MALTA

COURT OF APPEAL
(Inferior Jurisdiction)

Hon. Judge
LAWRENCE MINTOFF

Sitting of the 15th July, 2026

Inferior Appeal Number 134/2025 LM

Yubing Yang (ID no. 254778A)
('the appellee')

***vs*.**

Integra Private Wealth Limited (C 46966)
('the appellant')

The Court,

<u>Preliminary</u>

1. This appeal was filed by the defendant **Integra Private Wealth Limited (C 46966)** [hereinafter 'the appellant'], from the decision delivered on the 12th of September, 2025, [hereinafter referred to as 'the appealed decision'] by the Arbiter for Financial Services [hereinafter referred to as 'the Arbiter'] who decided the case initiated against it by the plaintiff **Yubing Yang (ID no. 254778A)** [hereinafter 'the appellee'], as follows:

"For the reasons amply stated in this decision, the Arbiter considers the Complaint to be fair, equitable and reasonable in the particular circumstances and substantive merits of the case (fn. 101: Cap. 555, Article 19(3)(b) and is partially accepting it in so far as it is compatible with this decision.

Given the identified shortcomings outlined earlier, the Arbiter concludes that it is fair, equitable and reasonable in the particular circumstances and substantive merits of the case to award the Complainant the amount of EUR 10,000.

This amount reflects the following:

- *The difference in value from the Complainant's original investment fund, the Vilhena Malta Government Bond Fund, at the time of his instruction to withdraw (indicated as EUR 190,455.45, which amount was also the sum requested to be received by the Complainant at the time, as confirmed in his email of 13 March 2025), (fn. 102: P. 14) less the marginally higher distributions and settlement value indicated to have been received from the Integra New Horizon Fund of EUR3,028.99 and EUR 177,426.46, respectively. (fn. 103: P. 13 & 36)*

Therefore, in accordance with Article 26(3)(c)(iv) of Chapter 555 of the Laws of Malta, the Arbiter orders Integra Private Wealth Limited to pay the amount of EUR 10,000 (ten thousand euros) as compensation to the Complainant for the reasons stated in this decision.

With interest at the rate of 2.15% p.a. (fn. 104: equivalent to the current Main Refinancing Operations (MRO) interest rate set by the European Central Bank) from the date of this decision till the date of payment. (fn. 105: It is to be noted that in case this decision is appealed, should this decision be confirmed on appeal, the interest is to be calculated from the date of this decision).

Each party is to bear its own costs of these proceedings."

The facts

2. The plaintiff filed these proceedings before the Arbiter after he suffered losses and emotional stress following an investment made into the Integra New Horizon Fund.

The merits of the case

3. The plaintiff explained that a previous investment he held through Integra, the Vilhena Malta Government Bond Fund was replaced without his knowledge and prior consent, and in a way which did not work to his benefit, with a new investment, the Integra New Horizon Fund, with which the defendant company was connected. The plaintiff explained that this new investment had a redemption restriction, also known as a lock-in period, which resulted in him incurring material losses when he needed to redeem his investment, something he planned to do within five years of the original investment, due to a serious cash flow shortage he was experiencing. The plaintiff explained that the disputed transaction was prompted and undertaken by Integra on an execution only basis, and it was also agreed to by his lawyer, who held a power of attorney on his behalf. The plaintiff claimed that Integra did not review the validity of the order for the replacement of his original investment; it did not notify him about this transaction; and it did not ensure that the execution was beneficial to him. He further claimed that the company misappropriated his funds when it provided him with a reduced principal sum in settlement for the surrender of his units prior to the end of the fund's lock-in period which was one year longer than the original expected redemption. He also held that despite requesting evidence of the authorisation for the change in fund, he was not provided with the requested information.

4. The plaintiff stated that he had suffered unfair treatment, as he had applied for Malta's MRVP Immigration Plan and invested in the Malta Treasury Fund at the end of 2019, and the immigration law firm and fund company,

Integra Private Wealth Limited, had informed him that the fund's maturity date would be towards the end of 2024, beginning of 2025. Thus he was looking at a five-year investment holding period which met the Malta MRVP Immigration requirements. The plaintiff claimed that at the time, he had also signed an investment service agreement with Integra and a power of attorney with the immigration lawyer. He further explained that when at the beginning of 2025, he asked Integra to redeem his fund, he was told that there was a new fund, the New Horizon Fund that was being suggested to him. The plaintiff explained that he was confused at the time, and he thought that he was merely being recommended a new fund. He also held that at the time he was facing a serious cash-flow problem, and was not looking into investing in new financial products. The plaintiff explained that Integra's official did not directly tell him that his fund had been actually replaced, but asked him for certain compliance documents which led him to believe that he could redeem his fund upon presentation of the said documents. The plaintiff stated that when he obtained the said documents, he immediately sent an email to Integra to redeem the Malta Government Bond Fund, but learned that in 2021 this had been replaced by the New Horizon Fund without his knowledge. The plaintiff said that this news shocked him and threw his family's financial plans into disarray, and it also cost him serious economic losses, including time and reputational costs to the tune of around EUR 30,000.

5. The plaintiff explained that on communicating with the fund company and the immigration law firm, he learned that in 2021 the lead lawyer from the immigration law firm received a call from the fund company who proposed the idea of changing the investment fund. The income from the New Horizon Fund

was potentially higher than the original Malta Government Bond Fund and his lawyer agreed to change the fund on the strength of the authorisation letter the plaintiff had signed in 2019. The plaintiff noted that despite his requests for submission of certain information relating to the change in fund, he was not provided with this information, and this led him to question whether there was the required authorisation for the changeover, and whether this met the compliance and formal requirements imposed. He also claimed that there is a degree of controversy surrounding the power of attorney granted to his lawyer, since he stated that other professionals had informed him that the authorisation was invalid for several reasons as outlined in his Complaint Form, including that he did not expect the immigration lawyer to make financial decisions for him other than handling immigration matters, and that the unlimited authorisation clause was only for actions beneficial to the complainant. The plaintiff further stated that the change of the open-ended Malta Government Bond Fund to a closed-ended fund, was not beneficial to him and to his cash flow, and there were greater risks from the extension period on the new fund. He also held that his lawyer should have confirmed with him in advance whether such transaction was beneficial. The plaintiff explained that the fund company did not confirm with him in advance and carried out the fund change operation based on the authorisation letter, and that when he asked the fund company for documentation showing the lawyer's written consent, the said company could not provide it. The plaintiff argued that the fund company should have been provided with a confirmation letter agreeing with the change in position, with an analysis report that the fund was favourable to him, and with the written confirmation letter. He stated that the company is a related party that collects fund management fees, and that it was beneficial for the advisor to extend the fund's term. He also held that a recommendation from the fund company cannot be deemed to be an objective one. The plaintiff stated further that Integra, as the executor of the change in investment, did not conduct a substantive risk review of the validity of the authorisation document, and that it executed the transaction without notifying the client. He claimed that Integra shirked its responsibility when arguing that it was not required to conduct a substantive review of the power of attorney, and that Integra had to weigh the risks and had an obligation to judge whether the execution of the power of attorney was beneficial to the client. The plaintiff claimed that from the email exchanges, it can be seen that the fund company misappropriated the client's funds and intended to embezzle the client's asset income through an irresponsible attitude, as it only wanted to return the principal of EUR 163,400 or EUR 177,400, and deduct all or part of the EUR 27,000 of income accumulated during the five years, a decision the plaintiff deemed to be unreasonsable. The plaintiff explained that the net value of the fund was about EUR 201,000 and the net value of the Malta Treasury Fund was about EUR 191,000, and that the investment income during the five years should belong to him, as he held the risk of the fund. The plaintiff stated further that the company shirked responsibility despite the lack of due dilgence and its obligation to inform him. He further held that although he had temporarily accepted the company's offer due to cash flow reasons, this did not mean that he voluntarily accepted their offer, as the company's unfair terms and its attitude of shirking responsibility, caused him a tight cash flow situation, and forced him to undertake certain actions which he would not have otherwise undertaken. In view of this, the plaintiff requested the company to acknowledge the execution error in writing, and to apologise to him, whilst also returning the current net value of his Malta Government Bond Fund of EUR 191,000, and the income during the five-year period, and to compensate him for the economic losses he suffered from the 10th of March 2025 to the fund redemption settlement date. The plaintiff noted that he would be willing to confirm the amount of economic losses and mental stress caused to him during this period, but he would be willing to accept the amount of compensation determined by the Arbiter for mental stress.

