

# INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

## PART A: THE APPLICATION PROCESS

### 1. REGULATION OF COLLECTIVE INVESTMENT SCHEMES IN TERMS OF THE INVESTMENT SERVICES ACT, 1994

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1.01 Collective investment schemes, including UCITS and retail AIFs are regulated by the Investment Services Act<sup>1</sup> (the "Act") which provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. Retail AIFs and UCITS (hereinafter collectively referred to as "retail CISs") constitute two categories of collective investment schemes which fall within the provisions of the Act.

**Deleted:** Regulation of Retail Collective Investment Schemes ("Retail CIS")¶  
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<#>Retail CISs are Collective Investment Schemes that are available to the general public. ¶  
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The Investment Services Act, 1994 ("the Act") provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta. 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.

1.02 The Act defines a "collective investment scheme" 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:

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

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The Act also provides that an alternative investment fund that is not promoted to retail investors and that does not have the characteristics listed in paragraph (a) above shall only be deemed to be a collective investment scheme, if the scheme, in specific circumstances as established by regulations under the Act, is exempt from such requirement and satisfies the conditions that may be prescribed.

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<sup>1</sup> Chapter 370 – Laws of Malta

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1.03 The Act defines a “UCITS” as meaning an undertaking for collective investment in transferable securities in terms of the UCITS Directive<sup>2</sup>. A UCITS is defined as an undertaking:

- (a) with the sole object of collective investment in transferable securities or in other liquid financial assets as specified in Part BII of these Investment Services Rules, of capital raised from the public and which operate on the principle of risk spreading; and
- (b) with units which are, at the request of holders repurchased or redeemed directly or indirectly, out of those undertakings’ assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

1.04 The Act defines an “AIF” as being a collective investment scheme, including the 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<sup>3</sup>, the following undertakings shall not be considered as AIFs:

- (a) a holding company;
- (b) an institution for occupational retirement provision which is covered by Directive 2003/41/EC;
- (c) employee participation schemes or employee savings schemes;
- (d) securitisation special purpose vehicles.

1.05 The exclusions referred to in Rule 1.04 and further exemptions can be granted from the requirements to obtain a collective investment scheme licence in terms of the provisions of the Investment Services Act (Exemption) Regulations<sup>4</sup> and the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations<sup>5</sup>.

<sup>2</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

<sup>3</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers.

<sup>4</sup> S.L. 370.02

<sup>5</sup> S.L. 370.06

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## 2. CRITERIA WHICH THE MFSA WILL APPLY IN CONSIDERING AN APPLICATION FOR A LICENCE AND ONGOING REGULATORY REQUIREMENTS

2.01 The MFSA will grant a collective investment scheme licence if it is satisfied that the scheme will comply in all respects with the provisions of the Act, the applicable Regulations and these Investment Services Rules. Furthermore, the MFSA must also be satisfied that the directors and officers/trustee(s)/general partner(s), are "fit and proper" persons to carry out the functions required of them in connection with the retail CIS.

2.02 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:

- the protection of investors and the general public;
- the protection to the reputation of Malta taking into account Malta's international commitments;
- the promotion of competition and choice; and
- the reputation and suitability of the applicant and all other parties connected with the scheme.

2.03 In assessing a request for a collective investment scheme licence, the MFSA will consider the nature of the scheme and the nature of the investors to whom it will be marketed. It will then look into the experience and track record of all parties who will be involved with the scheme. Such persons should be of good standing and should be competent. The MFSA reserves the right to refuse a licence if it does not approve a party involved with the scheme.

2.04 Even though the Act provides for the licencing of different categories of schemes, the MFSA applies the same standards relating to the "fit and proper" status of the applicant and its service providers.

2.05 The "fit and proper" test is one which an applicant and a licence holder must satisfy on a continuing basis. The MFSA assesses each case on its own merits and on the basis of the relevant circumstances.

2.06 Nonetheless, the onus of proving that it meets the required standards on an on-going basis rests on the applicant and/or licensed scheme as the case may be. It is not the MFSA's task to prove that an applicant is fit and proper either on licensing or thereafter.

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REQUIREMENT FOR A COLLECTIVE INVESTMENT SCHEME LICENCE¶

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ARTICLE 4 OF THE ACT STATES:¶

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"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.¶

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<#>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 FR

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2.07 In carrying out the “fit and proper” test, the MFSA adopts a cumulative approach. It may decide that a scheme has failed the test after considering various circumstances, each of which on its own may or would not lead to that conclusion. For this reason, it is essential that the information provided to the MFSA in truthful and as complete as possible.

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2.08 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 ought to have been disclosed<sup>6</sup>. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.

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

2.10 Integrity requires that the CIS, its officers and its service providers are acting honestly and in a trustworthy fashion.

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2.11 Competence means that the persons responsible for running the CIS 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.

2.12 Solvency involves ensuring that proper financial controls and management of liquidity and capital is applied.

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<sup>6</sup> For example in respect of a person's criminal record

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## 3. CATEGORIES OF RETAIL COLLECTIVE INVESTMENT SCHEMES

3.01 The MFSa's regulatory regime for retail CISs caters for two principal categories namely

- (a) Maltese retail AIFs; and
- (b) Maltese UCITS schemes.

In addition, reference must also be made to European retail AIFs and European UCITS Schemes which are authorised by a European regulatory authority of an EU Member State or EEA State.

3.02 A retail CIS may be established as:

- (a) an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations<sup>7</sup>;
- (b) an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations<sup>8</sup>;
- (c) an incorporated cell of a recognised incorporated cell company ('RICC') under the Companies Act (Recognised Incorporated Cell Company) Regulations<sup>9</sup>;
- (d) a limited partnership under the Companies Act<sup>10</sup>;
- (e) a unit trust under the Trust and Trustees Act<sup>11</sup>; and
- (f) a contractual fund under the Investment Services Act (Contractual Funds) Regulations<sup>12</sup>.

➤ Maltese retail AIFs

3.03 A Maltese retail AIF is a scheme licenced in accordance with the provisions of the Act and subject to the requirements prescribed in this Part and in Part BI of these Investment Services Rules.

