

3 July 2020

Circular on the Fitness and Properness Assessment of Committee Members involved with Investment Services Licence Holders and Collective Investment Schemes

This Circular is addressed to firms classifying as MiFID Firms, Fund Managers and self-managed Collective Investment Schemes falling within the scope of the Securities & Markets Supervision function.

1. Introduction

A crucial aspect of the MFSA's authorisation process consists of the fitness and properness assessment. The Authority expects that prior to proposing individuals for senior roles, authorised entities should conduct their own due diligence checks to ensure fitness and properness for the proposed role.

As part of the efforts that are being made by the MFSA in streamlining and enhancing the efficiency of the authorisation process, and in promoting good corporate governance practices across the financial services industry, the Authority is increasingly putting more onus on the important role of the governing body of authorised entities, when appointing key members with the entity.

Within this context, the Authority has carefully reassessed the current approval process of persons being proposed to hold Committee positions with certain authorised entities.

2. Proposal

The Authority is hereby announcing that with effect from the date of this Circular, individuals being appointed as members of:

- Investment Management Committees
- Investment Advisory Committees
- Risk Management Committees
- Internal Audit Committees
- Valuation Committees

in relation to Investment Services Licence Holders (**'ISLHs'**) and self-managed Collective Investment Schemes ('CISs') (collectively referred to as 'Licence Holders'¹), will no longer be required to submit a Personal Questionnaire ('PQ') Form, except for the scenario, as explained further below.

Accordingly, such Committee positions will not be subject to a fitness and properness assessment by the MFSA and will no longer fall within the MFSA's definition of Senior Management².

Notwithstanding the above, Licence Holders are still expected to treat member of Committee positions as "Key Function Holders"³. Accordingly, such entities shall continue to be required to undertake internal due diligence (upon engagement) and ongoing due diligence checks, of any Committee members. Licence Holders are being directed in this regard to the ["Guidelines to the Personal Questionnaire"](#) ('the Guidelines') with respect to the extent of the assessment to be performed by the authorised entity.

Licence Holders shall be required to retain records of the Due Diligence checks (including the Suitability Assessment), which would need to be made available to the Authority, upon request.

Further to the above, Licence Holders are to note that the requirement of submitting a PQ Form will remain valid in the following scenarios:

- i) For the most senior individual holding the following specific roles, or the equivalent (i.e. having the overall responsibility for the service or activity), including also those instances where the service or activity is to be provided on an individual basis, rather than through a Committee setup:
 - Chief Investment Officer/ Lead Portfolio Manager;
 - Chief/ Head/ Lead Investment Advisor;
 - Chief Risk Officer/ Risk Manager;
 - Internal Audit Manager.

The above positions shall accordingly still fall under the definition of 'Senior Management', as defined above.

¹ For the purpose of this Circular:

- i) 'ISLHs' includes Asset Managers (*de minimis*, Alternative Investment Fund Managers and UCITS Management Companies) and MiFID Firms (that opt to set up any of the above-mentioned Committees when providing services); and
- ii) 'License Holder(s)' refers to both applicants for a license and those that are already in possession of a license.

² The MFSA Rules define Senior Management as "*those natural persons who exercise executive functions within the Licence Holder and who are responsible, and accountable to the Management Body, for the day-to-day management of the Licence Holder*"

³ The MFSA Rules define Key Function Holder as "*Persons who have significant influence over the direction of the Licence Holder, but who are neither members of the management body and are not the CEO. They include the heads of internal control functions, the CFO, Compliance Officer, MLRO and the Risk Manager, where they are not members of the management body, senior management and other key function holders such as investment management, risk management, advisory, audit and valuation committee members, as may be deemed appropriate. Other key function holders might include heads of significant business lines, European Economic Area/European Free Trade Association branches, third country subsidiaries and other internal functions*".

- ii) Where the decisions relating to an activity or service are undertaken ‘collectively’ via the Committee setup (rather than, for example, having an appointed Chief Investment Officer/ Portfolio Manager, responsible for the ‘day-to-day’ decisions within a Committee), then the Authority would require the submission of PQ Forms by all the Committee members.

Valuation Officers and Valuation Committee Members

Licence Holders are further notified that individuals being appointed as Valuation Officers and/ or Valuation Committee members in relation to Licence Holders (where applicable), will also no longer fall under the **MFSA definition of ‘Senior Management’** but shall still be considered as **‘Key Function Holders’**. Accordingly, unless the individual in question would also be holding another senior role within the same entity that requires MFSA regulatory approval, a PQ Form will no longer be required for such positions.

With regards to the valuation function and appointment of valuation officer(s) (where applicable), even the most senior individual responsible for the activity shall not be subject to MFSA approval, but the appointment would be subject to a notification process upon appointment and resignation, as further detailed below.

