**INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS**

**PART A: The Application Process**

## Investment Services Act, 1994 (“The Act”)

### *Regulation of Alternative Investment Funds (“AIFs”)*

The Investment Services Act, 1994 (“the Act”) provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. AIFs are a special class of collective investment schemes which fall within the provisions of the Act. 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.

### *Definition of a collective investment scheme*

As indicated above, AIFs are a special class of collective investment scheme. 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:

1. the scheme or arrangement operates according to the principle of risk spreading; and either
2. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
3. 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
4. units are, or have been, or will be issued continuously or in blocks at short intervals.

## Provided that an alternative investment fund that is not sold to retail investors and that does not have the characteristic listed in paragraph (a) shall only be deemed to be a collective investment scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed.

### *Definition of “AIF”*

## The Act also defines an “AIF” as “a collective investment scheme, including subfunds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS Scheme in terms of the UCITS Directive.”

In terms of the AIFMD[[1]](#footnote-1) the following undertakings shall not be considered as AIFs:

1. a holding company;
2. an institution for occupational retirement provision which is covered by Directive 2003/41/EC,
3. employee participation schemes or employee savings schemes;
4. securitisation special purpose vehicles.

Private collective investment schemes will continue to be issued with a recognition certificate as these fall outside of scope of the AIFMD.

## Requirement for a collective investment scheme licence for Alternative Investor Funds

## *General Information*

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.*

1. *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 Scheme, including a Scheme set up as an AIF, to operate in or from Malta without having a licence.

Subarticle 4(2) makes it illegal for a Scheme including an AIF, to use Malta as a base without having a licence.

Subarticle 4(3) permits the initial steps in establishing a Scheme including an AIF, to be taken before a Licence has been obtained but the Scheme may not deal with investors before it is licensed.

Under Article 12(1) 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, the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations, the Investment Services Act (Marketing of Alternative Investment Funds) Regulations and the Investment Services Act (Alternative Investment Fund Manager Third Country) Regulations.

## *Licensable activities for Self-Managed AIFs*

A self-managed AIF may only be authorised to provide the licensable activities which consist in the internal management of the AIF as provided hereunder:

1. Investment management functions which the self-managed AIF shall at least perform:
2. Portfolio management;
3. Risk management.
4. Other functions that a self-managed AIF may additionally perform in the course of the collective management of an AIF:
5. Administration

* legal and fund management accounting services;
* customer inquiries;
* valuation and pricing, including tax returns;
* regulatory compliance monitoring;
* maintenance of unit- /shareholder register;
* distribution of income;
* unit/ shares issues and redemptions;
* contract settlements including certificate dispatch;
* record keeping.

1. Marketing;
2. Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the self-managed AIF, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of AIFs and the companies and other assets in which it has invested.

Self-managed AIFs shall, make a direct or indirect offering or placement of units or shares of AIFs to investors in any Member State or EEA State in accordance with the provisions of the Investment Services Act (Marketing of AIFs) Regulations.

## Criteria which MFSA will apply in considering an application for a Licence

The MFSA shall only grant a collective investment scheme licence to an AIF if it is satisfied to the extent that it can be, that the AIF will comply in all respects with the provisions of the Act, the applicable Regulations and these Investment Services Rules and that its directors and officers, or in the case of a unit trust/ contractual fund 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 AIF.

In accordance with Article 6(3) of the Act, when considering whether to grant or refuse a Licence, the MFSA will, in particular, have regard to:

1. the protection of investors and the general public;
2. the protection to the reputation of Malta taking into account Malta’s international commitments;
3. the promotion of competition and choice; and
4. the reputation and suitability of the applicant and all other parties connected with the AIF.

The MFSA will consider the nature of the AIF and the nature of investors to whom it will be marketed. It will also look into the experience and track record of all parties who will be involved with the AIF. Such persons should be of good standing and should be competent. The MFSA has the right to refuse a Licence if it does not approve a party involved with the AIF.

Although the Act provides for the licensing of many different kinds of Schemes, the MFSA applies the same standards relating to the "fit and proper" status of the Applicant and its Service Providers. The "fit and proper" test is one which an Applicant and a Licence Holder 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 licensed AIF as the case may be.

The MFSA's approach is cumulative. It may decide that an AIF 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.

In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test: (a) integrity; (b) competence and (c) solvency.

Integrity involves the AIF and its officers and its Service Providers acting honestly and in a trustworthy fashion.

Competence means that the persons responsible for running the AIF must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.

## Solvency means ensuring that proper financial controls and management of liquidity and capital is applied.

## Alternative Investment Funds

The AIFM and/ or any appointed intermediary may sell the AIF to Professional Investors and, where permitted, the AIF may be marketed to or invested into by Retail Investors, and the following types of investors:

* 1. Experienced Investors;
  2. Qualifying Investors;
  3. Extraordinary Investors.