3.04 The marketing of a Maltese retail AIF in jurisdictions outside Malta to investors other than professional investors as defined in MiFID<sup>13</sup> is not automatic and **may** be allowed subject to the applicability of additional requirements in force in the host Member State as prescribed in Article 43 of the AIFMD.

<sup>7</sup> S.L. 386.02

<sup>8</sup> S.L. 386.14

<sup>9</sup> S.L. 386.15

<sup>10</sup> Chapter 386 - Laws of Malta

<sup>11</sup> Chapter 331 - Laws of Malta

<sup>12</sup> S.L. 370.16

<sup>13</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.

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<#>Maltese Non-UCITS Schemes;¶

<#>Maltese UCITS Schemes; ¶

<#>Overseas based Non-UCITS Schemes; and¶

<#>European UCITS Schemes.¶

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<#>Unless otherwise indicated, all references to Retail CISs throughout these Rules capture Maltese UCITS Schemes, Maltese Non-UCITS Schemes, European UCITS Schemes and Overseas based Non-UCITS Schemes. ¶

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3.05 A Maltese retail AIF which is established as a retail self-managed AIF shall be constituted in the form of an investment company with variable share capital [SICAV] and shall comply with the provisions applicable to retail self-managed AIFs prescribed in Appendix IX to Part BI to these Rules.

## ➤ Maltese UCITS schemes

3.06 A Maltese UCITS scheme is an open-ended scheme formed in accordance with the provisions of the Act and subject to the requirements applicable to Maltese UCITS schemes outlined in this Part and in Part BII of these Investment Services Rules. A Maltese UCITS scheme is also subject to the provisions prescribed in the Investment Services Act (Marketing of UCITS) Regulations<sup>14</sup>.

3.07 A Maltese UCITS scheme be established as a as a common fund only if the MFSA has approved the application of the Maltese or European management company to manage the fund, the fund rules and the choice of the custodian.

3.08 A Maltese UCITS scheme shall be established as an investment company only if the MFSA has approved both its instruments of incorporation and the choice of the custodian, and where relevant the application of the designated management company to manage the investment company.

3.09 A Maltese UCITS scheme which is established as a self-managed Maltese UCITS scheme shall be constituted in the form of an investment company with variable share capital and shall comply with the provisions applicable to self-managed Maltese UCITS schemes prescribed in Appendix VIII to Part BII of these Investment Services Rules.

3.10 A Maltese UCITS scheme may market its units to the general public in Malta. It may also market its units to the general public in any Member State or EEA State (other than Malta) provided that it follows the notification procedure stipulated in the Investment Services Act (Marketing of UCITS) Regulations.

3.11 A Maltese UCITS scheme is required to draw up a prospectus and a Key Investor Information Document ('KIID'). In drawing up the prospectus, the Maltese UCITS shall comply with the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations<sup>15</sup> and the information outlined in Annex II to Appendix I to Part B of these Investment Services Rules. With regards to the drafting of the KIID, the Maltese UCITS scheme shall comply with the requirements prescribed in Rules 6.20 to 6.40 of Part BII of these Rules.

<sup>14</sup> S.L. 370.18

<sup>15</sup> S.L. 370.04

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<#>A Maltese Non-UCITS Scheme may be set up in various legal forms including:¶

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<#>an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta);¶

<#>an incorporated cell company in terms of the Companies Act (SICAV Incorporated Cell Company) Regulations, 2010;¶

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## ➤ European retail AIFs

3.12 A European AIF which would like to actively market/promote its units in Malta – either directly or through intermediaries is deemed to be “carrying on an activity in Malta” in terms of Article 4 of the Act. Such schemes may exercise a passport right in terms of the AIFMD and in terms of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations<sup>16</sup>.

3.13 In terms of the AIFMD, such schemes would be exempt from the requirement to hold a collective investment scheme licence provided they follow the notification procedure stipulated in the Investment Services Act (Marketing of Alternative Investment Funds) Regulations and in particular regulation 6 of the said regulations which provides for marketing of units or shares of an AIF to retail investors.

## ➤ European UCITS Schemes

3.14 A European UCITS scheme is a UCITS constituted as a unit trust, common contractual fund or investment company, harmonised in accordance with the UCITS Directive and authorised by a European regulatory authority of an EU Member State or EEA State.

3.15 European UCITS schemes which would like to actively market/ promote their units in Malta – either directly or through intermediaries<sup>17</sup> are deemed to be “carrying on an activity in Malta” in terms of Article 4 of the Act. However, such schemes may exercise a passport right in terms of the UCITS Directive. Accordingly such schemes are exempt from the requirement to hold a collective investment scheme licence provided that they follow the notification procedure stipulated in regulation 8 of the Investment Services Act (Marketing of UCITS) Regulations, as further expanded in Section 7 of this Part of the Rules which provides an indication of the scenarios that would constitute marketing/ promotion in Malta.

3.16 Whenever a European UCITS scheme is sold exclusively on a one-to-one basis to persons in Malta, by Investment Services Licence Holders or European investment firms/ European management companies passporting into Malta, the European UCITS scheme is not deemed to be “marketing/ promoting” its units in Malta as described in Section 7 of this Part and is accordingly not required to follow the notification procedure referred to above.

3.17 Likewise whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS scheme, the European UCITS scheme is not required to follow the notification procedure referred to above on the

<sup>16</sup> S.L. 370.21

<sup>17</sup> e.g. by means of seminars, mailshots etc.

