

**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
5.00	30 May 2023	Changed method of submission of Appendix 2D
6.00	5 February 2024	See: Circular dated 5 February on Various Amendments to the Investment Services Rulebooks
7.00	9 March 2026	Update relating to: ESMA's Guidelines on Outsourcing to Cloud Service Providers
8.00	24 March 2026	See: Circular on Changes to Depository Rulebook and the Depository Financial Return

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 provide depositary services to Collective Investment Schemes and are in possession of an Investment Services Licence issued in terms of the Investment Services Act (the "Act").

For the purpose of these Rules:

"Depositary" shall mean a Licence Holder authorised to act as depositary of any collective investment scheme and holding the Investment Service Licence, outlined in regulation 4(2) of Subsidiary Legislation 370.32;

"Depositary Lite" shall mean a Licence Holder holding the Investment Service Licence as outlined in Part 4b of Subsidiary Legislation 370.32 and authorised to provide services 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;
- ii. AIFs which have no redemption rights exercisable during the five-year period from the date of initial investment, and which generally do not invest in assets that must be held in custody in terms of the Investment Services Rules; or
- iii. Professional Investment Funds targeting Qualifying Investors and Extraordinary Investors as further outlined in Part 5 of Subsidiary Legislation 370.32.

"Licence Holder" shall mean a legal person in possession of a Depositary, or Depositary 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.

The provisions of General Requirements of these Rules shall not apply to a Licence Holder in possession of investment firm or credit institution licence issued by the MFSA, to the extent that such Licence Holder already complies with equivalent or more onerous requirements as part of its investment firm or credit institution licence. The Licence Holder shall remain responsible for undergoing initial assessment and periodic checks to ensure that this exemption remains applicable.

Such Licence Holders shall still ensure compliance with the provisions of Subsidiary Legislation 370.32 Investment Services Act (Custodians of Collective Investment Schemes) Regulations at all times.

This exemption shall not apply to a Licence Holder which is a branch or a subsidiary of an investment firm or credit institution.

1. General Requirements

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 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 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.

- 1.04 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.
- 1.05 The Licence Holder shall take reasonable steps to ensure continuity and regularity in the performance of their services. To this end, the Licence Holder shall employ appropriate and proportionate systems, resources and procedures.
- 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.
- 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.
- 1.08 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 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;

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 – 1 month in advance;
 - e. any acquisitions or disposals of shares which fall within the disclosure provisions of Article 10 of the Act – as soon as possible and in any event not later than one month before the proposed acquisition or disposal as the case may be. 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, whichever is the earlier;
 - k. any material changes in the information supplied to the MFSA – as soon as practically possible 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, 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;
- n. any advertent breach of the Scheme’s Licence Conditions or Investment Restrictions, not previously notified to the MFSA by the Scheme or the Management Company – as soon as practically possible upon becoming aware of it.

1.09 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 1.35(b), 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;

- h. the change in the responsibilities of an Approved Person 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 Propriety Assessments Applied by the Authority](#), as a person whose role with a licensed entity requires the regulatory approval of the MFSA;

- i. entering into, amending or terminating the Subordinated Loan Agreement as further detailed in SLC 1.59 and SLC 1.60;
- j. entering into an outsourcing arrangement of material /critical nature.

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 individuals, eligible to authorise payment instructions (as applicable) on behalf of the parties to whom depositary and custody services are being provided. This list should include their 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 pay promptly all amounts due to the MFSA as established in terms of [Subsidiary Legislation 370.52, Investment Service Act \(Fees\) Regulations](#), as may be amended from time to time.

1.13. 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.

1.14 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.

1.15 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.

- 1.16. 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.
- 1.17. 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, which cannot be effectively mitigated.
- 1.18. When entering into any outsourcing to cloud service providers, the Licence Holder shall follow the [ESMA Guidelines on outsourcing to cloud service providers, unless such Licence Holder](#) is subject to provisions of [Regulation \(EU\) 2022/2554 on digital operational resilience for the financial sector](#).

Organisational Requirements

- 1.19. The Licence Holder shall:
 - a. have sufficient resources to effectively conduct its business activities;
 - b. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
 - 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;
 - e. maintain adequate and orderly records of its business and internal organisation;
 - f. on a best effort basis refer to [the Guidance on Technology Arrangements, ICT and Security Risk Management, and Outsourcing Arrangements](#).

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 undertaken in the course of that business, including consideration whether the Licence Holder shall be subject to provisions of [Regulation \(EU\) 2022/2554 on digital operational resilience for the financial sector](#) instead due to other authorisations held.

1.20. 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, to which the services are provided by the Licence Holder. This shall include maintaining conflicts of interest register;
- b. decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- c. adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Licence Holder;
- 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 its activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its activities as further specified in the Section titled Business Continuity Process below;
- 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 financial reports which reflect a true and fair view of its financial position and which comply with all applicable accounting standards and rules;

- 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.
- 1.21. 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.
- 1.22. 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 SLC 1.20 to SLC 1.21 above and take appropriate measures to address any deficiencies.

