

INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

PART B: STANDARD LICENCE CONDITIONS

Appendix 5 Penalties

Breach of these Rules may give rise to disciplinary action being taken against the offending Licence Holder.

Where a Licence Holder breaches or infringes a Licence Condition, the MFSA may by virtue of authority granted to it under article 16A of the Act impose penalties without recourse to a court of law, up to a maximum of €150,000. The Act grants the MFSA discretion to impose administrative penalties on Licence Holders and/or on Licence Holders' directors, officers or trustees.

In determining whether to impose a penalty or other sanction in terms of the Investment Services Act, 1994 and in determining the appropriate penalty or sanction, the MFSA shall be guided by the principle of proportionality. The MFSA shall, where relevant, take into consideration the circumstances of the specific case, such as:

- a. the good faith and the degree of openness of the Licence Holder in the fulfilment of his obligations under the Act, relative regulations, Rules and Licence Conditions or of decisions of the competent authority in this regard;
- b. the degree of diligence and co-operation shown by the Licence Holder;
- c. any evidence of wilful deceit on the part of the Licence Holder or its officers;
- d. the seriousness of the effects of the infringement including the losses for third parties caused by the infringement, and any potential systemic consequences of the infringement;
- e. the repetition, frequency or duration of the infringement by the Licence Holder;
- f. the profits obtained and/ or losses avoided by the Licence Holder by reason of the infringement;
- g. the financial strength of the Licence Holder;
- h. previous infringements by the Licence Holder and prior sanctions imposed by MFSA or other regulatory authorities on the same Licence Holder.

Whenever the infringement consists of a failure to perform a duty, the application of a sanction shall not exempt the Licence Holder from its performance, unless the decision of the MFSA explicitly states the contrary.

The following is a list for indicative purposes, (*which should not however be construed as exhaustive*) of breaches of SLCs that may give rise to a course of action. The code inserted beside each SLC refers to the classification of the breach and the range of the penalty which MFSA may impose in such a situation. Breaches of SLCs not specifically referred to will be dealt with on a case by case basis.

A separate penalty system applies to late submission of documents, fees etc. as explained further on in this section.

A right of appeal to the Financial Services Tribunal is available to Licence Holders on whom penalties are imposed.

Investment Services Act CRD (Administrative Penalties, Measures and Investigatory Powers) Regulations 2014

Category 2 and Category 3 Licence Holders subject to the CRD and the CRR should take note that these Regulations stipulate the administrative penalties, measures and investigatory powers which the MFSA may apply to Category 2 and Category 3 Licence Holders in the context of the Capital Requirements Directive (2013/36/EU) and the Capital Requirements Regulation (EU) No 575/2013. The MFSA strongly advises Category 2 and Category 3 Licence Holders who are subject to CRD and CRR, to familiarise themselves with the provisions of the said Regulations.

Part B – Standard Licence Conditions – applicable level of penalty for infringements.

Please note that the following is indicative only, and not an exhaustive list of all possible breaches in terms of infringements of the SLCs in the various ISRISP Rulebooks which could give rise to the imposition of an administrative penalty

General Requirements	Rules Reference Part BI	Rules Reference Part BII	
Failure to commence investment services business within twelve months from the date of issue of the licence.	SLC 1.01	SLC 1.05	(1)
Failure to notify the MFSA of an event as required, by any Standard Licence Condition applicable to the Licence Holder.	SLC 1.03	SLC 1.07	(2)

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General Requirements	Rules Reference Part BI	Rules Reference Part BII	
Failure to obtain MFSA's written consent before making any change as outlined in SLC 1.07.	SLC 1.07	SLC 1.10	(4)
Failure to maintain sufficient records to be able to demonstrate compliance with the conditions of the Investment Services Licence.	SLC 1.08	SLC 1.11	(4)
Failure to establish, implement and maintain the systems and procedures outlined in SLC 1.18	SLC 1.18	SLC 2.03	(5)
Failure to notify the MFSA of any breach of the licence conditions as soon as the Licence Holder becomes aware of the breach.	SLC 1.13	SLC 1.15	(3)
Failure to establish and /or maintain an effective compliance function	SLCs 1.21-1.22	SLCs 2.17-2.18	(3)
Failure to establish and /or maintain an effective risk management function	SLCs 1.23-1.24	SLC 2.25	(3)
Failure to establish and /or maintain an effective internal audit function	SLC 1.28	SLC 2.23	(3)