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¶ <#>An Overseas based Non-UCITS Scheme is an open ended or closed ended Scheme formed in accordance with or existing under the laws of a jurisdiction other than Malta and is subject to tailored requirements agreed with the MFSA. ¶

¶ Overseas based Non-UCITS Schemes which would like to actively market/ promote their units in Malta – either directly or through intermediaries (e.g. by means of seminars, mailshots etc.) – are deemed to be “carrying on an activity in Malta” in terms of Article 4 of the Investment Services Act and are required to hold a Collective Investment Scheme Licence prior to marketing/ promoting their units in Malta. Reference should be made to Section 12 of this Part for an indication of the scenarios that would constitute marketing/ promotion in Malta. ¶

¶ Certain licensing eligibility criteria will apply to such Schemes – primarily that the Scheme and its principal Service Providers are to be based and regulated in a Recognized Jurisdiction. Such Scheme may appoint multiple distributors. ¶

¶ Whenever an Overseas based Non-UCITS Scheme is sold exclusively on a one to one basis to persons in Malta, by Investment Services Licence Holders/ European investment firms passporting into Malta, the Overseas based Non-UCITS Scheme is not deemed to be “carrying on an activity in Malta” provided there is no “marketing/ promotion” in Malta as described in Section 12 of this Part. Likewise whenever an investor in Malta requests and is provided with information (including marketing material) on an Overseas based Non-UCITS Scheme, the Overseas based Non-UCITS Scheme is not deemed to be “carrying on an activity in Malta” on the basis that the communication was initiated by the investor.¶

¶ An Overseas based Non-UCITS Scheme that is not marketed in Malta in its own right but is available for linking to unit linked ...

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basis that there is no “marketing/ promotion” in Malta as the communication was initiated by the investor.

3.18 A European UCITS scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta is not deemed to be “marketing” in Malta and will accordingly not be required to follow the notification procedure.

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3.19 In terms of regulation 9(5) of the Investment Services Act (Marketing of UCITS) Regulations, a European UCITS scheme is required to satisfy the MFS that adequate measures have been taken to ensure that facilities are available in Malta for making payments to unit holders, repurchasing or redeeming units and making available the information which European UCITS schemes are obliged to provide.

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3.20 The requirement referred to in Rule 3.19 may be satisfied through:

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a. the appointment of at least one of the following entities to carry out the above-mentioned services:

- an Investment Services Licence Holder; or
- a local branch of a European Investment Firm passporting into Malta in terms of regulation 3 of the European Passport Rights for Investment Firms Regulations, as amended; or
- a local branch of a European management company passporting into Malta in terms of regulation 9 of Investment Services Act (UCITS Management Company Passport) Regulations;

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¶ The MFS aims to provide a regulatory framework which is both robust and simultaneously adaptable to allow managers and promoters to innovate and to develop new products to meet the changing needs of the market. The Standard Licence Conditions for Maltese Non-UCITS Schemes are set out in Part BI of these Rules, and in Part BII as regards Maltese UCITS Schemes. Overseas based Non-UCITS Schemes are subject to tailored licence conditions as may be agreed with the MFS. The licence conditions will be specific to such Schemes and depend on the extent of supervision exercised by the competent authority of the home State of such Schemes.¶

¶ <#>Section 12 of this Part includes the ongoing regulatory requirements applicable to European UCITS Schemes which market their units in Malta in terms of the UCITS Directive. ¶

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¶ A Maltese UCITS Scheme, a Maltese Non-UCITS Scheme or an Overseas based Non-UCITS Scheme that has been granted or has applied for a Collective Investment Scheme Licence may apply for admissibility to listing with the Listing Authority (the MFS is the Listing Authority in terms of the Financial Market Act, 1990). ¶

¶ A European UCITS Scheme may also apply for admissibility to listing with the Listing Authority. ¶

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## 4. SERVICE PROVIDERS

4.01 The MFSA ordinarily expects a retail CIS to appoint service providers such as a manager, a custodian, an administrator and an investment adviser.

### ➤ Manager

4.02 A retail CIS is expected to appoint an AIFM or a UCITS management company depending on whether the scheme is established as an AIF or as a UCITS.

4.03 A Maltese retail AIF may appoint a Maltese or a European AIFM. A Maltese AIFM shall be licenced in terms of the Act and shall comply with the requirements prescribed in Part BIII of the Investment Services Rules for Investment Services Providers.

4.04 A European AIFM shall comply with the requirements prescribed in regulations 6 and 7 of the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations and Part CIII of the Investment Services Rules for Investment Services Providers.

4.05 A Maltese UCITS Scheme which is not a self-managed Maltese UCITS shall appoint a Maltese or European management company. A Maltese management company shall be licenced in terms of the Investment Services Act and shall be expected to comply with the SLCs prescribed in Part BII of the Investment Services Rules for Investment Services Providers.

4.06 A European management company may be appointed as long as it complies with regulations 9 and 10 respectively of the Investment Services Act (UCITS Management Company Passport) Regulations and Part CII of the Investment Services Rules for Investment Service Providers.

4.07 Where the Maltese UCITS management company wishes to delegate to a sub-manager for the purpose of a more efficient conduct of its business, the carrying out of some of its functions, it shall submit to the MFSA the details of such delegation. Furthermore, this delegation of functions shall not prevent the effectiveness of supervision over the Maltese UCITS management company and in particular shall not prevent the Maltese management company from acting in the best interests of the investors.

### ➤ Fund Administrator

4.08 Administrative services in relation to a Maltese retail CIS may be carried out by the manager or by a delegated third party administrator in terms of the rules on delegation prescribed in the Investment Services Rules for Investment Services Providers applicable to UCITS management companies and AIFMs.

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The MFSA ordinarily expects all Service Providers of a Maltese Non-UCITS Scheme to be based in Malta and regulated by the MFSA. Service Providers generally include, amongst others, a Manager, a Custodian, an Administrator and an Investment Adviser. ¶

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<#>The MFSA may, in the following scenarios, also accept Service Providers which may not be established and regulated in a Recognised Jurisdiction where the MFSA considers that the Service Provider is subject to regulation to an equal or comparable level in the jurisdiction concerned. ¶

<#>¶

<#>Manager¶

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<#>Where a Maltese Non-UCITS Scheme proposes to appoint a third party Manager and the proposed Manager is established in Malta, it should be in possession of a Category 2 Investment Services Licence issued in terms of article 6 of the Investment Services Act, 1994 and authorised to provide fund management services. ¶

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<#>Where the proposed Manager has appointed a Sub-Manager with limited or full discretion in respect of the management of the assets of the Scheme, the Sub-Manager is also subject to MFSA's approval. Notwithstanding MFSA's approval requirement, the MFSA expects the Manager to exercise care and diligence in the selection of a Sub-Manager and to assume responsibility for the acts of the Sub-Manager. ¶

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<#>Maltese Non-UCITS Schemes which do not appoint a third party manager, should refer to the relevant supplementary conditions applicable to self-managed funds included in Part BI of these Rules. ¶

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4.09 Where the proposed fund administrator is established in Malta, it shall be in possession of a Fund Administration Recognition Certificate issued in terms of article 9A of the Act.

