

# INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

## PART B: STANDARD LICENCE CONDITIONS

### PART BI: PROFESSIONAL INVESTOR FUNDS TARGETING EXPERIENCED INVESTORS

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## REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	17 July 2007	Applicable until 5 May 2019
2.00	6 May 2019	See: <a href="#">Circular dated 6 May 2019 on Revisions to CIS Rulebooks</a>
3.00	3 July 2020	See: <a href="#">Circular dated 3 July 2020 on the updates made to the ISP and CIS Rulebooks</a>

APPLICABILITY OF REGULATION (EU) NO 345/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 APRIL 2013 ON EUROPEAN VENTURE CAPITAL FUNDS AND OF REGULATION (EU) NO 346/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 17 APRIL ON EUROPEAN SOCIAL ENTREPRENEURSHIP FUNDS

Where the Scheme is established as:

- [I] a European Venture Capital Fund in terms of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds; or
- [II] a European Social Entrepreneurship Fund in terms of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds;

it shall refer to and comply with the applicable provisions of the aforementioned Regulations as well as the SLCs prescribed in this Rulebook.

In the case of conflict between these Rules and the provisions prescribed in the aforementioned EU Regulations, the provisions of the latter shall prevail.

- 1.1 Apart from the conditions listed in this section, where the Scheme is established in the form of a limited partnership or an investment company, it shall also be subject to the supplementary conditions for Schemes established as limited partnerships or as investment companies – as applicable – set out in [Appendix I](#). **In the case of umbrella Schemes, reference to “the Scheme” shall be construed, where applicable, as reference to the Sub-Funds of the Scheme.**
- 1.2 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of any party appointed by the Scheme.
- 1.3 Apart from being constituted as a PIF, the Scheme shall not carry out any activity for which a Licence is required, unless prior approval is obtained from the MFSA. The MFSA may in such circumstances, request such additional information and impose such additional conditions it deems appropriate.
- 1.4 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Licence Condition or to impose any new conditions.

## Manager

- 1.5 The Scheme shall appoint a third-party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme:

Provided that, where a third party Manager is not appointed, the supplementary conditions applicable to Self-Managed Schemes set out in SLCs 4.2 to 4.15 of [Appendix I](#) shall apply in lieu of the SLCs 1.6 and 1.7 below;

Provided further that PIFs which are self-managed and which qualify for the de minimis exemption prescribed therein shall also be subject to SLC 4.1 of [Appendix I](#).

- 1.6 The Manager shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Manager. The Scheme shall be required to satisfy the MFSA that the proposed Manager meets the above requirements.
- 1.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

## Administrator

- 1.8 The Scheme may appoint an Administrator. Where an Administrator is not appointed, the Manager shall be responsible for the Administration function.
- 1.9 The Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Administrator. The Scheme shall satisfy the MFSA that the proposed Administrator meets the above requirements.
- 1.10 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

## Investment Adviser

- 1.11 The Scheme may appoint an Investment Adviser. The Investment Adviser shall have the business organisation, systems, experience and expertise deemed

necessary by the MFSA for it to act as Investment Adviser. The Scheme shall satisfy the MFSA that the proposed Adviser meets the above requirements.

- 1.12 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Investment Adviser to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

