

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

15<sup>th</sup> October, 2007

The Board of Directors

### Securities Unit

Unit Tel: (+356) 21441155  
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Dear Sirs,

### **Re: *Investment Services Rules for Professional Investor Funds***

We refer to our circular dated 17<sup>th</sup> July, 2007 regarding the above.

### ***Change in name of the “Guidelines for Professional Investor Funds” (“the PIF Guidelines”)***

Parliament recently approved a number of amendments to the Investment Services Act, 1994. These changes will become effective on the 1<sup>st</sup> November, 2007 and necessitate the renaming of the PIF Guidelines to “Investment Services Rules for Professional Investor Funds” (“the PIF Rules”). The change in name of the PIF Guidelines is scheduled to take effect on the 1<sup>st</sup> November, 2007.

### ***Updated cross references to Part CI of the current Investment Services Guidelines***

The MFSA will also shortly issue new Investment Services Rules for Investment Services Providers to be applicable to inter alia, investment services licence holders. These Rules are scheduled to come into force on the 1<sup>st</sup> November, 2007 to comply with the Markets in Financial Instruments Directive. Part CI of the current Investment Services Guidelines (presently applicable to investment services licence holders) as well as a number of Appendices to the said Guidelines will accordingly be deleted with effect from 1<sup>st</sup> November, 2007.

In view of the fact that the PIF Guidelines include a number of cross references to Part C I of the current Investment Services Guidelines, the relevant SLCs included in Parts BI, BII and BIII of the PIF Guidelines which refer to Part C I have also been updated.

### ***Other minor amendments***

The MFSA has also taken the opportunity to effect a number of minor changes to the Guidelines, principally for clarification purposes.

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

We are pleased to enclose Part A and B of the Investment Services Rules for Professional Investor Funds with tracked changes (versus the latest published version dated 17<sup>th</sup> July, 2007). These Rules are scheduled to become effective on the 1<sup>st</sup> November, 2007 and will accordingly replace the current PIF Guidelines. Those licensed Professional Investor Funds (“PIFs”) that are subject to the Guidelines will

accordingly be required to comply with the PIF Rules with effect from 1<sup>st</sup> November, 2007. The MFSA will, once the Rules come into force on the 1<sup>st</sup> November, 2007, issue revised licences to the PIFs referred to above duly updated to refer to the Rules (rather than the Guidelines).

The transitional arrangements outlined in our letter dated 17<sup>th</sup> July, 2007 will remain applicable and licensed PIFs that are presently not subject to the PIF Guidelines will be required to notify the MFSA of arrangements being made or which have been made to come in line with the requirements included in the PIF Rules by not later than the **17<sup>th</sup> April, 2008**. These PIFs shall be required to satisfy the requirements stipulated in the PIF Rules by not later than 17<sup>th</sup> July, 2008.

Please feel free to contact Mr. James Farrugia or the undersigned should you have any queries or require any clarifications regarding the above.

Yours faithfully,



**Cristina Parlato Trigona**  
**Director**

***Encls. (by e-mail only)***

**MFSA**

**MALTA FINANCIAL SERVICES AUTHORITY**

**INVESTMENT SERVICES**  
**RULES**

**FOR**

**PROFESSIONAL INVESTOR**  
**FUNDS**

Issued: 17<sup>th</sup> July, 2007

Last Updated: 1<sup>st</sup> November, 2007

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## INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

### INTRODUCTION

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These Investment Services Rules have been issued in terms of Article 6 of the Investment Services Act, 1994 and set out MFSA's regulatory regime applicable to Collective Investment Schemes set up as Professional Investor Funds.

These Rules provide for three principal classes of PIFs as follows:

1. PIFs promoted to Experienced Investors (or Experienced Investor Funds);
2. PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and
3. PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).

These classes of PIFs are further described in Section 4 of Part A of these Rules.

These Rules are divided into 2 Parts as follows:

#### *Part A: The Application Process*

This Part provides:

- i. a detailed description of the Application Process and includes as Schedules the relevant Application Documents for a PIF Licence;
- ii. an outline of the licensing requirements applicable to Professional Investor Funds in terms of the Investment Services Act, 1994;
- iii. a detailed description of the different classes of Professional Investor Funds licensed by the MFSA;
- iv. a description of the eligibility requirements to be satisfied by prospective Service Providers of the PIF;
- v. a non exhaustive list of documents to be submitted by an applicant in support of an application for a collective investment scheme licence;
- vi. the requirements applicable for the licensing of additional sub-funds within an existing umbrella PIF; and
- vii. the requirements applicable for the approval of additional classes of shares of an existing PIF (which classes of shares do not constitute one or more sub-funds).

#### *Part B: Standard Licence Conditions*

This Part is divided into three sections and includes a number of Appendices. The standard conditions for PIFs promoted to Experienced Investors are set out in Part B I, in Part B II as

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MALTA FINANCIAL SERVICES AUTHORITY

regards PIFs promoted to Qualifying Investors and in Part B III as regards PIFs promoted to Extraordinary Investors.

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## TABLE OF CONTENTS

### *Part A: The Application Process*

|   |   |    |
|---|---|----|
| 1.  | Investment Services Act, 1994   | 1  |
| 1.1   | Regulation of Professional Investor Funds   | 1  |
| 1.2   | Definition of a Collective Investment Scheme  | 1  |
| 2.  | Requirement for a Collective Investment Scheme Licence for Professional Investor Funds  | 3  |
| 3.  | Criteria which MFSA will apply in considering an application for a Licence              | 4  |
| 4.  | Categories of Professional Investor Funds   | 6  |
| 4.1   | PIFs promoted to Experienced Investors  | 6  |
| 4.2   | PIFs promoted to Qualifying Investors   | 7  |
| 4.3   | PIFs promoted to Extraordinary Investors  | 9  |
| 5.  | Standard Licence Conditions   | 11 |
| 6.  | Listing on the Malta Stock Exchange   | 12 |
| 7.  | Offering Document/ Marketing Document   | 13 |
| 8.  | Service Providers   | 15 |
| 8.1   | Manager   | 15 |
| 8.2   | Fund Administrator  | 16 |
| 8.3   | Custodian   | 16 |
| 8.4   | Investment Adviser  | 16 |
| 9.  | Application for Preliminary Indication of Acceptability of a Professional Investor Fund | 18 |
| 10.   | Applications for a PIF Licence  | 19 |
| 10.1  | The Application Process   | 19 |
| 10.2  | Application Documents   | 20 |
| 11.   | Applications for the licensing of additional sub-funds of an existing PIF               | 25 |
| 12.   | Applications for the approval of additional classes of shares of an existing PIF        | 26 |
| 13.   | Fees  | 27 |
| Schedule A: <u>  </u> Application for a Licence to operate as a Professional Investor Fund                    |   |    |
| Schedule B: <u>  </u> Application for Preliminary Indication of acceptability of a Professional Investor Fund |   |    |
| Schedule C: <u>  </u> Personal Questionnaire  |   |    |

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**Part B: Standard Licence Conditions**

|   |                  |             |
|---|------------------|-------------|
| Part B I: Professional Investor Funds targeting Experienced Investors     | <del>28</del>    | Deleted: 7  |
| Part B II: Professional Investor Funds targeting Qualifying Investors     | <del>42</del>    | Deleted: 39 |
| Part B III: Professional Investor Funds targeting Extraordinary Investors | <del>55</del>    | Deleted: 50 |
| Appendix I: Supplementary Licence Conditions                              | <del>71</del>    | Deleted: 63 |
| Appendix II: Contents of the Offering Document                            | <del>78</del>    | Deleted: 0  |
| Appendix III: Declaration Forms   | <del>84</del>    | Deleted: 76 |
| Appendix IV: Quarterly Statistical Return                                 | <del>93</del>    | Deleted: 84 |
| <b><u>Glossary</u></b>  | <b><u>94</u></b> |             |

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## **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

### **PART A: THE APPLICATION PROCESS**

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#### **1. Investment Services Act, 1994 (“The Act”)**

##### ***1.1 Regulation of Professional Investor Funds (“PIFs”)***

The Investment Services Act, 1994 (“the Act”) provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. PIFs are a special class of collective investment schemes which fall within the provisions of the Act. The following sections make reference to various parts of the Act but do not attempt to reproduce it, and therefore should not be treated as a substitute for reading the Act itself.

##### ***1.2 Definition of a Collective Investment Scheme***

As indicated above, PIFs are a special class of collective investment scheme. The Act defines “Collective Investment Schemes” as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

- a. the scheme or arrangement operates according to the principle of risk spreading; and either
- b. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- c. at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or
- d. units are, or have been, or will be issued continuously or in blocks at short intervals.

Provided that the Competent Authority may issue a licence with respect to a scheme or arrangement whose units are to be offered for subscription, sale or exchange to:

- a. Licence Holders; or
- b. persons whose ordinary business involves the acquisition and disposal of instruments of the same kind as the instrument or instruments in which the scheme or arrangement invests; or

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- c. persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, in which the scheme or arrangement invests; or
- d. persons who by regulation under the Act are exempt from the requirement of an Investment Services Licence provided that the scheme or arrangement invests in instruments or property in respect of which such persons are exempt.

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Notwithstanding that such a scheme or arrangement does not have the characteristic listed in paragraph (a) above, and in any such case, such scheme or arrangement shall be deemed to be a collective investment scheme.

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**2. Requirement for a Collective Investment Scheme Licence for Professional Investor Funds**

Article 4 of the Act states:

- “4 (1) *Subject to the provisions of subarticle (3), no Collective Investment Scheme shall issue or create any units or carry on any activity in or from within Malta unless there is in respect of it a valid Collective Investment Scheme licence.*
- (2) *Subject to the provisions of subarticle (3), no Collective Investment Scheme formed in accordance with or existing under the laws of Malta shall issue or create any units or carry on any activity in or from within a country, territory or other place outside Malta unless there is in respect of it a valid Collective Investment Scheme licence.*
- (3) *No Collective Investment Scheme shall be precluded by the provisions of subarticle (1) from issuing or creating such units or from taking such steps as may be necessary for the incorporation or, as the case may be, the establishment of the scheme or from taking such steps as may be necessary for securing the authorisation of the scheme by the competent authority.”*

Subarticle 4(1) makes it illegal for any Scheme, including a Scheme set up as a PIF, to operate in or from Malta without having a licence.

Subarticle 4(2) makes it illegal for a Scheme including a PIF, to use Malta as a base without having a licence.

Subarticle 4(3) permits the initial steps in establishing a Scheme including a PIF, to be taken before a Licence has been obtained but the Scheme may not deal with investors before it is licensed.

Under Article 12(1)(i) of the Act, certain exemptions have been granted from the requirement to obtain a Collective Investment Scheme licence. For further details, reference should be made to the [Investment Services Act \(Exemption\) Regulations, 2007](#), [the Investment Services Act \(Recognition of Private Collective Investment Schemes\) Regulations, 2002](#) and [the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004](#) as amended.

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### 3. Criteria which MFSA will apply in considering an application for a Licence

The MFSA may only grant a Collective Investment Scheme licence to a PIF if it is satisfied to the extent that it can be, that the PIF will comply in all respects with the provisions of the Act, the relevant Regulations and these Rules and that its directors and officers, or in the case of a unit trust/common contractual fund or limited partnership, its Trustee(s) or General Partner(s) respectively, are fit and proper persons to carry out the functions required of them in connection with the PIF.

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In accordance with Article 6(3) of the Act, when considering whether to grant or refuse a Licence, the MFSA will, in particular, have regard to:

- a. the protection of investors and the general public;
- b. the protection to the reputation of Malta taking into account Malta's international commitments;
- c. the promotion of competition and choice; and
- d. the reputation and suitability of the applicant and all other parties connected with the Scheme.

The MFSA will consider the nature of the PIF and the nature of investors to whom it will be marketed. It will also look into the experience and track record of all parties who will be involved with the PIF. Such persons should be of good standing and should be competent. The MFSA has the right to refuse a Licence if it does not approve a party involved with the PIF.

Although the Act provides for the licensing of many different kinds of Schemes, the MFSA applies the same standards relating to the "fit and proper" status of the Applicant and its Service Providers. The "fit and proper" test is one which an Applicant and a Licence Holder must satisfy on a continuing basis. Each case is assessed on its own merits and on the basis of the relevant circumstances. The onus of proving that it meets the required standards on an on-going basis is on the Applicant and/or licensed PIF as the case may be. It is not the task of the MFSA to prove that an applicant is fit and proper either on licensing or thereafter. The MFSA's approach is cumulative. It may decide that a PIF has failed the test on the basis of considering various circumstances, each of which on its own may or would not lead to that conclusion. An open and honest relationship with the MFSA is essential. When arriving at its decision as to whether an Applicant has met the required standards, the MFSA will take account both of what is said and of what is not said (for example in respect of a person's criminal record) that ought to have been disclosed. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

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In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test:

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- a. integrity;
- b. competence; and
- c. solvency.

Integrity involves the PIF and its officers and its Service Providers acting honestly and in a trustworthy fashion.

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Competence means that the persons responsible for running the PIF must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.

Solvency means ensuring that proper financial controls and management of liquidity and capital is applied.

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## 4. Categories of Professional Investor Funds

The MFSA's regulatory regime for PIFs caters for three principal categories:

1. PIFs promoted to Experienced Investors (or Experienced Investor Funds);
2. PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and
3. PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).

Unless otherwise indicated, all references to PIFs throughout these Rules capture PIFs promoted to Experienced Investors, PIFs promoted to Qualifying Investors and PIFs promoted to Extraordinary Investors.

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### 4.1 PIFs promoted to Experienced Investors

An "Experienced Investor", is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. An investor must state the basis on which he satisfies this definition, either

- a. by confirming that he/ she is:
  - i. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or
  - ii. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; or
  - iii. a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);

OR

- b. by providing any other appropriate justification.

In the case of joint holders, all holders should individually satisfy the definition of "Experienced Investor".

The minimum investment threshold is EUR15,000 or equivalent in another currency. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the PIF. The minimum investment threshold applies to each individual "Experienced Investor". In the case of joint holders, the minimum investment limit remains EUR15,000 or equivalent in another currency.

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In the case of an umbrella fund comprising of sub-funds each of which is set up as a Professional Investor Fund, the EUR15,000 threshold may be applicable on a per scheme basis rather than on a per sub-fund basis. Thus, effectively an “Experienced Investor” may hold less than EUR15,000 in a sub fund provided that his/ her total holding in such scheme is at least EUR15,000.

Before an Experienced Investor Fund may accept any investment, it should obtain a completed “Experienced Investor Declaration Form” in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is an “Experienced Investor”. In the case where the Experienced Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Experienced Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Experienced Investor and to exclude retail investors. A proforma of an Experienced Investor Declaration Form is provided in Appendix III to Part B of these Rules.

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The Manager/Sales Agent or any third party selling units of the Experienced Investor Fund is bound to take reasonable steps to ensure that the investor has sufficient knowledge and understanding of the risks involved in investing in a PIF.

The Manager/Sales Agent or any third party selling units in an Experienced Investor Fund will be required to countersign the Experienced Investor Declaration Form signifying that he has satisfied himself/ herself that the investor has sufficient knowledge and understanding of the risks involved.

If the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund is not satisfied that the investor has the necessary experience and knowledge in order to understand the risks involved, then the said Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund should state so in the Experienced Investor Declaration Form and confirm that he/ she has warned the investor accordingly. The investor shall also confirm in writing that he/ she has been warned in this regard.

Whilst the PIF or its Administrator may rely on the confirmation provided by the Manager/ Sales Agent or any third party selling units of the Experienced Investor Fund, it shall be precluded from processing applications for the issue of units in the PIF unless the Experienced Investor Declaration Form is duly completed as indicated above.

PIFs promoted to Experienced Investors are not subject to any investment restrictions. Whilst borrowing on a temporary basis for liquidity purposes is permitted and not restricted, borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of NAV.

#### 4.2 PIFs promoted to Qualifying Investors

A “Qualifying Investor”, is required to meet one or more of the following criteria:

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1. a body corporate which has net assets in excess of EUR750,000 or which is part of a group which has net assets in excess of EUR750,000;
2. an unincorporated body of persons or association which has net assets in excess of EUR750,000;
3. a trust where the net value of the trust's assets is in excess of EUR750,000;
4. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/or disposal of :-
  - 4.1 funds of a similar nature or risk profile;
  - 4.2 property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
5. an individual whose net worth or joint net worth with that person's spouse, exceeds EUR750,000;
6. a senior employee or Director of Service Providers to the PIF;
7. a relation or close friend of the promoters limited to a total of 10 persons per PIF;
8. an entity with (or which are part of a group with) EUR3.75 million or more under discretionary management, investing on its own account;
9. the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors;
10. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

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In the case of joint holders, all holders should individually satisfy the definition of "Qualifying Investor".

Minimum initial investment is EUR75,000, or equivalent in another currency. The total amount invested may not fall below this threshold (or equivalent) unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual "Qualifying Investor". In the case of joint holders, the minimum investment limit remains EUR75,000 or equivalent in another currency .

In the case of an umbrella fund comprising of sub-funds each of which is set up as a Professional Investor Fund, the EUR75,000 threshold may be applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively a "Qualifying Investor" may hold less than EUR75,000 in a sub-fund provided that his total holding in the scheme is at least EUR75,000.

Prior to accepting any investment the PIF should be in receipt of a completed "Qualifying Investor Declaration Form" in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is a "Qualifying Investor". In the case where the Qualifying Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Qualifying Investor Declaration Form is required for the prospective

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investor to demonstrate eligibility to be treated as a Qualifying Investor. A proforma of a Qualifying Investor Declaration Form is provided in Appendix III to Part B of these Rules.

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PIFs promoted to Qualifying Investors are not subject to any investment or borrowing (including leverage) restrictions other than those which may be specified in their Offering Document.

### 4.3 PIFs promoted to Extraordinary Investors

An “Extraordinary Investor” is required to meet one or more of the following criteria:

1. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million;
2. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million;
3. a trust where the net value of the trust’s assets is in excess of EUR7.5 million;
4. an individual whose net worth or joint net worth with that person’s spouse, exceeds EUR7.5 million;
5. a senior employee or Director of Service Providers to the PIF;
6. the investor qualifies as a PIF promoted to Extraordinary Investors;
7. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

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In the case of joint holders, all holders should individually satisfy the definition of “Extraordinary Investor”.

Minimum initial investment is EUR750,000, or equivalent in another currency. The total amount invested may not fall below this threshold (or equivalent) unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment threshold applies to each individual “Extraordinary Investor”. In the case of joint holders, the minimum investment limit remains EUR750,000 or equivalent in another currency .

In the case of an umbrella fund comprising of sub-funds each of which is set up as a Professional Investor Fund, the EUR750,000 threshold may be applicable on a per scheme basis rather than on a per sub-fund basis. Thus effectively an “Extraordinary Investor” may hold less than EUR750,000 in a sub-fund provided that his total holding in the scheme is at least EUR750,000.

Prior to accepting any investment the PIF should be in receipt of a completed “Extraordinary Investor Declaration Form” in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is an “Extraordinary Investor”. In the case where the Extraordinary Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in

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the case of a trust, from the Trustee. The Extraordinary Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Extraordinary Investor. A proforma of an Extraordinary Investor Declaration Form is provided in Appendix III to Part B of these Rules.

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PIFs promoted to Extraordinary Investors are not subject to any investment or borrowing (including leverage) restrictions other than those which may be specified in their Offering Document/ Marketing Document.

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5. Standard Licence Conditions

The MFSA aims to provide a regulatory framework which is both robust and simultaneously adaptable to allow managers and promoters to innovate and to develop new products to meet the changing needs of the market. The Standard Licence Conditions for PIFs promoted to Experienced Investors are set out in Part B I of these Rules, in Part B II as regards PIFs promoted to Qualifying Investors and in Part B III as regards PIFs promoted to Extraordinary Investors.

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**6. Listing on the Malta Stock Exchange**

A PIF that has been granted or has applied for a Collective Investment Scheme licence may apply for admissibility to listing with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).

Where an application for admissibility to listing has been submitted concurrently with an application for a Collective Investment Scheme licence, the documents submitted as part of the application for a Collective Investment Scheme licence need not be resubmitted as part of the application for admissibility to listing. Furthermore – provided that during the application for a Collective Investment Scheme licence, the MFSA is informed of the PIF’s intention to apply for admissibility to listing – once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a Collective Investment Scheme licence as well as in relation to the application for admissibility to listing.

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**7. Offering Document/ Marketing Document**

A PIF targeting Experienced or Qualifying Investors is required to draw up an Offering Document which should at least include the information listed in Appendix II to Part B of these Rules. The Offering Document should be provided to prospective investors free of charge.

