

Consultation Document on the Transposition and Implementation of AIFMD II and UCITS VI

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1 Introduction

- 1.1.1 The original [Alternative Investment Fund Managers Directive](#) (“the AIFMD”) was introduced in response to the 2008 financial crisis and the lack of regulatory oversight for alternative investments. In force since 22 July 2013, this directive applies to fund managers that manage or market funds such as hedge funds, private equity funds, and real estate funds – investment vehicles that fall outside the scope of the established retail investment fund framework in the EU i.e. the UCITS framework. The AIFMD provides a harmonised regulatory regime across Member States, enhancing investor protection through authorisation requirements, risk management, and disclosure standards.
- 1.1.2 The [UCITS Directive](#) (“the UCITSD”) establishes a harmonised regulatory framework for the management and marketing of retail funds across all Member States. Its primary objective is to protect retail investors by imposing rigorous rules on fund diversification, transparency, and risk management, ensuring that these funds remain accessible and comparatively lower-risk investment vehicles.
- 1.1.3 The final text of [Directive 2024/927](#) (“the Directive” or “AIFMD II”) amending both the AIFMD and the UCITSD, was published in the EU Official Journal on 26 March 2024 and entered into force on 15 April 2024.
- 1.1.4 Member States have until 16 April 2026, to adopt and publish the necessary laws and regulations to comply with the Directive, with the exception of measures transposing Article 1(12) of AIFMD II and Article 2(7) of the UCITS VI, which have a delayed application date of 16 April 2027. These Articles relate to new reporting obligations to National Competent Authorities (“NCAs”).
- 1.1.5 On 19 April 2024 the MFSA published a [circular](#) to inform the industry of the publication of the Directive and invited market participants to assess in advance the changes which may impact their business and to prepare for the adaptations required prior to the application date.
- 1.1.6 The MFSA is the NCA for the purposes of transposing and implementing the provisions of the Directive in line with the AIFMD and UCITSD.

- 1.1.7 The purpose of this Consultation Document is to provide an overview of the changes brought about by the Directive, explain how and where the MFSA proposes to transpose these provisions in national law, outline the planned implementation approach, and present the MFSA's proposed positions on the options and discretions available under the Directive.
- 1.1.8 The MFSA is presenting the proposed amendments to the Rulebooks in [Annex I](#).
- 1.1.9 The content set out herein is subject to potential amendments following feedback received, further analysis, and further editorial changes which may be required. This information should also not be construed as legal advice.

2 Amendments to Directive 2011/61/EU

2.1 The Local Framework

- 2.1.1 To transpose AIFMD II in the local framework the MFSA is envisaging amendments, inter alia, to the below as further explained in this document:

- [The Investment Services Act \(Cap. 370\)](#)
- [The MFSA Act \(Cap. 330\)](#)
- [SL 370.21 – Marketing of AIFs Regulations](#)
- [SL 370.23 – AIFM Regulations](#)
- [SL 370.24 – AIFMs Third Country Regulations](#)
- [SL 370.32 – Custodians of Collective Investment Schemes Regulations](#)
- [Part A: The Application Process for AIFs](#)
- [Part B – Standard Licence Conditions applicable to Alternative Investment Funds](#) (“AIF Rulebook”)
- [Part BIII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as AIFMs](#) (“AIFM Rulebook”)
- [Part BI – Standard Licence Conditions applicable to Professional Investor Funds targeting Experienced Investors](#)
- [Part BII – Standard Licence Conditions applicable to Professional Investor Funds targeting Qualifying Investors](#) (“PIF Qualifying Rulebook”)
- [Part BIII – Standard Licence Conditions applicable to Professional Investor Funds targeting Extraordinary Investors](#)

- [Standard Licence Conditions applicable to Collective Investment Schemes authorised to invest through loans \(applicable from 10 November 2020\)](#) ("Loan Funds Rulebook")
- [Authorisation Application Forms – Fund Management](#)
- [Guidance Note: The use of Side Pockets by Collective Investment Schemes](#) ("Side Pockets Policy")
- [Glossary to the Investment Services Rules for Alternative Investment Funds](#)

2.2 Article 4 (Definitions)

- 2.2.1 The AIFMD II updates the definition of "professional investor" found in the AIFMD in line with that of the Markets in Financial Instruments Directive II (MiFID II). Reference to 'professional investor' already exists in the Part A and Part B of the AIF Rulebook. Consequently, the MFSA proposes to add a definition in the Glossary for AIFs to include this definition. The MFSA also proposes to review the reference to professional clients in Part A of the AIF Rulebook.
- 2.2.2 This Directive also introduces the definition of a "central securities depository", as these entities are now explicitly mentioned in Article 21, which regulates depositaries. Other new definitions explain the terms "capital of the AIF", "shareholder loan" and "leveraged AIF" and "loan origination". The MFSA proposes to include all the aforementioned new definitions, except for that of "central securities depository", in the Glossary of the relevant Rulebooks. The definition of "central securities depository" is proposed to be introduced in SL 370.32.

1. **Do you agree with introducing the definitions as proposed?**
2. **Do you believe these definitions should be accompanied by a definition of a "loan" to ensure consistent interpretation and application across AIFs? (See Section 2.8)**

2.3 Article 6 (Conditions for taking up activities as AIFM)

- 2.3.1 Article 6(4) grants Member States the option to extend the list of ancillary functions or activities provided by AIFMs to third parties. In such case the non-core MiFID services which an AIFM is allowed to offer is expanded to include any other function or activity which is already provided by the AIFM in relation to an AIF that it manages, or in relation to services that it provides in accordance with this paragraph, as long as any possible conflicts of interest are managed appropriately. The AIFM

can also seek authorisation to offer the administration of benchmarks and credit servicing activities.

2.3.2 AIFMs are prohibited from administering benchmarks which are used in the AIFs that they manage.

2.3.3 The references to MiFID I are also updated to refer to the correct Articles of MiFID II.

2.3.4 The MFSA intends to exercise this option and update the AIFM and AIF Rulebook to transpose this Article.

3. Do you consider it appropriate to exercise the option provided in Article 6(4)? If yes, do you agree with transposing these requirements in the AIFM and AIF Rulebook? If not, please explain why you believe the option should not be exercised.

2.4 Article 7 (Application for authorisation)

2.4.1 Although parts of Article 7 are being replaced in toto, the new requirements include the following submissions to the MFSA:

- the programme of activity setting out the organisational structure of the AIFM, including human and technical resources; and
- information on how the AIFM intends to comply with the AIFMD.

2.4.2 All the other information listed in the Article is already collected by the MFSA.

2.4.3 In the case of delegates, the MFSA would now be collecting the:

- LEI Code
- name of the Supervisory Authority
- details on whether this is a partial or full delegation.

2.4.4 ESMA shall prepare a report to be sent to the European Commission by 16 April 2029 analysing market practices regarding delegation and on the exercise of ESMA's supervisory convergence powers.

2.4.5 The MFSA proposes to update its relevant Application Forms to include these new requirements and to allow it to collect the new information.

4. Do you agree with the method of collection of information of the new data points i.e. through the relevant Application Forms?

