

INVESTOR COMPENSATION SCHEME

Circular to investment firms holding Category 1a, 1b, 2 or 3 licence

Subject: Request for data in connection with a review of the
Investor Compensation Scheme Regulations

Introduction

The Investor Compensation Scheme (ICS) in consultation with the MFSA is carrying out a review of the Investor Compensation Scheme Regulations¹ in relation to:

- (i) the criteria by which investment firms are required to participate in the ICS;
- (ii) the funding of the ICS; and
- (iii) the reporting obligations of investment firms for the purposes of the ICS.

Participation Criteria

The Investor Compensation Scheme Directive² lays down that all investment firms carrying on investment business must belong to an investor compensation scheme. By contrast, the Regulations establish that only Cat. 2 or Cat. 3 investment firms providing investment services to retail clients must belong to ICS. The Regulations therefore exclude:

- Cat. 1 investment firms authorised to receive and transmit orders in relation to one or more instruments and, or provide investment advice and, or place instruments without a firm commitment basis but not to hold or control clients' money or customers' assets; and
- Cat. 2 and Cat. 3 investment firms providing services to professional, institutional and other clients listed in the First Schedule of the Regulations.

As the Regulations are not in line with the Directive, the ICS will be recommending that appropriate amendments be made whereby investment firms which fall within the scope of the ICS Directive would belong to the ICS.

¹ Legal Notice 368 of 2003 ([link](#))

² Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes ([link](#))

The Investor Compensation Scheme in Malta is managed and administered by the Compensation Schemes Management Committee set-up under the Investor Compensation Scheme Regulations, 2003.

Postal address:
c/o Malta Financial Services
Authority
Notabile Road
Attard BKR3000
Malta

www.compensationschemes.org.mt

Voice: +356 2144 1155
Fax: +356 2144 1189
info@compensationschemes.org.mt

Correspondence and queries are to be addressed to the attention of the Secretary

Funding

The Regulations impose an annual fixed contribution (€2,911.72 for Cat. 2 firms, and €17,470.30 for Cat. 3 firms), and a variable contribution (amounting to 0.1% of total revenue of firms) which is held in reserve and on call in favour of the ICS.

The widening of ICS membership will need a restructuring of annual contributions to include the other categories of investment firms, namely Cat. 1 investment firms, and Cat. 2 and Cat. 3 investment which also provide services to non-retail clients.

Any such review must also ensure that the ICS is at all times adequately funded.

Reporting obligations

The changes which are likely to take place to the funding model will require participants to provide additional information to the ICS for the purpose of discharging its responsibilities.

At this stage, the ICS would like to gather more information from licence holders to be able to assess the impact of future changes to the funding model. For this purpose, all Cat. 1, 2, and 3 investment firms are being requested to provide business information on the attached form (see annexed *Statistical Return*). The purpose of this form is to assess the current ICS risk factors and determine any possible closer correlation between funding criteria and ICS risk factors. All returns will be treated under strict confidentiality, although the ICS reserves the right to publish aggregate market figures.

The Statistical Return should be received by the ICS by not later than 24 October 2014.

Dr Anton Felice
Chairman
Investor Compensation Scheme

19 September 2014

INVESTOR COMPENSATION SCHEME

STATISTICAL RETURN

(Explanatory notes overleaf)

To be submitted by Category 1, 2 and 3 investment firms

Name of investment firm	
Licence Number	
Licence Category	

1. NUMBER OF CLIENTS as at 31 December 2013

NUMBER UNDER NOMINEE as at 31 December 2013 of:	INVESTORS:	<input type="text"/>	NON- INVESTORS:	<input type="text"/>	TOTAL:	<input type="text"/>
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2. AMOUNT OF ASSETS PLACED OR INVESTED BY CLIENTS as at 31 December 2013

ASSETS HELD UNDER NOMINEE (in whichever currency as at as at 31 December 2013) by:	INVESTORS:	EUR* <input type="text"/>	NON- INVESTORS:	EUR* <input type="text"/>	TOTAL:	EUR* <input type="text"/>
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MONIES HELD UNDER NOMINEE (in whichever currency as at as at 31 December 2013) by:	INVESTORS:	<input type="text"/>	NON- INVESTORS:	<input type="text"/>	TOTAL:	<input type="text"/>
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* - This should include euro equivalent of any monies or assets which are held in a non-euro currency.

