
**Circular to the financial services industry
on changes to the Investment Services Rules
following the transposition of the UCITS V Directive**

The MFSA announces the publication of the following regulations issued in terms of the Investment Services Act, 1994:

- (a) Investment Services Act (Control of Assets) (Amendment) Regulations, 2016 [L.N. 113 of 2016];
- (b) Investment Services Act (Custodians of Collective Investment Schemes) Regulations, 2016 [L.N. 114 of 2006];
- (c) Investment Services Act (UCITS Administrative Penalties, Measures and Investigatory Powers) Regulations, 2016 [L.N. 115 of 2016] and
- (d) Investment Services Act (UCITS Management Company Passport) (Amendment), Regulations, 2016 [L.N. 116 of 2016].

The publication of these regulations completes the process of transposition of Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions ('UCITS V').

Concurrently, the MFSA is announcing the publication of a revised version of the following Investment Services Rulebooks:

- (a) the Investment Services Rules for Investment Services Providers;
- (b) the Investment Services Rules for Professional Investor Funds;
- (c) the Investment Services Rules for Alternative Investment Funds; and
- (d) the Investment Services Rules for Retail Collective Investment Schemes.

Most of the changes to the abovementioned Rulebooks relate to the UCITS V transposition process. On the other hand, some changes have been made to provide further clarity to the SLCs or for the purpose of introducing reporting requirements.

Investment Services Rules for Investment Services Providers

The revisions to the Investment Services Rules for Investment Services Providers consist of the following:

- *Part BII*: Part BII has been revised as follows:
 - (a) SLCs 2.19 and 3.01 were revised to update the link to the ESMA website;

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- (b) New SLCs 3.52 to 3.60 were included to transpose Articles 14a and 14b of UCITS V.
- *Part BIII*: SLCs 5.01 and 5.02 of Part BIII have been revised to reflect the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.
- *Part BIV*: Part BIV has been considerably revised and many parts of it now included in the Investment Services Act (Custodians of Collective Investment Schemes) Regulations. In particular:
- (a) SLC 1.01 has been updated in view of the different classifications in the Category 4 Investment Services Licence;
- (b) SLCs 1.02 and 1.03 have been deleted in view of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations;
- (c) SLCs 3.01, 3.04, 3.06 to 3.09, 3.11 to 3.12, 3.15 and 3.29 have been deleted in view of the transposition of UCITS V and the Investment Services Act (Custodians of Collective Investment Schemes) Regulations;
- (d) Section 4 applicable to custodians of AIFs has been deleted in its entirety in view of the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.
- *Appendix 13*: The changes to Annex 5 of Appendix 13 have been made to include another section within the 'AIFM & AIF Details' Sheet of Annex 5 entitled 'Section B: Information on Master/Feeder AIF(s)' to segregate Master/Feeder structures from the other AIFs managed by the full scope or *de minimis* Category 2 AIFM. The scope of this section is to avoid duplication of the Assets under Management ("AUM") figure of Master and Feeder AIF(s) managed by the same AIFM.

The primary amendment to Annex 5 is the introduction of a new column entitled 'Deduction from Total AUM Calculation of AUM of Feeder AIF(s)' in 'Section B: Information on Master/Feeder AIF(s)'. This column has been introduced to exclude the AUM of feeder AIF(s) managed by a Maltese full scope or *de minimis* Category 2 AIFM also managing its Master AIF, from the automated 'Total Assets Under Management (in Euro)' figure of the full scope or *de minimis* Category 2 AIFM.

'Yes' represents the Feeder AIF's AUM (stated in the 'Assets Under Management' column) that is excluded from the automated 'Total Assets Under Management (in Euro)' figure of the full scope or *de minimis* Category 2 AIFM (to avoid double counting).

'No' represents the Master/Feeder AIF's AUM included in the automated 'Total Assets Under Management (in Euro)' figure of the full scope or *de minimis* Category 2 AIFM. Additional information is provided in the *Important Information Sheet* of the Annex 5.

