

Consultation Procedure

Proposed Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations 2012 and accompanying amendments to the Investment Services Rules

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

In the case of primary legislation in particular, Bills may and do undergo revisions during the Parliamentary stages.

This consultation is also being exercised at the request and on behalf of the Ministry of Finance.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Note for Consultation

THE DRAFT COMPANIES ACT (INVESTMENT COMPANIES WITH VARIABLE SHARE CAPITAL) (AMENDMENT) REGULATIONS

AND

ACCOMPANYING AMENDMENTS TO THE INVESTMENT SERVICES RULES

BACKGROUND

1. Following discussions with the Malta Fund Industry Association, the Registrar of Companies and other stakeholders the Authority is proposing the amendments listed in this Consultation Document.
2. The aim of the proposed changes is to:
 - i. Streamline the various obligations related to the submission of accounts to unit-holders;
 - ii. Improve the quality of information provided to investors;
 - iii. Reduce costs and surplus with reference to the distribution of accounts.
3. Collective Investment Schemes falling within the remit of the Companies Act are required to send their annual accounts to all shareholders. In addition to this obligation schemes are bound by additional obligations namely, the obligation to communicate accounts to share/unit-holders prescribed under the Listing Rules and the Investment Services Rules. The different fronts and levels of regulation have created some inconsistency in the approach to the circulation of accounts.
4. In terms of the Companies Act, the directors of every company are required to prepare for each accounting period, individual accounts comprising the balance sheet as at the last day of the accounting period to which they refer, the profit and loss account for that period, the notes to the accounts and any other financial statements required by generally accepted accounting principles and practice. Companies, including SICAVs authorised and registered in Malta are obliged to circulate a physical copy of their accounts to all shareholders in terms of article 180 of the Companies Act since all members of a company have a right to be sent the annual accounts 14 days before a general meeting.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

5. While article 180 of the Companies Act requires a SICAV to circulate a printed copy of its accounts to all shareholders, the Investment Services Rules for Collective Investment Schemes, issued in terms of the Investment Services Act simply require schemes to provide the annual report including the accounts to unit-holders/ shareholders free of charge upon request.
6. Listing Rule 8.35 corresponds with the Investment Services Rules and simply states that unit-holders of a Listed SICAV may request the annual report audited accounts within four months of the end of the financial period to which they relate free of charge.

PROPOSED AMENDMENTS

7. In view of the above, the Authority is proposing the following amendments:
 - [i] Amendments to the Companies Act (Investment Companies with Variable Share Capital) Regulations;
 - [ii] Amendments to the Investment Services Rules for Retail Collective Investment Schemes; and
 - [iii] Amendments to the Investment Services Rules for Professional Investor Funds.

7.1. Proposed amendments to the Companies Act (Investment Companies with Variable Share Capital) Regulations:

The Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations are being proposed with the aim of including an optional dis-application of article 180 of the Companies Act to SICAVs. A SICAV can avail itself of this proposed regulation as long as it fulfils the following conditions:

- [i] The directors of a SICAV must send notice to the registered postal address of each shareholder and unit-holder not less than 14 days prior to the annual general meeting, advising that the annual accounts are available to shareholders and unit-holders free of charge upon request, and that within four weeks of their approval, the annual accounts shall be posted on a website designated therein;
- [ii] The accounts are made available to all shareholders and unit-holders, in both printed and electronic form, free of charge upon request, not less than 14 days prior to the annual general meeting;
- [iii] Within four weeks of their approval, the accounts are posted on a designated website.

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

7.2. Proposed amendments to the Investment Services Rules for Retail Collective Investment Schemes

The Authority is proposing to revise the Investment Services Rules for Retail Collective Investment Schemes as follows:

- [i] Part BI – Inclusion of a proposed new Rule 12.8 which requires a SICAV to send an information report to all unit-holders within four weeks from the date of every annual general meeting.
- [ii] Part BII – Inclusion of a proposed new Rule 15.8 requiring a SICAV to send an information report to all unit-holders within four weeks from the date of every annual general meeting.
- [iii] Appendix II – Inclusion of a new Rule 4 setting out the contents of the information report.

7.3. Proposed amendments to the Investment Services Rules for Professional Investor Funds

The Authority is proposing to revise the Investment Services Rules for Professional Investor Funds as follows:

- [i] Appendix I – Inclusion of a proposed new Rule 2.9 requiring that in the case of a Professional Investor Fund being sold to experienced investors, a SICAV, is to send an information report to all unit-holders within four weeks from the date of every annual general meeting with the information specified therein.

CONTACTS

Licence holders and other interested parties are being informed of the circulation of the proposed Companies Act (Investment Companies with Variable Share Capital) (Amendment) Regulations 2012 and an accompanying Table of Amendments to the Investment Services Rules in the form of an annex to this Note titled ‘Annex I’.

Interested parties are kindly asked to submit any comments which they may have in relation to the aforementioned document in writing, to Dr Emaliese Lofaro – Regulatory Development Unit on elofaro@mfsa.com.mt by not later than 9th November 2012.

Communications Unit
Malta Financial Services Authority
MFSA Ref: 04-2012
22nd October 2012