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## MFSA issues second consultation document on AIFMD

On 3rd December 2012, the MFSA launched a consultation exercise on the proposed implementation of the Alternative Investment Fund Managers Directive. This consultation exercise is the second one and provides a detailed insight into the proposed changes to the Investment Services Rules for Investment Services Providers. In particular, the format adopted continues to build, consolidate and improve on the version of the Rule Book which was issued a year ago following the transposition of the UCITS IV Directive. The revised Rule Book which is being proposed aims at achieving specific outcomes namely:



- i) The implementation of European Law in the field of securities regulation including MiFID, AIFMD, CRD and UCITS IV Directive;
- ii) The creation of a single point of reference for Investment Services Providers starting off from the application process to the applicable Standard Licence Conditions irrespective of the services being provided. Furthermore, the Rule Book also includes within its set-up all the prescribed application documents and the templates thus making it easier to refer to.
- iii) The availability of a consolidated Investment Services Rule Book for Investment Services Providers provides certainty as to which supervisory regime is applicable to each Category of Licence Holders. Furthermore, Part B of the Rule Book has been streamlined in four specific sections which are applicable to Investment Services Licence Holders depending on type of activity being undertaken.
- iv) When accompanied by the Guidance Notes, the consolidated Investment Services Rule Book provides an all-you-need to know document for institutions who intend establishing an operation in Malta.

The consultation document is available for download from the MFSA Website under the Announcements Section. Interested parties are to send their comments in writing by not later than Friday 11th January 2013 addressed to the MFSA Securities and Markets Supervision Unit - [su@mfsa.com.mt](mailto:su@mfsa.com.mt).

## MFSA implements ESRB Recommendation on foreign currency lending

On 12th December 2012, the Authority published MFSA Rule 01/2012 cited as the 'Foreign Currency Lending Rule'. The MFSA Rule 01/2012 is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1) published as Notice No. 2011/C 342/01 of the Official Journal of the European Union, which was approved by the General Board of the European Systemic Risk Board (ESRB) on 21 September 2011, in accordance with Regulation (EU) No. 1092/2010.

The Rule applies to the following financial institutions as purposely defined therein:

- i. Credit Institutions authorised under the Banking Act;
- ii. Financial Institutions authorised under the Financial Institutions Act;
- iii. Investment Services Providers and Collective Investment Schemes authorised under the Investment Services Act;
- iv. Undertakings authorised to carry on the business of insurance and/or re-insurance under the Insurance Business Act;
- v. Occupational schemes authorised under the Special Funds (Regulation) Act;
- vi. Financial Conglomerates in terms of the Financial Conglomerates Regulations.

This MFSA Rule regulates the conduct of foreign currency lending. A foreign currency is defined as any currency other than the legal tender of the country in which the borrower is resident. Therefore the foreign currency can be any currency including the Euro and any currency of a non-EU country such as the US Dollar. The determining factor for identifying a foreign currency is the residence of the borrower.

MFSA Rule 01/2012 presents two sets of obligations namely general obligations applying to all financial institutions as defined within the Rule itself and reporting obligations imposed on certain financial institutions whose levels of foreign currency lending activities are above a certain threshold in comparison with their overall lending. The Authority shall determine this 'materiality' threshold periodically, in accordance with guidance provided by the EBA and the ESRB.

All the Financial Institutions subject to this Rule must comply with the following general obligations:

- An obligation to educate borrowers on the risks involved in foreign currency lending;
- An obligation to monitor their levels of foreign currency lending and hold specific records on foreign currency loans entered into after 1st January 2013;
- An obligation to incorporate foreign currency lending risk in their internal risk management systems;
- An obligation to hold adequate capital to cover foreign currency lending risk;
- An obligation to monitor funding and liquidity risks in connection with foreign currency lending to both hedged and unhedged borrowers, together with their overall liquidity positions.

The MFSA Rule 01/2012 is available for download from the [MFSA website](#). The MFSA Rule 01/2012 shall come into force on 1st of January 2013.



## MFSA issues consultation on proposed amendments to Trusts and Trustees Act

On 14th December 2012, the MFSA launched a consultation exercise on the proposed amendments to the Trusts and Trustees Act and other related legislation. This consultation exercise is the result of a series of meetings of a Working Group which included representatives from the Authority and from the Industry. The Working Group was set up to discuss proposals for improving Malta's laws and practices regulating trusts and to enhance the legal framework related to the establishment and use of trusts for various purposes.

