

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART BIV: STANDARD LICENCE CONDITIONS
APPLICABLE TO INVESTMENT SERVICES LICENCE
HOLDERS WHICH QUALIFY AS **DEPOSITARIES**

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	22 July 2013	
2.00	7 January 2021	
3.00	23 November 2021	Revisions in view of IFR/D
4.00	08 April 2022	See: Circular dated 08 April 2022 on The introduction of Appendix 2E - a new regulatory return for Licence Holders offering depository services solely to Collective Investment Schemes
4.01 5.00	30 May 2023	Changed method of submission of Appendix 2D
6.00 5.00	<u>5 February 2024</u>	<u>See: Circular dated 5 February on Various Amendments to the Investment Services Rulebooks</u>
<u>7.00</u>	<u>2025</u>	<u>See: [To insert hyperlink to Circular]</u>

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INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART BIV: STANDARD LICENCE CONDITIONS APPLICABLE TO INVESTMENT SERVICES LICENCE HOLDERS WHICH QUALIFY AS DEPOSITARIES

Introduction

Part BIV of the Investment Services Rules for Investment Services Providers (the "Rules") applies to Investment Services Licence Holders which have been authorised to act as Depositories of Collective Investment Schemes and are therefore in possession of an Investment Services Licence issued in terms of the Investment Services Act (the "Act").

~~Any capitalised terms and notions not defined in these Rules are defined in the Glossary to the Investment Services Rules for Investment Services Providers.~~

For the purposes of these Rules:

"Depository" shall means a Licence Holder authorised to act as a trustee or depository of collective investment schemes;

"Depository Lite" shall means a Licence Holder authorised to act as such in respect of the following:

- i. AIFs marketed in Malta in terms of regulation 7 of the Investment Services Act (Alternative Investment Fund Manager) (Third Country) Regulations; or
- ii. AIFs which have no redemption rights exercisable during the five-year period from the date of initial ~~investment~~investment, and which generally do not invest in assets that must be held in custody in terms of the Investment Services Rules.

Investment Services Rules for Investment Services Licence Holders

Part BIV: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Depositories
Issued: 22 July 2013
Date of last Revision: ~~5 February~~X November 20254

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"Licence Holder" shall means a legal person in possession of a Depository, or Depository Lite Investment Services Licence, issued in terms of the Act;

Any capitalised terms and notions not defined in these Rules are defined in the Glossary to the Rules.

**1. ~~General Requirements~~
~~applicable to Depositories of Collective Investment Schemes~~**

~~The Standard Licence Conditions prescribed in this section shall apply where the Licence Holder proposes to act as Depository of a Collective Investment Scheme which is third-party managed or self-managed.~~

Eligibility Criteria

1.01 The Licence Holder is required to have an Investment Services Licence permitting it to provide Depository or Depository Lite services and to have an established place of business in Malta.

1.02 The Licence Holder shall commence its Investment Services business within twelve months of the date of issue of the Investment Services Licence.

If, for any reason the Licence Holder is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason/s for such ~~a~~ delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Investment Services Licence in accordance with the relevant provisions of the Act.

1.03 ~~The Management Body of the Licence Holder shall have a balanced mix of members in an executive and non-executive function with at least one~~

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independent non-executive member, who shall be capable of exercising objective and independent judgement and shall be in a position to effectively oversee and challenge the decisions and activities of the Management Body of the Licence Holder.

For the purpose of these Rules, Management Body shall mean the governing body of a Licence Holder; or the body or bodies appointed in accordance with Maltese law which, is empowered to set the strategy, objectives and overall direction of the Licence Holder, and which oversees and monitors management decision-making, and includes the persons who effectively direct the business of the Licence Holder.

The Licence Holder shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Licence Holder shall supply the MFSA with such information and returns as the MFSA requires.

1.04 Where a Standard Licence Condition requires that the Licence Holder notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a Durable Medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

1.045 The business of the Licence Holder shall be effectively directed or managed by at least two individuals in satisfaction of the “dual control” principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the Licence Holder.

Moreover, the Licence Holder shall take reasonable steps to ensure continuity and regularity in the performance of Investment and Ancillary Services. To this end, the Licence Holder shall employ appropriate and proportionate systems, resources and procedures.

1.05 The Licence Holder has fiduciary obligations towards the unit holders of the Schemes serviced and is expected to act in their best interests at all times.

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1.06 The Licence Holder shall co-operate with the MFSA in an open and honest manner, including by promptly disclosing any information that may affect its compliance with applicable regulatory requirements, supplying such information and returns as the MFSA may require and fully complying with any inspection, enquiry or compliance testing carried out by the MFSA or by an inspector acting on its behalf.

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1.07 Where a Standard Licence Condition requires that the Licence Holder notifies the MFSA of an event, such notification shall be made formally to the MFSA on funds@mfsa.mt. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

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1.086_ — The Licence Holder shall notify the MFSA in writing of:

- a. a change in the name or business name (if different) – at least one month in advance.
- b. a change of address – at least one month in advance.
- c. the departure of a Director or Senior Manager – within 14 days of the departure. The Licence Holder shall also request the Director or Senior Manager to confirm to MFSA that their departure ~~had was not the result of any~~ regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Licence Holder's notification of departure.

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€ For the purposes of these Rules, a Senior Manager shall mean the person occupying the most senior role following that of director, so that in the case where there are various management grades, it is the most senior manager who will be subject to a notification to the MFSA.

- d. the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Licence Holder's share capital – on becoming aware of the situation.

- e. any acquisitions or disposals of shares which fall within the disclosure provisions of Article 10 of the Act – immediately upon becoming aware of the proposed acquisition or disposal. It should be noted that MFSA has the right to object to such an acquisition.
- f. the provision of a related company loan – within 15 days of making the loan, provided that the Licence Holder which falls under any one of the following categories need not comply with these requirements:
 - i. credit institutions licensed in terms of the Banking Act, 1994; or
 - ii. financial institutions licensed in terms of the Financial Institutions Act, 1994.
- g. any proposed material change to its business [activity](#) (whether that business constitutes licensable activity under the Act or not) – at least one month before the change is to take effect. Where a new or amended Investment Services Licence is required, the Licence Holder shall not commence the new business until the new Investment Services Licence has been granted or the amendment has been approved by the MFSA.
- h. any evidence of fraud or dishonesty by a member of the Licence Holder's staff – immediately upon becoming aware of the matter.
- i. a decision to make a material claim on any insurance policy held in relation to the Licence Holder's business. Notification should be provided as soon as the decision is taken.
- j. any actual or intended legal proceedings of a material nature by or against the Licence Holder – immediately after the decision has been taken or on becoming aware of the matter.
- k. any material changes in the information supplied to the MFSA – immediately upon becoming aware of the matter. This shall include the obligation to notify the MFSA on a continuous basis of any changes or

circumstances which give rise to the existence of Close Links, ~~as defined in the Act,~~ between the Licence Holder and any other person.

- l. the fact, where applicable, that the Licence Holder has not provided any Investment Services or carried out any investment activity for the preceding six months, setting out the reasons for such inactivity and providing a business plan for future activity.

m. any other material information concerning the Licence Holder, its business or its staff in Malta or abroad – immediately upon becoming aware of the matter.

~~m.n.~~ any breach of the Scheme's Licence Conditions or of any of the provisions of the Constitutional Documents of the Scheme as soon it becomes aware of the breach. An inadvertent breach of investment restrictions of a Scheme shall also be notified to the MFSA by the Depository if such breach has not been rectified within six months from the date of its discovery.

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1.097 The Licence Holder shall obtain the written consent of the MFSA before:

- a. making any change to its share capital or the rights of its shareholders;
- b. establishing a branch in Malta or abroad;
- c. acquiring 10 per cent or more of the voting share capital of another company;
- d. taking any steps to cease its Investment Services business;
- e. agreeing to sell or merge the whole or any part of its undertaking;
- f. making an application to a regulator abroad to undertake any form of licensable activity outside Malta;

~~g.~~ the appointment of a director or Senior Manager, responsible for the Investment Services business of the Licence Holder, or of a Compliance

Officer in terms of SLC 1.3220(b), ~~Money~~, Money Laundering Reporting Officer or other key function holders of the Licence Holder. The request shall be accompanied by the submission of a Personal Questionnaire ("PQ"), duly completed by the person proposed in line with the [Guidelines to the Personal Questionnaire](#), in order to enable the MFSA to assess whether the person(s) concerned are sufficiently competent and of good repute to undertake such activities;

~~For the purposes of the above and (h) below, 'Senior Manager' should be interpreted as the person occupying the most senior role following that of Director, so that in the case where there are various management grades, it is the most senior manager who will require the MFSA's authorisation.~~

- g. the change in the responsibilities of an Approved Person¹ when such a change involves a variation in the role that would require authorisation by the MFSA. The request for consent of the change in responsibilities of an Approved Person shall be accompanied by a PQ.