Investment Services Rules for Professional Investor Funds

The revisions to the Investment Services Rules for Professional Investor Funds consist of the following:

- *Part A:* Part A has been revised as follows:
 - (a) Section 8.3 dealing with the custodian was updated to reflect the distinction between the Category 4a and the Category 4a Investment Services Licence;
 - (b) Section 11: A new section 11 was included in Part A dealing with the requirements applicable in relation to the surrender of a Collective Investment Scheme Licence.
- *Part BI:* Part BI has been revised as follows:
 - (a) SLC 1.5 dealing with the appointment of a third party manager has been revised to ensure clarity;
 - (b) SLCs 1.14 and 1.16 dealing with the custodian have been revised in line with the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.
- *Part BII:* Part BII has been revised as follows:
 - (a) SLC 1.5 dealing with the appointment of a third party manager has been revised to ensure clarity;
 - (b) SLCs 1.14 and 1.17 dealing with the custodian have been revised in line with the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.
- *Part BIII:* Part BIII has been revised as follows:
 - (a) SLC 1.5 dealing with the appointment of a third party manager has been revised to ensure clarity;
 - (b) SLCs 1.14 and 1.16 dealing with the custodian have been revised in line with the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

Investment Services Rules for Alternative Investment Funds

The revisions to the Investment Services Rules for Alternative Investment Funds consist of the following:

- *Part A:* Part A has been revised through the inclusion of a new Section 10 applicable in relation to the surrender of a Collective Investment Scheme Licence.
- *Part B:* Part B has been revised as follows:

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- (a) SLCs 3.14 to 3.20 have been deleted and replaced by SLCs 3.14 and 3.15 in line with the Investment Services Act (Custodians of Collective Investment Schemes) Regulations;
 - (b) SLCs 3.25 and 3.26 have been deleted since these replicate the provisions of SLCs 1.06(d) and 1.07(d);
 - (c) SLCs 5.01 and 5.03 have been revised to clarify the obligations of the AIFM;
 - (d) SLC 5.12 has been revised to correct a typo;
 - (e) SLC 7.02 has been revised to read “*The AIFM may only market an AIF....*” instead of “*The AIF may only be marketed with a passport...*”;
 - (f) SLCs 8.17 and 8.18 have been revised to correct cross-references.
- *Appendix I:* SLCs 8.01, 8.08, 8.13, 8.22 and 8.24 have been revised to remove references to the AIFM.

Investment Services Rules for Retail Collective Investment Schemes

The revisions to the Investment Services Rules for Retail Collective Investment Schemes consist of the following:

- *Part A:* Part A has been revised as follows:
- (a) Section 7 dealing with Service Providers has been revised to reflect the distinction between the Category 4a and the Category 4a Investment Services Licence;
 - (b) Section 14: A new section 14 was included in Part A applicable in relation to the surrender of a Collective Investment Scheme Licence.
- *Part BII:* Part BII has been revised as follows:
- (a) SLC 2.15 was revised to refer to the Investment Services Act (Custodians of Collective Investment Schemes) Regulations (hereinafter referred to as Custodian Regulations);
 - (b) SLCs 2.16 and 2.18 were incorporated in the Custodian Regulations;
 - (c) SLC 6.1.2 was revised to transpose the provisions of Article 69(1) of UCITS IV as amended by UCITS V;
 - (d) SLC 6.2.8 was revised to transpose the provisions of Article 78(4) of UCITS IV as amended by UCITS V;
 - (e) SLC 6.2.22 was revised to update the link to the ESMA website;
 - (f) SLC 16.8 was revised to include reference to the *ESMA Guidelines on sound remuneration policies under the UCITS Directive and AIFMD*.

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- Appendix I: Paragraphs 2.1, 2.2 and 2.3 of Annex II to Appendix I were revised to transpose the revised Schedule A of Annex I point 2 of UCITS IV as amended by UCITS V.
- Appendix II: Paragraph 1.9 dealing with the Annual Report was revised to transpose the requirements of Article 69(3) of UCITS IV as amended by UCITS V.
- Appendix VIII: A new Section 8 was added to Section II of Appendix VIII. This Section deals with remuneration policies and practices and has been introduced to transpose the requirements of Articles 14a and 14b as introduced by UCITS V.

Contacts

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