

# INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS

## PART A: THE APPLICATION PROCESS

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## REVISIONS LOG

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1.00	5 August 2013	-
2.00	16 May 2018	-
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	27 July 2022	See: <a href="#">Circular dated 27 July 2022 on Amendments to the Investment Services Rulebooks</a>
5.00	4 September 2023	See: <a href="#">Circular dated 4 September 2023 on Various Amendments to the Investment Services Rulebooks</a>
6.00	5 February 2024	See: <a href="#">Circular dated 5 February on Various Amendments to the Investment Services Rulebooks</a>
7.00	20 November 2024	See: <a href="#">Implementation of Various EBA &amp; ESMA Guidelines</a>
8.00	12 February 2025	See: <a href="#">Circular dated 12 February 2025 on the launch of a framework for Collective Investment Schemes structured as Limited Partnerships without separate legal personality</a>
9.00	30 May 2025	See: <a href="#">Circular dated 30 May 2025 on various amendments to the Investment Services Rulebooks in the context of EuVECA and EuSEF Regulations</a>
10.00	30 April 2026	See: <a href="#">Various Amendments to the Investment Services Rulebooks for the Purposes of Directive 2024/927(EU)</a>

## SECTION 1 Scope

### **R1-1.1 Regulation of Collective Investment Schemes in terms of the Investment Services Act, 1994**

R1-1.1.1 Collective Investment Schemes including Alternative Investment Funds (“AIFs”) are regulated by the Investment Services Act<sup>1</sup> (“the Act”) which provides the statutory basis for regulating collective investment schemes constituted in or operating in or from Malta. AIFs constitute a category of collective investment schemes which fall within the provisions of the Act.

### **R1-1.2 Definitions**

R1-1.2.1 Article 2 of the Act defines a “collective investment scheme” as any scheme or arrangement which has as its object or as one of its objects the collective investment of capital acquired by means of an offer of units for subscription, sale or exchange and which has the following characteristics:

- a. the scheme or arrangement operates according to the principle of risk spreading; and either
- b. the contributions of the participants and the profits or income out of which payments are to be made to them are pooled; or
- c. at the request of the holders, units are or are to be repurchased or redeemed out of the assets of the scheme or arrangement, continuously or in blocks at short intervals; or
- d. units are, or have been, or will be issued continuously or in blocks at short intervals.

The Act also provides that an AIF that is not promoted to retail investors and that does not have the characteristic listed in paragraph (a) above shall only be deemed to be a collective investment scheme if the scheme, in specific circumstances as established by regulations under this Act, is exempt from such requirement and satisfies any conditions that may be prescribed.

R1-1.2.2 The Act also defines an “AIF” as “a collective investment scheme, including sub-funds thereof, which raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors, and which does not qualify as a UCITS scheme in terms of the UCITS Directive.” In

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<sup>1</sup> Chapter 370 – Laws of Malta

terms of the Alternative Investment Fund Managers Directive<sup>2</sup> (“AIFMD”), the following undertakings shall not be considered as AIFs:

- a. a holding company;
- b. an institution for occupational retirement provision which is covered by Directive 2003/41/EC;
- c. employee participation schemes or employee savings schemes; and
- d. securitisation special purpose vehicles.

R1-1.2.3 The exclusions referred to in R1-1.2.2 and further exemptions can be granted from the requirement to obtain a collective investment scheme licence in terms of the Investment Services Act (Exemption) Regulations<sup>3</sup>, the Investment Services Act (Recognition of Private Collective Investment Schemes) Regulations<sup>4</sup> and the Investment Services Act (Marketing of Alternative Investment Funds) Regulations<sup>5</sup>.

R1-1.2.4 Private Collective Investment Schemes will continue to be issued with a recognition certificate since these schemes fall outside of scope of the AIFMD.

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<sup>2</sup> [Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers](#)

<sup>3</sup> S.L. 370.02

<sup>4</sup> S.L. 370.06

<sup>5</sup> S.L. 370.21

## SECTION 2 Criteria which the MFSA will apply in considering an application for a Licence and ongoing regulatory requirements

### R2-2.1 General Information

R2-2.1.1 The MFSA will grant a collective investment scheme licence if it is satisfied to the extent that it can be, that the scheme will comply in all respects with the provisions of the Act, the applicable Regulations and these Investment Services Rules. Furthermore, the MFSA must also be satisfied that the Directors and officers, or in the case of a unit trust or limited partnership, its Trustee(s) or General Partner(s) respectively are "fit and proper" persons to carry out the functions required of them in connection with the collective investment scheme.

R2-2.1.2 In accordance with article 6(3) of the Act, when considering whether to grant or refuse a licence, the MFSA will, in particular, have regard to:

- a. the protection of investors and the general public;
- b. the protection to the reputation of Malta taking into account Malta's international commitments;
- c. the promotion of competition and choice; and
- d. the reputation and suitability of the applicant and all other parties connected with the Scheme.

R2-2.1.3 In assessing a request for a collective investment scheme licence, the MFSA will consider the nature of the scheme and the nature of investors to whom it will be marketed. It will then look into the experience and track record of all parties who will be involved with the scheme. Such persons should be of good standing and should be competent. The MFSA reserves the right to refuse a licence if it does not approve a party involved with the scheme.