The proposed amendments to the Trusts and Trustees Act cover a vast array of issues amongst which, the proposal to extend the perpetuity period of trusts to 125 years and the introduction of a specific article on settlor reserved powers. Furthermore, the Authority is also consulting with the industry on proposed amendments to the regulatory framework including the proposed introduction of a minimum share capital requirement for trustees and on the introduction of an obligation to purchase a Professional Indemnity Insurance Cover.

Apart from the revised Trusts and Trustees Act, the industry is also being circulated with two proposed regulations namely:

- i. Trusts and Trustees Act (Registration of Notaries to act as Qualified Persons) Regulations - The purpose of the Trusts and Trustees Act (Registration of Notaries to act as Qualified Persons) Regulations is that of creating a framework which caters for the registration of notaries wishing to act as a qualified person in terms of Article 43 of the Act. These regulations seek to provide the possibility to notaries who are acting as depositary notaries in terms of Article 43A of the Act to also act as qualified persons, as long as such notaries are registered in terms of these Regulations. The Trusts and Trustees Act (Registration of Notaries to act as Qualified Persons) Regulations also deal with the application requirements which a notary must fulfil in order to be eligible for registration to act as a qualified person.
- ii. Trusts and Trustees Act (Notarial Trust Deeds, Registration, Conservation and Access) Regulations- The purpose of the Trusts and Trustees Act (Notarial Trust Deeds, Registration, Conservation and Access) Regulations is that of providing a clear procedure which is to be adopted by Notaries to ensure the protection of the private nature of the trust deed on the one hand and the public element which is innate in the public deed on the other hand. These Regulations provide guidance on the following matters:
  - a. conservation and registration in volumes by the Publishing Notary for all notarial deeds published prior to the coming into force of these regulations;
  - b. conservation and registration in volumes by the Publishing Notary for all notarial deeds published after the coming into force of these regulations;
  - c. Safekeeping of documents by Depositary Notaries; and
  - d. Accessibility of Trust Documents.

The consultation document is available for download from the MFSA Website under the Announcements Section. Interested parties are to send their comments in writing by not later than 15th February 2013 addressed to the MFSA Securities and Markets Supervision Unit - [su@mfsa.com.mt](mailto:su@mfsa.com.mt).

The 3<sup>rd</sup> Annual Malta Spring Fund Conference

**UCITS – AIFMD – MiFID II**

**Implications for Funds, Managers, Service Providers**

**March 14<sup>th</sup> & 15<sup>th</sup>, 2013 – The Westin Dragonara Resort – St. Julian's Bay – Malta**

## Malta: Recognised Incorporated Cell Companies

*Regulatory changes at an EU level have led many EU Member States to introduce new investment structures that may be of benefit to fund sponsors. A recent development in Malta is the creation of an incorporated cell company that, while established primarily as an alternative risk transfer vehicle for the insurance industry, does appear to offer a further option particularly where a fund sponsor is seeking to launch a number of regulated fund products. In the below article, Dr. Michael Xuereb, the Director of the Regulatory Development Unit of the Malta Financial Services Authority, outlines this new structure.*

### Malta: Recognised Incorporated Cell Companies

New framework legislation implemented by the Malta Financial Services Authority (MFSA) has caught the attention of fund service providers seeking a cost- and time-efficient platform for launching, developing and spinning off funds. The Recognised Incorporated Cell Company (RICC) Regulations, which build on the incorporated cell concept introduced as part of the Maltese Companies Act 1998, permit the establishment of fund clusters or cells around a central entity, with that central entity using streamlined set-up procedures to ensure a relatively quick structuring procedure for individual cells using standardised documentation. Funds set up as cells within a RICC may therefore benefit from, for instance, administrative backing, common strategic branding services and enhanced support services for start-ups (see below) while preserving the autonomy of an individual cell as a fully fledged, independently-managed fund.

#### Modular Structure

To benefit from this structure, a RICC, which must first be granted recognition by the MFSA, is established—this can then have any number of funds set up as Incorporated Cells (ICs), each of which benefits from separate legal personality and would need to be independently licensed as a fund by the MFSA. The RICC may provide administrative services to each of the ICs, subject to the RICC being appropriately authorised under the Maltese Investment Service Act. These services include assistance with the establishment of an IC, procurement of external service providers, negotiation of service provision agreements, endorsement of fund applications and standardisation of documentation across ICs that are “linked” to a given RICC.

Funds set up as ICs within a RICC are required to be fully licensed as collective investment schemes and are associated with a RICC through, for example, a linking reference in the IC’s Memorandum of Association, a common registered address and a minimum of one director in common with the RICC (with the latter ensuring the maintenance of common standards in administrative matters). A RICC is not required to hold shares or founder shares in its ICs, and the boards of the ICs are expected to operate independently of one another and in the best interests of the IC concerned. Moreover, the RICC itself is not authorised to carry out any investment, management or other licensable activity on behalf of the IC, as these activities would be carried on within or under the full control of the ICs themselves through their respective boards of directors.