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A PIF targeting Extraordinary Investors may either draw up an Offering Document – which includes at least the information listed in Appendix II to Part B of these Rules – or else draw up a Marketing Document which should at least include:

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- i. a list of Service Providers including the Directors, General Partner(s) or Trustee (as applicable), and their respective contact details;
- ii. a definition of Extraordinary Investor;
- iii. a risk warnings section describing in brief at least the principal risks associated with investing in the PIF;
- iv. the investment objectives, policies and restrictions of the PIF or where applicable its sub-funds;
- v. details of the fee structure;
- vi. details of the classes/ units on offer (whether these constitute a distinct sub-fund or not);
- vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed);
- viii. a Statement – where the PIF has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the PIF. This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request;
- ix. the Extraordinary Investor Declaration Form and the Subscription Form;
- x. the following text:
  - “[name of the Fund] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.
  - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.
  - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.
  - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.

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The Marketing Document should also include as an Annex, either the most recent version of the Constitutional Document of the PIF or a summary thereof. In the latter case, the Marketing Document should provide that a copy of the PIF’s Constitutional Document will

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be provided to prospective investors upon request. The Marketing Document or where applicable the Offering Document, should be provided to prospective investors free of charge.

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8. Service Providers

A PIF may appoint any Service Provider as it may deem necessary – although PIFs promoted to Experienced Investors are required to appoint a Custodian responsible for the safe custody of the assets of the PIF and for monitoring the activities of the PIF’s Manager as more fully detailed in the applicable Part B I of these Rules.

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Ordinarily, Service Providers of a PIF may include, amongst others, a Manager, an Administrator, an Investment Adviser and/or a Custodian/Prime Broker.

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Service Providers should be established and regulated in a Recognised Jurisdiction. Recognised Jurisdictions include EU and EEA Members, and signatories to a Multilateral MoU or Bilateral MoU with the MFSA covering the relevant sector of financial services.

Deleted: Service provider

The MFSA may, in the following scenarios, also accept Service Providers which may not be established and regulated in a Recognised Jurisdiction:

Deleted: Service Provider

- i. where the Service Provider is the subsidiary of a firm that is regulated in a Recognised Jurisdiction, that retains control of its subsidiary and undertakes to provide all the necessary information to the MFSA; or
- ii. where the MFSA considers that the Service Provider is subject to regulation to an equal or comparable level in the jurisdiction concerned.

Where one or more of the proposed Service Providers is not based in a Recognised Jurisdiction or does not fall under (i) above, it is recommended that prior to the submission of an Application for a PIF Licence, the promoters submit an application for preliminary indication of acceptability of a PIF as outlined under Section 9 below.

8.1 Manager

Where a third party Manager is to be appointed and the proposed Manager is established in Malta, the Manager should be in possession of a Category 2 Investment Services Licence issued in terms of Article 6 of the Act and should be duly licensed and authorised by the MFSA to provide management services to collective investment schemes.

Where the proposed Manager has appointed a Sub-Manager with limited or full discretion in respect of the management of the assets of the PIF, the Sub-Manager is not subject to MFSA’s approval and no eligibility criteria apply. In such case, the MFSA expects the Manager to exercise care and diligence in the selection of a Sub-Manager and to assume responsibility for the acts of the Sub-Manager

For PIFs which do not appoint a third party Manager, reference should be made to supplementary conditions applicable to self managed funds included in Appendix I to Part B of these Rules.

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### 8.2 Fund Administrator

Administrative services in relation to the PIF may either be carried out by an appointed third party Administrator or undertaken by the appointed Manager.

Where the proposed Fund Administrator is established in Malta, the Administrator should be in possession of a Fund Administration recognition certificate issued in terms of Article 9A of the Act.

### 8.3 Custodian

A PIF promoted to Experienced Investors should appoint a third party Custodian responsible for the safe keeping of the assets of the PIF and for undertaking monitoring duties over the PIF's Manager as more fully detailed in the relevant standard licence conditions in Part B I of these Rules. The appointed Custodian should be independent from the Manager and need not be established and regulated in Malta.

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In the case of a PIF promoted to Qualifying or Extraordinary Investors, although the MFSA recommends and would ordinarily expect the appointment of a Custodian, which may be a Prime Broker, for safekeeping the PIF's assets, there is no obligation to have either. Where no Custodian is appointed, responsibility for the establishment of proper arrangements for the safe keeping of the PIF's assets remains with the Directors/ General Partner(s)/ Trustee and officers of the PIF. The applicant will be required to outline – as part of the application process – the arrangements that will be put in place to ensure adequate safekeeping of the assets of the PIF.

Where the PIF wishes to appoint a Custodian established in Malta, the Custodian should be in possession of a Category 4 Investment Services Licence issued in terms of Article 6 of the Act.

### 8.4 Investment Adviser

The Investment Adviser is a person responsible for the provision of investment advice to the PIF or its Manager on the assets of the PIF. It is understood that the Investment Adviser will not have any discretion with respect to the investment and re-investment of the assets of the PIF.

PIFs are generally not required to appoint a third party Investment Adviser. Moreover, the proposed Investment Adviser need not be established and regulated in Malta.

Where the Investment Adviser is appointed directly by the Manager, rather than by the PIF such Investment Adviser is not subject to MFSA's approval and no eligibility criteria apply.

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Where the proposal includes the appointment – directly by the PIF – of a third party Investment Adviser, and the proposed Investment Adviser is established in Malta, the Adviser should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of Article 6 of the Act and should be duly licensed and authorised by the MFSA to provide investment advice to collective investment schemes.

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**9. Application for Preliminary Indication of Acceptability of a Professional Investor Fund**

An application for preliminary indication of acceptability of a PIF is to be submitted in respect of a prospective PIF having one or more of its Service Providers which does not fall within the parameters outlined in Section 8 above.

Deleted: service provider

If any of the external service-providers to be appointed by the PIF operate from a country that is not a “Recognised Jurisdiction” or are not subsidiaries of a company involved in financial services and regulated in a Recognised Jurisdiction, it is recommended that at an early stage, applicants request a preliminary indication of acceptability of the PIF. Schedule B to this Part contains the application form for preliminary indication of acceptability of a PIF.

The MFSA will review the proposed structure of the PIF and its prospective Service Providers – to the extent that these do not satisfy the conditions mentioned in Section 8 above – and will inform the applicant whether the proposed structure of the PIF and its Service Providers are acceptable to the MFSA.

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Provided all relevant details are received pertaining to the regulatory status of the relevant Service Provider(s) and the applicable regulatory framework in the jurisdiction concerned, the MFSA will ordinarily communicate the acceptability or otherwise of the proposed structure of the PIF within seven business days of receipt of the application for preliminary indication of acceptability of a PIF.

Deleted: service provider

The application for preliminary indication of acceptability of a PIF does not substitute the application for a PIF Licence. Therefore, where the MFSA has issued a positive indication of acceptability of the PIF, the applicant would then need to apply for a Collective Investment Scheme licence (Please refer to Section 10 below).

A positive indication of acceptability of a PIF should not be construed as a commitment or guarantee that the MFSA will grant a licence to the PIF (following the submission of an application for a PIF Licence).

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**10. Applications for a PIF Licence**

**10.1 The Application Process**

When submitting an application for a Collective Investment Scheme licence under the Act, the promoter should ensure that the appropriate Application Form (Schedule A to this Part refers) is completed.

The application requirements and the ongoing requirements to which licences are subject, are summarised below.

There are three phases - as follows:-

Phase One - Preparatory

- a. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place in advance of submitting an Application for a licence. Although guidance will be given on the relevant regulatory requirements and on the completion of the Application documents, responsibility for the formulation of the proposal and the completion of the Application documents will remain with the Applicant. It is essential that the Applicant provides a comprehensive description of the proposed activity at the beginning of Phase One.
- b. After preliminary discussions, the promoters should submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- c. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant. In the case of third party managed PIFs promoted to Experienced or Qualifying Investors the MFSA is committed to review the Application Form and supporting documents and provide its comments to the Applicant within seven business days from receipt of the application documents. In the case of PIFs promoted to Extraordinary Investors, the MFSA is committed to review the Application Form and the supporting documents and to provide its comments to the Applicant within three business days. This time-frame only applies when the PIF appoints a third party Manager and where all service-providers are based and regulated in Recognised Jurisdictions.
- d. The MFSA may ask for more information and may make such further enquiries as it considers necessary. The 'fit and proper' checks – which entail following up the information which has been provided in the Application documents – begin at this stage.

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- e. The MFSA will consider the nature of the proposed PIF and a decision will be made regarding which “Standard Licence Conditions” (SLCs) should apply. Some of these conditions may be disapplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied. The licence conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

The standard licence conditions for PIFs promoted to Experienced Investors are set out in Part B I of these Rules, in Part B II as regards PIFs promoted to Qualifying Investors and in Part B III as regards PIFs promoted to Extraordinary Investors.

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### Phase Two – Pre-Licensing

- f. Once the review of the draft Application and supporting documents has been completed, the Authority will issue (all other things equal) its ‘in principle’ approval for the issue of a licence.
- g. At this stage, the Applicant will be required to finalise any outstanding matters. Submission of signed copies of the revised Application form together with supporting documents in their final format, and any other issues raised during the Application process, should be resolved as part of Phase Two.
- h. A licence will be issued as soon as all pre-licensing issues are resolved.

### Phase Three – Post-Licensing/Pre-Commencement of Business

- i. The Applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

## **10.2 Application Documents**

An applicant for a PIF Licence is ordinarily required to submit the following documents:

### Investment Companies

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Offering Document/ Marketing Document;
- iii. Draft version of the Memorandum & Articles of Association of the PIF;
- iv. draft Board of Directors’ resolution:
- confirming the Directors’ intention to apply for a licence in favour of the PIF;
  - identifying the person(s) responsible for signing the application documents;
  - identifying the person(s) responsible for acting as a point of liaison with the MFSA;

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- identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the PIF;
  - identifying the person(s) responsible on behalf of the Board for the AML obligations of the PIF;
  - approving and assuming responsibility for the contents of the Offering Document/ Marketing Document;
- v. Application Fee;
- vi. Directors of the PIF:
- where Individuals
- Personal Questionnaires of the proposed Director(s);
- where Corporate, regulated in a recognised jurisdiction
- details of the regulatory status of the proposed Corporate Director(s);
  - name of the individual that will represent the Corporate Director on the Board of Directors of the PIF;
- vii. Founder Shareholder(s) – that hold more than 10% of the voting shares:
- where Individuals
- Personal Questionnaire of the proposed Founder Shareholder(s);
- where Corporate, regulated in a recognised jurisdiction
- details of the regulatory status of the proposed Corporate Founder Shareholder(s);
- where Corporate, not regulated in a recognised jurisdiction
- Personal Questionnaire of the Directors of the proposed Corporate Founder Shareholder(s);
  - Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Founder Shareholder(s); and
  - last three years audited financial statements of the proposed Corporate Founder Shareholder(s).

### Limited Partnership

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Offering Document/ Marketing Document;
- iii. Draft version of the Deed of Partnership;
- iv. Resolution of the General Partner(s):
  - confirming the its/ their intention to apply for a licence in favour of the PIF;
  - identifying the person(s) responsible for signing the application documents;
  - identifying the person(s) responsible for acting as a point of liaison with the MFSA;
  - identifying the person(s) responsible on behalf of the General Partners(s) for the Compliance obligations of the PIF;

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- identifying the person(s) responsible on behalf of the General Partners(s) for the AML obligations of the PIF; and
  - approving and assuming responsibility for the contents of the Offering Document/ Marketing Document.
- v. Application Fee;
- vi. General Partner(s) of the PIF:
- where Individuals*
- Personal Questionnaire of the proposed General Partner(s);
- where Corporate, regulated in a recognised jurisdiction*
- details of the regulatory status of the proposed Corporate General Partner(s);
  - the name of the individual who will represent the Corporate General Partner(s);
- where Corporate, not regulated in a recognised jurisdiction*
- Personal Questionnaire of the Directors of the proposed Corporate General Partner(s);
  - Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate General Partner(s);
  - the name of the individual who will represent the Corporate General Partner(s); and
  - Last three years audited financial statements of the proposed Corporate General Partner(s).

*Unit Trust/ Common Contractual Fund*

- i. Application Form (Schedule A to this Part);
- ii. Draft version of the Offering Document/ Marketing Document;
- iii. Draft version of the Trust Deed/ **Fund Rules**;
- iv. A resolution of the proposed Manager:
  - confirming the Manager’s intention to apply for a licence in favour of the PIF;
  - identifying the person(s) responsible for signing the application documents;
  - identifying the person(s) responsible for acting as a point of liaison with the MFSA;
  - identifying the person(s) responsible on behalf of the Manager for the Compliance obligations of the PIF;
  - identifying the person(s) responsible on behalf of the Manager for the AML obligations of the PIF; and
  - approving and assuming responsibility for the contents of the Offering Document;
- v. Application Fee;
- vi. Details of the regulatory status of the proposed Trustee.

*Supplementary Application Documents – Self Managed PIF*

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- i. Personal Questionnaire and detailed Curriculum Vitae of the members of the Investment Committee/ Portfolio Manager;
- ii. Terms of reference regulating the procedures of the Investment Committee;
- iii. Confirmation from the Portfolio Manager(s) (as applicable) that he/she/they will:
  - operate in accordance with the investment objective and policy described in the PIF's Offering Document in general and the investment guidelines issued by the investment committee in particular;
  - report to the Investment Committee on a regular basis any transactions effected on behalf of the PIF; and
  - provide to the Investment Committee, any information as the Investment Committee may require from time to time;
- iv. Confirmation from the Portfolio Manager(s)/ Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions.

Supplementary Application Documents – PIFs targeting Extraordinary Investors

- i. Directors/ General Partner(s)/ Founder Shareholders of the PIF:
  - where Individuals
    - a banker's reference from the individual's main banker with whom the individual has been banking for the last five years or over, confirming whether the individual concerned is a customer of the bank, for how long, and whether he/ she has maintained his/her bank account satisfactorily over such period;
    - a reference from a lawyer, accountant, other professional or regulated person;
  - where Corporate, regulated in a recognised jurisdiction
    - the references referred to above in respect of the person who will be representing the Corporate Director/ General Partner(s)/ Founder Shareholders;
    - a recent certificate of good-standing in respect of such Corporate Director/ General Partner(s)/ Founder Shareholders;
- ii. A confirmation from the Directors/ General Partner(s)/ Manager as the case may be that the proposed Service Providers to the PIF are authorised to provide these services by their home state regulator together with evidence of their respective authorisation.

Deleted: Service Provider

Supplementary Application Documents – Proposed appointment of Service Providers which do not operate from a Recognised Jurisdiction

- i. PQs of the Directors and Qualifying Shareholders (>10% control) of the relevant Service Provider;
- ii. Latest three years audited financial statements; and
- iii. Evidence of their respective authorisation.

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The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

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**11. Applications for the licensing of additional sub-funds of an existing PIF**

A licensed PIF constituted in the form of an umbrella fund (i.e. with sub-funds) wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund;
- ii. a confirmation from the Directors, General Partner or the Manager as applicable signifying their intention to apply for a licence in favour of the sub-fund;
- iii. a final draft of the revised Offering Document/ Marketing Document/ Offering Supplement (as applicable);
- iv. the appropriate application fee (refer to Section 14 below); and
- v. a draft copy of the approval by the PIF's proposed Directors, General Partner(s) or the Manager (as applicable) of the revised Offering Document/ Marketing Document/ Offering Supplement (as applicable).

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**12. Applications for the approval of additional classes of shares of an existing PIF**

A licensed PIF constituted in the form of an umbrella (i.e. with sub-funds) or multi class (i.e. without sub-funds) wishing to issue an additional class of shares/ units (which shall not constitute a distinct sub-fund of the PIF) is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
- ii. a final draft of the revised Offering Document/ Marketing Document;
- iii. a draft copy of the approval of the PIF's proposed Directors, General Partner(s) or the Manager – as applicable – of the Offering Document/ Marketing Document; and
- iv. a confirmation from the Directors, General Partner(s) or the Manager (as applicable) signifying their intention to issue additional classes of shares/ units.

The issue of additional classes of shares/ units within an existing PIF – so long as the additional classes of shares/ units do not constitute a distinct sub-fund of the PIF – is not subject to any application/ supervisory fees.

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**13. Fees**

The Application Fee is payable on submission of the Application for Preliminary Indication of Acceptability of a Professional Investor Fund or the Application for a PIF Licence and is not refundable. Annual Fees are payable on the date the Licence is granted and then annually thereafter within seven business days.

The applicable fees are currently as follows:

*Application for Preliminary Indication of Acceptability of a Professional Investor Fund*  
(Section 9 above refers)

LM200 (EUR465.87) (irrespective of the number of sub-funds)

*Application for a PIF Licence* (Section 10 above refers)

Scheme: LM300 (EUR698.81)

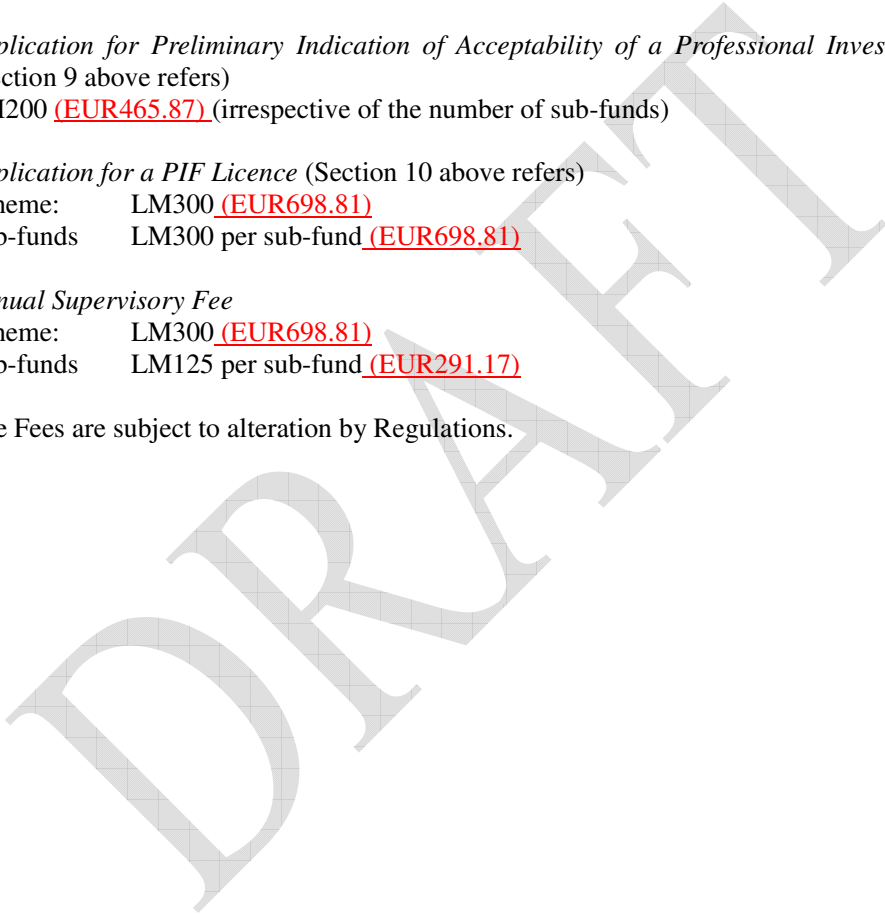
Sub-funds LM300 per sub-fund (EUR698.81)

*Annual Supervisory Fee*

Scheme: LM300 (EUR698.81)

Sub-funds LM125 per sub-fund (EUR291.17)

The Fees are subject to alteration by Regulations.



