

## INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTOR FUNDS

### PART B: STANDARD LICENCE CONDITIONS

#### Appendix 2 Distributions of Income

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##### *Introduction*

The supplementary licence conditions on distributions of income are applicable to Maltese AIFs whether these are third-party managed or self-managed AIFs in terms of Part B of these Rules.

The supplementary licence conditions prescribed in this Appendix shall apply to AIFs which are marketed to retail investors.

##### **1.0 Accounting periods**

- a. This SLC determines what are the annual and half-yearly accounting periods of an AIF but this is subject to the right of the AIFM to choose that any particular annual or half-yearly accounting period shall end on a day which is not more than seven days after and not more than seven days before the day on which that accounting period would otherwise end.
- b. Subject to paragraphs (c), (d) and (e), annual accounting periods are successive periods of twelve months and the first six months of an annual accounting period is a half-yearly accounting period.

The first half-yearly accounting period shall be determined by the AIFM, or the investment company, with the approval of the Depositary.

- c. The first annual accounting period shall begin:-
  - i. where the AIF is the subject of an initial offer, on the first day of the period of the initial offer, or
  - ii. in any other case, when the AIF is authorised.
- d. The first annual accounting period shall end:-
  - i. on the next day in the calendar year which is the day specified in the most recently published AIF particulars as the day on which the annual accounting period ends; or

- ii. if that next day is less than six months after the beginning of the first annual accounting period and the AIFM, or the investment company, after consulting the auditor, and with the consent of the MFSA, so determines, on the first anniversary of that next day.
- e. The first annual accounting period after the making of a change in the dates of the annual accounting period shall begin on the next day following the end of the annual accounting period immediately preceding the making of that change and shall end:-
  - i. on the next day in the calendar year which is the new day on which the annual accounting period ends; or
  - ii. if that next day is less than six months after the beginning of the first annual accounting period to be completed after the making of the change and the AIFM, or the investment company, after consulting the auditor, and with the consent of the MFSA, so determines, on the first anniversary of that next day.

## **2.0 Annual income allocation date**

- a. Each of the sub-funds of an AIF set up as an umbrella fund shall for the purposes of this SLC and of SLCs 3 to 9 of this Appendix be regarded as separate AIFs.
- b. An AIF shall have an annual income allocation date, which is the date in any year stated in the most recently published AIF particulars as the date on or before which, in respect of each annual accounting period, an allocation of income is to be made.
- c. The annual income allocation date must be a date within the two months following the relevant financial year end.

## **3.0 Annual allocation of income**

- a. On or before each annual income allocation date the AIFM, or the investment company, shall calculate under paragraph (b) of this SLC the amount available for income allocation in respect of the immediately preceding annual accounting period, and shall inform the Depositary of that amount.
- b. Allocation to the “*income account*”: -

- i. take the aggregate of the income property received or receivable by the AIF in respect of the period;
- ii. include in (i) any income equalisation amount received by the Depositary on Units created during the period, including any resulting from the final valuation;
- iii. add the AIFM's, or the investment company's, best estimate of any relief from tax on expenses properly payable out of income in respect of the period;
- iv. deduct the aggregate of all the AIFM's, and the Depositary's remuneration properly paid or payable in respect of the period;
- v. deduct the aggregate of the payments out of income property paid or payable in respect of the period;
- vi. deduct such provision for taxation as the AIFM, or the investment company, after consulting the auditor considers appropriate;
- vii. deduct the aggregate of those parts of the cancellation prices of Units cancelled during that period (including any cancelled by relation to the final valuation) as were attributable to the addition of income property to the calculation of the cancellation price including any income equalisation amount paid by the Depositary on cancellation;
- viii. deduct (or disregard) and carry forward any potential income, if the Depositary and the AIFM, or the investment company, agree that, because adequate information is normally not available about how that income accrues, it ought generally not to be accounted for on an accrued basis;
- ix. deduct (or disregard) and carry forward any potential income, if the Depositary and the AIFM, or the investment company, agree that that income is not likely to be received by the Depositary until 12 months after the income allocation date, provided the auditor is satisfied that the Depositary has made and intends to continue to make all proper efforts to obtain its receipt; and
- x. adjust for the re-allocation of the expenses from the "income account" to the "capital account". The Depositary, in consultation with the AIFM, or the investment company, shall exercise reasonableness in effecting these re-allocations.

Provided that AIFs that are not “*distributor funds*” but which have the power in terms of their prospectus to make distributions of income, may transfer any realised capital gains net of realised and/or unrealised capital losses from the “*capital account*” to the “*income account*”.

