

# **Corporate Governance Manual for Directors of Collective Investment Schemes**

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## TABLE OF ABBREVIATIONS

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AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
AIFMD	Alternative Investment Fund Manager Directive
AML/CFT	Anti-Money Laundering / Combating the Financing of Terrorism
BCP	Business Continuity Plan
CIS	Collective Investment Scheme
CMP	Compliance Monitoring Programme
CSR	Corporate Social Responsibility
D&O	Directors and Officers liability insurance cover
ESG	Environmental, Social, Governance
EU/EEA	European Union / European Economic Area
FIAU	Financial Intelligence Analysis Unit
ICT	Information and Communications Technology
ISA	Investment Services Act
MFSA	Malta Financial Services Authority
MLRO	Money Laundering Reporting Officer
NAV	Net Asset Value
PII	Professional Indemnity Insurance
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
SFDR	Sustainable Finance Disclosure Regulation
UCITS	Undertaking for Collective Investment in Transferable Securities
VaR	Value at Risk

## REVISIONS LOG



VERSION	DATE ISSUED	DETAILS
1.00	September 2014	Publication of Corporate Governance Manual for Directors of Investment Companies and Collective Investments Schemes
2.00	30 October 2023	Publication of Updated Corporate Governance Manual for Directors of Collective Investment Schemes

# PREAMBLE

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Corporate Governance is “the system by which all companies are directed and controlled”.<sup>1</sup> It provides the structure through which companies’ objectives are set, attained and how performance is monitored. It also governs the relationship between the entity’s management, its Board, its shareholders, and other stakeholders.

Corporate governance ensures that an entity’s organisation and operations are carried out in a manner that benefits the company’s best interests. Good corporate governance generates trust - “If management is about running the business, governance is about seeing that it is run properly”.<sup>2</sup>

In line with the Malta Financial Services Authority’s (‘MFSA’) strategic priority of strengthening the overall governance, conduct and culture within the financial services sector, the Authority embarked on a long-term project aimed at strengthening the overall corporate governance framework of its Authorised Entities. To this end, in August 2022, a new [Corporate Governance Code](#) was issued, establishing a comprehensive, principle-based and cross sectoral framework applicable to all financial sectors operators.

Whilst the recently published Code captures almost all MFSA authorised entities, including Collective Investment Schemes (‘CISs’) within its scope,<sup>3</sup> in view of the specificities of the funds sector, the Authority is of the view that a specific Corporate Governance Manual for Directors of Investment Funds (the ‘Manual’) complementing the principles and provisions set out in the MFSA Corporate Governance Code is merited.

This Manual, as updated, seeks to align the Corporate Governance Manual for Directors of Investment Companies and Collective Investment Schemes with the new Corporate Governance Code while introducing additional principles and best practices which are specific to the funds sector. It thereby seeks to promote strong and effective governance, enhancing the compliance culture and ensuring the continued stability, growth and soundness of the sector.

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<sup>1</sup> The Financial Aspects of Corporate Governance (The Cadbury Report), December 1992, available online at: <https://ecgi.global/sites/default/files//codes/documents/cadbury.pdf>

<sup>2</sup> Tricker, Robert Ian, Corporate governance. Principles, policies and practices, Oxford University Press, New York 2009.

<sup>3</sup> The Corporate Governance Code provides a set of principles, complemented by supporting provisions, which are to be applied on a ‘best effort basis. It is applicable across sectors, to all persons (excluding natural persons) authorised by the MFSA to provide financial services in or from within Malta – this therefore includes authorised stakeholders operating in the asset management sector. The Code does not apply to listed entities falling within the scope of the capital market rules and neither does it apply to authorised entities which are also listed and falling within scope of the capital market rules. Therefore, Collective Investment Schemes falling within the scope of the Capital Markets Rules are excluded from the scope of the new Code.

Whilst the guidance set out in this Manual is not intended to be exhaustive, CISs should use it to develop their own best corporate governance practices to fit their particular context.

This Manual should not be deemed to override the applicable laws, regulations or rules which regulate CISs, neither should it be considered or construed as advice or any other form of commitment on the part of the MFSA. Should a conflict arise between this Manual and the applicable laws, regulations or rules, the respective laws, regulations, or rules are to prevail. Indeed, where more onerous/mandatory provisions are prescribed in the applicable regulatory framework, the more onerous/mandatory provisions are to apply.

## **Title 1            Scope and High-level Principles**

### ***Section 1 - Scope and Application***

- 1.1.1            This Manual shall apply to Directors of Collective Investment Schemes ('CISs' or 'Schemes' or 'Fund') authorised by the MFSA to provide services in or from within Malta.
- 1.1.2            Given the various types of Schemes falling within its scope, this Manual's application is based on the principle of proportionality. Rather than providing a rigid set of rules, the Manual is comprised of principles, which Schemes are expected to comply with on a 'best-effort basis'.
- 1.1.3            The Directors of the Scheme are expected to adhere to this Manual in a manner that is proportionate to the nature, size and complexity of the Scheme's' business. This is, of course, without prejudice to any requirements or obligations set out in the applicable regulatory frameworks.
- 1.1.4            In applying the principle of proportionality, as set out in 1.1.2, Directors, as far as applicable, should consider the following criteria:
- i.    the size of the Scheme for which they act as Directors manages *inter alia* in terms of the balance sheet total, assets under management, and/or the volume of transactions it makes;
  - ii.   the legal form of the Scheme;
  - iii.  the geographical presence and the size of the operations in each jurisdiction;
  - iv.   the underlying business model and strategy, the nature and complexity of the business activities, and the Scheme's organisational structure;
  - v.    the risk strategy, risk appetite and actual risk profile of the Scheme, also taking into account the result of the annual capital adequacy assessment;
  - vi.   the type of investors; and
  - vii.  the nature and complexity of the products, contracts or instruments the Fund invests in.
- 1.1.5            The Directors are ultimately responsible for the governance of the Scheme. Where this Code sets out expectations on the Scheme, this should also be considered as a reference to the responsibility of the Board of Directors for

the overall governance of the Scheme and for the policies and procedures adopted for the better governance of the Scheme.

1.1.6 This title outlines the high-level principles which should guide Directors of Schemes in the exercise of their role and functions.

1.1.7 Title 2 of this Manual sets out the principles of good corporate governance applicable to Collective Investment Schemes. It is organised into sections which provide a number of core principles that are considered essential for the good governance of Schemes.

1.1.8 Any references to the “Corporate Governance Manual for Directors of Investment Companies and Collective Investments Schemes” in any documentation/rules/guidance notes issued by the MFSA should be considered as a reference to this Manual.