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**MFSA**

**MALTA FINANCIAL SERVICES AUTHORITY**

**INVESTMENT SERVICES RULES  
FOR PROFESSIONAL INVESTOR FUNDS**

***Schedule A***

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**Application for a Licence to operate  
as a Professional Investor Fund**

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Name of Applicant:

This application is:

Date submitted:

## Introduction

### **Information concerning the Application for a Licence to operate as a Professional Investor Fund**

- Part A of the Investment Services Rules for Professional Investor Funds should be read carefully before this Application form is completed.
- Applicants should specify on the front page whether the Application is Draft or Final.
- The worksheets are password protected and all cells are locked except for the “yellow” cells which are write-enabled. This means that the Applicant is allowed to insert, delete or amend “yellow” cells only.
- All questions should be answered. Preferably, replies should not go beyond the space provided for this purpose. In case of detailed explanations, separate sheets should be used. If the Applicant believes that a question does not apply, the response should be “N/A”. **NONE OF THE QUESTIONS ARE TO BE LEFT UNANSWERED.**
- Hard copies of Applications and supporting documents (refer to Annex 1) are to be submitted in either English or Maltese. An Excel format of the Application Form is available from MFSA’s web site ([www.mfsa.com.mt](http://www.mfsa.com.mt)). Applicants are encouraged to complete the Application Form electronically.
- Draft Application Forms and supporting documents are to be submitted unsigned. In due course – when the draft has been reviewed and amended as appropriate – the Final Application Form and supporting documents bearing original signatures should be submitted. The Final Application will take into consideration all comments and changes agreed between MFSA and the Applicant during the Application review process.
- Any person who knowingly or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect is guilty of an offence under the Investment Services Act, 1994.
- If, after the Application has been submitted, the Applicant becomes aware that the information submitted has changed or if the Applicant becomes aware of any material fact that affects the information submitted, the Applicant must inform MFSA immediately.
- The first draft Application submitted should be accompanied by the appropriate fee, otherwise the Application will not be processed. The fee structure which is current at the time of writing (but which is subject to change) is shown below. Applicants are advised to check that the fee structure below is current at the time of submitting the Application.

|                     | Application Fee | Annual Fee | Application Fee | Annual Fee  | Application Fee | Annual Fee  |
|---------------------|-----------------|------------|-----------------|-------------|-----------------|-------------|
|                     | <i>Lm</i>       | <i>Lm</i>  | <i>GBP*</i>     | <i>GBP*</i> | <i>EUR*</i>     | <i>EUR*</i> |
| <b>Scheme</b>       | 300             | 300        | 473             | 473         | 698.81          | 698.81      |
| <b>sub-funds(#)</b> | 300             | 125        | 473             | 197         | 698.81          | 291.17      |

(#) per sub-fund

\* Approximate GBP/EUR equivalent. The Annual Fee is payable when a licence is first issued and annually thereafter.

- If a licence is granted, its terms will depend (inter alia) upon all the matters and circumstances discussed as part of the Application process. It is therefore essential that all pertinent matters are brought to the attention of the MFSA to enable the Authority to form a complete and thorough understanding of the Applicant and its proposal.
- Responsibility for the submission of all relevant information rests with the Applicant.

## ***Table of Contents***

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|                           |   |
|---------------------------|---|
| <b><i>Section 1</i></b>   | <b><i>Details of the Professional Investor Fund ("PIF")</i></b> |
| <b><i>Section 2</i></b>   | <b><i>Details of the External Manager</i></b>                   |
| <b><i>Section 3</i></b>   | <b><i>Details of the External Administrator</i></b>             |
| <b><i>Section 4</i></b>   | <b><i>Details of the Investment Advisor</i></b>                 |
| <b><i>Section 5</i></b>   | <b><i>Details of the Custodian/ Prime Broker</i></b>            |
| <b><i>Section 6</i></b>   | <b><i>Other Service Providers</i></b>                           |
| <b><i>Annex 1</i></b>     | <b><i>Additional Information</i></b>                            |
| <b><i>Declaration</i></b> |   |
| <b><i>Checklist</i></b>   |   |
| <b><i>Validation</i></b>  |   |



## Section 1

### Details of the Professional Investor Fund ("PIF")

**This Section of the Application Form must be completed**

|             |  |
|-------------|--|
| <b>1.10</b> | <b>Does the PIF intend to appoint an external Administrator?</b> |
|             | <input type="checkbox"/>   |
|             |  |

|             |   |
|-------------|---|
| <b>1.11</b> | <b>Does the PIF intend to appoint an external Investment Advisor?</b> |
|             | <input type="checkbox"/>  |
|             |   |

|             |   |                          |
|-------------|---|--------------------------|
| <b>1.12</b> | <b>Details of the units to be issued</b>                      |                          |
|             |   |                          |
| a.          | Nature of Shares/ units to be offered to investors in the PIF | <input type="checkbox"/> |
| b.          | Minimum Investment Amount per investor                        | <input type="checkbox"/> |
|             |   |                          |

|             |   |
|-------------|---|
| <b>1.13</b> | <b>Does the PIF intend to seek a listing on a Stock Exchange?</b> |
|             | <input type="checkbox"/>  |
|             |   |

## Section 2

### Details of the External Manager

|            |                        |
|------------|------------------------|
| <b>2.1</b> | <b>Name of Manager</b> |
|            |                        |

|            |  |
|------------|--|
| <b>2.2</b> | <b>Country in which the Manager is domiciled</b> |
|            |  |

|            |   |
|------------|---|
| <b>2.3</b> | <b>Is the Manager authorised to provide discretionary management services to collective investment schemes?</b> |
|            |   |

|            |  |
|------------|--|
| <b>2.4</b> | <b>Details of the primary regulator of the Manager</b> |
|            |  |
| a.         | <b>Name:</b>   |
|            |  |
| b.         | <b>Address:</b>  |
|            |  |
| c.         | <b>Contact Person:</b>                                 |
|            |  |
| d.         | <b>E-Mail:</b>   |
|            |  |
| e.         | <b>Tel:</b>  |
|            |  |
| f.         | <b>Fax:</b>  |
|            |  |

|            |   |
|------------|---|
| <b>2.5</b> | <b>If the Manager is not located in Malta and is not licensed elsewhere, does it intend to apply for an appropriate licence abroad?</b> |
|            |   |

|            |   |
|------------|---|
| <b>2.6</b> | <b>Is the Manager a subsidiary of an entity regulated in a recognised jurisdiction?</b> |
|            |   |



**Section 2**

**Details of the External Manager**

|            |  |
|------------|--|
| <b>2.7</b> | <b>List the Directors/ General Partners of the Manager</b> |
|            |  |
|            |  |
|            |  |
|            |  |

|            |  |                                     |
|------------|--|-------------------------------------|
| <b>2.8</b> | <b>Please indicate, from the list below, the services for which the Manager shall be responsible</b> |                                     |
|            |  |                                     |
|            | a. Overall Management  | <input checked="" type="checkbox"/> |
|            | b. Receipt of Subscriptions  | <input checked="" type="checkbox"/> |
|            | c. Valuations  | <input checked="" type="checkbox"/> |
|            | d. Share Registration  | <input checked="" type="checkbox"/> |
|            | e. Determination of NAV  | <input checked="" type="checkbox"/> |
|            | f. Investment Management   | <input checked="" type="checkbox"/> |
|            | e. Other - Please specify  |                                     |
|            |  |                                     |

### Section 3

#### Details of the External Administrator

|            |                              |
|------------|------------------------------|
| <b>3.1</b> | <b>Name of Administrator</b> |
|            |                              |

|            |  |
|------------|--|
| <b>3.2</b> | <b>Country in which the Administrator is domiciled</b> |
|            |  |

|            |   |
|------------|---|
| <b>3.3</b> | <b>Is the Administrator authorised to provide administration services to collective investment schemes?</b> |
|            |   |

|            |  |
|------------|--|
| <b>3.4</b> | <b>Details of the primary regulator of the Administrator</b> |
|            | a. <b>Name:</b>  |
|            | b. <b>Address:</b>   |
|            | c. <b>Contact Person:</b>                                    |
|            | d. <b>E-Mail:</b>  |
|            | e. <b>Tel:</b>   |
|            | f. <b>Fax:</b>   |

|            |  |
|------------|--|
| <b>3.5</b> | <b>If the Administrator is not located in Malta and is not licensed/ recognised elsewhere, does it intend to apply for an appropriate licence/ recognition abroad?</b> |
|            |  |

|            |   |
|------------|---|
| <b>3.6</b> | <b>Is the Administrator a subsidiary of an entity regulated in a recognised jurisdiction?</b> |
|            |   |

**Section 3**

**Details of the External Administrator**

---

|            |  |
|------------|--|
| <b>3.7</b> | <b>List the Directors/ General Partners of the Administrator</b> |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |

|            |  |
|------------|--|
| <b>3.8</b> | <b>Please indicate the services for which the Administrator shall be responsible</b> |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |
|            |  |

|            |  |
|------------|--|
| <b>3.9</b> | <b>The Administrator will be appointed by the:</b> |
|            |  |
|            |  |

## Section 4

### Details of the Investment Advisor

|            |                        |
|------------|------------------------|
| <b>4.1</b> | <b>Name of Advisor</b> |
|            |                        |

|            |  |
|------------|--|
| <b>4.2</b> | <b>Country in which the Advisor is domiciled</b> |
|            |  |

|            |   |
|------------|---|
| <b>4.3</b> | <b>Is the Advisor authorised to provide advisory services to collective investment schemes?</b> |
|            |   |

|            |  |
|------------|--|
| <b>4.4</b> | <b>Details of the primary regulator of the Advisor</b> |
|            |  |
| a.         | <b>Name:</b>   |
|            |  |
| b.         | <b>Address:</b>  |
|            |  |
| c.         | <b>Contact Person:</b>                                 |
|            |  |
| d.         | <b>E-Mail:</b>   |
|            |  |
| e.         | <b>Tel:</b>  |
|            |  |
| f.         | <b>Fax:</b>  |
|            |  |

|            |   |
|------------|---|
| <b>4.5</b> | <b>If the Advisor is not located in Malta and is not licensed elsewhere, does it intend to apply for an appropriate licence abroad?</b> |
|            |   |

|            |   |
|------------|---|
| <b>4.6</b> | <b>Is the Advisor a subsidiary of an entity regulated in a recognised jurisdiction?</b> |
|            |   |

**Section 4**

**Details of the Investment Advisor**

|            |  |
|------------|--|
| <b>4.7</b> | <b>List the Directors/ General Partners of the Advisor</b> |
|            |  |
|            |  |
|            |  |
|            |  |

|            |  |
|------------|--|
| <b>4.8</b> | <b>Please indicate the services for which the Advisor shall be responsible</b> |
|            |  |
|            |  |
|            |  |
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|            |  |
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|            |  |
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|            |  |
|------------|--|
| <b>4.9</b> | <b>The Adviser will be appointed by the:</b> |
|            |  |

## Section 5

### Details of the Custodian/ Prime Broker

|            |  |
|------------|--|
| <b>5.1</b> | <b>Name of Custodian/ Prime Broker</b> |
|            |  |
|            |  |

|            |  |
|------------|--|
| <b>5.2</b> | <b>Country in which the Custodian/ Prime Broker is domiciled</b> |
|            |  |
|            |  |

|            |   |
|------------|---|
| <b>5.3</b> | <b>Is the Custodian/ Prime Broker authorised to provide Custody/ Prime Broking services to collective investment schemes?</b> |
|            |   |
|            |   |

|            |  |
|------------|--|
| <b>5.4</b> | <b>Details of the primary regulator of the Custodian/ Prime Broker</b> |
|            |  |
| a.         | <b>Name:</b> <span style="background-color: yellow;"></span>           |
|            |  |
| b.         | <b>Address:</b> <span style="background-color: yellow;"></span>        |
|            |  |
| c.         | <b>Contact Person:</b> <span style="background-color: yellow;"></span> |
|            |  |
| d.         | <b>E-Mail:</b> <span style="background-color: yellow;"></span>         |
|            |  |
| e.         | <b>Tel:</b> <span style="background-color: yellow;"></span>            |
|            |  |
| f.         | <b>Fax:</b> <span style="background-color: yellow;"></span>            |
|            |  |

|            |   |
|------------|---|
| <b>5.5</b> | <b>If the Custodian/ Prime Broker is not located in Malta and is not licensed elsewhere, does it intend to apply for an appropriate licence abroad?</b> |
|            |   |
|            |   |

|            |   |
|------------|---|
| <b>5.6</b> | <b>Is the Custodian/ Prime Broker a subsidiary of an entity regulated in a recognised jurisdiction?</b> |
|            |   |
|            |   |

**Section 5**

**Details of the Custodian/ Prime Broker**

|            |  |
|------------|--|
| <b>5.7</b> | <b>List the Directors/ General Partners of the Custodian/ Prime Broker</b><br><br><br><br><br> |
|------------|--|

|            |  |
|------------|--|
| <b>5.8</b> | <b>Please indicate the services for which the Custodian/ Prime Broker shall be responsible</b><br><br><br><br><br><br><br><br><br><br><br> |
|------------|--|

**Section 6**  
**Other Service Providers**

**This Section of the Application Form must be completed**

|            |                      |  |
|------------|----------------------|--|
| <b>6.1</b> | <b>PIF's Auditor</b> |  |
| a.         | Name:                |  |
| b.         | Address:             |  |
| c.         | Contact Person:      |  |
| d.         | E-Mail:              |  |
| e.         | Tel:                 |  |
| f.         | Fax:                 |  |

|            |  |  |
|------------|--|--|
| <b>6.2</b> | <b>PIF's Legal Advisors: Lead Counsel (where applicable)</b> |  |
| a.         | Name:  |  |
| b.         | Address:   |  |
| c.         | Contact Person:  |  |
| d.         | E-Mail:  |  |
| e.         | Tel:   |  |
| f.         | Fax:   |  |

|            |   |  |
|------------|---|--|
| <b>6.3</b> | <b>PIF's Legal Advisors: Maltese Counsel (where applicable)</b> |  |
| a.         | Name:   |  |
| b.         | Address:  |  |
| c.         | Contact Person:   |  |
| d.         | E-Mail:   |  |
| e.         | Tel:  |  |
| f.         | Fax:  |  |



**Section 6**  
**Other Service Providers**

**This Section of the Application Form must be completed**

|            |  |  |
|------------|--|--|
| <b>6.4</b> | <b>PIF's Local Representative (where applicable)</b> |  |
| a.         | Name:  |  |
| b.         | Address:   |  |
| c.         | Contact Person:                                      |  |
| d.         | E-Mail:  |  |
| e.         | Tel:   |  |
| f.         | Fax:   |  |

|            |                                       |  |
|------------|---------------------------------------|--|
| <b>6.5</b> | <b>PIF's Compliance Officer</b>       |  |
| a.         | Name:                                 |  |
| b.         | Address:                              |  |
| c.         | Relationship with the Manager/ Scheme |  |
| d.         | E-Mail:                               |  |
| e.         | Tel:                                  |  |
| f.         | Fax:                                  |  |

|            |                                       |  |
|------------|---------------------------------------|--|
| <b>6.6</b> | <b>PIF's MLRO</b>                     |  |
| a.         | Name:                                 |  |
| b.         | Address:                              |  |
| c.         | Relationship with the Manager/ Scheme |  |
| d.         | E-Mail:                               |  |
| e.         | Tel:                                  |  |
| f.         | Fax:                                  |  |

**Annex 1**  
**Additional Information**

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**Question 1.8**



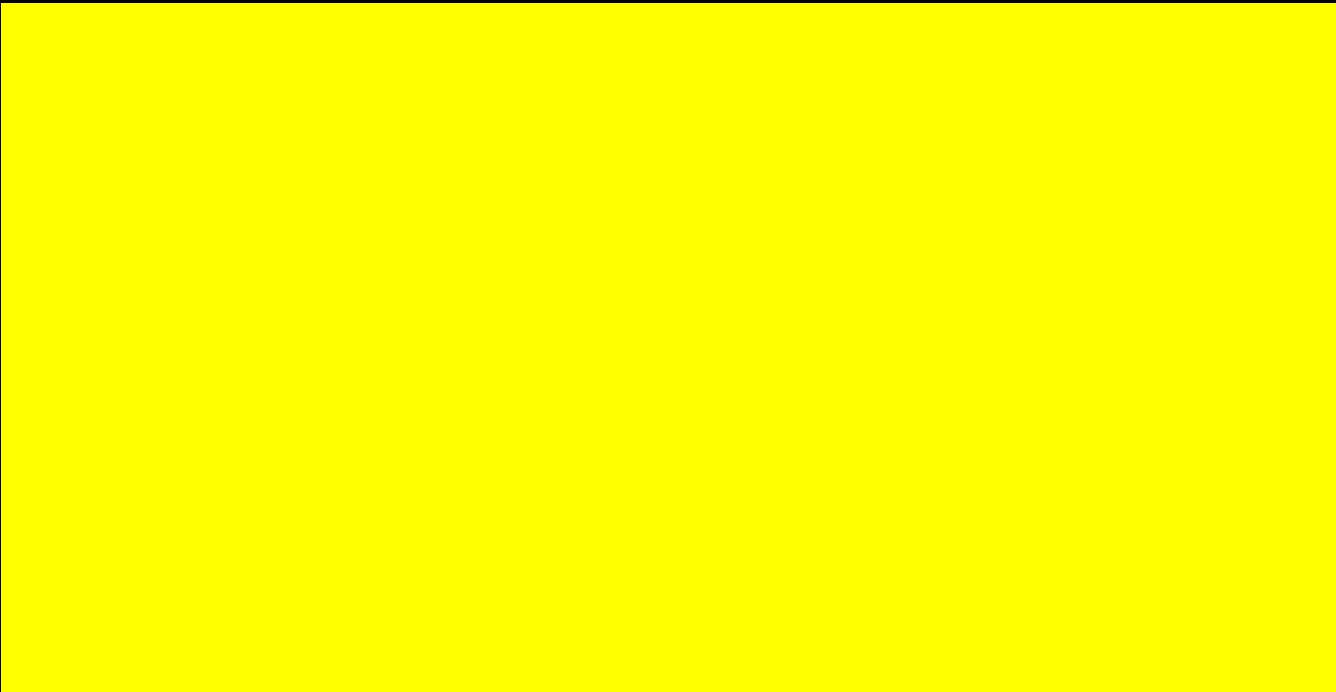
**Question 1.9**



**Annex 1**  
**Additional Information**

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**Question 1.10**



## **Declaration**

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**This Section of the Application Form must be completed**

***This declaration should be completed by Qualifying Signatories of the Applicant.***

***The Applicant hereby declares that:***

- The information supplied in this Application Form is complete and correct;***
- There are no inconsistencies between the provisions of the Constitutional Documents and the Offering Document submitted with this Application;***
- The MFSA will be notified immediately if the information provided changes in any material way - either prior to or subsequent to licensing;***
- The person(s) whose signature appears below is duly authorised by the Applicant to make this Application;***
- The MFSA is hereby being authorised to make such enquiries as it may consider necessary in connection with this Application;***

***For and on behalf of the Applicant:***

**Name**

**Signature**

**Title**

**Date**

## Checklist

The following information should be provided with this Application:

Enclosed

### **Investment Companies**

1. Application Form
2. Offering Document/ Marketing Document
3. Memorandum & Articles of Association
4. Board of Directors resolution:
  - *confirming the Directors' intention to apply for a PIF licence in favour of the Scheme*
  - *identifying the person(s) responsible for signing the application documents;*
  - *identifying the person(s) responsible for acting as a point of liaison with the MFSA*
  - *identifying the person(s) responsible obo the Board for the Compliance obligations of the Scheme;*
  - *identifying the person(s) responsible obo the Board for the AML obligations of the Scheme;*
  - *approving and assuming responsibility for the contents of the Offering Document*
5. Application Fee
6. Directors of the Scheme:
  - i. where Individuals*
    - *Personal Questionnaires of the proposed Director(s)*
  - ii. where Corporate, regulated in a recognised jurisdiction*
    - *Details of the regulatory status of the proposed Corporate Director(s)*
    - *The Name of the particular Director who will represent the corporate Director(s) Partner(s)*
7. Founder Shareholder(s) - that hold all voting shares
  - i. where Individuals*
    - *Personal Questionnaire of the proposed Founder Shareholder(s)*
  - ii. where Corporate, regulated in a recognised jurisdiction*
    - *Details of the regulatory status of the proposed Corporate Director(s)*
  - iii. where Corporate, not regulated in a recognised jurisdiction*
    - *Personal Questionnaire of the Directors of the proposed Corporate Founder Shareholder(s)*
  
    - *Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Founder Shareholder(s)*
    - *Last three years audited financial statements of the proposed Corporate Founder Shareholder(s)*

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### **Limited Partnership**

1. Application Form
2. Offering Document/ Marketing Document
3. Deed of Partnership
4. General Partner's resolution:
  - *confirming the General Partner's intention to apply for a PIF licence in favour of the Scheme*
  
  - *identifying the person(s) responsible for signing the application documents;*
  - *identifying the person(s) responsible for acting as a point of liaison with the MFSA*
  - *identifying the person(s) responsible obo the GP for the Compliance obligations of the Scheme;*
  - *identifying the person(s) responsible obo the GP for the AML obligations of the Scheme;*
  - *approving and assuming responsibility for the contents of the Offering Document*

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## Checklist

The following information should be provided with this Application:

- |   |          |
|---|----------|
|   | Enclosed |
| 5. Application Fee  |          |
| 6. General Partner(s) of the Scheme   |          |
| <i>i. where Individuals</i>   |          |
| - Personal Questionnaire of the proposed General Partner(s)   |          |
| <i>ii. where Corporate, regulated in a recognised jurisdiction</i>  |          |
| - Details of the regulatory status of the proposed Corporate General Partner(s)                           |          |
| <i>iii. where Corporate, not regulated in a recognised jurisdiction</i>                                   |          |
| - Personal Questionnaire of the Directors of the proposed Corporate General Partner(s)                    |          |
| - Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate General Partner(s) |          |
| - The Name of the particular Director who will represent the corporate General Partner(s)                 |          |
| - Last three years audited financial statements of the proposed Corporate General Partner(s)              |          |

**Unit Trust**

- |  |  |
|--|--|
| 1. Application Form  |  |
| 2. Offering Document/ Marketing Document   |  |
| 3. Trust Deed  |  |
| 4. Manager's resolution:   |  |
| - confirming the Manager's intention to apply for a PIF licence in favour of the Scheme              |  |
| - identifying the person(s) responsible for signing the application documents                        |  |
| - identifying the person(s) responsible for acting as a point of liaison with the MFSA               |  |
| - identifying the person(s) responsible obo the Manager for the Compliance obligations of the Scheme |  |
| - identifying the person(s) responsible obo the Trustee for the AML obligations of the Scheme        |  |
| - approving and assuming responsibility for the contents of the Offering Document                    |  |
| 5. Application Fee   |  |
| 6. Details of the regulatory status of the proposed Trustee  |  |

**Supplementary Application Documents - Self Managed PIF**

- |  |  |
|--|--|
| 1. Personal Questionnaire and detailed CV of the members of the Investment Committee/ Portfolio Manager  |  |
| 2. Terms of reference regulating the procedures of the Investment Committee  |  |
| 3. Confirmation from the Portfolio Manager/s (as applicable) that he/she/they:   |  |
| - operate in accordance with the investment objective and policy described in the Scheme's Offering Document in general and the investment guidelines issued by the investment   |  |
| - report to the investment committee on a regular basis any transactions effected on behalf of the Scheme; and   |  |
| - provide to the investment committee, any information as the investment committee may require from time to time   |  |
| 4. Confirmation from the Portfolio Manager(s)/ Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions. |  |

## Checklist

The following information should be provided with this Application:

Enclosed

**Supplementary Application Documents - PIFs targeting Extraordinary Investors**

1. Directors/ General Partner(s)/ Founder Shareholders of the Scheme
  - i. where Individuals
    - a banker's reference from the individual's main banker with whom the individual has been banking for the last five years or over, confirming whether the individual concerned is a customer of the bank, for how long, and whether he/ she has maintained his/her bank account satisfactorily over such period
    - a reference from a lawyer, accountant, other professional or regulated person
  - ii. where Corporate, regulated in a recognised jurisdiction
    - the references referred to above in respect of the person who will be representing the corporate Director
    - a recent certificate of good-standing in respect of such company
2. a confirmation from the Directors/ General Partner(s)/ Manager as the case may be that the proposed Service Providers to the PIF are authorised to provide these services by their home state regulator together with evidence of their respective authorisation.

