

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

INVESTMENT SERVICES RULES FOR RETAIL COLLECTIVE INVESTMENT SCHEMES

PART B: STANDARD LICENCE CONDITIONS

Appendix III

Contents of the Constitutional Documents

1.0 Schemes set up as Investment Companies or Limited Partnerships

1.1 The Constitutional Documents shall:

- i. provide that the assets of the Scheme shall be entrusted to a Custodian 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 Manager or the Custodian 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 Scheme, which method shall have been approved by the MFSA;
- v. provide that the Units of the Scheme shall be issued or sold at a price arrived at by dividing the net asset value of the Scheme 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 Scheme within the time limits prescribed in the Constitutional Documents. Provided that 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 Scheme 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 Scheme

Investment Services Rules for Retail Collective Investment Schemes

Part B: Standard Licence Conditions

Appendix III: Contents of the Constitutional Documents

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shall repurchase its Units on such terms as may be provided in its Constitutional Documents;

- ix. provide that the Scheme, or the Manager, or the Custodian shall issue registered certificates representing one or more portions of the Scheme, 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 Manager, Administrator, Investment Adviser and the Custodian may charge remuneration and expenditure to the Scheme;
- xii. lay down provisions relating to the allocation and distribution of income;

2.0 Schemes set up as Unit Trusts

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2.1 The Constitutional Document of a Unit Trust shall:

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- i. provide that the Trustee shall ensure that the sale, issue, repurchase, redemption and cancellation of Units effected by or on behalf of the Scheme 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 Manager unless they conflict with the Licence Conditions or the Constitutional Documents;
- iv. provide that the Trustee shall ensure that in transactions involving the Scheme'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 Scheme's income is applied in accordance with the Constitutional Documents;
- vi. provide that the Trustee shall enquire into the conduct of the Manager in each annual accounting period and report thereon to the holders of Units. The Trustee's report shall be delivered to the Manager in good time to enable the Manager to include a copy of the report in its Annual Report. The Trustee's report shall state whether in the Trustee's opinion the Scheme has been managed during that period:

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- in accordance with the limitations imposed on the investment and borrowing powers of the Scheme by the Constitutional Documents and by the MFSA; and
- otherwise in accordance with the provisions of the Constitutional Documents and the Licence Conditions.

If the Manager 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 will be liable to the Manager, the Scheme and the holders of Units for any loss suffered by them as a result of its failure to perform its obligations or its improper performance of them. It shall be provided that holders of Units shall be able to enforce this liability either directly or indirectly through the Manager;
- 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 Scheme;
- 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 Manager 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.

3.0. Schemes set up as Common Contractual Funds

3.1. The Deed of Constitution of a Common Contractual Fund shall provide:

- i. the name of the contract fund and the duration if any;
- ii. the name of the management company and of the custodian;
- iii. the investment policy;

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- iv. the distribution policy, if any, of the income of the contractual fund;
 - v. the remuneration and expenditure which the management company is empowered to charge the fund and the method of calculation of such remuneration;
 - vi. the date of the closing of the accounts of the fund;
 - vii. the dissolution of the contractual fund, 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 manager and the custodian of the contractual fund;
 - 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 management company to convene a meeting for unit holders to vote on certain issues as may be determined by the deed of constitution of the fund;
 - 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 contractual fund's assets;
 - xiv. The law governing the contractual fund;
 - xv. Any other matter which may be prescribed by the competent authority.
- 3.2. In the case where a Special Investment Vehicle is envisaged, the Deed of Constitution and the Offering Memorandum of the Contractual Fund shall clearly indicate the intention to establish such a vehicle, and any reports prepared by the contractual fund shall include such information on the Special Investment Vehicle.
- 3.3. Furthermore, the Constitutional Document of a Contractual Fund shall:
- i. provide that the Manager shall ensure that the sale, issue, repurchase, redemption and cancellation of Units effected by or on behalf of the Scheme are

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carried out in accordance with MFSA's requirements, the Deed of Constitution and the most recent Prospectus;

- ii. provide that the Manager shall ensure that the Scheme's income is applied in accordance with the Deed of Constitution;
- iii. provide that the Manager 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 Manager is empowered to charge to the Contractual Fund and the method of calculation of such remuneration;
- v. prescribed that decisions affecting the rights of unit holders shall be taken by the manager of the contractual fund in agreement with the custodian of such fund;
- vi. provide that a General Meeting of the holders of Units shall be held at least once each year.

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