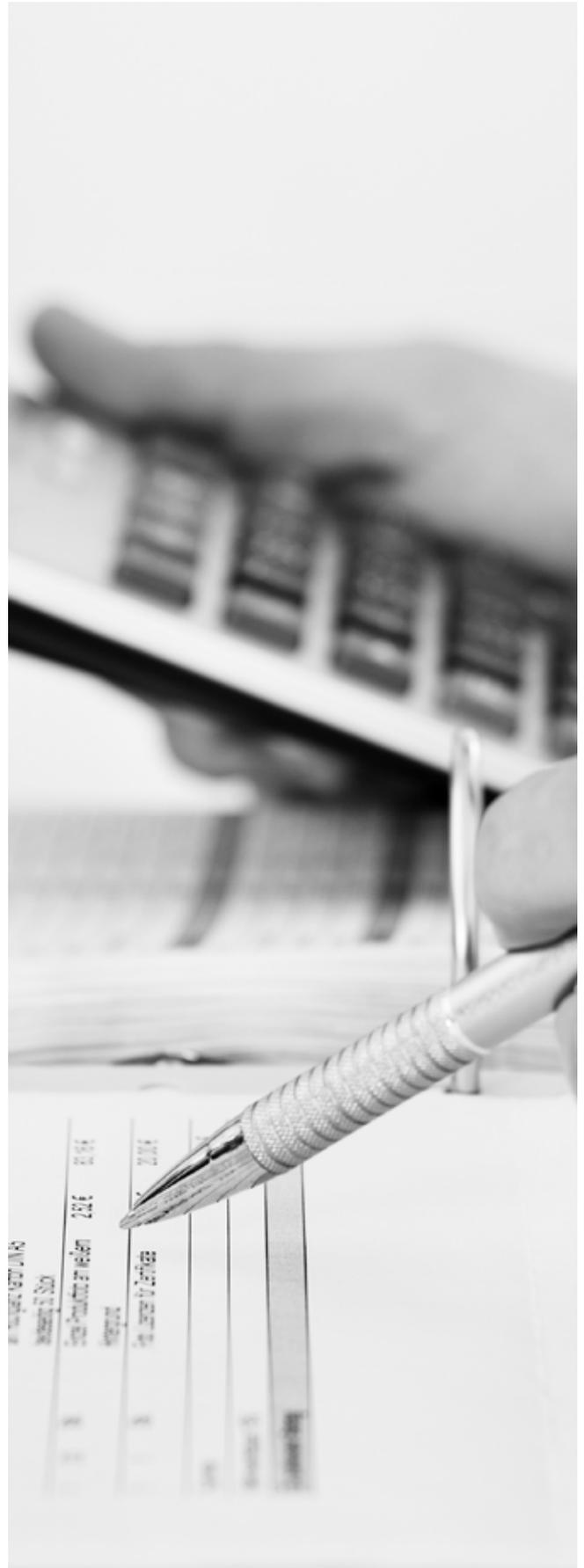
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1. INTRODUCTION

The Prevention of Money Laundering and Funding of Terrorism Regulations (“PMLFTR”) impose a series of obligations on subject persons, i.e. on anyone who is carrying out relevant activity or relevant financial business. Regulation 2(1) of the PMLFTR identifies which insurance intermediary activities constitute relevant financial business. Under paragraph (d) thereof, the following is deemed to constitute relevant financial business:

(d) any insurance intermediary activities carried out by an insurance intermediary or by a tied insurance intermediary related to long-term insurance business which person or institution is enrolled or required to be enrolled under the provisions of the Insurance Distribution Act, other than a natural person who is registered or enrolled and acts on behalf of a tied insurance intermediary or a person or institution enrolled as a tied insurance intermediary that does not collect premiums, or other amounts intended for the policyholder or the beneficiary;

In view of the fact that the Financial Intelligence Analysis Unit (“FIAU”) was made aware of a number of difficulties encountered by the insurance sector in interpreting this provision, the present Interpretation Note is being issued to provide guidance in this regard.



