

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Legal and Regulatory Developments under the Investment Services Act, 1994, including Publication of new Investment Services Rules

2nd November, 2007

1.0 Background

As part of the transposition of the Markets in Financial Instruments Directive (“MiFID”) into Maltese law, certain changes to the local legal and regulatory framework were required. These included:

- a. amendments to the Investment Services Act, 1994 (“the Act”);
- b. the issue of a number of new Legal Notices as well as the amendment of certain Legal Notices issued under the Act;
- c. revisions to the current MFSA Investment Services Guidelines issued in terms of the Act.

2.0 Legislative Amendments

2.1 Amendments to the Investment Services Act, 1994.

The Investment Services Act, 1994 has been amended through the enactment of the Various Financial Services Laws (Amendment) Act (‘Act XX of 2007’) which was published on the **3rd August 2007**. Such amendments were brought in to force on the **1st November 2007**.

The legislative changes to the Act relate mainly to the transposition of the MiFID.

2.2 Issue of Legal Notices

A number of Legal Notices which had been issued under the Act needed to be repealed or amended and new ones needed to be issued in order to transpose the requirements of MiFID. The following is a list of the relevant Legal Notices under the Act which have recently been published and brought into force on **1st November, 2007**:

- a. European Passport Rights for Investment Firms Regulations, 2007 (replaces LN 87 of 2004, as amended);

- b. European Passport Rights for Persons Operating Multilateral Trading Facilities Regulations, 2007 (new);
- c. Investment Services (Tied Agents) Regulations, 2007 (new);
- d. Investment Services Act (Licence and Other Fees) Regulations, 2007 (replaces LN 322 of 2006);
- e. Investment Services Act (Exemption) Regulations, 2007 (replaces LN 6 of 1995 as amended).

3.0 Publication of new Investment Services Rules

With effect from the 1st November, 2007, the Investment Services Guidelines as well as the Guidelines for Professional Investor Funds issued by the MFSA in terms of its powers under the Act, are no longer in force and have been replaced by the Investment Services Rules referred to below.

New Format & Structure of MFSA Regulatory Requirements issued in terms of the Investment Services Act, 1994

The transposition of the requirements of the MiFID, in particular the transposition of its Implementing Directive (Commission Directive 2006/73/EC of the 10 August 2006), required a total redrafting of the Standard Licence Conditions for Investment Services Licence Holders contained in Part C I of the Investment Services Guidelines. MFSA has taken this opportunity to undertake a complete overhaul of the current structure of the Investment Services Guidelines (which shall now be referred to as the 'Investment Services Rules' in accordance with the amendment to Article 6(2)(b) of the Investment Services Act brought about by Act XX of 2007).

In this regard, the Investment Services Rules issued by MFSA are divided into four separate Rule Books as follows:

a. Investment Services Rules for Investment Services Providers.

These Investment Services Rules are applicable as from the **1st November, 2007** and set out MFSA's regulatory regime for Investment Services Licence Holders, including Custodians and Managers of Collective Investment Schemes. They also include the Rules which are applicable to European Investment Firms establishing a Branch in Malta and to European Management Companies which provide services in Malta, on a cross border basis in terms of the passporting provisions set out in the MIFID and UCITS Directives respectively. These Rules are accessible on MFSA's web-site by selecting '*Securities/ Investment Services/Investment Services Rules*'.

b. Investment Services Rules for Retail Collective Investment Schemes.

Reference is made to MFSA's Circulars dated 28th September, 2007 and 8th October, 2007 relating to the Proposed Revised Standard Licence Conditions for Maltese UCITS Schemes and Non-UCITS Schemes respectively. Copies of these circulars can be accessed through MFSA's web-site by selecting '*Securities/Collective*

Investment Schemes/ Circulars and Notices'. The MFSA has considered the feedback received in relation to the proposed new standard licence conditions, which primarily consisted of requests for clarifications which have been addressed, and has issued these Rules which set out MFSA's regulatory regime applicable to Retail Collective Investment Schemes. These Rules are applicable to Maltese Non-UCITS and Maltese UCITS Collective Investment Schemes licensed by the MFSA after **1st November, 2007** and are accessible from the MFSA's web-site by selecting '*Securities/Collective Investment Schemes/Investment Services Rules*'. Maltese UCITS and Non-UCITS Collective Investment Schemes licensed before 1st November, 2007 (including new sub-funds of such schemes), will remain subject to the Rules referred to in (c) below and will be required to comply with the Investment Services Rules for Retail Collective Investment Schemes by not later than 23rd July, 2008. This is without prejudice to the continued applicability of any derogations from Standard Licence Conditions previously set out in Part C.II or C.III of the Investment Services Guidelines, which had been granted to such schemes. Notwithstanding, such schemes may elect to comply with the relevant SLCs included in these new Rules in lieu of the tailored licence conditions currently applicable to them.

c. *Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.*

The above-named Rules include the requirements for Recognised Persons, namely Recognised Fund Administrators and Recognised Private Collective Investment Schemes previously included in Parts A and B of the Investment Services Guidelines. Accordingly, references in the Recognition Certificates of Recognised Fund Administrators and Recognised Private Collective Investment Schemes, to Part A / B of the Investment Services Guidelines, should now be construed as referring to Part A/ B of the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.

These Rules also include the Standard Licence Conditions applicable to Maltese Non-UCITS and UCITS Collective Investment Schemes previously set out in Parts C II and C III of the Investment Services Guidelines and are applicable to such schemes licensed before 1st November, 2007, including any new sub-funds of these schemes. Accordingly references in such schemes' licences to the SLCs in Part C II / Part C III of the Investment Services Guidelines should now be construed as references to the SLCs in Part C II/ Part C III of the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes. These schemes will be granted a transitional period to come in line with the new Rules, as further detailed in 'b' above.

The Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes are accessible from MFSA's web-site by selecting '*Securities/Investment Services/ Investment Services Rules*' or '*Securities/Collective Investment Schemes/ Investment Services Rules*'.

d. *Investment Services Rules for Professional Investor Funds (“PIFs”)*.

In line with what was communicated to licensed PIFs by means of MFSA’s circular letter dated 15th October, 2007, the above-named Rules reflect the requirements previously laid out in the Guidelines for Professional Investor Funds. Accordingly, any references in the licences of currently licensed PIFs, to the Guidelines for Professional Investor Funds, should now be construed as referring to the Investment Services Rules for Professional Investor Funds. These Rules apply as from 1st November, 2007 and are accessible on MFSA’s web-site by selecting ‘*Securities/ Collective Investment Schemes/ Investment Services Rules*’.

4.0 Contacts

Should you have any queries or require any clarifications regarding the above, please do not hesitate Mr. James Farrugia (jimfarrugia@mfsa.com.mt).