2.5 Article 8 (Conditions for granting authorisation)

- 2.5.1 AIFMD II adds stricter requirements to the conditions for granting authorisation, as explained below.
- 2.5.2 It imposes a minimum requirement of two natural persons who effectively conduct the business of the AIFM.
- 2.5.3 Such persons must either be employed full-time by that AIFM or be executive members or members of the governing body of the AIFM committed full-time to conducting the business of that AIFM. It is the intention of the MFSA to adopt the definition of “Senior Management” as found in the [Glossary](#)¹.
- 2.5.4 These two persons must be domiciled in the European Union.
- 2.5.5 The persons must be of sufficiently good repute and are experienced in relation to investment strategies pursued by the AIF.
- 2.5.6 The MFSA will be checking compliance with these requirements during the authorisation process and supervisory engagements.
- 2.5.7 The MFSA proposes to update the AIFM and AIF Rulebook to transpose this Article.

5. Do you agree with the proposed manner of transposing these requirements in the AIFM and AIF Rulebook?

6. Do you see merit in clarifying further who are the persons effectively conducting the business?

2.6 Article 12 (General Principles)

- 2.6.1 By 16 October 2025, ESMA is required to submit a report to the European Parliament, the Council, and the Commission that will assess the costs charged by AIFMs to the investors of the AIFs that they manage.
- 2.6.2 The report will explain why these costs are at their current levels and account for any variations in fees, including those that arise from the

¹ Those natural persons who exercise executive functions within the Licence Holder and who are responsible, and accountable to the Management Body, for the day-to-day management of the Licence Holder.

different types of AIFs.

- 2.6.3 For the purpose of the aforementioned report, competent authorities are required to provide ESMA with one-time data on costs. This data must include all fees, charges, and expenses that are directly or indirectly borne by investors, or by the AIFM in connection with the AIF's operations, and that are to be directly or indirectly allocated to the AIF.
- 2.6.4 Competent authorities will be required to make this data available to ESMA using their existing powers. These powers include the ability to require AIFMs to provide information, as outlined in Article 46(2) of this Directive. This data provision is in accordance with Article 35 of Regulation (EU) No 1095/2010.
- 2.6.5 The MFSA is of the view that this Article does not require transposition since the requirements fall on ESMA.

7. Do you have any comments on the interpretation of this Article?

2.7 Article 14 (Conflicts of interest)

- 2.7.1 AIFMD II requires AIFMs which manage or intend to manage an AIF at the initiative of a third party, including AIFs using the name of the third-party initiator or appointing the third-party initiator as a delegate, to submit to its NCA, taking account of conflicts of interest, detailed explanations and evidence of its compliance with Article 14 of the AIFMD.
- 2.7.2 The AIFM is now required to specify what reasonable steps it has taken to prevent conflicts of interest arising from the relationship or, where they cannot be prevented, how it identifies, manages and monitors and where applicable, discloses those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.
- 2.7.3 The MFSA will be checking compliance with these requirements during the authorisation process and supervisory engagements.
- 2.7.4 The MFSA proposes to update the AIFM and AIF Rulebook to transpose this Article.

8. Do you agree with the proposed manner of transposing these requirements in the AIFM and AIF Rulebook?

2.8 Article 15 (Risk Management) Article 61 (Transitional provisions)

Introduction and Description of Changes

- 2.8.1 This Section applies to AIFs engaging in “loan origination” and “loan-originating AIFs”, as defined in Article 4.
- 2.8.2 Article 15 of AIFMD II introduces a new loan origination regime which will launch immediately on 16 April 2026, subject to a grandfathering provision for existing loan funds constituted prior to 15 April 2024.
- 2.8.3 AIFMD II defines a loan-originating AIF as an AIF:
- (i) whose investment strategy is mainly to originate loans; or
 - (ii) whose originated loans have a notional value that represents at least 50 % of its net asset value;
- 2.8.4 AIFMD II does not restrict AIFs which fall outside of this definition from originating loans as a minor part of their investment strategy or their NAV, subject to conditions to be complied with, such as implementing and maintaining an effective loan origination policy.
- 2.8.5 Where AIFMs manage AIFs that engage in loan origination they shall implement, review at least annually, and revise where necessary, policies, procedures and processes to:
- assess the credit risk
 - administer and monitor their credit portfolios
 - have stronger credit assessments, loan approval, and portfolio management practices
- 2.8.6 For AIFMs managing AIFs engaging in loan origination, even when they do not qualify as loan-originating AIFs, AIFMD II addresses risk concentration through a 20% threshold for a single borrower when it is either a financial undertaking, or an AIF, or a UCITS. Such limit shall:
- apply by the date specified in the AIF rules, instruments of incorporation or prospectus, which shall be no later than 24 months from the date of the first subscription for units or shares of the AIF
 - cease to apply once the AIFM starts to sell assets of the AIF in order to redeem units or shares as part of the liquidation of the AIF

- be temporarily suspended where the capital of the AIF is increased or reduced.

2.8.7 The application date referred to in the first bullet of the previous point shall take account of the particular features and characteristics of the assets to be invested by the AIF. In exceptional circumstances, the MFSA may approve an extension of that time limit by a maximum of a year upon submission of a duly justified investment plan.

2.8.8 Additionally, AIFMD II introduces restrictions to whom loans may be granted by the AIF to avoid conflicts of interest, namely:

- the AIFM or the staff of that AIFM;
- the AIF's depositary or the entities to which the depositary has delegated functions;
- an entity to which the AIFM has delegated functions or the staff of that entity;
- an entity within the same group, except where that entity is a financial undertaking that exclusively finances borrowers that are not referred to in the previous points.

2.8.9 The proceeds of the loans shall be attributed to the AIF in full, minus any allowable fees for their administration. All costs and expenses shall be disclosed in line with Article 23 of the AIFMD.

2.8.10 AIFMs are not permitted to manage AIFs whose strategy, even partly, is to originate loans with the sole purpose of transferring them or their exposures to third parties and in this context it must comply with a dedicated risk retention rule of 5% of the notional value of each loan originated.

2.8.11 In addition to the requirements summarised above, AIFs falling within the definition of "loan-originating AIFs" shall generally be closed-ended, and must obtain NCA approval to be structured as open-ended funds. The MFSA will consider open-ended AIFs on a case by case basis. ESMA shall develop draft regulatory technical standards to determine the requirements with which loan originating AIFs are to comply to maintain an open-ended structure.

2.8.12 Leverage limits are also introduced for both open-ended and closed-ended loan-originating AIFs. The former has a 175% limit, whereas the latter has a 300% limit. If the AIF infringes these limits, and the

infringement is beyond the control of the AIFM that manages it, the AIFM shall, within an appropriate period, take such measures as are necessary to rectify the position, taking due account of the interests of the investors in the loan-originating AIF.

