

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

PART B

APPENDIX I: RULES APPLICABLE TO QUALIFYING PROFESSIONAL INVESTOR FUNDS ADOPTING DIFFERENT STRUCTURES

1. INTRODUCTION

1.01 The Rules prescribed in this Appendix are applicable to Maltese Qualifying Professional Investor Funds, whether these are third party managed or self-managed schemes.

1.02 Qualifying Professional Investor Funds which are established as self-managed schemes shall be required to comply with the additional rules outlined in this Appendix applicable to self-managed schemes in addition to the rules applicable to such schemes depending on the structure opted for.

2. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS LIMITED PARTNERSHIPS

2.01 The scheme shall obtain the written consent of the MFSA before admitting a general partner. The request for consent shall be accompanied by a Personal Questionnaire ("PQ") in the form set out in Schedule B to Part A of these Rules duly completed by the person proposed (in the case of an individual) or by the directors and qualifying shareholders of the proposed general partner (in the case of a body corporate).

2.02 Where the proposed corporate general partner is regulated in a recognized jurisdiction, the request for consent need not be accompanied by the PQ of the directors and qualifying shareholders of the proposed corporate general partner, but shall include details of the regulatory status of the general partner.

2.03 General partners shall be persons falling within any one of the following categories:

- [i] a company licensed under the Investment Services Act for the provision of fund management services; or
- [ii] a company falling within the exemptions applicable to overseas fund managers; or
- [iii] any other entity of sufficient standing and repute as approved by the MFSA;
- [iv] any other individual who satisfies the fit and proper test.

Deleted: <#>INTRODUCTION¶

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<#>The supplementary conditions prescribed in this Appendix are applicable to Maltese Qualifying Professional Investor Funds, whether these are third party managed or self-managed schemes. ¶

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<#>Qualifying Professional Investor Funds which are established as self-managed schemes shall be required to comply with the additional rules outlined in this Appendix applicable to self-managed schemes in addition to the rules applicable to such schemes depending on the structure opted for. ¶

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Where the general partner falls under paragraphs [iii] and [iv] above, and in the absence of a manager (as per paragraphs [i] or [ii]) acting as an additional general partner, the scheme shall appoint a manager acceptable to the MFSA.

2.04 The scheme shall notify the MFSA in writing of the departure of a general partner within 14 days of the departure.

In particular, the notification submitted by the scheme shall include the following information:

(A) the name and role of the official departing;

(B) the reason of departure i.e. resignation, dismissal, re-organisation etc.;

(C) the effective date of resignation;

(D) the proposed replacement.

The scheme shall also request the director or senior manager, portfolio manager, compliance officer, money laundering reporting officer and risk manager to confirm in writing to the MFSA:

(i) whether the departure has any regulatory implications, or if otherwise, to provide any relevant details;

(ii) the information required in terms of paragraphs (A) to (C) above.

A copy of the scheme's request to the departing official shall be provided to the MFSA together with the scheme's notification of departure.

An e-mail notification of resignation shall be sent to the MFSA on ausecurities@mfsa.com.mt. This e-mail shall be followed up by the submission of original and hard copies to the MFSA.

The scheme shall ensure that the relevant forms related to the departure and approval of officials, where applicable, are filed with the Registry of Companies.

2.05 The scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.

2.06 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the general partner(s) and of any party appointed by the scheme.

2.07 Where applicable, the scheme, or the manager or fund administrator on behalf of the scheme, is required to disclose to potential investors, the identity of the beneficial owners of the general partner(s) upon request.

3. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INVESTMENT COMPANIES

Commented [IA1]: Revised as per MFSA circular date 19th August 2016

Deleted: The Scheme shall also request the General Partner to confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.¶