3. Amendments to the MFSA Rulebooks

The updated position of the MFSA has been reflected in the relevant ISLHs and CISs Rules. As a result, the following MFSA Rulebooks have been updated:

- Parts A, BI, BII and BIII of the Investment Services Rules for Investment Services Providers;
- Parts A, Part B and Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through Loans of the Investment Services Rules for Alternative Investment Funds;
- Parts A, Appendix I to Part B and Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through Loans of the Investment Services Rules for Professional Investor Funds;
- Parts A and Appendix VIII to Part B of the Investment Services Rules for Retail Collective Investment Funds.

The Licence Holders’ attention is drawn that the relevant Application Forms to the respective MFSA Rulebooks shall be updated in due course (as part of a holistic exercise that is currently being undertaken by the MFSA that is aimed at streamlining the application process).

Annex 1 to this Circular provides a list of the specific changes to the Rulebooks that are being affected as a result of this change.

4. MFSA Notification process for appointments and resignations of Committee Members

With effect from the date of this Circular, the appointment of Committee Members (including Valuation Officers) with Licence Holders shall be notified to the Authority by means of a declaration signed by the governing body / legal representatives of the License Holder, who shall take full responsibility with respect to the appointment of the individual and his/her fitness and properness.

The declaration shall confirm that:

- (i) The Licence Holder has carried out a due diligence assessment on the appointed individual and is satisfied that he/ she complies with the standards of fitness and properness required by the MFSA, and that the Licence Holder shall notify the MFSA should such individual cease to comply with the mentioned standards;
- (ii) the due diligence exercise undertaken has been fully documented, held at the registered office, and is available upon request by the MFSA; and
- (iii) the due diligence exercise carried out will be updated at periodical intervals as applicable and the updates will be documented and will be made available upon request by the MFSA.

Similarly, the MFSA will also need to be notified accordingly about the resignation of Committee members holding the above-mentioned positions.

As further specified in the Rules, the notification submitted by the Licence Holder with regards to departure of staff holding these positions, shall include the following information:

- the name and role of the official departing;
- the reason of departure i.e. resignation due to personal reasons, dismissal, re-organisation etc.;
- the effective date of resignation;
- any proposed replacement;
- whether the resignation resulted in any regulatory contraventions.

No notification from the individual is required to be submitted to the MFSA with regards to Committee member roles that are not subject to MFSA approval. That said, the departing individual is encouraged to reach the MFSA separately in the event that she/ he would like to discuss any matters in relation to the resignation.

Any appointment and resignation notifications with respect to roles not requiring MFSA approval, shall be submitted through the Licence Holder portal, as explained in the [Circular](#) issued by the Authority providing Guidance on the Licence Holder portal.

5. Terms of Reference of Committees

Further to the above, as result of the removal of the fitness and properness assessment for Committee members on part of the Authority, it is hereby communicated that the Terms of Reference document of such Committees will no longer be subject to the Authority's approval.

However, the Terms of Reference document (and any changes thereto) should be submitted to the Authority for notification purposes, both at application stage and thereafter, in case of updates effected to the document.

6. Committee Appointments that have been proposed and are currently pending MFSA approval

Any requests submitted to the Authority for approval (either as part of a new application or otherwise in relation to an existing Licence Holder) of Committee members and/ or Valuation Officers, that have been submitted up to the date of this Circular, shall continue to be processed to the MFS

A approval, as per the previous procedure.

Contact

Any queries regarding the above should be directed to the Securities and Market Supervision Function (e-mail: ausecurities@mfsa.mt).

ANNEX 1

Investment Services Rules for Investment Services Providers	
Part BI	
R	Summary of the amendments
R1-1.3.1(56)	The definition of “Key Function Holder” has been amended to include specific reference to committee members.
R4-1.2.1(ii) (new)	Inclusion of instances requiring a notification to the MFSA, including the appointment or the departure of any Key Function holders, whose appointment is not subject to MFSA approval, have been included.
R4-1.3.1(xi)	Detail regarding when the MFSA approval of individuals is required has been provided.
Part BII	
1.10(c) (new)	Inclusion of instances requiring a notification to the MFSA, including the appointment or the departure of Key Function holders, whose appointment is not subject to MFSA approval.
1.11(i)	Detail regarding when the MFSA approval of individuals is required has been provided.
Part BIII	
8(f) <i>de minimis</i> (new)	Inclusion of instances requiring a notification to the MFSA, including the appointment or the departure of any Key Function holders, whose appointment is not subject to MFSA approval.
9(e) <i>de minimis</i>	Detail regarding when the MFSA approval of individuals is required has been provided. Furthermore, references to outdated documents requested (i.e. the Competency Form) or procedures implemented by the Authority with respect to the due diligence assessment process (i.e. the five-years validity of a Personal Questionnaire) which are no longer applicable, have been removed and the paragraph updated accordingly.
1.17(e) (new)	Inclusion of instances requiring a notification to the MFSA, including the appointment or the departure of any Key Function holders, whose appointment is not subject to MFSA approval.
1.18(g)	References to outdated documents requested (i.e. the Competency Form) or procedures implemented by the Authority with respect to the due diligence assessment process (i.e. the five-years validity of a Personal Questionnaire) which are no longer applicable have been removed and the paragraph updated accordingly.
1.18(i)	Detail regarding when the MFSA approval of individuals is required has been provided.