~~For the purposes of the above an Approved Person should be interpreted as defined in the Guidance on the Fitness and Properness Assessments Applied by the Authority, as a person whose role with a licensed entity requires the regulatory approval of the MFSA;~~

- h. ~~entering into, amending or terminating the Subordinated Loan Agreement as further detailed in SLC 1.5963 and SLC 1.6460;~~

- ~~h.i. entering into any sub-delegation agreements.~~

- 1.10 The Licence Holder shall maintain sufficient records to be able to demonstrate compliance with the conditions of its Investment Services Licence.

- 1.11. The Licence Holder shall maintain a current and verified list of authorised individuals who can approve payment instructions. This list should include their

¹ ~~'Approved Person' is defined in the Guidance on the Fitness and Properness Assessments Applied by the Authority, as a person whose role with a licensed entity requires the regulatory approval of the Authority.~~

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names, contact details, and the scope of their authority. A procedure for regularly updating this list shall be implemented.

1.12. The Licence Holder shall comply with the requirements laid down in Subsidiary Legislation 370.32, as may be amended from time to time.

~~1.11 The Licence Holder shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.~~

1.13. The Licence Holder shall pay promptly all amounts due to the MFSA as established in terms of Subsidiary Legislation 370.03, Investment Service Act (Fees) Regulations, as may be amended from time to time.

~~1.12.~~

~~1.13 The Licence Fee shall be payable by the Licence Holder on the day the Investment Services Licence is first issued, and thereafter a supervisory fee will become due annually within one week from the anniversary of that date.~~

~~1.14 The Licence Holder shall notify the MFSA of any breach of the conditions of the Licence as soon as it becomes aware of the breach.~~

~~1.15~~ 1.14 If so required by the MFSA, the Licence Holder shall do everything in its power to delay the cessation of its Investment Services business, or the winding-up of such business so as to comply with conditions imposed by the MFSA, in order to protect the interests of customers.

1.15 A request for a variation of an Investment Services Licence by the Licence Holder shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons thereof.

1.16. The Licence Holder shall remain fully responsible for discharging all its obligations under these Rules, the Act and Regulations issued thereunder, if it outsources critical or important operational functions or any relevant services and activities.

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1.17. The Licence Holder shall perform a thorough and documented due diligence when selecting a service provider, ensuring that the service provider has a strong governance, resources and expertise to provide a reliable and secure service to the Licence Holder. Any outsourcing arrangement shall be formalised in a legally binding written agreement, defining the rights and obligations of both parties.

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1.18. The Licence Holder shall carry out continuous monitoring of the service provider's performance and compliance with any agreements in place. The MFSA shall have the right to access any information of the Licence Holder held with any service providers.

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1.19. The Licence Holder shall not delegate any activities with regard to the Scheme, to a third party, if such delegation may create conflicts of interest between the Scheme, the investors in the Scheme, the Management Company and such third party.

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1.20. When entering into any outsourcing to cloud service providers, the Licence Holder shall follow the ESMA Guidelines on outsourcing to cloud service providers.

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1.21. Without prejudice to the general obligations of the Licence Holder regarding cash flow monitoring, safekeeping and general oversight, the Licence Holder shall take reasonable care to ensure that the Management Company complies with all provisions of the Scheme's Constitutional Documents and offering documentation, as may be applicable, relating, but not limited to:

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a. investment and borrowing powers and limitations;

b. provisions regarding the issue and cancellation of units, including the redemption rights of investors in normal and exceptional circumstances, and the existing redemption arrangements with investors; and

c. valuation and pricing.

1.22. The Depositary of UCITS and/or AIFs Licence Holder must take reasonable care to carry out oversight on the Fund Administrator to ensure that the Fund Administrator has sufficient resources and controls in place to perform an accurate determination of the Net Asset Value at each NAV date, in accordance with the rules stipulated in the Offering Documentation of the Scheme.

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1.23. The Depositary of UCITS and/or AIFs Licence Holder shall:

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a. verify that a robust and consistent valuation policy is implemented and that the methodology set out in the Offering Documentation and applicable standards is being adhered to; and

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1.16b. take reasonable care to oversee on an ongoing basis the Management Company liquidity management systems and procedures, to ensure that the Scheme is managed in accordance with its Offering Documentation, applicable Rules and Regulations.

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General Organisational Requirements

1.24 5 The Licence Holder 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; have sufficient resources to effectively conduct its business activities;

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b. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;

a.

b-c. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

- d. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally;
- c. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;
- d.a. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- a. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Licence Holder;
- b.e. maintain adequate and orderly records of its business and internal organisation;
- c. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally; and
- d.f. on a best effort basis refer to [the Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements.](#)

For ~~these purposes~~this purpose, the Licence Holder shall take into account the nature, scale and complexity of its business, and the nature and range of Investment ~~and Ancillary~~ Services undertaken in the course of that business.

1.2156 The Licence Holder shall establish, implement and maintain:

- a. effective organisational and administrative arrangements, allowing the Licence Holder to properly identify, manage, mitigate and monitor any potential conflicts of interest in order to prevent such conflicts of interest from adversely affecting the interests of investors in the Schemes, for which the Licence Holder was appointed as a Depositary;

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b. decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

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c. adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;

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d. 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;

e. an adequate business continuity process and disaster recovery plan aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of Investment Services and its activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its Investment Services and related activities as further specified in the Section titled Business Continuity Process below;

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f. effective internal reporting and communication of information at all relevant levels of the Licence Holder;

g. accounting policies and procedures that enable it to deliver to the MFSA in a timely manner to the MFSA upon request, financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules.

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h. effective and transparent procedures for the reasonable and prompt handling of each complaint received from clients, and to keep a record of each complaint and the measures taken for its resolution.

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1.26. 1.17 The Licence Holder shall have internal control mechanisms and administrative and accounting procedures which permit the verification of compliance with these Rules as well as effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems.

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1.27 The Licence Holder shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements established in accordance with ~~SLCs 1.15 and 1.16~~SLC 1.245 to SLC 1.26 above and take appropriate measures to address any deficiencies.

Call Back Procedure~~1.18~~—~~When entering into any outsourcing arrangements, the Licence Holder shall make reference to the ESMA Guidelines on outsourcing to cloud service providers.~~

1.28 The Licence Holder shall establish, maintain, and implement a written procedure governing the call back process (the “Call Back Procedure”).

1.29 The Call Back Procedure shall ~~inter alia~~, clearly delineate the circumstances in which a call back is to be affected. Such circumstances shall include, ~~at a~~ as a minimum, instances involving:

a. high-value transactions where the beneficiary is not the investment fund (or the originator) itself, and/or

b. transactions where there are indications or suspicions that the communication channel or medium used to convey the payment instruction is not deemed to be secure or otherwise reliable, and/ or

c. ~~(e)~~ instances where the beneficiary account is not the same as the account provided by the investment fund at onboarding stage.

1.30 The Call Back Procedure shall be subject to review by the Licence Holder on at least an annual basis, and updated as necessary to ensure its continued adequacy, effectiveness, and alignment with sound operational risk management practices. The Call Back Procedure shall include escalation procedures in case the ~~Call Back~~ cannot be performed.