#### Custodian

- 1.13 The assets of the Scheme shall be entrusted to a Custodian for safekeeping. The Custodian shall also be responsible for monitoring the extent to which the Manager is abiding by the investment and borrowing powers laid out in the Offering Document and otherwise in accordance with the provisions of the Constitutional Document of the Scheme and these Licence Conditions.
- 1.14 The Custodian shall be:
- (i) an entity providing the services of Custodian in terms of a Category 4a Investment Services Licence issued under the Investment Services Act, 1994;
  - (ii) an entity constituted in a Member State or EEA State and operating from a Member State or EEA State other than Malta, providing the services of Custodian to collective investment schemes; or
  - (iii) an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian to collective investment schemes where the MFSA is satisfied that such entity is of sufficient standing and repute and having the business organization, systems, experience and expertise deemed necessary for it to act as Custodian.
- 1.15 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement any party to act in the capacity of Custodian to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.
- 1.16 The custodian shall ensure compliance with the provisions prescribed in the Investment Services Act (Custodians of Collective Investment Schemes) Regulations, 2016 applicable to custodians of Professional Investor Funds targeting Experienced Investors.
- 1.17 The Custodian shall be separate and independent from the Manager and shall act independently and solely in the interests of the unit holders. Any facts, relationships, arrangements, or circumstances which may at any stage bring that

independence into question shall be declared to the MFSA as soon as the Scheme becomes aware of any such matter.

#### Local Representative

- 1.18 **Where the Scheme's service providers are all based outside Malta and where the** Scheme has not appointed a local resident Director (in the case of a Scheme set up as an investment company), or a local General Partner (in the case of a Scheme set up as a limited partnership); or a local Trustee (in the case of a Scheme set up as a unit trust or a common contractual fund), the Scheme is required to appoint a Local Representative
- 1.19 The Local Representative shall be based in Malta and shall carry out the following functions:
- (i) act as point of liaison between the MFSA and the Scheme;
  - (ii) receive any instructions from the MFSA;
  - (iii) provide any information to the MFSA as may be requested by the MFSA from time to time; and
  - (iv) **act as the Scheme's Money Laundering Reporting Officer.**

**The Local Representative may also act as the Scheme's Compliance Officer.**

- 1.20 The Local Representative should have access to all records regarding the Scheme in order to be in a position to provide any documents or respond to any queries that the MFSA may have, as the need arises.
- 1.21 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of any party to act in the capacity of Local Representative to the Scheme. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

#### Compliance Officer

- 1.22 **Responsibility for the Scheme's compliance with its licence conditions rests with** the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or a common contractual fund.

- 1.23 The Scheme shall at all times have a Compliance Officer.
- 1.24 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer in advance. The request for consent of the appointment or replacement of a Compliance Officer shall be accompanied by a **Personal Questionnaire ("PQ"), in the form set out in Schedule C to Part A of these Rules** and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 1.25 The Scheme shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation or removal. The Scheme shall also request the Compliance Officer to confirm to the MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the **Scheme's notification of departure.**
- 1.26 The Scheme shall request its Compliance Officer to prepare a **"Compliance Report"** at least on a six monthly basis, which in the case of a Scheme taking the form of:
- (i) an investment company, should be presented to the Board of Directors;
  - (ii) a limited partnership, should be presented to the General Partner; or
  - (iii) a unit trust or a common contractual fund, should be presented to the Manager and the Trustee.

**The "Compliance Report" should indicate any:**

- a. breaches to the Investment and Borrowing Restrictions;
- b. complaints from unit holders in the Scheme and the manner in which these have been handled;
- c. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- d. material compliance issues during the period covered by the Compliance Report.

**The "Compliance Report" should also include a confirmation that all the local Prevention of Money Laundering requirements have been satisfied. This confirmation should be obtained from the Scheme's Money Laundering Reporting Officer.**



- 1.27 **A copy of the “Compliance Report” should be held in Malta at the registered office of the Scheme and made available to the MFSA during Compliance Visits.**

#### Prevention of Money Laundering

- 1.28 **Responsibility for the Scheme’s compliance with its Prevention of Money Laundering obligations rests with the Board of Directors in the case of a Scheme set up as an investment company; with the General Partner(s) in the case of a Scheme set up as a limited partnership; or with the Manager in the case of a Scheme set up as a unit trust or a common contractual fund.**
- 1.29 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.30 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer in advance. The request for consent of the appointment or replacement of a MLRO, shall be accompanied by a Personal Questionnaire (“PQ”), **in the form set out in Schedule C to Part A of these Rules** and by a Competency Form, in the form set out in Schedule D to Part A of these Rules – duly completed by the person proposed. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 1.31 The Scheme shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal. The Scheme shall also request the MLRO to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. **A copy of such request shall be provided to MFSA together with the Scheme’s notification of departure.**