Conduct of Business Rules	Rules Reference Part BI	Rules Reference Part BII	
<u>General</u> Failure to abide the conditions relating to inducements.	SLC 2.02	SLCs 3.50-3.51	(3)
<u>Client Classification Requirements.</u> Failure to abide by any of the conditions in this section.	SLCs 2.03 – 2.12	N/A	(3)
<u>Client Profile Requirements.</u> Failure to abide by any of the conditions in	SLC 2.13 –	N/A	(4)

Conduct of Business Rules	Rules Reference Part BI	Rules Reference Part BII	
this section.	2.26		
<u>Client Disclosure Requirements</u> Failure to abide by any of the conditions in this section.	SLC 2.27 – 2.37	N/A	(6)
<u>Retail Client Agreement</u> Failure to abide by any of the conditions in this section.	SLC2.38 – 2.39	N/A	(4)
<u>Client Reporting</u> Failure to abide by any of the conditions in this section.	SLC 2.40 – 2.53	SLCs 3.25-3.29	(3)
<u>Best Execution Requirements</u> Failure to abide by any of the conditions in this section.	SLC 2.54 – 2.71	SLCs 3.30-3.36	(6)
<u>Client Order Handling Rules</u> Failure to abide by any of the conditions in this section.	SLCs 2.72 – 2.81	SLCs 3.37-3.49	(3)
<u>Record Keeping</u> Failure to abide by any of the conditions in this section.	SLCs2.83 – 2.85	SLCs 2.49-2.52	(3)
<u>Safeguarding of Client Assets</u> Failure to abide by any of the conditions in this section.	SLCs2.86 – 2.93	N/A	(6)
<u>Conflicts of Interests</u> Failure to abide by any of the conditions in this section.	SLCs 2.94 – 2.101	SLCs 3.02-3.12	(3)
<u>Staff Dealing</u> Failure to abide by any of the conditions in this section.	SLCs 2.102 – 2.105	SLCs 2.42-2.45	(2)
<u>Conduct of Business Rules for Licence Holders Producing and Disseminating Investment Research</u>	SLCs2.109 – 2.116	N/A	(3)

Conduct of Business Rules	Rules Reference Part BI	Rules Reference Part BII	
Failure to abide by any of the conditions in this section.			
<u>Complaints Handling</u> Failure to abide by any of the conditions in this section.	SLC 117	SLCs 1.18-1.22	(3)
<u>Provisions Applicable to Licence Holders whose Staff Promote and Sell Investment Products</u> Failure to abide by any of the conditions in this section.	SLCs 2.118 – 2.122	N/A	(4)
<u>Provisions Applicable to Licence Holders Appointing Tied Agents</u> Failure to abide by any of the conditions in this section.	SLCs 2.123 – 2.132	N/A	(4)
<u>Provisions Applicable to Licence Holders Appointing Introducers</u> Failure to abide by any of the conditions in this section.	SLCs 2.133 – 2.145	N/A	(4)

Disclosure Requirements for Information to Clients, Including Marketing Communications	Rules Reference	
<u>General</u> Failure to abide by any of the conditions in this section	SLCs 3.01 – 3.01A	(3)
<u>Marketing Information and other Information for Retail Clients and Potential Retail Clients</u> Failure to abide by any of the conditions in this section	SLCs 3.02 - 3.14	(3)
<u>Disclosure Requirements Applicable to Licence Holders holding or controlling Client Assets</u> Failure to abide by any of the conditions in this section	SLCs 3.15 – 3.21	(3)

<u>Information about Costs and Associated Charges</u> Failure to abide by any of the conditions in this section	SLC 3.22	(3)
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Operators of Multilateral Trading Systems	Rules Reference	
<u>General</u> Failure to abide by any of the conditions in this section	SLCs 5.01 – 5.07	(3)
<u>Compliance Arrangements</u> Failure to abide by any of the conditions in this section	SLCs 5.08-5.09	(3)
<u>Pre-Trade Transparency Requirements for MTFs</u> Failure to abide by any of the conditions in this section	SLCs 5.10 – 5.12	(4)
<u>Post-Trade Transparency Requirements for MTFs</u> Failure to abide by any of the conditions in this section	SLCs 5.13 – 5.15	(4)
<u>Transaction Reporting</u> Failure to abide by any of the conditions in this section	SLC 5.16	(4)