1.31 ~~The call back shall be conducted by an official of the Licence Holder who is independent of the individual(s) involved in the origination or transmission of~~

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~~the payment or transaction instruction.~~ The official performing the call back shall, as a minimum, verify and confirm:

- a. ~~the transaction amount;~~
- b. ~~the beneficiary details, including bank name and account number; and~~
- c. ~~the nature and purpose of the transaction.~~

1.32 ~~Where it is not possible to affect the call back or to obtain satisfactory confirmation, the Licence Holder shall ensure that the matter is escalated in accordance with the internal escalation procedures set out in the Call Back Procedure.~~ The Licence Holder shall maintain a detailed log or record of all call backs. Such record shall include, at a minimum:

- a. ~~the date and time of the call back;~~
- b. ~~the name and position of the person with whom the payment or other order was confirmed; and~~

~~the name and position of the person who performed the call back.~~ The Licence Holder shall have a separate, independent process to verify that the instruction received is valid and comes from an authorised person as defined in the respective agreements. The Licence Holder shall verify the legitimacy of a request or transaction by directly contacting the originating party to confirm the details of such request or transaction:

c. ~~_____~~

1.29 ~~The threshold to trigger a Call Back Procedure shall be agreed individually for each Collective Investment Scheme taking into consideration the nature, scale and complexity of their business operation. Such threshold shall be reviewed periodically and at least on an annual basis. The details of the review and justifications behind any change shall be duly documented.~~

Commented [IM1]: Considering the size of our depositaries, this may create operational issues.

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Compliance

1.33019 The Licence Holder shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by same to comply with its obligations under the Act, the Regulations issued thereunder and these Rules, as well as with its obligations under other applicable legislation, in particular the Prevention of Money Laundering Act, 1994, the Prevention of Financial Markets Abuse Act, 2005, and Regulations issued thereunder, as well as to detect the associated risks, and shall put in place adequate measures and procedures designed to minimise such risk and to enable the MFSA to exercise its powers effectively.

For this purpose the Licence Holder shall take into account the nature, scale and complexity of its business and the nature and range of Investment Services and activities undertaken in the course of that business.

1.34120 The Licence Holder shall establish and maintain a permanent and effective compliance function which operates independently, and which has the following responsibilities:

- a. to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures and procedures implemented and the actions taken to address any deficiencies in the Licence Holder's compliance with its obligations;
- b. to advise and assist the relevant persons responsible for carrying out the Investment Services and activities to comply with the Licence Holder's legal and regulatory obligations.

1.35221 In order to enable the compliance function to discharge its responsibilities properly, the Licence Holder shall ensure that the following conditions are satisfied:

- a. the compliance function shall have the necessary authority, resources, expertise and access to all relevant information;

- b. a Compliance Officer shall be appointed and shall be responsible for the compliance function and for any reporting as to compliance required by these Rules;
- c. the relevant persons involved in the compliance function shall not be involved in the performance of services or activities which they monitor;
- d. the method of determining the remuneration of the relevant persons involved in the compliance function shall not compromise their objectivity and shall not be likely to do so.

However, the MFSA may exempt a Licence Holder from the requirements of points (c) or (d) if the Licence Holder is able to demonstrate to the satisfaction of the MFSA, that in view of the nature, scale and complexity of its business, ~~and the nature and range of Investment Services and related activities~~, the requirement under that point is not proportionate and that its compliance function continues to be effective.

Risk Management

1. ~~3.63~~²² The Licence Holder shall establish a risk management function which shall be responsible for the following actions:~~shall take the following actions with a view to manage its risks:~~

- a. designing, implementing and monitoring risk management policies and procedures, which identify the risks relating to its activities, processes and systems, and where appropriate, set the level of risk tolerated by the Licence Holder.
- a. ~~establish, implement and maintain adequate risk management policies and procedures, which identify the risks relating to its activities, processes and systems, and where appropriate, set the level of risk tolerated by the Licence Holder. In so doing, the Licence Holder shall also adopt~~

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~~remuneration policies and practices that are consistent with and promote sound and effective risk management;~~

- b. adopt~~ing~~ effective arrangements, processes and mechanisms to manage the risks relating to the Licence Holder's activities, processes and systems, in light of that level of risk tolerance;
- c. monitor~~ing~~ the following:
 - i. the adequacy and effectiveness of the Licence Holder's risk management policies and procedures;
 - ii. the level of compliance by the Licence Holder and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b) above; and
 - iii. the adequacy and effectiveness of measures taken to address any deficiencies in those arrangements and procedures, including failures by the relevant persons to comply with such arrangements or follow such procedures.

1.374The risk management function shall be functionally and hierarchically separate from the operating units.

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1.385The functional and hierarchical separation of the risk management function shall be reviewed by the Authority in accordance with the principle of proportionality, on the understanding that the Licence Holder shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities.

Internal Audit

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1.3936The Licence Holder shall establish and maintain an internal audit function which is separate and independent from other functions and activities and which shall have at least the following responsibilities:

Investment Services Rules for Investment Services Licence Holders

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a. to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the Licence Holder's systems, internal control mechanisms and arrangements;

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b. to issue recommendations based on the result of work carried out in accordance with paragraph (a);

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c. to verify compliance with the recommendations referred to in paragraph (b);

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d. to report to the governing body any internal audit matters indicating in particular whether appropriate remedial measures have been taken in respect of any deficiencies identified.

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1.3740 Where appropriate and proportionate, in view of the nature, scale and complexity of its business and the nature and range of activities undertaken in the course of its business, the MFSA may, at its discretion, exempt the Licence Holder from the requirements set out by in SLC 1.3639.

1.4138 The Licence Holder shall, having regard to the nature, scale, and complexity of its business, conduct a periodic review of its assessment to determine whether the established arrangements for internal audit are adequate.

1.42 The provisions of SLC 1.39-1.41 shall not apply to a Licence Holder in possession of an investment services or credit institution licence issued by the MFSA, provided that such Licence Holder has established and maintains an internal audit function pursuant to its respective investment services or credit institution licence.

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This exemption shall also apply to a Licence Holder which is a branch of an investment firm or credit institution duly licensed in an EU/EEA Member State, on the condition that the internal audit function is set up at the group level and covers the operations of the branch.

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Business Continuity Process

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Investment Services Rules for Investment Services Licence Holders

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1.433The Business Continuity Process shall consist of:

- a. Disaster Recovery Plan (DRP);
- b. Business Continuity Plan (BCP);
- c. Business Continuity Management (BCM).

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1.440The DRP shall define all the necessary resources, actions, and tasks required for the recovery of the infrastructure and functionality needed for normal business operation of the Licence Holder. This document may form part of the Business Continuity Plan.

1.451The BCM team shall at least include the executive management and, depending on the nature, scale and complexity of the Licence Holder's business, may also include a BCP co-ordinator and the internal auditor.

1.462The BCM team shall:

- a. identify key personnel and the person/s responsible for the implementation of the BCP;
- b. identify and define, critical resources and functions of the Licence Holder's business as well as main risks posed to its business operations;
- c. define a process to protect the Licence Holder's critical resources and functions;
- d. define alternatives for the continuation of critical functions;
- e. prepare, document and maintain the BCP and DRP and ensure their continuous review;
- f. develop relevant training programs promoting company-wide awareness of the recovery function and ensuring that relevant personnel is updated with any changes to the business continuity process;

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g. test the business continuity process on a regular basis (at least annually) and ensure that logs are maintained; and

h. maintain contact with suppliers to ensure support during a recovery effort.

1.473 The BCP shall at least include:

a. the objectives of the BCP;

b. the person/s responsible for the BCP;

c. key personnel required to help in the recovery process including substitutes;

d. contact details of all the persons mentioned in the previous points;

e. details of any agreement with third parties (if applicable) required to ensure resumption of operations and their contact details;

f. an alternative/secondary site from which operations can be resumed;

g. data back-up and recovery arrangements, both hard and electronic copy;

h. the means to re-establish physical records;

i. financial and operational assessments;

j. how the Licence Holder will inform the regulators in the event of non-continuation of business;

k. how the Licence Holder will satisfy any regulatory reporting requirements to which it is subject to in the event of any business disruption;

l. how the Licence Holder will ensure prompt access of its customers to their assets in the event of non-continuation of business;

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m. an analysis of threats and impact scenarios including a step-by-step approach of how the Licence Holder would have its operational activities resumed in the least possible time in the event of a major incident which would render its current offices inoperable;

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n. the planning and implementation of preventive and mitigating measures and activities allowing protection against any anticipated risks or minimisation of their potential adverse impacts;

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o. the planning for activities to be implemented or executed during an emergency or disastrous event;

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p. the strategic and tactical planning for resources, vital information and documentation of the activities for resumption, recovery, and restoration of business operations - both physical and logical, exercises/update and plan management;

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q. a timetable for regular review and updating of plans, resources and procedures; and

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r. a timetable for quarterly and annual testing of the plan and the requirement for testing logs to be maintained.