6. In its reply, the defendant company held that the complaint filed by its client is without merit, as it misreperesents the extent to which it was required to adhere to the power of attorney, and it also tends to overlook the company's voluntary acceptance of the settlement terms. It further held that the plaintiff's action is time-barred under article 21(1)(c) of the Arbiter for Financial Services Act, which provides that complaints must be filed within two years of the complainant becoming aware of the matters being complained of. It explained that the transaction switching the plaintiff from the Malta Government Bond Fund to the Integra New Horizon Fund, occurred in 2021, as acknowledged in the plaintiff's complaint, and that although the plaintiff claims that he became aware of the transaction on the 10th of March 2025, statements and transaction confirmations including annual NAC reports as well as annual Qualifying Investment Confirmations sent to the MRVP, were routinely provided to his attorney. The defendant further claimed that under Maltese law, communication to a duly appointed attorney in terms of a power of attorney, constitutes notice to the mandator, and that it was within its rights to assume

that the attorney was communicating such matters to the plaintiff pursuant to article 1875 of the Civil Code. It explained that in this case the attorney signed the document instructing the switch of assets into the Integra New Horizon Fund on the 8th of April 2021, thus evidencing knowledge of the transaction. The complaint was then filed on the 23rd March 2025, over four years after the transaction, and therefore the complaint filed by the plaintiff should be considered time-barred. The defendant further explained that in his email of the 17th March 2025, the plaintiff explained that he is a "doctor of finance", and that he had been engaged in the financial industry for twenty years, which means that he qualifies as a professional client and was fully aware of the documents he was signing, both in providing the power of attorney to his attorney, and more pertinently in signing the surrender agreement. The defendant explained that on the 25th of March 2025, the plaintiff signed a binding surrender agreement accepting EUR 177,426.24 as full and final settlement for his Integra New Horizon Fund units, which agreement contains a provision stating that acceptance of the settlement is full and final, with explicit ackowledgment of the lock-in period and its impact on the redemption value of the fund; a confirmation that the complainant had no further claims or entitlements against Integra; and confirmation that the complainant entered in the agreement independently and of his own volition, and that Integra acted in accordance with his instructions. The defendant explained that in this case there was no evidence of violence, fraud or error, and that it is accordingly confident that the plaintiff, a seasoned financial professional, signed the agreement of his own free will, thus rendering the agreement both valid and enforceable. It therefore asked the Arbiter to dismiss the complaint in its entirety, and to order the plaintiff to bear administrative costs in terms of article 22(6) of Chapter 555, and this in light of the complaint's frivolous nature.

7. Further to its reply, the defendant held that the complainant, in his correspondence, made unsubstantiated allegations of fraud and self-interest, both against it and against its attorney, and that the attorney's instruction was clear in that it sought to enhance the complainant's financial status by switching to an investment that offered the potential for a higher return than what the original asset would have provided if it were to be held until maturity, without taking any additional risk. It therefore claimed that the complainant's assertions are not only frivolous in nature, but also appear to be premeditated as seen in the emails sent by the complainant himself. It expressed its view that the complainant never intended to engage with Integra in good faith, and his ultimate objective was to inflict reputational harm on the service provider, despite his full knowledge and acceptance that the settlement terms were final and binding. Finally, the service provider reserved the right to take legal action against the complainant should the matter escalate further or should the complainant make public statements which are malicious, untrue or in breach of the agreement.

The appealed decision

8. The Arbiter made the following considerations in his decision of the 12th September, 2025:

"***Preliminary Pleas***

Claim that the Complaint is time-barred

In its reply the Service Provider raised the plea that the complaint is time-barred in terms of Article 21(1)(c) of Cap. 555 ('the Act'). This is also when taking into consideration Article 1875 of the Civil Code relating to the duty of the mandatory to render account of his management to the mandator.

In essence, the Company argued that given that the switch in fund occurred in 2021 and the complaint with Integra was only filed on 23 March 2025, the complaint is prescribed in terms of Article 21(1)(c) of the Act as it was filed later than the two years from when the Complainant became aware of the matters complained of.

*The Service Provider submitted that the mandatory had signed the switching instruction at the time, thereby evidencing knowledge of the transaction. It further noted that the mandatory was provided with various transaction confirmations and statements at the time and regularly thereafter which featured the investment. The Company submitted that "*Integra was within its rights to assume that the Attorney was communicating such matters to the Client". *(fn. 13: p. 158) It further submitted that, despite the Complainant's claims that he only became aware of the transaction in March 2025, "*Under Maltese law ... communication to a duly appointed Attorney in terms of a PoA constitutes notice to the mandator." *(fn. 14: ibid.)*

The Arbiter considers the following as relevant aspects to the plea raised by the Service Provider:

(a) Article 21(1)(c) of the Act provides that:

> '(c) An Arbiter shall also have the competence to hear complaints in terms of his functions under article 19(1) in relation to the conduct of a financial service provider occurring after the coming into force of this Act, if a complaint is registered in writing with the financial services provider not later than two years from the day on which the complainant first had knowledge of the matters complained of.'

The article refers to the knowledge of the Complainant who, in this case, is the mandator and not the mandatory.

The Arbiter needs to decide when the Complainant himself had knowledge of the matters complained of and not when his lawyer, who had a power of attorney, had knowledge of the disputed transaction (and/or knowledge of the lock-in period of the disputed product). This matter should be kept distinct and not convoluted together. It is considered that the Service Provider cannot interpret and attribute the quoted provision of the Act as applying to the mandatary, as it is trying to do, when this is a complaint filed by the mandator (the Complainant), who undisputedly is the

Company's customer. In this particular case, the Complainant is the rightful party who could exercise the action of making a complaint under the Act.

The mandator's right to make a valid complaint under the Act should furthermore reasonably not be prejudiced by any possible negligence or failures in the mandatory's actions. Any potential or claimed shortcomings in this regard are matters for the relevant competent court to consider as it is not the role of the Arbiter to determine the validity or otherwise of the actions taken by the mandatory under a power of attorney agreement or the limits of such an agreement and/or whether there was any omission or failure by the mandatory with respect to its duties towards its principal.

Such aspects fall outside the Arbiter's competence as they do not fall within the scope of Cap. 555, which only covers financial services-related matters. The Arbiter shall accordingly not delve into, and not consider, the mandatary's actions.

To determine competence regarding Article 21(1)(c) of the Act, the Arbiter needs to accordingly focus on, and only consider, the actual knowledge of the mandator, that is, when the Complainant hi
mself first had knowledge of the matters complained of.

(b) No adequate evidence has emerged that the Complainant had knowledge of the matters complained of more than two years before making his complaint with Integra.

The Complainant consistently explained that he first had knowledge of the matters complained of in March 2025. This is as specifically outlined or substantiated through the following:

i. No evidence of any actual formal notification and proper disclosure to the Complainant relating to his re-classification from a retail to professional client, the redemption of the Vilhena Malta Government Bond Fund and the switch into the Integra New Horizon Fund in 2021 has been produced or emerged during the proceedings of the case;

ii. In his Complaint Form of 16 April 2025 to the OAFS, the Complainant indicated the date '09/03/2025' as to when he had first knowledge; (fn. 15: p. 2)

iii. The date reflects the explanation provided in his Complaint to the OAFS where he inter alia noted:

> 'When I obtained the compliance receipt on March 10, 2025, I immediately sent an email to Andre to redeem the Malta Government Bond Fund. On the

same day, I learned that my fund was replaced by the New Horizons fund in 2021 without my knowledge*'; (fn. 16: p. 3)*

iv. *In his emails to Integra of March 2025, it is noted that the Complainant furthermore inter alia explained the following:*

- *Email March 2025:* 'I don't want to invest in any New Horizons fund, thank you'. *(fn. 17: p. 24)*

- *Email of 10 March 2025:* 'First, I was not aware that the lawyer replaced the fund on my behalf, and she did not tell me anything about it. Second, the authorization letter only said that I authorized her to submit personal information to the wealth management company but did not authorize her to make financial decisions for me'.

- *Email of 11 March 2025:* 'I only clearly understood the whole process of the matter yesterday. Before that, I didn't realize that the fund had been changed because the content of the previous email confused me. I thought you had been suggesting that I invest in a new fund'. *(fn. 19: p. 17)*

The above communications followed the Final Compliance Letter dated 7 March 2025, from the Residency Malta Agency that the Complainant was requested to present (to process a withdrawal request) and which was required to confirm that he 'has fulfilled all obligations for the first 5 years since the issuance of the residency certificate stipulated under Legal Notice'. *(fn. 20: p. 89)*

v. *In his submissions of 23 May 2025, the Complainant also reiterated:* 'I confirm again that I learned from Integra that the investment was replaced in March 2025'. *(fn. 21: p. 173) These submissions were confirmed under oath during the hearing of 3 June 2025. (fn. 22: p. 180 & 184)*

vi. *In his final submissions, the Complainant again consistently highlighted:* 'First direct notify: Integra only directly notify me about transfer … after I requested full redemption (2025), proving I was kept in the dark', noting also that 'March 2025 (when I actually learned of the switch*)'; (fn. 23: p. 275)*

vii. *As to the Company's submission that the Complainant had continuous access to their online system since December 2019, which documented all the investment activities, (fn. 24: p. 19-20) it is noted that in an email dated 20 February 2023 sent to Integra, the Complainant, however, stated: '…* I wish [to know] what is the net worth of my balance … **because I still can't access my account so far**.*' (fn. 25: p. 235 – Emphasis added by the Arbiter)*

It is further noted that during the cross-examination held during the sitting of 24 June 2025, the following was testified in this regard:

> 'It is being said that [the Complainant] has logged in into the back end to see the value of the investment but he still has some difficulty to log in; he cannot receive the security code on the mobile phone so he [sent] some email correspondence to [the Company]. He has some emails and even if he logs in the system, he sees only some change in name in the system, but he cannot see the investment itself'. *(fn. 26: p. 266)*

Hence, not much comfort can be placed on the Company's submission that access to its online systems created knowledge to the Complainant.

