**Investment Services Rules for Notified Professional Investor Funds**

**AX42 - Annex C: Contents of the Offering Memorandum**

***1. General Requirements***

**1.1** A Scheme shall issue or cause to be issued an Offering Document for which the Scheme shall be responsible. The purpose of the Document is to provide sufficient information to enable potential Investors to make an informed investment decision.

**1.2** The Document must contain all material information, which at the date of the Offering Document is within the knowledge of the Scheme’s governing body, to be relevant for the purpose of making an informed judgement about the merits of participating in the Scheme and the extent of the risks accepted by so participating. The Offering Document shall include the following information:

***Information Concerning the Scheme***

1. The following statements –which must be in a prominent position printed in font whose pitch is at least 12:

* “[name of the Scheme] is a Notified PIF under the Investment Services Act (Notified CISs) Regulations.
* Notified PIFs are not licensed by the MFSA. Notified PIFs are required to adhere to the supervisory conditions stipulated in the abovementioned Regulations and in the Investment Services Rules for Notified Professional Investor Funds and related Due Diligence Service Providers.
* Notified PIFs are non-retail schemes and available to investors qualifying as Qualifying Investors. The protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.
* The content this Offering Document or any other marketing documentation has not been approved or reviewed by the MFSA and the ultimate responsibility on the content of this documentation lies on the Notified PIF.
* NPIFs are riskier funds by nature in view of the less onerous regulatory requirements that apply and are subject to the minimum level of supervision for a fund in Malta. The MFSA may remove a NPIF from the Register of NPIFs at any time.
* Investors in NPIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.
* Investors’ attention is drawn to the risk disclosures section of this document.
* The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”

1. A statement that the Scheme’s governing body has approved of the content of the Offering Document.
2. Name of the Scheme.
3. Date of establishment of the Scheme and a statement as to its duration, if limited.
4. Name or style, form in law and registered office.
5. In the case of an umbrella Scheme, an indication of the Sub-Funds.
6. In the case of an Incorporated Cell Company, an indication of the incorporated cells.
7. The investment objectives, policies, and restrictions of the Scheme, together with the extent of use of leverage. In the case of an umbrella Scheme, this information must be provided for each Sub-Fund.
8. A statement indicating that:

* changes to the investment policies and restrictions of the Scheme, or in the case of an umbrella Scheme, its Sub-Funds, shall be notified to investors in advance of the change.
* changes to the investment objectives of the Scheme, or in the case of an umbrella Scheme its Sub-Funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.

1. Accounting and distribution dates.
2. Name of auditor.
3. Details of the types and main characteristics of the Units and in particular:

* the nature of the right represented by the Unit;
* indication of the voting rights, if any, of the holders of Units.

1. A Statement – where the Scheme has issued “Voting Shares” to the promoters and “non-Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the Scheme. In the event that the “Voting Shares” are held by a Corporate Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.
2. Procedures and conditions for the creation, issue, and sale of Units.
3. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase, or redemption may be suspended.
4. Rules for the valuation of assets.
5. Method to be used for the determination of the creation, sale, and issue prices and the repurchase, redemption and cancellation prices of Units, in particular:

* the method and frequency of the calculation of the net asset value;
* information concerning the charges relating to the sale or issue and the repurchase or redemption of Units; and
* arrangements whereby holders of Units and prospective holders of Units may deal.

1. In the case of an umbrella Scheme, the charges applicable to the switching of investments from one Sub-Fund to another.
2. Information concerning the nature, amount, and the basis of calculation in respect of remuneration payable by the Scheme to the Manager, Administrator, Custodian, Service Provider appointed in terms of Regulation \_\_ of the Investment Services Act (List of Notified CISs) Regulations, and to third parties, and in respect of the reimbursement of costs by the Scheme to the Manager, to the Custodian and to third parties.
3. In the case of a Scheme set up as an investment company, the amounts of authorised and paid-up share capital.
4. In the case of a Scheme set up as an investment company, brief details of the members of the Board of Directors of the Scheme. Where the Scheme has appointed one or more Corporate Directors, this section should include brief details on the Corporate Director and its directors, including a brief description of the nature/ objects of the company. In the case of a Corporate Director with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate Director or include a statement that such information will be available upon request.
5. In the case of a Scheme set up as a limited partnership, brief details of the General Partner/s. Where the Scheme has appointed one or more Corporate General Partner/s, this section should include brief details on the Corporate General Partner/s and its directors, including a brief description of the nature/ objects of the company. In the case of Corporate General Partner/s with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate General Partner/s or include a statement that such information will be available upon request.
6. In the case of a Scheme set up as an investment company with variable share capital and opting to issue shares subject to full payment by a settlement date, in accordance with regulation 16 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the Scheme shall indicate in its offering document, the settlement date by which payment of the full subscription price is to be received, which date cannot be later than five working days from the date of issue of those shares.

