

INVESTOR COMPENSATION SCHEME

M A L T A

CONSULTATION DOCUMENT

CONSULTATION ON AMENDMENTS TO THE INVESTOR COMPENSATION SCHEME
REGULATIONS ISSUED UNDER THE INVESTMENT SERVICES ACT

Date: 01 June 2022

Closing Date: 15 June 2022

Contents

Preamble	3
1.1 Background:	3
1.2 Purpose of this Note for Consultation:	4
1.3 Overview of the proposed changes	4
1.4 Details of the proposed contribution amendments	5
1. Variable Contribution.....	5
2. Fixed Contribution	6
3. Extraordinary Compensation Contribution.....	6
Consultation and how to respond	6
The proposed amendments.....	7
1. Regulation 2: Add the following new definitions:.....	7
2. Regulation 11 (1) shall be substituted with the following:	8
3. Regulation 12 shall be substituted with the following new regulations:	8
4. Regulation 17 (2) shall be substituted with the following:	14
5. Regulation 19 shall be substituted with the following:	15
6. Regulation 22 shall be substituted with the following:	15
7. Regulation 26 shall be substituted with the following:	16

Preamble

1.1 Background:

In November 2016, the Investor Compensation Scheme (“Scheme”) consulted interested parties on proposed amendments to the Investor Compensation Scheme Regulations S.L 370.09¹ (“Regulations”). The main element of the amendments was a change in the contribution method applicable for each participating firm, from that based on revenue to that based on number of clients. The need for a change in the contribution method was to strengthen the financial means of the Scheme, which were deemed to be inadequate. Furthermore, the amendments proposed in 2016 were made in the context of the requirement under article 26 (3) (e) of the Arbitrator for Financial Services Act 2016², in which the Scheme became obliged to settle any judgment or award for up to €20,000, in respect of a determination of civil liability which is obtained by an investor against a financial services provider.

Various submissions were made by investment firms and Representative Bodies during the consultation phase, which were duly considered by the Scheme. However, the proposed amendments were suspended because at the time, the Scheme encountered difficulties in implementing the amendments related to clients-based contributions. As a result, the Management Committee of the Scheme decided to revise the contributions method proposed in the consultation document issued in 2016 (original consultation document) by reverting to a revenue-based method.

However, as a result of enhanced systems within the Malta Financial Services Authority (“MFSA”), more reliable clients data has been available, as a result of which, the Scheme can now have a clearer picture of its covered liability in connection with eligible investors.

Furthermore, the MFSA has revised the license categories of investment firms. Such measure may have an impact on the manner the Scheme will identify its participating firms and on the contribution amount payable by each firm.

These developments prompted the Scheme to re-consider its position regarding the contribution method and consequently, a new contribution method is being proposed in replacement of the one proposed in the original consultation document. Additionally, some of the amendments proposed in the original document have been modified in order to address to the extent possible the concerns raised by respondents of the document and also to mitigate the effect of the change in license categories on the Scheme.

The newly proposed contribution method retains the principle that, as far as possible, contributions reflect the risk on the Scheme. However, under the new method, the risk factor is limited to the number of clients and the type of client relationship.

¹ Compensation Scheme Regulations S.L 370.09 - [View Document \(legislation.mt\)](#)

² Arbitrator for Financial Services Act 2016 - [View Document \(legislation.mt\)](#)

1.2 Purpose of this Note for Consultation:

The purpose of this document is to consult again interested parties on a modified version of the amendments to the Regulations proposed in 2016, in response to the developments mentioned in Section 1.1 of this document. These amendments are necessary in order to:

- (a) To bring the Regulations more in line with the Investor Compensation Scheme Directive 97/9/EC³ ("ICSD");
- (b) To revise the current contribution method in a way that brings a reasonable balance, between the regulatory needs of the Scheme and the ability of participating firms to finance the Scheme with a limited impact on their financial resources;
- (c) To amend further the regulations and the contributions method in accordance with the afore-mentioned developments; and
- (d) as far as possible, address the concerns raised by respondents of the original consultation document.