Granting Loans to Consumers - Member State Option

- 2.8.13 Article 15(4g) provides that Member States have the option to prohibit AIFs from granting loans to consumers in its Member State. A consumer is a natural person who, in transactions covered by Directive 2008/48/EC (Consumer Credit Directive), is acting for purposes which are outside his trade, business or profession in relation to credit agreements.
- 2.8.14 The MFSA may not exercise this option found in the new paragraph 4g. This would mean that an AIF originating loans would also be able to provide loans to consumers as defined in Article 3, point (a), of Directive 2008/48/EC, the Consumer Directive.
- 2.8.15 This differs and would broaden the current approach in terms of the current Loan Funds Rulebook that does not allow the origination of loans to individuals, financial undertakings as defined, collective investment schemes, fund managers, and related parties.
- 2.8.16 The MFSA seeks the industry's views on this Member State discretion and particularly whether there should be restrictions in terms of who the AIFs originating loans should be allowed to lend money to.

Marketing Loan Originating AIFs to Retail Clients

- 2.8.17 AIFMD II doesn't prohibit loan originating funds from being marketed to retail investors as defined in MiFID II if the Member State permits such marketing within its jurisdiction. Individual Member States may impose additional conditions or restrictions on the marketing of AIFs to retail investors, and may, for example, prohibit the marketing of loan originating AIFs entirely to this investor category. Where a Member State does allow retail marketing, AIFMs must ensure compliance with the requirements set out in Articles 43 and 43a of the AIFMD.
- 2.8.18 **In this regard, the MFSA proposes to only allow AIFs originating loans to be marketed to retail investors if they comply with the applicable provisions of the ELTIF Regulation and any relevant RTS and Guidelines issued thereunder.** In other words, the AIF would need to be classified as an ELTIF. This approach is being proposed to ensure a high and

harmonised level of investor protection, as the ELTIF framework includes specific safeguards tailored to the retail market which are not otherwise present in the AIFMD regime. By requiring such AIFs to meet these additional criteria, retail investors can be afforded greater transparency, risk mitigation, and regulatory oversight when exposed to what is otherwise a relatively complex and illiquid asset class.

Future of the Current Loan Funds Regime

- 2.8.19 The current Loan Funds Regime varies from AIFMD II's loan originating AIF regime in several aspects with the MFSA's framework being overall more restrictive, as further outlined in the table below. In particular, one should note that the current regime restricts the category of debtors/borrowers to whom loans may be offered.
- 2.8.20 The current Loan Funds Regime is also applicable to both PIFs and licensed AIFs. However, given the status of the manager as a de minimis/below threshold AIFM, the MFSA would have discretion whether to continue to apply the current MFSA Loan Funds Regime to PIFs, or replace the existing rules with the AIFMD II requirements.

<u>Title</u>	<u>Local Regime</u>	<u>AIFMD II</u>
Applicability	MFSA-licensed AIFs and PIFs	AIFs – as defined in the Directive
Fund Structure	Closed-Ended	Closed-Ended & Open-Ended – subject to certain conditions
Investment Strategy	Primarily, i.e. more than 20% of the NAV: i. the direct origination of loans by the Scheme; or ii. the acquisition by the Scheme of a portfolio of loans or a direct interest in loans which gives rise to a direct legal relationship	Primarily: Direct or indirect loan origination or more than 50% of the NAV in originated loans

	between the Scheme as lender and the borrower; or iii. engage in receivables financing.	
Target Investors	Professional Investors under MiFID and/or Qualifying Investors as defined in the MFSA Rules, both subject to a minimum investment of EUR 100,000	Professional Investors ,i.e. Professional Clients under MiFID, and Retail Clients subject to NCA discretion.
Target Loan Recipients	Cannot be: i. individuals ii. financial undertakings iii. CISs iv. the AIFMs and related parties	Cannot be: i. the AIFM or the staff of that AIFM; ii. the AIF's depositary or the entities to which the depositary has delegated functions; iii. an entity to which the AIFM has delegated functions or the staff of that entity; iv. an entity within the same group, except where that entity is a financial undertaking that exclusively finances borrowers that are not referred to in points i. to iii.

Leverage Limits	200% limit of the net assets of the Scheme	Open-Ended: 175% and Closed-Ended: 300% limit, expressed as its exposure, calculated using the commitment method, divided by its net asset value.
Concentration Limits	No limits per se	20% for loans granted to any financial undertaking, AIF, or UCITS.
Liquidity Management	Do not include prescriptive requirements such as the Liquidity Maturity Ladder (i.e. Asset/ Liability Management) requirement. The Manager or the scheme, if self-managed, shall ensure to have well documented liquidity management policies and procedures (including their review and update) and that the investment strategy, liquidity profile and redemption policy, are aligned accordingly	New Liquidity Provisions through Article 16 and Annex V which are very clear and prescriptive.
Self-Managed Schemes	MFSA-licensed PIFs for Qualifying Investors, AIFs	AIFs – as defined in the Directive

2.8.21 The MFSA will phase out the current homegrown Loan Funds Regime for new AIFs as from 16 April 2029, therefore existing AIFs which have a redemption date which falls after this date will need to align to the new regime in a timely and orderly manner, ensuring full compliance with the updated regulatory framework from 17 April 2029 onwards.

2.8.22 The MFSA is currently assessing the implications of the existing Loan Funds Regime for PIFs, particularly in light of the new loan origination rules introduced under AIFMD II. The options under consideration could include either retaining the Loan Funds Regime exclusively for PIFs or abolishing it entirely. Should the latter option be adopted, existing Loan Funds established under the current framework would be permitted to continue operating; however, no new PIFs would be authorised under the existing regime as from 16 April 2026. Instead, any new loan-originating structures would need to comply fully with the requirements of AIFMD II.

2.8.23 With the aim of harmonising regimes, the MFSA may therefore opt to align the existing Loan Funds Regime for PIFs with that of the AIFMD II.

Furthermore, at the time of writing, NAIFs are not allowed to originate loans. The Authority may consider revising its stance for NAIFs to align fully with AIFs.

Such alignment would necessitate that PIFs and NAIFs meet the identical requirements specified for AIFs. Full alignment with the AIFMD would also result in the application of the RTS which determines the rules for loan-originating open-ended funds, and in the application of the option to grant loans to consumers. Upon the implementation date of the AIFMD II, the MFSA could only allow authorised AIFs to grant loans to consumers i.e. retail lending and eventually consider extending the position to NAIFs and PIFs at a future date.

2.8.24 The MFSA proposes to update the AIFM, AIF, NAIF, and all PIF Rulebooks to transpose these requirements in line with the final approach.

- | | |
|-----|---|
| 9. | Do you think the MFSA should make use of the option found in new paragraph 4(g) of Article 15 of AIFMD as outlined above, that is, to prohibit AIFs from granting loans to consumers? What benefits or risks do you see? |
| 10. | Are you of the view that additional restrictions should be introduced on whom AIFs originating loans may issue loans to e.g. individual consumers? |
| 11. | Do you agree with allowing AIFs originating loans to market their units to retail investors? If yes, should this be done under the ELTIF regime only? If not, what national provisions should be applied to ensure proper protection to retail investors? What is your view regarding the applicability of the current supplementary conditions applicable to AIFs which are sold to retail investors (Section 9 of Part B of the AIF Rulebook)? |
| 12. | Do you agree with phasing out the current MFSA loan funds regime in favour of the one introduced by AIFMD II for AIFs as explained? |

13. Should the current Loan Funds Regime be retained for PIFs or should PIFs also follow the AIFMD II Loan Funds Regime? In the latter case, do you see merit in excluding consumers from the loans that PIFs would be allowed to originate?
14. Similarly, should Notified AIFs be allowed to originate loans according to the AIFMD II Loan Funds Regime? In the latter case, do you see merit in excluding consumers from the loans that Notified AIFs would be allowed to originate?
15. Should open-ended loan originating PIFs and NAIFs be also subject to the same RTS which regulates open-ended loan originating AIFs?
16. Do you have any comments and with respect to the Notified PIF framework?

