

INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTOR FUNDS

PART B: STANDARD LICENCE CONDITIONS

Appendix 4: Contents of the Offering Document

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REVISIONS LOG

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1 General Requirements

- 1.01 The requirements prescribed in this Appendix are applicable to Maltese AIFs whether these are third-party managed or self-managed AIFs in terms of Part B of these Rules.
- 1.02 Unless otherwise agreed with the MFSA, an AIF shall issue or cause to be issued an Offering Document for which the AIF shall be responsible. The purpose of the Document is to provide sufficient information to enable potential investors to make an informed investment decision.
- 1.03 The Document must contain all material information which at the date of the Offering Document is within the knowledge of the AIF's Board of Directors (in the case of an AIF set up as an investment company), General Partner(s) (in the case of an AIF set up as a limited partnership) or AIFM (in the case of an AIF set up as a unit trust or a common contractual fund) to be relevant for the purpose of making an informed judgement about the merits of participating in the AIF and the extent of the risks accepted by so participating. The Offering Document shall include the information listed hereunder.

2 Information Concerning the AIF

- 2.01 Where the AIF is to be made available only to professional investors, the following statements must be in a prominent position printed in font whose pitch is at least 12:
- *"[name of the FUND] is licensed by the Malta Financial Services Authority ("MFSA") as an Alternative Investment Fund which is available to Professional Investors";*
 - *This Alternative Investor Fund is a Non-Retail Scheme. Therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail schemes do not apply;*
 - *The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.*
- 2.02 Where the AIF is to be made available to Experienced, Qualifying or Extraordinary Investors, the following statements must be in a prominent

position printer in font whose pitch is at least 12:

- *“[name of the FUND] is licensed by the Malta Financial Services Authority (“MFSA”) as an Alternative Investment Fund whose investors may comprise Experienced/ Qualifying/ Extraordinary Investors (delete as appropriate), and fulfils any additional conditions prescribed by the Authority in relation to Schemes sold to Experienced/ Qualifying/ Extraordinary Investors (delete as appropriate);*
- *This protection normally arising as a result of the imposition of the MFSA’s investment and borrowing restrictions and other requirements for retail schemes do not apply for this fund;*
- *This fund may only be marketed outside Malta to Professional Investors as defined in the AIFM Directive. The marketing of the fund to an investor who is not a Professional Investor as defined in the AIFM Directive may only be undertaken if allowed by the respective jurisdiction and subject to the national provisions applicable in the respective jurisdiction as prescribed in Article 43 AIFMD;*
- *The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”*

2.03 Where the AIF is to be made available to retail investors, the following statements must be in a prominent position printed in font whose pitch is at least 12:

- *“[name of the FUND] is licensed by the Malta Financial Services Authority (“MFSA”) as an Alternative Investment Fund and fulfils the additional conditions prescribed by the Authority to be marketed to Retail Investors.*
- *The MFSA has made no assessment or value judgement on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”*

2.04 A statement that the AIF’s Board of Directors (in the case of an AIF set up as an investment company), General Partner(s) (in the case of an AIF set up as a limited partnership) or AIFM (in the case of an AIF set up as a unit trust or a common contractual fund) confirm their approval of the content of the Offering Document.

2.05 In addition to the above, the following information about the AIF must be included in the Offering Document:

- i. Name of the AIF;
- ii. Date of establishment of the AIF and a statement as to its duration, if limited;
- iii. Name or style, form in law and registered office;
- iv. In the case of an umbrella AIF, an indication of the Sub-Funds;
- v. The investment objectives, policies and restrictions of the AIF, together with the extent of use of leverage. In the case of an umbrella AIF, this information must be provided for each Sub-Fund in the respective Offering Supplements;
- vi. A statement indicating that:
 - a. changes to the investment policies and restrictions of the AIF, or in the case of an umbrella AIF, its Sub-Funds, shall be notified to investors in advance of the change;
 - b. changes to the investment objectives of the AIF, or in the case of an umbrella AIF its Sub-Funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.
- vii. Accounting and distribution dates;
- viii. Name of auditor;
- ix. Details of the types and main characteristics of the Units and in particular:
 - a. the nature of the right represented by the Unit;
 - b. indication of the voting rights, if any of the holders of Units.
- x. Where the AIF has issued "Voting Shares" to the promoters and "non-Voting Shares" to prospective Investors, a Statement identifying the

holders of the "Voting Shares" of the AIF. In the event that the "Voting Shares" are held by a Corporate Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of "Voting Shares" will be disclosed upon request;

