

Annex A

GLOSSARY TO THE INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

(Extract)

“Sustainability Risk” means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

“Sustainability Factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

Part BII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as UCITS Management Companies

(Extract)

Introduction

The relevant requirements of SLC 2.01, 2.03, 2.04, 2.12, 2.34, 2.37, 3.03, 3.25, and 3.26, transposing Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS, shall apply from 1 August 2022.

...

2.01 The Licence Holder shall:

...

c. on a continuing basis ensure the effective integration of sustainability risks in the management of UCITS taking into account the nature, scale and complexity of the UCITS' business.

...

2.03 The Licence Holder shall:

...

The requirements prescribed in indents (a) to (e) shall take into account sustainability risks.

...

2.04 The Licence Holder shall:

...

The Licence Holder shall retain the necessary resources and expertise for the effective integration of sustainability risks for the purposes of indents (a) to (c).

...

2.12 The Licence Holder shall ensure that its senior management:

...

(g) is responsible for the integration of sustainability risks in the activities referred to in points (a) to (f).

...

2.34 The risk management policy shall comprise such procedures as are necessary to enable the Licence Holder to assess for each UCITS it manages the exposure of that UCITS to market, liquidity, sustainability and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

...

2.37 For the purposes of SLCs 2.34 to 2.376, the Licence Holder shall take into account the nature, scale and complexity of its business and of the UCITS it manages.

...

3.03 When identifying the types of conflict of interest, the Licence Holder shall ~~take into account~~:

- a. take into account the interests of the Licence Holder, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the Licence Holder towards the UCITS;
- b. take into account the interests of two or more managed UCITS; and
- c. include those types of conflicts of interest that may arise as a result of the integration of sustainability risks in its processes, systems and internal controls.;

...

3.25 The Licence Holder shall take into account sustainability risks when complying with the requirements set out in SLC 3.20 to 3.24.

3.26 Where the Licence Holder considers principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a), of Regulation (EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, the Licence Holder shall take into account such principal adverse impacts when complying with the requirements set out in SLC 3.20 to 3.24.



GLOSSARY TO THE INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

(Extract)

- “Management Body”** means the governing body of a Scheme or the body appointed in accordance with Maltese law which is empowered to set the strategy, objectives and overall direction of the Scheme, and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the Scheme, including the Board of Directors.
- “Senior Management”** means natural persons who exercise executive functions within the Scheme and who are responsible, and accountable to the Management Body, for the day-to-day management of the Scheme.
- “Sustainability Risk”** means sustainability risk as defined in Article 2, point (22), of Regulation (EU) 2019/2088 of the European Parliament and of the Council.
- “Sustainability Factors”** means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council.

INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

(Extract)

Part BII

1.1A The relevant requirements of SLC 16.13, 16.17A, 16.17B, 16.17C, 16.17D, 16.17E, and 16.17F, transposing Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS, shall apply from 1 August 2022.

...

16.13 The Scheme shall on a continuing basis ensure that it has sufficient management resources and expertise to effectively conduct its business including the effective integration of sustainability risks in the management of the Scheme, taking into account the nature, scale and complexity of the Scheme’s business.

...

Control by Senior Management and Supervisory Function

16.17A. When allocating functions internally, the Scheme shall ensure that senior management and the supervisory function, where appropriate, are responsible for the Scheme's compliance with its obligations under the Act, any applicable regulations issued thereunder and these Rules.

16.17B. The Scheme shall ensure that its senior management:

- a. is responsible for the implementation of the general investment policy of the Scheme as defined, where relevant, in the prospectus, the memorandum and articles of association or the instruments of incorporation of the investment company;
- b. oversees the approval of investment strategies;
- c. is responsible for ensuring that the Scheme has a permanent and effective compliance function as referred to in SLCs 3.01 to 3.06 of these Rules even where such function is performed by a third party;
- d. ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of the Scheme are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;
- e. approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions, so as to ensure that such decisions are consistent with the approved investment strategies;
- f. approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in SLCs 3.01 to 4.03 of Section IV Risk Management Function of Appendix VIII to these Rules.
- g. is responsible for the integration of sustainability risks in the activities referred to in points (a) to (f).

