

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

Appendix VII

Supplementary Licence Conditions for PIFs set up as private equity funds

SCOPE AND APPLICABILITY

A PIF established and authorised as a private equity fund shall, in addition to complying with any laws, regulations or Standard Licence Conditions applicable thereto, **also** comply with the Standard Licence Conditions prescribed in this Appendix.

For the purposes of these Investment Services Rules (the “Rules”), a private equity fund shall be understood as being a scheme whose objective is to generally invest in non-listed companies or issuers.

1 GENERAL REQUIREMENTS

- 1.01 The following Standard Licence Conditions lay down uniform rules for the establishment and marketing of a collective investment scheme established as a private equity fund in terms of the Investment Services Act, 1994 (‘the Act’), hereinafter referred to as ‘the Scheme’.
- 1.02 The Scheme may be structured as an open-ended or a closed-ended fund as defined in the Commission Delegated Regulation No. 694/2014 of 17 December 2013 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regards to regulatory technical standards determining types of alternative investment fund managers.
- 1.03 The Scheme shall commence its investment activities within 12 months of the date of issue of its Licence.

If, for any reason, the Scheme is not in a position to comply with this condition, it shall notify the MFSA in writing setting out the reason(s) for such a delay and indicating the proposed date of commencement of such activities. On the basis of the information provided and the circumstances of the case, the MFSA may decide to suspend or cancel the Licence in accordance with the relevant provisions of the Act.

2 SERVICE PROVIDERS

Fund Management

- 2.01 Where the Scheme does not appoint an external fund manager but opts for a self-managed structure, it shall be subject to all the Supplementary Licence Conditions prescribed in Section 6 of this Appendix as well as the relevant sections of the Investment Services Rules for Professional Investor Funds applicable to Self-Managed Collective Investment Schemes.

Provided that the Board of Directors (or equivalent body) of the Scheme shall monitor compliance by the individuals performing investment management with all the obligations for which they are responsible in terms of these Rules.

- 2.02 The fund manager may either have an established place of business in Malta or be in possession of a licence from a recognised jurisdiction.
- 2.03 Where the fund manager is established in Malta, it shall be in possession of a Category 2 Investment Services Licence as a *de minimis* fund manager or a Category 2 Investment Services Licence as an Alternative Investment Fund Manager ('AIFM') and in both instances authorised by the MFSA as a fund manager in terms of the Act:

Provided that the fund manager shall ensure compliance with the applicable Standard Licence Conditions prescribed in Part BIII of the Investment Services Rules for Investment Services Providers.

- 2.04 The fund manager shall also be required to provide the MFSA with evidence that it has experience in the area of private equity investment activities.

Custodial Arrangements

- 2.05 The Custodian shall be the holder of a Category 4a or Category 4b Investment Services Licence issued by the MFSA or a credit institution having its registered office in the EU and authorised in accordance with Directive 2013/36/EU, or an entity established in a recognised jurisdiction.

Valuation

- 2.06 The valuation function shall be performed by:
- a) An external valuer, being a legal or natural person independent from the Scheme, the fund manager and any other persons with close links to the Scheme or the fund manager; or
 - b) The fund manager, provided that the valuation task is functionally independent from the portfolio management function and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.
- 2.07 The Scheme shall notify the MFSA before proposing a material change in the valuation methodology of the underlying investments in the Scheme.

3 INVESTMENT OBJECTIVES, POLICIES AND RESTRICTIONS

- 3.01 To ensure adequate mitigation of conflicts of interest, the investment restrictions of the Scheme shall contain provisions regarding the ability of the Board of Directors (or equivalent body) to:

- (i) manage funds (whether private equity funds or other) or accounts with a similar investment mandate;
- (ii) offer co-investment opportunities to other private equity funds or principals and affiliate companies of the Board of Directors;
- (iii) engage in other investment activities similar to those of the Scheme;
- (iv) cause the Scheme to engage in transactions with principals and affiliate companies of the Board of Directors; and
- (v) act in other instances in which there is or may be a conflict of interest.

Borrowing and Leverage Restrictions

- 3.02 The Scheme shall be regulated by the provisions of the Investment Services Rules for Professional Investor Funds with regards to borrowing and leverage.
- 3.03 Clarity on permitted leverage and borrowing at both the level of the Scheme and at the level of any underlying Special Purpose Vehicle (to the extent that these are used) should be ensured and clearly disclosed in the Scheme's Offering Document and Constitutional Documents.

Eligible Investors and Minimum Entry Levels

- 3.04 Schemes established in terms of these Rules shall be open exclusively to the following types of specific professional investors:
 - a. investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC; or
 - b. investors which, on request, elect to be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC and commit to investing a minimum of EUR 100,000.
- 3.05 Schemes established in terms of these Rules cannot be set up as Retail Collective Investment Schemes or as Professional Investor Funds marketed to Experienced Investors. However, subject to the definition of 'eligible investors' prescribed in SLC 3.04 and subject to compliance with the SLCs prescribed in this Appendix, these Schemes may be established as Professional Investor Funds marketed to Qualifying Investors or Extraordinary Investors in accordance with the applicable Investment Services Rules.