***Information concerning the Manager, Administrator, Service Provider appointed in terms of Regulation \_\_ of the Investment Services Act (List of Notified CISs) Regulations, and Custodian/ Prime Broker (where applicable) (“the Service Provider”)***

1. Name or style, registered office, and head office.
2. If the Service Provider is part of a group, the name of that group.
3. Regulatory Status of the Service Provider.
4. In the case of the Administrator a statement whether the Administrator is appointed by the Scheme or the Manager.
5. Where one or more Service Provider has not to be appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out e.g., if a Custodian is not appointed, the Offering Document should include a description of the safekeeping arrangements that will be put in place with respect to the assets of the Scheme.

***Information concerning the Local Member of the NPIF’s Governing Body***

1. Name.
2. A statement detailing the responsibilities set out in Rule 13.01 of the Investment Services Rules for Notified PIFs and related Due Diligence Service Providers.

***Risk Warnings***

1. This section should provide a detailed and clear indication of the principal risks associated with investing in the Scheme.
2. Where it is possible for the Scheme to enter into agreements with investors for the purpose of committing funds for the subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the Scheme issue units at a discount with respect to its current NAV, in terms of the such agreements, there will be a risk of dilution to the Net Asset Value of the Scheme.
3. There should also be a clear risk warning that while investors entering into an agreement with the Scheme for the purpose of committing funds for the subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the draw-down request is made exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement, on the other hand, if the NAV per unit at the time a draw-down request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

***General Information***

1. A description of the potential conflicts of interest which could arise between the Manager, Administrator, Service Provider appointed in terms of Regulation \_\_ of the Investment Services Act (List of Notified CISs) Regulations, or the Custodian, and the Scheme.
2. The name of any entity which has been contracted by the Manager or the Scheme to carry out its work.
3. Information concerning the arrangements for making payments to holders of Units, purchasing, or redeeming Units and making available information concerning the Scheme.
4. Where applicable, an indication that the Scheme will use Trading Companies or Special Purpose Vehicles as part of its investment strategy.

***2. Disclosures in line with the Sustainable Finance Disclosure Regulations***

**2.1** The Sustainable Finance Disclosure Regulation (‘SFDR’) requires financial market participants and financial advisers to make pre-contractual and ongoing disclosures to investors regarding the integration of sustainability risks and the impact of adverse sustainability as well as the promotion of ESG characteristics and sustainable investments as applicable. Such obligations apply to all Financial Market Participants and Financial Advisors within the scope of SFDR, even to those that do not offer products that promote ESG characteristics or have sustainable investment objectives.

**2.2** On 14 July 2021 the European Commission issued a Q&A[[1]](#footnote-1) confirming the applicability of the SFDR to registered/sub-threshold AIFMs as referred to in Article 3(2) of the AIFMD.

Applied to the local context, this means that PIFs and *de minimis* AIFMs fall within the scope of the SFDR by virtue of their inclusion in the scope of Financial Market Participants and are required to provide the required disclosures.

**2.3** The Scheme shall therefore ensure compliance with the requirements emanating from the SFDR whilst keeping in mind the high-level principles-based approach outlined by the European Commission.[[2]](#footnote-2)

1. <https://www.esma.europa.eu/sites/default/files/library/sfdr_ec_qa_1313978.pdf> [↑](#footnote-ref-1)
2. <https://www.esma.europa.eu/document/letter-european-commission-esas-application-regulation-eu-20192088-sustainability-related> [↑](#footnote-ref-2)