MFSA MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

PART B: STANDARD LICENCE CONDITIONS

APPENDIX I
SUPPLEMENTARY LICENCE CONDITIONS

REVISIONS LOG

VERSION	DATE ISSUED	DETAILS
1.00	17 July 2007	Applicable until 5 May 2019
2.00	6 May 2019	See: Circular dated 6 May 2019 on Revisions to CIS Rulebooks
3.00	3 July 2020	See: Circular dated 3 July 2020 on the Fitness and Properness Assessment of Committee Members involved with ISPs and CIS'
4.00	21 December 2020	See: Circular dated 11 December 2020
5.00	4 November 2022	See: Circular dated 4 November 2022 on Amendments to Appendix I to Part B of the Investment Services Rules for Professional Investors Funds and the Glossary to Introduce Reference to a DLT Asset
6.00	12 February 2025	See: Circular dated 12 February 2025 on the launch of a framework for Collective Investment Schemes structured as Limited Partnerships without separate legal personality
7.00	30 April 2026	See: Various Amendments to the Investment Services Rulebooks for the Purposes of Directive 2024/927(EU)

1. Supplementary Licence Conditions applicable to PIFs established as Limited Partnerships under (a) the Companies Act and (b) the Investment Services Act (Special Limited Partnership Funds) Regulations

1.1 The Scheme shall obtain the written consent of the MFSA before admitting a General Partner. The request for consent shall be accompanied by a Personal Questionnaire ("PQ") in the form set out in Schedule C to Part A of these Rules duly completed by the person proposed (in the case of an individual) or by the Directors and qualifying shareholders of the proposed General Partner (in the case of a body corporate).

Provided that where the proposed corporate General Partner is regulated in a recognised jurisdiction, the request for consent need not be accompanied by the PQ of the Directors and qualifying shareholders of the proposed corporate General Partner, but shall include details of the regulatory status of the General Partner.

1.2 General Partners shall be persons falling within any one of the following categories:

i. a company licensed under the Investment Services Act for the provision of fund management services; or

ii. a company falling within the exemptions applicable to overseas fund managers; or

iii. any other entity of sufficient standing and repute as approved by the MFSA; or

iv. any other individual who satisfies the fit and proper test.

Where the General Partner falls under paragraphs (iii) and (iv) above, and in the absence of a manager (as per paragraphs (i) or (ii)) acting as an additional General Partner, the Scheme shall appoint a manager acceptable to the MFSA.

1.3 The Scheme shall notify the MFSA in writing of the departure of a General Partner within 14 days of the departure. The Scheme shall also request the General Partner to provide the MFSA with the relevant details concerning the individual's resignation, as appropriate and confirm to MFSA that his departure had no regulatory implications or to provide relevant details, as appropriate. A copy of such

request shall be provided to MFSA together with the Scheme's notification of departure.

1.4 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements.

1.5 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the General Partner(s) and of any party appointed by the Scheme.

1.6 Where applicable, the Scheme, or the Manager or Administrator on behalf of the Scheme, is required to disclose to potential investors, the identity of the beneficial owners of the General Partner(s) upon request.

2. Supplementary Licence Conditions applicable to PIFs established as Investment Companies

2.1 The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness of the Directors of the Scheme.

2.2 The Scheme shall at all times have one or more Directors independent from the manager and the custodian.

2.3 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Director provided that the Scheme shall not appoint a corporate Director unless such corporate Director is regulated in a recognised jurisdiction.

2.4 The request for consent of the appointment or replacement of an individual as Director shall be accompanied by a PQ in the form set out in Schedule B to Part A of these Rules duly completed by the person proposed. In the case of a corporate Director, the request for consent shall include details of its regulatory status.

2.5 The Scheme shall notify the MFSA in writing of the departure of a Director within 14 days of the departure. The Scheme shall also request the Director to confirm to the MFSA that his departure had no regulatory implications or to provide relevant

details, as appropriate. A copy of such request shall be provided to MFSA together with the Scheme's notification of departure.

2.6 Where the Scheme has issued "Voting Shares" to the promoters and "non-Voting Shares" to Experienced, Qualifying or Extraordinary Investors, any changes in the beneficial ownership of the "Voting Shares" of the Scheme shall be subject to the prior approval of the MFSA. The Scheme, or the manager or administrator on behalf of the Scheme, is required to disclose to potential investors, the identity of the beneficial owners of the "Voting Shares" upon request.

The Scheme shall obtain the written consent of the MFSA before:

i. making any changes to the rights of its "Voting Shares"; or

ii. redeeming its "Voting Shares"; or

iii. issuing additional "Voting Shares".

2.7 Minutes of the meetings of the Board of Directors must be held in Malta at the registered office of the Scheme or at any other place as may be agreed with the MFSA.