R2-2.1.4 Even though the Act provides for the licensing of different categories of schemes, the MFSA applies the same standards relating to the "fit and proper" status of the applicant and its service providers.

R2-2.1.5 The "fit and proper" test is one which an applicant and a licenced entity must satisfy on a continuing basis. The MFSA assesses each case on its own merits and on the basis of the relevant circumstances.

- R2-2.1.6            Nonetheless, the onus of proving that it meets the required standards on an ongoing basis rests on the applicant and/ or licenced scheme as the case may be. It is not the MFSA's task to prove that an applicant is fit and proper either upon licencing or thereafter.
- R2-2.1.7            In carrying out the 'fit and proper' test, the MFSA adopts a cumulative approach. It may decide that a scheme has failed the test after considering various circumstances, each of which on its own may or would not lead to that conclusion. For this reason, it is essential that the information provided to the MFSA is truthful, and as complete as possible.
- R2-2.1.8            When arriving at its decision as to whether an applicant has met the required standards, the MFSA will take account both of what is said and of what ought to have been disclosed<sup>6</sup>. It should be noted that it is an offence to provide inaccurate, false or misleading information to the MFSA.
- R2-2.2            Criteria which must be met to satisfy the "fit and proper" test**
- R2-2.2.1            In general terms, there are three criteria which must be met, to satisfy the "fit and proper" test: (a) **integrity**; (b) **competence**; and (c) **solvency**.
- R2-2.2.2            Integrity requires that the scheme, its officers and its service providers are acting honestly and in a trustworthy fashion.
- R2-2.2.3            Competence means that the persons responsible for the management of the scheme must be able to demonstrate an acceptable amount of knowledge, professional expertise and experience. The degree of competence required will depend upon the job being performed. The MFSA will take into account the qualifications, experience and skills of those involved.
- R2-2.2.4            Solvency involves ensuring that proper financial controls and management of liquidity and capital is applied.

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<sup>6</sup> For example, in respect of a person's criminal record.

## SECTION 3 Categories of Alternative Investment Funds

### R3-3.1 General Information

R3-3.1.1 An alternative investment fund may be established as:

- a. an investment company with variable share capital (SICAV) under the Companies Act (Investment Companies with Variable Share Capital) Regulations<sup>7</sup>;
- b. an investment company with fixed share capital (INVCO) under the Companies Act (Investment Companies with Fixed Share Capital) Regulations<sup>8</sup>
- c. an incorporated cell company under the Companies Act (SICAV Incorporated Cell Company) Regulations<sup>9</sup>;
- d. an incorporated cell of a recognised incorporated cell company ('RICC') under the Companies Act (Recognised Incorporated Cell Company) Regulations<sup>10</sup>;
- e. a limited partnership under the Companies Act<sup>11</sup>;
- f. a unit trust under the Trust and Trustees Act<sup>12</sup>;
- g. a contractual fund under the Investment Services Act (Contractual Funds) Regulations<sup>13</sup>; or
- h. a limited partnership under the Investment Services Act (Special Limited Partnership Funds) Regulations<sup>14</sup>.

### R3-3.2 Self-managed AIFs

R3-3.2.1 A self-managed AIF may only be authorised to provide the licensable activities which consist in the internal management of the AIF as provided hereunder:

- i. investment management functions which the self-managed AIF shall at least perform consisting in (a) portfolio management and (b) risk management

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<sup>7</sup> [S.L. 386.02](#)

<sup>8</sup> [S.L. 386.04](#)

<sup>9</sup> [S.L. 386.14](#)

<sup>10</sup> [S.L. 386.15](#)

<sup>11</sup> [Chapter 386 - Laws of Malta](#)

<sup>12</sup> [Chapter 331 - Laws of Malta](#)

<sup>13</sup> [S.L. 370.16](#)

<sup>14</sup> [L.N. 30 of 2025](#)

- ii. other functions that a self-managed AIF may additionally perform in the course of the collective management of an AIF:
- a. Administration:
    - legal and fund management accounting services;
    - customer inquiries;
    - valuation and pricing, including tax returns;
    - regulatory compliance monitoring;
    - maintenance of unit- /shareholder register;
    - distribution of income;
    - unit/ shares issues and redemptions;
    - contract settlements including certificate dispatch;
    - record keeping.
  - b. Marketing;
  - c. Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the self-managed AIF, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of AIFs and the companies and other assets in which it has invested.

R3-3.2.2 Self-managed AIFs shall make a direct or indirect offering or placement of units or shares of AIFs to investors in any Member State or EEA State in accordance with the provisions of the Investment Services Act (Marketing of Alternative Investment Funds) Regulations.

**R3-3.3 European Venture Capital Funds and European Social Entrepreneurship Funds**

R3-3.3.1 The AIFM may establish the AIF as a European venture capital fund in terms of [Regulation \(EU\) No 345/2013](#) and in this regard opt to use the designation 'EuVECA' in relation to the marketing of the qualifying venture capital funds in the EU.