Call Back Procedure

- 1.23. Where the Depository receives payments and settles instructions on behalf of the Scheme, the Depository shall establish, maintain, and implement a written policies and procedures governing the call back process (the "Call Back Procedure").
- 1.24. Provisions of this section shall not apply to a Licence Holder, who is not appointed as the designated banker of a collective investment scheme.
- 1.25. Specific conditions under which a call back is to be effected must be clearly outlined in the Call Back Procedure. As a minimum, such conditions shall include instances involving:
 - a. high-value transactions that exceed the quantitative pre-established threshold set by the Depository;
 - b. instructions, where the beneficiary details do not logically match those of a known counterparty / service provider or payments to bank accounts that are newly set up or recently modified;
 - c. urgent requests;
 - d. transfers to jurisdictions, banks, or counterparties presenting a higher risk from an AML/CTF or sanctions perspective;
 - e. transactions outside the Scheme's investment strategy or risk profile;

- f. deviations from normal volumes, frequency, or counterparties;
 - g. one-off or ad-hoc payments of material size; and;
 - h. instructions received outside normal channels or suspected not to be secure or otherwise reliable.
- 1.26. The Call Back Procedure shall be established taking into consideration the strategy of the Scheme and shall be subject to review by the Depositary on a periodic 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.
- 1.27. 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.
- 1.28. 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
 - c. the name and position of the person who performed the call back.

Compliance

- 1.29. 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.

1.30. 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.

1.31. 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, the requirement under that point is not proportionate and that its compliance function continues to be effective.

Risk Management

- 1.32. The Licence Holder shall establish a risk management function which shall be responsible for the following actions:
- 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.
 - b. adopting 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. monitoring 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.
- 1.33. The risk management function shall be functionally and hierarchically separate from the operating units.
- 1.34. The 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

- 1.35. The 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:

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

For the purpose of complying with these provisions, the Licence Holder shall be allowed to engage one or more independent external parties to perform internal audit function.

- 1.36. 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 of establishing a functional and hierarchical internal audit function as set out in SLC 1.35.

Provided that, in such case, the Senior Management of the Licence Holder shall be required to ensure that alternative arrangements are in place that provide sufficient assurance and oversight, equivalent to one typically coming from an internal audit function, which is separate and independent.

- 1.37. 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.
- 1.38. The provisions of SLC 1.35-1.37 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.

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.

Business Continuity Process

- 1.39. The Business Continuity Process shall consist of:
- a. Disaster Recovery Plan (DRP);
 - b. Business Continuity Plan (BCP);
 - c. Business Continuity Management (BCM).
- 1.40. The 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.
- 1.41. The 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.
- 1.42. The 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;
 - 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.

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

- 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;
- q. a timetable for regular review and updating of plans, resources and procedures; and
- r. a timetable for testing of the plan at least on an annual basis and the requirement for testing logs to be maintained and up to date.

1.44. The internal audit function, or in the absence, the management body shall:

- a. evaluate whether necessary controls were followed during an actual emergency;
- b. report findings to the governing body and, where applicable, the BCP co-ordinator; and
- c. follow up on past internal audit reports to ensure compliance with previous findings.

Capital Requirements

1.45. A 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.

1.46. The 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.

- 1.47. The 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 maintain own funds of not less than the amount outlined in SLC 1.45.

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:

- i. subject to capital adequacy requirements in accordance with the IFD and the IFR; and
- ii. 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 1.45 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) of Subsidiary Legislation 370.32 shall not be subject to the above-mentioned capital resources requirements.

- 1.48. The Licence Holder shall immediately notify the MFSA if at any time it is not in line with its capital requirements. In this case, the MFSA shall be provided with a plan from the Licence Holder to restore its financial resources to the required level in a timely manner.
- 1.49. 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

- 1.50. The Licence Holder shall calculate and maintain additional 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.
- 1.51. 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.
- 1.52. 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.

- 1.53. 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

- 1.54. Where the Licence Holder does not maintain additional own funds, in whole or in part, in accordance with SLCs 1.50 to 1.54 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.
- 1.55. 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. Documentary evidence of such coverage shall be provided to the MFSA at least once the coverage is obtained and upon request thereafter.
- 1.56. 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
 - 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.

- 1.57. 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.
- 1.58. 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.

Subordinated Loan Agreements

- 1.59. 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:
- a. 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;
 - b. a draft of the agreement; and
 - c. 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.
- 1.60. 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.

Accounting Record and Reporting Requirements

- 1.61. The Licence Holder shall maintain proper accounting records to show and explain its own transactions, assets and liabilities.
- 1.62. 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 these Rules.
- 1.63. 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 a reasonable time from the request.
- 1.64. The Licence Holder shall agree with the MFSA its accounting reference date.
- 1.65. The Licence Holder shall be required to prepare and submit through LH Portal interim financial return 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 Governing Body. In the latter case, the Licence Holder is expected to provide a certified true copy of such resolution to the MFSA.
- 1.66. The interim financial returns shall be prepared on a six-monthly basis and submitted to the MFSA within 42 days of the end of the relevant reporting period. The first interim financial return should cover the six months immediately following the accounting reference date and the second interim financial return should cover the twelve months 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 interim financial returns shall be agreed with the MFSA.
- 1.67. In addition to the interim financial returns, the Licence Holder shall be required to prepare and submit through LH Portal the Custody Sheet of the financial return as set out in Appendix 2 on a quarterly basis within 42 days of the end of the relevant calendar quarter.

