

5 February 2024

## 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) Amendments to the Investment Services Rules for Alternative Investment Funds, Part A – The Application Process (“Part A AIFs”);
- b) Amendments to the Investment Services Rules for Professional Investor Funds, Part A – The Application Process (“Part A PIFs”);
- c) Amendments to the Investment Services Rules for Retail Collective Investment Schemes, Part A – The Application Process (“Part A RCISs”);
- d) Amendments to the Investment Services Rules for Investment Services Providers, Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms (“MiFID Part BI”);
- e) 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 (“UCITS Part BII”);
- f) Amendments to the Investment Services Rules for Investment Services Providers, Part BIII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as AIFMs (“AIFMs Part BIII”);
- g) Amendments to the Investment Services Rules for Investment Services Providers, Part BIV: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Depositories (“Depositories Part BIV”);
- h) Amendments to the Part CIV: Rules for Third country AIFMs providing services in Malta (“Part CIV”);
- i) Deletion from the website of the specimen Subordinated Loan Agreement;
- j) Deletion from the website of various Appendices;
- k) Amendments to three Appendices to fix cross-references and update some terminology;
- l) Amendments to Investment Services Rules for Alternative Investment Funds Part B: Standard Licence Conditions Applicable to Alternative Investment Funds (“AIFs Part B”); and

- m) Investment Services Rules for Retail Collective Investment Schemes Part B -Standard Licence Conditions Part BII: Malta Based UCITS Collective Investment Schemes (“UCITS Part B”).

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

## **2. Amendments to Part A AIFs**

These changes apply in the context of the intention to surrender a Collective Investment Scheme licence. The requirement for a shareholder’s resolution is being substituted with that for a resolution from the governing body of the Scheme, as is done for other confirmations in Rule R6-6.1.3 (i) and (ii), and renumbered accordingly. In addition, such resolution will state that the shareholder’s written consent to surrender the licence of the Scheme has been obtained.

These changes are reflected in Annex A.

## **3. Amendments to Part A PIFs**

These amendments are identical to those described in Section 2.

These changes are reflected in Annex B.

## **4. Amendments to Part A RCISs**

The amendments to Part A RCISs are identical to those described in Section 2.

These changes are reflected in Annex C.

## **5. Amendments to MiFID Part BI**

### **Subordinated Loan Agreements (SLAs)**

Licence Holders require the MFSA’s approval prior to entering, amending, and/or terminating such an agreement. The SLA shall meet all the criteria for it to be an eligible instrument for inclusion within the own funds calculation in accordance with the CRR. This needs to be supported by the Auditor’s declaration. A draft of the SLA needs to be submitted to the MFSA for its approval.

New Rules have been introduced for this purpose.

**Miscellaneous**

The definition of “small and medium-sized investment firm”, and Rules R2-3.5.2, R2-3.5.3, and R2-3.5.6 have been deleted to ensure the correct transposition of the IFD as they were in conflict with the IFD.

On a different note, the reference to the Resolutions plan in Rule R1-1.11.5 has been removed to ensure correct transposition of the BRRD in relation to investment firms as only the Recovery Plan needs to be submitted to the MFSA. Furthermore, it has been specified that such Recovery plan should be submitted annually.

The table listing the initial capital for investment firms subject to the IFD is also amended to clarify which activities merit €750,000 initial capital.

Finally, the reference to the RMICAAP Guidance Note and sample has been removed as these are now outdated following the IFR/D and the CRR II and CRD VI.

These changes are reflected in Annex D.

**6. Amendments to UCITS Part BII**

These changes relate to the Subordinated Loan Agreement and are the same as those described in section 5 and are reflected in Annex E.

**7. Amendments to AIFMs Part BIII**

These changes relate to the Subordinated Loan Agreement and are the same as those described in section 5 and are reflected in Annex F.

**8. Amendments to Depositaries Part BIV**

These changes relate to the Subordinated Loan Agreement and are the same as those described in section 5 and are reflected in Annex G.

**9. Amendments to Part CIV**

Part CIV was drawn up to transpose Article 37 of the AIFMD in relation to the third-country passport. This Articles never came into force, and, therefore, neither did this Rulebook. The note at the top of the Rulebook which states that this Rulebook is not in force has been reworded to ensure clarity by stating that it will come into force when the MFSA communicates so.

Furthermore, the cross-references have been updated.

These changes are reflected in Annex H.

## **10. Deletion of the Subordinated Loan Agreement Specimen**

The SLA specimen has been deleted from the website.

## **11. Deletion of Various Appendices**

Various obsolete Appendices have been deleted, namely:

- Appendix 4 - Technical Criteria on the Disclosure Requirements for Investment Services Licence Holders
- Appendix 5 - Penalties
- Appendix 6 - Insurance Covers
- Appendix 7 - Record Keeping
- Appendix 8 - Transaction Reporting System
- Appendix 10 - Requirements on Risk Management and Internal Capital Adequacy Assessment for Investment Services Licence Holders

## **12. Amendments to Various Appendices to Fix Cross-References**

Paragraph 1.1 of “Appendix 9 – Definition of Close Links” has been updated to make a general reference to the Act and specific reference to UCITS Part BII and AIFMs Part BIII.

“Appendix 13 – Transparency Requirements” has been revised to update cross-references.

“Appendix 16 – Complaints Handling” has been revised to remove the reference to MiFID Part BI as complaint handling is now integrated into this Rulebook, and references to the MFSA Complaints Handling Unit have been replaced with references to the Office of the Arbitrator for Financial Services.

## **13. Amendments to the Investment Services Rulebooks in relation to the MMF Regulation**

On 19 December 2023, the European Securities and Markets Authority (ESMA) published the updated ESMA Guidelines on stress test scenarios under the MMF Regulation ([ESMA50-43599798-9011](#)).

The Guidelines apply to competent authorities, money market funds (MMFs), and managers of MMFs as defined in Regulation (EU) 2017/1131 of the European Parliament and of the

Council of 14 June 2017 on money market funds and update the previous version of the Guidelines. The Guidelines are revised regularly by ESMA and are reissued with updated methodologies regularly.

To implement these Guidelines, various Rulebooks were amended to update Rules which oblige the abovementioned persons to apply such Guidelines. The Rulebooks are:

- UCITS Part BII
- AIFMs Part BIII
- AIFs Part B
- UCITS Part B

These changes are reflected in Annex I.

## **14. 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](mailto:isspolicy@mfsa.mt).