2.8 The Scheme shall act honestly, fairly and with integrity –in the best interests of its investors/shareholders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring –by way of disclosure, internal procedures or otherwise –that investors are treated fairly. The following procedures should be followed during board meetings, where a member considers that s(he) has or may have a conflict of interest:

a. that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;

b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;

c. the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;

d. the minutes of the meeting should accurately record the sequence of such events.

ii. abiding by all relevant laws and regulations, including in respect of prevention of money laundering;

iii. avoiding any claim of independence or impartiality which is untrue or misleading; and

iv. avoiding making misleading or deceptive representations to investors.

3. Supplementary Licence Conditions applicable to PIFs using Trading Companies/Special Purpose Vehicles ("SPVs") for Investment Purposes

3.1 The SPVs must be established in Malta or in a jurisdiction which is not a FATF blacklisted country.

3.2 The Scheme shall through its Directors or General Partner(s) at all times maintain the majority directorship of any SPV.

3.3 The Scheme shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the Scheme.

3.4 The SPV shall be owned or controlled via a majority shareholding of the voting shares either directly or indirectly by the Scheme.

4. Supplementary Licence Conditions applicable to PIFs set up as Self-Managed Schemes

NOTE: This Section is applicable to all self-managed PIFs.

In the case where a self-managed scheme wishes to avail itself of the *de minimis* exemption prescribed in Article 3 AIFMD, it shall comply with SLCs 4.1 to 4.15 hereunder.

4.1 A self-managed Scheme (hereinafter referred to as *de minimis* self-managed Scheme) which satisfies one of the following conditions shall further comply with the requirements contained herein:

(i) either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100 million; or

(ii) either directly or indirectly, through a company with which the Scheme is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

Where the conditions prescribed above are no longer met, the *de minimis* self-managed Scheme shall inform the MFSA thereof and shall apply for an extension to its *de minimis* PIF Licence to a full AIF Licence within 30 days from the date of notification thereof to the MFSA.

Provided that in complying with the requirements prescribed in SLC 4.1 (a) and (b) above the *de minimis* self-managed Scheme shall further comply with articles 3 and 4 of the Commission delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council

with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

The *de minimis* self-managed Scheme shall comply with the following requirements:

i. the Scheme shall provide information to the MFSA on its investment strategy;

ii. the Scheme shall regularly, provide the MFSA with information on the main instruments in which it is trading and on its principal exposures and most important concentrations in order to enable the MFSA to monitor systemic risk effectively; and

Provided that in complying with the requirements prescribed in paragraph [ii] above, the Scheme shall submit to the MFSA the information prescribed in Annexes 1 and 2 to this Appendix and shall further comply with:

a. the applicable provisions of the Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision; and

b. the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD [ESMA/2013/1339 (revised)].

iii. the Scheme shall provide the MFSA with any additional information required from time to time. In particular, in respect of each annual accounting period, the Scheme shall require its auditor to prepare a management letter in accordance with International Standards on Auditing, which shall be submitted to the MFSA. The auditor must also confirm to the MFSA that the audit has been conducted in accordance with International Standards on Auditing and whether, in the auditor's opinion the methodology used by the Scheme to calculate its assets under management complies with the requirements of the Alternative Investment Fund Managers Directive.

4.1A The *de minimis* self-managed Scheme shall not benefit from any rights to passport in terms of the AIFMD, unless it chooses to apply for, and is granted a full AIFMD compliant licence in accordance with all the conditions in the Investment Services Rules for Alternative Investment Funds.

In the case where the *de minimis* self-managed Scheme opts to apply for a full AIFMD compliant licence, it shall further comply with the relevant requirements prescribed in the applicable articles of the EU Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

Capital Requirements

4.2 The Scheme shall be operated in or from Malta, as agreed with the MFSA. It shall have sufficient financial resources at its disposal to enable it to conduct its business effectively, to meet its liabilities and to be prepared to cope with the risks to which it is exposed. The initial, paid up share capital for the Scheme should not be less than EUR 125,000 or its currency equivalent and the NAV of the Scheme is expected to exceed this amount on an on-going basis. The Scheme should notify the MFSA as soon as its NAV falls below EUR 125,000 or its currency equivalent.

Operational Arrangements

4.3 The Scheme shall organise and control its affairs in a responsible manner and shall have adequate operational, administrative and financial procedures and controls to ensure compliance with all regulatory requirements and shall provide the MFSA with all the information it may require from time to time.

4.4 The Board of Directors shall be responsible for the management of the assets of the Scheme. At least one member of the Board of Directors shall be resident in Malta. The Board of Directors of the Scheme shall establish an in-house Investment Committee made up of at least three members, whose composition may include board members. The Terms of Reference of this Investment Committee which regulate the proceedings of the Investment Committee and any changes thereto, is subject to a notification to the MFSA. The majority of Investment Committee meetings, the required frequency of which should depend on the nature of the

Scheme's investment policy, but which should at least be quarterly, are to be physically held in Malta. Investment Committee meetings are deemed to be physically held in Malta if the minimum number of members that form a quorum necessary for a meeting are physically present in Malta.