Investment Services Licence Holders which Qualify as Systematic Internalisers and for those which execute Off-Market Deals	Rules Reference	
Failure to abide by any of the conditions in this section	SLC 6.01- 6.14	(4)

Financial Resources, Record Keeping and Reporting	Rules Reference	
Failure to maintain adequate financial resources and the minimum applicable financial resources requirements.	SLC 7.01,	(4)
Failure to notify the MFSA that a Licence Holder is in breach of the financial resources requirements and breach of other financial notification requirements.	SLC 7.04, 7.18, 7.19	(3)
Failure to maintain appropriate accounting records.	SLC 7.06 – 7.08,	(3)

Failure to notify the MFSA that a Licence Holder will be unable to submit an Annual or Interim Financial return on the due date.	SLC 7.18 (b)	(1)
Submission of an incomplete financial return.	SLC 7.11, 7.14	(2)
Failure to retain proper accounting records.	SLC 7.09	(3)
Failure to report or inaccurate reporting regarding breaches of SLCs and/or other regulatory sanctions in the annual report to shareholders.	SLC 7.28	(3)

Transaction Reporting	Rules Reference	
Failure to report any transactions carried out by the Licence Holder and which he is required to report.	SLCs 8.01 – 8.05; Appendix 8	(4)

Classification of Breaches and Penalty Ranges

Classification	Code	Range of penalties
Breach – level 1	1	Lm50 – 200 €116.47 – €465.87
Breach – level 2	2	Lm100 – 500 €232.94 – €1164.69
Breach – level 3	3	Lm100 – 2000 €232.94 – €4658.75
Breach – level 4	4	Lm200 – 5000 €465.87 – €11646.87
Breach – level 5	5	Lm200 – 10000 €465.87 – €2393.73
Breach – level 6	6	Lm200 – €465.87 – €150, 000

2.1 Structure for administrative penalties in respect of late submission of documents

Breach of the Investment Services Rules

The Investment Services Rules stipulate various requirements for the submission of documents within set time-frames. In the instance when such time-frames are not complied with, and unless there are justifiable reasons for the delay, Licence Holders will be considered as breaching the relevant Licence Condition(s) and will be penalised accordingly.

The Submission of Documents/Fees etc

Documents may be submitted in various ways. The date of receipt will be as follows:

- If it is sent by fax, the date of receipt recorded by the fax machine;
- If it is sent by post, this will be the date indicated by the MFSA stamp evidencing receipt;
- If it is delivered by hand, on the date such delivery was made and recorded by MFSA.

Every effort should be made to ensure timely submission of documents. Penalties for late submission will apply if a document is not received on its due date.

MFSA's Discretion

The MFSA will use its discretion to decide what action to take in respect of Licence Holders who do not submit documents by their due date, after taking into consideration the reasons (if any) put forward by the Licence Holder for the delay.

Liability to an Initial and Daily penalty

Late submission gives rise to liability to an initial penalty and an additional daily penalty as indicated below. If the conditions imposed by MFSA are not met, the Authority reserves the right to take any further action it may deem adequate in the circumstances.

The following should be considered as guidelines in respect of fines that will be imposed by the Authority in respect of late submission of documents and should not be regarded as exhaustive.

Documents to be submitted by Investment Services Licence Holders

Unless otherwise agreed with the Authority the following documents/ fees are due as stipulated by the relevant Standard Licence Conditions of these Investment Services Rules or as otherwise provided for by Regulations issued under the Act:-

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	Initial Fine:	Daily Fine:
Licence Fee	Lm 10 – 200 €23.29 - €465.87	Lm 5 – 25 €11.65 - €58.23
Interim Financial Return	Lm 25 – 500 €58.23 - €1164.69	Lm 5 – 30 €11.65 - €69.88
Annual Financial Return	Lm 25 – 500 €58.23 - €1164.69	Lm 5 – 30 €11.65 - €69.88
Audited Financial Statements	Lm 25 – 500 €58.23 - €1164.69	Lm 5 – 30 €11.65 - €69.88
Auditors' Report to the MFSA	Lm 10 – 200 €23.29 - €465.87	Lm 5 – 25 €11.65 - €58.23