

INVESTMENT SERVICES RULES FOR PROFESSIONAL INVESTOR FUNDS

PART B: STANDARD LICENCE CONDITIONS

Appendix II

Contents of the Offering Document

1. General Requirements

- 1.1 Unless otherwise agreed with the MFSA, a Scheme shall issue or cause to be issued an Offering Document for which the Scheme shall be responsible. The purpose of the Document is to provide sufficient information to enable potential Experienced, Qualifying and/or Extraordinary Investors to make an informed investment decision.
- 1.2 The Document must contain all material information which at the date of the Offering Document is within the knowledge of the Scheme's Board of Directors (in the case of a Scheme set up as an investment company), General Partner(s) (in the case of a Scheme set up as a limited partnership) or Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) to be relevant for the purpose of making an informed judgement about the merits of participating in the Scheme and the extent of the risks accepted by so participating. The Offering Document shall include the following information:

Information Concerning the Scheme

- i. The following statements – which must be in a prominent position printed in font whose pitch is at least 12:
 - “[name of the Scheme] is licensed by the Malta Financial Services Authority (“MFSA”) as a Professional Investor Fund which is available to investors qualifying as Experienced Investors/ Qualifying Investors/ Extraordinary Investors [delete as appropriate].
 - Professional Investor Funds are Non-Retail schemes. Therefore, the protection normally arising as a result of the imposition of the MFSA's investment and borrowing restrictions and other requirements for retail schemes do not apply.
 - Investors in PIFs are not protected by any statutory compensation arrangements in the event of the fund's failure.
 - The MFSA has made no assessment or value judgment on the soundness of the fund or for the accuracy or completeness of statements made or opinions expressed with regard to it.”.

- ii. In the case of PIFs targeting Extraordinary Investors, the Offering Memorandum should also provide that: *“PIFs targeting Extraordinary Investors are subject to the minimum level of supervision for a Fund regulated in Malta.”*.
- iii. A statement that the Scheme’s Board of Directors (in the case of a Scheme set up as an investment company), General Partner(s) (in the case of a Scheme set up as a limited partnership) or Manager (in the case of a Scheme set up as a unit trust or a common contractual fund) confirm their approval of the content of the Offering Document.
- iv. Name of the Scheme.
- v. Date of establishment of the Scheme and a statement as to its duration, if limited.
- vi. Name or style, form in law and registered office.
- vii. In the case of an umbrella Scheme, an indication of the Sub-Funds.
- viii. In the case of an Incorporated Cell Company, an indication of the incorporated cells.
- ix. The investment objectives, policies and restrictions of the Scheme, together with the extent of use of leverage. In the case of an umbrella Scheme, this information must be provided for each Sub-Fund.
- x. A statement indicating that:
 - changes to the investment policies and restrictions of the Scheme, or in the case of an umbrella Scheme, its Sub-Funds, shall be notified to investors in advance of the change.
 - changes to the investment objectives of the Scheme, or in the case of an umbrella Scheme its Sub-Funds, shall be notified to investors in advance of the change. The change in the investment objectives will only become effective after all redemption requests received during such notice period, have been satisfied.
- xi. Accounting and distribution dates.
- xii. Name of auditor.
- xiii. Details of the types and main characteristics of the Units and in particular:
 - the nature of the right represented by the Unit;

- indication of the voting rights, if any of the holders of Units.
- xiv. A Statement – where the Scheme has issued “Voting Shares” to the promoters and “non Voting Shares” to prospective Investors – identifying the holders of the “Voting Shares” of the Scheme. In the event that the “Voting Shares” are held by a Corporate Entity or a Trustee, the Offering Document may include the name of the said Corporate Entity/ Trustee without disclosing the names of the individual beneficial owners/ beneficiaries. The Offering Document would also need to state that the identity of the ultimate beneficial owners of the holders of “Voting Shares” will be disclosed upon request.
 - xv. Procedures and conditions for the creation, issue and sale of Units.
 - xvi. Procedures and conditions for the repurchase, redemption and cancellation of Units, and details of the circumstances in which repurchase or redemption may be suspended.
 - xvii. Rules for the valuation of assets.
 - xviii. Method to be used for the determination of the creation, sale and issue prices and the repurchase, redemption and cancellation prices of Units, in particular:
 - the method and frequency of the calculation of the net asset value;
 - information concerning the charges relating to the sale or issue and the repurchase or redemption of Units; and
 - arrangements whereby holders of Units and prospective holders of Units may deal.
 - xix. In the case of an umbrella Scheme, the charges applicable to the switching of investments from one Sub-Fund to another.
 - xx. Information concerning the nature, amount and the basis of calculation in respect of remuneration payable by the Scheme to the Manager (or in the case of a Self-Managed Scheme, the Investment Committee), Administrator, Depositary, Adviser, and to third parties, and in respect of the reimbursement of costs by the Scheme to the Manager, to the Depositary and to third parties.
 - xxi. In the case of a Scheme set up as an investment company, the amounts of authorised and paid-up share capital.
 - xxii. In the case of a Scheme set up as an investment company, brief details of the members of the Board of Directors of the Scheme. Where the Scheme has