R3-3.3.2 Similarly, the AIFM may establish the AIF as a European social entrepreneurship fund in terms of [Regulation \(EU\) No 346/2013](#) and in this regard opt to use the designation 'EuSEF' in relation to the marketing of the qualifying social entrepreneurship funds in the EU.

R3-3.3.3 In the cases referred to in R3-3.3.1 and R3-3.3.2, the AIFM shall be guided by the provisions of Regulations (EU) No 345/2013 and

346/2013, as amended from time to time, prescribing rules for the marketing of qualifying venture capital funds/ social entrepreneurship funds to eligible investors across the EU, for the portfolio composition of the qualifying venture capital funds/ social entrepreneurship funds and for the eligible investment instruments and techniques to be used by qualifying venture capital funds/ social entrepreneurship funds. Accordingly, the 'Standard Licence Conditions Applicable to Collective Investment Schemes authorised to invest through loans' ('Loan Fund Rules'); are to be disapplied with respect to AIFs established in the cases referred to in Rules 3-3.3.1 to 3-3.3.3.

### **R3-3.4 European Long-Term Investment Funds**

R3-3.4.1 The AIFM may establish the AIF as a European long-term investment fund (ELTIF) in terms of Regulation (EU) No 2016/7605, as amended by Regulation (EU) 2023/606, and as it may be amended from time to time. In such case, the AIFM shall be guided by the provisions of the aforementioned Regulation in relation to the authorisation, investment policies and operating conditions of these Schemes.

### **R3-3.5 Targeted investor base for AIFs**

The AIFM and/or any appointed intermediary may market:

- a. Retail AIFs to retail investors, or
- b. AIFs (including Retail AIFs) to professional investors and, where permitted, to qualifying investors;

Provided that where the AIFM intends establishing the scheme as a European venture capital fund, European social entrepreneurship fund or as a European long-term investment fund as identified in the preceding Rules, it shall be guided by the provisions of the applicable EU Regulations prescribing the investor base of these schemes.

#### **R3-3.5.1 Targeted investor base - retail Investors**

R3-3.5.1.1 The establishment of AIFs targeting retail investors is regulated in Part A of the Investment Services Rules for retail Collective Investment Schemes as well as Part B of these Rules.

R3-3.5.1.2 A scheme targeting retail investors may, subject to Rule R3-3.5.1.3 below, only be marketed with a passport in jurisdictions outside Malta if the AIFM satisfies the relevant provisions prescribed in the Investment Services Act (Alternative Investment Fund Manager) (Passport) Regulations or the Investment Services Act (Marketing

of Alternative Investment Funds) Regulations.

R3-3.5.1.3 The marketing of an AIF in jurisdictions outside Malta to investors other than professional investors as defined in this Rulebook is not automatic and may be allowed subject to the national provisions applicable in the respective jurisdiction as prescribed in Article 43 of the AIFMD.

### **R3-3.5.2 Targeted investor base - professional investors**

R3-3.5.2.1 A 'professional investor' is an investor which is considered to be a professional client or may, on request, be treated as a Professional Client within the meaning of Annex II to MIFID II.

R3-3.5.2.2 Annex II to MIFID II provides that a Professional Client is a client who possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs. In order to be considered a Professional Client, it shall comply with the criteria listed in the following Rules.

R3-3.5.2.3 The following shall all be regarded as professional investors in all investment services and activities and with respect to all the Financial Instruments:

- i. entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:
  - a. credit institutions;
  - b. investment firms;
  - c. other authorised or regulated financial institutions;
  - d. insurance companies;
  - e. collective investment schemes and management companies of such schemes;
  - f. pension funds and management companies of such funds;
  - g. commodity and commodity derivatives dealers;
  - h. locals;
  - i. other institutional investors.
- ii. large undertakings meeting two of the following size requirements on a company basis:
  - a. balance sheet total: EUR20,000,000
  - b. net turnover: EUR40,000,000

c. own funds: EUR2,000,000

iii. national and regional governments, public bodies that manage public debt, Central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations;

iv. other institutional investors whose main activity is to invest in Financial Instruments, including entities dedicated to the securitisation of assets or other financing transactions.

R3-3.5.2.4 Investors other than those referred to in R3-3.5.2.3 including public sector bodies and private individual investors may also elect to be treated as professionals within the meaning of Annex II to MIFID II.

R3-3.5.2.5 Prior to accepting any investment, the scheme should be in receipt of a completed "Professional Investor Declaration Form" in which the investor confirms that he/ she has read and understood the mandatory risk warnings and describes why he/ she is a professional investor. A proforma of a Professional Investor Declaration Form is provided in Appendix 9 to Part B of these Rules.

### **R3-3.5.3 Targeted investor base - qualifying investors**

R3-3.5.3.1 In terms of the MFSA's regulatory regime applicable to collective investment schemes, an AIF can be promoted to qualifying investors as defined and outlined in R3-3.5.3.2 below.

