

2 February 2022

The Investment Firms Regulation and Directive – 7th Briefing [Updated on 17 February 2022]

1. Introduction

This communication supplements the previous briefings in order to keep the industry abreast with the developments with respect to the Investment Firms Regulation and Directive ('IFR/D'), which came into force on 26 June 2021.

This briefing will provide information with respect to:

- The publication of Implementing Technical Standards ('ITS');
- Updates on the Malta Financial Services Authority ('the MFSA' or 'the Authority') website pertaining to the EBA Reporting Requirements;
- The projected fixed overheads;
- Liquidity requirements;
- Guidelines on internal governance;
- ICARA and RMICAAP requirements; and
- LH Portal Corporate Profile.

2. Publication of Implementing Technical Standards

Following the implementation of the Investment Firms [Regulation](#) ('IFR') and [Directive](#) ('IFD') on 26 June 2021, the European Commission published the [Implementing Regulation \(EU\) 2021/2284](#) laying down implementing technical standards ('ITS') for the application of the IFR.

The ITS stipulate the [technical standards on reporting and disclosures for investments firms](#) which have been published by the European Banking Authority ('EBA'). This information pertains, but is not limited, to the applicability of the EBA Annexes in accordance with the Class of the investment firm.

Investment firms should refer to the ITS for guidance on supervisory reporting and public disclosure.

Additionally, in December 2021, the EBA issued a revised list of [ITS validation rules](#). Licence holders are reminded that the EBA may change these validation rules from time to time. Licence holders must ensure that they use the latest version in order avoid errors when uploading the XBRL files.

3. Updates on the MFSA website for EBA Reporting

In view of the new reporting requirements emanating from the IFR/D regime, the MFSA website has been amended accordingly to help investment firms falling under this regime to navigate through the necessary regulatory requirements. In this respect, under the [Investment Firms section of Securities and Markets Supervision](#), a link to the EBA website and relevant reporting requirements has been created. Licence holders can thus access the EBA webpage pertaining to the XBRL reporting and other disclosures, via the MFSA website.

4. Projected fixed overheads

Annex I and Annex III of the EBA Investment Firms Reporting require investment firms to provide the projected fixed overheads for a given year. Therefore, investment firms are required to calculate the projected fixed overheads at the beginning of each year and report it accordingly in Annex I and Annex III templates. Licence Holders are kindly reminded that Class 2 investment firms shall report on a quarterly basis, while Class 3 shall report on an annual basis.

5. Liquidity requirements

On 10 December 2021 the EBA published its draft Regulatory Technical Standards ('RTS') and draft Guidelines on liquidity requirements exemptions for small and non-interconnected investment firms.

The [draft RTS on specific liquidity management](#) set out liquidity risk elements that may raise major concern for investment firms. Investment firms shall maintain adequate levels of liquid resources, including with respect to addressing material sources of risk to markets, to clients as well as to the investment firm itself, acknowledging that these elements may either be independent or arise due to the interconnectedness of the liquidity risk of that firm with its markets, credit or operational risk.

The [draft Guidelines](#) specify the criteria under which small and non-interconnected investment firms may be exempt from liquidity requirements. The mentioned guidelines provide a set of investment services and activities which are provided by an investment firm to be eligible for the exemption from liquidity requirements.

[Update - As per Circular titled The [Investment Firms Regulation and Directive – 4th Briefing](#), Article 43 of IFR exempts Class 3 firms, the smallest firms, from holding liquid assets equivalent to at least one third of the fixed overhead requirements. In the interest of the industry's size, the lack of systemic importance of such firms and operational efficiency, the MFSA applies this exemption straight away without the licence holders having to apply specifically for such derogation, as per R3-2.6.1 of Part BI of the Rules applicable to MiFID Firms which refers to Part Five of the IFR].

6. Guidelines on internal governance for investment firms under the Investment Firms Directive

The EBA published its revised [Guidelines](#) on internal governance for investment firms under the IFD.

The IFD provides specific requirements with respect to governance requirements in parallel to those already applicable under the Capital Requirements Directive ('CRD'). These requirements are applicable to Class 2 investment firms. Furthermore, all investment firms must abide by the governance requirements under the Markets in Financial Instruments Directive ('MiFID').

The Guidelines provide details on how the IFD governance requirements must be applied by Class 2 investment firms, explaining the tasks, responsibilities and organization of the management body, and the organization of investment firms, including the need to create transparent structures that enable the supervision of all the activities. Additionally, the guidelines specify requirements intended at ensuring the sound management of risks across all three lines of defence, especially, set out detailed requirements for the second line of defence (the compliance function and the independent risk management where applicable) and the third line of defence.

7. ICARA and RMICAAP

As mentioned in previous communications, licence holders are required to submit the [MiFID Firms Quarterly Reporting](#) in accordance with the [Guidelines](#) and [Documentation Timetable](#). Following the entry into force of the IFR/D regime, licence holders are **no longer required to submit a separate letter confirming that they have an RMICAAP in place**. The RMICAAP has been superseded by the ICARA. In this respect, licence holders are required to provide a confirmation that the ICARA is in place as per Point 4 of the Confirmations tab of the MiFID Firms Quarterly Reporting. This confirmation shall be submitted, together with the rest of the confirmations, in accordance with the above-mentioned Guidelines and Documentation Timetable.

[Update – As per Article 24 of IFD those investment firms which do not meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of Regulation (EU) 2019/2033 shall have an ICARA in place. Nevertheless, where necessary the Authority may request investment firm which meet the conditions for qualifying as small and non-interconnected investment firms set out in Article 12(1) of IFR, to have an ICARA in place].

8. LH Portal Corporate Profile

Licence holders are kindly reminded to keep their Corporate Profile in the LH Portal always updated. In this respect, all licence holders shall by now, have acquired an LEI code and are thus required to update the Corporate Profile accordingly.

9. Conclusion

Licence holders are requested to familiarise themselves with the above-mentioned developments and undertake the necessary actions to comply with the regulatory framework, including Technical Standards as may be applicable.

Should you have any queries pertaining to any of the above, please do not hesitate to contact investmentfirms@mfsa.mt.