1.3 Overview of the proposed changes

1. It is being proposed that appropriate amendments be made to ensure that all investment firms which fall within the scope of the ICSD should participate in the Scheme. This requirement stems from Article 2 (1) of the ICSD, which states inter alia that "no investment firm authorised in a Member State may carry on investment business unless it belongs to an investor compensation scheme." Such an amendment would require the participation by all investment firms licensed by MFSA, even where such firms provide services solely and exclusively to non-retail clients. As an exception, collective investment schemes or fund managers, trustees or custodians of collective investment schemes would not be required to participate, as their services fall outside the scope of the Markets in Financial Instruments Directive⁴ - MiFID II and the ICSD participation requirements.
2. The method for calculating the contributions payable to the Scheme will be amended by modifying the two contribution components currently in place, namely the Variable Contribution and the Fixed Contribution. Furthermore, an Extraordinary Compensation Contribution will be levied where the available funds of the Scheme are not adequate to meet compensation obligations.
3. It is also proposed that participants may be required to pay a Management Expenses Contribution at least once in every financial year if the Scheme considers that the funds available to it to meet management expenses in that financial year will be insufficient.
4. In view that the licences of investment firms shall be revised, the new contributions method will not take into account any differences between categories of participating firms.
5. It is also recommended that all compensation payments will be made in euro. Where the monies or instruments owed to or belonging to eligible investors are in a currency other than the euro, the exchange

³ Investor Compensation Scheme Directive 97/9/EC - [Eur-Lex-31997L0009 \(europa.eu\)](#)

⁴ Markets in Financial Instruments Directive - [Eur-Lex - 02014L0065-20200326 \(europa.eu\)](#)

rate used will be the applicable euro foreign exchange reference rate quoted by the European Central Bank on the date of the determination.

6. The wording in regulation 22 shall be amended to make it clear that, upon payment of compensation, the Scheme is immediately and automatically subrogated by operation of the law into all the rights of the investor, up to the amount of the compensation paid, against the licence holder and any other third party. The wording is thus aligned to the general principle in the Civil Code, which is applicable today, and confers a general right of subrogation in favour of the Scheme to all rights of the investor.

1.4 Details of the proposed contribution amendments

1. Variable Contribution

The Variable Contribution that should be payable by any participating firm should be proportional to the volume of assets eligible for compensation held by such firm. This assessment will rely on:

- a) the number of clients rather than the value of clients' assets, on the basis that the volume of assets eligible for compensation by the Scheme is capped at €20,000 per eligible investor; and
- b) the relative risks posed by the firm to the Scheme where the services offered to its clients are either on a nominee basis or a non-nominee basis.

Furthermore, in response to the feedback received from respondents of the original consultation document, the Scheme is now reviewing its Variable Contribution rates as follows:

- a) The target Variable Contribution rate will be 0.15 percent. This is a significant reduction from the rate of 0.5 percent proposed in the original consultation document.
- b) The target Variable Contribution rate will be adjusted to reflect the different risks on the Scheme regarding nominee and non-nominee clients, as per the following contribution calculation formula:

Number of nominee clients x €20,000 x 0.2%

plus:

Number of non-nominee clients x €20,000 x 0.1%

Furthermore, the original proposal for a minimum Variable Contribution is being withdrawn, as a result of which, any participating firm which does not provide any service to retail clients shall not be required to pay a Variable Contribution.

Additionally, it is proposed that the target level for Variable Contributions be built up over a transitional period of five years, commencing on 1 January 2023, in order to smoothen the burden of such payments for the industry. The contribution rates during the transitional period are shown in the table below:

Year	Nominee clients	Non-nominee clients
2023	0.04%	0.02%
2024	0.08%	0.04%
2025	0.12%	0.06%
2026	0.16%	0.08%
2027 and for each year thereafter	0.2%	0.1%

2. Fixed Contribution

It is also proposed that the current Fixed Contribution would be retained as a participation fee which will be payable annually. The Fixed Contribution will be an important source of funding for the Scheme, which is intended to mitigate the effect of:

- a) the significant reduction in the Variable Contribution rate in comparison with that originally proposed; and
- b) the withdrawal of the minimum Variable Contribution.

