INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART A: THE APPLICATION PROCESS

Title 1 Investment Services Act, 1994

Section 1 Scope

1.1 Regulation of Investment Services

The Investment Services Act, 1994, ("the Act") as amended and supplemented provides a statutory basis for regulating the provision of Investment Services[1].

1.2 The Meaning of "Investment Services"

1.2.1 A licensable activity takes place when an investment service is offered in respect of an instrument. In terms of Article 3 of the Act, it is an offence to conduct a licensable activity without a licence.

1.2.2 Falling within the scope of "investment service" is "any Service falling within the First Schedule to the Act when provided in relation to an Instrument." The definition also provides that the service of management of investments in terms of the First Schedule shall also include the collective portfolio management of assets of a collective investment scheme when provided in relation to an asset that is not an instrument within the meaning of the Second Schedule to the Act. In line with MiFID II[2], the "operation of an organised trading facility" is also added as an investment service.

1.3 Services covered by the Act

1.3.1 The First Schedule to the Act lists the following Services:

(i) **Reception and transmission of orders** in relation to one or more instruments. The reception from a person of an order to buy, sell or

[1] The following sections make reference to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself.
[2] Directive 2014/65/EU of the European Parliament of the Council of 15 May 2014 on markets in financial instruments.

subscribe for instruments and the transmission of that order to a third party for execution.

(ii) **Execution of orders** on behalf of other persons. Acting to conclude agreements to buy, sell or subscribe for one or more instruments on behalf of other persons.

(iii) **Dealing on own account**. Trading against proprietary capital resulting in conclusion of transactions in one or more instruments.

(iv) **Management of investments**. Managing or agreeing to manage assets belonging to another person if those assets consist of or include one or more instruments or the arrangements for their management are such that the person managing or agreeing to manage those assets has a discretion to invest any of those assets in one or more instruments.

Collective portfolio management of assets, belonging to a collective investment scheme, where the arrangements for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any moveable and/or immovable property.

Management of investments may also constitute the selection or agreement to select, on a discretionary basis, instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within Class III – "linked long term", of the Second Schedule to the Insurance Business Act.

Collective portfolio management of assets, belonging to a collective investment scheme, where the arrangements for their management are such that the person managing or agreeing to manage those assets has discretion to invest in any movable and, or immovable property.

(v) **Trustee, custodian or nominee services**.

(i) Acting as trustee, custodian or nominee holder of an instrument, or of the assets represented by or otherwise connected with an instrument, where the person acting as trustee, custodian or nominee holder is so doing as part of his providing any investment service in paragraphs 1, 2, 3, 4 or 6 of the Second Schedule to the Act:

Provided that for the purposes of this subparagraph, any person who is authorised or otherwise exempt from

authorisation in the terms of articles 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this subparagraph if such person does not provide an investment service and delegates all activities which are investment services in terms of this Act to a person who is licensed to provide such services; or

(ii) Holding an instrument or the assets represented by or otherwise connected with an instrument as nominee, where the person acting as nominee is so doing on behalf of another person who is providing any investment service referred to in the First Schedule to the Act or on behalf of a client of such person, and such nominee holding is carried out in relation to such investment service:

Provided that for the purposes of this paragraph any person who is authorised or otherwise exempt from authorisation in the terms of articles 43 or 43A of the Trusts and Trustees Act shall not by virtue of holding such assets be required to have a licence in terms of this Act.

(iii) Acting as trustee or custodian in relation to a collective investment scheme.

(vi) **Investment Advice.**
Giving, offering or agreeing to give, to persons in their capacity as investors or potential investors or as agent for an investor or potential investor, a personal recommendation in respect of one or more transactions relating to one or more instruments.

For the purposes of this paragraph, a "personal recommendation" shall mean a recommendation presented as suitable for the person to whom it is addressed, or which is based on a consideration of the circumstances of that person, and must constitute a recommendation to take one of the following steps:

a. to buy, sell, subscribe for, exchange, redeem, hold or underwrite a particular instrument;
b. to exercise or not to exercise any right conferred by a particular instrument to buy, sell, subscribe for, exchange, or redeem an instrument;
c. to select one or more instruments by reference to which benefits are wholly or partly payable under a contract of insurance falling within the meaning of Class III – "linked

long term", of the Second Schedule to the Insurance Business Act.

A recommendation is not a personal recommendation if it is issued exclusively through distribution channels or to the public.

(vii) **Underwriting of instruments and, or placing of instruments on a firm commitment basis.** The underwriting or placing of instruments such that the person providing the service assumes the risk of bringing a new securities issue to the market by buying the issue from the issuer thereby guaranteeing the sale of a certain number of shares to investors.

(viii) **Placing of instruments without a firm commitment basis.** The marketing of newly-issued securities or of securities which are already in issue but not listed, to specified persons and which does not involve an offer to the public or to existing holders of the issuer's securities – without assuming the risk of guaranteeing the sale of a certain number of shares by buying the relative securities from the issuer.

(ix) **Operation of a Multilateral Trading Facility ("MTF").** The operation of a multilateral system which brings together multiple third party buying and selling interests in instruments – in the system and in accordance with non-discretionary requirements – in a way that results in a contract.

(x) **Operation of an Organised Trading Facility ("OTF").** The operation of multilateral system which is not a regulated market or an MTF and in which multiple third-party buying and selling interest in bonds, structure finance products, emission allowance or derivatives are able to interact in the system in a way that results in a contact in accordance with requirements prescribed.

(xi) **Data reporting services as a regular occupation or business, this will capture an investment firm or a market operator operating a trading venue as**

- an APA(Approved Publication Arrangements),
- a CTP (Consolidated Tape Providers) or
- an ARM (Approved Reporting Mechanism).

An indication of the service shall be included in their licence.

1.4 Instruments covered by the Act

1.4.1 The Act defines an "instrument" as "any instrument, contract or right falling within the Second Schedule to this Act and whether or not issued in Malta".

1.4.2 The Second Schedule to the Act lists the following Instruments:

(i) Transferable Securities.
Those classes of securities which are negotiable on the capital market and include:

a. shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depository receipts in respect of shares;
b. bonds or other forms of securitised debt, including depository receipts in respect of such securities; and
c. any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

(ii) Money Market Instruments.
Those classes of instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment.

(iii) Units in collective investment schemes.

(iv) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, or other derivative instruments, financial indices or financial measures which may be settled physically or in cash.

(v) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event).

(vi) Options, futures, swaps, and any other derivative contracts relating to commodities, that can be physically settled provided that they are traded on a regulated market, within the meaning of the Financial Markets Act and, or a Multilateral Trading Facility within the meaning of the First Schedule to the Act.

(vii) Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled, are not for commercial purposes, are not included in article 6 of the Second Schedule to the Act, and, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are cleared and settled throughout recognized clearing houses or are subject to regular margin calls.

(viii) Derivative instruments for the transfer of credit risk means those securities giving the right to acquire or sell any transferable security or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures

(ix) Financial contract for differences or under any other contract the purpose or intended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price for property of any description or in an index or other factor designated for that purpose in the contract.

(x) Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in the Second Schedule to the Act, which have the characteristics of other derivative instruments, having regard to whether, inter alia, they are traded on a regulated market within the meaning of the Financial Markets Act or a Multilateral Trading Facility within the meaning of the First Schedule to the Act, are cleared and settled through recognized clearing houses or are subject to regular margin calls.

(xi) Certificates or other instruments which confer property rights in respect of any instrument falling within the Second Schedule to the Act.

(xii) Foreign exchange acquired or held for investment purposes.

(xiii) Emission allowances consisting of any units recognised for compliance with requirements prescribed by Emission Trading Scheme Directive (2003/87/EC)

Section 2. Requirement for an Investment Services Licence

2.1. General Information

Article 3 of the Act states that:

(1) No person shall provide, or hold himself out as providing, an investment service in or from within Malta unless he is in possession of a valid investment services licence.

(2) No body corporate, unincorporated body or association formed in accordance with or existing under the laws of Malta, shall provide or hold itself out as providing an investment service in or from within a country, territory or other place outside Malta unless it is in possession of a valid investment services licence."

2.1.1. An Investment Services Licence is required whether the Investment Service is being provided in Malta or overseas. If the investment service is provided in Malta to overseas residents, a Licence is required regardless of type of person involved.

2.1.2. Under Article 3(2) of the Act, it is illegal to use Malta as a base for providing Investment Services overseas without having an Investment Services Licence.

2.1.3. When granting a licence, authorisation shall not be granted solely for the provision of ancillary services as outlined in Annex I Section B of the MiFID II.

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2.1.4. For further details as to possible exemptions from the requirement of an investment services licence, reference should be made to:

- the Investment Services Act (Exemption) Regulations, 2007,
- the European Passport Rights for Investment Firms Regulations, 2007,
- the Investment Services Act (UCITS Management Company Passport) Regulations, 2011,
- the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations, 2013,
- the Investment Services Act (Marketing of Alternative Investment Funds) Regulations, 2013, and
- he Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2013.

2.2. Licensable activities for UCITS Management Companies

2.2.1. A UCITS Management Company may only be authorised to provide the licensable activities provided hereunder:

[1] A UCITS Management Company shall not engage in activities other than the management of UCITS Schemes, with the exception of the additional management of other Schemes which are not UCITS but the units of which cannot be marketed in other Member States or EEA States and for which the UCITS Management Company is subject to the MFSA's prudential supervision.

The activity of "Management of a UCITS" shall include the following functions:

(i) Investment management.

(ii) Administration:
   a. legal and fund management accounting services;
   b. customer inquiries;
   c. valuation and pricing (including tax returns);
   d. regulatory compliance monitoring;
   e. maintenance of unit-holder register;
   f. distribution of income;
   g. unit issues and redemptions;
   h. contract settlements (including certificate dispatch);
   i. record keeping.

(iii) Marketing.

[2] Without prejudice to indent [1] above, the MFSA may authorise the UCITS Management Company to provide, in addition to the Management of UCITS, the following services:

a. management of portfolios of investments including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in the Act;

b. as non-core services:
   i. investment advice concerning one or more of the instruments listed in the Act;

   ii. safekeeping and administration in relation to units of collective investment undertakings.

[3] A UCITS Management Company shall not be authorised to provide only the services referred to in indent [2] above, or to provide non-core services referred to in point (b) of indent [2] above without being authorised for the services referred to in point (a) of indent [2] above.

2.3. Licensable activities for AIFMs

2.3.1. An AIFM may only be authorised to provide the licensable activities provided hereunder:

[1] An AIFM shall not engage in activities other than those prescribed hereunder and the additional management of UCITS subject to authorisation in terms of the Act and in terms of Part BII of the Investment Services Rules for Investment Services Providers. The activities the AIFM can be licenced to provide are the following:

(a) Investment management functions which the AIFM shall at least perform when managing an AIF:
[i] Portfolio management;
[ii] Risk management.

(b) Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:
[i] Administration
- legal and fund management accounting services;
- customer inquiries;
- valuation and pricing, including tax returns;
- regulatory compliance monitoring;
- maintenance of unit-/shareholder register;
- distribution of income;
- unit/shares issues and redemptions;
- contract settlements including certificate dispatch;
- record keeping.

[ii] Marketing;

[iii] Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of

undertakings and other services connected to the management of AIFs and the companies and other assets in which it has invested.

[2] By way of derogation from indent [1] above, the MFSA may authorise an AIFM to provide, in addition to the activities outlined above, the following services:

a. management of portfolios of investments including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;

b. non-core services comprising:
   i. investment advice concerning one or more of the instruments listed in the Act;
   ii. safekeeping and administration in relation to shares or units of collective investment undertakings;
   iii. reception and transmission of orders in relation to financial instruments.

[3] The AIFM shall not be authorised to provide:

a) Only the services referred to in indent [2] above;
b) Non-core services referred to in paragraph (b) of indent [2] above without also being authorised to provide the services referred to in paragraph (a) of indent [2] above;
c) Only the activities referred to in paragraph (b) of indent [1] above; or
d) The services referred to in paragraph (a) (i) of indent [1] above without also providing the services referred to in paragraph (a) (ii) of indent [1] above or vice versa.

2.3.2. Licence holders authorised under the Investment Services Act and credit institutions authorised under the Banking Act, 1994 shall not be required to obtain a licence issued in terms of the Act in order to provide investment services such as individual portfolio management in respect of AIFs.