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

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

Information concerning the Manager, Investment Adviser, Administrator, Depositary/ Prime Broker (where applicable) (“the Service Provider”)

- i. Name or style, registered office and head office.
- ii. If the Service Provider is part of a group, the name of that group.
- iii. Regulatory Status of the Service Provider.
- iv. In the case of the Investment Adviser or the Administrator a statement whether the Investment Adviser/ the Administrator is appointed by the Scheme or the Manager.
- v. Where one or more Service Provider has not to be appointed, a description should be provided concerning how the functions normally undertaken by each functionary will be carried out e.g. if a Depositary/Prime Broker is not appointed, the Offering Document should include a description of the safekeeping arrangements that will be put in place with respect to the assets of the Scheme.

- vi. In the case of a Self Managed Scheme, details of the members of the Investment Committee, including an overview of their experience and expertise together with an outline of the person(s) responsible for the day to day management of the assets of the Scheme.

Information concerning the Local Representative

- i. Name, registered office and head office, if different from registered office.
- ii. Main activities.

Risk Warnings

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

General Information

- i. A description of the potential conflicts of interest which could arise between the Manager, or the Investment Adviser, or the Depositary/ Prime Broker, and the Scheme.
- ii. The name of any entity which has been contracted by the Manager or the Scheme to carry out its work.

- iii. Information concerning the arrangements for making payments to holders of Units, purchasing or redeeming Units and making available information concerning the Scheme.
 - iv. Where applicable, an indication that the Scheme will use Trading Companies or Special Purpose Vehicles as part of its investment strategy.
- 2. *Closed ended schemes set up as Professional Investor Funds which make an offer of securities to the public***
- 2.1 Closed ended schemes set up as Professional Investor Funds targeting Experienced Investors which make an offer of securities to the public shall:
- not be subject to the requirements outlined in Section 1 of this Appendix; and
 - draw up their Offering Document in line with the requirements of Schedule C of Appendix 9 to the current Investment Services Rules for Recognised Persons and Retail Collective Investment Schemes.
- 2.2 The Offering Document shall be made available to Experienced Investors as soon as practicable and in any case, within a reasonable time in advance of, and at the latest, at the beginning of the offer of Units. In the case of an initial offer of Units in a closed ended Scheme not already admitted to trading on a Regulated Market that is to be admitted to trading for the first time, the Offering Document shall be available at least six working days before offer opens.
- 2.1 Where the Offering Document is made available by publication in electronic form, a paper copy must nevertheless be delivered to the investor, upon his request and free of charge, by the Scheme or the financial intermediaries placing or selling the Scheme's Units. The Offering Document of the Scheme must be made available in a printed form at the registered office of the Scheme or its manager or other financial intermediaries placing or selling the Units in the Scheme.
- 2.2 The Directors of the Scheme, or its administrative management or supervisory body – whose names and functions or in the case of legal persons their names and registered offices appear on the Offering Document – must include a declaration in the Offering Document to the effect that to the best of their knowledge the information contained therein is in accordance with facts and that the Offering Document makes no omission likely to effect its import.
- 2.3 The text and the format of the Offering Document, and/or the supplements to the Offering Document, published or made available to the public, shall at all times be identical to the latest version approved by the MFSA.

- 2.4 Every significant new factor, material mistake or inaccuracy relating to the information included in an Offering Document of the Scheme which is capable of affecting the investors' assessment of the Units on offer and which arises or is noted between the time when the Offering Document is approved and the final closing of the offer to the public or, as the case may be, the time when trading on a Regulated Market begins, shall be mentioned in a supplement to the Offering Document. Such a supplement shall be approved in the same way within a maximum of seven working days and published in accordance with at least the same arrangements as were applied when the original Offering Document was published. The summary, and any translations thereof, shall also be supplemented, if necessary to take into account the new information included in the supplement. Investors who have already agreed to purchase or subscribe for the Units before the supplement is published shall have the right, exercisable within a time limit which shall not be shorter than two working days after the publication of the supplement, to withdraw their acceptances.
- 2.5 If there are significant new factors, material mistakes or inaccuracies, arising since the approval of the Offering Document, the Scheme shall publish a supplement which must be approved by the MFSA.
- 2.6 The Scheme shall comply with the requirements laid out in Regulations 3 to 8 of the Investment Services Act (Prospectus of Collective Investment Schemes) Regulations, 2005.