R3-3.5.3.2 A "Qualifying Investor", is an investor that fulfils the following criteria:

- i. invests a minimum of EUR 100,000 or its currency equivalent in the AIF which investment may not be reduced below this minimum amount at any time by way of a partial redemption; and
- ii. declares in writing to the AIFM and the AIF that it is aware of and accepts the risks associated with the proposed investment; and
- iii. satisfies at least one of the following:
  - a. is a body corporate which has net assets in excess of EUR 750,000 or which is part of a group which has net assets in excess of EUR 750,000 or, in each case, the currency equivalent thereof;
  - b. is an unincorporated body of persons or association which has net assets in excess of EUR 750,000 or the currency equivalent;

- c. is a trust where the net value of the trust's assets is in excess of EUR 750,000 or the currency equivalent;
- d. is an individual whose net worth or joint net worth with that of the person's spouse, exceeds EUR 750,000 or the currency equivalent; or
- e. is a senior employee or director of a service provider to the AIF.

R3-3.5.3.3 The minimum investment requirement is EUR 100,000 or its currency equivalent. The total amount invested may not fall below this threshold unless this is the result of a fall in the net asset value. Provided that the minimum threshold is satisfied, additional investments – of any size – may be made. The minimum investment requirement applies to each qualifying investor individually. Therefore, in the case of joint holders, the minimum investment requirement is EUR 100,000 or the currency equivalent thereof per investor.

R3-3.5.3.4 Prior to accepting any investment, the scheme should be in receipt of a completed “Qualifying Investor Declaration Form” in which the investor confirms that he/ she has read and understood the mandatory risk warnings and describes why he/ she is a qualifying investor. A proforma of a Qualifying Investor Declaration Form is provided in Appendix 9 to Part B of these Rules.

Note: On 26<sup>th</sup> May 2016, the Authority issued a circular to the industry informing that with effect from 3rd June 2016, the MFSA would cease accepting any applications for the licencing of AIFs targeting Experienced Investors and Extraordinary Investors.

R3-3.5.3.5 AIFMs or intermediaries making units in AIFs available to Qualifying Investors (who are not Professional Investors) resident in the EEA are required to comply with Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs), as amended from time to time.

## SECTION 4 Applications for a Collective Investment Scheme Licence

### R4-4.1 The application process

R4-4.1.1 When submitting an application for a collective investment scheme licence under the Act, the promoter should ensure that the appropriate Application Form<sup>15</sup> is completed.

R4-4.1.2 The application requirements which must be satisfied by an AIF are summarised below.

R4-4.1.3 There are three phases to the application process namely (i) phase one being the preparatory phase; (ii) phase two being the pre-licencing phase; and (iii) phase three being the post-licencing phase.

R4-4.1.4 The Applicant shall make reference to the [Guidelines on funds' names using ESG or sustainability-related terms](#) when submitting the application to the MFSA.

### R4-4.2 Phases of the licence application process

#### R4-4.2.1 Phase One – Preparatory Phase

- a. The MFSA recommends that the promoters complete the application form and submit it with the supporting documents as specified in the application form itself. The application form must be signed by the promoter and shall be complete with all the information and documents required. The application form and the supporting documentation will be reviewed and comments provided to the applicant generally within three weeks from submission of all application documents.
- b. The MFSA may ask for more information and may make such further enquiries as it considers necessary. Furthermore, the MFSA carries out the necessary due diligence checks at this stage.
- c. The MFSA will consider the nature of the proposed scheme and will apply the rules included in Part B of this Rulebook as applicable. The rules included in Part B represent the ongoing requirements to which the scheme will be subject, if and when licenced.

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<sup>15</sup> Schedule AA07 – Funds [including the applicable Annexes]

#### **R4-4.2.2 Phase Two – Pre-Licensing Phase**

- a. Once the MFSA concludes the review of the application and supporting documents, it will issue its 'in principle' approval for the issue of a licence. The 'in principle' approval is valid for a period of **three months** during which, the applicant will be required to finalise any outstanding matters. Should the three months elapse without the satisfactory resolution of all pre-licensing outstanding issues, the 'in principle approval' issued will cease to have effect.
- b. Once any outstanding matters have been finalised, the application form and the supporting documentation are endorsed by the members of the governing body of the scheme and resubmitted to the MFSA.
- c. The MFSA will proceed with the issue of a licence as soon as all pre-licensing matters outlined in the 'in-principle' approval are resolved.

#### **R4-4.2.3 Phase Three– Post-Licensing/ Pre-Commencement of Business Phase**

- R4-4.2.3.1 The applicant may be required to satisfy a number of post-licensing matters prior to the formal commencement of business.

#### **R4-4.3 Application documents**

- R4-4.3.1 An applicant for a collective investment scheme licence is ordinarily required to submit the following documents:
- i. application form;
  - ii. application fee;
  - iii. draft version of the instruments of incorporation<sup>16</sup>;
  - iv. draft version of the offering documents together with the applicable checklists. The offering documents shall at least include the information listed in Appendix 4 to Part B of these Rules;
  - v. resolution of the governing body<sup>17</sup> of the AIF:
    - a. confirming the intention of the governing body to apply

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<sup>16</sup> Memorandum and articles of association in the case of a SICAV, deed of partnership in the case of a limited partnership, trust deed/ deed of constitution (either by public deed or private writing) in the case of unit trust or contractual fund. In the case of a limited partnership being established in terms of the Investment Services Act (Special Limited Partnership Funds) Regulations, the draft partnership agreement shall be submitted in conjunction with AX55 – Limited Partnership Agreement Checklist.

