



## MALTA FINANCIAL SERVICES AUTHORITY

### Proposed revised Investment Services Rules for Recognised Persons

4<sup>th</sup> June, 2008

*The MFSA invites comments by not later than Wednesday 25<sup>th</sup> June, 2008, on the proposed revised Investment Services Rules for Recognised Persons which will come into effect on the 23<sup>rd</sup> July 2008. Interested parties are to send their comments in writing addressed to the Director – Securities Unit, MFSA*

#### 1.0 Background

The current Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes issued on the 1<sup>st</sup> November, 2007 contain:

- a) the Standard Licence Conditions applicable to Maltese Non UCITS and Maltese UCITS Collective Investment Schemes established before 1<sup>st</sup> November, 2007 and to any sub-funds of such schemes established after this date;
- b) the Rules applicable to Recognised Fund Administrators; and
- c) the Rules applicable to Recognised Private Collective Investment Schemes.

By the 23<sup>rd</sup> July, 2008, all collective investment Schemes established in Malta (whether UCITS or Non UCITS) established before 1<sup>st</sup> November, 2007 together with their respective sub-funds, are required to comply with the Rules contained in the Investment Services Rules for Retail Collective Investment Schemes published on 1<sup>st</sup> November, 2007 (last up-dated on 15<sup>th</sup> May, 2008). As at this date, the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes is to be replaced by Investment Services Rules applicable solely to Recognised Persons which will include further detail and additional requirements applicable to Recognised Persons, namely Recognised Fund Administrators and Recognised Private Schemes, as further detailed below.

#### 2.0 Main Changes to the Rules Applicable to Recognised Fund Administrators

**Part AI** to the Investment Services Rules for Recognised Persons relates to the application process leading to the issue of a Recognition Certificate to a Fund Administrator in terms of Section 9A of the Investment Services Act, 1994. Additional detail has been included in this Part, including certain clarification with a view to distinguishing those services which would be subject to a Recognition Certificate from those which would require an Investment Services Licence issued in terms of article 3 of the Investment Services Act, 1994.

The ongoing requirements applicable to Recognised Fund Administrators are contained in **Part B I** of the proposed Investment Services Rules for Recognised Fund Administrators. These have been enhanced with a view to provide more clarity and detail as to the continuing

obligations of Recognised Fund Administrators. Accordingly, **Part B I** is divided in to 5 sections as follows:

### **Section 1 – General Requirements**

This section deals, inter alia, with certain notifications which the Recognised Fund Administrator must make to MFSA, such as the obligation to notify MFSA if it is unable to commence business within 12 months of the date of issue of the Recognition certificate and to notify the MFSA of any changes to its operational or management structure. This section also indicates the circumstances when a Recognised Fund Administrator must obtain MFSA's consent prior to effecting any changes (such as taking steps to cease its Fund Administration business or the appointment of new Directors or Senior Managers).

### **Section 2 – General Organisational Requirements**

This section deals with the requirements relating to the organisation of the Recognised Fund Administrator's business. It covers issues relating to the implementation and maintenance of certain systems and procedures (such as those relating to the internal decision making procedures and control mechanisms and those relating to business continuity and the protection of client confidentiality). This section also contains details with respect to the responsibility for compliance with the applicable requirements (including prevention of money laundering obligations) pertaining to Recognised Fund Administrators. The requirement for the formal appointment by a Recognised Fund Administrator of a Compliance Officer and Prevention of Money Laundering Reporting Officer, and for MFSA's approval of such persons, has also been introduced into the Rules.

### **Section 3 – Conduct of Business**

This section lays down the requirements relating to the manner in which a Recognised Fund Administrator is expected to conduct its business. It contains, inter alia, requirements relating to the content of an agreement between a Recognised Fund Administrator and the Collective Investment Scheme or Fund Manager to which it provides its services.

### **Section 4 – Financial Reporting and Audit Requirement**

In addition to the current requirement to submit annual audited financial statements, in terms of the proposed new Rules, Recognised Fund Administrators are also required to request their auditor to prepare a management letter in accordance with International Standards on Auditing. Moreover, together with submission of their Annual Report, Recognised Fund Administrators are to be required to submit to the MFSA, details of the names and domiciles of schemes serviced by them during the relevant financial period.

This section also contains details of the contents of the Annual Report which Fund Administrators are requested to prepare. The annual Audited Financial Statements of Fund Administrators shall be published and submitted to the MFSA within six months from the end of the period concerned.

### **Section 5 - Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA**

Whilst referring to the MFSA's right, following advance notification to the Fund Administrator, to vary or revoke any condition of its Recognition or to impose any new conditions, this section also refers to the grounds on which the MFSA has the right to cancel or suspend a Recognition Certificate issued to a Fund Administrator.

### **3.0 Main Changes to the Rules Applicable to Recognised Private Collective Investment Schemes**

**Part A II** deals with the application process leading to the issue of a Recognition Certificate to a Private Collective Investment Scheme in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, 2002. It lists the documents to be submitted to MFSA in application for such a Recognition Certificate and indicates the checks which MFSA carries out in this regard.

**Part B II** relates to the ongoing requirements for Recognised Private Collective Investment Schemes. This Part is divided into 4 sections as follows:

#### **Section 1 – Introduction**

##### **Section 2 – General Requirements**

This section, *inter alia*, further clarifies the circumstances when MFSA's approval is required. These include the amendment of the constitutional documents of the private scheme and the transfer of units in the scheme by one unit holder to another party which is not an existing unit holder in the scheme.

##### **Section 3 – Financial Reporting and Auditing Requirement**

This section refers to the current requirement for the scheme to submit annual audited financial statements and no new requirements are to be introduced in this regard.

##### **Section 4 – Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA**

Whilst referring to the MFSA's right, following advance notification to the Scheme, to vary or revoke any condition of its Recognition or to impose any new conditions, this section also refers to the grounds on which the MFSA has the right to cancel or suspend a Recognition Certificate issued to a Private Collective Investment Scheme.