4.5 Minutes of Investment Committee meetings should be available in Malta for review during the MFSA's compliance visits. The role of the Investment Committee will be to:

i. monitor and review the investment policy of the Scheme;

ii. establish and review guidelines for investments by the Scheme;

iii. issue of rules for stock selection;

iv. set up the portfolio structure and asset allocation; and

v. make recommendations to the board of directors of the Scheme.

4.6 Where the Scheme has not appointed an Investment Committee, the functions mentioned under SLC 4.5 above shall be undertaken by the Directors of the Scheme and any reference to Investment Committee throughout this Appendix shall be construed as reference to the Board of Directors of the Scheme.

4.7 The Investment Committee may delegate the day-to-day investment management of the assets of the Scheme to one or more officials of the Scheme (referred to as 'the Portfolio Manager(s)') –who will effect day-to-day transactions within the investment guidelines set by the Investment Committee and in accordance with the investment objectives, policy and restrictions described in the Scheme's Offering Document/ marketing document.

4.8 The Scheme shall obtain the written consent of the MFSA before the appointment or replacement of a Portfolio Manager. For the purposes of the above and 4.9 below, 'Portfolio Manager(s)' should be interpreted as the person(s) in charge of the day-to-day investment management of the Scheme, whether he/she is also a member of the Investment Committee or otherwise. Provided that, when the Investment

Committee is to be considered as being collectively responsible for the day-to-day investment management of the assets of the Scheme, all its members would be required to obtain the written consent of the MFSA.

Where the prior approval of the Authority is required, the request for approval shall be submitted to the Authority together with a Personal Questionnaire duly completed by the person(s) proposed.

The MFSA reserves the right to object to the proposed replacement or appointment and to require such additional information it considers appropriate. The MFSA shall be entitled to be satisfied, on a continuing basis, of the fitness and properness, including competence, of the Portfolio Manager(s).

4.9 The Scheme shall notify the MFSA in writing:

1. of the departure of a Portfolio Manager within 14 days of the departure. The Scheme shall also request the Portfolio Manager to confirm that his/ her departure has no regulatory implications or otherwise provide any relevant details, as appropriate. A copy of such request shall be provided to MFSA;

2. of the appointment and departure of Investment Committee members which are not in charge of the day-to-day investment management of the assets of the Scheme (i.e. do not fall under the definition of 'Portfolio Manager(s)' of 4.8 above), upon engagement. The notification of appointment of committee members shall be accompanied by a declaration confirming that:

   a) the Licence Holder has carried out a due diligence assessment on the appointed individual and is satisfied that he/ she complies with the standards of fitness and properness required by the MFSA, and that the Licence Holder shall notify the MFSA should such individual cease to comply with the mentioned standards;

   b) the due diligence exercise undertaken has been fully documented, held at the registered office, and is available upon request by the MFSA; and

c) the due diligence exercise carried out will be updated at periodical intervals as applicable and the updates will be documented and will be made available upon request by the MFSA.

4.10 The Scheme shall have adequate arrangements, in agreement with and subject to the approval of the MFSA, to ensure adequate monitoring of the activities of the Portfolio Manager/s and the Investment Committee.

4.11 The Scheme shall on a continuing basis ensure that it has sufficient management resources to effectively conduct its business.

4.11a The Scheme shall, taking into account the size, nature, scale and complexity of the said undertaking and on a best effort basis, refer to the DORA Regulation.

Dealings by Officials of the Scheme

4.12 Where the Scheme allows its officials to deal for their own account, it is responsible for ensuring that such a practice does not lead to abuse. The standards and procedures to be adopted should include the following:

i. the Scheme must take appropriate steps to ensure that officials act in conformity with the statutory requirements concerning insider dealing and market abuse;

ii. the Scheme must take reasonable steps to ensure that its officials do not initiate personal transactions which might impair their ability to manage the Scheme's assets objectively and effectively or which might create a conflict between their own interest and that of the Scheme;

iii. internal mechanisms should be established to prompt the Compliance Officer's intervention if and when in respect of any staff member, abnormal behaviour or patterns concerning investment transactions are observed.

All transactions undertaken by officials on their own account should be at "arm's length" –but this does not preclude discounts being allowed to officials.

Reporting Requirements

4.13 The Scheme shall notify the MFSA immediately if it is notified that its auditor intends to qualify the audit report.

Documents and Records

4.14 The Scheme or the Administrator shall keep such accounting and other records, in particular regarding the whole process of the investment management function and its monitoring thereof, as are necessary to enable it to comply with the Licence Conditions and to demonstrate that compliance has been achieved. Records are to be retained in Malta and made available to MFSA's review as the need arises. Records shall be retained for a minimum period of ten years. During the first two years they shall be kept in a place from which they can be produced within two working days of their being requested. After the first two years they shall be kept in a place from which they can be produced within five working days of their being requested.