## ➤ Custodian

4.10 A retail CIS is required to appoint a custodian responsible for the safe keeping, monitoring and oversight of the scheme's assets.

4.11 The custodian shall be based in Malta and shall be in possession of a Category 4a Investment Services Licence issued by the MFSA in terms of the Act and the Investment Services Act (Custodians of Collective Investment Schemes) Regulations.

## ➤ Investment Adviser

4.12 The investment adviser is a person responsible for the provision of investment advice to the retail CIS or its manager with respect to amongst others the investment and re-investment of the assets of the scheme. It is understood that the investment adviser will not have any discretion with respect to the investment and re-investment of the assets of the scheme.

4.13 Retail CISs are generally not required to appoint a third party investment adviser. Moreover, the proposed investment adviser need not be established and regulated in Malta.

4.14 Where the investment adviser is appointed by the manager, rather than by the scheme such it will also be subject to the MFSA's approval. Where the proposal includes the appointment of an investment adviser that is established in Malta, the adviser shall be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of article 6 of the Act and shall be duly authorised by the MFSA to provide investment advice to collective investment schemes.

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## **Deleted:** 7.2. Maltese UCITS Schemes¶

¶ The MFSA ordinarily expects a Maltese UCITS Scheme to appoint Service Providers such as a manager, a Custodian, an Administrator and an Investment Adviser. ¶

### ¶ <#>Manager¶

¶ A Maltese UCITS Scheme which is not a self-managed Maltese UCITS shall appoint a Maltese or European management company. A Maltese management company shall be licenced in terms of the Investment Services Act and shall be expected to comply with the SLCs prescribed in Part BII of the Investment Services Rules for Investment Services Providers.¶

¶ A European management company may be appointed as long as it complies with Regulations 9 and 10 respectively of the Investment Services Act (UCITS Management Company Passport) Regulations, 2011 and Part CII of the Investment Services Rules for Investment Service Providers. ¶

¶ Where the Maltese management company wishes to delegate to a Sub-Manager for the purpose of a more efficient conduct of its business, the carrying out of some of its functions, it shall submit to the MFSA the details of such delegation. Furthermore, this delegation of functions shall not prevent the effectiveness of supervision over the Maltese management company and in particular shall not prevent the Maltese management company from acting in the best interests of the investors. ¶

¶ Maltese UCITS Schemes which do not appoint a management company should refer to the relevant supplementary conditions applicable to self-managed schemes included in Part BII and Appendix VIII of these Rules. ¶

### ¶ <#>Fund Administrator ¶

¶ Administrative services in relation to a Maltese UCITS may be carried out by the management company or a delegated third party Administrator in terms of the rules on delegation prescribed in the Investment Services Rules for Investment Services Providers. A fund administrator may be appointed directly by the Maltese UCITS.¶

¶ Where the proposed provider of fund administration services is established in Malta, it should be in possession of a Fund Administration recognition certificate issued in terms of Article 9A of the Investment Services Act, 1994. ¶

### ¶ <#>Custodian ¶

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# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

## 5. APPLICATIONS FOR A COLLECTIVE INVESTMENT SCHEME LICENCE

### ➤ The Application Process – Maltese retail AIFs and Maltese UCITS Schemes

5.01 When submitting an application for a collective investment scheme licence under the Act, the promoter should ensure that the appropriate Application Form<sup>18</sup> is completed.

5.02 The application requirements which must be satisfied by Maltese Retail AIFs and Maltese UCITS Schemes, are summarised below.

5.03 There are three phases to the application process namely [i] phase one being the preparatory phase; [ii] phase two being the pre-licencing phase; and [iii] phase three being the post-licencing phase.

5.04 Phase one consists of the following steps:

a. The MFSA recommends that the promoters complete the application form and submit it with the supporting documents as specified in the application form itself. The application form must be signed by the promoter and shall be complete with all the information and documents required. The application form and the supporting documentation will be reviewed and comments provided to the applicant generally within three weeks from submission of the application documents.

b. The MFSA may ask for more information and may make such further enquiries as it considers necessary. Furthermore, the MFSA carries out the necessary due diligence checks at this stage.

c. The MFSA will consider the nature of the proposed scheme and will apply the rules included in Parts BI or BII of this Rulebook depending on whether the scheme is a retail AIF or a UCITS. The rules included in Part BI and BII represent the ongoing requirements to which the scheme will be subject, if and when licensed.

5.05 Phase two consists of the following steps:

(a) 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; the 'in principle approval' issued will cease to have effect.

<sup>18</sup> Schedule A to Part A of these Rules

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<#>¶  
<#>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. ¶  
<#>¶  
<#>The draft Application Form and the supporting documentation will be reviewed and comments provided to the Applicant generally within three weeks from submission of the application documents. ¶  
<#>¶  
<#>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. ¶  
<#>¶  
<#>The MFSA will consider the nature of the proposed Scheme and a decision will be made regarding which "Standard Licence Conditions" (SLCs) should apply. Some of these conditions may be disappplied or amended (where the circumstances justify such treatment, as long as investors are adequately protected) and supplementary conditions (if any) may be applied. The Licence Conditions are very important since they represent the ongoing requirements to which the Applicant will be subject, if and when licensed. ¶

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# MFSA

MALTA FINANCIAL SERVICES AUTHORITY

(b) Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the scheme and resubmitted to MFSA.

(c) The MFSA will proceed with the issue of a licence as soon all pre-licensing issues are resolved.

5.06 During phase three, the applicant may be required to satisfy a number of post-licencing matters prior to the formal commencement of business.

