

# MFSA

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## MALTA FINANCIAL SERVICES AUTHORITY

### **Circular on Own Funds Requirements for Investment Firms and Fund Managers based on Fixed Overheads under Article 97(4) of Regulation (EU) No 575/2013**

#### **Introduction**

This Circular is intended to clarify the financial reporting framework in relation to the fixed overhead requirement. Specifically, investment firms and fund managers are required to hold eligible capital of at least one-quarter of the fixed overheads of the previous year (or projected fixed overheads in the case of an investment firm/ fund manager which has not been in business for one year).

The Circular sets out how the financial reporting framework harmonises calculations of capital requirements and provides a clear definition of fixed overheads. In addition, the Circular illustrates the conditions under which the MFSA can make adjustments to the capital requirements in a case where there has been a material change in the business activities of an investment firm/ fund manager.

#### **(1) The legal basis of the Fixed Overhead Requirement**

The EU Commission Delegated Regulation No 2015/488 of 4 September 2014 (“the Regulation”) amending EU Delegated Regulation No 241/2014 as regards own funds requirements for firms based on fixed overheads applies the fixed overhead requirement. The Regulation follows from the European Banking Authority’s (“EBA”) draft Regulatory Technical Standards (“RTS”) on own funds requirements published on 29 January 2014, in consultation with the European Securities and Markets Supervision Authority (“ESMA”).

Investment firms are subject to the fixed overhead requirement as set out in Article 34b(1) of the Regulation while fund managers are subject as set out in Article 9(5) laid down in Directive 2011/61/EU on Alternative Investment Fund Managers (“the AIFMD”) and Article 7(1)(a)(iii) prescribed by Directive 2009/65/EC relating to Undertakings for Collective Investment In Transferable Securities (“the UCITS Directive”). The definition of own funds laid down in the AIFMD and in the UCITS Directive supports the application of the fixed overhead requirement to fund managers.

Links to the relevant documents can be found hereunder.

EU Commission Delegated Regulation No 2015/488: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R0488>

EBA Final draft Regulatory Technical Standards:

[https://www.eba.europa.eu/documents/10180/561374/EBA-RTS-2014-01+\(Own+Funds+-+Fixed+Overheads\).pdf](https://www.eba.europa.eu/documents/10180/561374/EBA-RTS-2014-01+(Own+Funds+-+Fixed+Overheads).pdf)

## **(2) Data requirements**

Investment firms and fund managers submit a number of regulatory financial returns to the MFSA over the course of the accounting period. The returns are cumulative, with the first one filed covering the first three months of the accounting year, the second one filed covering the first six months of the accounting year, and so forth until the (unaudited) annual financial return is filed covering the whole accounting year.<sup>1</sup> The fixed overhead requirement calculation of the said returns is to be populated by referring to the audited annual financial statements and the audited annual financial return covering the previous full accounting period.

Subsequently, the audited annual financial return is submitted together with the audited annual financial statements. Since the most recent audited annual financial statements would have become available at this stage, the fixed overhead calculation of the audited annual financial return is to be updated to reflect the corresponding audited annual financial statements. Such fixed overhead requirement data would then naturally continue to be used in the following returns that are to be filed, starting from the interim financial return covering the first three months of the new accounting year. Nonetheless, particularly in the case of fund managers, the MFSA appreciates that in practice, the interim financial return covering the first three months of the new accounting year may be submitted before the audited annual financial return (covering the previous full accounting year) becomes available. In these circumstances, we would expect the fund manager to use the latest available audited annual financial statements and audited annual financial return until such time as the most recent audit is completed.

Where the investment firm/ fund manager has not been in business for one complete year, the projected fixed overheads included in its budget for the first twelve months' trading as submitted with its application for authorisation are to be used for the purposes of carrying out the fixed overhead calculation in the applicable returns until such time as the first audited set of financial statements becomes available.

## **(3) MFSA adjustment of the fixed overhead requirement**

As per Article 34c specified in the Regulation, the MFSA may adjust the requirement to maintain at least one-quarter of the fixed overheads of the previous year as per Article 97(2) laid down in EU Regulation No 575/2013 on prudential requirements for credit institutions and investment firms ("the CRR"). It is essential that investment firms/ fund managers are fully acquainted with what constitutes "a material change in business" as set out in Article 34c.

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<sup>1</sup> De-minimis fund managers that are being supervised by the investment funds team only submit the audited annual financial return.

Where the investment firm/ fund manager deems that there has been a material change in its business which should be reflected in the fixed overhead requirement applied, then the investment firm/ fund manager should write to the MFSA requesting it to vary its fixed overhead requirement. This request should set out the basis for this request as per Article 34c of the Regulation and should be supported, as a minimum, by the latest available financial return and management accounts.

## **Contacts**

Any queries or requests for clarifications on the contents of this Circular should be addressed to the Securities and Markets Supervision Unit by e-mail on [su@mfsa.com.mt](mailto:su@mfsa.com.mt).