*This is also even more when taking into account that as part of its submissions, the Company listed the login history of the Complainant, '*Demonstrating that the client accessed our system on numerous occasions to view valuation statements'. *(fn. 27: p. 188). It is, however, noted that the login history provided by the Company indicated login success or failure only between 24 October 2023 to 18 March 2025. (fn. 28: p. 222)*

The gap in time between this period and the date of the Complainant's formal complaint (of March 2025) is clearly less than two years and thus does not support the Company's arguments on this point;

viii. The Company also submitted that Integra directly sent to the Complainant on 20 February 2023, a Fund Fact sheet of the Integra New Horizon Fund. (fn. 29: p. 188 & 234)

It is noted that this followed a request by the Complainant to know the net worth of his balance on account as he could not access his account. (fn. 30: p. 235) The Complainant expressed his concern about the value of his balance following the receipt of an investment report as at 8 February 2023. (fn. 31: p. 234-235)

In the email of 20 February 2023, Integra's advisor indeed noted:

'Unfortunately, in this current interest rate environment, it'll take time for the underlying stocks to recover. For your reference, I'm attaching the latest January 2023 factsheet of your investment fund which gives us more informatio*n'. (fn. 32: p. 234)*

In the circumstances, it is considered that whilst the said email and Fund Fact Sheet provided on 20 February 2023, should have triggered enquiries given that the fact sheet was of a different fund than that he was originally invested into, the mere *provision of a fund fact sheet, however, should not be construed as adequately creating awareness of the matters complained of for the purposes of Article 21(1)(c) of the Act. This is for the reasons outlined below:*

- The email sent on 20 February 2023 did not specifically bring to the Complainant's attention or mention the change in fund but was rather a general communication relating to the performance of his account and a minor withdrawal that was being instructed at the time. (fn. 33: Ibid.)

This communication does not provide sufficient evidence about the Complainant's realisation and awareness at that point in time that his original fund had actually been replaced with a new fund which had a materially different feature, the limitation on redemption, which is the key subject matter of this Complaint.

Apart from the general nature of the communication, the extent of awareness may have reasonably and likely been influenced by other factors. The possible language barriers are particularly noted as well as certain similarities between the new fund with that of the original fund. Both funds focused on opportunities in securities listed on the Maltese domestic market, with the Integra New Horizon Fund also listed as being predominantly invested into the Vilhena Malta Government Bond Fund (approx. 45.5%) and the Vilhena Malta Bond Fund (approx. 51.9%). (fn. 34: Integra New Horizon Fund Fact Sheet dated January 2022 – p. 238)

- *In addition, even if one had to consider the communication of 20 February 2023 as raising awareness about the change in fund (which is questionable for the reasons outlined above), the said email and Fund Fact Sheet provided cannot reasonably be considered as creating awareness about the key issue relating to this Complaint - that is, the lock-in period and limitation in redemption applicable on the new fund.*

  *Indeed, neither the said email nor the Fund Fact Sheet included any specific provision or mention of the lock-in feature, which is the key aspect that has, in the main, contributed to the claimed losses and damages sought by the Complainant in this Complaint. (fn. 35: The Liquidity Risk mentioned in the Fund Fact Sheet as part of the general Risk Factors is rather a general disclaimer which only specified '*The ease/difficulty with which an investment can be converted to cash and the uncertainty of the price to be received. – p. 237)

ix. *Consideration is also made of the context of this case, where the Service Provider claimed that the disputed transaction was made on an execution only basis with the order provided by the Complainant's Attorney under the PoA agreement and not directly by the Complainant himself.*

Transactions undertaken by a financial service provider on an execution only basis are typically triggered by the client, who would have details about the investment beforehand and instruct the service provider to execute the transaction. The particular circumstances of this case are, however, different and distinct from such a scenario, with the Complainant asserting that he was not even aware, nor consented to, nor informed about the investment in question. This context further supports the Complainant's claim of awareness as not occurring at the time of the disputed switch.

x. For the reasons outlined, the circumstances of this case reasonably point more towards the Complainant having first knowledge and awareness of the matters complained of, including the lock-in period restriction on the new fund, in the year 2025, that is, when he wanted to fully redeem his investment. This is furthermore supported by the Service Provider's email of 10 March 2025 to the Complainant, wherein the Company stated:

'When you first requested to withdraw your remaining funds on February 8, 2025, we immediately responded on February 11, 2025, explaining the lock-in period restriction. We have been transparent about this limitation since your initial request'. *(fn. 36: p. 19)*

The Arbiter considers that there is no justifiable and adequate basis on which the Service Provider's plea can be accepted in the circumstances. The Service Provider's plea, with respect to Article 21(1)(c) of the Act, is accordingly dismissed by the Arbiter for the reasons mentioned.

Claim that the Company is not the correct or legitimate defendant

In its reply, the Service Provider inter alia submitted that 'Integra is not in a position to assess whether the PoA granted authority for such instructions and any complaint by the Client in this respect should therefore be directed at the Attorney directly'. *(fn. 37:p. 158)*

As highlighted above, the legitimacy or otherwise of the PoA for the disputed transaction and the actions or lack thereof of the Complainant's Attorney under the PoA agreement are not the subject of the Arbiter's decision.

Various key allegations made by the Complainant, as summarised above at the start of this decision, are ultimately directed to and involve the conduct of the Company for which Integra is rightfully the legitimate defendant.

The Arbiter shall thus only consider and limit his decision to the conduct of the financial services provider and the claims brought by the Complainant involving and applicable specifically to the Company.

Claim of full and final settlement

The Company claimed that the Complainant voluntarily signed a binding surrender agreement on 25 March 2025 as full and final settlement for his Integra New Horizon Fund units. It referred to the clauses applicable under the said agreement and further submitted that the agreement was signed by the Complainant of his own free will without any evidence of violence, fraud or error. It submitted that the validity and the enforceability of the agreement was thus confirmed. (fn. 38: p. 159)

*On his part, the Complainant claimed that the settlement agreement was signed under duress, given that he had '*financial pressure' *and '*faced a liquidity crisis'*. (fn. 39: p. 275)*

*The Complainant further submitted that under article 974 of the Civil Code, '*The agreement is voidable due to 'error' (misunderstanding terms) and 'duress' (financial coercion*)'. (fn. 40: Ibid.)*

*In its final submissions, the Service Provider rejected '*any suggestion that coercion, violence or fraud took place'*, reiterating that* 'The Settlement Agreement was entered into voluntarily, following full disclosure of its terms'*. (fn. 41: p. 288)*

*It further argued that there was '*no evidence of procedural or substantive unfairness*' and submitted that: (fn. 42: Ibid.)*

> 'The Complainant repeatedly demonstrated understanding of the Agreement's content and only objected due to personal circumstances; such 'financial pressure' does not invalidate contractual consent or satisfy legal requirements for duress or error.*'*

The Arbiter notes that the quoted provision of the Civil Code, article 974 provides that:

> 'Where consent has been given by error, or extorted by violence or procured by fraud, it shall not be valid.'

*It is further noted that the Complainant signed a settlement agreement with Integra on 25 March 2025. The said agreement referred to the '*reduced settlement value of €177,426.46 due to the terms and conditions of the Fund*',* *the fund defined as '*the New Horizon Fund'*. (fn. 43: p. 165) The agreement, namely, stipulated that:*

'1. The Client holds **2,456.0883 units** in the **New Horizon Fund** (the 'Fund'), which he has elected to surrender.
2. The estimated current value of the Client's holding in the Fund is **€200,935.04** as at the valuation date of 17 February 2025.
3. The Client acknowledges that surrendering his units prior to the end of the Fund's lock-in period results **in a reduced settlement value of €177,426.46** due to the terms and conditions of the Fund.
4. The Client has agreed to accept the discounted settlement value as **full and final settlement** of his investment in the Fund.'
…

1. Acceptance of Settlement

The Client acknowledges and agrees to accept the sum of **€177,426.46 as full and final settlement** arising from the surrender of his 2,456.0883 units in the New Horizon Fund. The Client accepts this amount, recognizing that it reflects reduced value due to the Fund's lock-in period.

2. Instruction to Close Account

The Client hereby instructs **Integra Private Wealth** to close account **00208YY** upon completion of the settlement described above.

3. Final Release

By signing this Agreement, the Client agrees that she has no further claims or entitlements against **Integra Private Wealth**, the Fund, or any of their associated entities concerning the surrendered units.