<sup>17</sup> Board of directors in the case where the AIF is established as an investment company; general partners where the AIF is established as a limited partnership; manager in the case of unit trust.

- for a licence in favour of the AIF<sup>18</sup>;
  - b. identifying the person(s) responsible for signing the application documents;
  - c. identifying the person(s) responsible for acting as a point of liaison with the MFSA;
  - d. identifying the person(s) responsible on behalf of the governing body for the compliance obligations of the AIF;
  - e. identifying the person(s) responsible on behalf of the governing body for the AML/CFT obligations of the AIF;
  - f. approving and assuming responsibility for the contents of the offering document.
- vi. vi. personal questionnaires of the individuals proposed to carry out the functions of compliance officer and money laundering reporting officer;
- vii. personal questionnaires of the individuals proposed to carry out the functions of portfolio manager, risk manager, and investment advisor as applicable, depending on the operational arrangements of the AIF;

R4-4.3.2 In addition, where the AIF is established as an **investment company**, it is required to submit the following additional documents:

- i. personal questionnaires of the directors of the AIF:
  - individuals: personal questionnaire(s) of the proposed director(s);
  - corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual that will represent the corporate director on the board of directors of the AIF.
- ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
  - individuals: personal questionnaire(s) of the founder shareholder(s);
  - corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
  - corporate and not regulated in a recognised jurisdiction:
    - (a) personal questionnaire(s) of the director(s) of the proposed corporate founder shareholder(s);
    - (b) personal questionnaire(s) of the qualifying beneficial owner(s) of the proposed corporate founder shareholder(s); and

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<sup>18</sup> Where the AIF is established as an incorporated cell company, the resolution must confirm the intention of the board of directors to apply for a collective investment scheme licence in favour of a scheme as an incorporated cell company.

- (c) last three years audited financial statements of the proposed corporate founder shareholder(s).

#### R4-4.3.3

In addition to the requirements outlined in R4-4.3.1 above, where the AIF is established as an **Incorporated Cell Company**<sup>19</sup> pursuant to the provisions of the Companies Act (SICAV Incorporated Cell Companies) Regulations<sup>20</sup>, it is required to submit the following additional documents:

- i. personal questionnaires of the directors of the AIF:
  - individuals: personal questionnaire(s) of the proposed director(s);
  - corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual that will represent the corporate director on the board of directors of the AIF.
- ii. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
  - individuals: personal questionnaire(s) of the founder shareholder(s);
  - corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
  - corporate and not regulated in a recognised jurisdiction:
    - (a) personal questionnaire(s) of the director(s) of the proposed corporate founder shareholder(s);
    - (b) personal questionnaire(s) of the qualifying beneficial owner(s) of the proposed corporate founder shareholder(s); and
    - (c) last three years audited financial statements of the proposed corporate founder shareholder(s).

#### R4-4.3.4

In addition to the requirements outlined in R4-4.3.1 and R4-4.3.3 above, in the case of **Incorporated Cells**<sup>21</sup> pursuant to the provisions of the Companies Act (SICAV Incorporated Cell Companies) Regulations or the Companies Act (Recognised Incorporated Cell Companies) Regulations<sup>22</sup>, the MFSA requires the following additional documentation:

- i. a copy of the agreement between the IC and the stated ICC;

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<sup>19</sup> Hereinafter referred to as "ICC"

<sup>20</sup> S.L. 386.14

<sup>21</sup> Hereinafter referred to as "ICs"

<sup>22</sup> [S.L. 386.15](#)

- ii. the draft resolution of the governing body of the IC shall include a confirmation of the governing body to apply for a Collective Investment Scheme Licence in favour of the AIF to operate as an IC of the SICAV ICC or the IC of the recognised incorporated cell company (hereinafter referred to as "RICC");
- iii. a copy of the resolution passed by the board of directors of the SICAV ICC (umbrella fund) or the RICC which
  - approves the name of the IC being established;
  - approves the terms of the memorandum and articles of association of the IC and resolves that the said memorandum and articles of association of the IC are to be entered into by the ICC; and
  - authorises, if applicable, the ICC to subscribe for one or more shares in the IC.
- iv. Personal Questionnaires of the directors of the AIF:
  - individuals: personal questionnaire(s) of the proposed director(s);
  - corporate and regulated in a recognised jurisdiction:
    - (a) details of the regulatory status of the proposed corporate director(s);
    - (b) name of the individual that will represent the corporate director on the board of directors of the AIF.
- v. in relation to the founder shareholder(s) holding more than 10% of the voting shares:
  - individuals: personal questionnaire(s) of the proposed founder shareholder(s);
  - corporate and regulated in a recognised jurisdiction: details of the regulatory status of the proposed corporate founder shareholder(s);
  - corporate and not regulated in a recognised jurisdiction:
    - (a) personal questionnaire(s) of the director(s) of the proposed corporate founder shareholder(s);
    - (b) personal questionnaire(s) of the qualifying beneficial owner(s) of the proposed corporate founder shareholder(s); and
    - (c) last three years audited financial statements of the proposed corporate founder shareholder(s).