## ***Section 2 - High-level Principles***

1.2.1 Directors shall act in an ethical manner taking into consideration the best interests of investors and the integrity and reputation of Malta’s financial system, with the tone being set from the top.

1.2.2 Directors shall act honestly, fairly, effectively, and professionally, and shall comply with all relevant applicable legislative and regulatory frameworks.

1.2.3 Directors are *inter alia* also expected to:

- i. conduct their business with integrity, due skill, care, and diligence;
- ii. identify, mitigate and manage any conflicts of interests;
- iii. organise and control their affairs effectively, inter alia establishing an adequate risk management framework;
- iv. ensure that high standards of corporate governance are applied at all times;
- v. ensure that the Scheme which they direct maintains adequate financial resources;
- vi. disclose to the MFSA any information which the Authority would reasonably expect to be made aware of; and disclose to the Board any information which the Scheme would reasonably expect to be made aware of.

#### 1.2.4

Directors shall:

- i. make reference to and, as applicable, ensure compliance with the relevant Maltese laws, regulations and rules issued thereunder as well as any Guidance Notes which may be issued by the MFSA or other relevant authority, agency, or body to assist the said entities in complying with their legal and regulatory obligations.
- ii. cooperate in an open and honest manner with the MFSA and any other relevant regulatory authority; and
- iii. take due account and, as applicable, comply with any relevant EU legislation as well as any Guidance Notes/Statements/Industry Best Practices which may be issued by European and international standard-setting bodies.

### ***Section 3 - Definitions***

#### 1.3.1

For the purposes of this Manual, the definitions set out under this section should be read in conjunction with the provisions of the Investment Services Act and any other law administered by the Authority, which is applicable to Schemes, for the time being in force in Malta.

#### 1.3.2

In the event that any of the definitions contained hereunder conflict with a definition under the Investment Services Act or any other law administered by the Authority, which is applicable to Schemes, for the time being in force in Malta, the definitions set out in the Act or in any other such law shall prevail, unless otherwise specified herein.

**Administrator** 'Administrator' shall refer to a person appointed by the Scheme responsible for the provision of Administration services to the Scheme.

**AIFMD** 'AIFMD' means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as

amended from time to time, and includes any implementing measures that have been or may be issued thereunder.

**Alternative Investment Fund** 'Alternative Investment Fund' or 'AIF' shall have the same meaning as assigned to it under Article 2 (1) of the Investment Services Act.

**Alternative Investment Fund Manager** 'Alternative Investment Fund Manager' or 'AIFM' shall have the same meaning as assigned to it under Article 2 (1) of the Investment Services Act.

**Chairperson** 'Chairperson' shall refer to the chair of the Board of Directors.

**Committee** 'Committee' shall refer to a Committee of the Board.

**Company** 'Company' shall have the same meaning assigned to it by the Companies Act, Chapter 386 of the Laws of Malta.

**Collective Investment Scheme** 'Collective Investment Scheme' or 'Scheme' or 'Fund' or 'CIS' shall have the same meaning as assigned to it under Article 2 (1) of the Investment Services Act.

**Custodian/Depository** 'Custodian/Depository' shall have the same meaning as assigned to it under the Investment Services Rules of Collective Investment Schemes.

**Director** 'Director' or 'Board member' shall refer to the term Director as defined in Article 2 of the Companies Act, i.e., any person occupying the position of Director of a company, by whatever name such person may be called, carrying out substantially the same functions in relation to the direction of the company as those carried out by a Director.

Provided that, for purposes of this manual directors/board members shall refer to directors/board members of Schemes.

**Executive Director** an "Executive Director" is a Director who is contractually engaged to undertake the day-to-day executive management and decision making process of the Scheme.

**Fund Manager** 'Fund Manager' shall refer to the company investing in assets on behalf of a Collective Investment Scheme in accordance with the investment objectives of the Fund. For Self-Managed Schemes, the term Fund Manager shall refer to the individuals appointed for the management of the assets of the Scheme.

**Greenwashing** 'Greenwashing' should be understood as the practice of making unsubstantiated claims by a Scheme about being environmentally friendly or exaggerating its positive environmental impact. Greenwashing can exist at entity, product, and process level.

**Independent Director** An 'Independent Director' is a Non-Executive Director who is free from any present and past business, family, or other relationship of any nature – with the entity, its controlling shareholder/s or the management of either – that could influence the Director's objective and balanced judgment and reduce the member's ability to take decisions independently.

**Investment Service Act** 'Investment Service Act' or 'the Act' or 'ISA' shall refer to the Investment Service Act, Chapter 370 of the Laws of Malta.

**Malta Financial Services Authority** 'Malta Financial Services Authority', 'MFSA' or 'the Authority' refers to the Malta Financial Services Authority, as established by the Malta

Financial Services Authority Act, Chapter 330 of the Laws of Malta.

**MFSA Act** 'MFSA Act' shall refer to the Malta Financial Services Authority Act, Chapter 330 of the Laws of Malta.

**Money Laundering Reporting Officer** 'Money Laundering Reporting Officer' or 'MLRO' means the person appointed by a Scheme in terms of Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations.

**Net Asset Value** 'Net Asset Value' or 'NAV' shall represent the net value of and a Scheme is calculated as the total value of the Scheme's assets minus the total value of its liabilities.

**Non-Executive Director** A 'Non-Executive Director' is a Director who is not engaged in the daily management of the Scheme. A Non-Executive Director has an important role in overseeing and monitoring management decision making within the Scheme.

**Person** 'Person' shall refer to the term Person as defined in Article 2 of the MFSA Act.

**Recognised Jurisdiction** 'Recognised Jurisdiction' shall be defined as including EU and EEA Members, and signatories to a Multilateral MoU or Bilateral MoU with the MFSA covering the relevant sector of financial services.

**Self-Managed Scheme** 'Self-Managed Scheme' shall refer to those Schemes where a third-party Fund Manager is not appointed.

**Senior Management** 'Senior Management' or 'Senior Executives' shall refer to those natural persons who exercise executive functions within the Scheme and who

are responsible, and accountable to the Board, for the day-to-day management of the Scheme.

**Service Providers** 'Service Providers' are appointed by the Scheme as it may deem necessary. These Service Providers may include, amongst others, a Fund Manager, an Administrator, an Investment Adviser, a Custodian/Depositary and an Auditor. All Service Providers of a Scheme shall be established and regulated in a recognised jurisdiction.

**Undertaking for Collective Investment in Transferable Securities** 'Undertaking for Collective Investment in Transferable Securities' or 'UCITS', shall have the same meaning as assigned to it under Article 2(1) of the 'Investment Services Act.'