## ➤ Application documents

5.07 An applicant for a collective investment scheme licence in respect of a retail CIS is ordinarily required to submit the following documents:

- i. application form.
- ii. application fee;
- iii. draft version of the instruments of incorporation<sup>19</sup>;
- iv. draft version of the prospectus and where applicable the KIID; and
- v. a detailed marketing plan;
- vi. draft management, administration, custody and advisory agreements as applicable;
- vii. resolution of the governing body<sup>20</sup> of the scheme:
  - (a) confirming the intention of the governing body to apply for a collective investment scheme licence in favour of the retail CIS<sup>21</sup>;
  - (b) identifying the person(s) responsible for signing the application documents;
  - (c) identifying the person(s) responsible on behalf of the governing body of the retail CIS for the scheme's compliance obligations;
  - (d) identifying the person(s) responsible on behalf of the governing body of the retail CIS for the scheme's anti-money laundering obligations;

<sup>19</sup> Memorandum and articles of association in the case of a SICAV, deed of partnership in the case of a limited partnership, trust deed/ deed of constitution (either by public deed or private writing) in the case of unit trust or contractual fund.

<sup>20</sup> Board of directors in the case where the scheme is established as an investment company; general partners where the scheme is established as a limited partnership; manager in the case of unit trust

<sup>21</sup> Where the scheme is established as an incorporated cell company, the resolution must confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company.

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<#>At this stage, the Applicant will be required to finalise any outstanding matters. 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.¶

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(e) approving and assuming responsibility for the contents of the prospectus and where applicable the KIID;

viii. personal questionnaires of the individuals proposed to carry out the functions of portfolio manager, risk manager, compliance officer and money laundering reporting officer and investment advisor.

5.08 In addition, where the scheme is established as an investment company, it is required to submit the following additional documents:

- i. personal questionnaires of the directors of the scheme:
- individuals: personal questionnaires of the proposed director(s);
  - corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

- ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
- individuals: personal questionnaires of the founder shareholder(s);
  - corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
  - corporate and not regulated in a recognised jurisdiction:
    - (a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
    - (b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
    - (c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

5.09 In addition to the requirements outlined in Rule 5.07 above, where the scheme is established as an incorporated cell company, it is required to submit the following additional documents:

- i. personal questionnaires of the directors of the scheme:
- if individuals: personal questionnaires of the proposed director(s);
  - if corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.

ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:

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Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;  
<#>Draft version of the Memorandum & Articles of Association of the Scheme;  
<#>Draft Management, Administration, Custody, Advisory agreements (as applicable);  
<#>Draft Board of Directors' resolution;  
<#>confirming the Directors' intention to apply for a Collective Investment Scheme licence in favour of the Scheme;  
<#>identifying the person(s) responsible for signing the application documents;  
<#>identifying the person(s) responsible on behalf of the Board for the Compliance obligations of the Scheme;  
<#>identifying the person(s) responsible on behalf of the Board for the AML obligations of the Scheme;  
approving and assuming responsibility for the contents of the Prospectus and the Key Investor Information Document (if applicable);  
Application Fee;  
<#>Marketing Plan;  
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MALTA FINANCIAL SERVICES AUTHORITY

- if individuals: personal questionnaires of the founder shareholder(s);
- if corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
- if corporate and not regulated in a recognised jurisdiction:
  - (a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
  - (b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
  - (c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

5.10 In addition to the requirements outlined in Rules 5.07 and 5.09 above, in the case of incorporated cells (ICs) the following additional documents are required:

- a copy of the agreement between the incorporated cell and the stated ICC;
- the draft resolution of the governing body of the incorporated cell shall include a confirmation of the governing body to apply for a collective investment scheme licence in favour of the scheme to operate as an incorporated cell of the SICAV incorporated cell company or the incorporated cell of the recognised incorporated cell company (RICC);
- a copy of the resolution of the board of directors of the SICAV ICC 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.
- personal questionnaires of the directors of the scheme:
  - if individuals: personal questionnaires of the proposed director(s);
  - if corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual(s) that will represent the corporate director on the board of directors of the scheme.
  - if corporate, not regulated in a recognised jurisdiction
    - (a) personal questionnaire of the directors of the proposed corporate director(s);
    - (b) personal questionnaire of the qualifying beneficial owners of the proposed corporate director(s);

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<#>Draft version of the Memorandum & Articles of Association

of the Scheme<sup>22</sup>;¶

<#>Draft Management, Administration, Custody, Advisory

agreements (as applicable);¶

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- (c) the name of the individual(s) who will represent the corporate director(s); and
- (d) last three years audited financial statements of the proposed corporate director(s).

v. in relation to the founder shareholder(s) holding more than 10% of the voting shares:

- if individuals: personal questionnaires of the founder shareholder(s);
- if corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
- if corporate and not regulated in a recognised jurisdiction:
  - (a) personal questionnaire of the directors of the proposed corporate founder shareholder(s);
  - (b) personal questionnaire of the qualifying beneficial owners of the proposed corporate founder shareholder(s); and
  - (c) last three years' audited financial statements of the proposed corporate founder shareholder(s).

5.11 In addition to the requirements outlined in Rule 5.07 above, in the case where the scheme is established as a **limited partnership** the following additional documents are required:

i. general partner(s) of the scheme:

- if individuals: personal questionnaires of the proposed general partner(s);
- if corporate, regulated in a recognised jurisdiction:
  - (a) details of the regulatory status of the proposed corporate general partner(s);
  - (b) the name of the individual(s) who will represent the corporate general partner(s);
- if corporate, not regulated in a recognised jurisdiction:
  - (e) personal questionnaire of the directors of the proposed corporate general partner(s);
  - (f) personal questionnaire of the qualifying beneficial owners of the proposed corporate general partner(s);
  - (g) the name of the individual(s) who will represent the corporate general partner(s); and
  - (h) last three years audited financial statements of the proposed corporate general partner(s).

5.12 In addition to the requirements outlined in Rule 5.07 above, in the case where the scheme is established as a unit trust or contractual fund, the details of the regulatory status of the proposed trustee are required.