#### R4-4.3.5

In addition to the requirements outlined in R4-4.3.1 above, in the case where the AIF is established as a **limited partnership**, the following additional documents are required in relation to the general partner(s) of the scheme:

- i. individuals: personal questionnaire(s) of the proposed general partner(s);
- ii. corporate, regulated in a recognised jurisdiction:
  - (a) details of the regulatory status of the proposed corporate general partner(s);
  - (b) the name of the individual(s) who will represent the corporate general partner(s);
- iii. corporate, not regulated in a recognised jurisdiction
  - (a) personal questionnaire(s) of the director(s) of the proposed corporate general partner(s);
  - (b) personal questionnaire(s) of the qualifying beneficial owner(s) of the proposed corporate general partner(s);
  - (c) the name of the individual(s) who will represent the corporate general partner(s); and
  - (d) last three years audited financial statements of the proposed corporate general partner(s).

R4-4.3.6 In addition to the requirements outlined in R4-4.3.1 above, in the case where the AIF is established as a **unit trust** or **contractual fund**, the details of the regulatory status of the proposed trustee are required.

R4-4.3.7 Where the AIF is established as a **self-managed scheme**, the MFSA requires the following additional application documents:

- i. personal questionnaire(s) of the Portfolio Manager(s) and, where appointed, of the Risk Manager. For the purposes of the above and (ii) below, the term Portfolio Manager/ Risk Manager should be interpreted as the person(s) in charge of the day-to-day investment management/ risk management function of the AIF, whether the person is also a member of the Investment/ Risk Committee or otherwise. Provided that, when the Investment/ Risk Committee is to be considered as being collectively responsible for the day-to-day investment/risk management function of the AIF, all its members would be required to submit a personal questionnaire, and paragraphs (ii) and (iii) below shall apply to all of them;
- ii. terms of reference regulating the procedures of the investment committee and the risk committee (if applicable);
- iii. confirmation from the Portfolio Manager(s) (as applicable) that he/she/they will:
  - operate in accordance with the investment objective and policy described in the AIF's offering document in general and the investment guidelines issued by the Investment Committee in particular;

- report to the Investment Committee on a regular basis any transactions effected on behalf of the AIF; and
  - provide the Investment Committee with any information as the Investment Committee may require from time to time;
- iv. confirmation from the Portfolio Manager(s) that they have appropriate resources available to them to ensure ongoing access to the market information which they would need to take account of in making investment management decisions;
- v. portfolio and risk management delegation agreements (as applicable);
- vi. risk management policy document;
- vii. if the scheme intends to cover potential professional liability risks by way of professional indemnity insurance, it shall provide a copy of the cover note to the insurance policy.

R4-4.3.8 In addition to the requirements outlined in the above Rules, where the AIF proposes to appoint service providers which do not operate from a recognised jurisdiction, the MFSA requires the following additional application documents:

- i. personal questionnaire(s) of the director(s) and qualifying shareholder(s) (>10% control) of the relevant service provider;
- ii. latest three years audited financial statements; and
- iii. evidence of their respective authorisation.

R4-4.3.9 The MFSA reserves the right to request such additional information as it may require when processing an application for a licence.

#### **R4-4.4 Licensing timeframes applicable to AIFs**

R4-4.4.1 An AIF may start providing an investment service in Malta with the investment strategy/-ies described in the application form submitted to the MFSA as soon as the licence is granted but not earlier than one month after having submitted any missing information referred to hereunder:

- a. information on arrangements made for the delegation and sub-delegation to third parties of functions referred to in SLCs 8.76 to 8.83 of Part B of these Rules;
- b. the memorandum and articles of association of the AIF;
- c. information on the arrangements made for the appointment of the Depositary; and

- d. any additional information referred to in SLC 8.85 of Part B of these Rules.

#### **R4-4.5 Licencing of additional sub-funds of an existing AIF**

R4-4.5.1 A licenced AIF constituted in the form of an umbrella fund wishing to establish additional sub-funds, is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to apply for a licence in favour of the sub-fund(s);
- ii. a confirmation from the governing body of the AIF signifying its intention to apply for a licence in favour of the sub-fund(s);
- iii. a final draft of the revised offering document/ offering supplement (as applicable) together with the checklist required;
- iv. the appropriate application fee; and
- v. a draft copy of the approval by the governing body of the AIF of the revised offering document/ offering supplement (as applicable).

#### **R4-4.6 Applications for the approval of additional classes of shares/units of an existing AIF**

R4-4.6.1 A licenced AIF constituted in the form of an umbrella (i.e., with sub-funds) or multi-class (i.e., without sub-funds) fund wishing to issue an additional class of shares/ units which shall not constitute a distinct sub-fund of the AIF is ordinarily required to submit the following documents:

- i. formal notification to the MFSA of its intention to issue additional classes of shares/ units;
- ii. a final draft of the revised offering document;
- iii. a draft copy of the approval of the governing body of the AIF of the offering document; and
- iv. a confirmation from the governing body of the AIF signifying its intention to issue additional classes of shares/ units.