16.17C. In addition to the requirements prescribed in SLC 16.17B, the Scheme shall also ensure that its senior management and, where appropriate, its supervisory function shall:

- a. assess and periodically review the effectiveness of the policies, arrangements and procedures implemented to comply with the provisions of the Act and any applicable regulations and Investment Services Rules issued thereunder;
- b. take appropriate measures to address any deficiencies.

16.17D. The Scheme shall ensure that the senior management and, where applicable, the supervisory function, receive on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

16.17E. The Scheme shall ensure that the senior management receives regular reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in SLC 16.17B (b) to (e).

16.17F. The Scheme shall ensure that the supervisory function, if any, receives on a regular basis written reports on the matters referred to in SLC 16.17D.

Appendix VIII: Supplementary Licence Conditions Applicable to Self-Managed Schemes

The relevant requirements of SLC 2.02 (of Section I), 1A.01, 1A.02, 3.05 and 3.06 (of Section II), 2.18 (of Section III), 3.02 (of Section IV), transposing Commission Delegated Directive (EU) 2021/1270 amending Directive 2010/43/EU as regards the sustainability risks and sustainability factors to be taken into account for UCITS, shall apply from 1 August 2022.

...

Section I

2.02 When identifying the types of conflict of interest, the Scheme shall ~~take into account~~:

- a. ~~take into account~~ its interests, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the Scheme;
- b. ~~take into account~~ the interests of two or more managed Schemes; ~~and~~
- c. ~~include those types of conflicts of interest that may arise as a result of the integration of sustainability risks in its processes, systems and internal controls.~~;

...

Section II

1A. Administrative Procedures and Internal Control Mechanisms

1A.01 The Scheme shall:

- a. establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
 - b. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
 - c. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Scheme;
 - d. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Scheme as well as effective information flows with any third party involved;
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- e. maintain adequate and orderly records of its business and internal organisation;
- f. establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question;
- g. establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities;
- h. establish, implement and maintain accounting policies and procedures that enable it, at the request of the MFSA, to deliver in a timely manner to the MFSA financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules;
- i. monitor and evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements on a regular basis in accordance with indents (a) to (h) above and to take appropriate measures to address any deficiencies.
- j. on a best effort basis refer to the [Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#).

1A.02 The requirements prescribed in indents (a) to (j) shall apply depending on the nature, scale and complexity of the Scheme's business, and the nature and range of services and activities undertaken in the course of that business.

1A.03 The requirements prescribed in indents (a) to (e) shall take into account sustainability risks.

1A.04 The Scheme shall:

- a. employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
- b. retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the Scheme, especially with regard to the management of the risk associated with those arrangements;
- c. ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly and professionally.

1A.05 The Licence Holder shall retain the necessary resources and expertise for the effective integration of sustainability risks for the purposes of indents (a) to (c).

1A.06 The requirements prescribed in indents (a) to (c), shall apply depending on the nature, scale and complexity of the Scheme's business, and the nature and range of services and activities undertaken in the course of that business.

...

3.06 The Scheme shall take into account sustainability risks when complying with the requirements set out in SLC 3.01 to 3.05.

3.07 Where the Scheme considers principal adverse impacts of investment decisions on sustainability factors as described in Article 4(1), point (a), of Regulation (EU) 2019/2088, or as required by paragraphs 3 or 4 of Article 4 of that Regulation, the Licence Holder shall take into account such principal adverse impacts when complying with the requirements set out in paragraphs SLC 3.01 to 3.05.

Section III

2.18 The Scheme shall on a continuing basis ensure that it has sufficient management resources and expertise to effectively conduct its business including the effective integration of sustainability risks in the management of the Scheme taking into account the nature, scale and complexity of the Scheme's business.

...

Section IV

3.02 The risk management policy shall comprise such procedures as are necessary to enable a Scheme to assess the exposure of that Scheme to market, liquidity, sustainability and counterparty risks, and the exposure of the Scheme to all other risks, including operational risks, which may be material for the Scheme.

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