#### Auditor

- 1.32 The Scheme shall appoint an auditor approved by the MFSA. The Scheme shall **replace its auditor if requested to do so by the MFSA. The MFSA’s consent shall be sought prior to the appointment or replacement of an auditor.**
- 1.33 The Scheme shall make available to its auditor, the information and explanations he/ she needs to discharge his/ her responsibilities as an auditor and in order to meet the MFSA’s requirements.
- 1.34 The Scheme shall not appoint an individual as an auditor, nor appoint an audit firm where the individual directly responsible for the audit, or his/ her firm is:

- (i) a director, partner, qualifying shareholder, officer, representative or employee of the Scheme;
- (ii) a partner of, or in the employment of, any person in (a) above;
- (iii) a spouse, civil partner, parent, step-parent, child, step-child or other close relative of any person in (a) above;
- (iv) a person who is not otherwise independent of the Scheme; or
- (v) a person disqualified by the MFSA from acting as an auditor of a Scheme.

For this purpose an auditor shall not be regarded as an officer or an employee of the Scheme solely by reason of being auditor of that Scheme.

1.35 The Scheme shall obtain from its auditor a signed letter of engagement defining clearly the extent of the auditor's responsibilities and the terms of his appointment. The Scheme shall confirm in writing to its auditor its agreement to the terms in the letter of engagement.

1.36 The letter of engagement shall include terms requiring the auditor:

- (i) to provide such information or verification to the MFSA as the MFSA may request;
- (ii) to afford another auditor all such assistance as he/ she may require;
- (iii) to vacate his/ her office if he/ she becomes disqualified to act as auditor for any reason;
- (iv) if he/ she resigns, or is removed or not reappointed, to advise the MFSA of that fact and of the reasons for his/ her ceasing to hold office. The auditor shall also be required to advise the MFSA if there are matters he/ she considers should be brought to the attention of the MFSA;
- (v) in accordance with section 18 of the Act, to report immediately to the MFSA any fact or decision of which he/ she becomes aware in his/ her capacity as auditor of the Scheme which:
  - a. is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
  - b. constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act;

c. relates to any other matter which has been prescribed.

- 1.37 If at any time the Scheme fails to have an auditor in office for a period exceeding four weeks the MFSA shall be entitled to appoint a person to fill the vacancy; the fees and charges so incurred being payable by the Scheme.
- 1.38 In respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.

Investment Objectives, Policies and Restrictions applicable to Licence Holders whose application to MFSA in terms of article 5 of the Act was submitted prior 1/1/2010

- 1.39 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. In addition, where the Scheme intends effecting its investments through the use of Trading Companies or Special Purpose Vehicles, it shall also be subject to the supplementary conditions regarding the use of such vehicles set out in [Appendix I](#). The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme.
- 1.40 Direct borrowing for investment purposes and leverage via the use of derivatives **is restricted to 100% of NAV. The Scheme's exposure relating to derivative instruments is calculated taking into account:**
- (i) the current value of the underlying asset;
  - (ii) the counterparty risk;
  - (iii) future market movements; and
  - (iv) the time available to liquidate positions.

**The Scheme's exposure relating to borrowing for investment purposes is the amount so borrowed.**

- 1.41 The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Custodian shall supervise the operation of the Scheme to ensure that the Manager complies with the investment policies and restrictions of the Scheme.
- 1.42 Where the Scheme has been set up as a Feeder Fund, the underlying fund shall satisfy the leverage restrictions applicable to the Scheme.