The marketing of the AIF is subject to the provisions of Section 11 of the Act.

The AIF may only be marketed with a passport in jurisdictions outside Malta if it satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations and the Investment Services Act (Marketing of AIFs) Regulations.

The marketing of an AIF in jurisdictions outside Malta to investors other than Professional Investors as defined in this Rulebook is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFM Directive.

## *Professional Investors*

A ‘Professional Investor’ is an investor who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. The following should all be regarded as professionals in all investment services and activities and with respect to all the financial instruments mentioned in Schedule 2 to the Investment Services Act:

* 1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

1. Credit Institutions
2. Investment Firms
3. Other authorised or regulated financial institutions
4. Insurance Companies
5. Collective Investment Schemes and management companies of such Schemes
6. Pension funds and management companies of such funds
7. Commodity and commodity derivatives dealers;
8. Locals;
9. Other institutional investors.
   1. Large undertakings meeting two of the following size requirements on a company basis:
10. balance sheet total: EUR20,000,000
11. net turnover: EUR40,000,000
12. own funds: EUR2,000,000
    1. National and regional governments, public bodies that manage public debt, Central banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
    2. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Investors not falling under any of the above categories, including public sector bodies and private individual investors may also be treated as professional investors upon request within the meaning of Annex II to Directive 2004/39/EC.

Prior to accepting any investment, the AIF should be in receipt of a completed “Professional Investor Declaration Form” in which the investor confirms that he/ she has read and understood the mandatory risk warnings and describes why he/ she is a Professional Investor. A proforma of a Professional Investor Declaration Form is provided in Appendix 9 to Part B of these Rules.

## *Retail Investors*

Retail AIFs are subject to the requirements prescribed in Part B of these Rules including Section 4 thereof dealing with investment restrictions applicable to these AIFs.

## *Experienced Investors*

An “Experienced Investor” is a person having the expertise, experience and knowledge to be in a position to make his own investment decisions and understand the risks involved. An investor must state the basis on which he satisfies this definition, either

1. by confirming that he/ she is:
   * 1. a person who has relevant work experience having at least worked in the financial sector for one year in a professional position or a person who has been active in these type of investments; or
     2. a person who has reasonable experience in the acquisition and/ or disposal of funds of a similar nature or risk profile, or property of the same kind as the property, or a substantial part of the property, to which the AIF in question relates; or
     3. a person who has made investments amounting to EUR100,000 within the past 2 years at an average frequency of 3 per quarter;

OR

1. by providing any other appropriate justification.

Persons who qualify as ‘Professional Investors’ in terms of the MIFID, automatically qualify as ‘Experienced Investors’. The term ‘Professional Investor’ is defined earlier on in this section.

In the case of ‘joint holders’, all holders should individually satisfy the definition of ‘Experienced Investor’ outlined above or jointly make investments amounting to EUR200,000.

In relation to investments made by an entity holding on a nominee basis, the underlying investors considered to be the beneficial owners must individually satisfy the definition of “Experienced Investors”.

The minimum investment requirement is EUR10,000. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value of the AIF. The minimum investment requirement applies to each individual “Experienced Investor”. In the case of joint holders, the minimum investment requirement remains EUR10,000 per investor.

In the case of an umbrella fund comprising of sub-funds each of which is set up as an AIF, the EUR10,000 requirement may be applicable on a per scheme basis and therefore to the entire AIF rather than on a per sub-fund basis.

Prior to accepting any investment, the AIF should be in receipt of a completed “Experienced Investor Declaration Form” in which the investor confirms that he/ she has read and understood the mandatory risk warnings and describes why he/ she is an “Experienced Investor”. In the case of an entity holding on a nominee basis, the individual underlying investors must confirm that they are “Experienced Investors”. Alternatively, the entity can satisfy itself that the underlying individual investors are “Experienced Investors” and give such a confirmation on their behalf.

In the case where the Experienced Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Experienced Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Experienced Investor and to exclude retail investors. A proforma of an Experienced Investor Declaration Form is provided in Appendix 9 to Part B of these Rules. The AIF or the AIFM or the Administrator on its behalf shall only create Units if amongst others, it is in receipt of an appropriately completed Experienced Investor Declaration Form.

The AIFM/ Sales Agent or any third party selling units of the AIF which is sold to Experienced Investors is bound to take reasonable steps to ensure that the investor has sufficient knowledge and understanding of the risks involved in investing in an AIF.

The AIFM/ Sales Agent or any third party selling units in an AIF which is sold to Experienced Investors will be required to countersign the Experienced Investor Declaration Form signifying that he has satisfied himself/ herself that the investor has sufficient knowledge and understanding of the risks involved.