4. Acknowledgement of Independent Decision

The Client confirms that this transaction has been made of his own volition, is fully aware of the Fund's terms, and acknowledges that Integra Private Wealth has acted in accordance with his instructions.

5. Acknowledgement of Reduction in Value

The Client expressly acknowledges that the settlement value of **€177,426.46** is lower than the estimated value of his units due to the application of reduction in value for early surrender during the lock-in period.*' (fn. 44: p. 165 – Emphasis added by the Company)*

The settlement agreement dated 25 March 2025 in respect of the surrender of units in the Integra New Horizon Fund was speedily done and entered into within just a couple of weeks from the Complainant's request (of 10 March 2025) (fn. 45 – p. 22) for the redemption of the investment.

Apart from the lack of adequate time available to the Complainant to carefully and fully consider the implications of entering into a settlement agreement, it is noted that the settlement in respect of the Integra New Horizon Fund also occurred at a time when the Complainant was experiencing financial pressures due to the liquidity difficulties he had, which the Company was aware of at the time. (fn. 46: The Complainant's email of 11 March 2025 refers – P. 41)

These financial pressures were caused by the extended lock-in period involved by the switch of the funds which Complainant maintains was done without his authority or knowledge.

Whilst noting the above context, the Arbiter is of the opinion that the mentioned agreement involving the new fund (the Integra New Horizon Fund) does not preclude the Complainant from seeking redress to claims involving his original investment, the Vilhena Malta Government Bond Fund, in the particular circumstances of this case.

This is also when considering the following:

a) *The settlement agreement relates to the full and final settlement relating to the disposal of units in the* Integra New Horizon Fund, *with the Complainant acknowledging* 'that surrendering his units prior to the end of the Fund's lock-in period results in a reduced settlement value' and confirming that he 'has no further claims or entitlements … concerning the surrendered units.*' (fn. 47: p. 165)*

The agreement is not considered to cover claims for damages concerning the original investment, the Vilhena Malta Government Bond Fund, and from the claimed unauthorised switching thereof. The settlement agreement does not cover such aspects. Accordingly, it cannot be considered to effectively cover or thus exclude other claims for damages concerning the original investment and the alleged unauthorised change in investment into the Integra New Horizon Fund*.*

b) *The Final Release Clause 3 of the Agreement is considered to apply only to the early redemption and surrender of units of the New Horizon Fund and does not extend to other claims as explained in the preceding paragraph.*

c) In order for the Arbiter to determine whether he can consider additional claims against Integra following the said settlement agreement, the Arbiter accordingly needs to first assess the specific circumstances and merits of this case.

Claim that Complaint is frivolous in nature

The Service Provider's plea that the Complainant's claims are frivolous in nature is an aspect that will be considered by the Arbiter as part of the merits of the case.

Other aspects - Preliminary

Claim of possible misappropriation

The Arbiter outrightly states that he does not consider claims of fraud and that any such claims should be reported to the police.

With regards to the case in question and the lower value received by the Complainant from his investment, it is noted that the Company explained that, given the applicable lock-up period, it tried to find solutions to assist the Complainant in the early disposal of his investment.

The Company offered two subsequent proposals to the Complainant in this regard, after finding other investors who were willing to take over the Complainant's units in the Integra New Horizon Fund, albeit at a lower value – ASF 070/2025 23 the first offer being of EUR 163,401.46 and the second offer from another client of EUR 177,426.46. (fn. 48: p. 13 & 16)

At the time, the Complainant eventually reluctantly chose (according to him under duress) the second offer to receive EUR 177,426.46, which was lower than both the value of the New Horizon Fund and the value of the Vilhena Malta Government Bond Fund (indicated as EUR 200,935.04 and EUR 190,455.45 respectively). (fn. 49: p. 13) The Complainant considered the resulting difference in value as having been 'misappropriated'.

Whilst the use of such a term may not be the appropriate one to reflect the Complainant's grievance, for the avoidance of doubt, the Arbiter points out that claims of misappropriation are not the subject of the Arbiter's decision. As mentioned above, the Arbiter's decision shall only focus on and consider the other alleged shortfalls in the Company's conduct raised in the Complaint as summarised above.

The Merits of the Case

The Arbiter will decide the Complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case. *(fn. 50: Cap. 555, Art. 19(3)(b))*

*The Arbiter is considering all pleas raised relating to the merits of the case together to avoid repetition and to expedite the decision as he is obliged to do in terms of Chapter 555 (fn. 51: Art. 19(3)(d)) which stipulates that he should deal with complaints in '*an economical and expeditious manner'*.*

Background

Background about the Complainant and the services entered into with IPW

The Complainant is a Chinese national who had applied for the Malta Residence and Visa Programme ('MRVP'). He signed a Power of Attorney ('PoA') agreement with his attorney on 22 August 2018. (fn. 52: p. 106-108) This agreement was particularly intended for the MRVP, as reflected in the initial clauses of the power of attorney. (fn. 53: p. 106)

His application for the MRVP was approved in principle on 30 July 2019. As one of the conditions of the programme, the Complainant had to provide evidence confirming a 'Qualifying Investment' *for the equivalent of EUR 250,000. (fn. 54: p. 224) Under the said programme, beneficiaries had* 'the option to redeem their qualifying investment after five years'. *(fn. 55: https://residency.gov.mt/the-malta-residence-and-visa-programme-live)*

The Complainant entered into an Investment Services Agreement with Integra on 27 August 2019. (fn. 56: p. 118-148) The financial services offered by Integra to the Complainant were limited to 'Nominee Services' *and* 'Execution Only' *as reflected in Annex 2 to the said agreement. (fn. 57: p. 146) Nevertheless, an* 'Investment Advisor' *was designated to the Complainant by Integra as reflected in the Client Acceptance Letter. (fn. 58: p. 225-227)*

In December 2019, an amount of EUR 250,000 was invested into the Vilhena Malta Government Bond Fund as an MRVP Qualifying Investment. (fn. 59: p 229 & 233). The investment into the Vilhena Malta Government Bond Fund was eventually switched to the Magiston Funds SICAV plc – Integra New Horizon Fund in 2021.

The service provided by Integra continued in the context of an 'MRVP Qualifying Investment' *throughout the years, as reflected in the Valuation Reports dated February/March 2025, (fn. 60: p. 81 & 94) and the Service Provider's*

communication of 19 February 2025 to the Malta Residency Visa Agency. (fn. 61: p. 240)
As to the Complainant's profile, it is noted that in an email dated 17 March 2025 sent to Integra, which was highlighted by the Service Provider during the proceedings of the case, the Complainant stated:

"I am a doctor of finance and have been engaged in the financial industry for 20 years in such a complex ecological environment as China, so I can say with certainty that I am an expert." *(fn. 62: p. 164)*

The Complainant later clarified in his submissions that he has:

> *"*a clear understanding of finance, not that I understand all the processes and matters in this investment behaviour ... in addition, as I lack English skills, the translation software is slightly misleading, and I do not understand Malta's financial policies, financial terms, and financial environment. I am not even an individual with full behavioural capacity." (*fn. 63: p. 174)*

He also pointed out in his final submissions that:

> '…I have not provided IPW with information about my professional financial work experience, and I have no experience in professional positions in the European financial field, nor do I have relevant service transaction knowledge. I am not engaged in investment transactions in China, but only in credit work.*'* *(fn. 64: p. 277)*

<u>Background on how and why the switch in investment was made</u>

*In his submissions, the Complainant claimed that he '*learned from Integra that the investment change was recommended to the immigration lawyer by Integra.*' (fn. 65: p. 170)*

It is noted that in an email sent in March 2025, the Service Provider provided inter alia the following explanations to the Complainant:

> 'In early 2021, we had identified an opportunity to enhance returns for our residency clients who held qualifying investments. Through careful analysis, we determined that diversifying across multiple funds could potentially generate superior returns. As a result, we worked closely with our clients' accredited agents to create the New Horizon Fund, specifically designed to optimise returns for our residency clients. While this fund, as per the offering supplement, has a mandatory 5 year lock-in period (i.e. until April 2026), the

> fund was structured with the primary objective of delivering enhanced value for clients like yourself'. *(fn. 66: p. 24 & 68)*

In a further email sent on 10 March 2025, the Service Provider also explained the following to the Complainant:

'We would like to clarify the circumstances regarding the adjustment to your investment and the relevant authority under which it was made:

> • Authority to Adjust the Qualifying Investment:
>
> As wealth managers, we have the responsibility and authority to make investment decisions that are in the best interests of our clients. This authority is outlined in the Investment Services Agreement (ISA) signed by our clients, including yourself.' *(fn. 67: p. 21)*

The transaction was executed on an 'Execution-Only basis' *as outlined in the same email, where it was further explained that:*

'In early 2021, we liaised with Dr. Busuttil, who reviewed the proposed switch and confirmed it was in your best interest. Based on his instructions, the switch was executed to optimise the performance of your investment'. *(fn. 68: Ibid)*

The Company's 'Execution-Only Form' *dated 8 April 2021, was signed by the Complainant's Attorney for the Complainant. (fn. 69: p. 66) This form confirmed the instruction to purchase the* 'Magiston Funds SICAV plc – Integra New Horizon Fund' *with the* 'Amount to be subscribed' *being* 'as per the number of units held in the Vilhena Malta Government Bond Fund (Distributor); subscription to be inspecie'. *(fn. 70: Ibid)*

<u>Other aspects</u>

It is noted that, during the sitting of 24 June 2025, the Company's official testified inter alia that:

'The first thing that I would like to point out is that in the Investment Services Agreement which [the Complainant] signed, he specifically asked for us to communicate via his attorney and not directly with him.'*(fn. 71: P. 264)*

Although Annex 1 to the Investment Services Agreement included a c/o address for the Complainant's attorney, the 'Contact Number' *and* 'Email address' *provided, however, appear to be contact details of the Complainant (or his Chinese intermediary) as they include a China dialling country code (+86) and a Chinese messaging platform ('QQ.com'). (fn. 72: as emerging from a general internet search).*

It has not emerged that any communications relevant to this case were made on the said Chinese contact details.