### **4.0 Contacts**

A copy of the proposed Part AI, AII, BI and BII of the new Investment Services Rules for Recognised Persons is herewith attached. Any queries regarding the above may be addressed to:

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**MFSA**

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**MALTA FINANCIAL SERVICES AUTHORITY**

**INVESTMENT SERVICES  
RULES**

**FOR**

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**RECOGNISED PERSONS**

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**Issued: 1<sup>st</sup> November, 2007**  
**Last Updated: 23<sup>rd</sup> July, 2008**

## **INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS AND RETAIL COLLECTIVE INVESTMENT SCHEMES**

### **INTRODUCTION**

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These Investment Services Rules have been issued in terms of the Investment Services Act, 1994 and set out MFSA's regulatory regime applicable to Recognised Persons (namely Recognised Collective Investment Schemes and Recognised Fund Administrators).

These Rules are divided into two Parts and include a number of Appendices and Schedules as follows:

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

This Part is sub-divided into two main sections:

- Part A.I provides a description of the process for applying for Recognition as a Fund Administrator
- Part A.II provides a description of the process for applying for recognition as a Private Investment Scheme

#### *Part B: Ongoing Requirements*

This Part is also sub-divided into two main sections. The ongoing recognition requirements applicable to Fund Administrators are set out in Part B I. whilst Part B II includes the ongoing requirements applicable to Private Collective Investment Schemes.

#### ***Other Investment Services Rules issued by the MFSA in terms of the Investment Services Act, 1994***

The MFSA has also issued:

*i. Investment Services Rules for Retail Collective Investment Schemes.*

These Investment Services Rules set out MFSA's regulatory regime applicable to Retail Collective Investment Schemes. These Rules include the Standard Licence Conditions applicable to Maltese Non-UCITS and Maltese UCITS Collective Investment Schemes respectively.

*ii. Investment Services Rules for Investment Services Providers.*

The Investment Services Rules for Investment Services Providers set out MFSA's regulatory regime applicable to Investment Services Licence Holders, including Custodians

and Managers of Collective Investment Schemes. They also include the Rules which are applicable to European Investment Firms establishing a Branch in Malta and to European Management Companies which provide services in Malta, on a cross border basis in terms of the passporting provisions set out in the MiFiD and UCITS Directives.

*iii. Investment Services Rules for Professional Investor Funds.*

These Investment Services Rules set out MFSA's regulatory regime applicable to Collective Investment Schemes set up as Professional Investor Funds and provide for three principal classes of Professional Investor Funds:

- PIFs promoted to Experienced Investors (or Experienced Investor Funds);
- PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and
- PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).

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## **INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS**

### **Part A I: RECOGNISED FUND ADMINISTRATORS**

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#### **1. Regulation of Fund Administrators**

The Investment Services Act, 1994 (“the Act”) provides a statutory basis for regulating the provision of Fund Administration Services. 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.

Article 9A(1) of the Act provides that any person who in Malta or from Malta provides to Licence Holders in Malta or to equivalent authorised persons and schemes overseas, administrative services which do not themselves constitute licensable activity under the Act, shall require MFSA’s recognition in terms of article 9A of the Act.

#### **2. Fund Administration Services**

In terms of article 9A(2)(i) of the Act, the MFSA may from time to time, issue Investment Services Rules laying down the requirements for recognition, including establishing which activities constitute administrative services for the purposes of this article. In this regard, such administrative services shall be limited to Fund Administration Services, which shall include the following services:

- i. Preparation of Net Asset Value
- ii. Reconciliations
- iii. Pricing the Investment Portfolio
- iv. Fund Accounting
- v. Preparation of Contract Notes
- vi. Payment of Bills
- vii. Preparation of Financial Statements
- viii. Performance Reporting
- ix. Compliance Reporting
- x. Transfer Agency
- xi. Registrar

The above is not to be interpreted as an exhaustive list of services which may be provided by a Fund Administrator. Services (i) to (v) are generally regarded as the ‘core’ services ordinarily performed by Fund Administrators for which recognition in terms of Article 9A of the Act would be required, whilst services (vi) to (xi) are ancillary services which may also be provided by such persons. The sale provision of one or a limited number of ancillary services may not necessarily trigger the recognition requirement and potential applicants for recognition are advised to consult the MFSA in advance particularly if they do not intend providing any of the ‘core’ services in order that it may be determined whether the recognition requirement applies.

### **3. Distinction from Licensable Services**

A Fund Administrator should examine its operations in order to determine whether it will be providing investment services in terms of article 3 of the Act. If the Fund Administrator intends providing an investment service in terms of article 3 of the Act, in addition to the fund administration services listed in Section 2, it will require an Investment Services Licence in terms of the said Act.

#### ***Execution of orders on behalf of other persons versus processing of orders***

Subscription applications for or requests to purchase units and redemption applications or requests to sell units together with requests to switch or transfer ownership of units are regarded as constituting orders in relation to units in collective investment schemes.

A Recognised Fund Administrator which processes purchase or redemption orders received directly from a prospective or existing investor in a Fund is deemed to be executing those orders in units on behalf of such investors. Such Recognised Fund Administrator would require an Investment Services Licence in terms of article 3 of the Investment Services Act, 1994.

On the other hand, when investors or potential investors in a Fund are required to communicate their orders directly to the Fund or its Manager (with the latter passing on these orders to a Recognised Fund Administrator for processing), the MFSA would take the view that the Recognised Fund Administrator's role is solely involved in the processing of documentation passed to it by the Fund or its Manager.

