

GLOSSARY TO THE
INVESTMENT SERVICES RULES FOR
PROFESSIONAL INVESTOR FUNDS

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This Glossary should be read in conjunction with the Investment Services Rules for Professional Investor Funds issued by the MFSA.

A

“Act” or “ISA”	The Investment Services Act, 1994.
“Accrual Period”	The term “Accrual Period” means the period during which the performance of the staff member is assessed and measured for the purposes of determining its remuneration.
“Administration”	The provision of any of the following services: <ul style="list-style-type: none">• legal and fund management accounting services;• customer inquiries;• valuation and pricing, including tax returns;• regulatory compliance monitoring;• maintenance of unit-/shareholder register;• distribution of income;• unit/shares issues and redemptions;• contract settlements including certificate dispatch;• record keeping.
“Administrator”	A person appointed by the Scheme or its AIFM responsible for the provision of Administration services to the Scheme.
“Advertorial”	The term “Advertorial” means an editorial with an advertising content. Advertorials are in their majority press releases or other editorials, which are offered to the Scheme free of charge and which content ordinarily includes a description of the features of the investment product and/or service concerned and what such product and/or service aims to offer to potential investors. Advertorials usually also include launch offer details, rates of return or other income offered by the investment.
“Advisor”	See “Investment Advisor” .
“Alternative Investment Fund” or “AIF”	The term “AIF” means a Collective Investment Scheme , including sub-funds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those

investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive.

“Alternative Investment Fund Manager” or “AIFM”

The term “AIFM” means a legal person whose regular business is managing one or more AIFs.

“Alternative Investment Fund Managers Directive” or “AIFMD”

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directive 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

B

“Beneficial Owner(s)”

The term “Beneficial Owner(s)” shall have the same meaning as that assigned to it by regulation 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations..

“Branch”

The term “Branch” means the place of business which is part of the management company whether this is a UCITS management company or an AIFM, which has no legal personality and which provides the services for which the management company has been authorised. All the places of business established in the same Member State or EEA State by a management company having its head office in another Member State or EEA State shall be regarded as a single branch.

C

“Carried Interest”

The term “Carried Interest” means a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF.

“Civil Partner”

The term “Civil Partner” shall mean a partner bound by a civil union or a union of equivalent status in terms of the Civil Unions Act.

“Civil Union”	The term “civil union” shall mean a civil union or a union of equivalent status in terms of the Civil Unions Act.
“Clawback”	The term “Clawback” means a contractual agreement in which the staff member agrees to return ownership of an amount of remuneration to the AIFM under certain circumstances. This can be applied to both upfront and deferred variable remuneration. When related to risk outcomes, Clawback is a form of ex-post risk adjustment.
“Close Links”	The term ‘Close Links’ shall have the same meaning as that assigned to it in Appendix 9 to Part B of the Investment Services Rules for Investment Services Providers.
“Collective Investment Scheme”	The term ‘Collective Investment Scheme’ shall have the same meaning as that assigned to it by article 2 of the Act and shall include any sub-funds of such Scheme.
“Collective Investment Scheme Licence”	The term ‘Collective Investment Scheme’ shall have the same meaning as that assigned to it by article 2 of the Act.
“Compliance Officer”	The term “Compliance Officer” means the person appointed by the Scheme, responsible for ensuring compliance by the Scheme with its applicable Standard Licence Conditions.
“Constitutional Document”	The term “Constitutional Document” refers to the documents constituting a Scheme. In the case of an investment company, its Memorandum and Articles of Association, statutory documents, or other instruments of incorporation; in the case of a limited partnership the Deed of Partnership contract or partnership agreement; in the case of a unit trust the trust deed; and in the case of a contractual fund the Fund Rules.
“Control”	The term “Control” means the relationship between a parent undertaking and a subsidiary undertaking as defined in Article 2 of the Companies Act, or a similar relationship between any natural or legal person and an undertaking.
“Control Functions”	The term “Control Functions” means staff (other than Senior Management) responsible for risk management, compliance, internal audit and similar functions within the AIFM (e.g. the CFO to the extent that he/she is responsible for the preparation of the financial statements).

“Custodian”

The person appointed by the Scheme responsible for safekeeping of the assets of the Scheme and for carrying a monitoring function over the activities of the AIFM.

D

“Deferral Period”

The term “Deferral Period” means the period during which variable remuneration is withheld following the end of the Accrual Period.

“Delegation”

The term “Delegation” means an arrangement of any form between a Scheme and a service provider by which that service provider performs a process, a service or an activity which would otherwise be undertaken by the Scheme itself.

“Durable Medium”

The term “Durable Medium” is any instrument which enables a client to store information addressed personally to that a client in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored.

E

“EEA”

European Economic Area

“EEA State”

The term “EEA State” shall have the same meaning as that assigned to it by article 2 of the Act.