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**Supplementary Application Documents – Proposed appointment of Service Providers which operate from non recognised Territories**

1. PQs of the Directors and Qualifying Shareholders (>10% control) of the relevant Service Provider.
2. Latest three years audited financial statements.
3. Evidence of their respective authorisation.

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**N.B. The MFSA reserves the right to request such additional information it considers necessary to be able to process this Application**

## *Validation Sheet*

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|            |                          |
|------------|--------------------------|
| Cover Page | <input type="checkbox"/> |
| Section 1  | <input type="checkbox"/> |
| Section 2  | <input type="checkbox"/> |
| Section 3  | <input type="checkbox"/> |
| Section 4  | <input type="checkbox"/> |
| Section 5  | <input type="checkbox"/> |
| Section 6  | <input type="checkbox"/> |
| Annex 1    | <input type="checkbox"/> |



**MFSA**

MALTA FINANCIAL SERVICES AUTHORITY

**INVESTMENT SERVICES RULES  
FOR PROFESSIONAL INVESTOR FUNDS**

***Schedule B***

---

**Application for Preliminary Indication of  
Acceptability of a Professional Investor Fund**

---

Name of Applicant:

This application is:

Date submitted:

## *Introduction*

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### **Information concerning the Application for Preliminary Indication of Acceptability of a Professional Investor Fund**

- Part A of the Investment Services Rules for Professional Investor Funds should be read carefully before this Application form is completed.
- Applicants should specify on the front page whether the Application is Draft or Final.
- The worksheets are password protected and all cells are locked except for the “yellow” cells which are write-enabled. This means that the Applicant is allowed to insert, delete or amend “yellow” cells only.
- All questions should be answered. Preferably, replies should not go beyond the space provided for this purpose. In case of detailed explanations, separate sheets should be used. If the Applicant believes that a question does not apply, the response should be “N/A”. **NONE OF THE QUESTIONS ARE TO BE LEFT UNANSWERED.**
- Hard copies of Applications and supporting documents are to be submitted in either English or Maltese. An Excel format of the Application Form is available from MFSA’s web site ([www.mfsa.com.mt](http://www.mfsa.com.mt)). Applicants are encouraged to complete the Application Form electronically.
- Any person who knowingly or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect is guilty of an offence under the Investment Services Act, 1994.
- If, after the Application has been submitted, the Applicant becomes aware that the information submitted has changed or if the Applicant becomes aware of any material fact that affects the information submitted, the Applicant must inform MFSA immediately.
- The first draft Application submitted should be accompanied by the appropriate fee, otherwise the Application will not be processed. The fee structure which is current at the time of writing (but which is subject to change) is shown below. Applicants are advised to check that the fee structure below is current at the time of submitting the Application.

|               | <b>Application Fee</b> | <b>Application Fee</b> | <b>Application Fee</b> |
|---------------|------------------------|------------------------|------------------------|
|               | <i>Lm</i>              | <i>GBP*</i>            | <i>EUR*</i>            |
| <b>Scheme</b> | 200                    | 315                    | 465.87                 |

\* Approximate GBP/EUR equivalent.

- Responsibility for the submission of all relevant information rests with the Applicant.

## ***Table of Contents***

---

|                           |   |
|---------------------------|---|
| <b><i>Section 1</i></b>   | <b><i>Details of the Professional Investor Fund ("PIF")</i></b> |
| <b><i>Section 2</i></b>   | <b><i>The Service Providers</i></b>                             |
| <b><i>Section 3</i></b>   | <b><i>Investment Objectives, Policies and Restrictions</i></b>  |
| <b><i>Declaration</i></b> |   |

## Section 1

### Details of the Professional Investor Fund ("PIF")

|            |                    |  |
|------------|--------------------|--|
| <b>1.1</b> | <b>Name of PIF</b> |  |
|            |                    |  |

|            |                              |  |
|------------|------------------------------|--|
| <b>1.2</b> | <b>Legal Form of the PIF</b> |  |
|            |                              |  |

|            |   |  |
|------------|---|--|
| <b>1.3</b> | <b>Under which laws is the PIF established/ is to be established?</b> |  |
|            |   |  |

|            |  |  |
|------------|--|--|
| <b>1.4</b> | <b>Will the PIF issue classes of shares constituting Sub-Funds</b> |  |
|            |  |  |

|            |                                   |  |
|------------|-----------------------------------|--|
| <b>1.5</b> | <b>Will the PIF be open ended</b> |  |
|            |                                   |  |

|            |  |  |
|------------|--|--|
| <b>1.6</b> | <b>The PIF will be sold to:</b>              |  |
|            | Experienced Investors - minimum EUR15,000    |  |
|            | Qualifying Investors - minimum EUR75,000     |  |
|            | Extraordinary Investors - minimum EUR750,000 |  |

|            |  |  |
|------------|--|--|
| <b>1.7</b> | <b>Minimum Subscription per investor</b> |  |
|            |  |  |

**Section 1**

**Details of the Professional Investor Fund ("PIF")**

|            |   |
|------------|---|
| <b>1.8</b> | <b>Promoters (with full background and status, including details of any authorisation by a regulatory</b> |
|            |   |

|            |  |  |
|------------|--|--|
| <b>1.9</b> | <b>Nature of units to be issued</b>  |  |
|            | <b>Class(es) of share/ units to be issued:</b>                             |  |
|            | <b>Any geographical/ nationality restrictions on sale of shares/units?</b> |  |
|            |  |  |

## Section 2

### The Service Providers

|     |                              |  |
|-----|------------------------------|--|
| 2.1 | <b>Manager</b>               |  |
|     | <b>Name:</b>                 |  |
|     | <b>Country of Residence:</b> |  |
|     | <b>Regulator:</b>            |  |

|     |                              |  |
|-----|------------------------------|--|
| 2.2 | <b>Administrator</b>         |  |
|     | <b>Name:</b>                 |  |
|     | <b>Country of Residence:</b> |  |
|     | <b>Regulator:</b>            |  |

|     |   |  |
|-----|---|--|
| 2.3 | <b>Custodian/ Trustee/ Prime Broker</b> |  |
|     | <b>Name:</b>                            |  |
|     | <b>Country of Residence:</b>            |  |
|     | <b>Regulator:</b>                       |  |

|     |                              |  |
|-----|------------------------------|--|
| 2.4 | <b>Investment Advisor</b>    |  |
|     | <b>Name:</b>                 |  |
|     | <b>Country of Residence:</b> |  |
|     | <b>Regulator:</b>            |  |

**Section 3**

**Investment Objectives, Policies and Restrictions**

|            |   |
|------------|---|
| <b>3.1</b> | <b>Investment objectives and policy for each class (in brief)</b> |
|            |   |

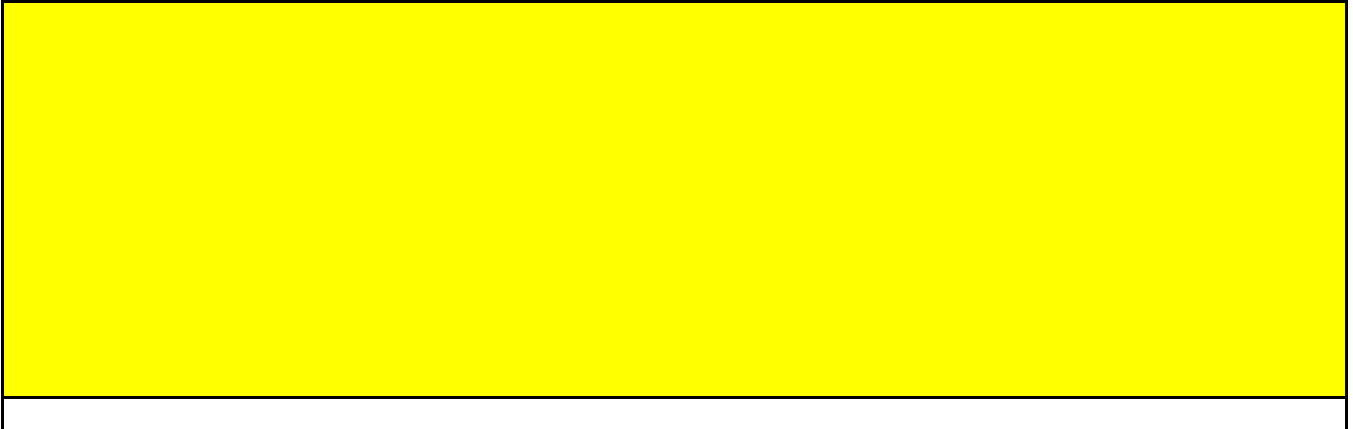
|            |   |
|------------|---|
| <b>3.2</b> | <b>Assets in which the fund would be invested, and brief details of any proposed investment limits or restrictions.</b> |
|            |   |

|            |                         |
|------------|-------------------------|
| <b>3.3</b> | <b>Borrowing Powers</b> |
|            |                         |

### Section 3

#### Investment Objectives, Policies and Restrictions

---

|     |   |
|-----|---|
| 3.4 | <i>Please indicate if the PIF is to be leveraged or not. If Yes, please indicate the extent to which this is permitted.</i> |
|     |   |



**Declaration**

---

*This declaration should be completed by Qualifying Signatories of the Applicant.*

*I request a preliminary indication of acceptability for the PIF outlined above. If this is favourable, an application will be submitted in due course for full approval.*

**For and on behalf of the Applicant:**

**Name**

**Signature**

**Title**

**Date**

**MFSA**

**MALTA FINANCIAL SERVICES AUTHORITY**

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## **Personal Questionnaire**

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|   |  |
|---|--|
| Name of Individual completing the Personal Questionnaire (“the Applicant”):   |  |
| Licence Holder or Entity (incorporated or still in formation) which has applied for an MFSA authorisation or licence, in connection with which application is being made: |  |

*Please return this form to:*

**The Director General  
Malta Financial Services Authority  
Notabile Road  
Attard BKR 14, Malta.**

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## PERSONAL QUESTIONNAIRE

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### **IMPORTANT INFORMATION**

The Personal Questionnaire (“P.Q.”) should be completed by individuals proposed as qualifying shareholders or proposed to occupy certain positions of trust or to carry out certain activities with a Licence Holder or an Entity which has applied to be authorised or licensed by the MFSA. These individuals have to satisfy the “*fit and proper*” test (as defined in the Glossary at the end of this P.Q.) before being granted approval by the MFSA to become qualifying shareholders or to occupy the proposed post or to carry out the proposed activities with the Licence Holder or Entity in question. The P.Q. assists the MFSA in assessing whether a person is fit and proper.

Please refer to the applicable Directives or Guidelines as defined in the Glossary for details regarding the persons who are required to complete a P.Q.

#### ***Completion Instructions***

*Please read the questions carefully before completing this form.*

*Applicants are encouraged to complete the P.Q. on computer. An electronic version of this P.Q. can be downloaded from MFSA’s web-site [www.mfsa.com.mt](http://www.mfsa.com.mt). If the P.Q. is not completed electronically, answers should be written in ink in **BLOCK CAPITALS**.*

*All questions should be answered and any questions which are ‘Not Applicable’ should be clearly indicated as ‘Not Applicable’. If there is insufficient space for a detailed answer, please securely attach continuation sheets at the back of this document. Please label continuation sheets, clearly indicating to which question in the P.Q. the additional information refers.*

*Applicants are expected to be open and provide clear and detailed information to enable the MFSA to carry out the applicable fit and proper test. It should not be assumed that information in the public domain, or which has been previously disclosed to the MFSA or to another regulatory body, is known to the MFSA. If in the case of any doubt about the relevance of information, this should be disclosed to the MFSA.*

*Please ensure that the names and addresses, contact persons, and where possible fax and telephone numbers, of companies/institutions mentioned in the P.Q. are provided correctly and in full.*

*The completed P.Q. including the declaration at the end, should be signed at the appropriate place on the last page by the Applicant and by the Licence Holder. Entities which are still in the process of applying for a Licence from the MFSA and in connection with whom the P.Q. is being submitted, are not required to counter-sign the P.Q.*

*The completed P.Q. should be addressed for the attention of the Director General, as shown on the cover sheet.*

*The fit and proper requirement is an on-going requirement and therefore Applicants are subject to ongoing assessment. The areas covered in this P.Q. may not necessarily be exhaustive of the matters that the MFSA will consider in assessing whether an Applicant is fit and proper, and also for the MFSA to remain satisfied that an Applicant who has been approved continues to satisfy the fit and proper test. Consequently, at any time during the application and thereafter, the MFSA may require the Applicant to provide further information. **Furthermore, the MFSA reserves the right to seek information and references from organisations and individuals named in this P.Q. and elsewhere both at the time of submission of this questionnaire and at any time thereafter. To this effect, the Applicant is required to complete the authorisation letters attached to the P.Q.– the Banker’s Authorisation Letter, the General Authorisation Letter and the Authorisation Letter to the Commission for the Administration of Justice . The Banker’s Authorisation Letter authorises the Bank to provide to the MFSA the information outlined in the respective letter and any information as may be required by the MFSA. The General Authorisation Letter authorises any individual or organisation named in this P.Q. to provide information to the MFSA with regards to the Applicant. Sometimes however, organisations and individuals named in this P.Q. may want an authorisation letter addressed specifically to them before providing any information to the MFSA – in which case Applicants may have to send an authorisation letter specifically addressed to the organisations and individuals in particular. Similarly, the Authorisation Letter to the Commission for the Administration of Justice authorises the Commission to provide information to the MFSA with regards to the Applicant.***

*In addition, if at any time after the P.Q. is submitted, there is a material change to the information provided in the P.Q. the Applicant is required to notify the MFSA. This is an on-going obligation which the Applicant undertakes in signing the ‘Declaration’ on page 15 of this P.Q.*

*The P.Q. should be completed by the Applicant personally. The Applicant retains responsibility for the contents thereof. In addition, the Licence Holder (not an Entity or a company in formation which is still in the process of applying for a Licence from the MFSA) in connection with which this P.Q., is being submitted, should verify to the extent and wherever possible, the information included by the Applicant in the P.Q.*

*An Applicant who furnishes information, or makes a statement which he/she knows to be inaccurate, false or misleading in any material respect, or recklessly furnishes information or makes a statement which is inaccurate, false or misleading in any material respect, may be guilty of an offence and may severely prejudice his or her fit and proper status.*

*If you are in any doubt about how any of the questions should be answered, please contact the Director of the relevant Regulatory Unit at the MFSA on 21441155.*

*An Applicant should not occupy any post or begin performing any function which requires prior approval by the MFSA, until the MFSA has granted its approval.*

*Correctly completed P.Q.s accompanied by written requests for approval of the Applicant in terms of the applicable Laws, are to be submitted at least twenty one (21) business days in advance of the date when the Licence Holder or the Entity or the company in formation in question would like the Applicant to take up the post in question or commence the proposed activities.*

*Please note that if the P.Q. is incomplete or is completed incorrectly, the P.Q. may be returned, with consequent delays in the processing of the requested approval from the MFSA. Moreover, if it comes to light that any material information has not been disclosed, approval may be delayed or rejected.*

**SECTION 1: INFORMATION regarding the LICENCE HOLDER or ENTITY which has applied to become a LICENCE HOLDER**

Note: If the Applicant is seeking approval to be appointed in connection with more than one Licence Holder or Entity which has applied to become a Licence Holder (e.g. in the case of Group companies), Questions 1 to 4 in this Section should be answered with respect to each Licence Holder or Entity. Continuation Sheets may be attached at the back of this P.Q. if the answer boxes provide insufficient space.

**1. Name(s) of Licence Holder or Entity in connection with which this questionnaire is being completed.**

\_\_\_\_\_

**2. Position to be occupied by Applicant with the Licence Holder or Entity which has applied to become a Licence Holder in connection with which this questionnaire is being completed.**

2.1 Position Title. Please mark as appropriate:

|                         |                          |                    |                          |
|-------------------------|--------------------------|--------------------|--------------------------|
| Qualifying Shareholder  | <input type="checkbox"/> | General Manager    | <input type="checkbox"/> |
| Chairman                | <input type="checkbox"/> | Alternate Director | <input type="checkbox"/> |
| Executive Director      | <input type="checkbox"/> | Managing Director  | <input type="checkbox"/> |
| Chief Executive Officer | <input type="checkbox"/> | Company Secretary  | <input type="checkbox"/> |
| Non Executive Director  | <input type="checkbox"/> | Senior Manager     | <input type="checkbox"/> |

Please specify Title, if not in the above list (e.g. Financial Controller)

\_\_\_\_\_

2.2 Please specify any duties to be carried out, as applicable :

\_\_\_\_\_

**3. Intended Effective Date of Position:**

\_\_\_\_\_

Note: An Applicant cannot assume the proposed post with the Licence Holder or Entity in question unless approved by the MFSA.

