

29 March 2022

Updated: Amendments to the Investment Services Rulebooks

1. Introduction

The purpose of this Circular is to communicate to the industry several amendments conducted to the Investment Services Rulebooks. These amendments consist of:

- a) amendments to the Transparency provisions in the Investment Services Rulebooks to elaborate on the suitable channels Licence Holders may use to disclose the information required under the Shareholder Rights Directive (“SRD II Directive”), that is, the SRD II Disclosures;
- b) additional whistle-blower protection provisions on the reporting of infringements by employees;
- c) updated cross references to the Investment Services Rules For Investment Services Providers, Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms (“ISR ISP Part BI”); and
- d) other miscellaneous amendments relating to own funds and capital requirements, reporting requirements, and removal of obsolete provisions.

A table detailing all the changes conducted to the Rulebooks is Annexed to this Circular.

2. Changes to the Rulebooks

Amendments to the ISR ISP Part BI

Transparency Provisions

Minor changes have been introduced to the Section ‘Transparency provisions’ of the ISR ISP Part BI to elaborate on the suitable channels investment firms may use to disclose the information required under Article 3i of the SRD II Directive. Such disclosure shall be made in the Annual Audited Financial Statements report for the financial year, or together with the periodic communications referred to in Article 25(6) of Directive 2014/65/EU to the institutional investor or a collective investment scheme, or published on the Licence Holder’s website.

Whistleblowing

Two new definitions have been inserted in the ISR ISP Part BI, namely the definitions of Approved Publication Arrangement ('APA') and Approved Reporting Mechanism ('ARM') to accompany the provisions of Section 23.

A new Section 23 dealing with the reporting of infringements by employees was included in Title 1. This new section imposes an obligation on:

- investment firms, ARMs and APAs with a derogation in accordance with Article 2(3) of MiFIR;
- credit institutions in relation to investment services or activities and ancillary services, and
- branches of third-country firms

to develop and maintain appropriate mechanisms for employees to report potential or actual infringements internally through a specific, independent and autonomous channel. Furthermore, the above-mentioned entities shall also be required to refer and comply with the applicable provisions within the Protection of the Whistleblower Act.

Amendments to the Investment Services Rules for Investment Services Providers, Part BII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as UCITS Management Companies ("ISR ISP Part BII")

ISR ISP Part BI Cross References

The ISR ISP Part BII contains SLC 1.04 which cross refers to various Rules of the ISR ISP Part BI, making these Rules in ISR ISP Part BI also applicable to UCITS Management Companies. These cross references are being updated through the amendment of such SLC, and the introduction of others to reflect the amendments made to the ISR ISP Part BI.

Own Funds and Capital Requirements

Two SLCs were introduced in lieu of the cross references found in SLC 1.04 to regulate own funds and the capital requirements of the Licence Holder, namely the composition and amount of own funds, and the calculation of the capital requirement aligning these provisions with the ISR ISP Part BI.

Reporting Requirements

Four Rules were added obliging Licence Holders to submit to the Authority the original Representations Sheet of the Annual Financial Return, the Audited Annual Financial Return, the original Representations Sheet, the annual supervisory fee calculator, and the original Representations Sheet of the Interim Financial Return, all duly signed. The Annual Financial Return should be submitted in electronic copy.

Transparency Provisions

The Section 'Transparency provisions' of the ISR ISP Part BII has been amended to elaborate on the suitable channels UCITS Management Companies may use to disclose the information required under Article 3i of the SRD II Directive.

Amendments to the Investment Services Rules for Investment Services Providers, Part BIII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Alternative Investment Fund Managers ("ISR ISP Part BIII")

ISR ISP Part BI Cross References

The amendments to the ISR ISP Part BIII are identical to those of the ISR ISP Part BII insofar as ISR ISP Part BI cross references found in SLC 1.09, SLCs regarding own funds and capital requirements, reporting, and SRD II Disclosures.

Miscellaneous

The references to Categories were removed as these are now considered outmoded given the introduction of Classes following the IFD package .

Section: TRANSITIONAL ARRANGEMENTS was removed as this is now considered obsolete.

Amendments to the Investment Services Rules for Alternative Investment Funds, Part B: Standard Licence Conditions applicable to Alternative Investment Funds ("ISR AIF Part B")

Notification & Reporting Requirements

The ISR AIF Part B has been amended to remove the requirement to notify the MFSA about changes in address.

The ISR AIF Part B has also been amended to clarify the deadline for submission of annual reports by AIFs admitted to listing on regulated market in line with the AIFMD. These entities have to submit the annual report within four months from the end of the respective period concerned rather than six.

Furthermore, the provision allowing the extension of the financial statements' submission deadline of annual reports has been removed.

Transparency Provisions

The Section 'Transparency provisions' of the ISR AIF Part B has been amended to elaborate on the suitable channels AIFMs may use to disclose the information required under SRD II Directive the SRD II Disclosures.

Amendments to the Investment Services Rules for Retail Collective Investment Schemes, Part BII: Malta Based UCITS Collective Investment Schemes (“ISR RCIS Part BII”)

Transparency Provisions

The Section ‘Transparency provisions’ of the ISR RCIS Part BII has been amended to elaborate on the suitable channels UCITS may use to disclose the information required under SRD II Directive the SRD II Disclosures.

Amendments to the Investment Services Rules for Professional Investor Funds, Part BI: Professional Investor Funds targeting Experienced Investors (“ISR PIF Part BI”)

Minimum Entry Levels

Minor amendments were done to substitute the reference to the USD currency in the rulebook with the phrase “currency equivalent” to be in line with the relevant Authorisations Rulebook.

Amendments to the Investment Services Rules for Professional Investor Funds, Part BII: Professional Investor Funds targeting Qualifying Investors (“ISR PIF Part BII”)

Minimum Entry Levels

The same changes as explained in the Section relating to the ISR PIF Part BI have been reflected in the ISR PIF Part BII.

Amendments to the Investment Services Rules for Professional Investor Funds, Part BIII: Professional Investor Funds targeting Extraordinary Investors (“ISR PIF Part BIII”)

Minimum Entry Levels

The same changes as explained in the Section relating to the ISR PIF Part BI have been reflected in the ISR PIF Part BII.

3. Conclusion

The revised Rulebooks enter into force on the day following the publication of this circular.

Should you have any queries in relation to this circular, please contact smspolicy@mfsa.mt.