11.01(a)(iii)	Reference to the MFSA approval of Investment Committee members has been made conditional to the provisions of SLC1.18(i).
11.09(e)(a)	The submission for the consideration and approval of the MFSA of changes in the valuation arrangements of an AIFM prior to the filing of a new Notified AIF is no longer required. Equally, only certain changes to the AIFM's portfolio management arrangements now require a prior submission to the Authority.
Glossary to the Investment Services Rules for Investment Services Providers	
Letter "K" (new)	The definition of "Key Function Holder" has been introduced in the Glossary, to specifically include committee members.

Investment Services Rules for Alternative Investment Funds

Part A

SLC	Summary of the amendments
4.13(i)	Reference to the submission of a Personal Questionnaire with respect to Investment Committee members is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.

Part B

1.06(iv) and (vi)	<p>(iv) the departure of individuals holding roles which do not require MFSA approval is also subject to a notification to the Authority.</p> <p><i>New:</i> (vi) the appointment of officials not requiring MFSA approval is subject to a notification to the Authority, upon engagement.</p>
1.07(iii)	<p>Reference to the MFSA's approval of Investment Committee members, and therefore the submission of a Personal Questionnaire with respect to such roles is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.</p> <p>Furthermore, references to outdated documents requested or procedures implemented by the Authority with respect to the due diligence assessment (e.g. the Competency Form) have been removed and the paragraph updated accordingly.</p>

Investment Services Rules for Professional Investor Funds

Part A

SLC	Summary of the amendments
5.13(i)	Reference to the submission of a Personal Questionnaire with respect to Investment Committee members is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.
5.16(iii)	The competence of the Investment Committee with respect to virtual currencies will be now object of a declaration submitted to the MFSA by the governing body of the PIF, rather than of an assessment performed by the Authority.

Part B – Appendix I

4.4	The requirement for the MFSA's approval of the Terms of Reference of the Investment Committee – and any changes thereto – has been removed and replaced with an obligation to notify and submit a copy of the updated version of such document to the Authority
4.8	Reference to the MFSA's approval of Investment Committee members, and therefore the submission of a Personal Questionnaire with respect to such roles is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.
4.9	The Rule has been expanded to set out the requirement for a notification to the MFSA with respect to the appointment and departure of officials which are not subject to the Authority's approval.

Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans

1.09 (d) and (e)	(d) the departure of individuals holding roles which do not require MFSA approval is also subject to a notification to the Authority. <i>New:</i> (e) the appointment of individuals not requiring MFSA approval is subject to a notification to the Authority, upon engagement.
1.10(d)	Reference to the MFSA's approval of Investment and Risk Committee members, and therefore the submission of a Personal Questionnaire with respect to such roles is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.

	Furthermore, references to outdated documents requested or procedures implemented by the Authority with respect to the due diligence assessment (e.g. the Competency Form) have been removed and the paragraph updated accordingly.
8.06	The requirement for the MFSA's approval of the Terms of Reference of the Investment Committee – and any changes thereto – has been removed and replaced with an obligation to notify and submit a copy of the updated version of such document to the Authority.
8.11	Reference to the MFSA's approval of Investment Committee members is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.
8.12	Reference to the submission of Competency Form and CV (which are no longer applicable), have been removed.
8.13	The Rule has been expanded to set out the requirement for a notification to the MFSA with respect to the appointment and departure of officials which are not subject to the Authority's approval.

Investment Services Rules for Retail Collective Investment Schemes

Part A

SLC	Summary of the amendments
9.1	Reference to the submission of a Personal Questionnaire with respect to Investment Committee members is removed, whilst the meaning of 'Portfolio Manager' is further clarified to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise. Furthermore, the submission of a Personal Questionnaire for the Risk Manager of the scheme is outlined accordingly.

Part B – Appendix VIII

Section III, 2.03	The requirement for the MFSA's approval of the Terms of Reference of the Investment Committee – and any changes thereto – has been removed and replaced with an obligation to notify and submit a copy of the updated version of such document to the Authority.
Section III, 2.08	The meaning of 'Portfolio Manager' is outlined out to include any person(s) in charge of the investment management of the scheme, whether he/she is a committee member or otherwise.
Section III, 2.11	Reference to the MFSA approval of committee members has been removed, whilst leaving applicable the Authority's approval with respect to "Portfolio Managers", as previously defined.
Section III, 2.13	Reference to the MFSA assessment with respect to the fitness and properness of committee members has been removed, whilst leaving applicable the Authority's assessment with respect to "Portfolio Managers", as previously defined.
Section III, 2.14	Reference to the MFSA approval of committee members has been removed, whilst leaving applicable the Authority's approval with respect to "Portfolio Managers", as previously defined.
Section III, 2.16	Reference to committee members has been removed, whilst the mentioned declaration will still apply to "Portfolio Managers", as previously defined.