If the AIFM/ Sales Agent or any third party selling units of the AIF which is sold to Experienced Investors is not satisfied that the investor has the necessary experience and knowledge in order to understand the risks involved, then the said AIFM/ Sales Agent or any third party selling units of the AIF should state so in the Experienced Investor Declaration Form and confirm that he/ she has warned the investor accordingly. The investor shall also confirm in writing that he/ she has been warned in this regard.

Whilst the AIF or its Administrator may rely on the confirmation provided by the AIFM/ Sales Agent or any third party selling units of the AIF which is sold to Experienced Investors, it shall be precluded from processing applications for the issue of units in the AIF unless the Experienced Investor Declaration Form is duly completed as indicated above.

AIFs sold to Experienced Investors are subject to the investment restrictions set out in Section 4 of Part B of these Rules. Whilst borrowing on a temporary basis for liquidity purposes is permitted and not restricted, borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of NAV.

## *Qualifying Investors*

A “Qualifying Investor”, is required to meet one or more of the following criteria:

* + 1. a body corporate which has net assets in excess of EUR750,000 or which is part of a group which has net assets in excess of EUR750,000;
    2. an unincorporated body of persons or association which has net assets in excess of EUR750,000;
    3. a trust where the net value of the trust’s assets is in excess of EUR750,000;
    4. an individual, or in the case of a body corporate, the majority of its Board of Directors or in the case of a partnership its General Partner who has reasonable experience in the acquisition and/ or disposal of :-

1. funds of a similar nature or risk profile;
2. property of the same kind as the property, or a substantial part of the property, to which the AIF in question relates;
   * 1. an individual whose net worth or joint net worth with that person’s spouse or civil partner[[2]](#footnote-2), exceeds EUR750,000;
     2. a senior employee or Director of Service Providers to the AIF;
     3. a relation or close friend of the promoters limited to a total of 10 persons per AIF;
     4. an entity with (or which are part of a group with) EUR3.75 million or more under discretionary management, investing on its own account;
     5. the investor qualifies as an AIF which is sold to Qualifying or Extraordinary Investors;
     6. an entity whether body corporate or partnership wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

In the case of ‘joint holders’, all holders should individually satisfy the definition of “Qualifying Investor”.

In relation to investments made by an entity holding on a nominee basis, the underlying investors considered to be the beneficial owners must individually satisfy the definition of “Qualifying Investors”.

The minimum investment requirement is EUR75,000. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment requirement applies to each individual “Qualifying Investor”. In the case of joint holders, the minimum investment requirement is EUR75,000.

In the case of an umbrella fund comprising of sub-funds each of which is set up as an AIF, the EUR75,000 requirement is applicable on a per scheme basis and therefore to the entire AIF rather than on a per sub-fund basis.

Prior to accepting any investment, the AIF should be in receipt of a completed “Qualifying Investor Declaration Form” in which the investor confirms that he/she has read and understood the mandatory risk warnings and describes why he/she is a “Qualifying Investor”. In the case of an entity holding on a nominee basis, the individual underlying investors must confirm that they are “Qualifying Investors”. Alternatively, the entity can satisfy itself that the underlying individual investors are “Qualifying Investors” and give such a confirmation on their behalf.

In the case where the Qualifying Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Qualifying Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as a Qualifying Investor. A proforma of a Qualifying Investor Declaration Form is provided in Appendix 9 to Part B of these Rules. The AIF or the AIFM or the Administrator on its behalf shall only create Units if amongst others, it is in receipt of an appropriately completed Qualifying Investor Declaration Form.

AIFs sold to Qualifying Investors are subject to the investment restrictions prescribed in Section 4 of Part B to these Rules as well as those which may be specified in their Offering Document.

## *Extraordinary Investors*

An “Extraordinary Investor” is required to meet one or more of the following criteria:

* + 1. a body corporate, which has net assets in excess of EUR7.5 million or which is part of a group which has net assets in excess of EUR7.5 million;
    2. an unincorporated body of persons or association which has net assets in excess of EUR7.5 million;
    3. a trust where the net value of the trust’s assets is in excess of EUR7.5 million;
    4. an individual whose net worth or joint net worth with that person’s spouse or civil partner, exceeds EUR7.5 million;
    5. a senior employee or Director of Service Providers to the AIF;
    6. the investor qualifies as an AIF which is sold to Extraordinary Investors;
    7. an entity whether a body corporate or partnership wholly owned by persons or entities satisfying any of the criteria listed above which is used as an investment vehicle by such persons or entities.

In the case of joint holders, all holders should individually satisfy the definition of “Extraordinary Investor”.

In relation to investments made by an entity holding on a nominee basis, the underlying investors considered to be the beneficial owners must individually satisfy the definition of “Extraordinary Investors”.