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- 3.01 The MFSA shall be satisfied, on a continuing basis, of the fitness and properness of the directors of the scheme.
- 3.02 The scheme shall at all times have one or more directors independent from the manager and the depositary where a depositary has been appointed.
- 3.03 The scheme shall obtain the written consent of the MFSA prior to the the appointment or replacement of a director. The scheme shall not appoint a corporate director unless such corporate director is regulated in a recognized jurisdiction.
- 3.04 The request for consent of the appointment or replacement of an individual as director shall be accompanied by a PQ in the form set out in Schedule B to Part A of these Rules duly completed by the person proposed. In the case of a corporate director, the request for consent shall include details of its regulatory status. The MFSA reserves the right to object to the proposed appointment or replacement and to require such additional information it considers appropriate.
- 3.05 The scheme shall notify the MFSA in writing of the departure of a director within 14 days of the departure. The scheme shall also request the director to provide the MFSA with the relevant details concerning the individual's resignation, as appropriate. A copy of such request shall be provided to MFSA together with the scheme's notification of departure.
- 3.06 Minutes of the meetings of the board of directors shall be held in Malta at the registered office of the scheme or at any other place as may be agreed with the MFSA.
- 3.07 Where the scheme has issued "Voting Shares" to the promoters and "non-Voting Shares" to qualifying investors, any changes in the beneficial ownership of the "Voting Shares" of the scheme shall be subject to the prior approval of the MFSA. The scheme, or the manager or administrator on behalf of the scheme, is required to disclose to potential investors, the identity of the beneficial owners of the "Voting Shares" upon request.
- 3.08 The scheme shall obtain the written consent of the MFSA before:
- (i) making any changes to the rights of its "Voting Shares";
 - (ii) redeeming its "Voting Shares"; or
 - (iii) issuing additional "Voting Shares".
- 3.09 The scheme shall act honestly, fairly and with integrity – in the best interests of its investors/shareholders and of the market. Such action shall include:
- (i) avoiding conflicts of interest where this is possible and, where it is not, ensuring by way of disclosure, internal procedures or otherwise, that investors are treated fairly. The following procedures should be followed during board meetings, where a member considers that s(he) has or may have a conflict of interest:

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- (a) that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;
 - (b) unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;
 - (c) the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;
 - (d) the minutes of the meeting should accurately record the sequence of such events.
- (ii) abiding by all relevant laws and regulations, including in respect of prevention of money laundering;
- (iii) avoiding any claim of independence or impartiality which is untrue or misleading; and
- (iv) avoiding making misleading or deceptive representations to investors.

4. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INCORPORATED CELL COMPANIES WITH INCORPORATED CELLS PURSUANT TO THE COMPANIES ACT (SICAV INCORPORATED CELL COMPANIES) REGULATIONS¹

- 4.01 Both the incorporated cell company ('ICC') and the individual incorporated cells ('IC') shall be licensed by the MFSA.
- 4.02 The ICC and the individual ICs shall have at least one common director between them.
- 4.03 The ICC and the individual ICs shall have a common registered office.

5. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS INCORPORATED CELLS ('IC') UNDER A RECOGNISED INCORPORATED CELL COMPANY ('RICC') PURSUANT TO THE COMPANIES ACT ((RECOGNISED INCORPORATED CELL COMPANIES) REGULATIONS²

- 5.01 Incorporated cells³ set up under a recognised incorporated cell company ('RICC') in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations, 2012 may be set up as:

¹ S.L. 386.14

² S.L. 386.15

³ Hereinafter referred to as 'ICs'

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- (a) an investment company with variable share capital (SICAV) in terms of the Companies Act (Investment Companies with Variable Share Capital) Regulations;
 - (b) an investment company with fixed share capital in terms of the Companies Act (Investment Companies with Fixed Share Capital) Regulations.
- 5.02 Each IC can be either third-party managed or self-managed. In the case where an IC is third-party managed, it will be required to appoint an investment manager, which shall be approved by the RICC.
- 5.03 An IC which is third-party managed shall appoint its own investment manager which may be the same or different from the investment manager appointed by any other ICs set up under the same RICC. However, in any case, the investment manager appointed must be approved by both the RICC and the MFSA.
- 5.04 An IC shall, unless otherwise authorised in writing by the MFSA, appoint the service providers selected for it by its RICC, under the same terms and conditions as shall have been approved by the MFSA for this purpose.
- 5.05 An IC shall have the same registered office as its RICC at all times.
- 5.06 Each IC shall be regulated by its own memorandum and articles of association. Each of the instruments of incorporation or any changes thereto must be endorsed by the RICC. No changes to the instruments of incorporation of the IC shall be effected except as approved by resolution of the board of directors of the IC and the RICC and in accordance with the Rules applicable to such schemes.
- 5.07 Each IC must issue its own offering document which may either be based on the standard form used by incorporated cells that belong to the same RICC or specific to the particular IC:
- Provided that no offering document or changes thereto shall be issued by the IC unless it has first been approved by the RICC and the MFSA.
- 5.08 An IC that has been granted or has applied for a collective investment scheme licence may apply for admissibility to listing with the Listing Authority⁴.
- 5.09 The directors of an IC are not required to be the same as those of the RICC. However the RICC and the IC must have at least one common director. The MFSA may require that directors with different competencies sit on the different boards of directors of the ICs. The common director shall report to the board of directors of the RICC on a regular basis and must provide the RICC with any information that may be relevant to the fulfilment of the RICC's compliance obligations in relation to its ICs.

⁴ The MFSA is the Listing Authority in terms of the Financial Markets Act.