Moreover, the Fixed Contribution amount will be revised as a result of the change in the licensing of investment firms mentioned in section 1.3, as follows:

- a) the annual Fixed Contribution amounts currently in place for Category 2 and Category 3 Investment Services license holders will be replaced by a standard Fixed Contribution amount of €4,000 payable annually by every participating firm; and
- b) every participating firm will be required to pay the Fixed Contribution.

3. Extraordinary Compensation Contribution

Where the available financial means of the Scheme are not adequate to cover all liabilities of the Scheme, an extraordinary Compensation Contribution should be levied in the form of a Variable Contribution. It is recommended that the extraordinary Compensation Contribution amount that would be required from each participating firm should not exceed the regular Variable Contribution amount payable by the firm.

Consultation and how to respond

Any feedback on the proposed amendments should reach the MFSA by not later than . Please send your responses by e-mail to: communications@mfsa.mt and/or info@compensationschemes.org.mt

The proposed amendments

1. Regulation 2: Add the following new definitions:

"available financial means" means cash, deposits and low-risk assets which can be used for the purposes laid down in regulation 19 and Payment Commitments up to the limit set out in regulation 12A (2);

"client" means any eligible investor who has entrusted money or instruments to a licence holder in connection with licensed business;

"covered liability" in relation to a participant means the maximum amount of compensation specified in regulation 17 (1) multiplied by the total number of clients of the said participant;

"eligible investor" means any investor who is not excluded from compensation in terms of the First Schedule of the "Regulations";

"licence holder" means any person who holds a licence to carry out investment services business in terms of the Act, to the exclusion of collective investment schemes or fund managers, trustees or custodians of collective investment schemes;

"financial year" means the financial year of the Scheme which shall be an accounting period of twelve months ending on the thirty-first day (31st) of December of each year;

"low-risk assets" means items falling into the first or second category referred to in Table 1 of Article 336 of Regulation (EU) No 575/2013 or any assets which are considered to be similarly safe and liquid by the competent authority;

"management expenses" means expenses incurred, or expected to be incurred, by the Scheme in connection with its objective and functions under these regulations other than those incurred in paying compensation pursuant to regulation 19;

"nominee client" means any client who transfers monies or financial instruments into the name of a license holder in order to facilitate transactions, while the client retains ownership of the transferred assets;

"non-nominee client" means any client who is provided with an investment service by a license holder, without transferring any monies or financial instruments into the name of the license holder;

"participant" means every license holder participating or required to participate in the Scheme;

"Payment Commitments" means Payment Commitments of a participant towards the Scheme in accordance with regulation 12A (2), which are fully collateralised provided that the collateral:

(a) consists of low risk assets; and

b) is unencumbered by any third-party rights and is at the disposal of the Scheme;

Delete the following definitions:

"licence holder" means any person who holds a licence to carry out investment services business in terms of the Act;

"investor" means any person who has entrusted money or instruments to a licence holder in connection with licensed business, to the exclusion of persons listed in the First Schedule;

2. Regulation 11 (1) shall be substituted with the following:

11 (1) Every licensed holder which is licenced in terms of the Investment Services Act or any subsidiary legislation thereunder, shall participate in and contribute to the Scheme:

Provided that:

(a) licensed holders, which provide services solely as collective investment schemes or as fund managers, trustees or custodians of collective investment schemes, shall not be required to participate and contribute to the Scheme;

(b) a branch of a licence holder operating in Malta which is licensed in a non-EEA state shall participate in and contribute to the Scheme, unless the Scheme has in force an agreement with the authority responsible for the management and administration of the scheme in that other state stipulating, inter alia, that the level or scope of cover provided for eligible investors in that state is equal to or exceeds the level or scope of cover in Malta;

(c) a branch of a licence holder operating in Malta which is licensed in an EEA state may at its own option, participate in and contribute to the Scheme, only where the level or scope of the Scheme in Malta exceeds the level or scope of cover provided in the EEA state in which it is licensed.