The minimum investment requirement is EUR750,000. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value. Provided that the minimum requirement is satisfied, additional investments – of any size – may be made. The minimum investment requirement applies to each individual “Extraordinary Investor”. In the case of joint holders, the minimum investment requirement is EUR750,000.

In the case of an umbrella fund comprising of sub-funds each of which is set up as an AIF, the EUR750,000 requirement is applicable on a per scheme basis and therefore to the entire AIF rather than on a per sub-fund basis.

Prior to accepting any investment, the AIF should be in receipt of a completed “Extraordinary Investor Declaration Form” in which the investor confirms that he/ she has read and understood the mandatory risk warnings and describes why he/ she is an “Extraordinary Investor”. In the case of an entity holding on a nominee basis, the individual underlying investors must confirm that they are “Extraordinary Investors”. Alternatively, the entity can satisfy itself that the underlying individual investors are “Extraordinary Investors” and give such a confirmation on their behalf.

In the case where the Extraordinary Investor is a company or partnership, such declaration is required from the Director(s)/ General Partner(s), whilst in the case of a trust, from the Trustee. The Extraordinary Investor Declaration Form is required for the prospective investor to demonstrate eligibility to be treated as an Extraordinary Investor. A proforma of an Extraordinary Investor Declaration Form is provided in Appendix 9 to Part B of these Rules. The AIF or the AIFM or the Administrator on its behalf shall only create Units if amongst others, it is in receipt of an appropriately completed Extraordinary Investor Declaration Form.

AIFs sold to Extraordinary Investors are subject to the investment restrictions prescribed in Section 4 of Part B to these Rules as well as those which may be specified in their Offering Document.

## *European Venture Capital Funds and European Social Entrepreneurship Funds*

## The AIFM may establish the AIF as a European venture capital fund in terms of Regulation (EU) No 345/2013[[3]](#footnote-3) and in this regard opt to use the designation ‘EuVECA’ in relation to the marketing of the qualifying venture capital funds in the Union.

## Similarly , the AIFM may establish the AIF as a European social entrepreneurship fund in terms of Regulation (EU) No 346/2013[[4]](#footnote-4) and in this regard opt to use the designation ‘EuSEF’ in relation to the marketing of the qualifying social entrepreneurship funds in the Union.

## In both instances, the AIFM shall be guided by the provisions of Regulations (EU) No 345/2013 and 346/2013 prescribing rules for the marketing of qualifying venture capital funds/ social entrepreneurship funds to eligible investors across the Union, for the portfolio composition of the qualifying venture capital funds/ social entrepreneurship funds and for the eligible investment instruments and techniques to be used by qualifying venture capital funds/ social entrepreneurship funds.

## *European Long-Term Investment Funds*

## The AIFM may establish the AIF as a European long-term investment fund (ELTIF) in terms of Regulation (EU) No 2016/760[[5]](#footnote-5). In such case, the AIFM shall be guided by the provisions of the aforementioned regulation in relation to the authorisation, investment policies and operating conditions of these schemes.

## Standard Licence Conditions

The MFSA aims to provide a regulatory framework which is both robust and simultaneously adaptable to allow AIFMs and promoters to innovate and to develop new products to meet the changing needs of the market.

The Standard Licence Conditions prescribed in sections 1 - 7 of Part B of these Rules are applicable both to externally managed AIFs as well as to self-managed AIFs. The additional conditions prescribed in section 8 of Part B of these rules apply exclusively to self-managed AIFs.

## Listing on the Malta Stock Exchange

An AIF which has been licenced in terms of the Act may also be admitted to listing. An application to that effect is made with the Listing Authority (the MFSA is the Listing Authority in terms of the Financial Market Act, 1990).

Where an application for admissibility to listing has been submitted concurrently with an application for a Collective Investment Scheme licence, the documents submitted as part of the application for a Collective Investment Scheme licence need not be resubmitted as part of the application for admissibility to listing. Furthermore – provided that during the application for a Collective Investment Scheme licence, the MFSA is informed of the AIF’s intention to apply for admissibility to listing – once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a Collective Investment Scheme licence as well as in relation to the application for admissibility to listing.

## Applications for an AIF Licence

## *The Application Process*

The appropriate Application Form must be completed when submitting an application for a Collective Investment Scheme licence under the Act (Schedule 1 to this Part refers).

The application requirements and the ongoing requirements, to which licences are subject, are summarised below.