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- 5.10 In addition to the obligations arising under the Companies Act, the IC shall notify the RICC and the MFSA within 14 days of a director of the IC being appointed or ceasing to be a director of the cell.
- 5.11 An IC may create subfunds. In such a case, the IC is required to comply with Rules 5.17 to 5.19 of Part A of the Investment Services Rules for Professional Investor Funds, as applicable.
- 5.12 Unless expressly prohibited by any Rules, laws or regulations or by its instruments of incorporation, an IC shall be permitted to own shares in any other IC of its RICC subject to any conditions that may apply in terms of its licence.
- 5.13 An IC of an RICC shall also indicate in a suitable manner in all of its business letters and forms that it is an IC of a RICC and the name of the RICC.
- 5.14 No IC of a RICC shall transfer, relocate or convert itself in any other manner except as authorised by the competent authority and subject to any conditions which the latter deems fit to impose.
- 5.15 An IC shall apply for a collective investment scheme licence as if it were an independent scheme, provided that it shall also be required to provide the relevant endorsements, resolutions and other approvals from its RICC as required by the applicable Rules and Regulations and will be required to comply with Part A of these Rules, as applicable.
- 5.16 On application, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.
- 5.17 An IC must provide a draft copy of its agreement with the RICC referred to in section 3 of Part BIII of the Investment Services Rules for Recognised Persons.
- 5.18 The IC must inform its RICC of any departure from any standard model agreement and must submit the relevant changes to the MFSA for approval.
- 5.19 The MFSA shall only grant a collective investment scheme licence to an IC if it is satisfied that the scheme will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and the applicable Investment Services Rules issued thereunder.
- 5.20 An IC of a RICC shall pay the licencing and supervision fees applicable to a collective investment scheme as stipulated in the Investment Services Act (Fees) Regulations. Subfunds of the IC shall pay the licensing and supervision fees applicable to subfunds of a collective investment scheme in terms of the same regulations.

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6. ADDITIONAL RULES APPLICABLE TO SCHEMES USING TRADING COMPANIES/ SPECIAL PURPOSE VEHICLES ("SPVs") FOR INVESTMENT PURPOSES

Commented [IA2]: Formerly SLCs 3.1 to 3.3 of Appendix I

- 6.01 The SPVs must be established in Malta or in a jurisdiction which is not an FATF Blacklisted country.
- 6.02 The scheme shall, through its directors or general partner(s), at all times maintain the majority directorship of any SPV.
- 6.03 The scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the scheme.

7. ADDITIONAL RULES APPLICABLE TO SCHEMES ESTABLISHED AS SELF-MANAGED SCHEMES

Commented [IA3]: Formerly 4.1 to 4.15 of Appendix I

- 7.01 The Rules prescribed in this section shall apply in addition to the rules prescribed in Part B.
- 7.02 In the case where the self-managed scheme wishes to avail itself of the *de minimis* exemption prescribed in Article 3 AIFMD, it shall comply with Rules 7.03 to 7.28. Other self-managed schemes shall comply with Rules 7.08 to 7.28.
- 7.03 A self-managed scheme (hereinafter referred to as *de minimis* self-managed scheme) which satisfies one of the following conditions shall further comply with the requirements contained herein:
- (a) either directly or indirectly, through a company with which the scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or
 - (b) either directly or indirectly, through a company with which the scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.
- 7.04 Where the conditions prescribed above are no longer met, the *de minimis* self-managed scheme shall inform the MFSA thereof and shall apply for an extension to its *de minimis* PIF licence to a full AIF licence within 30 days from the date of notification thereof to the MFSA:

Provided that in complying with the requirements prescribed in Rule 7.03 (a) and (b) above, the *de minimis* self-managed scheme shall further comply with articles 3 and 4

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of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

7.05 The *de minimis* self-managed scheme shall comply with the following requirements:

- (a) the scheme shall provide information to the MFSA on its investment strategy;
- (b) the scheme shall regularly, provide the MFSA with information on the main instruments in which it is trading and on its principal exposures and most important concentrations in order to enable the MFSA to monitor systemic risk effectively:

Provided that in complying with the requirements prescribed in paragraph [b] above, the scheme shall submit to the MFSA the information prescribed in Annexes 1 and 2 to this Appendix and shall further comply with:

- (i) the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision; and
 - (ii) the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].
- (c) the scheme shall provide the MFSA with any additional information required from time to time. In particular, in respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing, which shall be submitted to the MFSA. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion the methodology used by the scheme to calculate its assets under management complies with the requirements of the AIFMD.

7.06 The *de minimis* self-managed scheme shall not benefit from any rights to passport in terms of the AIFMD, unless it chooses to apply for, and is granted a full AIFMD compliant licence issued in accordance with the conditions in the Investment Services Rules for Alternative Investment Funds.