**4. Contact point within the Licence Holder or Entity in connection with which this questionnaire is being completed, to whom MFSA may address any queries in connection with this application.**

4.1 Name: \_\_\_\_\_

4.2 Fax: \_\_\_\_\_

4.3 Position: \_\_\_\_\_

4.4 E-mail: \_\_\_\_\_

**5. Are you involved in any way with a Licence Holder other than the Licence Holder or Entity in connection with which this P.Q. is being submitted?**

|  |                          |
|--|--------------------------|
| YES  | <input type="checkbox"/> |
| NO   | <input type="checkbox"/> |
| If YES, please indicate the name of the other Licence Holder and the position held:<br>_____ |                          |

**SECTION 2: PERSONAL INFORMATION regarding the APPLICANT**

|                                |   |
|--------------------------------|---|
| <b>6. Personal information</b> |   |
| 6.1                            | Surname _____   |
| 6.2                            | Forename(s) _____                                       |
| 6.3                            | Any previous name(s) by which you have been known _____ |

|  |                         |
|--|-------------------------|
| <b>7. Current private address including Post Code - if applicable and Current Contact Details. (Please include the date when you took up residence at this address).</b> |                         |
| 7.1  | Address: _____          |
| 7.2  | Date: _____             |
| 7.3  | Telephone Number: _____ |
| 7.4  | Fax Number: _____       |
| 7.5  | Mobile Number: _____    |
| 7.6  | E-mail address: _____   |

|   |              |
|---|--------------|
| <b>8. Date and place of birth (including town or city).</b> |              |
| 8.1   | Date: _____  |
| 8.2   | Place: _____ |

|   |                     |
|---|---------------------|
| <b>9. Nationality and how it was acquired (birth, naturalisation, marriage). (If your nationality has changed, please advise when it was changed and what it was previously).</b> |                     |
| 9.1   | Nationality: _____  |
| 9.2   | How Acquired: _____ |



### SECTION 3: QUALIFICATIONS / MEMBERSHIPS

**10.** Current associateship, membership or fellowship of professional bodies and year of admission.

|      | <i>Associate (A), Member (M) or Fellow (F)?</i> | <i>Year of Admission</i> | <i>Associate-ship/ Membership/ Fellowship Number</i> | <i>Professional Body</i> | <i>Full Address of Professional Body</i> |                     |
|------|---|--------------------------|--|--------------------------|--|---------------------|
| 10.1 | _____   | _____                    | _____  | _____                    | _____                                    |                     |
|      |   |                          |  |                          | <i>Phone</i><br>_____                    | <i>Fax</i><br>_____ |
| 10.2 | _____   | _____                    | _____  | _____                    | _____                                    |                     |
|      |   |                          |  |                          | <i>Phone</i><br>_____                    | <i>Fax</i><br>_____ |
| 10.3 | _____   | _____                    | _____  | _____                    | _____                                    |                     |
|      |   |                          |  |                          | <i>Phone</i><br>_____                    | <i>Fax</i><br>_____ |

**11.** Please list academic degrees and diplomas, stating the name and address of the conferring University/Institution and the year of conferment.

|      | <i>Degree (DE) or Diploma(DPL)</i> | <i>Designatory Letters</i> | <i>Year Granted</i> | <i>University</i> | <i>Full Address of University/Institution</i> |                     |
|------|------------------------------------|----------------------------|---------------------|-------------------|---|---------------------|
| 11.1 | _____                              | _____                      | _____               | _____             | _____   |                     |
|      |                                    |                            |                     |                   | <i>Phone</i><br>_____                         | <i>Fax</i><br>_____ |
| 11.2 | _____                              | _____                      | _____               | _____             | _____   |                     |
|      |                                    |                            |                     |                   | <i>Phone</i><br>_____                         | <i>Fax</i><br>_____ |
| 11.3 | _____                              | _____                      | _____               | _____             | _____   |                     |
|      |                                    |                            |                     |                   | <i>Phone</i><br>_____                         | <i>Fax</i><br>_____ |

Applicants who have obtained qualifications from a University / Institution may be required to provide a certified true copy of the diploma or degree awarded should MFSA not be in a position to verify in a timely manner the attainment of the respective qualifications from the indicated University / Institution.

**12.** Please list any other qualifications that you have attained together with the appropriate date and the name of the Educational Institute or Training Centre (e.g. MITC or Securities Institute or Institute of Financial Services etc.). Please also supply contact name, address, certificate number etc.

|      | <i>Date</i> | <i>Qualification</i> | <i>Educational Institute / Training Body</i> |
|------|-------------|----------------------|--|
| 12.1 | _____       | _____                | _____  |
| 12.2 | _____       | _____                | _____  |
| 12.3 | _____       | _____                | _____  |

**13.** Please list any other skills or specific training you have had (*not already mentioned elsewhere*) that is relevant to the business of the licence holder or entity named in No. 1 above.

|      | <i>Date</i> | <i>Training</i> | <i>Provided by ...</i> |
|------|-------------|-----------------|------------------------|
| 13.1 | _____       | _____           | _____                  |
| 13.2 | _____       | _____           | _____                  |
| 13.3 | _____       | _____           | _____                  |

## SECTION 4: EMPLOYMENT HISTORY

Note: A full employment history is required. All periods of unemployment should be indicated. Any gaps in employment should be explained. Details regarding any periods of self-employment should also be provided. The reason for leaving each employment should be given. Reasons for termination, dismissal or other issues that arose on leaving the employment which may be relevant for the fit and proper test should be fully explained in a continuation sheet attached at the back of the P.Q.

**14.** Current occupation or employment and occupations and employment during the last ten years (starting from the most recent), including the name of the employer, the nature of the business, the position held and a brief explanation of duties and relevant dates. Please also include details of any previous employment in the financial services industry.

*Present occupation or employment and occupations during the last ten years.*

|      |   |
|------|---|
| 14.1 | <p><b>Name of Employer and Nature of Business</b> _____<br/> <i>(e.g. Financial Services; Banking; Insurance; Business Consultancy; Accountancy; Legal Services etc..)</i></p> <p><b>Dates of employment</b> _____</p> <p><b>Title of Position Held and Brief Explanation of Duties</b> _____</p> <p><b>Regulatory Status and if applicable, name of regulatory Body</b> Regulated: YES <input type="checkbox"/><br/>         NO <input type="checkbox"/><br/>         If YES – Name of Regulatory Body<br/>         _____</p> <p><b>Full Address</b> _____<br/> <b>Phone</b> _____<br/> <b>Fax</b> _____</p> <p><b>Reasons for Leaving Employment</b> Resignation <input type="checkbox"/> Dismissal <input type="checkbox"/><br/>         Redundancy <input type="checkbox"/> End of Contract <input type="checkbox"/><br/>         Retirement <input type="checkbox"/> Termination <input type="checkbox"/><br/>         Other please specify<br/>         _____</p> |
| 14.2 | <p><b>Name of Employer and Nature of Business</b> _____<br/> <i>(e.g. Financial Services; Banking; Insurance; Business Consultancy; Accountancy; Legal Services etc..)</i></p> <p><b>Dates of employment</b> _____</p> <p><b>Title of Position Held and Brief Explanation of Duties</b> _____</p> <p><b>Regulatory Status and if applicable, name of regulatory Body</b> Regulated:<br/>         YES <input type="checkbox"/></p>   |

|   |   |  |
|---|---|--|
|   | NO <input type="checkbox"/>   |  |
|   | If YES – Name of Regulatory Body<br>_____   |  |
| <i>Full Address</i>   | _____   |  |
|   | <i>Phone</i> _____  |  |
|   | <i>Fax</i> _____  |  |
| <i>Reasons for Leaving Employment</i>                               | Resignation <input type="checkbox"/>  | Dismissal <input type="checkbox"/>       |
|   | Redundancy <input type="checkbox"/>   | End of Contract <input type="checkbox"/> |
|   | Retirement <input type="checkbox"/>   | Termination <input type="checkbox"/>     |
|   | Other please specify<br>_____   |  |
| 14.3 <i>Name of Employer and Nature of Business</i>                 | _____   |  |
|   | <i>(e.g. Financial Services; Banking; Insurance; Business Consultancy; Accountancy; Legal Services etc..)</i> |  |
| <i>Dates of employment</i>  | _____   |  |
| <i>Title of Position Held and Brief Explanation of Duties</i>       | _____   |  |
| <i>Regulatory Status and if applicable, name of regulatory Body</i> | Regulated:  |  |
|   | YES <input type="checkbox"/>  |  |
|   | NO <input type="checkbox"/>   |  |
|   | If YES – Name of Regulatory Body<br>_____   |  |
| <i>Full Address</i>   | _____   |  |
|   | <i>Phone</i> _____  |  |
|   | <i>Fax</i> _____  |  |
| <i>Reasons for Leaving Employment</i>                               | Resignation <input type="checkbox"/>  | Dismissal <input type="checkbox"/>       |
|   | Redundancy <input type="checkbox"/>   | End of Contract <input type="checkbox"/> |
|   | Retirement <input type="checkbox"/>   | Termination <input type="checkbox"/>     |
|   | Other please specify<br>_____   |  |

## SECTION 5: DIRECTORSHIPS

NOTE: In this Section, the Applicant is required to indicate only those positions in relation to which she or he has been a Director or Company Secretary. If an Applicant's previous job title included the word "Director" but his or her duties did not include those associated with the title director as defined in the Glossary, this should be indicated.

**15.** Name any bodies corporate and the countries in which they are registered:-

(a) of which you are currently a director or company secretary; and

(b) of which you have been or were previously a director or company secretary at any time during the last ten years.

|      | <i>Name of Company</i> | <i>Post</i> | <i>Current (C)<br/>Previous (P)</i> | <i>Country of Incorporation<br/>and Address</i> |
|------|------------------------|-------------|-------------------------------------|---|
| 15.1 | _____                  | _____       | _____                               | _____   |
| 15.2 | _____                  | _____       | _____                               | _____   |
| 15.3 | _____                  | _____       | _____                               | _____   |

**16.** With reference to Questions 14 and 15, have you been dismissed from any of the positions described or asked to resign or agreed to resign instead of being dismissed, or have you resigned whilst under investigation or have you ever been censured, disciplined or publicly criticised by any employer or Regulatory Authority, whether current or previous?

16.1 YES

NO

If YES, please provide details of the circumstances:

\_\_\_\_\_

## SECTION 6: BANK REFERENCES & OTHER REGULATORY AUTHORISATIONS

17. Please provide the following details regarding your current main bank and any former bank(s) which you have utilised as your main banks (if applicable) during the past 10 years.

**In this respect, please complete the specimen authorisation letter in Appendix One to this P.Q., which authorises the bank(s) to disclose relevant information to the MFSA. Please attach the completed specimen authorisation letter, in original duplicate to this P.Q. Form. The MFSA may then send this authorisation letter to the respective bank(s) should it deem necessary.**

17.1 Current Main Bank: \_\_\_\_\_  
 Name / Address / Contact Person \_\_\_\_\_  
 / Fax Number: \_\_\_\_\_  
 Duration of Relationship: \_\_\_\_\_

17.2 Main former Bank(s) in the previous 10 years: \_\_\_\_\_  
 Name / Address / Contact Person \_\_\_\_\_  
 / Fax Number: \_\_\_\_\_  
 Duration of Relationship: \_\_\_\_\_

18. If you, as an individual have been supervised or regulated (during the last ten years) in respect of any financial services or corporate activity, please supply each Regulator's full name, address and any relevant reference and contact.

| 18.1 | <i>Dates</i> |           | <i>Regulator</i> | <i>Address</i> |            | <i>Relevant Reference/Contact</i> |
|------|--------------|-----------|------------------|----------------|------------|-----------------------------------|
|      | <i>From</i>  | <i>To</i> |                  |                |            |                                   |
|      | _____        | _____     | _____            | _____          | _____      | _____                             |
|      |              |           |                  | <i>Phone</i>   | <i>Fax</i> |                                   |
|      |              |           |                  | _____          | _____      |                                   |

Please also provide details of the Regulators (if any) of the Companies listed in response to Q.14

| 18.2 | <i>Dates</i> |           | <i>Regulator</i> | <i>Address</i> |            | <i>Relevant Reference/Contact</i> |
|------|--------------|-----------|------------------|----------------|------------|-----------------------------------|
|      | <i>From</i>  | <i>To</i> |                  |                |            |                                   |
|      | _____        | _____     | _____            | _____          | _____      | _____                             |
|      |              |           |                  | <i>Phone</i>   | <i>Fax</i> |                                   |
|      |              |           |                  | _____          | _____      |                                   |

## SECTION 7: GENERAL INFORMATION

**19.** In carrying out your duties will you be acting on the directions or instructions of any other person? (The object of the question is to discover who - if anyone - controls what you do - e.g. a director reports to the Board).

19.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**20.** Do you in your private capacity or any corporate body of which you are a director, secretary, controller, manager or shareholder or does any related party, undertake business with the Licence Holder or Entity in connection with which the application is being made?

20.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**21.** Are any shares in the Licence Holder or Entity, in connection with which the application is being made, registered in your name or in the name of a related party as defined in the Glossary?

21.1 YES   
NO

If YES:

- please specify the number of shares held \_\_\_\_\_
- please give the name(s) in which the shares are held \_\_\_\_\_
- please specify the class of shares \_\_\_\_\_

**22.** Do you hold any shares in the Licence Holder or Entity in connection with which the application is being made, as trustee or nominee?

22.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**23.** Are any of the shares mentioned in the answer to Questions 21 and 22, pledged to any party?

23.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**24.** What proportion of the voting power at any general meeting of the Licence Holder or Entity in connection with which the application is being made (or of another body corporate of which it is a subsidiary) are you or any related party entitled to exercise or control the exercise of?

\_\_\_\_\_

**25.** Are you aware of any business interests, employment obligations or other situations which may give rise to conflicts of interests in the performance of the activities associated with your proposed post with the Licence Holder or Entity in connection with which this P.Q. is being submitted?

25.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**26.** Is there any further information of direct relevance for the MFSA to carry out its fit and proper test effectively?

26.1 YES   
NO

If YES, please provide details:

\_\_\_\_\_



## SECTION 8: DECLARATIONS & CONFIRMATIONS

**27.** Are there are contractual impediments or restrictions through any previous occupation or employment, which preclude you in any way from taking up the position in Q.2 for which this P.Q. is being completed?

27.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**28** Have you at any time been found in breach of regulations or convicted of any offence, criminal or otherwise, by any Tribunal or court? If so, give full particulars of the forum which determined the breach, offence or conviction and/or full particulars of its decision, the offence and the penalty imposed and the date of conviction/decision. (Breaches of traffic regulations punishable by fines lower than Lm 50 (or its equivalent) need not be reported).

28.1 YES   
NO

28.2 Court:

\_\_\_\_\_

28.3 Offence:

\_\_\_\_\_

28.4 Penalty:

\_\_\_\_\_

28.5 Date:

\_\_\_\_\_

**29.** Are you the subject of any current criminal investigations and / or proceedings?

29.1 YES   
NO

If YES, please give details:

\_\_\_\_\_

**30.** Have you been the subject of any civil proceedings or litigation? Are you presently, or do you expect to be engaged in litigation?

30.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**31.** Have you or any body corporate, partnership or unincorporated entity with which you are, or have been, associated as director, controller or manager:

|       |  |
|-------|--|
| 31.1  | <p>ever been censured, disciplined or publicly criticised by any Court of Law, regulatory authority, officially appointed enquiry or by any professional body or trade association?</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>   |
| 31.2. | <p>ever been the subject of a regulatory disciplinary measure or been refused or had revoked or restricted or suspended a licence or authorisation to carry on a business activity for which a specific licence or authorisation or other permission is required?</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> |
| 31.3  | <p>ever been found guilty of conducting or been investigated for possible conduct of any licensable activities without the necessary licence, authorisation or permits?</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>   |
| 31.4  | <p>ever been the subject of an investigation (whether current or previous) by a governmental, professional or other regulatory body or have you resigned whilst under investigation?</p> <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p>  |
| 31.5  | <p>If any of the above questions (Q. 31.1 – 31.4) has been answered YES, please provide full details:</p> <p>_____</p>   |

|  |   |
|--|---|
| <b>32.</b> Have you, or any body corporate, partnership or unincorporated entity with which you are, or have been associated as a director, controller or manager withdrawn an application that had been submitted to a regulatory or licensing authority? |   |
| 32.1   | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>If YES, give full particulars:</p> <p>_____</p> |

|  |   |
|--|---|
| <b>33.</b> Have you been dismissed from any office or employment or barred from entry to any profession or occupation? |   |
| 33.1   | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>If YES, give full particulars:</p> <p>_____</p> |

|   |  |
|---|--|
| <b>34.</b> Have you been adjudicated bankrupt by a Court or Tribunal? |  |
| 34.1  | <p>YES <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> |

If YES, give full particulars:

\_\_\_\_\_

**35.** Have you failed to satisfy any debt adjudged due and payable by you as a judgement debtor under an order of a Court or Tribunal?

35.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**36.** Have you, in connection with the formation or management of any body corporate, partnership or unincorporated entity been adjudged by a court liable for any fraud, forgery or other misconduct by you towards such a body or company or towards any members thereof?

36.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

**37.** Has any body corporate, partnership or unincorporated entity with which you were associated as a director, controller or manager been compulsorily wound up or made any compromise or arrangement with its creditors or ceased trading?

37.1 YES   
NO

If YES, give full particulars:

\_\_\_\_\_

If YES, please also confirm whether any of the above mentioned proceedings occurred in circumstances where creditors did not receive or have not yet received full settlement of their claims, either while you were associated with it or within five years after you ceased to be associated with it:

\_\_\_\_\_

**38.** Have you (in your individual capacity) or any body corporate, partnership or unincorporated entity with which you were associated ever been asked to close a bank account or had a bank account closed by the bank?

38.1 YES   
NO

If YES, please provide details:

\_\_\_\_\_

## SECTION 9: DECLARATION

### THE APPLICANT

I certify that I have read and understood the Important Information on pages i-iii. I also certify that the above information is complete and correct to the best of my knowledge and belief, and that I have personally re-checked this information. I undertake to advise the Malta Financial Services Authority of any material change to the contents of this P.Q. By signing the declaration below, I authorise MFSA to contact any or all of the above named or any other person and to make such enquiries and seek further information as considered by the MFSA to be relevant and as it thinks appropriate in the course of verifying the information given in this P.Q. This authorisation is valid at the date of signature and at any time in the future. I also understand that the results of any verification carried out by the MFSA in connection with the applicable fit and proper test may be disclosed to the Licence Holder or the promoters of the Entity, in connection with which this P.Q. is being submitted.

I understand that the personal information provided in this P.Q. will be used by the MFSA to discharge its regulatory and statutory functions under the laws under which it has been appointed Competent Authority and other relevant legislation, and will not be disclosed for any other purpose.

**Knowingly or recklessly giving the MFSA information which is false or misleading may be a criminal offence.**

Name of Applicant (in block capitals) \_\_\_\_\_

Passport Number \_\_\_\_\_  
or alternatively  
I. D. Number \*:

Place and date of \_\_\_\_\_  
Issue of Passport:

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

### THE LICENCE HOLDER

I confirm, on behalf of the Licence Holder that I have read and understood the Important Information on pages i-iii. I also certify that the above information is complete and correct to the best of our knowledge and belief. After verifying to the extent possible, the information included in this P.Q., and following our own due diligence enquiries, the Licence Holder believes that the Applicant is fit and proper to take up the position as proposed in Q.1 of this P.Q..

Name of Licence Holder (in block capitals): \_\_\_\_\_

Name of person \_\_\_\_\_  
signing on behalf of  
the Licence Holder:

Position Title \_\_\_\_\_

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

***Signatories on behalf of the Licence Holder in connection with which this P.Q. is being submitted:***

***This Declaration should be signed on behalf of the Licence Holder, by an individual who has been authorised to sign on behalf of the Licence Holder. The individual should be of sufficient standing within the Licence Holder in question. The Licence Holder should keep adequate record of the delegated authority evidencing that the individual in question has been authorised to sign on its behalf.***

Where the Applicant will occupy positions with different Licence Holders (e.g. Group of Companies), this Declaration shall be signed by an official representing each Licence Holder, unless agreed otherwise with the MFSA.

N.B. Entities which are still in the process of applying for a Licence from the MFSA and in connection with which an Applicant submits a P.Q., need not counter-sign the declaration ordinarily signed by existing Licence Holders.

Please ensure that the following documentation is attached to this Personal Questionnaire Form:

- a. \* An authenticated copy of an identification document (I.D. card or passport)
- b. A recent copy of the Applicant's conduct certificate (which should not be more than 3 months old) from the police authorities or an equivalent certification from the country of residence of the individual completing the PQ;
- c. The Banker's Authorisation Letter (Appendix One)
- d. The General Authorisation Letter (Appendix Two)
- e. In the case of advocates only, the Authorisation Letter to Commission for the Administration of Justice (Appendix Three)

N.B. Please note that the submission of a detailed Curriculum Vitae is not required.

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## GLOSSARY

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Associate – in relation to a person entitled to exercise or control the exercise of voting power in relation to an unincorporated entity such as a partnership, or holding shares in a body corporate, that is neither a subsidiary nor an interest in a joint venture, means –

- (a) the wife or husband or son (including step-son) or daughter (including step-daughter) of that person;
- (b) any company of which that person is a director;
- (c) any person who is an employee or partner of that person;
- (d) if that person is a company –
  - (i) any director of that company;
  - (ii) any subsidiary of that company;
  - (iii) any director or employee of any such subsidiary;
- (e) if that person has with any other person an agreement or arrangement with respect to the acquisition, holding or disposing of shares or other interests in that body corporate or under which they undertake to act together in exercising their voting power in relation to it, that other person.

