
Chairman
Malta Financial Services Authority

Minister of Finance, Economy
and Investment

| L.N. of 20109

INVESTMENT SERVICES ACT
(CAP. 370)

| **Investment Services Act (Contractual Funds) Regulations, 20109.**

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, Economy and Investment after consultation with the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Title and commencement.

1. (1) The title of these regulations is the Investment Services Act (Contractual Funds) Regulations, 2009.

Definitions

2. (1) In these regulations, unless the context otherwise requires:

Cap. 370

“Act” means the Investment Services Act.

“contractual fund” shall have the meaning assigned to it in regulation 3;

“deed of constitution” means the contract under which a contractual fund is constituted;

| Cap. 386

“custodian” means the person responsible for the safekeeping and custody of the assets of the contractual fund and for carrying out such duties ~~specified referred to~~ in Investment Services Rules issued by the competent authority ~~and/or in which may be specified as part of~~ the contractual fund’s licence conditions

“currency” means, in addition to the Euro, any convertible currency in terms of Article 186 of the Companies Act”;

“fractional unit” means a fraction of a whole unit in any class of units issued by the contractual fund;

“management company” or “manager” means the person responsible for the proper administration and management ~~and the overall operation~~ of the contractual fund, the general supervision of the contractual fund’s affairs and for carrying out such duties specified

~~referred to~~ in Investment Services Rules issued by the competent authority ~~and/ or which may be specified~~ as part of the contractual fund's licence conditions;

“multi class scheme” means a scheme falling within the terms of regulation 9;

“multi fund scheme” means a scheme falling within the terms of regulation 11;

“special purpose vehicle” or “SPV” means a company established in accordance with Regulation 3A.

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“sub-fund” means a separate portfolio of assets and liabilities maintained by a contractual fund in accordance with its deed of constitution;

“unit-holder” means the holder of one or more units of a contractual fund and references to a unit holder in such a contractual fund shall be construed accordingly.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

Establishment of a Contractual Fund

3. (1) A contractual fund is a collective investment scheme within the meaning of Article 2 of the Act, established by means of a deed of constitution entered into for such purpose by the manager and the custodian of such a collective investment scheme, under which the unit holders participate and share in the property of the collective investment scheme ~~as co-owners~~ as evidenced by units issued by the manager in terms of regulation 7 of these Regulations.

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(2) A contractual fund shall not have legal personality and its property shall be represented by freely transferable units.

(3) A contractual fund may be constituted by a public deed or by private writing.

~~(3)~~ A contractual fund may be established either as an open ended collective investment scheme or as a closed ended collective investment scheme.

~~(4)~~ The provisions of the deed of constitution of a contractual fund shall be binding on the unit holders ~~and on all persons claiming through the unit holders,~~ as if such persons had been party to the deed.

~~(5)~~ The liabilities of a unit holder in a contractual fund shall be limited to the amount agreed to be contributed by the unit holder for the subscription of

units therein.

(67) A contractual fund, whose deed of constitution is entered into by a manager and custodian in terms of these Regulations, shall be deemed to be domiciled in Malta and shall be subject to the laws of Malta.

Use of Special
Purpose Vehicles

3A.

(1) A contractual fund set up in terms of these Regulations may establish one or more special purpose vehicles for the sole purpose of investing and holding assets on behalf of the fund in accordance with the fund's deed of constitution and offering document.

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(2) Where a special purpose vehicle established in terms of sub-regulation (1) is formed and constituted under the laws of Malta, it shall be licensed and regulated by the competent authority under the same licence of the contractual fund establishing it and shall be subject to that contractual fund's licence conditions and to any other licence conditions that may specifically apply to that special purpose vehicle.

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(3) The competent authority may, following advance notification to the contractual fund or to the special purpose vehicle, vary or revoke any licence condition or impose any new condition or conditions as it may deem appropriate.

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(4) Where the competent authority suspends or cancels a licence of a contractual fund in accordance with the provisions of the Act, such suspension or cancellation shall extend to any special purpose vehicle established by that contractual fund. The competent authority may however make specific provisions regulating the special purpose vehicle or vehicles established by the contractual fund.