- 1.43 Where the Scheme has been set up as a Fund of Hedge Funds, the Scheme shall invest in at least five different hedge funds to ensure the necessary diversification.
- 1.44 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.45 Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.
- 1.46 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

- (i) **if one or more of the Scheme's investment restrictions are at any time** contravened for reasons beyond the control of the Manager or the Scheme, the Manager or the Scheme must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s).

The above is aimed at addressing circumstances which may arise following **acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity**. The above is without prejudice to the duty of the Manager and the Scheme to comply with the **Scheme's investment restrictions and to ensure that such restrictions are** not contravened as a direct result of any acquisition of its underlying assets.

- (ii) a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a **licence condition and will therefore not be subject to MFSA's notification** requirements. However, where the contravention is not remedied by the Manager or Scheme within the maximum six month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

Investment Objectives, Policies and Restrictions applicable to Licence Holders whose application to MFSA in terms of article 5 of the Act was submitted after 31/12/2009

- 1.47 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme. The Custodian shall supervise the operation of the Scheme to ensure that the Manager complies with the investment policies and restrictions of the Scheme.
- 1.48 The Scheme shall comply with the investment restrictions within six months from the launch of the Scheme or upon reaching a value equivalent to EUR 2,500,000 or USD 2,500,000 whichever is sooner. However, the Scheme will, provided it considers this to be in the best interest of its shareholders and that it observes the principle of risk spreading, not be required to comply with its investment restrictions upon reaching a value equivalent to EUR 2,500,000 or USD 2,500,000 subject to it complying with such restrictions within a maximum of six months from launch.
- 1.49 A Scheme may only enter into repurchase/reverse repurchase and stock lending or borrowing agreements:
- (i) when in the opinion of the Scheme or its Manager, the entering into such agreements by the Scheme is appropriate and in the interest of investors in the Scheme, and entails an acceptable level of risk; and
  - (ii) in accordance with good market practice, which involves the provision of adequate collateral in accordance with good market practice to the satisfaction of the Scheme or its Manager.
- 1.50 Investment by the Scheme in Financial Derivative Instruments as part of its investment policy in order to obtain exposure to underlying assets shall be without prejudice to the limits set out in these Rules which apply in the case of direct investments in such underlying assets. The exposure to the underlying assets should be calculated using the Commitment Approach indicated in Section 13 of Part B11 of the Investment Services Rules for Retail Collective Investment Schemes.
- 1.51 Direct borrowing for investment purposes and leverage via the use of derivatives **is restricted to 100% of NAV. The Scheme's exposure relating to derivative instruments is calculated taking into account:**
- (i) the current value of the underlying asset;
  - (ii) the counterparty risk;

- (iii) future market movements; and
- (iv) the time available to liquidate positions

**The Scheme's exposure relating to borrowing for investment purposes is the amount so borrowed.**

**The assessment of the Scheme's global exposure to derivative instruments** should be assessed on the basis of the Value at Risk Approach or the Commitment Approach as set out in Section 13 of Part B11 of the Investment Services Rules for Retail Collective Investment Schemes.

- 1.52 The Manager or the Scheme, where this is self-managed, must take reasonable steps to ensure that the Scheme is managed according to the risk spreading principle. In particular, the Scheme shall be required to adhere to the diversification requirements prescribed below. In the case of a Scheme investing in alternative assets, the MFSA may impose tailored investment restrictions. Such Scheme may utilise SPVs subject to the conditions set out in [Appendix I](#) and subject to such other conditions as the MFSA may consider appropriate, taking into account the nature of the underlying assets and their proposed custody arrangements.
- 1.53 The Scheme may invest up to 20% of its total assets in securities issued by the same body and up to 30% of its assets in money market instruments issued by the same body provided that:
- (i) the 20% / 30% limit set out above may be increased to a maximum of 100% in the case of securities and money market instruments issued or guaranteed by an OECD or EU/ EEA Member State, its local authorities or public international bodies of which one or more such States are members;
  - (ii) the 20% / 30% limit set out above may be increased to a maximum of 35% in the case of securities and money market instruments guaranteed by a credit institution authorised in the EEA or which is subject to equivalent prudential requirements;
  - (iii) the 20% limit set out above may be increased up to a maximum of 30% in the case of transferable securities traded in or dealt on a regulated market which operates regularly, is recognised and is open to the public.
- 1.54 The Scheme may invest up to a maximum of 35% of its total assets in deposits held with a single body.

