

**INVESTMENT SERVICES RULES FOR NOTIFIED
PROFESSIONAL INVESTOR FUNDS AND
RELATED DUE DILIGENCE SERVICE PROVIDERS**

SUPPLEMENTARY RULES

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REVISIONS LOG

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1.00	18 Dec 2023	See Circular: MFSA Launches Framework for Notified PIFs

1. Supplementary Rules applicable to NPIFs using Trading Companies / Special Purpose Vehicles ('SPVs') for Investment Purposes

- 1.1 The SPVs must be established in Malta or in a jurisdiction which is not a FATF blacklisted country.
- 1.2 The NPIF shall through its Directors or General Partner(s) at all times maintain the majority directorship of any SPV.
- 1.3 The NPIF shall ensure that the investments effected through any SPV are in accordance with the investment objectives, policies and restrictions of the NPIF.
- 1.4 The SPV shall be owned or controlled via a majority shareholding of the voting shares either directly or indirectly by the NPIF

2. Supplementary Rules applicable to NPIFs established as Incorporated Cell Companies with Incorporated Cells pursuant to the Companies Act (SICAV Incorporated Cell Companies) Regulations (S.L. 386.14)

- 2.1 The ICC and the individual ICs shall have at least one common director between them.
- 2.2 The ICC and the individual ICs shall have a common registered office.

3. Supplementary Rules applicable to NPIFs established as Incorporated Cells under a Recognised Incorporated Cell Company pursuant to the Companies Act (Recognised Incorporated Cell Companies) Regulations (S.L. 386.15)

- 3.1 ICs set up under a Recognised Incorporated Cell Company (hereinafter referred to as an 'RICC') 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).
- 3.2 Each IC can only be third party managed. The IC shall appoint an investment manager, which should be approved by both the RICC and its Due Diligence Service Provider.

- 3.3 An IC 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 its Due Diligence Service Provider.
- 3.4 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.
- 3.5 An IC shall have the same registered office as its RICC at all times.
- 3.6 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.
- 3.7 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.
- 3.8 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 compliance obligations in relation to its ICs.
- 3.9 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.
- 3.10 An IC may create sub-funds. In this regard, an IC is required to comply with the applicable provisions of Part A of these Rules.
- 3.11 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.
- 3.12 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.
- 3.13 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.

- 3.14 An IC shall submit a notification 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 these Rules, as applicable.
- 3.15 Upon notification, the IC must provide information on any departure from the standard model agreements endorsed by the RICC.
- 3.16 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.
- 3.17 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.
- 3.18 An IC of a RICC shall pay the notification and supervision fees applicable to NPIFs as stipulated in the Investment Services Act (Fees) Regulations. Sub-funds of the IC shall pay the notification and supervision fees applicable to sub-funds of a collective investment scheme in terms of the same paragraph.

4. Supplementary Rules applicable to NPIFs investing in DLT Assets

- 4.1 NPIFs investing in DLT assets, either directly or through a trading company/ SPV, shall comply with the SLCs under this Section.

Provided that NPIFs 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 NPIFs investing in such units shall also comply with the SLCs under this Section.

General

- 4.2 NPIFs falling under this Section shall only be established as investment companies, limited partnerships 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

- 4.3 Pursuant to Part A of these Rules, the MFSA requires that the parties involved in the NPIF and the service providers of the NPIF 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

- 4.4 Pursuant to Rule 8.3 above, the governing body of the NPIF 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.
- 4.5 The members of the governing body shall create an overall structure which will ensure an adequate division of responsibilities in relation to the NPIF and shall carry out all the necessary checks to satisfy themselves that the NPIF'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.
- 4.6 The governing body of the NPIF 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

- 4.7 The NPIF shall ensure that the Manager shall have such business organisation, systems, experience and expertise for it to act as Manager to a NPIF investing in DLT assets.
- 4.8 The NPIF 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.

- 4.9 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 NPIF.

Administrator

- 4.10 The NPIF shall ensure that the Administrator shall have adequate business organisation, systems, experience and expertise for it to act as an Administrator to a NPIF investing in DLT assets.

- 4.11 The onus of proving that the proposed Administrator meets the above requirements on an ongoing basis is on the NPIF.

Custodian

- 4.12 The NPIF shall ensure that, where appointed, the Custodian or Prime Broker, shall have the business organisation, systems, experience and expertise for it to act as a Custodian or a Prime Broker to a NPIF investing in DLT assets.

Compliance

- 4.13 The NPIF shall ensure that the local member of the governing body tasked with compliance duties has the experience and expertise for them to enable the compliance function to be properly carried out.

Money Laundering Reporting Officer

- 4.14 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 for it to act as MLRO of a NPIF investing in DLT assets.

Auditor

- 4.15 The Auditor shall have the business organisation, systems, experience, and expertise for it to act as an Auditor to a NPIF investing in DLT assets.

Quality assessment of DLT Assets

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

- 4.17 Pursuant to Rule 8.16 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

- 4.18 The NPIF shall ensure that the appointed Manager:
- i. Implements an appropriate, documented and regularly updated quality assessment process when investing on behalf of the NPIF, according to the investment strategy, the objectives and risk profile of the NPIF;
 - ii. Ensures that the risks associated with each investment position of the NPIF and their overall effect on the NPIF'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 NPIF corresponds to the size, portfolio structure and investment strategies and objectives of the NPIF as provided for in its constitutional document and Offering Document.
- 4.19 Pursuant to Rule 8.18 above, the NPIF 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 NPIF, assesses whether the risk profile of the said DLT asset falls within the scope of the risk management policy of the NPIF.
- 4.20 Where a Risk Manager has been appointed (s)he shall also assess whether the quality assessment carried out in terms of Rule 8.19 above provides reasonable assurance that the DLT asset being invested in on behalf of the NPIF falls within scope of the risk management policy of the NPIF.

Liquidity Management

- 4.21 The NPIF 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 NPIF and to ensure that the liquidity profile of the investments of the NPIF complies with its underlying obligations.
- 4.22 The NPIF 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 NPIF and monitor the liquidity risk of the NPIF 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 NPIF.
- 4.23 The NPIF shall ensure that the appointed Manager confirms that the liquidity profile and the redemption policy of the NPIF, and/or its Sub-Funds, as applicable, are consistent.

- 4.24 The verification and valuation function shall be performed by:
- i. An external valuer, being a legal or natural person independent from the NPIF, from the Manager and from any other persons with close links to the NPIF 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.
- 4.25 The NPIF 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 NPIF's investments in DLT assets.

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