- xi. Procedures and conditions for the creation, issue and sale of Units;
- xii. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase or redemption may be suspended;
- xiii. Rules for the valuation of assets;
- xiv. Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of Units, in particular:
 - a. the method and frequency of the calculation of the net asset value;
 - b. information concerning the charges relating to the sale or issue and the repurchase or redemption of Units; and
 - c. arrangements whereby holders of Units and prospective holders of Units may deal.
- xv. In the case of an umbrella AIF, the charges applicable to the switching of investments from one Sub-Fund to another;
- xvi. Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the AIF to the AIFM (or in the case of a Self-Managed AIF, the Investment Committee), Administrator, Custodian, (in respect of safe-keeping services), Adviser, and in respect of the reimbursement of costs by the AIF to the AIFM, and to the Custodian (in respect of safe-keeping services);
- xvii. In the case of an AIF set up as an investment company, the amounts of authorised and paid-up share capital;
- xviii. In the case of an AIF set up as an investment company, brief details of

the members of the Board of Directors of the AIF. Where the AIF has appointed one or more Corporate Directors, this section should include brief details on the Corporate Director and its directors, including a brief description of the nature/ objects of the company. In the case of a Corporate Director with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate Director or include a statement that such information will be available upon request;

- xix. In the case of an AIF set up as a limited partnership, brief details of the General Partner/s. Where the AIF has appointed one or more Corporate General Partner/s, this section should include brief details on the Corporate General Partner/s and its directors, including a brief description of the nature/ objects of the company. In the case of Corporate General Partner/s with nominee shareholders and directors, this section should either disclose the ultimate beneficial owners of the Corporate General Partner/s or include a statement that such information will be available upon request;
- xx. In the case of an AIF set up as an investment company with variable share capital and which has opted to issue shares subject to full payment by a settlement date, in accordance with regulation 16 of the Companies Act (Investment Companies with Variable Share Capital) Regulations, it shall indicate in its offering document, the settlement date by which payment of the full subscription price is to be received, which date cannot be later than five working days from the date of issue of those shares.

3 Information concerning the AIFM, Investment Adviser, Administrator, Custodian/ Prime Broker (where applicable) (“the Service Provider”)

- 3.01 The following information about the Service Providers must be included in the Offering Document:
 - i. Name or style, registered office and head office;
 - ii. If the Service Provider is part of a group, the name of that group;

- iii. Regulatory Status of the Service Provider;
- iv. In the case of the Investment Adviser or the Administrator a statement whether the Investment Adviser/ the Administrator is appointed by the AIF or the AIFM;
- v. Where one or more Service Provider has not been appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out.

4 Risk Warnings

- 4.01 The section on risk warnings should provide a detailed and clear indication of the principal risks associated with investing in the AIF.
- 4.02 Where it is possible for the AIF to enter into agreements with investors for the purpose of committing funds for the subscription at a future date to units at a specific price, a risk warning should be made to the effect that should the AIF issue units at a discount with respect to its current NAV, in terms of the such agreements, there will be a risk of dilution to the Net Asset Value of the AIF.
- 4.03 There should also be a clear risk warning that while investors entering into an agreement with the AIF for the purpose of committing funds for the subscription at a future date to units at a specific price, would in effect be subscribing for such units at a discount if the NAV per unit prevailing at the time the draw-down request is made, exceeds the price at which the investor had agreed to subscribe for units in terms of such agreement, on the other hand, if the NAV per unit at the time a draw-down request is made is lower than the price at which the investor had agreed to subscribe for units in terms of such agreement, the investor would, in effect, be paying a premium for such units.

5 General Information

- 5.01 A description of the potential conflicts of interest which could arise between the AIFM, or the Investment Adviser, or the Custodian/ Prime Broker, and the AIF.
- 5.02 The name of any entity which has been contracted by the AIFM or the AIF to carry out its work.

- 5.03 Information concerning the arrangements for making payments to Unit-Holders, purchasing or redeeming Units and making available information concerning the AIF.
- 5.04 Where applicable, an indication that the AIF will use Trading Companies or Special Purpose Vehicles as part of its investment strategy.
- 5.05 Where the Offering Document is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the AIF or the financial intermediaries placing or selling the AIF's Units. The Offering Document of the AIF must be made available in a printed form at the registered office of the AIF or its AIFM or other financial intermediaries placing or selling the Units in the AIF.
- 5.06 The Directors of the AIF, or its administrative management or supervisory body – whose names and functions or in the case of legal persons their names and registered offices appear on the Offering Document – must include a declaration in the Offering Document to the effect that to the best of their knowledge the information contained therein is in accordance with facts and that the Offering Document makes no omission likely to affect its import.
- 5.07 The text and the format of the Offering Document, and/ or the supplements to the Offering Document, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.
- 5.08 Every significant new factor, material mistake or inaccuracy relating to the information included in an Offering Document of the AIF which is capable of affecting the investors' assessment of the Units on offer and which arises or is noted between the time when the Offering Document is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a Regulated Market begins, shall be mentioned in a supplement to the Offering Document. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Offering Document was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the Units before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.
- 5.09 If there are significant new factors, material mistakes or inaccuracies, arising

since the approval of the Offering Document, the AIF shall publish a supplement which must be approved by the MFSA.

