

MFSA Property Funds Policy
Feedback Statement
January 2006

Section A - Background

- A.1. On 12th September, 2005, a copy of the MFSA's Property Funds Policy which had been approved by the Board of Governors – as per Annex 1 hereto - was circulated to members of the Financial Services Consultation Council for information and any comments
- A.2. The MFSA received comments from a number of members of the Associations represented on the FSCC. An outline of the main comments received and MFSA's position in relation thereto, is provided in Section B. The up-dated final Policy wording is included in Annex 2 hereto.

Section B – Main Comments Received and MFSA's position

- B.1. Objection was expressed with regards to the MFSA's policy of precluding the sale and promotion of property funds, both locally-based or overseas-based, to local retail investors, on the basis that such asset class can provide stable investment returns. The point was made that the MFSA should consider allowing the retail distribution of property funds provided they satisfy certain requirements aimed at protecting investors. Reservations were also expressed regarding the leverage restrictions referred to in the Policy.

Whilst noting such comments, in the interests of retail investor protection and financial stability, the MFSA has opted – at least for the time being – to retain its prudent approach in relation to the above-mentioned issues.

- B.2. Re Section C (iii) of the Policy: A suggestion was made for the removal of the six monthly reporting requirement on the basis that the Scheme Directors and Manager are nonetheless responsible for ensuring adherence to the Scheme's investment policy disclosed in the Prospectus and given that the MFSA should in any event be in a position to monitor compliance through its review of the Scheme's interim financial statements

Given that PIFs are not required to prepare interim (six monthly) financial statements, and given that even if these are drawn up, there would be a time-lag between the half year end and the date of receipt by the MFSA, the MFSA believes that the notification requirement referred to in Section C (iii) of the Policy should be retained.

- B.3. Re Section D (i) of the Policy: A suggestion was also made for an increase in the 10% limit referred to in this section to 20% in order to enable retail funds to have more flexibility in investing in property companies and given the risk spreading characteristics of collective investment schemes.

The MFSA wishes to point out that funds having a 20% exposure to property would fall under Section C of the Policy, requiring them to be established as PIFs, whereas Section D applies to retail funds. Accordingly, no change is being made in this regard.

- B.4. Re Section D (ii) of the Policy: A concern was expressed regarding the fund manager's obligation to ensure that the issuer has made sufficient provision for the repayment of the bond at maturity. This was felt to be too onerous and a request was made for this obligation to be dispensed with, at least in respect of bonds falling within the 10% of NAV threshold.

The MFSA acknowledges that the original wording of the Policy in this regard is overly onerous on the fund manager and has accordingly amended the wording in both this Section as well as Section A (ii) to read *'In the case of investments in bonds issued by property management or financing companies, the fund manager is to take such 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'*

- B.5. Re Section F of the Policy: The rationale for precluding the licensing of an overseas-based retail property fund as a PIF, was queried.

The MFSA has adopted this approach in view of the difficulties which it would face in seeking to effectively regulate an overseas-based retail property fund as a PIF, given that it would not be in a position to rely on the fund's Primary Regulator for ensuring that the conditions laid down in the Policy are complied with and consequently, the degree to which the MFSA can exercise control would be limited.

Section C - Other Issues:

- C.1. Further to a request for clarification, for the avoidance of doubt, a specific reference to the possible borrowing for liquidity purposes which is unrestricted, has been included in Section B of the Policy (B (ii) refers).
- C.2. It has also been clarified that the Policy does not apply to UCITS funds authorised in terms of the EU UCITS Directive.
- C.3. The up-dated Policy also provides guidance as to the manner in which 'residence' is to be interpreted in the case where a Trustee is investing in the fund on behalf of a Trust.
- C.4. Lastly, although strictly not a regulatory issue, 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.

ANNEX 1

Originally Proposed MFSA Property Funds Policy

SECTION A

Funds whose main objective¹ is investing in immovable property and targeting investors who are Malta resident

- i These are only permitted as professional investor funds promoted to qualified 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 qualified 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 must ensure that the issuer of the bond has made sufficient provision to repay the bond at maturity.
- iii. Borrowing for liquidity purposes is unrestricted for both PIFs promoted to Qualified Investors and for PIFs promoted to Experienced Investors
- iv. For PIFs promoted to Qualified Investors, leverage up to a maximum of **50 %** of NAV is permitted. 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. For PIFs promoted to Experienced Investors, no leverage is permitted.
- 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 qualified or experienced investors as set out in the MFSA's PIF Guide;
- ii. These PIFs are subject to the standard PIF conditions, with no investment or borrowing restrictions other than a maximum of **50%** of NAV leverage restriction

¹ '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)

for PIFs targeting Qualified Investors. [As for other PIFs targeting Experienced investors, no leverage is permitted for such funds].

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 qualified or experienced investors as set out in the MFSA's PIF Guide;
- 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 NAV.
- 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 such companies, the fund manager is to ensure 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 have only 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 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.

ANNEX 2

MFSA Property Funds Policy

Note(1): Collective Investment Schemes authorised in terms of the EU UCITS Directive fall outside the scope of this Policy

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 objective¹ is investing in immovable property and targeting investors who are Malta resident

- i These are only permitted as professional investor funds promoted to qualified 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 qualified 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 Qualified Investors and for PIFs promoted to Experienced Investors
- iv. For PIFs promoted to Qualified Investors, leverage up to a maximum of **50 %** of net asset value is permitted. 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. For PIFs promoted to Experienced Investors, no leverage is permitted.
- 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.

¹ 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)

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 qualified or experienced investors as set out in the MFSA's PIF Guide;
- ii. Borrowing for liquidity purposes is unrestricted for both PIFs promoted to Qualified 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 Qualified 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 other PIFs targeting Experienced investors, no leverage is permitted for such funds].

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 qualified or experienced investors as set out in the MFSA's PIF Guide.
- 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 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 prerequisite 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.