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<#>details of the regulatory status of the proposed Corporate Director(s):¶  
<#>name of the individual(s) that will represent the Corporate Director on the Board of Directors of the Scheme.¶

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¶  
<#>Application Form (Schedule A to this Part):¶  
<#>Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;¶  
Draft version of the Deed of Partnership;¶  
<#>Draft Management, Administration, Custody, Advisory agreements (as applicable);¶  
<#>Resolution of the General Partner(s):¶  
<#>confirming the its/ their intention to apply for a Collective Investment Scheme licence in favour of the Scheme;¶  
<#>identifying the person(s) responsible for signing the application documents;¶

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5.13 Where the scheme is established as a self-managed retail scheme, the MFSA requires the following additional application documents:

- i. personal questionnaire and detailed curriculum vitae of the members of the investment committee and of the portfolio manager;
- ii. terms of reference regulating the procedures of the investment committee;
- iii. confirmation from the portfolio manager(s) (as applicable) that he/she/ they will:
  - operate in accordance with the investment objective and policy described in the scheme's prospectus in general and the investment guidelines issued by the investment committee in particular;
  - report to the investment committee on a regular basis any transactions effected on behalf of the scheme; and
  - provide to the investment committee, any information as the investment committee may require from time to time;
- iv. 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;
- v. risk management policy.

5.14 In addition to the requirements outlined in Rule 5.13 above, where the scheme is established as a self-managed retail AIF, the MFSA requires the following additional application documents:

- i. portfolio and risk management delegation agreements (where applicable);
- ii. risk management policy document;
- iii. programme of activities / business plan;
- iv. where the self-managed retail AIF intends to cover potential professional liability risks by way of professional indemnity insurance, a copy of the cover note to the insurance policy is required.

5.15 The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

➤ Licensing of additional subfunds of an existing scheme

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5.16 A retail AIF or UCITS scheme 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:

- formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund(s);
- a confirmation from the directors/ general partner/manager (UCITS management company or AIFM) as applicable signifying their intention to apply for a licence in favour of the sub-fund(s);
- a final draft of the revised prospectus and where applicable the KIID;
- the appropriate application fee as outlined in Section 9 to this Part of the Rules; and
- a draft copy of the approval by the scheme's proposed directors/general partner(s)/manager (as applicable) of the revised prospectus and where applicable the KIID.

➤ Applications for the approval of additional classes of shares/ units of an existing scheme

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

- formal notification to the MFSA of its intention to issue additional classes of shares/ units;
- a final draft of the revised prospectus and where applicable the KIID;
- a draft copy of the approval of the scheme's proposed directors/general partner(s)/manager (as applicable) of the prospectus and where applicable the KIID; and
- a confirmation from the directors/general partner(s)/manager (as applicable) signifying their intention to issue additional classes of shares/ units.

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

➤ Licencing Timeframes applicable to UCITS

5.19 The MFSA shall inform the management company or in the case where the scheme is a self-managed UCITS, the investment company, within two months of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

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<#>8.2 The Application Process – Overseas based Non-UCITS Schemes ¶

<#>¶

<#>When submitting an application for a Collective Investment Scheme licence under the Act, the promoter should ensure that the appropriate Application Form (Schedule B to this Part refers) is completed. ¶

<#>¶

<#>The application requirements which must be satisfied by an Overseas based Non-UCITS Scheme, are summarised below. ¶

<#>¶

<#>There are three phases as follows:-¶

<#>¶

<#>Phase One - Preparatory¶

<#>¶

<#>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 and in particular on the manner in which the applicant proposes to market the units of the Scheme in Malta. ¶

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5.20 The MFSA shall not authorise a Maltese UCITS if it is legally prevented for example though a provision in the fund rules or instruments of incorporation from marketing its units in Malta.

## Licencing timeframes applicable to retail AIFs

5.21 The MFSA shall inform an applicant for a licence to provide services as a retail self-managed AIF 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.

5.22 A self-managed retail AIF may start providing an investment service in Malta with investment strategies described in 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:

- (a) information on arrangements made for the delegation and sub-delegation to third parties of functions;
- (b) the memorandum and articles of association of the retail AIF;
- (c) information on the arrangements made for the appointment of the custodian;
- (d) any additional information relating to the reporting obligations of the scheme.

## Listing on a regulated market

5.23 A scheme, whether a retail AIF or a UCITS scheme 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<sup>23</sup>.

5.24 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 the collective investment scheme licence need not be resubmitted as part of the application for admissibility to listing.

5.25 In addition, provided the MFSA is informed of the scheme's intention to apply for admissibility to listing, once the 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.

5.26 A European UCITS or European retail AIF may also apply for admissibility to listing with the Listing Authority.

<sup>23</sup> The MFSA is the Listing Authority in terms of the Financial Markets Act.

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~~<#>¶~~  
~~<#>Application Form (Schedule A to this Part);¶~~  
~~<#>Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;¶~~  
~~<#>Draft version of the Deed of Partnership;¶~~  
~~<#>Draft Management, Administration, Custody, Advisory agreements (as applicable);¶~~  
~~<#>Resolution of the General Partner(s);¶~~  
~~<#>confirming the its/ their intention to apply for a Collective Investment Scheme licence in favour of the Scheme;¶~~  
~~<#>identifying the person(s) responsible for signing the application documents;¶~~  
~~<#>identifying the person(s) responsible on behalf of the General Partners(s) for the Compliance obligations of the Scheme;¶~~  
~~<#>identifying the person(s) responsible on behalf of the General Partners(s) for the AML obligations of the Scheme; and¶~~  
~~<#>approving and assuming responsibility for the contents of the Prospectus and Key Investor Information Document (if applicable);¶~~  
~~<#>Application Fee;¶~~  
~~<#>Marketing Plan;¶~~  
~~<#>General Partner(s) of the Scheme;¶~~

Moved up [5]: ~~<#>Application Form (Schedule A to this Part);¶~~  
~~<#>Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;¶~~

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Moved up [3]: ~~<#>Incorporated Cell Companies (ICCs)¶~~

~~<#>¶~~  
~~<#>Application Form (Schedule A to this Part);¶~~  
~~<#>Draft version of the Prospectus and the Key Investor Information Document (KII) (if applicable);¶~~

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~~Application Documents¶~~  
~~<#>¶~~  
~~<#>Maltese Non-UCITS Schemes and Maltese UCITS Schemes ¶~~  
~~<#>¶~~

Moved up [2]: ~~<#>Application Form (Schedule A to this~~  
~~<#>Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme;¶~~  
~~<#>Draft version of the Memorandum & Articles of Association of the Scheme;¶~~

Moved up [6]: ~~<#>A Maltese Non-UCITS Scheme or a Maltese UCITS Scheme 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:¶~~

Moved up [7]: ~~<#>A Maltese Non-UCITS Scheme or Maltese UCITS Scheme constituted in the form of an umbrella (i.e. with sub-funds) or multi class (i.e. without sub-funds) fund wishing to issue an additional class of shares/ units (which shall not constitute a distinct sub-~~

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## **6. EXERCISE OF PASSPORT RIGHTS BY EUROPEAN RETAIL AIFs**

### **➤ Notification Procedure**

6.01 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 European AIFs wishing to market their units in Malta in terms of the AIFMD.