In the latter scenario, a Recognised Fund Administrator will not be deemed to be involved in the "*execution of orders on behalf of other persons*" in relation to units in collective investment schemes provided the following minimum conditions are clearly met:

- all unit-holder orders must be clearly addressed to the Scheme or its Manager;
- payments in respect of a subscription for units must be made by non-negotiable cheques to the order of the Scheme or its Manager;
- at no point must the Recognised Fund Administrator hold unit-holders' funds or securities;
- application forms, redemption requests, contract notes, and other trade documentation must make it clear that the contract for the purchase and redemption of units is one between the Scheme or its Manager and the unit-holder;
- the Scheme or its Manager must set down clear parameters governing the role of the Recognised Fund Administrator in relation to the acceptance and refusal of orders;

A Recognised Fund Administrator which follows the procedures outlined above will accordingly not be deemed to be providing the investment service of 'execution of orders' in terms of article 3 of the Investment Services Act, 1994 and will not require an investment

service licence in terms of the said Act, unless it provides any other Investment Service set out in the First Schedule of the said Act.

**4. Criteria which MFSA will apply in considering an application for Recognition for the provision of Fund Administration Services**

The MFSA shall not recognise an Applicant unless it is satisfied that the Applicant is a fit and proper person to provide these services and that the Applicant will comply in all respects with the provisions of the Act, any relevant Regulations and these Rules and that its Directors and officers are fit and proper persons to carry out the functions required of them.

When considering whether to recognise or otherwise an Applicant, the MFSA must take account of:

- a. the degree of protection to the investors in the Fund(s) to be serviced;
- b. the degree of protection to the reputation of Malta taking into account Malta's international commitments; and
- c. the promotion of competition and choice.

The scope of the Act is wide and it covers many different kinds of business. However, in all cases, the MFSA applies the same standards relating to the “fit and proper” status of the Applicant, the track record of the Applicant (and those associated with it), and the nature of the business.

The “fit and proper” test is one which an Applicant and a Recognised Fund Administrator must satisfy on a continuing basis. Each case is assessed on the basis of the relevant circumstances. The onus of proving that it meets the required standards is on the Applicant and Recognised Fund Administrator. It is not the task of the MFSA to prove that an Applicant is not fit and proper either during the application process or thereafter. The MFSA's approach is cumulative that is to say the Authority may conclude that an Applicant or a Recognised Fund Administrator has failed the test on the basis of considering several situations, each of which on its own 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 or a Recognised Fund Administrator is fit and proper the MFSA will take account both of what is said and of what is not said (for example in respect of a director's criminal record). It should be noted that it is an offence to provide inaccurate, false or misleading information.

The MFSA will only grant the Applicant recognition in terms of article 9A of the Act, if it is satisfied of its fit and proper status, including that of all persons connected thereto, in particular its Directors and Qualifying Shareholders. It is to be noted that the “fit and proper” test in respect of application for recognition focuses primarily on the integrity of

the parties involved and the MFSA does not undertake any thorough evaluation of the competence and solvency of the Applicant as in the case of applications for licences issued in terms of the Act. Integrity involves the Recognised Fund Administrator and its employees acting honestly and in a trustworthy fashion in relation to its clients and other parties. Moreover, the Recognised Administrator will not be subject to any on-going requirements or conditions, other than those specified in Part B.I as may be amended or supplemented in the Recognition Certificate issued by the MFSA.

## **5. The Application Process**

When submitting an application for Recognition as an Administrator of a Collective Investment Scheme, the promoter should ensure that the appropriate Application Form (Schedule I to this Part refers) is completed.

The application process to be followed by an Applicant for Recognition, is summarised below.

There are three phases as follows:-

### *Phase One – Preparatory*

- i. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place well in advance of submitting an Application for Recognition. Although guidance will be given on the applicable 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 submits a comprehensive (written) description of the proposed activity before the meeting.
- ii. The next stage is that the promoters submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
- iii. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant. 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.

### *Phase Two – Pre-Recognition*

- iv. Once the review of the draft Application and supporting documents has been completed and sufficient replies to the Authority’s due diligence enquiries have been received, the Authority will issue (provided it is satisfied that the Applicant meets the

eligibility criteria for Recognition) its 'in principle' approval for the Recognition of the Applicant.

- v. At this stage, the Applicant will be required to finalise any outstanding matters, such as incorporation of Company (or registration of partnership), 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.
- vi. The Applicant will be Recognised as soon as all pre-Recognition issues are resolved.

*Phase Three – Post-Recognition /Pre-Commencement of Business*

- vii. The Applicant may also be required to satisfy a number of post-Recognition matters prior to formal commencement of business.

The Recognised Fund Administrator acknowledges that the MFSA will 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.

The Recognised Fund Administrator acknowledges that the MFSA has the right, from time to time, to vary or revoke any condition or to impose new conditions.

## **6. Application Documents**

A request for Recognition as an Administrator of a Collective Investment Scheme should be supported by the following documentation:

- i. a duly completed Application for recognition as an Administrator of a Collective Investment Scheme;
- ii. a business plan, including a description of the administrative services to be provided and details as to whom such administrative services will be provided;
- iii. Memorandum & Articles of Association, deed of partnership or equivalent constitutive document depending on the legal structure of the Applicant;
- iv. a copy of the most recent audited accounts of the Applicant or in the case of a new entity, three year financial projections;
- v. a duly completed Personal Questionnaire in the form set out in Schedule II to Part A.I of these Rules by each Director and Qualifying Shareholder(s) of the Applicant as well as by the Applicant's proposed Compliance Officer and Money Laundering Reporting Officer.

