

Annex B

Amendments to the Investment Services Rules for Retail Collective Investment Schemes, Part A: The Application Process

Current Rule	New Rule
<p>A Maltese Non-UCITS Scheme is an open ended or closed ended retail Scheme formed in accordance with or existing under the Laws of Malta. Such Schemes are subject to the requirements outlined in Part B I of these Rules.</p>	<p>R3-3.2.1 A Maltese retail AIF is a scheme licensed in accordance with the provisions of the Act and subject to the requirements prescribed in this Part and in Section 9 of Investment Services Rules For Alternative Investment Funds Part B: Standard Licence Conditions Applicable To Alternative Investment Funds.</p>
<p>N/A</p>	<p>R3-3.4.2 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.</p> <p>The schemes shall also refer to SLC 10.02 of the Part BIII for AIFMs.</p>
<p>None</p>	<p>R3-3.4.3 In terms of regulation 6(7) of the Investment Services Act (Marketing of AIFs) Regulations, where a European AIF is to be marketed to retail investors in Malta, the AIFM is to take the necessary measures to ensure that facilities are available in Malta to perform the following tasks:</p> <ul style="list-style-type: none">a. process investors' subscription, payment, repurchase and redemption orders relating to the units of the AIF, in accordance with the conditions set out in the AIF's documents;b. provide investors with information on how orders referred to in the preceding

	<p>point can be made and how repurchase and redemption proceeds are paid;</p> <p>c. facilitate the handling of information relating to the investors' exercise of their rights arising from their investment in the AIF in Malta;</p> <p>d. make the information and documents required pursuant to Articles 22 and 23 of the AIFMD, as transposed in Maltese Law, available to investors for the purposes of inspection and obtaining copies thereof;</p> <p>e. provide investors with information relevant to the tasks that the facilities perform in a durable medium; and</p> <p>f. act as a contact point for communicating with the competent authority</p>
None	<p>R3-3.4.4 The AIFM shall ensure that the facilities to perform the tasks referred to in R3-3.4.3, including electronically, are provided:</p> <p>a. in Maltese or English ; and</p> <p>b. by the AIFM itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.</p>
None	<p>R3-3.4.5 For the purposes of point (b) of R3-3.4.45, where the tasks are to be performed by a third party, the appointment of the said third party shall be:</p> <p>a. without prejudice to any authorisation requirement which may be required to perform the tasks referred to in R3.4.3 within the regulatory framework of the jurisdiction where the respective task will be provided; and</p> <p>b. evidenced by a written contract, which specifies which of the tasks referred to in R3-3.4.3 will not be performed by the AIFM and that the third party will receive</p>

	all the relevant information and documents from the AIFM.
None	<p>R3-3.5.6 In terms of Regulation 9(5) of the Investment Services Act (Marketing of UCITS) Regulations, a European UCITS scheme is required to satisfy the MFSA that adequate measures have been taken to ensure that facilities are available in Malta for:</p> <ul style="list-style-type: none"> a. processing subscription, repurchase and redemption orders and making other payments to unit-holders relating to the units of the European UCITS, in accordance with the conditions set out in the documents required pursuant to sub-regulation 1(a) to (c) ; b. providing investors with information on how orders referred to in the preceding point can be made and how repurchase and redemption proceeds are paid; c. facilitating the handling of information and access to procedures and arrangements relating to the investors' exercise of their rights arising from their investment in the European UCITS in Malta; d. making the information and documents required pursuant to Chapter IX of the UCITS Directive as transposed in Maltese Law available to investors under the conditions laid down in Article 94 of the UCITS Directive as transposed in Maltese Law, for the purposes of inspection and obtaining copies thereof; e. providing investors with information relevant to the tasks that the facilities perform in a durable medium; and f. acting as a contact point for communicating with the competent authorities.
None	R3-3.5.7 A European UCITS scheme shall ensure that the facilities to perform

	<p>the tasks referred to in R3-3.5.6, including electronically, are provided:</p> <ul style="list-style-type: none"> a. in Maltese or English ; and b. by itself, by a third party which is subject to regulation and supervision governing the tasks to be performed, or by both.
None	<p>R3-3.5.8 For the purposes of point (b) of R3-3.5.7, where the tasks are to be performed by a third party, the appointment of the said third party shall be:</p> <ul style="list-style-type: none"> a. without prejudice to any authorisation requirement which may be required to perform the tasks referred to in R3.5.6 within the regulatory framework of the jurisdiction where the respective task will be provided; and b. evidenced by a written contract, which specifies which of the tasks referred to in R3-3.5.6 will not be performed by the European UCITS scheme and that the third party will receive all the relevant information and documents from the European UCITS scheme.
None	<p>R3-3.5.9 Once a European UCITS scheme has accessed the Maltese market, the MFSA shall be provided with relevant information on the manner in which the requirements referred to in R3-3.5.6 - R3-3.5.8 above will be satisfied.</p>
<p>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</p>	<p>R4-4.1.1 The MFSA ordinarily expects a retail CIS to appoint suitable service providers which generally include the Manager, the Depositary, and Administrator, and an Adviser.</p>
<p>Where the Maltese management company wishes to delegate to a Sub-Manager for the purpose of a more efficient conduct of its business, the</p>	<p>DELETION</p>