6.02 Marketing of a European AIF which is managed by an external AIFM is regulated by the provisions of regulation 5 of the Investment Services Act (Marketing of AIFs) Regulations<sup>25</sup>. The European AIF, where registered in a Member State or EEA State other than Malta, shall thereafter be exempt from the provisions of article 4 of the Act as long as the conditions referred to in the regulations are fulfilled.

### **➤ Notification Requirements**

6.03 The European AIFM shall submit to the European regulatory authority in its home Member State or EEA State a notification in respect of each European AIF which it intends to market.

6.04 A European AIFM can market the units or shares of the European AIF to retail investors only if it is in possession of an authorisation for this purpose from the MFSA. The European AIFM shall comply with Section 10 of the Investment Services Rules for Investment Services providers prescribing:

- a) the types of AIF with respect to which an application for marketing to retail investors may be made to the MFSA;
- b) the manner and form of the application for an authorisation to market an AIF to retail investors in Malta;
- c) the conditions for authorisation to market to retail investors; and
- d) the on-going obligations and additional requirements applicable to the marketing of AIFs to retail investors.

6.05 The MFSA shall, no later than twenty working days after the date of receipt of a complete notification file, receive from the European regulatory authority of the AIFM's home Member State, the complete notification file. This shall also include a statement to the effect that the European AIFM concerned is authorised to manage European AIFs with a particular investment strategy.

6.06 The MFSA will only receive the complete notification file if the European AIFM's management of the European AIF complies with and will continue to comply with the provisions of the AIFMD.

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<sup>25</sup> S.L. 370.21

# MFSA

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6.07 Upon transmission of the notification file to the MFSA, the European AIFM may start marketing the European AIF in Malta.

➤ Ongoing requirements

6.08 European AIFMs marketing units or shares of European AIFs in Malta in terms of the AIFMD are required to keep the documentation and the translations thereof updated. Furthermore, the MFSA should be notified of any amendments to the documentation.

6.09 Furthermore, European AIFs being marketed in Malta in terms of the AIFMD are required to pay Annual Supervisory Fees referred to in Section 8 below.

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## 7. EXERCISE OF PASSPORT RIGHTS BY EUROPEAN UCITS SCHEMES

7.01 This section should be read in conjunction with the [Investment Services Act \(Marketing of UCITS\) Regulations](#) and [Commission Regulation \(EU\) No 584/2010](#)<sup>26</sup>. It provides an overview of the requirements applicable to European UCITS Schemes wishing to market their units in Malta in terms of the UCITS Directive.

### ➤ Notification Procedure

7.02 European UCITS schemes may market their units in Malta without the need to hold a collective investment scheme licence in terms of the [Act](#), provided that the European UCITS Scheme has satisfactorily completed the notification procedure outlined in regulation 8 of the [Investment Services Act \(Marketing of UCITS\) Regulations](#) as further described below.

7.03 The term “marketing” is to be interpreted as capturing at least the following scenarios:

- (a) [Scenario 1](#): an investment advertisement<sup>27</sup> is issued in Malta marketing/promoting the European UCITS Scheme;
- (b) [Scenario 2](#): seminars or other meetings are organized in Malta aimed at the general public or at a class or classes of investors with a view to promote the European UCITS scheme;
- (c) [Scenario 3](#): a circular/mail-shot or other medium of communication is used with a view to promote the European UCITS scheme to persons in Malta;
- (d) [Scenario 4](#): the placing of brochures/ documentation pertaining to the European UCITS scheme in a location accessible to the public or the uploading of the UCITS’ documents or other information regarding the UCITS on a local distributor’s internet site – which targets mainly investors in Malta (being clients of the distributor); and
- (e) [Scenario 5](#): direct or indirect promotion of the European UCITS scheme by means of press releases.

7.04 The scenarios included above are not exhaustive and do not necessarily capture all possible scenarios where a European UCITS scheme may market its units in Malta. The term “at least” implies that the term “marketing” should not be interpreted so

<sup>26</sup> Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

<sup>27</sup> Article 2 of the Act defines an “investment advertisement” means any form or medium of advertising or promotional activity, other than a prospectus, the contents of which, either invites persons, or contains material calculated to induce persons: (i) to become or offer to become participants in a collective investment scheme; or (ii) to subscribe for or otherwise acquire or underwrite an instrument; or (iii) to purchase or otherwise procure an investment service.

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narrowly to include only the scenarios described. European UCITS schemes may consult MFSA should they be in doubt whether a particular scenario involves “marketing”.

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7.05 For the avoidance of doubt:

- (a) a European UCITS scheme that is sold exclusively to persons in Malta on a one to one basis need not follow the notification procedure provided there is no “marketing” in Malta as described above;
- (b) whenever an investor in Malta requests and is provided with information (including marketing material) on a European UCITS scheme, the European UCITS Scheme is not deemed to be “marketing” in Malta on the basis that the communication was initiated by the investor;
- (c) a European UCITS scheme that is not marketed in Malta in its own right but is available for linking to unit linked policies which are themselves marketed in Malta, is not deemed to be “marketing” in Malta and will accordingly not be required to follow the notification procedure.