7.07 In the case where the *de minimis* self-managed scheme opts to apply for a full AIFMD compliant licence, it shall further comply with the relevant requirements prescribed the applicable articles of the EU Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

Capital requirements

- 7.08 The scheme shall be operated in or from Malta, as agreed with the MFSA. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed. The initial, paid up share capital for the scheme should not be less than EUR 125,000 or its currency equivalent and the NAV of the Scheme is expected to exceed this amount on an on-going basis. The scheme shall notify the MFSA as soon as its NAV falls below EUR125,000 or its currency equivalent.

Operational arrangements

- 7.09 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.
- 7.10 The management of the assets of the scheme shall be entrusted to the board of directors, at least one member of whom must be resident in Malta.
- 7.11 The board of directors of the scheme shall establish an in-house investment committee made up of at least three members, whose composition may include members of the board of directors. The terms of reference of this investment committee shall regulate the proceedings of the committee. Any changes thereto shall be subject to the prior approval of the MFSA.
- 7.12 The majority of investment committee meetings – the required frequency of which should depend on the nature of the scheme’s investment policy, but which should be at least quarterly – are to be physically held in Malta:
- Provided that meetings of the investment committee are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.
- 7.13 The minutes of the meetings of the investment committee shall be available in Malta for review during MFSA’s compliance visits.
- 7.14 The role of the investment committee will be to:
- i. monitor and review the investment policy of the scheme;
 - ii. establish and review guidelines for investments by the scheme;
 - iii. issue of rules for stock selection;
 - iv. set up the portfolio structure and asset allocation; and
 - v. make recommendations to the board of directors of the scheme.

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- 7.15 Where the scheme has not appointed an investment committee, the functions mentioned under Rule 7.14 above shall be undertaken by the directors of the scheme and any reference to investment committee throughout this Appendix shall be construed as reference to the board of directors of the scheme.
- 7.16 The investment committee may delegate the day-to-day investment management of the assets of the scheme to one or more officials of the scheme referred to as “the portfolio manager/s”.
- 7.17 The portfolio manager(s) will effect day-to-day transactions within the investment guidelines set by the investment committee and in accordance with the investment objectives, policy and restrictions described in the scheme’s offering document.
- 7.18 The scheme shall obtain the written consent of the MFSA prior to the appointment or replacement a member of the investment committee or portfolio manager. The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and propriety, including competence, of the members of the investment committee and of the portfolio manager(s).
- 7.19 The request for consent of the appointment of a member of the investment committee or a portfolio manager shall be accompanied by a PQ in the form set out in Schedule B to Part A of these Rules together with a detailed CV of the person proposed.
- 7.20 The scheme shall notify the MFSA in writing of the departure of a member of the investment committee and/ or a Portfolio Manager within 14 days of the departure. The scheme shall request the investment committee and/or portfolio manager, as applicable to provide the MFSA with the relevant details concerning the individual’s resignation. A copy of such request shall be provided to MFSA.
- 7.21 The scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the portfolio manager(s) and the investment committee.
- 7.22 The scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

Dealings by officials of the scheme

- 7.23 Where the scheme allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:
- the scheme must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse;
 - the scheme must take reasonable steps to ensure that its officials do not initiate personal transactions which might impair their ability to manage the scheme’s

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assets objectively and effectively or which might create a conflict between their own interest and that of the Scheme;

- iii. internal mechanisms should be established to prompt the compliance officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

7.24 All transactions undertaken by officials on their own account should be at "arm's length" – but this does not preclude discounts being allowed to officials.

Reporting requirements

7.25 The scheme shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

Documents and records

7.26 The scheme or the administrator on behalf of the scheme shall keep such accounting and other records, in particular regarding the whole process of the investment management function and its monitoring thereof, as are necessary to enable it to comply with the licence conditions and to demonstrate that compliance has been achieved.

7.27 Records are to be retained in Malta and made available to MFSA's review as the need arises and during compliance visits. Records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

Conflicts of interest

7.28 The scheme shall act honestly, fairly and with integrity – in the best interests of its investors and/or shareholders and of the market. Such action shall include:

- i. avoiding conflicts of interest where this is possible and, where it is not, ensuring – by way of disclosure, internal procedures or otherwise – that investors are treated fairly. The following procedures should be followed during Investment Committee meetings, where a member considers that s(he) has or may have a conflict of interest:
 - a. that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;
 - b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in

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which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;

- c. the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;
 - d. the minutes of the meeting should accurately record the sequence of such events.
- ii. abiding by all relevant laws and regulations, including in respect of prevention of money laundering;
 - iii. avoiding any claim of independence or impartiality which is untrue or misleading; and
 - iv. avoiding making misleading or deceptive representations to investors.