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1.484 Where the Licence Holder establishes an internal audit function, the internal auditor should:

a. evaluate whether necessary controls were followed during an actual emergency;

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b. report findings to executive management and, where applicable, the BCP coordinator; and

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c. follow up on past internal audit reports to ensure compliance with previous findings.

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Capital Requirements

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Investment Services Rules for Investment Services Licence Holders

Part BIV: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Depositaries

Issued: 22 July 2013

Date of last Revision: 5 FebruaryX November 20254

1.4945TheA Licence Holder in possession of a Depositary licence shall have a minimum initial capital at authorisation stage of at least €750,000 as a permanent minimum capital requirement.

A Licence Holder in possession of a Depositary Lite licence shall have a minimum initial capital at authorisation stage of at least €125,000 as a permanent minimum capital requirement.

The Licence Holder shall maintain own funds of not less than the amount outlined above or its fixed overhead requirement, whichever is the highest.

1.5046The Licence Holder shall at all times have financial resources sufficient for the proper performance of its functions. The Licence Holder shall at all times maintain own funds at least equal to or in excess of its permanent minimum capital requirement with the difference -constituting the Licence Holder's financial resources requirement.

1.5147The Licence Holder, which is an investment firm established in Malta, shall ensure that the types of assets and methods used to calculate its own funds requirements are in line with the provisions of Part BI (Rules Applicable to Investment Services Licence Holders which Qualify as MIFID Firms) of the Investment Services Rules for Investment Services Providers.

The Licence Holder, which is an entity specified in Regulation 29(2)(e), or an entity specified in Regulation 40(b) of Subsidiary Legislation 370.32 shall have amaintain minimum-own funds of not less than the amount outlined in SLC 1.449.6 or its fixed overhead requirement whichever is the highest.

Provided that the Licence Holder, which is an investment firm or branch of an investment firm established in a Member State or EEA State other than Malta:

- -subject to capital adequacy requirements in accordance with the IFD and the IFR; and
- authorised in accordance with Directive 2014/65/EU and which also provides the ancillary service of safekeeping and administration of financial

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instruments for the account of clients, including custodianship and related services such as cash/collateral management in accordance with point (1) of Section B of Annex I of Directive 2014/65/EU including capital requirements for operational risks and authorised in accordance with Directive 2014/65/EU and which also provides the ancillary service of safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management in accordance with point (1) of Section B of Annex I of Directive 2014/65/EU shall in any case have own funds not less than the amount outlined in SLC 1.469 above and shall ensure that its own funds requirements are calculated in line with the provisions of the IFR and the IFD.

Provided further that the Licence Holder, which is an entity specified in Regulation 17(2) (b) to (d) and Regulation 29(2) (a) to (d) credit institution licensed in terms of the Banking Act, 1994 or a branch established in Malta of a credit institution authorised in an EU Member State or EEA State, or of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions, of Subsidiary Legislation 370.32 shall not be subject to the above-mentioned capital resources requirements.

1.52 The Licence Holder shall immediately notify the MFSA if at any time it is in breach of its capital requirements. In this case, the MFSA may, if the circumstances justify it, allow the Licence Holder a limited period within which to restore its financial resources to the required level.

1.53 Any additional risks may be addressed either by way of: (a) additional own funds; or (b) a professional indemnity insurance; or (c) a mix of the two as further prescribed hereunder.

Additional Own Funds

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1.5448 The Licence Holder shall calculate and ~~hold~~ maintain additional own funds which ~~own funds which~~ are appropriate to cover potential risks arising from its operational activity taking into account the nature, scale and complexity of the Licence Holder's business.

1.55 To calculate the adequate level of additional own funds, the Licence Holder shall assess at least the risks emanating from:

- a. the terms and obligations stipulated in the contractual relationships with the respective entities;
- b. amount and types of assets held in custody for clients over the preceding 5 years, including risks from concentration of clients, counterparties, sectoral and geographical concentration;
- c. value and liquidity of fixed assets, the Licence Holder would have to dispose of during a wind-down;
- d. average severance payments payable in case of a wind-down, taking into consideration employment legislation and contracts with employees;
- e. complexity of business setup and any significant operational events and associated financial losses over the preceding 5 years, including processing errors;
- f. share and criticality of outsourced services;
- g. complexity of information and communications technology (ICT) services used and consequential digital operational resilience of Licence Holder, including any losses caused by cyberattacks or disruption of critical ICT services over the preceding 5 years;
- h. the total operational risk losses and gross income that have been generated in the preceding 5 years.

1.56 The Licence Holder shall comply with any additional own funds as may be set by the MFSA from time to time, in particular, when the MFSA decides that there has been a material change in business activity of a Licence Holder in the new reporting period. If the MFSA so determines, the Licence Holder will be given due notice in writing of the additional requirements which shall be applied.

~~1.5749~~The Licence Holder shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital and liquid assets that is considered adequate to cover the nature and level of risks which they may pose to others and to which the Licence Holder itself might be exposed.

The arrangements, strategies and processes referred to in the preceding paragraph shall be appropriate and proportionate to the nature, scale and complexity of the activities of the Licence Holder. They shall be subject to regular internal review.

Professional Indemnity Insurance and Additional Own Funds

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~~1.580~~Where the Licence Holder does not maintain additional own funds, in whole or in part, in accordance with SLCs 1.54 to 1.57 above, it shall obtain and maintain, at all times, professional indemnity insurance, or a combination thereof, which is appropriate and sufficient to cover potential operational and liability risks to which it may be exposed.~~The Licence Holder shall take out and maintain a professional indemnity insurance or have additional own funds which are appropriate to cover potential liability risks arising from professional negligence.~~

~~1.594~~~~The~~A professional indemnity insurance policy shall be governed by the law of a European Union Member State or the law of the United Kingdom. Where the Licence Holder forms part of an international group of companies, the MFSA may accept that the professional indemnity insurance cover of the group be extended to provide cover to the Licence Holder.

~~1.6052~~In particular, the Licence Holder shall ensure that the professional indemnity insurance policy covers at least:

- a. any legal liability in consequence of any negligent act, error or omission in the conduct of the Licence Holder's business by the Licence Holder or any person employed by it or otherwise acting for it, including any engaged delegated parties or consultants under a contract for service with the Licence Holder; and

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b. any dishonest, fraudulent, criminal or malicious act, error or omission of any person at any time employed by the Licence Holder, or otherwise acting for it, including any engaged delegated parties or consultants under a contract for service with the Licence Holder.

~~1.6153 All operational and professional liability risks shall be covered at all times either through appropriate additional own funds determined in accordance with SLC 1.56 or through appropriate coverage of professional indemnity insurance.~~

~~1.54~~ The Licence Holder may enter into separate policies to cover activities licensed under other laws, subject to MFSA approval of the terms. Where the Licence Holder is required to maintain professional indemnity insurance cover in terms of an authorisation or licence under any other legislation, separate cover for the activities carried out under that legislation is a requirement.

~~1.6255~~ A Licence Holder shall within two working days from the date it becomes aware of any of the circumstances specified in (a) to (f) below, inform the MFSA in writing where:

a. during the period of a policy, the Licence Holder has notified insurers of an incident which may give rise to a claim under the policy;

b. during the period of a policy, the insurer has cancelled the policy or has notified its intention of doing so;

c. the policy has not been renewed or has been cancelled and another policy satisfying the requirements of this section has not been taken out from the day on which the previous policy lapsed or was cancelled and provide details of the alternative arrangements put in place; or

d. the insurer has intimated that it intends to decline to indemnify the insured in respect of a claim under the policy.