<u>Re-classification from Retail to Professional and absence of key Declaration Forms</u>

The Complainant was initially classified as a retail client. Clause 3.1 of the Investment Services Agreement dated August 2019, which was entered into with Integra, outlined inter alia that:

> 'The Client has been classified as a Retail Client as defined by the Investment Services Rules for Investment Service Providers issued by the MFSA.' *(fn. 73: p. 195)*

The Complainant's classification from retail to professional client was changed in April 2021. This is after the completion of the Company's 'Professional Investor Form' *dated 8 April 2021, which was signed by the Complainant's Attorney.(fn. 74: p. 272). The switch in investment occurred concurrent with the reclassification (both dated 8 April 2021).(fn. 75: p. 66 & 272)*

It is noted that a somewhat conflicting position has emerged as to who prompted and triggered the change in fund. Whilst, in one of its communications exchanged with the Complainant, it emerges that the change was, in effect, prompted by the Company; during the hearings, the impression was given that the Complainant's Attorney rather triggered the changeover.

It is noted in this regard that in its email to the Complainant of 10 March 2025, Integra stated:

> 'In early 2021, we had identified an opportunity to enhance returns for our residency clients who held qualifying investments. Through careful analysis, we determined that diversifying across multiple funds could potentially generate superior returns. As a result, we worked closely with our clients' accredited agents to create the New Horizon Fund, specifically designed to optimise returns for our residency clients. While this fund, as per the offering supplement, has a mandatory 5 year lock-in period (i.e. until April 2026), the fund was structured with the primary objective of delivering enhanced value for clients like yourself.'*(fn. 76: p. 24)*

However, during the sitting of 24 June 2025, the Company's official testified:

> 'Asked whether the attorney came to me and said, 'Look, I want to change this fund from this to this,' and I complied with that, I say this is correct. The

> attorney also asked us to reassess [the Complainant] as a professional client. There is a particular form on the basis of his volume of trading over the past four quarters, and the value of his assets.
>
> …
>
> It is being said that there was an initiative taken by the attorney to change the status of the client from a retail investor to a professional investor. And, on that basis, his attorney used the power of attorney in order to demand on an Execution Only basis to switch the fund which was a retail fund to a professional investor fund.
>
> I say this is correct.' *(fn. 77: p. 266)*

*The Company's official again testified '*I said that we did not recommend it' *when asked whether the Company had recommended the switch in investment.(fn. 78: p. 267)*

> 'Asked whether I, at the point, explained to the attorney that by switching from one fund to the other he is entering into a lock up period, I say that there was an explanation to the attorney. There was a meeting but, yes, this was amply explained because of the nature of the fund. The fund, in fact, invests in Vilhena funds where it was originally held, but it has an additional return because of the way it operates which requires the lock up period because it has an additional interest over a period of five years. This was explained to the attorney.*'(fn. 79: p. 267)*

Although the Attorney was the one who signed the forms in the change, the evidence suggests that the switch and replacement of the fund was effectively brought about as a result of the actions or promotional efforts of the Company with the 'accredited agents'.

The aspects mentioned above are considered relevant in understanding the context in which the change in investment was made and the obligations applicable to the Company with respect to the switch into one of its in-house funds.

The Arbiter furthermore notes that the Company executed the application into the Integra New Horizon Fund based solely on the Company's internal 'Professional Investor Form' *(fn. 80: p. 272) and the Company's internal* 'Execution-Only Form' *(fn. 81: p. 66) given that these were the only forms presented by the Company during the proceedings of this case.*

It is noted that following the Arbiter's decree of 28 July 2025, (fn. 82: p. 283) in which the Arbiter requested the Company to produce a copy of the application *forms for the Integra New Horizon Fund, (that is, the* 'Qualifying Investor Declaration Form' *and the* 'Risk of Insufficient Liquidty to meet Redemption Requests Investor Declaration Form' *(Appendix II and III of the Offering Supplement of this fund), the Company did not produce the requested forms.*

In its reply to the said decree, the Company only instead clarified the following as part of its final submissions:

> 'Please note that the investments which the Complainant made with Integra were so **made under nominee**, meaning that investments were held in Integra's name on the Complainant's behalf. We have previously provided the Professional Investor Form validly provided by the Attorney, as well as the Execution Only Form executed by the Attorney instructing us to acquire the investment.
>
> Consequently, Integra (as investor for and on behalf of the Complainant as client) completed the said forms, on the basis of the information and instructions provided by the Attorney.*'(fn. 83: p. 288 – Emphasis added by the company)*

In the circumstances, the Arbiter considers that certain material shortcomings emerge in the Company's conduct which were to the Complainant's detriment when processing the* 'Execution-Only Order Form' *signed by the Attorney. This is in view of the following reasons:

a) *Integra's own forms were not a substitute or replacement for the specific forms that needed to be completed for an application to purchase units into the Integra New Horizon Fund. The Offering Supplement in respect of the Integra New Horizon Fund.*

   The Offering Supplement in respect of the Integra New Horizon fund (fn. 84: https://www.integra-pw.com/images/services/IntegraNewHOrizonOS.pdf - Although the version of the Offering Supplement available through this link is dated 4 January 2022, the same forms existed at the time of the Complainant's investment – footnote 1 in the Arbiter's decree of 28 July 2025 refers) required the completion of the fund's own specific forms in order for a valid application to be made into this fund. The fund's Offering Supplement provided inter alia that:

   > 'Applications for Shares from Qualifying Investors must be made on the application form provided for this purpose by the fund. The purchase of Shares in writing is a legally binding contract. The Fund reserves the right

> to reject any application in whole or in part. No application will be accepted unless a Qualifying Investor Declaration Form with the minimum contents as set out in Appendix V of the Offering Memorandum has been completed and signed by the Investor or his authorized agent.*'(fn. 85: Page 28 of the Offering Supplement of the Integra New Horizon Fund)*

b) *Integra's '*Professional Investor Form' *is intended for its own internal classification of its clients and not to satisfy the fund's specific eligibility criteria for '*Qualifying Investors'*.*

   Indeed, the criteria applicable for 'Professional Investor' *for the classification of the investment firm's client under MiFID are different to those applicable for the satisfaction of the fund's eligibility criteria as a '*Qualifying Investor'*.*

   *For example, whilst the '*Professional Investor Form' *referred to '*An individual with an Instrument portfolio (including cash deposited and instruments) exceeding €500,000', *(fn. 86: p. 272) the comparable criteria under the* 'Qualifying Investor Declaration Form' stipulates 'an individual whose net worth or joint net worth with that person's spouse or civil partner, exceeds EUR 750,000 or USD 750,000 (or equivalent in another currency)*'. (fn. 87: page 40 of the Offering Supplement of the Integra New Horizon Fund).*

   The 'Professional Investor Form' *for MiFID purposes should indeed not be convoluted with, nor used as a replacement for, the* 'Qualifying Investor Declaration Form'.

   The Complainant even contested his qualification of the definition and mentioned criteria in the Professional Investor Form completed in his regard. During the proceedings of the case, the Complainant submitted inter alia:

   > '… I cannot be regarded as a professional investor. First, I have not made significant transactions in the relevant market at an average frequency of 10 times per quarter in each of the past four quarters. Second, I do not have deposits and investment instruments exceeding 500,000 euros.' *(fn. 88: p. 277)*

   No sufficient comfort has emerged that the applicable criteria for the investment into the Integra New Horizon Fund were indeed satisfied in the first place.

c) *Both the fund's '*Qualifying Investor Declaration Form' *and the '*Risk of Insufficient Liquidity to meet Redemption Requests – Investor Declaration

Form*' had to be completed either directly by the investor or his duly authorised agent.*

Indeed, in the case where the investment was not being made directly by the investor but through a duly authorised agent, the said forms contained specific sections which had to be completed by such agent. (fn. 89: page. 39-41 & 45 of the Offering Supplement of the Integra New Horizon Fund)

It is noted that the said forms had important declarations that had to be completed by the agent. The agent had to provide clear confirmations regarding eligibility and the investor's awareness of and understanding of the Offering Supplement.