2.9 Article 16 (Liquidity management), Annex V, Article 46 (Powers of competent authorities)

2.9.1 In the context of liquidity management provisions, AIFMD II allows loan-originating AIFs to be open-ended if the AIFM can demonstrate to the NCA that the AIF's liquidity risk management system is compatible with its investment strategy and redemption policy.

2.9.2 In addition, Annex V lists 9 different liquidity management tools:

- Suspension of subscriptions, repurchases and redemption
- Redemption Gate
- Extension of Notice Periods
- Redemption Fee
- Swing Pricing
- Dual Pricing
- Anti-Dilution Levy
- Redemption in Kind
- Side Pockets

2.9.3 AIFMs managing open-ended AIFs need to use at least 2 tools from points 2 to 8 of Annex V, other than suspensions, as reproduced in the previous point, after assessing the suitability of those tools in relation to the pursued investment strategy, the liquidity profile and the redemption policy of the AIF. The AIFM shall include those tools in the AIF rules or instruments of incorporation for possible use in the interest of the AIF's investors. It is not possible to only use the tools referred to in Annex V, points 5 and 6.

- 2.9.4 Liquidity management tools need to be accompanied by the AIFM with a clear procedure for their use.
- 2.9.5 The AIFM may suspend subscriptions, repurchases, and redemptions in the interest of investors, or activate and/or deactivate any liquidity management tools as necessary in the interest of investors, and inform the MFSA.
- 2.9.6 These tools may be deactivated or changed in the interest of investors by the AIFM. The AIFM may also activate side pockets as referred to in point 9 of the Annex.
- 2.9.7 An AIFM shall only use a suspension of subscriptions, repurchases and redemptions or side pockets in exceptional cases where the interests of the AIF investors so require.
- 2.9.8 In cases where any of the tools are activated, deactivated, and/or changed, the AIFM needs to inform the MFSA as soon as possible of such change in circumstances.
- 2.9.9 As is already done, the MFSA may, in exceptional circumstances, suspend subscriptions, repurchases, and redemptions after consulting with the AIFM to protect the investor and financial stability.
- 2.9.10 ESMA has on 15 April 2025 published [draft Regulatory Technical Standards \(RTS\)](#) and a [final report on the Guidelines \(GL\) on Liquidity Management Tools \(LMTs\)](#). The MFSA intends to implement these RTS and GLs in its regulatory framework.
- 2.9.11 The Authority's current Side Pockets Policy applies only to PIFs given its establishment prior to AIFMD. In light of AIFMD II, the Authority proposes to keep this policy but to extend its applicability to AIFs allowing it to continue to apply together with the Guidelines and RTS. Where there is a conflict between the local Guidance Note and the RTS or Guidelines then the latter would prevail.
- 2.9.12 The MFSA proposes to amend the ISA, the AIFM and AIF Rulebooks, and the MFSA's Side Pocket Policy to transpose and implement this Article.

17. Do you agree with the proposed manner of transposing these requirements in the ISA, AIFM and AIF Rulebooks? Do you agree with retaining and updating the current Side Pocket Policy as explained?

2.10 Article 20 (Delegation)

- 2.10.1 AIFMD II allows for a much wider delegation of the AIFM's functions since any of the activities of Annex I and/or any of the non-core activities may be delegated, if certain conditions are met and the MFSA is duly informed.
- 2.10.2 The AIFM must demonstrate that the delegate is fully capable to carry out the functions and it has undertaken appropriate due diligence before appointing such delegate.
- 2.10.3 The delegation agreement allows the AIFM to give additional instructions after its entry into force or to withdraw such delegation at any time to protect the investors.
- 2.10.4 The lines of responsibility need to be established through detailed mandate agreements and ongoing monitoring processes.
- 2.10.5 AIFMD II allows for sub-delegation as long as the requirements under Article 20 are satisfied.
- 2.10.6 The AIFMs will retain ultimate accountability to the NCA and to the client and must not become an AIFM only in name.
- 2.10.7 The MFSA proposes to update the AIFM and AIF Rulebook to transpose this Article.

18. Do you agree with the proposed manner of transposing these requirements in the AIFM and AIF Rulebooks?

2.11 Article 21 (Depositary)

- 2.11.1 Article 21(5a) allows Member State the option of a derogation in relation to the appointment of a depositary established in another Member State following a reasoned request to the NCA.
- 2.11.2 The request shall demonstrate a lack of depositary services in the Member State that are able to meet effectively the needs of the AIF given its investment strategy.
- 2.11.3 The depositary market in the Member State cannot exceed €50 billion of assets safekept on behalf of authorised or registered EU AIFs managed by an EU AIFM.

- 2.11.4 NCAs are obliged to report to ESMA on any concessions granted.
- 2.11.5 The depositary appointed cannot be based in a high-risk third country as defined in the Anti-Money Laundering Directive.
- 2.11.6 The Member States where the non-EU AIFs are intended to be marketed must have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters.
- 2.11.7 The depositary shall make available to all involved NCAs, Home and Host, on request, any information that it has obtained while performing its duties to assist them in their supervisory duties.
- 2.11.8 In the case of sub-delegation, the depositary shall exercise all due skill, care, and due diligence before appointing such sub-delegate. The depositary shall continuously monitor its sub-delegate and is ultimately responsible for it. These obligations do not apply if such depositary is a CSD.
- 2.11.9 The MFSA proposes to exercise this option in view of the lack of local depositaries. The MFSA intends to apply it where all requirements are met and a reasoned request is submitted demonstrating the lack of suitable local depositary services for the AIF's investment strategy, the aggregate amount of assets in the national depositary market does not exceed EUR 50 billion, and following a case-by-case assessment by the MFSA.
- 2.11.10 The MFSA proposes to update the SL 370.32, the AIFM, and the AIF Rulebooks to transpose this Article.

- 19. Do you consider it appropriate to exercise the option provided in Article 21(5a)? Do you agree with the proposed manner of transposing this Article in SL 370.32, and the AIFM and the AIF Rulebooks? If not, please explain why you believe the option should not be exercised.**
- 20. Do you intend on using this option to set up and service AIFs in Malta?**

2.12 Article 23 (Disclosure to investors)

2.12.1 Through the amendments made by AIFMD II, the AIFMs shall now disclose the below:

- The name of the EU AIF in accordance with the AIF rules or instruments of incorporation
- The possibility of and the conditions for using liquidity management tools
- Charges and fees borne by the AIFM which will be allocated to the AIF
- Annually, the fees, charges, and expenses borne by the investors; and
- The composition of the originated loan portfolio

2.12.2 The above requirements shall be disclosed in the Offering Documentation.

2.12.3 The MFSA proposes to update the AIF Rulebook to reflect these changes.

21. Do you agree with the proposed manner of transposing this Article in the AIF Rulebook? Do you see merit in additional implementing measures?

