

1 October 2019

## Tied Agent Regime Enhancements

Following the regulatory briefing held by the MFSA in May 2019 and the commitment to improve the authorization process of tied agents, the AU would like to propose the below:

### License Holders

A company authorized by the Malta Financial Services Authority and holding a valid license pursuant to article 6 of the Investment Services Act, 1994 ("the Act") to provide investment services activities as per the First Schedule of the Act may establish a tied agent in accordance with article 29 of the MiFID II. When an entity is considering appointment of a tied agent, being it in Malta or in a Host Member State as per article 35 of the MiFID II, it is proposed to notify the Authority in advance of the appointment. It will facilitate the assessment of the License Holder from a risk profile perspective and also permits to assess the capacity of the License Holder to supervise a tied agent.

### Submission of notifications

The Authorisations wish to bring to the attention of potential applicants certain matters which shall be addressed in notification documents.

These are the following:

- the envisaged arrangements and organisation of the License Holder with regards to the activity to be undertaken, including the internal measures and processes to be developed and implemented by the License Holder in order to ensure adherence with any general good provisions;
- reporting and dual control arrangements between the License Holder and proposed tied agent;
- the support structures available to the Compliance Officer of the License Holder to mitigate the additional risks to which the License Holder may be exposed to through the establishment of a tied agent (such as legal and regulatory risk that General Good Provisions are not being adhered to);
- clarifications on the anticipated number of staff to be involved in the provision of activities within the tied agent, including information on the place from which they will operate and whether the employees will be facing clients;
- the anticipated volume of business to be undertaken through the use of tied agents, such as expected revenue streams;

- Arrangements in place to ensure complete segregation between the tied agent's own activities and the activities carried out by the tied agent on behalf of the License Holder (when the proposed Tied Agent not an individual).

## **Fitness and Properness assessment**

The Authority expects to receive a declaration from the License Holder appointing the Tied Agent, in which it is assuming responsibility for the fitness and properness assessment of the proposed individuals. The said declaration shall contain a confirmation that the tied agent is of a sufficiently good repute and possesses appropriate general, commercial and professional knowledge and competence so as to be able to deliver the investment service or ancillary service and to communicate all relevant information regarding the proposed service to the potential client. A detailed explanation of the checks carried out by the License Holder in relation to the tied agent's fitness and properness is to be included in the License Holder's declaration.

Notwithstanding the foregoing, the level of competence of the proposed tied agent whose activities include the provision of advice, is to be reassessed by the Authority. This shall therefore be clearly demonstrated in the Curriculum Vitae of individuals providing such service within the proposed tied agent.

## **Contacts**

Should you have any queries relating to the above, kindly contact the Authority on [mifidnotifications@mfsa.com.mt](mailto:mifidnotifications@mfsa.com.mt).