Chief Executive – a person who is employed by the licence holder/entity and who either alone or jointly with others is or will be responsible under the immediate authority of the directors for the conduct of the business of the licence holder/entity.

Controller - in relation to a body corporate, is a person who, alone or together with others, exercises control of the body corporate.

Director - in relation to a company, is a person occupying the position of a director of the company, by whatever name she or he may be called, empowered to carry out substantially the same functions in relation to the direction of the company as those carried out by a director.

Fit and Proper Test – qualifying shareholders, board members, senior managers and other key functionaries are required to meet the fit and proper test. In general terms, the fit and proper test includes the following criteria: integrity, competence, experience, qualifications and the requirement to be financially sound. All criteria must be met in satisfaction of the fit and proper test.

Laws – in the context of this P.Q., refer to the legislation under which the MFSA issues regulatory Licences or Registrations or Authorisations, and include, the Banking Act (Chapter 371), the Financial Institutions Act (Chapter 376), the Investment Services Act (Chapter 370), the Insurance Business Act (chapter 403), the Insurance Brokers and Other Intermediaries Act (Chapter 404), the Special Funds (Regulations) Act (Chapter 450), and the Trusts and Trustees Act (Chapter 331).

Licence Holder – any individual or entity licensed or authorised and supervised by the MFSA under any one or more of the legislative frameworks indicated under ‘Laws’.

Officer – in relation to a company, includes a director, partner, manager or company secretary or any person effectively acting in such capacity whether formally appointed or not.

Related Party or Parties – a party is related to an entity if:

- (a) directly, or indirectly through one or more intermediaries, the party:
  - (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries);
  - (ii) has an interest in the entity that gives it significant influence over the entity; or
  - (iii) has joint control over the entity;
- (b) the party is an associate (as defined) of the entity;
- (c) the party is a joint venture in which the entity is a venturer (i.e. a party to a joint venture and has joint control over that joint venture);
- (d) the party is a member of the key management personnel of the entity or its parent;
- (e) the party is a close member of the family of any individual referred to in (a) or (d);

- (f) the party is an entity that is controlled, jointly controlled or significantly influenced by, or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (d) or (e); or
- (g) the party is a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity.

Senior Manager - a person employed by the licence holder/entity who, under the immediate authority of a director or the Chief Executive of the licence holder/entity, exercises managerial functions or is responsible for maintaining accounts or other records of the licence holder/entity.

Trustee – in relation to property, means the person or persons holding or in whom the property is vested on terms of trust in accordance with the provisions of the Trusts and Trustees Act or is otherwise deemed to be a trustee under the Trusts and Trustees Act.

## APPENDIX ONE

### STANDARD LETTER

#### ***AUTHORISATION LETTER FOR BANKS TO REPLY TO MFSA DUE DILIGENCE ENQUIRIES***

**PLEASE COMPLETE AND SEND IN ORIGINAL DUPLICATE TO THE MFSA TOGETHER WITH THIS P.Q. FORM. THE MFSA MAY THEN SEND THIS AUTHORISATION LETTER TO THE RESPECTIVE BANK(S) SHOULD IT DEEM NECESSARY.**

*(TO BE SENT IN A SEALED ENVELOPE MARKED "PERSONAL & CONFIDENTIAL")*

The Manager

\_\_\_\_\_

Date \_\_\_\_\_

#### **Personal & Confidential**

Dear \_\_\_\_\_

Re: \_\_\_\_\_ (Name, Address, ID No. - if known)

In the near future the Malta Financial Services Authority ("MFSA") may write to you and may request information in my regard.

The MFSA is responsible - inter alia - for the regulation and supervision of the business of insurance and insurance intermediaries activities, investment services, collective investment schemes, trustees and persons providing fiduciary services, banking and financial institutions' activities carried out in or from Malta. In pursuance of its regulatory duties, the MFSA may make enquiries, including those set out below as part of its standard fit and proper verifications.

This letter is to specifically and directly authorise you to provide any information to the MFSA as it may require from time to time, including information regarding my bank accounts, and in particular to confirm that I maintain with your Bank, the account(s) described below, and to confirm whether:

1. the account (No. \_\_\_\_\_) is a personal account in my sole name;
2. the account has been maintained for some time and if so for how long;
3. there are any other accounts to which I am a party whether sole, joint, personal, corporate or any other, either presently or previously;
4. all the accounts referred to (in 1 and 3) have been maintained satisfactorily;
5. the Bank has ever required me to close an account to which I was a party.



The MFSA may also request you to provide it with any additional explanatory information which it considers necessary and with any information that you consider appropriate and relevant to provide.

You are authorised to respond to the MFSA directly at your earliest convenience should the MFSA enquire on my behalf. I shall be responsible for charges, if any, applicable for this service. I understand that I will not be informed by the Bank of any information furnished by the Bank to the MFSA, upon the latter's written request.

**This authorisation to the Bank regarding the provision of relevant information on my behalf to the MFSA is valid from the date of signature of this letter.**

Yours sincerely

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c.c. The Director General  
Malta Financial Services Authority

## APPENDIX TWO

### *FIT AND PROPER ENQUIRY - GENERAL AUTHORISATION FORM*

**PLEASE COMPLETE AND SEND IN ORIGINAL DUPLICATE TO THE MFSA TOGETHER WITH THIS P.Q. FORM. THE MFSA MAY THEN SEND THIS AUTHORISATION LETTER TO THE PARTY WITH WHOM IT IS CONDUCTING THE DUE DILIGENCE ENQUIRY, SHOULD IT DEEM NECESSARY**

*(TO BE SENT IN A SEALED ENVELOPE MARKED "PERSONAL & CONFIDENTIAL")*

TO WHOM IT MAY CONCERN

Date \_\_\_\_\_

Re: \_\_\_\_\_ (Name, Address, ID No.)

This letter is to authorise you to provide any information and respond in the most detailed manner to any questions and requests made by the Malta Financial Services Authority ("MFSA") in my regard. The MFSA is responsible - inter alia - for the regulation and supervision of financial services activities carried out in or from Malta. In pursuance of its regulatory duties, the MFSA may make enquiries as part of its standard fit and proper checks, regarding my previous employments, my qualifications, my current or past membership or associateships of educational institutes, professional associations, previous or current directorships.

The MFSA may also request you to provide it with any additional explanatory information which it considers necessary and any information that you consider appropriate and relevant to provide.

**This authorisation letter regarding the provision of relevant information on my behalf to the MFSA is valid from the date of signature of this letter.**

You are authorised to respond to the MFSA directly at your earliest convenience should the MFSA enquiry on my behalf. I shall be responsible for charges, if any, applicable for this service.

Yours sincerely

\_\_\_\_\_

c.c. The Director General  
Malta Financial Services Authority

## APPENDIX THREE

### STANDARD LETTER

#### ***AUTHORISATION LETTER TO COMMISSION FOR THE ADMINISTRATION OF JUSTICE TO REPLY TO MFSA DUE DILIGENCE ENQUIRIES***

The Secretary  
The Commission for the Administration of Justice  
The President's Palace  
Republic Street  
Valletta

Date \_\_\_\_\_

#### **Personal & Confidential**

Dear Madam,

Re: \_\_\_\_\_ (Name, Address, ID No.)

In the near future the Malta Financial Services Authority ("MFSA") may write to you and may request information in my regard.

The MFSA is responsible - inter alia - for the regulation and supervision of financial services activities carried on, in or from Malta, including the regulation of trustees, business of insurance, investment services and banking. In pursuance of its regulatory duties, the MFSA may make enquiries, including those set out below as part of its standard "fit and proper" verifications.

This letter is to specifically and directly authorise you to provide any information to the MFSA as it may require from time to time, and in particular to confirm whether:

1. the undersigned is held in good standing by the Commission for the Administration of Justice;
2. the undersigned has ever been subject to proceedings by the Commission for the Administration of Justice and in respect of which there has been no exoneration;
3. the Commission for the Administration of Justice is in the process of investigating or has taken or is in the process of taking disciplinary action against the undersigned;
4. the Commission for the Administration of Justice is aware of any information that might have an adverse effect on the MFSA's determination of the "fitness and properness" of the undersigned to serve as an officer of a regulated entity.

The MFSA may also request you to provide it with any additional explanatory information which it considers necessary and with any information that you consider appropriate and relevant to provide.

**This authorisation to the Commission for the Administration of Justice regarding the provision of relevant information on my behalf to the MFSA is valid from the date of signature of this letter.**

You are authorised to respond to the MFSA directly at your earliest convenience should the MFSA enquire on my behalf.

Yours sincerely

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**THE ENVELOPE SHOULD BE MARKED “PERSONAL & CONFIDENTIAL”**

c.c. The Director General  
Malta Financial Services Authority

**INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

**PART B: STANDARD LICENCE CONDITIONS**

**Part B I: Professional Investor Funds targeting Experienced Investors**

- 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 Professional Investor Fund, 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 may appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to Self Managed Schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 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

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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:

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- i. an entity providing the services of Custodian in terms of a Category 4 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.

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- 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 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

- 1.17 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);
  - 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)

such Scheme is required to appoint a Local Representative.

- 1.18 The Local Representative shall be based in Malta and shall carry out the

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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.

- 1.19 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.
- 1.20 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

- 1.21 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.
- 1.22 The Scheme shall at all times have a Compliance Officer.
- 1.23 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days 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 – 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.
- 1.24 The Scheme shall notify the MFSA of the resignation or removal of its Compliance Officer upon becoming aware of the proposed resignation

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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.

1.25 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:

- an investment company, should be presented to the Board of Directors;
- a limited partnership, should be presented to the General Partner; or
- a unit trust or a common contractual fund, should be presented to the Manager and the Trustee.

The "Compliance Report" should indicate any:

- i. breaches to the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. 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.

1.26 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

1.27 Responsibility for the Scheme's compliance with its Prevention of Money Laundering obligations rests with the Board of Directors in the

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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.

- 1.28 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.29 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least twenty one business days 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 – 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.
- 1.30 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.

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## Auditor

- 1.31 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.
- 1.32 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.
- 1.33 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, parent, step-parent, child, step-child or other close

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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.

1.34 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.

1.35 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:
    - is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
    - constitutes or is likely to constitute a material breach of the legal and regulatory requirements applicable to the Scheme in or under the Act;
- relates to any other matter which has been prescribed.

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- 1.36 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.
- 1.37 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

- 1.38 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.
- 1.39 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.

- 1.40 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.
- 1.41 Where the Scheme has been set up as a Feeder Fund, the underlying fund shall satisfy the leverage restrictions applicable to the Scheme.

- 1.42 Where the Scheme has been set up as a Fund of Hedge Funds, the

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Scheme shall invest in at least five different hedge funds to ensure the necessary diversification.

- 1.43 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.44 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.
- 1.45 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.

- 1.46 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.
- 1.47 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.
- 1.48 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.49 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.
- 1.50 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

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

## Promotion

- 1.52 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.

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- 1.53 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.
- 1.54 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.
- 1.55 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.

Amended 1<sup>st</sup>  
November,  
2007

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### Minimum Entry Levels

- 1.56 The minimum investment which the Scheme may accept is EUR15,000 (or its equivalent expressed in other currencies). 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 EUR15,000 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 EUR15,000 threshold may apply on a per scheme basis rather than on a per Sub-Fund basis.

### Experienced Investor Declaration Forms

- 1.57 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.
- 1.58 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.
- 1.59 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.

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## Side Letters

- 1.60 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.
- 1.61 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

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

## General

- 1.63 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and 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 contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within two weeks of the end of the quarter concerned. 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 four months respectively of the end of the period concerned.
- 1.64 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
- 1.65 The Scheme shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Scheme on the

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day the Licence is first issued, and thereafter annually within one week from the anniversary of that date.

- 1.66 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.
- 1.67 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.68 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*”.
- 1.69 The Scheme shall comply with the applicable laws and regulations relating to the Prevention of Money Laundering.
- 1.70 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.
- 1.71 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.
- 1.72 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.
- 1.73 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document or Constitutional

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Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.

- 1.74 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.
- 1.75 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.
- 1.76 The Scheme, its Manger 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.
- 1.77 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.
- 1.78 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.

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## **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

### **PART B: STANDARD LICENCE CONDITIONS**

#### **Part B II: Professional Investor Funds targeting Qualifying Investors**

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- 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 Professional Investor Fund, 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 may appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to Self Managed Schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 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

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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 subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document and shall be subject to MFSA approval.

- 1.14 The Custodian, where appointed, shall be:

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- i. an entity providing the services of a Custodian in terms of a Category 4 Investment Services Licence issued under the Investment Services Act, 1994; or
  - 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 or Prime Broker to collective investment schemes; or
  - iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker 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 or Prime Broker 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 Where appointed, the Custodian or Prime Broker 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**

- 1.17 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);
  - 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)

such Scheme is required to appoint a Local Representative.

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1.18 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;
- iv. act as the Scheme's Money Laundering Reporting Officer.

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

1.19 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.

1.20 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**

1.21 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.

1.22 The Scheme shall at all times have a Compliance Officer.

1.23 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days 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 – 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.

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- 1.24 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.
- 1.25 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:
- an investment company, should be presented to the Board of Directors;
  - a limited partnership, should be presented to the General Partner; or
  - a unit trust or a common contractual fund, should be presented to the Manager and the Trustee.

The "Compliance Report" should indicate any:

- i. breaches of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. 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.

- 1.26 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

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- 1.27 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.
- 1.28 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.29 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least twenty one business days 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 – 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.
- 1.30 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.

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#### **Auditor**

- 1.31 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.
- 1.32 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.
- 1.33 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;

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- iii. a spouse, 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.

1.34 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.

1.35 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:
  - is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
  - constitutes or is likely to constitute a material breach of the ~~legal and regulatory requirements applicable to the Scheme~~ in or under the Act;

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- relates to any other matter which has been prescribed.

- 1.36 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.
- 1.37 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**

- 1.38 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.
- 1.39 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.40 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.
- 1.41 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).

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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.

### Offering Document

- 1.42 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.
- 1.43 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.
- 1.44 The Scheme shall approve the Offering Document including any amendments thereto, and confirm its approval to MFSA.
- 1.45 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.

### Constitutional Document

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

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## Promotion

1.47 The Manager and/or any appointed intermediary may only promote the Scheme to Qualifying 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 Qualifying Investor criteria set out in the Scheme's Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Qualifying Investors.

1.48 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.

Amended 1<sup>st</sup>  
November,  
2007

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Deleted: Section 5 of Part C I of the current Investment Services Guidelines.

1.49 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

1.50 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

1.51 The minimum investment which the Scheme may accept is EUR75,000 (or its equivalent expressed in other currencies). 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 EUR75,000 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 EUR75,000 threshold may apply on a per scheme basis rather than on a per Sub-Fund basis.

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## Qualifying Investor Declaration Forms

1.52 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as "Qualifying 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 "Qualifying Investors". The Scheme may rely upon the declaration provided by the investor in the absence of

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information to the contrary.

- 1.53 Copies of the Qualifying Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering requirements should be held in Malta at the registered office of the Scheme and should be available for inspection by the MFSA during compliance visits.

#### Side Letters

- 1.54 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.
- 1.55 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

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

#### General

- 1.57 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and 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 contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within two weeks of the end of the quarter concerned. 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 four months respectively of the end of the period concerned.
- 1.58 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.

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- 1.59 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.
- 1.60 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.61 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 Qualifying Investors*”.
- 1.62 The Scheme shall comply with the applicable laws and regulations relating to the Prevention of Money Laundering.
- 1.63 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.
- 1.64 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.
- 1.65 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.
- 1.66 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.

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- 1.67 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.
- 1.68 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.
- 1.69 The Scheme, its Manger 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.
- 1.70 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.
- 1.71 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document.

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## **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

### **PART B: STANDARD LICENCE CONDITIONS**

#### **Part B III: Professional Investor Funds targeting Extraordinary Investors**

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- 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 Professional Investor Fund, 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 may appoint a third party Manager approved by the MFSA with responsibility for the discretionary investment management of the assets of the Scheme. Where a third party Manager is not appointed, the supplementary conditions applicable to Self Managed Schemes set out in Appendix I shall apply in lieu of the conditions 1.6 and 1.7 below.
- 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 notify the MFSA before the appointment or replacement of any party to act in the capacity of Manager to the Scheme at least ten business days in advance of the appointment or

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replacement. Such notification shall be accompanied by:

- i. a confirmation from 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)/ Trustee (in the case of a Scheme set up as a unit trust or a common contractual fund) as the case may be that the proposed Manager is authorised to provide these services by its home state regulator; and
- ii. evidence of the authorisation of the Manager.

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 notify the MFSA before the appointment or replacement of any party to act in the capacity of Administrator to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:
  - i. a confirmation from 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)/ Trustee (in the case of a Scheme set up as a unit trust or a common contractual fund) as the case may be that the proposed Administrator is authorised to provide these services by its home state regulator; and
  - ii. evidence of the authorisation of the Administrator.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

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## 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 notify the MFSA before the appointment or replacement of any party to act in the capacity of Adviser to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:
- i. a confirmation from 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)/ Trustee (in the case of a Scheme set up as a unit trust or a common contractual fund) as the case may be that the proposed Investment Adviser is authorised to provide these services by its home state regulator; and
  - ii. evidence of the authorisation of the Adviser.

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 subject to adequate safekeeping arrangements. The Scheme may entrust its assets to a Custodian or Prime Broker for safekeeping. In the absence of an appointed Custodian, the Scheme will be responsible for the establishment of proper arrangements for the safekeeping of its assets. Such arrangements shall be described in the Offering Document/ Marketing Document and shall be subject to MFSA approval.
- 1.14 The Custodian, where appointed, shall be:
- i. an entity providing the services of a Custodian in terms of a Category 4 Investment Services Licence issued under the Investment Services Act, 1994; or
  - ii. an entity constituted in a Member State or EEA State and

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operating from a Member State or EEA State other than Malta, providing the services of Custodian or Prime Broker to collective investment schemes; or

- iii. an entity constituted outside Malta and operating from outside Malta providing the services of a Custodian or Prime Broker 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 notify the MFSA before the appointment or replacement of any party to act in the capacity of Custodian or Prime Broker to the Scheme at least ten business days in advance of the appointment or replacement. Such notification shall be accompanied by:

- i. a confirmation from 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) as the case may be that the proposed Custodian or Prime Broker is authorised to provide these services by its home state regulator; and
- ii. evidence of the authorisation of the Custodian or Prime Broker.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate.

### Local Representative

1.16 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);
- a local General Partner (in the case of a Scheme set up as a limited partnership); or
- a local Manager (in the case of a Scheme set up as a unit trust or a common-contractual fund)

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such Scheme is required to appoint a Local Representative.

1.17 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;
- iv. to act as the Scheme's Money Laundering Reporting Officer.

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

1.18 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.

1.19 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

1.20 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.

1.21 The Scheme shall at all times have a Compliance Officer.

1.22 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Compliance Officer at least twenty one business days 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 – 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.

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1.23 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.

1.24 The Scheme shall require 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:

- an investment company, should be presented to the Board of Directors;
- a limited partnership, should be presented to the General Partner; or
- a unit trust or a common contractual fund, should be presented to the Manager and the Trustee.

The "Compliance Report" should indicate any:

- i. breaches of the Investment and Borrowing Restrictions;
- ii. complaints from unit holders in the Scheme and the manner in which these have been handled;
- iii. material valuation errors (higher than 0.5% of NAV) and the manner in which these have been handled; and
- iv. 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.

1.25 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

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- 1.26 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.
- 1.27 The Scheme shall at all times have a Money Laundering Reporting Officer.
- 1.28 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Money Laundering Reporting Officer at least twenty one business days 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 – 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.
- 1.29 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.

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#### **Auditor**

- 1.30 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.
- 1.31 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.
- 1.32 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;~~

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- ii. a partner of, or in the employment of, any person in (a) above;
- iii. a spouse, 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.

1.33 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.

1.34 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:
  - is likely to lead to a serious qualification or refusal of his audit report on the accounts of the Scheme; or
  - ~~constitutes or is likely to constitute a material breach of the~~ legal and regulatory requirements applicable to the Scheme

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in or under the Act;

- relates to any other matter which has been prescribed.

- 1.35 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.
- 1.36 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**

- 1.37 The Scheme shall be subject to the investment objectives, policies and restrictions outlined in its Offering Document/ Marketing Document. The Manager or the Scheme shall take all reasonable steps to comply with the investment policies and restrictions of the Scheme.
- 1.38 Changes to the investment policies and restrictions of the Scheme shall be notified to investors in advance of the change.
- 1.39 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.
- 1.40 The following shall be the rules applicable in the event of an inadvertent breach of investment restrictions:
- 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

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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.