#### Operational Flexibility

The independence of each IC, both from the central RICC and other related ICs, allows each IC to make its own outsourcing and other arrangements. It is worth bearing in mind that while an IC may choose to outsource fund administration or other services to a different provider than that already proposed by the RICC, the MFSA would still need to approve any service provider that has not already been approved at the RICC level before the IC in question was licensed. Using providers already approved for other ICs is expected to expedite approval of ICs on the same RICC platform, particularly if standardised service provision agreements are used.

#### Multiple Uses

The RICC has had an encouraging response from fund managers seeking to set up umbrella funds and may also be of interest, for example, where an overall investment fund strategy involves the separation of different investment strategies into separate legal entities for the purposes of appointing specialist managers or for accommodating multiple promoters following similar strategies. ICs can also adopt different currencies and financial year ends from other ICs within the same RICC structure, and can be quoted independently of each other and of the RICC on the Malta Stock Exchange.

As a platform, the RICC may also be an option for start-up funds because of the administrative support provided by the central RICC, which can help to develop new funds that can eventually move out of the RICC structure relatively easily and establish themselves as separate independent schemes. As such, the RICC could also serve as a framework for developing new managers who could potentially, and subject to the appropriate authorisations, take over as managers of funds moving out of the RICC.

### **Potential for Redomiciliation and Migration of Funds and Sub-funds**

The RICC framework is structured to allow ICs to migrate into and out of RICCs, as well as to allow independent funds to join, or redomicile into, a RICC structure. Both self-managed and third-party managed ICs can be established within the same RICC, subject to MFSA approval.

A RICC structure may incorporate UCITS, non-UCITS and Maltese Professional Investor Funds within one platform that can handle both retail and alternative investment funds, which provides for a great deal of flexibility.

#### **Basic Legal Features of RICCs**

- Separate legal personality
- IC's memorandum and articles must be signed by the RICC
- RICC may (but does not need to) subscribe for shares in IC
- RICC and ICs must have common registered address
- Directors of RICC and ICs may be the same (but boards should be independent)
- At least one director of the RICC must be on the board of an IC
- ICs would normally have same service providers unless otherwise authorised by the MFSA
- ICs may migrate to/from other RICCs
- ICs may transform into independent (i.e., non-RICC-linked) structures
- Redomiciliation of similar structures allowed
- RICC may expel an IC on serious grounds
- Maltese Companies Act dissolution and winding up procedures apply to ICs

**Source:** Dechert LLP - OnPoint, 'Malta: Recognised Incorporated Cell Companies', Financial Services Quarterly Report - 4th Quarter 2012, 18 December 2012, <http://sites.edechert.com/27/711/landing-pages/malta.asp?intEmailHistoryId=759820&intEmailListId=49&intEmailId=100300&intExternalSystemId=1>

## Press Releases issued by the European Supervisory Authorities

### European Banking Authority (EBA)

- 07 December 2012** - [Joint Committee publishes report on the implementation of anti-money laundering and counter-terrorist financing requirements for e-money in the EU](#)
- 14 December 2012** - [Opinion on the recommendations of the High-level Expert Group on reforming the structure of the EU banking sector](#)
- 20 December 2012** - [Update on supervisory reporting requirements for liquidity and leverage ratio](#)
- 21 December 2012** - [Opinion in response to the European Commission's consultation regarding a possible framework for the recovery and resolution of financial institutions other than banks](#)

### European Securities and Markets Authority (ESMA)

- 03 December 2012** - [EU and Swiss regulators to co-operate on cross-border supervision of alternative investment funds](#)
- 04 December 2012** - [ESMA finalises guidelines on repo arrangements for UCITS funds](#)
- 04 December 2012** - [Statement: Operating Principles and Areas of Exploration in the Regulation of the Cross-Border Derivatives Market](#)
- 19 December 2012** - [ESMA clarifies rules for alternative investment funds and their managers](#)
- 20 December 2012** - [ESMA issues statement on forbearance practices](#)
- 20 December 2012** - [ESMA consults on guidelines for CCPs' interoperability arrangements](#)
- 20 December 2012** - [ESMA proposes guidelines on the scope of the CRA Regulation](#)

### European Insurance and Occupational Pensions Authority (EIOPA)

- 04 December 2012** - [EIOPA holds its 2nd Consumer Strategy Day](#)
- 14 December 2012** - [EIOPA publishes its second half-year Financial Stability Report](#)
- 19 December 2012** - [EIOPA to launch the technical assessment of the long-term guarantees package](#)
- 20 December 2012** - [EIOPA publishes Opinion on interim measures regarding Solvency II](#)
- 21 December 2012** - [EU-U.S. Insurance dialogue outlines the way forward](#)

## Licences - November 2012

### LICENCES ISSUED

#### Collective Investment Schemes

##### *Professional Investor Funds targeting Qualifying Investors*

- Collective Investment Scheme licence issued to **Villers Investment Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Resco Funds SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Audentia Capital SICAV plc** in respect of one sub-fund.
- Collective Investment Scheme licence issued to **Himalaya SICAV plc** in respect of one sub-fund.