Conflicts of Interest

4.15 The Scheme shall act honestly, fairly and with integrity –in the best interests of its investors/shareholders and of the market. Such action shall include:

i. avoiding conflicts of interest where this is possible and, where it is not, ensuring –by way of disclosure, internal procedures or otherwise –that investors are treated fairly. The following procedures should be followed during Investment Committee meetings, where a member considers that s(he) has or may have a conflict of interest:

   a. that person should declare that interest to the other members either at the meeting at which the issue in relation to which s(he) has an interest first arises, or if the member was not at the date of the meeting interested in the issue, at the next meeting held after s(he) became so interested;

   b. unless otherwise agreed to by the other members, a member shall avoid entering into discussions in respect of any contract or arrangement in

which s(he) is interested and should withdraw from the meeting while the matter in which s(he) has an interest is being discussed;

c. the interested member should not vote at a meeting in respect of any contract or arrangement in which s(he) is interested, and if s(he) shall do so, his/her vote shall not be counted in the quorum present at the meeting;

d. the minutes of the meeting should accurately record the sequence of such events.

ii. abiding by all relevant laws and regulations, including in respect of prevention of money laundering;

iii. avoiding any claim of independence or impartiality which is untrue or misleading; and

iv. avoiding making misleading or deceptive representations to investors.

Loan Origination

4.16 The Scheme shall ensure that, where it originates loans, the notional value of the loans originated to any single borrower by that Scheme does not exceed in aggregate 20 % of the capital of the Scheme where the borrower is one of the following:

(a) a financial undertaking as defined in Article 13, point (25), of Directive 2009/138/EC of the European Parliament and of the Council;

(b) an AIF; or

(c) a UCITS.

The restriction set out in the first subparagraph of this paragraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760 of the European Parliament and of the Council.

4.17 The Scheme set up as a loan-originating PIF shall ensure that the leverage of represents no more than:

(a) 175 %, where the Scheme is open-ended;
(b) 300 %, where the Scheme is closed-ended.

The leverage of a loan-originating PIF shall be expressed as the ratio between the exposure of that Scheme, calculated according to the commitment method as defined in the delegated acts adopted pursuant to Article 4(3) of the AIFMD, and its net asset value.

Borrowing arrangements which are fully covered by contractual capital commitments from investors in the loan-originating PIF shall not be considered to constitute exposure for the purpose of calculating the ratio referred to in the second subparagraph.

In the event that a loan-originating PIF infringes the requirements laid down in this paragraph and the infringement is beyond the control of the Scheme, it 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 Scheme.

Without prejudice to the powers of the competent authorities referred to in Regulation 6(3), (4) and (5) of the AIFM Regulations, the requirements set out in the first subparagraph of this paragraph shall not apply to a loan-originating PIF whose lending activities consist solely of originating shareholder loans, provided that the notional value of those loans does not exceed in aggregate 150 % of the capital of the Scheme.

4.18 The investment limit of 20 % laid down in SLC 4.16 shall:

(a) apply by the date specified in the Scheme 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 Scheme;

(b) cease to apply once the Scheme starts to sell assets in order to redeem units or shares as part of the liquidation of the Scheme; and

(c) be temporarily suspended where the capital of the Scheme is increased or reduced.

The suspension referred to in point (c) of SLC 4.18 of these Rules, shall be limited in time to the period that is strictly necessary, taking due account of the interests of the investors in the Scheme, and, in any case, shall last no longer than 12 months.

4.19 The application date referred to in paragraph 4.18, first subparagraph, point (a), shall take account of the particular features and characteristics of the assets to be invested by the Scheme. In exceptional circumstances, the MFSA, upon submission of a duly justified investment plan, may approve an extension of that time limit of no more than 12 additional months.

4.20 The Scheme shall ensure that it does not grant loans to the following entities:

(a) the Scheme or the staff of that Scheme;

(b) the Scheme's depositary or the entities to which the depositary has delegated functions in respect of the Scheme in accordance with Article 21 of the AIFMD, as transposed in National Law;

(c) an entity to which the Scheme has delegated functions in accordance with Article 20 of the AIFMD, or the staff of that entity;

(d) an entity within the same group, as defined in Article 2, point (11), of Directive 2013/34/EU of the European Parliament and the Council, as the AIFM, except where that entity is a financial undertaking that exclusively finances borrowers that are not referred to in points (a), (b) and (c) of this paragraph.

4.21 Where the Scheme originates loans, the proceeds of the loans, minus any allowable fees for their administration, shall be attributed to that Scheme in full. All costs and expenses linked to the administration of the loans shall be disclosed in accordance with SLCs 3.01 to 3.05 of Appendix 13 to Part B: Investment Services Rules for Alternative Investment Funds.

4.22 The Scheme shall not grant loans to consumers, as defined in Article 3(a) of Directive 2008/48/EC, within the territory of Malta.

The Scheme shall not service credit agreements granted to consumers as defined in Article 3(a) of Directive 2008/48/EC, within the territory of Malta.

This SLC shall not affect the marketing, within the European Union, of Schemes which grant loans to consumers or service credits granted to consumers outside the territory of Malta.