## **Title 2 Principles of Good Corporate Governance**

### ***Section 1 - The Role and Function of the Director of a Fund***

- 2.1.1 Collective Investment Schemes should be led and controlled by an effective Board that is collectively responsible for the Fund's long-term sustainable success.
- 2.1.2 The Board of Directors holds the ultimate and overall responsibility for the Fund's corporate governance arrangements and is the Fund's primary decision-making body with collective responsibility for its affairs.
- 2.1.3 The Board therefore is *inter alia* responsible to oversee and ensure that the Fund consistently operates in a manner that seeks to protect the best interest of the Fund and its investors.
- 2.1.4 A particular aspect which has a material impact on the nature of the role of a Fund Director is that it is the Fund Manager which sets the investment strategy and operational structure of the Fund.
- 2.1.5 The role of the Board of Directors of a Fund is to oversee and monitor the implementation of the Fund's investment and operational strategy as set by the Fund Manager and as disclosed to investors in the Fund's Offering Documents. To the extent that regulatory, tax or operational planning requires the Board's periodic input into strategy, such input shall occur in the form of a review and approval of a recommendation made by the Fund Manager.
- 2.1.6 Considering that the traditional role of management in the Fund context is shared by the Fund Manager and by the other service providers, the Board shall be responsible for the oversight of:
- i. the Fund Manager, key service providers and outsourced functions ensuring their adherence to the objective, policy, strategy, and restrictions of the Fund as well as any applicable legislation;
  - ii. the implementation of the Fund's investment and operational strategy as set by the Fund Manager and disclosed to investors in the Fund's Offering Documents.

- 2.1.7 Directors should also ensure that:
- i. risks and conflicts of interest are identified, mitigated and managed in an effective and timely manner;
  - ii. there is clear and accurate communication with investors;
  - iii. any delegation arrangement/s entered into is with appropriate service providers, clear about what is being delegated, and adequately monitored;
  - iv. self-managed Schemes establish an in-house Investment Committee which may also include members of the Board of Directors of the Scheme; and
  - v. there is adequate oversight of the financial controls of the Fund.
- 2.1.8 Directors must be aware that, as the individuals holding the ultimate responsibility for the Fund, they shall be subject to MFSA's regulatory scrutiny.

## ***Section 2 - Structure and Composition of the Board of Directors***

- 2.2.1 The Board's structure and composition should ensure that it can fulfil its key responsibilities and ensure adequate understanding and oversight of the Fund's operations, considering the nature, size and complexity of its business.
- 2.2.2 The Board should be composed of persons who, as a group, have the required diversity of knowledge, judgment, and experience to complete their tasks in an appropriate and professional manner.
- 2.2.3 The composition and structure of the Board should ensure that no member or group of members can dominate decision making, influencing the Scheme disproportionately.
- 2.2.4 The Board should be composed of a combination of Executive and Non-Executive Directors, including Independent Non-Executive Directors. Good corporate governance practices strongly support the inclusion Independent Non-Executive Directors on the Board to independently safeguard the interests of the investors of the Fund, implement robust oversight of the practices of investment managers and aid in rebuilding public trust in asset management.

- 2.2.5 A Fund Board should appoint a Chairperson. The Chairperson shall be responsible for ensuring that the Board operates effectively and efficiently. The Chairperson is also responsible *inter alia* for the communication between the Fund Manager and the Board, and between the investors and the Board.
- 2.2.6 Executives of the Fund Manager or other service providers of the Fund may sit on a Fund Board. In their capacity as Directors of a Fund, when nominated by the Fund Manager, the Directors owe their duties to the Fund and not to their employers. The Directors would need to appropriately manage any conflicts of interest which may arise, as outlined in Section 10.
- 2.2.7 The Board should have no less than three Directors. Taking into consideration the nature, scale, complexity, and outsourcing arrangements of the activities being conducted, the Fund should appoint a number of Directors sufficient to ensure an adequate balance of skills and experience within the Board, taking into consideration the investment strategy of the Fund. Furthermore, the Board should have a sound understanding of the fund management industry and related processes as well as, appreciation of regulatory rules, directives and industry and/or market trends.
- 2.2.8 Boards should not be composed of more than seven Directors as this may reduce the efficiency of the decision-making process of the Scheme.
- 2.2.9 Boards should be composed of an uneven number of Directors. This to ensure that where it is not possible for decisions to be taken unanimously, decisions are at least taken on the basis of a majority vote and limit the Chairperson's use of the casting vote.
- 2.2.10 The quorum for any Board meeting should be the majority of Directors, unless a Committee has been appointed to handle a specific matter.
- 2.2.11 Directors should ensure that they have sufficient resources to enable them to discharge their duties to the Fund. Fund Directors should not hesitate to ask the Fund Manager for additional resources, if possible.
- 2.2.12 Some Committees may be appointed to review and execute documents related to transactions already approved by the Board in a prior meeting. The actions of any such Committee should be reported at the Board meeting taking place after such actions. Any material actions by such Committee

should be reported to the Board immediately after the action rather than waiting to report it at the following Board meeting.

### ***Section 3 – Directors Appointment, Succession and Resignation***

- 2.3.1 CISs should have a formal, rigorous, documented, and transparent process for the appointment of Directors. This process is to be based on merit and objective criteria.
- 2.3.2 Any nomination for re-appointment should take account of past performance. The acceptance and appointment should be reflected in writing, through an acceptance letter, terms of reference or Director services agreement to be entered into by the Fund and the appointee.
- 2.3.3 A Fund should ensure that the Board is composed of persons who are fit and proper. The Board should ensure that the Scheme conducts an assessment and due diligence prior to proposing a Director to be appointed to it, and on a regular basis thereafter, to ensure that these individuals are fit and proper persons.
- 2.3.4 Prior to accepting an appointment as a Director of a Fund, a person should ensure that other directors have a good reputation, knowledge of the operations of a CIS and sufficient capacity to discharge their duties.
- 2.3.5 Fund Directors should ensure that they keep developing and updating their skills, and that they keep themselves adjourned as to the latest changes in legislation, regulations, rules or other matters that may impact their role and/or the Scheme. To this effect, Fund directors may *inter alia* avail themselves of relevant training courses.
- 2.3.6 Fund Directors should also ensure that the Fund Manager is a fit and proper person both at on-boarding stage and on an ongoing basis thereafter. This provision shall also apply *mutatis mutandis* to the service providers of the Fund.
- 2.3.7 Fitness and Properness is assessed against the following four criteria: [i] Competence; [ii] Reputation; [iii] Conflicts of Interest and Independence of Mind; and [iv] Time Commitment. Further information is provided through the MFSA's [Guidance on the Fitness and Properness Assessments applied by the Authority](#).