“Established”

The term “Established” means:

- (a) for AIFMs, ‘having its registered office in’;
- (b) for AIFs, ‘being authorised or registered in’, or if the AIF is not authorised or registered, ‘having its registered office in’;
- (c) for Custodians, ‘having its registered office or branch in’;
- (d) for legal representatives that are legal persons, ‘having its registered office or branch in’;
- (e) for legal representatives that are natural persons, ‘domiciled in’.

“EU”

European Union

“European AIF”

The term “European AIF” means:

- (a) An AIF which is authorised or registered in a Member State or EEA State other than Malta under the applicable national law; or
- (b) An AIF which is not authorised or registered in a Member State or EEA State other than Malta, but has its registered office and/or head office in a Member State or EEA State.

“European AIFM”

The term “European AIFM” means an AIFM which has its registered office in a Member State or EEA State other than Malta.

“ESMA”

European Securities and Markets Authority

F

“Feeder AIF” The term “Feeder AIF” means an AIF or sub-fund thereof which has been approved to invest at least eighty five per cent of its assets in units of another AIF or sub-fund thereof in terms of the AIFMD.

“Financial Instrument” See “Instrument”

H

“Holding Company” The term “Holding Company” means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company:

- (a) Operating on its own account and whose shares are admitted to trading on a regulated market in the EU; or
- (b) Not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or assorted companies as evidence in its annual report or other official documents.

“Home Member State” The term “Home Member State” shall have:

- (a) the meaning assigned to “home Member State or EEA State” in Regulation 2 of the European Passport Right for Investment Firms Regulations 2007, as may be amended from time to time; or
- (b) the meaning assigned to “home Member State or EEA State” in Regulation 2 of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011, as may be amended from time to time; or
- (c) the meaning assigned to “home Member State or EEA State” in Regulation 2 of the Investment Services Act

(Alternative Investment Fund Manager Passport)
Regulations, 2013.

“Identified Staff”

The term “Identified Staff” shall mean categories of staff, including Senior Management, risk takers, control functions and any employee receiving total remuneration that takes them into the same Remuneration Bracket as Senior Management and risk takers, whose professional activities **have a material impact on the AIFM’s risk profile or the risk profiles of the AIFs it manages and categories of staff of the entity/-ies to which portfolio management or risk management activities have been delegated by the AIFM, whose professional activities have a material impact on the risk profiles of the AIF that the AIFM manages.**

“Instrument(s)”

The term “Instrument” shall have the same meaning as that assigned to it in Article 2 of the Act.

In particular, with regards to the use of the term in Appendix **8 to Part B of these Rules, the term “Instruments” shall mean** units or shares of the AIFs managed by the AIFM or equivalent ownership interests (including –for AIFs issuing only units –unit-linked instruments), subject to the legal structure of the AIFs concerned and their Constitutional Documents and/or offering document, or share-linked instruments or equivalent non-cash instruments.

“Investment”

Any instrument, contract or right falling within the Second Schedule to the Act and whether or not issued or entered into in Malta.

“Investment Advertisement”

The term ‘investment advertisement’ shall have the same meaning as that assigned to it in article 2 of the Act.

“Investment Advisor”

The term “Investment Advisor” means a person appointed by the Scheme or its AIFM responsible for advising the Scheme or the AIFM regarding the investment and re-investment of the assets of the Scheme.

“Investment Committee”	The term “Investment Committee” means an internal committee of a self-managed Scheme appointed by the board of directors of the Scheme.
“Investment Firm”	The term “Investment Firm” shall have the same meaning as that assigned to it in Regulation 2 of the European Passport Rights for Investment Firms Regulations, 2007.
“Investment Service”	The term “Investment Service” shall have the same meaning as that assigned to it in Article 2 of the Act.
“Investment Services Licence”	The term “Investment Services Licence” shall have the same meaning as that assigned to it in article 2 of the Act.
“Investment Services Licence Holder”	The term “Investment Services Licence Holder” means a person who holds an Investment Services Licence.
“Investment Services Rules for Investment Services Providers”	Investment Services Rules issued by the MFSA in terms of article 6 of the Act applicable to Investment Services Licence Holders and equivalent authorised persons.
“Investment Services Rules for Professional Investor Funds”	Investment Services Rules issued by the MFSA in terms of article 6 of the Act applicable to Professional Investor Funds.
“Investment Services Rules for Recognised Persons”	Investment Services Rules issued by the MFSA in terms of the Act applicable to Recognised Private Collective Investment Schemes, Recognised Fund Administrators and Recognised Incorporated Cell Companies.
“Investment Services Rules for Retail Collective Investment Schemes”	Investment Services Rules issued by the MFSA in terms of article 6 of the Act applicable to Retail Collective Investment Schemes.
“Issuer”	The term ‘Issuer’ means an issuer within the meaning of Article 2(1)(d) of Directive 2004/109/EC where that issuer has its registered office in the EU, and its shares are admitted to trading on a regulated market within the meaning of Article 4(1)(21) of MIFID.

L

“Leverage”

The term “leverage” means any method by which a self-managed Scheme increases the exposure of its investment portfolio whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means.