<p>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.</p>	
<p>Where the Investment Adviser is appointed by the Manager, rather than by the Scheme such Investment Adviser is also subject to MFSA's approval. Where the proposal includes the appointment of an Investment Adviser that is established in Malta, the Adviser should be in possession of a Category 1A, 1B, 2 or 3 Investment Services Licence issued in terms of article 6 of the Investment Services Act, 1994 and should be duly authorised by the MFSA to provide investment advice to collective investment schemes.</p>	<p>R4-4.5.3 Where the investment adviser is appointed by the scheme the appointment of such investment advisor shall be subject to the MFSA's approval. Where the investment advisor is appointed by the manager, rather than by the scheme such appointment will need to be done by the AIFM in accordance with the applicable Investment Services Rules for Investment Services Providers and will also be subject to the MFSA's approval. Where the proposal includes the appointment of an investment adviser established in Malta, the adviser shall be in possession of an Investment Services Licence authorising the entity to act as an Investment Firm issued by the MFSA in terms of article 6 of the Act and shall be duly authorised to provide investment advice to collective investment schemes.</p>
<p>An applicant for a Collective Investment Scheme licence in respect of a Maltese Non-UCITS Scheme or a Maltese UCITS Scheme is ordinarily required to submit the following documents:</p> <ul style="list-style-type: none"> i. Application Form (Schedule A to this Part); ii. Draft version of the Prospectus and if applicable the Key Investor Information Document of the Scheme; 	<p>R5-5.3.1 An applicant for a collective investment scheme licence in respect of a retail CIS is ordinarily required to submit the following documents:</p> <ul style="list-style-type: none"> i. application form; ii. application fee; iii. draft version of the instruments of incorporation ; iv. draft version of the prospectus and where applicable the KIID; and v. a detailed marketing plan;

<p>iii. Draft version of the Memorandum & Articles of Association of the Scheme;</p> <p>iv. Draft Management, Administration, Custody, Advisory agreements (as applicable);</p> <p>v. Draft Board of Directors' resolution</p> <ul style="list-style-type: none"> - confirming the Director's 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); <p>vi. Application Fee; vii. Marketing Plan;</p> <p>viii. Directors of the Scheme:</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>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 (as applicable).</p>
<p>None</p>	<p>R6-6.1.3 The term "marketing" is to be interpreted as capturing at least the following scenarios:</p> <p>(a) Scenario 1: an investment advertisement is issued in Malta marketing/ promoting the European Retail AIF;</p> <p>(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 Retail AIF;</p> <p>(c) Scenario 3: a circular/mail-shot or other medium of communication is used with a view to promote the European Retail AIF to persons in Malta;</p> <p>(d) Scenario 4: the placing of brochures/ documentation pertaining to the European Retail AIF in a location which targets mainly investors in Malta (being clients of the distributor); and</p>

	(e) Scenario 5: direct or indirect promotion of the European Retail AIF by means of press releases.
None	R6-6.1.4 The scenarios included above are not exhaustive and do not necessarily capture all possible scenarios where a European Retail AIF may market its units in Malta. The term “at least” implies that the term “marketing” should not be interpreted so narrowly to include only the scenarios described. European Retail AIFs may consult the MFSA should they be in doubt whether a particular scenario involves “marketing”.
None	R6-6.1.5 For the avoidance of doubt: (a) a European Retail AIF 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 Retail AIF, the European Retail AIF is not deemed to be “marketing” in Malta on the basis that the communication was initiated by the investor. (c) a European Retail AIF 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.
R6-6.3.2 Furthermore, European AIFs being marketed in Malta in terms of the AIFMD are required to pay annual supervisory fees referred to in Section 9 below.	R6-6.3.2 Furthermore, European AIFs being marketed in Malta in terms of the AIFMD are required to pay annual supervisory fees referred to in the Investment Services Act (Fees)

	Regulations (Subsidiary Legislation 370.03).
None	R6.6.3.3 European Retail AIFs that have been authorised by the European regulatory authority of the Retail AIF home Member State to market their units in Malta in terms of the AIFMD are required to keep the documentation referred to above and the translations thereof updated. Furthermore, the European Retail AIF shall notify any amendments to the aforementioned documents to the MFSA and shall indicate where such documents can be obtained electronically.
None	R6.6.3.4 In the event of a change to the information provided in the notification letter submitted in accordance with R6.6.3.3, or a change regarding the share classes to be marketed, the European Retail AIF shall notify in writing the MFSA and the home Member State at least one month before implementing that change.
None	R6-6.4 Cross-Border Marketing Rights R6-6.4.1 The European Retail AIF will be able to access the Maltese market as from the date of notification by the European regulatory authority of the European Retail AIF home Member State or EEA State.
None	R6-6.4.2 The European Retail AIF will be required to pay the relevant notification fee outlined in the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03) soon after the notification by the European regulatory authority.
None	R6-6.5 Information provided to Maltese retail investors by a European Retail AIF R6-6.5.1 A European Retail AIF is required to provide Maltese investors