- 1.55 The Scheme is not subject to any investment restrictions with respect to investments in a single collective investment scheme provided that the underlying scheme is a UCITS or other open ended collective investment scheme subject to risk spreading requirements which are at least comparable to those applicable to the Scheme itself.
- 1.56 The Scheme may invest up to a maximum of 30% of its total assets in any single collective investment scheme which does not satisfy the conditions indicated in SLC 1.54 above.
- 1.57 Where the Scheme is a fund of hedge funds it shall invest in at least five hedge funds.
- 1.58 Where the Scheme enters into OTC derivative transactions, it shall ensure that its exposure to a single counterparty is limited to 20% of its total assets.

The exposure to one counterparty in an OTC derivative transaction may be reduced where the counterparty provides the scheme with acceptable collateral in accordance with good market practice to the satisfaction of the Scheme or its Manager.

The exposure per counterparty of an OTC derivative should not be measured on the basis of the notional value of the OTC derivative, but on the maximum potential loss incurred by the Scheme if the counterparty defaults.

The Scheme may net the mark-to-market value of its OTC derivative positions with the same counterparty, **thus reducing the Scheme's exposure to its counterparty**, provided that the Scheme has a contractual netting agreement with its counterparty which creates a single legal obligation such that, in the event of the **counterparty's failure to perform owing to default, bankruptcy, liquidation or any similar circumstance**, the Scheme would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions.

- 1.59 The Scheme shall limit its aggregate maximum exposure (through securities, money market instrument, deposits and OTC derivatives transactions) to a single issuer/counterparty to 40% of its total assets.
- 1.60 Where the Scheme has been set up as a Feeder Fund, the underlying fund shall satisfy the leverage restrictions applicable to the Scheme.
- 1.61 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.

1.62 Changes to the investment objectives of the Scheme shall be notified to investors in advance of the change. The notice period should be sufficiently long to allow for redemption requests to be submitted by investors and processed prior to the change being effected. The change in the investment objectives should only become effective after all pending redemptions linked to the change in the investment objectives have been satisfied. Any applicable redemption fees would also need to be waived accordingly.

1.63 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:

- (i) **if one or more of the Scheme's investment restrictions are at any time** contravened for reasons beyond the control of the Manager or the Scheme, the Manager or the Scheme must take such steps as are necessary to ensure a restoration of compliance with such restriction(s) as soon as is reasonably practicable having regard to the interests of the unit-holders and, in any event, within the period of six months beginning on the date of discovery of the contravention of such restriction(s).

The above is aimed at addressing circumstances which may arise following **acquisition of the Scheme's assets and include market price movements of the Scheme's underlying assets or market illiquidity. The above is without prejudice to the duty of the Manager and the Scheme to comply with the Scheme's investment restrictions and to ensure that such restrictions are not contravened as a direct result of any acquisition of its underlying assets.**

- (ii) a contravention of an investment restriction which may arise due to the circumstances outlined in (i) above shall not be considered as a breach of a **licence condition and will therefore not be subject to MFSA's notification requirements.** However, where the contravention is not remedied by the Manager or Scheme within the maximum six month period stipulated in (i) above, a breach of this Licence Condition is deemed to arise and the relevant notification requirements will apply.