(5) Any act or omission by the special purpose vehicle which, had it been made by the contractual fund, would have amounted to breach of a licence condition that may lead to suspension or cancellation of the licence of the contractual fund under the Act, may be considered by the competent authority as if it had been made by the contractual fund and may lead to the suspension or cancellation of the licence of that contractual fund.

(6) For the better carrying out of the provisions of these Regulations the competent authority may, from time to time, issue and publish Investment Services Rules which shall be binding on contractual funds, special purpose vehicles and any other persons as may be specified therein.

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4. (1) The deed of constitution of a contractual fund should specify whether the fund is being established as a closed ended or open ended collective investment scheme and shall provide for the following:

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- (i) the name of the contractual fund;

Contents of Deed
of Constitution

- (ii) the duration , if any, of the contractual fund;
- (iii) name of the management company and of the custodian;
- (iv) the investment policy of the contractual fund;
- (v) the distribution policy, if any, of the income of the contractual fund;
- (vi) the remuneration and expenditure which the management company is empowered to charge the fund and the method of calculation of such remuneration;
- (vii) the date of the closing of the accounts of the fund;
- (viii) the dissolution of the contractual fund without prejudice to the requirements set out in regulation 18;
- (ix) the procedure for the amendment to the deed of constitution;
- (x) the procedure for the removal and replacement of the manager and the custodian of the contractual fund;
- (xi) the procedure for the issue of units to participants;
- ~~(xi)~~(xii) the minimum percentage of holding required to requisition a meeting in terms of regulation 19;
- ~~(xii)~~(xiii) the procedure for the redemption of units and the conditions under which redemptions may be carried out or suspended;
- ~~(xiii)~~(xiv) the method of valuation of the contractual fund's assets;
- (xv) the law governing the contractual fund;
- (xvi) any other matter which the competent authority, may by Investment Services Rules published for this purpose, require.

~~(xiv)~~ (2) Where the use of special purpose vehicles is envisaged, the deed of constitution and the offering memorandum of a contractual fund must clearly indicate the intention to establish such special purpose vehicles, and any reports prepared by the contractual fund shall include any information on the special purpose vehicles established by the contractual fund which the competent authority or any applicable Investment Services Rules issued under the Act may require.”

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The deed of constitution

5. (1) The deed of constitution shall comply with the requirements of these regulations and any applicable Investment Services Rules, and shall be submitted to the competent authority for approval prior to its signature.

(2) Upon approval of the terms of the deed of constitution by the competent authority, a certified true copy thereof shall be submitted to the competent authority.

(3) The aforesaid submission shall be made by the manager or the custodian or their authorised agents.

(4) The competent authority shall publish a copy of the deed of constitution of a contractual ~~fund~~ fund licensed in terms of the Act on its website.

Prospectus of a Contractual Fund

6. (1) Where a contractual fund is required to issue a prospectus, it shall submit a draft copy thereof to the competent authority for its approval prior to

the issue of the form of application for the subscription of units in the contractual fund.

(2) Upon approval, a signed copy of the prospectus of the contractual fund shall be submitted to the competent authority. Such copy shall be signed by at least two persons duly authorised in writing by the Board of Directors of the management company of the contractual fund.

(3) A certified true copy of the contractual fund's prospectus may be submitted to the competent authority in lieu of the signed copy indicated in subregulation (2).

(4) The competent authority shall publish a copy of the offering document prospectus of a contractual fund funds licensed in terms of the Act, on its website.

Issue of registered certificates units in a contractual fund.

7. (1) The management company of a contractual fund shall issue registered certificates or contract notes representing written confirmation of entry in the register of units.

(2) Certificates issued in accordance with sub regulation (1) shall be signed by the management company and by the custodian of the contractual fund.

Fractional Units

8. (1) A contractual fund, may, if so authorised by its deed of constitution issue fractional units up to such number of decimal places, not being less than three, as shall be specified in the said deed and under such terms and conditions as may be specified therein.

(2) Fractional Units shall be automatically consolidated into a whole unit when the fractional units held by one unit holder become equal to a whole unit.