2.3.3. Licence holders shall, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with investors in any Member State or EEA State only to the extent the units or shares can be marketed in accordance with the provisions of the Investment Services Act (Alternative Investment Fund Managers Passport) Regulations, 2013.

2.4. De Minimis AIFMs

2.4.1. AIFMs which satisfy one of the following conditions shall be subject to SLCs 1 to 59 of Part BIII of these Investment Services Rules and shall comply with the requirements laid down in this section:

(a) Either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or

(b) Either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF;

2.4.2. The AIFMs referred to in paragraphs (a) and (b) above, shall comply with the following requirements:

[i] They shall identify themselves and the AIFs that they manage to the MFSA at the time of application[3];

[ii] They shall provide information on the investment strategies of the AIFs that they manage to the MFSA at the time of application;

[iii] They shall regularly, provide the MFSA with information on the main instruments in which they are trading and on the principal exposures and most important, concentrations of the AIFs that they manage in order to enable the MFSA to monitor systemic risk effectively; and

[iv] They shall notify the MFSA in the event they no longer meet the conditions referred to in paragraphs (a) and (b) of this Section.

[v] They shall provide the MFSA with any additional information required from time to time.

2.4.3. Licence Holders referred to in paragraphs (a) and (b) above shall not benefit from any rights granted in terms of the Directive unless they choose to apply for a full AIFM Category 2 licence, subject to the full conditions of Part BIII of these Investment Services Rules.

[3] De minimis AIFMs shall compile Schedule A1 at the time of application.

2.4.4. Where the conditions prescribed in paragraphs (a) and (b) of SLC 2.41 above are no longer met, the Licence Holder concerned shall inform the MFSA thereof and shall apply for an upgrade to its Category 2 Licence within 30 days from the date of notification to the MFSA.

2.4.5. AIFMs referred to in paragraphs (a) and (b) of SLC 2.41 above shall further comply with the requirements prescribed in the following Commission Regulations namely:

[I] Commission Implementing Regulation (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt-in under Directive 2011/61/EU of the European Parliament and of the Council; and

[II] Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Section 3. Criteria which MFSA will apply in considering an application for a Licence

3.1. Article 6 of the Act provides that the MFSA may refuse to grant an Investment Services Licence unless it is satisfied that the Applicant is a **fit and proper** person to provide the relevant Investment Services and activities. The Applicant shall comply with relevant rules and regulations as applicable and suitable to the type of licence. Furthermore, a Personal Questionnaire Form [Schedule F to Part A of the Investment Services Rules for Investment Services Providers] shall be completed by each proposed board member, senior manager (including the CEO or equivalent), the Money Laundering Reporting Officer, the Compliance Officer and other key functionaries of the Applicant as set out in further detail in the Personal Questionnaire Form.

3.2. When considering whether to grant or refuse an Investment Services Licence, the MFSA must take account of:

a. the degree of protection to the investors;
b. the protection of the reputation of Malta taking into account Malta's international commitments; and
c. the promotion of competition and choice.

3.3. The onus of proving sufficient assurance to the Authority is on the Applicant or Licence Holder. The MFSA conducts an independent assessment from publicly available information on "fit and proper" suitability, therefore when arriving at its decision the Authority will also take into account its findings.

In terms of Article 22(2) of the Act it is a criminal offence to provide inaccurate, false or misleading information to the MFSA.

3.4. In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test:

3.4.1. **Integrity** involves the Licence Holder and its employees being of good repute and acting honestly and in a trustworthy fashion in relation to its clients and other parties.

3.4.2. **Competence** means that those people carrying on the business of the Licence Holder must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved. Sound and prudent management, adequate resources,

and a scrupulous attitude towards clients are essential. The business should be well organised, it should have adequate controls, and it should maintain sufficient records to demonstrate these attributes. Individuals should have a sufficient understanding of the business, and of the Investment Services and Instruments (including the related markets) with which they are dealing.

3.4.3. **Solvency** means ensuring that proper financial control and management of liquidity and capital is applied. The business should have sufficient Financial Resources to meet not only the financial demands on the business but also the Capital Resources Requirement or the Financial Resources Requirement established by the MFSA, as applicable.

Applicants are required to carry out a suitability assessment with respect to members of the management body and, where applicable, key function holders. The Guidelines issued by the EBA and ESMA in terms of Article 16 of Regulation (EU) No 1095/2010 and Regulation (EU) No 1093/2010 on the assessment of suitability of members of the management body and key function holders shall apply. The Guidelines can be accessed through the following link.

Section 4. Categories of Licences

4.1. There are four categories of Investment Services Licences as follows:

4.1.1. **Category 1a:**
Licence Holders authorised to receive and transmit orders in relation to one or more instruments and, or provide investment advice and/or place instruments without a firm commitment basis but not to hold or control Clients' Money or Customers' Assets. (This Category does not include managers of Collective Investment Schemes.)

4.1.2. **Category 1b:**
Licence Holders authorised to receive and transmit orders, and/or provide investment advice in relation to one or more instrument and/or place instruments without a firm commitment basis solely for professional clients and/or eligible counterparties but not to hold or control Clients' Money or Customers' Assets. (This Category does not include managers of Collective Investment Schemes.)

4.1.3. **Category 2:**
Licence Holders authorised to provide any Investment Service and to hold or control Clients' Money or Customers' assets, but not to operate a multilateral trading facility or deal for their own account or underwrite or place instruments on a firm commitment basis. (This Category applies to managers of Collective Investment Schemes)

4.1.4. **Category 3:**
Licence Holders authorised to provide any investment service and to hold and control Clients' Money or Customers' Assets.

4.1.5. **Category 4(a):**
Licence Holders authorised to act as trustees or custodians of all types of Collective Investment Schemes.

4.1.6. **Category 4(b)[4]:**
Licence Holders authorised to act:

a. as custodians of AIFs which have no redemption rights exercisable during the five year period from the date of initial investment and which generally do not invest in assets that must be held in custody in terms of the Investment Services Rules.
b. as custodians to AIFs marketed in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations.

[4] Depositary Lite

4.1.7. **Data Reporting Service Providers**

Licence Holders authorised to act:

- approved publication arrangements ("APA") firms who make public the details of transactions in financial instruments; (art 20 and 21 of MiFIR[5])
- approved reporting mechanism ("ARM[i]") a firm who reports the details of transactions to regulators for the purposes of market abuse surveillance; (art 26 of MiFIR)
- consolidated tape providers ("CTP") a person authorised under the Directive to provide the service of collecting trade reports for financial instruments from regulated markets, MTFs, OTFs and APAs and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument (MiFID II Article (4)(1)(53).

4.2. Additional Information

4.2.1. Licence Holders' Capital Resources Requirements or Financial Resources Requirements as applicable and the fees they must pay depend on the Category of the Investment Services Licence. The nature of the activities an Investment Services Licence Holder can offer will be described in the Licence. Some of the categories of Investment Services Licences are cumulative, but this is not the case with Category 4 Licences. Therefore, it may be necessary, for example, to apply for both a Category 2 and a Category 4 licence.

4.2.2. Where a Category 2 Licence Holder is providing the services of collective portfolio management, its licence will indicate whether it relates to the provision of fund management services to UCITS and/or Alternative Investment Funds or where relevant whether the Licence Holder is a De Minimis AIFM.

4.2.3. A Licence Holder will be considered to be "controlling" Clients' Money or Customers' Assets where, for example, the Licence Holder holds a mandate over the client's bank account or holds a power of attorney by which he can control a customer's assets.

For the purposes of categorisation, a Licence Holder will not be considered to be holding Clients' Money or Customers' Assets if it does not handle Clients' Money and if:

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a. the Licence Holder does not handle customers' cheques, certificates or other documents constituting or evidencing title, and a recommendation by the Licence Holder can be effected only by the customer or a third party, such as a bank, acting on the customer's behalf; or

b. where the Licence Holder handles customers' cheques, certificates or other documents constituting or evidencing title, it has ensured that all customers have instructed all third parties with which the Licence Holder will carry out business on behalf of customers, that all cheques, certificates and other documents constituting or evidencing title to assets or money are to be issued only in the names of the customers or the names of persons specified by the customers, and all such third parties have confirmed their agreement in writing.

In either case (a) or (b), the Licence Holder's involvement with Clients' Money and assets must be limited entirely to situations governed by these arrangements. In addition, the Licence Holder must not handle bearer securities on behalf of customers. A Licence Holder which meets these criteria will remain subject to the relevant requirements concerning the safeguarding of Customers' assets particularly the Investment Services Act (Control of Assets) Regulations and the Commission Delegated Regulation (EU) 2016/438 of 17 December 2015[6].

4.2.4. The MFSA will determine into which category each Licence Holder falls.

[6] Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to the obligations of depositaries.

Section 5. Compliance and Prevention of Money Laundering

5.1. Role of Compliance Officer

5.1.1. As the Regulator of Investment Services in Malta, the MFSA requires licensees to adhere strictly to the requirements imposed under the law, the regulations and other rules issued thereunder. As part of the licensing process, every Applicant will be asked to identify one individual who will be responsible for ensuring the Licence Holder's adherence to the Licence Conditions listed in Parts BI, BII, BIII and BIV of these Rules as the case may be.

5.1.2. The role of a Compliance Officer is onerous – not least because of the extent of responsibility and the possibility of censure by the Regulator if problems arise. No individual should accept this responsibility lightly – and certainly not without due consideration of the information that follows. Compliance Officers are advised to ensure they are clear about the extent of responsibilities. Compliance Officers should also be clear whether they could be held personally responsible in the event of a problem. Some specific points that Compliance Officers should consider are:

a. As the person made responsible for all aspects of compliance, the Compliance Officer will be expected to demonstrate independence of judgement and to exercise proper day-to-day supervision and control over the activity of the Company as a Licence Holder under the Investment Services Act. Therefore the Compliance Officer **must not be involved** in the operations of the Licence Holder.

b. In order to be able to satisfy these requirements, the Compliance Officer must familiarise him/herself thoroughly with the Licence Conditions that attach to the Licence Holder's licence as well as any relevant Guidance issued by MFSA – and take steps to ensure that the Licence Holder's staff are familiar with those Licence Conditions that are relevant to their role within the Company.

c. In particular, the Compliance Officer must pay particular attention to Chapter 3, Title 3 Compliance of Part BI, SLC 2.17 of Part BII, SLC 1.26 of Part BIII and SLC 1.18 of Part BIV of these Rules which require the Licence Holder to establish, implement and maintain adequate polices and procurers to identify breaches by the Licence Holder of the applicable regulatory requirements, and to minimise the risk of such breaches.

d. The MFSA also expects the Compliance Officer not to breach, or to permit breaches by others, of internal control procedures and systems or Licence Conditions imposed upon the Licence Holder's business by the MFSA. If the Compliance Officer becomes aware of such breaches, (s)he is expected to draw them to the attention of the person concerned and, where appropriate, to the attention of the Partners/ Board of Directors (as appropriate). All such breaches and action taken as a result should be recorded in writing.

e. The MFSA also expects the Compliance Officer to ensure, so far as is possible, that incorrect or misleading information is not provided deliberately or recklessly to the MFSA either in supervisory returns or in any other way.

f. The MFSA requires very high standards of conduct and compliance from all its Licence Holders. Consequently, a breach of any Licence Condition, and in particular, evidence of bad faith, lack of care and concern for the interests of customers, deceptive acts and behaviour, and incompetence, are all considered to be serious matters.

g. The Authority considers it important to ensure that Compliance Officers understand the requirements placed upon them. Therefore the Authority is always available to discuss any doubts, worries, suspicions or queries that may arise from time to time in respect of their role.

5.1.3. Before a Compliance Officer is appointed, the Licence Holder must formally propose appointment to MFSA – after having conducted its own due diligence checks. The Licence Holder must ensure that the individual being proposed as Compliance Officer is competent to carry out such a function and is particularly conversant with the investment services being carried out by the Licence Holder. In particular, reference is made to the MFSA Policy outlining the Requirements for Category 2 or Category 3 Investment Services Firms distributing or intending to distribute contracts of differences (CFDs) and/or rolling spot forex contracts under the MiFID regime which expressly provides that the individual being proposed inter alia as Compliance Officer needs to prove to the satisfaction of the Authority that he/she has adequate track record with one or more regulated firms that operate within this industry. The said Policy also provides that the level of skills and expertise required of such employees will be considered in detail.

