MFSA MALTA FINANCIAL SERVICES AUTHORITY

Circular

5 November 2026

Amendments to the MFSA Q&A "Investment Firms Regulation and Directive: Overview"

1. Purpose

The purpose of this Circular is to communicate certain amendments made to the MFSA Questions & Answers document which was issued following the Webinar "Investment Firms Regulation and Directive: Overview" held on 7 May 2021 (MFSA Q&A). The said changes clarify which types of assets held in custody by Investment Firm shall be factored in when calculating the Assets Safeguarded and Administered (ASA), aligning it with the EBA position on application of K-ASA requirement, issued on 15 July 2022.

2. Introduced amendments

On 15 July 2022 the EBA clarified that an investment firm, which acts as a depositary for safeguarding and administering client assets entrusted to it and which it holds in custody, must take such assets into account for the purpose of calculating the K-ASA factor.

MFSA has aligned its Q&A with the above position and further clarified that the assets shall be excluded from the definition of ASA, when:

a. the depositary does not hold strict liability obligations for the loss or a potential loss of a financial instrument held in custody, including when such liability is duly passed on to the third party; and/or

b. the depositary only verifies and keeps record of ownership of the assets referred to in Article 21(8)(b) of 2011/61/EU Directive or Article 22(5)(b) of Directive 2009/65/EU.

3. Conclusion

The amendments set out in this Circular intend to provide more clarity on the application of K-ASA requirement for investment firms who are also providing depositary services to collective investment schemes. In this regard, the MFSA has amended Question 18 of the Q&A, which can be accessed through the following link.

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