Supplementary Conditions for PIFs investing directly or indirectly in immovable property

*(Please refer also to MFSA's Property Fund Policy found on the MFSA Website ([www.mfsa.com.mt](http://www.mfsa.com.mt)) in the Section entitled Securities/Collective Investment Schemes/Circulars/2007).*

1.64 The Scheme may invest up to a maximum of 25% of its total assets directly or indirectly (through an SPV) in any one single immovable property. Subject to the Scheme being operated according to the risk-spreading principle, it will not be



required to comply with this restriction before three years from its launch. For the purposes of this restriction, a property whose economic viability is linked to another property is not considered as a separate item of property for this purpose.

- 1.65 Where the Scheme invests solely in immovable property (rather than also in property funds and/or other securities), it should be exposed to not less than 5 different properties.
- 1.66 The Scheme may invest 100% of its total assets in any single property fund provided that such fund complies with the investment, borrowing and leverage conditions applicable to PIFs targeted at Experienced Investors, established as **property funds and which are set out in these Rules and in MFSA's Property Fund Policy.**
- 1.67 The Scheme may invest up to 100% of its assets in a Special Purpose Vehicle provided that the applicable investment, borrowing and leverage restrictions are satisfied at the level of Special Purpose Vehicle.

#### Supplementary Conditions for PIFs engaged in foreign currency lending

- 1.68 The Scheme shall, in as far as these may be applicable to any foreign currency lending which it may carry out, abide by the high level principles on foreign currency lending as outlined in MFSA Rule 1 of 2012 on foreign currency lending, which is modelled on the Recommendation of the European Systemic Risk Board on lending in foreign currencies (ESRB/2011/1).
- 1.69 Foreign currency lending means lending in any currency other than the legal tender of the country in which the borrower is domiciled. This includes situations **where the Euro is the foreign currency due to the borrower's domicile being outside the euro zone.**
- 1.70 When the Scheme has engaged in any form of foreign currency lending during the period under review, it shall submit a confirmation to this effect together with its annual report. Any foreign currency lending activity shall be indicated as a **percentage of the scheme's total NAV. A Scheme which has not carried out any foreign currency lending during the period under review is not required to submit a 'nil' return.**

#### Offering Document

- 1.71 The Scheme shall publish an Offering Document, which shall be dated and the essential elements of which shall be kept up to date. The Offering Document shall be offered to investors free of charge before they become committed to investing.

- 1.72 The Offering Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the information listed in [Appendix II](#).
- 1.73 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.74 The Offering Document and any amendments thereto shall be sent to and agreed with the MFSA before publication. The Scheme must submit a copy of its approval **of the Offering Document, when this is submitted for MFSA's approval.**
- 1.75 Where the Scheme is in the form of an investment company or limited partnership and makes an offer of securities to the public, it shall lodge a signed copy of the Offering Document with the Registrar of Companies. A Scheme in the form of a unit trust or a common contractual fund shall lodge a copy of the Offering **Document with MFSA's Securities Unit. The Securities Unit will pass on the** documentation to the Registrar of Companies who will make the necessary arrangements to retain the documentation in an appropriate file for public access.

#### Constitutional Document

- 1.76 Any changes to the Constitutional Document of the Scheme must be approved by the MFSA in advance of implementation.

#### Promotion

- 1.77 The Manager and/or any appointed intermediary may only promote the Scheme to Experienced Investors. In the event of active promotion of the Scheme through the use of mass media advertising, investment advertisements should clearly indicate that the Scheme is not available for investment by the general public but is only available for investors satisfying the applicable Experienced Investor criteria **set out in the Scheme's Offering Document. The Scheme, its Manager or** Administrator may in turn only accept subscriptions from Experienced Investors.
- 1.78 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part BI of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.
- 1.79 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

- 1.80 All publicity comprising an invitation to purchase Units in the Scheme shall be approved by the Compliance Officer. All promotional material issued by the Scheme shall indicate that an Offering Document exists and the places where it, and any documents updating it, may be obtained.