There are three phases - as follows:-

*Phase One - Preparatory*

1. MFSA recommends that the promoters arrange to meet representatives of the MFSA to describe their proposal. This preliminary meeting should take place in advance of submitting an Application for a licence. Although guidance will be given on the relevant 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 provides a comprehensive description of the proposed activity at the beginning of Phase One.
2. After preliminary discussions, the promoters should submit a draft (rather than a Final) Application Form, together with supporting documents as specified in the Application Form itself.
3. The draft Application and the supporting documentation will be reviewed and comments provided to the Applicant.
4. 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.
5. The MFSA will consider the nature of the proposed AIF and a decision will be made regarding which “Standard Licence Conditions” (SLCs) should apply. The licence conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed.

*Phase Two – Pre-Licensing*

1. Once the MFSA concludes the review of the application and supporting documents, it will issue its ‘in principle’ approval for the issue of a licence. The ‘in principle’ approval is valid for a period of **three months** during which, the applicant will be required to finalise any outstanding matters. Should the three months elapse without the satisfactory resolution of all pre-licencing outstanding issues, the ‘in principle approval’ issued will cease to have effect.
2. 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, should be resolved as part of Phase Two.
3. A licence will be issued as soon as all pre-licensing issues are resolved.

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

1. The Applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

*Phase Three – Post-Licensing/ Pre-Commencement of Business – Self-Managed AIFs*

1. The Applicant may be required to satisfy a number of post-licensing matters prior to formal commencement of business.

Without prejudice to the generality of Article 6(6) of the Act, the MFSA shall inform an applicant for a licence to provide services as a self-managed AIF in writing within three months of the submission of a complete application, whether or not authorisation has been granted. The MFSA may prolong this period for up to three additional months, where it considers necessary due to the specific circumstances of the case and after having notified the applicant accordingly.

A self-managed AIF may start providing an investment service in Malta with investment strategies described in accordance with the Application Form submitted to the MFSA as soon as the licence is granted, but not earlier than 1 month after having submitted any missing information referred to hereunder:

1. Information on arrangements made for the delegation and sub-delegation to third parties of functions referred to in SLCs 7.59 – 7.67 of Part B of these Rules;
2. The memorandum and articles of association of the AIF;
3. Information on the arrangements made for the appointment of the custodian;
4. Any additional information referred to in SLC 7.68 of Part B of these Rules.

## *Application Documents*

An applicant for an AIF Licence whether externally managed or self-managed is ordinarily required to submit the documents listed hereunder. The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

## *Investment Companies*

1. Application Form (Schedule 1 to this Part);
2. Draft version of the Offering Document/ Marketing Document;
3. Draft version of the Memorandum & Articles of Association of the AIF;
4. Draft Board of Directors’ resolution:

* confirming the Directors’ intention to apply for a licence in favour of the AIF;
* identifying the person(s) responsible for signing the application documents;
* identifying the person(s) responsible for acting as a point of liaison with the MFSA;
* identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the AIF;
* identifying the person(s) responsible on behalf of the Board for the AML obligations of the AIF;
* approving and assuming responsibility for the contents of the Offering Document/ Marketing Document;

1. Application Fee;
2. Directors of the AIF:

*where Individuals*

* Personal Questionnaires of the proposed Director(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Director(s);
* name of the individual that will represent the Corporate Director on the Board of Directors of the AIF;

1. Founder Shareholder(s) – that hold more than 10% of the voting shares:

*where Individuals*

* Personal Questionnaire of the proposed Founder Shareholder(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Founder Shareholder(s);

*where Corporate, not regulated in a recognised jurisdiction*

* Personal Questionnaire of the Directors of the proposed Corporate Founder Shareholder(s);
* Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Founder Shareholder(s); and
* last three years’ audited financial statements of the proposed Corporate Founder Shareholder(s).

1. Compliance Officer, Money Laundering Reporting Officer - Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

## *Limited Partnerships*

1. Application Form (Schedule 1 to this Part);
2. Draft version of the Offering Document/ Marketing Document;
3. Draft version of the Deed of Partnership;
4. Resolution of the General Partner(s):

* confirming its/ their intention to apply for a licence in favour of the AIF;
* identifying the person(s) responsible for signing the application documents;
* identifying the person(s) responsible for acting as a point of liaison with the MFSA;
* identifying the person(s) responsible on behalf of the General Partner(s) for the Compliance obligations of the AIF;
* identifying the person(s) responsible on behalf of the General Partner(s) for the AML obligations of the AIF; and
* approving and assuming responsibility for the contents of the Offering Document/ Marketing Document.

1. Application Fee;
2. General Partner(s) of the AIF:

*where Individuals*

* Personal Questionnaire of the proposed General Partner(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate General Partner(s);
* the name of the individual who will represent the Corporate General Partner(s);

*where Corporate, not regulated in a recognised jurisdiction*

* Personal Questionnaire of the Directors of the proposed Corporate General Partner(s);
* Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate General Partner(s);
* the name of the individual who will represent the Corporate General Partner(s); and
* last three years’ audited financial statements of the proposed Corporate General Partner(s).

