

# REPORT OF THE INVESTOR COMPENSATION SCHEME FOR 2018

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## Contents

Introduction.....	1
Management Committee .....	1
Meetings Of The Committee .....	2
Financial Statements as at 31 December 2018.....	2
List of Participants .....	2
Functions of the Scheme .....	3
Building the Fund .....	4
Protection of Funds .....	4
Procedures for the Payment of Claims.....	5
Investors' Claims.....	5
Consultation .....	6

## INTRODUCTION

In terms of regulation 8 of LN 368 of 2003 (the Investor Compensation Scheme Regulations 2003, hereinafter referred to as “the Regulations”), the Compensation Schemes Management Committee of the Investor Compensation Scheme (hereinafter referred to as “the Scheme”) is pleased to present its report on the discharge of its functions and its operations during 2018.

The Scheme’s audited financial statements as at the 31 December 2018 are also attached.

## MANAGEMENT COMMITTEE

In accordance with regulation 3 of the Regulations, the Scheme is managed and administered by a Management Committee (hereinafter referred to as “the Committee”) appointed by the Malta Financial Services Authority

### *Chairman*

Mr Robert Caruana (appointed on 23 April 2018)  
Dr Anton Felice (resigned on 29 March 2018)

### *Members*

Mr Benny Borg Bonello (resigned on 31 December 2018)  
Mr James Bonello (resigned on 31 August 2018)  
Mr George F Farrugia  
Mr Kenneth Farrugia  
Dr Massimo Vella (resigned on 31 December 2018)  
Mr Oliver Bonello (resigned on 29 August 2017)  
Mr Silvio Galea (appointed on 23 April 2018)  
Mr Karol Gabarretta (appointed on 1 September 2018)  
Dr Edmond Zammit Laferla (appointed on 8 May 2019)

Dr Mauro Magro (appointed on 8 May 2019)

*Secretary*

Mr Aldo Giordano

## **MEETINGS OF THE COMMITTEE**

The Management Committee held 12 meetings during 2018.

## **FINANCIAL STATEMENTS AS AT 31 DECEMBER 2018**

The Scheme registered a surplus of €5,702 in 2018 compared to €20,788 registered in 2017. Management and administration expenses amounted to €42,543 (2017: €28,877).

Accumulated funds and reserves amounted to €2,078,921 (2017: €1,905,922). Of the capital and reserves the sum of €93,169 (2017: €85,458) is held on deposit as part of the variable contribution of licence holders. A further €139,954 (2017: €130,317) is held by participants in a reserve (the “Investor Compensation Scheme Reserve”) which is pledged to the Scheme and is payable on call whenever the Scheme’s funds are inadequate.

## **LIST OF PARTICIPANTS**

AKFX Financial Services Ltd  
ALB Forex Trading Limited  
Alpha Value Management Limited  
APS Bank Limited

AQA Capital Limited  
Atlington Capital Management Ltd  
Bank of Valletta plc  
Binary Investments (Europe) Limited  
Blue Suisse Limited  
Brokersclub Limited  
Calamatta Cuschieri & Co. Limited  
Charts Investment Management Services Limited.  
Citco Custody Limited  
Crystal Finance Investments Limited  
Curmi & Partners Limited  
Diaman Partners Ltd  
D.B.R. Investments Limited  
Dolfin Asset Services Ltd  
Domino Europe Limited  
FABAR Wealth Management Limited  
Fair-finance asset Management Limited  
FCS Asset Management Limited  
Fexserv Investment Services (Malta) Limited  
Financial Planning Services Limited  
Finco Treasury Management Limited  
Framont & partners management Limited  
FXDD Malta Limited Investment Services  
Gamma Capital Markets Limited  
Gamma Capital Trader Limited  
Global Capital Financial Management Limited  
Growth Investments Limited  
Heptagon Capital Limited  
Hogg Capital Investments Limited  
Horus Malta Limited  
HSBC Bank (Malta) plc  
Huber & Partners Limited  
Integra Private Wealth Limited  
Intrepid Capital Limited  
Jesmond Mizzi Financial Advisors Limited  
Joseph Scicluna Investment Services Limited  
LL Capital & Partners Limited  
Lombard Bank Malta plc  
M.Z Investment Services Limited  
Medina Asset Management Limited