5.1.4. Once satisfied the MFSA will then write to the person proposed reminding said person of the nature of the role and asking that person to confirm in writing his/ her understanding of the requirements and their acceptance of the responsibilities attached to the Compliance role.

5.2. Role of Money Laundering Reporting Officer

5.2.1. Investment Services Licence Holders carry on "relevant financial business" for the purposes of the Prevention of Money Laundering and Funding of Terrorism Regulations[7] as amended. Accordingly, besides adhering to the Prevention of Money Laundering Act, 1994, Licence Holders are required to adhere to the Regulations and any relevant Guidance Notes and Implementing Procedures issued by the Financial Intelligence Analysis Unit.

5.2.2. Regulation 15 of the Prevention of Money Laundering Regulations and the Funding of Terrorism Regulations requires that an Investment Services Licence Holder appoints a Money Laundering Reporting Officer. The person assuming this role may or may not act as Compliance Officer having the duties outlined in Section 5.1 above. The role of the Money Laundering Reporting Officer is an onerous one and should only be accepted by individuals who fully understand the extent of responsibilities attached to the role.

5.2.3. In this regard, particular attention should be given to the following:

a. In terms of the FIAU Implementing Procedures, the individual being proposed as Money Laundering Reporting Officer should be a senior employee of the Licence Holder or an executive director.

b. The Money Laundering Reporting Officer should familiarise himself/herself thoroughly with the Prevention of Money Laundering Act, 1994, and the provisions amending the Act, the Regulations made thereunder, as well as the Implementing Procedures as well as any guidance notes issued by the Financial Intelligence Analysis Unit.

c. The Money Laundering Reporting Officer should also ensure that all staff are familiar with the relevant provisions of the legislation mentioned in (a) above, and that regular training is being given in this regard. Note is to be taken of training that has been carried out and records retained of the persons trained and when. Care should

[7] S.L.

also be taken when new staff is recruited to ensure that they obtain the necessary training.

d. Any suspicious transactions are to be reported directly to the Financial Intelligence Analysis Unit, even if the transaction is not carried out.

e. An internal reporting procedure should be set up to ensure that staff can report any such transactions without hindrance and that clear reporting lines are in place. Senior management is to be made aware of such reports and should not be in a position to suppress them.

f. The Money Laundering Reporting Officer should ensure that proper Know Your Customer procedures are in place and that the procedures set out in the Implementing Procedures relating to the identification and verification of natural or legal persons are complied with. In this regard, it would be pertinent to point out that copies of identification documents are to be retained of all customers and these should invariably be authenticated.

g. Particular care is to be taken as to identification procedures and records of corporate entities with authenticated copies of identification records being retained for all directors of such entities.

5.2.4. Before a Money Laundering Reporting Officer is appointed, the Licence Holder must formally propose appointment to the MFSA – after having conducted its own due diligence checks. Once satisfied the MFSA will then write to the person proposed reminding that person of the nature of the role and asking that person to confirm (in writing) his/her understanding of the requirements and their acceptance of the responsibilities attached to the role of Money Laundering Reporting Officer.

Section 6. The Application Process

6.1. Article 3 of the Act provides that: "No person shall provide, or hold himself out as providing, an investment service in or from Malta unless he is in possession of a valid investment services licence".

6.2. There are three phases of licence application:

6.2.1. **Preparatory Phase**

a. It is recommended to hold a preliminary meeting in advance of submitting an Application for an Investment Services Licence. It is essential that the Applicant submits a comprehensive written description of the proposed activity before the meeting.
b. An application form, together with supporting documents as specified in the Application Form will need to be submitted to ausecurities inbox ausecurities@mfsa.com.mt.
c. The MFSA will review and will provide comments upon submission of the application, the Authority may ask for more information if it considers necessary.
d. The MFSA will not process applications which are not complete with all the required documentation or which fail to identify all the persons holding key positions within the proposed entity.

6.2.2. **Pre-Licensing Phase**

a. Once the review of the draft Application and supporting documents has been completed and the draft Licence Conditions have been agreed, the Authority will issue its "in principle" approval for the issue of a licence. The 'in principle' approval is valid for a period of three months from the date of issue thereof during which the Applicant will be required to finalise any outstanding matters, as indicated in the Licence Conditions, submit of signed copies of the revised Application Form together with supporting documents in their final format, and any other issues raised during the Application process.

b. An Investment Services Licence will be issued as soon as all pre-licensing issues are resolved.

6.2.3. **Post-Licensing / Pre-Commencement of Business Phase**

During this phase, the Applicant may be required to satisfy a post-licensing matters prior to formal commencement of business.

Disclaimer:
The MFSA is not liable in damages for any acts or omissions unless the act or omission is shown to have been done or omitted in bad faith.

The MFSA reserves the right to vary or revoke any condition of a Licence or to impose new conditions.

6.3. Additional conditions applicable to the application process of AIFMs

6.3.1. Without prejudice to the generality of Article 6(6) of the Act, the MFSA shall inform an applicant for a licence to provide services as an AIFM in writing within three months of the submission of a complete application, whether or not authorisation has been granted. The MFSA may prolong this period for up to three additional months, where it considers necessary due to the specific circumstances of the case and after having notified the applicant accordingly. An application is deemed to be complete if the applicant has at least submitted the information referred to in the Checklist to the Application Form in Schedule A2 of these Rules to the satisfaction of the Authority.

6.3.2. An AIFM may start managing AIFs in Malta with investment strategies described in accordance with the Application Form submitted to the MFSA as soon as the licence is granted, but not earlier than 1 month after having submitted any missing information referred to hereunder:

(a) Information on arrangements made for the delegation and sub-delegation to third parties of functions referred to in Part BIII of these Rules;
(b) The memorandum and articles of association of each AIF which the AIFM manages or intends to manage;
(c) Information on the arrangements made for the appointment of the custodian for each AIF which the AIFM intends to manage;
(d) Any additional information referred to in Part BIII of these Rules for each AIF which the AIFM manages or intends to manage.

Section 7. Fees

7.1. Application Fee – Investment Services Licence Holders Categories 1 to 4

The Application Fee is payable on the initial submission and those fees are non-refundable

7.2. Annual Supervisory Fees - Investment Services Licence Holders Categories 1 to 4

7.2.1. Investment Services Licence Holders are required to pay the Annual Supervisory Fee upon the submission of the annual audited financial statement .The Annual Supervisory fee to be paid by Categories 1 to 3 Investment Services Licence Holders is computed with reference to the revenue of the year immediately preceding the year when the fee is payable. Category 4 Investment Services Licence Holders are liable to pay a fixed Annual Supervisory Fee as indicated in the table below.

7.2.2. A newly authorised Investment Services Licence Holder will be required to pay the minimum annual supervisory fee for the first year of operation upon receipt of the licence. The fee payable shall be proportionate to the period remaining between the date of the granting of the licence and the date of the submission of the annual audited financial statements.

7.2.3. The applicable fees payable in terms of the Investment Services Act (Fees) Regulations are provided in the tables hereunder:

FEES FOR CATEGORY 1 - 4 LICENCE HOLDERS PURSUANT TO ARTICLE 3 OF THE INVESTMENT SERVICES ACT			
	Application Fee	**Supervisory Fee**	
Category 1a:	€ 2,500	For revenue up to € 50,000 Further tranches of € 50,000 up to a maximum of € 1,000,000	€ 2,000 € 350 per tranche or part thereof.
Category 1b:	€ 3000	For revenue up to € 50,000 Further tranches of € 50,000 up to a maximum of € 1,000,000.	€ 2,750 € 350 per tranche or part thereof.
Category 2:	€ 5,000	For revenue up to € 250,000.	€ 4,500

		Further tranches of € 250,000 up to a maximum of € 5,000,000	€ 400 per tranche or part thereof.
Category 3:	€ 7,000	For revenue up to € 250,000 Further tranches of € 250,000 up to a maximum of € 50,000,000.	€ 6,000 € 400 per tranche or part thereof
Category 4a	€ 17,000	€ 15,000	
Category 4b	€7,500	€5,000	

7.3. Tied Agents

7.3.1. The application fee for the registration of Tied Agents is payable at time of application and the annual supervisory fee is payable on the anniversary of the grant of registration. The Annual Supervisory Fee is payable at time the registration certificate is granted.

TIED AGENTS REGISTERED PURSUANT TO THE INVESTMENT SERVICES ACT (TIED AGENTS) REGULATIONS		
	Application Fee	**Supervisory Fee**
Individuals:	€ 300	€ 300
Not Individuals:	€ 350	€ 350 and € 250 per individual employed by such Tied Agent and who is directly involved in the provision of Tied Agent activities.

7.4. Fees for European UCITS Management Companies, European AIFMs and European Investment Firms establishing a branch in Malta.

7.4.1. European UCITS Management Companies and AIFMs and European Investment Firms establishing a branch in Malta shall pay the Application fee on notification of intention to establish a branch in Malta. The first Annual Supervisory Fee is payable on the commencement of business and thereafter annually on the anniversary of the date of their commencement of business.

EUROPEAN MANAGEMENT COMPANIES PROVIDING SERVICES THROUGH THE ESTABLISHMENT OF A BRANCH PURSUANT TO REGULATION 9 OF THE INVESTMENT SERVICES ACT (UCITS MANAGEMENT COMPANY PASSPORT) REGULATIONS		
	Application Fee	**Annual Supervisory Fee**

European Management Companies	€ 1,250	€ 4,000
EUROPEAN AIFMS PROVIDING SERVICES THROUGH THE ESTABLISHMENT OF A BRANCH PURSUANT TO REGULATION 7 OF THE INVESTMENT SERVICES ACT (ALTERNATIVE INVESTMENT FUND MANAGER PASSPORT) REGULATIONS		
European AIFMS	€ 1,250	€ 4,000
EUROPEAN INVESTMENT FIRMS ESTABLISHING A BRANCH IN MALTA PURSUANT TO REGULATION 3 OF THE INVESTMENT SERVICES ACT (EUROPEAN PASSPORT RIGHTS FOR INVESTMENT FIRMS) REGULATIONS		
	Application Fee	**Annual Supervisory Fee**
European Investment Firms authorised to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instruments without a firm commitment basis, in terms of MiFID but are not authorized to hold and control Clients Money or Customers' Assets.	€ 750	€ 1,200
European Investment Firms authorized to provide any investment service in terms of MiFID and to hold and control Clients' Money or Customers' Assets but not to operate a multilateral trading facility or to deal for their own account or underwrite or place instruments on a firm commitment basis.	€ 1,000	€ 3,000
European Investment Firms authorized to provide any investment service in terms of MiFID, and to hold and control Clients' Money or Customers' Assets.	€ 1,650	€ 3,600

7.5. Fees for marketing of units or shares of an AIF by an AIFM pursuant to regulation 7 and 22 of the Investment Services Act (Alternative Investment Fund Managers) (Third Country) Regulations

7.5.1. AIFMs wishing to market in Malta, units or shares of an AIF shall pay the Application Fee on notification of intention to commence marketing in Malta. The first Annual Supervisory Fee is payable on

commencement of marketing and thereafter annually on the anniversary of the date of their commencement of such marketing in Malta.

MARKETING OF UNITS OR SHARES OF AN AIF BY AN AIFM PURSUANT TO REGULATION 7 AND 22 OF THE ISA (ALTERNATIVE INVESTMENT FUND MANAGERS) (THIRD COUNTRY) REGULATIONS		
	Application Fee	**Annual Supervisory Fee**
AIF	€2500	€3000
Per AIF sub- fund	€450	€500

Section 8. Variation of Investment Services Licence

8.1. A request for a variation of a Licence should be submitted to the MFSA in writing. The request should be submitted on ausecurities@mfsa.com.mt.

8.2. The request for a variation of an Investment Services Licence should be supported by relevant supporting documentation as appropriate in particular:

(a) the extracts of the application form outlining the variation;
(b) Board of Directors resolution approving the changes.
(c) revised business plan; and
(d) revised financial projections.

The above is not exhaustive and depends on the extent of the changes required in view of the variation of the licence.

8.3. In particular, when dealing with AIFMs, the MFSA may restrict the scope of the authorisation as regards the investment strategies of AIFs which the AIFM is allowed to manage.