R4-4.6.2 The issue of additional classes of shares/ units within an existing AIF is not subject to any application/ supervisory fees as long as the additional classes of shares/ units do not constitute a distinct sub-fund of the AIF.

#### **R4-4.7 Listing on a regulated market**

R4-4.7.1 An AIF that has been granted or has applied for a collective investment scheme licence in terms of the Act, may apply for admissibility to listing with the Listing Authority<sup>23</sup>.

R4-4.7.2 Where an application for admissibility to listing has been submitted concurrently with an application for a collective investment scheme licence, the documents submitted as part of the application for a collective investment scheme licence need not be resubmitted as part of the application for admissibility to listing.

R4-4.7.3 In addition, provided that the MFSA is informed of the AIF's intention to apply for admissibility to listing, once these documents have been approved by the MFSA, they will be deemed to be approved in relation to both the application for a collective investment scheme licence as well as in relation to the application for admissibility to listing.

R4-4.7.4 A European AIF may also apply for admissibility to listing with the Listing Authority.

#### **R4-4.8 Conversion of an NPIF into an AIF**

R4-4.8.1 The licencing process for AIFs is also available to collective investment schemes which are included in the List of Notified PIFs, in terms of the Investment Services Act (Notified CISs) Regulations:

Provided that, in cases of conversions, any redemption fees in relation to investors wishing to exit the NPIF prior to the conversion shall be waived and no subscription fees will be levied on existing investors in the NPIF.

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<sup>23</sup> The MFSA is the Listing Authority in terms of the Financial Markets Act.

## SECTION 5 Marketing of Self-Managed AIFs

### R5-5.1 Notification procedure

R5-5.1.1 This section should be read in conjunction with the Investment Services Act (Marketing of Alternative Investment Funds) Regulations. It aims to provide an overview of the requirements applicable to self-managed Maltese AIFs wishing to market their units in another Member State or EEA State in terms of Directive 2011/61/EU.

R5-5.1.2 Marketing of a European AIF which is managed by a European AIFM is regulated by the provisions of regulation 5 of the Investment Services Act (Marketing of AIFs) Regulations. The European AIF, where registered in a Member State or EEA State other than Malta, shall thereafter be exempt from the provisions of article 4 of the Act as long as the conditions referred to in the regulations are fulfilled.

### R5-5.2 Notification requirements

R5-5.2.1 A self-managed Maltese AIF may market its units or shares to professional investors in a Member State or EEA State other than Malta provided that prior to commencement of its marketing in a Member State or EEA State, the conditions prescribed hereunder are met.

R5-5.2.2 The self-managed Maltese AIF shall submit to the MFSA a notification<sup>24</sup> which shall comprise the documentation and information prescribed hereunder:

- a. a notification letter, including a programme of operations concerning the self-managed AIF;
- b. the AIF's offering document or equivalent rules and instruments of incorporation;
- c. identification of the Depositary of the AIF;
- d. a description of, or any information on, the AIF available to investors;
- e. information on where the master AIF is established if the Maltese AIF is a feeder AIF;
- f. any additional information concerning the disclosure obligations prescribed in Section 8 to Part B of these Rules;
- g. an indication of the Member State or EEA State in which the self-managed AIF intends to market its units or shares;
- h. information about arrangements made for the marketing of the self-managed AIF and, where relevant, information on the arrangements established to prevent units or shares of the AIF

<sup>24</sup> Schedule 4 to Part A of these Rules.

from being marketed to retail investors, including in the case where the AIF relies on activities of independent entities to provide investment services.

### **R5-5.3 Pre-marketing arrangements**

R5-5.3.1 The term 'pre-marketing' shall have the same definition as that of the Investment Services Act (Marketing of AIFs) Regulations.

R5-5.3.2 A self-managed Maltese AIF may engage in pre-marketing in the European Union, **except** where the information presented to potential professional investors:

- (a) is sufficient to allow investors to commit to acquiring its units or shares;
- (b) amounts to subscription forms or similar documents whether in a draft or a final form; or
- (c) amounts to its constitutional documents, prospectus or offering documents in a final form if not yet established and licensed by the MFSA.

R5-5.3.3 Where a draft prospectus or offering documents are provided, they shall not contain information which is sufficient to allow investors to take an investment decision and shall clearly state that:

- (a) they do not constitute an offer or an invitation to subscribe to the units or shares of the self-managed Maltese AIF; and
- (b) the information presented therein should not be relied upon because it is incomplete and may be subject to change.

R5-5.3.4 A self-managed Maltese AIF shall ensure that investors do not acquire its units or shares through pre-marketing and that investors contacted as part of pre-marketing may only acquire its units or shares through the marketing notification arrangements outlined in R5-5.3.2 above.

R5-5.3.5 Any subscription by professional investors of units or shares of an AIF referred to in the information provided to the MFSA in the context of pre-marketing, or of an AIF established as a result of the pre-marketing, shall be considered to be the result of marketing and shall be subject to the applicable notification procedures referred to in R5-5.3.2 above provided that such subscription is made within 18 months of the self-managed Maltese AIF having begun pre-marketing.

