

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Publication of Revised Investment Services Rules for Investment Services Providers and Investment Services Rules for Retail Collective Investment Schemes

The MFSA is today publishing a revised version of the Investment Services Rules for Investment Services Providers and of the Investment Services Rules for Retail Collective Investment Schemes (hereinafter referred to as the “Rules”).

The changes to the Rules, as indicated below were made to ensure a more faithful transposition of the provisions of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS IV), and consist of the following:

Investment Services Rules for Investment Services Providers:

- [i] SLC 9.19 of Part BI has been amended to further clarify that the obligation of the Custodian of a Scheme to enter into an information agreement with the Manager of that Scheme subsists only in the case where the Manager is not licensed in Malta. This amendment ensures a more accurate transposition of Article 33(5) of the UCITS IV Directive. Licence Holders are to note the changes as reproduced hereunder:

Old Version	Revised Version
9.19. Where the UCITS has appointed a management to provide it with investment management services then the Licence Holder shall enter into an information agreement with such management company as may have been appointed by the UCITS	<i>9.19. Where the UCITS has appointed a management company which is not licenced in Malta, to provide it with investment management services then the Licence Holder shall enter into an information agreement with such management company as may have been appointed by the UCITS, 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 Custodians in Malta.</i>

Investment Services Rules for Retail Collective Investment Schemes:

- [ii] SLC 5.47 of Part BII – This SLC lays down the borrowing restrictions of UCITS Schemes and reworded to more faithfully transpose the requirements of Article 83 of the UCITS IV Directive. Licence Holders are to note the changes as reproduced hereunder:

Old Version	Revised Version
<p>5.47 The Scheme may borrow:</p> <p>i. up to a maximum of 10 per cent of:</p> <p>a. its assets, when the Scheme is set up as an investment company or a limited partnership; or</p> <p>b. the value of the Scheme, when the Scheme is set up as a unit trust or common contractual fund.</p> <p>Provided that the borrowing is on a temporary basis and such that the Scheme’s overall risk exposure does not exceed 210 per cent of its NAV under any circumstances.</p> <p>Provided further that the Scheme may acquire foreign currency by means of a ‘back to back’ loan. Foreign currency obtained in this manner is not classed as borrowings for the purpose of this SLC provided that offsetting deposit:</p> <ul style="list-style-type: none"> - is denominated in the base currency of the Scheme; and - equals or exceeds the value of the foreign currency loan outstanding. <p>ii. up to a maximum of 10 per cent of its assets, in the case of an investment company or a limited partnership, provided that the borrowing is to make possible the acquisition of immovable property essential for the direct pursuit of its business; in which case the borrowing and that referred to in paragraph (i) above, may in</p>	<p>5.47 <i>Where the Scheme is set up as an investment company it shall not borrow. Where the Scheme is set up as a common fund, its Fund Manager or its Custodian shall not borrow on its behalf. A Scheme, may however acquire foreign currency by means of a “back-to-back” loan.</i></p> <p><i>By way of derogation from the above paragraph, a Scheme may borrow provided that such borrowing is:</i></p> <p><i>(a) on a temporary basis and represents:</i></p> <ul style="list-style-type: none"> - <i>in the case of an investment company no more than 10% of its assets, or</i> - <i>in the case of a common fund, no more than 10% of the value of the fund; or</i> <p><i>(b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10% of its assets.</i></p> <p><i>Where a Scheme is authorised to borrow under sub paragraphs (a) and (b) above, such borrowing shall not exceed 15% of its assets in total.</i></p>

total not exceed 115 per cent of the borrower's assets.	
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[iii] Point [xi] of SLC 2.8 of Appendix II to Part B – relating to the disclosure of transaction costs for the purposes of disclosure thereof in the Scheme's Annual Report. By virtue of this amendment, transaction costs are being defined as costs incurred by a Scheme in connection with transactions on its portfolio. Licence Holders are to note the changes as reproduced hereunder:

Old Version	Revised Version
<p>2.8 A statement of the developments concerning the assets of the Scheme during the period including the following:</p> <p>.....</p> <p>(xi) details of transactions with the Manager, the Custodian or their associates; and</p>	<p>2.8 <i>A statement of the developments concerning the assets of the Scheme during the period including the following:</i></p> <p>.....</p> <p><i>(xi) transaction costs, which are costs incurred by a Scheme in connection with transactions on its portfolio; and</i></p>

The revised Rules can be downloaded from the Authority's website at www.mfsa.com.mt under the section *Legislation and Regulation/Regulation/Securities and Markets*.

Any queries with regards to the updated Rules should be addressed to Dr Sarah Pulis, Securities and Markets Supervision Unit [e-mail: spulis@mfsa.com.mt] or Dr. Isabelle Agius, Regulatory Development Unit [e-mail: iagius@mfsa.com.mt].

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Malta Financial Services Authority
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