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### ➤ Notification Requirements

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7.06 A European UCITS scheme may market its units in Malta, provided that prior to commencement to market in Malta, the MFSA has received from the European regulatory authority of the EU Member State or EEA State a notification letter made in the form and manner prescribed in regulation 8 of the Investment Services Act (Authorisation and Passporting of UCITS) Regulations. The notification letter shall include the following information:

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- a. information on the arrangements made for marketing by the European UCITS of its units in Malta, including where relevant in respect of share classes;
- b. an indication that the units of the European UCITS will be marketed by the management company that manages the European UCITS;
- c. the latest version of its fund rules or its instruments of incorporation and its prospectus in Maltese or English;
- d. where appropriate, the latest annual report and any subsequent half-yearly report in Maltese or English;
- e. the KIID translated in Maltese or English; and
- f. an attestation that the European UCITS fulfils the conditions of the UCITS Directive in the manner and form prescribed by Commission Regulation 584/2010.

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7.07 The notifying European UCITS scheme shall take the measures necessary to ensure that facilities are available in Malta for making payments to unit-holders, repurchasing or redeeming units and making available the information which European UCITS schemes are obliged to provide by *inter alia* making the arrangements outlined in Rules 3.14 to 3.20 of this Part of the Rules. The MFSA will not request additional documents, certification or information other than those provided above.

## ➤ Cross-border Marketing Rights

7.08 The European UCITS will be able to access the Maltese market as from the date of notification by the European regulatory authority of the UCITS home Member State or EEA State.

7.09 The European UCITS scheme will be required to pay the relevant notification fee outlined in Section 8 of this Part of the Rules soon after the notification by the European regulatory authority.

## ➤ On-Going Requirements

7.10 European UCITS schemes that have been authorised by the European regulatory authority of the UCITS home Member State to market their units in Malta in terms of the UCITS Directive are required to keep the documentation referred to above and the translations thereof updated. Furthermore, the European UCITS shall notify any amendments to the aforementioned documents to the MFSA and shall indicate where such documents can be obtained electronically.

7.11 European UCITS schemes should also ensure that their marketing arrangements comply with the requirements outlined in Schedule D to this part of the Rules. Any investment advertisements issued by a notified European UCITS scheme should be drawn up in compliance with these requirements.

7.12 Furthermore, European UCITS schemes authorised to market their units in Malta in terms of the UCITS Directive are required to pay annual supervisory fees referred to in Section 8 below.

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# MFSA

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## 8. CESSATION OF COLLECTIVE INVESTMENT SCHEME LICENCE

8.01 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 licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit-holders.

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8.02 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.

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8.03 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:

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a) a formal request to the MFSA asking for its approval to surrender the collective investment scheme licence;

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b) a resolution of the governing body of the scheme;

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i. confirming the scheme's intention to surrender its licence, subject to the MFSA's approval and once the necessary formalities are finalised;

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ii. confirming that the scheme has informed its auditor, custodian and relevant parties of its intention to surrender its licence;

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c) a shareholders' resolution confirming their approval of the proposed closure of the scheme (where applicable);

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d) 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 shall be submitted to the MFSA.

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8.04 Subsequently the scheme shall also submit:

a) a confirmation from the scheme's administrator that there are no investors in the scheme;

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b) a confirmation from the scheme's administrator that no complaints/ litigation are/is pending arising from any event that occurred whilst the scheme was licensed;

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c) a confirmation from the scheme's administrator that the accruals and liabilities of the scheme have been cleared;

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d) a confirmation from the custodian (where applicable) or administrator that the disbursement of the assets of the scheme has been completed in order; and

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e) the original licence/s granted to it by the MFSA.

8.05 Once all the requirements listed above are satisfied, the respective supervisory fees are settled, the scheme is delisted from any regulated market and passporting

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notifications withdrawn (as applicable), an internal process will be set in motion for approval of the surrender of the collective investment scheme licence.

8.06 The MFSA will convey its final decision to the scheme and will issue a public notice regarding the surrender of the scheme's licence.

8.07 Where the scheme consists of different sub-funds, and the licence which had been granted to the sub-fund is being surrendered, this section will nonetheless apply and any references to 'the scheme' shall be deemed to refer to 'the sub-fund'.

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## 9. FEES

9.01 The application fee is payable on submission of the application for a collective investment scheme licence and is not refundable.

9.02 Licensed collective investment schemes are required to pay the first annual supervisory fee on the date the licence is granted and annually thereafter upon the anniversary of the granting of the licence.

9.03 European UCITS Schemes or AIFs are required to pay a notification fee upon notification to the MFS of the intention to market their units in Malta. The first annual supervisory fee is payable on the commencement of such marketing and annually thereafter on the anniversary of the date of commencement of such marketing.

9.04 The applicable fees payable in terms of the Investment Services Act (Fees) Regulations<sup>28</sup> are indicated in the following tables. The fees are subject to alteration by regulations.

Collective Investment Scheme Licence (Maltese UCITS schemes and Maltese retail AIFs) pursuant to Article 4 of the Investment Services Act.		
	Application Fee	Annual Supervisory Fee
	€	€
Collective Investment Scheme Licence: <u>Maltese UCITS Schemes, Retail AIFs</u>	2,500	3,000
Sub-funds (fee is applicable per sub-fund up to 15 sub-funds). No annual supervisory fee will be payable from the 16 <sup>th</sup> scheme sub-fund upwards.	450	500
<u>Incorporated Cell of RICC</u>	<u>2,500</u>	<u>3,000</u>
<u>Sub-funds</u> (fee is applicable per sub-fund up to 15 sub-funds). No annual supervisory fee will be payable from the 16 <sup>th</sup> scheme sub-fund upwards.	450	500

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European UCITS marketing their units in Malta pursuant to regulation 8 of the Investment Services Act ( Marketing of UCITS) Regulations		
	Notification Fee	Annual Supervisory Fee
	€	€
EU UCITS	2,500	3,000
Sub-funds (fee is applicable per sub-fund up to 15 sub-funds). No annual supervisory fee will be payable from the 16 <sup>th</sup> scheme sub-fund upwards.	450	500

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European AIFs marketing their units in Malta pursuant to regulation 5 of the Investment Services Act ( Marketing of Alternative Investment Funds) Regulations		
	Notification Fee	Annual Supervisory Fee
	€	€
European AIF	2,500	3,000
Sub-funds (fee is applicable per sub-fund up to 15 sub-funds). No annual supervisory fee will be payable from the 16 <sup>th</sup> scheme sub-fund upwards.	450	500

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