Commitments and Drawdowns

- 3.06 The Scheme may require investors to make a capital commitment that is drawn down from time to time upon a specified period of notice by the Board of Directors (or equivalent body) of the Scheme.

4 DISCLOSURE TO INVESTORS

- 4.01 The Scheme shall make available to investors, in accordance with its Constitutional Documents and/or Offering Document and prior to their investment in the Scheme, the following information and any material changes thereto:

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

- i. A description of the investment strategy and the objectives of the Scheme, information on where any master fund is established and where the underlying funds are established if the Scheme is a fund of funds, a description of the types of assets in which the Scheme may invest, the techniques it may employ and all associated risks, and any applicable investment restrictions, the circumstances in which the Scheme may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the PIF can employ;
- ii. A description of the procedures by which the Scheme may change its investment strategy or investment policy, or both;
- iii. A description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the Scheme is established;
- iv. The identity of the Scheme's custodian, auditor and any other service providers and a description of their duties and the investors' rights;
- v. A description of how the Scheme's fund manager is complying with the requirements of providing professional liability cover where this is applicable;
- vi. A description of any delegation of the management function by the fund manager and of any safe-keeping function delegated by the custodian, the identification of the delegates and any conflicts of interest that may arise from such delegations;
- vii. A description of the Scheme's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets;
- viii. A description of the Scheme's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- ix. A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- x. A description of how the Scheme ensures a fair treatment of investors and, whenever an investor obtains preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the Scheme;
- xi. The latest annual report which the fund manager must submit in relation to the Scheme;

- xii. The procedure and conditions for the issue and sale of units or shares in the Scheme;
 - xiii. The latest net asset value of the Scheme or the latest market price of the unit or share of the Scheme as determined in accordance with the Scheme's valuation procedure;
 - xiv. Where available, the historical performance of the Scheme;
 - xv. The identity of the prime broker and a description of any material arrangements of the Scheme with its prime brokers and the way the conflicts of interest in relation thereto are managed; and the provision in the contract with the custodian on the possibility of transfer and reuse of the Scheme's assets, as well as information about any transfer of liability to the prime broker that may exist;
 - xvi. A description of how and when the following information will be disclosed:
 - i. The percentage of the Scheme's assets which are subject to special arrangements arising from their illiquid nature;
 - ii. Any new arrangements for managing the liquidity of the Scheme;
 - iii. The current risk profile of the Scheme and the risk management systems employed to manage those risks;
 - xvii. The possibility to create side-pockets and any other measures designed to capture and mitigate against the inherent illiquidity of private equity funds;
 - xviii. Details of penalties on investors who default on their commitment obligation including grace periods, as well as the right to terminate the investors' right to contribute subsequent capital, to buy out the defaulting investor for a fraction of the amount previously contributed and/ or to actively locate a buyer for the defaulting investor's interest and other sanctions;
 - xix. Details of any equalisation mechanism in order to compensate initial investors for having funded earlier investments in which the new investors will participate.
- 4.02 A Scheme which employs leverage shall disclose on a regular basis:
- a. Any changes to the maximum level of leverage which is employed by the Scheme as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;
 - b. The total amount of leverage employed by the Scheme.
- 4.03 The Scheme shall also inform investors without delay of any changes with respect to custodian liability.

- 4.04 The Scheme shall disclose the identity of the regulated entity and its regulator or regulators in all correspondence, advertisements and other documents. Wording similar to the following shall be used: “Licenced by the MFSA as a Professional Investor Fund available to specified professional investors.”

5 REPORTING REQUIREMENTS

- 5.01 The Scheme shall comply with any reporting requirements which the MFSA may prescribe from time to time in relation to the obligations prescribed in these Rules.

Financial Year End

- 5.01 In determining the financial year end of the Scheme the Board of Directors shall take into consideration that the audit of the underlying investments of the Scheme might take considerable time and this would in turn adversely effect the Scheme’s ability to meet the regulatory timeframes for submission.

6 SUPPLEMENTARY LICENCE CONDITIONS APPLICABLE TO SELF-MANAGED SCHEMES

Capital Requirements

- 6.01 The initial paid-up share capital (or equivalent interests) for the Scheme should not be less than EUR 300,000 and the NAV of the Scheme is expected to exceed this amount on an ongoing basis.
- 6.02 The Scheme shall notify the MFSA as soon as its NAV falls below EUR 300,000.

Operational Arrangements

- 6.03 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time.
- 6.04 Where the Scheme is self-managed, the obligations which would usually be incumbent on the fund manager shall be carried out by the Scheme.