### 2.3.8

Further to 2.3.6 and the criteria set out in 2.3.7, the assessment of the fitness and properness of the Fund Manager could include:

- i. Independent searches on the Fund Manager and its major shareholders;
- ii. Obtaining a confirmation of the regulated status of the Fund Manager;
- iii. A review of the Fund Manager's marketing materials and website;
- iv. Conducting an interview with the Fund Manager. The interview should cover the following aspects of the Fund Manager's operations: investment and risk philosophy; market views; financial position and regulatory capital; operations; past regulatory issues, if any; service providers to the Fund; conflicts of interest; corporate governance philosophy; attitude towards compliance etc.;
- v. A visit at the Fund Manager's main place of business or the offices from which the investment management activity on behalf of the Fund will take place; and
- vi. A request for, and verification of, references.

### 2.3.9

Fund Directors should also conduct due diligence on the Fund and its service providers seeking to ensure that they are fit and proper. Further to the criteria set out in 2.3.7 such assessment could include:

- i. A request and review of all material documentation of the Fund, such as:
  - a) Certificate of incorporation (or equivalent documents);
  - b) Memorandum and Articles of Association (or equivalent documents);
  - c) Offering Documents including subscription agreement(s);
  - d) Any management agreement;

- e) Investment management/
- f) Any investment advisory agreement;
- g) Administration agreement;
- h) Custody/Depository agreement;
- i) Any prime brokerage or counterparty agreements;
- j) Any side letters;
- k) Auditor engagement letter;
- l) Any registered office agreement;
- m) Register of Directors (if available); and
- n) Register of Members (if available).

- ii. Confirmation of regulatory status of relevant service providers;
- iii. Request and review of the service providers' annual reports (if available); or
- iv. Interview with other Directors to be recommended to the Board by the Fund Manager.

2.3.10 The Fund Directors should schedule a meeting with the Fund Manager, if possible, within 12 months of the inception of a Fund, or their appointment.

2.3.11 CISs should have formal, fair and transparent policies and processes to determine the remuneration of the Board and Senior Management.

2.3.12 Remuneration policies and processes should be aligned with the Scheme's business strategy, objectives and values, and be aimed at ensuring the Scheme's long-term success.

2.3.13 A Director should consider resigning from a Fund Board, where *inter alia* there is:

- i. knowledge or suspicion of illegal or improper activities by any Fund service provider;
- ii. a material conflict of interest affecting the Director that cannot be mitigated;
- iii. an inability to discharge his/her duties to the Fund due to lack of time, change in personal circumstances or any other reason;

- iv. a request by the Fund Manager, or the Fund's Board for the Director's resignation; and
- v. any other change or development which results in the Director no longer being considered as fit and proper:

Provided that prior to doing so or instead of doing so the Director is to consider informing the relevant authorities, agencies, or bodies and/or filing the necessary reports.

#### ***Section 4 - Board Meetings***

2.4.1 Regular and well-structured Board meetings are crucial to ensure the Board discharges its duties effectively.

2.4.2 Directors should be proactive in their oversight of the Scheme, its operations, any Service Providers and, where applicable, the Scheme's Senior Management. Directors should satisfy themselves they have continuous access to accurate, timely and relevant information such that they can discharge their duties, exercise objective judgement on corporate affairs, take pertinent decisions and ensure an informed assessment can be made of all the issues facing the CIS.

2.4.3 Fund Directors should, whenever deemed necessary, request more information or transparency from any service provider. This *inter alia* involves gathering reports on aspects of the Fund's business to be considered at formal Board meetings.

During meetings, all Directors should be given ample opportunity to express their opinions and discuss the issues set on the Board agenda so that they always honour their responsibilities. Sufficient time for deliberations should be also provided during these meetings.

2.4.4 The Board should set procedures or terms of reference to determine the frequency, purpose, conduct and duration of meetings, and meet regularly. In line with the Fund's nature, size and complexity of its business, Board meetings should be held at least once every quarter to review the performance and operations of the Fund for the relevant quarter. In case Board's meetings are held less frequently, justification shall be provided and duly disclosed. The Board meetings are to be held in Malta unless another place is agreed beforehand with the MFSA.

- 2.4.5 Quarterly cycle Board meetings should be held before the end of the month following the calendar quarter end (i.e., before the end of April to review performance and operations from January to March). This should not preclude Board members from asking for more information intra quarter, as needed, for them to be able to discharge their role effectively.
- 2.4.6 The efficient working and effectiveness of Board meetings is primarily the responsibility of the Chairperson, who should ensure that all relevant issues on the agenda are supported by all available information. The Chairperson should also encourage each Director to contribute actively to the Board's deliberations.
- 2.4.7 Notice of the dates of the forthcoming meetings, agendas and supporting material should be circulated, by the company secretary, well in advance to the Directors, to allow them enough time to appropriately consider the information prior to the next scheduled Board meeting.
- 2.4.8 *Ad hoc* Board meetings may be scheduled as often as necessary to handle specific matters (e.g., Board meetings reviewing and approving the audited financial statements). As far as reasonably possible, notice of an *ad hoc* Board meeting should be given sufficiently in advance to ensure all Directors have time to re-arrange their commitments.
- 2.4.9 The Board should have a regular agenda for its meetings. A detailed agenda of items for consideration at each Board meeting together with minutes of the previous Board meeting, sufficient and clear supporting information and papers shall be circulated in advance of the meeting to allow all Directors adequate time to consider the material.
- 2.4.10 Following a Board meeting, draft minutes should be sent to Board members in a timely manner to facilitate and ensure an effective review.
- 2.4.11 Additional agenda topics may be added on a permanent or *ad hoc* basis depending on the context. A typical standard agenda could include the following:
- i. Appointment of Chairperson (if no permanent Chairperson has been appointed) and secretary for the meeting, notice given or waived (if applicable) and quorum;

- ii. Approval of prior minutes and any action points from prior meetings;
- iii. Conflicts of interest (either as a permanent or ad hoc agenda topic);
- iv. Investment management report (historic and forward looking);
- v. Risk Report;
- vi. Financial crime compliance report (including any other matters related to financial crime);
- vii. Compliance Report;
- viii. Administrator report (including periodic financial crime compliance updates etc.);
- ix. Custodian/Depositary report;
- x. Audit report (if applicable for the particular meeting);
- xi. Marketing and investor relations report (including a review of subscriptions and redemptions);
- xii. Regulatory and legal update;
- xiii. Any exercise of discretionary powers – acceptance of subscriptions below minimum; acceptance of early redemptions, application of any gates; review and approval of side letters;

xiv. Any other business; and

xv. Date of next meeting.

