

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Second Circular addressed to the investment services industry regarding the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2009 (LN 328 of 2009)**

#### **1.0 BACKGROUND**

On the 22<sup>nd</sup> December, 2009 the Authority issued its first [Circular addressed to the investment services industry regarding the Prevention of Money Laundering and Funding of Terrorism \(Amendment\) Regulations, 2009](#). For ease of reference the 2009 circular will be referred to as ‘the first circular’. The objective of this circular was *inter alia* to provide guidance on the interpretation of the term ‘marketing’ as amended through LN 328 of 2009.

By the present circular, the Authority is hereby repealing the first circular dated 22<sup>nd</sup> December, 2009 regarding the interpretation of the term ‘marketing’ as used in the definition of ‘relevant financial business’ relating to collective investment schemes within the Prevention of Money Laundering and Funding of Terrorism (Amendment) Regulations, 2009 (‘PMLFTR’).

#### **2.0 THE AMENDMENTS**

Following discussions with the MFSA and within the Joint Committee on the Prevention of Money Laundering and Funding of Terrorism, the FIAU has effected a number of amendments to Part I of its Implementing Procedures consisting of the introduction of a new Chapter 9 and the addition of a new additional section 6.1. The revised [Part I of the Implementing Procedures](#) may be accessed from the FIAU website.

#### ***2.1 The Interpretation of the Term ‘marketing’***

Regulation 2 of the PMLFTR (as amended) defines ‘relevant financial business’ as follows:

*‘...a collective investment scheme **marketing** its units or shares, licensed or recognised, or required to be licensed or recognised, under the provisions of the Investment Services Act;’*

The first circular provided that the interpretation of the term marketing refers to cases where the Scheme itself, either through its directors or through persons directly employed with the Scheme, effectively carries out the marketing of its units or shares.

On the basis of this interpretation only those collective investment schemes that marketed their units directly were considered as subject persons in terms of the PMLFTR.

The amendments to the Implementing Procedures broaden the scope of applicability of the PMLFTR to cover **all** collective investment schemes, the units or shares in which are offered to or placed with investors, whether directly or indirectly, by the Scheme itself or by other third parties on behalf of the scheme.

## ***2.2 Outsourcing***

The revisions also allow collective investment schemes which only have a limited physical operational setup in Malta to outsource the implementation of the measures and procedures applicable to them under the PMLFTR.

In view of the above it shall be permissible for the duties attributable to the MLRO of a collective investment scheme to be carried out by the MLRO of the administrator of the Scheme. In such cases the MLRO of the administrator shall be responsible for carrying out the reporting obligations of the Scheme.

## ***2.3 Practical Implications***

Licensed collective investment schemes that do not market their units directly and which previously did not fall within the scope of the PMLFTR will now be considered to fall within the definition of 'subject person' under the PMLFTR by virtue of the interpretation of the phrase 'marketing its units or shares' introduced through the amendments in the Implementing Procedures.

These collective investment schemes have until **30<sup>th</sup> April 2013** to comply with the new requirements of the implementing procedures.

Collective Investment Schemes which have not appointed a Money Laundering Reporting Officer on the basis of the previous interpretation given to the term 'marketing' are now kindly required to contact the Authority to finalise the appointment of the MLRO and to provide an updated prospectus relating to the Scheme.

In relation to outsourcing, the Authority will be revising the 'Investment Services Rules for Retail Collective Investment Schemes' and the 'Investment Services Rules for Professional Investor Funds' to reflect the new Implementing Procedures.

**The first circular is being repealed with effect from today.**

**Communications Unit  
Malta Financial Services Authority  
5<sup>th</sup> February, 2013**