4.23 The Scheme is prohibited from engaging in loan origination where the whole or part of the investment strategy is to originate loans with the sole purpose of transferring those loans or exposures to third parties.

4.24 The Scheme shall ensure that it retains 5 % of the notional value of each loan that it has originated and subsequently transferred to third parties. That percentage of each loan shall be retained:

(a) until maturity, for loans whose maturity is a period of up to eight years, or for loans granted to consumers regardless of their maturity; and

(b) for a period of at least eight years for other loans.

By way of derogation from the first subparagraph, the requirement set out therein shall not apply where:

(a) the Scheme starts to sell assets in order to redeem units or shares as part of the liquidation of the Scheme;

(b) the disposal is necessary for the purposes of compliance with restrictive measures adopted under Article 215 TFEU, or with product requirements;

(c) the sale of the loan is necessary to enable the Scheme to implement its investment strategy in the best interests of the Scheme's investors; or

(d) the sale of the loan is due to a deterioration in the risk associated with the loan, detected by the Scheme as part of its due diligence and risk

management process referred to in SLC 2.08 of Part BIII: Investment Services Rules for Investment Services Providers which qualify as AIFMs, and the purchaser is informed of that deterioration when buying the loan.

Upon the request of the MFSA, the Scheme shall demonstrate that it meets the conditions for the application of the relevant derogation set out in the second subparagraph.

4.25 A loan-originating PIF shall be closed-ended.

By way of derogation from the first subparagraph, a loan-originating PIF may be open-ended provided that it is able to demonstrate to the MFSA that its liquidity risk management system is compatible with its investment strategy and redemption policy.

The requirement set out in the first subparagraph of this paragraph shall be without prejudice to the thresholds, restrictions and conditions set out in Regulations (EU) No 345/2013, (EU) No 346/2013 and (EU) 2015/760.

4.26 A Scheme that originates loans that was constituted before 15 April 2024 in accordance with the *"Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans"* shall be deemed to comply with SLC 4.16 to 4.19 and SLC 4.21 until 16 April 2029.

Until 16 April 2029, where the notional value of the loans originated by the Scheme to any single borrower, or the leverage of the Scheme, is above the limits referred to in SLC following 4.16 and 4.17 respectively, the Scheme shall not increase that value or that leverage. Where the notional value of the loans originated by the Scheme to any single borrower, or the leverage of the Scheme, is below the limits referred to in SLC following 4.16 and 4.17 respectively, the Scheme shall not increase that value or that leverage above those limits.

A Scheme that originates loans, that was constituted before 15 April 2024 that does not raise additional capital after 15 April 2024 shall be deemed to comply with SLC 4.16 and 4.17 and SLC 4.22.

Notwithstanding the first, second and third paragraphs of this paragraph, a Scheme that originates loans that was constituted before 15 April 2024 may choose to be subject to SLC 4.16 to 4.19 and SLC 4.21 provided that the MFSA is notified thereof.

Where the Scheme originates loans before 15 April 2024, it may continue to hold such loans without complying with SLC 2.08 (d), and SLC 2.09 (v) to (viii) of Part BIII of the Investment Services Rules for Alternative Investment Fund Managers in respect of those loans.

Where the Scheme originates loans on or after 16 April 2024 it shall comply with SLC 2.08 (d), and SLC 2.09 (v) to (viii) of Part BIII of the Investment Services Rules for Alternative Investment Fund Managers in respect of those loans.

5. Supplementary Licence Conditions applicable to PIFs targeting Qualifying or Extraordinary Investors effecting drawdowns on investors' committed funds

Qualifying or Extraordinary PIFs established as SICAVs and which wish to effect drawdowns on investors' committed funds are required to comply with the relevant provisions of Legal Notice 361 of 2008 relating to the 'Issue of shares at a discount', in addition to the following SLCs:

5.1 The Scheme shall retain at its registered office, a copy of its written agreements with investors who have committed to invest in the Scheme. Such agreements shall be available for inspection by MFSA officials during compliance visits.

5.2 Any request on committed funds shall be effected *pro rata* amongst all relevant investors in the Scheme.

5.3 The Scheme shall only make a fresh call for further commitments once all outstanding commitments from existing investors have been requested.

5.4 Reference to 'minimum investment' in SLC 1.53 of Part BII and SLC 1.55 of Part BIII shall be construed as a reference to 'minimum commitment'.

5.5 In addition to the disclosure requirements applicable to the Offering Document of the Scheme set out in Regulation 15(3) of the Companies Act (Investment Companies with Variable Share Capital) Regulations, the Offering Document shall

comply with the applicable disclosure requirements set out in Appendix II of these Rules under the heading 'Risk Warnings'. In the case of a PIF targeting Extraordinary Investors which has opted to issue a Marketing Document instead of an Offering Document, such disclosure requirements will likewise apply for the Marketing Document.