2. INSURANCE BROKERS

The current certificate of enrolment issued by the Malta Financial Services Authority (“MFSA”) to insurance brokers allows a person enrolled under article 13 of the Insurance Distribution Act (Cap. 487 of the Laws of Malta) to carry out insurance distribution activities in both general business as well as long-term business of insurance. This situation has at times given rise to questions as to whether insurance brokers who have consciously by way of strategy, business model or risk appetite, limited their insurance distribution activities to general business of insurance and have never carried on any insurance distribution activities relating to long-term business of insurance, should still be considered as subject persons or otherwise. The FIAU would like to clarify that in such instances and in line with the wording used in Regulation 2(1) (d) of the PMLFTR, such insurance distribution activities would not fall under the definition of ‘relevant financial business’, and thus such an insurance broker would not be considered as a “subject person”.

On the other hand, any insurance broker who carries out insurance distribution activities related to long-term insurance business is considered to be a subject person independently of the risk, size or value of one’s activities.

What happens in situations where an insurance broker who carries out insurance distribution activities related to general insurance business wishes to change the nature of its activities?

Where an insurance broker intends to commence carrying out insurance distribution activities relating to long-term business of insurance, the insurance broker is to ensure that it is in a position to meet the AML/CFT obligations arising from the PMLFTR prior to actually carrying out such business. Insurance brokers are reminded that this entails the appointment of a Money Laundering Reporting Officer who would have to be approved by the MFSA. In addition, any such broker would also have to register with the FIAU through the CASPAR system. It is to be noted that an insurance broker who commences to carry out long-term insurance business without complying with the above indicated AML/CFT obligations could result in the FIAU and the MFSA taking action against any such insurance broker. This may also include the imposition of pecuniary fines.

An insurance broker who at present carries out long-term insurance business insurance distribution activities may decide not to do so any longer. In such instances, not only is the insurance broker required to determine whether it will carry out any new long-term insurance business activities but must also see how it will deal with any existing long-term insurance business it is still servicing and handling.

By way of example, if the insurance broker is collecting the premium due on a given policy from the customer and forwarding it to the insurance undertaking, the broker would still be considered as carrying out relevant financial business and remains a subject person for the purposes of the PMLFTR. Therefore, as long as a broker continues to service any existing long-term business of insurance, the insurance broker is expected to continue abiding by all applicable AML/CFT requirements.

Furthermore, where insurance brokers no longer carry out and service any long-term insurance business, they are reminded that they are still bound to retain any records of past business for a period of five (5) years as set out in Regulation 13 of the PMLFTR.

Tying in with this interpretation, it follows that an insurance manager who only accepts appointments from insurance brokers who have limited their insurance distribution activities in the class or classes of general business of insurance, would equally not be considered as a subject person for the purposes of the PMLFTR.

In an effort to ensure that the FIAU has a correct understanding of who is to be considered as subject person or otherwise, the FIAU is inviting insurance brokers who have decided to limit their insurance distribution activities to general business of insurance and do not intend to carry any long-term insurance business to notify it of their situation by making use of the declaration attached in Annex I. This declaration should be printed on the insurance broker’s letterhead and be signed by the legal representatives of the insurance broker. Scanned copies of the said declaration may be sent on compliance@fiaumalta.org. Moreover, a copy of this declaration should also be submitted to the Insurance and Pensions Supervision of the MFSA for its records on ipsu@mfsa.mt.



3. TIED INSURANCE INTERMEDIARIES

Tied insurance intermediaries enrolled with the MFSA which carry out tied insurance intermediary activities in the class or classes of long-term business of insurance are equally considered to be carrying out relevant financial business in terms of the above-quoted Regulation 2(1) (d) of the PMLFTR and are deemed to be subject persons. Therefore, any tied insurance intermediary enrolled to carry out tied insurance intermediary activities only in the class or classes of general business of insurance, would not be considered as a subject person.