3. Regulation 12 shall be substituted with the following new regulations:

12A (1) The available financial means of the Scheme shall comprise the compensation contribution, which shall be paid by every participant. Such compensation contribution shall be composed of a Variable Contribution and an annual Fixed Contribution.

(a) The target level for the Variable Contribution shall be based on a two-tier percentage of the covered liability of all participants, consisting of 0.2 percent and 0.1 percent of the covered liability regarding nominee clients and non-nominee clients respectively. The Variable Contribution shall be payable in the financial years and according to the respective percentage rates specified hereunder:

Year	Nominee clients	Non-nominee clients
2023	0.04%	0.02%
2024	0.08%	0.04%
2025	0.12%	0.06%
2026	0.16%	0.08%
2027 and for each year thereafter	0.2%	0.1%

(b) The annual Fixed Contribution shall amount to €4,000 and shall be payable by every participant, irrespective of the number of clients of participant.

Provided that:

- (i) where a client is provided with both nominee and non-nominee services, the client should be counted as one nominee client for the purpose of calculating the Variable Contribution;
- (ii) where a new license holder joins the Scheme as participant part-way through a financial year, the Fixed Contribution payable by such participant during that financial year shall be calculated pro-rata according to the number of remaining days of the same year;
- (iii) the competent authority may by virtue of investor compensation rules pursuant to regulation 12K establish different percentage rates of Variable Contribution and / or a different annual Fixed Contribution amount for every participant;
- (iv) where the Variable Contributions fall short of the target level established for such contributions, the payment of Variable Contributions shall resume at least until the target level is reached again;
- (v) if the Variable Contributions have been reduced to less than two-thirds of such target level, the regular Variable Contribution shall be set at a level allowing such target level to be reached within six years;
- (vi) the regular Variable Contribution and Fixed Contribution shall take due account of the phase of the business cycle, and the impact procyclical contributions may have when setting annual contributions in the context of these regulations.

(2) The Variable Contributions may include Payment Commitments.

Provided that:

(a) the total share of Payment Commitments shall not exceed 30% of the total amount of Variable Contributions raised in accordance with this regulation;

(b) the Payment Commitments amount in respect of a participant shall not be less than €3,000; and

(c) the competent authority may issue investor compensation rules pursuant to regulation 12K in order to prescribe such other amount of payment commitment as it may determine.

(3) The Scheme shall ensure that it has in place adequate alternative funding arrangements to enable it to obtain short-term funding to meet claims against the Scheme.

(4) The available financial means shall be used in order to repay eligible investors pursuant to these regulations

12B The Scheme may at any time require participants to pay the following contributions:

(a) Compensation Contribution

(b) Management Expenses Contribution.

12C(1) Subject to regulation 12A (1), the Scheme shall, with effect from 1st January 2022, require participants to pay a Compensation Contribution at least once in every financial year. The Compensation Contribution shall be paid in the form of a Variable Contribution and an annual Fixed Contribution, which shall be allocated to the available financial means. Subject to the provisions of sub-regulation (2), a portion of the Compensation Contribution due by each participant for each financial year may be provided to the Scheme by means of a payment commitment.

(2) If the available financial means of the Scheme are insufficient to compensate eligible investors after a determination in accordance with regulation 13, the Scheme shall require participants to pay an extraordinary Compensation Contribution not exceeding the regular Variable Contribution amount payable by each participant. The Scheme may in exceptional circumstances and with the consent of the competent authority require higher extraordinary Compensation Contributions.

(3) The Variable Contribution (including any extraordinary Compensation Contribution) shall be based on the amount of covered liabilities of each participant. For the avoidance of doubt and saving the provisions of these regulations, the Variable Contribution shall be determined by the Scheme for each participant having regard to:

(a) the applicable percentages of the covered liabilities of all participants as specified in regulation 12A (1); and

(b) the covered liabilities of each participant at the end of the year immediately preceding the relevant financial year;

(4) Notwithstanding the provisions of sub-regulation (3), if a participant does not comply with the obligations incumbent on it under regulation 26, or if it does not provide to the Scheme the statement referred to under the sub-regulation (6) of the said regulation by the date on which it is due, the participant's Variable Contribution will be calculated using (where relevant or available) the participant's total covered liabilities applicable to the previous period, multiplied by a factor of 1.20 or on any other reasonable basis in the discretion of the Scheme.