MeDirect Bank (Malta) plc  
Michael Grech Financial Investment Services Limited.  
MPM Capital Investments Limited  
NBG Bank Malta Limited  
Nextmarkets Trading Limited  
Nemea Bank plc  
Nord Hedge Asset Management Limited  
Novofina Limited  
NSFX Limited  
Pilatus Bank Limited  
Rizzo, Farrugia & Co. (Stockbrokers) Limited.  
Skilling Group Limited  
Sparkasse Bank Malta plc  
Tendall Capital Markets Limited  
Timberland Fund Management Limited  
TMS Brokers Europe Limited  
TradExec (TEX) Limited  
Van Sterling Capital Limited  
Vatas Asset Management Limited  
Zarattini International Limited  
Zenith Finance Ltd

## FUNCTIONS OF THE SCHEME

The Regulations transpose Directive 97/9/EC on investor-compensation schemes. In terms of regulation 19 thereof, the Scheme is required to provide for the payment of compensation for claims arising out of the licence holder's inability to:

- a) repay money owed to or belonging to investors and held on their behalf in connection with licensed business; or
- b) return to investors any instruments belonging to them and held, administered or managed on their behalf in connection with licensed business or, where this is not possible, their monetary equivalent or value.

In both scenarios, the law clearly sets out that compensation is due in situations where the investment firm cannot return monies or instruments held by itself on behalf of the investor. The trigger for the submission of such claims is an MFSA determination that an investment firm is insolvent, whilst still holding client's monies/instruments. As soon as this happens, the Scheme has three months in which to pay out compensation in respect of loss of monies/instruments held by the investment firm on behalf of investors, subject to the maximum amount set out in the Regulations (which stands at €20,000 per investor).

- c) The Scheme in accordance with the provisions set out in article 26 (3) (e) of the Arbitration for Financial Services Act XVI of 2016 is also required to settle any judgment or award up to EUR 20,000, in respect of any civil liability which is obtained by an investor against a participant in regard to licensed business in respect of which there is a determination.

The maximum amount of compensation pay out to an investor shall be not more than €20,000 in total, inclusive of any payout made under the Regulations.

Furthermore, in terms of regulation 4, the functions of the Scheme are:

- (a) To maintain a fund for the payment of claims for compensation by investors;
- (b) To place contributions to the fund on deposit or to invest such funds;
- (c) To establish procedures and arrangements for the payment of claims for compensation by investors;

- (d) To handle and pay claims for compensation by investors; and  
To advise the Malta Financial Services Authority on matters relating to compensation of investors.

## **BUILDING THE FUND**

The first function of the Scheme is to build and maintain a fund for the payment of claims to investors.

### *Fixed Contributions*

All Category 2 and Category 3 participants reported to the Scheme by the Malta Financial Services Authority as being licensed to provide investment services to private individuals are required to pay a Fixed Contribution to the Scheme.

The Fixed Contribution is established in the Second Schedule of the Regulations at €2,911.72 for Category 2 licence holders and at € 17,470.30 for Category 3 licence holders. The Fixed Contributions for 2018 amounted to €373,505 (2017: €364,254).

### *Variable Contributions*

The Second Schedule of the Regulations also provides for participating licence holders to maintain an Investor Compensation Scheme Reserve to be accounted for in the financial year when the Fixed Contribution is paid.

Participating licence holders are required to transfer to this Reserve a “variable contribution” which cannot be less than €698.81. Annually, licence holders are required to adjust their variable contribution such that the amount held on Reserve would be equivalent to 0.1%

of their total revenue (as at the previous financial year end). Licence holders may top-up, but not draw, from the Reserve. The Regulations provide that the said Reserve is to be invested by the licence holder with a third party who is approved by the Scheme.

The majority of participants have pledged their investments to the Scheme in terms of guidelines which were issued in 2004 and hold the minimum of €698.81 by way of Reserve.