- c. At the end of each annual accounting period, the Depositary shall transfer the positive balance, if any, in the “*income account*” to an account to be known as the “*distribution account*”.
- d. The AIF may decide to distribute all or part of the balance in the “*distribution account*” and shall either directly or through the AIFM instruct the Depositary accordingly. In that case the Depositary shall carry the remaining balance in the “*distribution account*” forward to the next annual accounting period.
- e. The Depositary is not obliged to comply with paragraph (c) of this SLC if it appears to the Depositary, having consulted the AIFM, or the investment company, that the average payment to the holders of Units (disregarding holders of bearer certificates, holders of accumulation units, and holders of Units who are the AIFM or the Depositary or associates of either of them) by way of income would be less than €2.33 (or the equivalent amount in the base currency).
- f. Where the Depositary decides under paragraph (e) of this SLC not to distribute income, the Depositary must so inform the AIFM, or the investment company, which must then immediately instruct the Depositary either: -
  - i. to carry the balance in the “*income account*” forward to the next annual accounting period (and to regard it as received at the start of that period), or
  - ii. to credit the income to the “*capital account*”.
- g. On or before the annual income allocation date, the Depositary shall allocate the available income to the Units in existence in accordance with SLCs 5.0 or 6.0 or both.

#### **4.0 Annual allocation of capital gains/ losses**

- a. Allocation to the “*capital account*”: -
  - i. take the aggregate of the capital property realised and/ or unrealised by the AIF in respect of the period; and
  - ii. adjust for the re-allocation of the expenses from the “*income account*” to the “*capital account*”.

#### **5.0 Annual allocation to accumulation Units**

- a. Where an AIF has in existence both accumulation Units and income Units, the Depositary shall allocate the amount available for allocation of income between accumulation Units and income Units according to the respective shares in the property of the AIF represented by the accumulation Units and income Units in existence at the end of the relevant annual accounting period.
- b. The amount allocated to accumulation Units (whether under paragraph (a) of this SLC or because all the Units are accumulation Units) shall, with effect from the end of the annual accounting period, become part of the capital property and be reflected by an increase, as at the end of the period either:
  - i. in the value of the property of the AIF which an accumulation Unit represents or,
  - ii. where undivided shares are allocated to Unit holders, in the number of undivided shares in the property of the AIF which an accumulation Unit represents.
- c. The increase in undivided shares under paragraph (b)(ii) of this SLC shall be of such number (which may be a fraction but must be calculated to at least three decimal places) as will ensure that the creation price of an accumulation Unit remains unchanged notwithstanding the transfer of the income to the capital property or the relevant part of it.

#### **6.0 Annual distribution to holders of income Units**

- a. Subject to paragraph (b) of this SLC, where the Units in existence in an AIF are or include income Units, on or before each annual income allocation date the Depositary shall distribute the income allocated to those Units among the holders and the AIFM rateably in accordance with the number of such Units held or deemed to be held by them

respectively at the end of the relevant annual accounting period.

- b. Before distributing income under paragraph (a) of this SLC, the Depositary shall: -
  - i. deduct any amounts previously allocated by way of interim allocation of income in respect of that annual accounting period, and
  - ii. deduct and carry forward in the “*income account*” such amount as shall be necessary to adjust that allocation of income to the nearest one-hundredth of a cent (or the equivalent amount in the base currency) per income Unit or such lesser fraction as the AIFM may from time to time determine.
- c. Nothing in this Appendix shall require the Depositary to distribute income allocated to any Units in any case where the AIFM, or the investment company, or the Depositary considers it necessary or appropriate to carry out or complete identification procedures in relation to the holder or another person pursuant to a statutory or regulatory obligation.

## **7.0 Interim allocations of income**

- a. This SLC applies if at any time the most recently published AIF particulars:
  - i. state that an allocation of income will be made before the annual income allocation date in any year in respect of a period (“an interim accounting period”) within the annual accounting period, and
  - ii. specify a date as the interim income allocation date in relation to that interim accounting period.
- b. In such a case, SLCs 3.0 to 6.0 shall apply so as to secure the making of an interim allocation of income as if: -
  - i. the interim accounting period in question and all previous interim accounting periods in the same annual accounting period taken together, were the annual accounting period;
  - ii. the interim income allocation date were the annual income allocation date, and
  - iii. the AIFM, or the investment company, were to treat as the available amount of income for the interim allocation a sum in its opinion not exceeding the amount which would be available for allocation of

income if the interim accounting period and all previous interim accounting periods in the same annual accounting period taken together were an annual accounting period.