- vi. resolution of the Directors/ General Partners of the Applicant confirming their intention to apply for a Recognition as an Administrator of a Collective Investment Scheme in terms of article 9A of the Act in favour of the Applicant;
- vii. address of the premises in Malta from where the services will be rendered including the relevant contact details;
- viii. Memorandum and Articles of Association and most recent audited accounts of any Qualifying corporate shareholders of the Applicant;
- ix. a chart which illustrates the internal operational structure of the Applicant's proposed fund administration business (this should show names, reporting lines and roles);
- x. [where the Applicant forms part of a Group] a diagram showing the relationships between the Applicant and other members of the Group. The "family tree" submitted should give details up to the ultimate beneficial owner(s), showing percentage sizes of holdings in each entity; unless (a) the entity has one ultimate beneficial owner with a holding of over 50% of the voting rights or (b) no less than fifty ultimate beneficial owners who between them account for over 50% of the voting rights. If (a) or (b) apply, it will only be necessary to give details of the ultimate beneficial owners with holdings of 10% or more;
- xi. an application fee of EUR2,329.37

The MFSA may require Applicants requesting recognition to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should grant Recognition to the Applicant as Administrator of a Collective Investment Scheme.

Persons in possession of a licence under the Financial Institutions Act, 1994 or the Banking Act, 1994 or persons in possession of a licence under the Investment Services Act 1994, shall, in applying for recognition in terms of article 9A of the Act, be exempt from the requirement to submit application documents listed in paras. (i), (iii), (iv), (v), (vii), (viii) and (x).

## **7. Fees**

The Application Fee is payable on submission of the Application Form (or the draft Application Form if this is submitted initially) and is not refundable. The Supervisory Fee is payable on the day the Applicant is Recognised as an Administrator of a Collective Investment Scheme and thereafter annually, upon the anniversary of that date.

The applicable fees are currently as follows:

*Application for Recognition to provide Fund Administration*  
EUR2,329.37

*Annual Supervisory Fee*  
EUR465.87

The Fees are subject to alteration by Regulations.

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## **INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS**

### **Part A II: RECOGNISED PRIVATE COLLECTIVE INVESTMENT SCHEMES**

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#### **1. Regulation of Private Collective Investment Schemes**

The Investment Services Act, 1994 “the Act” provides the statutory basis for regulating collective investment schemes. 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.

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:

- i. Licence Holders; or
- ii. 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
- iii. 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
- iv. 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.



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

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 collective investment scheme to operate in or from Malta without having a licence.

Subarticle 4(2) makes it illegal for a collective investment scheme to use Malta as a base without having a licence.

Subarticle 4(3) permits the initial steps in establishing a collective investment scheme to be taken before a Licence has been obtained but the collective investment 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.

A Collective Investment Scheme operating in or from Malta, or constituted under Maltese law, may, subject to satisfying certain specific criteria, apply for recognition by MFSA as a Private Scheme in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, 2002. A Collective Investment Scheme so recognised is exempt from the requirement of a Collective Investment Scheme Licence.

A Scheme is deemed to be a Private Collective Investment Scheme if it satisfies the following requirements:

- i. the number of participants in the Scheme is limited to 15 individuals;
- ii. the participants are close friends or relatives of the promoters;
- iii. the Scheme is essentially private in nature and purpose;
- iv. the Scheme does not qualify as a Professional Investor Fund.

Provided that one of the participants may be a company if the following requirements are satisfied:

- a. taking into account the ultimate individual beneficial owners of such company, the maximum number of fifteen participants is still satisfied;
- b. the company's ultimate individual beneficial owners are close friends or relatives of the promoters;
- c. the company is in no manner involved in the management or administration of the Scheme and its connection with the Scheme is merely that of investor.

**2. Criteria which MFSA will apply in considering an application for Recognition as a Private Collective Investment Scheme**

The MFSA may only recognise a Private Collective Investment Scheme if it is satisfied to the extent that the Scheme 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 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 Scheme.

When considering whether to recognise or otherwise a Private Collective Investment Scheme, the MFSA will, in particular, have regard to:

- a. the protection to the reputation of Malta taking into account Malta's international commitments;
- b. the reputation and suitability of the Applicant and all other parties connected with the Scheme.

The MFSA will need to be satisfied with the "fit and proper" status of the Applicant and the Recognised Private Scheme. The "fit and proper" test is one which an Applicant and a Recognised Private Collective Investment Scheme 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 Recognised Private Collective Investment Scheme as the case may be. It is not the task of the MFSA to prove that an Applicant is fit and proper either on Recognition or thereafter. The MFSA's approach is cumulative. It may decide that an Applicant 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.

The MFSA will only grant the Scheme recognition as a Private Collective Investment Scheme if it is satisfied that the Scheme complies with all the criteria and requirements for it to be considered private in nature and purpose and is satisfied of the "fit and proper" status of the Directors/ Officers of the Scheme as well as that of its participants. It is to be noted that the MFSA will limit its due diligence procedures to determining the integrity of the persons concerned and unlike in the case of licensed schemes, the MFSA will not assess the competence of the persons responsible for managing the Scheme, and will not subject the Scheme to any investment or borrowing restrictions or other conditions other than those specified in this Part, or which may be specified in the recognition certificate.

### **3. The Application Process**

The application process to be followed by an Applicant for Recognition as a Private Collective Investment Scheme, is summarised below.

There are two phases as follows:-

#### **Phase One – Preparatory**

- a. After any required preliminary discussions with the MFSA, the promoters should submit an application together with supporting documents (in draft form) as specified hereunder.
- b. The application and the supporting documentation will be reviewed and comments provided to the Applicant generally within three weeks from submission of the application documents.
- c. 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.

*Phase Two – Pre-Recognition*

- d. Once the review of the application and supporting documents has been completed and sufficient replies to the Authority's due diligence enquires have been received, the Authority will issue (provided it is satisfied that the Applicant meets the eligibility criteria for Recognition), its 'in principle' approval for the Recognition of the Applicant.
- e. At this stage, the Applicant will be required to finalise any outstanding matters. Submission of signed copies of the revised supporting documents in their final format, and any other issues raised during the application process, should be resolved as part of Phase Two.
- f. The Applicant will be Recognised as soon as all pre-Recognition issues are resolved.

The Recognised Private Scheme acknowledges that the MFSA will 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.

The Recognised Private Scheme acknowledges that the MFSA has the right, from time to time, to vary or revoke any condition or to impose new conditions.