#### Minimum Entry Levels

- 1.81 The minimum investment which the Scheme may accept is EUR 10,000 or USD10,000 or (for Schemes having applied for a licence prior 1/1/2010) EUR15,000 or USD15,000. Once the minimum investment has been made, any additional amount may be invested but the total amount invested must not at any time be less than EUR10,000/EUR15,000 or USD10,000/USD15,000 as applicable unless this is the result of a fall in the net asset value. In the case of an umbrella Scheme where each of the Sub-Funds is set up as a Professional Investor Fund, the EUR 10,000/EUR15,000 or USD10,000/ USD15,000 threshold may apply on a per scheme basis rather than on a per Sub-Fund basis.

#### Experienced Investor Declaration Forms

- 1.82 Before investing in the Scheme, investors must sign the Declaration referred to in [Appendix III](#) **stating that they qualify as “Experienced Investors” and that they have read and understood the risk warnings in the Offering Document.** In the case of **joint holders, all holders should individually qualify as “Experienced Investors”.** The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.
- 1.83 The Scheme or the Manager or Administrator on its behalf shall only create Units if amongst others it is in receipt of an appropriately completed Experienced Investor Declaration Form.
- 1.84 Copies of the Experienced Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering requirements should be held in Malta at the registered offices of the Scheme and should be available for inspection by the MFSA during compliance visits.

#### Side Letters

- 1.85 Side letters to be entered into by the Scheme must be circulated and approved by the Board of Directors (in the case of a Scheme set up as an investment company) / General Partner(s) (in the case of a Scheme set up as a limited partnership)/ Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) of the Scheme prior to issue.

- 1.86 Side letters issued by the Scheme should be retained in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

#### Distributions of Income

- 1.87 The Scheme shall effect any distributions of income in accordance with the provisions of its Constitutional Documents and/ or Offering Document.

#### General

- 1.88 The Scheme – or the Manager or Administrator on its behalf – shall submit copies **of the Scheme's annual audited financial statements and half-yearly report** (if any) to the MFSA and such other information, as the MFSA may from time to time request. The half-yearly (if any) and annual reports shall be published and provided to investors in the Scheme, and submitted to the MFSA within two and six months respectively of the end of the period concerned.

The Scheme shall also submit to the MFSA, on the following email address: fundreporting@mfsa.com.mt any statistical returns which may be required by the Central Bank of Malta to fulfil European and other relevant reporting obligations.

When requested to do so by the MFSA, a Scheme shall also submit, on the following email address: statistics@mfsa.com.mt any statistical returns may be required under MFSA Rule 1 of 2012 on foreign currency lending.

- 1.89 The Annual Report of the Scheme shall include a report by the Custodian which **shall state whether in the Custodian's opinion, the Scheme has been managed in** that period:
- (i) in accordance with the limitations imposed on the investment and borrowing powers of the Scheme by the Constitutional Document and Offering Document; and
  - (ii) otherwise in accordance with the provisions of the Constitutional Document and the Licence Conditions
- 1.90 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Scheme on the day the Licence is first issued, and thereafter annually within one week from the anniversary of that date.

- 1.91 The Scheme shall co-operate fully with any inspection or other enquiry carried out by, or on behalf of, the MFSA and inform it promptly of any relevant information. The Scheme shall supply the MFSA with such information as the MFSA may require.
- 1.92 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.93 The Scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements, and other documents. Wording **similar to the following shall be used: "Licensed by the MFSA as a Professional Investor Fund available to Experienced Investors"**.
- 1.94 The Scheme shall comply with the applicable laws and regulations relating to the Prevention of Money Laundering.
- 1.95 The MFSA shall not be liable in damages for anything done or omitted to be done unless the act or omission is shown to have been done or omitted to be done in bad faith.
- 1.96 A request for a variation of the Licence shall be submitted to the MFSA in writing, giving details of the variation requested and the reasons.
- 1.97 The MFSA shall be informed of any material information concerning the Scheme, its management or its operation, as soon as the Scheme becomes aware of that information. This shall include notifying the MFSA in writing of:
- (i) any evidence of fraud or dishonesty by an official of the Scheme immediately upon becoming aware of the matter;
  - (ii) any actual or intended legal proceedings of a material nature by or against the Scheme immediately the decision has been taken or on becoming aware of the matter;
  - (iii) any other material information concerning the Scheme, its business or its officials in Malta or abroad – immediately upon becoming aware of the matter.
- 1.98 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.99 The Scheme shall not be required to make public the issue and redemption prices of its Units. However, these must be made available to unit-holders upon request.

