

INVESTMENT SERVICES RULES FOR ALTERNATIVE INVESTMENT FUNDS

PART B: STANDARD LICENCE CONDITIONS

Appendix 3

Contents of the Constitutional Documents

1 INTRODUCTION

- 1.01 The requirements prescribed in this Appendix are applicable to Maltese AIFs whether these are third-party managed or self-managed AIFs in terms of Part B of these Rules.
- 1.02 The requirements prescribed in this Appendix shall apply to Maltese AIFs which are marketed to retail investors.

2 CONTENTS OF THE CONSTITUTIONAL DOCUMENTS

- 2.01 The Constitutional Documents shall:
- i. provide that the assets of the AIF shall be entrusted to a Depositary for safekeeping;
 - ii. specify the conditions under which there may be effected, and the procedure to be followed with respect to, the replacement of the AIFM or the Depositary including the right of the MFSA to require such replacement. There shall be provisions to ensure the protection of unit holders in such circumstances;
 - iii. specify the procedures for the creation and cancellation of Units;
 - iv. define clearly the method of valuation of the assets of the AIF, which method shall have been approved by the MFSA;
 - v. provide that the Units of the AIF shall be issued or sold at a price arrived at by dividing the net asset value of the AIF calculated on the approved basis by the number of Units outstanding. Such price may be increased by duties and charges;
 - vi. provide that Units shall not be issued unless the equivalent of the net issue price is paid into the assets of the AIF within the time limits prescribed in the Constitutional Documents. This provision shall not preclude the issue of bonus units;

- vii. provide that Units shall be redeemed or repurchased at a price arrived at by dividing the net asset value of the AIF calculated on the approved basis by the number of Units outstanding. Such price may be decreased by duties and charges;
- viii. determine the frequency of the calculation of the issue and repurchase prices. This shall be preferably, on each business day and definitely at least twice each month. The prices shall be made available with similar frequency. The AIF shall repurchase its Units on such terms as may be provided in its Constitutional Documents;
- ix. provide that the AIF, or the AIFM, or the Depositary shall issue registered certificates representing one or more portions of the AIF, or alternatively written confirmation of entry in the register of Units or fractions of Units;
- x. provide that rights attaching to fractions of Units shall be exercisable in proportion to the fractions of a Unit held except for voting rights which shall only be exercisable in whole Units;
- xi. prescribe the basis upon which the AIFM, Administrator, Investment Adviser and the Depositary may charge remuneration and expenditure to the AIF;
- xii. lay down provisions relating to the allocation and distribution of income.

2.02 Where the AIF is set up as a **Unit Trust**, the Constitutional Document of the AIF shall:

- i. provide that the Trustee shall ensure that the sale, issue, repurchase, redemption and cancellation of Units effected by or on behalf of the AIF are carried out in accordance with MFSA's requirements, the Constitutional Documents and the most recent Prospectus;
- ii. provide that the Trustee shall ensure that the value of Units is calculated in accordance with the provisions of the Constitutional Documents;
- iii. provide that the Trustee shall carry out the instructions of the AIFM unless these conflict with the Licence Conditions or the Constitutional Documents;
- iv. provide that the Trustee shall ensure that in transactions involving the AIF's assets, consideration is remitted to it within time limits which are acceptable market practice in the context of a particular transaction;
- v. provide that the Trustee shall ensure that the AIF's income is applied in accordance with the Constitutional Documents;

- vi. provide that the Trustee shall enquire into the conduct of the AIFM in each annual accounting period and report thereon to the holders of Units. The Trustee's report shall be delivered to the AIFM in good time to enable the AIFM to include a copy of the report in its Annual Report. The Trustee's report shall state whether in the Trustee's opinion the AIF has been managed during that period:
 - a. in accordance with the limitations imposed on the investment and borrowing powers of the AIF by the Constitutional Documents and by the MFSA; and
 - b. otherwise in accordance with the provisions of the Constitutional Documents and the Licence Conditions.

If the AIFM has not complied with these requirements, the Trustee shall state why this is the case and outline the steps which the Trustee has taken to rectify the situation;

- vii. provide that the Trustee shall be liable to the AIF or to the investors of the AIF, for loss by the Trustee or any third party to whom the custody of financial instruments held in custody has been delegation. The trustee shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the trustee's negligent or intentional failure to properly fulfil his obligations;
- viii. provide that the liability of the Trustee shall not be diminished if it has entrusted to a third party some or all of the assets in its safe-keeping;
- ix. provide that the Trustee shall not enter into a contract for the sale of assets unless such assets belong to the AIF;
- x. provide that the Trustee shall notify the MFSA of any breach of the Licence Conditions or of any breach of the provisions of the Constitutional Documents as soon as it becomes aware of the breach;
- xi. prescribe the remuneration and the expenditure which the AIFM is empowered to charge to the unit trust and the method of calculation of such remuneration;
- xii. provide that a General Meeting of the holders of Units shall be held at least once each year.

2.03 Where the AIF is set up as a **Common Contractual Fund**, the Deed of Constitution of the AIF shall include:

- i. the name of the AIF and the duration if any;
- ii. the name of the AIFM and of the depositary;
- iii. the investment policy;
- iv. the distribution policy, if any, of the income of the AIF;
- v. the remuneration and expenditure which the AIFM is empowered to charge the AIF and the method of calculation of such remuneration;
- vi. the date of the closing of the accounts of the AIF;
- vii. the dissolution of the AIF, without prejudice to the requirements prescribed in Regulation 21 of the Investment Services Act (Contractual Funds) Regulations, 2010;
- viii. the procedure for the amendment to the deed of constitution;
- ix. the procedure for the removal and replacement of the AIFM and the depositary of the AIF;
- x. the procedure for the issue of units to participants or fractional units up to such a number of decimal places not being less than three as specified in the deed of constitution;
- xi. that a minimum percentage of holding is required for unit holders in a contractual fund to request, in writing, the AIFM to convene a meeting for unit holders to vote on certain issues as may be determined by the deed of constitution of the AIF;
- xii. the procedure for the redemption of units and the conditions under which redemptions may be carried out or suspended;
- xiii. The method of valuation of the AIF's assets;
- xiv. The law governing the AIF;
- xv. Any other matter which may be prescribed by the competent authority.

2.04 Where the AIF is set up as a common contractual fund and the use of a Special Investment Vehicle is envisaged, the Deed of Constitution and the Offering Memorandum of the AIF shall clearly indicate the intention to establish such a

vehicle, and any reports prepared by the AIF shall include such information on the Special Investment Vehicle.

- 2.05 Furthermore, the Constitutional Document of an AIF set up as a common contractual fund shall:
- i. provide that the AIFM shall ensure that the sale, issue, repurchase, redemption and cancellation of Units effected by or on behalf of the AIF are carried out in accordance with MFSA's requirements, the Deed of Constitution and the most recent Prospectus;
 - ii. provide that the AIFM shall ensure that the AIF's income is applied in accordance with the Deed of Constitution;
 - iii. provide that the AIFM shall notify the MFSA of any breach of the Licence Conditions or of any breach of the provisions of the Deed of Constitution as soon as it becomes aware of the breach;
 - iv. prescribe the remuneration and the expenditure which the AIFM is empowered to charge to the AIF and the method of calculation of such remuneration;
 - v. prescribe that decisions affecting the rights of unit holders shall be taken by the AIFM of the AIF in agreement with the Depositary of such AIF;
 - vi. provide that a General Meeting of the holders of Units shall be held at least once each year.