*The fund's Qualifying Investor Declaration Form required the '*duly authorized agent' *to:*

> 'hereby confirm that I have been properly appointed as a duly authorized agent of a prospective investor in the Scheme described above. **I certify that my principal is eligible to be treated as a 'Qualifying Investor'** since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal. **I certify that my principal has read and understood the Offering Document including the mandatory risk warnings**.*' (fn. 90: page 39 of the Offering Supplement of the Integra New Horizon Fund – Emphasis added by the Arbiter)*

The fund's Risk of Insufficient Liquidity Form in turn required the 'duly authorized agent' *to:*

> *'*hereby confirm that I have been properly appointed as a duly authorized agent of a prospective investor in the Scheme described above. **I certify that my principal has duly authorized me to confirm that he/she is aware of the fact that the Fund may invest in assets which are illiquid and that the Fund may also accept illiquid assets through subscriptions in specie**. **The investor is thus aware of the fact that the Fund may not be in a position to meet all redemption requests at all times. I certify that my principal has read and understood the Offering Document including the mandatory risk warnings.'** *(fn. 91: page 45 of the Offering Supplement of the Integra New Horizon Fund – Emphasis added by the Arbiter)*

Further to the above, the Arbiter considers that ***if the Complainant's Attorney had completed the indicated fund's*** **'Qualifying Investor Declaration Form'**

***and* 'Risk of Insufficient Liquidity Form'*, Integra could have reasonably and justifiably relied on such forms for the execution of the instruction to purchase the fund. However, no such forms were presented*.**

In the circumstances, Integra cannot just rely on its argument that the 'Attorney bears the responsibility to relay all actions to the Mandator'*, (fn. 92: p. 287) as it argued in its submissions, in the instance where the confirmations required from the Attorney, as an agent of the Complainant, in terms of the fund's Offering Document were not presented to it (together with its other internal forms).*

The Arbiter considers that in the absence of completion by the Complainant's Attorney of the fund's specific declarations (the* 'Qualifying Investor Declaration Form' *and the* 'Risk of Insufficient Liquidity to meet Redemption Requests – Investor Declaration Form'*, the onus of certifying the Complainant's awareness and understanding of the terms of the fund as outlined in its Offering Document, in the circumstances, fell onto the Company.

In its final submissions, the Service Provider seems to imply that it completed the fund's application forms itself in its capacity as nominee. (fn. 93: p. 288 – the Arbiter notes that not even the fund's application forms completed by Integra were provided) No copy of the mentioned fund forms completed by Integra were, however, presented by the Company, notwithstanding the Arbiter's requests. (fn. 94: p. 283)

In its capacity as nominee, Integra itself became the agent on whom the obligations to ensure the investor's awareness and understanding of the Offering Document would have applied.

Integra, as agent for the Complainant, did not ensure that its principal (being the Complainant as its client, and not the Complainant's other agent),* 'read and understood the Offering Document' *as required in the indicated fund's declarations.

It is also noted that the Company seems to have placed comfort just on the* 'Execution Only Form'*. *This is given that in its final submissions, it inter alia pointed out:*

> 'In particular we note that the Execution Only Form requires the client to confirm they are aware of the terms of the investment.' *(fn. 95: p. 288)*

***This statement could not have reasonably and sufficiently provided the same type of comfort emerging from the declarations and confirmations available in the* ‘Qualifying Investor Declaration Form’ *and* ‘Risk of Insufficient Liquidity Form’.**

This is also in view that the awareness of* ‘the terms of the investment’ *referred to by the Service Provider in the* ‘Execution-Only Form’ *deals with and solely caters for the nature of the service being provided by the Company, that is, the* ‘Execution-Only Service’** *(fn. 96: p. 66)* ***and not to the actual terms of the investment fund being invested into (the latter being covered in the fund’s forms).

No sufficient comfort has thus ultimately emerged that a valid application has been completed in respect of the Integra New Horizon Fund for the reasons outlined.

The Arbiter is of the opinion that when it comes to material changes (such as change from retail to professional status and material change in the investment terms) affecting the nature of the relationship between an investor and his appointed investment services firm, the investment services licensee cannot rely solely on a power of attorney used for normal administrative issues. It must, at the very least, obtain specific confirmation from the attorney that the changes have been explained to and consented by his mandator (their customer) or better still obtain direct confirmation from the customer.

Such material changes would involve re-assessment of the investor’s attitude to risk which are not issues that could be delegated by the mandator to the mandatary. By way of analogy from the medical field, a mandator could empower the mandatary to perform administrative tasks on his behalf (e.g. sign documents, procure medicine, arrange appointments, etc) but cannot undergo medical tests on behalf of the mandator.

<u>Conclusion</u>

As outlined in the MFSA’s Conduct of Business Rulebook, applicable to the Service Provider as a licensed MiFID investment firm:

> ‘Regulated Persons should be guided by the general principle that they are required to act honestly, fairly, and professionally in accordance with the best interests of their Clients. This requirement entails that Regulated Persons should seek to avoid situations of conflict of interest in so far as

> this is possible. In general, conflicts of interest would occur when a Regulated Person has an interest of its own that conflicts with the interest or interests of other Clients or entities for whom the Regulated Person may be acting in some capacity.' *(fn. 97: Page 195, Chapter* 3 *Conflicts of interest of the MFSA's Conduct of Business Rulebook (version April 2019). Rule R. 3.2 of the said Rulebook which stipulates:* "A regulated person shall act honestly, fairly, professionally in accordance with the best interests of its Clients".
>
> …
>
> 'When selling their Products and Services to Clients, Regulated Persons have an obligation to act honestly, fairly and in accordance with the best interest of such Clients. They must also behave with utmost good faith, integrity, due skill, care and diligence vis-à-vis their Clients. Accordingly, Regulated Persons are required to do everything which is possible to satisfy the needs and requirements of their Clients and shall place the interests of the latter before all other considerations.*' (fn. 98: Page 223, Chapter 4* Sales Process and Selling Practices, of the MFSA's Conduct of Business Rulebook *(version April 2019). Rule R.4.1.5 of the said Rulebook which stipulates that "*When providing Products, Services and/or where appropriate, Ancillary Services to Clients, a regulated person shall: (a) to act honestly, fairly and professionally in accordance with the best interests of its Clients; (b) at all times carry out the regulated activities with utmost good faith, integrity, due skill, care and diligence; (c) do everything which is reasonably possible to satisfy the needs and requirements of its Clients and shall place the interests of those Clients before all other considerations. Subject to these requirements and interests, a Regulated Person shall have proper regard for others."

It is further noted that Rule R.4.1.13 of the MFSA's Conduct of Business Rulebook further provides that:

> 'A Regulated Person shall not:- (a) persuade or attempt to persuade a Client to surrender or cancel any Product or Service which such Client may have already purchased, if such surrender or cancellation is not in the best interest of the Client; …'.

The Arbiter has given particular attention to the context in which the switch to the new investment was made, as explained above, where:

(i) *despite the* ‘execution-only’ *nature of the transaction, a switch was made into an in-house fund, in effect prompted by the Company;*

(ii) *the new investment necessitated a re-classification of the client from retail to professional;*

(iii) *the only forms signed were the Company's own internal forms, which were also only signed by the Attorney;*

(iv) *apart from the difference in the nature of the funds (from a retail to a professional investor fund, with the latter subject to different regulatory requirements where the level of protection afforded to investors may be different to those of a retail fund), the new fund included different terms of investment, particularly a lock-in period (of five years) (fn. 99: As per the provisions outlined in the* Offering Supplement of the Integra New Horizon Fund *– page 6, 20 and 31 of the Offering Supplement – https://www.integra-pw.com/images/services/IntegraNewHorizonOS.pdf) during which no redemption rights were possible.*

In the circumstances, it was only reasonable and mostly appropriate for the Company to ensure and obtain adequate formal confirmation of the Complainant's consent and acknowledgement of the new terms of the fund investment. The evidence emerging from the proceedings of this case does not support that this was properly done.

Coupled with the further absence of key fund declaration forms, which the Company was obligated to obtain and/or properly complete for the proper execution of the fund application, it cannot thus be concluded that the Company acted professionally in accordance with the best interests of its Client and that the transaction was carried out with the required due skill, care and diligence.

Hence, the Arbiter considers that the Complainant's claim that the switching of his investment was unauthorised and the Company's failure to notify him directly, as their client, about the switch and the new fund is justified in the particular circumstances of this case.

In determining the extent of compensation to be awarded in the circumstances, the Arbiter cannot reasonably consider any claimed lost earnings applicable on the Integra New Horizon Fund, as was made by the Complainant in his final submissions. This is also when taking into consideration the full and final *settlement already entered into by the Complainant with respect to the surrender of units into the Integra New Horizon Fund.*

However, the Arbiter shall consider compensation with reference to the Complainant's original investment as elaborated further below.