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~~1.56 To calculate the adequate level of additional own funds, the Licence Holder shall assess at least the risks emanating from:~~

~~the terms and obligations stipulated in the contractual relationships with the respective entities;~~

~~amount and types of assets held in custody for clients over the preceding 5 years, including risks from concentration of clients, counterparties, sectoral and geographical concentration;~~

~~value and liquidity of fixed assets, the Licence Holder would have to dispose of during a wind-down;~~

~~average severance payments payable in case of a wind-down, taking into consideration employment legislation and contracts with employees;~~

~~complexity of business setup and any significant operational events and associated financial losses over the preceding 5 years, including processing errors;~~

~~share and criticality of outsourced services;~~

~~complexity of information and communications technology (ICT) services used and consequential digital operational resilience of Licence Holder, including any losses caused by cyberattacks or disruption of critical ICT services over the preceding 5 years;~~

~~the total operational risk losses and gross income that have been generated in the preceding 5 years.~~

~~1.57 The Licence Holder shall comply with any additional capital requirements as may be set by the MFSA from time to time, in particular, when the MFSA decides that there has been a material change in business activity of a Licence Holder in the new reporting period. If the MFSA so determines, the Licence Holder will be given due notice in writing of the additional capital requirements which shall be applied.~~

~~1.58 The Licence Holder shall immediately notify the MFSA if at any time it is in breach of its capital requirements. In this case, the MFSA may, if the circumstances justify it, allow the Licence Holder a limited period within which to restore its financial resources to the required level.~~

Subordinated Loan Agreements

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~~1.6359~~Prior to entering into a Subordinated Loan Agreement the Licence Holder shall obtain the Authority's written consent by submitting the following to the MFSA:

i. ~~the rationale for entering into the Subordinated Loan Agreement and a copy of an amended version of the applicable fFinancial rReturns evidencing the effect of the loan on the own funds of the Licence Holder;~~

ii. ~~a draft of the agreement; and~~

iii. ~~a declaration from the external Auditors of the Licence Holder that such Subordinated Loan Agreement qualifies as an eligible instrument for the purpose of the own funds calculation.~~

~~iii. —1.6460~~ A Subordinated Loan Agreement shall be drawn up between the Licence Holder and lender. The Subordinated Loan shall meet all the criteria specified in Article 63 of Regulation (EU) No 575/2013 for it to be classified as an eligible instrument for inclusion within the own funds calculation.

Enforcement

~~1.23~~ The Licence Holder shall at all times observe the Licence Conditions which are applicable to it, as well as all the relative requirements which emanate from the Act and Regulations issued thereunder. In terms of the Act, the MFSA has various sanctioning powers which may be used against the Licence Holder which does not comply with its regulatory obligations. Such powers include the right to impose administrative penalties.

Complaints

~~1.24~~ The Licence Holder is required to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of each complaint received from clients, and to keep a record of each complaint and the measures taken for its resolution. The Licence Holder is also required to inform eligible complainants in writing that they may refer their complaint to the Office of the Arbiter for Financial Services as established by the Arbiter for Financial

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Services Act, if they are not satisfied with the manner in which it has been handled by the Licence Holder.

1.25 Where a complaint has been lodged with the Arbiter for Financial Services and the case duly decided, the Licence Holder shall immediately provide the Authority with a copy of the Arbiter's final decision. The Licence Holder shall also notify the Authority immediately in the event that an appeal from the decision of the Arbiter is lodged by the complainant or by the Licence Holder itself, in terms of the Arbiter for Financial Services Act, and once such appeal has been decided, of the final decision of the Court.

2. Financial Resources Requirements, Accounting and Record Keeping

General

2.01 The Licence Holder shall at all times maintain own funds equal to or in excess of its capital resources requirement. This shall constitute the Licence Holder's Financial Resources Requirement.

Provided that the Licence Holder, which is a credit institution licensed in terms of the Banking Act, 1994 or a branch established in Malta of a credit institution authorised in an EU Member State or EEA State, or of an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions, is not subject to the above mentioned financial resources requirement and does not need to prepare and submit any Interim or Annual Financial Return referred to in the SLCs which follow.

2.02 The meaning of own funds and the capital resources requirement applicable to Depositaries as well as the methodology for calculating a Licence Holder's satisfaction of its Financial Resources Requirement, are set out in Appendix 1 to these Rules.

2.03 The Licence Holder shall comply with any further financial resources requirements set by the MFSA. If the MFSA so determines, the Licence Holder

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~~will be given due notice in writing of the additional financial resources requirements which shall be applied.~~

~~2.04 The Licence Holder shall immediately advise the MFSA if at any time it is in breach of its Financial Resources Requirement. In this case, the MFSA may, if the circumstances justify it, allow the Licence Holder a limited period within which to restore its financial resources to the required level.~~

~~2.05 The Licence Holder shall ensure compliance with this section and Appendix 1 to these Rules. A Licence Holder which is found to be in breach of these requirements may be subject to regulatory action in terms of Article 104 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.~~

~~2.05a The Licence Holder shall obtain the Authority's written consent before entering into, amending, and/or terminating a Subordinated Loan Agreement in line with SLC 2.05b of this Rulebook.~~

~~2.05b A Subordinated Loan Agreement shall be drawn up between the Licence Holder and lender. The Subordinated Loan Agreement shall meet all the criteria for it to be an eligible instrument for inclusion within the own funds calculation in accordance with Appendix 1A.~~

~~2.05c Prior to entering into a Subordinated Loan Agreement, the Licence Holder shall submit the following to the MFSA on funds@mfsa.mt:~~

- ~~i. the rationale for entering into the Subordinated Loan Agreement and a copy of an amended version of the applicable Financial Returns evidencing the effect of the loan on the own funds of the Licence Holder;~~
- ~~ii. a draft of the agreement; and~~
- ~~iii. a declaration from the external Auditors of the Licence Holder that such Subordinated Loan Agreement, qualifies as an eligible instrument for the purpose of the own funds calculation as specified Appendix 1A.~~

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Accounting / Record-Keeping Record and Reporting Requirements

1.651.2.06 The Licence Holder shall maintain proper accounting records to show and explain its own transactions, assets and liabilities.

2.071.662 The accounting records shall:

- a. disclose with reasonable accuracy, at all times, the financial position of the Licence Holder; and
- b. enable the financial statements required by the MFSA to be prepared within the time limits specified in the conditions of the Investment Services Licence: these Rules.

1.673.2.08 In particular, the financial records shall contain:

- a. entries from day to day of all sums of money received and expended and the matters to which they relate;
- b. a record of all income and expenses, explaining their nature;
- c. a record of all assets and liabilities, including any guarantees, contingent liabilities or other financial commitments; and
- d. entries from day to day of all transactions on the Licence Holder's own account.

2.09 The Licence Holder shall retain accounting records for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within 24 hours of their being requested, a reasonable time from the request.

2.10 1.68 The Licence Holder shall agree with the MFSA its aAccounting rReference date. Date (financial year end).

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1.695 Reporting Requirements

The Licence Holder shall be required to prepare and submit through LH Portal ~~the~~ interim financial returns and annual financial return in the form set out in Appendix 2. Such returns shall be signed by at least two directors or partners, or any other persons authorised to sign on behalf of the Licence Holder by way of a resolution of the Management Body. In the latter case, the Licence Holder is expected to provide a certified true copy of such resolution to the MFSA.

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~~1.7066~~ The interim financial returns shall be prepared on a ~~quarterly~~ ~~six-monthly~~ basis and submitted to the MFSA within one month of the end of the relevant reporting period. The first interim financial return should cover the ~~threesix~~ months immediately following the accounting reference date, ~~and the second interim financial return should cover the twelvesix months following the accounting reference date immediately following the accounting reference date, and the third interim financial return should cover the nine months immediately following the accounting reference date.~~ In the event of a change to the accounting reference date, the dates for the preparation and submission of the ~~i~~nterim ~~f~~inancial ~~r~~eturns shall be agreed with the MFSA.

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~~2.11~~ The Licence Holder shall have internal control mechanisms and administrative and accounting procedures which permit the verification of their compliance with these Rules as well as effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems.

~~Depositories offering depositary services solely to Collective Investment Schemes shall, on an annual basis, prepare an Annual Audited Financial Return in the form set out in Appendix 2E, signed by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution.~~

~~Depository Lite Licence Holders shall, on an annual basis, prepare an Annual Audited Financial Return in the form set out in Appendix 2A, signed by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution.~~

Provided that, Licence Holders subject to Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms, shall not be required to submit Appendix 2A or Appendix 2E.

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~~1.7167.12~~ The ~~a~~Annual ~~f~~Financial ~~r~~Return shall be submitted to the MFSA within one month of the ~~a~~Accounting ~~r~~Reference ~~d~~Date. In addition, the ~~a~~Annual ~~a~~Audited ~~f~~Financial ~~r~~Return shall be submitted to the MFSA within four months of the ~~a~~Accounting ~~r~~Reference ~~d~~Date.

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~~1.682.13~~ Audited annual financial statements prepared in accordance with International Financial Reporting Standards, together with a copy of the auditor's management letter and the auditor's report pursuant to SLC ~~1.832.27~~ shall be submitted to the MFSA within four months of the ~~a~~Accounting ~~r~~Reference ~~d~~Date.