6. DELETED

7. Supplementary Licence Conditions applicable to PIFs established as Incorporated Cell Companies with Incorporated Cells pursuant to the Companies Act (SICAV Incorporated Cell Companies) Regulations [1]

7.1 Both the Incorporated Cell Company[2] and the individual Incorporated Cells[3] shall be licensed by the MFSA.

7.2 The ICC and the individual ICs shall have at least one common director between them.

7.3 The ICC and the individual ICs shall have a common registered office.

8. Supplementary Licence Conditions applicable to PIFs established as Incorporated Cells under a Recognised Incorporated Cell Company pursuant to the Companies Act (Recognised Incorporated Cell Companies) Regulations [4]

[1] S.L. 386.14
[2] Hereinafter referred to as 'ICC'
[3] Hereinafter referred to as 'ICs'
[4] S.L. 386.15

8.1 ICs set up under a Recognised Incorporated Cell Company[5] in terms of the Companies Act (Recognised Incorporated Cell Companies) Regulations, 2012 may be set up as:

- an investment company with variable share capital (SICAV) in terms of the Companies Act (Chapter 386 of the Laws of Malta); or

- an investment company with fixed share capital in terms of the Companies Act (Chapter 386 of the Laws of Malta).

8.2 Each IC can be either third party managed or self-managed. In the case where an IC is third party managed, it will be required to appoint an investment manager, which should be approved by both the RICC and the MFSA.

8.3 An IC which is third party managed shall appoint its own investment manager which may be the same or different from the investment manager appointed by any other ICs set up under the same RICC. However, in any case, the investment manager appointed shall be approved by both the RICC and the MFSA.

8.4 An IC shall, unless otherwise authorised in writing by the MFSA, appoint the service providers selected for it by its RICC, under the same terms and conditions as shall have been approved by the Authority for this purpose.

8.5 An IC shall have the same registered office as its RICC at all times.

8.6 Each IC is regulated by its own Memorandum and Articles of Association. Each of the constitutional documents or any changes thereto must be endorsed by the RICC. No changes to the constitutional documents of the IC shall be effected except as approved by resolution of the Board of Directors of the IC and the RICC and in accordance with the rules applicable to such schemes.

8.7 Each IC must issue its own Offering Document which may either be based on the standard form used by ICs that belong to the same RICC or specific to the particular IC. Provided that no Offering Document or changes thereto shall be issued by the IC unless it has first been approved by the RICC and the MFSA.

[5] Hereinafter referred to as 'RICC'

8.8 An IC that has been granted or has applied for a collective investment scheme licence may apply for admissibility to listing with the Listing Authority. The MFSA is the Listing Authority in terms of the Financial Markets Act.

8.9 The Directors of an IC are not required to be the same as those of the RICC. However the RICC and the IC must have at least once common Director. The MFSA may require that Directors with different competencies sit on the different Boards of Directors of the ICs. The common Director shall report to the Board of the RICC on a regular basis and must provide the RICC with any information that may be relevant to the fulfilment of the RICC's compliance obligations in relation to its ICs.

8.10 In addition to the obligations arising under the Companies Act, the IC shall notify the RICC and the MFSA within 14 days of a Director of the IC being appointed or ceasing to be a Director of that IC.

8.11 An IC may create sub-funds. In this regard, an IC is required to comply with section 9.4 of Part A of the Investment Services Rules for Professional Investor Funds, as applicable.

8.12 Unless expressly prohibited by any rules, laws or regulations or by its articles of association, an IC shall be permitted to own shares in any other IC of its RICC subject to any conditions that may apply in terms of its licence.

8.13 In addition to the requirements of article 6 of the Companies Act, an IC of a RICC shall also indicate in a suitable manner in all of its business letters and forms that it is an IC of a RICC and the name of the RICC.

8.14 No IC of a RICC shall transfer, relocate or convert itself in any other manner except as authorised by the competent authority and subject to any conditions which the latter deems fit to impose.

8.15 An IC shall apply for a collective investment scheme licence as if it were an independent scheme, provided that it shall also be required to provide the relevant endorsements, resolutions and other approvals from its RICC as required by the applicable Rules and Regulations and will be required to comply with Part A of the Investment Services Rules for Professional Investor Funds, as applicable.

8.16 On application, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.

8.17 An IC shall provide a draft copy of its agreement with the RICC referred to in section 3 of Part BIII of the Investment Services Rules for Recognised Persons.

8.18 The IC must inform its RICC of any departure from any standard model agreement and must submit the relevant changes to the MFSA for approval.

8.19 The MFSA may only grant a collective investment scheme licence to an IC if it is satisfied that the Scheme will comply in all respects with the provisions of the Investment Services Act, the relevant Regulations and applicable Rules.

8.20 An IC of a RICC shall pay the licencing and supervision fees applicable to a collective investment scheme as stipulated in paragraph (b) of the Schedule to the Investment Services Act (Fees) Regulations. Sub-funds of the IC shall pay the licensing and supervision fees applicable to sub-funds of a collective investment scheme in terms of the same paragraph.