With respect to the moral damages claimed, the Arbiter, does not consider that compensation for mental stress is justified in the particular circumstances of this case. This is also when considering the context involving the MRVP, the nature of the communications exchanged, and the quick liquidity availability enabled by the Company (where the fund's units were ultimately switched to another investor that was found by the Company within just around two weeks from the Complainant's redemption request to assist him with his liquidity position. (fn. 100: the Complainant's request for redemption on 10 March 2025 (p. 44) to settlement on 25 March 2025 (p. 165)."

<u>The Appeal</u>

9. The appellant company filed its appeal application on the 1st October 2025, whereby it requested this Court to repeal, revoke and reverse the decision of the Arbiter for Financial Services of the 12th September 2025, subject to any or all other decision this Court may deem appropriate in the circumstances, as well as denying all pleas by the appellee, while upholding all pleas and submissions made by the appellant.

10. The appellant explains that it feels aggrieved by the decision given by the Arbiter, and bases its appeal on five grounds: (i) the Arbiter did not recognise that the action is time-barred in terms of article 21(1)(c) of Chapter 555; (ii) the Arbiter did not recognise that a full and final settlement agreement was signed by the parties; (iii) the change in the fund was validly authorised; (iv) the Arbiter applied certain civil procedures (prescription) but not others in his decision (validity of the power of attorney); (v) no *ratio decidendi* was given when the

Arbiter awarded the sum of €10,000 with interest and costs. The appellant claims that this decision is unjustified and has no basis in fact or at law.

11. The appellee replied that the decision given by the Arbiter is just, and therefore merits confirmation in its entirety, while the appeal filed by the appellant ought to be dismissed with costs against it.

Considerations

12. This Court shall now proceed to consider the grievances raised by the appellant in its appeal, and this after considering the decision given by the Arbiter, and the position adopted by the appellee in these proceedings.

The First Grievance: *[The action is time-barred in terms of article 21(1)(c) of Chapter 555]*

13. The appellant states that the Arbiter erred in limiting the legal effect of notice to the mandatary under article 1875 of the Civil Code. It claims that the Arbiter erred further in failing to dismiss the complaint as time-barred by the lapse of the two-year prescriptive period, as established by article 21(1)(c) of Cap. 555 of the Laws of Malta. The appellant claims that the two-year prescriptive period began to run when the appellee's mandatary was notified, due to the fact that the mandator is deemed to have first acquired knowledge of the matters complained of from the moment the mandatary became aware of the matter. It further holds that it is crucial to draw a distintion between a general mandate and a special mandate. In this case, the appellee conferred a general mandate upon the mandatary by means of the power of attorney of the

25th August 2019, and this within the meaning of article 1862 of the Civil Code, authorising the mandatary to act in the amplest manner, and therefore without limitation. According to the appellant this means that the appellee is deemed to be duly notified from the moment the mandatary, acting in a general manner and without limitation, became aware of the matter. The appellant states that since this notification occurred more than two years before the filing of the complaint with the Arbiter, the prescriptive period laid out in article 21(1)(c) of Chapter 555 of the Laws of Malta, had already elapsed. Moreover, article 1875 of the Civil Code imposes upon the mandatary the duty to keep the mandator fully aware of all matters relating to him, including the change in fund the mandatary himself approved in writing.

14. The appellee on the other hand claims that he had indeed given a special power of attorney to the mandatary, by means of which the said mandatary was authorised limitedly, to carry out acts in connection with the respondent's application in terms of the Malta Residence and Visa Program [Legal Notice 288 of 2015]. He further claims that the assertion that the power of attorney in question was a general one on the strength of one particular clause, is totally unfounded in fact and at law, since within the context of the power of attorney itself, it is evident that the acts and purposes thereby authorised were limited to the appellee's application in terms of the Malta Residence and Visa Program [Legal Notice 288 of 2015 as amended]. The appellee holds that the appellant had to prove that the appellee, and not the appellee's special mandatary, was duly notified with the change in the investment funds more than two years prior to the filing of the complaint. He further holds that the appellant failed to produce such evidence, and therefore, the Arbiter's decision that there was no

evidence to suggest that the complainant had knowledge of the matters complained of more than two years before filing his complaint, was correct, and that according to law and jurisprudence it was actually the appellant itself that had to prove that the complaint in question was time-barred. He states that on the other hand, he produced ample evidence which shows that he only became aware of the change in the investment funds on the 9th March 2025, and proceeded to file his complaint the following month, that is on the 16th April 2025.

15. The Court observes that the power of attorney given by the appellee to his mandatary, states explicitly that it is being given to:

> ‘*(a) sign and apply on my behalf for the Malta Residence and Visa Program in terms of Legal Notice 288 of 2015 as amended; (b) to amend, make corrections, submit documents and substitute documents of all forms of my application for the said Program; (c) to act as my attorney in the most ample manner with respect to Clause A above, which includes the amendment of any application form; (d) to correspond on my behalf with the Malta Residence and Visa Agency / Identity Malta and to furnish the Malta Residence and Visa Agency / Identity Malta with any information and/or documentation or explanations as may from time to time be required by Malta and Residence and Visa Agency / Identity Malta ...”.*

It is thus amply clear that the mandate given by the appellee was a very specific one, and one meant to facilitate his Malta residence application and the requirements he needed to satisfy under Legal Notice 288 of 2015. It is therefore wrong of the appellant to build this particular grievance on the premise that the appellee gave his mandatary a general mandate, as this is not the case. This further means that the appellant in this case had to prove that the mandatory (and not his special mandatary) was duly notified with the change more than two years prior to the filing of the complaint, something which in the opinion of the Court, it did not manage to do. The Court is of the same opinion as the Arbiter, that in this case there is no evidence which suggests that the appellee had knowledge of the matters complained of more than two years before he filed his complaint, and there is not a trace of evidence which suggests that there was any formal notification or disclosure to the appellee regarding the transfer of his funds. Indeed, the Court cannot doubt that the date indicated by the appellee in his complaint form, that is that of the 10th of April, 2025, is the date when these matters were first brought to his attention, as confirmed by him under oath in the sitting of the 3rd June 2025. The Court has no doubt that the appellee first learned about the transfer of his investments when he requested full redemption of his funds. Neither can it be claimed that he somehow had online or remote access to his investments, as the Arbiter here concluded that the login history suggests that the appellee started logging into the system, at times without success, in October 2023, which date falls within the two-year time period within which he made the complaint. Therefore the Court has no doubt that the Arbiter was correct in concluding that the action is not time-barred, as there is nothing in the acts of the proceedings to suggest that the appellee had prior knowledge of the relevant facts which led to his complaint before March 2025. Hence this grievance is being dismissed.

The Second Grievance: [A full and final settlement was signed by the parties]

16. The appellant states that both parties had signed a settlement agreement on the 25th March 2025, on the basis of which the appellee was paid the sum of

€177,426.46 by the appellant, and he further agreed that he would have no further claims or entitlements against the appellant by accepting this sum of money. Nonetheless, the appellee proceeded with a claim against the appellant before the Arbiter, who in turn entirely disregarded this clause, and awarded a sum payable to the appellant as he deemed that this settlement did not cover the original fund. The appellant claims that this does not hold any water as the clause is all-encompassing, and the change of the investment into the Integra Fund, could only happen with the liquidation of the Vilhena Fund. It was the former which led to the latter, and as a consequence, a full and final settlement with regards to the latter fund necessarily includes a full and final settlement with regards to the former. The Arbiter however decided that this clause did not bind the parties. The appellant states that the full and final settlement clause voluntarily covenanted by virtue of the agreement of the 25th March 2025, has the same effect as a *res judicata* at law, and that it also has the same effect as a contract on the strength of article 1729 of the Civil Code. The appellant refers also to article 1730 of the Civil Code, which stipulates that a compromise between two parties can only be suspended in the event of a fraud or violence, both of which did not occur in this case. The appellee, in an attempt to attack the validity of the settlement agreement, claimed that he had signed under financial duress, however he failed to prove this in the proceedings before the Arbiter. The appellant holds that the maxim *pacta sunt servanda* demands that whatever is freely agreed to is bound to stand, in the sense that whatever is covenanted between two parties, becomes the law between those two parties.