1. Compliance Officer, Money Laundering Reporting Officer - Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

## *Unit Trust/ Common Contractual Fund*

1. Application Form (Schedule 1 to this Part);
2. Draft version of the Offering Document/ Marketing Document;
3. Draft version of the Trust Deed/ Fund Rules;
4. A resolution of the proposed AIFM:

* confirming the AIFM’s intention to apply for a licence in favour of the AIF;
* identifying the person(s) responsible for signing the application documents;
* identifying the person(s) responsible for acting as a point of liaison with the MFSA;
* identifying the person(s) responsible on behalf of the AIFM for the Compliance obligations of the AIF;
* identifying the person(s) responsible on behalf of the AIFM for the AML obligations of the AIF; and
* approving and assuming responsibility for the contents of the Offering Document;

1. Application Fee;
2. Details of the regulatory status of the proposed Trustee.
3. Compliance Officer, Money Laundering Reporting Officer - Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

## *Incorporated Cell Companies (ICCs) – (Investment Companies set up in terms of Legal Notice 559 of 2010)*

1. Application Form (Schedule 1 to this Part);
2. Draft version of the Offering Document/ Marketing Document;
3. Draft version of the Memorandum & Articles of Association of the AIF;
4. Draft Board of Directors’ resolution:

* confirming the Directors’ intention to apply for a licence in favour of the AIF as an Incorporated Cell Company;
* identifying the person(s) responsible for signing the application documents;
* identifying the person(s) responsible for acting as a point of liaison with the MFSA;
* identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the AIF;
* identifying the person(s) responsible on behalf of the Board for the AML obligations of the AIF;
* approving and assuming responsibility for the contents of the Offering Document/ Marketing Document;

1. Application Fee;
2. Directors of the AIF:

*where Individuals*

* Personal Questionnaires of the proposed Director(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Director(s);
* name of the individual that will represent the Corporate Director on the Board of Directors of the AIF;

1. Founder Shareholder(s) – that hold more than 10% of the voting shares:

*where Individuals*

* Personal Questionnaire of the proposed Founder Shareholder(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Founder Shareholder(s);

*where Corporate, not regulated in a recognised jurisdiction*

* Personal Questionnaire of the Directors of the proposed Corporate Founder Shareholder(s);
* Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Founder Shareholder(s); and
* last three years’ audited financial statements of the proposed Corporate Founder Shareholder(s).

1. Compliance Officer, Money Laundering Reporting Officer - Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

## *Incorporated Cells (ICs) (Investment Companies set up in terms of Legal Notice 559 of 2010 and Legal Notice 119 of 2012)*

1. Application Form (Schedule 1 to this Part);
2. Draft version of the Offering Document/ Marketing Document;
3. Draft version of the Memorandum & Articles of Association of the AIF;
4. Draft Board of Directors’ resolution:

* confirming the Directors’ intention to apply for a licence in favour of the AIF to operate as, an incorporated cell of the SICAV Incorporated Cell Company (SICAV ICC) or incorporated cell of the Recognised Incorporated Cell Company (RICC);
* identifying the person(s) responsible for signing the application documents;
* identifying the person(s) responsible for acting as a point of liaison with the MFSA;
* identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the AIF;
* identifying the person(s) responsible on behalf of the Board for the AML obligations of the AIF;
* approving and assuming responsibility for the contents of the Offering Document/ Marketing Document;

1. A copy of the Resolution passed by the Board of Directors of the SICAV ICC (umbrella fund) or the RICC which:

* Approves the name of the incorporated cell being established;
* Approves the terms of the memorandum and articles of association of the incorporated cell and resolves that the said memorandum and articles of association of the incorporated cell are to be entered into by the incorporated cell company; and
* Authorises, if applicable, the subscription by the incorporated cell company of a share or shares in the incorporated cell.

1. Application Fee;
2. Directors of the AIF:

*where Individuals*

* Personal Questionnaires of the proposed Director(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Director(s);
* name of the individual that will represent the Corporate Director on the Board of Directors of the AIF;

1. Founder Shareholder(s) – that hold more than 10% of the voting shares:

*where Individuals*

* Personal Questionnaire of the proposed Founder Shareholder(s);

*where Corporate, regulated in a recognised jurisdiction*

* details of the regulatory status of the proposed Corporate Founder Shareholder(s);

*where Corporate, not regulated in a recognised jurisdiction*

* Personal Questionnaire of the Directors of the proposed Corporate Founder Shareholder(s);
* Personal Questionnaire of the qualifying beneficial owners of the proposed Corporate Founder Shareholder(s); and
* last three years’ audited financial statements of the proposed Corporate Founder Shareholder(s).