Section 9. Cessation of Investment Service business

9.1. Investment Services Licence Holders should inform the MFSA at an early stage of their intentions to surrender their licence. In order to protect the interests of customers and investors the MFSA may request to delay the surrender of licence or wind-up of the business.

9.2. The following confirmations / action / documentation should be submitted to the MFSA on the following e-mail: investmentfirms@mfsa.com.mt:

a. a formal request to the MFSA asking for approval to surrender the licence;
b. a certified true copy of the Directors'/ General Partners' Resolution confirming the Licence Holder's intention to surrender its Investment Services Licence, subject to the Authority's approval and once the necessary formalities are finalised;
c. due notice to the clients of its intention to surrender its licence. Confirmation to this effect should be submitted to MFSA;
d. a confirmation (where appropriate) that each client has specifically consented to the transfer of that client's business to another appropriately licensed firm;
e. a confirmation that no litigation is pending which arises out of any event that occurred whilst the Licence Holder was licensed;
f. a confirmation that the Licence Holder will remove from all letterheads, and any other stationery, any reference to being licensed by the Authority;
g. a confirmation that the Licence Holder has informed its auditor and insurer (in respect of its money policy and/ or professional indemnity insurance, if any) of the its intention to surrender its Licence;
h. a confirmation from the auditors of the Licence Holder specifying the date by when all business and obligations arising from the Licence Holder's activities related to its Investment Services Licence have been settled;
i. a declaration that there are no pending complaints against the Licence Holder; and
j. a declaration that all contributions due to date by the Licence Holder to the Investor Compensation Scheme have been made (where applicable)[8]

[8] Category 1 Investment Services Licence Holders do not fall within the remit of the Investor Compensation Scheme.

The above list may is not exhaustive and it is the Licence Holder's responsibility to ensure all its responsibilities have been satisfied.

9.3. Once all the requirements listed above are satisfied, an internal process will be set in motion for approval of the surrender of the Investment Services Licence. Once a decision is taken, this will be conveyed to the Licence Holder which will cease to be licensed thereafter. The Licence Holder should then return its original licence to the MFSA. Moreover, following the Authority's approval of the surrender, unless arrangements are made for the winding up of the Licence Holder, a certified true copy of the Constitutional Document of the Licence Holder duly amended to remove all references to Investment Services activity from its Objects Clause and, (where appropriate) to change the name of the Licence Holder should be submitted to the Authority.

9.4. The MFSA will ordinarily issue a public notice regarding the surrender of the Licence. The wording of the public notice will be provided to the Licence Holder for its comments prior to being published.

Section 10. Standard Licence Conditions/ Ongoing Regulatory Requirements

10.1. The Standard Licence Conditions for Investment Services Licence Holders are set out in Parts B and C of these Rules. An applicant should refer to the respective guidelines on Parts B and C for specific requirements in relation to the service offered.

10.2. Financial Resources Requirements

10.2.1. Licence Holders are required at all times to maintain own funds which are equal to or in excess of their Capital Resources Requirement. This shall constitute the Licence Holder's Financial Resources Requirement.

10.2.2. The components of the Capital Resources Requirement vary depending on the Category of Licence held by the Licence Holder.

10.2.3. ***Category 1a, Category 1b and Category 4b***

10.2.3.1. The Capital Resources Requirement shall be the higher of (a) and (b) below:

a. Initial Capital; and
b. The Fixed Overheads Requirement.

10.2.4. ***Financial Resources Requirements for UCITS Management Companies***

10.2.4.1. A Licence Holder must have own funds which are equivalent to an initial capital of at least EUR 125,000 taking into account the following:

a. when the value of the portfolios of a Licence Holder exceeds EUR 250,000,000, the Licence Holder will be required to provide an additional amount of own funds which is equal to 0.02% of the amount by which the value of the portfolios of a Licence Holder exceeds EUR 250,000,000.

   Provided that the total initial capital and the additional amount shall not exceed EUR 10,000,000.

b. For the purposes of paragraph (a) above, the following portfolios shall be deemed to be the portfolios of a Licence Holder:

   i. unit trusts/ common funds managed by a Licence Holder including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

ii. investment companies for which a Licence Holder is designated management company;
iii. other collective investment undertakings managed by a Licence Holder including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

c. Without prejudice to the amounts prescribed in paragraphs (a) and (b) above, the own funds of a Licence Holder must at no time be less than one quarter of their preceding year's fixed overheads.

10.2.4.2. For the purposes of paragraphs (a), (b) and (c) above, the MFSA may authorise a Licence Holder not to provide up to 50% of the additional amount of own funds referred to in paragraph (a) if a Licence Holder benefits from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in Malta, or in any other recognised jurisdiction where it is subject to prudential rules considered by the MFSA to be equivalent to those in force.

10.2.5. ***Financial Resources Requirements for AIFMs***

10.2.5.1. The Capital Resources Requirement applicable to the Licence Holder shall be the higher of (i) and (ii) below:

[i] The sum of the following:
a. Initial Capital of EUR 125,000;
b. An additional amount of Own Funds equivalent to 0.02% of the amount by which the value of the portfolios under management exceed EUR 250,000,000.

The summation of (a) and (b) above shall not exceed EUR 10,000,000.

Provided that the Licence Holder may be exempted from providing up to 50% of the additional amount of Own Funds referred to in (b) above, if it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking. The credit institution or insurance undertaking must have its registered office in a Member State or in a third country that is subject to prudential rules considered by the MFSA as equivalent to those laid down in Union Law.

Licence Holders wishing to avail themselves of this exemption should make an application to the MFSA.

[ii] The fixed overheads requirement.

10.2.5.2. For the purpose of the above calculation, AIFs managed by the Licence Holder, including AIFs for which the Licence Holder has delegated the management function but excluding AIFs that the Licence Holder is managing under delegation, shall be deemed to be the portfolios of the Licence Holder. The Licence Holder shall be considered as managing AIFs under delegation in those cases where it does not have a direct relationship with the AIF due to its role as a sub-delegate of the designated AIFM.

10.2.5.3. The meaning of Own Funds and the Capital Resources Requirement applicable to the different categories of Licences, as well as the methodology for calculating a Licence Holder's Financial Resources Requirement, are set out in Appendix 1A.

10.2.5.4. Provided that Licence Holders falling under any of the following categories, are exempt from the Financial Resources Requirements referred to above:

a. A credit institution constituted and licensed under the Laws of Malta;
b. A branch established in Malta of a credit institution authorised in a EU Member State or EEA State; and
c. A branch (established in Malta) of an overseas credit institution which is subject to prudential requirements equivalent to the requirements applicable to Maltese credit institutions.

10.2.5.5. The Standard Licence Conditions describe the financial reporting and record keeping requirements applicable to certain Investment Services Licence Holders.

10.2.6. ***Capital Resources Requirements for Investment Services Licence Holders which qualify as Category 2 and Category 3 MiFID Firms and Category 4a Licence Holders***

10.2.6.1. Licence Holders are required at all times to maintain own funds at least equal to its Capital Resources Requirement. The own funds of the Licence Holder may not fall below the amount of initial capital required at the time of its authorisation.

10.2.6.2. The components of the Capital Resources Requirement vary depending on the Category of Licence held by the Licence Holder.

10.2.6.3. ***Category 2***

10.2.6.3.1. Category 2 Licence Holders shall at all times satisfy the following Capital Resources Requirement:

i. A Common Equity Tier 1 capital ratio of 4.5%, which is calculated as follows:

$$\frac{\text{Common Equity Tier 1 capital}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the fixed overheads requirement}}$$

ii. A Tier 1 capital ratio of 6%, which is calculated as follows:

$$\frac{\text{Tier 1 capital}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the fixed overheads requirement}}$$

iii. A total capital ratio of 8%, which is calculated as follows:

$$\frac{\text{Own Funds}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the fixed overheads requirement}}$$

10.2.6.4. ***Category 3***

10.2.6.4.1. Category 3 Licence Holders shall at all times satisfy the following Capital Resources Requirement:

i. A Common Equity Tier 1 capital ratio of 4.5%, which is calculated as follows:

$$\frac{\text{Common Equity Tier 1 capital}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the large exposures risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the operational risk component}}$$

ii. A Tier 1 capital ratio of 6%, which is calculated as follows:

$$\frac{\text{Tier 1 capital}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the large exposures risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the operational risk component}}$$

iii. A total capital ratio of 8%, which is calculated as follows:

$$\frac{\text{Own Funds}}{\text{The sum of the non-trading book business risk components, the trading book business risk components, the commodities instruments - risk component, the large exposures risk component, the foreign exchange risk component, the settlement risk component, the credit valuation adjustment risk component and the operational risk component}}$$

10.2.6.4.2. The meaning of Own Funds and the risk components applicable to the different categories of Licences are set out in Appendix 1B.

10.2.6.4.3. Provided that Licence Holders falling under any of the following categories, are exempt from the Capital Resources Requirements referred to above:

a. A credit institution constituted and licensed under the Laws of Malta;

b. A branch established in Malta of a credit institution authorised in a EU Member State or EEA State; and

c. A branch (established in Malta) of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions.

10.2.6.4.4. The Standard Licence Conditions set out in Part BI of the Investment Services Rules establish the requirements for the maintenance and reporting of capital resources, accounting, record keeping and reporting requirements for Category 2 and Category 3 Licence Holders which are MiFID firms, including requirements arising from the CRD.

10.2.6.4.5. Standard Licence Conditions Title 5, Section 8 included in Part BI of these Rules stipulate the supplementary conditions applicable to Licence Holders falling within the scope of the Investor Compensation Scheme Regulations.

10.2.6.5. ***Category 4a***

10.2.6.5.1. Category 4a Licence Holders shall apply the requirements set out Part BI of these Investment Services Rules for the maintenance and reporting of capital resources.

10.2.6.5.2. The Capital Resources Requirement of Category 4a Licence Holders shall therefore be equivalent to the Capital Resources Requirement of Category 3 Licence Holders.

10.3. General Outline of the Initial Capital

10.3.1. Minimum Initial Capital for the different categories of Investment Services Licence Holders shall be as follows:

	Minimum Initial Capital
Category 1A:	EUR50,000
Category 1B – with PII:	EUR20,000
Category 1B – without PII:	EUR50,000
Category 2	EUR125,000
Category 3	EUR730,000
Category 4A:	EUR730,000
Category 4B:	EUR125,000

10.3.2. For detailed standard licence conditions applicable to an investment services and activities potential applicants should refer to the relevant rules as outlined above.

Section 11. Appointment of Tied Agents

11.1. General Information

11.1.1. In terms of the Investment Services (Tied Agents) Regulations, 2017 (hereinafter referred to as the "Tied Agents Regulations"), Tied Agents established in Malta may be appointed by:

a. Maltese investment firm (excluding UCITS Management Companies and AIFMs) as defined in Tied Agents Regulations; and / or
b. European Investment Firms as defined in Tied Agents Regulations

The entities referred to paragraphs (a) and (b) above shall be jointly referred to as "Investment Firm".

11.1.2. Investment Firm may appoint Tied Agents to carry out business in Malta or in another EU or EEA Member State provided that such Tied Agent is registered in the appropriate register maintained by the EU or EEA Member State in which such Tied Agent is established.

11.1.3. A Tied Agent is a natural or a legal person who, under the full and unconditional responsibility of only one Investment Firm on whose behalf it acts, carries out one or more of the following services:

a. Promoting of investment and/or ancillary services to clients or prospective clients;
b. Receiving and transmits instructions or orders from the client in respect of investment services or instruments;
c. Places instruments; and / or
d. Provides investment advice to clients in respect of those investments or services.

11.1.4. Tied Agents shall act only on behalf of one Investment Firm.

11.1.5. These Rules, pertaining to the appointment of Tied Agents have been issued pursuant to MFSA's powers under the Tied Agents Regulations.

11.2. Process for Registration of Tied Agents

11.2.1. In terms of the Tied Agents Regulations, an Investment Firm may appoint a Tied Agent for the purposes of promoting its services, soliciting business or receiving orders from clients or potential clients and transmitting them, placing instruments and providing investment advice in respect of such instruments and services offered by the Investment Firm.

