

4 September 2023

Various Amendments to the Investment Services Rulebooks

1. Introduction

The purpose of this Circular is to communicate amendments that have been made to the Investment Services Rulebooks, namely:

- a) the introduction of new Rules to transpose the marketing requirements stemming from the Cross-Border Distribution of Funds Directive (“CBDFD”);
- b) revisions to the Investment Services Rulebook for Retail Collective Investment Schemes to reflect the Authority’s decision taken in 2016 to consolidate the number of fund frameworks available to fund promoters in terms of the Investment Services Act;
- c) the introduction of new Rules to implement Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (“the PRIIPs Regulation”);
- d) the deletion of Schedule D of Investment Services Rules for Retail Collective Investment Schemes: National Rules for Marketing of European UCITS Schemes in Malta (“Schedule D”);
- e) the application of current formatting templates to the Part A Rulebooks specified hereunder;
- f) the introduction of new Rules to implement Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules (“ELTIF II”); and
- g) minor editorial, structural and referential corrections.

The amendments to the each of the Rulebooks are being outlined in various Annexes attached to this Circular.

2. Amendments to the Investment Services Rules for Alternative Investment Funds Part A: The Application Process ('ISR AIF Part A')

Two new sub-sections have been introduced to Section 5 'Marketing of AIFs' of the ISR AIF Part A to transpose new Articles 30a and 32a of the AIFMD as introduced by the CBDFD on:

- a) the pre-marketing arrangements for AIFs; and
- b) the de-notification arrangements to be in place when an AIF decides to cease marketing its units.

Apart from the CBDFD requirements, this Rulebook has been revised to ensure it's aligned with the current MFSA formatting template for Rulebooks. In this respect, the numbering has been changed from Standard Licence Conditions (SLCs) to Rules (R).

The Rule which detailed the documents which are required to be submitted when an AIF is established as a self-managed scheme has been slightly revised to clearly specify that a Risk Manager needs to submit a Personal Questionnaire when the day-to-day risk management function is delegated to them. Furthermore, the Terms of Reference regulating the procedures of the Investment and Risk Committees need to be submitted, where applicable.

All material changes carried out are outlined in [Annex A](#).

3. Amendments to the Investment Services Rules for Retail Collective Investment Schemes, Part A: The Application Process ('ISR RCIS Part A')

The Section 'Categories of retail Collective Investment Schemes' of ISR RCIS Part A has been amended to reflect [the decision](#) taken by the Authority in 2016 to consolidate and reduce the number of fund frameworks available to fund promoters in terms of the Investment Services Act and the applicable Investment Services Rules. At the time, the framework for Retail Collective Investment Schemes included the possibility to establish four different types of schemes, namely:

- a) UCITS;
- b) Retail Non-UCITS Schemes;
- c) Overseas Based Retail Non-UCITS Schemes; and
- d) Retail AIFs.

Following an assessment held at the time, a decision was taken to discontinue the Retail Non-UCITS Schemes and the Overseas Based Retail Non-UCITS Schemes. In this respect, the way forward was to gradually phase out such schemes. Whilst no new collective investment scheme licences were issued under these categories, existing licence holders were allowed to continue operating under this regime. On the other hand, Overseas-Based Retail Non-UCITS Schemes were required to comply with the Maltese National Private Placement Regime, which came into force with the transposition of the AIFMD. The above decisions were never officially reflected in ISR RCIS Part A even though the Authority ceased to accept applications pertaining to these categories.

For the sake of clarity, definitions of the terms 'UCITS' and 'AIF' have now been inserted in the ISR RCIS Part A.

A new 'Section 6' dealing with the exercise of passport rights by European retail AIFs has been introduced. This new section details the notification procedure, as well as the notification and ongoing requirements applicable to European AIFs wanting to market their units in Malta in terms of the AIFMD. This inclusion aligns the Rulebook to reflect similar requirements to both UCITS Schemes and Retail AIFs.

Further to Section 2 above, ISR RCIS Part A, has also been updated to transpose the requirements stemming from the CBDFD. In this respect:

- a) 2 new Rules have been inserted under R3-3.4, European retail AIFs, and R3-3.5, European UCITS schemes, to reflect the facilities that should be made available in Malta by European UCITS schemes and retail AIFs respectively when being marketed to retail investors in Malta. These transpose the new Articles 43a of the AIFMD as introduced by the CBDFD;
- b) the requirement to have a facilities agent in Malta for the marketing of European UCITS schemes has been removed since this required alignment with the CBDFD requirements, which state that no local presence is necessary;
- c) the Section 'Exercise of Passport Rights by European UCITS Schemes' has been updated to incorporate the information which is to be provided to Maltese investors by European UCITS schemes. This transposes Article 93 of the UCITS Directive as amended by the CBDFD; and
- d) a new Rule has been included to reflect the conditions to be fulfilled when a European UCITS scheme intends to de-notify the arrangements made for marketing its units in

Malta. This transposes the new Article 93a of the UCITS Directive as introduced by the CBDFD.

