

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

3<sup>rd</sup> May, 2007

**Securities Unit**

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## **Re: Updated Property Funds Policy**

We refer to the Feedback Statement regarding MFSA's Property Funds Policy issued in January, 2006.

The said Feedback Statement provided a detailed explanation of the outcome of the consultation process relating to the revisions to MFSA's Property Funds Policy as well as MFSA's updated Property Funds Policy.

The Purpose of this letter is to bring to your attention a number of changes to the Property Funds Policy as summarised hereunder:

### *1. Professional Investor Funds targeting Extraordinary Investors*

The Property Funds Policy has been amended to clearly provide that Professional Investor Funds targeting Extraordinary Investors fall outside the scope of the Policy and are accordingly not subject to the restrictions – mainly relating to the use of leverage – included therein.

### *2. Closed ended Property Funds*

Funds whose main objective is investing in immovable property (irrespective of whether they are set up as open ended or closed ended) were subject to the following leverage restrictions:

- Professional Investor Funds targeting Experienced Investors – no leverage at the Fund level
- Professional Investor Funds targeting Qualifying Investors – maximum of 50% of NAV leverage at the Fund level

The revised Property Funds Policy provides that Property Funds set up as closed ended funds are subject to the following leverage restrictions:

- Professional Investor Funds targeting Experienced Investors – maximum of 100% of NAV leverage at the Fund level; and
- Professional Investor Funds targeting Qualifying or Extraordinary Investors – no leverage restrictions.

Closed Ended Property Funds whose main objective is investing in immovable property will thus benefit from more flexibility in terms of the extent of leverage that

## MFSA

MALTA FINANCIAL SERVICES AUTHORITY

they can employ. The previous leverage restrictions applicable to open ended Property Funds have been retained.

Finally, we enclose the updated Property Funds Policy for your records. This is also available on MFSA's web-site under: Securities>Collective Investment Schemes>Circulars/ Notices.

Please feel free to contact Mr. James Farrugia or the undersigned should you have any queries or require any clarification in respect of the above.

Yours sincerely,



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

*Encls.*

## **MFSA Property Funds Policy**

Note (1): Collective Investment Schemes authorised in terms of the EU UCITS Directive as well as Professional Investor Funds promoted to Extraordinary Investors fall outside the scope of this Policy and shall follow the specific rules applicable thereto.

Note (2): Promoters' attention is being drawn to the Immovable Property (Acquisition by Non-Residents) Act, Cap. 246, as amended, in order to ensure that the requirements of this legislation are not overlooked in the process of structuring and promoting property funds.

### **SECTION A**

*Funds whose main objective<sup>1</sup> is investing in immovable property and targeting investors who are Malta resident*

- i. These are only permitted as professional investor funds promoted to Qualifying or Experienced Investors as set out in the MFSA's PIF Guide. However, if they invest in immovable property in Malta, these funds are only permitted as professional investor funds promoted to Qualifying Investors as defined in the MFSA's PIF Guide.
- ii. Apart from the maintenance of liquid funds (including cash deposits, money market instruments and liquid non-Property Related Assets) as considered appropriate, and the possible investment of up to 25% of net asset value in securities (equities or bonds) issued by property management and/or property financing companies, such funds must invest solely in immovable property either directly or indirectly through other professional or retail collective investment schemes or companies not being funds, which in turn invest in immovable property, and no other mix of assets is permitted. In the case of investment in bonds issued by property management or financing companies, the fund manager is to take reasonable steps as it considers appropriate, to ensure to the extent possible, that the issuer has made sufficient provision for the repayment of the bond at maturity.
- iii. Borrowing for liquidity purposes is unrestricted for both PIFs promoted to Qualifying Investors and for PIFs promoted to Experienced Investors
- iv. For PIFs promoted to Qualifying Investors, leverage up to a maximum of **50%** of net asset value is permitted. The MFSA reserves the right to require advance

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<sup>1</sup> 'Main objective' is to be interpreted as an investment objective to invest in immovable property as the fund's main asset class or significant asset class (> 20% of NAV)

## MFSA

MALTA FINANCIAL SERVICES AUTHORITY

notification of any intended borrowing by such PIFs from local credit institutions for the purposes of leverage/ to acquire immovable property. For PIFs promoted to Experienced Investors, no leverage is permitted.

Provided that closed-ended PIFs promoted to Qualifying Investors shall not be subject to any leverage restrictions, whilst closed-ended PIFs promoted to Experienced Investors are permitted to leverage up to a maximum of 100% of NAV.