(5) In addition to the provisions of sub-regulation (3), every participant shall every financial year pay to the Scheme a Fixed Contribution amounting to €4,000.

(6) Subject to the provisions of sub-regulations (3) and (4), the competent authority may in virtue of investor compensation rules establish a method (hereinafter referred to as the "Compensation Contribution method") to establish the amounts due by each participant for each financial year regarding the Variable Contribution, the Payment Commitment and the Fixed Contribution: Provided that the competent authority may review or amend any such Compensation Contribution method.

(7) Any payment commitment shall become payable to the Scheme on the Scheme's demand. The payment commitment of a participant shall also become payable to the Scheme whenever that participant ceases to be licensed in Malta for any reason whatsoever.

(8) Details on the type of assets which may be accepted as collateral for Payment Commitments and on the modalities used to implement such Payment Commitments may be specified by investor compensation rules.

(9) The value of assets comprising collateral for the Payment Commitments shall be the market value of such assets, determined in accordance with such discounting rules ("Valuation Haircuts") as shall be established by investor compensation rules.

(10) The assets comprising collateral for the Payment Commitments shall be denominated in euro.

(11) A participant may not switch from one asset comprising collateral for the Payment Commitments to another asset, without the prior written consent of the Scheme.

(12) A participant may, with the prior approval of the Scheme, pay the equivalent amount of the Payment Commitment directly with the Scheme, in which case such payment shall be on account of the participant's liability under sub-regulation (1) and the provisions of this regulation shall, where applicable, also be applicable to such payment. No interest shall be payable by the Scheme to the participant in respect of such payment. The Scheme may, in its absolute discretion, request the participant to substitute such payment with the Payment Commitment due under these regulations.

12D(1) The Scheme may, with effect from 1st January 2022, require participants to pay a Management Expenses Contribution at least once in every financial year if it has reasonable grounds to believe that the funds available to it to meet management expenses in that financial year are, or will be, insufficient. Provided that:

Where an investment firm becomes a participant of the Scheme part way through a financial year, the Management Expenses Contribution payable by such participant during that financial year shall be calculated pro-rata according to the number of remaining days of the same year.

(2) The Scheme shall apply any amount collected from a Management Expenses Contribution to the payment of management expenses, and shall not treat such funds as available financial means of the Scheme.

(3) Subject to the proviso in sub-regulation (1), the competent authority may by investor compensation rules pursuant to regulation 12K establish a method (hereinafter referred to as the "Management Expenses Contribution method") for determining the amount of Managements Expenses Contribution due by each participant in any financial year: Provided that the competent authority may review or amend any Management Expenses Contribution method.

12E(1) The Scheme shall assess at least once in every financial year the Compensation Contribution and the Management Expenses Contribution for each participant in respect of the relevant financial year in accordance with these Regulations.

(2) The Scheme shall give notice to each participant about the amount of its Compensation Contribution and its Management Expenses Contribution in respect of any relevant financial year. The obligation of the participant towards the Scheme in respect of such Contributions for any relevant financial year shall be deemed to arise on the date of such notice.

(3) A participant which is aggrieved by any such assessment may request the Scheme to reconsider such assessment.

(4) A request for reconsideration shall be made within thirty days from notification of the assessment and may not be made concurrently with an appeal.

(5) The request for reconsideration shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended.

(6) On receipt of a request for reconsideration, the Scheme may require the participant making the request to furnish such information as the Scheme may deem necessary.

(7) In the event that the Scheme accedes to the request for reconsideration, and upon reassessment of the amount of the contribution in writing, amends the contribution due, the assessment shall be amended accordingly, and notice of the amount of contribution payable shall be notified upon such participant:

Provided that if the Scheme does not accede to the request for reconsideration, the participant is duly informed in writing.