9. Supplementary Licence Conditions applicable to PIFs investing in DLT assets

NOTE: PIFs investing in DLT assets, either directly or through a trading company/ SPV, shall comply with the SLCs under this Section.

Provided that PIFs investing in:

i. DLT assets through a trading company/ SPV shall also comply with the requirements prescribed under Section 3 of this Appendix.

ii. Units of collective investment schemes which are/have been created through Initial Coin Offerings shall be deemed to comprise 'direct' investments in DLT assets and therefore PIFs investing in such units shall also comply with the SLCs under this Section.

General

9.1 Schemes falling under this Section shall only be established as investment companies, limited partnerships established in terms of the Companies Act or in terms of the Investment Services Act (Special Limited Partnership Funds) Regulations, or unit trusts.

Provided that such schemes shall not be established as:

i. European Venture Capital Funds in terms of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds; or

ii. European Social Entrepreneurship Funds in terms of Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds.

Competence

9.2 Pursuant to section 2 of Part A of these Rules, the MFSA requires that the parties involved in the Scheme and the service providers of the Scheme have sufficient knowledge and experience in the field of information technology, DLT assets and their underlying technologies, including but not limited to the Distributed Ledger Technology, at all times.

Governing Body

9.3 Pursuant to SLC 9.2 above, the governing body of the Scheme shall, at all times, have at least one member who has sufficient knowledge and experience in the field of information technology, DLT assets and their underlying technologies, including but not limited to the Distributed Ledger Technology.

9.4 The members of the governing body shall create an overall structure which will ensure an adequate division of responsibilities in relation to the Scheme and shall carry out all the necessary checks to satisfy themselves that the Scheme's overall structure is consistent with the standards prescribed in the Act and in these Rules and that the terms agreed to in the contracts with the service providers are reasonable and consistent with the standards adopted by the industry.

9.5 The governing body of the Scheme shall monitor its service providers on an ongoing basis, including through the conduct of onsite inspections at the offices of such providers, and shall ensure that these are discharging their contractual obligations in a diligent manner.

Manager

9.6 Pursuant to SLC 1.6 of Part B II of these Rules, the Manager shall have such business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as Manager to a PIF investing in DLT assets.

Provided that:

i. Where a third party Manager is not appointed, the supplementary conditions applicable to self-managed schemes set out in Section 4 as well as SLCs 9.26 and 9.27 of this Appendix shall apply in lieu of SLCs 9.7 to 9.8 below.

ii. In the case of a self-managed Scheme, any reference to the 'Manager' under SLCs 9.16 to 9.19 and 9.21 to 9.24 below shall be construed as reference to the Investment Committee and/or Portfolio Manager of the Scheme.

9.7 Pursuant to SLC 9.6 above, the Scheme shall ensure that the appointed Manager has in place an in-house investment committee made up of at least three members.

The in-house investment committee shall, at all times, have at least one individual who has sufficient knowledge and experience in the field of information technology, DLT assets and their underlying technologies, including but not limited to the Distributed Ledger Technology.

9.8 The onus of proving that both the proposed Manager and its in-house investment committee meet the above requirements on an ongoing basis is on the Scheme.

Administrator

9.9 Pursuant to SLC 1.9 of Part B II of these Rules, the Administrator shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as an Administrator to a PIF investing in DLT assets.

9.10 The onus of proving that the proposed Administrator meets the above requirements on an ongoing basis is on the Scheme.

9.11 Provided that where an Administrator is not appointed, SLC 9.9 and 9.10 shall apply *mutatis mutandis* to the Manager, who shall be responsible for the administration function.

Custodian

9.12 The Custodian or Prime Broker, where appointed, shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as a Custodian or a Prime Broker to a PIF investing in DLT assets.

Compliance Officer

9.13 The Compliance Officer is expected to have the experience and expertise deemed necessary by the MFSA for it to act as Compliance Officer of a PIF investing in DLT assets.

Money Laundering Reporting Officer

9.14 In addition to the requirements under the Prevention of Money Laundering and Funding of Terrorism Regulations (LN 372 of 2017 as may be amended from time to time) and the Implementing Procedures issued by the Financial Intelligence Analysis Unit as may be amended from time to time, the MLRO is expected to have the experience and expertise deemed necessary by the MFSA for it to act as MLRO of a PIF investing in DLT assets.

Auditor

9.15 The Auditor shall have the business organisation, systems, experience and expertise deemed necessary by the MFSA for it to act as an Auditor to a PIF investing in DLT assets.

Quality assessment of DLT assets

9.16 The Scheme shall ensure that the appointed Manager carries out appropriate research in order to assess the quality of the DLT assets being invested into. The Scheme shall ensure that the appointed Manager keeps a record of the quality assessment and makes it available to the governing body of the Scheme.

9.17 Pursuant to SLC 9.16 above, in assessing the quality of the DLT asset to be invested in, the Manager shall take into account *inter alia* the following factors:

i. the Inventor/s and/or Issuer/s, as applicable;

ii. the protocol/s and the underlying infrastructure;

iii. the availability and reliability of information and the providers thereof;

iv. the service providers involved; and

v. the Exchange/s on which the DLT asset is traded.