- v. The Offering Document should include a strong risk warning regarding the significant risks associated with investment in the fund, with no assurance that the fund's objective will be achieved.

### **SECTION B**

*Funds whose main objective is investing in immovable property and targeting investors who are not Malta resident*

- i. These are only permitted as professional investor funds promoted to Qualifying or Experienced Investors as set out in the MFSA's PIF Guide;
- ii. Borrowing for liquidity purposes is unrestricted for both PIFs promoted to Qualifying Investors and for PIFs promoted to Experienced Investors
- iii. These PIFs are subject to the standard PIF conditions, with no investment or borrowing restrictions other than a maximum of **50%** of net asset value leverage restriction for PIFs targeting Qualifying Investors. The MFSA reserves the right to require advance notification of any intended borrowing by such PIFs from local credit institutions for the purposes of leverage/ to acquire immovable property. As for PIFs targeting Experienced investors, no leverage is permitted for such funds.

Provided that closed-ended PIFs promoted to Qualifying Investors shall not be subject to any leverage restrictions, whilst closed-ended PIFs promoted to Experienced Investors are permitted to leverage up to a maximum of 100% of NAV.

### **SECTION C**

*Funds which have only a limited exposure of direct or indirect investment in immovable property and who target investors who are Malta resident and/or non-Malta residents*

- i. These are only permitted as professional investor funds promoted to Qualifying or Experienced Investors as set out in the MFSA's PIF Guide.

## MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- ii. Their exposure to immovable property (direct or indirect) should be limited to approximately 10%-20% of the fund's net asset value. This should be disclosed in the fund's Offering Memorandum.
- iii. The fund's percentage direct or indirect investment in immovable property, is subject to six monthly reporting to MFSA to ensure that the property exposure limit is satisfied on an on-going basis.
- iv. These PIFs are subject to the standard PIF conditions / requirements as set out in the PIF Guide. No investment restrictions other than those indicated above in this Section are applicable.

### **SECTION D**

#### ***Funds investing in property management and/ or property financing companies***

- i. Such funds may be promoted to retail investors, in which case the standard licence conditions set out in the Investment Services Guidelines will apply, together with the additional conditions set out below. It is to be noted that retail funds may not invest directly in immovable property or in any companies, including collective investment schemes, whose objective is to own or invest in immovable property except up to a maximum of 10% of net asset value.
- ii. Such funds may invest in any combination of shares or bonds issued by property management companies or property financing companies, which – subject to the possible maximum exposure of 10% of net asset value to unlisted securities as per the Standard Licence Conditions – must be listed on the primary market of a recognised investment exchange. In the case of investment in bonds issued by property management or financing companies, the fund manager is to take reasonable steps as it considers appropriate, to ensure to the extent possible, that the issuer has made sufficient provision for the repayment of the bond at maturity.

### **SECTION E**

#### ***Promotion to investors in Malta of***

- ***overseas-based property funds whose main objective is to invest in property or***
- ***overseas-based funds which only have a limited exposure to property***

Overseas-based funds which invest directly or indirectly in immovable property, may not be promoted to retail investors in Malta, but may only be promoted to experienced or qualifying investors according to the criteria laid out in the Authority's PIF Guide and must comply with the other conditions set out above for '*Funds whose main objective is investing in immovable property and targeting investors who are Malta resident*' or '*Funds which have only a limited exposure of direct or indirect*

# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

*investment in immovable property and who target investors who are Malta resident and/or non-Malta residents as applicable'.*

## **SECTION F**

### ***Licensing of Overseas-Based Funds***

Overseas-based funds having an exposure to property, and seeking a licence as a pre-requisite for listing on the Malta Stock Exchange, cannot be licensed as PIFs if they are authorised as retail funds by their Primary Regulator.

#### **Interpretation of Terms:**

*Property management company:* companies whose business involves providing a range of services primarily for property owners, including: advertising property, checking references of prospective buyers and tenants, arranging for the sale or lease of property, collecting rent etc.

*Property financing companies:* companies involved in providing bridging or other finance arrangements to borrowers engaged in property development and investment.

*Property-Related Assets:* securities issued by property management companies and/or property financing companies and/or property development companies and/or companies, including collective investment schemes, whose main objective is to own or to invest in immovable property.

*Malta Resident Investors:* For the purposes of the policy, 'residence' in the context of investments in collective investment schemes made by a Trustee on behalf of a Trust, is to be determined by reference to the residence of the ultimate beneficiaries of the Trust, and not the residence of the Trustee.