1. Compliance Officer, Money Laundering Reporting Officer - Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

## *Supplementary Application Documents – Self-Managed AIF*

1. Investment Committee Member, Portfolio Manager, (Risk Manager – where appointed):-

Personal Questionnaire and Competency Form of the individuals proposed to carry out these functions.

1. Terms of reference regulating the procedures of the Investment Committee;
2. Confirmation from the Portfolio Manager(s) (as applicable) that he/ she/ they will:
3. operate in accordance with the investment objective and policy described in the AIF’s Offering Document in general and the investment guidelines issued by the investment committee in particular;
4. report to the Investment Committee on a regular basis any transactions effected on behalf of the AIF; and
5. provide to the Investment Committee, any information as the Investment Committee may require from time to time;
6. Confirmation from the Portfolio Manager(s)/ Investment Committee that they have appropriate resources available to them to ensure on-going access to the market information which they would need to take account of in making investment management decisions.
7. Portfolio and Risk Management Delegation Agreements (as applicable);
8. Risk Management Policy Document;
9. Programme of Activities (Business Plan);
10. If the AIF intends to cover potential professional liability risks by way of professional indemnity insurance, it shall provide a copy of the cover note to the insurance policy.

## *Licensing of Additional Sub-Funds of an Existing AIF*

A licensed AIF constituted in the form of an umbrella fund (i.e. with sub-funds) wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

1. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund;
2. a confirmation from the Directors, General Partner or the AIFM as applicable signifying their intention to apply for a licence in favour of the sub-fund;
3. a final draft of the revised Offering Document/ Marketing Document/ Offering Supplement (as applicable);
4. the appropriate application fee (refer to Section 7 below); and
5. a draft copy of the approval by the AIF’s proposed Directors, General Partner(s) or the AIFM (as applicable) of the revised Offering Document/ Marketing Document/ Offering Supplement (as applicable).

## *Applications for the approval of additional classes of shares of an existing AIF*

A licensed AIF constituted in the form of an umbrella (i.e. with sub-funds) or multi-class (i.e. without sub-funds) wishing to issue an additional class of shares/ units (which shall not constitute a distinct sub-fund of the AIF) is ordinarily required to submit the following documents:

1. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
2. a final draft of the revised Offering Document/ Marketing Document;
3. a draft copy of the approval of the AIF’s proposed Directors, General Partner(s) or the AIFM – as applicable – of the Offering Document/ Marketing Document; and
4. a confirmation from the Directors, General Partner(s) or the AIFM (as applicable) signifying their intention to issue additional classes of shares/ units.

## The issue of additional classes of shares/ units within an existing AIF – so long as the additional classes of shares/ units do not constitute a distinct sub-fund of the AIF – is not subject to any application/ supervisory fees.

## Marketing of AIFs

## *Notification Procedure*

## This section should be read in conjunction with the Investment Services Act (Marketing of AIFs) Regulations. It aims at providing an overview of the requirements applicable to self-managed Maltese AIFs wishing to market their units in another Member State or EEA State in terms of Directive 2011/61/EU.

Marketing of a Maltese AIF which is managed by an external AIFM is regulated by the provisions of the Investment Services Act (Marketing of AIFs) Regulations. Alternatively, an AIF shall refer to the Investment Services Act (Alternative Investment Fund Managers Passport) Regulations with regards to the provision of services in another EU/ EEA Member State whether by means of the establishment of a branch or on a remote basis under the freedom of services.

The AIF may only be sold with a passport in jurisdictions outside Malta if it satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager Passport) Regulations and the Investment Services Act (Marketing of AIFs) Regulations. The marketing of an AIF in jurisdictions outside Malta to investors other than Professional Investors as defined in this Rulebook is not automatic and may be allowed subject to national provisions applicable in the respective jurisdiction as per Article 43 of Directive 2011/61/EU.

## *Notification Requirements*

A self-managed Maltese AIF may market its units or shares to professional investors in a Member State or EEA State other than Malta provided that prior to commencement of its marketing in a Member State or EEA State, the conditions prescribed hereunder are met.

A self-managed AIF shall submit to the MFSA a notification [Schedule 4 to Part A of these Rules] which shall comprise the documentation and information prescribed hereunder:

1. a notification letter, including a programme of operations concerning the self-managed AIF;
2. the AIF’s prospectus or equivalent rules or instruments of incorporation;
3. identification of the custodian of the AIF;
4. a description of, or any information on, the AIF available to investors;
5. information on where the master AIF is established if the Maltese AIF is a feeder AIF;
6. any additional information concerning the disclosure obligations prescribed in Section 8 of Part B of these Rules;
7. an indication of the Member State or EEA State in which the self-managed AIF intends to market its units or shares;
8. information about arrangements made for the marketing of the self-managed AIF and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIF relies on activities of independent entities to provide investment services.