**4. Application Documents**

A request for Recognition as a Private Collective Investment Scheme should be supported by the following documentation/ information:

- i. a letter formally applying for recognition;
- ii. a copy of the Scheme's Memorandum and Articles of Association, or equivalent constitutional document depending on the legal form of the Scheme;
- iii. details of the investment objectives and policies of the Scheme;
- iv. a Personal Questionnaire, in the form set out in Schedule II to Part A.I of these Rules, duly completed by each Director and participant in the Scheme;
- v. registered address in Malta and contact details;
- vi. the names of the participants in the Scheme, together with a confirmation signed by all participants and endorsed by the Directors (as applicable) that they are close friends or relatives of the promoters;

- vii. an undertaking from the Participants/ Directors (as applicable) that the Scheme satisfies the criteria for Private Schemes and will continue to do so on an on-going basis unless advance notice is given to the MFSA;
- viii. an application fee of EUR1,164.69

The MFSA may require Applicants requesting Recognition as a Private Collective Investment Scheme to submit to the MFSA whatever additional information it deems appropriate for the purposes of determining whether it should recognise the Applicant as a Private Collective Investment Scheme.

## **5. Fees**

The Application Fee is payable on submission of the Application Form (or the draft Application Form if this is submitted initially) and is not refundable. The Supervisory Fee is payable on the day the Applicant is Recognised as a Private Collective Investment Scheme and thereafter annually, upon the anniversary of that date.

The applicable fees are currently as follows:

*Application for Recognition as a Private Collective Investment Scheme*  
EUR1,164.69

*Annual Supervisory Fee*  
EUR349.41

The Fees are subject to alteration by Regulations.

## **INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS**

### **Part B II: ONGOING REQUIREMENTS FOR RECOGNISED PRIVATE COLLECTIVE INVESTMENT SCHEMES**

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#### **1. Introduction**

In addition to the requirements included in this Part, the Scheme shall comply with the provisions of the relevant Regulations issued under the Investment Services Act, 1994, as may be amended or supplemented at any time, including the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, 2002.

#### **2. General Requirements**

- 2.1 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.
- 2.2 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.
- 2.3 Where a requirement demands that the Scheme notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.
- 2.4 The Scheme shall obtain the approval of the MFSA before any of the following documents are amended:
  - i. Constitutional Documents;
  - ii. Scheme rules (if not contained in (i));
  - iii. any other document affecting the rights of participants in the Scheme;
- 2.5 The Scheme shall promptly notify the MFSA in writing of any change in the details of the premises from where it is managed.
- 2.6 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to these premises from where the Recognised Private Scheme is managed/operates. For this purpose, the Recognised Private Scheme shall ensure

that proper accounting and other records are at all times retained at its premises to show and explain the transactions it carries out and the nature of its activity and to make such records available to the MFSA, upon request.

- 2.7 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;
  - ii. any actual or intended legal proceedings of a material nature by or against the Scheme; and
  - iii. any other material information concerning the Scheme, its business or its officials in Malta or abroad;
- immediately upon becoming aware of the matter.
- 2.8 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 Recognition Certificate is first issued, and thereafter annually within one week from the anniversary of that date.
- 2.9 The MFSA shall be notified of any breach of these Conditions or of any of the provisions of the Constitutional Documents as soon as the Scheme becomes aware of the breach.
- 2.10 No Units in the Scheme may be transferred from a Unit holder to any other party, which is not an existing Unit – Holder without the advance permission of the MFSA.
- 2.11 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors and Shareholders of the Scheme.
- 2.12 The Scheme shall obtain the written consent of the MFSA before the appointment of a Director or before issuing shares to any prospective new shareholder. The request for consent shall reach the MFSA at least twenty one business days prior to the proposed date of appointment or replacement or prior to the proposed issue of shares.
- 2.13 The request for consent of the appointment or replacement of an individual as Director or for the consent in respect of the proposed issue of shares to a new shareholder shall be accompanied by a Personal Questionnaire in the form set out in Schedule II to Part AI of these Rules duly completed by the person proposed. In the case of a Corporate Director or Corporate Shareholders, the request for consent shall include details of the proposed Directors or Shareholder. The MFSA reserves the right to object to the proposed appointment or replacement or to the proposed issue



of shares and to require such additional information it considers appropriate.

- 2.14 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.
- 2.15 Minutes of the meetings of the Board of Directors shall be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

### **3. Financial Reporting and Auditing Requirement**

- 3.1 The Scheme shall submit its annual Audited Financial Statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The accounting information provided in the Annual Financial Statements shall be audited by a qualified auditor. The auditor's report, including any qualifications thereto shall be produced in full in the annual report. The annual audited financial statements shall be published and submitted to the MFSA within six months of the end of the period concerned.

The Annual Audited Financial Statements shall be accompanied by a report from the auditor of the Scheme to the MFSA, confirming whether in its opinion and further to the information available during the course of its audit, the Scheme has satisfied the criteria for Private Schemes during the relevant accounting period.

### **4. Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA**

- 4.1 The MFSA has the right, from time to time, and following advance notification to the Scheme, to vary or revoke any Condition or impose any new conditions.
- 4.2 The MFSA may by notice in writing, cancel or suspend the recognition certificate issued in favour of the Scheme:
- i. if it considers that the Scheme does not fulfil the requirements of any of the provisions of the Act, relevant Regulations and these Rules; or
  - ii. if it considers that the Scheme has failed to comply with any of these Rules;  
or
  - iii. if it considers that the Scheme has given information which is false, misleading or inaccurate; or



- iv. if it considers that the Scheme or any persons connected thereto, in particular its Directors and Qualifying Shareholders, are not fit and proper persons; or
- v. if it considers it desirable to cancel or suspend recognition for the protection of investors and the general public and the reputation of Malta, taking into account Malta's International commitments; or
- vi. at the request of the Scheme, subject to appropriate notification to all participants of the Scheme.

