



MALTA FINANCIAL SERVICES AUTHORITY

Circular addressed to the financial services industry regarding Malta's transposition/implementation of the Markets in Financial Instruments Directive ('MiFID')

Introduction of Tied Agents Regime

12th April 2007

As part of its transposition of Directive 2004/39/EC (henceforth "MiFID"), MFSA has decided to introduce, a new regime through which Investment Services Licence Holders may appoint tied agents as provided for in Article 23 of the MiFID.

Tied Agents are defined in Article 4 (1)(25) as being "*natural or legal persons who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments and/or provides advice to clients or prospective clients in respect of those financial instruments or services.*"

In terms of Article 23(1) of MiFID, Member States may allow an investment firm to appoint tied agents for the purposes of promoting the serves of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect to such financial instruments and services offered by that investment firm. In particular:

- a. There are no financial resources requirements for tied agents.
- b. Tied agents would need to be registered (rather than licensed) by MFSA once it is satisfied of their fit and proper status.
- c. The investment firm will remain fully and unconditionally responsible for all the acts or omissions on the part of the tied agent when acting on behalf of the firm.
- d. Tied agents will not be authorised to hold and/or control clients' money or assets.

For a general view of the requirements to which Licence Holders appointing tied agents would be subject, you may refer to Article 23 of the MiFID (copy attached for ease of reference).

MFSA is currently in the process of drafting the relevant regulations and Investment Services Rules and will be issuing them for consultation in due course.

Contacts

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Annex 1

Article 23

Obligations of investment firms when appointing tied Agents

1. Member States may decide to allow an investment firm to appoint tied agents for the purposes of promoting the services of the investment firm, soliciting business or receiving orders from clients or potential clients and transmitting them, placing financial instruments and providing advice in respect of such financial instruments and services offered by that investment firm.

2. Member States shall require that where an investment firm decides to appoint a tied agent it remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the firm. Member States shall require the investment firm to ensure that a tied agent discloses the capacity in which he is acting and the firm which he is representing when contacting or before dealing with any client or potential client.

Member States may allow, in accordance with Article 13(6), (7) and (8), tied agents registered in their territory to handle clients' money and/or financial instruments on behalf and under the full responsibility of the investment firm for which they are acting within their territory or, in the case of a cross-border operation, in the territory of a Member State which allows a tied agent to handle clients' money.

Member States shall require the investment firms to monitor the activities of their tied agents so as to ensure that they continue to comply with this Directive when acting through tied agents.

3. Member States that decide to allow investment firms to appoint tied agents shall establish a public register. Tied agents shall be registered in the public register in the Member State where they are established.

Where the Member State in which the tied agent is established has decided, in accordance with paragraph 1, not to allow the investment firms authorised by their competent authorities to appoint tied agents, those tied agents shall be registered with the competent authority of the home Member State of the investment firm on whose behalf it acts.

Member States shall ensure that tied agents are only admitted to the public register if it has been established that they are of sufficiently good repute and that they possess appropriate general, commercial and professional knowledge so as to be able to communicate accurately all relevant information regarding the proposed service to the client or potential client.

Member States may decide that investment firms can verify whether the tied agents which they have appointed are of sufficiently good repute and possess the knowledge as referred to in the third subparagraph.

The register shall be updated on a regular basis. It shall be publicly available for consultation.

4. Member States shall require that investment firms appointing tied agents take adequate measures in order to avoid any negative impact that the activities of the tied agent not covered by the scope of this Directive could have on the activities carried out by the tied agent on behalf of the investment firm.

Member States may allow competent authorities to collaborate with investment firms and credit institutions, their associations and other entities in registering tied agents and in monitoring compliance of tied agents with the requirements of paragraph 3. In particular, tied agents may be registered by an investment firm, credit institution or their associations and other entities under the supervision of the competent authority.

5. Member States shall require that investment firms appoint only tied agents entered in the public registers referred to in paragraph 3.

6. Member States may reinforce the requirements set out in this Article or add other requirements for tied agents registered within their jurisdiction.