- 1.100 If dealings in the Units are suspended, the Scheme – or the Manager or Administrator on its behalf – shall inform the MFSA forthwith stating the reason for this suspension.

The MFSA has the right to require the suspension of the subscription, repurchase or redemption of Units of the Scheme, where this is considered appropriate in the interests of unit-holders or of the public.

- 1.101 The Scheme, its Manager or Administrator on its behalf shall keep such accounting and other records as are necessary to enable it to comply with these conditions and to demonstrate that compliance has been achieved. Accounting records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.
- 1.102 In the event of a winding-up, **the Scheme must give MFSA at least two weeks'** notice of this intention. The prior approval of the MFSA shall be obtained for the approach to be adopted. If requested to do so by the MFSA, the Scheme, shall do all in its power to delay the winding-up or to proceed with the winding-up in accordance with conditions imposed by the MFSA.
- 1.103 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.
- 1.104 The Scheme shall at all times monitor the regulatory status of the fund manager. In the event that the fund manager is no longer a de minimis fund manager, the Scheme must ensure that it becomes compliant with the requirements prescribed in the AIFM Directive.

#### Cross sub-fund investment

- 1.105 A Sub-Fund of a Scheme may invest in units of one (1) or more sub-funds within the same Scheme provided that:
- (i) adequate disclosure of the intentions of the Sub-Fund to invest in other Sub-Fund of the Scheme is made in the Constitutional Documents and/or the Offering Documentation;
  - (ii) the Scheme must have stipulated, in its Constitutional Documentation, that the assets and liabilities of each Sub-Fund are treated as a patrimony separate from the assets and liabilities of any other Sub-Fund of same Scheme in terms of regulation 9 of the Companies Act (Investment Companies with Variable Share Capital) Regulations;

- (iii) the Sub-Fund is allowed to invest up to 10% of its assets into any Sub-Fund within the same Scheme;
- (iv) the target Sub-Fund(s) may not themselves invest in the Sub-Fund which has invested in the target Sub-Fund(s);
- (v) in order to avoid duplication of fees, where the Manager of the Sub-Fund and the Manager of the target Sub-Fund is the same or, in the case of different Managers, where one Manager is an affiliate of the other, only one set of management, subscription and/or redemption fees shall apply between the Sub-Fund and the target Sub-Fund;

Provided that the restriction in point (v) shall apply only in respect of and to the extent (up to the portion) of the investment of the Sub-Fund in the target Sub-Fund;

- (vi) for the purposes of ensuring compliance with any applicable capital requirements and for the purpose of calculating the net asset value of each Sub-Fund, cross sub-fund investments will be counted once;
- (vii) any voting rights acquired by the Sub-Fund from the acquisition of the units in the target Sub-Fund shall be disappplied;
- (viii) clear disclosure of cross sub-fund investments shall be made in the **Scheme's** half-yearly and annual audited financial statements;

For the purpose of point (viii) the Administrator of the target Sub-Fund shall have adequate system capability to comply with these disclosure requirements as well as other reporting requirements in accordance with industry standards; and

- (ix) a Conflict of Interest Policy shall be in place and accordingly any conflicts of interest that arise shall be duly recorded, mitigated and disclosed as may be necessary.

This SLC does not apply to Schemes that fall within the scope of the Loan Fund Rules.

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