2.13 Article 24 (Reporting obligations to competent authorities)

2.13.1 The AIFMs need to detail the specific instruments traded, the markets used, the exposures and assets, and the leverage of each AIF they manage and report it to the MFSA.

2.13.2 The AIFMs need to report details about any delegation arrangements regarding portfolio or risk management, namely the:

- Identification details and possible conflicts of interest;
- Number of full-time equivalent employees employed by the AIFM for the day to day tasks, as well as the amount employed to monitor the delegation arrangements;
- Activities that are being delegated and a description of them;
- Amount and percentage of AIF assets that are managed under delegation;
- Number and dates of periodic due diligence reviews, any issues found, and how they will be remedied;
- Commencement and expiry dates of such agreements.

2.13.3 In the case of sub-delegation the above information is needed too.

2.13.4 ESMA shall publish an RTS in relation to this Article.

2.13.5 The AIFM and AIF Rulebook will be updated to reflect these changes, whilst the file transmission process with the MFSA will continue to be used.

22. Do you agree with the proposed manner of transposing this Article in the AIFM and AIF Rulebooks?

2.14 Article 25 (Use of information by competent authorities, supervisory cooperation and limits to leverage)

2.14.1 The MFSA has to ensure that all information collected under Article 24 for Maltese AIFMs, reporting, is made available to the relevant NCAs, ESAs, and other European Authorities.

2.14.2 The MFSA proposes to update SL 370.23 to reflect these changes.

23. Do you agree with the proposed manner of transposing this Article in SL 370.23?

2.15 Article 35 (Conditions for the marketing in the Union with a passport of a non-EU AIF managed by an EU AIFM)

2.15.1 AIFMD II provides that a non-EU AIF cannot be established in a third-country which is identified as a high-risk country by the Anti Money Laundering Directive.

2.15.2 Additionally, the third country where the non-EU AIF is established must have signed an agreement with the Member State of reference and with other Member State in which the units or shares of the non-EU AIF are intended to be marketed that fully complies with the standards laid down in the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.

2.15.3 The MFSA proposes to update SL 370.24 to reflect these changes.

24. Do you agree with the proposed manner of transposing this Article in SL370.24?

2.16 Article 36 (Conditions for the marketing in Member States without a passport of non-EU AIFs managed by an EU AIFM)

- 2.16.1 AIFMD II adds the requirement that a non-EU AIF cannot be established in a third country which is identified as a high-risk country by the Anti Money Laundering Directive.
- 2.16.2 Additionally, there is a new requirement that the third country where the non-EU AIF is established must have signed an agreement with the Member State of reference and with other MS in which the units or shares of the non-EU AIF are intended to be marketed that fully complies with the standards laid down in the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.
- 2.16.3 The MFSA proposes to update SL 370.24 to reflect these changes.

25. Do you agree with the proposed manner of transposing this Article in SL370.24?

2.17 Article 37 (Authorisation of non-EU AIFMs intending to manage EU AIFs and/or market AIFs managed by them in the Union in accordance with Article 39 or 40)

- 2.17.1 The AIFMD II adds the requirement that a non-EU AIFM cannot be established in a third country which is identified as a high-risk country by the AMLD.
- 2.17.2 Additionally, there is a new requirement that the third country where the non-EU AIFM is established must have signed an agreement with the Member State of reference that fully complies with the standards laid down in the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.
- 2.17.3 If the Non-EU AIFM is established in a high-risk country, it has two years to rectify the situation whilst always keeping in mind the interest of the investors.
- 2.17.4 The MFSA proposes to update SL 370.24 in view of AIFMD II.

26. Do you agree with the proposed manner of transposing this Article in SL 370.24?
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2.18 Article 40 - Conditions for the marketing in the Union with a passport of non-EU AIFs managed by a non-EU AIFM

- 2.18.1 AIFMD II adds the requirement that a non-EU AIF cannot be established in a third country which is identified as a high-risk country by the AMLD.
- 2.18.2 Additionally, there is a new requirement that the third country where the non-EU AIF is established must have signed an agreement with the Member State of reference and with other Member State in which the units or shares of the non-EU AIF are intended to be marketed that fully complies with the standards laid down in the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.
- 2.18.3 The MFSA proposes to update SL 370.24 in view of AIFMD II.

27. Do you agree with the proposed manner of transposing this Article in SL 370.24?

2.19 Article 42 - Conditions for the marketing in Member States without a passport of AIFs managed by a non-EU AIFM

- 2.19.1 AIFMD II adds the requirement that a non-EU AIFM cannot be established in a third country which is identified as a high-risk country by the Anti Money Laundering Directive.
- 2.19.2 Additionally, there is a new requirement that the third country where the non-EU AIFM is established must have signed an agreement with the MS of reference that fully complies with the standards laid down in the OECD Model Tax Convention and ensures an effective exchange of information in tax matters.
- 2.19.3 The MFSA proposes to update SL 370.24 in view of AIFMD II.

28. Do you agree with the proposed manner of transposing this Article in SL 370.24?

2.20 Article 43 - Marketing of AIFs by AIFMs to retail investors

- 2.20.1 AIFMD II allows licensed EU AIFMs to market units or shares of an EU AIF which invests predominantly in the shares of a particular company, to employees of that company or of its affiliated entities within the

framework of employee savings schemes or employee participation schemes, on a domestic or cross border basis.

2.20.2 The MFSA proposes to update SL 370.24 to reflect these changes.

29. Do you agree with the proposed manner of transposing this Article in SL 370.24?

2.21 Article 47 - Powers and competences of ESMA

2.21.1 AIFMD II states that the obligation of professional secrecy shall apply to all persons who work or who have worked for ESMA, for the NCAs or for any other person to whom ESMA has delegated tasks, including auditors and experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings or for cases covered by taxation law.

2.21.2 AIFMD II introduces two new instances where such officials may be exempted from professional secrecy, namely:

- ESMA or the NCA or another authority or body concerned states at the time of communication that such information may be disclosed;
- The information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.

2.21.3 ESMA may, in exceptional circumstances, suspend subscriptions, repurchases, and redemptions after consulting with the non-EU AIFM which markets its units in the EU to protect the investor and financial stability.

2.21.4 The MFSA proposes to amend the MFSA Act, and SL 370.23 to transpose these changes.

30. Do you agree with the proposed manner of transposing this Article in the MFSA Act, the ISA, and SL 370.23?

2.22 Article 50 (Obligation to cooperate)

2.22.1 The amendments to Article 50 by AIFMD II introduces new powers to the MFSA and other NCAs, as well as new obligations.