*Ad hoc* topics could include:

- i. Approval of the Fund's Offering Documents and any changes to the Offering Documents or other constitutional documents;
- ii. Reviewing and signing off the Fund's annual report and accounts;
- iii. The exercise of discretionary powers granted to the Board under the Fund's constitutional documents, such as the acceptance of late subscriptions or the convening of an investors' meeting; and
- iv. Any other exceptional events of significance from a governance point of view.

2.4.12 Directors should, to the extent possible, attend all board meetings, whether regular or unscheduled. The attendance of Directors to Board meetings and Board Committees should be reported on an attendance log maintained by the Company Secretary. The Chairperson is responsible to address any repeated absences with the relevant Board member.

2.4.13 Board meetings must be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

2.4.14 Further to 2.4.13, in order to increase the exposure of Board members to each other and to the Fund Manager, virtual Board meetings could, subject to the Fund's constitutional documents and applicable laws, require some members of the Board to dial in from the same location.

2.4.15 Board meetings should last as long as necessary to go through the agenda. There should be sufficient discussion on each item to ensure a proper debate.

- 2.4.16 Directors, both collectively and individually, are to take objective and well-informed decisions, in the long-term and sustainable interest of the Fund. Whenever acting on recommendations or advice from the Fund's service providers, the Directors shall request clear explanations on the rationale supporting those recommendations or advice. Each Director must exercise his own judgment and form his own views on the relevant matters.
- 2.4.17 All Board meetings should be minuted to account for the decisions taken by the Board therein, and the discussions and rationale supporting them. If a dissenting view is expressed, this should also be accounted for in the minutes.
- 2.4.18 Pursuant to 2.4.17 board minutes should therefore provide a true and accurate record of discussions held, decisions taken, and resolutions made. The minutes should enable external parties such as external auditors and regulatory bodies to understand Board discussions and decision-making processes. Any relevant material, either distributed in advance or produced at the meeting and on which opinions and decisions were based, should be referred to in the minutes and kept with them.
- 2.4.19 Directors, even those who were not present for the meeting in question, should review and if necessary, comment on the minutes prepared, within a reasonable time.
- 2.4.20 The Board should formally approve and adopt the minutes at the subsequent board meeting. Once approved, these are to be signed off by the Chairperson.
- 2.4.21 The provisions of this section shall *mutatis mutandis* apply to meetings of the Board's Committees.

### ***Section 5 – The Board Pack***

- 2.5.1 Pursuant to 2.4.7 to 2.4.9, it should be ensured that the board pack for a board meeting includes all information necessary for the Board to consider the meeting's agenda. The board pack should include *inter alia* the following written reports:
- i. Investment management report;
  - ii. Administrator report;
  - iii. Custodian/ Depositary report;

- iv. Auditor report (if applicable);
- v. Risk Report;
- vi. Compliance Report; and
- vii. Any other information that may be requested by the Board.

2.5.2 The board pack should also reflect relevant information as required by any applicable legislative and regulatory frameworks.

2.5.3 Investment Management Report

2.5.3.1 The Investment Management Report must provide sufficient information to enable the Board to evaluate and oversee the portfolio from a performance, risk and compliance perspective.

2.5.3.2 Where a Fund has an investment advisor appointed, a separate report should also be provided by the investment advisor. In the event that a Fund has multiple investment advisors (such as a multi-manager Fund), primary reports from such advisors could be rotated through the Board meeting cycle.

2.5.3.3 A Fund Manager's report should *inter alia* include the following information:

- i. the period covered by the report – the end of this period should be as close as possible to the date of the Board meeting during which the report will be reviewed;
- ii. any investor reports produced by the Fund Manager since the last investment management report presented to the Board – such reports should be sent to the Directors of a Fund at the same time as they are sent to investors, but it is useful to have them included in a Board pack;
- iii. a description of portfolio positions of the Fund including the five largest positions;
- iv. a description of liquidity profile of the Fund including
  - (i) estimates of time required to liquidate all positions in the Fund;
  - (ii) a liquidity analysis relative to the

redemption provisions of the Fund; and

(iii) highlighting any positions that have become illiquid since the last investment management report.

- v. a description of the Fund's risk profile including summary information on VaR, stress test and/or other forms of risk analysis/ metrics used by the Fund Manager (or investment advisor where applicable) and any concentration of risk (i.e., market, liquidity, country);
- vi. a description of the Fund Manager's (or investment advisor's, where applicable) views of economic and market conditions for the reporting period (including forecasts), and how the Fund's portfolio is positioned to take advantage of such market conditions,
- vii. any compliance matters including any breaches of regulatory or offering document-based restrictions (including investment and borrowing restrictions, and counterparty exposure limits where applicable) that have come to the Fund Manager's attention during the course of the review period or confirmation that no such breaches have come to its attention;
- viii. any remedial action taken or to be taken by the Fund Manager or any other parties involved to prevent a recurrence of any such breaches including description of any compensation due to the Fund or investors;
- ix. sales and marketing report;
- x. any investor complaints;
- xi. a report on the service providers to the Fund, including the Administrator, Depository, prime, execution or clearing brokers, distributors, auditors etc. as applicable;
- xii. an update on the audit plan and timetable (as applicable);

- xiii. any regulatory matters or updates applicable to the Fund including compliance with all applicable regulatory filings;
- xiv. any tax matters including compliance with all applicable tax filings;
- xv. a list of management and performance fees paid and accrued;
- xvi. a regulatory (including capital adequacy requirements if any), financial and operational report of the Fund Manager (and investment advisor where applicable).

#### 2.5.3.4

For Funds falling within scope of the AIFMD, the one-off matters that AIFMs should also report on in its handling of relevant AIFMD requirements might include:

- i. Conflict management issues;
- ii. Delegation arrangements operated by the AIFM;
- iii. Operation of the AIFM's risk management policy in respect of the AIF;
- iv. Any leverage issues;
- v. Monitoring of liquidity risk in accordance with the AIFM's liquidity policy for the AIF;
- vi. The operation of the valuation policy and procedures for the AIF.

#### 2.5.4

##### Administrator Report

##### 2.5.4.1

The Administrator Report should allow Directors to understand and oversee the Administrator's service to the Fund. Directors should request additional

information if necessary to enhance their awareness and monitoring of the Administrator's activities.

#### 2.5.4.2

An Administrator's Report should *inter alia* include the following information:

- i. The period covered by the report – the end of this period should be as close as possible to the date of the Board meeting during which the report will be reviewed;
- ii. A valuation and financial report including information on:
  - (i) the Net Asset Value of the Fund and Net Asset Value per share or unit;
  - (ii) the level of accuracy and timeliness of the Net Asset Value during the period;
  - (iii) information on securities valuation (including any derivative positions and unlisted securities);
  - (iv) any aged dividend and interest income;
  - (v) any pricing errors or misstatements;
  - (vi) any stale prices (i.e., where the current price of an asset does not reflect a recently established price);
  - (vii) any unlisted or hard-to-value securities;
  - (viii) asset and cash reconciliations;
  - (ix) income statement for the period covered by the report and year-to-date; and
  - (x) balance sheet.

