

## Annex A

### Amendments to the Investment Services Rules for Alternative Investment Funds Part A: The Application Process

Current Rule	New Rule
<p>1.01 Collective Investment Schemes including AIFs are regulated by the Act which provides the statutory basis for regulating Collective Investment Schemes constituted in or operating in or from Malta. AIFs constitute a category of Collective Investment Schemes which fall within the provisions of the Act.</p>	<p>R1-1.1.1 Collective Investment Schemes including Alternative Investment Funds (“AIFs”) are regulated by the Investment Services Act (“the Act”) which provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. AIFs constitute a category of collective investment schemes which fall within the provisions of the Act.</p>
<p>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 members of the governing body of the Scheme are “fit and proper” persons to carry out the functions required of them in connection with the Scheme.</p>	<p>R2-2.1.1 The MFSA will grant a collective investment scheme licence if it is satisfied to the extent that it can be, 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, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively are “fit and proper” persons to carry out the functions required of them in connection with the collective investment scheme.</p>
<p>None</p>	<p>R3-3.1 General Information</p> <p>R3-3.1.1 An alternative investment fund may be established as:</p> <ul style="list-style-type: none"><li>a. an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations;</li><li>b. an investment company with fixed share capital (INVCO) under the Companies Act (Investment Companies with Fixed Share Capital) Regulations;</li></ul>

	<p>c. an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations;</p> <p>d. an incorporated cell of a recognised incorporated cell company ('RICC') under the Companies Act (Recognised Incorporated Cell Company) Regulations;</p> <p>e. a limited partnership under the Companies Act;</p> <p>f. a unit trust under the Trust and Trustees Act; and</p> <p>g. a contractual fund under the Investment Services Act (Contractual Funds) Regulations.</p>
<p>3.05 The AIFM and/or any appointed intermediary may market the AIF to retail investors, professional investors and, where permitted to qualifying investors:</p> <p>Provided that where the AIFM intends establishing the Scheme as a European venture capital fund, European social entrepreneurship fund or as a European long-term investment fund as identified in the preceding SLCs, it shall be guided by the provisions of the applicable EU Regulations prescribing the investor base of these Schemes</p>	<p>R3-3.5 The AIFM and/or any appointed intermediary may market:</p> <p>(a) Retail AIFs to retail investors, or</p> <p>(b) AIFs, including Retail AIFs, to professional investors and, where permitted, to qualifying investors;</p> <p>Provided that where the AIFM intends establishing the scheme as a European venture capital fund, European social entrepreneurship fund or as a European long-term investment fund as identified in the preceding Rules, it shall be guided by the provisions of the applicable EU Regulations prescribing the investor base of these schemes.</p>
<p>3.06 The establishment of AIFs targeting retail investors is regulated in Part B of these Rules.</p>	<p>R3-3.5.1.1 The establishment of AIFs targeting retail investors is regulated in Part A of the Investment Services Rules for retail Collective Investment Schemes as well as Part B of these Rules.</p>
<p>3.07 The Scheme may only be marketed with a passport in jurisdictions outside Malta if the AIFM satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations<sup>6</sup></p>	<p>R3-3.5.1.2 A scheme targeting retail investors may, subject to R3-3.5.1.3 below, only be marketed with a passport in jurisdictions outside Malta if the AIFM satisfies the relevant provisions prescribed in the Investment Services</p>

