

## **INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS**

### **PART C: RULES FOR PERSONS EXERCISING EUROPEAN PASSPORT RIGHTS IN MALTA**

#### **Part C II: Rules for European Management Companies providing services in Malta**

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These Rules have been issued in terms of Regulation 9 of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011 which provides that a European management company pursuing activities through a branch within the territory of Malta shall comply with the provisions of the Investment Services Rules on conduct of business, and the competent authority shall be responsible for supervising compliance thereof.

In terms of Article 16 of the UCITS Directive (Directive 2009/65/EC) as partially transposed by the Investment Services Act (UCITS Management Company Passport) Regulations, 2011, a European Management Company may provide cross border services in Malta either by:

- a. establishing a branch in Malta; or
- b. providing services in Malta from its Home Member State under the freedom to provide services.

In terms of Article 17(5) of Directive 2009/65/EC, the MFSA shall assume responsibility for ensuring that the services provided by the branch within Malta comply with the obligations prescribed in Article 14 of the Directive.

The purpose of this Part is therefore to clarify which of the Standard Licence Conditions included in Part BII of these Investment Services Rules are also applicable to a European Management Company establishing a branch in Malta.

The following SLCs apply to European Management Companies providing services in Malta through the establishment of a branch:

#### **Organisational Requirements:**

- 1.01 European Management Companies providing services in Malta through the establishment of a branch shall, in so far as its branch operations in Malta are concerned:

- a. establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- b. ensure that the persons which it employs are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c. establish, implement and maintain adequate internal control mechanisms designed to ensure compliance with its regulatory requirements.
- d. employ personnel with the skills, knowledge and expertise necessary for the proper discharge of responsibilities allocated to them;
- e. maintain adequate and orderly records of their business and internal organisation.

For these purposes, the European Management Companies shall take into account the nature, scale and complexity of their business, and the nature and range of investment services and activities undertaken in the course of that business.

Other Requirements:

<b>Part BII:</b>	
SLC 3.02 to 3.12	Conflicts of interest
SLC 3.16 to 3.19	Duty to act in the best interests of the UCITS and their unit-holders
SLC 3.20 to 3.24	Due diligence requirements
SLC 3.25 to 3.29	Handling of subscription and redemption orders: Reporting obligations in respect of the execution of subscription and redemption orders
SLC 3.30 to 3.36	Best executions
SLC 3.37 to 3.42	Placing orders to deal on behalf of the UCITS with other entities for execution
SLC 3.43 – 3.44	Handling of orders
SLC 3.45 – 3.49	Aggregation and allocation of trading orders
SLC 3.50 – 3.51	Safeguarding the best interests of UCITS in inducements

With a view to ensuring compliance with the above-mentioned SLCs, European Management Companies should also take into account any relevant Guidance Notes issued by the MFSA from time to time.

### **Enforcement**

The attention of European Management Companies providing services in Malta on a cross border basis is drawn to Regulation 13 of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011 which lays down MFSA's powers with respect to the enforcement of, inter alia, the observance of the Rules indicated above by European Management Companies.

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