- iii. an investor activity report including information on:
  - (i) subscriptions, redemptions and any conversions of shares or units;
  - (ii) number of investors and domiciles;
  - (iii) the largest five investors in the Fund;
  - (iv) whether any late redemptions occurred and why – late receipt of redemption documents;
  - (v) whether investor statements/contract notes were issued on time (if applicable);
  - (vi) whether any subscription or redemption fees were levied; and
  - (vii) any investor complaints received and/or handled by the Administrator.
  
- iv. a financial crime compliance report where [a] the carrying out of AML/CFT aspects have been outsourced to the Administrator; and/or [b] the MLRO and Monitoring Function of the Administrator are also carrying out the same function on behalf of the Scheme.;
  
- v. a compliance comfort letter including information on:
  - (i) compliance with applicable anti-money laundering requirements and any issues arising, where [a] the carrying out of AML/CFT aspects have been outsourced to the Administrator; and/or [b] the MLRO and Monitoring Function of the Administrator are also carrying out the same function on behalf of the Scheme.

- (ii) any suspicious trading activity (to the extent that it may be reported);
  - (iii) exposure to Politically Exposed Persons and exposure to other high-risk clients where [a] the carrying out of AML/CFT aspects have been outsourced to the Administrator; and/or [b] the MLRO and Monitoring Function of the Administrator are also carrying out the same function on behalf of the Scheme;
  - (iv) transparency regarding the independence of pricing and verification of asset holdings;
  - (v) any minimum capital adequacy requirement;
  - (vi) any data protection issues;
  - (vii) any financial reporting issues;
  - (viii) any business updates from the Administrator; and
  - (ix) regulatory update;
- 
- vi. any relevant internal audit report;
  - vii. any comments on service level during the period; and
  - viii. any significant matters that have arisen in the period since the last Board meeting which in the opinion of the Administrator should be brought to the attention of the Board.

2.5.5 Custodian/Depository Report

2.5.5.1 The Custodian/Depository Report should allow Directors to understand and oversee the Custodian's/Depository's service on behalf of the Fund.

2.5.5.2 A Custodian's/Depository's Report should *inter alia* include the following information:

- i. the period covered by the report – the end of this period should be as close as possible to the date of the Board meeting during which the report will be reviewed;
- ii. description of any breaches of regulatory or offering document-based restrictions (including investment and borrowing restrictions, and counterparty exposure limits where applicable) that have come to the Custodian's/Depository's attention during the course of the review period or confirmation that no such breaches have come to its attention;
- iii. a portfolio report including trading volumes;
- iv. any issues relating to the calculation of a Fund's NAV not being in accordance with the Fund documentation and regulations as applicable;
- v. any pricing errors reported to the Custodian/Depository;
- vi. any settlement issues;
- vii. any segregation issues;
- viii. any issues relating to cash and asset reconciliations;

- ix. any issues regarding the supervision and oversight of the Administrator's functions to include a review of the adequacy of the Administrator's controls and procedures (where relevant);
- x. any issues arising from the Custodian's/Depository's oversight of Prime Brokers (where applicable) including compliance with re-hypothecation limits, if any;
- xi. any relevant internal audit report; and
- xii. any significant matters that have arisen in the period since the last Board meeting which in the opinion of the Custodian/Depository should be brought to the attention of the Board.

## 2.5.6 Audit Report

- 2.5.6.1 The Board should obtain from the Fund's auditors an audit plan and timetable for its review and approval once this is agreed with the Fund Manager of the Fund. The Board should engage actively with the auditors to *inter alia* understand the scope and timing of the audit, any issues expected or arising from the audit, the level of cooperation and efficiency from all service providers to the Fund who contribute to the audit, and the contents and implications of the final audit report.
- 2.5.6.2 Directors are to ensure that the audited financial statements of a Fund accurately reflect the financial situation of the Fund. Directors may request additional disclosures to be included in the footnotes to the financial statements, as necessary.
- 2.5.6.3 Directors should ensure they understand and accept the content of the Auditors management letter prior to signing it. A process should be in place to ensure that each representation given to the auditors is provided in good faith and with reasonable accuracy.

## ***Section 6 – Advisors to the Board***

- 2.6.1 The Fund (normally through its Fund Manager) may opt to appoint external advisors.
- 2.6.2 In the ordinary course of business, the Board may rely directly or indirectly on such advisors for information, analysis, judgment, and advice even though they may be appointed or directed by the Fund Manager. A Fund Board should ensure that it has the ability under the constitutional documents of the Fund to retain outside advisors at the Fund's expense and should not hesitate to exercise the right to appoint its own advisors if it is prudent to do so.
- 2.6.3 Separation between Fund Directors and Advisor shall be maintained. The role of Advisors is limited to an advisory role and it does not extend to decision-making. Fund Directors are encouraged to seek professional advice where there are issues that are significant for the Scheme and the advice given must be recorded in board minutes.

## ***Section 7 – Service Providers***

- 2.7.1 The delegation of activities to service providers does not discharge the Fund and its Board from their responsibilities.
- 2.7.2 Directors should properly monitor the service providers' performance, confirming that their activities are carried out in accordance with applicable laws and in the best interest of investors, and that they have adequate business continuity procedures in place.
- 2.7.3 Directors shall require reporting from the service providers on a regular basis to assess their activities. Furthermore, onsite visits to service providers and meetings with their senior management should be considered as ways to properly assess their performance.
- 2.7.4 Considering the relevance of the safekeeping of the Fund's assets as a basic and essential requirement, the Directors should have a clear understanding of the custodian's/depositary's capability to deliver on its mandate and should be knowledgeable of where and how the Fund's assets will be held in custody.

- 2.7.5 Directors should consider putting in place a structure for regular reviews of the service providers, that allows for the findings to be timely reported to the Board.
- 2.7.6 Directors should be aware of any applicable regulatory responsibilities for the monitoring of service providers.
- 2.7.7 Pursuant and without prejudice to 2.3.9, Directors should perform due diligence checks on the Service Providers before such Service Providers are onboarded. Directors should also make sure that the Fund has in place procedures and checklists to conduct the due diligence checks. In selecting Service Providers, the Board should also take into consideration the interest of the Investors.