R5-5.3.6 If the self-managed Maltese AIF engages in pre-marketing, it shall within two weeks of it having begun pre-marketing, send to the MFSA an informal letter, in paper form or by electronic means, specifying:

- (a) the Member States in which and the periods during which the pre-marketing is taking or has taken place;
- (b) a brief description of the pre-marketing including information on the investment strategies presented; and,
- (c) where relevant, a list of the AIFs and compartments of AIFs which are or were the subject of pre-marketing.

R5-5.3.7 A self-managed Maltese AIF shall ensure that any pre-marketing is adequately documented.

**R5-5.4 De-notification of arrangements made for the marketing of a self-managed Maltese AIF**

R5-5.4.1 A self-managed Maltese AIF may de-notify the arrangements made for marketing its units or shares in a Member State in respect of which it has made a notification in accordance with R5-5.3.2 of this Part of the Rules, where all the following conditions are fulfilled:

- (i) except where the self-managed Maltese AIF is closed-ended or is structured as an ELTIF, a blanket offer is made to repurchase or redeem, free of any charges or deductions, all units or shares held by investors in that Member State, is publicly available for at least 30 working days, and is addressed, directly or through financial intermediaries, individually to all investors in that Member State whose identity is known;
- (ii) the intention to terminate arrangements made for marketing its units or shares in that Member State is made public by means of a publicly available medium, including by electronic means, which is customary for marketing AIFs and suitable for a typical AIF investor; and,
- (iii) any contractual arrangements with financial intermediaries or delegates are modified or terminated with effect from the date of de-notification in order to prevent any new or further, direct or indirect, offering or placement of the units or shares identified in the notification referred to in R5-5.4.2 of this Part of the Rules.

As of the date referred to in sub-paragraph (iii), a self-managed Maltese AIF shall cease any new or further, direct or indirect, offering or placement of its units or shares in the Member State in respect of which it has submitted a notification in accordance with R5-5.4.2 of this Part of the Rules .

R5-5.4.2 The self-managed Maltese AIF shall submit a notification to the MFSA containing the information referred to in sub-paragraphs (i), (ii)

and (iii) of R5-5.4.1 of this Part of the Rules.

R5-5.4.3 For a period of 36 months from the date referred to in R5-5.4.1(iii), a self-managed Maltese AIF shall not engage in pre-marketing of its units or shares referred to in the notification, or in respect of similar investment strategies or investment ideas, in the Member State identified in the notification referred to in R5-5.4.2.

R5-5.4.4 A self-managed Maltese AIF shall provide investors who remain invested in it as well as the MFSA with the information required under Articles 22 and 23 of the AIFMD as transposed in Maltese Law.

## SECTION 6 Cessation of a Collective Investment scheme Licence

### R6-6.1 Procedure

R6-6.1.1 The AIF shall inform the MFSA at an early stage of its intention to surrender its collective investment scheme licence. The MFSA may require the AIF to delay the surrender of its licence, or to wind-up such business in accordance with conditions imposed by the MFSA, in order to protect the interests of unit-holders.

R6-6.1.2 The general procedure for surrendering a collective investment scheme licence is outlined below, although the MFSA reserves the right to impose additional requirements or vary them according to the particular circumstances of the case.

R6-6.1.3 Following a notification to the MFSA of its intention to surrender its collective investment scheme licence, the AIF shall submit the following documentation to the MFSA:

- (a) a formal request to the MFSA asking for its approval to surrender the collective investment scheme licence;
- (b) a resolution of the governing body of the AIF:
  - i. confirming the AIF's intention to surrender its licence, subject to the MFSA's approval and once the necessary formalities are finalised;
  - ii. confirming that the AIF has informed its auditor, Depositary and relevant service providers of its intention to surrender its licence;
  - iii. confirming, when the scheme is set up in a corporate form, that its shareholders have consented, in writing, to the scheme's intention to surrender its licence,; by way of derogation from Rule R6-6.1.7.
- (c) A written confirmation that due notice was given to its Unit-holders of its intention to surrender its licence, once the necessary formalities are finalised.

R6-6.1.4 Subsequently the AIF shall also submit:

- (a) a confirmation from the AIF's Administrator that there are no investors in the AIF;
- (b) a confirmation from the AIF's Administrator that no complaints/ litigation are/is pending arising from any event which arose whilst there were investors in the AIF;

- (c) a confirmation from the AIF's Administrator that the accruals and liabilities of the AIF have been cleared;
- (d) a confirmation from the Depositary (where applicable) or Administrator that the disbursement of the assets of the AIF has been completed in order; and
- (e) the original licence/s granted to it by the MFSA.

R6-6.1.5 Once all requirements listed above are satisfied, the respective supervisory fees are settled, the AIF is delisted from any Regulated Market and passporting notifications have been withdrawn (as applicable), an internal process will be set in motion for approval of the surrender of the collective investment scheme licence.

R6-6.1.6 The MFSA will convey its final decision to the AIF and will issue a public notice regarding the surrender of the AIF's licence.

R6-6.1.7 Where the AIF consists of different sub-funds, and the licence which had been granted to the sub-fund is being surrendered, this section will nonetheless apply and references to 'the AIF' shall be deemed to refer to 'the sub-fund'.

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