17. The appellee claims that in this case, not only did the Arbiter provide a reason for not relying exclusively on the agreement in question, but he actually provided more than one reason, that are all valid as a matter of fact and as a matter of law. He states that the Arbiter was totally correct when he concluded that the evidence clearly shows that at the time the appellee signed the agreement in question, he was experiencing several financial pressures, which the appellant was well aware of, also due to the fact that the unauthorised change in funds which the appellant had executed had resulted in an additional one year lock-in period by way of redemption restriction, during which the appellee could not withdraw his investment as planned. He states further that he was not given adequate time to consider the implications of the agreement in question, which was consequently concluded in a short period of time. He claims that one of the main purposes for the enactment of Cap. 555 of the Laws of Malta, is to protect consumers from unfair practices in the financial markets, and he claims that this is certainly applicable in the present case, given that the change effected in the investment funds by the appellant was quite subtle, and therefore was not easily recognisable to the untrained eye, as noted by the Arbiter in his decision. He claims that the agreement in question is a clear example of how a financial services provider may, through unfair practices, attempt to conceal its responsibility to the detriment of its customers who are burdened with substantial losses. He claims further that the agreement in question refers solely to the New Horizon Fund, to which he was switched unilaterally by the appellant, without his knowledge and consent, and not to the Vilhena Government Bond Fund in which his investment had originally been made. The appellee insists that this means that any claims arising from the said

Vilhena Government Bond Fund, cannot be construed to constitute the subject matter of the agreement in question. He also explains that the Arbiter's decision in liquidating the amount of ten thousand Euros (€10,000) in his favour was pegged to the value of the said Vilhena Government Bond Fund, which is not even mentioned in the agreement in question.

18. The Court is of the same opinion as the Arbiter, in that the full and final settlement clause and the appellee's agreement to it, was pegged to the New Horizon Fund, and agreeing to this clause did not in any way preclude the appellee from seeking redress in respect of claims involving his original investment in the Vilhena Malta Government Bond Fund. The said clause was signed with respect to the early redemption and surrender of the appellee's units in the New Horizon Fund, and had nothing to do with the investment he originally held, from which he was transferred without having full disclosure of all material facts. The hurried manner in which all this was transacted, the losses incurred by the appellee due to the lock-in clause, and the fact that the appellee did not have adequate time to think his options through, due also to the financial difficulties he was facing at the time, all lend credibility to the Arbiter's conclusion that the full and final settlement clause was agreed to only in so far as it affects the appellee's exit from the New Horizon Fund and not the appellee's original investment.

The Third Grievance: *[The change in the fund was validly authorised]*

19. The appellant holds that the Arbiter erred in limiting the legal effect of notice to the mandatary under article 1875 of the Civil Code, and that the

Arbiter’s conclusion in this regard is erroneous at law and in fact. It states that even if one had to put aside the fact that the appellee’s mandatary was fully aware of everything at every step, the appellee personally knew that his investment was now in the Integra Fund. It explains that the appellee had direct access to the online portfolio portal, and he himself sought clarifications in February 2023. Moreover, on the 25th August 2019, the appellee executed a general power of attorney in favour of his legal representative. The appellant further holds that Maltese jurisprudence supports the idea that the appointment of a mandatary creates a fiduciary relationship, and therefore it follows that the mandatary is vested with full authority to receive communications and to act on behalf of the mandator. It further holds that it should be amply clear that once the mandatary executed the transfer of funds on behalf of the appellee, the appellee was duly notified of this transfer in terms of law. The appellant claims that in this case, the appellee empowered his mandatary to act in a general manner as contemplated by article 1862 of the Civil Code, and expressly exempted him from both the duty to render an account of his management and from any liability for acts performed in the course of that mandate. In this case, the appellant acted in terms of the agreement, and approval was acquired from the mandatary, and thus the change in the investment was validly authorised.

20. The appellee replies to this grievance by again stating that the power of attorney in question was indeed a special one, and therefore his special consent was required to make the switch from the Vilhena Government Bond Fund to the New Horizon Fund, which consent was never requested by the appellant,

and therefore could not have been provided. Moreover, all evidence points to his not being aware of any changes prior to the 9th March, 2025.

21. The Court has already made a number of considerations on this point, and would like to reiterate once more that this was not a general, but a special power of attorney given by the appellee to the mandatary, and therefore the appellee's consent was required prior to any material changes to his investments and to the funds in which his investments were held. It has been amply proved that no such consent was obtained by the mandatary in this case. The Court does not share the same conviction as the appellant, that the appellee was somehow kept informed about the changes to his funds, and despite the claim that he had direct access to the online portal, this does not mean that the appellee was making use of this portal or that the appellee was managing to log into the portal effectively. In fact the Arbiter considered that from the evidence produced, it transpires that the appellee gained online access to the portal sometime in October 2023, and even then, some of his log-in attempts were not successful. Despite the fiduciary nature of the relationship between the appellee and his mandatary, nowhere has it been proven that the appellee was made aware of any material changes to the funds and to the nature of his investments, and hence the Court cannot accept this particular submission made by the appellant. Therefore, in view of these considerations, the Court is not upholding this particular grievance either.

The Fourth Grievance: *[The Arbiter applied certain civil procedures (prescription) but not others (validity of power of attorney)]*

22. The appellant states that it felt aggrieved by the Arbiter's claim that the validity or otherwise of the power of attorney signed by the appellee, did not fall within his remit. It states that there is nothing in Cap. 555 of the Laws of Malta which precludes the Arbiter from determining whether a power of attorney was validly in force or not, since this issue is fundamental and central to this dispute. It holds that article 19(3) of Cap. 555 states that in carrying out his functions under sub-article (1), the Arbiter shall consider all applicable and relevant laws, rules and regulations, and therefore in this case it should have been evident that the laws, rules and regulations governing mandate, are both applicable and relevant to the case. Further to this, the appellant claims that if the Arbiter was of the opinion that the validity or otherwise of the actions taken in terms of the power of attorney, did not fall within his sphere of competences, he ought to have refrained from proceeding further, and should have referred the matter to the competent Court for proper determination.

23. The appellee puts forward the opinion that this particular grievance is frivolous and vexatious, especially when considering the Arbiter's decision in its entirety, since it relates to the said power of attorney. He claims that even if one were to consider the power of attorney in question as a valid general power of attorney, it still results that the appellant did not follow the correct procedures when effecting the change from the Vilhena Government Bond Fund to the New Horizon Fund. Within this context, the appellee states that he believes it is very imprudent on the part of the appellant to cut corners by presenting incomplete documentation to a special mandatary, and not to the appellee, who was only authorised to deal with the complainant's application in terms of the Malta Residence and Visa Program [Legal Notice 288 of 2015 as

amended] when making the change from the Vilhena Government Bond Fund to the New Horizon Fund, when the appellant should have requested the appellee's express consent in such regard by means of proper and complete documentation. The appellee states that even if one were to consider the power of attorney in question as being a valid general power of attorney, which it isn't, the fact remains that the Arbiter listed a number of deficiencies relating to the procedure which was adopted by the appellant when making the change between the funds in question, to the extent that such change was still deemed to have been made without the required authorisation in terms of the law.

24. The Court is of the opinion that the Arbiter was correct in stating that the validity of the power of attorney in question did not fall within his remit, in the sense that the complainant in his complaint, did not ask the Arbiter to investigate the validity of the power of attorney. Therefore the Arbiter did not need to go into this particular technicality. What is clear however is that whereas the appellant is building its appeal around its understanding that the power of attorney in question was a general one, in actual fact the power of attorney in question is a special one, and therefore the appellee should have been consulted before any material changes to his investments were made, something which evidently did not happen, because if it did, there would have been a shred of evidence of this material fact somewhere in the acts of the proceedings. In view of this, this grievance is being dismissed as well.

The Fifth Grievance: *[No* ratio decidendi *was given when the Arbiter awarded the sum of €10,000 with interests and costs.*

Such decision was unjustified and has no basis in fact or at law]

25. The appellant claims that in his decision, the Arbiter awarded the appellee the sum of €10,000 with interest accruing from when the date the decision was taken, as well as costs. It holds that this decision was taken without providing the parties with any considerations which such decision necessitates, in total breach of the principles of good administrative behaviour required in awarding such a sum. It holds that in arriving at this sum, the Arbiter has failed or has failed to show that in coming up with this sum, he took cognizance of any relevant factor. It states that whereas the Arbiter is not precluded from deciding in a manner which he believes to be just and equitable, the decision has to be transparent, and the party affected by such decision should be made aware of the basis for such a decision.

26. The appellee states that even this grievance is frivolous and vexatious, since the Arbiter in his decision clearly explained why he awarded the sum of €10,000 as damages.

27. The Court fails to see the logic behind this particular grievance, especially since in his concluding remarks, the Arbiter made it clear that the liquidation of the amount of €10,000, represents the difference in value between the amount the appellee could have received under the Vilhena Malta Government Bond Fund (€190,455.45), and the amount received by the appellee upon settling for the Integra New Horizon Fund (€3,028.99 and €177,426.46). The difference between what was, and what could have been, in fact stands at €10,000. Hence this grievance is being dismissed as well, as it is utterly unfounded.

Decide

For these reasons, the Court rejects the appeal filed by the appellant, and is confirming the decision delivered by the Arbiter on the 12th September 2025, in its entirety.

The costs of this appeal are to be borne by the appellant.

Read.

Hon. Dr Lawrence Mintoff LL.D.
Judge

Christian Sammut
Deputy Registrar