(8) Should the Scheme, upon reassessment of the amount of the contribution payable in writing, not adjust the contribution due, notice thereof shall be given to the participant:

Provided always that in the event of any participant who has applied for a reconsideration upon failing to agree with the Scheme on such assessment, its right of appeal against the assessment shall remain unimpaired.

(9) A participant may not appeal against an assessment of the contribution unless it has first exhausted its right to a reconsideration of such assessment.

(10) An appeal shall be filed against the Scheme and made to the Financial Services Tribunal under article 19 of the Act, within thirty days of service of the notice to the participant of the notice of the assessment referred to in sub regulation (8). The request for an appeal shall include a written document stating precisely the reasons for such a request, and the manner in which it considers that the assessment should be amended. The Financial Services Tribunal shall have all the powers conferred upon it by article 21 of the Malta Financial Services Authority Act. Saving the provisions of these Regulations, the provisions of article 21 of the Malta Financial Services Authority Act shall apply mutatis mutandi to appeals that may be brought before the Financial Services Tribunal under these Regulations, so however that any reference in article 21 to the Competent Authority shall include a reference to the Scheme.

(11) An appeal on a question of law only from a decision of the Financial Services Tribunal shall lie to the Court of Appeal in its superior jurisdiction. An appeal shall be made by not later than twenty days from the date of the decision of the Financial Services Tribunal. In the determination of such an appeal, the Court of Appeal shall be constituted in terms of article 41(6) of the Code of Organisation and Civil Procedure. An appeal from a partial decision of the Financial Services Tribunal may only be filed together with an appeal from the final decision of the Financial Services Tribunal.

(12) Where an assessment as referred to in sub-regulation (1) has not been appealed, or where such assessment has been agreed in accordance with sub-regulation (7), or where such assessment has been appealed, within fifteen days of the date when the decision of the Financial Services Tribunal or the Court of Appeal has become a res judicata, the assessment as contained in the notice of the Scheme or as reduced or increased by the decision of the Tribunal or the Court of Appeal shall be due to the Scheme.

(13) Upon the service of a copy of the notice or of the decision, as the case may be, by means of a judicial act on the participant indicated in the notice or decision, the said notice or decision shall constitute an executive title for all effects and purposes of Title VII of Part I of Book Second of the Code of Organization and Civil Procedure.

12F(1) The calculation of contributions shall take into account previous contributions, where contributions raised prove either more or less than the amount actually due in accordance with these regulations.

(2) The Scheme may adjust the calculation of a participant's share of any contribution to take proper account of any or all of the following:

(a) any excess or shortfall, not already taken into account, between previous contributions of the same type assessed in relation to previous financial years and the relevant contributions actually due in that financial year;

(b) amounts that the Scheme has not been able to recover from participants for any reason whatsoever;

(c) payments deferred under regulation 12H;

(d) anything else that the Scheme believes on reasonable grounds should be taken into account.

(3) The Scheme may reduce, remit, or refund any overpaid contributions paid by a participant in respect of any particular financial year, or adjust the calculation of a participant's share of any contribution, wherever there is a mistake of law or of fact, unless the reduction, remit, refund or adjustment is in respect of a contribution which is prescribed in accordance with regulation 12G (9).

(4) A participant who ceases to be a participant of the Scheme for whichever reason shall not be entitled for any refund of payments to the Scheme in respect of its contributions.

12G(1) A participant shall pay to the Scheme its:

(a) Compensation Contribution; and

(b) Management Expenses Contribution.

(2) A participant's contribution shall be due on and payable within, thirty days of the date of the notice of an assessment pursuant to regulation 12E (2).

(3) Where a participant requests a reconsideration or files an appeal against an assessment of the contribution, such request or appeal shall not delay the payment deadlines set out in sub-regulation (2). Such participant shall be entitled to a refund from the Scheme of any amount of contribution paid in excess of the amount which is agreed in accordance with regulation 12E (7), or where such assessment has been appealed, of the amount which is finally determined as due by a decision of the Financial Services Tribunal or the Court of Appeal which has become a res judicata.

(4) If a participant ceases to be a participant part way through a financial year of the scheme, it will remain liable for any unpaid contributions.