### Offering Document/ Marketing Document

- 1.41 The Scheme shall publish an Offering Document or else a brief Marketing Document.
- 1.42 The Offering Document or where an Offering Document has not been published the Marketing Document shall be offered to investors free of charge before they become committed to investing.
- 1.43 The Marketing Document or the Offering Document shall be dated and shall be kept up to date.
- 1.44 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.
- 1.45 The Marketing Document shall contain sufficient information for investors to make an informed judgement about the investment proposed to them and shall contain at least the following information:
  - i. a list of service providers including the Directors, General Partner(s) or Trustee (as applicable), and their respective contact details;
  - ii. a definition of Extraordinary Investor;
  - iii. a ~~risk warnings section describing in brief at least the principal~~ risks associated with investing in the Scheme;

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- iv. investment objectives, policies and restrictions of the Scheme;
- v. fee structure;
- vi. details of the classes of Units on offer (whether these constitute a distinct Sub-Fund or not);
- vii. overview of the safekeeping arrangements (where a custodian/ prime broker is not appointed)
- viii. a Statement – where the Scheme has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the Scheme. This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request;
- ix. the Subscription Form;
- x. Extraordinary Investor Declaration Form;
- xi. the following text:
  - “[name of the Scheme] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as ‘Extraordinary Investors’. This entails the minimum level of supervision for a Fund regulated in Malta.
  - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply.
  - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund’s failure.
  - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”;

The Marketing Document shall also include as an Annex, either the most recent version of the Constitutional Document of the Scheme or a summary thereof. ~~In the latter case the Marketing Document should provide that a copy of the Scheme’s Constitutional Document will be~~

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provided to prospective investors upon request.

- 1.46 The Scheme shall approve the Offering Document/ Marketing Document including any amendments thereto, and confirm its approval to MFSA.
- 1.47 The Offering Document/ Marketing Document and any amendments thereto – for so long as the amendments do not relate to the creation of a new class of Units or to any other matter that requires approval in terms of these Licence Conditions – including a copy of the Scheme’s approval of the revised Offering Document/ Marketing Document – shall be submitted to the MFSA within five business days from publication. Any amendments to the Offering Document/ Marketing Document which relate to the creation of a new class of Units or to any other matter that requires approval in terms of these Licence Conditions must be submitted to the MFSA for approval before publication.

### Constitutional Document

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

### Promotion

- 1.49 The Manager and/or any appointed intermediary may only promote the Scheme to Extraordinary 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 Extraordinary Investor criteria set out in the Scheme’s Offering Document. The Scheme, its Manager or Administrator may in turn only accept subscriptions from Extraordinary Investors.

- 1.50 The promotion of the Scheme is subject to Section 11 of the Act, and to the requirements of Section 3 of Part B of the Investment Services Rules for Investment Services Providers as more fully explained in the relevant Guidance Notes issued by the MFSA.

Amended 1<sup>st</sup>  
November,  
2007

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- 1.51 The Scheme may only be promoted in jurisdictions outside Malta if it satisfies the relevant rules of such jurisdictions.

- 1.52 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/

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Marketing Document exists and the places where it, and any documents updating it, may be obtained.

### Minimum Entry Levels

- 1.53 The minimum investment which the Scheme may accept is EUR750,000 (or its equivalent expressed in other currencies). 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 EUR750,000 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 EUR750,000 threshold may apply on a per scheme basis rather than on a per Sub-Fund basis.

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### Extraordinary Investor Declaration Forms

- 1.54 Before investing in the Scheme, investors must sign the Declaration referred to in Appendix III stating that they qualify as “Extraordinary 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 “Extraordinary Investors”. The Scheme may rely upon the declaration provided by the investor in the absence of information to the contrary.
- 1.55 Copies of the Extraordinary Investor Declaration Forms and records evidencing compliance with the local Prevention of Money Laundering requirements shall be held in Malta at the registered office of the Scheme and shall be available for inspection by the MFSA during compliance visits.

### Side Letters

- 1.56 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.
- 1.57 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.

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### Distributions of Income

- 1.58 The Scheme shall effect any distributions of income in accordance with

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the provisions of its Constitutional Documents and/ or Offering Document/ Marketing Document.

## General

- 1.59 The Scheme – or the Manager or Administrator on its behalf – shall submit quarterly statistical information and 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 contents of the quarterly statistical information are set out in Appendix IV. The statistical information shall be prepared in respect of the relevant quarter, and submitted within three weeks of the end of the quarter concerned. 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 four months respectively of the end of the period concerned.
- 1.60 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.
- 1.61 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.
- 1.62 The Scheme and its service providers shall comply with all Maltese and overseas regulations to which they are subject.
- 1.63 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 Extraordinary Investors*”.
- 1.64 The Scheme shall comply with the applicable laws and regulations relating to the Prevention of Money Laundering.
- 1.65 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.
- 1.66 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.

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- 1.67 The MFSA shall be informed of any material information concerning the Scheme, its management, its operation or its service providers, 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 which a reasonable person would expect the MFSA to wish to be informed about - immediately upon becoming aware of the matter.
- 1.68 The MFSA shall be notified of any breach of the Licence Conditions or of any of the provisions of the Offering Document/ Marketing Document or Constitutional Documents of the Scheme as soon as the Scheme or its Manager or Administrator becomes aware of the breach.
- 1.69 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.
- 1.70 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 period of suspension shall be as brief as is practicable.
- 1.71 The Scheme, its Manger 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.
- 1.72 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~~

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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.

- 1.73 Any changes to the financial year-end of the Scheme shall be notified to the MFSA and disclosed in the Offering Document/ Marketing Document.

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# **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

## **PART B: STANDARD LICENCE CONDITIONS**

### **Appendix I Supplementary Licence Conditions**

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#### **1. *Supplementary Conditions for Professional Investor Funds established as Limited Partnerships***

- 1.1 The Scheme shall obtain the written consent of the MFSA before admitting a General Partner. The request for consent shall be accompanied by a Personal Questionnaire (“PQ”) in the form set out in Schedule C to Part A of these **Rules** duly completed by the person proposed (in the case of an individual) or by the Directors and Qualifying Shareholders of the proposed General Partner (in the case of a body corporate).

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Provided that where the proposed corporate General Partner is regulated in a recognized jurisdiction, the request for consent need not be accompanied by the PQ of the Directors and Qualifying Shareholders of the proposed corporate General Partner, but shall include details of the regulatory status of the General Partner.

- 1.2 General Partners shall be persons falling within any one of the following categories:
- i. a company licensed under the Investment Services Act, 1994, for the provision of fund management services; or
  - ii. a company falling within the exemptions applicable to overseas fund managers; or
  - iii. any other entity of sufficient standing and repute as approved by the MFSA;
  - iv. any other individual who satisfies the fit and proper test.

Where the General Partner falls under (iii) and (iv) above, and in the absence of a Manager (as per (i) or (ii)) acting as an additional General Partner, the Scheme shall appoint a Manager acceptable to the MFSA.

- 1.3 The Scheme shall notify the MFSA in writing of the departure of a General Partner within 14 days of the departure. The Scheme shall also request the General Partner 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.

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- 1.4 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.
- 1.5 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the General Partner(s) and of any party appointed by the Scheme.
- 1.6 Where applicable, the Scheme, or the Manager or Administrator on behalf of the Scheme, is required to disclose to potential investors, the identity of the beneficial owners of the General Partner(s) upon request.

**2. *Supplementary Conditions for Professional Investor Funds established as Investment Companies***

- 2.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme.
- 2.2 The Scheme shall at all times have one or more Directors independent from the Manager and the Custodian.
- 2.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Director provided that the Scheme shall not appoint a Corporate Director unless such Corporate Director is regulated in a recognized jurisdiction.
- 2.4 The request for consent of the appointment or replacement of an individual as Director shall be accompanied by a PQ in the form set out in Schedule C to Part A of these **Rules** duly completed by the person proposed. In the case of a Corporate Director, the request for consent shall include details of its regulatory status.
- 2.5 The Scheme shall notify the MFSA in writing of the departure of a Director within 14 days of the departure. The Scheme shall also request the Director 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.
- 2.6 Where the Scheme has issued "Voting Shares" to the promoters and "non Voting Shares" to Experienced, Qualifying or Extraordinary Investors, any changes in the beneficial ownership of the "Voting Shares" of the Scheme shall be subject to the prior approval of the MFSA. The Scheme, or the Manager or Administrator on behalf of the Scheme, is required to disclose to potential investors, the identity of the beneficial owners of the "Voting Shares" upon request.

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The Scheme shall obtain the written consent of the MFSA before:

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- i. making any changes to the rights of its “Voting Shares”;
  - ii. redeeming its “Voting Shares”; or
  - iii. issuing additional “Voting Shares”.
- 2.7 Minutes of the meetings of the Board of Directors must be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.
- 2.8 The Scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:
- i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during Board Meetings, where a member considers that s(he) has or may have a conflict of interest:
    - a. that person should declare that interest to the other members either at the Meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the Meeting interested in the issue, at the next Meeting held after s(he) became so interested;
    - b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
    - c. the interested member should not vote at a Meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;
    - d. the minutes of the meeting should accurately record the sequence of such events.
  - ii. abiding by all relevant laws and regulations, including in respect of Prevention of Money Laundering;
  - iii. avoiding any claim of independence or impartiality which is untrue or misleading; and
  - iv. avoiding making misleading or deceptive representations to investors.

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3. ***Supplementary Conditions regarding the use of Trading Companies/ Special Purpose Vehicles (“SPVs”) for investment purposes***

- 3.1 The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country
- 3.2 The Scheme shall – through its Directors or General Partner(s) – at all times maintain the majority directorship of any SPV.
- 3.3 The Scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the Scheme.

4. ***Supplementary Conditions for Self Managed Schemes***

*Capital Requirements*

- 4.1 The Scheme shall be operated in or from Malta, as agreed with the MFSA. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed. The initial, paid up share capital for the Scheme should not be less than EUR 125,000, or the equivalent in any other currency and the NAV of the Scheme is expected to exceed this amount on an on-going basis. The Scheme should notify the MFSA as soon as its NAV falls below EUR125,000.

*Operational Arrangements*

- 4.2 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time.
- 4.3 The management of the assets of the Scheme is to be the responsibility of the Board of Directors, at least one of whom must be resident in Malta. The Board of Directors of the Scheme shall establish an in-house Investment Committee made up of at least three members, whose composition may include Board members. The Terms of Reference of this Investment Committee – which regulate the proceedings of the Investment Committee – and any changes thereto, is subject to the prior approval of the MFSA. The majority of Investment Committee meetings – the required frequency of which should depend on the nature of the Scheme’s investment policy, but which should be at least quarterly – are to be physically held in Malta. Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.
- 4.4 Minutes of Investment Committee meetings should be available in Malta for review

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during MFSA's compliance visits. The role of the Investment Committee will be to:

- i. monitor and review the investment policy of the Scheme;
  - ii. establish and review guidelines for investments by the Scheme;
  - iii. issue of rules for stock selection;
  - iv. set up the portfolio structure and asset allocation; and
  - v. make recommendations to the Board of Directors of the Scheme.
- 4.5 Where the Scheme has not appointed an Investment Committee, the functions mentioned under para 4.4 above shall be undertaken by the Directors of the Scheme and any reference to Investment Committee throughout this Appendix shall be construed as reference to the Board of Directors of the Scheme.
- 4.6 The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to one or more officials of the Scheme (referred to as "the Portfolio Manager/s") – who will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the Scheme's Offering Document/ Marketing Document.
- 4.7 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement a member of the Investment Committee or a Portfolio Manager. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness, including competence, of the members of the Investment Committee and of the Portfolio Manager/s.

The request for consent of the appointment of a member of the Investment Committee or a Portfolio Manager shall be accompanied by a PQ in the form set out in Schedule C to Part A of these Rules and a detailed CV of the person proposed.

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- 4.8 The Scheme shall notify the MFSA in writing of the departure of a Member of the Investment Committee and/ or a Portfolio Manager within 14 days of the departure. The Scheme shall also request the Investment Committee and/ or the Portfolio Manager, as applicable, to confirm that his/ her departure has no regulatory implications or otherwise provide any relevant details, as appropriate. A copy of such request shall be provided to MFSA.
- 4.9 The Scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the

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Portfolio Manager/s and the Investment Committee.

- 4.10 The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

*Dealing by Officials of the Scheme*

- 4.11 Where the Scheme allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:
- i. The Scheme must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse.
  - ii. The Scheme must take reasonable steps to ensure that its officials do not initiate personal transactions which might impair their ability to manage the Scheme's assets objectively and effectively or which might create a conflict between their own interest and that of the Scheme.
  - iii. Internal mechanisms should be established to prompt the Compliance Officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

All transactions undertaken by officials on their own account should be at "arm's length" – but this does not preclude discounts being allowed to officials.

*Reporting Requirements*

- 4.12 The Scheme shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

*Documents and Records*

- 4.13 The Scheme or the Administrator shall keep such accounting and other records, in particular regarding the whole process of the investment management function and its monitoring thereof, as are necessary to enable it to comply with the licence conditions and to demonstrate that compliance has been achieved. Records are to be retained in Malta and made available to MFSA's review as the need arises. 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.

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## *Conflicts of Interest*

- 4.14 The Scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:
- i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during Investment Committee meetings, where a member considers that s(he) has or may have a conflict of interest:
    - a. that person should declare that interest to the other members either at the Meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the Meeting interested in the issue, at the next Meeting held after s(he) became so interested;
    - b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
    - c. the interested member should not vote at a Meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the Meeting;
    - d. the minutes of the meeting should accurately record the sequence of such events.
  - ii. abiding by all relevant laws and regulations, including in respect of Prevention of Money Laundering;
  - iii. avoiding any claim of independence or impartiality which is untrue or misleading; and
  - iv. avoiding making misleading or deceptive representations to investors.

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## **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

### **PART B: STANDARD LICENCE CONDITIONS**

#### **Appendix II Contents of the Offering Document**

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##### **1. General Requirements**

- 1.1 Unless otherwise agreed with the MFSA, a Scheme shall issue or cause to be issued an Offering Document for which the Scheme shall be responsible. The purpose of the Document is to provide sufficient information to enable potential Experienced, Qualifying and/or Extraordinary Investors to make an informed investment decision.
- 1.2 The Document must contain all material information which at the date of the Offering Document is within the knowledge of the Scheme's 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) or Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) to be relevant for the purpose of making an informed judgement about the merits of participating in the Scheme and the extent of the risks accepted by so participating. The Offering Document shall include the following information:

##### **Information Concerning the Scheme**

- i. The following statements – which must be in a prominent position printed in font whose pitch is at least 12:
  - “[name of the Scheme] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as Experienced Investors/ Qualifying Investors/ Extraordinary Investors [delete as appropriate].
  - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail schemes do not apply.
  - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund's failure.
  - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.

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- ii. In the case of PIFs targeting Extraordinary Investors, the Offering Memorandum should also provide that: *“PIFs targeting Extraordinary Investors are subject to the minimum level of supervision for a Fund regulated in Malta.”*
- iii. A statement that the Scheme’s 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) or Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) confirm their approval of the content of the Offering Document.
- iv. Name of the Scheme.
- v. Date of establishment of the Scheme and a statement as to its duration, if limited.
- vi. Name or style, form in law and registered office.
- vii. In the case of an umbrella Scheme, an indication of the Sub-Funds.
- viii. The investment objectives, policies and restrictions of the Scheme, together with the extent of use of leverage. In the case of an umbrella Scheme, this information must be provided for each Sub-Fund.
- ix. A statement indicating that:
  - changes to the investment policies and restrictions of the Scheme, or in the case of an umbrella Scheme, its Sub-Funds, shall be notified to investors in advance of the change.
  - changes to the investment objectives of the Scheme, or in the case of an umbrella Scheme its Sub-Funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.
- x. Accounting and distribution dates.
- xi. Name of auditor.
- xii. Details of the types and main characteristics of the Units and in particular:
  - the nature of the right represented by the Unit;
  - indication of the voting rights, if any of the holders of Units.

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xiii. A Statement – where the Scheme has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the Scheme. In the event that the “Voting Shares” are held by a Corporate Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.

xiv. Procedures and conditions for the creation, issue and sale of Units.

**Deleted:** This section should also provide that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request. ¶

xv. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase or redemption may be suspended.

xvi. Rules for the valuation of assets.

xvii. Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of Units, in particular:

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

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xviii. In the case of an umbrella Scheme, the charges applicable to the switching of investments from one Sub-Fund to another.

xix. Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the Scheme to the Manager (or in the case of a Self Managed Scheme, the Investment Committee), Administrator, Custodian, Adviser, and to third parties, and in respect of the reimbursement of costs by the Scheme to the Manager, to the Custodian and to third parties.

xx. In the case of a Scheme set up as an investment company, the amounts of authorised and paid-up share capital.

xxi. In the case of a Scheme set up as an investment company, brief details of the members of the Board of Directors of the Scheme. Where the Scheme has appointed one or more Corporate Directors, this section should include brief details on the Corporate Director and its directors, including a brief description of the nature/

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objects of the company. In the case of a Corporate Director with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate Director or include a statement that such information will be available upon request.

- xxii. In the case of a Scheme set up as a limited partnership, brief details of the General Partner/s. Where the Scheme has appointed one or more Corporate General Partner/s, this section should include brief details on the Corporate General Partner/s and its directors, including a brief description of the nature/ objects of the company. In the case of Corporate General Partner/s with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate General Partner/s or include a statement that such information will be available upon request.

***Information concerning the Manager, Investment Adviser, Administrator, Custodian/ Prime Broker (where applicable) (“the Service Provider”)***

- i. Name or style, registered office and head office.
- ii. If the Service Provider is part of a group, the name of that group.
- iii. Regulatory Status of the Service Provider.
- iv. In the case of the Investment Adviser or the Administrator a statement whether the Investment Adviser/ the Administrator is appointed by the Scheme or the Manager.
- v. Where one or more Service Provider has not to be appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out e.g. if a Custodian/Prime Broker is not appointed, the Offering Document should include a description of the safekeeping arrangements that will be put in place with respect to the assets of the Scheme.
- vi. In the case of a Self Managed Scheme, details of the members of the Investment Committee, including an overview of their experience and expertise together with an outline of the person(s) responsible for the day to day management of the assets of the Scheme.

***Information concerning the Local Representative***

- i. Name, registered office and head office, if different from registered office.
- ii. Main activities.

***Risk Warnings*** ▼

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- i. This section should provide a detailed and clear indication of the principal risks associated with investing in the Scheme.

### **General Information**

- i. A description of the potential conflicts of interest which could arise between the Manager, or the Investment Adviser, or the Custodian/ Prime Broker, and the Scheme.
- ii. The name of any entity which has been contracted by the Manager or the Scheme to carry out its work.
- iii. Information concerning the arrangements for making payments to holders of Units, purchasing or redeeming Units and making available information concerning the Scheme.
- iv. Where applicable, an indication that the Scheme will use Trading Companies or Special Purpose Vehicles as part of its investment strategy.

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### **2. Closed ended schemes set up as Professional Investor Funds which make an offer of securities to the public**

- 2.1 Closed ended schemes set up as Professional Investor Funds targeting Experienced Investors which make an offer of securities to the public shall:

- not be subject to the requirements outlined in Section 1 of this Appendix; and
- draw up their Offering Document in line with the requirements of Schedule C of Appendix 9 to the current Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.

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- 2.2 The Offering Document shall be made available to Experienced Investors as soon as practicable and in any case, within a reasonable time in advance of, and at the latest, at the beginning of the offer of Units. In the case of an initial offer of Units in a closed ended Scheme not already admitted to trading on a Regulated Market that is to be admitted to trading for the first time, the Offering Document shall be available at least six working days before offer opens.

- 2.1 Where the Offering Document is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the Scheme or the financial intermediaries placing or selling the Scheme's Units. The Offering Document of the Scheme must be made available in a printed form at the registered office of the Scheme or its manager or other financial intermediaries placing or selling the Units in the Scheme.

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- 2.2 The Directors of the Scheme, or its administrative management or supervisory body – whose names and functions or in the case of legal persons their names and registered offices appear on the Offering Document – must include a declaration in the Offering Document to the effect that to the best of their knowledge the information contained therein is in accordance with facts and that the Offering Document makes no omission likely to effect its import.
- 2.3 The text and the format of the Offering Document, and/or the supplements to the Offering Document, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.
- 2.4 Every significant new factor, material mistake or inaccuracy relating to the information included in an Offering Document of the Scheme which is capable of affecting the investors' assessment of the Units on offer and which arises or is noted between the time when the Offering Document is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a Regulated Market begins, shall be mentioned in a supplement to the Offering Document. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Offering Document was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the Units before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.
- 2.5 If there are significant new factors, material mistakes or inaccuracies, arising since the approval of the Offering Document, the Scheme shall publish a supplement which must be approved by the MFSA.
- 2.6 The Scheme shall comply with the requirements laid out in Regulations 3 to 8 of the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005.