Liabilities of the unit holders in a contractual fund and of the manager and custodian of a contractual fund. Separate patrimony

9. (1) The property of a contractual fund and of each of its sub-funds, if any, shall constitute a separate patrimony and shall be separate and distinct from the property of its unit holders, its manager and of its custodian.

(2) The creditors of the unit holders in a contractual fund or of the manager or of the custodian thereof, may not enforce their rights on the property of the contractual fund.

~~Provided that nothing in this subarticle shall be deemed to deprive any creditor of such unitholder, manager or custodian of any rights granted to a creditor under article 1144 of the Civil Code. (Source SFA Article 48 article 1144 Civil Code action pauliana (remedy available to creditors in general).~~

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Multi class schemes

10. (1) A contractual fund may be constituted as a multi class scheme, if in terms of its deed of constitution, the units which are issued by its management company are capable of being divided into different classes of units not constituting a distinct sub-fund.

(2) A multi class contractual fund may, with the written approval of the competent authority, issue a new class or classes of units. Such class or classes of units shall not constitute a distinct sub-fund or sub-funds of the contractual fund.

(3) Each class of shares in a multi class contractual fund may be denominated in a different currency provided that a class of units may be denominated only in one currency.

(4) A multi class contractual fund may not elect for the segregation of any of its assets and liabilities.

Accounts of multi class schemes

11. (1) A multi class scheme having its units denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(2) The provision of subregulation (1) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required by the competent authority.

(3) For the purposes of subregulations (1) and (2), the conversion from the base currency of a class of units into the currency in which the annual accounts of the multi class scheme are to be drawn up shall be in accordance with generally accepted accounting principles.

Multi fund Schemes

12. (1) A contractual fund may be constituted as a multi fund scheme where, in terms of its deed of constitution, its property is or is capable of being divided into different groups of units where one group would constitute a distinct sub-fund of the contractual fund

(2) A multi fund scheme may, with the written approval of the competent authority, create and issue a new group of units which may constitute a new sub-fund or be comprised in an existing sub-fund or sub-funds of the contractual fund.

(3) A group of units constituting a sub-fund in a multi class scheme fund may be denominated in a different currency provided that a group of units may be denominated in only one currency.

(4) For the purposes of this regulation, “a sub-fund” means the distinct group of units constituting that sub-fund in a multi class scheme to which are

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allocated assets and liabilities distinct from other assets and liabilities allocated to the other sub-funds in the same contractual fund.

Accounts of multi fund schemes

13. (1) A contractual fund having its units denominated in different currencies shall draw up its annual accounts in any one of such currencies.

(2) The manager of a contractual fund shall maintain proper accounting records of the assets and liabilities of each sub-fund in the base currency of any group of units constituting that sub-fund.

(3) The provisions of subregulation (1) shall *mutatis mutandis* apply to the drawing up of any other reports or financial statements which may be required by the competent authority in terms of Investment Services Rules issued for this purpose.

(4) For the purposes of subregulations (1) and (3), the conversion from the base currency of a group of units into the currency in which the annual accounts of the umbrella fund are to be drawn up shall be in accordance with generally accepted accounting principles.

Segregation of assets and liabilities of multi fund schemes

14. (1) A multi fund scheme may in terms of its deed of constitution, have the assets and liabilities of each sub-fund treated for all intents and purposes of law as a patrimony separate from the assets and liabilities of each other sub-fund of the multi fund scheme. Where a multi fund scheme is so constituted, the assets and liabilities of each sub-fund shall, for all intents and purposes of law be deemed to constitute a patrimony separate from the assets and liabilities of each other sub-fund of such a multi fund scheme.

(2) Subregulation (1) shall not apply to such proportion of the liabilities of a multi fund scheme which by virtue of the deed of constitution of such a scheme, or by virtue of the terms of issue of the units constituting a sub-fund are, or are to be attributable to, one or more sub-funds in the proportion established therein.