(5) If a participant does not pay the total amount of its contribution, before the end of the date on which it is due, it shall pay an additional amount to the Scheme as follows:

(a) if the contributions was not paid in full before the end of the due date, an administrative fee of five hundred euro (€500); and

(b) interest on any unpaid part of the contribution at the rate of 12% per annum, accruing on a daily basis from the date on which the amount concerned became due.

(6) Where the Scheme decides to sue for the recovery of a contribution, administrative fee or interest due to it by a participant under these regulations, the Chairperson or an officer of the Scheme duly authorised by the Scheme to act on its behalf may make a declaration on oath before the Court Registrar or before any other officer authorised to administer the oath in judicial matters, wherein he states the nature of the debt and the name of the participant and confirm that it is due.

(7) Saving the provisions of regulation 12E (12), the declaration referred to in sub-regulation (6) shall be served upon the participant by means of a judicial act and it shall have the same effect as a final judgement of the

competent court unless the participant shall, within a period of twenty days from service upon him of the said declaration, oppose the claim by filing an application stating precisely the reasons for such opposition and demanding that the court declare the claim unfounded.

(8) The application filed in terms of sub-regulation (7) shall be served upon the Scheme, which shall be entitled to file a reply within a period of twenty days. The court shall appoint the application for hearing on a date after the lapse of that period.

(9) Any action by the Scheme for the payment of any contribution due by a participant shall be barred by the lapse of a period of prescription of two years from the date on which the contribution was due.

12H(1) The competent authority may defer, in whole or in part, a participant's obligation to pay a contribution if the competent authority considers that such contributions would jeopardise the liquidity or solvency of the participant. Such deferral shall not be granted for a longer period than six months but may be renewed upon request of the participant.

(2) Any contributions deferred pursuant to sub-regulation (1) shall be paid when the payment no longer jeopardises the liquidity and solvency of the participant.

(3) Any such deferral shall suspend the period of prescription set out in regulation 12G (9).

12I (1) The Scheme may hold any amounts collected from Compensation Contributions or Management Expenses Contributions and any other funds managed and administered by it on deposit or may invest such contributions, having regard to the need for prudence.

(2) Interest or any other form of income or gain earned by the Scheme in respect of its assets held pursuant to sub-regulation (1) shall be allocated to the Scheme's reserves, including the "Accumulated Fund" and the "Revaluation Reserve".

(3) The Management Committee may at any time, and at its sole discretion, allocate any of the Scheme's reserves held pursuant to sub-regulation (2) to either of the class of funds representing the Scheme's available financial means or the Management Expenses contributions.

12J A notice or other document to be given, provided or served under these regulations shall be deemed to have been duly given or served on a person if the requirements of article 187 (1) and (4) of the Code of Organisation and Civil Procedure are complied with:

Provided that a notice or other document may in all cases be served by means of a judicial act, in which case the relevant provisions of the Code of Organisation and Civil Procedure shall apply.

12K(1) The competent authority may issue investor compensation rules to licence holders for the purposes of these Regulations.

(2) Such investor compensation rules may contain such incidental, supplementary and consequential provisions as appear to the competent authority to be expedient for the purpose of these regulations.

4. Regulation 17 (2) shall be substituted with the following:

(2) All compensation payments shall be made in euro. Where the monies or instruments owed to or belonging to eligible investors are in a currency other than the euro, the exchange rate used shall be the

applicable euro foreign exchange reference rate quoted by the European Central Bank on the date of the determination given in terms of regulation 13 (1).

5. Regulation 19 shall be substituted with the following:

19(1) After a determination is made, in terms of Regulation 13, the Scheme shall provide for the payment of compensation in respect of claims arising out of a licence holder's inability to:

(a) repay money owed to or belonging to eligible investors and held on their behalf in connection with licensed business; or

(b) return to eligible 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.

(2) Without prejudice to any payment of compensation which the Scheme is required to make in accordance with these regulations, and in application of the requirement under article 26 (3) (e) of the Arbitration for Financial Services Act 2016, the Scheme shall also settle any judgment or award for up to twenty thousand euro (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, and such payment shall be made within ten (10) business days from the day when the judgement or award becomes res judicata. Such amount shall be deducted from the maximum amount of compensation which may be payable under regulation 17 (1).