~~1.7269~~A Licence Holder which is also a credit institution in terms of the Banking Act, 1994 shall be required to submit to MFSA, together with its audited annual financial statements, a separate note supported by an auditor's confirmation, disclosing the net revenue derived from activities for which an investment services licence was issued to it, that is the gross revenue derived from such activities less any commissions that are directly related to the acquisition of the said gross revenue, paid or payable to third parties.

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~~1.7370~~ ~~Where the annual financial return has been submitted before the relevant audited annual financial statements have been produced, the annual financial return shall be updated to reflect the information in the audited annual financial statements and submitted to the MFSA together with the audited annual financial statements.~~

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~~1.7471~~ The Licence Holder shall also prepare and submit such additional financial returns as the MFSA may require.

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~~1.752~~The Licence Holder shall be responsible for the correct compilation of the financial returns. The nature and content of the financial returns shall be as follows:

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- i. they shall be in agreement with the underlying accounting records;
- ii. accounting policies used for financial returns preparation shall be consistent with those adopted in the audited annual financial statements and shall be consistently applied. These accounting policies should adequately cater for the following:
 - a. amounts in respect of items representing assets or income may not be offset against amounts in respect of items representing liabilities or expenditure, as the case may be, or vice versa, unless duly authorised by the MFSA; and
 - b. balances representing clients' money and/ or assets held/ controlled by the Licence Holder must not form part of the Licence Holder's Balance Sheet;
- iii. information to be included in the financial returns shall be prepared in accordance with International Financial Reporting Standards;
- iv. financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;

~~2.14 In addition to the Annual Financial Return and Audited Annual Financial Statements, Depositaries offering depositary services solely to Collective Investment Schemes shall prepare an Interim Financial Return, in the form set out in Appendix 2E, at dates three, six, and nine months after the Accounting Reference Date. The first Interim Financial Return should cover the three months immediately following the Accounting Reference Date, the second Interim Financial Return should cover the six months immediately following the Accounting Reference Date, and the third Interim Financial Return should cover the nine months immediately following the Accounting Reference Date. In the event of a change to the Accounting Reference Date, the dates for the preparation of the Interim Financial Returns shall be agreed with the MFSA.~~

~~— Depositary Lite Licence Holders shall prepare an Interim Financial Return, in the form set out in Appendix 2A, at dates three, six, and nine months after the Accounting Reference Date. The first Interim Financial Return should cover the three months~~

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immediately following the Accounting Reference Date, the second Interim Financial Return should cover the six months immediately following the Accounting Reference Date, and the third Interim Financial Return should cover the nine months immediately following the Accounting Reference Date. In the event of a change to the Accounting Reference Date, the dates for the preparation of the Interim Financial Returns shall be agreed with the MFSA.

Provided that, Licence Holders subject to Part BI: Rules applicable to Investment Services Licence Holders which qualify as MiFID Firms, shall not be required to submit Appendix 2A or Appendix 2E.

2.15—The Interim Financial Return shall be submitted to the MFSA within one month of the date up to which it has been prepared. It shall be signed by at least two directors or partners or any other persons authorised to sign by way of a Board Resolution. In the latter case, the Licence Holder is expected to provide a certified true copy of such Board Resolution to the MFSA.

2.16—The Licence Holder shall prepare and submit to the MFSA the Financial Return for Custodians in the form set out in Appendix 2D. The form should be filled in on a quarterly (calendar) basis and submitted to the MFSA through the LH Portal within one month of the end of the relevant quarter.

2.17—The Licence Holder shall prepare and submit such additional financial returns as the MFSA may require.

2.18—The Licence Holder shall be responsible for the correct compilation of the financial returns. The nature and content of the financial returns shall be as follows:

- a. they shall be in the form set out in Appendix 2A and Appendix 2E depending on the type of depositary licence;
- b. they shall be in agreement with the underlying accounting records;

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- c. accounting policies shall be consistent with those adopted in the audited annual financial statements and shall be consistently applied. These accounting policies should adequately cater for the following:
- i. amounts in respect of items representing assets or income may not be offset against amounts in respect of items representing liabilities or expenditure, as the case may be, or vice versa, unless duly authorised by the MFSA; and
- ii. balances representing clients' money and/ or assets held/ controlled by the Licence Holder must not form part of the Licence Holder's Balance Sheet;
- d. information to be included in the financial returns shall be prepared in accordance with International Financial Reporting Standards;
- e. investments shall be included in the balance sheet at valuations arrived at in accordance with the provisions of International Financial Reporting Standards;
- f. financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item;
- g. where the Annual Financial Return has been submitted before the relevant audited annual financial statements have been produced, it shall be updated to reflect the information in the audited annual financial statements and submitted to the MFSA together with the audited annual financial statements;
- h. in the case of an individual or individuals in partnership or association, financial returns shall be prepared to show relevant figures for the Investment Services business exclusively. If required by the MFSA to do so, the individual (or individuals) shall submit, in addition, a statement of personal assets and liabilities.

~~2.19~~^{1.76} If so notified in writing by the MFSA, the Licence Holder shall be required to prepare and submit additional financial information for the purposes of consolidated supervision.

~~2.20~~^{1.74} The Licence Holder shall notify the MFSA immediately upon becoming aware_:

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a. that it is in breach of the requirements in respect of financial resources, records, reporting or procedures and controls;

b. that it will be unable to submit an Annual or Interim Financial Return on the due date.

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The notice shall give reasons and shall explain what actions are ~~is~~ being taken to rectify matters.

2.21.785 The Licence Holder shall notify the MFSA immediately if:

- a. it is notified that its auditor intends to qualify the audit report;
- b. it becomes aware of actual or intended legal proceedings against it;
- c. it decides to claim on a professional indemnity or other policy relating to its Investment Services business;

1.79 Documents may be submitted in various ways and the date of receipt shall be established as follows:

(i) In case of an electronic submission, including via Licence Holder Portal, the date of receipt shall be the timestamp generated by the portal upon successful upload/confirmation of submission of the document;

(ii) If it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;

(iii) If it is delivered by hand, this will be the date, when such delivery was made and recorded by the MFSA.

~~the Licence Holder's counterparties in repurchase and reverse repurchase agreements or securities and commodities lending and securities and commodities borrowing transactions default on their obligations.~~

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Audit

~~2.221.8077~~ The Licence Holder shall appoint an auditor approved by the MFSA. The Licence Holder shall replace its auditor if requested to do so by the MFSA. The MFSA's consent shall be sought prior to the appointment or replacement of an auditor.

~~1.8178~~ The Licence Holder shall make available to its auditor the information and explanations he needs to discharge his responsibilities as an auditor and in order to meet the MFSA's requirements.

~~2.231.8279~~ The Licence Holder shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his firm is:

- a. a director, partner, qualifying shareholder, officer, representative or employee of the Licence Holder;
- b. a partner of, or in the employment of, any person in (a) above;
- c. a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- d. a person who is not otherwise independent from the Licence Holder;
- e. person disqualified by the MFSA from acting as an auditor of a Licence Holder.

For this purpose, an auditor shall not be regarded as an officer or an employee of the Licence Holder solely by reason of being auditor of that ~~Custodian~~Licence Holder.

~~2.24 1.83~~ The Licence Holder shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment ~~and The Licence Holder shall~~ confirm ~~to the auditor~~ in writing ~~to its auditor~~ its agreement to the terms ~~in of~~ the letter of engagement.

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The auditor shall also provide the MFSA with a letter of confirmation in the form set out in the Application Form for an Investment Services Licence.copy of letter of engagement.

~~2.25~~ 1.84 The letter of engagement shall include terms requiring the auditor:

- a. to provide such information or verification to the MFSA as the MFSA may request;
- b. to afford another auditor all such assistance as he may require;
- c. to vacate his office if he becomes disqualified to act as auditor for any reason;
- d. if he resigns, is removed from the office or not reappointed, to advise the MFSA of that fact and of the reasons for his ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he considers should be brought to the attention of the MFSA;
- e. in accordance with article 18 of the Act, to report immediately to the MFSA any fact or decision of which he becomes aware in his capacity as auditor of the Licence Holder which:
 - i. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Licence Holder; or
 - ii. constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Licence Holder in or under the Act; or
 - iii. gravely impairs the ability of the Licence Holder to continue as a going concern; or
 - iv. relates to any other matter which has been prescribed.