<p>or the Investment Services Act (Marketing of Alternative Investment Funds) Regulations.</p>	<p>Act (Alternative Investment Fund Manager) (Passport) Regulations or the Investment Services Act (Marketing of Alternative Investment Funds) Regulations.</p>
<p>4.07 An applicant for a Collective Investment Scheme Licence is ordinarily required to submit the following documents:</p> <p>...</p> <p>iii. draft version of the Constitutional Document(s);</p> <p>vi. Personal Questionnaires of the individuals proposed to carry out the functions of Compliance Officer and MLRO.</p>	<p>R4-4.3.1 An applicant for a collective investment scheme licence is ordinarily required to submit the following documents:</p> <p>iii. draft version of the instruments of incorporation;</p> <p>vi. personal questionnaires of the individuals proposed to carry out the functions of compliance officer and money laundering reporting officer</p> <p>vii. personal questionnaires of the individuals proposed to carry out the functions of portfolio manager, risk manager, and investment advisor as applicable, depending on the operational arrangements of the AIF;</p>
<p>4.13 Where the AIF is established as a self-managed Scheme, the MFSA requires the following additional application documents:</p> <p>i. Personal Questionnaires of the Portfolio Manager(s) and, where appointed, of the Risk Manager. For the purposes of the above and (ii) be interpreted as the person(s) in charge of the day-to-day investment management of the AIF, whether the person is also a member of the Investment Committee or otherwise. Provided that, when the Investment Committee is to be considered as being collectively responsible for the day-to-day investment management of the assets of the AIF, all its members would be required to submit a Personal Questionnaire, and paragraphs (ii) and (iii) below</p>	<p>R4-4.3.6 Where the AIF is established as a self-managed scheme, the MFSA requires the following additional application documents:</p> <p>...</p> <p>ii. terms of reference regulating the procedures of the investment committee and the risk committee (if applicable);</p> <p>...</p>

<p>shall apply to all of them;</p> <p>ii. terms of reference regulating the procedures of the Investment Committee;</p> <p>iii. confirmation from the Portfolio Manager(s) (as applicable) that he/she/they will:</p> <ul style="list-style-type: none"> <li>- operate in accordance with the investment objective and policy described in the AIF's offering document in general and the investment guidelines issued by the Investment Committee in particular;</li> <li>- report to the Investment Committee on a regular basis any transactions effected on behalf of the AIF; and</li> <li>- provide the Investment Committee with any information as the Investment Committee may require from time to time;</li> </ul> <p>iv. confirmation from the Portfolio Manager(s) that they have appropriate resources available to them to ensure ongoing access to the market information which they would need to take account of in making investment management decisions;</p> <p>v. portfolio and risk management delegation agreements (as applicable);</p> <p>vi. risk management policy document;</p> <p>vii. if the Scheme intends to cover potential professional liability risks by way of professional indemnity insurance, it shall provide a copy of the cover note to the insurance policy.</p>	
<p>4.16 In terms of Article 6(6) of the Act, within six months from the date of submission of a properly completed application form together with the requisite documentation, the MFSA shall inform the applicant in writing of its</p>	<p>Deleted as the Rulebooks cannot impose legal obligations on the MFSA since the Rulebooks are issued by the MFSA itself. Furthermore, this is already provided for in the ISA.</p>

<p>decision whether or not to grant a licence.</p>	
<p>4.17 Without prejudice to the generality of the provisions of Article 6(6) of the Act, the MFSA shall inform in writing an applicant for a licence to provide services of a self-managed AIF whether or not authorisation has been granted within three months of the submission of a complete application. 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.</p>	<p>Deleted as the Rulebooks cannot impose legal obligations on the MFSA since the Rulebooks are issued by the MFSA itself. Furthermore, this is already provided for in the ISA.</p>
<p>None</p>	<p>R4-4.7.4 A European AIF may also apply for admissibility to listing with the Listing Authority.</p>
<p>5.03 Marketing of an AIF which is managed by an external AIFM is regulated by the provisions of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations. Alternatively, an AIF shall refer to the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations with regards to the provision of services in another Member State or EEA State whether by means of the establishment of a Branch or on a remote basis under the freedom of services.</p>	<p>R5-5.1.2 Marketing of a European AIF which is managed by a European AIFM is regulated by the provisions of regulation 5 of the Investment Services Act (Marketing of AIFs) Regulations. 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.</p>
<p>None</p>	<p>R5-5.3 Pre-marketing arrangements  R5-5.3.1 The term 'pre-marketing' shall have the same definition as that of the Investment Services Act (Marketing of AIFs) Regulations.</p>
<p>None</p>	<p>R5-5.3.2 A self-managed Maltese AIF may engage in pre-marketing in the European Union, except where the information presented to potential professional investors:</p>