(3) The liabilities incurred in respect of each sub-fund shall be paid out of the assets forming part of its patrimony and the creditors in respect thereof shall have no claim or right of action against the other assets forming part of the multi fund scheme, and proceedings against the management company or the custodian in relation to the multi fund scheme shall respect the legal status of each sub-fund as a patrimony separate from the assets and liabilities of each other sub-fund of the multi fund scheme, in terms of this regulation.

“Proceedings” in this regulation shall mean the procedures which must be followed in respect of the dissolution and the liquidation of the common fund in terms of regulation 20.

(4) The management company of a contractual fund shall hold or cause

to be held such separate records, accounts, statements and other documents as may be necessary to evidence the liabilities and assets of each sub-fund as distinct and separate from the assets and liabilities of other sub-funds in the same multi fund scheme.

Application of
Rules and
Regulations to
contractual funds
and their service
providers

15. Unless the context otherwise requires and unless otherwise provided in Investment Services Rules issued by the competent authority applying specifically to contractual funds, any rules and regulations applicable in general to collective investment schemes and their managers and custodians, shall also apply to contractual funds, their managers and custodians.

Accounting
requirements

16. A contractual fund shall keep proper books of accounts and shall be required to submit its annual accounts and any other financial statements and any other regulatory returns in terms of the Investment Services Rules.

Cessation of
Duties

17. The duties of the management company or of the custodian in respect of a contractual fund shall cease:

(a) upon the voluntary withdrawal of the management company, provided that the competent authority has approved such withdrawal;

(b) upon the voluntary withdrawal of the custodian or of its removal by the management company provided that:

(c) where the competent authority cancels the licence issued to the management company or to the custodian ;

(d) where the competent authority removes the management company or the custodian or suspends their appointment.

(e); where the authorisation of the management company or of the custodian is withdrawn;

(f) where the management company or the custodian has been declared bankrupt, has entered into a compromise with creditors, has obtained a suspension of payment, or has been dissolved;

(g) in other cases provided for in the deed of constitution.

Provided that when the functions of a manager or of a custodian of a contractual fund cease in terms of this regulation:

(i) the custodian or manager must be replaced within two months of its removal or such longer period as may be authorized in writing by the competent authority; and

(ii) during the intervening period, the custodian or the manager, whichever remains in office, shall take all necessary steps for safeguarding the interests of unit holders.

Decisions

18. ~~Decisions affecting the rights of unit holders shall be taken by the~~ manager of the contractual fund; ~~in agreement consultation~~ with the custodian ~~of such fund,~~ shall take decisions which are binding on the unit holders in the contractual fund. ~~[To consider additional wording to cater for situations where the custodian disagrees with the manager possibly requiring the manager to convene a meeting of unit holders or to seek their approval in such instance]~~

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Meetings of unit holders

19. Unit holders in a contractual fund may request, in writing, the management company to convene a meeting for unit holders to vote on certain issues as may be determined by the deed of constitution of such fund.

Dissolution of a contractual Fund.

20. (1) The causes of dissolution of a contractual fund shall be the following:

(a) the expiry of the period, if any, fixed by the deed of constitution of the said contractual fund;

(b) in the event of bankruptcy or cessation of duties by the management company or by the custodian, if these are not replaced within two months;

(c) with the consent of the unit holders in the contractual fund as may be specified in the deed of constitution;

(d) in other circumstances as indicated in the deed of constitution.

(2) Notice of the dissolution shall be published without delay, and in any event within seven working days from the event giving rise to the dissolution, by the management company or the custodian, in a newspaper in circulation in Malta. In default, such notice shall be published by the competent authority at the expense of the contractual fund.

(3) As soon as the event giving rise to the dissolution of the contractual fund occurs, the issue of units shall be prohibited, on penalty of nullity. The redemption of units where applicable, remains possible provided the equal treatment of unit holders is ensured.

Disapplication of
Civil Code
(Cap.16)

21. (1) The provisions of Title V of Part I of Book Second ~~??~~ of the Civil Code shall not apply to property held in a contractual fund. ~~{to also disapply the Second Schedule of the Civil Code?}~~

(2) The provisions of Title III of the Second Schedule to the Civil Code shall not apply to contractual funds.

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