Also excluded from being considered as subject persons are tied insurance intermediaries enrolled to carry out tied insurance intermediary activities in the class or classes of long-term insurance business if they qualify for one of the following exceptions:

- i. The person in question is a natural person and has been enrolled so that the individual in question can carry out activities on behalf of an entity that has itself been enrolled as a tied insurance intermediary; **or**
- ii. The tied insurance intermediary does not collect premiums, or other amounts intended for the policyholder or the beneficiary.

With regards to the exception referred to in (ii) above, Chapter 8 of the Insurance Distribution Rules allow an insurance undertaking to authorise the tied insurance intermediaries that act on its behalf to collect and hold monies. It is only where such an authorisation has been granted and the tied insurance intermediary has therefore to maintain a tied insurance intermediary account, that the tied insurance intermediary will be considered as a subject person for the purposes of the PMLFTR.

For clarification purposes, a tied insurance intermediary is not considered as collecting and holding monies when the monies are transmitted directly from the client to the insurance undertaking, for instance by means of a cheque payable to the insurance undertaking, or any other transfer of monies which is made directly to the insurance undertaking (such as via a bank transfer).

The FIAU remains available to assist subject persons. Questions on the application of this Interpretative Note may be sent to queries@fiaumalta.org.

ANNEX I

A. DECLARATION BY INSURANCE BROKERS WHO HAVE ALWAYS LIMITED THEIR ACTIVITIES TO GENERAL BUSINESS OF INSURANCE

Financial Intelligence Analysis Unit
65C, Tower Street
Birkirkara BKR4012
Malta

[Date]

[Name of Insurance Broker] ("the Company") is hereby declaring to the Financial Intelligence Analysis Unit that since the date of its enrolment under the Insurance Distribution Act (Cap 487 of the Laws of Malta), the Company's insurance distribution activities have always been limited to the carrying out of general business of insurance and that it has never carried on any long-term business of insurance.

The Company understands that, should it decide to start carrying out long-term business of insurance, it will be deemed to be a subject person for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations and must therefore abide by and meet the obligations arising from the said regulations prior to commencing any such activity, independently of the volume, value or risk of said long-term insurance business.

In addition, should the Company decide to carry out long term business of insurance, it will duly notify the FIAU in writing of its intention at least 30 days prior to carrying out such business and rescind the current declaration with immediate effect.

[Name and Surname]
[Designation]

B. DECLARATION BY INSURANCE BROKERS WHO HAVE DECIDED TO CEASE ANY LONG-TERM BUSINESS OF INSURANCE

Financial Intelligence Analysis Unit
65C, Tower Street
Birkirkara BKR4012
Malta

[Date]

[Name of Insurance Broker] ("the Company") is hereby notifying the Financial Intelligence Analysis Unit that with effect from XX XXX XXX, it has limited its insurance distribution activities to the carrying out of general business of insurance and that it will no longer be carrying out insurance distribution activities of long-term insurance business. The Company has also ceased to service any long-term policies it has sold and has notified policy holders accordingly.

All records pertaining to any long-term insurance distribution activities that were carried out prior to the Company taking this decision are to be retained in line with the applicable provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations and any Implementing Procedures issued by the Financial Intelligence Analysis Unit, and shall be made available to the competent authorities in line with applicable law.

The Company understands that, should it decide to once again commence carrying out insurance distribution activities of long-term business of insurance, it will be deemed to be a subject person for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations and must therefore abide by and meet the obligations arising from the said regulations prior to commencing any such activity, independently of the volume, value or risk of said long-term insurance business.

In addition, the Company shall duly notify the FIAU in writing of its intention at least 30 days prior to commencing to carry out insurance distribution activities of long-term business of insurance and rescind the current declaration with immediate effect.

[Name and Surname]

[Designation]

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Questions on this document or on the application of AML/CFT
measures may be sent to **queries@fiaumalta.org**

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