

## INVESTMENT SERVICES RULES FOR INVESTMENT SERVICES PROVIDERS

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

#### **Part C IV: Rules for Third Country AIFMs providing services in Malta**

**Note:** Part CIV will not be applicable with effect from 22<sup>nd</sup> July 2013.  
Part CIV will become applicable as determined by the MFSA in 'ad hoc' circulars which will be published for this purpose.

These Rules have been issued for the purposes of Regulation 21 of the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2012 which provides that a Third Country AIFM which has been authorised in a Member State or EEA State other than Malta and which has appointed as member state of reference such EU Member State or EEA State may manage a European AIF in Malta through the establishment of a branch provided that the third country AIFM is authorised to manage that type of AIF.

In terms of Article 41 of the AIFMD (Directive 2011/61/EC) as transposed by the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2012, a third country AIFM may provide cross border services in Malta either:

- a. by managing an AIF directly under the freedom to provide services; or
- b. by establishing a branch.

In terms of Article 45(2) of the AIFMD, the MFSA shall assume responsibility for ensuring compliance by the AIFM with Articles 12 and 14 in the case where the AIFM manages and/or markets AIFs through a branch in Malta.

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

The following SLCs apply to Third Country AIFMs providing services in Malta through the establishment of a branch:

#### Organisational Requirements:

1.01 A Third Country AIFM is expected to comply with the conduct of business rules prescribed hereunder. In particular the Third Country AIFM shall:

- (a) act honestly, with due skill, care and diligence and fairly in conducting its activities;
- (b) act in the best interests of the AIFs or the investors of the AIFs it manages and the integrity of the market;
- (c) have and employ effectively the resources and procedures that are necessary for the proper performance of its business activities;
- (d) take all reasonable steps to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs it manages is fairly treated;
- (e) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the AIFs or the investors of the AIFs it manages and the integrity of the market;
- (f) treat all AIF investors fairly.

Other Requirements:

| <b>Part BIII:</b>   |  |
|---------------------|--|
| SLC 3.01 to 3.04    | Conduct of Business  |
| SLC 3.07 to 3.14    | Conflicts of Interest  |
| SLCs 10.01 to 10.30 | Supplementary Licence Conditions applicable to AIFMs marketing AIFs in Malta to Retail Investors |

Furthermore, the Third Country AIFM shall also comply with the provisions of Commission Delegated Regulation supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

**Enforcement**

The attention of Third Country AIFMs providing services in Malta on a cross border basis is drawn to Regulation 24 of the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations, 2012 which lays down MFSA's powers with respect to the enforcement of and the observance of the Rules indicated above by Third Country AIFMs.