	<p>with the following information and documents upon request and free of charge:</p> <p>a. a prospectus;</p> <p>b. an annual report for each financial year;</p> <p>c. a half-yearly report covering the first six months of the financial year; and</p> <p>d. the PRIIPS KID.</p>
None	R6-6.5.2 The required documents are to be sent to the MFSA via e-mail on aifmdnotifications@mfsa.mt .
None	R6-6.5.3 Required documents must be submitted either in Maltese or in English. Translations are not required to be sworn as true.
None	<p>R6-7.7 De-Notification Requirements</p> <p>R6-7.7.1 A European Retail AIF may de-notify the arrangements made for marketing its units in Malta once the conditions outlined in regulation 3(12) of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations are fulfilled; namely.</p>
None	R6-7.7.2 The information referred to in the previous rule is to clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information is to be provided in Maltese or English.
None	R6-7.7.3 As of the de-notification date, the European Retail AIF shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in Malta.
None	R6-7.7.4 The European Retail AIF shall submit a notification to the competent authorities of its home Member State containing the information referred to in R6-7.7.1
R7-7.3.1 A European UCITS scheme may market its units in Malta, provided that	R7-7.3.1 A European UCITS scheme may market its units in Malta, provided that

<p>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 (Marketing of UCITS) Regulations. The notification letter shall include the following information:</p> <p>c. information on the facilities for the performance of tasks referred to in R3-3.5.6 of this Part of the Rules;</p>	<p>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 (Marketing of UCITS) Regulations. The notification letter shall include the following information:</p> <p>c. the details necessary, including the address, for the invoicing or for the communication of the applicable regulatory fees in line with the Investment Services Act (Fees) Regulations (Subsidiary Legislation 370.03);</p> <p>d. information on the facilities for the performance of tasks referred to in R3-3.5.6 of this Part of the Rules;</p>
<p>None</p>	<p>R7-7.5.2 In the event of a change to the information provided in the notification letter submitted in accordance with R6-6.2.2, or a change regarding the share classes to be marketed, the European UCITS scheme shall notify in writing the MFSA and the home Member State at least one month before implementing that change .</p>
<p>None</p>	<p>R7-7.6 Information provided to Maltese investors by a European UCITS scheme</p> <p>R7-7.6.1 A European UCITS scheme is required to provide Maltese investors with the following information and documents upon request and free of charge:</p> <p>a. a prospectus;</p> <p>b. an annual report for each financial year;</p>

	<p>c. a half-yearly report covering the first six months of the financial year; and</p> <p>d. the KIID or PRIIPS KID, as applicable.</p>
None	<p>R7-7.6.2 The required documents are to be sent to the MFSA via e-mail to ucitsnotifications@mfsa.mt.</p>
None	<p>R7-7.6.3 Required documents must be submitted either in Maltese or in English. Translations are not required to be sworn as true.</p>
None	<p>R7-7.7 De-Notification Requirements</p> <p>R7-7.7.1 A European UCITS scheme may de-notify the arrangements made for marketing its units in Malta once the conditions outlined in regulation 8(13) of the Investment Services Act (Marketing of UCITS) Regulations are fulfilled; namely:</p> <p>a. a blanket offer is made to repurchase or redeem, free of any charges or deductions, all such units held by investors in Malta, which is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in Malta whose identity is known;</p> <p>b. the intention to terminate arrangements made for marketing such units in Malta is made public by means of a publicly available medium, including by electronic means, which is customary for marketing UCITS and suitable for a typical UCITS investor; and</p> <p>c. any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the</p>

	units identified in the notification referred to in R7-7.3.1.
None	R7-7.7.2 The information referred to in points (a) and (b) of R7-7.6.1 is to clearly describe the consequences for investors if they do not accept the offer to redeem or repurchase their units. Such information is to be provided in Maltese or English.
None	R7-7.7.3 As of the de-notification date referred to in point (c) of R7-7.6.1, the European UCITS scheme shall cease any new or further, direct or indirect, offering or placement of its units which were the subject of de-notification in Malta.
None	R7-7.7.4 The European UCITS scheme shall submit a notification to the competent authorities of its home Member State containing the information referred to in R7-7.6.1.
None	R7-7.7.5 The European UCITS scheme shall provide Maltese investors who remain invested in the said scheme with the information required under Articles 68 to 82 and under Article 94 of the UCITS Directive. Such information shall be provided using any electronic or other distance communication means, provided that the information and communication means are available for investors in either Maltese or English.