### ***Section 8 – Directors’ Indemnity and Insurance***

- 2.8.1 Fund Directors should consider obtaining adequate Professional Indemnity Insurance (PII) or Directors and Officers (D&O) liability insurance cover.
- 2.8.2 When taking out such insurance cover, Fund Directors should consider the fund’s size and value of assets under management, particularly in relation to the minimum limits of indemnity prescribed. Moreover, Fund Directors should ensure that such insurance *inter alia* covers:
- a) any legal liability in consequence of any negligent act, error, or omission in the conduct of the business of the Fund;
  - b) legal defence costs which may arise in consequence of any negligent act, error, or omission in the conduct of the Fund’s business;
  - c) the whole territory of the European Union and extends to all other territories from, in or to which the Fund is providing its services;
  - d) any dishonest, fraudulent, criminal, or malicious act, error, or omission;
  - e) libel, slander, and defamation;
  - f) loss of, and damage to, documents and records belonging to the Fund;

- g) any liability resulting from any breach of a provision of the Act or of any regulations and rules issued thereunder, and any award resulting from any such breach; and
- h) claims made after the expiry of the policy where the circumstances giving rise to the claim were notified to the insurers during the period of the policy.

### ***Section 9 - Conflicts of Interest and Confidentiality***

- 2.9.1 The Board is responsible for identifying, recording, and appropriately managing conflicts of interest and it needs to ensure that the influence of third parties does not negatively impact the independent judgment of Directors. Conflicts of interest should be avoided. Where this is not possible, the conflict should be disclosed and dealt with in accordance with the Fund's constitutional document and applicable laws, regulations, and rules.
- 2.9.2 Directors need to assess any potential conflict situations, such as a directorship, shareholding or other interest in a business which is a customer or competitor of or service provider to the Fund. Any such conflict should be disclosed to the Board and dealt with in accordance with the Fund's constitutional document, the Scheme's conflicts of interest policy, and applicable laws, regulations or rules.
- 2.9.3 Directors should not utilise confidential information obtained in their capacity as directors for other purposes, such as for his private benefit or the benefit of an unconnected business.
- 2.9.4 Directors are expected to ensure that any confidential information relating to the Fund's business or investors is protected, in accordance with any applicable laws, regulation or rules.

### ***Section 10 - Internal Controls***

- 2.10.1 The Board should ensure that appropriate and effective internal controls are in place to *inter alia*:
  - i. identify, understand, manage, and where appropriate disclose risks;

- ii. ensure that all legal and regulatory requirements, including those relating to financial crime, are abided by;
- iii. ensure that an effective and robust Information and Communication Technology (ICT) and security risks management process is in place.

2.10.2 The Board is responsible for:

- i. the establishment of policies and procedures in relation to internal controls in line with the three lines of defence model;
- ii. the determination of the amount and type of risk the Scheme is willing to accept to achieve its strategic objectives;
- iii. the oversight of the internal controls' framework;
- iv. the monitoring and management of data and cyber security risks;
- v. the independence of the internal control functions; and
- vi. the maintenance of the internal control system.

2.10.3 Risk Management

2.10.3.1 Schemes should have in place an adequate risk management framework to provide awareness and consideration of the exposure to risk. This framework should ensure that risks to which the Scheme is exposed are identified, understood, managed, and where appropriate disclosed.

2.10.3.2 The Board should understand and fully appreciate the business risks, including those relating to financial crime, which may affect the ability of the Scheme to achieve its objectives.

2.10.3.3 Pursuant to Section 14 hereunder, the Board should be in a position to anticipate risks, emerging threats and potential crises that could affect the Fund and have appropriate plans in place to ensure business continuity.

2.10.4 Compliance

- 2.10.4.1 The Board is responsible for compliance with the regulatory regime within which the Fund operates and should have a clear understanding of how this impinges on its operations.
- 2.10.4.2 The Board should establish, implement, and maintain adequate policies and procedures designed to detect any risk of failure by the Scheme to comply with its legal and regulatory obligations, taking also into account potential changes to their business model and shall put in place adequate measures and procedures designed to minimise such risk, including financial crime compliance risks.
- 2.10.4.3 The Board should ensure that the Fund has a Compliance Monitoring Programme ('CMP'). This should establish the activities, risk areas, policies and procedures of the Fund which will be monitored and tested during the year. The compliance monitoring to be carried out by the compliance officer in a particular year is to be clearly outlined in this document, ensuring to identify and monitor high risk areas which are relevant to the Fund.
- 2.10.4.4 The CMP should *inter alia*:
- i. highlight/identify the frequency of checks to be conducted and/or specific procedures to be monitored/tested;
  - ii. be tailor made for the Fund, taking into account its specific features and/or highly relevant processes or issues;
  - iii. be a live document which adapts to changes within the Fund, the industry and regulatory environment;
  - iv. be commensurate with the nature, size and complexity of the Fund; and
  - v. be based on a risk assessment exercise carried out by the compliance officer prior to the drawing up of such a plan.
- 2.10.4.5 CISs should keep documentary evidence that the checks and tests highlighted in the CMP are being undertaken in the frequency stipulated. This should include reports detailing findings and recommendations.
- 2.10.4.6 CISs are to refer to Section 2.3 of the [Circular](#) issued by the MFSA on the 5 September 2018 for further guidance on the CMP.

- 2.10.4.7 A Fund Board should ensure that the Fund has adopted any Codes of Conduct that are mandated by law, regulation or listing requirements, as applicable. The Fund Board should also consider the adoption of a voluntary Code of Conduct.
- 2.10.4.8 The provisions of the Code of Conduct should be taken into account within all the Scheme's policies and procedures. Directors should abide by such Code and should promote and ensure awareness of this document, *inter alia* by providing the Fund's officials with adequate training thereon.
- 2.10.4.9 The Board should, in the Directors' Report accompanying the annual financial statements, or through alternative channels which are publicly available, highlight the fund's compliance, or otherwise, with this manual and any applicable corporate governance code, including voluntary Codes of Conduct which the fund may have decided to adopt.
- 2.10.4.10 A compliance report should be tabled to the Board at least on a six-monthly basis. This report should capture all relevant compliance related developments and shall *inter alia* include:
- i. Updates on the CMP conducted throughout the year and the escalation of any findings identified. In this regard, as a minimum, an outline of the checks conducted by the compliance officer, highlighting any findings made and a recommended way forward;
  - ii. Where a compliance visit has been carried out, a report thereon;
  - iii. Updates on any local and international regulatory developments relevant to the Fund;
  - iv. Updates on the submission of regulatory findings; and
  - v. Other compliance matters, such as any breaches which occurred during the period and updates on any matters which could potentially lead to breaches.