## **8.0 Income equalisation**

- a. An allocation of income (whether annual or interim) to be made in respect of each Unit created or issued or sold during the accounting period in respect of which that income allocation is made shall include a capital sum ("income equalisation") representing the AIFM's, or the investment company's, best estimate of the amount of income included in the creation price or in the creation price by reference to which the issue or selling price of that Unit was determined.
- b. The amount of income equalisation may be the actual amount of income in question or, if the Constitutional Documents permit it, it may be an amount arrived at by taking the aggregate of the amounts of income included in the creation price in respect of Units of the type in question issued or re-issued in the accounting period in question (or such lesser period as is specified for this purpose in the Constitutional Documents) and dividing that aggregate by the number of those Units and applying the resultant average to each of the Units in question.
- c. Income equalisation in the case of a Unit re-issued by the AIFM, or the investment company, in the accounting period in question is financed out of the income equalisation amounts paid by the AIFM, or the investment company, to the Depositary; and, accordingly, the AIFM, or the investment company, shall be paid by the Depositary out of the "distribution account" (in the case of income Units) and out of the capital property (in the case of accumulation Units) a sum equal to the income equalisation applicable to that Unit when allocations of income are next made for an interim or for an annual accounting period.

## **9.0 How distributions may be made**

- a. Any monies payable by the Depositary to a holder in respect of any Unit, the title to which is for the time being represented by a bearer certificate, maybe paid by crossed cheque or warrant made payable to the order of the person who, in such manner as is prescribed in the Constitutional Documents, has identified himself to the Depositary as the person entitled to that distribution and may be sent by post to such address as that person shall have disclosed to the Depositary for that purpose.
- b. Any monies payable by the Depositary to the AIFM or to a registered holder in respect of any Unit may be paid by crossed cheque or warrant made payable to the order of and sent through the post to the usual

business address of the AIFM or the registered address of such holder, as the case may be, or, in the case of joint holders, made payable to and sent to the registered address of that one of the joint holders who is first named on the register.

- c. The payment of any cheque or warrant to the first named of joint holders shall be as effective a discharge to the Depositary and the AIFM or the investment company, as if such first named joint holder had been a sole holder.
- d. Every such cheque or warrant which is so sent shall be a satisfaction of the monies payable and shall be a good discharge to the Depositary and the AIFM, or the investment company.
- e. Where an authority in writing given by the holder (or in the case of joint holders by all of them) in such form as the Depositary shall consider sufficient, is held by the Depositary, he shall pay the amount payable in accordance with that authority.
- f. Any distribution payment which shall remain unclaimed after a period of twelve years from the date of payment shall then be transferred to and become part of the capital property and henceforth neither the payee nor the holder nor any successor in title of his shall have any right thereto or therein except as part of the capital property.

### **10.0 Distribution statements and tax details**

- a. On or before any income allocation date (whether annual or interim) the Depositary shall send to each holder (or to the first named of joint holders) entitled to be entered in the register as at the end of the accounting period in question and shall on request give or send to every holder of Units the title to which is represented by a bearer certificate: -
  - i. a statement prepared by the AIFM, or the investment company, showing the calculation of the amount of income allocated in respect of the period to which he is entitled, whether or not the income is distributed to him or allocated to accumulation Units and, where applicable, a statement of how much of the amount to which he is entitled represents income equalisation, and
  - ii. details of any tax deducted in respect of that income.
- b. In the case of any distribution on liquidation of an AIF, details shall be given as to the proportion of the distribution which represents capital and the proportion which represents income.

- c. If in any year an interim allocation of income is made in respect of a

period of less than six months it shall, subject to paragraph (d) hereunder, be a sufficient compliance with this SLC in relation to that interim allocation period if:

- i. instead of sending or giving a distribution statement for that period in accordance with paragraph (a)(i), the information which would have been given in such a statement is included in the next distribution statement for a half-year or for a full year to be sent or given, and
  - ii. tax details are sent or given in accordance with the requirements for the time being of the Department of Inland Revenue.
- d. Paragraph (c) of this SLC does not absolve the Depositary from complying with paragraph (a) of this SLC in respect of any person who was entitled to any part of the interim allocation but who ceased to be a holder of any or all of his Units before the end of the period to be covered in the next distribution statement; but in such a case the Depositary shall comply with paragraph (a) of this SLC on or before the next ensuing annual (or half- yearly) income allocation date.