Risk Management

9.18 The Scheme shall ensure that the appointed Manager:

i. Implements an appropriate, documented and regularly updated quality assessment process when investing on behalf of the Scheme, according to the investment strategy, the objectives and risk profile of the Scheme;
ii. Ensures that the risks associated with each investment position of the Scheme and their overall effect on the Scheme's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures; and

iii. Ensures that the risk profile of the Scheme corresponds to the size, portfolio structure and investment strategies and objectives of the Scheme as provided for in its constitutional document and Offering Document.

9.19 Pursuant to SLC 9.18 above, the Scheme shall ensure that the Manager, within the parameters of the risk management function and prior to investing in a DLT asset on behalf of the Scheme, assesses whether the risk profile of the said DLT asset falls within the scope of the risk management policy of the Scheme.

9.20 Where a Risk Manager has been appointed (s)he shall also assess whether the quality assessment carried out in terms of SLC 9.19 above provides reasonable assurance that the DLT asset being invested in on behalf of the Scheme falls within scope of the risk management policy of the Scheme.

Liquidity Management

9.21 The Scheme shall ensure that the appointed Manager employs an appropriate liquidity management system and adopts procedures which enable the Manager to monitor the liquidity risk of the Scheme and to ensure that the liquidity profile of the investments of the Scheme complies with its underlying obligations.

9.22 The Scheme shall ensure that the appointed Manager regularly conducts stress tests, under normal and exceptional liquidity conditions, which enable it to assess the liquidity risk of the Scheme and monitor the liquidity risk of the Scheme accordingly.

Provided that the frequency of such stress tests shall be determined on the basis of the nature, scale and complexity of the investments in DLT assets undertaken by the Scheme.

9.23 The Scheme shall ensure that the appointed Manager confirms that the liquidity profile and the redemption policy of the Scheme, and/or its Sub-Funds, as applicable, are consistent.

9.23A Where a Scheme activates side pockets, it shall ensure that the appointed manager discloses the following information in the Offering Memorandum in a clear, fair and not misleading manner:

- the circumstances/ criteria where a Side Pocket may be employed; the policy for transferring assets to Side Pockets, including the nature of the assets that may be allocated to Side Pockets and the circumstances in which such allocations may be made as well as the procedure for the allocation of investments to Side Pockets;

- the policy and procedure to be followed by the Scheme for transferring assets out of Side Pockets or for redeeming such assets as well as the procedure to be followed for the redemption or re-conversion of the units representing the Side Pocket. In this regard, upon the occurrence of a 'liquidity event' whereby an asset allocated to a Side Pocket becomes liquid or capable of valuation, the Scheme may decide to redeem such asset or to transfer such asset to the liquid pool of assets – details pertaining to the policy and procedure to be adopted are to be clearly disclosed in the Offering Memorandum;

- limits (where applicable), on the size of Side Pockets, including the maximum percentage of the fund / sub-fund which can be allocated to Side Pockets in aggregate, and in the case where no limits are set, disclosure to this effect;

- policies for the valuation of assets allocated to a Side Pocket. Such disclosure should be comprehensive on the methodology for the valuation of these types of assets and should also refer to a consistent approach to be adopted when valuing such assets;

- fee structure relating to the class of units representing the Side Pocket; and

- relevant risk warnings, in particular arising from the fact that Side Pocket assets may be hard to value, the illiquidity of Side Pocket assets, the difficulty which investors may find to exit from an investment in a Side Pocket rather than from a "normal" share class in the Scheme, and associated restrictions in realising interests in such assets.

Verification and Valuation

9.24 The verification and valuation function shall be performed by:

i. An external valuer, being a legal or natural person independent from the Scheme, from the Manager and from any other persons with close links to the Scheme or the Manager; or

ii. The Manager, provided that the valuation task is functionally independent from the portfolio management function and provided that other measures have been taken to ensure that conflicts of interest are mitigated and that undue influence upon employees is prevented.

9.25 The Scheme shall ensure that the person responsible for the verification and valuation function has the business organisation, systems, experience and expertise necessary to conduct the required verification and valuation of the Scheme's investments in DLT assets.

Self-Managed Schemes

NOTE: In addition to Section 4, self-managed PIFs investing in DLT assets shall also be subject to the SLCs hereunder.

9.26 The Investment Committee of a self-managed Scheme investing in DLT assets shall, at all times, have at least one individual who has sufficient knowledge and experience in the field of information technology, DLT assets and their underlying technologies, including but not limited to the Distributed Ledger Technology. For the avoidance of any doubt, where a Portfolio Manager/s is appointed it is to be understood that this competence requirement shall also be applicable to such Portfolio Manager/s.

9.27 SLC 4.6 of this Appendix shall not be applicable to a self-managed Scheme investing in DLT assets.

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