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## **INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS**

### **Part B I: ON-GOING REQUIREMENTS FOR RECOGNISED FUND ADMINISTRATORS**

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

- 1.1 The Fund Administrator shall commence its Fund Administration business within twelve months of the date of issue of the Recognition Certificate.

If, for any reason the Fund Administrator is not in a position to comply with this requirement, it shall notify the MFSA in writing setting out the reason/s for such a delay together with an updated business plan indicating the proposed date of commencement of business. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Recognition Certificate.

- 1.2 The Fund Administrator shall co-operate in an open and honest manner with the MFSA and inform it promptly of any relevant information. The Fund Administrator shall supply the MFSA with such information as the MFSA requires.

- 1.3 Where a requirement demands that the Fund Administrator notifies the MFSA of an event, such notification shall be made to the MFSA formally, in a durable medium. The request to notify the MFSA of an event shall not be satisfied merely by the fact that the information which ought to be notified to the MFSA is included in a standard regulatory return.

- 1.4 The Fund Administrator's Investment Services Business shall be effectively directed or managed by at least two individuals in satisfaction of the "dual control" principle. Such persons shall be of sufficiently good repute and sufficiently experienced so as to ensure the sound and prudent management of the Licence Holder.

Moreover, the Fund Administrator shall take reasonable steps to ensure continuity and regularity in the performance of its Fund Administration Services. To this end, the Fund Administrator shall employ appropriate and proportionate systems, resources and procedures.

- 1.5 The Fund Administrator shall notify the MFSA in writing of:
- i. a change in the Fund Administrator's name or business name (if different) at least one month in advance of the change being made;
  - ii. a change of address, at least one month in advance;

- iii. the departure of a Director or Senior Manager: within 14 days of the departure. The Fund Administrator shall also request the Director or Senior Manager to confirm to MFSA that their 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 Fund Administrator's notification of departure;
  - iv. any proposal change to the ultimate beneficial ownership of any party directly or indirectly controlling 10 per cent or more of the Fund Administrator's share capital on becoming aware of the situation. Any new Qualifying Shareholder in the Fund Administrator shall require MFSA's approval;
  - v. any proposed material change to its business (whether that business constitutes licensable activity under the Act or not), at least one month before the change is to take effect;
  - vi. any evidence of fraud or dishonesty by a member of the Fund Administrator's staff immediately upon becoming aware of the matter;
  - vii. any actual or intended legal proceedings of a material nature by or against the Fund Administrator immediately the decision has been taken or on becoming aware of the matter;
  - viii. any other material information concerning the Fund Administrator, its business or its staff in Malta or abroad immediately upon becoming aware of the matter.
- 1.6 The Fund Administrator shall obtain the written consent of the MFSA before:
- i. making any change to its authorized or issued share capital or the rights of its shareholders;
  - ii. establishing a branch in Malta or abroad;
  - iii. taking any steps to cease its Fund Administration business;
  - iv. agreeing to sell or merge the whole or any part of its undertaking;
  - v. the appointment of a Director or a Senior Manager responsible for the business of the Fund Administrator (including the Compliance Officer and Money Laundering Reporting Officer), at least twenty one business days in advance. The request for consent of the appointment of any of the above, shall be accompanied by a Personal Questionnaire ("PQ"), in the form set out in Schedule II of Part A.I of these Rules – duly completed by the person proposed.

- 1.7 The Fund Administrator shall maintain sufficient records to be able to demonstrate compliance with these requirements.
- 1.8 The Fund Administrator shall co-operate fully with any inspection or other enquiry, or compliance testing carried out by the MFSA, or an inspector acting on its behalf.
- 1.9 The Fund Administrator shall pay promptly all amounts due to the MFSA. In particular, the Supervisory Fee shall be payable by the Fund Administrator on the day the Recognition Certificate is first issued, and thereafter annually within one week from the anniversary of that date.
- 1.10 The Fund Administrator shall notify the MFSA of any breach of these requirements as soon as the Fund Administrator becomes aware of the breach.
- 1.11 If so required by the MFSA, the Fund Administrator shall do all in its power to delay the cessation of its Fund Administration business, or the winding-up of such business so as to comply with conditions imposed by the MFSA.
- 1.12 The Fund Administrator shall notify the MFSA of any material valuation errors (>0.5% of Net Asset Value) relating to a Scheme in respect of which it acts as Fund Administrator on becoming aware of such error.
- 1.13 The MFSA may, whenever it deems it necessary or expedient, undertake compliance visits to the premises from which the administrative services are rendered. For this purpose, the Fund Administrator shall ensure that proper accounting and other records are at all times retained at its premises to show and explain the transactions it carries out and the nature of its services and to make such records available to the MFSA.

## **2. General Organisational Requirements**

### **2.1 The Fund Administrator shall:**

- a. establish, implement and maintain decision-making procedures and organizational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- b. ensure that its relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c. establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the Fund Administrator;
- d. employ personnel with the skills, knowledge and expertise necessary for the discharge of responsibilities allocated to them;
- e. establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the Fund Administrator;
- f. maintain adequate and orderly records of its business and internal organization;
- g. ensure that the performance of multiple functions by its relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly and professionally.

For these purposes, the Fund Administrator shall take into account the nature, scale and complexity of its business, and the nature and range of Fund Administration Services undertaken in the course of that business.

### **2.2 The Fund Administrator shall establish, implement and maintain:**

- a. systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question; and
- b. an adequate business continuity policy aimed at ensuring, in the case of an interruption to its systems and procedures, the preservation of essential data and functions and the maintenance of its Fund Administration Services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of its Fund Administration Services and related activities;

### **2.3 The Fund Administrator shall monitor and, on a regular basis evaluate, the adequacy and effectiveness of its systems, internal control mechanisms and arrangements**

established in accordance with SLCs 2.1 and 2.2 above and take appropriate measures to address any deficiencies.