- 2.22.2 Where the MFSA has reasonable grounds to suspect that acts contrary to the AIFMD are being or have been carried out by an AIFM not licensed by it, it shall notify ESMA and the NCAs of the home and host Member States of the AIFM concerned in as specific a manner as possible.
- 2.22.3 When the MFSA is the recipient NCA, it shall take appropriate action and inform ESMA and the notifying NCAs of the outcome of that action and, to the extent possible, of significant interim developments.
- 2.22.4 Where the MFSA is the home NCA of an AIFM and it exercises its powers to suspend the issue, repurchase or redemption of units in the interest of the unit-holders or of the public, it shall notify the NCAs of the host Member State of the AIFM, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.
- 2.22.5 Where the MFSA is the host NCA of an AIFM, it may request the NCAs of the home Member State of the AIFM to exercise its powers to suspend the issue, repurchase or redemption of units in the interest of the unit-holders or of the public, specifying the reasons for the request and informing ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.
- 2.22.6 Where the MFSA is the home NCA of the AIFM and it does not agree with the request referred to in the previous paragraph, it shall inform the NCAs of the host Member State of the AIFM, ESMA and, where the ESRB was informed stating the reasons for the disagreement.
- 2.22.7 On the basis of the information received pursuant to the previous two paragraphs, ESMA shall issue without undue delay an opinion to the NCAs of the home Member State of the AIFM on the exercise of the aforementioned powers. ESMA shall communicate that opinion to the NCAs of the host Member State of the AIFM.
- 2.22.8 Where the MFSA as home NCA of the AIFM does not act in accordance with ESMA's opinion, or doesn't intend to comply with that opinion, it shall inform ESMA and the NCAs of the host Member State of the AIFM, stating the reasons for its non-compliance or intention not to comply.
- 2.22.9 In the event of a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the EU, and unless such publication conflicts with the legitimate interests of the AIF's unit-holders or shareholders or of the public, ESMA may publish the fact that the

MFSA doesn't comply or doesn't intend to comply with its opinion, together with the reasons provided by the MFSA for its non-compliance or intention not to comply. ESMA shall analyse whether the benefits of publication would outweigh the amplification of the threats to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the EU resulting from that publication and shall give the MFSA advance notice of such publication.

- 2.22.10 Where the MFSA is the host NCA of an AIFM it may, where it has reasonable grounds for doing so, request the NCAs of the home Member State of the AIFM to exercise, without delay, any of the powers present in Article 46(2) of the AIFMD, except for the powers to suspend the issue, repurchase or redemption of units in the interest of the unit-holders or of the public, specifying the reasons for its request in as specific a manner as possible and informing ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.
- 2.22.11 The NCAs of the home Member State of the AIFM shall, without undue delay, inform the MFSA as the host NCA of the AIFM, ESMA and, if there are potential risks to stability and integrity of the financial system, the ESRB, of the powers exercised and of their findings.
- 2.22.12 If Malta exercises the derogation allowing the appointment of a depositary established in another Member State, and the MFSA is the home NCA of an AIF, or of the AIFM managing the AIF where the AIF is not regulated, the MFSA shall, without delay, notify ESMA and the NCAs of the depositary concerned in as specific a manner as possible if it has reasonable grounds to suspect that acts contrary to the AIFMD are being or have been carried out by that depositary.
- 2.22.13 Where the MFSA is the recipient NCA, it shall take appropriate action and shall inform ESMA and the notifying NCAs of the outcome of that action.
- 2.22.14 ESMA shall draft RTS and Guidelines to cater for these eventualities.
- 2.22.15 The MFSA proposes to update the ISA to transpose these changes.

31. Do you agree with the proposed manner of transposing this Article in the ISA?
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2.23 Annex I AIFMD

- 2.23.1 Special purpose entities are added in the Section of Annex I, which governs other functions that an AIFM may additionally perform in the course of the collective management of an AIF, loan origination on behalf of an AIF and servicing securitisation
- 2.23.2 The MFSA proposes to amend the AIFM and AIF Rulebooks to transpose this requirement.

32. Do you agree with the proposed manner of transposing this Article in the AIFM and AIF Rulebooks?

3 Changes to Directive 2009/65/EU

3.1 Changes to the Local Framework

3.1.1 To transpose the UCITS VI in the local framework we are envisaging amendments, inter alia, to the below:

- i. The Investment Services Act (Cap. 370)
- ii. SL 370.32 – Custodians of Collective Investment Schemes Regulations
- iii. [Part BII: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as UCITS Management Companies](#) (“UCITS ManCo Rulebook”)
- iv. [Part BII – Malta based Retail UCITS Collective Investment Schemes](#) (“UCITS Rulebook”)
- v. New Legal Notice to transpose Articles 20a and 84 of the UCITS VI and UCITSD, respectively.

3.2 Article 2 (Definitions)

3.2.1 The UCITS VI introduces the definition of Central Securities Depositories (CSDs), as these entities are now explicitly mentioned in Article 22a, which regulates depositaries.

3.2.2 The MFSA proposes to include this new definition in SL 370.32.

33. Do you agree with introducing the definition as proposed?

3.3 Article 6 (Conditions for taking up business as UCITS ManCo)

3.3.1 Article 6(3) grants Member State the option to extend the list of ancillary functions or activities provided by UCITS ManCos. In such case the non-core MiFID services which a UCITS ManCo is allowed to offer is expanded to include any other function or activity which is already provided by the UCITS ManCo in relation to a UCITS that it manages, or in relation to services that it provides in accordance with this paragraph, as long as any possible conflicts of interest are managed appropriately.

3.3.2 The UCITS ManCo can also seek authorisation to offer the administration of benchmarks.

3.3.3 UCITS ManCos are prohibited from administering benchmarks which are used in the UCITS that they manage.

3.3.4 The MFSA proposes to amend the UCITS ManCo and UCITS Rulebook to transpose this Article.

34. Do you consider it appropriate to exercise the option provided in Article 6(3)? If yes, do you agree with how these requirements will be transposed in the UCITS ManCO and UCITS Rulebook? If not, please explain why you believe the option should not be exercised.

3.4 Article 7 (Application for and Granting of authorisation)

3.4.1 UCITS VI adds stricter requirements to the conditions for granting authorisation.

3.4.2 It imposes a minimum requirement of two natural persons who effectively conduct the business of the AIFM.

3.4.3 Additionally, such persons must either be employed full-time by that management company or be executive members or members of the governing body of the management company committed full-time to conducting the business of that UCITS ManCo.

3.4.4 Finally, these two persons must be domiciled in the European Union.

3.4.5 The persons must be of sufficiently good repute and are experienced in relation to the type of UCITS managed by the ManCo.

3.4.6 The MFSA will be checking compliance with these requirements during supervisory engagements.

3.4.7 Although parts of Article 7 are being replaced in toto, the new requirements to be submitted to the MFSA are, namely:

- the programme of activity setting out the organisational structure of the UCITS ManCo, including human and technical resources; and
- information on how the UCITS ManCo intends to comply with the UCITSD.