The MFSA commits itself, by not later than twenty working days after the date of receipt of a complete notification file, to transmit such file to the European regulatory authority of the Member State or EEA State where the self-managed AIF intends to market its units or shares. The MFSA will also enclose a statement to the effect that the self-managed AIF can adopt a particular investment strategy.

The MFSA will transmit the complete notification file only if the self-managed AIF complies with and will continue to comply with the provisions of the AIFM Directive.

Upon transmission of the notification file, the MFSA will, without delay, notify the Maltese AIF thereof and the latter may start marketing its units or shares in the host Member State or EEA State as from the date of such notification.

## Fees

The Application Fee is payable on submission of the application for an AIF Licence and is not refundable. The first Annual Supervisory Fee is payable on the date the Licence is granted and then annually thereafter upon the anniversary of the date of the granting of the Licence. The Applicable Fees payable in terms of the Investment Services Act (Fees) Regulations 2014 are as follows:

|  |  |  |
| --- | --- | --- |
| **AIFs licenced pursuant to Article 4 of the Investment Services Act** | | |
|  | **Application Fee**  **€** | **Annual Supervisory Fee**  **€** |
| AIF | €2,000 | €2,000 |
| Per Sub-Fund | €1000 | €600 |
|  | | |
| **Incorporated Cells (“ICs”) of RICCs pursuant to Article 9A of the Investment Services Act** | | |
| Per Incorporated Cell | €1000 | €600 |

|  |  |  |
| --- | --- | --- |
| **European AIFs having their units marketed in Malta in terms of**  **Regulation 5 of the**  **Investment Services Act (Marketing of Alternative Investment Funds) Regulations** | | |
|  | **Application/Notification Fee** | **Annual Supervisory Fee** |
| EU AIF | €2,500 | €3,000 |
| Per Scheme Sub-fund | €450 | €500 up to 15 Scheme sub- funds (per sub- fund).  No Annual Supervisory Fee will be payable from the 16th Scheme sub-fund upwards) |

The Fees are subject to alteration by Regulations.

## Surrender of a Collective Investment Scheme Licence

The Scheme shall inform the MFSA at an early stage of its intention to surrender its Collective Investment Scheme Licence. The MFSA may require the Scheme to delay the surrender of its Collective Investment Scheme Licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit holders.

The general procedure for surrendering a Collective Investment Scheme Licence is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.

Following a notification to the MFSA of its intention to surrender its Collective Investment Scheme Licence, the Scheme shall submit the following documentation to the MFSA:

1. a formal request to the MFSA asking for its approval to surrender the Collective Investment Scheme Licence;
2. a Directors’/ Manager’s/ General Partner’s (as applicable) resolution:   
   * 1. confirming the Scheme’s intention to surrender its Licence, subject to the MFSA’s approval and once the necessary formalities are finalised;
     2. confirming that the Scheme has informed its auditor, custodian and relevant service providers of its intention to surrender its Licence;
3. a Shareholders’ resolution confirming their approval of the proposed closure of the Scheme (where applicable);
4. the Scheme must give due notice to its unit holders of its intention to surrender its Licence (once the necessary formalities are finalised). A confirmation to this effect should be submitted to the MFSA.

Subsequently the Scheme shall also submit:

1. a confirmation from the Scheme’s administrator that there are no investors in the Scheme;
2. a confirmation from the Scheme’s administrator that no complaints/ litigation are/is pending arising from any event which arose whilst there were investors in the Scheme;
3. a confirmation from the Scheme’s administrator that the accruals and liabilities of the Scheme have been cleared;
4. a confirmation from the custodian (where applicable) or administrator that the disbursement of the assets of the Scheme has been completed in order; and
5. the original licence/s granted to it by the MFSA.

An internal process will be set in motion for approval of the surrender of the Collective Investment Scheme Licence as soon as all the requirements listed above are satisfied, the respective supervisory fees are settled, the Scheme is delisted from any regulated market and passporting notifications have been withdrawn (as applicable).

The MFSA will convey its final decision to the Scheme and will issue a public notice regarding the surrender of the Scheme’s Licence.

## Where the Scheme consists of different sub-funds, and on the Licence which had been granted to the sub-fund is being surrendered, this Section will nonetheless apply and references throughout to ‘the Scheme’ shall be deemed to refer to ‘the sub-fund’.

1. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers [↑](#footnote-ref-1)
2. The term ‘Spouse’ includes a partner bound by a civil union or by a union of equivalent status in terms of the Civil Unions Act. [↑](#footnote-ref-2)
3. Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds [↑](#footnote-ref-3)
4. Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds [↑](#footnote-ref-4)
5. Regulation (EU) No 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds [↑](#footnote-ref-5)