If the Custody Sheet submission deadline for the second and the fourth calendar quarter coincides with the submission deadline of the interim financial returns, both filings can be made as a single document.

- 1.68. 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 1.82 shall be submitted to the MFSA within four months of the accounting reference date.
- 1.69. 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.
- 1.70. The Licence Holder shall also prepare and submit such additional financial returns as the MFSA may require.
- 1.71. 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 agreement with the underlying accounting records;
 - b. 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:
 - 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;
 - c. information to be included in the financial returns shall be prepared in accordance with International Financial Reporting Standards;

- d. financial returns shall not be misleading as a result of the misrepresentation or omission or miscalculation of any material item.
- 1.72. 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.
- 1.73. The Licence Holder shall notify the MFSA immediately upon becoming aware that it is in breach of the requirements in respect of financial resources, records, reporting or procedures and controls. The notice shall give reasons and shall explain what actions are being taken to rectify matters.
- 1.74. 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.
- 1.75. Documents may be submitted in various ways and the date of receipt shall be established as follows:
- a. 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;
 - b. If it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;
 - c. If it is delivered by hand, this will be the date, when such delivery was made and recorded by the MFSA.

External Audit

- 1.76. The Licence Holder shall appoint an external 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.

- 1.77. 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.
- 1.78. 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 Licence Holder.

- 1.79. 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 confirm to the auditor in writing its agreement to the terms of the letter of engagement. The auditor shall also provide the MFSA with a copy of letter of engagement.
- 1.80. 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.
 - 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 Close Links 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 Close Links.
- 1.81. 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 shall be payable by the Licence Holder.
- 1.82. 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:
- a. audited annual financial statements are in agreement with the Licence Holder's accounting records;
 - b. the Licence Holder's capital resource requirements have been properly calculated in accordance with the MFSA's requirements and exceed the Licence Holder's capital resource requirements as at the accounting reference date;

- c. proper accounting records have been kept, and adequate systems for their control have been maintained, as required by the MFSA, during the financial period under review;
 - d. 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 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 financial period under review.
 - e. all information and explanations necessary for the purpose of the audit have been obtained.
- 1.83. 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.
- 1.84. 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.
- 1.85. 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. However, if there have been breaches, a summary must be provided of the breach(es) committed and regulatory sanction imposed.

2. Supplementary Conditions applicable to a Depository of a UCITS Scheme

The Supplementary Conditions prescribed in this section shall apply to a Depository of a UCITS Scheme which is third-party managed or self-managed.

- 2.01 A Licence Holder, acting as Depository for a UCITS Scheme shall be any of the persons listed in Regulation 17 of Subsidiary Legislation 370.32.
- 2.02 The Depository 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 Depository 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.
- 2.04 The Depository shall, supervise the operation of a Scheme to ensure that the Management Company complies with the investment restrictions of the Scheme.
- 2.05 The Depository 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.
- 2.06 The Depository shall not enter into a contract for the sale of assets when such assets are not in the ownership of the Scheme.
- 2.07 When servicing a Scheme formed in accordance with or existing under the laws of Malta duly licensed by the MFSA, the Depository shall notify the MFSA of any advertent breach of the Scheme's Licence Conditions or Investment Restrictions, not previously notified to the MFSA by the Scheme or the Management Company, as soon it becomes aware of the breach.
- 2.08 When the Depository is servicing either a merging UCITS or a receiving UCITS, the Depository 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.
- 2.09 A Depository 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.
- 2.10 A Depository of a Master UCITS shall immediately inform the MFSA, the Feeder UCITS and the Depository of the Feeder UCITS about any irregularities it detects with regard to such Master UCITS which are deemed to have a negative impact on the Feeder UCITS.
- 2.11 The irregularities referred to in SLC 2.10 which the Depository of a Master UCITS detects while carrying out its functions and which may have a negative impact on the Feeder UCITS shall include, but are not limited to:
- a. errors in the net asset value calculation of the Master UCITS;
 - b. errors in transactions for or settlements of the purchase, subscription or request to repurchases or redeem units in the Master UCITS undertaken by the Feeder UCITS;
 - c. errors in the payment or capitalisation of income arising from the Master UCITS, or in the calculation of any related withholding tax;
 - d. breaches of the investment objectives policy or strategy of the Master UCITS, as described in its fund rules or instrument of incorporation, offering documentation 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, offering documentation or Key Investor Information document.
- 2.12 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 Depositary of an AIF

- 3.01 A Depositary for an AIF shall be one of the entities listed in Regulation 29 (2) of Subsidiary Legislation 370.32.
- 3.02 The Depositary 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 in Malta, the Depositary Lite may be one of the entities listed in Regulation 40 of Subsidiary Legislation 370.32.
- 3.04 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.