Some participants took the opportunity to pay the amount of the Variable Contribution directly to the Scheme. The Management Committee determined that the payment of the variable contribution to the Scheme shall be on account against a potential claim on the Scheme, which may call on these funds in terms of regulation 16. No interest shall be payable by the Scheme to the licence holder on funds deposited with the Scheme.

The Statement of changes in funds in the attached financial statements explains the amounts held by licence holders and pledged in favour of the Scheme. This amounts to €139,954. The Statement also shows the variable contribution paid directly to the Scheme. This is indicated as part of the Scheme’s net assets and amounts to €93,169.

## **PROTECTION OF FUNDS**

The second function of the Scheme is to protect and safeguard the fixed and variable contributions that are transferred or transferable by participating licence holders to the Scheme.

The Management Committee is required to deposit or invest the fixed contributions that are made to the fund, until such time as they are required for the payment of claims for compensation by investors.

In the performance of this task and in accordance with regulation 7, the Committee appointed the Central Bank of Malta to provide investment management services including financial, accounting and other related support services. The agreement with the Central Bank, in force since 2003 and revised in 2011, includes parameters for the investment of funds by the Central Bank of Malta on behalf of the Scheme. These parameters apply prudent investment criteria that take account of both the short and long term liquidity requirements of the Scheme.

### **PROCEDURES FOR THE PAYMENT OF CLAIMS**

The third function of the Scheme is to establish procedures for the payment of claims for compensation by investors.

In this connection, the Committee is required to inform the general public about the procedures and arrangements for claiming against the Scheme. Users can obtain information about the Scheme from its website. ([www.compensationschemes.org.mt](http://www.compensationschemes.org.mt)),

Regulation 11 and 35 require the Committee to consult the relevant Compensation Schemes in other countries for the purpose of assessing appropriate and feasible procedures by

which investors may claim against the respective Schemes. Claims against foreign schemes may follow defaults by branches in Malta of an investment services provider licensed in another Member State.

During the year, there were no participants with branches outside Malta.

### **INVESTORS' CLAIMS**

The fourth function of the Scheme is to handle and pay claims to investors.

On 11 August 2014, the MFSA made a determination to the effect that Maltese Cross Financial Services Limited was unable to meet its obligations arising from claims by its investors for reasons which are directly related to its financial circumstances.

On paying compensation, the ICS became subrogated in the investors' rights and claims. The aforesaid subrogation shall not prejudice any claims that the investor may have for amounts in excess of the amount paid by the ICS. The Scheme has paid €2,414,156.

The Scheme continues to pursue recoveries on the basis of such subrogation.

On 4 October 2017, the MFSA made a determination in terms of regulation 13 of the Regulations to the effect that All Invest Company Limited was unable to meet its obligations arising from claims by its investors for reasons which are directly related to its financial circumstances.

During 2018, the Scheme continued to accept claims made by investors following decisions by the Arbiter for Financial Services. The Scheme has paid €755,226 up to December 2018.

On paying any compensation, the Scheme became subrogated in the investor's rights and claims against All Invest Company Limited and against any other party solely with respect to the recovery of the compensation paid by the Scheme. The aforesaid subrogation shall not prejudice any claims that the investor may have for amounts in excess of the amount paid by the Scheme.

It is estimated that the Scheme might still be liable for another €300,000.

Authority on matters relating to investors' compensation.

The ICS has advised the MFSA to issue a consultation report that reviews the participation and financing requirements of the Scheme. In drawing up this consultation report the Scheme has examined whether funding is adequate to meet future potential claims. The consultation report also took account of new loss events which will be required to be covered by the Scheme in virtue of the Arbiter for Financial Services Act, 2016.

A subcommittee has been appointed, following the feedback received from stake holders. The subcommittee is discussing the different methods of calculating contributions and will be publishing a feedback statement after the Committee's decision on the method adopted. This work is still ongoing.

## **CONSULTATION**

The fifth function of the Scheme is to advise the Malta Financial Services

**Robert Caruana**

***Chairman – Compensation Schemes Management Committee***

29 May 2019

*Attachment: Audited Financial Statements of the Investor Compensation Scheme for 2018*