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- f. in accordance with article 18 of the Act, to report to the MFSA any facts or decision as specified in (e) above of any person having ~~C~~lose ~~L~~inks, ~~as defined in Appendix 9,~~ with the Licence Holder, of which the auditor becomes aware in his capacity as auditor of the Licence Holder or of the person having such ~~C~~lose ~~L~~inks.

~~2.26~~^{1.85} If at any time the Licence Holder fails to have an auditor in office for a period exceeding four weeks the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Licence Holder.

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~~2.27~~^{1.86} In respect of each annual accounting period, the Licence Holder shall require its auditor to prepare a management letter in accordance with International Standards on Auditing. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion:

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- a. the ~~a~~Annual ~~f~~Financial ~~r~~Return together with the audited annual financial statements are in agreement with the Licence Holder's accounting records;
- b. the ~~an~~Annual ~~f~~Financial ~~r~~Return has been prepared in accordance with the MFSA's requirements and is consistent with the audited annual financial statements;
- c. the Licence Holder's ~~Financial Resources~~capital resource requirements have been properly calculated in accordance with the MFSA's requirements and exceed the Licence Holder's ~~Financial Resources Requirement~~capital resource requirements as at the ~~a~~Accounting ~~r~~Reference ~~d~~Date;
- d. proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the period covered by the ~~a~~Annual ~~f~~Financial ~~r~~Return;
- e. the Licence Holder has, either:

- i. maintained throughout the period covered by the [Annual Financial Return](#), systems adequate to safeguard Customers' Assets and Clients' Money; or
 - ii. based on review procedures performed, nothing has come to the auditor's attention that causes the auditor to believe that the Licence Holder held Customers' Assets or Clients' Money during the period covered by the Annual Financial Return.
- f. all information and explanations necessary for the purpose of the audit have been obtained.

2.281.87 Where, in the auditor's opinion, one or more of the requirements have not been met, the auditor shall be required to include in his report a statement specifying the relevant requirements and the respects in which they have not been met. Where the auditor is unable to form an opinion as to whether the requirements have been met, the auditor shall be required to specify the relevant requirements and the reasons why he has been unable to form an opinion.

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2.291.88 The Licence Holder in receipt of a management letter from its auditor which contains recommendations to remedy any weaknesses identified during the course of the audit, is required to submit to the MFSA by not later than six months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the auditor's recommendations have been/are being implemented. In the instance where the Licence Holder has not taken/is not taking any action in respect of any one or more recommendations in the auditor's management letter, the reasons are to be included.

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2.301.89 The Licence Holder is required to include in the Directors' Report (which should form part of the annual report to members of the company), a statement regarding breaches of SLCs or other regulatory requirements which occurred during the reporting period, and which were subject to an administrative penalty or other regulatory sanction.

Where there have been no breaches, Directors' Report shall contain a statement to that effect, it is sufficient merely to say so. However, if there have been breaches, a summary must be provided of the breach(es) committed and regulatory sanction imposed.

Capital Resources Requirements

Conditions for Depositaries

~~2.31 Depositaries shall apply the requirements set out in Points (viii)–(ix), (xiii)–(xv) of R1 1.7.1, R1 1.8.14, R1 1.16.1 to R1 1.16.6, R1 1.16.8, R1 2.2.1, R1 2.2.3, R1 2.2.4, R1 2.2.6, R1 2.2.7~~

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Conditions applicable to Licence Holders engaging in foreign currency lending

~~2.32 The Licence Holder shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in MFSA Rule 1 of 2012 on foreign currency lending which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).~~

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~~2.33 Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations where the Euro is the foreign currency due to the borrower's domicile being outside the euro zone.~~

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~~2.34 When the Licence Holder has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its Annual Financial Return. Any foreign currency lending activity shall be indicated as a percentage of its total lending. A Licence Holder which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.~~

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~~Transparency provisions~~

~~2.35 This Section shall apply to Licence Holders acting as shareholders intermediary as defined in the Glossary in respect of Collective Investment Schemes, which invest on behalf of an institutional investor, as defined in the Glossary, in shares of companies which have their registered office in a Member State and the shares of which are admitted to trading on a regulated market situated or operating within a Member State.~~

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~~2.36 When the Licence Holder is engaged in shareholder identification and/or is involved in the transmission of information, including the transmission of information along the chain of intermediaries and/or facilitate the exercise of shareholders rights, the Licence Holder shall comply with the provisions of the Commission Implementing Regulation (EU) 2018/1212 in its entirety.~~

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Identification of shareholders

~~2.37 On the request of the listed company or of a third party nominated by the listed company, the Licence Holder shall communicate, without delay to the listed company the information regarding shareholder identity.~~

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~~2.38 Where there is more than one shareholders intermediary in a chain of intermediaries, the request of the listed company, or of a third party nominated by the listed company, is transmitted between intermediaries without delay and that the information regarding shareholder identity is transmitted directly to the listed company or to a third party nominated by the company without delay by the intermediary who holds the requested information.~~

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~~2.39 At the request of the listed company, or of a third party nominated by the company, the Licence Holder shall communicate to the company without delay the details of the next intermediary in the chain of intermediaries.~~

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~~2.40 A Licence Holder that discloses information regarding shareholder identity in accordance with the rules laid down in this Section shall not be in breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision.~~

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Transmission of information

2.41A Licence Holder is required to transmit the following information, without delay, from the listed company to the shareholder or to a third-party nominated by the shareholder:

- i. the information which the listed company is required to provide to the shareholder to enable the shareholder to exercise rights flowing from its shares, and which is directed to all shareholders in shares of that class; or
- ii. where the information referred to in point (i) is available to shareholders on the website of the listed company, a notice indicating where on the website that information can be found.

The requirement referred to in the first paragraph of this SLC shall not apply where the information referred to in point (i) or the notice referred to in point (ii) is transmitted or provided by the listed companies directly to all their shareholders or to a third party nominated by the shareholder.

2.42The Licence Holder shall transmit, without delay, to the listed company, in accordance with the instructions received from the shareholders, the information received from the shareholders related to the exercise of the rights flowing from their shares.

2.43Where there is more than one shareholders intermediary in a chain of intermediaries, information referred to in SLC 2.42 shall be transmitted between shareholder intermediaries without delay, unless the information can be directly transmitted by the shareholders intermediary to the listed company or to the shareholder or to a third party nominated by the shareholder.

Facilitation of the exercise of shareholder rights

2.44The Licence Holder shall facilitate the exercise of the rights by the shareholder, including the right to participate and vote in general meetings, which shall comprise at least one of the following:

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- i. it makes the necessary arrangements for the shareholder or a third party nominated by the shareholder to be able to exercise themselves the rights;
- ii. it exercises the rights flowing from the shares upon the explicit authorisation and instruction of the shareholder and for the shareholder's benefit.

2.45 Where the Licence Holder receives confirmation of receipt of the votes, it shall transmit it without delay to the shareholder or a third party nominated by the shareholder.

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2.46 Where there is more than one shareholders intermediary in the chain of intermediaries, the confirmation shall be transmitted between intermediaries without delay, unless the confirmation can be directly transmitted to the shareholder or a third party nominated by the shareholder.

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2.47 When votes are cast electronically an electronic confirmation of receipt of the votes is sent to the person that casts the vote.

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2.48 Provided that after the general meeting the shareholder or a third party nominated by the shareholder can obtain, at least upon request, confirmation that their votes have been validly recorded and counted by the listed company, unless that information is already available to them.

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Non-discrimination, proportionality and transparency of costs

2.49 Licence Holders acting as shareholders intermediaries shall disclose publicly any applicable charges for services provided for under this Section separately for each service.

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2.50 Any charges levied by a Licence Holder on shareholders, companies and other shareholders intermediaries shall be non-discriminatory and proportionate in relation to the actual costs incurred for delivering the services. Any differences between the charges levied between domestic and cross border exercise of

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~~rights shall be permitted only where duly justified and where they reflect variation in actual costs incurred for delivering the services.~~

23. Supplementary Conditions applicable to a Depositary of a UCITS Scheme

The Supplementary Conditions prescribed in this section shall apply ~~where the Licence Holder proposes to act as a~~ to a Depositary of a UCITS Scheme which is third-party managed or self-managed.

2.01 A Licence Holder, acting as Depositary for a UCITS Scheme shall be any of the persons listed in Regulation 17 of Subsidiary Legislation 370.32.