### 2.4 *Compliance*

- 2.4.1 Responsibility for the compliance obligations of the Fund Administrator rests with the Board of Directors of the Fund Administrator.
- 2.4.2 The Fund Administrator shall at all times have a Compliance Officer with responsibility for all aspects of compliance and for acting as the Fund Administrator's main point of contact with the MFSA.
- 2.4.3 The Fund Administrator 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 II to Part A.I 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.
- 2.4.4 The Fund Administrator 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 Fund Administrator's notification of departure.

### 2.5 *Prevention of Money Laundering*

- 2.5.1 Responsibility for the Fund Administrator's compliance with its prevention of Money Laundering obligations rests with the Board of Directors of the Fund Administrator.
- 2.5.2 The Fund Administrator shall at all times have a Money Laundering Reporting Officer ('MLRO').
- 2.5.3 The Fund Administrator shall obtain the written consent of the MFSA before the appointment or replacement of a MLRO 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 II to Part AI 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.
- 2.5.4 The Fund Administrator shall notify the MFSA of the resignation or removal of its MLRO upon becoming aware of the proposed resignation or removal. The Fund Administrator shall also request the MLRO 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 Fund Administrator's notification of departure.

### **3. Conduct of Business Rules**

- 3.1 A Fund Administrator shall conduct its business relating to a Scheme by means of a written agreement which shall set out the basis on which its services are to be provided. Such an agreement may be entered into either with the Scheme or alternatively with the Manager of such a Scheme. The agreement shall be written in clear and plain language.
- 3.2 An agreement with a Scheme or its Manager shall include statements on:
- i. whether the Fund Administrator is appointed by the Scheme or its Manager;
  - ii. the nature of the services to be provided by the Fund Administrator;
  - iii. in respect of any charges payable by the customer to the Fund Administrator:-
    - the basis of calculation.
    - the basis of payment.
    - the frequency of payment.
  - iv. the fact that the Fund Administrator is recognized by the MFSA in terms of the Investment Services Act.
  - v. arrangements for bringing the agreement to an end.
- 3.3 The Fund Administrator shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls in respect of its own business and the affairs of the Scheme(s) in respect of which it acts as Fund Administrator.
- 3.4 Any subscription or redemption instructions received by a Fund Administrator in respect of a Scheme in relation to which it acts as Fund Administrator shall be addressed directly to the Scheme and under no circumstances shall such instructions be addressed directly to the Fund Administrator, unless the latter is also appropriately licensed under the Investment Services Act, 1994.
- 3.5 The Fund Administrator shall determine the Net Asset Value of a Scheme in respect of which it acts as Fund Administrator in accordance with the Constitutional Documents or Prospectus of such Scheme.
- 3.6 Where the Fund Administrator proposes to outsource administrative services to a third party administrator, whether in Malta or overseas, it shall:



- i. remain ultimately responsible on a continuing basis for the choice and the performance of the administrator;
- ii. be responsible on a continuing basis:
  - to ensure that the third party administrator is competent, of good standing and suitable and able to undertake the proposed functions;
  - to monitor the services being provided by the third party administrator.

#### **4. Financial Reporting and Audit Requirement**

- 4.1 The Fund Administrator shall appoint an auditor to audit its annual financial statements. The Fund Administrator shall notify the MFSA immediately if it becomes aware that the auditor intends to qualify its audit report. The Fund Administrator shall submit its annual audited financial statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The auditor's report, including any qualifications thereto shall be reproduced in full in the annual report. The annual Audited Financial Statements shall be published and submitted to the MFSA within six months of the end of the period concerned.
- 4.2 The Fund Administrator shall submit its annual audited financial statements to the MFSA and such other information, returns and reports as the MFSA may from time to time request. The auditor's report, including any qualifications thereto shall be reproduced in full in the Annual Report. The annual Audited Financial Statements shall be published and submitted to the MFSA within six months of the end of the period concerned.

The Annual Report shall be accompanied by :

- i. a letter from the Board of Directors of the Fund Administrator listing the names and domiciles of the Schemes it provided fund administration services to (either by appointment by the Schemes directly or by the Schemes' Manager) during the relevant financial period; and
  - ii. a report from the auditor to the MFSA, confirming whether in its opinion and further to the information available to it during the course of its audit, the activities of the Fund Administrator were, during the relevant accounting period, restricted to fund administration and did not involve licensable activity in terms of the Act. Provided that this report shall not be required where Fund Administrator is also an Investment Services Licence Holder.
- 4.3 In respect of each annual accounting period, the Fund Administrator shall require its auditor to prepare a management letter in accordance with International Standards on Auditing.
- 4.4 Fund Administrators in receipt of a management letter from their auditor which contains recommendations to remedy any weaknesses identified during the course of the audit, are required to submit to the MFSA by not later than nine months from the end of the financial period to which the management letter relates, a statement setting out in detail the manner in which the auditor's recommendations have been/ are being implemented. In the instance where Fund Administrators

have not taken / are not taking any action in respect of any one or more recommendations in the auditor's management letter, the reasons are to be included.

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## **5 Variation, Cancellation or Suspension of a Recognition Certificate by the MFSA**

5.1 The MFSA has the right, from time to and following advanced notification to the Fund Administrator, to vary or revoke any condition of its Recognition or impose any new conditions.

5.2 The MFSA may by notice in writing, cancel or suspend the recognition certificate issued in favour of the Fund Administrator:

- i. if it considers that the Fund Administrator does not fulfill the requirements of any of the provisions of the Act, relevant Regulations and these Rules; or
- ii. if it considers that the Fund Administrator has failed to comply with any of these Rules; or
- iii. if it considers that the Fund Administrator has given information which is false, misleading or inaccurate; or
- iv. if it considers that the Fund Administrator or any persons connected thereto, in particular its Directors and Qualifying Shareholders, are not fit and proper persons; or
- v. if it considers it desirable to cancel or suspend recognition for the protection of investors and the general public and the reputation of Malta, taking into account Malta's International commitments; or
- vi. at the request of the Fund Administrator; or
- vii. if the Fund Administrator has not commenced the activities which it was recognized to carry on within the time provided for in these rules or has ceased to carry on such activities.