11.2.2. In the case of a legal person, being proposed as a Tied Agent, such person's constitutional documents (e.g. Memorandum and Articles of Association, Certificate of Incorporation) – a copy of which would need to be submitted to the MFSA – should also include a reference to tied agency activities in the object clause.

11.2.3. In terms of regulation 9(2) of the Tied Agents Regulations, it is up to the investment firm proposing a person as the tied agent to ensure that such appointee is of sufficiently good repute and possesses appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed services to the clients. For this purpose, the Investment Firm shall carry out all the relevant due diligence checks it deems necessary in respect of the proposed person.

The Investment firm appointing a tied agent will be required to provide a declaration outlining the above.

11.2.4. On receipt of all the necessary application documents and fees, the MFSA will carry out the assessment as to the proposed person's fitness and properness. The Authority in the assessment will take on the account the business activities and service for which the tied agent is proposed. In relation of activities which are associated with high risks or targeting retail clients the MFSA reserves rights to request information about the proposed tied agent appointee including but not limited to: personnel profiles, experience, structure of a tied agent and reporting lines as it deemed suitable and necessary to fulfil the role. The MFSA will register the Proposed Person in the public register established in terms of the Tied Agents Regulations. Such registration will be confirmed by the issue of a Registration Certificate to the Proposed Person.

11.2.5. When a European investment firm is making use of the right to free establishment to provide investment services through a tied agent established in Malta where the investment firm has no existing branch, the tied agent will be treated as a branch presence in Malta (in this regards the relevant passporting notification procedure for an establishment of branch needs to be followed). When the tied agent of a European investment firm is established in Malta where the investment firm already maintains a branch, the tied agent is assimilated to that branch.

11.3. Eligibility Criteria for Tied Agents

11.3.1. The MFSA will only consider admitting individuals to the register of Tied Agents established in terms of the Tied Agents Regulations, provided that the Investment Firm seeking to appoint such individuals as its Tied Agents confirms to the MFSA that the persons concerned:

a. are established in Malta or, in the case of appointments by Licence Holders, in another EU or EEA Member State which does not allow its own investment firms to appoint Tied Agents;
b. are aged 18 years or over;
c. have attained, to the satisfaction of the Licence Holder, secondary school level education;
d. have a clean conduct certificate issued in their regard by the Malta Police or the equivalent authority in an EU or EEA Member State, as applicable; and
e. where applicable, prima facie satisfy the MFSA's standard competence requirements applicable to investment advisors.

11.3.2. Any additional information to the above may be required by the Authority if it deems necessary to adequately assess suitability of the applicant.

11.3.3. Where the person considered to be appointed as Tied Agent is a legal person, the above criteria would need to be satisfied by the individuals to be acting on behalf of such legal person, in carrying out the activities of a Tied Agent.

Section 12. Exercise of Passport Rights

12.1. Maltese Investment Firms

12.1.1. Licence Holders which are entitled to exercise passport rights in terms of the S.L 370.10 European Passport Rights for Investment Firms Regulations, 2007 and / or under the European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, 2007 are required to follow the procedure indicated therein before they can commence to provide services in another EU / EEA Member State whether by means of the establishment of a branch or on a remote basis under the freedom of services.

12.1.2. For this purpose, Licence Holders should refer to Schedules DI and EI of these Rules which contain a specimen notification letter to be sent to MFSA indicating their intention to provide services on a remote basis or establish a branch in another EU / EEA Member State.

12.2. Third country Investment Firms having their presence established in Malta

12.2.1. Third country firms intending to provide investment services or perform investment activities in or from Malta are required to follow the procedure as outlined in Investment Services Act (Provision of Investment Services and Activities by Third- Country Firms) Regulations, 2017

12.3. Maltese UCITS Management Companies

12.3.1. Licence Holders which are entitled to exercise passport rights in terms of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011 are required to follow the procedure indicated therein before they can commence to provide services in another EU / EEA Member State whether by means of the establishment of a branch or on a remote basis under the freedom of services.

12.3.2. For this purpose, Licence Holders should refer to Schedules DII and EII of these Rules which contain a specimen notification letter to be sent to MFSA indicating their intention to provide services on a remote basis or establish a branch in another EU / EEA Member State.

12.4. Maltese AIFMs

12.4.1. Licence Holders which are entitled to exercise passport rights in terms of the Investment Services Act (Alternative Investment Fund Managers Passport) Regulations, 2013 are required to follow the procedure indicated therein before they can commence to provide services in another EU / EEA Member State whether by means of the establishment of a branch or on a remote basis under the freedom of services.

12.4.2. For this purpose, Licence Holders should refer to Schedules DIII and EIII of these Rules which contain a specimen notification letter to be sent to MFSA indicating their intention to provide services on a remote basis or establish a branch in another EU / EEA Member State.

12.4.3. Licence Holders wishing to engage in the cross-border marketing of AIFs in Malta or in any other Member State or EEA State are required to comply with the provisions of the Investment Services Act (Marketing of AIFs) Regulations, 2013.

12.5. Third Country AIFMs having Malta as their Member State of Reference

12.5.1. Third Country AIFMs are entitled to exercise passport rights in terms of the Investment Services Act (Alternative Investment Fund Managers Third Country) Regulations, 2013. In such a case the Third Country AIFM must follow the procedure outlined in Regulation 9 in the choice of Malta as a Member State of reference. Following that, the Third Country AIFM may in terms of Regulations 18 and 19, provide services in another EU / EEA Member State whether by means of the establishment of a branch or on a remote basis under the freedom of services.

The provisions of these Regulations outlining the passporting procedure applicable to Third Country AIFMs established in Malta through the Member State of Reference have not come in force.

13. Prudential Assessment of Acquisitions and Increase of Holdings in Investment Services Licence Holders

This section 13 applies to any person or persons acting in concert, desirous of acquiring directly or indirectly a qualifying shareholding in a company licensed to carry on investment services business or increasing the existing qualifying shareholding in the company concerned.

The scope of this section 13 is:

– to transpose the relevant provisions of the Directive 2007/44/EC of the European Parliament and of the Council, of 5 September 2007, amending Council Directive 92/49/EC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increases in holdings in the financial sector;

– to determine the criteria to be applied by the MFSA in the assessment process of a proposed acquirer; and

– to ensure that the proposed acquirer knows what information is required to be provided in order to allow the MFSA to assess the proposed acquisition in a complete and timely manner.

In drafting the Rules, the MFSA has been guided by the Joint Guidelines on the prudential assessment of acquisitions and increases of qualifying holdings in the financial sector issued by the Joint Committee of the European Supervisory Authorities' published on the 20th December 2016, which can be accessed through the following link http://www.esma.europa.eu/.

13.1 Notification Requirements

[i] Notification is also required:

a. if the shareholding held by the acquirer in the licence holder involuntarily reaches or exceeds 10%, 20%, 30% or 50% of the shares or voting rights in the licence holder. This may occur as a result of the repurchase by the licence holder of shares held by other shareholders, or in the event of an increase in capital in which existing shareholders do not participate. In such cases, notification to the MFSA is still necessary upon becoming aware that a shareholding reaches or exceeds one of the thresholds referred to in this paragraph, even if the acquirer

intends to reduce its level of shareholding so that it once again falls below the said thresholds;

b. when a number of persons are "acting in concert" such that each of them decides to exercise his rights linked to the shares he acquires in accordance with an explicit or implicit agreement made between them. In such a case, notification of the voting rights held collectively by these persons will have to be made to the MFSA by each of the parties concerned or by one of these parties on behalf of the group of persons so acting in concert;

c. in the case of indirect qualifying shareholdings. Where the licence holder directly concerned by the proposed acquisition, in turn, directly or indirectly, controls subsidiaries that are regulated entities subject to the supervision of their overseas regulatory authorities, the proposed acquirer is required to provide notification of its proposed acquisition to each of these authorities. However, the responsibility for the final decision regarding the prudential assessment remains with the MFSA, if the proposed acquisition relates to a licensed company.

If qualifying shareholdings are held indirectly through one or more third parties, all persons in the chain of holdings are subject to assessment by the Authority against the five assessment criteria, described in section 13.8 below, where a threshold mentioned in sub-paragraph (a) of paragraph [i] of this Section is reached or exceeded. These requirements may be satisfied through an assessment of the person at the top of the chain and those who hold shares in the investment services licence holder directly, unless the MFSA has doubts about intermediate holders.

[ii] Where the proposed transaction is considered as significant or complex the proposed acquirer should in anticipation of the formal notification contact the MFSA.

Significant or complex transactions may include:

(a) transactions where the proposed acquirer or the investment services licence holder has a complex group structure;
(b) cross-border transactions;
(c) transactions involving significant proposed changes to the business plan or strategy of the investment services licence holder; and
(d) transactions involving the use of substantial debt financing.

Pre-notification contacts should focus on the information required by the MFSA to commence its assessment of an acquisition or increase of a qualifying holding.

[iii] Formal notification is to be accompanied by:

a. a Personal Questionnaire as set out in Schedule F in the case of a proposed acquirer who is an individual; and

b. the Questionnaire for Qualifying Shareholders other than Individuals as set out in Schedule G in the case of a proposed acquirer who is not an individual;

together with the information requested in Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm.

[iv] In order to avoid undue delays in the assessment process, laid down in article 10A of the Act, it is essential that the proposed acquirer promptly transmits all required information, together with the notification of its decision to the MFSA. The assessment period will only commence when all required information is transmitted to the MFSA. Where the notification is incomplete, the MFSA shall acknowledge receipt of the notification within two working days. Such notification shall not, however, have the contents and effects specified in Article 10A of the Act and the MFSA shall not be obliged to specify the missing information in the acknowledgment of receipt, but may detail the missing information in a separate letter to be issued within a reasonable time period. Upon receipt of all required documents, the MFSA shall acknowledge receipt of the notification in writing pursuant to, and with the effects and contents specified in Article 10A of the Act.

[v] Without prejudice to the paragraphs hereunder, the list of information necessary to carry out the assessment as per Schedule F or G and Commission Delegated Regulation 2017/1946 as appropriate shall be considered to be an exhaustive list of required information.

[vi] In the event that any of the information submitted is false or forged, rendering the conclusions of the MFSA liable to be erroneous, the MFSA shall refuse the approval of the proposed acquisition.

13.2 Proportionality principle

[i] The information required shall be proportionate and shall take into account amongst other matters:

1. the nature of the proposed acquirer (legal or natural person, regulated entity or otherwise, whether or not the proposed acquirer is regulated in the EU or in a third country considered equivalent, etc.), and
2. the nature of the proposed acquisition including the specifics of the proposed transaction (intra-group transaction or transaction between persons which are not part of the same group, etc.),
3. the degree of involvement of the proposed acquirer in the management of the licence holder and
4. the size of the holding to be acquired.

[ii] In some cases the MFSA may not require the proposed acquirer to provide all of the information that appears in Schedule F or G and Commission Delegated Regulation 2017/1946 as appropriate (for example, if the MFSA already possesses some information or can obtain it from another overseas regulatory authority).

[iii] In other cases, notwithstanding the exhaustive list of information referred to in sub-paragraph (v) of paragraph 13.1 above, the MFSA may consider, on the basis of its analysis of the information submitted in accordance with this Section, by the proposed acquirer, that some additional information is necessary for the assessment of the proposed acquisition. In that case, the MFSA may request, in writing, that the proposed acquirer provides the additional information. Such a request shall initiate the beginning of the interruption period referred to in article 10A of the Act. This additional information clarifies and completes the information submitted in accordance with Schedule F or G and Commission Delegated Regulation 2017/1946 as appropriate.

[iv] In the case of intra-group transactions, a notification must be submitted by the proposed acquirer, identifying the upcoming changes in the group (for instance, the revised group structure chart) and providing the required information, as laid down in this Chapter, concerning the new persons and/or entities in the group. This refers to the direct or indirect owners of the qualifying shareholding, as well as to the persons who effectively direct the business of the proposed

acquirer. The full assessment procedure is only necessary for the new persons and/or entities in the group and the new group structure. If there is a change in the nature of a qualifying shareholding so that an indirect qualifying shareholding becomes a directly held qualifying shareholding and the relevant holder has already been assessed, the MFSA shall consider limiting its assessment to the changes having occurred since the date of the last assessment.