“Listing Authority”

The term “Listing Authority” means the authority defined in Article 2 of the Financial Markets Act, Cap. 345.

M

“Malus”

The term “Malus” shall mean an arrangement that permits the AIFM to prevent vesting of all or part of the amount of a deferred remuneration award in relation to risk outcomes or performances of the AIFM as a whole, the business unit, the AIF and, where possible the staff member. Malus is a form of ex-post risk adjustment.

“Marketing”

The term “Marketing” means a direct or indirect offering or placement at the initiative of an AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU.

“Marketing Communication”

See “Investment Advertisement”

“Member State”

The term “Member State” shall have the same meaning as that assigned to it by Regulation 2 of the Investment Services Act (Marketing of AIFs) Regulations, 2013.

“MFSA”

The Malta Financial Services Authority.

“MIFID”

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended from time to time, and includes any implementing measures that have been or may be issued thereunder.

“Money Laundering Reporting Officer” or “MLRO”

The term “Money Laundering Reporting Officer” means the person appointed by a Collective Investment Scheme in terms of Regulation 15 of the Prevention of Money Laundering and Funding of Terrorism Regulations.

N

“Non-Listed Company”

The term “Non-Listed Company” means a company which has its registered office in the EU and the shares of which are not admitted to trading on a regulated market within the meaning of point (21) of Article 4(1) of MIFID.

O

“Outsourcing”

See “Delegation”.

“Own Funds”

The term “Own Funds” means own funds as defined in point (118) of Article 4(1) of Regulation (EU) No 575/2013.

P

“Personal Questionnaire” or “PQ”

The term “Personal Questionnaire” means Schedule 2 to Part A of these Rules.

“Prime Broker”

The term “Prime Broker” means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities.

“Professional Client”

The term “Professional Client” means a professional client as defined in Annex II to MIFID.

Q

“Qualifying Shareholder”

The term “Qualifying Shareholder” means a person who has a Qualifying Shareholding.

“Qualifying Shareholding”

The term “Qualifying Shareholding” shall have the same meaning as that assigned to it by article 2 of the Act.

R

“Recommendation”

Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial sector.

“Regulated Market”

The term “Regulated Market” means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of MIFID.

“Regulation No 345/2013”

The term “Regulation No 345/2013” shall be understood as referring to Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds.

“Regulation No 346/2013”

The term “Regulation No 346/2013” shall be understood as referring to Regulation (EU) No. 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds.

“Remuneration Bracket”

The term “Remuneration Bracket” means the range of the total remuneration of each of the staff members in the senior manager and risk taker categories –from the highest paid to the lowest paid in these categories.

“Retail Client”

A client who is not a Professional Client.

“Retention Period” The term “Retention Period” means the period of time during which variable remuneration that has been already vested and paid out in the form of instruments cannot be sold.

S

“Scheme” See “Collective Investment Scheme”.

“Senior Management” The person or persons who effectively direct the business of the Scheme.

“Special Purpose Vehicle” or “SPV” A special purpose vehicle:

1. set up by the Scheme as part of its investment strategy for the purpose of achieving its investment objectives; and
2. owned or controlled via majority shareholding of the voting shares either directly or indirectly by the Scheme; and

having the majority of its directors in common with the Scheme which set it up.

“Spouse” The term “spouse” includes a partner bound by a civil union or by a union of equivalent status in terms of the Civil Unions Act.

“Standard Licence Conditions” or “SLCs” The term “Standard Licence Conditions” means the conditions which apply to a Collective Investment Scheme and which are contained in Part B of the Investment Services Rules.

“Supervisory Function” The term “Supervisory Function” means the relevant persons or body or bodies responsible for the supervision of the AIFM’s Senior Management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under the AIFMD. For those AIFMs that given their size, internal organisation and the nature, scope and complexity of their activities or their legal structure do not have a separate supervisory function, the supervisory function should be understood as the member or members of the management body responsible for these functions.

“Supervisory Authority” in relation to non-EU AIFs or non-EU AIFMs

The term **“Supervisory Authorities” in relation to non-EU AIFs or non-EU AIFMs** means the national authorities of a third country which are empowered by law or regulation to supervise AIFs or AIFMs as applicable.

T

“Third Country”

A country which is not a Member State or an EEA State.

U

“UCITS”

A Collective Investment Scheme, whether of the unit trust or open-ended investment company variety, falling within the scope of and authorised in terms of the UCITS Directive.

“UCITS Scheme”

See **“UCITS”**.

“UCITS Directive”

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) and includes any implementing measures that have been or may be issued thereunder.

“Units”

The term **“Units”** means shares in an investment company, units in a unit trust, or any other form of representation of the rights and interests of participants in a Collective Investment Scheme.

V

“Vesting Point”

An amount of remuneration vests when the staff member receives payment and becomes the legal owner of the remuneration. Once the remuneration vests, no explicit ex-post adjustments can occur apart from Clawback clauses.

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