(3) The amount of an investor's claim shall be calculated by the Management Committee after taking into account any or all of the following factors:

(a) legal and contractual conditions;

(b) counter-claims;

(c) market value; and

(d) surrender value.

6. Regulation 22 shall be substituted with the following:

22(1) Without prejudice to any other right which the Scheme may have at law, the Scheme shall, upon paying compensation under these regulations, immediately and automatically be subrogated to all the rights of the investor, up to the amount of the compensation paid, as against the licence holder and, or any third party.

(2) Upon paying compensation under these regulations, the Scheme shall decide in its absolute discretion which recoveries are likely to be both reasonably possible and cost effective to pursue.

(3) Prior to payment by the Scheme, eligible investors shall confirm in writing to the Scheme that:

(a) they have not received any payment from any other scheme or from the licence holder concerned in respect of the same loss;

(b) they will provide any assistance the Scheme may require to enable the Scheme to exercise its rights and remedies against the licence holder; and

(c) their rights in respect of any money or instruments comprising the claim shall be subrogated in favour of the Scheme.

7. Regulation 26 shall be substituted with the following:

26(1) Participants shall ensure that they have electronic information systems in place to the satisfaction of the Scheme in order:

(a) to provide to the Scheme, at any time and upon its request, all information relevant for the achievement of the Scheme's objective and functions or for the proper administration of the Scheme, including the repayment of eligible investors and testing purposes;

(b) to enable the Scheme to process claims for compensation by investors and this at all times, whether or not a determination has been made under regulation 13; and

(c) to provide the Scheme with the information required in regulation 12C (4).

(2) Participants shall ensure that their electronic information systems hold records of all their existing and past clients and that it can correctly identify between clients who fall within the definition of "eligible investor" and those who do not, and that for every such client, complete, dated and up to date records are maintained to the satisfaction of the Scheme, including records of all transactions involving payments from or to such clients and instruments which are or have been held or bought by the participant for or to the benefit of such clients.

(3) Participants shall, on an annual basis, provide a declaration to the satisfaction of the Scheme that such electronic information systems are in full compliance with the requirements of this regulation. Such declaration shall be confirmed and signed by the auditors of the participant.

(4) The Scheme may at any time and in its discretion conduct independent tests of a participant's data capturing procedures and information systems. Such tests shall be carried out at the expense of the participant.

(5) Participants shall upon and in the manner requested by the Scheme provide to the Scheme an aggregated statement of the records held in accordance with sub regulation (2).

(6) Participants shall in addition provide to the Scheme a written and an electronic statement showing its total number of nominee clients and non-nominee clients as at 31st December of each year.

(7) The statement referred to in sub-regulation (6) shall be provided by not later than 1st April of each financial year.

(8) Without prejudice to any other provision of these regulations, any participant or any director or official thereof, who:

(a) fails to comply with the Scheme's request for information within the period of time established by the Scheme pursuant to these regulations; or

(b) knowingly or recklessly furnishes information, or makes a statement which is inaccurate, false or misleading in any material respect; or

(c) fails to comply with the requirements of this regulation

shall for every failure, be liable to an administrative penalty of not less than one thousand and five hundred euro (€1,500) but not exceeding one hundred and twenty-five thousand euro (€125,000), and in the case of a continuing infringement to a further administrative penalty not exceeding two hundred and fifty euro (€250) for each day during which the infringement continues, as may be imposed by the competent authority by means of a notice in writing and without recourse to a court hearing.

(9) Where an administrative penalty has been imposed by the competent authority in terms of this regulation, an appeal shall lie to the Financial Services Tribunal in accordance with articles 19 of the Act.

(10) The Scheme shall notify the Authority where a participant fails to comply with the obligations imposed on it under these regulations and the Authority shall take all measures appropriate to ensure that the said participant meets such obligations.

7. The Second and Third Schedule of the Regulations shall be deleted.

The Secretariat

Compensation Scheme Malta

01 June 2022