3.4.8 All the other information listed in the Article is already collected by the MFSA.

- 3.4.9 In the case of delegates, the MFSA will now collect the:
- LEI Code
 - name of the Supervisory Authority; and
 - details on whether this is a partial or full delegation
- 3.4.10 The UCITS VI obliges the UCITS ManCos to inform the MFSA of any material changes made to any of the conditions for initial authorisation, especially with regards to this Article, prior to making such changes.
- 3.4.11 The MFSA proposes to update the relevant Application Forms to include these new requirements.
- 3.4.12 The UCITS ManCo and UCITS Rulebook will be updated to transpose this Article.

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| <p>35. Do you agree with the proposed manner of transposing this Article in the UCITS ManCo and UCITS Rulebooks?</p> <p>36. Do you agree with this analysis and the method of collection of information i.e. through the relevant Application Forms?</p> |
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3.5 Article 13 (Delegation)

- 3.5.1 The UCITS VI allows for a much wider delegation of the UCITS ManCos functions since any of the activities of Annex II and/or any of the non-core activities may be delegated, if certain conditions are met and the MFSA is duly informed.
- 3.5.2 The delegation agreement allows the management company to give additional instructions after its entry into force or to withdraw such delegation at any time to protect the investors.
- 3.5.3 The delegate must be qualified and capable of undertaking the functions or performing the services being delegated.
- 3.5.4 The UCITS' prospectuses must list the services which have been delegated.
- 3.5.5 There is a new requirement on the management company. It needs to justify to the NCA its entire delegation structure on objective reasons.
- 3.5.6 The UCITS VI allows for sub-delegation as long as the requirements under this Article are satisfied.

- 3.5.7 The UCITS ManCo will retain ultimate accountability to the NCA and to the client, and must not become a UCITS only in name. Any delegation must not put at risk the interests of the investors.
- 3.5.8 The Commission will adopt delegated acts for this Article.
- 3.5.9 The MFSA proposes to update the UCITS ManCo and UCITS Rulebooks to transpose this Article.

37. Do you agree with the proposed manner of transposing this Article in the UCITS ManCo and UCITS Rulebooks?

3.6 Article 14 (Conflicts of Interest)

- 3.6.1 UCITS VI requires management companies which manage or intend to manage a UCITS at the initiative of a third party, including UCITS using the name of the third-party initiator or appointing the third-party initiator as a delegate, to submit to its NCA, taking account of conflicts of interest, detailed explanations and evidence of its compliance with Article 14 of the UCITSD.
- 3.6.2 The UCITS is now required to specify what reasonable steps it has taken to prevent conflicts of interest arising from the relationship or, where they cannot be prevented, how it identifies, manages and monitors and where applicable, discloses those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.
- 3.6.3 The MFSA will be checking compliance with these requirements during supervisory engagements.
- 3.6.4 The MFSA proposes to amend the UCITS ManCo and UCITS Rulebook to transpose this Article.

38. Do you agree with the proposed manner of transposing this Article in the UCITS ManCo and UCITS Rulebooks?

3.7 Article 18a, 84, & Annex IIA – Liquidity Management

- 3.7.1 Annex IIA lists 9 different liquidity management tools:
- Suspension of subscriptions, repurchases and redemption
 - Redemption Gate
 - Extension of Notice Periods

- Redemption Fee
- Swing Pricing
- Dual Pricing
- Anti-Dilution Levy
- Redemption in Kind
- Side Pockets

- 3.7.2 A UCITS needs to use at least 2 tools from points 2 to 8 of Annex V over and above deferrals of redemptions, after assessing the suitability of those tools in relation to the pursued investment strategy, the liquidity profile and its redemption policy. The UCITS shall include those tools in its rules or instruments of incorporation for possible use in the interest of the investors and inform the MFSA. It is not possible to only use the tools referred to in Annex V, points 5 and 6.
- 3.7.3 Liquidity management tools need to be accompanied by the UCITS with a clear procedure for their use.
- 3.7.4 A UCITS shall only use a suspension of subscriptions, repurchases and redemptions or side pockets in exceptional cases where the interests of the investors so require.
- 3.7.5 In cases where any of the tools are activated, deactivated, and/or changed, the UCITS needs to inform the MFSA as soon as possible of such change in circumstances.
- 3.7.6 As is already done, the MFSA may, in exceptional circumstances, suspend subscriptions, repurchases, and redemptions after consulting with the UCITS to protect the investor and financial stability.
- 3.7.7 ESMA has issued an RTS and Guidelines in this regard.
- 3.7.8 When the MFSA is the UCITS' home NCA, it shall inform, without delay, the NCAs of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of any notification received in relation to the activation or deactivation of liquidity management tools. ESMA shall have the power to share the information received with the NCAs.
- 3.7.9 Where the MFSA as home NCA suspends subscriptions, repurchases, and redemptions, it shall notify the NCAs of the UCITS host Member State, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.

- 3.7.10 When the MFSA is the host NCA, it may request the home NCA of the UCITS to suspend subscriptions, repurchases, and redemptions, specifying the reasons for the request and informing ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.
- 3.7.11 Where the MFSA as home NCA doesn't agree with the request to suspend subscriptions, repurchases, and redemptions, it shall inform the requesting NCAs, ESMA and, where the ESRB was informed of that request, the ESRB, stating the reasons for the disagreement.
- 3.7.12 On the basis of the information received, ESMA shall issue quickly an opinion to the MFSA when it is the home NCA with regards to the suspension of subscriptions, repurchases, and redemptions. ESMA shall communicate that opinion to the host NCA.
- 3.7.13 Where the MFSA as the UCITS home Member State doesn't act in accordance with ESMA's opinion, or doesn't intend to comply with that opinion, it shall inform ESMA and the requesting NCA, stating its reasons for its non-compliance or intention not to comply.

In the event of a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the EU, and unless such publication conflicts with the legitimate interests of the UCITS' unitholders or of the public, ESMA may publish the fact that the MFSA doesn't comply or doesn't intend to comply with its opinion, together with the reasons provided by the MFSA for its non-compliance or intention not to comply.

ESMA shall analyse whether the benefits of publication would outweigh the amplification of the threats to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the EU resulting from that publication and shall give the MFSA advance notice of such publication.

- 3.7.14 ESMA shall develop guidelines to provide guidance to NCAs on how to exert such powers.
- 3.7.15 The MFSA's current side pocket policy applies to PIFs and excludes UCITS. The MFSA proposes to amend this policy in line with UCITS VI, so that the use of side pockets will no longer be prohibited for UCITS.

- 3.7.16 The MFSA will review its current policy to bring it line with the UCITS VI, however, since such Directive lays down minimum harmonisation rules in this regard, we propose to update and keep such policy.
- 3.7.17 The MFSA proposes to transpose Article 18a and Annex IIA in the UCITS Rulebook, whilst Article 84 will be transposed in a new Legal Notice. The side pocket policy will also be updated to transpose this Article.

39. Do you agree with the proposed manner of transposing Article 18a and Annex IIA in the UCITS Rulebook and Article 84 in a new Legal Notice? Do you agree with retaining and updating the current side pocket policy as explained?