3. REVENUE

REVENUE for the period 1 January to 31 December 2013 placed by:	INVESTORS:	EUR <input type="text"/>	NON- INVESTORS:	EUR <input type="text"/>	TOTAL:	EUR <input type="text"/>
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I hereby certify that information contained in this Statistical return is correct.

Name and Surname: _____

Designation: _____

Date: _____ E-Mail: _____ Phone: _____

Please submit this return, duly signed, by not later than 24 October 2014

By mail: Geoffrey Bezzina (Secretary), Investor Compensation Scheme
Malta Financial Services Authority, Notabile Road, Attard, BKR 3000

By email: info@compensationschemes.org.mt

Definitions:

“**Assets held under nominee**” means financial instruments purchased by the **Licence Holder** in its own name and for the benefit of an **Investor**;

“**Investor Revenue**” means **Revenue** received or receivable from persons who fall within the definition of **Investor**;

“**Investor**” means any person who has entrusted money or instruments to a **Licence Holder** in connection with licenced business, to the exclusion of persons listed in the First Schedule of the Investor Compensation Scheme Regulations (see below);

“**Licence Holders**” means all investment firms holding a Category 1, 2 or 3 licence;

“**Monies held under nominee**” means monies held or received by the **Licence Holder** for an **Investor** and which exclude any money belonging to the **Licence Holder**;

“**Non-Investor Revenue**” means **Revenue** received or receivable from persons who fall within the definition of **Non-Investor**.

“**Non-Investor**” means any person who is not an **Investor**;

“**Revenue**” means all gross income received or receivable by a **Licence Holder** from its business activities which are licensable as Category 1, 2 or 3 under the Investment Services Act, including fees, commissions, gains or other profits and before deducting any costs or expenses in relation thereto;

“**Scheme**” means the Investor Compensation Scheme;

Extract from Legal Notice 368 of 2003

FIRST SCHEDULE - Exclusions

The following are excluded from claiming under the Scheme:

1. Persons carrying on investment services within the meaning of the Investment Services Act, or equivalent or similar foreign legislation;
2. Credit institutions carrying on the business of banking within the meaning of the Banking Act, or equivalent or similar foreign legislation;
3. Financial institutions within the meaning of the Financial Institutions Act, or equivalent or similar foreign legislation;
4. Insurance undertakings carrying on the business of insurance within the meaning of the Insurance Business Act and the Insurance Brokers and other Intermediaries Act, or under equivalent or similar foreign legislation;
5. Collective investment schemes;
6. Pension and retirement funds;
7. Companies which are of such a size that they are not permitted to draw up abridged balance sheets pursuant to the Companies Act, or under equivalent or similar foreign legislation;
8. Governments and administrative authorities, national and international institutions;
9. Local and municipal councils or authorities;
10. Debt securities issued by the same institution and liabilities arising out of own acceptances and promissory notes;
11. Persons holding accounts which do not disclose the investor's identity;
12. Companies and commercial partnerships in the same group as the licence holder;

13. Directors and managers of the relevant licence holder and members of the licence holder with personal liability, persons holding five percent or more of the capital of such licence holder, the auditors of the licence holder and persons of the same description with respect to a company forming part of the same group of companies as the licence holder;
14. Close relatives, that is, ascendants, descendants or the spouse of the persons referred to in paragraph 13;
15. Investors who have any responsibility for or have taken advantage of certain facts relating to a licence holder which gave rise to the licence holder's financial difficulties or contributed to the deterioration of its financial situation;
16. Investors in respect of transactions in connection with which a criminal conviction has been obtained for money laundering in terms of the Prevention of Money Laundering Act, or under equivalent or similar foreign legislation;
17. Nominees, trustees or other third parties acting on behalf or in the interest of the persons referred to in this Schedule to the extent of the funds held in such capacity;
18. Professional and institutional investors.