## ***Section 11 - Investor Relations***

- 2.11.1 Pursuant to 1.2.1 and 2.1.3, the Fund Board is to act ethically taking into consideration the best interests of all investors. The Board should also be cognisant of matters where different investor groups may be affected in different ways.
- 2.11.2 The Board should ensure that timely and accurate disclosure/reporting is made on material matters regarding the Fund to investors, including *inter alia* the financial situation, performance, ownership, and governance of the Fund, in accordance with the applicable regulatory framework.
- 2.11.3 A Board should obtain confirmation from the Fund Manager and/or the Administrator that all such communications and disclosures have been provided to the investor.
- 2.11.4 The Board should ensure that investor complaints are reviewed and appropriately handled within a reasonable time.

## ***Section 12 - Anti-Money Laundering and Combating Funding of Terrorism, Sanctions and other Financial Crime related obligations***

- 2.12.1 The Board of the Fund holds the ultimate and overall responsibility for compliance with the applicable laws, regulations and business and ethical standards, including AML/CFT, sanctions and any other financial crime related obligations.
- 2.12.2 The Board should understand the Fund's obligations under the applicable AML/CFT, sanctions and overall financial crime related frameworks. To this effect, the Fund may refer to relevant legislation, regulation, and any other applicable guidance issued by the National Competent Authorities.
- 2.12.3 The Fund's Board should receive and review a periodic report from the Scheme's MLRO and AML/CFT Monitoring Function. The frequency with which it is to receive such a report should be dependent on the risk profile of the Scheme but, as a minimum, this should be received on an annual basis. In addition, The Board may also request ad hoc information from the MLRO and the Monitoring Function as it may consider necessary.

2.12.4 The Board of Directors should satisfy itself that all applicable AML/CFT, sanctions and any other financial crime compliance obligations are being complied with. To this effect, the Board is to ensure that its financial crime related processes are supported with the necessary investment and that it reviews the Fund's financial crime compliance related frameworks to continually improve their effectiveness and efficiency in being able to detect potential criminal activity.

To discharge its responsibilities under this Section of the Code in an effective manner, the Board should not only refer to the report mentioned in 2.12.3 but, to the extent that may be applicable, should also have timely and direct access to any relevant reports of the internal audit function, the findings and observations of external auditors, as well as the findings of or communications from the relevant competent authorities, and supervisory measures or sanctions imposed.

### ***Section 13 - ESG***

2.13.1 The European Union has developed a framework for Sustainable Finance in order to boost the transition to achieve a net-zero, sustainable, inclusive, and circular economy which is largely applicable to CISs.

2.13.2 Rules on Sustainable Finance aim to assist in scaling up sustainable investments and fight greenwashing practices. Sustainable Finance also aims to make the sustainability profile of Schemes more comparable and better understood by Investors.

2.13.3 Notwithstanding their specific mandates on financial risks and returns, the Board shall prevent greenwashing practices by creating a corporate culture that embraces sustainability, integrating sustainability into their investment processes and adherence to ESG standards and CSR principles deeply throughout their entire value chain, focusing on longer-term goals and returns inclusive for all the stakeholders involved.

2.13.4 In this regard, the Board should be aware of all internal and external stakeholders the company is accountable to beyond its shareholders, such as employees, clients, suppliers, and social communities, and it should consider the impact of its action on them.

- 2.13.5 The Board shall be transparent on its ESG and sustainability claims, both at the Scheme level as well as regarding any financial products developed, marketed, and distributed by it and the processes to do so.
- 2.13.6 The Board shall ensure the sustainability focus of a Fund is consistently reflected in its name, objectives, investment policy and strategy and the investments it holds.
- 2.13.7 The Board shall ensure that appropriate resources are devoted to achieving the stated ESG objectives.
- 2.13.8 The Board shall set up robust processes to identify, assess and manage climate and environmental-related risks.
- 2.13.9 Such risks shall be integrated in the company's long-term strategy and their oversight allocated to the full Board or relevant committees.
- 2.13.10 The Board shall focus on gathering and disclosing all ESG/sustainability-related data and information according to the relevant European legislation and make them easily accessible for investors and stakeholders to make informed decisions.
- 2.13.11 Such information, including pre-contractual and ongoing periodic disclosures, website disclosure and marketing material should be communicated in an accurate, fair, clear, not misleading, simple and concise way to all the relevant stakeholders.
- 2.13.12 The Board shall be responsible for establishing metrics utilised for remuneration and promotions throughout the organisation that take into account financial and non-financial metrics linked to the ESG performance and additional positive impact towards environmental and social objectives.

#### ***Section 14 - Business Continuity and Disaster Recovery***

- 2.14.1 The Board is expected to establish, implement, and maintain effective contingency plans for business continuity and disaster recovery. Such plans should aim to minimise losses, ensure continuity of critical functions, mitigate risks of damage to investors, and uphold the Scheme's reputation.

2.14.2 The Board is expected to understand the key dependencies that are required to maintain the business operational. Directors should question how the Scheme is protecting itself from the impact of disruption and also the plans for responding and recovering from such disruptions, and whether appropriate resources are being employed.

2.14.3 The Board should endeavour to be as prepared as it can to handle any eventuality should it occur. Fund Boards should anticipate risks, emerging threats and potential crises that could affect the Fund. Examples of such matters may include:

- i. Serious disruption in markets in which the Fund invests;
- ii. Failure of a service provider or counterparty;
- iii. Fraud;
- iv. Loss of regulatory status of a service provider;
- v. Breaches of investment, borrowing or other Fund guidelines or restrictions;
- vi. Breaches of applicable laws and regulations;
- vii. Ineligibility of investors previously allowed into the Fund;
- viii. Pricing errors or irregularities;
- ix. Fall in liquidity of specific assets or instruments;
- x. Accounting errors or irregularities;
- xi. Force majeure events (natural disasters, currency crisis, civil unrest, war etc.);
- xii. Fund Manager is paralyzed, ineffective or out of control; and
- xiii. Investigation of or litigation against the Fund or the Fund Manager.

2.14.4 The Board should satisfy itself that adequate structures and processes are in place for the Scheme to be ready should any adverse event occur.

2.14.5 The Board should expect the Scheme's service providers to provide regular updates on their respective business continuity and disaster recovery plans ('BCP'). Such updates should specifically include the scope, trigger, implementation and testing of the plans.

2.14.6 The Board should be provided with relevant information and involved in the management of a crisis, in a timely manner. Methods of escalation are to be agreed in advance with the Fund Manager and other service providers.

### ***Section 15 - Termination of a Fund***

2.15.1 Pursuant to the decision to terminate the Fund, the Board should be actively involved in the on-going monitoring of the Fund's solvency and the planning and implementation of the liquidation plan, if applicable at least until a liquidator is appointed.

2.15.2 The Board should have a clear understanding of the implications of its actions vis-à-vis all the Fund's stakeholders including creditors, shareholders, and regulators in the context of a termination.

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