[v] In certain circumstances, such as in the case of acquisitions by means of a public offer, the proposed acquirer may encounter difficulties in obtaining information which is needed to prepare a full business plan. In these cases, the proposed acquirer shall bring such difficulties to the attention of the MFSA and point out the aspects of its business plan that might be modified in the near future.

13.3 The Concept of Significant influence

[i] Notification in terms of article 10(1) of the Act is also required if a proposed acquisition or increase in a holding (which does not amount to 10% of the capital or voting rights of the investment services licence holder) would enable the proposed acquirer to exercise a significant influence over the management of the investment services licence holder, whether such influence is actually exercised or not.

[ii] The (non-exhaustive) list of factors which shall be taken into account in order to assess whether a proposed acquisition of a holding would make it possible for the proposed acquirer to exercise significant influence over the management of the authorised undertaking are the following:

(a) the existence of material and regular transactions between the proposed acquirer and the investment services licence holder;

(b) the relationship of each member or shareholder with the investment services licence holder;

(c) whether the proposed acquirer enjoys additional rights in the investment services licence holder, by virtue of a contract entered into or of a provision contained in the constitutional documents of the investment services licence holder;

(d) whether the proposed acquirer is a member of, has a representative in or is able to appoint a representative in the board of directors;

(e) the overall ownership structure of the investment services licence holder or of a parent undertaking of the investment services licence holder, having regard, in particular, as to whether shares or participating interests and voting rights are distributed across a large number of shareholders or members;

(f) the existence of relationships between the proposed acquirer and the existing shareholders and any shareholders agreement that would enable the proposed acquirer to exercise significant influence;

(g) the proposed acquirer's position within the group structure of the investment services licence holder; and

(h) the proposed acquirer's ability to participate in the operating and financial strategy decisions of the investment services licence holder.

13.4 Indirect acquisitions of qualifying shareholdings

[i] The relevant tests to assess whether a qualifying holding is acquired indirectly, and the size of such holding are carried out when:

(a) a natural or legal person acquires or increases a direct or indirect participation in an existing holder of a qualifying holding; or

(b) a natural or legal person has a direct or indirect holding in a person which acquires or increases a direct participation in an authorised undertaking.

[ii] Two tests shall be applied to assess whether a qualifying shareholding is acquired indirectly and the size of such holding. The control criterion shall be applied first. If, from the application of such criterion, it is ascertained that the relevant person does not exert or acquire, directly or indirectly, control over an existing qualifying shareholder or an acquirer of a qualifying shareholding in an investment services licence holder, the multiplication criterion shall be subsequently applied in respect of that person. The control and the multiplication criteria shall be applied along each branch of the corporate chain.

Application of the control criterion

[iii] The first step envisages the application of the notion of control and, accordingly, all natural or legal persons

(a) who acquire, directly or indirectly, control over an existing holder of a qualifying shareholding in an investment services licence holder, irrespective of whether such existing holding is direct or indirect; or

(b) who, directly or indirectly, control the proposed direct acquirer of a qualifying shareholding in a investment services licence holder

shall be considered to constitute indirect acquirers of a qualifying shareholding.

[iv] In both case (a) and case (b) the indirect acquirers include the ultimate natural person or persons at the top of the corporate control chain.

[v] In the case set out in item (a) of paragraph [iii] above, each of the persons acquiring, directly or indirectly, control over an existing holder of a qualifying shareholding shall be treated as an indirect acquirer of a qualifying shareholding and is required to submit the prior notification to the MFSA in terms of article 10(1) of the Act. The existing holder of the qualifying shareholding shall not be required to submit the said notification. The MFSA may allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders. The size of the holding of each indirect acquirer so identified shall be deemed equal to the qualifying shareholding of the existing holder over which control is acquired.

[vi] In the case set out in item (b) of paragraph [iii] above, the direct acquirer and the indirect acquirers so identified shall submit a prior notification to the MFSA regarding their intention to acquire or increase a qualifying shareholding. The MFSA may allow the person or persons at the top of the corporate control chain to submit the prior notification also on behalf of the intermediate holders; however, this is without prejudice to the obligation of the proposed direct acquirer to submit to the MFSA the prior notification in respect of its own acquisition of a qualifying shareholding. The size of the holding of each indirect acquirer shall be deemed to be equal to the qualifying shareholding acquired directly.

Application of the multiplication criterion

[vii] Where the application of the control criterion does not determine that a qualifying shareholding was acquired indirectly by the person to which the control criterion is applied the multiplication criterion shall be carried out.

[viii] The multiplication criterion entails the multiplication of the percentages of the holdings across the corporate chain, starting from the participation held directly in the licence holder, which has to be multiplied by the participation held at the level immediately above (the result of such multiplication being the size of the indirect holding of the latter person) and continuing up the corporate chain for so long as the result of the multiplication continues to be 10% or more.

[ix] Under this criterion, a qualifying shareholding will be deemed to be acquired indirectly:

(a) by each of the persons in respect of which the result of the multiplication is 10% or more; and
(b) by all persons holding, directly or indirectly, control over the person or persons identified pursuant to the application of the multiplication criterion in accordance with item (a) of this paragraph.

13.5 Decision to Acquire

In terms of article 10(1) of the Act, a proposed acquirer is required to notify the MFSA as soon as a decision is made to acquire or increase a qualifying shareholding in an investment services licence holder.

The following non-exhaustive list of elements shall be taken into account in order to assess whether a decision to acquire has been made:
(a) whether the proposed acquirer was aware or, considering information it could have had access to, should have been aware of the acquisition/increase of a qualifying shareholding and the transaction giving rise to it; and

(b) whether the proposed acquirer had the ability to influence, to object to or to prevent the proposed acquisition or increase of a qualifying shareholding.

13.6 The Concept of Acting in Concert

[i] A person shall still be considered as acting in concert even when one or several such persons are passive, since inaction might contribute to create the conditions for an acquisition or increase of a qualifying holding or for exercising influence over the authorised undertaking. In order to establish whether certain persons act in concert, and thus whether a notification to the competent authority and subsequent prudential assessment is required, the competent authority shall take all the relevant elements into account on a case by case basis.

[ii] Where certain persons act in concert, their holdings shall be aggregated in order to determine whether such persons acquire a qualifying shareholding or cross any relevant threshold contemplated in article 10(1) of the Act. In such a case, each of the persons concerned, or one person acting on behalf of the rest of the group of persons acting in concert should notify the MFSA of the relevant acquisition or increase of a qualifying shareholding.

[iii] When no notification evidencing that certain persons are acting in concert has been submitted to the MFSA, it may still decide to examine whether such persons are in fact acting in concert. For this purpose, the MFSA shall take into account the non-exhaustive factors listed below as indicators that persons may be acting in concert. The fact that any particular factor is present does not necessarily in itself lead to the conclusion that the relevant persons are acting in concert.

[iv] The (non-exhaustive) list of factors which shall be considered in order to assess whether certain persons are acting in concert are the following:

(a) shareholder agreements and agreements on matters of corporate governance (excluding, however, pure share purchase agreements, tag along and drag along agreements and pure statutory pre-emption rights); and

(b) other evidence of collaboration, for example:
(1) the existence of family relationships;
(2) whether the proposed acquirer holds a senior management position or is a member of the board of directors or is able to appoint such a person;
(3) the relationship between undertakings in the same group (excluding, however, those situations which satisfy the independence criteria set out in paragraph 4 or, as the case may be, 5 of Article 12 of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as subsequently amended);
(4) the use by different persons of the same source of finance for the acquisition or increase of holdings in the investment services licence holder; and
(5) consistent patterns of voting by the relevant shareholders.

[v] When shareholders cooperate or engage in any of the activities set out in the non-exhaustive list below, such cooperation, shall not be

considered in and of itself, as leading to the conclusion that they are acting in concert:

(a) entering into discussions with each other about possible matters to be raised with the board of directors of the company;

(b) making representations to the board of directors of the company about company policies, practices or particular actions that the company might consider taking;

(c) other than in relation to the appointment of directors, exercising shareholders' statutory rights to:
(1) add items to the agenda of a general meeting;
(2) table draft resolutions for items included or to be included on the agenda of a general meeting; or
(3) call a general meeting, other than the annual general meeting;

(d) other than in relation to a resolution for the appointment of directors, agreeing to vote in the same way on a particular resolution put to a general meeting, in order, for example:
(1) to approve or reject:
i. a proposal relating to directors' remuneration;
ii. an acquisition or disposal of assets;
iii. a reduction of capital and/or share buy-back;
iv. a capital increase;
v. a dividend distribution;
vi. the appointment, removal or remuneration of auditors;
vii. the appointment of a special investigator;
viii. the company's financial statements; or
ix. the company's policy in relation to the environment or any other matter relating to social responsibility or compliance with recognised standards or codes of conduct; or
(2) to reject a related party transaction.

[vi] Each case shall be assessed on its own merits. Where there are facts, in addition to the shareholders' engagement in any activity set out in the preceding paragraph, which indicate that the shareholders should be regarded as persons acting in concert, then those facts shall be taken into account in making a determination. There might, for example, be facts about the relationship between the shareholders, their objectives, their actions or the results of their actions which suggest that their cooperation in relation to an activity is not merely an expression of a common approach on a specific matter, but one element of a broader agreement or understanding between the shareholders.

[vii] Also, if shareholders cooperate by engaging in an activity which is not listed in paragraph [v] above, the MFSA shall not consider that fact, in and of itself, as meaning that those persons should be regarded as persons acting in concert.

[viii] In cases of cooperation between shareholders in relation to the appointment of directors, in addition to the facts described above (including the relationship between the relevant shareholders and their actions), other facts shall also be considered such as:

(a) the nature of the relationship between the shareholders and the proposed directors;

(b) the number of directors being voted for pursuant to a voting agreement;

(c) whether the shareholders have cooperated in relation to the appointment of directors on more than one occasion;

(d) whether the shareholders are not simply voting together but are also jointly proposing a resolution for the appointment of certain directors; and

(e) whether the appointment of the proposed directors will lead to a shift in the balance of power in the board of directors.

13.7 Determination of Voting Rights

The voting rights held by certain entities and which are to be taken into account for the purposes of article 10 of the Investment Services Act are described below:

i. Voting Rights held by UCITS Management Companies:

A UCITS management company within the meaning of article 2(1) (b) of Directive 2009/65/EC authorised in another Member State or EEA State or in a sector other than that in which the acquisition is proposed (the management company) and its parent undertaking:

a. need not aggregate their holdings, provided that they exercise their voting power independently of each other; but

b. must aggregate their holdings if the management company:

i. manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller; and

ii. has no discretion to exercise the voting rights attached to such holdings and may only exercise the voting rights attached to the holdings under direct or indirect instructions from its parent undertaking or an undertaking in respect of which the parent undertaking is a controller

B. Voting Rights held by European Investment Firms or Investment Services Licence Holders:

A European Investment firm or an Investment Services Licence Holder and its parent undertaking need not aggregate holdings of the parent undertaking with holdings managed by the investment firm or Licence Holder on a client by client basis, provided that the investment firm or Licence Holder:

a. has permission to provide portfolio management services; and

b. exercises its voting power independently from the parent; and

c. may only exercise the voting rights attached to such shares under instructions given in writing or by electronic means and has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

C. Voting Rights held by Market Makers

Shares reaching or exceeding a 5% threshold of the total voting rights of an Investment Services Licence Holder held by a market maker, acting in its capacity of a market maker need not be aggregated provided that the person acting as market maker:

a. is duly authorised by its home Member State as such in terms of the Markets in Financial Instruments Directive; and

b. neither intervenes in the management of the Investment Services Licence Holder concerned nor exerts any influence on the Investment Services Licence Holder to buy such shares or back the share price.

D. Voting Rights held by virtue of Trading Book Entries

Shares held by a credit institution or a European Investment Firm or an Investment Services Licence Holder in its trading book need not be aggregated provided that:

a. voting rights held in the trading book do not exceed 5%, and

b. the credit institution, the European Investment Firm or the Investment Services Licence Holder ensures that the voting rights attaching to shares held in the trading book are not exercised nor otherwise used to intervene in the management of the Investment Services Licence Holder in which the voting rights are being acquired.

E. Voting Rights Attaching to Shares Held for Clearing and Settlement Purposes

Shares held for the sole purpose of clearing and settlement within a short settlement cycle shall not be taken into account.

