

28th March 2019

Circular on a proposed Temporary Permission Regime ('TPR') for UK Investment Funds, Asset Managers and Investment Firms passporting into Malta in relation to a No-Deal Brexit Scenario

This circular is aimed to provide an update to UK licensed investment funds, asset managers and investment firms (collectively referred to as 'UK entities') passporting into Malta.

The Malta Financial Services Authority intends to grant a temporary permission to UK entities which **already** passport their services and activities into Malta. The purpose of the envisaged Temporary Permission Regime (hereinafter referred to as 'TPR') is to, *inter alia*, ensure financial stability, business continuity as well as protecting existing investors/ clients. Any TPR granted by Malta would **only** apply in relation to **existing clients/ contracts** and will apply in the event that the UK leaves the European Union ('EU') without a withdrawal agreement by the relevant date hereinafter referred to as "*Brexit date*".

It is intended that any TPR granted by Malta would remain valid for twelve (12) months after Brexit date. This temporary regime would be applicable to UK entities to: (i) obtain the necessary authorisation; and/or (ii) terminate existing contracts in an orderly manner; and/or (iii) proceed with the assignment of the contracts to a duly authorised entity. UK entities which passport into Malta **would not be allowed** to offer their services to **new** investors/clients in Malta post-Brexit date.

Any entity which provides cross-border services from the UK to Malta under the current passporting arrangements, and would like to avail itself of the TPR is **urgently** required to analyse its position and notify the Authority of its future intentions, indicating whether they would be applying for a Maltese licence or otherwise. More information in relation to the proposed TPR would be provided in due course, including our guidance on the process of the notification procedure which would need to be followed.

- **Asset Management**

The Maltese regulatory framework already provides for the delegation of investment management/ portfolio management and/or risk management by alternative investment fund managers to third country asset managers, subject to specific criteria. It also permits the marketing of non-EU AIFs managed by EU AIFMs (Article 36 of Directive 2011/61/EU) and marketing of AIFs managed by non-EU AIFMs (Article 42 of Directive 2011/61/EU) under the [Investment Services Act \(Alternative Investment Fund Manager\)\(Third Country\) Regulations, 2013](#).

- **Investment Firms**

We would also like to remind UK licensed investment firms authorized to provide cross-border passporting in Malta (hereinafter referred to as 'UK investment firms') of the ***"ESMA Statement – Reminder to firms on their MiFID obligations on the disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union"***, which was published in December 2018.

In this respect, UK Investment Firms are required to adhere to the following actions:

- i. To provide Maltese clients with timely and complete information on the effect that Brexit may have in the absence of a bilateral agreement (the so-called 'no deal') and in the absence of transitory measures adopted on a national basis;
- ii. To adopt appropriate precautions to manage the occurrence of the 'no deal', which could lead to the loss of the "European passport" as an enabling condition for the provision of investment services throughout the EU;
- iii. To ensure that Maltese clients, both professional and retail, have clear and understandable information on the investment services rendered;
- iv. To provide information on any contractual and statutory rights of Maltese clients in these circumstances, including the right to cancel the contract and any right of recourse, where applicable. In particular, existing Maltese clients should be informed of any changes to their contractual relationship with the UK Investment firm or of any impact on specific contracts that may occur as a result of the action taken by the firm (e.g. relocation to a group entity or to a branch of another group entity based in an EU-27 country); and
- v. Not to conclude new investments services business as long as they are not authorised for such activities under Union law.

Any **material issues** which would need to be flagged to MFSA on any of the above content should be reported on the following email address: brexit@mfsa.com.mt

As communicated in our circular dated [11 January 2019](#), Maltese asset managers and investment firms entities falling within scope of the TPR granted by the UK Financial Conduct Authority ('FCA') are reminded to follow the notification procedure without further delay and until 28 March 2019 – refer to <https://www.fca.org.uk/firms/connect>

The introduction of the TPR would also be subject to any EU legislation (including but not limited to Guidance, Opinions, FAQs etc.) that may be applicable from time to time.

Contacts

Should you have any queries regarding the above, please contact us on brexit@mfsa.com.mt.