	<p>(a) is sufficient to allow investors to commit to acquiring its units or shares;</p> <p>(b) amounts to subscription forms or similar documents whether in a draft or a final form; or</p> <p>(c) amounts to its constitutional documents, prospectus or offering documents in a final form if not yet established and licensed by the MFSA.</p>
None	<p>R5-5.3.3 Where a draft prospectus or offering documents are provided, they shall not contain information which is sufficient to allow investors to take an investment decision and shall clearly state that:</p> <p>(a) they do not constitute an offer or an invitation to subscribe to the units or shares of the self-managed Maltese AIF; and</p> <p>(b) the information presented therein should not be relied upon because it is incomplete and may be subject to change.</p>
None	<p>R5-5.3.4 A self-managed Maltese AIF shall ensure that investors do not acquire its units or shares through pre-marketing and that investors contacted as part of pre-marketing may only acquire its units or shares through the marketing notification arrangements outlined in R5-5.3.2 above.</p>
None	<p>R5-5.3.5 Any subscription by professional investors of units or shares of an AIF referred to in the information provided to the MFSA in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in R5-5.3.2 above provided that such subscription is made within 18 months</p>

	of the self-managed Maltese AIF having begun pre-marketing.
None	<p>R5-5.3.6 If the self-managed Maltese AIF engages in pre-marketing, it shall within two weeks of it having begun pre-marketing, send to the MFSA an informal letter, in paper form or by electronic means, specifying:</p> <p>(a) the Member States in which and the periods during which the pre-marketing is taking or has taken place;</p> <p>(b) a brief description of the pre-marketing including information on the investment strategies presented; and,</p> <p>(c) where relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing.</p>
None	R5-5.3.7 A self-managed Maltese AIF shall ensure that any pre-marketing is adequately documented.
None	R5-5.4 De-notification of arrangements made for the marketing of a self-managed Maltese AIF
None	<p>A self-managed Maltese AIF may de-notify the arrangements made for marketing its units or shares in a Member State in respect of which it has made a notification in accordance with R5-5.3.2 of this Part of the Rules, where all the following conditions are fulfilled:</p> <p>(i) except where the self-managed Maltese AIF is closed-ended or is structured as an ELTIF, a blanket offer is made to repurchase or redeem, free of any charges or deductions, all units or shares held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that Member State whose identity is known;</p>

<p>5.06 The MFSA commits itself, by not later than twenty working days after the date of receipt of a complete notification file, to transmit such file to the European regulatory authority of the Member State or EEA State where the self-managed AIF intends to market its units or shares. The MFSA will also enclose a statement to the effect that the self-managed AIF can adopt a particular investment strategy.</p>	<p>Deleted as the Rulebooks cannot impose legal obligations on the MFSA since the Rulebooks are issued by the MFSA itself. Furthermore, this is already provided for in SL 370.21, Investment Services Act (Marketing of Alternative Investment Funds) Regulations.</p>
<p>5.07 The MFSA will transmit the complete notification file only if the self-managed AIF complies with and will continue to comply with the provisions of the AIFMD.</p>	<p>Deleted as the Rulebooks cannot impose legal obligations on the MFSA since the Rulebooks are issued by the MFSA itself. Furthermore, this is already provided for in SL 370.21, Investment Services Act (Marketing of Alternative Investment Funds) Regulations.</p>
<p>5.08 Upon transmission of the notification file, the MFSA will, without delay, notify the Maltese AIF thereof and the latter may start marketing its units or shares in the host Member State or EEA State as from the date of such notification.</p>	<p>Deleted as the Rulebooks cannot impose legal obligations on the MFSA since the Rulebooks are issued by the MFSA itself. Furthermore, this is already provided for in SL 370.21, Investment Services Act (Marketing of Alternative Investment Funds) Regulations.</p>