

21 July 2021

Changes to Appendix 2B Fund Manager Return triggered by the Investment Firms Regulation and Directive (“IFRD”)

1. Introduction

On 26 June 2021, the Investment Firms Directive (“IFD”) [(EU) 2019/2034] and the Investment Firms Regulation (“IFR”) [(EU) 2019/2033] came into force. Despite the fact that the IFRD does not apply directly to AIFMs (both *de-minimis* and full-scope) and UCITS Management Companies (“Fund Managers”), Articles 60 and 61 of the IFD amend Article 7(1)(a)(iii) of the UCITS Directive and Article 9(5) of the Alternative Investment Fund Managers Directive (“AIFMD”), respectively.

The said IFD Articles make reference to Article 13 of the IFR in its entirety but specifically requiring that the own funds of the AIFM/UCITS Management Company must, in line with the fixed overheads requirement, never be less than one quarter of the fixed overheads of the preceding year. That said, this will not result in any changes to the fixed overheads requirement applied to date.

Therefore, by virtue of the above, Article 13 of the IFR does nevertheless apply to Fund Managers. Article 13(4) of the IFR makes reference to draft regulatory technical standards (“RTS”) drafted by the European Banking Authority (“EBA”) to supplement the calculation of the fixed overheads requirement, which RTS therefore also applies to Fund Managers.

Apart from the amendments to the AIFMD and the UCITS Directive imposed by the IFD, it was determined that the IFRD does not impact Fund Managers in any other way.

The purpose of this Circular is to make the industry aware of changes which were made to the Appendix 2B Fund Manager Return (“Appendix 2B”) template on the MFSA’s website to full align the content of the Appendix 2B with the IFRD.

2. Changes Made

The [final report](#) issued by the EBA on 16 December 2020 concerning the draft RTS related to the implementation of a new prudential regime for investment firms lays down, specifically in point 6 of page 31, additional items for deduction from the Fund Manager’s total expenses, as part of the Fixed Overhead Requirement calculation.

In view of this development, the following items listed in the RTS are applicable to Fund Managers and will be added to the Fixed Overhead Requirement calculator in Sheet 5 of the Appendix 2B:

- Expenditures from taxes where they fall due in relation to the annual profits of the Fund Manager;

- Payments related to contract-based profit and loss transfer agreements according to which Fund Manager is obliged to transfer, following the preparation of its annual financial statements, its annual result to the parent undertaking; and
- Expenses related to items that have already been deducted from own funds in accordance with Article 36(1) of Regulation (EU) 2013/575.

No other required changes to the Appendix 2B were identified.

3. Conclusion

As a result of the above-mentioned changes to the Appendix 2B, Licence Holders are requested to ensure that the new Appendix 2B template available on the MFSA website is made use of for the completion of all future Appendix 2B submissions in accordance with the applicable [Documentation Timetable](#) as from the return covering the reporting periods commencing from Quarter 3 of 2021 and any other reporting due for submission to the MFSA by 01 November 2021.

Should you have any queries in relation to the submission of the new Appendix 2B template, please do not hesitate to contact the Funds Team within the Securities and Markets Supervision function on funds@mfsa.mt.