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**INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

**PART B: STANDARD LICENCE CONDITIONS**

**Appendix III  
Declaration Forms**

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This Appendix includes relevant information regarding the Declaration Forms to be completed by prospective Experienced, Qualifying and Extraordinary Investors.

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**Annex I**  
**Pro Forma Experienced Investor Declaration Form**

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*Scheme: [insert name of the Scheme]*

**Section I: This section should be completed by the Experienced Investor or his/ her duly authorised agent**

*[tick as appropriate]*

**Name of Investor/ duly authorised agent:** *[insert name of the Scheme Investor/ duly authorised agent]*

***The investment is being made directly by the investor (not through a duly authorised agent)***

- I hereby confirm that I am eligible to be treated as an “Experienced Investor”, since I satisfy the definition thereof in light of the positive response(s) that I have given to the question(s) below or the reasons supplied. I certify that I have read and understood the Offering Document including the mandatory risk warnings.

*Where applicable:*

- I hereby confirm that I have been warned by the Manager/ Sales Agent/ third party selling Units of the Scheme that I do not possess the necessary experience and knowledge in order to understand the risks involved in investing in the Scheme.

***The investment is not being made directly by the investor but through a duly authorised agent***

- I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme described above. I certify that my principal is eligible to be treated as an “Experienced Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal or appropriate reasons provided. I certify that my principal has read and understood the Offering Document including the mandatory risk warnings.

*Where applicable:*

- I hereby confirm that I have been warned by the Manager/ Sales Agent/ third party selling Units of the Scheme that my principal does not possess the necessary experience and knowledge in order to understand the risks involved in investing in the Scheme and that I have informed my principal accordingly.

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I qualify / My Principal qualifies *[delete as applicable]* as an “Experienced Investor”, as I/ he/ she possess(es) the necessary expertise, experience and knowledge to be in a position to make my/ his/ her own investment decisions and understand the risks involved as:

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- |  | <i>Yes</i>               | <i>No</i>                |
|--|--------------------------|--------------------------|
| a. I am/ (s)he is  |                          |                          |
| i. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or   | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the Scheme/ Sub-Fund in question relates; or | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);             | <input type="checkbox"/> | <input type="checkbox"/> |

OR

- |   |                          |                          |
|---|--------------------------|--------------------------|
| b. [Please provide justification below] | <input type="checkbox"/> | <input type="checkbox"/> |
| _____                                   |                          |                          |
| _____                                   |                          |                          |
| _____                                   |                          |                          |
| _____                                   |                          |                          |
| _____                                   |                          |                          |

|  |  |
|--|--|
| <b>Name of investor/<br/>duly authorised<br/>agent</b> |  |
| <b>Signature</b>                                       |  |
| <b>Title/ Capacity in<br/>which signed</b>             |  |
| <b>Date</b>  |  |

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**Section II: This section should be completed by the Manager/ Sales Agent/ third party selling Units of the Scheme**

*[tick as appropriate]*

I hereby confirm that:

I have satisfied myself that the investor has the necessary experience and knowledge in order to understand the risks involved;

OR

I have **not** satisfied myself that the investor has the necessary experience and knowledge in order to understand the risks involved and that I have warned the investor/ duly authorised agent accordingly.

|             |  |
|-------------|--|
| <b>Name</b> |  |
|-------------|--|

|                  |  |
|------------------|--|
| <b>Signature</b> |  |
|------------------|--|

|  |  |
|--|--|
| <b>Name of Manager/<br/>Sales Agent/ Third<br/>Party</b> |  |
|--|--|

|             |  |
|-------------|--|
| <b>Date</b> |  |
|-------------|--|

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**Annex II**  
**Pro Forma Qualifying Investor Declaration Form**

---

*Scheme: [insert name of the Scheme]*

**This section should be completed by the Qualifying Investor or his/ her duly authorised agent**

*[tick as appropriate]*

**Name of Investor/ duly authorised agent:** *[insert name of the Scheme Investor/ duly authorised agent]*

**The investment is being made directly by the investor (not through a duly authorised agent)**

- I hereby confirm that I am eligible to be treated as a “Qualifying Investor”, since I satisfy the definition thereof in light of the positive response(s) that I have given to the question(s) below. I certify that I have read and understood the Offering Document including the mandatory risk warnings.

**The investment is not being made directly by the investor but through a duly authorised agent**

- I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme described above. I certify that my principal is eligible to be treated as a “Qualifying Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal. I certify that my principal has read and understood the Offering Document including the mandatory risk warnings.

I qualify / My Principal qualifies *[delete as applicable]* as a “Qualifying Investor”, as I am/ he/ she/ it is:

|  | <u>Yes</u>               | <u>No</u>                |
|--|--------------------------|--------------------------|
| i. a body corporate which has net assets in excess of EUR750,000 or which is part of a group which has net assets in excess of EUR750,000; | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. an unincorporated body of persons or association which has net assets in excess of EUR750,000;   | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. a trust where the net value of the trust’s assets is in excess of EUR750,000;   | <input type="checkbox"/> | <input type="checkbox"/> |
| iv. an individual, or in the case of a body corporate, the majority of   |                          |                          |

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|  | <i>Yes</i>               | <i>No</i>                |
|--|--------------------------|--------------------------|
| its Board of Directors or in the case of a partnership its General Partner, who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile; or property of the same kind as the property, or a substantial part of the property, to which the Scheme in question relates; | <input type="checkbox"/> | <input type="checkbox"/> |
| v. an individual whose net worth or joint net worth with that person's spouse, exceeds EUR750,000;   | <input type="checkbox"/> | <input type="checkbox"/> |
| vi. a senior employee or director of service providers to the Scheme;  | <input type="checkbox"/> | <input type="checkbox"/> |
| vii. a relation or a close friend of the promoters;  | <input type="checkbox"/> | <input type="checkbox"/> |
| viii. an entity with (or which are part of a group with) EUR3.75 million or more under discretionary management investing on its own account;  | <input type="checkbox"/> | <input type="checkbox"/> |
| ix. a PIF promoted to Qualifying or Extraordinary Investors; or  | <input type="checkbox"/> | <input type="checkbox"/> |
| x. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.   | <input type="checkbox"/> | <input type="checkbox"/> |

|  |  |
|--|--|
| <b>Name of investor/<br/>duly authorised<br/>agent</b> |  |
| <b>Signature</b>                                       |  |
| <b>Title/ Capacity in<br/>which signed</b>             |  |
| <b>Date</b>  |  |

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**Annex III**  
**Pro Forma Extraordinary Investor Declaration Form**

---

*Scheme: [insert name of the Scheme]*

**This section should be completed by the Extraordinary Investor or his/ her duly authorised agent**

*[tick as appropriate]*

**Name of Investor/ duly authorised agent:** *[insert name of the Scheme Investor/ duly authorised agent]*

**The investment is being made directly by the investor (not through a duly authorised agent)**

- I hereby confirm that I am eligible to be treated as an “Extraordinary Investor”, since I satisfy the definition thereof in light of the positive response(s) that I have given to the question(s) below. I certify that I have read and understood the Offering Document/ Marketing Document including the mandatory risk warnings.

**The investment is not being made directly by the investor but through a duly authorised agent**

- I hereby confirm that I have been properly appointed as a duly authorised agent of a prospective investor in the Scheme described above. I certify that my principal is eligible to be treated as an “Extraordinary Investor” since my principal satisfies the definition thereof in light of the positive response(s) that I have given to the question(s) below in respect of my principal. I certify that my principal has read and understood the Offering Document/ Marketing Document including the mandatory risk warnings.

I qualify / My Principal qualifies *[delete as applicable]* as an “Extraordinary Investor”, as I am/ he/ she/ it is:

|   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| i. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million; | <input type="checkbox"/> | <input type="checkbox"/> |
| ii. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million;  | <input type="checkbox"/> | <input type="checkbox"/> |
| iii. a trust where the net value of the trust’s assets is in excess of EUR7.5 million;  | <input type="checkbox"/> | <input type="checkbox"/> |

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|  | <i>Yes</i>               | <i>No</i>                |
|--|--------------------------|--------------------------|
| iv. an individual whose net worth or joint net worth with that person's spouse, exceeds EUR7.5 million;  | <input type="checkbox"/> | <input type="checkbox"/> |
| v. a senior employee or director of service providers to the Scheme;   | <input type="checkbox"/> | <input type="checkbox"/> |
| vi. a PIF promoted to Extraordinary Investors;   | <input type="checkbox"/> | <input type="checkbox"/> |
| vii. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities. | <input type="checkbox"/> | <input type="checkbox"/> |

|  |  |
|--|--|
| <b>Name of investor/<br/>duly authorised<br/>agent</b> |  |
|--|--|

|                  |  |
|------------------|--|
| <b>Signature</b> |  |
|------------------|--|

|  |  |
|--|--|
| <b>Title/ Capacity in<br/>which signed</b> |  |
|--|--|

|             |  |
|-------------|--|
| <b>Date</b> |  |
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## **INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS**

### **PART B: STANDARD LICENCE CONDITIONS**

#### **Appendix IV Quarterly Statistical Return**

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1. Name of PIF \_\_\_\_\_
2. Quarter Ended (Please delete as appropriate) Mar/ June/ Sept/ Dec
3. Year \_\_\_\_\_
4. Return Submitted by (Please delete as appropriate) PIF/Manager
5. Base Currency \_\_\_\_\_
6. Total Net Asset Value (“NAV”) expressed in base currency \_\_\_\_\_
7. Total NAV expressed in Euro (unless base currency is Euro) EUR \_\_\_\_\_
8. Date when NAV last calculated \_\_\_\_\_

#### ***Declaration***

I confirm that I am authorised to sign this Quarterly Return on behalf of the entity described in No. 4 above. I further confirm that to the best of my knowledge and belief, the information contained in this return is both accurate and complete.

|  |  |
|--|--|
| <b>Name</b>                            |  |
| <b>Signature</b>                       |  |
| <b>Title/ Capacity in which signed</b> |  |
| <b>Date</b>                            |  |

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**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 Investors Funds issued by the MFSA.

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|  |  |
|--|--|
| <b>“Act” or “ISA”:</b>                         | The Investment Services Act, 1994.   |
| <b>“Administrator”:</b>                        | A person appointed by the Scheme or its Manager responsible for the provision of administration services to the Scheme.  |
| <b>“Adviser”:</b>                              | See “Investment Adviser”.  |
| <b>“Collective Investment Scheme Licence”:</b> | Shall have the same meaning as that assigned to it by Article 2 of the Act.  |
| <b>“Collective Investment Scheme”:</b>         | Shall have the same meaning as that assigned to it by Article 2 of the Act.  |
| <b>“Compliance Officer”:</b>                   | The person appointed by the Scheme or its Manager as applicable, responsible for ensuring compliance by the Scheme with its applicable Licence Conditions.   |
| <b>“Constitutional Documents”:</b>             | The documents constituting the Scheme: in the case of a Scheme set up as an investment company, its Memorandum and Articles of Association, statutory documents, or other instruments of incorporation; in the case of a Scheme set up as a limited partnership the <u>Deed of Partnership</u> or partnership agreement; in the case of a Scheme set up as a unit trust the trust deed; <u>and in the case of a Scheme set up as a common contractual fund the Fund Rules.</u> |
| <b>“Custodian”:</b>                            | The person appointed by the Scheme responsible for safekeeping of the assets of the Scheme and in the case of Professional Investor Funds targeting Experienced Investors for carrying a monitoring function over the activities of the Manager.   |
| <b>“EEA State”:</b>                            | Shall have the same meaning as that assigned to it by Regulation 2 of the Undertakings for Collective Investment in  |

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Transferable Securities and Management Companies Regulations, 2004 as amended and includes European Union Member States, Norway, Iceland and Liechtenstein.

**“Experienced Investor Declaration Form”:**

A standard form as per Annex I to Appendix III of Part B of these Rules to be completed by Experienced Investors prior to investing in an Experienced Investor Fund.

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**“Experienced Investor Fund”:**

A special class of Professional Investor Funds which may only offer their units to Experienced Investors.

**“Experienced Investor”:**

A person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. An investor must state the basis on which he satisfies this definition, either

1. by confirming that he is:
  - a. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or
  - b. a person who has reasonable experience in the acquisition and/or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates; or
  - c. a person who has carried out investment transactions in significant size at a certain frequency (for example a person who within the past 2 years carried out transactions amounting to at least EUR50,000 at an average frequency of 3 per quarter);

OR

2. by providing any other appropriate justification.

**“Extraordinary Investor Declaration Form”:**

A standard form as per Annex III to Appendix III of Part B of these Rules to be completed by Extraordinary Investors prior to investing in an Extraordinary Investor Fund.

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**“Extraordinary Investor Fund”:**

A special class of Professional Investor Funds which may only offer their units to Extraordinary Investors.

**“Extraordinary Investor”:**

A person who meets one or more of the following criteria:

1. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million;
2. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million;
3. a trust where the net value of the trust’s assets is in excess of EUR7.5 million;
4. an individual whose net worth or joint net worth with that person’s spouse, exceeds EUR7.5 million;
5. a senior employee or Director of service providers to the PIF;
6. the investor qualifies as a PIF promoted to Extraordinary Investors;
7. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

**“FATF Blacklisted country”:**

A country which appears on the FATF list of blacklisted countries.

**“FATF”:**

Financial Action Task Force.

**“Feeder Fund”:**

A Scheme which invests at least 85% of its assets in one Scheme or in one Sub-Fund of an Umbrella Scheme.

**“Fund of Hedge Funds”:**

A Scheme which invests at least 50% of its assets in Hedge Funds.

**“Hedge Fund”:**

A Scheme that pools investors’ money and invest those funds in financial instruments in an effort to make a positive return in all kinds of markets by pursuing leveraging and other speculative investment practices that may increase the risk of investment loss.

**“Investment Advertisement”:**

Shall have the same meaning as that assigned to it by Article 2

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of the Act.

**“Investment Adviser”:**

A person appointed by the Scheme or its Manager responsible for amongst others advising the Scheme or the Manager regarding the investment and re-investment of the assets of the Scheme.

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**“Investment Committee”:**

An internal committee of a Self Managed Scheme appointed by the Board of Directors responsible for the functions outlined in para. 4.4 of Appendix I to Part B of these Rules.

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**“Investment Services Licence Holder”:**

A person who holds an Investment Services Licence.

**“Investment Services Licence”:**

Shall have the same meaning as that assigned to it by Article 2 of the Act.

**“Investment Services Rules for Investment Services Providers”:**

Investment Services Rules issued by the MFSA in terms of Article 6 of the Investment Services Act, 1994 applicable to Investment Services Licence Holders and equivalent authorised persons.

**“Investment Services Rules for Professional Investor Funds” or**

**“Rules”:**

Investment Services Rules issued by the MFSA in terms of Article 6 of the Investment Services Act applicable to Professional Investor Funds.

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**“Licence Holder”:**

Shall have the same meaning as that assigned to it by Article 2 of the Act.

**“Local Representative”:**

A person appointed by the Scheme responsible for the following functions:

1. act as point of liaison between the MFSA and the Scheme;
2. receive any instructions from the MFSA;
3. provide any information to the MFSA as may be requested by the MFSA from time to time; and
4. act as the Scheme’s Money Laundering Reporting Officer.

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- “Manager”:** A person appointed by the Scheme responsible for amongst others the management of the assets of the Scheme.
- “Member State”:** Shall have the same meaning as that assigned to it by Regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004 as amended.
- “MFSA”:** The Malta Financial Services Authority.
- “MIFID”:** Directive 2004/39/EC of the European Parliament and of the Council of the 21<sup>st</sup> April 2004 on markets in financial instruments amending Council Directives 85/611EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.
- “Money Laundering Reporting Officer” or “MLRO”:** The person appointed by the Scheme in terms of Regulation 10 of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2006.
- “Offering Document”:** A Prospectus or similar document giving details of the Licence Holder.
- “Personal Questionnaire” or “PQ”:** Schedule C to Part A of the [Investment Services Rules](#) for Professional Investor Funds.
- “Prime Broker”:** See “Custodian”.
- “Professional Investor Fund promoted to Experienced Investors”:** See “Experienced Investor Fund”.
- “Professional Investor Fund promoted to Extraordinary Investors”:** See “Extraordinary Investor Fund”.
- “Professional Investor Fund promoted to Qualifying Investors”:** See “Qualifying Investor Fund”.

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**“Professional Investor Fund” or “PIF”:**

A special class of collective investment schemes which fall within the provisions of the Act. Presently there are three classes of Professional Investor Funds as follows:

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1. PIFs promoted to Experienced Investors (or Experienced Investor Funds);
2. PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and
3. PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).

**“Qualifying Investor Declaration Form”:**

A standard form as per Annex II to Appendix III of Part B of these Rules to be completed by Qualifying Investors prior to investing in a Qualifying Investor Fund.

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**“Qualifying Investor Fund”:**

A special class of Professional Investor Funds which may only offer their units to Qualifying Investors.

**“Qualifying Investor”:**

A person who meets one or more of the following criteria:

1. a body corporate which has net assets in excess of EUR750,000 or which is part of a group which has net assets in excess of EUR750,000;
2. an unincorporated body of persons or association which has net assets in excess of EUR750,000;
3. a trust where the net value of the trust’s assets is in excess of EUR750,000;
4. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/or disposal of :-
  - 4.1 funds of a similar nature or risk profile;
  - 4.2 property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
5. an individual whose net worth or joint net worth with that person’s spouse, exceeds EUR750,000;
6. a senior employee or Director of service providers to the PIF;
7. a relation or close friend of the promoters limited to a total of 10 persons per PIF;

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8. an entity with (or which are part of a group with) EUR3.75 million or more under discretionary management, investing on its own account;
9. the investor qualifies as a PIF promoted to Qualifying or Extraordinary Investors;
10. an entity (body corporate or partnership) wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

**“Qualifying Shareholder”:**

A person who has a Qualifying Shareholding.

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**“Qualifying Shareholding”:**

Shall have the same meaning as that assigned to it by Article 2 of the Act.

**“Regulated Market”:**

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 which 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 in accordance with the provisions of Title III of the MIFID.

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**“Scheme”:**

See “Collective Investment Scheme”.

**“Self Managed Scheme”:**

A Scheme which has not appointed a Manager as its designated investment manager responsible for the management of its assets.

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**“Side Letter”:**

A letter or agreement entered into by the Scheme or its Manager on its behalf, with one or more investors, with the purpose of agreeing particular terms relating to redemption conditions, fees or other matters relevant to an investor’s investment in the Scheme.

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**“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

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voting shares either directly or indirectly by the Scheme.

**“Standard Licence Conditions” or “SLC”:**

means the standard conditions which apply to a Professional Investor Fund which holds a Collective Investment Scheme Licence and which are contained in Part B of these Rules.

The Standard Licence Conditions for Experienced Investor Funds are set out in Part B I of these Rules, in Part B II as regards Qualifying Investor Funds and in Part B III as regards Extraordinary Investor Funds.

**“Sub-Funds”:**

The distinct class or classes of Units constituting that Sub-Fund in an Umbrella Scheme to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other sub-funds in the same Umbrella Scheme.

**“Sub-Manager”:**

A person generally appointed by the Manager of the Scheme responsible for the day to day management of part or all of the portfolio of the Scheme.

**“Terms of Reference”:**

A document approved by the Board of Directors of a Self Managed Scheme which regulates the proceedings of the Investment Committee of the Scheme. The Terms of Reference ordinarily includes clauses which cover the following areas:

- Composition of the Investment Committee (including the minimum and maximum number of members)
- Appointment of the members of the investment committee (this section would appoint the members of the Investment Committee and list the names of the members)
- Frequency of meetings
- Quorum
- Role of the Investment Committee
- Record Keeping
- Minutes of the meetings of the committee
- Delegation of day to day management to one or more Portfolio Managers
- Appointment of Investment Committee members and Portfolio Managers subject to MFSA approval
- Responsibilities of Portfolio Managers
- Votes of members of the Investment Committee
- Management of conflicts of interests
- Resignation of members of the Investment Committee

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— Procedure for amendments to the Terms of Reference.

“Trading Company”: See “Special Purpose Vehicle”.

“Trustee”: See “Custodian”.

“Umbrella Scheme”: A Collective Investment Scheme which may in terms of its constitutional documents issue classes of shares or units which constitute Sub-Funds.

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