

26 April 2021

## Circular for Licence Holders availing of Freedom of Services

### Introduction

The Malta Financial Services Authority (“the MFSA” or “the Authority”) has noticed, from a thorough review of its records, that there is a multitude of Licence Holders which have obtained permission to provide services outside Malta through the Freedom of Services, more commonly known as Passporting, mechanism allowed in terms of the AIFMD, MiFID, and the UCITS Directive (hereunder referred to as “the Directives”), and are not exercising such Passporting rights.

### Findings of the Authority

The MFSA notes that a number of Licence Holders, who have submitted a passporting notification to the MFSA, have never actively used such Passport or have stopped using the Passport altogether for an extended period of time. This means that the Licence Holders may not be in line with one or more of the abovementioned Directives, depending on the level of cross border activities undertaken since:

1. They have to inform MFSA where they are going to provide their services through the use of a Passport;
2. The programme of operations and other information originally presented to the Authority may be outdated;
3. Any changes to the conditions of the Passport on a freedom of services basis need to be notified to the MFSA at least one month prior to effecting such changes. Never using or stopping the use of the Passport is tantamount to not adhering with such notification of change in conditions;

### Ongoing Monitoring Conducted by the MFSA

The MFSA is obliged through the abovementioned Directives to monitor the activities, or in this case the lack thereof, of Licence Holders passporting out as the Authority of the Home Member State. Failure of Licence Holders to take prompt actions in line with the above may result in contraventions of the respective Directives.

### Way Forward

The MFSA is therefore requesting all Licence Holders making use of freedom of services in terms of the Directives to:

1. Assess their programme of operations;
2. Ensure that the contact details provided to the MFSA are up to date;;

3. Ensure that all other information furnished to the MFSA and Host Member State is updated; and
4. Assess whether it is still their intention to actively Passport outside Malta. In the event that Licence Holders are not making use of an active notification and have not been making use of the passport for a period of more than 3 months, the Licence Holder is expected to reach out to the MFSA to withdraw such notification.

Such review is to be concluded within one month from the date of the circular and any divergences shall be reported the MFSA by Friday 07 June 2021. In the case of any queries, please do not hesitate to contact [smsnotifications@mfsa.mt](mailto:smsnotifications@mfsa.mt)