3.8 Article 20a (Reporting Obligations to competent authorities)

- 3.8.1 The UCITS ManCo needs to detail the specific instruments traded, the markets used, and the exposures and assets and report it to the MFSA for each UCITS it manages. Such information shall include the identifiers that are necessary to connect the data provided on assets, UCITS and management companies to other supervisory or publicly available data sources.
- 3.8.2 For each UCITS it manages, the management company shall provide the arrangements for managing the liquidity of the UCITS, including the current selection of liquidity management tools, and any activation or deactivation of such tools, to the MFSA.
- 3.8.3 Additionally, it shall report the current risk profile of the UCITS, including the market risk, liquidity risk, counterparty risk, other risks including operational risk, and the total amount of leverage employed by the UCITS and the results of the stress tests.
- 3.8.4 The UCITS ManCo needs to report details about any delegation arrangements regarding portfolio or risk management, namely the:
- Identification details and possible conflicts of interest
 - Number of full-time equivalent employees employed by the UCITS ManCo for the day to day tasks, as well as the amount employed to monitor the delegation arrangements
 - Activities that are being delegated and a description of them
 - Amount and percentage of UCITS assets that are managed under delegation

- Number and dates of periodic due diligence reviews, any issues found, and how they will be remedied
- Commencement and expiry dates of such agreements
- The list of Member States in which the units of the UCITS are actually marketed by its management company or by a distributor which is acting on behalf of that management company.

- 3.8.5 In the case of sub-delegation the above information is needed too.
- 3.8.6 The MFSA is obliged to cooperate and share relevant information with other NCAs and ESAs, as necessary, and to protect the financial stability within the EU.
- 3.8.7 Where necessary for the effective monitoring of systemic risk, the MFSA may require additional information on a periodic or ad hoc basis. In such a case, the MFSA has to inform ESMA of any such additional reporting requirements.
- 3.8.8 In exceptional circumstances, and where required in order to ensure the stability and integrity of the financial system or to promote long-term sustainable growth, ESMA after consulting the ESRB may request the MFSA to impose additional reporting requirements.
- 3.8.9 ESMA shall publish an RTS in relation to this Article.
- 3.8.10 The MFSA proposes to issue a new Legal Notice to transpose this Article.

40. Do you with the proposed manner of transposing this Article in a new Legal Notice?

3.9 Article 22a (Depositary)

- 3.9.1 In the case of sub-delegation, the Depositary shall exercise all due skill, care, and due diligence before appointing such sub-delegate. The Depositary shall continuously monitor its sub-delegate and is ultimately responsible for it. These obligations do not apply if such depositary is a CSD.
- 3.9.2 The MFSA proposes to amend SL 370.32 to transpose this Article.

41. Do you agree with the proposed manner of transposing this Article in SL370.32?

3.10 Article 29 (Conditions for taking up authorisation)

- 3.10.1 UCITS VI will add stricter requirements to the conditions for granting authorisation.
- 3.10.2 The two persons who effectively conduct the business of the UCITS ManCo must now be natural persons.
- 3.10.3 Additionally, such persons must either be employed full-time by that management company or be executive members or members of the governing body of the UCITS ManCo committed full-time to conducting the business of that UCITS ManCo.
- 3.10.4 Finally, these two persons must be domiciled in the European Union.
- 3.10.5 The MFSA will be checking compliance with these requirements during supervisory engagements.
- 3.10.6 The MFSA proposes to amend the UCITS Rulebook to transpose this Article.

42. Do you agree with the proposed manner of transposing this Article in the UCITS Rulebook?

3.11 Article 57 (Subscription Rights)

- 3.11.1 Where a UCITS activates side pockets when the repurchase or redemption of its units are temporarily suspended by such UCITS, by means of asset segregation, the segregated assets may be excluded from the calculation of limits laid down in the relevant UCITSD chapter.
- 3.11.2 The MFSA proposes to amend the UCITS Rulebook to transpose this Article.

43. Do you agree with the proposed manner of transposing this Article in the UCITS Rulebook?

3.12 Article 79 (Key Investor Information)

- 3.12.1 The name of the UCITS must now be included in the prospectus, and it constitutes pre-contractual information.
- 3.12.2 The MFSA proposes to amend the UCITS Rulebook to transpose this Article.

44. Do you agree with the proposed manner of transposing this Article in the UCITS Rulebook?

3.13 Article 98, Article 101, & Article 102 (Obligation to Cooperate)

- 3.13.1 Where the MFSA is the host NCA of the UCITS and has reasonable grounds, it may request the home NCAs of the UCITS to exercise, without delay, powers found in Article 98 of the UCITSD, except for the power to suspend the issue, repurchase or redemption of units specifying the reasons for its request in as specific a manner as possible and informing ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB.
- 3.13.2 The NCA of the UCITS home Member State shall, without undue delay, inform the MFSA, ESMA and, if there are potential risks to the stability and integrity of the financial system, the ESRB, of the powers exercised and of its findings.
- 3.13.3 ESMA may request the MFSA to submit, without undue delay, explanations to ESMA in relation to specific cases which raise a serious threat to investor protection, to the orderly functioning and integrity of financial markets or to the stability of the whole or part of the financial system in the EU.
- 3.13.4 The NCAs shall cooperate with each other and with ESMA and the ESRB whenever necessary for the purpose of carrying out their duties under the UCITSD or of exercising their powers under the UCITSD or under national law.
- 3.13.5 ESMA may develop RTS to establish common procedures to ensure cooperation between NCAs during inspections and investigations, and to determine the procedures for the exchange of information between NCAs, the ESAs, the ESRB, and members of the ESCB, subject to the applicable provisions of the UCITSD.

- 3.13.6 The UCITS VI states that the obligation of professional secrecy shall apply to all persons who work for the NCAs or for any other person to whom they have delegated tasks, including auditors and experts. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings or for cases covered by taxation law.
- 3.13.7 The UCITS VI introduces two new instances where such officials may be exempted from professional secrecy, namely:
- i. ESMA or the MFSA or another authority or body concerned states at the time of communication that such information may be disclosed;
 - ii. The information disclosed is used in a summary or in an aggregate form in which individual financial market participants cannot be identified.
- 3.13.8 The MFSA proposes to amend the ISA to transpose these Articles.

45. Do you agree with transposing this Article in the ISA?

3.14 UCITSD Schedule A (List of Instruments)

- 3.14.1 In point 1.13 of Schedule A of the UCITSD, under the procedures and conditions for repurchase or redemption of units, UCITS VI states that such procedure shall cater for cases of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.
- 3.14.2 The MFSA proposes to amend Appendix I of the UCITS ManCo Rulebook to transpose this requirement.

46. Do you agree with the proposed manner of transposing this in the UCITS ManCo Rulebook?

4 Annex I – The Proposed Rules

- 4.1.1 Annex I presents the proposed changes to the Rulebooks. Legislative changes as explained would still need to be drafted after this Consultation.

5 Conclusion

- 5.1.1 The MFSA invites comments on all matters in this Consultation Paper, particularly on the specific comments outlined at the end of each Section. Stakeholders are encouraged to provide clear, detailed feedback and, where relevant, to include specific drafting suggestions or alternative proposals. The MFSA will consider all comments received by **24 November 2025**. All contributions should be sent via email on isspolicy@mfsa.mt.