~~3.01.2.02~~ The ~~Licence Holder~~Depositary shall have the business organisation, systems, and appropriate expertise and experience deemed necessary by the MFSA for it to carry out its functions.

2.03 Neither the ~~Licence Holder~~Depositary nor any of its associates shall deal with the Scheme as a Principal unless the terms of the transaction or arrangement are on an arm's length basis.

~~3.02.2.04~~ — The ~~Licence Holder~~Depositary shall, ~~where applicable,~~ supervise the operation of a Scheme to ensure that the Management Company complies with the investment restrictions of the Scheme.

3.03.2.05 The ~~Licence Holder~~Depositary shall enquire into the conduct of the Management Company or the Scheme in each annual accounting period and report thereon to the holders of Units in accordance with MFSA's requirements, if any, applicable to the Scheme and with any applicable provisions of its Agreement with the Scheme or (in the case of a Scheme constituted as a Unit Trust or Common Contractual Fund) its Management Company.

~~3.04.2.06~~ The Licence Holder shall not enter into a contract for the sale of assets when such assets are not in the ownership of the Scheme.

~~3.05.~~ When servicing a Scheme formed in accordance with or existing under the laws of Malta duly licensed by the MFSA, the Depositary shall:

~~a. advise the MFSA if the value of the Scheme falls below EUR 2.33 million; and~~

Investment Services Rules for Investment Services Licence Holders

Part BIV: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Depositories

Issued: 22 July 2013

Date of last Revision: ~~5 February~~X November 20254

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~~b.2.07~~ notify the MFSA of any breach of the Scheme's Licence Conditions or of any of the provisions of the Constitutional Documents of the Scheme as soon it becomes aware of the breach.

~~2.08~~ The Licence Holder shall comply with the requirements laid down in ~~the Subsidiary Legislation 370.32, Investment Services Act (Custodians of Collective Investment Schemes) Regulations, as may be amended from time to time.~~
~~3.06.~~

~~3.07.2.09~~ When the Licence Holder is servicing either a merging UCITS or a receiving UCITS, the Licence Holder shall verify:

- a. the identification of the type of merger and the UCITS involved;
- b. the planned effective date of the merger; and
- c. the rules applicable, respectively, to the transfer of assets and the exchange of units with the requirements of the UCITS Directive and the fund rules or instruments of incorporation of their respective UCITS.

~~3.08.2.10~~ Where the UCITS has appointed a Management Company, which is not licensed in Malta to provide it with investment management services then the Licence Holder shall enter into an information agreement with such management company, to regulate the flow of information deemed necessary to allow it to perform the functions set out in Article 32 of the UCITS Directive and in other regulatory requirements applicable to Depositaries in Malta.

~~3.09.2.11~~ The information agreement referred to in SLC ~~2.103.08~~ above shall provide for the following:

- a. A description of the procedures including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the Licence Holder;
- b. A description of the procedures to be followed where the ~~M~~management ~~C~~company envisages a modification of the scheme rules or prospectus of

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the UCITS, and identifying when the ~~Licence Holder~~ Depository should be informed, or where a prior agreement with the ~~Licence Holder~~ Depository is needed to proceed with the modification;

- c. A description of the means and procedures by which the ~~Licence Holder~~ Depository will transmit to the ~~M~~management ~~C~~company all relevant information that the latter needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the ~~M~~management ~~C~~company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;
- d. a description of the means and procedures by which the ~~Licence Holder~~ Depository will have access to all relevant information it needs to perform its duties;
- e. A description of the procedures by which the ~~Licence Holder~~ Depository has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;
- f. A description of the procedures by which the ~~M~~management ~~C~~company can review the performance of the ~~Licence Holder~~ Depository in respect of its contractual obligations.

~~3.102.12~~ 3.112.12 The details referred to in ~~SLC 3.09~~ SLC 2.11, (c) and (d) may be included either in the information agreement or in a separate written agreement.

~~3.112.13~~ 3.112.13 In addition to the information provided for in SLC ~~3.09, 2.11~~, the information agreement shall also provide for:

- a. the conditions under which the agreement may be amended or terminated;

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- b. the conditions which are necessary to facilitate transition to another Depositary and, in case of such transition the procedure by which the Licence Holder shall send all relevant information to the appointed Depositary;
- c. the confidentiality obligations applicable to the parties to the agreement which shall be subject to the ability of either the MFSA or the European regulatory authorities of the ~~M~~management ~~C~~company's home Member State or EEA State where the ~~M~~management ~~C~~company is a European ~~M~~management ~~C~~company in gaining access to relevant documents and information;
- d. a list of all the information that needs to be exchanged between the UCITS, its ~~M~~management ~~C~~company and the Licence Holder Depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;
- e. information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable;
- f. the period of validity of the agreement.

3.122.14 Where either the Licence Holder Depositary or the ~~M~~management ~~C~~company have appointed third parties in order to carry out their duties, the information agreement shall also provide for the following:

- a. an undertaking by the relevant ~~third parties~~ to the agreement to provide details, on a regular basis, of any third parties appointed by the Depositary of a Maltese UCITS or the ~~manager~~ Management Company to carry out their respective duties;
- b. an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;

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- c. a statement that the liability of the ~~Licence Holder~~ Depositary shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping custody.

~~3.132.15~~ Where the Management Company appointed by the UCITS has been also appointed as manager for other UCITS, served by the Depositary, the information agreement may also provide for such other UCITS. In such cases the agreement shall list the UCITS covered.

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~~3.142.16~~ In cases where the parties to the agreement agree to the use of electronic transmission for part or all of the information ~~that flows~~ between them, the agreement shall contain provisions ensuring that a record is kept of such information.

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~~3.152.17~~ The information agreement shall be regulated by Maltese Law.

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~~3.162.18~~ A ~~Licence Holder which is a~~ Depositary of a Maltese UCITS, which is a master UCITS (Master UCITS), must conform to the Investment Services Rules for Retail Collective Investment Schemes on Feeder and Master UCITS.

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~~3.172.19~~ A ~~Licence Holder which is a~~ Depositary of a ~~Maltese Master~~ UCITS, ~~the latter being a master UCITS~~, shall immediately inform the MFSA, the Feeder UCITS and the Depositary of the Feeder UCITS about any irregularities it detects with regard to ~~the Maltese UCITS which is asuch M~~ master UCITS which are deemed to have a negative impact on the Feeder UCITS.

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2.20 The irregularities referred to in SLC ~~3.172.19~~ which the Depositary of a ~~Maltese UCITS which is a M~~ master UCITS detects in the course of carrying out its functions and which may have a negative impact on the Feeder UCITS shall include, but are not limited to:

- ~~3.18~~
- a. errors in the net asset value calculation of the ~~Maltese UCITS which is a~~ master UCITS;

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- b. errors in transactions for or settlements of the purchase, subscription or request to repurchases or redeem units in the ~~Maltese UCITS which is a Master~~ UCITS undertaken by the ~~F~~feeder UCITS;
- c. errors in the payment or capitalisation of income arising from the ~~Master~~~~Maltese UCITS which is a master~~ UCITS, or in the calculation of any related withholding tax;
- d. breaches of the investment objectives policy or strategy of the ~~Maltese UCITS which is a master~~Master UCITS, as described in its fund rules or instrument of incorporation, ~~offering documentation Prospectus~~or Key Investor Information document.
- e. breaches of investment and borrowing limits set out in the law or in the scheme rules, instruments of incorporation, ~~prospectus~~ offering documentation or Key Investor Information document.

2.21 The Depository shall adhere at all times to the relevant obligations applicable to it arising from:

- Commission Delegated Regulation (EU) 2016/438 supplementing the UCITS Directive as amended from time to time.

3. Supplementary Conditions applicable to a Depository of an AIF

3.01 A Depository for an AIF shall be one of the entities listed in Regulation 29 (2) of Subsidiary Legislation 370.32.

3.02 The Depository shall adhere to the relevant obligations applicable to it and arising from the Commission Delegated Regulation (EU) No 231/2013, as amended from time to time.

3.03 For an AIF which has no redemption rights exercisable for at least five years from the date of initial investment and which generally does not invest in financial instruments that must be held in custody, or for non-EU AIFs that are marketed

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in Malta, the Depositary Lite may be one of the entities listed in Regulation 40 of Subsidiary Legislation 370.32.

When servicing an AIF that fulfils conditions of SLC 3.03, the Depositary Lite shall comply with the provisions of Part 4b of Subsidiary Legislation 370.32.

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