F. Voting Rights Attaching to Shares Held by Custodians

Shares held by a custodian in its capacity as custodian, shall not be taken into account provided that the custodian can only exercise the voting rights attached to the shares under instructions given in writing or by electronic means.

G. Voting Rights or Other Shares held by Credit Institutions or Investment Firms.

Voting Rights attached to shares held by a credit institution, a European Investment Firm or an Investment Services Licence Holder as a result of:

a. providing the underwriting of financial instruments; and, or

b. placing financial instruments on a firm commitment basis

in terms of point 6 of Section A of Annex I to the Directive, shall not be taken into account provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

13.8 The Five Assessment Criteria

In assessing the notification provided for in article 10 of the Act and the information referred to in article 10A of the Act, the MFSA shall in order to ensure the sound and prudent management of the investment services licence holder in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the investment services licence holder, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a. the reputation of the proposed acquirer;

b. the reputation and experience of any person who will direct the business of the investment services licence holder as a result of the proposed acquisition;

c. the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the investment services licence holder in which the acquisition is proposed;

d. whether the investment services licence holder will be able to comply and continue to comply with the prudential requirements emanating from the Act any regulations issued thereunder as well as these Rules, and where applicable from the Financial Conglomerates Regulations, 2004 and Directive 2006/49/EC in particular, whether the group of which it will become a part of has a structure that makes it possible to exercise effective supervision and effectively exchange information among the MFSA and overseas regulatory authorities and determine the allocation of responsibilities amongst the MFSA and overseas regulatory authorities;

e. whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of article 1 of Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015, *on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC* is being or has been

committed or attempted or that the proposed acquisition could increase the risk thereof.

13.8.1 The First Assessment Criterion - The reputation of the proposed acquirer.

[i] This criterion concerns the determination of whether any doubts exist about the integrity and professional competence of the proposed acquirer and whether these doubts are founded. Such doubts may arise, for instance, from past business conduct. The assessment of the reputation is of particular relevance if the proposed acquirer is an unregulated entity but shall be facilitated if the proposed acquirer is authorised and supervised within the European Union.

[ii] Without prejudice to the requirements of section 3 of this Part A, the assessment of the reputation of the proposed acquirer covers two elements:

a. integrity; and

b. professional competence.

[iii] While the MFSA shall always assess the integrity of the proposed acquirers against the same requirements regardless of the influence over the investment services licence holder, the assessment of the professional competence may be reduced for proposed acquirers who are not in a position to exercise any influence over the investment services licence holder or who intend to acquire holdings purely for passive investment purposes.

Integrity - *Situations Subject to Assessment*

[iv] The integrity requirements shall be applied regardless of the size of the qualifying holding that the proposed acquirer intends to acquire and of its involvement in the management or the influence that it is planning to exercise on the investment services licence holder. The assessment shall also cover the legal and beneficial owners of the proposed acquirer.

[v] In general, the proposed acquirer is assumed to be of "good repute" (trustworthy) if there is no reliable evidence to the contrary and the Authority has no reasonable grounds to doubt his or her good repute.

Integrity requirements imply, but are not limited to, the absence of "negative records". In this regard, the MFSA retains discretionary power to determine which other situations cast doubts on the integrity of the proposed acquirer. For this purpose, the following situations shall be taken into account:

a. Any conviction of a relevant criminal offence. Special consideration shall be given to any offence under the laws governing banking, financial, securities or insurance activity or concerning securities markets or securities or payment instruments, including laws on money laundering, market manipulation, or insider dealing and usury; to any tax offences, to any offence of dishonesty, fraud, or financial crime; and to other offences under legislation relating to companies, bankruptcy, insolvency or consumer protection.

b. Any relevant criminal offences currently being tried or having been tried in the past may also be relevant, as they can cast doubt on the integrity of the proposed acquirer and may mean that the integrity requirements are not met.

[vi] The integrity of the proposed acquirer is not only affected by court decisions and ongoing judicial proceedings. The following situations shall also be taken into account, since they may cast doubts on the integrity of the proposed acquirer:

– Current or past investigations and/or enforcement actions related to the proposed acquirer either directly or indirectly, by way of its ownership or control, or the imposition of administrative sanctions for non-compliance with provisions governing banking, financial, securities or insurance activity, or those concerning securities markets, securities or payment instruments, or any financial services legislation or other matters contemplated in sub-paragraph (a) above; or

– Current or past investigations and/or enforcement actions by any other regulatory or professional bodies for non-compliance with any relevant provisions; or

– Any relevant findings from on-site compliance visits and offsite supervision; or

– any other information from credible and reliable sources that is relevant in this context. When considering whether information from other sources is credible and reliable, the MFSA shall consider

both the extent to which the source is public and trustworthy, as well as the extent to which the information is provided by several independent and reputable sources, is consistent over a period of time and there are no reasonable grounds to suspect that it is false.

[vii] The absence of a criminal conviction or prosecution, administrative and enforcement action should not be considered as constituting in and of itself sufficient evidence of a proposed acquirer's integrity, in particular where allegations of criminal conduct persist.

[viii] In addition to considering judicial or administrative decisions or procedures, the assessment of the integrity of the proposed acquirer shall examine its correctness in past business dealings, the lack of which may undermine the integrity and trustworthiness of the proposed acquirer at the time of the proposed acquisition. The MFSA shall pay attention to:

i. any evidence that the proposed acquirer has not been transparent, open and cooperative in its dealings with the MFSA or any overseas regulatory authority, including any evidence that the proposed acquirer knowingly ignored its notification obligation in terms of article 10 of the Act or attempted to evade the prudential assessment that such person is required to undergo as a proposed qualifying shareholder;

ii. any refusal of a registration, authorisation, membership or licence to carry out a trade, business or profession, any revocation, withdrawal or termination of such registration, authorisation, membership or licence, and any expulsion from a professional body or association;

iii. the reasons for any dismissal from employment or any position of trust, fiduciary relationship or other similar situation, as well as any request to resign from such a position; and

iv. any disqualification by any competent authority from acting as a person who directs the business.

[ix] The MFSA shall assess the relevance of such situations on a case-by-case basis, recognising that the characteristics of each situation may be more or less severe and that some situations may be significant when considered together, even though each of them in isolation may not be significant.

[x] The MFSA may judge the relevance of criminal records differently according to the type of conviction, the finality of the judgment (i.e. whether it is subject to appeal), the type of punishment, the length of any imprisonment imposed, the stage of judicial proceedings reached (conviction, trial or indictment) and the effect of rehabilitation.

[xi] In cases involving the acquisition of a new qualifying shareholding the information requirements on which the assessment of integrity is based, may vary according to the nature of the proposed acquirer (i.e. individual vs legal person, regulated or supervised entity vs unregulated entity).

[xii] However, in all cases, the proposed acquirer himself should attest in a statement that none of the situations described in points (a) to (b) and (i) to (iv) above occurs or has to the best of its knowledge occurred in the past. A delayed, incomplete or undelivered declaration will call into question the approval of the proposed acquisition.

[xiii] In all cases, the MFSA should be able to verify the statement submitted by the proposed acquirer by asking such person to provide documents evidencing that no adverse events as mentioned above have occurred (e.g. police conduct certificates) and, if needed, by requesting confirmation from other authorities (e.g. judicial authorities or other regulators), domestic or otherwise. The MFSA may also consider, to the extent that they are relevant and the source appears trustworthy, other indications of wrongdoing, such as adverse media reports and allegations.

[xiv] In the case of an increase in an existing qualifying shareholding which crosses the relevant thresholds contemplated in article 10(1) of the Act, and to the extent that the integrity of the proposed acquirer has previously been assessed by the MFSA, the relevant information shall be updated as appropriate.

[xv] When assessing the integrity of the proposed acquirer, the MFSA may take into consideration the integrity and reputation of any person linked to the proposed acquirer, i.e. any person who has, or appears to have, a close family or business relationship with the proposed acquirer.

[xvi] In this context, and by way of example, (where A is the proposed acquirer and B is a connected person) a close business relationship could be where:

a. A is the controlling shareholder of a company and B is a board member of that company appointed by A, or vice versa;

b. A and B jointly control a company;

c. A and B are board members of a company appointed by the same shareholder;

d. A and B participate in a shareholder agreement regarding the exercise of voting rights which have a significant influence in a company.

Professional competence

[xvii] The professional competence of the proposed acquirer covers competence in management ("management competence") and in the area of the financial activities carried out by the investment services licence holder ("technical competence").

[xviii] The management competence may be based on the proposed acquirer's previous experience in acquiring and managing holdings in companies, and should demonstrate due skill, care, diligence, and compliance with the relevant standards.

[xix] The technical competence may be based on the acquirer's previous experience in operating and managing financial firms as a controlling shareholder or as a person who effectively directs the business of a financial firm. In this case, the experience should demonstrate due skill, care, diligence and compliance with the relevant standards.

[xx] The assessment of professional competence shall take into account the influence that the proposed acquirer will exercise over the investment services licence holder. In accordance with the proportionality principle, the competence requirements shall be reduced for proposed acquirers who are not in a position to exercise, or undertake not to exercise, significant influence over the investment services licence holder. In such circumstances, the evidence of adequate management competence should be sufficient.

[xxi] The professional competence requirement shall generally be considered to be met if:

(a) the proposed acquirer is a person already considered to be sufficiently competent in its capacity as a holder of a qualifying

shareholding in another licensed entity which is supervised by the MFSA or another competent supervisory authority in another Member State;

(b) the proposed acquirer is a natural person who already directs the business of the same or another licensed entity which is supervised by the MFSA or by another competent supervisory authority in another Member State; or

(c) the proposed acquirer is a legal person that is a licensed and supervised by the MFSA or by another competent supervisory authority in another Member State;

and there is no new or revised evidence that could cast reasonable concerns regarding the proposed acquirer's professional competence.

[xxii] If any of the situations contemplated in items (a), (b), and (c) above apply in respect of a proposed acquirer that is supervised by a supervisory authority in a third country which is considered equivalent, the assessment of integrity and professional competence may be facilitated by cooperating with the supervisory authority in such third country.

[xxiii] The circumstances set out in the above paragraph are also relevant for the assessment of the proposed acquirer's integrity but do not constitute, by themselves, sufficient grounds for the MFSA to assume the proposed acquirer's integrity.

[xxiv] Persons may acquire significant holdings in entities subject to prudential supervision by European regulatory authorities or overseas regulatory authorities with the aim of diversifying their portfolio and/or obtaining dividends or capital gains, rather than with the aim of becoming involved in the management of the licence holder concerned. Having regard to the likely influence of the proposed acquirer over the investment services licence holder, the professional competence requirements for this type of acquirer would be significantly reduced.

[xxv] Similarly, when the acquisition of control or of a shareholding allows the proposed acquirer to exercise a strong influence (e.g. a holding which confers a veto power), the need for technical competence will be greater, considering that the controlling shareholders will be able to define and/or approve the business plan and strategies of the licence holder concerned. In the same way, the degree of technical competence

needed will depend on the nature and complexity of the activities envisaged.

[xxvi] The following situations regarding past and present business performance and financial soundness of a proposed acquirer with regard to their potential impact on his or her professional competence shall also be considered:

(a) any inclusion on any list of unreliable debtors or any similar negative records with a credit bureau, if available;
(b) the financial and business performance of the entities owned or directed by the proposed acquirer or in which the proposed acquirer had or has significant share with special consideration to any rehabilitation, bankruptcy and winding-up proceedings and whether and how the proposed acquirer has contributed to the situation that led to the proceedings;
(c) any declaration of personal bankruptcy; and
(d) any civil lawsuits, administrative or criminal proceedings, large investments or exposures and loans taken out, in so far as they can have a significant impact on the financial soundness.

Where the proposed acquirer is a legal person

[xxvii] If the proposed acquirer is a legal person, the requirements must be satisfied by the legal person, as well as by all of the persons who effectively direct its business, and in any case by those persons who meet the criteria set out in Article 3(6)(a)(i) or 3(6)(c) of Directive (EU) 2015/849.

[xxviii] When assessing professional competence, the technical aspect should relate primarily to the financial activities currently performed by the proposed acquirer and/or by companies in the group to which such person belongs.

[xxix] In light of the above, all the persons who effectively direct the business of a proposed acquirer which is not regulated in a Member State/ EEA State or an approved jurisdiction, will be required to submit to the MFSA a completed Personal Questionnaire as per **Schedule F** to these Rules.