- 5.10 The AIF shall comply with the requirements laid out in Regulations 3 to 8 of the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005.

6 Disclosure to Investors

- 6.01 The AIF shall make available to investors, in accordance with the Constitutional Documents and/or Offering Document, the following information before it invests in the AIF, as well as any material changes thereof:

- a. A description of the investment strategy and the objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restriction on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIF is entitled to employ;
- b. A description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- c. A description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgements in the territory where the AIF is established;
- d. The identity of the AIF's custodian, auditor and any other service providers and a description of their duties and the investors' rights;
- e. A description of how the AIF is complying with the requirements of SLC 8.13 of Part B of these Rules;

- f. A description of any delegated management function as referred to in SLC 8.01 of Part B of these Rules by the AIF and of any safe-keeping function delegated by the custodian, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- g. A description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with SLCs 8.49 to 8.64 of Part B of these Rules;
- h. A description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;
- i. A description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;
- j. A description of how the AIF ensures a fair treatment of investors and, whenever an investor obtains preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF;
- k. The latest annual report referred to in SLC 8.88 of Part B of these Rules;
- l. The procedure and conditions for the issue and sale of units or shares;
- m. The latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with SLCs 8.49 to 8.64 of Part B of these Rules;
- n. Where available the historical performance of the AIF;
- o. The identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the custodian on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;

- p. A description of how and when the information required under SLC 6.05 and 6.06 of this Appendix will be disclosed.
- 6.02 The AIF shall inform the investors before they invest therein of any arrangement made by the custodian to contractually discharge itself of liability in accordance with Article 21(13) of the Directive as transposed in Part BIV of the Investment Services Rules for Investment Services Providers.
- 6.03 The AIF shall also inform investors of any changes with respect to custodian liability without delay.
- 6.04 Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or in accordance with Maltese law, only such information referred to in SLCs 6.01 to 6.03 above which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in prospectus.
- 6.05 The AIF shall periodically disclose to investors:
- a. The percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
 - b. Any new arrangements for managing the liquidity of the AIF;
 - c. The current risk profile of the AIF and the risk management systems employed to manage those risks;
 - d. The composition of the originated loan portfolio;
 - e. On an annual basis, all fees, charges and expenses that were directly or indirectly borne by investors;
 - f. On an annual basis, any parent undertaking, subsidiary or special purpose vehicle utilised in relation to the AIF's investments by or on behalf of the Licence Holder.
- 6.06 An AIF employing leverage shall disclose on a regular basis:
- a. Any changes to the maximum level of leverage which the AIF may employ as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;

- b. The total amount of leverage employed by that AIF.

6.07 DELETED.

7 Additional Disclosures to investors of the AIFs, which are sold exclusively to retail investors

- 7.01 The AIF should adequately inform its investors about the existence of performance fees and about their potential impact on the investment return. The main elements of the performance fee calculation method should be disclosed as per SLCs 9.1 to 9.6 of these Rules.
- 7.02 In case a performance fee is charged also in times of negative performance, a prominent warning to investors shall be included in the KII.
- 7.03 In case the AIF is managed against a benchmark, performance fees shall be computed against a benchmark model based on a different but consistent benchmark. The AIF Manager shall explain the choice of the benchmark in the Offering Document.
- 7.04 The Offering Document and, if relevant, any ex-ante information documents as well as marketing material, should clearly set out all information necessary to enable investors to understand properly the performance fee model and the applicable computation methodology. Such documents shall include as a minimum a description of the performance fee calculation method, with specific reference to parameters and the date when the performance fee is paid. The Offering Document shall include concrete examples of how the performance fee will be calculated to provide investors with a better understanding of the performance fee model especially in the case of performance fees charged against negative performances. The main elements of the performance fee calculation method shall also be indicated.
- 7.05 The KII shall clearly set out all information necessary to explain the existence of the performance fee, the basis on which the fee is charged and when the fee applies, consistently with Article 10(2)(c) of the [Commission Regulation \(EU\) No 583/2010 of 1 July 2010](#). Where performance fees are calculated based on performance against a reference benchmark index, the KIID and the Offering Document shall display the name of the benchmark and show past performance against it.

7.06 The annual report and half-yearly reports and any other ex-post information shall indicate, for each relevant share class, the impact of the performance fees by clearly displaying: (i) the actual amount of performance fees charged and (ii) the percentage of the fees based on the NAV of the share class.

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