In an effort to ensure a level playing field and better investor protection, some of the CBDFD UCITS requirements have also been extended to Retail AIFs, namely the following:

- a) Definition of marketing and possible marketing scenarios;
- b) Ongoing requirements;
- c) Cross-border Marketing Rights;
- d) Information provided to Maltese investors by a European Retail AIF; and
- e) De-Notification Requirements.

Finally, similar to ISR AIF Part A, ISR RCIS Part A, this Rulebook, has been cosmetically revised for it to be aligned with the current formatting template for the Rulebooks. Moreover, certain sections have been shifted under others to properly reflect the sequential order of the Rulebook.

All material changes carried out are outlined in [Annex B](#).

4. Amendments to Various Rulebooks to implement the PRIIPs Regulation

On 1 January 2018 the PRIIPs Regulation introduced the key information documents for packaged retail and insurance-based investment products (“PRIIPs KID”) for all packaged retail and insurance-based investment products, which are made available to retail investors in the EEA. The Regulation applies to all PRIIPs manufacturers, and/or persons advising on such products, and/or persons selling PRIIPs.

The Authority recently issued a [circular regarding the PRIIPs Regulation on 22 December 2022](#) to complement [another circular issued on 23 May 2022](#).

It should be noted that in terms of the local regulatory framework, AIFMs, UCITS ManCos, self-managed AIFs, self-managed UCITS, and PIFs are all in scope of the PRIIPs Regulation.

To implement this Regulation, various Rulebooks have now been amended to introduce Rules which oblige PRIIPs manufacturers, and/or persons advising on such products, and/or persons selling PRIIPs, to produce a PRIIPs KID in line with the PRIIPs Regulation. The Rulebooks are:

- a) Investment Services Rules for Retail Collective Investment Schemes, Part A: The Application Process;
- b) Investment Services Rules for Retail Collective Investment Schemes – Part B - Standard Licence Conditions Part BII: Malta Based UCITS Collective Investment Schemes;
- c) Investment Services Rules for Investment Services Providers Part A: The Application Process;
- d) Glossary to The Investment Services Rules for Retail Collective Investment Schemes;
- e) Glossary to The Investment Services Rules for Investment Services Providers;
- f) Investment Services Rules for Alternative Investment Funds Part B: Standard Licence Conditions Applicable to Alternative Investment Funds;
- g) Glossary to the Investment Services Rules for Alternative Investment Funds;
- h) 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;
- i) Investment Services Rules for Investment Services Providers Part BII: Standard Licence Conditions Applicable to Investment Services Licence Holders Which Qualify as UCITS Management Companies;
- j) Investment Services Rules for Professional Investor Funds Part B: Standard Licence Conditions Part BI: Professional Investor Funds Targeting Experienced Investors;
- k) Investment Services Rules for Professional Investor Funds Part B: Standard Licence Conditions Part B II: Professional Investor Funds Targeting Qualifying Investors; and
- l) Investment Services Rules for Professional Investor Funds Part B: Standard Licence Conditions Part BIII: Professional Investor Funds Targeting Extraordinary Investors.

All the new Rules of each respective Rulebook are outlined in [Annex C](#).

5. Deletion of Schedule D

Schedule D had been replaced through Section 12 of the [Investment Services Rules For Retail Collective Investment Schemes Part A: The Application Process](#). Therefore, it is obsolete and will be deleted from the website.

6. Amendments to Implement ELTIF II

Following the entry into force of ELTIF II, Rule 3.04 of ISR AIF Part A has been updated to make reference to the ELTIF II and any subsequent iterations of such Regulation. The preamble in Investment Services Rules for Alternative Investment Funds Part B: Standard Licence Conditions Applicable to Alternative Investment Funds (“Part B AIFs”) has also been amended to this effect.

The changes can be found in [Annex D](#).

7. Conclusion

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

Should you have any queries on the contents of this circular, please contact the Investment Services Supervision Function on isspolicy@mfsa.mt.