## **GLOSSARY TO THE INVESTMENT SERVICES RULES FOR RECOGNISED PERSONS AND RETAIL COLLECTIVE INVESTMENT SCHEMES**

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This Glossary should be read in conjunction with the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.

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| <b>“Act” or “ISA”:</b>                         | The Investment Services Act, 1994.  |
| <b>“Collective Investment Scheme Licence”:</b> | Shall have the same meaning as that assigned to it in article 2 of the Act.   |
| <b>“Collective Investment Scheme”:</b>         | Shall have the same meaning as that assigned to it in article 2 of the Act and shall include any Sub-Funds of such scheme.  |
| <b>“Constitutional Documents”:</b>             | The documents constituting a 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 Deed of Partnership contract or partnership agreement; in the case of a Scheme set up as a unit trust the trust deed; and in the case of a Scheme set up as a common contractual fund the Fund Rules. |
| <b>“Custodian”:</b>                            | The person appointed by the Scheme responsible for safekeeping of the assets of the Scheme and for carrying a monitoring function over the activities of the Manager.   |
| <b>“EEA State”:</b>                            | Shall have the same meaning as that assigned to it in article 2 of the Act.   |
| <b>“EEA”:</b>                                  | European Economic Area  |
| <b>“EU”:</b>                                   | European Union.   |
| <b>“Instrument”:</b>                           | Shall have the same meaning as that assigned to it in article 2 of the Investment Services Act, Cap. 370.   |

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| <b>“Investment Advertisement”:</b>  | Shall have the same meaning as that assigned to it by Article 2 of the Act.   |
| <b>“Investment Service”:</b>  | Shall have the same meaning as that assigned to it in article 2 of in the Investment Services Act.  |
| <b>“Investment Services Licence Holder”:</b>  | A person who holds an Investment Services Licence.  |
| <b>“Investment Services Licence”:</b>   | Shall have the same meaning as that assigned to it in article 2 of the Act.   |
| <b>“Investment Services Rules for Investment Services Providers”:</b>                               | 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.  |
| <b>“Investment Services Rules for Professional Investor Funds”:</b>                                 | Investment Services Rules issued by the MFSA in terms of article 6 of the Investment Services Act applicable to Professional Investor Funds.  |
| <b>“Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes”:</b> | Investment Services Rules issued by the MFSA in terms of the Investment Services Act, 1994 applicable to Recognised Private Collective Investment Schemes and Recognised Fund Administrators. |
| <b>“Investment Services Rules for Retail Collective Investment Schemes”:</b>                        | Investment Services Rules issued by the MFSA in terms of article 6 of the Investment Services Act, 1994 applicable to Retail Collective Investment Schemes.                                   |

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| <b>“Investment”:</b>  | Any instrument, contract or right falling within the Second Schedule to the Act and whether or not issued or entered into in Malta.  |
| <b>“Licence Holder”:</b>  | Shall have the same meaning as that assigned to it in article 2 of the Act.  |
| <b>“Member State”:</b>  | Shall have the same meaning as that assigned to it in Regulation 2 of the Undertakings for Collective Investment in Transferable Securities and Management Companies Regulations, 2004 as amended.   |
| <b>“MIFID”:</b>   | Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directive 85/511/EEC and 93/6/EEC and Directive 2000/12/EC of the European parliament and of the Council and repealing Council Directive 93/22/EEC.   |
| <b>“MFSA”:</b>  | The Malta Financial Services Authority.  |
| <b>“Professional Investor Fund”:</b>                                  | <p>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:</p> <ol style="list-style-type: none"><li>1. PIFs promoted to Experienced Investors (or Experienced Investor Funds);</li><li>2. PIFs promoted to Qualifying Investors (or Qualifying Investor Funds); and</li><li>3. PIFs promoted to Extraordinary Investors (or Extraordinary Investor Funds).</li></ol> |
| <b>“Recognised Fund Administrator” or “Recognised Administrator”:</b> | A person who is in possession of a recognition to act as an administrator of a collective investment scheme, in or from Malta, in terms of article 9A of the Act.  |
| <b>“Recognised Private Collective Investment Scheme”:</b>             | A Scheme in possession of a recognition to act as a Private Collective Investment Scheme in terms of the Investment Services Act (Recognition of Private Collective Investment Schemes)  |

Regulations, 2002.

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| <b>“Scheme”:</b>                              | See “Collective Investment Scheme”.  |
| <b>“Self Managed Scheme”:</b>                 | A Scheme which has not appointed a Manager as its designated investment manager responsible for the management of its assets.  |
| <b>“Standard Licence Condition” or “SLC”:</b> | The standard conditions contained in Parts CII and CIII of the Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.  |
| <b>“Sub-Funds”:</b>                           | The distinct class or classes of Units constituting that Sub-Fund in an Umbrella Fund to which are allocated assets and liabilities distinct from other assets and liabilities allocated to other sub-funds in the same Umbrella Fund. |
| <b>“Third Country”:</b>                       | A country which is not an EU or an EEA Member State.   |
| <b>“UCITS”:</b>                               | A collective investment scheme, whether of the unit trust or open-ended investment company variety, falling within the scope of and authorised in terms of the UCITS Directive.  |
| <b>“Umbrella Fund”:</b>                       | A Collective Investment Scheme which may in terms of its constitutional documents issue classes of shares or Units which constitute Sub-Funds.   |
| <b>“Umbrella Scheme”:</b>                     | See “Umbrella Fund”.   |
| <b>“Unit”:</b>                                | Shall have the same meaning as that assigned to it in article 2 of the Act.  |