13.8.2 The Second Assessment Criterion - The Reputation and Experience of those who will direct the business of the investment services licence holder

[i] The second criterion addresses circumstances when the proposed acquirer is in a position to appoint new persons who will direct the business of the authorised undertaking as a result of the proposed acquisition and such persons need to be fit and proper.

[ii] In contrast, and without prejudice to the on-going fit and proper requirements that apply to persons who currently direct the business of the investment services licence holder under the Act, this criterion does not apply to a proposed acquisition that does not involve the appointment of new persons who will direct the business.

[iii] If the proposed acquirer intends to appoint a person who is not fit and proper, then the MFSA shall oppose the proposed acquisition.

13.8.3 The Third Assessment Criterion - The Financial Soundness of the Proposed Acquirer

[i] The financial soundness of the proposed acquirer can be understood as the capacity of the proposed acquirer to finance the proposed acquisition and to maintain a sound financial structure for the foreseeable future in respect of the proposed acquirer and of the investment services licence holder. This capacity should be reflected in the overall aim of the acquisition and the policy of the proposed acquirer regarding the acquisition, but also – if the proposed acquisition would result in a qualifying shareholding of 50% or more or in the investment services licence holder becoming a subsidiary of the proposed acquirer – in the forecast financial objectives, consistent with the strategy identified in the business plan. The MFSA shall determine whether the proposed acquirer is sufficiently sound from a financial point of view to ensure the sound and prudent management of the investment services licence holder for the foreseeable future (usually three years), having regard to the nature of the proposed acquirer and of the acquisition.

[ii] The depth of the assessment of the financial soundness of the proposed acquirer shall be linked to the degree of influence the proposed acquirer would have over the investment services licence holder following the proposed acquisition, the nature of the proposed acquirer (for instance, whether the proposed acquirer is a strategic or a financial investor, including whether it is a private equity fund or a hedge fund) and the nature of the acquisition (for instance, whether the transaction is significant or complex). The assessment of the characteristics of the acquisition will also vary between situations where the acquisition leads to a change in the control of the investment

services licence holder and situations where the proposed acquirer would be likely to exercise little or no influence.

[iii] If a proposed acquirer gains control over the investment services licence holder, the assessment of the financial soundness of the proposed acquirer shall also cover the capacity of the proposed acquirer to provide further capital to the investment services licence holder in the midterm, if necessary, and its stated intentions in respect of whether it would provide such capital.

[iv] The information required for the assessment of the financial soundness of the proposed acquirer will depend on the legal status of the proposed acquirer: for example, whether it is:

- an entity subject to prudential supervision;
- an entity which is not so subject; or
- an individual.

[v] In the case of a change in control, in particular in relation to the type of business pursued and envisaged in the investment services licence holder in which the acquisition is proposed, the extent of the proposed acquirer's compliance with prudential requirements should also be taken into account. While the objective of this criterion is to assess the financial soundness of the proposed acquirer, the objective of the fourth assessment criterion as described in section 13.8.4 below, is to assess the prospective soundness of the investment services licence holder in which the acquisition is proposed, which presupposes the financial soundness of the proposed acquirer (i.e. its ability to implement the business plan).

[vi] The MFSA shall also analyse whether the financial mechanisms, put in place by the proposed acquirer to finance the acquisition, or existing financial relationships between the proposed acquirer and the investment services licence holder concerned, could give rise to conflicts of interest that could destabilise the financial structure of the said investment services licence holder.

[vii] The MFSA shall oppose the proposed acquisition if it concludes, on the basis of its analysis of the information received, that the proposed acquirer is likely to face financial difficulties during the acquisition process or in the foreseeable future.

[viii] While the use of borrowed funds to finance the acquisition shall not, in and of itself, lead to the conclusion that the proposed acquirer is unsuitable, the MFSA shall assess if such indebtedness negatively

affects the financial soundness of the proposed acquirer or the investment services licence holder's capacity to comply with prudential requirements (including, where relevant, the commitments provided by the proposed acquirer to meet prudential requirements referred to in section 13.8.4 below).

13.8.4 The Fourth Assessment Criterion – Compliance with prudential requirements

[i] Whereas the Third Assessment Criterion aims basically at clarifying whether the financial situation of the proposed acquirer is sound enough to support the proposed acquisition of the investment services licence holder, this criterion requires that the proposed acquisition does not adversely affect the licence holder's compliance with prudential requirements. In particular, effective supervision, information exchange and the clear allocation of responsibilities should not be hindered as a result of the proposed acquisition.

[ii] In assessing this criterion, the MFSA shall take into consideration not only the objective facts, such as the intended holding in the investment services licence holder, the reputation of the proposed acquirer, its financial soundness, and its group structure; but will also look at the proposed acquirer's declared intentions towards the investment services licence holder concerned as expressed in its strategy (business plan). This could be backed up by appropriate commitments made by the proposed acquirer to meet prudential requirements under the assessment criteria laid down in this section, provided that the rights of the proposed acquirer under the Act and any regulations and rules issued thereunder are not affected. These commitments could concern, for example, the financial support provided in case of liquidity or solvency problems, corporate governance issues, the proposed acquirer's future intended shareholding in the licence holder and directions and goals for development.

[iii] The MFSA shall take into account the ability of the licence holder in which the acquisition is being proposed to comply at the time of the proposed acquisition, and to continue to comply thereafter, with all prudential requirements, including capital requirements, liquidity requirements, requirements related to governance arrangements, internal control, risk management and compliance.

[iv] If the licence holder in which the acquisition is being proposed will be part of a group as a result of the proposed acquisition, the group structure shall make it possible for the MFSA to exercise effective supervision, effectively exchange information with different overseas

regulatory authorities and determine the allocation of responsibilities among the MFSA and overseas regulatory authorities.

[v] The prudential assessment of the proposed acquirer shall also cover its capacity to support adequate organisation of the investment services licence holder within its new group. Both the investment services licence holder concerned as well as the group should have clear and transparent corporate governance arrangements and adequate organisation, including an effective internal control system and independent control functions (risk management, compliance and internal audit).

[vi] The group of which the investment services licence holder will become a part of shall be adequately capitalised.

[vii] The MFSA shall also consider whether the proposed acquirer will be able to provide the investment services licence holder concerned with the financial support it may need for the type of business pursued by and/or envisaged for it; to provide any new capital that the investment services licence holder may require for future growth in its activities or to implement any other appropriate solution to accommodate the investment services licence holder's needs for additional own funds.

[viii] If the proposed acquisition would result in a qualifying shareholding of 50% or more or in the investment services licence holder becoming a subsidiary of the proposed acquirer, this criterion shall be assessed at the time of acquisition and on a continuous basis for the foreseeable future (usually three years). The business plan provided by the proposed acquirer to the MFSA should cover at least this period. On the other hand, in cases of qualifying shareholdings of less than 20%, the applicable information requirements are those set out in Article 10 of Commission Delegated Regulation 2017/1946.

[ix] The business plan shall clarify the plans of the proposed acquirer concerning the future activities and organisation of the investment services licence holder in which the acquisition is proposed. This shall also include a description of its proposed group structure. The plan shall also evaluate the financial consequences of the proposed acquisition and include a medium-term forecast.

[x] For the purposes of this section:

– "group structure" shall cover the members of the group, including their parent entities and subsidiaries, and intra-group

corporate governance procedures (decision-making mechanisms, level of independence, capital management); and

– "to exercise effective supervision" shall mean that the MFSA is not prevented from fulfilling its supervisory duties by the investment services licence holder's close links to other persons. It also means that the MFSA shall not be prevented from fulfilling its monitoring duties by the laws, regulations, or administrative provisions of another country governing a person with close links to the investment services licence holder, or by difficulties in the enforcement of those laws, regulations or administrative provisions.

13.8.5 Fifth Assessment Criterion - Suspicion of Money Laundering or Terrorist Financing by the proposed acquirer

[i] In terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008, investment services licence holders are required to report transactions to the Financial Intelligence Analysis Unit and to the MFSA, whenever they suspect or have reasonable grounds to suspect that the funds involved may have been or are the proceeds of criminal activity or are linked to terrorism. Transactions should be reported whenever the circumstances surrounding them would lead a reasonable person to be suspicious. These concepts shall also be used for the prudential assessment of proposed acquirers.

[ii] The money laundering or terrorist financing assessment complements the integrity assessments referred to in the First Assessment Criterion and shall be carried out regardless of the value and other characteristics of the proposed acquisition.

[iii] The MFSA shall oppose the proposed acquisition if:

(a) it knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer is or was involved in money laundering operations or attempts, whether or not this is linked directly or indirectly to the proposed acquisition;

(b) it knows or suspects, or has reasonable grounds for knowing or suspecting, that the proposed acquirer has carried out terrorist activities or terrorist financing, in particular if the proposed acquirer is subject to a relevant financial sanctions regime; or

(c) the proposed acquisition increases the risk of money laundering or terrorist financing.

[iv] The assessment shall also cover the persons with close personal or business links to the proposed acquirer, including the legal and beneficial owners of the proposed acquirer.

[v] For the purpose of paragraph [iv], 'persons with close personal links' to the proposed acquirer include the spouse, registered partner, cohabitee, child, parent or other relation that shares living accommodation with the proposed acquirer; and 'persons with close business links' to the proposed acquirer are those with whom the proposed acquirer, in private or through a company, its parent undertaking or subsidiary, conducts significant business.

[vi] The MFSA shall also oppose the acquisition even when there are no criminal records, or where there are no reasonable grounds to suspect that money laundering is being committed or attempted, if the context of the acquisition would give reasonable grounds to suspect that there will be an increased risk of money laundering or terrorist financing. This could be the case, for example, if the proposed acquirer is established in or has relevant personal or business links itself (or through any family member or persons known to be close associates) with a country or territory identified by the FATF (Financial Action Task Force) as having strategic deficiencies that pose a risk to the international financial system or with a country or territory identified by the European Commission as having strategic deficiencies in its national anti-money laundering or counter-terrorist financing regime that pose significant threats to the financial system.

[vii] In addition to information relating to the proposed acquirer collated during the assessment process, the MFSA shall collect information from (for example) court decisions, public prosecutor's files, FATF-GAFI evaluations, assessments or reports drawn up by other international organisations and standard setters with competencies in the field of anti-money laundering, predicate offences to money laundering and combating the financing of terrorism, as well as open media searches, which offer a comprehensive overview of the most recurrent money laundering or terrorism financing typologies, etc.

[viii] Within this context, the MFSA shall also assess information regarding the source of the funds that will be used for the proposed acquisition, including both the activity that generated the funds, as well as the means through which they have been transferred, to assess whether this may give rise to an increased risk of money laundering or terrorist financing. The MFSA shall verify that:

(a) the funds used for the acquisition are channelled through chains of financial institutions, all of which are subject to effective anti-money laundering and terrorist financing supervision by competent authorities (i) in the EU or (ii) in non-EU countries which, on the basis of credible sources such as mutual evaluations, detailed assessment reports or published follow-up reports, have requirements to combat money laundering and terrorist financing consistent with the FATF Recommendations and effectively implement those requirements;

(b) the information on the activity that generated the funds, including the history of the business activities of the proposed acquirer and on the financing scheme is credible and consistent with the value of the deal; and

(c) the funds have an uninterrupted paper trail back to their origins, or other information that allows the supervisory authorities to resolve all doubts as to their legal origin.

[ix] Should the MFSA be unable to verify the source of funds in the manner described above, it shall consider whether the explanation provided by the proposed acquirer is reasonable and credible, having regard to the outcome of the proposed acquirer's integrity assessment.

[x] Missing information or information regarded as incomplete, insufficient or liable to give rise to suspicion – for example, capital movements not accounted for, cross-border relocations of headquarters, reshuffles in management or legal person owners, earlier associations of the owners, or the management of the company by criminals – shall trigger increased supervisory diligence and requests by the MFSA for further information and, should reasonable suspicion subsist, the MFSA shall oppose the acquisition.

[i] An ARM is required to perform validation of the transaction reports against the requirements established under Article 26 of MiFIR for: field, format and content of fields in accordance with Table 1 of Annex I to Commission Delegated Regulation (EU) of 28.7.2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.