##### *Professional Investor Funds targeting Extraordinary Investors*

- Collective Investment Scheme licence issued to **WOOD & Company Funds SICAV plc** in respect of one sub-fund .

#### Investment Services

- Category 3 licence issued to **NSFX Ltd.**

### LICENCES SURRENDERED

#### Collective Investment Schemes

##### *Professional Investor Funds targeting Qualifying Investors*

- Surrender of licence issued to **The ARP Absolute Return Funds (SICAV) plc** in respect of one sub-fund.

##### *UCITS*

- Surrender of licences issued to **Celsius Global Funds SICAV plc** in respect of eight sub-funds.

#### Investment Services

- Cancellation of Category 1A licence issued to **Guardian Securities Limited.**

### LICENCES EXTENDED

#### Banking

##### *Credit Institutions*

- Licence issued to **Ferratum Bank (Malta) Limited** extended to provide issuing and administering other means of payment.

##### *Financial Institutions*

- Licence extended to **Syspay Limited** to provide additional payment services as listed in Schedule 2 of the Financial Institutions Act.

#### Insurance

##### *Insurance Undertakings*

- Licence extended to **Platinum Insurance Ltd** to carry on business of insurance in two classes of the general business.

##### *Insurance Agents*

- Extension of licence issued to **S.M.S Insurance Agency Ltd** to act as an insurance agent on behalf of Middlesea Insurance p.l.c in relation to four classes of the general business.

### Registry of Companies - New Registrations - November 2012

Companies	Partnerships	Total
364	8	372



### MFSA Consultations

#### Consultation Documents

**03/12/2012** - [Consultation on the proposed implementation of the Alternative Investment Fund Managers Directive](#)

**14/12/2012** - [Consultation on the proposed amendments to the Trusts and Trustees Act and other related legislation](#)

#### Feedback Statements

**12/12/2012** - [Feedback Statement further to Industry Responses to MFSA Consultation document dated 29th October 2012 on the proposed Foreign Currency Lending Rules](#)

**21/12/2012** - [Feedback Statement further to Industry Responses to MFSA Consultation document dated 5th November 2012 on the proposed US Dollar Funding Rule](#)



### MFSA Circulars

**07/12/2012** - [Circular regarding the application of article 5 \(1\) of Council Directive 2004/113/EC of the 13th December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services \("the Directive"\)](#)

**27/12/2012** - [Circular on ESMA Statement on the treatment of Forbearance Practices](#)



### MFSA Notices

**03/12/2012** - [Surrender of Licence by Luperco SICAV plc](#)

**12/12/2012** - [EIOPA consultation process on the Draft Implementing Technical Standards for Occupational Pensions](#)

**17/12/2012** - [Surrender of Licence by Swiss Settlements Fund Management Ltd](#)

**20/12/2012** - [Surrender of Licence by Lembex Global Investments Ltd](#)

**21/12/2012** - [Surrender of Warrant by The Alphabet Trustee \(Nominee\) Limited](#)

**21/12/2012** - [Surrender of Licence by NEF Funds SICAV Ltd](#)





## Warnings

**27/12/2012** - [MFSa Warning - TradeFast / TradeFast Inc. / TradeFast Holdings Inc.](#)

**28/12/2012** - [MFSa Warning - Guardian Securities Limited](#)

Foreign warnings received by MFSa can be viewed on the [MFSa Website](#).



## Forthcoming Events

**7 January 2013** - [MFSa Industry Update on the AIFMD](#)

**17 January 2013** - [Institute of Directors Seminar - The changing nature of Corporate Governance following the Euro-zone crisis](#)

**14-15 March 2013** - [ESAFON - The 3rd Annual Malta Spring Fund Conference - UCITS – AIFMD – MiFID II - Implications for Funds, Managers, Service Providers](#)

### MFSa Education Consultative Council (ECC)

Training by members of the ECC:

- [Malta International Training Centre](#)
- [Institute of Financial Services](#)
- [Malta Institute of Accountants](#)



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